MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark F. James
Mark James Legal, LLC
South Bend, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Indiana Attorney General

Caroline G. Templeton
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony Hutchens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 18, 2023

Court of Appeals Case No. 23A-CR-918

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause No. 71D03-2203-MR-3

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] In March of 2021, fourteen-year-old Anthony Hutchens led G.R., his six-year-old neighbor, into the woods, where he sexually assaulted and killed her. The State petitioned to have Hutchens found a juvenile delinquent for having committed what would be murder, felony murder, and Level 3 felony child molesting, if committed by an adult. The State subsequently requested to have him waived into adult court. The juvenile court granted the State's request, and, following trial, the trial court found Hutchens guilty as charged. Hutchens contends that the juvenile court abused its discretion in granting the State's request to have him waived into adult court. Because we disagree, we affirm.

Facts and Procedural History

[2] On March 12, 2021, six-year-old G.R. and a friend went to a playground in her apartment complex and played with Hutchens, who was then fourteen years old. When G.R.'s friend went home, G.R. walked with her part of the way to her friend's apartment. As it began to get dark and G.R. had not yet returned home, her stepfather, G.R.'s mother, and others went out to look for her but were unsuccessful. Police searched the woods and eventually located G.R. using a drone that had infrared capabilities. G.R.'s dead body was found wearing only a jacket, and her pants were found by her right knee.

[3] Officers spoke with Hutchens because witnesses had seen G.R. going into the woods with him. Hutchens first told police that he had returned home from school and gone outside to play; instead of playing, however, he had decided to

walk in the woods, and G.R. had followed him. Hutchens initially told police that he had not seen anyone else in the woods. Police informed Hutchens that they were going to search for his DNA and/or fingerprints on G.R.'s body and asked Hutchens if they would find any. Hutchens replied that he "might have seen somebody actually" and described a white, gray-haired, shadowy figure in a black suit who could copy DNA. Trial Ex. 35 at 18:56. Hutchens also claimed that the shadowy figure had knocked him out and that he had awakened next to G.R.'s dead body. Hutchens maintained that the shadowy figure had "[taken] control of [him]" and begun chanting before it had used Hutchens's hands to strangle G.R. Trial Ex. 35 at 54:09. Hutchens admitted that he had taken a shower after returning home.

[4] On March 14, 2021, Dr. Jared Brooks performed an autopsy on G.R. Dr. Brooks found petechia on the inside and outside of G.R.'s eyelids, which are small pinpoint hemorrhages typically caused by compressive or traumatic asphyxia or strangulation. Dr. Brooks also found petechia on G.R.'s ears, on both sides of her neck that extended down onto her arms and chest, on her left lymph nodes, and in her trachea. G.R. had sustained a blunt force injury to her frenulum on her lower lip and an injury to her upper lip. To ensure that he found all of G.R.'s external injuries, Dr. Brooks conducted a "second look" at G.R. the next day and found three diagonal, linear contusions on G.R.'s neck that were consistent with an asphyxial mechanism, possibly strangulation "considering the context of the case[.]" Tr. Vol. III p. 47. G.R. had also suffered abrasions to her vagina, vaginal canal, and rectum, one of which was

approximately two inches from the opening of her anus and all of which had occurred while she was still alive. G.R. had also suffered a subarachnoid hemorrhage to her spinal cord, meaning that there was bleeding in the layer of connective tissue that surrounded her spinal cord. Dr. Brooks concluded that G.R. had died from asphyxia. Forensic testing provided very strong support that Hutchens's DNA had been found on the waistband of G.R.'s pants, her left-hand swab, and the vaginal-cervical swab. Testing also provided very strong support that G.R.'s DNA had been found on Hutchens's underwear and penis.

[5] On March 16, 2021, the State requested permission to file a delinquency petition alleging that Hutchens, who was fourteen years old, was delinquent for committing acts that would be murder, felony murder, and Level 3 felony child molesting if committed by an adult. On November 29, 2021, the State moved to waive jurisdiction pursuant to Indiana Code section 31-30-3-4. At the hearing on the waiver request, Hutchens stipulated that there was probable cause to believe that he had committed murder. Craig Redman, a probation supervisor, confirmed that Hutchens had been fourteen years old at the time of the offense and was fifteen years old at the time of the waiver hearing. Redman testified that he was unaware of any residential program that would accept a juvenile who had committed murder exacerbated by child molesting.

[6] Redman testified regarding some troubling statements Hutchens had made during his detention:

> On March 29th, 2021, Mr. Hutchens received a medical incident report while in detention stating, "I have the mind of a psychopath. Give me any object and I'll find a way to kill someone with it like a tape dispenser." On April 4th of 2021, Mr. Hutchens received a mental health incident report stating to detention staff that, "It would be a good way to torture someone with snake neurotoxin." He further stated, "By putting the snake poison in someone's throat, they would slowly rot and die from the inside out." The same report - documents Mr. Hutchens reporting striking a basketball -- striking a basketball during a game for the purposes of strengthening his hands in case he would need them for violent reasons.
>
> Again, April 6, 2021, in detention an incident report that Mr. Hutchens hit the wall with his fist during gym time. When asked why he hit the wall, he stated he wanted to make his hands tougher. On January 10th, 2022, staff overheard Mr. Hutchens make a statement towards other residents in the pod saying, "What is the scariest thing a child could hear?" and then proceeded to answer the question, "Zip," while referring to his pants unzipping.

Tr. Vol. II pp. 19–20.

[7] Two psychologists evaluated Hutchens. Dr. Jeffrey Burnett diagnosed Hutchens with autism spectrum disorder ("ASD") and attention deficit hyperactivity disorder ("ADHD"). Dr. Burnett explained that those with ASD commonly have a communication or language disorder. Hutchens was not particularly interested in relationships and group norms and had an idiosyncratic style of thinking and decision-making. According to Dr. Burnett, Hutchens was "somewhat socially and emotionally immature relative to his chronological age" while his sexual development was typical for a fourteen-year-old. Tr. Vol. II p. 79. Dr. Burnett noted that Hutchens had had no history

of verbal or physical aggressiveness. Dr. Burnett believed that Hutchens would benefit from treatment to address social skills and communication.

[8] Dr. Burnett did not observe any malevolence, aggression, or hostility in Hutchens that he would expect to see in a person with psychopathic characteristics, nor did he observe anything to suggest that Hutchens had ever suffered from hallucinations. Dr. Burnett believed that Hutchens's report of a shadowy figure at the time of the murder was storytelling and that it could encompass lying designed to shift blame from himself. Dr. Burnett assessed Hutchens at a low to moderate risk for future violence. Dr. Burnett believed that Hutchens was more child-like than adult-like and that Hutchens would not receive treatment if he were placed in the adult-criminal system.

[9] The second psychologist, Dr. Michale Jenuwine, placed Hutchens's development at a fourth- or fifth-grade level and agreed that he had ASD, which had caused issues with communication and socialization. Dr. Jenuwine believed that Hutchens's deficiency in social interaction and communication could be treated in therapy to identify adaptive behaviors. Dr. Jenuwine agreed with Dr. Burnett that Hutchens gave no indication of psychosis or hallucinations and that he was a moderate to low risk of committing another violent offense. Dr. Jenuwine believed that Hutchens would benefit from treatment and recommended anger management, skills-based training in decision making, individual therapy, impulse control, peer socialization, and vocational training. Dr. Jenuwine identified Hutchens's vulnerability as the risk in waiving him to adult court and that he had not been provided

rehabilitative services in juvenile court. Dr. Jenuwine was not certain to what degree Hutchens's ASD had affected the commission of the crime.

[10] The juvenile court found that the State had alleged that Hutchens had committed murder, there was probable cause to believe he had, and he had been over twelve years old at the time of the offense. The juvenile court addressed the fact that Hutchens had had no prior contact with the juvenile-justice system and found that, because of the offenses that Hutchens was alleged to have committed, there were no classes or treatment that would have provided Hutchens with a message he had not already received. The juvenile court also found that there was evidence of deliberation in the crimes because of the effort required by Hutchens to reach the spot in the woods where he had killed G.R. and that he had committed two crimes.

[11] The juvenile court noted that "evidence indicates that he is capable of conforming his behavior to the requirements of his milieu" and that Hutchens's mother and education professionals had tried to provide him with services to assist him with his ASD. Appellant's App. Vol. II p. 84.[1] Accordingly, the juvenile court found that Hutchens's ASD was not a reason to retain Hutchens in the juvenile system. The juvenile court determined that Hutchens had "squandered the opportunities presented by his home life," noting that he had been provided a safe home in a "nurturing, non-criminogenic environment"

[1] The pagination of the Appellant's Appendix, volume II, skips from page eighty to page eighty-eight, meaning that all page numbers beyond that are seven higher than the actual number. We cite to the actual page numbers, as indicated in the PDF file.

that was attentive to his mental condition and educational needs. App. Vol. II p. 85.

[12] The juvenile court ultimately concluded that the nature of the alleged offenses was dispositive: "The autopsy reports detailed the extensive injuries [G.R.] suffered immediately before being killed. She spent her last moments on earth being sexually violated and then strangled and/or smothered to death, her face streaked with blood, by a person there is probable cause to believe was [Hutchens.]" Appellant's App. Vol. II p. 85. The juvenile court found that if Hutchens had committed the offense, he "requires lengthier rehabilitative services than" the juvenile court could impose. Appellant's App. Vol. II p. 85. The juvenile court also noted that

> [t]he community can probably bear even a substantial probability that any juvenile delinquent will reoffend by committing a minor offense. But the community cannot bear even a low probability that the Respondent will re-commit the offenses that the Court has found probable cause to believe he has already committed here.

Appellant's App. Vol. II pp. 84–85. The juvenile court granted the State's motion for waiver.

[13] Once in adult court, Hutchens waived his right to a jury trial and was found guilty as charged by the trial court. The trial court sentenced Hutchens pursuant to Indiana Code section 31-30-4-2 to a term of sixty-four years suspended, placed him in the custody of the Department of Correction ("DOC"), and ordered that he successfully complete the program at the DOC in a juvenile facility as a condition of his suspended sentence.

Discussion and Decision

[14] Hutchens contends that the juvenile court improperly waived jurisdiction over his case. A juvenile court's decision regarding waiver is reviewed for an abuse of discretion. *State v. C.K.*, 70 N.E.3d 900, 902 (Ind. Ct. App. 2017), *trans. denied*. Waiver decisions are reviewed as any other sufficiency question. *McDowell v. State*, 456 N.E.2d 713, 715 (Ind. 1983). We will not reweigh the evidence or judge the credibility of witnesses. *Id*. "Where there is adequate factual support in the record, it is within the juvenile court's province to weigh the effects of retaining or waiving jurisdiction and to determine which alternative is the more desirable." *Villalon v. State*, 956 N.E.2d 697, 704–05 (Ind. Ct. App. 2011), *trans. denied*.

[15] Indiana Code section 31-30-3-4, which governs waiver into adult court for acts that constitute murder, provides as follows:

> Upon motion of the prosecuting attorney, and after full investigation and hearing, the juvenile court shall waive jurisdiction if it finds that:
>
> > (1) the child is charged with an act that would be murder if committed by an adult;
> >
> > (2) there is probable cause to believe that the child has committed the act; and
> >
> > (3) the child was at least twelve (12) years of age when the act charged was allegedly committed;
>
> unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

Proof of the three enumerated requirements creates a presumption in favor of waiver. *Moore v. State*, 723 N.E.2d 442, 446 (Ind. Ct. App. 2000). Once the statutory presumption is triggered, "the burden to present evidence that waiver is not in the best interests of the juvenile or of the safety and welfare of the community remains at all times on the juvenile seeking to avoid waiver." *Hagan v. State*, 682 N.E.2d 1292, 1295 (Ind. Ct. App. 1996). We conclude that Hutchens has failed to carry this burden.

[16] The juvenile court ultimately found the nature of Hutchens's alleged offenses to be dispositive, and Hutchens has not established an abuse of discretion in this regard. The juvenile court heard evidence that Hutchens, who had been previously known to G.R. and had likely had her trust, had led her to a remote location where he had sexually violated her before brutally ending her life. Testing identified Hutchens's DNA in G.R.'s vagina, and the autopsy had revealed blunt force injuries to her rectum and vagina, which had occurred when she was still alive. As for G.R.'s death, the autopsy indicated that the cause of her death had been asphyxiation, likely by smothering or strangulation.[2] The record also contained evidence that Hutchens had exhibited deliberation in the commission of his crimes and in his attempts to cover them up and deflect blame. We agree with the juvenile court that even assuming, *arguendo*, that there is a low risk that Hutchens will reoffend, the extreme

[2] Hutchens admitted during his initial police interview that he had strangled G.R. to death but claimed that the shadowy figure in the woods had controlled his hands.

seriousness of his crimes warrants infinitely more caution than if his crimes had been far less serious. The horrific nature of Hutchens's crimes supports a conclusion that waiving him into adult court best serves the safety and welfare of the community.

[17] Moreover, we cannot say that the juvenile court abused its discretion when it concluded that remaining in the juvenile system would not be in Hutchens's best interests either. In the end, the record indicates that Hutchens needs rehabilitative services that the juvenile system cannot provide. First, evidence at the waiver hearing established the probation department was not aware of a residential program that would accept a juvenile who had committed murder, much less when the murder had coincided with molestation. Second, the record supported the juvenile court's belief that the services the juvenile system could offer Hutchens would not rehabilitate him. The juvenile court noted that because Hutchens was alleged to have committed murder and child molesting, there were no classes or treatment the juvenile-justice system could provide that would give Hutchens a message he had not otherwise received.

[18] Finally, there was no evidence that treatment for his ASD would rehabilitate Hutchens. Dr. Jenuwine was not sure to what degree Hutchens's ASD had affected the commission of the offenses, and Hutchens had presented no other evidence that the commission of the offenses had been related to his deficits in social interactions. *See, e.g.*, *Kedrowitz v. State*, 199 N.E.3d 386, 399 (Ind. Ct. App. 2022) (once the presumption of waiver to adult court is triggered, the burden is on the juvenile seeking to avoid waiver to present evidence that

waiver is not in the best interests of the juvenile or the safety and welfare of the community), *trans. denied*. Hutchens has failed to establish that his ASD justifies keeping him in the juvenile system. *See Villalon*, 956 N.E.2d at 705 (finding no abuse of discretion in granting waiver motion when the juvenile system did not have appropriate options for rehabilitating the defendant, who did not have psychological or mental health issues that would benefit from treatment in the juvenile system). In light of the evidence of the nature of Hutchens's crimes and the lack of evidence that the juvenile system can rehabilitate him, we cannot say that the juvenile court abused its discretion in waiving him to adult court.[3]

[19] We affirm the judgment of the trial court.

Vaidik, J., and Brown, J., concur.

---

[3] While it is true that Dr. Burnett and Dr. Jenuwine both recommended that Hutchens remain in the juvenile system, the juvenile court was under no obligation to accept the recommendation of expert witnesses and did not. *Hall v. State*, 870 N.E.2d 449, 457 (Ind. Ct. App. 2007), *trans. denied*.

Hutchens also points to research that suggests recidivism rates for youth waived to adult court are higher than those that are not waived and other general information about the effect of the adult system on juveniles who are tried as adults. To the extent that this information seems to address the wisdom of whether the law should allow for a juvenile to ever be tried as an adult, such questions are more properly put to the General Assembly.