Circuit Court for Anne Arundel County
Case No. C-02-CR-17-002633

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2514

September Term, 2018

NICHOLAS KYLE HOFFMAN

v.

STATE OF MARYLAND

Graeff,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 5, 2019

Nicholas Hoffman, appellant, was convicted at a bench trial in the Circuit Court for Anne Arundel County of attempted first- and second-degree murder, and first- and second-degree assault. After merging the latter three convictions into his conviction for attempted first-degree murder, the court sentenced him to life imprisonment, all but 25 years suspended, and five years of supervised probation upon his release from prison. Appellant presents two questions on appeal, which we have slightly rephrased:

I. Did the trial court err in denying appellant's motion for judgment of acquittal on the charge of attempted first- and second-degree murder because the State did not prove that he had acted with an intent to kill?

II. Did the trial court err in denying appellant's motion to transfer his case to juvenile court?

For the reasons that follow, we shall affirm.

FACTS

On the afternoon of November 3, 2017, Logan Dandley, a 16-year-old junior at South River High School was walking home with a friend when he was struck by a car driven by appellant, a senior at the same school. Appellant's friend, Callie Scott, was a passenger in the car and, at appellant's request, she videotaped the attack on appellant's cell phone. The State's theory of prosecution was that appellant had acted with the intent to kill. The State's evidence came from the testimony of Dandley, Scott, the investigating detective, and the video. The theory of defense was that appellant did not act with the intent to kill but, at most, with an intent to do grievous bodily injury. The defense presented no testimonial evidence. Viewing the evidence in the light most favorable to the State, the following was elicited at appellant's trial.

Around 3:30 p.m. on November 3, 2017, Dandley was walking on a residential street, about a block and a half from his home in Edgewater, Maryland, when he heard the sound of screeching tires. He testified that he turned his head and in "a split second" saw, behind him, a car speeding toward him. Having "no time for anything else[,]" he "tr[ied] to jump straight up in the air[.]" As he did so, he "flipped over the car" with his knee putting a hole through the windshield and his head hitting the roof of the car before he bounced off and landed on the ground. He was flown to Shock Trauma in Baltimore for life threatening injuries and released the next day.

Dandley testified that he did not know appellant, but three days before the attack he was walking near his house when appellant, driving the same car with four passengers, including another student named Thomas Mynaugh, came "speeding towards me[.]" The car missed Dandley only because he quickly stepped out of the way. That evening, appellant communicated with Dandley on Snapchat, saying that after smoking some marijuana, he and the four people from the car were going to "jump me in front of my house."

Dandley testified that he knew Mynaugh and explained that about two months before the attack he and Mynaugh had had an argument about marijuana. Apparently, Dandley had arranged to purchase marijuana from Mynaugh, and although Dandley received the marijuana, he did not pay for it. The two had smoothed things over, however, within a few weeks. Dandley did not know that appellant and Mynaugh were friends until he saw them in the car together three days before the attack.

Callie Scott testified that she and appellant were friends, and during lunch on the day of the attack, appellant said he "wanted to see" Dandley. She did not know who Dandley was. Scott and appellant left school around 1:45 p.m. and went to a park where she took a Xanax pill and appellant took two. He became irritable, which she testified had happened the couple of times before when appellant had taken Xanax. After an hour or so, they drove to the Woodland Beach area to find Dandley. Appellant said he wanted to "hit him with his car door." Upon spotting Dandley, appellant handed Scott his cell phone and asked her to make a recording. The recording shows appellant accelerating toward Dandley for eight seconds before hitting him with his car. As he accelerates toward Dandley he says, "Let's go, boy" and, after hitting Dandley and with Scott repeatedly saying appellant's name, he says, "Fuck him." Appellant drove away and was stopped by the police about two blocks from the attack. Appellant told Scott to say that his cracked windshield was caused by "a boulder."

Appellant and Scott were taken to a police station where they both made videotaped statements. Scott testified that she lied to the detective and told him what appellant had asked her to say, that a boulder had hit his car. In appellant's statement, he denied hitting Dandley, and said that while driving his car a rock fell off a truck in front of him and hit his windshield. His videotaped statement was admitted into evidence, and the court noted that appellant "does not appear to be agitated, aggressive, or irritated[.]" The interviewing detective testified that appellant was "coherent" and "speaking intelligibly," and appellant said that he "wasn't under the influence of any drugs or alcohol."

A recording of the assault on appellant's cell phone was admitted into evidence and played for the court. Among other things, the court noted that "[i]t is a straight on hit[.]"

DISCUSSION

I.

Appellant argues that the trial court erred in denying his motion for judgment of acquittal on the charge of first- and second-degree attempted murder because the State did not meet its burden of showing that he intended to kill Dandley.[1] Appellant argues that the State's evidence showed an equally plausible, if not stronger, theory that he merely intended to cause grievous injury. Appellant cites *Spencer v. State*, 450 Md. 530 (2016) to support his argument. The State disagrees, as do we.

On appeal from a bench trial, the scope of our review is set out in Md. Rule 8-131(c): we "review the case on both the law and the evidence" and we "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[,]" giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." In reviewing a challenge to the sufficiency of the evidence, we view "the evidence in the light most favorable to the prosecution, [and determine whether] *any* rational trier of fact could have

[1] Appellant states several times in his appellate brief that the State failed to prove that he had formed a "premeditated, deliberate intent to kill", but he never addresses why the evidence failed to show premeditation. We shall not address whether the State failed to show premeditation because appellant has failed to put forth any argument on that theory. *See* Md. Rule 8-504(a)(6) (an appellate brief shall include "[a]rgument in support of the party's position on each issue") and (c) (an appellate court "may dismiss" or order any other appropriate relief for noncompliance with the Rule). *See also Klauenberg v. State*, 355 Md. 528, 551-52 (1999) (failure to present argument on appeal as to why the trial court abused its discretion waives issue on appeal).

found the essential elements of the crime beyond a reasonable doubt.'" *Derr v. State*, 434 Md. 88, 129 (2013) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)), *cert. denied*, 573 U.S. 903 (2014). "That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted).

"The crime [of] attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes behind mere preparation." *State v. Earp*, 319 Md. 156, 162 (1990). Murder is a common law crime in Maryland that is codified and parsed into degrees for punishment purposes by Md. Code Ann., Criminal Law Art. ("Crim. Law") §§ 2-205 and 2-206, respectively. The overlapping *mens rea* for attempted first- and second-degree murder is an intent to kill without justification, excuse, or mitigation. *Earp*, 319 Md. at 163. An "'[i]ntent to kill' means just what the term suggests—one person intends to bring about the death of another." *Id*.

Because intent is a "subjective concept and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by" facts and inferences from those facts. *Buck v. State*, 181 Md. App. 585, 641 (2008) (quotation marks, brackets, and citations omitted). *See also Burch v. State*, 346 Md. 253, 273 ("Absent an

admission by the accused, [an intent to kill] rarely can be proved directly.") (citation omitted), *cert. denied*, 522 U.S. 1001 (1997). It is well established that "an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body." *Buck*, 181 Md. App. at 642 (quotation marks and citations omitted). This is because "[i]t is permissible to infer that one intends the natural and probable consequences of his act[ions]." *Id.* (quotation marks and citations omitted) (some brackets added). Moreover, specific intent may be inferred by considering "the accused's acts, conduct and words." *State v. Raines*, 326 Md. 582, 591 (citation omitted), *cert. denied*, 506 U.S. 945 (1992).

Citing *Spencer*, *supra*, appellant argues that like the facts in that case, the State failed to show that he had the specific intent to kill. To support his argument, he points out that he had no motive to kill Dandley: he and Dandley did not know each other and whatever dispute Dandley had had with Mynaugh was resolved a month before. He emphasizes that he told Scott before the attack that he only wanted to hit Dandley with his car door. Appellant's argument is without merit.

In *Spencer*, the police attempted to stop Spencer after he failed to stop at a stop sign and nearly collided with a patrol car. 450 Md. at 539. During the ensuing chase, Spencer, who was intoxicated, drove recklessly and at speeds between 80 and 100 miles per hour. *Id*. at 539-40. When the police managed to "box" him in to get him to stop, Spencer drove onto the grass and paved shoulder and struck a cyclist. *Id*. at 540. He tried to flee his car on foot, but the police apprehended him. *Id*. at 541-52. The Court of Appeals reversed his attempted second-degree murder conviction of the cyclist, agreeing with Spencer that the State had failed to prove an intent to kill the cyclist. The Court reasoned that while a car

could be used as a deadly weapon, the State had presented no evidence that Spencer's goal was to harm the cyclist, but rather the evidence showed that his goal was to "avoid apprehension by the police." *Id*. at 570. The Court added that even assuming that Spencer wanted to hit the cyclist so he could escape, "the intent to cause serious bodily injury in order to further his goal of escape is insufficient – Spencer was required to have the specific intent to kill[.]" *Id*. at 571.

The facts present in appellant's case are in direct contrast to those in *Spencer* where the driver's intent was not to hit the cyclist but to escape from the police. Appellant drove directly at Dandley, accelerating for 8 seconds, and not once slowing down or changing direction. There was no goal other than to hit Dandley with his car. The court was free to discount appellant's earlier words to Scott that he wanted to hit Dandley with his car door. As to appellant's motive argument, it is axiomatic that "[m]otive is not an element of the crime of murder," although it can provide the reason for why a person engaged in criminal activity. *Snyder v. State*, 361 Md. 580, 604-05 (2000) (citations omitted). Contrary to appellant's argument, there was evidence of motive, even if not compelling — appellant was upset because Dandley stole marijuana from his friend a couple of months earlier.

Appellant also argues that the State presented no evidence that death was a natural and probable result of his actions and that the natural and probable consequences maxim should not apply to him because of his youth and drug use. There was no evidence that appellant was intoxicated when he committed the crime. He did not present a voluntary intoxication defense. There also was no evidence of appellant's alleged lack of maturity. Appellant's argument that the natural and probable consequences maxim should not apply

here because of his lack of maturity or intoxication does not in any way affect the legal sufficiency of the inferences that could be drawn that appellant acted with an intent to kill. *See Chisum v. State*, 227 Md. App. 118, 136 (2016) ("[T]he availability of other permitted inferences does not in any way negate or compromise the validity and the legal sufficiency of the permitted inference of the intent to kill."). Accordingly, we find no error by the trial court in denying appellant's motion for judgment of acquittal.

II.

Appellant was properly charged in circuit court with attempted first-degree murder and related offenses. *See* Md. Code Ann., Courts and Judicial Proceedings ("Cts. & Jud. Proc.") § 3-8A-03(d) (providing that a juvenile court does not have jurisdiction over a child at least 14 years of age who is alleged to have committed a crime punishable by life imprisonment and all other charges arising out of the same attack), and Crim. Law § 2-205 (attempted first-degree murder is subject to imprisonment not exceeding life). Prior to trial, appellant filed a motion to transfer his case to juvenile court, which the lower court denied. Appellant argues on appeal that the lower court abused its discretion when it denied his motion to transfer. The State disagrees, as do we.

A circuit court may transfer a case involving a child who is at least 14 but not 18 years of age to juvenile court where "the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society." Criminal Procedure ("Crim. Proc.") § 4-202(b)(3). A hearing is required before any decision to grant or deny such a motion. Crim. Proc. §4-202(f). In making its decision, the court is required to weigh five factors:

(1) the age of the child;

(2) the mental and physical condition of the child;

(3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;

(4) the nature of the alleged crime; and

(5) the public safety.

Crim. Proc. §4-202(d). The requesting party, usually the juvenile, bears the burden of demonstrating that the court should grant his request. *Brown v. State*, 169 Md. App. 442, 451 (2006).

We review a lower court's weighing of the above five factors under an abuse of discretion standard. *Whaley v. State*, 186 Md. App. 429, 444 (2009) (citation omitted).

> Abuse of discretion . . . has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Alexis v. State, 437 Md. 457, 478 (2014) (quotation marks and citation omitted). *See also Fontaine v. State*, 134 Md. App. 275, 288, *cert. denied*, 362 Md. 188 (2000) (where we said that an abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court" and "where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.") (quotation marks and citations omitted).

At the transfer hearing, the parties presented argument, and the lower court reviewed the Maryland Department of Juvenile Services ("DJS") report and the recorded video of the attack. As to the first factor, age of the defendant, the court noted that appellant was 17 years and ten months old at the time of the offense, and he was 18 at the time of the hearing. The court found that this factor weighed against transfer to juvenile court.

As to the second factor, the mental and physical condition of appellant, the court pointed out that appellant was "the size of an adult" and had no physical or mental health issues. The court noted that he had a substance abuse problem, primarily the use of marijuana. According to the DJS report, appellant reported he first used alcohol when he was 16 years old but only consumed it three or four times; he started using marijuana at age 14 and began using it daily in the middle of junior year; and he started using Xanax at age 17, as frequently as two or three times a month.

As to the third factor, appellant's amenability to treatment, the court referred to the DJS report that stated that appellant had no prior contacts with the juvenile system, and that the DJS "does have services available" for him. Although appellant had no documented disciplinary history in school, appellant self-reported that he had been involved in a fight during the school year and received a multi-day suspension. The court noted that appellant had a grade point average of 1.96 at the start of the school year and that his grades were erratic. The court also noted appellant's history of employment. In June 2017, he was working as an apprentice at a HVAC company, but at the time of school he had switched to a part-time job at a restaurant for one-week before changing jobs to a different restaurant. The court also noted his disruptive childhood – his father abused

drugs, his father and girlfriend moved out of the house which was then sold, and appellant was taken in by neighbors.

As to the fourth factor, the nature of the crime, the court reviewed the video of the crime, noting that it appeared to be "a planned attack" — appellant accelerated toward the victim and never swerved; he struck the victim "straight on" at a high rate of speed; and he left the scene without checking in the victim while uttering words that indicated "little to no remorse[.]" The court found that this weighed against transferring his case to juvenile court.

As to the fifth and final factor, public safety, the court noted that it shared DJS's concerns about the risk appellant represents to public safety given that Dandley had not threatened or provoked appellant in any way before the attack. The court noted that appellant was apparently upset with Dandley over the theft of marijuana taken from appellant's friend, but "there was nothing that warranted this type of assault[.]" The court found that appellant "represents a very clear and serious danger" to public safety.

The court then weighed the factors together and concluded:

> Certainly, the Court weighs [the public safety factor] with the – with the factors regarding amenability to treatment and the defendant's lack of prior contact with the juvenile – with the Department of Juvenile Services and the fact that there has been no delinquent findings and no prior contacts and no – at least in the school records, no history of poor behavior as it relates to school.
>
> I find – and I would note that the Department, in summary, recommends to the Court that the jurisdiction of the adult court remain intact as the – based on the defendant's age, he is an adult, the serious nature of the offense and the risk that he represents to public safety.

> I am required to, and do, exercise my independent judgment in regards to that, but nonetheless, I concur with the Departments' recommendation. And based on all of the factors and considering all of the factors, as I am required to do, I find they weigh in favor of the case remaining in the adult system. So, I deny the Defense motion.

Appellant does not dispute the facts elicited at the hearing but argues that the court drew the wrong conclusions from the facts and gave too much weight to the nature of the crime and not enough to his amenability to treatment. He cites *In re Johnson*, 17 Md. App. 705 (1973) to support his argument that the court gave undue weight to the nature of the crime. He also emphasizes that he is "still a child," never had been in trouble before, had unaddressed substance abuse issues, and only acted "impulsive[ly]" and "rashly[.]"

We disagree with appellant's assessment of the court's ruling. Over five-typed pages, the court explored and weighed each of the factors and weighed the factors together. In reviewing the court's process, we disagree that the court gave short shrift to the amenability factor or placed too much emphasis on the nature of the crime factor. The court thoroughly considered the parties' arguments, DJS report, and each of the five factors. In sum, we are persuaded that the court did not abuse its discretion in concluding, in concurrence with the DJS's recommendation, that the factors weighed in favor of denying appellant's motion to transfer his case to juvenile court.

In *Johnson*, a 16-year-old girl was given permission by her 21-year-old boyfriend to drive his car, even though she did not have a license. *Johnson*, 17 Md. App. at 709-10. When she made a wide turn, she accidentally put her foot on the accelerator rather than the brake, causing the car to drive up on the sidewalk and strike three children, killing one of them. *Id*. at 710. Johnson's boyfriend sent her home, and he told the police upon their

arrival that he was driving the car at the time of the accident. *Id*. He eventually recanted and implicated Johnson. A petition was filed in juvenile court alleging Johnson was a delinquent child as she had committed the delinquent act of manslaughter by automobile. *Id*. at 709. The State sought a waiver to adult court.

The circuit court, sitting as a juvenile court, began the subsequent hearing by stating the "ground rules[,]" to examine the five "criteria" set forth in the statute. *Id*. at 710 (quotation marks and citation omitted). The Assistant State's Attorney told the juvenile court that "the basis for the State's request for waiver is that this charge is too serious to be tried in juvenile court." *Id*. (quotation marks omitted). A "waiver summary" prepared by the DJS was submitted to the court. *Id*. at 710-11. The summary stated that Johnson was an above-average student, she was described by her 10th grade counselor as "very responsible and reliable and has presented no conduct problems," and she had been active in extra-curricular activities at school. *Id*. Additionally, the author of the report opined that Johnson "had the potential to be a productive citizen." *Id*. at 711. Her church pastor testified at the hearing and described her as "very concerned about what has happened" and that there were times when "she has been crying because of the death of the two year old." *Id*. at 711. The court ruled:

> Well, I am going to grant the State's request and waive jurisdiction in this petition. It is a very difficult step for me to take because we have a young lady who has had a very credible record for herself. She has not been in any difficulty and she has done well in school and has been active in school activities, has been active in community activities, but I *base my decision* on her age, almost seventeen when this occurred, but *essentially on the very grievous nature of the offense*; the fact that there was this very tragic killing, the fact that the respondent used subterfuge, the responsibility for it, all of this is a tragedy of immense proportions as we all recognize. It is essentially

> because of this that I feel that this is not the appropriate tribunal for this matter.

Id. at 711 (emphasis supplied in *In re Johnson*).

On appeal, we reversed the juvenile court's waiver of jurisdiction ruling. We held the juvenile court abused its discretion by failing "to consider sufficiently the appellant's amenability to treatment in any institution, facility, or programs available." *Id*. at 713. We reasoned:

> We think it apparent that the hearing judge was unduly influenced by the 'nature of the offense' to the extent that the amenability of the appellant to rehabilitation was cast aside and not considered, or, if considered, was not afforded its proper weight. The mere statement that the five legislative factors were considered by the hearing judge does not divest this Court of its right to determine whether *vel non* those factors were actually considered and properly weighed in relation to each other and relative to the legislative purpose[.]
>
> * * *
>
> We think it apparent from the 'Waiver Summary' and the testimony of Rev. Gill that the juvenile appellant is, if adjudged a delinquent child, an ideal subject for the rehabilitative measures available from the Department of Juvenile Services.

Id. at 712-13.

In re Johnson is easily distinguishable. Unlike the facts in *In re Johnson* where the harm was caused by an accident (Johnson did not mean to accelerate but meant to brake the car), here appellant deliberately accelerated his car for about eight seconds toward the victim with whom he was apparently angry at based on a misguided notion of loyalty to his friend. There was evidence that Johnson showed remorse for what her actions had caused; appellant did not. Additionally, not only do the underlying factual circumstances here and in *Johnson* bear little resemblance to each other, the lower court here weighed

each of the five statutory factors unlike in *Johnson* where the lower court stated, "I base my decision on . . . the very grievous nature of the offense[.]" In sum, we find no abuse of discretion by the lower court in denying appellant's motion to transfer his case to juvenile court.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.