Circuit Court for Prince George's County
Case No.: CT180352F

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 381

September Term, 2019

BRANDON HERNANDEZ ESTRADA

v.

STATE OF MARYLAND

Meredith,
Wells,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: January 9, 2020

Appellant, seventeen-year-old Brandon Hernandez Estrada, was indicted in the Circuit Court for Prince George's County, Maryland, and charged as an adult with attempted first- and second-degree murder, first- and second-degree assault, multiple counts of conspiracy to commit these offenses, and participation in a criminal gang. After the court denied his motion to transfer his case to the juvenile court, appellant pleaded guilty to one count of second-degree assault. The court subsequently denied a renewed motion to transfer for disposition to the juvenile court. After appellant was sentenced to ten years, all suspended, credit for time served, to be immediately followed by five years of supervised probation, this Court granted his application for leave to appeal to answer the following question:

> Did the Circuit Court err in denying the motion to transfer Appellant's case to juvenile court for purposes of disposition?

For the following reasons, we now shall affirm.

BACKGROUND

Pursuant to a February 2018 indictment, seventeen-year-old appellant was charged with attempted first-degree murder and other offenses. The charges arose after two students at Parkdale High School in Riverdale, Maryland, lured another student, Jonathan Ramirez Granados, who they believed was a member of a rival gang based on the music he was listening to, into the woods behind the school.

Several other individuals were waiting in the woods. One unidentified boy in the group struck the victim over the head with a baseball bat and another stabbed him three times. When the police arrived, the boys fled, but were apprehended. According to the

statement of facts in support of the guilty plea, appellant was "standing present and acted as an aider and abettor in the assault." Appellant agreed with this fact, and also expressly agreed with the court when it asked "[a]nd by your presence, you assisted in that assault taking place?" The State agreed that appellant was not a member of MS-13. Appellant was charged as an adult in the Circuit Court of Prince George's County with attempted first-degree murder and related charges.

In July 2018, the circuit court, the Honorable Sean D. Wallace presiding, considered appellant's motion to transfer the case to the juvenile court, prior to adjudication.[1] During the hearing, the court heard from appellant's expert in juvenile forensic psychology, Dr. Kenneth Stefano. Dr. Stefano evaluated seventeen-year-old appellant and concluded that, due to some "inculteration difficulties and difficulties acquiring the English language as well as some ongoing family dynamic issues," appellant, who was born in El Salvador and had only been in the United States since 2014, was "a mildly depressed young man who has had significant difficulty adjusting to school in the United States and life in the United States." In fact, appellant indicated "symptoms of depression that were just borderline in terms of clinical significance." Appellant was "of at least the average capacity to learn and to function" but may have had a learning disability given his difficulty learning English and some prior learning difficulties while he was in El Salvador. Further, appellant was evaluated while he was detained at Cheltenham Youth Center and determined to have "an

[1] As will become pertinent later, Judge Wallace presided over the motions hearing, the guilty plea and the sentencing hearing in this case.

educational problem based on his lack of or his declining academic performance over the years."

Dr. Stefano diagnosed appellant with an adjustment disorder with depressed mood. Further, were his depression symptoms left untreated, Dr. Stefano was of the opinion that appellant was "at significant risk for progressing into a major depressive episode which would be much more intractable and much more difficult to treat." Dr. Stefano recommended that appellant receive an individualized education program which would make him eligible for remediation or direct special education services. In addition, Dr. Stefano wanted appellant to receive individualized psychotherapy, cognitive behavioral therapy and a psychiatric evaluation to determine whether anti-depressant medication might be warranted. Addressing the public safety factor under consideration by the court, Dr. Stefano also thought appellant's case should be transferred to juvenile court because any "delinquent or negative attitudes that he might have acquired over the years that might have contributed to the instance [sic] offense could be more easily modified and moderated when an adolescent than as an adult." Dr. Stefano also noted appellant's age and was of the opinion that the remaining three and a half years when he would be subject to the juvenile court's jurisdiction "would be ample time for Brandon to receive the treatment, the supervision, and the life skills that he is going to need to be a functional and successful adult."

After Dr. Stefano's testimony, the State called Aurora Capps, a Case Management Specialist with the Department of Juvenile Services ("the Department"). Capps reviewed appellant's records while he was detained at Cheltenham and concluded that "based on the

nature of the charges, the violent nature of this offense, his gang involvement," that these "would all limit [appellant's] treatment and placements options at this time." Capps testified that the Department would be seeking "a hardware secure commitment" for appellant. However, there was no space available at the one such facility in Maryland at the time of the transfer hearing. And, although there were three out-of-state placements that might become available if the case were transferred to juvenile court, appellant would have to be further evaluated prior to any placement there.

After hearing argument, the court denied the motion to transfer the case to juvenile court prior to trial. Stating that it was familiar with *Whaley v. State*, 186 Md. App. 429 (2009), and noting that it had read the transfer jurisdiction report prepared by Ms. Capps with the attached social history from the Department, the court began by noting that it was "not assuming the truth or the guilt of the defendant for the alleged conduct," but that it did not find the evidence "speculative" in this case. The court then went through the statutory factors required by § 4-202(d) of the Criminal Procedure Article and found that appellant was seventeen and a half years old, and that his physical condition was "unremarkable," other than a history of asthma. *See* Md. Code (2001, 2018 Repl. Vol.) § 4-202(d) of the Criminal Procedure Article ("Crim. Proc.") (setting forth factors a criminal court must consider when determining whether to transfer a case back to juvenile court, including: (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).

As for appellant's mental condition, the court stated that it considered, but rejected, Dr. Stefano's conclusion that appellant had a learning disability. The court stated that Dr. Stefano's basis appeared to be that appellant was "of average cognitive ability and yet hasn't increased his command of the English language." The court continued that "[t]here are any number of reasons why he may not have done that, only one of which is a learning disability."

The court then addressed appellant's amenability to treatment, stating "that's not a question of speculation. Does a program exist? Certainly if one program doesn't exist then it's not available. But the question is, is he going to have to wait three years to get an opening?" Further, "[g]iven the nature of the situation, I accept the [D]epartment's analysis that they [sic] are very few options available for Mr. Estrada under the circumstances, under these circumstance[s]." But, the court continued that there may be other programs available to appellant and that "[t]here is evidence he has responded while being detained at Cheltenham to whatever programs and treatment have been provided to him."

Turning to the nature of the alleged offense, the court observed that "the nature of the alleged offense as I read it is that he was an aider and abettor in [an] attempted first degree murder with a group of ten people in a gang related issue." The court then stated:

> But I do give significance to the alleged incident, that the victim was targeted as far as believed to be involved with a rival gang, was escorted to the woods behind the school, told to go to the woods behind the school where Mr. Estrada along with nine others were present when he was hit with a baseball bat and stabbed three times.
>
> And then, when he approached the police, Mr. Estrada along with all the others fled.

> So, the nature of the alleged offense is serious, and the public safety is certainly implicated by that.

The court concluded:

> But considering all the factors -- and no one factor is determinative. I look as I think I must at all the factors. I do not determine that Mr. Estrada has established by a preponderance of the evidence that it's in the interests of either himself or of society that this case be transferred to the juvenile court.
>
> Accordingly, the motion to transfer is denied.

Thereafter, on August 21, 2018, Brandon appeared in court and pursuant to a plea agreement with the State, pleaded guilty to second-degree assault. The plea agreement provided that, in exchange for the plea, the State would recommend probation and the defense would be free to allocute for a juvenile disposition at sentencing. The sentencing guidelines were probation to 2 years and it was noted that appellant had no previous juvenile or adult court contacts. The State informed the court that the plea was based on the State's belief that, although appellant "may have been affiliated or hung around certain other individuals," it did not believe that he was "part of a criminal gang." The State further informed the court that, although appellant was present "acting as an aider and abettor" in the underlying incident, the plea was "based on his culpability as the State has reviewed all of the evidence." The State noted that none of the others charged in this incident "received this offer."

After examining appellant on the record, the court found that he knowingly and voluntarily entered the plea and the court accepted it. The court then heard the following facts in support of the guilty plea:

> The facts in support of this plea are as follows: On February 6th, 2018, at approximately 1:00 p.m., Prince George's Police Department responded for an assault in the wooded area to the rear of Parkdale High School located at 6001 Good Luck Road in Riverdale, Maryland. The officers observed defendant Brandon Hernandez Estrada [and six other individuals], and ordered them to stay where they were. The commands were ignored. The gentlemen started to flee, but were apprehended.
>
> Victim Jonathan Romarez Granadas (ph.) was located in the wooded area suffering from three stab wounds and a swollen laceration to the back of his head.
>
> The victim was interviewed and indicated that he was met by two students in a classroom, who asked him to come to the woods. Several other students were present in the woods when he arrived. The other students, not Brandon Hernandez Estrada, made threatening statements. And one of the students . . . hit the victim with a bat. One of the students also stabbed the victim three times. The defendant was standing present and acted as an aider and abettor in the assault. Further investigation revealed that the defendant was not a member of MS13.
>
> If the victim were called to testify, he would identify the defendant as being present on that day in the woods. All events occurred in Prince George's County, State of Maryland.

After appellant's counsel stated there were no additions or corrections, the court personally examined appellant, as follows:

> THE COURT: Mr. Hernandez Estrada, do you agree if there had been a trial, the State could have presented that evidence, in other words, witnesses were to come in and said that's what happened?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Is that basically what happened?
>
> THE DEFENDANT: Yes.
>
> THE COURT: So, you were present when the victim was hit with the bat and stabbed?
>
> THE DEFENDANT: Yes.

> THE COURT: And by your presence, you assisted in that assault taking place?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And so I'm clear, you're pleading voluntarily; is that right?
>
> THE DEFENDANT: Yes.
>
> THE COURT: I mean it's your decision, it's not your lawyer [Defense Counsel's], not the prosecutor, not my decision, not your family's decision. And you're telling me it's what you want to do; is that correct?
>
> THE DEFENDANT: Yes.
>
> THE COURT: All right. I am going to accept this plea, enter a finding of guilt as to Count IV, which charges the defendant with second degree assault, because I find there's sufficient facts to support the plea and that the plea is entered freely, knowingly and voluntarily by the defendant.

Prior to sentencing, on August 30, 2018, the court ordered the Department to perform an updated transfer study report concerning the possibility of a juvenile disposition. That study was completed and submitted on or around September 24, 2018 and, although it was not admitted as an exhibit, Judge Wallace indicated that he had read it prior to sentencing. That report, signed by Sally G. Reed, Case Management Specialist III and Katherine E. Ball, Case Management Specialist Supervisor and included in the record on appeal, addresses the five factors required pursuant to Crim. Proc. § 4-202.2(b) in detail, and provides the following summary and recommendation:

> **I.** This writer was given a copy of the defendant's birth certificate, El Salvador passport, and Immigration Detainer from the Department of Homeland Security which has the defendant's name, Brandon Aldair Hernandez-Estrada and a date of birth of January 20, 2001. Therefore, the defendant is currently seventeen (17) years and eight (8) months of age. At the time of the alleged offense, the defendant was seventeen (17) years and

one (1) month of age. **This factor weighs in favor of treatment as a juvenile offender**.

II. The defendant does not have any mental or physical limitations that would preclude him from either the Juvenile System or the Adult System. Due to the absence of mental health concerns and absence of physical limitations, there is no indication that the defendant would be unable to maintain himself in an adult and/or juvenile facility or program. The defendant was last enrolled as a 10th grade student at Parkdale High School. In regards to substance abuse, the defendant reported he started smoking marijuana when he was 16 years old. He stated he uses "occasionally" but never daily and last used in February 2018. He also admitted to smoking cigarettes weekly since he was 16 years old. **This factor weighs in favor of treatment as a juvenile offender.**

III. The defendant has no prior contacts in the State of Maryland or the District of Columbia. Given the lack of contacts with the Department, there are services available to him. The police report indicates that the defendant admitted to being an active MS-13 gang member. The defendant denied admitting to being part of the MS-13 gang. The Department was not able to substantiate the defendant's gang membership. If the defendant were to be remanded to the Juvenile Court, the Department would refer the defendant for any available services, both within and out of the community in an attempt to address the delinquent/criminal behavior. **This factor weighs in favor of treatment as a juvenile offender**.

IV. It is alleged that the defendant and co-defendants lured the Victim to a wooded area behind Parkdale High School. Once in the wooded area the Victim was hit in back of head with a baseball bat and stabbed three times in the abdomen by the defendants. The Victim was rushed to Prince George's County Hospital Center where he underwent surgery for a collapsed lung, lacerated liver and intestines. He also had a swollen laceration across the back of his head. As officers from the Gang Unit approached the scene, they saw the defendants running through the woods behind Parkdale High School. After a brief pursuit, the defendants were apprehended by police. Once in custody they waived their Miranda rights and admitted to being members of the gang MS-13. The defendant denies admitting to being part of the MS-13 gang. They also reported they believed the Victim to be a rival 18th Street gang member due to him listening to rap music related to the 18th Street; which was the motivation behind the assault. Furthermore, the Victim was able to positively identify the defendant as one [sic] the person's present during the assault. **This factor weighs in favor of treatment as an Adult offender**.

> **V**. Although the crime did not result in a death for the Victim, there was a potential for the loss of human life. Therefore, the instant offense is extremely serious and reflects a blatant disregard for the law, and as a result, the defendant must be considered a threat to public safety. The Victim suffered a swollen laceration to his head, a collapsed lung, and lacerated liver and intestines. The police report also indicates the defendant self-admitted to his involvement with the criminal street organization MS-13, which he later denied. **This factor weighs in favor of treatment as an Adult offender**.

Transfer of Jurisdiction Investigation Report (Juvenile Disposition), at 5-6 (Sept. 24, 2018).

The report concluded that: "If the Criminal Court where [sic] to relinquish jurisdiction over this matter and grant the defendant a juvenile disposition, the Department would refer the defendant for any available services, both within and out of the community in an attempt to address the delinquent/criminal behavior. The Department has no further recommendation at this time." *Id*. at 6.

At the disposition hearing, the State asked the court to impose probation, and informed the court that it had "no stance" on the defense's request to transfer disposition to the juvenile court. The court then heard from defense counsel, who urged the court to transfer disposition to the juvenile court because of Brandon's "diminished role in this incident[.]"

Defense counsel noted that the current information was that appellant was not a member of MS-13 and that, although he was present during the assault, "he did not know the grievous harm" that would befall the victim in this case. Defense counsel also observed that community based and residential programs would be available for appellant's treatment, and that he could be held accountable in juvenile court "where he can get mental health treatment and therapy, where his educational services will be supported by the

services that the Department of Juvenile Services provides." Noting that appellant had a scheduled appearance before the immigration court, defense counsel argued for transfer so that appellant would not "have the collateral consequences of a criminal conviction" on his record. Citing *In re Nancy H.*, 197 Md. App. 419 (2011), counsel then observed that expungement is an available remedy in the juvenile court after a transfer.

Defense counsel also addressed the five factors pursuant to Crim. Proc. § 4-202.2(b), in detail. Observing that information about the first three factors "are the ones that are really the same from the original transfer hearing," counsel focused on Dr. Stefano's evaluation from the first hearing, noting that appellant "has really some mild depression that could be treated with therapy. That if untreated could get worse and become a serious depressive disorder." Counsel continued that this amenability to treatment weighed in favor of transfer, noting also that appellant received good reports when he was being treated at Cheltenham. Counsel also observed that appellant had no prior contacts with either the juvenile or adult justice system.

Turning to the nature of appellant's acts and concerns for public safety, defense counsel stated:

> He's now adjudicated or I should say found -- I suppose a conviction for second-degree assault. The nature of the offense and the public safety, of course, Your Honor, are the two factors that are most changed by the new circumstances. This is still a very serious offense. I mean no disrespect to [the victim] and what happened to him. But as my client has maintained, he never wanted those things to happen to [the victim]. He never knew those things would happen to [the victim]. And that's reflected in his plea, it's reflected in the State's investigation; he is not a member of this terrible gang. He just is not. He's denied it from day one. The State would never say that to myself or to Your Honor if they didn't have a real reason to believe it. So I ask that Your Honor consider that in transferring him to Juvenile Court.

> Your Honor, as I started getting into, he was in the woods because that's where kids go when they cut the class, when they cut class at Parkdale High School. He knew the kids that were in the woods, but only sort of through knowing them from school. He wasn't friends with them, he didn't have deep relationships with them. He stood there and acted like as an aider to abetter [sic] to what he believed was a fight. But when the sort of violent nature and gang nature of this offense became evidence [sic], he was terrified. He did not want that to happen. He ran because he was terrified of these boys. I remember Your Honor asking, well, you know, did he run with the boys. And no, he did not. Certainly there was some of the group that was with him, but not the boy who committed the stabbing. He did not run with that boy. He ran with some of the boys, I can't say exactly which were.

Defense counsel remarked that there was a change in the public safety factor based on the State's recommendation of probation, observing that "there's an acknowledgement there, that the public does not need to be protected from Brandon through incarceration." Defense counsel also noted that the prosecutor was "not full-throatedly opposing juvenile treatment in this matter." Defense counsel concluded by noting that appellant had been detained in the adult system for approximately seven months by the time of disposition.

The court then heard from appellant. Appellant stated "[t]hat I would like to apologize for what happened. I didn't know what was going to happen. I would like to apologize to [the victim], because I didn't know what was going to happen to him." Further, appellant asked the court to give him "an opportunity to continue my studies and become a better person."

The court denied the transfer request and proceeded to disposition, as follows:

> Okay. Well, what really hasn't been discussed much here, is that this was a very serious incident. The attempted murder of a young man because he was listening to the wrong kind of music. And that it was obviously gang-related. Your minor role in that, which [Defense Counsel] has referred to ask [sic] your diminished culpability. But your minor role in that is reflected in the charge, the plea. That is the charge to assault and a cap of probation. But

> the fact remains that it was a very serious incident, it could have resulted in the loss of life, and you played a role in that by your very presence. And the State has indicated that her investigation leads her to conclude you are not a member of the MS-13 gang and I accept that.
>
> Nonetheless, you were knowingly present for something that was going to happen to [the victim] in that woods. And you are culpable for that. So I've considered the most recent transfer investigation report, and the prior one, and all of the information submitted at the prior [transfer request] hearing. I don't find that it's appropriate under the circumstances to transfer jurisdiction of this case to the Juvenile court.

The court sentenced appellant to 10 years' imprisonment, with all but time served suspended, and placed him on 5 years of supervised probation. We may include additional detail in the following discussion.

DISCUSSION

Appellant asserts that the court erred in denying his request to transfer disposition to the juvenile court. The State responds that the court did not abuse its discretion in denying the transfer request. We agree with the State.

"Generally, when a minor is accused of conduct which, if committed by an adult, constitutes a crime, original jurisdiction over the child lies in juvenile court." *Gaines v. State*, 201 Md. App. 1, 9 (citing Md. Code (1974, 2006 Repl. Vol.), § 3-8A-03(a)(1) of the Courts and Judicial Proceedings ("Cts. & Jud. Proc.") Article), *cert. denied*, 424 Md. 55 (2011). Under certain circumstances, depending upon the age of the child and the seriousness of the offense, jurisdiction will instead lie in the circuit court. *Gaines*, 201 Md. App. at 10 (citing Cts. & Jud. Proc. §§ 3-8A-03(d)(1), (3)). There are three situations in which there may be transfer of jurisdiction between the adult criminal justice system and the juvenile system: (1) a pre-trial juvenile court to criminal court (a "waiver"), *see* Cts. &

Jud. Proc. § 3-8A-06; (2) a pre-trial criminal court to juvenile court (a "pre-trial reverse waiver"), Crim. Proc. § 4-202; and (3) a pre-sentence criminal court to juvenile court (a "pre-sentencing reverse waiver"), Crim. Proc. § 4-202.2.

Pertinent to our discussion, § 4-202.2 of the Criminal Procedure Article provides that, "[a]t sentencing, a court exercising criminal jurisdiction in a case involving a child shall determine whether to transfer jurisdiction to the juvenile court if . . . the court did not transfer jurisdiction after a hearing under § 4-202(b) of this subtitle." Crim. Proc § 4-202.2(a)(2)(ii). As such a hearing was conducted in this case, the court was required to consider the following factors prior to disposition:

> (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 child's acts as proven in the trial or admitted to in a plea entered under Maryland Rule 4-242; and
>
> (5) public safety.

Crim. Proc. § 4-202.2(b).

The statutory factors to be considered for waiver and pre-trial reverse waiver are virtually the same. *Gaines*, 201 Md. App. at 11; *see also Smith v. State*, 399 Md. 565, 587 (2007) (Wilner, J., concurring) (observing that the factors for reverse waiver prior to adjudication and prior to disposition are "[f]or the most part," the same); *see also Chen v. State*, 370 Md. 99, 106 (2002) ("Two statutory provisions concerning the same subject matter are considered to be *in pari materia* and must be interpreted accordingly"). Notably,

however, whereas § 4-202(d) requires the court to consider "the nature of the alleged crime," in determining whether to transfer to juvenile court before adjudication, § 4-202.2(d) requires the court to consider "the nature of the child's acts as proven in the trial or admitted to in a plea entered under Maryland Rule 4-242[.]"

"All the factors need not be resolved against the juvenile in order to justify waiver, but the court must consider each factor weighing them in relation to one another in determining whether the child is an unfit subject for juvenile rehabilitative measures." *In re Appeal No. 646*, 35 Md. App. 94, 95-96 (1977) (citing *In re Johnson*, 17 Md. App. 705, 709 (1973)). The court must not "presume the child's guilt of the alleged offenses." *Gaines*, 201 Md. App. at 11 (citing *Whaley*, 186 Md. App. at 449). And, the court is not obligated to follow a recommendation from the Department of Juvenile Services ("DJS"), however, this Court has "noted the importance of DJS reports in determining the amenability of the child to treatment." *Whaley*, 186 Md. App. at 449 (citations omitted).

In addition, Crim. Proc. § 4-202.2(b) requires only that the court "consider" the five factors; there is no requirement that it do so in detail on the record. By way of contrast, Cts & Jud. Proc. § 3-8A-06(e), which governs juvenile waiver hearings (as opposed to reverse waiver hearings) provides that "[i]n making its determination, the court shall consider the following criteria individually and in relation to each other on the record[.]" *See also In re Ricky B.*, 43 Md. App. 645, 648 (1979) ("The only variance appearing in [former] section 3-817[e] from that of [former] Art. 27, § 594A[d] is the legislative Fiat in the former that the hearing court must consider the following '[c]riteria individually and in relation to each other on the record'")(citation omitted).

Finally, "[t]he burden is on the juvenile to demonstrate that under these five factors, transfer to the juvenile system is in the best interest of the juvenile or society." *Whaley*, 186 Md. App. at 444; *see also In re Nancy H.*, 197 Md. App. at 422 (noting that the standard of review for consideration of the factors under Crim. Proc. § 4-202(c) is by the preponderance of the evidence). And, the disposition of reverse waiver motion is committed to the sound discretion of the trial court and will not be disturbed on appeal unless that discretion has been abused. *Whaley*, 186 Md. App. at 444 (citing *King v. State*, 36 Md. App. 124, 128, *cert. denied*, 281 Md. 740 (1977)); *see also Smith*, 399 Md. at 587 (Wilner, J., concurring) (The "obvious premise" of § 4-202.2 is that "the criminal court should be permitted, in its discretion, to transfer the case to the juvenile court for disposition"). An "'[a]buse 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.'" *Nash v. State*, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 574 U.S. 911 (2014).

We begin our review in this case by observing that Judge Wallace presided over both the initial reverse waiver hearing, prior to adjudication, and the second reverse waiver hearing, prior to disposition. Considering the factors, as well as the record as a whole, appellant was seventeen years old when the incident occurred. There was no indication that he suffered any mental or physical limitations at that time or immediately prior to disposition. And, although appellant apparently struggled with the English language, he was not a member of MS-13 and also had demonstrated that he was amenable to treatment by his good record at Cheltenham. Nevertheless, appellant admitted to his involvement in

the crime of second-degree assault for his role with several others in a violent assault of another high school student, notably originally charged as an attempted murder, over relatively minor transgressions. The court's consideration of these facts was supported by the record, and we are unable to conclude that the court abused its discretion in denying transfer prior to disposition.

We also note that Judge Wallace expressly stated, at the first reverse waiver hearing, that he was familiar with *Whaley*. *See Thornton v. State*, 397 Md. 704, 736 (2007) (appellate courts presume that "the trial judge knows the law and applies it properly"). We are persuaded that appellant's reliance on that case, as well as *In re Johnson*, 17 Md. App. 705 (1973), is misplaced. In *Whaley*, this Court held that the circuit court erred in denying a petition for a reverse waiver because it proceeded as though it was required to assume that a juvenile defendant was guilty of the offenses with which he was charged. *Whaley*, 186 Md. App. at 449. The State told the circuit court that it had to presume Whaley's guilt in the reverse waiver proceeding. *Id*. at 436. Furthermore, in announcing its decision, the court expressly stated that it was required to assume the truth of the charges and of the factual allegations that support them. *Id*. at 439.

Although a circuit court is statutorily required to consider "the nature of the alleged crime" in determining whether to order a reverse waiver (§ 4-202(d)(4) of the Criminal Procedure Article), the *Whaley* Court held that the circuit court had erred in assuming that the defendant was guilty of all of the allegations against him. *Whaley*, 186 Md. App. at 449. We explained:

> Such a presumption in the criminal court, where the burden is on the juvenile, could create its own set of problems. It could force a defendant to preview his defense in an attempt to obtain the reverse waiver. In addition, the same judge hearing the reverse waiver and assuming guilt (albeit for a limited

> purpose) may be the one who hears the criminal case. Finally, an assumption of guilt for consideration of a reverse waiver could skew the analysis of the five statutory factors; because the "nature of the alleged offense" factor will almost invariably be found by the court and be linked to the "public safety" factor. It is no surprise that one assumed guilty of a serious offense will frequently be deemed to be a threat to public safety and not amenable to treatment. This seems to run contrary to the authorization to transfer jurisdiction to the juvenile court (Crim. Proc. § 4–202(b)(3)) when it is "in the interest of the child."

Id. at 447 (footnote omitted).

This case is quite different from *Whaley*, in which the circuit court explicitly assumed the defendant's guilt because it incorrectly believed that it was required to do so. *Whaley*, 186 Md. App. at 449. Moreover, the prohibition on presuming a juvenile defendant's guilt does not preclude a court considering the level of his or her participation in the alleged offenses. *See Gaines*, 201 Md. App. at 14. In fact, "[i]t is difficult, if not impossible, to consider 'the nature of the alleged crime,' which the court must do, without considering the actions taken by the alleged perpetrators to commit that crime." *Id*. Thus, when evaluating the "nature of the alleged crime," courts may consider "'not only the type of crime but the circumstances surrounding its commission.'" *Id*. at 13 (quoting *In re Waters*, 13 Md. App. 95, 104 (1971)) (emphasis removed).

Turning to *Johnson*, *supra*, there the juvenile petition alleged that the appellant, Diane Connie Johnson, an unlicensed driver, caused the death of a two-year-old child in a grossly negligent manner when she lost control of the vehicle she was driving and struck three children standing on a sidewalk. *In re Johnson*, 17 Md. App. at 710. Johnson left the scene prior to the arrival of the police, and her boyfriend, who was not driving the car at the time, originally claimed responsibility. *Id*. However, after the boyfriend recanted

and implicated Johnson, and after the original petition was filed in the juvenile court, the State sought a waiver to criminal court. *Id*. The circuit court granted the waiver, stating as follows:

> 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.

In re Johnson, 17 Md. App. at 711.

This Court reversed, concluding that "there exists no justification for a waiver of jurisdiction." *In re Johnson*, 17 Md. App. at 713. We explained "[w]e 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." *Id*. at 712. We also concluded that the State's argument that trial in criminal court was appropriate because "Johnson was not in need of the rehabilitative measures afforded by the Department of Juvenile Services" was a "specious" argument and "injects into waiver hearings the anomalistic proposition that waiver should be granted because the juvenile is too good for rehabilitation, and, as such, should be subjected to the regular criminal procedures. It creates a penalty for good conduct." *In re Johnson*, 17 Md. App. at 712-13.

Ultimately, the primary difference between this case and both *Whaley* and *Johnson* is that we are concerned with a pre-disposition reverse waiver request. Contrary to those cases, the court was required to consider the nature of the child's acts as either proven in the trial or admitted to in a guilty plea, as occurred in this case. *See* Crim. Proc. § 4-202.2(b)(4). We are not persuaded that the court unduly emphasized this factor to the neglect of the remaining four. We further hold, that based on our review of the entire record as a whole, the court properly exercised its discretion in denying the reverse waiver prior to disposition.

JUDGMENT AFFIRMED.

COSTS TO BE ASSESSED TO APPELLANT.