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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

TONY B.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B285555

(Los Angeles County
Super. Ct. No. MJ23850)

ORIGINAL PROCEEDINGS; petition for writ of mandate.
Christopher Estes, Judge. Petition denied.

Public Defender of Los Angeles County, Albert J. Menaster
and Robert C. Lu for Petitioner.

No appearance for Respondent.

Jackie Lacey, District Attorney of Los Angeles County, Phyllis C. Asayama, Deputy District Attorney, Scott Collins, Deputy District Attorney, Matthew Brown, Deputy District Attorney for Real Party in Interest.

Tony B. committed a murder during the course of a residential robbery. Because he was over 14, and had committed a grave offense, he was charged directly in the criminal court pursuant to the filing discretion vested in the People at the time. Following the voters' passage of amendments to Welfare and Institutions Code section 707 (Proposition 57), which removed the People's filing discretion, Tony B.'s case was certified to the juvenile court for consideration of a motion to transfer the matter back to the criminal court under the section's amended terms.¹ (See *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303 (*Lara*)). After a protracted hearing, the juvenile court determined that Tony B. was not a proper subject for treatment in the juvenile court, and so returned the matter to criminal court.

Tony B. seeks review of that order by way of the instant petition for writ of mandate. This court initially denied the petition, but the Supreme Court directed that we instead issue an order to show cause. Having done so, and having taken briefing and argument, we again deny the petition.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTS AND PROCEDURAL HISTORY²

The crime

Tony B. was born in December 2000. According to a probation officer's report, when he was 14 years, 6 months old, and a runaway, Tony B. selected a house to burglarize in a neighborhood he frequented. He chose the house based on the fact that its occupant was an 86-year-old, wheelchair-bound woman, Annie Bell, who lived alone. At 1:30 a.m. on June 18, 2015, Tony B. entered the backyard of the house, removed the screen of the bedroom window, and reached in to take the woman's purse from her dresser. He then went to the front of the house and entered it through another, unlocked window. Once in the house, Tony B. first went to the kitchen and armed himself with a

² A petition for a writ of mandate must be accompanied by an adequate record, including copies of all documents and exhibits submitted to the trial court supporting and opposing the petitioner's position. (Cal. Rules of Court, rule 8.486(b); see also *Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187.) The petition submitted by Tony B. failed to do so, and in a significant manner. All of the People's exhibits from the transfer hearing were omitted, including Tony B.'s post-arrest statement to police, which was relied upon heavily by both parties during the evidentiary hearing, the preliminary hearing transcript, the murder book containing police and autopsy reports, and 53 pages of detention observation notes from juvenile hall. Some of the exhibits submitted by the defense, such as reports from the Department of Children and Family Services and early school records, were also missing, having been separated from the defense brief to which they were attached and admitted as a single document. Given the Supreme Court's direction to issue an order to show cause on the petition, we must now overlook the omissions. However, we will presume the missing evidence is as described elsewhere in the record. (See, *In re R.V.* (2015) 61 Cal.4th 181, 203 [appellate court views record in light most favorable to trial court's determination].) The People's return also alleged several facts, primarily regarding the crime, that were not disputed by Tony B. here.

knife, reportedly because he thought someone beside the woman might be present. According to Tony B., as he moved through the house he caused a noise that woke the woman, who first questioned who was there and then began screaming. Tony B. proceeded to the woman's bedroom and stabbed her 41 times with the knife to silence her. The woman was killed, never having left her bed.

After the murder, Tony B. left the house and waited nearby. When no one responded to the screams, he reentered the house and completed the burglary. Later that day, Tony B. stood in the crowd watching as police investigated a report from Annie Bell's neighbor that something was wrong. A bystander alerted police that a young man in the crowd seemed to have knowledge of the incident and was acting suspiciously. Additionally, police interviewed a witness who had overheard Tony B. tell the witness's cousin that he stabbed the victim, stating that he and the victim had scared each other. Tony B. was further heard threatening to "come back for" the cousin if the cousin told. The witness later identified Tony B. as the person who had admitted the murder. Indeed, when Tony B. was contacted by officers, he had the woman's laptop computer in his possession and bloodstains on his shorts.

After his arrest, Tony B. made a statement to police. He reportedly began by giving a false name and birth date, denied any knowledge of the crime, and offered a false alibi. When confronted with the fact that there was blood on his shorts, and that a witness had reported his statements admitting the crime, Tony B. acknowledged committing the murder and provided his true identity, but minimized the violence. Interviews of additional witnesses confirmed that Tony B. had admitted the murder. During his intake interview at juvenile hall, Tony B. further acknowledged regular marijuana use which, along with the running away, burglary and murder, violated the terms of a probation to which Tony B. was subject as a result of a prior burglary.

Transfer proceedings

On November 8, 2016, the voters passed Proposition 57. It amended section 707 to eliminate the People's discretion to file charges directly in criminal court when they involve a juvenile defendant. (*Lara, supra*, 4 Cal.5th at p. 303.) Instead, the People became obligated to make a motion to transfer such cases from juvenile to criminal court if they wished to prosecute the case in that venue. (§ 707, subd. (a)(1).) Tony B.'s case, which was initially filed in the criminal court, was thereupon certified to the juvenile court for consideration of a motion to transfer. The juvenile court ordered and reviewed a probation officer's report on Tony B.'s behavioral patterns and social history, as required by section 707, subdivision (a)(1), took briefing on the matter, and held a three-day evidentiary hearing.

Prosecution evidence

As has been noted, the People introduced Tony B.'s post-arrest statement regarding the murder, the preliminary hearing transcript, the murder book, observation notes regarding Tony B.'s behavior in juvenile hall, and several crime scene photos documenting the nature of the offense, all of which were reviewed by the juvenile court.³ The People further presented the testimony of the homicide detective who interviewed Tony B. after his arrest and who testified at the preliminary hearing. With regard to the interview, the detective stated that he did not observe the effect of any drug or alcohol on Tony B., found Tony B. to be lucid and responsive to questions, albeit initially defiant or annoyed, and considered Tony B. to behave in an age-appropriate manner.

The People also called the probation officer who prepared the statutorily-required report for the transfer hearing. In addition to reviewing documentary evidence from the police, the probation department, the schools and the Los Angeles County Department of

³ See footnote 2, *supra*.

Children and Family Services (DCFS), the officer interviewed Tony B.'s adoptive mother and other interested parties.⁴ In the end, he recommended that Tony B.'s case be transferred to the criminal court based on several statutory factors.⁵ He found significant criminal sophistication in Tony B.'s offense, given his advance decision to commit a burglary, his deliberate selection of a vulnerable victim, his immediately arming himself upon entering the house, and his prior delinquent behavior and non-responsiveness to DCFS intervention efforts. Records showed Tony B. had also failed to respond positively to prior counseling efforts and probation grants, further indicating that he could not be rehabilitated before expiration of the juvenile court's jurisdiction. Information that Tony B. had a history of school discipline, truancy, delinquent behavior, early misbehavior in juvenile hall, as well as the severity of the current offense, additionally led to the probation officer's conclusion that Tony B.'s case should be transferred to criminal court.

Defense evidence

The defense responded by submitting numerous documents regarding Tony B.'s background. Early DCFS reports showed that Tony B. was born with cocaine in his system. His father's whereabouts were unknown and his mother was incapable of providing for him. Accordingly, DCFS placed Tony B. with a cousin and later with two sets of foster parents. Because those parties did not provide him with

⁴ Pursuant to a court order, Tony B. was not interviewed.

⁵ As is discussed, *infra*, section 707, subdivision (a)(2) requires the juvenile court to consider: 1) the degree of criminal sophistication exhibited by the minor; 2) whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; 3) the minor's previous delinquent history; 4) the success of previous attempts by the juvenile court to rehabilitate the minor; and 5) the circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

adequate care, Tony B. was placed at age two with the woman who would become his adoptive mother, and who thereafter provided him and his older brother with what a social worker described as a happy home.⁶ Tony B. continued to receive counseling and therapy services, as well as medication, for some behavioral concerns, attention deficit hyperactivity disorder (ADHD), and oppositional defiance disorder. He also received assistance with an early speech impediment, but was found not to be developmentally delayed so as to require Regional Center services.

The adoptive mother had described Tony B. as a kind and helpful child, but noticed a pronounced change in his behavior when he reached the seventh grade (approximately age 12). He began to run away, skip school, damage property, and defy rules. She attributed the change to Tony B.'s associating with negative peers, and reported he had stopped taking his ADHD medication and refused to see doctors or therapists.⁷ Indeed, Tony B. had a juvenile record that indicated numerous runaways and trancies, for which he was counseled and released, followed by a sustained petition on a burglary charge for which he was granted probation. School disciplinary records dating from 2009 further documented assaults on other students, fighting, bullying, stealing, defiance, committing obscene acts, using profanity, disruptiveness and truancy.

⁶ During the transfer hearing, the defense alleged that Tony B.'s adoptive mother had physically abused him, even though both Tony B. and his older brother denied any such abuse when questioned contemporaneously by DCFS. The juvenile court specifically rejected the allegations of abuse, and the defense does not argue them here. Similarly, the defense is no longer pressing an argument that Tony B. was under the influence of drugs at the time of the offense.

⁷ The defense noted that at one point the adoptive mother allowed Tony B.'s prescription to lapse, which would also account for a period of missed ADHD medication.

The adoptive mother contacted DCFS for assistance in dealing with Tony B.'s behavior, and ultimately asked that he be removed from her home until he could follow the rules. In September 2014, while he was still 13, Tony B. was detained and placed in a group home. While there, his behavioral problems continued, and he was even arrested for the burglary that would result in his being placed on probation. When, after approximately six months, Tony B.'s behavior improved and he expressed a desire to live at home and "make things right," he was released to his adoptive mother for an extended visit. However, he soon ran away and remained whereabouts unknown until he committed the murder at issue, on June 18, 2015.

Once in juvenile hall, Tony B. continued his confrontational behavior, including threatening teachers. After approximately a year, however, Tony B.'s conduct improved, and he obtained positions of trust within juvenile hall, such as serving in the probation office and in the kitchen.⁸ Tony B. was also doing well in school, earning mostly B's and C's and participating in academic bowls. He had ceased taking ADHD medication, but was receiving counseling in a structured setting.

Defense experts in neurology and neuropsychology testified that Tony B. suffered from brain disease, particularly frontal lobe syndrome, as a result of his *in utero* exposure to cocaine. This, they concluded, led to poor impulse control, disinhibition, and severe ADHD that interfered with Tony B.'s ability to process complex tasks. While they detected pronounced deficiencies in some areas of Tony B.'s mental functioning, the experts did not consider him to be mentally retarded or to have a developmental disability, and acknowledged he could perceive right from wrong. They explained that his frontal lobe syndrome created a gap between his real-world functioning and his intellectual potential.

⁸ Still, the juvenile court noted that as late as April 17, 2017, four months before the August 18, 2017 transfer hearing, Tony B. had refused to follow instructions and rebuffed a probation officer with profanity.

Hence, despite Tony B.'s relatively high academic performance and his seeming bright to witnesses, the experts did not believe his mental functioning was correspondingly mature.

The neuropsychologist further opined, based on Tony B.'s self-reporting, that Tony B. suffered from post-traumatic stress disorder related to violence he had witnessed while living as a runaway, including having a gun pulled on him. The expert noted the instability Tony B. experienced in his initial foster placements as an additional factor that influenced his functioning. Though he acknowledged there is no direct connection between being an adolescent and acting out, the mere fact that Tony B. was a teenager also suggested to the neuropsychologist that Tony B. was impulsive. Plus, he believed Tony B. would have been distressed by the loss of his favorite aunt approximately two years before the murder, and from learning a week or two before that his adoptive mother was suffering from stomach cancer.

The experts were encouraged by Tony B.'s recent behavioral improvement while in juvenile hall. They believed the structured setting and positive programming were permitting Tony B. to internalize good behavior, indicating an amenability to treatment in the juvenile justice system. Neither could guarantee Tony B. would be rehabilitated. Rather, they considered the juvenile justice system his best hope for rehabilitation.

The defense went on to introduce the testimony of a social worker, employed in defense counsel's office, who had reviewed Tony B.'s DCFS and school records. She asserted that Tony B. did, in fact, experience developmental delays and learning disabilities, but that DCFS and the schools had not timely or adequately assessed or treated him. She also faulted the adoptive mother for failing to take parenting classes in order to deal with sexual abuse Tony B. might have experienced in his early placements, failing to show him sufficient affection, and failing to ensure his ADHD medicine never ran out.

Additionally, the defense called a series of teachers and detention officers from juvenile hall to attest to Tony B.'s improved behavior after a year in that facility. The founder of a community-based organization, which offers guidance to delinquent juveniles during and after their detention, testified that he had positively interacted with Tony B. and would continue to provide him with assistance. And, a former deputy director of the Division of Juvenile Justice opined that it offered rehabilitation services that would benefit Tony B. within the time remaining for juvenile jurisdiction.

Juvenile court's decision

After weighing all of that evidence in light of the factors set forth in section 707,⁹ the juvenile court found that Tony B. was not likely to be successfully treated in the juvenile system and that transfer of his case to criminal court was appropriate. In an admirably thorough statement of its reasoning, the court first found that Tony B. had exhibited a high degree of criminal sophistication in committing an extremely grave offense, going to factors one and five. Without the influence of anger, peer pressure or other stressors, Tony B. had carefully selected a vulnerable victim, planned the burglary, and, once underway, returned to the scene repeatedly to carry out his objective. The court noted that Tony B. did not need to arm himself upon entering the home of an elderly, immobile woman, and could easily have run away once she awoke and called out, but did not. Instead, he advanced to the room where she laid in order to silence her and neutralize his risk of detection. Moreover, when confronted by police, Tony gave a false identity and alibi, and minimized the violence of the attack once he did admit it, again exhibiting an appreciation of the risks and consequences of his criminal behavior. The juvenile court acknowledged the "uncontested" evidence of Tony B.'s early childhood trauma and organic brain injury as testified to by the defense experts. However, it did not find any impulsivity or thoughtlessness resulting

⁹ See footnote 4, *supra*.

from such conditions to have caused Tony B.'s specific decisions or actions at the time of the offense.

Further, the juvenile court found that Tony B. had an escalating pattern of truant and delinquent behavior, and that previous attempts to correct his conduct failed. It noted that Tony B. had been acting out for years, despite his adoptive mother's efforts to impose structure. He was eventually placed in a group home for six months, during which time he committed a burglary and was placed on probation. He thereupon began to adjust to the group home's structure, but once granted a visit home reverted to his delinquent behavior. The court observed that Tony B.'s recent improvement in the structure of juvenile hall followed the same pattern, suggesting that once relieved of such structure he would return to his former ways. Based on the totality of those circumstances, the court determined that transfer was warranted. This petition followed.¹⁰

DISCUSSION

Section 707 permits the People to file a motion to transfer the case of a juvenile defendant to criminal court if, in the case of a defendant aged 14 or 15 at the time of the offense, the crime charged is a grave felony, including murder. (§ 707, subd. (a)(1), (2).) Upon the making of such a motion, the juvenile court must order a probation

¹⁰ The petition was untimely. California Rules of Court, rule 5.770(g) requires any petition challenging a transfer order to be filed within 20 days of arraignment. Because in this case Tony B. had already been arraigned and the matter certified back to juvenile court, the equivalent trigger for that 20-day deadline was the date of his return appearance in criminal court. In fact, Tony B.'s counsel announced an intention to file a writ petition at the time of the juvenile court's decision, and was permitted to select the date on which the matter would proceed. Nevertheless, the petition was not filed for 41 days after Tony B.'s re-appearance in criminal court. Again, given the current posture of the petition, we must overlook the deficiency. For the same reason, the People noted but did not pursue the issue in their return.

report on the behavioral patterns and social history of the minor, as well as any statement offered by the victim. (§ 707, subd. (a)(1).) Upon consideration of that report, as well as any other evidence submitted, the juvenile court “shall” evaluate five statutory criteria and then determine whether a transfer is appropriate. (§ 707, subd. (a)(2); see also, Cal. Rules of Court, rule 5.770(b)(2).)

The statute sets forth the five criteria in the following fashion. First, the factor that must be considered is described. Then, several examples of evidence that “may” be considered in relation to each factor are listed. (E.g., § 707, subd. (a)(2)(A).) The mandatory criteria are 1) the degree of criminal sophistication exhibited by the minor, 2) whether the minor can be rehabilitated prior to the expiration of the juvenile court’s jurisdiction, 3) the minor’s prior delinquent history, 4) the success of previous attempts by the juvenile court to rehabilitate the minor, and 5) the circumstances and gravity of the offense the minor is alleged to have committed. (§ 707, subd. (a)(2)(A)-(E).) In considering those factors, the court is permitted to take into account, along with “any other relevant evidence,” 1) the minor’s age, maturity, intellectual capacity, physical, mental or emotional health, impetuosity or failure to appreciate the risks and consequences of criminal behavior, the effect of adult, familial or peer pressure on the minor, the effect of the minor’s family and community environment, and any childhood trauma, 2) the minor’s potential to grow and mature, 3) the seriousness of the minor’s previous delinquent history, the effect of the minor’s family and community environment, and any childhood trauma, 4) the adequacy of services previously provided to address the minor’s needs, and 5) the actual behavior of the person, the mental state of the person, the person’s degree of involvement in the crime, the level of harm actually caused by the person, and the person’s mental and emotional development. (*Ibid.*)

A juvenile court’s decision to transfer a minor defendant’s case in light of those factors is reviewed for an abuse of discretion. (*People v.*

Superior Court (Jones) (1998) 18 Cal.4th 667, 680-681 (*Jones*).) Factual findings regarding the statutory criteria that underlie the court's determination are reviewed for substantial evidence based on the entire record. (*Ibid*; *Rene C. v. Superior Court* (2006) 138 Cal.App.4th 1, 11 (*Rene C.*)). As the available record shows, the juvenile court's ruling here is supported in both respects.

Tony B.'s present challenge rests primarily on the assertion that none of the evidence presented at the transfer hearing was sufficient to show that Tony B. acted in a criminally sophisticated manner, that he committed an unmitigatedly grave offense, or that he could not be rehabilitated within the time remaining for juvenile court jurisdiction. He bases that assertion on the idea that his witnesses provided uncontroverted evidence that he suffered from impulsivity due to organic brain disease and childhood trauma. He reasons that, given such impulsivity, he necessarily could not have appreciated the consequences of his actions and so acted with criminal sophistication or in a manner that cannot soon be corrected. Tony B. bolsters that argument by reference to the recent decisions in *Miller v. Alabama* (2012) 567 U.S. 460 and *Graham v. Florida* (2010) 560 U.S. 48, which he broadly characterizes as eschewing unconditional life sentences for teenaged offenders in recognition of their impulsive decision-making. Such arguments are an overreach.

Reference to the actual facts of the crime readily undermines Tony B.'s claim that his mental condition rendered him impulsive and thoughtless during its commission. As the trial court noted, Tony B. was managing to support himself while living as runaway when he planned the burglary at issue, exhibiting a level of maturity. And plan he did, selecting as his victim an elderly woman living alone and with limited mobility. He waited until the middle of the night to approach the woman's house, on his own and without any peer pressure. He then executed his plan in stages. He started at the rear of the house, successfully stealing the woman's purse. He then moved to the front of

the house and gained entry. His first stop was the kitchen, not for valuables, but for a knife with which to confront anyone he met inside. Indeed, when the woman woke and cried out, Tony B. did not try to make an escape. Instead, he advanced into her bedroom and silenced her. Still undeterred, Tony B. left the house and waited for a time. When no one responded to the woman's screams, he returned to complete the burglary. Later, after bragging about the crime to a friend, Tony B. threatened the friend should he tell anyone. And, once captured by police, Tony B. gave a false identity and denied involvement in the crime in an effort to avoid prosecution. The juvenile court could properly rely on those facts to conclude that Tony B. was not acting impulsively in committing the offense.

Moreover, Tony B.'s argument ignores the plain language of section 707, even after the amendments by Proposition 57, which commits to the juvenile court the decision of whether a juvenile defendant's case should be transferred. (*People v. Vela* (2018) 21 Cal.App.5th 1099, 1102; see *Lara, supra*, 4 Cal.5th at pp. 308-309.) Even unanimous expert opinion on how the ultimate issue should be decided is not binding. (*In re R.V., supra*, 61 Cal.4th at pp. 215-216.) Only when there is no reasonable basis for the juvenile court to reject such evidence is a doubt raised as to whether the court had substantial evidence to support its decision. (*Ibid.*) Additionally, the statute places an inability to appreciate consequences of criminal behavior, as emphasized by Tony B. here, among the discretionary factors the juvenile court may consider. (§ 707, subd. (a)(2)(A)(ii).) It is but one aspect of Tony B.'s circumstances to be considered.

Tony B.'s characterization of his witnesses' testimony as uncontroverted is also inaccurate. It is true the trial court considered testimony by the medical experts to be "uncontested" to the extent that they diagnosed Tony B. with organic brain disease and childhood trauma that can cause impulsivity. Beyond that, the evidence was conflicting. As has been mentioned, Tony B.'s actual conduct the night

of the murder contradicted claims of impulsiveness. The detective who interviewed him at the time testified that he was responsive and age-appropriate. The probation officer's evaluation of Tony B. was that he was not suitable for treatment through the juvenile court. The court was also present for the People's cross-examination of the defense witnesses, which revealed the limits of their credibility. For example, the neurologist who testified that Tony B. could be rehabilitated in the time remaining for juvenile jurisdiction seemed to misunderstand the nature of that jurisdiction, suggesting Tony B. could simply be reevaluated at age 23 and transferred to an adult facility if he was not rehabilitated. The neuropsychologist admitted that many of Tony B.'s behaviors during the offense were indicative of deliberation, but he had not reviewed police reports or listened to Tony B.'s statement to police before reaching conclusions about Tony B.'s mental state at the time of the crime. The social worker who reviewed Tony B.'s DCFS and school records, and disagreed with her predecessors' assessment and treatment of Tony B., was directly employed by defense counsel, and so was, in fact, an advocate for Tony B. And the former deputy director of the Department of Juvenile Justice who testified that Tony B. could be rehabilitated within the juvenile system was shown to have overlooked material information regarding Tony B.'s background and the facts of the crime. In short, the defense witnesses' testimony was not uncontradicted, but was simply credited by the juvenile court in one respect.

Indeed, at the time of the transfer hearing Tony B. asked the juvenile court to consider the totality of the circumstances when determining whether transfer was warranted. That is, Tony B. acknowledged that his witnesses' assessments were but one aspect of the whole record. The juvenile court agreed to consider the totality of the circumstances presented, not only as advocated by Tony B. but as urged by a state advisory committee that has considered the proper standard since the passage of Proposition 57. (Advisory Com. com., 23

pt. 2, West's Ann. Codes, Rules (2017 ed.) foll. Rule 5.770, p. 973.) Tony B. cannot now argue that the juvenile court erred in considering more than just his witnesses' opinions in reaching its conclusion.¹¹

With regard to the remaining factors to be considered by the juvenile court—Tony B.'s prior delinquent record and the effectiveness of prior efforts to correct his behavior—the court had evidence that Tony B. committed at least one burglary before the instant offense. That was the culmination of numerous contacts with law enforcement for truancy and running away, behavior that was consistent with other relevant evidence that Tony B. had been truant and defiant at school, was assaulting other students, and was fighting, bullying and stealing. In his first 14 contacts with law enforcement, Tony B. was counseled and released. When his behavior overwhelmed his adoptive mother, DCFS detained Tony B. and placed him in a group home. Even then, Tony B. went forth to commit the burglary for which he was placed on probation. Tony B. thereupon failed to respond to the grant of probation, running away when he was allowed an extended visit home and ultimately committing the murder at issue.

At the same time, in the juvenile court's view, evidence that Tony B. was responding to the structure and counseling at juvenile hall—notably without the need for ADHD medication—was following the same pattern as before. Tony B.'s initial rebellious behavior occurred despite the adoptive mother's laying down behavioral rules that Tony

¹¹ The People take the opportunity presented by the instant petition to argue that a totality of the circumstances approach is improper, and instead—just as under former law—the evidence must show that under each and every one of the statutory criteria the minor should be retained in juvenile court. We do not reach the merits of that argument. To begin, the People acquiesced in the totality of the circumstances approach at the time of the transfer hearing. The People cannot raise new objections here. Plus, there is substantial evidence going to each factor the juvenile had to consider, so its decision would be supported in any event.

B. did not like, and included a refusal to resume counseling. Once placed in a group home and given counseling and structure, he still committed burglary. Though he was granted probation and eventually seemed to respond to the structure of the group home, he resumed his delinquent behavior once he was allowed a home visit. The result was the brutal murder of Annie Bell. The juvenile court could look to that pattern as further evidence that Tony B. was not likely to be rehabilitated in the time remaining for juvenile jurisdiction.

Far from being undisputed, the evidence adduced at the transfer hearing regarding Tony B.'s behavior and potential for rehabilitation presented a mixed bag. It was for the juvenile court to sort through the evidence and make a decision on the propriety of a transfer. Its conclusion is supported by substantial evidence, and cannot be described as an abuse of discretion.

DISPOSITION

Because the juvenile court has not been shown to have abused its discretion in ordering the matter transferred to criminal court pursuant to section 707, the order to show cause is discharged and the petition for writ of mandate is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT