Circuit Court for Charles County
Case No. C-08-JV-19-000124

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2528

September Term, 2019

IN RE T.J.J.

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 13, 2021

Appellant, T.J.J., was charged in the Circuit Court for Charles County with (i) attempted first-degree murder, (ii) attempted second-degree murder, (iii) first-degree assault, (iv) second-degree assault, (v) reckless endangerment, and (vi) having openly carried a dangerous weapon with the intent to injure. Following a two-day adjudicatory hearing, the Circuit Court, sitting as a Juvenile Court, found T.J.J. "involved" in each of the six counts with which he was charged and committed him to a residential treatment facility. On appeal, he presents three questions for our review, which we have reworded as follows:

1. Whether the evidence was legally sufficient to support the court's finding that T.J.J. was guilty of attempted first-degree murder, attempted second-degree murder, and first-degree assault.

2. Whether the court committed reversible error by denying T.J.J.'s motion to suppress his recorded police statement.

3. Whether the court abused its discretion by denying defense counsel's requests to order the removal of T.J.J.'s leg restraints during the adjudicatory hearing.[1]

[1] In his appellate brief, T.J.J. asks:

1. Was the evidence insufficient to convict T.J.J. of attempted first-degree murder, attempted second-degree murder, and first-degree assault?

2. Did the juvenile court err in denying the motion to suppress T.J.J.'s statement to the police?

3. Where T.J.J. showed no sign of being unable to behave during the adjudicatory hearing, did the juvenile court abuse its discretion by denying the Defense's two requests to remove T.J.J.'s leg shackles?

We answer T.J.J.'s questions in the negative and shall, therefore, affirm the judgments of the circuit court.

BACKGROUND[2]

On the date of the incident at issue, T.J.J. and the victim, N.P., were fourteen and seventeen years old, respectively. They resided with N.P.'s biological grandparents, who had adopted T.J.J. approximately ten years prior to the date of the incident. On the afternoon of April 2, 2019, T.J.J.'s adoptive mother ("Mother") asked N.P. to clean the upstairs bathroom. N.P. went downstairs in search of a broom. There, she found T.J.J. in the downstairs bathroom with the lights turned off and the door cracked open. N.P. returned upstairs and reported this unusual behavior to Mother, who, in turn, called T.J.J. upstairs. Approximately fifteen minutes later, Mother advised N.P. that T.J.J.'s adoptive father and she were going to the grocery store. After they had departed leaving T.J.J. and N.P. alone in the house, the latter proceeded to clean the upstairs bathroom per Mother's request. When she had finished doing so, N.P. entered the upstairs kitchen to get a snack. Thereafter, she began to descend the steps en route to her downstairs bedroom. As she did so, N.P. passed T.J.J., who was sitting at the top of the steps with a large kitchen knife.[3]

[2] Given that T.J.J. challenges the sufficiency of the evidence, we present the underlying facts in the light most favorable to the State. *See, e.g.*, *Davis v. State*, 207 Md. App. 298, 303 (2012) (citing *Moye v. State*, 369 Md. 2, 12 (2002)).

[3] N.P. did not see the kitchen knife prior to the attack. During a police interrogation conducted on April 4th, however, T.J.J. admitted that as N.P. descended the stairs, the knife had been "[r]ight there beside [him]. Like right on the steps."

When N.P. had reached "about . . . the second to last step," T.J.J. attacked her from behind. He grabbed hold of the ponytail of her wig and slit her throat twice, cutting in a vertical downward fashion. A struggle ensued, during which T.J.J. stabbed N.P. in the back of the head behind her left ear. N.P. escaped by "elbow[ing] him off" and fled the house. T.J.J. gave chase, grabbed N.P. by the wrist, and attempted to force her back inside. N.P. attempted to "fight[] him off," while screaming something to the effect of: "Get off of me." T.J.J. did not heed her pleas. N.P. eventually broke free, fled, and elicited the aid of a neighbor who had witnessed the outside altercation but had not intervened, having believed that the youths had been "playing." The neighbor attempted to dial 9-1-1, but was nervous and unable to dial properly. Despite the severity of her injuries, N.P. called the police, who responded shortly thereafter. N.P. was then airlifted to the hospital, where she received sixteen sutures to her neck and two or three additional stitches to the back of her head.

Following the fray, T.J.J. retreated to the house, changed his clothes, and absconded from the scene. Two days later, Reginald Thomas witnessed T.J.J. sitting on his neighbor's porch. The following morning, Mr. Thomas observed T.J.J. enter a shed adjoining a neighboring townhome. Mr. Thomas ordered him out of the shed, after which T.J.J. told him that he was afraid to return home because he was "in trouble" with his parents. Mr. Thomas welcomed T.J.J. into his home, offered him a sandwich, and permitted him to watch television. Thereafter, police officers arrived at Mr. Thomas's house and asked him whether T.J.J. was present therein. Mr. Thomas called out to T.J.J., who exited the house.

T.J.J. was handcuffed and transported to a Waldorf police station where he was provided his *Miranda* rights and interrogated.

We will include additional facts as necessary to our resolution of the questions presented.

DISCUSSION

I.

In challenging the sufficiency of the evidence to support his involvement in first-degree assault, T.J.J. contends that "his mental diagnosis and recent changes in medication undermine[d] the conclusion that he formed an intent to cause 'serious physical injury.'"[4] He further asserts that the State introduced "no evidence" from which the court could have reasonably inferred the requisite intent to commit attempted second-degree murder. Finally, he claims that "the record does not support the high bar of finding willful, deliberate, and premeditated attempted killing" required to sustain a finding of involvement in attempted first-degree murder. "Because the State failed to establish the intent to kill or cause serious injury," T.J.J. concludes, it "failed to meet its burden of establishing beyond a reasonable doubt each essential element of the offenses."

The State counters that T.J.J. challenges the court's "ultimate conclusion and the resolution of conflicting evidence" -- and *not* the sufficiency of the evidence. It further

[4] Although the transcripts of the adjudicatory hearing reflect T.J.J.'s having been prescribed psychiatric medication, they do not indicate with which disorder he was diagnosed.

maintains that "[a] reasonable fact finder could have concluded from the[] facts that T.J.J. was lying in wait to attack N.P. and tried to kill her by slitting her throat and stabbing at her skull."

Standard of Review

The standard for review of the sufficiency of the evidence is the same in a jury trial and a bench trial, as well as in a criminal prosecution and a juvenile delinquency proceeding. *See Chisum v. State*, 227 Md. App. 118, 129 (2016) ("[A]ppellate review of the sufficiency of the evidence … is precisely the same in a jury trial and in a bench trial[.]"); *In re James R.*, 220 Md. App. 132, 137 (2014) ("'This same standard of review applies in juvenile delinquency cases.'" (quoting *In re Timothy F.*, 343 Md. 371, 380 (1996))). We must, therefore, determine whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *White v. State*, 217 Md. App. 709, 713 (2014) (quotation marks and citation omitted). Given that exculpatory evidence and inferences "are not a part of that version of the evidence most favorable to the State's case," they do not exist for purposes of our review of the sufficiency of the evidence. *See Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015). The scope of our review is, therefore, limited to the incriminating evidence adduced at trial. "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citation omitted; emphasis retained).

When reviewing evidentiary sufficiency, our concern is not with the burden of persuasion but with the burden of production. *See Joppy v. State*, 232 Md. App. 510, 546, *cert. denied*, 454 Md. 662 (2017). It is not, therefore, within our purview to reweigh the evidence or to retry the case. *See Stanley v. State*, 248 Md. App. 539, 564 (2020) ("On appellate review of evidentiary sufficiency, a court will not 'retry the case' or 're-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.'" (quoting *Smith v. State*, 415 Md. 174, 185 (2010))). Rather, we defer to the court's assessment of witness credibility and to its resolution of conflicting evidence. *See State v. Stanley*, 351 Md. 733, 750 (1998) ("Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." (citation omitted)).

The Sufficiency of the Evidence

We begin by addressing T.J.J.'s contention that the evidence was legally insufficient to support a reasonable inference that he attacked N.P. with the deliberate and premeditated intent to kill, in that *mens rea* entails the specific intent to kill, which, in turn, embodies the specific intent to inflict grievous bodily harm. *See Dixon v. State*, 364 Md. 209, 240 (2001) ("The intent to kill envelops the intent to do serious physical injury."). If evidence of T.J.J.'s murderous *mens rea* suffices to sustain a conviction for attempted first-degree murder, it is, *ipso facto*, sufficient to sustain convictions for attempted second-degree murder and first-degree assault. In order to survive T.J.J.'s sufficiency challenge to the *mens rea* element of attempted first-degree murder, the State must have met its burden of

proving the specific intent to kill, deliberation, and premeditation. In *Tichnell v. State*, 287 Md. 695, 717 (1980), the Court of Appeals explained that murderous *mens rea*, writing:

> For a killing to be "willful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate.

A. The Specific Intent to Kill

Where, as here, a juvenile does not admit to having specifically intended to kill his or her victim, "the trier of fact may infer the intent to kill from the surrounding circumstances." *State v. Raines*, 326 Md. 582, 591 (1992). Accordingly, an intent to kill may "be determined by a consideration of the accused's acts, conduct and words." *Id.* (citation omitted). As is particularly pertinent here, "[a]n intent to kill may, under proper circumstances, be inferred from the use of a deadly weapon directed at a vital part of the human body." *State v. Earp*, 319 Md. 156, 167 (1990) (citing *State v. Jenkins*, 307 Md. 501, 514 (1986). *See also* Judge Charles E. Moylan, Jr., *Criminal Homicide Law* § 3.2 (2002) ("First and foremost in the ranks of proof . . . is the permitted inference of an intent to kill from the directing of a deadly weapon at a vital part of the victim's anatomy."). The nature of the victim's injuries and the brutality with which they were inflicted constitute further circumstantial evidence from which a court may infer the intent to kill. *See Thornton v.* State, 397 Md. 704, 734 n.7 (2007) ("The Court acknowledged the 'nature of the injuries inflicted upon' the victim, and the 'brutality and severity of [the] beating' as

evidence of malice and intent to commit a homicide." (quoting *Davis v. State*, 205 Md. 97, 104 (1964))).

B. Premeditation and Deliberation

In order to be "premeditated," "the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate." *Fields v. State*, 168 Md. App. 22, 47 (quoting *Wagner v. State*, 160 Md. App. 531, 564 (2005)), *aff'd*, 395 Md. 758 (2006). It is, however, "unnecessary that the deliberation or premeditation shall have existed for any particular length of time.'" *Fields*, 168 Md. App. at 47 (quoting *Wagner*, 160 Md. App. at 564). In order to be properly characterized as "deliberate and premeditated," therefore, the decision to kill must only have been the result of "'a choice made as a consequence of thought, no matter how short the period between the intention and the act[.]'" *Id*. (quoting *Wagner*, 160 Md. App. at 47).

"[O]rdinarily, premeditation is not established by direct evidence. Rather, it is usually inferred from the facts and surrounding circumstances." *Pinkney v. State*, 151 Md. App. 311, 336, *cert. denied*, 377 Md. 276 (2003) (quotation marks and citation omitted). Although not necessarily dispositive, the number and severity of the wounds and the brutality with which they were inflicted "may also provide sufficient evidence of deliberation." *Purell v. State*, Case No. 355, Sept. Term 2019, slip op. at 10 (filed May 27, 2021). Whether an accused deliberately attempted to kill his or her victim is also evidenced by his or her having procured and/or concealed a potentially lethal weapon in advance of the attempted homicide at issue. *See, e.g., State v. Hurt*, 668 S.W.2d 206, 215 (Mo. App.

1984) ("The inference of deliberation is made more apparent by the fact [that] the defendant procured and concealed a knife.").

C. The Instant Case

In this case, the court made the following factual findings in support of the verdicts:

> [T.J.J.] went and he got a rather large kitchen knife. Then he went and sat on the steps, and when his cousin, although they are sort of siblings, walked up facing him, I think, he didn't do anything, he sat there on the steps with the knife, either in his hand or next to him.
>
> When she walked past the second time, with her back to it, she testified to it, again, it is really not in dispute, he stood up, he grabbed her back, the back of the hair, and with the large kitchen knife, he brought it across her throat on two separate occasions, cutting her throat, causing the infliction of sixteen stitches after she was Shock/Trauma flown to Prince George's County Hospital.
>
> And when the slitting of the throat did not seem to stop her, and a struggle ensued, he then took the knife in his other hand, somehow, and drove it into the back of her head near where [her] ear is. Those pictures are all in Evidence.
>
> It is your skull, there's not much skin above there. To send a knife that deeply through the skin means it also went through the bone. The bone is right there underneath the skin. That is the appearance. The flesh is peeled back. Nonetheless, either way, he drove the knife into her head.

T.J.J.'s argument that he was unable to form a specific intent is unavailing. At the hearing, Mother testified that T.J.J. had been prescribed psychiatric medication and

affirmed that his mental health provider and prescription had "recently changed."[5] Defense counsel did not, however, elicit any expert testimony pertaining to T.J.J.'s diagnosis, symptoms, or medications. The mere fact that T.J.J. had been treated for an unspecified condition and had switched medications prior to April 2nd does not, without more, evidence his having lacked the capacity to form the intent to kill.

The evidence reflects that T.J.J. repeatedly slit N.P.'s neck -- a vital part of her body -- with a large kitchen knife -- a dangerous weapon -- and then stabbed her behind her left ear. Accordingly, the court could have reasonably inferred the specific intent to kill. The severity of N.P.'s injuries, evidenced by multiple photographs thereof and the need for sixteen sutures to the neck and two or three stitches to the back of the head, further indicate that T.J.J. attacked N.P. with homicidal intent.

In addition to finding that T.J.J. had harbored the intent to kill N.P., the court could have reasonably inferred that he had acted deliberately and with premeditation. It may well have readily deduced that T.J.J. had waited for his adoptive parents to leave the house before he retrieved the knife while N.P. was cleaning the bathroom, then sat on the steps waiting for her to walk by, concealed the knife as N.P. approached, and, when her back was turned, slit her throat twice. When the wounds to N.P.'s neck did not subdue her, the evidence indicated, he plunged the blade into the back of her skull and chased her as she fled. From these facts, the number and severity of potentially fatal blows, the brutality with

[5] Mother provided inconsistent testimony regarding the medication that T.J.J. had been prescribed on the date of the attack, first testifying "I believe it was, it might have been Risperdal or [C]lonidine," and then averring "No, Concerti."

which they were inflicted, and the protracted nature of the attack, a factfinder could have reasonably concluded that T.J.J. had acted deliberately and with premeditation.

Given the foregoing, we hold that the State adduced adequate evidence from which the court could have reasonably found T.J.J. involved in attempted first-degree murder, attempted second-degree murder, and first-degree assault.

II.

T.J.J. further challenges the court's denial of his motion to suppress statements that he made to the police after having been *Mirandized*, arguing that "the State failed to meet its burden of establishing that [he] knowingly and intelligently waived his *Miranda* rights." The State responds that "there is no sign in the record that T.J.J. did not understand what the officers told him or that he was unable to understand the waiver." Alternatively, it asserts that any error in admitting T.J.J.'s statements to the police was harmless because they "did not contribute to the delinquency involvement findings because [the court] relied on N.P.'s testimony."

Standard of Review

"'[I]n reviewing the denial of a motion to suppress, we look only to the record of the suppression hearing and do not consider the evidence admitted at trial.'" *Myers v. State*, 243 Md. App. 154, 166 (2019) (quoting *Coley v. State*, 215 Md. App. 570, 582 (2013)), *cert. denied*, 467 Md. 276 (2020). In so doing, we apply the following standards of review:

> [W]e view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing,

> unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality *de novo* and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (quotation marks and citation omitted).

Miranda Waiver

The Fifth Amendment to the United States Constitution, made applicable to the states by Fourteenth Amendment, provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In the seminal case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court established prophylactic safeguards to protect suspects from the coercion inherent in custodial interrogations. Prior to initiating any such inquiry, the *Miranda* Court mandated that the police warn a suspect that "he [or she] has a right to remain silent, that any statement he [or she] does make may be used as evidence against him [or her], and that he [or she] has the right to the presence of an attorney, either retained or appointed." *Id*. at 444. Once so advised, a suspect may waive his or her *Miranda* rights provided that such waiver is made knowingly, intelligently, and voluntarily. At a suppression hearing, the State bears the "heavy burden" of establishing by a preponderance of the evidence that the defendant's waiver was thus made. *See Gonzalez v. State*, 429 Md. 632, 650 (2012) ("The State has a 'heavy burden' to establish that a suspect has waived those rights, which means that the State must shoulder 'the burden to establish waiver by a preponderance of the evidence[.]'").

Similar to adults, the determination of whether a juvenile has knowingly and voluntarily waived his or her *Miranda* rights depends upon the totality of the circumstances. *See McIntyre v. State*, 309 Md. 607, 615 (1987) ("'This totality-of-the-circumstances approach . . . is adequate to determine whether there has been a waiver *even where interrogation of juveniles is involved.*" (citation omitted; emphasis retained)). "The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation." *Fare v. Michael C.*, 442 U.S. 707, 725, *reh'g denied*, 444 U.S. 887 (1979). In the case of a juvenile, "this includes the evaluation of [the youth's] age, experience, education, background, and intelligence, and into whether he [or she] has the capacity to understand the warnings given to him [or her], the nature of his [or her] Fifth Amendment rights, and the consequences of waiving those rights." *Id*. The absence of a parent or guardian is likewise an important -- although not dispositive -- factor in determining whether a juvenile's *Miranda* waiver was voluntarily made. *See Jones v. State*, 311 Md. 398, 407-08 (1988) ("The absence of a parent or guardian at the juvenile's interrogation is an important factor in determining voluntariness, although the lack of access to parents prior to interrogation does not automatically make a juvenile's statement inadmissible."). "Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Gonzalez*, 429 Md. at 652 (quotation marks and citation omitted).

In this case, the evidence adduced at the suppression hearing indicated that T.J.J. was fourteen years old at the time of his arrest. After having been handcuffed and transported to the police station, he was escorted to an interview room. Prior to being questioned, the interrogating officer removed T.J.J.'s shackles and handcuffs. T.J.J. had been given food and water prior to the interview and was offered an additional beverage by the interrogating officer. That officer advised T.J.J. of his *Miranda* rights, and asked him whether he understood the advisements.[6] T.J.J. answered in the affirmative.

The officer described T.J.J.'s demeanor as having been "[v]ery calm." Although the officer neither offered him an attorney nor proposed calling his parents, the record does not reflect that T.J.J. made either such request. The interview began in the late morning, ended in the early afternoon, and was relatively brief. Although the videotape of the interrogation was approximately two hours long, the interrogating officer repeatedly left and returned to the interview room. It is unclear from the transcript of the suppression hearing whether T.J.J. had prior experience with the criminal justice system.[7] Nor does the transcript contain testimony regarding T.J.J.'s education, intelligence, or mental health.[8] Finally, there is no indication of physical duress, coercion, promises, or inducements.

[6] The interrogating officer posed a few preliminary questions prior to reading to T.J.J. his *Miranda* rights, the answers to which the court suppressed.

[7] Although the transcript contains no such evidence, during the police interview, the interrogating officer claimed that T.J.J. and he had met several months prior while the officer was executing a search warrant at T.J.J.'s house.

[8] While there was no testimony pertaining to his education, during the interrogation, T.J.J. told the officer that he was in ninth grade.

Based on the foregoing, the court found by a preponderance of the evidence that T.J.J. knowingly, intelligently, and voluntarily waived his *Miranda* rights. Finding substantial evidence in support of that determination, we will not disturb the court's ruling. *See Faulkner v. State*, 156 Md. App. 615, 649 (providing that the court's finding that a defendant understood and waived his or her *Miranda* rights is a matter of fact subject to clear error review), *cert. denied*, 382 Md. 685 (2004).

Harmless Error

Even if the court had erred by denying T.J.J.'s motion to suppress, we would hold that any such error was harmless beyond a reasonable doubt. *See Logan v. State*, 164 Md. App. 1, 49 (2005) ("A court's failure to suppress a statement obtained in violation of *Miranda* can constitute harmless error."), *aff'd*, *State v. Logan*, 394 Md. 378 (2006); *Bartram v. State*, 33 Md. App. 115, 153 (1976) ("It is, of course, settled law that a *Miranda* error can, indeed, be harmless error." (citations omitted)), *aff'd*, 280 Md. 616 (1977). When delivering its verdicts, the court expressly disclaimed having relied on the content of the remarks at issue, ruling:

> So, I find beyond a reasonable doubt that he is guilty of all the counts for the reasons I have stated on the record.
>
> I find that the Court can conclude that whether . . . *I conclude it without relying on the statement*, based on the testimony of the victim, who basically described the attack in straightforward statements. So, *I conclude those without relying on the statement*.

(Emphasis added). Although it briefly referred to T.J.J.'s recorded statement when articulating its findings, we take the court at its word. *See Nixon v. State*, 140 Md. App.

170, 189 (2001) ("Deference has always been given to a trial judge's specific statement on the record that the court was not considering certain testimony or evidence."); *Simms v. State*, 39 Md. App. 658, 673 ("'The assumed proposition that judges are men of discernment, learned and experienced in the law and capable of evaluating the materiality of the evidence, lies at the very core of our judicial system.'") (quoting *State v. Babb*, 258 Md. 547, 550 (1970)), *cert. denied*, 283 Md. 738 (1978).

We are not persuaded by T.J.J.'s assertion that "[t]he juvenile court made findings based on facts solely provided by T.J.J.'s statement: for example, the court that T.J.J. got the knife and sat waiting on the step." The court could have readily inferred such facts from the victim's testimony and the other evidence adduced at trial.

III.

Finally, T.J.J. claims that the court abused its discretion by requiring him to wear leg shackles throughout the adjudicatory hearing, arguing that the restraints "indicat[ed] to each witness that he was a risk of flight, danger, or instability." Alternatively, T.J.J. maintains that wearing the leg shackles "*may* have had an internal, psychological impact on [him], an impact that cannot be shown by the trial transcripts on appeal." (Emphasis added). The State counters that this "modest security measure[]" was reasonable given the court's on-the-record determination that (i) T.J.J.'s "'emotional state had been put in question by the Defense'"; (ii) T.J.J. "had allegedly stabbed [N.P.] 'indiscriminately'"; and (iii) "while being held in a facility [T.J.J.] was found to be a danger to himself and others."

The Leg Restraints

On the first day of the adjudicatory hearing, and at the request of courtroom security personnel, the court ordered that T.J.J. remain in his leg restraints during the proceedings. In so doing, the court explained:

> I think [T.J.J.] ha[d] been found not competent, and then found competent. There has been request made by security. I am going to honor that request. I don't think it in any way prohibits the representation in this case.
>
> And of course the victim of the stabbing will be present here. She is young. I think all those considerations make it appropriate to do so. So if that is the specific finding that you are requesting, I will make that specific finding.

Citing our opinion in *In re D.M.*, 228 Md. App. 451 (2016), defense counsel challenged the order, arguing that a court has discretion to order that a juvenile remain shackled only upon making "a particularized finding that the youth presents a security risk in the courtroom" based on the juvenile's past *in-court* conduct. Defense counsel maintained, "[i]t is not about what happens on the street, it's not about the charges." After hearing argument from the defense and the State, the court reaffirmed its initial order, finding:

> I don't recall that it has to be conduct in the courtroom that concerns the Court. Obviously, we are not indiscriminately shackling. In fact, we really always take off shackles. And we are doing that in this case, just not all of them.
>
> I was asked by security to leave the shackles with regard to his legs. And that was based on all the factors, to include the fact that his emotional state had been put in question by the Defense by filing a request for a finding of incompetence, which apparently was found, and later to have been found not.

> The allegations that at fourteen he did indiscriminately stab somebody. Now, whether this is true or not, we don't know, but those are the allegations.
>
> And so I think in this particular case, with the victim in the courtroom, I think it is reasonable that at least on this level the shackles remain on the legs. They are not going to interfere with his ability to participate in a meaningful way within the court proceedings here today.

The following day, defense counsel renewed its request that the court permit the removal of T.J.J.'s leg restraints, citing his in-court composure the day prior. Again, the court denied defense counsel's request, ruling:

> Alright, it is normally the policy, in fact I have never had a juvenile shackled for a hearing or a proceeding before me, and generally we don't.
>
> But a request was made by Security, and now as we know, the allegations in this case are that the person related to him was walking down the steps, at least from her testimony, that there was no disagreement between them, and that he suddenly jumped up from the steps, grabbed her by the hair, and tried to slit her throat two times, then switched hands and stabbed her in the back of the head, then chased her into the street.
>
> The Court has some concerns with that testimony that security, as far as released from the hands, but not from his feet, given that he had been previously found, I believe, if I am not mistaken, that he had been in an institution because he was determined to be a danger to himself or others.
>
> The Court is going to make a specific finding that there is a concern that he may be dangerous, depending on what happens through the course of the trial. So, we are going to continue to leave him with his feet shackled.
>
> I understand that one of his hands is injured. The report was that he had been in two altercations. I don't know if that is

> related to that, but we will, as requested yesterday, we will take breaks … if he can't write things down, if you want to take a break to have a conversation with him, we will accommodate that, if that is of assistance. But we are going to make a specific finding that there is a concern with regard to safety, and leave him shackled at his feet.

Standard of Review

"[T]he trial judge has broad discretion in maintaining courtroom security." *Hunt v. State*, 321 Md. 387, 408 (1990). *See also Campbell v. State*, 243 Md. App. 507, 518 (2019) ("The conduct of a criminal trial is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse." (quotation marks and citations omitted)), *cert. denied*, 467 Md. 695 (2020). When reviewing the exercise of such discretion, we need "not determine whether less stringent security measures were available to the trial court, but rather whether the measures applied were reasonable and whether they posed an unacceptable risk of prejudice to the defendant." *Id*. (citing *Bruce v. State*, 318 Md. 706, 721 (1990)). A court's failure to exercise discretion constitutes an abuse thereof. *See Cagle v. State*, 462 Md. 67, 75 (2018) ("A failure to exercise this discretion, or a failure to consider the relevant circumstances and factors of a specific case, 'is, itself, an abuse of discretion[.]'" (quoting *101 Geneva LLC v. Wynn*, 435 Md. 233, 241 (2013))). Accordingly, "the decision as to whether an accused should wear leg cuffs or shackles must be made by the judge personally, and may not be delegated to courtroom security personnel." *Whittlesey v. State*, 340 Md. 30, 84 (1995).

The Presumption Against Shackling

Although juvenile offenders do not enjoy the full panoply of constitutional rights afforded to adults in criminal prosecutions, some such protections apply to children where "granting that right would help achieve . . . the goals of the juvenile system." *In re D.M.*, 228 Md. App. at 466. In a delinquency proceeding, the accused is entitled to the presumption of innocence, the right to assist counsel, and the right to a fair hearing. In order to safeguard those rights, in *In re D.M.*, we extended the presumption against shackling to the juvenile system. *Id*. at 469. We explained:

> There are practical consequences to the appearance of juveniles in restraints. While juveniles are not entitled to trial by jury, their cases often involve witnesses whose perceptions may be swayed by the sight of a child in physical restraints. Indiscriminate shackling also physically and, at times, psychologically inhibits the juvenile respondent's right to assist counsel and participate in his or her own defense. Where there is the potential for the loss of liberty, a juvenile's needs in court are "comparable in seriousness to a felony prosecution." [*Application of*] *Gault*, 387 U.S. [1,] 36, 87 S. Ct. 1428 [(1967)]. The use of restraints may impair a juvenile's physical ability to take notes and confer freely with counsel, and it might also impair a psychological willingness to testify or answer a magistrate's questions openly and candidly. The goals of the juvenile system being rehabilitative, a juvenile's active participation in his or her defense may demonstrate to the court an eagerness to receive treatment or may help guide the court in crafting an effective and personalized treatment plan. It may further serve as an example to the juvenile of how engaging the support of others can be beneficial.

Id. at 467-68.

Although juveniles generally enjoy a "right . . . to appear in court free of shackles," that protection is not absolute, and may be overridden by a compelling State interest that outweighs the prejudice posed thereby. *Id*. at 466. "[E]ssential state interests that may justify the physical restraint of a defendant include preventing the defendant's escape, protecting those in the courtroom, and maintaining order in the courtroom." *Id*. at 464. Whether a State interest outweighs the danger of unfair prejudice "must be measured on a case-by-case basis. *Id.* at 463 (quoting *Lovell v. State*, 347 Md. 623, 640 (1997)). Accordingly, "juveniles should not be shackled while appearing at juvenile court hearings, unless and until there has been a finding on the record that the juvenile poses a security concern or threat that would disrupt those particular proceedings or involve danger to the juvenile or others." *Id*. at 469.

When reviewing the court's implementation of heightened security measures, "[i]t is our function to consider the scene presented to those who might have been prejudiced by the sight of the shackles and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to [the defendant's] right to a fair proceeding." *Id*. at 470. "Our inquiry is not whether less conspicuous measures might have been feasible, but whether the measures utilized were reasonable and whether, given the need, such security posed an unacceptable risk of prejudice to the defendant." *Bruce v. State*, 318 Md. 706, 721 (1990) (citing *Holbrook v. Flynn*, 475 U.S. 560, 572 (1986)).

In this case, the court made the requisite particularized factual findings, citing T.J.J.'s having allegedly stabbed N.P. (a testifying witness) "indiscriminately" and without

provocation. The court further noted that T.J.J. had been previously deemed a danger to himself and others, that defense counsel had called his emotional stability into question, and that he had been in two recent altercations. Finally, although N.P. may not have been present during the second day of the adjudicatory proceeding, the court noted that she was present in court on the first day. We hold that the court adequately articulated its reasons for requiring that T.J.J.'s feet remain shackled.

In weighing the State's interests against prejudice to T.J.J., we first note that the danger of unfair prejudice posed in this case is presumably less than if T.J.J. had been tried by a lay jury. *See United States v. Zuber*, 118 F.3d 101, 104 (1997) ("We traditionally assume that judges, unlike juries, are not prejudiced by impermissible factors[.]" (citing *Anderson v. Smith*, 751 F.2d 96, 106 (2d Cir. 1984))); *Carter v. Hewitt*, 617 F.2d 961, 972 n.13 (3d Cir. 1980) ("Nonjury trials present a much smaller danger of unfair prejudice than jury trials."). That danger was further mitigated by the court's having permitted the removal of the restraints from T.J.J.'s wrists, requiring only that he remain in leg restraints. *See Hunt*, 321 Md. at 412 ("[L]eg irons . . . is a lesser restraint than handcuffs, and accordingly, less prejudicial."); *Bowers v. State*, 306 Md. 120, 129 ("'There is some authority that shackles are not to be used if the danger can be overcome by armed guards and that handcuffs are not to be used if less visible leg irons will suffice.'" (citation omitted)). Indeed, it is unclear from the record whether T.J.J.'s restraints were even visible during the two-day hearing. Nor does the record reflect that the leg shackles hindered T.J.J.'s ability to effectively communicate with his attorney or take notes during the

proceedings. Finally, as the State aptly argues, even if N.P. -- who had resided with T.J.J. for most of his life -- had seen the leg restraints, it is exceedingly unlikely that her having done so would have detracted from the reliability of her in-court identification. On these facts, the State's interest in courtroom safety outweighed the danger of unfair prejudice to T.J.J. Accordingly, we perceive no abuse of discretion.

For the foregoing reasons, we affirm the judgments of the circuit court.

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