

IN THE CIRCUIT COURT OF MARYLAND
FOR MONTGOMERY COUNTY
JUVENILE DIVISION

IN RE:

[RESPONDENT FIRST
NAME]

...Respondent

Petition No: [REDACTED]
Hearing Date [REDACTED]

RESPONSE AND MEMORANDUM IN OPPOSITION TO STATE'S REQUEST
TO WAIVE JUVENILE JURISDICTION

The Respondent, [RESPONDENT FIRST LAST NAME], by and through counsel, Patrick J. Hoover, Esq., and PATRICK HOOVER LAW OFFICES provides the following response and memorandum in opposition to the State's Petition of Waiver to Adult Court, and states the following:

STATEMENT OF REASONS TO OPPOSE WAIVER TO ADULT COURT

- Respondent, [RESPONDENT FIRST LAST NAME] (hereinafter "[RESPONDENT FIRST NAME]"), has no prior record of adjudication in any forum or any jurisdiction, much less criminal conviction in this or any other jurisdiction; has graduated this past June with his Maryland High School Diploma, notwithstanding his many years of special education instruction; remains living at home under close supervision by both parents, remains in treatment with his psychiatrist and therapist, and is fully compliant with all prescribed medications, all through the direction of his psychiatrist.

2. Victim and witness testimony described [RESPONDENT FIRST NAME]'s role in the assault as minimal, with no physical force employed other than the alleged attempt to put hands into the victim's pocket; victim and witness testimony described [RESPONDENT FIRST NAME] as having fled the scene during the attack; and police reports described [RESPONDENT FIRST NAME] as the first to surrender after being stopped by the police and entirely cooperative with the police.
3. Psychological reports, behavioral reports, and Department of Juvenile Services (DJS) reports all describe [RESPONDENT FIRST NAME]'s overall improvement and change in personality, behavior and self-awareness since the incident; and describe [RESPONDENT FIRST NAME] and his family's remorse over the incident in which [RESPONDENT FIRST NAME] is allegedly involved.
4. In spite of two hospitalizations in 1999 and 2000, DJS did not implement the Psychiatric Institute of Washington's recommended treatment plan in 2000 as part of their informal supervision over [RESPONDENT FIRST NAME]. See DJS Transfer Investigation Report [REDACTED] page 4.
5. In spite of the family's financial restrictions for [RESPONDENT FIRST NAME]'s treatment, [RESPONDENT FIRST NAME]'s family have actively sought to place [RESPONDENT FIRST NAME] in outpatient treatment and have sought special education interventions to help their son; [RESPONDENT FIRST NAME]'s progress in those programs have been well-documented.
6. It would be illogical in the extreme to suggest, as seen in the State's petition of waiver, that [RESPONDENT FIRST NAME] is an unfit candidate for rehabilitation through the services of the juvenile court. The juvenile court has not

never had jurisdiction over [RESPONDENT FIRST NAME]. The juvenile court has therefore never had the opportunity to provide [RESPONDENT FIRST NAME] with any potential services, supervision, or court-ordered treatment. Because the Court has never had [RESPONDENT FIRST NAME] under supervision or in court-ordered treatment, to suggest ~~this~~ case be transferred to adult court completely ignores the most important fact of the case.

7. There has never been court-ordered treatment for [RESPONDENT FIRST NAME], nor has there been a meaningful treatment plan in place by DJS in spite of [RESPONDENT FIRST NAME]'s well-documented mental health problems. In fact, DJS chose to overlook the strong recommendation of his then medical provider, when in 2000, he was hospitalized and discharged with specific recommendations for aftercare, which DJS chose not to incorporate into informal supervision at the intake level then underway.
8. In the past, prior contacts involving informal supervision through DJS, each described an offense for which [RESPONDENT FIRST NAME] was inappropriately charged. For instance, the description of False Report in 1999 in fact was anything but a false report. The DJS contact involving assault entailed no more than schoolyard incidents elevated inappropriately. Lastly, the weapon on school property offense of September 2007 consisted of [RESPONDENT FIRST NAME] being in possession of a small penknife on campus.
9. DJS report states that an appropriate treatment plan can be implemented in the juvenile court system, in spite of [RESPONDENT FIRST NAME]'s current age.

10. DJS report describes [RESPONDENT FIRST NAME] as being immature for his age.
11. The DJS transfer report states that [RESPONDENT FIRST NAME] has demonstrated the ability to follow orders and responsibility, and has a strong family support system that would be compliant with any treatment plan ordered by the juvenile court system. See DJS Transfer Investigation Report [REDACTED] page 8.

STATEMENT OF FACTS

Owsley family history, milieu, and mental health:

[RESPONDENT FIRST LAST NAME] was born on [REDACTED]. At the time of the incident, he was seventeen years and eight months of age. He is currently eighteen years and three months of age. As a toddler, [RESPONDENT FIRST NAME] suffered from cognitive developmental delays. His birth father was absent and his mother did not marry her current husband, who [RESPONDENT FIRST NAME] views as a father, until 1995. Between 1990 and 1995, [RESPONDENT FIRST NAME]'s mother was involved with a man who was physically and emotionally abusive to both her and physically abusive to [RESPONDENT FIRST NAME]. [RESPONDENT FIRST NAME]'s medical records indicate that this is a contributing factor to his behavior.

In the third grade, [RESPONDENT FIRST NAME] was transferred into a special education program in order to meet his education needs in light of his cognitive delays and emotional disturbance disability. Although [RESPONDENT FIRST NAME] has been involved with Department of Juvenile Services (DJS) in the past, such incidents have resulted only in pre court

supervision and were resolved at DJS Intake. Additionally, in each past contact, [RESPONDENT FIRST NAME] successfully completed all conditions required of him by DJS.

[RESPONDENT FIRST NAME]'s actions that led to past informal contact at DJS are attributed to [RESPONDENT FIRST NAME]'s emotional medical disorder. [RESPONDENT FIRST NAME] currently receives medical treatment consisting of therapy and medication, newly designed and implemented since the date of the offending event and starting in January of 2008. However, in spite of the Psychiatric Institute of Washington's recommended treatment plan, after [RESPONDENT FIRST NAME]'s second hospitalization in [REDACTED], stating that [RESPONDENT FIRST NAME] needed a long-term intensive residential treatment program, DJS did not implement the recommendation for [RESPONDENT FIRST NAME]. See DJS Transfer Investigation Report [REDACTED] page 4. Because of insurance restrictions and finances, his family was only able to gain available treatment through the public school system and through outpatient treatment. This failure of potentially more effective services occurred despite the family's request of the DJS intake officer to order more intensive treatment for [RESPONDENT FIRST NAME], stating that by obtaining such treatment order through the Department, the Owsley's health insurance plan had agreed to fund such more intensive services. Please see Children Of Color With Mental Health Problems: Stuck In All The Wrong Places, Prof. Leviton, Susan, University of Maryland School Of Law, Spring 2002, 2 Margins 13, at 24-25, describing how African-American children are much less likely to receive specialty services.

Since the age of eight, [RESPONDENT FIRST NAME] has been receiving outpatient therapy and medication management. His initial diagnosis, which lasted until this year, was for Oppositional Defiant Disorder and Mood Disorder. Throughout his childhood until present, he has been prescribed Adderall, Clonidine, Depakote, Ritalin, Welbutrin, and Zyprexa, with mixed

results. At the age of nine and again at age ten, [RESPONDENT FIRST NAME] was hospitalized to deal with his aggression and find a more suitable treatment method. Most notably, from October of [REDACTED] to January [REDACTED] the period in which the incident occurred, [RESPONDENT FIRST NAME] had ceased receiving counseling and taking medication because his counselor relocated to California.

Since the incident in which [RESPONDENT FIRST NAME] has been charged, [RESPONDENT FIRST NAME] has been receiving therapy and medication management from Capital Mental Health Associates. There, Dr. Robert Hunt changed [RESPONDENT FIRST NAME]'s diagnosis to Bipolar Disorder and prescribed Lamictal, a psychotropic medication directed at treatment of bipolar disorder. According to Dr. Hunt, [RESPONDENT FIRST NAME] has made excellent progress in these few months, both from the medication change and from the counseling. Dr. Hunt describes [RESPONDENT FIRST NAME] as experiencing a newfound understanding of his psyche, as starting to seek positive role models, as improving his cognitive thinking skills, and as being able to identify and hold future goals. Dr. Hunt has also observed positive behavioral changes in [RESPONDENT FIRST NAME]'s affect and mood since beginning new medication and therapy treatment, for the first time in his life, appropriate to his medical diagnosis of bipolar disorder.

[RESPONDENT FIRST NAME] has been successfully employed part-time since June of 2006. He successfully graduated June 2008 and received his Maryland high school diploma. He has recently been admitted to Prince George's Community College and received a partial scholarship towards another college. He voluntarily attended the Take Charge Behavior Modification program in order to improve his decision-making skills where the program director has noted [RESPONDENT FIRST NAME]'s improvement in his understanding of the consequences of his

actions and has identified [RESPONDENT FIRST NAME]'s strong interests and efforts in self-improvement.

In addition to his psychiatrist, his program counselor and his school's report that [RESPONDENT FIRST NAME] has made and continues to make significant progress towards positive change, all describe [RESPONDENT FIRST NAME] as having expressed remorse and guilt for his alleged role in the assault in December 2007. [RESPONDENT FIRST NAME] has also been able to identify his tendency to follow people he identified as former friends, and [RESPONDENT FIRST NAME] is able to describe how their influence affected his judgment and decision-making skills. [RESPONDENT FIRST NAME] is now able to describe the problems that he encountered from following a group of individuals living in his area who had no real goals or ambitions in their lives. All reports, including [RESPONDENT FIRST NAME]'s own self-reports, describe [RESPONDENT FIRST NAME] as seeking better role models for friendship, and that at this time, when placed in a milieu with positive role models, [RESPONDENT FIRST NAME] gravitates towards positive individuals instead of negative role models.

Incident of [REDACTED]: Victim [VICTIM NAME] and witness [WITNESS NAME] audio statements to police.

On [REDACTED], at [REDACTED] in Silver Spring, Maryland, [VICTIM NAME], the victim (hereinafter "[VICTIM NAME]"), was walking to the apartment of [WITNESS NAME] (hereinafter "[WITNESS NAME]"). As he passed by a white Ford he saw a number of young men in and about the car and was able to describe each of them down to the length of hair worn and the articles of clothing worn by each. The specificity with which the victim described the young men who assaulted him is important insofar as his description makes clear that [RESPONDENT FIRST LAST NAME]'s participation in the event consisted of (1) presence

at the scene, (2) intervention only to try to separate the assailant and victim, and (3) flight soon thereafter while the assault was getting underway and continued in his absence.

According to the police report and according to the victim's and witness' testimony, the leader and main assailant [REDACTED] (hereinafter "[PARTICIPANT]"), was the sole person to hit [VICTIM NAME]. The other individual participating with the main actor, [PARTICIPANT], was identified as [PARTICIPANT] (hereinafter "[PARTICIPANT]").

When [VICTIM NAME] entered the foyer of the building, he was assaulted first by [PARTICIPANT]. [PARTICIPANT] grabbed [VICTIM NAME] by the arm and began to punch [VICTIM NAME] repeatedly. See [VICTIM NAME] audio interview at 4.05 minutes. [PARTICIPANT] then joined the struggle by trying to dig and rip [VICTIM NAME]'s pants pockets. The respondent and counsel, his parents, counsel undersigned and his treatment providers are unanimous in their position that the event [REDACTED] involving the assault of Mr. [VICTIM NAME] was serious, notwithstanding the fact that no medical injuries to Mr. [VICTIM NAME] are reported.

However, the facts taken from the statements of the victim Mr. [VICTIM NAME] as well as the police report generated following the event all make clear that [RESPONDENT FIRST NAME] participation in the event was minimal. This is easily seen by review of the victim's statement, where it is heard that at no time did [RESPONDENT FIRST NAME] strike or otherwise batter the victim. The fact of [RESPONDENT FIRST NAME]'s peripheral involvement cannot be overemphasized. A witness to the event, [WITNESS NAME], who lived in the apartment and witnessed the assault by [PARTICIPANT] and [PARTICIPANT] and who saw the main actor [PARTICIPANT] in the midst of the assault against the victim [VICTIM NAME], states in her audio statement of the events, in the enclosed cd audio file containing the [WITNESS

NAME] interview from 13:30 to 14:20 minutes, that [RESPONDENT FIRST NAME] was nowhere to be seen. She also states in a statement to Officer Miller that "I'm positive on the third guy. He was outside following us. He didn't get in and come into the apartment." See page 84 of State's Discovery, Statement of PO3 D. Miller #205 [REDACTED] on [REDACTED].

[WITNESS NAME] only saw two assailants when she opened her door, and she identified them as [PARTICIPANT] and [PARTICIPANT]. See the enclosed cd audio file containing the [WITNESS NAME] audio interview from 13:30 to 14:20 minutes. She did not see [RESPONDENT FIRST LAST NAME]. See the enclosed cd audio file containing the [WITNESS NAME] audio interview from 13:30 to 14:20 minutes. [WITNESS NAME] stated that she saw that [PARTICIPANT] was holding [VICTIM NAME] and hitting him and that [PARTICIPANT] was standing behind [PARTICIPANT], but not touching [VICTIM NAME]. See the enclosed cd audio file containing the [WITNESS NAME] audio interview from 13:30 to 14:20 minutes.

[WITNESS NAME]'s cousin, [REDACTED] who was inside [WITNESS NAME]' apartment and witnessed the attack, then immediately opened the front door. According to [WITNESS NAME], her cousin saw [PARTICIPANT] and [PARTICIPANT] casually walking out of the foyer, but did not see [RESPONDENT FIRST NAME], who had long since fled the scene. See the enclosed audio file containing the [WITNESS NAME] audio interview at 14:54 to 15:24. According to the audio interview, [WITNESS NAME]' cousin followed [PARTICIPANT] and [PARTICIPANT] and asked them "what happened?", upon which [PARTICIPANT] replied, "Nothing," and the two assailants continued walking to the white car. Again, no evidence or sight of [RESPONDENT FIRST LAST NAME] was reported by [WITNESS NAME] or her cousin.

Within an hour of the incident, the suspect ~~was~~ stopped by several police. According to the police report, [RESPONDENT FIRST NAME] was the first suspect to surrender to the police after the car was stopped. The suspects were taken to the police station on New Hampshire and Merrimack streets, where ~~victim~~ [VICTIM NAME] and witness [WITNESS NAME] identified each suspect and identified ~~the~~ role in the attack upon [VICTIM NAME]. See the enclosed cd audio file containing the [WITNESS NAME] audio interview at 17:36 to 18:32 minutes. [WITNESS NAME] specifically identified the two assailants she witnessed as being [PARTICIPANT] and [PARTICIPANT], see the enclosed cd audio file containing the [WITNESS NAME] audio interview at 17:36 to 18:32 minutes. [VICTIM NAME] specifically identified [PARTICIPANT] as the one who hit him, identified [PARTICIPANT] as the one digging at his front pockets. See the enclosed cd audio ~~file~~ containing the [VICTIM NAME] audio interview from 3:37 to 3:50 minutes.

ARGUMENT

The arguments of the Respondent may be summarized as follows:

1. Burden of proof, preponderance of the evidence

The State bears the burden of proof that the ~~respondent~~ is unfit for rehabilitation and thus, must be waived to adult court jurisdiction. ~~The~~ State must show that the preponderance of the evidence weighs in favor of waiver ~~and~~ the juvenile. See In re: Ricky B., 3 Md. App. 645, 406 A.2d 690. The preponderance of the evidence ~~must~~ be such that a judge would find it more

probable than not that the juvenile is unfit for rehabilitation. See In re: Randolph Tat 112 (437 A.2d 230, 238).

Respondent asserts past psychological reports and current achievements in education, therapy and behavioral programs; improved diagnosis and medication treatment; improved self-awareness of [RESPONDENT FIRST NAME]'s mental illness; improved self-awareness of [RESPONDENT FIRST NAME]'s cognitive thinking; [RESPONDENT FIRST NAME] has remained under increased parental supervision restrictions; [RESPONDENT FIRST NAME]'s remorse over his alleged involvement in [REDACTED] incident, and [RESPONDENT FIRST NAME]'s demonstrated goals for achieving higher education and achieving personal goals support a judge's decision that [RESPONDENT FIRST NAME] is a good candidate for rehabilitation in the juvenile court system.

2. Weight of Amenability to Rehabilitation Evaluating the 5 factors and Weight of Role of Juvenile Participation in Final Waiver Determination

The amenability of treatment at the juvenile level is perhaps the most critical factor of all, Matter of Trader; State of Maryland v. Richard Trader 17 (315 A.2d 528, 538). Amenability to rehabilitation cannot be dismissed simply because the nature of the offense is extremely grievous. Matter of Diane Johnson 712 (304 A.2d 859, 863). The five legislative factors must be considered and properly weighed in relation to each other and relative to the legislative purpose. Id. at 712 (863).

Age and Maturity

While [RESPONDENT FIRST NAME] was four months shy of turning 18, [RESPONDENT FIRST NAME]'s mental illness and emotional disability cause [RESPONDENT FIRST NAME] to behave less maturely and less independently for his age and,

when not on proper medication, cause him to be irritable and to impulsively act first and think second. Additionally, [RESPONDENT FIRST NAME]'s relationship with the young adults who participated in the incident is similar to that of a younger sibling following elder siblings out of admiration and a wish to emulate in order to fit in and belong.

Degree of Juvenile Participation

In addition to the five factors to consider for waiving jurisdiction to adult court, the Court should consider the degree of the juvenile participation. See Matter of Eugene Flowers, 416 (283 A.2d 430, 432). [RESPONDENT FIRST NAME]'s role in the incident in [REDACTED] was not that of a ring-leader, but as follows: [RESPONDENT FIRST NAME] did not attack the victim, [RESPONDENT FIRST NAME] did not encourage nor help the attacker strike the victim, and [RESPONDENT FIRST NAME] voluntarily and rapidly left the scene once he determined an assault was underway and before the other assailants walked away. [RESPONDENT FIRST NAME]'s actions during the incident resemble a nervous child who is not sure what to do, but tries to look good to his friends. It is clear from the victim and witness testimony that [RESPONDENT FIRST NAME]'s actions were not the actions of a determined actor with intent to gain possession of property. [RESPONDENT FIRST NAME]'s diagnosis of bipolar disorder and special education code, as well as ADHD, point to an impulsive behavior pattern and a high probability that [RESPONDENT FIRST NAME]'s actions were unplanned and based upon responding to a chaotic situation, rather than deliberative behavior suggesting criminal intent.

Finally, [RESPONDENT FIRST NAME] was the first to surrender to the police upon seizure, showing that he was aware of the trouble he was involved in and was not willing to exacerbate the situation. It also demonstrates [RESPONDENT FIRST NAME]'s respect for

authority figures, which can also be seen in the video interview at the police station.

[RESPONDENT FIRST NAME] speaks in a deferential and respectful tone to the police detective.

Thus, all the above facts demonstrate that [RESPONDENT FIRST NAME]'s role in the incident was no more than minor from start to finish.

Amenability to Rehabilitation

[RESPONDENT FIRST NAME] is diagnosed with bipolar disorder, which is among the most treatable of the psychiatric illnesses. Children Of Color With Mental Health Problems: Stuck In All The Wrong Places, at 15. In spite of [RESPONDENT FIRST NAME] not having received the recommended treatment from DJS after his hospitalization in [REDACTED] his family thereafter sought better treatment for his mental illness and emotional disability; and his parents actively sought to place [RESPONDENT FIRST NAME] in outpatient treatment and have sought special education interventions to help their son.

[RESPONDENT FIRST NAME] has responded very positively to the current medication regime with improvements in both affect, concentration and in mood. [RESPONDENT FIRST NAME] is active in therapy and in his behavioral program and is learning how to better understand the consequences of his actions. [RESPONDENT FIRST NAME] has been able to identify his tendency to follow people identified as former friends, and [RESPONDENT FIRST NAME] is able to describe how their influence affects his judgment and decision-making skills. [RESPONDENT FIRST NAME] is seeking more positive role models, and looks forward to attending college, where he will be interacting with other students who have similar goals in life. More importantly, [RESPONDENT FIRST NAME] fully understands and agrees that he will need lifetime treatment for his mental illness.

The amenability of treatment at the juvenile level is perhaps the most critical factor of all, Matter of Trader; State of Maryland v. Richard Trader 17 (538). [RESPONDENT FIRST NAME] has made and continues to make significant progress towards positive change since the incident. All reports from his doctors, behavioral treatment team and the DJS report describe [RESPONDENT FIRST NAME] as being a productive member of society, as being employed, and with immediate future plans to attend college.

[RESPONDENT FIRST NAME] is reported as having expressed remorse and guilt for his role in the assault in [REDACTED]. In contrast, in Matter of Trader the court noted that the juvenile was not remorseful. More notably, [RESPONDENT FIRST NAME] has never been under the supervision of the court in his relationship, nor had DJS followed the recommendations of the mental health professionals when [RESPONDENT FIRST NAME] was discharged from the hospital in [REDACTED]. In contrast, in Matter of Trader the court made clear that the juvenile had many opportunities through the court for rehabilitation and those multiple failed attempts demonstrated that the juvenile was a poor candidate for rehabilitation.

The DJS transfer report states that an appropriate treatment plan can be implemented in the juvenile court system, in spite of [RESPONDENT FIRST NAME]'s current age. See DJS report at page 10. While the DJS report describes [RESPONDENT FIRST NAME] as being immature for his age, which is appropriate given his mental health diagnosis, the same DJS transfer report states that [RESPONDENT FIRST NAME] has demonstrated the ability to follow orders, learn responsibility, and has a strong family support system that would be compliant with any treatment plan ordered by the juvenile court system. See DJS Transfer Investigation Report [REDACTED] page 8.

Thus, transfer to adult court would be inappropriate in this immediate matter: Neither DJS nor the court has demonstrated that [RESPONDENT FIRST NAME] is unfit for rehabilitation, [RESPONDENT FIRST NAME] has demonstrated the ability, capacity, and more importantly, motivation to learn from his actions; [RESPONDENT FIRST NAME] expresses remorse for his involvement; [RESPONDENT FIRST NAME] is responding successfully to new medication and therapy regime; and [RESPONDENT FIRST NAME] demonstrates a strong record of responsible citizenship, again, since [REDACTED] when he first began to receive necessary medication and psychiatric services.

The Nature of the Offense, The Public Safety

Amenability to rehabilitation cannot be dismissed simply because the nature of the offense is extremely grievous. Matter of Diane Johnson, 307 12 (304 A.2d 859, 863). In Matter of Johnson the juvenile, who had not been previously involved in any court matter, was directly responsible for the vehicular manslaughter of one child and injury to two children. The incident involved grievous harm to the victims and deceased as their families. Nonetheless, the appellate court ruled that the nature of the offense, however grievous, not dismiss the juvenile's amenability to rehabilitation. If the juvenile can be rehabilitated, the weight of rehabilitation can be given greater weight than the weight of the nature of the offense.

In contrast with this immediate matter, though the physical risk to the victim could have been more serious, it is highly improbable that the assault would have resulted in a loss of human life. There were no weapons involved, and the victim was not injured in any way that required even a doctor visit, much less resulting in significant physical trauma. [RESPONDENT FIRST NAME] himself did not strike or injure the victim.

[RESPONDENT FIRST NAME] did not cause the victim's injuries. [RESPONDENT FIRST NAME] was not the planner nor the instigator of the incident. [RESPONDENT FIRST NAME] did not physically beat the victim. The witness stated that she never saw [RESPONDENT FIRST NAME].

Furthermore, [RESPONDENT FIRST NAME] himself did not behave in a way that demonstrated a total disregard for the law, but behaved in a way that resembled nervousness and uncertainty. [RESPONDENT FIRST NAME] stood aside and then fled the scene while the attack continued. Significantly, [RESPONDENT FIRST NAME] demonstrates cognisance and respect when it is seen that he was the first to surrender to the police after being stopped and fully cooperative with the authorities.

While the incident in which [RESPONDENT FIRST NAME] is accused of is a serious offense, the victim makes clear in his recorded statement that it was not [RESPONDENT FIRST NAME] but rather another individual who inflicted the blows. The record also makes clear that the victim did not go to the hospital as a result of the assault, and no weapons were used during the assault. Furthermore, the DJS Transfer Investigation describes [RESPONDENT FIRST NAME] as a productive member of society who recently graduated from high school, is employed, and voluntarily attends a behavior modification program as well as participating in weekly therapy supervised by his psychiatrist while remaining compliant and evidencing significant improvement through specialized medication therapy. In sum, [RESPONDENT FIRST NAME]'s alleged involvement with the assault pales in comparison to the weight of evidence showing [RESPONDENT FIRST NAME]'s amenability to rehabilitation.

CONCLUSION

For all of the foregoing reasons, together with those reasons which may be articulated at the hearing to be held in this matter, the Respondent respectfully requests this Honorable Court to determine that the matter before the Court remains the Juvenile Court venue where it properly belongs.

CASE LAW AND REFERENCES

Court, DJS jurisdiction over juveniles who turn 18:

In Re Appeal No. 125832 Md. App. 225; 360 A.2d 27 (1976).

The court has jurisdiction, and as such, can order services, for children who committed a delinquent act under the age of 18 but then reach age 18 by the time the matter comes to court. This jurisdiction is given to the juvenile court over persons up to age 21. At 239 (360 A.2d 27, 33).

Burden of proof:

In re: Ricky B., 43 Md. App. 645; 406 A.2d 690 (1979).

When the State seeks a waiver of jurisdiction from juvenile court, the State must show by a preponderance of the evidence that weighing of the five factors tilts in favor of waiver and, patently, against the juvenile.

Preponderance of the evidence:

In re: Randolph T. 292 Md. 97; 437 A.2d 230 (1981).

Maryland statutes require that a judge find it more probable than not that the child is an unfit subject for juvenile rehabilitative measures. At 112 (437 A.2d 230, 238).

Type of evidence to be considered by the Judge:

Hazell v. Maryland 12 Md. App. 144; 277 A.2d 639 (1971).

The court is not bound to accept the recommendations of the Master, or of the Department of Juvenile Services. At 175 (A.2d 639, 643).

In re Murphy, 15 Md. App. 434, 291 A.2d 867 (1972).

The court is not obliged to follow the recommendations of the evaluation committee of the Department of Juvenile Services. At 442 (291 A.2d 867, 871).

Matter of Eugene Flower, 13 Md. App. 414; 283 A.2d 430; (1971).

In considering mental and physical condition of the child, the child's amenability to treatment, the nature of the offense and the safety of the public, the degree of the juvenile's participation will be a factor. At 416 (283 A.2d 430, 432).

Police reports or juvenile petitions alone may not furnish sufficient evidence for the court to adequately consider the above-mentioned factors. At 416 (283 A.2d 430, 432).

Weight given to each of the five factors:

Matter of Diane Johnson, 17 Md. App. 705, 304 A.2d 859 (1973).

Amenability to rehabilitation cannot be dismissed simply because the nature of the offense is extremely grievous. The five legislative factors must be considered and properly weighed in relation to each other and relative to the legislative purpose. At 712 (304 A.2d 859, 863).

In re: Randolph T., 292 Md. 97; 437 A.2d 230 (1981).

Maryland statutes require that a judge find it probable, after weighing all five factors, that the child is an unfit subject for juvenile rehabilitative measures. At 112 (437 A.2d 230, 238).

Matter of Trader; State of Maryland v. Richard Trader, 20 Md. App. 1; 315 A.2d 528 (1974).

Judge discusses the main reason why waiver was granted - prior treatments ordered by the Court failed "The amenability of treatment at the juvenile level is perhaps the most critical factor of all...This respondent has unfortunately a very lengthy history...[the Court has] tried various types of supervision. They never work." At 17 (315 A.2d 528, 538).

Judge then describes the secondary reason why waiver was granted - lack of remorse "The report states that [Respondent] feels no concern, no remorse, no feeling of guilt about the behavior..." At 19 (315 A.2d 528, 539).

Mental Health, Issues From Not Receiving Proper Mental Health Services

Children Of Color With Mental Health Problems: Stuck In All The Wrong Places of.

Leviton, Susan, University of Maryland School Of Law, Spring 2002, 2 Margins 13.

Bipolar disorder is among the most treatable of the psychiatric illnesses. With the correct medication the number and intensity of episodes can be greatly decreased.

At 15.

African American children with mental health problems are identified and referred at the same rates as other children, but are much less likely to actually receive specialty mental health services or psychotropic medications. At 24-25.

Enclosures

In re: [RESPONDENT FIRST LAST NAME], [REDACTED], cd audio file, excerpts of victim and witness testimony from State's Discovery.

Reference letters, summary letters of treatment, grades, scholarship information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing ~~was~~ mailed, first class, postage paid to Assistant State's Attorney Anthony Simpson, Montgomery County State's Attorney's Office, 50 Maryland Avenue, Rockville, MD 20850.

Patrick J. Hoover

IN THE CIRCUIT COURT OF MARYLAND
FOR MONTGOMERY COUNTY
JUVENILE DIVISION

IN RE:

[RESPONDENT FIRST
LAST NAME]

...Respondent

Petition No: [REDACTED]

Hearing Date [REDACTED]

ORDER

Upon full review and consideration of Respondent's Response and Memorandum of Opposition to State's Petition to Waive Juvenile Jurisdiction, it is this _____ day of _____, 20__ hereby;

ORDERED that the State's Petition to Waive Juvenile Jurisdiction shall be and hereby is DENIED.

Judge