Circuit Court for Baltimore County
Case Nos. 03-K-17-002276 and 16-006168

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1983 & 2628

September Term, 2017

STEVEN RAMSEY,

v.

STATE OF MARYLAND

Fader, C.J.
Graeff,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: August 9, 2019

Steven Ramsey, appellant, was charged with having committed multiple sexual offenses with respect to three pre-adolescent sisters. The three sisters, whom we shall refer to as "T.D.," "S.D.," and "E.D.," were his cousins, and the offenses were committed while he was periodically babysitting the three girls at their home. Those offenses occurred routinely over a period of approximately five years, beginning when appellant was 12 years of age and all three girls were under the age of eight and ending just before appellant's eighteenth birthday.

The charges relating to the sexual offenses that appellant was alleged to have committed, from the time that he was 12 years of age to the day before his sixteenth birthday, were brought via a delinquency petition in the Circuit Court for Baltimore County, sitting as a juvenile court (hereinafter referred to as "the juvenile court"), and the charges for the offenses that he purportedly perpetrated from the date of his sixteenth birthday to a week before he reached 18 years of age were brought by indictment in the Circuit Court for Baltimore County, sitting as an adult criminal court (hereinafter referred to simply as "the circuit court"). Appellant thereafter moved to have the adult criminal charges transferred to the juvenile court. When that motion was denied, the State requested that the juvenile court waive its jurisdiction as to the charges that it had before it. The juvenile court agreed to do so, and all of the charges against appellant, adult and juvenile, were subsequently consolidated for trial in Baltimore County's adult criminal court. Then, at appellant's request, severance was granted to permit a separate trial, in the circuit court, with respect to the offenses he committed as to each of the three sisters.

At the conclusion of the trial below, which, consistent with the severance granted, dealt only with the offenses appellant had committed with respect to "T.D." and not as to those offenses he perpetrated with respect to T.D.'s sisters, S.D. and E.D., appellant was convicted of two counts of sexual abuse of a minor and five counts of second-degree sexual offense.

Appellant now presents, on appeal, two questions for our review, which, in fact, amount to three. They are:

I. Did the circuit court err in denying appellant's request to have certain charges, which were based on acts committed by appellant after his sixteenth birthday but before his eighteenth birthday, transferred from the circuit court to the juvenile court?

II. Did the juvenile court err in waiving its jurisdiction with respect to certain charges that were based on acts committed by appellant after his twelfth birthday but before his sixteenth birthday?

III. Was the evidence legally sufficient to convict appellant on certain charges that were based on acts committed by appellant after his twelfth birthday but before his sixteenth birthday?

For the reasons that follow, we affirm the judgments of the circuit court.

Motion to Transfer Circuit Court Charges to Juvenile Court

As noted above, after being charged, in the circuit court, with having committed four counts of second-degree sexual offense and one count of sexual abuse with respect to a minor, namely, T.D., when he was 16 and 17 years old, appellant moved to have the case transferred to juvenile court. At the hearing on that motion, the circuit court considered, among other things, the "Transfer of Jurisdiction Investigation Report" that had been

prepared by the Maryland Department of Juvenile Services (the "Department") at the court's request for the transfer hearing. That report stated, among other things, that appellant was presently almost 19 years old and had no "handicapping conditions"; that he had graduated from high school with a 3.08 grade point average and a class rank of 107 out of 336 classmates; that he had been a member of the Navy Junior Reserve Officers Training Corps (NJROTC), where he had reached the rank of "lieutenant" and had been placed in command of his unit for half of his senior year in high school; that he had been employed as a cashier at a grocery store prior to his arrest; and, that he had been diagnosed with attention-deficit/hyperactivity disorder (ADHD) in kindergarten and had been prescribed various medications over the years for this condition.

The report also asserted that, during the Department's investigation into the sexual offenses appellant had allegedly committed as to T.D., T.D. had revealed that appellant had "sexually abused her for a number of years"; that he had, on multiple occasions, beginning when she was six or seven years old, put his "penis" in her "butt" and mouth; and that she had witnessed him committing similar acts on her sisters. Moreover, T.D.'s sister, E.D., had disclosed that appellant had put his "wiener" in her "backside"; that appellant had abused her "more than 5 times" while he was babysitting her and her sisters at their home; and that she was in first grade when it first occurred.

As for appellant's "amenability to treatment," the report noted that, following a "resource consultation," it was determined that if appellant's adult criminal charges were "to be waived to the juvenile system, there [were] very limited residential services to

address treatment for sex offenders due [to] his age," although a "psychosexual evaluation would need to be completed to determine risk of re-offending and if sex offending treatment could be treated in the community or in a residential placement." Finally, the report declared that the current offenses posed "a serious risk to public safety especially since the offenses involved the victimization of innocent and impressionable young children."

The circuit court subsequently denied appellant's motion to transfer, finding that

> With respect to [appellant's] age there's no question that he is now over 18 years old and almost 19 years old. Date of birth is March 30, 1998, so he'll be 19 in just a … few weeks.
>
> His mental and physical condition, physical age, 5'5", 195 pounds is no indication that he has any physical impairments. . . . Mentally there's, the only mental health issue is ADHD, and otherwise he seems mentally healthy. In fact he graduated from high school with a 3.08 grade point average. So he seems to be intelligent.
>
> With respect to . . . amenability to treatment he has had only one contact with juvenile services but that's related to this which is also a very serious charge. [Appellant's counsel] advises me that there are similar charges that went on for again some time before he got charged as an adult. The report does say that there are "very limited residential services to address treatment for sex offenders due to his age." And a psychosexual evaluation would be needed. But even with that apparently there are very limited treatment options for [appellant] due to his age and the nature of these charges in, available in the juvenile system.
>
> The nature of the offense, it really goes without saying these are very serious charges, very troubling charges where if they're true a severe impact on these young girls.

> Which ties into the public safety factor. Again very serious charges and, and it's three victims at, and ongoing for a number of years when they started, when these girls, when these girls were very young and it continued for a number of years. So I believe that [appellant] does pose a threat to public safety.
>
> And considering all the factors [appellant's] [m]otion to [t]ransfer to [j]uvenile [c]ourt is denied.

Juvenile Court's Waiver of Jurisdiction

As noted, the State, before bringing charges in the circuit court, filed a delinquency petition in the juvenile court. That petition charged appellant with having committed, with respect to T.D., the crimes of second-degree sexual offense, third-degree sexual offense, fourth-degree sexual offense, sexual abuse, sodomy, unnatural and perverted sexual practice, and assault. Each of those offenses was based on acts committed by appellant from February 5, 2011, when T.D. was six years old and appellant was 12 years old, until March 29, 2014, the day before appellant's sixteenth birthday.

Following the circuit court's denial of appellant's request to have his adult criminal charges transferred to the juvenile court, the State filed a motion asking the juvenile court to waive its jurisdiction so that both matters, the circuit court case and the juvenile case, could proceed as one matter in circuit court. At the hearing on that motion, appellant's counsel advised the court that, because the circuit court had "already denied [appellant's] request" to have the case transferred to juvenile court, "it didn't make much sense to have these cases in separate jurisdictions." Though he added that he believed "that the juvenile

court was the appropriate jurisdiction," he nonetheless indicated that, as to the waiver, he would "submit." The juvenile court then granted the State's waiver request.

In the indictment subsequently filed in circuit court, appellant was charged with having committed, with respect to T.D., one count of second-degree sex offense and one count of sex abuse of a minor on and between February 5, 2011, and March 29, 2014. That case was later consolidated with appellant's initial circuit court case, in which appellant was charged with having committed, with respect to T.D., four counts of second-degree sex offense and one count of sex abuse of a minor on and between March 30, 2014, and February 5, 2016. As previously observed, both cases included additional charges that alleged that appellant had committed similar offenses against T.D.'s sisters, E.D. and S.D., over the same time period. Following a motion by appellant's counsel, the charges pertaining to each of the three victims were severed into three separate actions, and, after appellant elected a bench trial, the State proceeded to trial solely on the charges involving T.D.

DISCUSSION

I.

Appellant contends that the circuit court erred in denying his request to have his adult criminal charges, which were based on acts purportedly committed by him when he was 16 and 17 years old, transferred to juvenile court, because, in so ruling, the court did not properly consider his amenability to treatment in the juvenile justice system, the nature of the crimes alleged, and the extent to which he posed a danger to the public, as required

by statute, specifically, § 4-202 of the Criminal Procedure Article of the Maryland Code. To bolster that contention, appellant claims that the court disregarded the portion of the Department's report regarding the need for a "psychosexual evaluation," which, in appellant's view, "left the circuit court with no evidence on the risk that [appellant] would reoffend or the viability of treatment[.]" That "error" was, according to appellant, "compounded by [the court's] excessive reliance on the nature of the offense," which, he maintains, contravened the general rule that a court "is not permitted to assume the guilt of the defendant, even for the limited purpose of the [transfer] hearing."

Ordinarily, a juvenile court has exclusive original jurisdiction over a child under 18 years of age, who is alleged to be delinquent. Md. Code, Cts. & Jud. Proc. § 3-8A-03(a). That jurisdiction does not, however, extend to a child who, as here, was at least 16 years old at the time of the offense and was alleged to have committed a second-degree sexual offense, "as well as all other charges . . . arising out of the same incident[.]" Cts. & Jud. Proc. § 3-8A-03(d)(4). Instead, exclusive original jurisdiction as to those charges rests with the circuit court. Cts. & Jud. Proc. § 1-501.

Nonetheless, a juvenile may seek transference of his or her case to the juvenile court under § 4-202 of the Criminal Procedure Article of the Maryland Code. That section permits a circuit court, "exercising criminal jurisdiction in a case involving a child," to transfer the case "to the juvenile court before trial or before a plea is entered under Maryland 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." Md. Code, Crim. Proc. § 4-202(b). In determining whether a transfer to a juvenile court is appropriate, the circuit court is to 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." Crim. Proc. § 4-202(d).

But, "[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 v. State*, 186 Md. App. 429, 444 (2009). And, in determining whether the juvenile has met that burden, the circuit court should bear in mind that "[n]ot all the factors need be given equal weight, nor do all the factors need be decided against the child in order for a waiver to be granted." *In re Bobby C.*, 48 Md. App. 249, 251 (1981). On appeal, we review that decision for abuse of discretion. *Id.*

The circuit court, we believe, neither failed to properly consider the five statutory factors nor abused its discretion in determining that the transfer to juvenile court sought by appellant was unwarranted. On the date of the hearing on appellant's transfer request, appellant was, as the court observed, almost 19 years old; had no noteworthy mental or physical impairments; had graduated high school with a grade point average of 3.08 and a class rank of 107 out of 336 students; had been elevated to the rank of "lieutenant" in the Navy Junior Reserve Officers Training Corps (NJROTC); and, had been gainfully

employed. Moreover, as for the nature of the crime and the threat to public safety, the court noted that appellant was accused of having committed, over the course of five years, repeated sexual acts, sometimes by threat of force, with respect to his three cousins, all of whom were under the age of 11 years old (and as young as six years old) when the abuse occurred. And the court had before it the Department's report, which opined that the crimes appellant had purportedly committed created a "serious risk to public safety" because "the offenses involved the victimization of innocent and impressionable young children." Furthermore, that report warned that appellant's "amenability to treatment in an institution, facility, or program available to delinquent children" would be hampered by the "very limited" residential services available for "sex offenders" who were of appellant's age.

As for appellant's assertion that the court's failure to order a "psychosexual evaluation" left the court with "no evidence" regarding the viability of treatment, we disagree. To begin with, the court was not required by law to request any report at all from the Department before making its decision, let alone demand that the Department specifically produce a psychosexual evaluation of appellant. Moreover, the Department's report did not state that a psychosexual evaluation was required before appellant's amenability to treatment could be assessed. Nonetheless, the court did consider the Department's suggestion regarding a psychosexual evaluation, but noted that, even if one were completed, the number of residential resources available to appellant was "very limited" because of appellant's age and the nature of the charges. *Cf. Hazell v. State*, 12 Md. App. 144, 156 (1971) (noting that the lack of psychological and psychiatric testing

results in the Department's report "[did] not compel the conclusion that there was no evidence before the court concerning appellant's physical and mental condition, or of his amenability to juvenile treatment.").

Moreover, appellant's amenability to treatment was only one of the factors that the circuit court needed to consider in assessing whether a transfer to juvenile court was in the interest of appellant or society. The court was required to consider all five factors, which it did on the record. And, in the court's view, a view we share, all five factors supported the court's determination that a transfer was unwarranted.

Finally, appellant's reliance on *In re Johnson*, 17 Md. App. 705, 711-713 (1973), in support of his contention that the circuit court charges should have been transferred to juvenile court is misplaced. In that case, 16-year-old Diane Johnson, an unlicensed driver, borrowed her boyfriend's car and, shortly thereafter, accidentally drove the car onto a sidewalk, striking three children and killing one of them. *Id.* at 709-10. Johnson fled the scene of the accident but was eventually apprehended. *Id.*

After filing a delinquency petition in the juvenile court, the State requested that the case be transferred to the circuit court. *Id.* at 710. At the hearing on that request, the juvenile court heard evidence that Johnson was an "above-average student"; that she was "very responsible" and "presented no conduct problem"; that she was "very concerned" about the accident; and that she had "the potential to be a productive citizen." *Id.* at 710-11. The court ultimately granted the State's motion, finding that, despite Johnson's "very

credible record," her age and the "very grievous nature of the offense" rendered the juvenile court "not the appropriate tribunal" for the charges pending against her. *Id.* at 711.

This Court reversed that decision, holding that the juvenile court abused its discretion in waiving its jurisdiction. *Id.* at 713. We explained that "the hearing judge was unduly influenced by the 'nature of the offense' to the extent that the amenability of [Johnson] to rehabilitation was cast aside and not considered, or, if considered, was not afforded its proper weight." *Id.* at 712. And we rejected the State's argument that the juvenile court's consideration of the five factors was "evident from the record," expounding that "[t]he mere statement that the five legislative factors were considered by the hearing judge does not divest this Court of its right to determine whether … those factors were actually considered and properly weighed in relation to each other and relative to the legislative purpose embodied in [the statute.]" *Id.* Then, observing that, based on the evidence presented at the waiver hearing, Johnson was "an ideal subject for the rehabilitative measures available from the Department of Juvenile Services," we avowed that the juvenile court abused its discretion in "fail[ing] to consider sufficiently [Johnson's] 'amenability to treatment in any institution, facility, or program[.]'" *Id.* at 713.

Here, in striking contrast to what occurred in *Johnson*, the circuit court clearly considered all five factors and properly weighed those factors in relation to each other. Moreover, that court gave careful consideration to appellant's "amenability to treatment," finding that appellant was a poor fit for treatment within the Department given his age, the nature of the crimes, the danger to public safety, and the dearth of resources available.

Furthermore, there is nothing in the record to support appellant's contention that the court relied "excessively" on the nature of the offense.

But, even more compelling, here, unlike in *Johnson*, where the charges stemmed from a single, unintended traffic accident, the charges in the instant case arose from appellant's intentional and repeated sexual acts against three children over a five-year period. *See Hazell*, 12 Md. App. at 155 ("That the court emphasized the factors relating to the 'nature of the offense,' and the 'safety of the public,' is, we think, wholly understandable in this case."); *see also Gaines v. State*, 201 Md. App. 1, 13-14 (2011) ("One of the factors to be considered is the nature of the offense, … and we think this may encompass not only the type of crime but the circumstances surrounding its commission.") (citations omitted) (emphasis removed). In sum, it is abundantly clear that it was not just the nature of the offenses that affected the court's decision but the repetition of those offenses over what amounted to half a decade.

Finally, at no time did the court indicate that it presumed appellant guilty of the charges. *Compare with Whaley*, 186 Md. App. at 448-49 (holding that the trial court erred in assuming the defendant guilty when considering his motion to transfer). In fact, the court, when discussing the severity of the charges, noted that the victims would be severely affected by the offenses "if they're true."

II.

Appellant next contends that the juvenile court erred in waiving its jurisdiction as to the offenses, which appellant purportedly committed during a three-year period from

February 5, 2011, to March 29, 2014, when he had not yet reached 16 years of age. Appellant maintains that, because he was less than 15 years old for "roughly the first two-thirds" of this time period, the juvenile court did not have the statutory authority to waive jurisdiction. And, appellant suggests that, even if the juvenile court had the authority to waive its jurisdiction, it nevertheless abused its discretion because "the evidence did not show that [appellant] was an unfit subject for juvenile rehabilitative measures."

A.

As for appellant's first claim, namely, that the juvenile court did not have statutory authority to waive its jurisdiction, we note, to begin with, that although the juvenile court has exclusive original jurisdiction over a child who is alleged to be delinquent, § 3-8A-03(a)(1) of the Courts and Judicial Proceedings Article, that jurisdiction may be waived "with respect to a petition alleging delinquency by: (1) [a] child who is 15 years old or older; or (2) [a] child who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by life imprisonment." Cts. & Jud. Proc. § 3-8A-06(a). But, before waiver can occur, the juvenile court must hold a hearing and, "from a preponderance of the evidence presented at the hearing," make a determination "that the child is an unfit subject for juvenile rehabilitative measures." Cts. & Jud. Proc. § 3-8A-06(d)(1).

If the juvenile court determines that the child is an unfit subject for juvenile rehabilitative measures and waives its jurisdiction, "the court shall order the child held for trial under the regular procedures of the court which would have jurisdiction over the

offense if committed by an adult." Cts. & Jud. Proc. § 3-8A-06(f). That is to say, "'an order of waiver valid on its face, . . . terminates the jurisdiction of the juvenile court and vests jurisdiction in the court having jurisdiction over the criminal offense with which the child is charged.'" *In re Franklin P.*, 366 Md. 306, 331 (2001) (quoting *In re Appeal No. 961*, 23 Md. App. 9, 12 (1974)). And that vesting of jurisdiction in the circuit court gives rise to "'a prima facie presumption of jurisdiction'" in that court. *Alford v. State*, 236 Md. App. 57, 78 (2018) (quoting *In re Nahif A.*, 123 Md. App. 193, 212 (1998)). In other words, "[i]t is presumed that jurisdiction over the subject matter and parties has been rightfully acquired and exercised," which means that "the burden is on the party challenging subject matter jurisdiction to rebut that presumption." *Id.* (citations and quotations omitted).

Hence, appellant had the burden of showing, by a preponderance of the evidence, that the circuit court was not the appropriate forum for his case. *See Alford*, 236 Md. App. at 78-79 (noting that, to overcome the presumption of jurisdiction in the juvenile court, the burden was on the defendant to show that he was not a juvenile). Despite that burden, at no point did appellant present below either argument or evidence to overcome the presumption of jurisdiction in the circuit court.

In any event, the petition filed in juvenile court alleged that sexual offenses were committed by appellant from February 5, 2011, through March 29, 2014, or from when appellant was 12 years old up to the day before his sixteenth birthday. Because appellant was 15 years old for at least a portion of that time period, the petition did in fact "alleg[e] delinquency by . . . [a] child who [was] 15 years old or older[,]" as required by Maryland

law. Cts. & Jud. Proc. § 3-8A-06(a). That appellant was less than 15 years old for a portion of the time during which he was alleged to have committed the charges transferred from juvenile court does not render his convictions, for those offenses that he committed when he was fifteen, invalid. Indeed, Maryland law permits an indictment to allege a broad time frame for sexual offenses against a child, where the exact date of the offense is oftentimes difficult, if not impossible, to discern. As we noted in *Malee v. State*, 147 Md. App. 320 (2002):

> In the context of a sex abuse case concerning a minor, when time is not an essential element of the offense, general allegations as to time are constitutionally sufficient if the actual date of the offense is unknown. The Court [in *State v. Mulkey*, 316 Md. 475 (1989)] explained that the "ability of a child to definitely state the date or dates of the offenses or to narrow the time frame of such occurrences may be seriously hampered by a lack of memory." Moreover, where the offense is of a continuing nature, it may simply be impossible for the State to provide specific dates in its charging document.

Id. at 328 (emphasis removed) (citations omitted).

Furthermore, although the time frame of the crimes alleged in juvenile court, which ultimately were transferred to circuit court, included crimes alleged to have been committed by appellant when he was under the age of fifteen, that inclusion, contrary to appellant's contentions, did not deny the circuit court jurisdiction over crimes he purportedly committed during the portion of that time period when he was fifteen years old, a point the Court of Appeals made in *Robinson v. State*, 353 Md. 683 (1999), though in a different factual context. In that case, the defendant was convicted of having committed the crimes of common law assault and battery between September 7 and

October 30, 1996. *Id.* at 701. On appeal, the defendant claimed that the criminal court lacked jurisdiction to convict him because, as of October 1, 1996, the crimes of common law assault and battery were no longer "cognizable in Maryland." *Id.* The Court of Appeals disagreed, holding that the charging document properly charged an offense within the jurisdiction of the trial court because "[t]he crimes of common law assault and battery were still cognizable between September 7 and September 30, 1996." *Id.* at 702. The Court explained that the extended time frame of the indictment did not defeat the court's jurisdiction, but rather "the expiration of the common law crimes on September 30, 1996 simply limited the time frame upon which [the defendant] could be convicted of assault and battery." *Id.*

Here, as in *Robinson*, the extended time frame, which included a time when appellant was not yet 15 years old, did not defeat the circuit court's jurisdiction; it merely limited the time period for the crimes that appellant could be convicted. And the court clearly declared appellant guilty of crimes he committed when he was 15 years old, as the court found that T.D. had been "repeatedly subjected to abuse by [appellant]" from when she was "six or seven … up until she was ten or ten and a half" and that, over that same time period, appellant had engaged in "repeated sexual acts" with T.D.; had "repeatedly" placed his penis in T.D.'s "butt" and "mouth"; and had "repeatedly imposed" sexual abuse on T.D. "on repeated occasions." And, given that "a trial judge is presumed to know the law and apply it properly," *Nottingham v. State*, 227 Md. App. 592, 615 (2016), we conclude that the court based its verdicts of guilty on acts appellant committed after he

turned 15 years old, despite the fact that appellant was under the age of 15 for a portion of the time period alleged in the indictment.

B.

We now turn to appellant's claim that the juvenile court abused its discretion in granting the State's waiver request because "the evidence did not show that [appellant] was an unfit subject for juvenile rehabilitative measures." First, as the State points out, that issue was either waived or not preserved for our review because, at the hearing on the State's waiver request, after declaring that in light of the circuit court's denial of his prior waiver request "it didn't make much sense to have these cases in separate jurisdictions," appellant's counsel stated that he would "submit." We conclude, based on that colloquy, that appellant consented to, or at least acquiesced in, the juvenile court's subsequent decision granting the State's waiver request. Thus, appellant affirmatively waived his right to appeal the decision of the court, as it is well established that "[t]he right of appeal may be waived where there is acquiescence in the decision from which the appeal is taken or by otherwise taking a position inconsistent with the right to appeal." *Grandison v. State*, 305 Md. 685, 765 (1986).

Even if appellant's claim was preserved, we conclude that the juvenile court did not abuse its discretion in granting the State's waiver request. To begin with, "[t]he purpose of the juvenile waiver hearing is not to determine guilt or innocence, but rather to determine whether or not the juvenile is a fit subject for juvenile rehabilitative measures." *In re Franklin P.*, 366 Md. at 329-30. That is, the juvenile court "essentially determines which

court will have authority over a juvenile for purposes of adjudicating any charges against the juvenile, either as to rehabilitative measures or as to punitive measures." *Id.* at 330. In making that determination, the court must consider the following criteria: "(1) [a]ge of the child; (2) [m]ental and physical condition of the child; (3) [t]he child's amenability to treatment in any institution, facility, or program available to delinquents; (4) [t]he nature of the offense and the child's alleged participation in it; and (5) [t]he public safety." Cts. & Jud. Proc. § 3-8A-06(e). Then, the court must weigh those factors "in relation to whether the child is an unfit subject for juvenile rehabilitation," *In re Bobby C.*, 48 Md. App. at 251, keeping in mind that "[n]ot all the factors need be given equal weight, nor do all of the factors need be decided against the child in order for a waiver to be granted." *Id.* "The final determination of waiver to the adult criminal system rests in the [juvenile] court's sound discretion." *In re Franklin P.*, 366 Md. at 330 (citations and quotations omitted). And, on appeal, "a waiver will be upheld where a preponderance of the legally sufficient evidence shows that such a determination is proper in the light of the factors to be considered." *In re Randolph T.*, 292 Md. 97, 101 (1981) (citations omitted).

As noted in our discussion of the circuit court's denial of appellant's request to have his adult criminal charges transferred to the juvenile court, the evidence showed that at the time of the waiver hearing appellant was 19 years old; had no noteworthy mental or physical impairments; had graduated high school with a GPA of 3.08 and a class rank in the top third of his class; and that, in his senior year of high school, he had reached the rank of lieutenant in the Navy Junior Reserve Officers Training Corps (NJROTC). The

evidence also showed that there were "very limited" services available for sex offenders of appellant's age. Moreover, appellant, according to the Department, was a "serious risk to public safety," given that he was accused of having subjected his three cousins, all of whom were under the age of 11 years old, to repeated, and, indeed, routine, sexual abuse over a five-year period. Consequently, the juvenile court's decision to waive jurisdiction did not constitute an abuse of discretion.

III.

Appellant's third and final contention is that the evidence was insufficient to convict him of the charges that were based on acts he purportedly committed from the time he was almost 13 years old to when he was almost 16 years of age. Invoking the "presumption of incapacity" in Maryland common law, which applies to children under the age of 14, appellant claims that, because he was under the age of 14 for "more than the first third of the time period alleged," the State was required to either overcome the presumption of incapacity or prove beyond a reasonable doubt that the offenses occurred on or after he turned 14 years old, which he maintains the State did not do.

Maryland recognizes the common law "presumption of incapacity," which states that a child between the ages of 7 and 14 is presumed to be incapable of committing a crime. *In re Devon T.*, 85 Md. App. 674, 682 (1991). But because that presumption does not apply to fourteen and fifteen-year-olds, and because the court below found, we believe, appellant guilty of offenses he committed after the age of fourteen, the presumption of

incapacity was never before it, as it was not relevant to the crimes for which appellant was convicted. We, therefore, have no reason to consider this issue and decline to do so.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.