IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2020

NO. 51

HOWARD JIMMY DAVIS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF RESPONDENT

BRIAN E. FROSH
Attorney General of Maryland

PETER R. NAUGLE
Assistant Attorney General
CPF No. 1312180283

Office of the Attorney General
Criminal Appeals Division
200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422
pnaugle@oag.state.md.us

Counsel for Respondent

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STATEMENT OF THE CASE

Respondent, the State of Maryland, accepts the Statement of the Case in Petitioner Howard Jimmy Davis's brief.

QUESTION PRESENTED

Did the Court of Special Appeals correctly conclude that Davis failed to rebut the presumption that Judge Purpura knew the law and applied it correctly in denying Davis's motion to transfer jurisdiction over this criminal matter to juvenile court?

STATEMENT OF FACTS

The State of Maryland accepts the Statement of Facts in Davis's brief, as supplemented and modified in the following Argument, and with the following amplifications.

On March 30, 2017, a statement of charges was issued by the District Court of Maryland for Baltimore County charging Davis with ten counts including, among others, two counts of attempted first-degree murder and first-degree assault, in connection with events on March 22, 2017. (R.61-62). On the date of the offense, Davis was over sixteen years old.

By virtue of the crimes charged and Davis's age, the criminal court of the Circuit Court for Baltimore County had original exclusive jurisdiction. On April 10, 2017, Davis was formally indicted on fourteen criminal counts including: attempted first-degree murder; home invasion; first- third- and fourth-degree burglary; two counts of first-degree assault; two counts of use of a firearm in the commission of a crime of violence; two counts of reckless endangerment; unauthorized use of a vehicle; unlawful taking of a motor vehicle; and theft of between $1,000 and $10,000. (E.14-17).

The events took place during the early morning hours of March 22, 2017, at the home of David Gilliam and Alise Williams, where the couple lived along with two teenage daughters and an eleven-year-old son. (E.22).[1] Around 1:39 a.m., Gilliam heard a "loud banging noise coming from the kitchen," and when he went downstairs he encountered three males "wearing masks, gloves and all dark clothing." (E.22).

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[1] The extract citations for this background reference the "reverse waiver report" prepared by the Department of Juvenile Services (E.20-25); the record citations reference the application for statement of charges.

Gilliam briefly fought with the nearest intruder and then all three fled. (E.23). After Gilliam went upstairs to call 911, he heard several gunshots downstairs. (E.23). His eleven-year-old son, who slept in a bedroom in the basement, opened the basement door and saw two individuals in ski masks. (E.23). One of the intruders "pointed a long black gun similar to an assault rifle at [Gilliam's son]." (E.23). Gilliam's son ran into the basement and "hid under a blanket in his bedroom," and the two masked men "came downstairs and searched the basement and then they went back upstairs." (E.23).

Shortly after Gilliam heard the gunshots, the door to couple's upstairs bedroom was "kicked in" and a "male subject with an assault rifle entered the bedroom." (E.23). Gilliam reported that "another subject was standing in the hallway with what he believed to be another rifle[.]" (E.23). The gunman pointed the rifle at Williams who pushed it away, and Gilliam grabbed the assault rifle as it fired several times into the bedroom. (E.23). Williams ran and locked herself in the bathroom. (E.23). The gunman then struck Gilliam in the face with the butt of the rifle, knocking out one of his teeth. (R.54).

Officer L. Bryant responded and observed Williams hanging from an upstairs window. (E.22). She advised that "there were several unknown male subjects in her house and they were possibly around back." (E.22). Officer Bryant went around back and saw two males running away; he pursued on foot, and saw them enter a minivan. (E.22).

Other officers observed the minivan and activated their cruiser's emergency lights. (E.22). Following a vehicle chase, the minivan crashed, and three male occupants fled on foot. (E.23). Matthew Crawley and Sterling Miller, Jr. were apprehended, but the third man was not. (E.23). Miller implicated his friend "Howard" as the third occupant; he explained that Crawley's only role was as the driver, and "that 'Howard' was in possession of the rifle and was solely responsible for assaulting the male at the residence." (E.23). The police found a ".22 caliber Mossberg International 715T assault rifle" in the minivan. (R.55). At the residence, they found the rear sliding glass door lying on the kitchen floor; bullet holes in the kitchen wall and bedroom closet; and blood spattered in the master bedroom. (R.55).

Davis's Transfer Motion

On June 15, 2017, Davis filed a motion asking the criminal court to transfer its original jurisdiction over his charges to the juvenile court. (E.18-19). On September 20, 2017, Davis requested a postponement for evaluations, which the State did not oppose. (E.8). On January 23, 2018, Judge Nancy Purpura held a hearing on Davis's transfer motion.

Davis, as the party with the burden of persuasion, called three witnesses. His first witness was Kimberly Turner, the program director for "unCUFFED ministries," a "non-profit that works specifically with youth charges, adults and also some young adults." (E.64). The State accepts Davis's account of her testimony (Petitioner's Br. at 8-9), with the following amplifications. Turner testified that Davis participated weekly at the Charles Hickey School, and "we really could see him growing . . . because I worked with him for 10 months." (E.67). For the purposes of the transfer motion, she wrote a letter in which she stated, in part, "[h]is commitment to receiving help is testimony [sic] to how amenable he is to treatment." (E.26).

Davis's second witness was Dr. Kristen Zygala. The State accepts Davis's account of her testimony at the hearing (Petitioner's Br. at 8, 10), with the following amplifications.

Dr. Zygala testified that she is a part-time clinical psychologist at the Spring Grove Hospital Center who does "assessments" for the Public Defender's Office. (E.73). She testified that she was "contacted to do an assessment to look at [Davis's] intellectual, academic, behavioral, and emotional functioning, as well as run a risk assessment," and her report was admitted as Defense Exhibit 2. (E.77-78).

Dr. Zygala testified that Davis has "a strong need for social dependency, attention and security," and "might compromise his own internal values or beliefs because he wants the acceptance from others so much." (E.81). At the same time, she testified there was "no indication of significant behavioral problems as a child," and the results of the Behavior Assessment System for Children (B.A.S.C.) – which looks at "inattention, impulsivity, hyperactivity, depression, anxiety" – "didn't reflect any areas of significance." (E.82).

Dr. Zygala testified that Davis's mother reported seeing a decline in his behavior in "the months leading up to his alleged crime," and that "it was the girlfriend and . . . her negative influences." (E.82). Dr. Zygala opined that once the "stimulus" of his girlfriend was removed, Davis was "back to his level of optimal functioning," "seems to be doing well," was "engaging in therapy," and "seems amenable to treatment because he has been so engaged." (E.82-83).

She testified that Davis had "some trauma," insofar as he reported seeing someone get shot and another person get stabbed, and that three relatives passed away in 2012. (E.25). She testified that in the 10th grade Davis "started skipping school and he was using drugs." (E.87). Dr. Zygala opined, "it all seems to be connected with this girlfriend and also, adolescence, I'm sure." (E.84). She testified Davis had reportedly ended things with his girlfriend, stating "I know that he has some mixed emotions. I think that was his first serious girlfriend and, you know, young love," but "she just created, you know, a lot of emotional difficulties that he didn't handle very well." (E.88).

Dr. Zygala "struggled" to come up with a diagnosis for Davis, and eventually "just . . . gave him an unspecified trauma and stressor related disorder[.]" (E.88-89). She observed that the Hickey School had also not given Davis any formal diagnosis. (E.30). Nevertheless, she opined, "he's already shown that he can – you know, he's willing to accept treatment, and engage in treatment and really put forth the effort." (E.90). She added, "I always do like to bring up the fact that . . . the brain is not fully developed until you're 25," and that is why "kids are more impulsive." (E.94-95).

On cross-examination, Dr. Zygala acknowledged she only met with Davis once. (E.97). She also acknowledged that past behavior is a factor in assessing future risk, and that Davis already had three prior contacts with the Department of Juvenile Services (DJS) at the time of this offense and that, as a result, Davis had to complete a "victim awareness" program to make him aware of how his behavior impacts the victim. (E.98). She also confirmed that she was aware that the allegations in this most recent case were extremely violent:

[PROSECUTOR]: And although they are only allegations, at this point, you are aware of the allegations in this –

DR. ZYGALA: Yes.

[PROSECUTOR]: – current case? And you would regard those as extremely violent, is that correct?

DR. ZYGALA: Yes.

[PROSECUTOR]: All right. And you understand that there is an allegation, that the Defendant, along with two adults, –

DR. ZYGALA: Yes.

[PROSECUTOR]: – forced their way into –

DR. ZYGALA: Absolutely.

[PROSECUTOR]: – another person's home? And you understand that there's an allegation, that at least one assault rifle was used?

DR. ZYGALA: Yes.

[PROSECUTOR]: Fully-functional assault rifle?

DR. ZYGALA: Yep.

(E.99-100).

When asked about the physical injuries inflicted on Gilliam, Dr. Zygala acknowledged, eventually, that they were serious:

[PROSECUTOR]: You're not aware? And are you aware of the extent of the injuries that were inflicted upon the victims?

DR. ZYGALA: Yes, I read the, the police report.

> [PROSECUTOR]: And what was your understanding of their injuries?
>
> DR. ZYGALA: I – my understanding that they were more – they were not severe injuries.
>
> [PROSECUTOR]: Okay. Were you aware of the fact that the, the, the male of the household had teeth knocked out?
>
> DR. ZYGALA: Actually, I did read that. Yes. I'm sorry. Yes.
>
> [PROSECUTOR]: And he suffered a graze wound from a bullet when he grabbed –
>
> DR. ZYGALA: Okay. Yeah.
>
> [PROSECUTOR]: – the carbine of a gun?
>
> DR. ZYGALA: Yeah.
>
> [PROSECUTOR]: Okay.
>
> DR. ZYGALA: So, – I'm sorry. I meant – yes. They were serious.

(E.102).

The prosecutor noted Dr. Zygala's testimony regarding the inherent "impulsivity" of youth and asked whether she would consider the nature of the allegations in the present case as being "more pre-planned" or "more impulsive[.]" (E.101). Dr. Zygala replied, "I don't know whether it took planning or if they, on a whim, just decided to go do that." (E.101).

Davis's final witness was Jenna Conway. The State accepts Davis's account of Conway's testimony (Respondent's Br. at 8, 10), with the following amplifications. Conway testified that she is an employee of the Public Defender's Office, and her job is mostly to "write assessments for . . . Transfer and Waiver Hearings." (E.110).

Conway identified Defense Exhibit 3 as "the documents [she] reviewed," and testified that she met with Davis and his mother, as well as Davis's case managers. (E.121). She testified, "what I gathered from them was just that his behavior was consistent, and that it was positive," and "how engaged he was in services," adding that typically the youth she works with have 90% of their "points" and Davis had 100%. (E.121-222). Defense counsel asked, "does [Davis] have um, needs that could be addressed through placement?" (E.126). Conway replied:

> MS. CONWAY: Yes. Behavioral modification. Group and individual therapy, working on whether that's mood, developing positive coping skills. Some of the things that he's doing right now at the Charles Hickey School. Unresolved trauma. Grief and bereavement from family members dying. All of those things can be addressed . . . in placement.

(E.126).

Defense counsel asked, "in the juvenile system, what types of programs would be available for [Davis]?" Conway replied, "[t]here's staff-secure, as well as hardware-secure facilities that offer behavioral modification, as well as mental health treatment, that are available to him." (E.131). Defense counsel asked, "do you, in your training, knowledge and expertise, feel that, given the nature of the offense in this case . . . that [Davis] could be successfully treated and rehabilitated in the juvenile system?" Conway replied, "while it is serious, it can still be treated in the Department of Juvenile Services." (E.129-30).

At the end of the evidentiary phase of the hearing (E.131), Judge Purpura reiterated that she had all of the reports, including the "Reverse Waiver Report" from DJS itself. (E.20-25). Under a section titled, "youth's amenability to treatment in any institution, facility, or program available [sic] delinquents," DJS indicated that Davis already had three prior contacts, but if transferred, he would be eligible for behavioral modification services, that he and his mother had expressed a willingness to participate in services, and that "evaluations would be requested to determine appropriate services." (E.22).

However, under "public safety," DJS reported, "[t]he nature of the current offenses . . . present a clear threat to himself and the safety of the public," that Davis's actions "show a disregard [for] the well-being and safety of others and a lack of respect for societal laws," and that "[a] home invasion is a blatant action of disrespect of personal space and has the potential to cause extreme emotional distress to victims." (E.24).

During the argument phase, Judge Purpura indicated that, as Davis bore the burden, she would hear from the defense first. (E.133). Defense counsel argued that Davis would "be able to benefit from services for at least another . . . 4 years and 2 months, to be exact," and "has had the benefit of . . . whatever services have been available at the Hickey School, because he's availed himself of all those services." (E.135). Defense counsel emphasized, "the progression in 10 months has really been very positive," and "both of the experts testified that there would be treatment available," and "he's exhibited the willingness to want to do that," which "bodes in his favor, that he would be amenable to treatment in an institute or facility." (E.137-38).

Defense counsel suggested, "[t]he unfortunate situation that led up to this was that [Davis] was told by a girl that he was seeing that she was pregnant with twins," and "said she lost one of the children, and . . . that she was raped by a young man who lived at this address. And that is what started this entire unfortunate . . . terrible set of circumstances." (E.138). Defense counsel acknowledged that offense was "serious," but argued "there is a secured facility and he would certainly have all kinds of services available, which you heard from all three witnesses, until he's 21 years old or older." (E.139, 141).

For the State's part, the prosecutor rejoined, "I would ask that this matter stay in the adult system." (E.145). The prosecutor emphasized that Davis was "about to turn 17 years old," and "until the triggering event with his ex-girlfriend, there [were] no mental or physical infirmities that would prevent [Davis] from understanding right versus wrong." (E.145). As to amenability to treatment, the prosecutor noted that Davis already had three prior contacts with DJS, and that the present escalation in violence tended to indicate that Davis "is not amenable to treatment in the juvenile system." (E.142).

Finally, as to the nature of the offense and public safety, the prosecutor urged that these were "the State's strongest argument" for retaining the criminal court's jurisdiction over this matter. (E.145). He argued, "[s]hort of murder, I think that this is probably as bad as it gets," and recounted:

> They're safe in their own home. At about 1:00 in the morning, the allegation is that their back door was entirely kicked in, three people come in who are wearing ski masks, . . . at least two of whom have what was identified as, or stated as, an assault rifles [sic] and one was actually recovered. They beat on this man. He goes upstairs to call for help. His – he locks his bedroom door. The allegation is, that somebody then – two of these individuals then kick in the bedroom door. He's there with his wife. He grabs the carbine of this um, assault rifle as the, the trigger's being pulled. He has graze [sic] on his arm. His teeth get knocked out. When the police actually get there, his wife is actually hanging out the window in an effort to escape. [Davis] and the Co-Defendant's thereafter lead the police on a high-speed chase, where this van, that was stolen, is completely destroyed.

(E.142).

The prosecutor argued that if one is willing to invade another person's house in the middle of the night while wearing a ski mask and armed with an assault rifle, "what won't you do?" (E.146). The prosecutor concluded, "I would ask, respectfully, that this matter stay in the adult system." (E.146).

Ultimately, Judge Purpura declined to transfer the criminal court's jurisdiction over this matter to the juvenile court. (E.146). Judge Purpura expressly confirmed, "I've had the opportunity to review the number of reports that have been admitted into evidence, . . . hear the testimony of the experts and consider argument of counsel. (E.144). Judge Purpura confirmed that she was cognizant of the "five factors" that a criminal court must consider in deciding whether to transfer its original jurisdiction over criminal charges to the juvenile court. (E.144).

Judge Purpura then offered insight into the reasoning underlying her decision, in the course of which she found, among other things, that Davis "would be eligible for behavioral modification" services through DJS, and also found that "[i]t's clear, that when this young man is in custody, he does well, that he doesn't commit any offenses, [and] that he's engaged in, in treatment[.]" (E.145-46). However, Judge Purpura observed, "when he's not in custody, he has committed an offense, a very grave, violent offense. And in my view, he's a considerable threat to public safety." (E.146).

Judge Purpura rejected the defense theme that Davis's girlfriend was ultimately to blame, and while all teenagers may be prone to "impulsivity" the vast majority do not commit actions remotely as violent as the allegations here:

> Everybody's very fortunate here today, that this did not result in a murder, because it very easily could have. But in any event, that is a very serious, violent offense. And I'm not persuaded, frankly, that the girlfriend is, is to blame here. But I have to say that, the presence of the girlfriend and her influence on this Defendant, that has been explained by the experts and, and counsel, frankly, in my view, does not favor transfer to the juvenile system, because, you know, there will be other girlfriends in the future and there will be other individuals in his life who will have an influence on him. And if those influences, influences can lead to behavior of this nature, that, frankly, does not weigh in favor of transfer to the juvenile system.
>
> In addition, while the expert that testified, that kids are more impulsive is certainly true, and, and certainly, most of that has to do with brain development, but it's important to note that, the vast majority of teenagers don't commit home invasion and attempted murder in spite of their impulsivity.

(E.145-46).[2]

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[2] As to Davis's age, Judge Purpura observed that Davis will "be turning 17 in March." (E.144). Judge Purpura observed that his mental and physical condition were both "good," and that Davis "is not someone who's mentally impaired in terms of his cognitive ability." (E.144-45).

Following Judge Purpura's explanation for her discretionary ruling, defense counsel did not request clarification, did not indicate that Judge Purpura had failed to adequately consider any of factors, and did not argue that Judge Purpura should have given (or was required to give) more weight to any one factor than another.[3] Thereafter, following scheduling discussions, the hearing was adjourned. (E.151).

Guilty Plea and Disposition

On April 26, 2018, Davis appeared before Judge Kathleen Cox and entered a conditional guilty plea to two counts of first-degree assault and one count of use of a firearm in the commission of a crime of violence. (E.161). The State agreed to nol pros the remaining charges and to cap its sentencing recommendation at only 10 years active. (E.162). Davis retained his right to appeal from the adverse ruling on his transfer motion. (E.162). The prosecutor recited the factual basis for the plea, and the plea was accepted. (E.171-76).

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[3] To be clear, the State is not suggesting that Davis failed to preserve his right to appeal generally from the denial of his motion; however, Davis bore the burden of developing a record adequate to meaningfully address his complaint of error.

On June 27, 2018, Davis appeared before Judge Cox for sentencing. This is an area in which Davis's statement of the facts necessitates clarification. (Petitioner's Br. at 9). In his statement of facts, Davis incorporates, by block quotation, extensive portions of Judge Cox's post-sentencing letter recommending Davis for enrollment in the Patuxent Institution dated July 2, 2018 (Respondent's Br. at 9), and only thereafter incorporates, largely by reference, Judge Purpura's explanation for *her ruling* on his transfer motion at the conclusion of the hearing on January 23, 2018 (*id*. at 11-12).

Intentionally or not, this rearrangement of the chronology and reversal in emphasis obfuscates the facts relevant to resolving the issue before this Court, which relates to Judge Purpura's discretionary ruling on Davis's transfer motion, not Judge Cox's letter of recommendation. That letter was written long after Judge Purpura's transfer ruling, in a different context, for a different purpose.[4]

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[4] Judge Cox was trying to *persuade* the Patuxent Institution to accept Davis into the program, she was not attacking the soundness of Judge Purpura's prior discretionary ruling to retain original jurisdiction over Davis's criminal charges.

The Court of Special Appeals' Affirmance

Davis appealed the denial of his transfer motion and argued, among other things, that Judge Purpura "failed to consider 'the amenability of [Mr. Davis] to treatment in an institution, facility, or program available to delinquent children.'" (Appellee's Br. at 17) (quoting Md. Code Ann., Crim. Proc., § 4-202(d)(3)). Specifically, he argued that she "acknowledged that [he] was *eligible* for certain services, but did not address whether he was *amenable* to treatment in the juvenile system[.]" (*Id.*) (Davis's emphasis).

The Court of Special Appeals rejected this argument, observing that judges are presumed to know the law and apply it properly, and that it "discern[ed] no reason to conclude that the motion court failed to give consideration to Davis's amenability to treatment in the juvenile court." (E.246). The court noted, among other things, Judge Purpura's observation that, "when [Davis] is in custody, he does well, . . . he doesn't commit any offenses, . . . he's engaged . . . in treatment," and concluded that the record overall, "reflect[s] that the court thoroughly considered what was presented in the DJS Report, the testimony at the hearing, and the arguments made by Davis's Counsel." (E.247).

ARGUMENT

THE COURT OF SPECIAL APPEALS CORRECTLY CONCLUDED THAT DAVIS FAILED TO REBUT THE PRESUMPTION THAT JUDGE PURPURA KNEW THE LAW AND APPLIED IT PROPERLY IN DECIDING NOT TO TRANSFER JURSIDICTION TO THE JUVENILE COURT.

The core issue before this Court is whether Judge Purpura soundly exercised her discretion in denying Davis's motion to transfer the criminal court's exclusive original jurisdiction over these charges to the juvenile court. The criminal court's transfer decision is discretionary, and the exercise of that discretion is guided by Maryland Code Ann., Crim. Proc. ("CP"), § 4-202(d), which enumerates five factors that must be considered:

> (d) In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:
>
> (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.

CP § 4-202(d)(1)-(5).

Davis's argument focuses only on the third factor – *i.e.*, "the amenability of the child to treatment in an institution, facility, or program available to delinquent children[.]" CP § 4-202(d)(3) – the meaning of which he suggests is unclear. (Petitioner's Br. at 13). He further suggests that Judge Purpura fell victim to this lack of clarity in that she "acknowledged [his] *eligibility* for treatment in the juvenile system," but failed to consider "his *amenability* to that treatment[.]" (*Id*. at 13) (Davis's emphasis). This argument is meritless.

Notwithstanding Davis's appellate suggestion that the meaning of CP § 4-202(d)(3) is unclear, the record demonstrates that the meaning was clear to everyone – defense counsel, the prosecutor, and Judge Purpura – at the time of the hearing on his transfer motion. As to Davis's newly-minted theory that the third factor is "the most important" (read: outcome determinative) (Respondent's Br. at 13), that notion lacks any support in the statutory language, and this Court should decline Davis's invitation to usurp the role of the General Assembly to enact policy through legislation. The judgment below should be affirmed.

A. Standard of Review

Where the criminal court is vested with original exclusive jurisdiction, the juvenile bears the burden of persuasion on a motion to transfer that jurisdiction to the juvenile court. *Gaines v. State*, 201 Md. App. 1, 10, *cert. denied*, 424 Md. 55 (2011). The court must consider all five factors, but "[n]ot all the factors need be given equal weight," and the court "is not required to make an arithmetic-type calculation as to the weight it assigns each factor." *In re Randolph T.*, 292 Md. 97, 101 (1981) (citations and quotations omitted). The ultimate decision whether to transfer jurisdiction, or not, is entrusted to the criminal court's sound discretion. *King v. State*, 36 Md. App. 124, 128 (1977).

As the concept of discretion involves a choice between acceptable alternatives as to which reasonable minds could differ, a discretionary ruling will not be disturbed "'simply because the appellate court would not have made the same ruling.'" *Devincentz v. State*, 460 Md. 518 (2018) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)); *accord Nash v. State*, 439 Md. 53 (2014) (same). The hallmark of the discretionary standard is appellate deference to the trial court's choice between the available alternatives.

An abuse of discretion can arise in one of two ways. First, an abuse of discretion can arise if the choice between alternatives is objectively unacceptable, meaning "*well removed* from any center mark imagined by the reviewing court and *beyond the fringe* of what that court deems minimally acceptable." *Faulkner v. State*, 468 Md. 418, 461 (2020) (emphasis added; quotation omitted). Significantly, Davis does not argue that this theory applies here. That is, he tacitly accepts that a criminal court presented with all of the evidence presented to Judge Purpura (including the evidence bearing on his amenability to treatment in the juvenile system) could reasonably decline to transfer its jurisdiction.

Instead, Davis bases his challenge to Judge Purpura's discretionary ruling on the theory that "'[i]n exercising discretion, the trial court must apply the correct legal standard in rendering its decision.'" (Petitioner's Br. at 14) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)). Davis's choice of error-theory makes it necessary to highlight another central pillar of appellate review; namely, that the *starting point* for appellate analysis is that the actions of the trial court are strongly presumed to have been correct.

"It is a well-established principle that '[t]rial judges are presumed to know the law and to apply it properly.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quoting *State v. Chaney*, 375 Md. 168, 179 (2003)). "It is equally well-settled that there is a 'strong presumption that judges properly perform their duties,' and that 'trial judges are not obliged to spell out in words every thought and step of logic.'" *Id.* (quoting *Beales v. State*, 329 Md. 263, 273 (1993)).

Accordingly, "error is never presumed by a reviewing court[.]" *Chaney*, 375 Md. at 184. "[T]he most fundamental principle of appellate review . . . is that the action of a trial court is presumed to have been correct and the burden of rebutting that presumption is on the party claiming error[.]" *Id.* at 184 (quoting *Fisher v. State*, 128 Md. App. 79, 104-05 (1999)); *Bradley v. Hazard Technology Co.*, 340 Md. 202, 206 (1995) ("It is well-settled that, on appeal, the burden of establishing error in the lower court rests squarely on the appellant."). Thus, the starting point for this Court's analysis is a strong presumption that the criminal court understood the relevant law and applied it properly, and it is Davis's burden to rebut that presumption.

Finally, as Davis's arguments rely heavily on the meaning of various statutory provisions, it bears emphasizing the "well-established" rules governing such arguments. *State v. Bey*, 452 Md. 255, 265 (2017). "The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature," which begins with "the normal, plain meaning of the statute," "viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Id.* (quoting *State v. Johnson*, 415 Md. 413, 421-22 (2010)); *accord Smith v. State*, 399 Md. 565, 565, 578 (2007) (same).

Critically, the courts "*neither add nor delete language* so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and . . . do not construe a statute with 'forced or subtle interpretations' that limit or extend its application." *Id.* (emphasis added). "The General Assembly is presumed to have had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law." *In re James S.*, 286 Md. 702, 705 (1980) (quotation omitted).

B. The criminal court was vested with exclusive original jurisdiction over Davis's criminal charges, and had broad discretion to decide whether or not to transfer its jurisdiction to the juvenile court.

As this Court has observed, "there is no constitutional right to be treated as a juvenile." *In re Samuel M.*, 293 Md. 83, 95 (1982). Nevertheless, society has long recognized youth as a relevant factor in affixing guilt, and by extension punishment, for violations of the criminal law. *Adams v. State*, 8 Md. App. 684, 687-88 (1970).[5] Beginning in 1899, this recognition eventually led every state in the country to create, in some form or another, a "juvenile court." *In re Johnson*, 254 Md. 517, 521-22 (1969). "The philosophy underlying this legislation is that wayward youth is in need of protection and rehabilitation." Rollin M. Perkins, *Criminal Law*, at 940 (3rd ed. 1982).

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[5] At common law, the question of criminal responsibility vis-à-vis the offender's age was resolved as a matter of basic capacity to form criminal *mens rea*. "(1) children under age seven had no criminal capacity; (2) children at age fourteen and over had the same criminal capacity as adults; and (3) children over seven and under fourteen were presumed to be without capacity, but this presumption could be rebutted in an individual case." Wayne R. LaFave, *Substantive Criminal Law*, § 9.6(a) at 80 (3d ed. 2017).

"The theory is not that a defendant is on trial charged with a crime for which he will be punished if found guilty," but rather, an adjudication process is being conducted to determine "what care, protection, training and guidance are needed to develop him into an upright citizen." *Id.* at 940-41. Maryland's juvenile justice statute declares its policy goals as follows:

> (1) To ensure that the Juvenile Justice System balances the following objectives *for children who have committed delinquent acts*:
>
> (i) Public safety and the protection of the community;
>
> (ii) Accountability of the child to the victim and the community for offenses committed; and
>
> (iii) Competency and character development to assist children in becoming responsible and productive members of society.

Md. Code Ann., Cts. & Jud. Proc. ("CJP"), § 3-8A-02(a) (emphasis added).

However, the rehabilitation-focused policy underlying the juvenile courts of Maryland is not without limits, and its general contours are reflected in the General Assembly's deliberate allocation of original exclusive jurisdiction between the juvenile courts and the criminal courts.

Maryland's circuit courts are courts of general jurisdiction, and are vested with "full common-law and equity powers and jurisdiction in all civil and criminal cases within its county, . . . *except where by law jurisdiction has been limited or conferred exclusively upon another tribunal*." CJP § 1-501 (emphasis added). "The juvenile courts are created by statute and have limited jurisdiction." *Crosby v. State*, 71 Md. App. 56, 60 (1987).

To be clear, Maryland's juvenile courts are not separate courthouses with separate judges, but rather, "the circuit court for a county sitting as the juvenile court." CJP § 3-8A-01(j). "What the legislature, through a collection of statues, has effectively done is to designate a part of each Circuit Court as a juvenile court and, with some exceptions, to allocate to that designated part of the Circuit Court the exclusive authority to handle certain kinds of cases involving juveniles." *Smith v. State*, 399 Md. 565, 586 (2007) (Wilner J., concurring). As Judge Wilner emphasized in his concurring opinion in *Smith*, the General Assembly's allocation of original exclusive jurisdiction between the two forums "is important," and explained:

> That allocation is important and must be honored. It is not just an organizational matter but implements the different procedures and options available in the "juvenile court" – that, in delinquency cases, the proceedings are regarded as civil, rather than criminal, that there is no right of jury trial, that there is a much more therapeutic overlay requiring greater coordination with the departments of health, education, social services, and juvenile services, and that *the disposition options are quite different from those available in criminal proceedings*.

Smith, 399 Md. at 586 (emphasis added).

Given that treatment as a juvenile for violations of the criminal laws "'is not an inherent right but one granted by the state legislature[,] the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved.'" *In re Samuel M.*, 293 Md. at 95 (quoting *Woodard v. Wainwright*, 556 F.2d. 781, 785 (5th Cir. 1977)). *See United States v. Bland*, 472 F.2d 1329, 1334 (D.C. 1972) (observing "legislative exclusion of individuals charged with certain specified crimes from the jurisdiction of the juvenile system is not unusual"). The allocation of jurisdiction between the juvenile courts and the criminal courts of Maryland has not been static over time, and the trend has been to narrow the juvenile court's jurisdiction by excluding cases that involve serious, typically violent, offenses.

From the beginning, the juvenile courts were denied jurisdiction over cases that involved a crime punishable by death or life imprisonment. *See Bean v. State*, 234 Md. 432, 444 (1964) ("The crime of rape being punishable by death or life imprisonment . . . the juvenile court did not have jurisdiction[.]").

Following substantial revisions to the Juvenile Causes Article in 1969,[6] Maryland Code (1957, 1973 Repl. Vol), Art. 26, § 70-2(d)(1) & (3), expressly provided that the juvenile court did not have jurisdiction over proceedings involving a child at least 14 years of age "alleged to have done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment," or at least 16 years of age alleged to have done an act amounting to "robbery with a deadly weapon[.]"[7]

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[6] The revisions, which were enacted by Acts 1969, Ch. 432, also included the enactment of CP § 4-202(b)'s predecessor – Art. 27, § 594A – prior to which there was no provision even allowing for a transfer of jurisdiction from the criminal court to the juvenile court.

[7] These provisions correspond to those currently codified at CJP § 3-8A-03(d)(1) & (d)(4)(xv), though the latter also now includes "attempted" robbery with a dangerous weapon.

In 1982, the General Assembly enacted legislation that expressly *prohibited* the criminal court from transferring jurisdiction to the juvenile court in certain cases including, among others, those involving first-degree murder where the juvenile was 16 or 17-years-old at the time of the offense. Acts 1982, Ch. 468 (SB 445). *See* CP § 4-202(c)(2) (current codification).

In 1986, the General Assembly enacted legislation that excluded cases involving juveniles over 16-years-old alleged to have violated the state's criminal handgun laws. Acts 1986, Ch. 790 (HB 1390). Under "legislative intent," the committee report to the enacting legislation indicated, "[t]he purpose of this bill is to diminish the number of killings by youths by removing youths charged with handgun violations from the more lenient treatment of the juvenile justice system." (Committee Report to H.B. 1390 at 2) (April 3, 1986). In 1994, the General Assembly excluded cases involving "certain violent crimes" from the juvenile court's original jurisdiction including, among others: abduction; second-degree murder; second-degree rape; armed carjacking; and use of a firearm with a nexus to a drug trafficking crime. Acts 1994, Ch. 641 (HB 1122; SB 382).

"In allocating authority between the juvenile and criminal courts, the Legislature has committed to the criminal court the initial authority to deal with juveniles who commit certain more grievous offenses." *Smith*, 399 Md. at 586 (Wilner, J., concurring). "Unless such a case is transferred," "the General Assembly has decided, as a general rule, that a juvenile who has allegedly committed one or more of those offenses should be treated as if he or she were an adult and not be afforded the more beneficent procures and options available in the juvenile court." *Id*. at 586.

Currently, the juvenile court generally has original exclusive jurisdiction over "[a] child who is alleged to be delinquent[.]" CJP § 3-8A-03(a)(1).[8] However, the juvenile court does not have jurisdiction over a child (1) who is "at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment," or (2) who is "at least 16 years old alleged to have committed" certain enumerated crimes. CJP § 3-8A-03(d)(1)(a), (d)(4).

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[8] The statute defines "child" as "an individual under the age of 18 years," and a "delinquent child" as "a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation." CJP § 3-8A-01(d), (*l*), & (m).

Davis was charged in connection with events that took place when he was already over sixteen years old, and therefore, as he acknowledges, "[t]he juvenile court did not have jurisdiction over his case for two reasons." (Petitioner's Br. at 18). First, the charges included attempted first-degree murder, which is punishable by life imprisonment. Md. Code Ann., Crim. Law ("CR"), § 2-201(b)(1). *See also State v. Hardy*, 53 Md. App. 313, 318 (1982) (holding criminal court had original exclusive jurisdiction over 14-year-old charged with attempted murder).

Second, the charges also included first-degree assault in violation of CR § 4-302, as well as use of a firearm in the commission of a crime of violence in violation CR § 4-204, both of which are among the crimes enumerated by CJP § 3-8A-03(d)(4)(x) & (xviii). Accordingly, the criminal court of the Circuit Court for Baltimore County was vested with original exclusive jurisdiction over this matter. The criminal court would retain jurisdiction unless it decided to issue an order under CP § 4-202(b), which *allows* (but does not compel) a criminal court to transfer its original jurisdiction over a criminal matter to juvenile court if, but only if, the following conditions exist:

> (b) *When transfer allowed.* – Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child *may* transfer the case to the juvenile court before trial or before a plea is entered under Rule 4-242 if:
>
> (1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;
>
> (2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4) or (5) of the Courts Article; and
>
> (3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

CP § 4-202(b) (emphasis added).

As the above provision only applies to cases that the General Assembly has otherwise expressly excluded from the juvenile court's original jurisdiction, CP § 4-202(b) recognizes the practical reality that the demarcation lines drawn by CJP § 3-8A-03(d) may result in some exceptional cases falling within the criminal court's original jurisdiction but which could nevertheless more appropriately be handled as a juvenile matter. The provision thus operates as a "release valve," to *allow* for a criminal court to transfer its original jurisdiction to the juvenile court, by granting the criminal court the discretionary authority to do so (or not), if the above conditions are met.

Davis notes that CP § 4-202(b)(3) uses the disjunctive "or," which "suggests that the court may grant transfer if it is in the 'interest of the child' *or* the 'interest of society.'" (Petitioner's Br. at 33). The State obviously agrees as to the meaning of the disjunctive (*i.e.*, either will suffice), but Davis goes too far in asserting that if the former is found the latter must also be found. (*Id*. at 33).

If anything, the use of the disjunctive in CP § 4-202(b)(3) recognizes that the interests of the child and the interests of society may not align in cases involving a serious criminal offense or, as here, multiple serious offenses.[9] This policy collision is more clearly borne out by CP § 4-202(b)'s use of the permissive term "may," rather than the directive term "shall," in framing the nature of the criminal court's transfer decision if all three conditions are satisfied. *See In re Najasha B.*, 409 Md. 20, 32-33 (2009) ("the use of the word 'shall' is presumed to have a mandatory meaning . . . and thus denotes an imperative obligation inconsistent with the exercise of discretion") (cleaned up).

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[9] While all crimes are, in some sense, "serious," the crimes enumerated by CJP § 3-8A-03(d)(4) all involve firearms and/or crimes committed against persons.

By framing the criminal court's decision to transfer its jurisdiction under CP § 4-202(b) as something that the criminal court is "allowed" to do, and "may" do (rather than "shall" do) if all three conditions are met, the statute vests the criminal court with the discretion *not* to transfer its original jurisdiction although it has the authority. In practice, showing that a transfer of jurisdiction would be in the "interest of the child" satisfies the third condition placed on the criminal court's discretionary transfer authority – but it does not thereby *compel* the criminal court to surrender its jurisdiction over the criminal charges.

Davis appears to argue otherwise. (Petitioner's Br. at 34-35). He notes that where the juvenile court is vested with exclusive original jurisdiction, CJP § 3-8A-06(d)(1) directs that the juvenile court, "*may not* waive its jurisdiction under this section *unless* it determines, from a preponderance of the evidence presented at the hearing, that *the child is an unfit subject for juvenile rehabilitative measures*." (emphasis added). He suggests that the inquiry under CP § 4-202(b) is identical to the inquiry under CJP § 3-8A-06(d)(1), with the "only difference" being which party has the burden. (Petitioner's Br. at 35).

To be sure, this "only difference" notion does find superficial support in prior decisions of the Court of Special Appeals. *See Crosby*, 71 Md. App. at 62 ("The circuit court must engage in the same inquiry as the juvenile court when deciding whether to order a waiver of jurisdiction, although the burden of persuasion is different."); *In re Ricky B.*, 43 Md. App. 645, 648 (1979) (suggesting there is "no real difference" between the two statutes and the factors to be weighed are "similar"). *But see Whaley v. State*, 186 Md. App. 429, 445 (2009) (observing "upon closer inspection, we find that the two statutes differ in significant respects, even as their histories have intersected").

However, the notion that the child's rehabilitative potential is dispositive regardless of which court has original jurisdiction, and that the "only difference" is which party has the burden of persuasion on that single issue, defies the plain language of the respective statutes. If the General Assembly had intended for the inquiry under CP § 4-202(b) to be identical to the inquiry under CJP § 3-8A-06(d)(1), it would have made them identical. Instead, it enacted two very different waiver provisions depending on which court has been vested with original jurisdiction.

The distinct operation of the two waiver statutes becomes clear when the waiver decision is viewed in terms of whether the *status quo,* vis-à-vis the juvenile offender, is being disturbed or maintained.

Where the legislature has granted the juvenile court exclusive original jurisdiction over a case involving juvenile delinquency by virtue of CJP § 3-8A-03(a), it has sent a clear signal that generally, as a matter of policy, those cases should be handled in the juvenile justice system in accordance with the purposes set forth by CJP § 3-8A-02(a). *See Moore v. Miley*, 372 Md. 663, 673 (2003) ("This Court has repeatedly noted that the Legislature's intent that the system of juvenile justice in Maryland is guided generally by principles of protection and rehabilitation of the individual rather than a societal goal of punishment and retribution."). Accordingly, when State asks the juvenile court to transfer its original jurisdiction over such a case to the criminal court, the legislature has made similarly clear that the juvenile court "*may not* waive its jurisdiction . . . *unless* it determines . . . that the child is an unfit subject for juvenile rehabilitate measures." CP § 3-8A-02(a).

In other words, the juvenile court has no discretion to waive the original jurisdiction vested in that court by the General Assembly, unless it determines that the core policy objective of rehabilitation of the juvenile would not be furthered by retaining its original jurisdiction.

Conversely, where the General Assembly has expressly *excluded* certain categories of cases from the juvenile court's original jurisdiction by virtue of CJP § 3-8A-03(d), it has sent a clear signal that generally, as a matter of policy, "a juvenile who has allegedly committed one or more of those offenses should be treated as if he or she were an adult and not be afforded the more beneficent procedures and options available in the juvenile court." *Smith*, 399 Md. at 587 (Wilner J., concurring). The unmistakable common denominator in the numerous legislative enactments excluding certain cases from the original jurisdiction of the juvenile court is not some shared characteristic on the part of the juveniles involved, but rather, the uniquely dangerous and/or violent nature of the underlying crimes involved, all of which involve firearms and/or crimes of violence committed against human victims (as opposed to property).

Though rehabilitation may be the driving (and eminently laudable) policy of the juvenile justice system, it is only one of many policy objectives of the criminal justice system. In addition to rehabilitation, other policies at stake in the criminal system include individual punishment as well as general deterrence[10] – to say nothing of the rights of the victims of violent crimes.

Where cases have been excluded from the juvenile court's original jurisdiction, the general rule is that they should be handled as a criminal matter – juvenile treatment is the exception. Indeed, the General Assembly has determined that there are some instances in which the criminal court "may not transfer a case to the juvenile court," regardless of whether the court feels that a transfer would be in the child's interests. *See* CP § 4-202(c).

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[10] Professor LaFave notes that although it is difficult to quantify the efficacy of deterrence-based crime prevention insofar as punishment is only "one of several forces that restrain people from violating the law," the *magnitude* of punishment is likely not as important as the *probability* of punishment. LaFave, *supra*, § 1.5(a)(4) at 49-50. In other words, the effectiveness of criminal punishment as a deterrent for engaging in certain conduct increases (or decreases) in proportion to the degree of certainty (or uncertainty) that punishment will result for engaging in that conduct.

By granting the criminal courts the discretionary authority to transfer a criminal case to the juvenile courts, the General Assembly prudently implemented a mechanism to transfer jurisdiction in those exceptional cases which, although allocated to the original exclusive jurisdiction of the criminal court, could be more appropriately handled as a juvenile matter.

But the plain language of CP § 4-202(b), especially when viewed in the context of the statutory framework of which it is a part, demonstrates that the General Assembly *did not* intend for the inquiry conducted by the criminal court in resolving a transfer motion under CP § 4-202(b) to simply be the "reverse" of the inquiry conducted by the juvenile court in a waiver hearing under CJP § 3-8A-06(d)(1).[11] Rather, where all of the conditions under CP § 4-202(b) are met – including a predicate determination that a transfer would be in the child's interests – the criminal court then has the discretion to decide whether, ultimately, the case could more appropriately be dealt with in the juvenile court.

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[11] The State notes that "reverse waiver hearing" does not mirror any language in CP § 4-202(b), and no other jurisdiction appears to use the phrase. The State submits that the phrase "transfer hearing" offers much greater clarity.

C. In deciding whether or not to transfer jurisdiction, CP § 4-202(d) directs that the criminal court "shall consider" all five of the factors enumerated therein.

In deciding whether to exercise its discretionary authority to transfer jurisdiction, or not, CP § 4-202(d) directs that the criminal court "shall consider" five factors. Davis contends that this Court must resolve the meaning of the third factor – "*i.e.*, the amenability of the child to treatment in an institution, facility, or program available to delinquent children" – which he submits means the criminal court must "consider the child's rehabilitative potential in the juvenile system." (Petitioner's Br. at 13). Davis further argues, for the first time, that this is "the most important factor." (*Id*. at 35). Both of these arguments are misguided.

Decades of Maryland authority illustrate that CP § 4-202(b)(3) contemplates that the criminal court consider the child's rehabilitative potential in the juvenile system; the point has never been disputed. But the notion that this is "the most important factor" in the context of a transfer hearing defies the statute's plain language which reflects no such emphasis, and which enumerates *five* factors that the criminal court must consider.

1. *The five statutory factors were adopted in Maryland following the Supreme Court's seminal decision in* Kent v. United States.

As of 1966, Maryland's juvenile courts were vested with original jurisdiction over all cases of juvenile delinquency, and although they had discretion to waive jurisdiction after "full investigation," the statute did not set forth any criteria to consider. Md. Code (1956, 1966 Repl. Vol.), Art. 26, § 54.

In 1966, the Supreme Court issued its seminal decision in *Kent v. United States*, 383 U.S. 541 (1966), in which the District of Columbia juvenile court summarily waived its original exclusive jurisdiction over Kent's case. Significantly, Kent's defense counsel had filed a motion along with a psychiatrist's affidavit certifying that Kent was "a victim of severe psychopathy," offering to prove that Kent was "a suitable subject for rehabilitation" in the juvenile system, and requesting a hearing. *Id.* at 545. Nevertheless, the District of Columbia juvenile court waived its original jurisdiction without a hearing, without ruling on Kent's motions, and without making any findings, declaring only that it had made the decision after "full investigation." *Id.* at 545. In reversing, the Supreme Court observed, in part:

> The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure.

Kent, 383 U.S. at 553.

The Supreme Court emphasized that the District of Columbia's Juvenile Act bestowed significant statutory rights on those juveniles who fell within the original exclusive jurisdiction of the juvenile court, and thus the decision to waive its original jurisdiction must be made in a way that permits meaningful review. *Id*. at 560-61. In an appendix, the Court observed that "[t]he statute sets forth no specific standards for the exercise of this important discretionary act," and suggested eight criteria – one of which was, "[t]he prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . . by the use of procedures, services and facilities currently available to the Juvenile Court." *Id*. at 567.[12]

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[12] The suggestions also included criteria related to the nature of the offense such as, "[w]hether the offense was committed in an aggressive, violent, premeditated or willful manner," and "[w]hether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted." *Kent*, 383 U.S. at 567.

Three years after *Kent*, by the Acts of 1969, Ch. 432, the Maryland General Assembly enacted substantial revisions to the Juvenile Causes Article. Former Art. 26, § 54 (allowing for juvenile court to waive jurisdiction upon "full investigation") was repealed, and a new provision was enacted which set forth, among other things, the five factors that the juvenile court must consider in making a waiver determination. Md. Code (1957, 1973 Repl. Vol.), Art. 26, § 70-16(b). Those factors are the same five factors set forth under current CJP § 3-8A-06(e).

The 1969 revisions also enacted former Art. 26, § 594A – the predecessor statute to CP § 4-202(b). As enacted, Art. 26, § 594A did not provide any criteria for the criminal court to consider in deciding whether to transfer jurisdiction to the juvenile court. However, in 1975, former § 594A was amended to incorporate the same five factors that now appear under current CP § 4-202(b). Those same five factors, adopted in the aftermath of *Kent*, have thus been applied in Maryland for over forty-five years.

2. *CP § 4-202(d) does not require the criminal court to make on the record findings as to each factor.*

As Davis notes, the factors a criminal court must consider under CP § 4-202(d) are "essentially identical" to those the juvenile court must consider under CJP § 3-8A-06(e). (Petitioner's Br. at 20). He suggests there are "two differences" in the factors "neither of which [is] material." (*Id.* at n. 5). However, there is a difference in the statutory language of CJP § 3-8A-06(e) and CP § 4-202(d), which Davis fails to mention, and which is material, especially given the nature of his argument which challenges the degree of specificity in Judge Purpura's oral explanation for her discretionary ruling. (Petitioner's Br. at 47).

Namely, CJP § 3-8A-06(e), directs that the juvenile court "shall consider the following criteria *individually and in relation to each other on the record*[.]" (emphasis added). Moreover, Maryland Rule 11-113(g) requires the juvenile court to "state the grounds for its decision on the record in a written memorandum filed with the clerk." By contrast, CP § 4-202(b) directs only that the criminal court "shall consider" the five factors, and does not require any "on the record" findings.

When the legislature intends to require on-the-record findings, it knows how – it has done so in CJP § 3-8A-06(e),[13] and indeed it has done so in subsequent subsections of CP § 4-202. *See* CP § 4-202(k)(2) (requiring district court when ordering secure facility detention in context of juvenile bail review to "state the reasons for the finding on the record"). The legislature has not enacted any such a requirement as part of CP § 4-202(b), and this Court should decline to add language to the governing statute that the General Assembly itself has not seen fit to include. *Cf. McClain v. State*, 425 Md. 238, 252-53 (2012) ("Rule 5-802.1, unlike some other Rules, does not require explicitly that findings be placed on the record, and we decline to read into the Rule such a requirement."). The State is not suggesting that criminal courts should rule on transfer motions summarily. However, the State *is* urging this Court to bear in mind the actual enacted language of CP § 4-202(d), in assessing Davis's complaint that Judge Purpura failed to fulfill her obligations under the statute for lack of adequate specificity in her ruling. (Petitioner's Br. at 46).

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[13] The language was added by Acts 1977, Ch. 490, which did not add similar language to then Art. 26, § 594A.

3. *It is well-established that the third factor contemplates that the criminal court must consider the juvenile's "rehabilitative potential in the juvenile system."*

Davis contends that the "important question" presented by this case is: "What does 'amenability' to 'treatment in an institution, facility, or program available to delinquent children' mean?" (Petitioner's Br. at 13). He thereafter expends approximately ten pages establishing that it "requires the trial court to consider the child's rehabilitative potential" in the juvenile system. (*Id*. at 27-31). The State does not disagree. Nor has the State, or anyone else, ever suggested that CP § 4-202(d)(3) contemplates anything other than the child's rehabilitative potential in the juvenile system.

The meaning of CP § 4-202(d)(3) is plain on its face, and as Davis recounts (Petitioner's Br. at 27-32), the Court of Special Appeals has consistently interpreted the essentially identical language in CJP § 3-8A-06(e) and its statutory predecessors as referencing the juvenile's rehabilitative potential in the juvenile system. *See In re Johnson*, 17 Md. App. 705, 712 (1973); *Wiggins v. State*, 22 Md. App. 291, 298 n.5 (1974). It is not a novel issue.

That said, a few nuances of the concept bear emphasizing. First, "amenability," especially in the context of treatment, is uniquely susceptible to degrees. Which is to say, a person can be more or less "amenable." Thus, in considering the child's "amenability to treatment" in the juvenile system, a court is rarely if ever confronted with a binary "yes" or "no" inquiry.

Second, while the State does not dispute that "amenability to treatment" connotes both "willingness" and "suitability" (Petitioner's Br. at 23), Davis gives short shrift to the latter, and the two are distinct – willingness is not necessarily proportionate to suitability. "The rehabilitation theory rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated." Wayne R. LaFave, *Substantive Criminal Law*, § 1.5(a)(3) at 48 (3rd Ed. 2017). The factor of "amenability to treatment" thus contemplates the extent (or degree) to which an antecedent cause for the juvenile's criminal behavior can be identified and linked to a treatment available in the juvenile system designed to address that cause.

While establishing a concrete cause-treatment link may not strictly be necessary to render a juvenile "amenable" *vel non* to "treatment in an institution, facility, or program available to delinquent children" CP § 4-202(b)(3), to the extent such a link can be established it is something a criminal court could reasonably consider in assigning weight to this factor in making its decision. *Cf. In re Michael B.*, 566 A.2d 446, 239-40 (Conn. Sup. Ct. 1989) (observing, in case involving 19-year old defendant charged with rape that "where basis of criminal behavior is a psychiatric disorder," rehabilitation "assumes paramount importance").

By the same token, if the evidence is less clear as to any particular antecedent cause for the juvenile's criminal behavior (*e.g.*, youthful impulsivity) or the availability of a treatment in the juvenile system tailored to address that particular cause, this is also something that the criminal court could reasonably consider. *Brown v. State*, 169 Md. App. 442 ("Although he did not say so explicitly, we interpret the judge's words as meaning that he felt that appellant had failed to demonstrate that the juvenile system had *a specific program suited for his needs*.") (emphasis added), *cert. denied*, 395 Md. 56 (2006).

4. *The amenability of the child to treatment in the juvenile system is only one of five factors that a criminal court must consider.*

In addition to arguing that CP § 4-202(d)(3) references the child's rehabilitative potential in the juvenile system (a point that has never been disputed), Davis also argues it is "the most important consideration in transfer cases." (Petitioner's Br. at 33). This reductionist argument should be forcefully rejected because it defies the plain language of the statute, and invites this Court to usurp the role of the legislature.

As Davis acknowledges, statutory interpretation begins by "looking at the statute's plain language, 'reading the statute as a whole to ensure that no word . . . is rendered [meaningless]." (Petitioner's Br. at 21) (Davis's alteration; quoting *Baltimore City Detention Center v. Foy*, 461 Md. 627, 637 (2018)). CP § 4-202(d) lists "amenability to treatment" in the juvenile system as the third of *five* factors that a criminal court must consider in deciding whether or not to transfer its jurisdiction over a criminal case to the juvenile court. Nowhere in CP § 4-202(d) is there any language directing that the criminal court give more or less weight to any one factor, let alone treat the third as the "most important."

Moreover, this Court and the Court of Special Appeals have both resisted the notion, even in the context of a *waiver hearing*, that any one factor must carry more weight than the others. *See In re Randolph T.*, 292 Md. at 101; *In re Samuel M.*, 293 Md. at 95; *Hazell*, 12 Md. App. 144, 155 (1971). If this Court were to endorse Davis's view that the third factor must be treated as the "most important" in the context of a *transfer hearing*, it would not only diametrically shift the balance of the transfer inquiry but it would inevitably crush flexibility out of a multi-factor statutory framework that is plainly intended to be flexible.

If the General Assembly had intended for the criminal courts to treat the third factor listed under CP § 4-202(d) as the "most important factor," it would have enacted a very different statute. Tellingly, throughout the entire portion of his brief dedicated to his theory that "amenability to treatment is the most important consideration in transfer cases" (*Id.* 33-38), Davis does not make a *single* reference to the actual language of CP § 4-202(d). The fact that Davis does not even attempt to ground this argument in the plain language of the statute itself should raise a red flag.

Instead, Davis grounds his argument in the language of a separate statute. He argues that the amenability of the child to treatment in the juvenile system is the most important factor in transfer cases because it "is patently the most important consideration in waiver cases[.]" (Petitioner's Br. at 13). He points to CJP § 3-8A-06(d)(1), which provides that the juvenile court "may not" waive its original exclusive jurisdiction over a case "unless" the juvenile court determines that the child is "an unfit subject for juvenile rehabilitative measures." (*Id*. at 34).

This argument is misguided because CJP § 3-8A-06(d)(1) is not, and has never been, applicable to this case. That statute only applies to cases that the General Assembly has placed within the original jurisdiction of the juvenile court. This case was expressly excluded from the juvenile court's jurisdiction by virtue of meeting multiple provisions of CJP § 3-8A-03(d), and thus fell within the exclusive original jurisdiction of the criminal court. The statute governing the criminal court's discretionary transfer decision is CP § 4-202(b), which contains no corollary to the language that Davis relies on from CJP § 3-8A-06(d)(1).

Quite differently, CP § 4-202(b) provides that the criminal court "may" transfer its original exclusive jurisdiction over a criminal case to the juvenile court if, among other things, it finds that it would be in the child's interests. CP § 4-202(b) does not direct that the criminal court "shall" transfer its jurisdiction whenever it would be in the child's interests. Put simply, the operative language of CJP § 3-8A-06(d)(1) is prohibitive, while the operative language of CP § 4-202(b) is permissive. The two statutes are tailored to guide decisions in two very different contexts; the language of one statute cannot be casually substituted for the language of the other.

Davis also argues that, to the extent CP § 4-202(b) is "remedial," it "'must be liberally construed, in order to effectuate its broad remedial purpose.'" (Petitioner's Br. at 37) (quoting *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 424 (2016)). Without conceding that CP § 4-202(b) is "remedial," Davis is not advancing a "liberal construction." He is inviting this Court to read language into and out of the statute in an effort to narrow the focus of a criminal court's transfer inquiry to a fraction of what the General Assembly has mandated. This Court should decline.

D. The criminal court soundly exercised its discretion in declining to transfer its original jurisdiction over Davis's charges to the juvenile court.

Ultimately, Davis's claim of error can be reduced to a modest premise: in resolving his motion to transfer the criminal court's original jurisdiction over his charges to the juvenile court, Judge Purpura failed to consider his "amenability to treatment in an institution, facility, or program available to delinquent children." CP § 4-202(d)(3). As the Court of Special Appeals correctly concluded (E.246-47), Davis cannot defend that premise.

1. *Davis cannot rebut the strong presumption that the criminal court knew the law and applied it properly.*

To reiterate, the starting point for this Court's analysis of Davis's claim of error is a strong presumption in the opposite direction. *See Chaney*, 375 Md. at 179; *Beales*, 329 Md. at 273. In other words, there is a strong presumption that Judge Purpura *did* consider his amenability to treatment in the juvenile system, along with the other factors that she was obligated to consider under CP § 4-202(d). The burden of rebutting that presumption "rests squarely on [Davis]." *Bradley*, 340 Md. at 206.

CP § 4-202(d) required Judge Purpura to consider the five enumerated factors in deciding whether or not to transfer the criminal court's original jurisdiction to the juvenile court, and the record "'supports a reasonable conclusion that appropriate factors were taken into account[.]'" (Petitioner's Br. at 24) (quoting *Skevofilax*, 396 Md. at 426)).

Davis's claim that Judge Purpura failed to consider his "amenability to treatment" in the juvenile system must contend with the fact that all three of the defense witnesses focused their reports and their testimony on his "willingness" to "engage" in behavioral modification services. Davis's claim must also contend with the fact that defense counsel cited all of this testimony during her argument on the transfer motion, repeatedly emphasizing that Davis had "availed himself of all those services," that "the progression in 10 months has been very positive," "both experts testified that there would be treatment available," and "he's exhibited the willingness to want to do that," which "certainly bodes in his favor, that he would be amenable to treatment in an institute or facility." (E.135-38).

Lest there be any doubt that Judge Purpura was considering all of this, she expressly confirmed, just before articulating her ruling, "I've had the opportunity to *review the number of reports* that have been admitted into evidence, . . . *hear the testimony* of experts and *consider argument* of counsel." (E.144) (emphasis added). She further confirmed that she was aware of the "five factors" that she had to consider. (E.144).

The predominant theme of Davis's presentation at the transfer hearing was to showcase his willingness to engage in treatment and how his demeanor was improving in custody. The letter that Turner wrote on Davis's behalf expressed her view that his "commitment to receiving help is testimony [sic] to how amenable he is to treatment." (E.26). Dr. Zygala testified that he was "*willing to accept treatment, and engage in treatment*, and really put forth the effort." (E.90). Conway similarly remarked on "how *engaged* [Davis] was in services." (E.122). Judge Purpura echoed the phraseology of the defense experts in crediting this portion of Davis's presentation stating, "[i]t's clear, that when [Davis] is in custody, he does well, that he doesn't commit any offenses, that *he's engaged in, in treatment*[.]" (E.145-46).

When defense counsel asked Conway, "do you have a recommendation for treatment?" Conway replied, "I believe it can be met um, through a hardware-secure facility, whether that's in the State of Maryland or outside of the State of Maryland in the juvenile system." (E.130). Judge Purpura credited this testimony as well stating, "[t]hey [*i.e.*, Department of Juvenile Services] don't mention that he could be held in a secure facility, although we know that and certainly the experts testified to that." (E.148).

The defense presentation was, however, largely couched in generalities when it came to persuading Judge Purpura as to precisely what Davis would be receiving treatment *for*, in terms of "rehabilitating" the antecedent causes of his criminal conduct. Dr. Zygala testified that her behavioral assessment "didn't reflect any areas of significance," and she "struggled" to come up with a diagnosis for Davis. (E.82, 88).[14] As Judge Purpura noted, even the Department of Juvenile Services indicated that they would need to conduct additional evaluations. (E.145).

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[14] Notably, the assessment which did not yield any results of significance was geared toward assessing Davis's "inattention, impulsivity, hyperactivity, depression, anxiety." (E.82).

Ultimately, bearing in mind that the defense had the burden of persuasion, the record demonstrates that Judge Purpura in fact found that Davis *was*, to some degree, "amenable to treatment" in the juvenile system but she was not persuaded to give this factor significant weight. In terms of identifying any antecedent cause for Davis's behaviors in this case, the clear message of the defense was that his actions were traceable to lies he was told by his girlfriend, and he acted impulsively due to his age. (E.30, 33, 37-40, 44, 82-84, 87-88, 138). Under the circumstances of this case, Judge Purpura reasonably did not find that angle persuasive declaring, "I'm not persuaded, frankly, that the girlfriend is, is to blame here," and "the vast majority of teenagers don't commit home invasion and attempted murder in spite of their impulsivity." (E.145-46).

On this record, this Court does not even have to rely on the strong general presumption that Judge Purpura knew the law and applied it properly – the record affirmatively demonstrates that she did. *Cf. In re Murphy*, 15 Md. App. 434, 441 (1972) ("It is patent that the determination to waive jurisdiction was based on the divers reports before the court.").

In arguing to the contrary, Davis asserts that Judge Purpura's "reasoning regarding the amenability factor was woefully deficient," in that she "did not address the DJS reports about [him] that were much more specific about this amenability to treatment[.]" (Petitioner's Br. at 41). The fact that Judge Purpura did not explicitly address the contents of those reports does not demonstrate that she failed to consider them. *Accord John O. v. Jane O.*, 90 Md. App. 406, 429 (1992) ("The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal."). To the contrary, she repeatedly confirmed that she *did* consider them. (E.113-15, 144).

Second, he asserts that Judge Purpura "appeared to misunderstand the amenability factor, by addressing his *eligibility* for juvenile services but not his *rehabilitative potential* if given those services." (Petitioner's Br. at 42) (Davis's emphasis). Davis cannot reasonably dispute that eligibility for services in the juvenile system is germane to the inquiry under CP § 4-202(b)(3). And Judge Purpura also found it was "clear" that when Davis "is in custody, he does well," and "he's engaged in, in treatment[.]" (E.145-46). Insofar as the defense experts consistently framed

their testimony in terms of Davis's "engagement" in treatment, Judge Purpura should not be faulted for adopting the same phraseology. Yet Davis dismisses this portion of the ruling because, he argues, Judge Purpura "was not considering his amenability to treatment" insofar as "[a]menability to treatment is a *prospective* inquiry[.]" (Petitioner's Br. at 45) (Davis's emphasis). But amenability involves retrospective *and* prospective considerations. That said, this Court should not countenance Davis's post-hoc dissection of Judge Purpura's explanation – even the arguments of defense counsel did not approach the level of exactitude that Davis is now demanding of Judge Purpura, and the transfer statute itself does not demand such conceptual precision in a criminal court's explanation for its decision.

For this Court to accept Davis's manner of challenge to a trial court's discretionary ruling would impose an impossible onus on trial judges and undermine the ability of litigants to rely on reasonable good-faith discretionary rulings as being entitled to appellate deference. Davis acknowledges, as he must, the well-established principle that "[t]rial judges are 'not obliged to spell out in words every thought and step of logic'" (Petitioner's Br. at

15) (quoting *Beales*, 329 Md. at 273)). Yet that is precisely what he is taking Judge Purpura to task for failing to do, as he lays bare in the concluding section of his brief, where he argues:

> To permit meaningful appellate review of this highly consequential decision, the trial court must state "in specific terms *why* the child is not amenable to rehabilitation or treatment and *why* the needs of the child and the safety of the community require that the child be tried as an adult."[15]

(Petitioner's Br. at 46) (quoting Samuel M. Davis, *Rights of Juveniles* § 4:4 (2020 ed)).

Complaints of "error" like the one Davis is presenting to this Court have a simple and fair solution, which does not require this Court to read language into (and out of) the transfer statute as enacted by the Maryland General Assembly, and which does not require subjecting trial courts and litigants to the looming threat of having discretionary rulings reversed on the basis of post-hoc complaints about specificity.

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15 The language that Davis quotes for this claim is taken from a section of a treatise addressing *a juvenile court's decision to waive its original jurisdiction* over a delinquency case; the author is not referring to a criminal court's decision to retain its original jurisdiction over a criminal case.

The simple solution is that if a party feels, in the wake of a lengthy oral explanation for a discretionary ruling that the explanation is insufficiently "specific" in some regard, the party need only ask for clarification; far – *far* – more often than not, the trial court will oblige. However, if, as here, the party chooses to say nothing, then the party must overcome the strong presumption that the trial court knew the law and applied it correctly. The transfer statute does not obligate criminal courts to achieve a pre-determined level of exactitude or to frame their explanations to a template terminology or else be reversed. The record demonstrates that Judge Purpura knew the law, and supports a reasonable conclusion that appropriate factors were meaningfully taken into account in exercising her discretion.

2. *The criminal court soundly exercised its discretion in electing to retain its jurisdiction over this criminal matter, based on all five factors that it was obligated to consider.*

What Davis *really* appears to be arguing (without saying so) by repeatedly stressing his view that his amenability to treatment in the juvenile system was "the most important factor" (Petitioner's Br. at 33, 46), is that he feels that Judge Purpura

should have transferred jurisdiction over these charges to the juvenile court given the evidence he presented on that factor.

What Davis refuses to accept is that no one factor is dispositive, and that CP § 4-202(b) obligates a criminal court to consider all five factors in resolving a request to transfer its jurisdiction over criminal charges to the juvenile court. Moreover, Judge Purpura was not obligated to accept the testimony of the defense experts that the nature of the offense and public safety favored a transfer of jurisdiction. *In re Murphy*, 15 Md. App. at 441-42. Indeed, she plainly did not agree with that testimony, finding, "when he's not in custody, he has committed an offense, a very grave, violent offense. And in my view, he's a considerable threat to public safety." (E.146). That finding was well within the bounds of her discretion.

Davis was over sixteen years old at the time of the events, and thus *two years* beyond the age at which the General Assembly has decided that cases as serious as this fall within the original jurisdiction of the criminal court. CJP § 3-8A-03(d)(1). Moreover, as Judge Purpura found, Davis "is not someone who's mentally impaired in terms of his cognitive ability." (E.145).

The allegations in this case did not stem from a schoolyard fight, or property theft, or some victimless indiscretion. Nor did the allegations showcase a delinquent act of youthful "impulsivity." The charges in this case stemmed from a premeditated, orchestrated, nighttime home invasion – involving multiple masked intruders, at least one fully-functional loaded assault rifle, and a stolen minivan – during which multiple shots were fired inside an occupied residence, the innocent occupants (both children and adults) were intentionally placed in imminent fear for their lives, and serious injuries were inflicted. As Judge Purpura remarked, everybody was "very fortunate . . . that this did not result in a murder, because it very easily could have." (E.145). Rehabilitation was not the only policy at stake.

Judge Purpura, based on meaningful consideration of the five factors enumerated by CP § 4-202(d), soundly exercised her discretion in deciding that this was not an appropriate case to transfer to juvenile court, and to thus retain the original exclusive jurisdiction vested in the criminal court by the General Assembly. Davis's argument to the contrary should be rejected, and the judgment below should be affirmed.

CONCLUSION

The State respectfully asks the Court to affirm the judgment of the Court of Special Appeals.

Dated: April 13, 2021

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

PETER R. NAUGLE
Assistant Attorney General
CPF No. 1312180283

Counsel for Respondent

CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font; complies with the font, line spacing, and margin requirements of Maryland Rule 8-112; and contains 12997 words, excluding the parts exempted from the word count by Maryland Rule 8-503.

/s/ Peter R. Naugle

PETER R. NAUGLE
Assistant Attorney General
CPF. No. 1312180283

Counsel for Respondent

HOWARD JIMMY DAVIS,	IN THE
Petitioner,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term, 2020
Respondent.	No. 51

CERTIFICATE OF SERVICE

In accordance with Md. Rule 20-201(g), I certify that on this day, April 13, 2021, I electronically filed the foregoing "Brief of Respondent" using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Kiran Iyer, Assigned Public Defender, Office of the Public Defender, Appellate Division, 6 Saint Paul Street, Suite 1302, Baltimore, Maryland 21202.

/s/ Peter R. Naugle
PETER R. NAUGLE
Assistant Attorney General
CPF. No. 1312180283

Counsel for Respondent