

No. 18-1184

IN THE SUPREME COURT OF TEXAS

In the Matter of S.T.

On Petition for Review from Cause No. 04-18-00133-CV,
Fourth District Court of Appeals,
San Antonio, Texas

PETITION FOR REVIEW

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STATEMENT OF THE CASE

The State alleged that S.T., a juvenile, helped commit a murder and then grotesquely tampered with evidence, and petitioned the court to waive jurisdiction under Family Code section 54.02 and transfer him to adult court. Following a hearing, the Honorable Romero Molina of the Starr County Court at Law, sitting as a juvenile court, entered the order waiving jurisdiction on January 11, 2018.

The Fourth District Court of Appeals affirmed the order in an opinion written by Chief Justice Sandra Bryan Marion and joined by Justices Martinez and Rios. *In the Matter of S.T.*, No. 04-18-00133-CV, 2018 WL 5927983 (Tex. App.—San Antonio, Nov. 14, 2018). On December 12, 2018, the court of appeals denied Petitioner’s motions for rehearing and *en banc* reconsideration without opinion.

This is an accelerated appeal. *Order Accelerating Juvenile Certification Appeals and Requiring Juvenile Courts to Give Notice of the Right to Immediate Appeal*, Misc. Docket 15-9156 (Tex. Aug. 28, 2015).

STATEMENT OF JURISDICTION

This Court has jurisdiction under Government Code section 22.001(a) because this case presents questions of law important to the jurisprudence of the State, specifically the principles of legal sufficiency review to be applied to a probable cause determination, and how juvenile courts should evaluate “sophistication and maturity” under section 54.02(f) of the Family Code. The latter question has been interpreted differently by the intermediate courts, and has been raised in dicta by the Court of Criminal Appeals, but not yet decided by a high court of this state.

The order waiving jurisdiction by the juvenile court is an appealable interlocutory order which may be carried to this Court. TEX. FAM. CODE §§ 56.01(c)(1)(A); 56.01(A).

ISSUES PRESENTED

1. After the appellate court acknowledged that the juvenile court's findings of fact on probable cause were not supported by record evidence, did it err by holding that the juvenile court could have relied upon inferences that lacked evidentiary basis?

2. Did the courts below misapply the statutory requirement that a juvenile court consider a child's "sophistication and maturity" in a transfer proceeding when they disregarded the court-appointed expert's opinion and limited the scope of inquiry to whether the juvenile understood the difference between right and wrong and was competent to stand trial?

3. Whether the trial court abused its discretion in waiving jurisdiction based on the absence of evidence to support its findings? [unbriefed]

REASONS FOR GRANTING REVIEW

“The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule,” declared the Court of Criminal Appeals, trying to redirect the course of the river sweeping generations of lost kids into the adult prison system, the river called “discretionary transfer.” *Moon v. State*, 451 S.W.3d 28, 36 (Tex. Crim. App. 2014). Yet the river continues to surge. The year after *Moon* was decided, the number of juveniles certified as adults increased from 115 to 151. Last year, it increased to 158.¹

Transfer to adult court is “the most severe sanction that may be imposed by a juvenile court.” *Hidalgo v. State*, 983 S.W.3d 746, 755 n.18 (Tex. Crim. App. 1999) (quotations omitted). When a child is transferred to adult court, the goal becomes retribution rather than rehabilitation as in the juvenile system. *Id.* at 755. The collateral effects of being tried in the adult system are borne by the innocent and the culpable alike. The risk of severe punishment gives the prosecution leverage to secure plea bargains because of the uncertainty of a jury verdict. Confidentiality is no longer afforded: there is a public arrest record, the attendant opprobrium, and the restricted opportunities that flow from that notoriety for the remainder of the juvenile’s life.

¹ Statistics are from the 2016 and 2018 Texas Department of Juvenile Justice Annual Reports to the Government and Legislative Budget Board (available at <https://www.tjjd.texas.gov/statistics/researchdetail.aspx>).

The Legislature's recent choice to make juvenile transfer decisions the subject of immediate interlocutory review reflects the severity of these sanctions. *See* S. Comm. Criminal Justice Analysis, Bill Analysis, Tex. S.B. 888, 84th Leg., R.S. (enacted May 12, 2015). But appellate review only operates as an effective safeguard if it guarantees that proper standards are applied.

In conflict with well-established precedent, the court below employed an incorrect standard of review for conducting a sufficiency review of the probable cause determinations. The court also ignored Petitioner's argument that the juvenile court applied an incorrect legal standard for evaluating evidence of sophistication and maturity. The consequences of these decisions on juveniles, on society, and on the policy direction chosen by the Legislature, merit this Court's attention.

STATEMENT OF FACTS

The Court of Appeals correctly stated the nature of the case. TEX. R. APP. P. 53.2(g).

The State charged Steve² with murder and tampering with evidence by burning, cutting, and disposing of the body in garbage bags, and petitioned the juvenile court to waive jurisdiction and transfer the case to adult court. CR 87-90. The details of the crime are horrific, and at the transfer hearing, the State sought to tie Steve to those details.

A few days before the events that gave rise to this case, Steve turned 16 years old. RR 10:19. He had just finished his sophomore year in high school. RR 10:40. An average student who played baseball and participated in a music group, Steve had never had disciplinary problems. RR 10:21, 60-61. He had used alcohol and marijuana, but had no criminal history. RR 10:21, 41. He was close to his parents. RR 10: 20-21, 34.

On July 28, 2017, Steve was invited by his friend Pete and another teenager, Jay, to meet at Whataburger to discuss a plan to smoke marijuana at an abandoned house on a ranch near the town of Roma. RR 10: 111-14; 137-38.

² Before the court of appeals, Petitioner used initials to represent minors' names. TEX. R. APP. P. 9.8. Here, Petitioner employs fictitious names for clarity: S.T. is "Steve," P.S. is "Pete," J.L.G. is "Jay," and C.O. is "Cody."

The plan was a pretext. Jay had decided to kill another teenager, Cody, because months before, Cody had robbed Jay at gunpoint during a drug deal. RR 11:13. Jay paid Pete \$10,000 to help him plan the murder. RR 10:101; RR 11:11. It is undisputed by all parties involved that Steve knew nothing about Jay's motive or plans. RR 10:137-38; RR 11:33-34, 47.

Two days later, Pete paid two boys he knew \$500 to give him and Cody a ride to the ranch. RR 10:84. Cody brought marijuana and a grinder. RR 10:98. Separately, Jay went to pick up Steve in his truck and they drove to the ranch. RR: 10:102, 112-13. Jay and Steve arrived first and walked to the house where they started smoking. RR 10:42. Pete called when he and Cody arrived at the ranch; Jay told Steve to get them because they didn't know how to get to the house. RR 10:115. When Steve left, Jay hid behind the house. RR 10:115; RR 11:14. Upon return to the house, the boys started to smoke marijuana. RR 10:116. At some point, Pete told Cody to go behind the house to find more marijuana. RR 10:116. When Pete brought Cody outside, Jay came out of hiding and shot Cody, killing him. RR 11:11-12. When Steve heard the gunshots, he was terrified. RR 10:143.

Q: And . . . what did the respondent initially say that he did when he heard those gunshots?

A: That he was – he stayed inside and he was hiding inside because he was scared.

Q: Why was he scared? What did he say he was scared of?

A: Because he believed that they could – that they could have shot at him because they just shot somebody.

RR 10:118.

After the murder, there were slightly different accounts of what happened, and who was involved, but there is no dispute that Jay still had a gun and was directing actions to dispose of evidence. RR 11:48-49. First, the body was moved to a man-made pit, either by Jay and Pete, or by all three boys at Jay's direction. RR 10:118; RR 11:13. The three boys left in Jay's truck and dropped Steve off at his house, where Jay gave Steve \$2,000. RR 10:120. Steve told law enforcement he did not want the money and gave it away to friends. RR 10:121.

The same day, at Jay's direction, Steve went back to the crime scene with his cousin Salvador who Steve had enlisted to help to remove casings and other evidence. RR 11:26, 46. Also the same day, Pete offered Steve more money to go back and dispose of the body; Steve said he did not want anything to do with it. RR 10:122. Jay told law enforcement that Steve did not have the "fortitude" to dispose of the body. RR 11:30. On July 31, Jay and Pete met Steve and his cousin Salvador. RR 11:26. Steve was left behind; Jay and Pete took Salvador back to the ranch where Salvador burned and dismembered the body, and placed it in plastic bags that they hid near a lagoon. RR 11:26-27. Pete called Steve to tell him how and where they disposed of the body. RR 10:124-25, 151; RR 11:23. Later, when Steve was interviewed by law enforcement, he was able to lead them to the general location of where the body was eventually found. RR 10:148.

In hours of videotaped interviews with law enforcement, none of the teens disputed Steve's version of events. RR 10:134-37, 152. No one said Steve knew about a gun before he heard gunshots. RR 10:151. All of them denied that Steve participated in the disposal of the body. RR 11:32-33.

In addition to law enforcement testimony, the State introduced the testimony and report of probation officer Maricela Gutierrez. RR 10:17; RR 16: State's Exh. 1 Ms. Gutierrez attested to Steve's close-knit and supportive family, his lack of criminal or disciplinary record, and his good behavior during detention. RR 10:19-21, 33-34. She recommended transfer only because of the severity of the alleged offense. RR 10:29-30

The State then introduced the testimony and report of court-appointed forensic psychologist, Xavier Martinez. RR 10:36-37; RR 16: State's Exh. 2. Dr. Martinez frequently conducts evaluations for transfer hearings. RR 10: 37-38. He testified that Steve had average intelligence and unremarkable personality traits; he scored low on tests that measured for substance abuse, thought disorders, and antisocial tendencies. RR 10:47-49. Dr. Martinez opined that Steve "does not present as an exceptionally mature and sophisticated juvenile." RR 16: State's Exh. 2, at 4. "He lacks full development of decision-making abilities that reflect independence of decision-making abilities, full and deliberate consideration for consequences of actions, deferring of impulses, and relative freedom from external

social pressure/influence.” *Id.* In his opinion, Steve had a good prognosis for rehabilitation and did not pose a “high risk for involvement in similar aggressive/violent criminal behavior.” *Id.* Dr. Martinez did not recommend transfer for Steve. RR 16: State’s Exh. 2, at 5. He said he would recommend transfer in a case where an adolescent was mature and sophisticated, able to make sound decisions, had a record of violence, and was unresponsive to interventions to modify behavior, but that was not this case. RR 10:71-72.

In response to the State’s questioning, Ms. Gutierrez and Dr. Martinez agreed that Steve knew the difference between right and wrong, understood the proceedings, and could aid in his defense. RR 10:36, 55.

Petitioner’s counsel introduced testimony and letters from neighbors, family friends, and teachers who attested that Steve is law-abiding and nonviolent. RR 11:57-62; RR 16: Respondent’s Exhs. 7-14. Dr. Norma Villanueva, a licensed clinical social worker, testified that Steve had been experiencing crying spells, fear, and sadness for his own family and for the deceased’s family. 12 RR 12:16. As to his sophistication and maturity, she testified he had “low emotional maturity” and the “same deficits that adolescents who lack maturity have.” RR 12:18.

On January 11, 2018, the court signed an order waiving jurisdiction. CR 176-80.

On appeal, Petitioner challenged the sufficiency of the evidence supporting all but one of the trial court's findings – the seriousness of the offense. The court of appeals affirmed.

SUMMARY OF THE ARGUMENT

No evidence supported the juvenile court's probable cause determinations. The juvenile court's order cited evidentiary facts that appeared nowhere in the record – that Steve planned the murder beforehand and committed grisly acts of tampering. The appeals court incorrectly applied well-settled principles of sufficiency review when it affirmed those findings based on impermissible inferences.

Texas law presumes that children bear less responsibility for their actions than adults and that they may be rehabilitated. Before a juvenile court can waive jurisdiction, it must assess certain factors, including the child's sophistication and maturity, to determine whether they rebut that presumption. Disregarding the testimony of a court-appointed expert, the courts below improperly limited the scope of inquiry regarding Petitioner's sophistication and maturity to whether he had legal capacity. This Court should correct the legal standard.

ARGUMENT

I. The court of appeals applied incorrect principles of sufficiency review to the juvenile court's probable cause findings.

A. Probable cause determinations are evaluated for legal and factual sufficiency.

A juvenile court may not transfer a child to adult court unless it finds probable cause to believe the child committed the offenses alleged. TEX. FAM. CODE § 54.02(a)(3). Petitioner challenged the sufficiency of the evidence to support the juvenile court's probable cause findings.

Neither this Court nor the Court of Criminal Appeals has decided the standard of review for a probable cause determination in a juvenile transfer motion. Most courts including the court below review probable cause findings for legal and factual sufficiency. Slip Op. at 7. In evaluating probable cause, the court considers whether there are sufficient facts and circumstances to support a prudent person's belief that the accused child committed the offense alleged. *See In re M.A.V.*, 88 S.W.3d 327, 332-33 (Tex. App.—San Antonio 2002, pet. denied). Probable cause requires “more than mere suspicion but less evidence than needed to support a conviction or support a finding by preponderance of the evidence.” *In re C.M.M.*, 503 S.W.3d 602, 702 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Courts assess the totality of the circumstances to determine probable cause. *Manuel v. State*, 481 S.W.3d 278, 283 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).

B. The appeals court incorrectly held that the juvenile court could infer facts based on speculation, and also incorrectly held that these inferences are not subject to appellate review.

The juvenile court found probable cause that Steve intentionally and knowingly caused Cody's death by guiding Jay to the ranch where Jay killed Cody. CR 177. When a person is charged under the law of parties, there must be evidence that he acted with intent to promote or assist the commission of the offense. TEX. PENAL CODE §§ 7.01(a); 7.02(a)(2).

The juvenile court cited evidence that Steve met Jay and Pete at Whataburger to discuss luring Cody to an isolated location to murder him. CR 178. The record does not support that finding. Steve met the culprits at Whataburger, yes. But not to plan a murder. As the investigating law enforcement officer admitted, the plan was "to go there and go smoke." RR 10:112, 137-38.

The appeals court acknowledged that the juvenile court's finding was not in the record: "[The officer] testified that none of the participants stated [Steve] knew [Jay] intended to lure [Cody] to the abandoned house to murder him . . ." Slip Op. at 6. In a footnote, the court reasoned that the juvenile court "could have inferred [Steve] was an active participant from the \$2,000 payment and [Steve's] actions in locating the abandoned house and directing [Pete] and [Cody] to the house while [Jay] hid outside." Slip Op. at 7 n.1. The court implied the inference was entitled to

total deference: “The juvenile court, however, is the sole judge of the weight to be given the testimony and the inferences to be drawn from the evidence.” *Id.*

Not so. A fact-finder may draw reasonable inferences from evidence, but may not draw conclusions based on speculation. *Hooper v. State*, 214 S.W. 3d 9, 15 (Tex. Crim. App. 2007); *see also City of Keller v. Wilson*, 168 S.W.3d 802, 830 (Tex. 2005) (“Jurors’ doubts about the engineers’ reports or the City’s motives could not supply them with objective indicia that the City knew flooding would occur. Constitutional concerns about the roles of judge and jury do not allow either to make such evidence up.”). “If . . . the evidence does no more than create a mere surmise or suspicion and is so slight as to necessarily make any inference a guess, then it is no evidence.” *Serv. Corp. Int’l v. Guerra*, 348 S.W.3d 221, 228 (Tex. 2011).

Contrary to the appeals court’s reasoning, what Steve did *before* the murder has no criminal significance because the State introduced no evidence that Steve had “an understanding and common design” to commit the offense. *Beier v. State*, 687 S.W.2d 2, 4 (Tex. Crim. App. 1985). “Sometimes youthful inexperience, and lack of common sense, impecuniousness, or personal relationships may bring the innocent into continuing proximity with the guilty, but our line of ‘mere presence’ cases requires acquittal in the absence of evidence of intentional participation.” *United States v. Herrera-Gonzalez*, 263 F.3d 1092, 1097-98 (9th Cir. 2001). All of

Steve's actions up until the time of the shooting were consistent with an adolescent adventure to get high.

Similarly, Steve's conduct *after* the murder did not evidence complicity.³ The law is well-settled that post-offense conduct does not support a finding of guilt absent some evidence of understanding or common design. *See Gross v. State*, 380 S.W.3d 181, 188 (Tex. Crim. App. 2012); *Randolph v. State*, 656 S.W.2d 475, 477 (Tex. Crim. App. Panel No. 1, 1983); *Baldrige v. State*, 543 S.W.2d 639, 643 (Tex. Crim. App. 1976); *Isham v. Collins*, 905 F.2d 67, 70 (5th Cir. 1980). The evidence in the record refuted the trial court's assumption that Steve helped plan the murder because *everyone involved agreed he knew nothing about it*. RR 10:134-37, 152; RR 11:47. As this was the only evidence before the juvenile court, and there was no evidence to the contrary, the juvenile court had no reasonable basis to infer probable cause. In a legal sufficiency review, an appellate court cannot reject contrary evidence that renders supporting evidence incompetent or that conclusively establishes the opposite. *See City of Keller*, 168 S.W.3d at 810-11. Even the low standard of probable cause requires more evidence than "mere suspicion." *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997).

³ The appeals court did not analyze the totality of the circumstances as required in a probable cause determination. For instance, the fact that Steve stayed and may have helped move the body could have been explained because Jay had a gun, had just killed someone, and Steve was afraid. Law enforcement conceded this reaction was not unreasonable. RR 10:143-44; RR 11:49-50. Jay said he paid Steve \$2,000 so he would dispose of the body, but later said Steve did not have the fortitude to do it. RR 11:30.

C. The court of appeals cited evidence that did not support the trial court's finding.

The juvenile court found probable cause to believe that Steve had tampered with evidence by burning and cutting the victim's body, placing the body in garbage bags, and hiding the bags. CR 177-78. Unlike with the murder allegation, the juvenile court did not find that Steve was complicit in tampering under the law of parties, but that he *actually committed* the grisly acts. CR 178.

No evidence supported the finding.

The evidence cited by the appeals court, if credited as true, could only support findings that Steve moved the body to the burn pit, removed gun casings, and was present when the body was disposed. Slip Op. at 6. Those were not the trial court's findings and they were not the basis of the petition for transfer. Therefore, the evidence is legally insufficient to support the trial court's probable cause determination. *See In re M.A.V.*, 88 S.W.3d at 332-33.

The court of appeals also cited law enforcement officer's belief that Steve assisted Salvador. Slip Op. at 6. A law enforcement officer's subjective belief, without factual basis, is irrelevant to a probable cause determination. *Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009). The State made much of the fact that each of the teenagers interviewed were initially deceptive and then eventually confessed. RR 10:111-12, 122; RR 11:30, 44. Under a totality of the circumstances analysis, this fact undermines the State's case. All four teenagers,

interviewed separately for hours, eventually admitted their own and others' involvement in a horrific crime. Yet they never implicated Steve as helping to carry out the murder or the disposal of the body. The State offered no explanation for why – or even how – all of them could consistently cover up for Steve under those circumstances. Dr. Martinez said the allegations against Steve were “radical departure” from his past behavior and adherence to moral norms. RR 16: State’s Exh. 2, at 4. As Occam’s razor would have it, the simplest explanation is most likely correct: he didn’t do it.

“Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions.” *Kent v. United States*, 383 U.S. 541, 561 (1966). The juvenile court made assumptions about the evidence; the court of appeals improperly deferred to those assumptions and made some of their own. This Court should sustain Petitioner’s challenge to the probable cause determinations and the review standards applied by the court of appeals.

II. The courts below improperly limited the scope of evidence considered in evaluating whether a child’s “sophistication and maturity” weighs in favor of transfer.

A. Section 54.02 requires the juvenile court to conduct an individualized assessment of a child’s sophistication and maturity when deciding whether the welfare of the community requires transfer.

A juvenile court may not transfer a child to adult court unless it finds that “because of the seriousness of the offense or the background of the child, the

welfare of the community requires criminal proceedings.” TEX. FAM. CODE § 54.02(a)(3). In making this determination, the court must have before it “a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.” *Id.* § 54.02(d). The court must consider several factors, including “the sophistication and maturity of the child.” *Id.* § 54.02(f)(2). If the court waives jurisdiction, it must “state specifically its reasons for waiver and certify its action, including the written order and findings of the court.” *Id.* § 54.02(h). These findings are subject to factual and legal sufficiency review. *Moon*, 451 S.W.3d at 47.

The Legislature derived the “sophistication and maturity” requirement from a 1959 policy memorandum enacted by the Juvenile Court in Washington, D.C., which set forth a list of factors to be considered in deciding whether to certify a juvenile as an adult. *Hidalgo*, 983 S.W.2d at 754. The original iteration of this factor was “the sophistication and maturity of the juvenile as determined by consideration of his home environmental situation, emotional attitude and pattern of living.” *Kent*, 383 U.S. at 567 (Appendix to Opinion of the Court). The premise of the statutory scheme was that “non-criminal treatment is to be the rule—and adult criminal treatment, the exception which must be governed by the particular factors of individual cases.” *Id.* at 560.

B. The courts below only considered evidence of legal capacity in assessing the child’s “sophistication and maturity.”

The juvenile court limited its consideration of the evidence supporting sophistication and maturity to whether Steve knew right from wrong, appreciated the consequences of his action, and was “reasonably intelligent.” CR 179. The evidence supporting these findings came from the conclusory testimony of Ms. Gutierrez and Dr. Martinez. RR 10:36; RR 10:55.

In reviewing the evidence supporting these findings, the court of appeals defined the legal standard as whether the juvenile understands the seriousness of the charges, knows the difference between the juvenile and criminal justice systems, knows right from wrong, and can aid in his defense. Slip Op. at 8

In essence, the below courts defined the sophistication and maturity inquiry to mean whether Steve had legal capacity. But that is not the intent of section 54.02(f)(2). When the Legislature intends for a person to be evaluated for capacity to understand proceedings in criminal court, assist in her own defense, and understand the wrongfulness of her conduct, it uses exactly that language. *See* TEX. PENAL CODE § 8.08 (child with mental illness, disability, or lack of capacity); § 8.01 (insanity); TEX. CODE CRIM. P. art. 46B.003 (incompetency). The Legislature used the words “sophistication and maturity” in section 54.02; it meant something different.

Other courts have rejected the narrow inquiry adopted by the below courts:

We believe that the requirement that the juvenile court consider the maturity and sophistication of the child refers to the question of culpability and responsibility for his conduct, and is not restricted to a consideration of whether he can intelligently waive rights and assist in the preparation of his defense.

R—E—M v. State, 541 S.W.2d 841, 846 (Tex. Civ. App. —San Antonio, 1976, writ ref'd n.r.e.). Albeit in dicta, the Court of Criminal Appeals has eschewed using evidence of capacity to assess sophistication and maturity: “No case has ever undertaken to explain, however, exactly *how* the juvenile’s capacity (or lack thereof) to waive his constitutional rights and assist in his defense is relevant to whether the welfare of the community requires transfer, and we fail to see that it is.” *Moon*, 451 S.W.3d at 50 n.87; *In the Matter of J.G.S.*, No. 03-16-00556-CV, 2017 WL 672460, at *4 (Tex. App.—Austin, Feb. 17, 2017, no pet.) (same).

C. Petitioner preserved this complaint for review.

In the trial court, Petitioner urged the juvenile court to consider a different definition of sophistication and maturity. RR 13:16-18; Supp. CR (Respondent’s Brief on Proper Consideration of Seriousness of the Offense Factor in Discretionary Transfer). On appeal, Petitioner challenged the factual sufficiency of the evidence to support this finding, arguing that the prevailing interpretation was too narrow and inconsistent with the purpose of section 54.02. Appellant Brief at 16-20. The appellate court ignored the argument, and also did not conduct a factual

sufficiency review. Slip Op. at 8-9. Petitioner re-urged the issue on motions for rehearing and *en banc* reconsideration. Both motions were denied without opinion.

D. This Court should grant review to correct the legal standard for evaluating a child’s “sophistication and maturity” under section 54.02.

The court of appeals’ judgment is conclusive on the facts of a case, but “this Court may review a court of appeals’ factual sufficiency analysis to ensure the court of appeals adhered to the correct legal standard.” *In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2014).

What an inquiry into sophistication and maturity should mean for purposes of a transfer hearing has attracted academic attention.⁴ It is also the subject of evolving jurisprudence. Recently, the Oregon Supreme Court undertook a review of the history and purpose of the “sophistication and maturity” factor that is an element of its juvenile waiver statute. *See In the Matter of J.C.N-V.*, 380 P.3d 248 (Or. 2016). The intermediate court held evidence of the juvenile’s awareness regarding the nature of the criminal act, degree of his participation, and awareness of the consequences satisfied the court’s obligation to find that he was sufficiently sophisticated and mature to warrant transfer. *Id.* at 253. The high court rejected

⁴ *See, e.g.*, Amanda NeMoyer, *Kent Revisited: Aligning Judicial Waiver Criteria with More than Fifty Years of Social Science Research*, 42 VT. L. REV. 441, 459-60 (2018) (explaining how behavioral science and neuroscience research have informed Supreme Court juvenile justice jurisprudence); Thomas Grisso, *Clinicians’ Transfer Evaluations: How Well Can they Assist Judicial Discretion?* 71 LA. L. REV. 157, 180 (2010) (arguing that psychological research should inform assessments of sophistication and maturity but the vagueness of the law’s purpose leads to inconsistent results.)

that interpretation, holding that the sophistication and maturity factor meant a finding that the “youth possesses sufficient adult-like intellectual, social and emotional capabilities to have an adult-like understanding of the significance of his or her conduct, including the wrongfulness and its consequences for the youth, the victim, and others.” *Id.* at 268.

The courts below used an interpretation of “sophistication and maturity” that precluded consideration of the extensive psychological evidence of Steve’s adolescent level of maturity, lack of adult sophistication, susceptibility to peer pressure, and amenability to rehabilitation. In doing so, the courts disregarded evidence essential to the ultimate question in a section 54.02 analysis: whether the welfare of the community requires, not allows, the juvenile to be treated as an adult.

PRAYER FOR RELIEF

Petitioner respectfully requests that the Court grant this petition, reverse the court of appeals’ judgment, and deny the State’s petition to waive jurisdiction. In the alternative, Petitioner seeks reversal of the court of appeals’ judgment and remand for the juvenile court to reconsider the evidence, and for such other and further relief to which he is entitled.

Respectfully submitted,

/s/ Julie Balovich

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CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure I certify that a copy of this Petition for Review was served on Respondent State of Texas through counsel of record, Victor Canales, 205 W. Main Street, Rio Grande City, Texas 78582, via electronic file manager on this 5th day of February, 2019.

/s/ Julie Balovich

Julie Balovich

CERTIFICATE OF COMPLIANCE

Based on a word count run on Microsoft Word, this petition for review contains 4,486 words, excluding the portions exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Julie Balovich

Julie Balovich

APPENDIX

TAB

- 1 Court's Ruling on Discretionary Transfer, dated January 11, 2018.
- 2 Opinion of Court of Appeals, dated November 14, 2018.
- 3 Judgment of Court of Appeals, dated November 14, 2018.
- 4 Tex. Fam. Code § 54.02

APPENDIX TAB 1

JAN 11 2018

Cause No. JV-17-035

DENNIS D. GONZALEZ COUNTY CLERK STARR CO. TX
BY: [Signature] DEPUTY

IN THE MATTER OF § IN THE COUNTY COURT
S[REDACTED] T[REDACTED] § AT LAW OF
A CHILD § STARR COUNTY, TEXAS

Court's Ruling on Discretionary Transfer

In making a decision today as to whether or not this Court should waive its exclusive original jurisdiction and make a discretionary transfer of this case to the criminal District Court, the Court must consider the following factors:

1. Is the child alleged to have violated a penal law of the grade of felony?
2. Was the child 14 years of age or older at the time he/she is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree. (and no juvenile adjudication hearing has been conducted?)
3. Was the child 15 years of age or older at the time the child is alleged to have committed the offense if the offense is a felony of the 2nd or 3rd degree or a state jail felony.
4. After full investigation and hearing, is there probable cause to believe that the child committed the offense alleged and that because of the seriousness of the offense, or the background of the child the welfare of the community requires criminal proceedings.

In making the determination required by the Texas Family Code, section 54.02(a), this Court shall consider the following:

1. Whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
2. The sophistication and maturity of the child;
3. The record and previous history of the child; and
4. The prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Based upon the evidence presents, the Court makes the following findings:

1. The Child before the Court S[REDACTED] T[REDACTED] was born on the [REDACTED] [REDACTED], and the alleged offense is alleged to have been committed on the 30th day of July 2017. Therefore, at the time of the alleged offense the Child, S[REDACTED] T[REDACTED] was 16 years of age.

2. The Court finds that no adjudication hearing has been conducted concerning any of the alleged acts in the Petitioner's Motion for Discretionary Transfer.
3. The alleged acts: That on or about July 30, 2017, S [REDACTED] T [REDACTED] did there and then commit the following acts:

Count One: a first-degree felony in violation of a Texas penal law, Tex. Penal Code Ann. § 19.02, in that he did then and there intentionally and knowingly cause the death of an individual, namely C [REDACTED] O [REDACTED], by guiding an individual, J [REDACTED] L [REDACTED] G [REDACTED] to a secluded ranch wherein J [REDACTED] L [REDACTED] G [REDACTED] shot and killed C [REDACTED] O [REDACTED]

Count Two: A second-degree felony in violation of a Texas penal law, , Tex. Penal Code Ann. § 37.09, in that he did then and there, knowing an investigation was in progress, to-wit: the investigation into a missing child, C [REDACTED] O [REDACTED] intentionally and knowingly alter, distress, or conceal the body of C [REDACTED] O [REDACTED] to-wit: burned the body, cut the body, placed the body in black garbage bags, and dumped in a secluded ranch with intent to impair its availability as evidence in the investigation.

Count Three. A second-degree felony in violation of a Texas penal law, Tex. Penal Code Ann. § 37.09, That he did then and there, knowing that an offense had been committed, to-wit: the murder of C [REDACTED] O [REDACTED] intentionally and knowingly alter, destroy, or conceal the body of C [REDACTED] O [REDACTED], to-wit: burned the body, cut the body, placed the body in black garbage bags, and dumped in a secluded ranch with intent to impair its availability as evidence in any subsequent investigation or official proceeding relating to the offense; would be felonies under the penal laws of the State of Texas if committed by an adult.

The Court further specifically finds that there is probable cause i.e. there was testimony elicited that would lead a reasonable person to believe:

That, S [REDACTED] I [REDACTED] committed the criminal acts described in paragraph 3, specifically that S [REDACTED] T [REDACTED] did he did then and there intentionally and knowingly cause the death of an individual, namely C [REDACTED] O [REDACTED] by guiding an individual, J [REDACTED] L [REDACTED] G [REDACTED] ([REDACTED]), to a secluded ranch wherein J [REDACTED] L [REDACTED] G [REDACTED] shot and killed C [REDACTED] O [REDACTED]

That. S [REDACTED] I [REDACTED] did then and there, knowing an investigation was in progress, to-wit: the investigation into a missing child, C [REDACTED] O [REDACTED] intentionally and knowingly alter, distress, or conceal the body of C [REDACTED] O [REDACTED] to-wit: burned the body, cut the

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body, placed the body in black garbage bags, and dumped in a secluded ranch with intent to impair its availability as evidence in the investigation;

That, [REDACTED] did then and there, knowing that an offense had been committed, to-wit: the murder of Chayse Olivarez, intentionally and knowingly alter, destroy, or conceal the body of Chayse Olivarez to-wit: burned the body, cut the body, placed the body in black garbage bags, and dumped in a secluded ranch with intent to impair its availability as evidence in any subsequent investigation or official proceeding relating to the offense.

Said Probable Cause was established by the following testimony elicited during the hearing:

Testimony from Detective Humberto Vela, Sheriff's Investigator Dario Marquez and Texas Ranger Eric Lopez established through interviews/confessions with S [REDACTED] T [REDACTED] P [REDACTED] S [REDACTED], J [REDACTED] L [REDACTED] G [REDACTED] and S [REDACTED] along with forensic reports provided by Dr. Frank P. Salinas, (Autopsy Report) and Dr. Tara Rios (Forensic Dental Report) along with physical evidence from the crime scene established the following:

That S [REDACTED] T [REDACTED] met with J [REDACTED] L [REDACTED] G [REDACTED] and P [REDACTED] S [REDACTED] at a Whataburger to discuss the luring of the victim C [REDACTED] O [REDACTED] to an isolated location, to murder C [REDACTED] O [REDACTED]. S [REDACTED] T [REDACTED] then took J [REDACTED] L [REDACTED] G [REDACTED] to the isolated ranch and waited for P [REDACTED] S [REDACTED] to lure C [REDACTED] O [REDACTED] to said ranch. Once at the ranch S [REDACTED] T [REDACTED] led F [REDACTED] S [REDACTED] and C [REDACTED] O [REDACTED] to the abandoned house, where C [REDACTED] O [REDACTED] was shot and killed by J [REDACTED] L [REDACTED] G [REDACTED] after lying in wait. S [REDACTED] T [REDACTED] and F [REDACTED] S [REDACTED] then assisted in carrying C [REDACTED] O [REDACTED]'s corpse into a fire pit after C [REDACTED] O [REDACTED] was killed by J [REDACTED] L [REDACTED] G [REDACTED]. S [REDACTED] T [REDACTED] then recruited his cousin S [REDACTED] T [REDACTED] to help dispose of the corpse of C [REDACTED] O [REDACTED]. S [REDACTED] T [REDACTED] then assisted in mutilating C [REDACTED] O [REDACTED] corpse by burning it, then cut it up and dismembered it. Finally, S [REDACTED] T [REDACTED] helped place and dispose C [REDACTED] O [REDACTED] corpse into three black trash bags and dumped in the secluded ranch with the intent to impair C [REDACTED] O [REDACTED] corpse availability as evidence for any investigation.

The manner in which Chayse Olivarez' corpse was mutilated was evidenced by both the interviews/confessions of S [REDACTED] T [REDACTED], I [REDACTED] S [REDACTED], J [REDACTED] L [REDACTED] G [REDACTED] and S [REDACTED], but also proven by the Autopsy Report submitted by Dr. Frank P. Salinas.

The identity of the corpse located in black plastic bags in the isolated ranch were identified as C [REDACTED] O [REDACTED] the child missing testified to by Detective Humberto Vela, whom had gone missing, through Dr. Tara Rios Forensic Dental Report.

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The Court finds that the alleged offense was committed against a person, namely C [REDACTED] O [REDACTED] a male born on the [REDACTED] [REDACTED]

The Court further finds that S [REDACTED] T [REDACTED] is of sufficient sophistication and maturity to be tried as an adult.

Said finding is based on the following:

The child S [REDACTED] T [REDACTED] understands right from wrong and appreciates the consequence of his actions as testified to by both Juvenile Probation Officer Maricela Gutierrez and Dr. Xavier Martinez; and can be considered reasonably intelligent, as testified by Norma Villanueva, Ph.D.. (Maricela 37-1 through 6) (Xavier Martinez 54-24 through 55-8; 55-25 through 56-10) (Norma Villanueva 45-22 through 46-2). In addition the testimony of Rosanna Flores, page 52 line 23 through page 53 line 16.

The Court considered the record and previous history of S [REDACTED] T [REDACTED], and notes that no testimony was provided of a record or previous history. The Court does note that there was testimony elicited of some trauma witnessed by S [REDACTED] T [REDACTED] i.e., that he returned home one day and observed his grandfather lying on the floor of their home, in a deceased state; and of being distraught by this and having an inability to maintain close relationships, evidenced by his failure to keep girlfriends.

The Court finds that the prospects of adequate protection for the public and the likelihood of reasonable rehabilitation of S [REDACTED] T [REDACTED] by the use of the procedures, services, and facilities that are currently available to the Juvenile Court are in doubt.

Said finding is based on the following:

The options available to the Court range from Probation, Placement at a Camp and/or Placement in the Texas Juvenile Justice Department (Maricela 23-21 through 26-21) which may or may not include placement into the Giddings State School, Capital and Serious Violent Offender Treatment Program. Said program having a success rate of a maximum of 50% and a low success rate of 32% according to testimony by Norma Villanueva Ph.D. (21-14 through 22-4). Determinate Placement would allow Selection [REDACTED]

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Torres a second opportunity for release before being transferred to the Texas Department of Corrections within the next 3 years. Placement in the Texas Juvenile Justice Department may or may not include placement into the Giddings State School, Capital and Serious Violent Offender Treatment Program. Because there is no definitive control to be retained by this Court under Determinate Placement nor Placement in the Texas Juvenile Justice Department, the Court is of the opinion that they are not adequate to provide the proper protection of the public

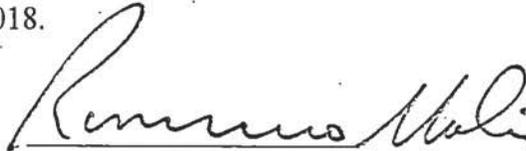
THEREFORE, THE Court finds that:

After considering all the testimony, diagnostic study, social evaluation, and full investigation, it is contrary to the best interests of the community to retain jurisdiction in the Juvenile Court.

Therefore, the Court waives jurisdiction of this cause and transfers it to the appropriate District Court for proper criminal proceeding and does hereby certify the action. The Court instructs the State to prepare a complaint charging the offense(s) being transferred to criminal court. Transfer of custody is an arrest and the Sheriff's Office is ordered to maintain custody of the child. [REDACTED] T [REDACTED] and A [REDACTED] L [REDACTED] T [REDACTED] I want to advise you as parents and you, S [REDACTED] T [REDACTED], that you have the right to appear, the right to have an attorney to represent you in the appeal, and to have an attorney appointed for purposes of an appeal if you and your family are indigent.

Bond is set at \$1,500,000.00 on Count One; \$1,500,000.00 on Count Two and \$1,500,000.00 on Count Three as described in paragraph 3 above.

Signed this 11th day of January, 2018.


Judge President

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APPENDIX TAB 2



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00133-CV

IN THE MATTER OF S.T.

From the County Court at Law, Starr County, Texas
Trial Court No. JV-17-035
Honorable Romero Molina, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: November 14, 2018

AFFIRMED

S.T. appeals the juvenile court's order waiving its jurisdiction and transferring him to district court for criminal proceedings. In his brief, S.T. challenges the sufficiency of the evidence to support the juvenile court's factual findings and also contends the juvenile court abused its discretion in ordering his transfer to the adult criminal justice system. We affirm the juvenile court's order.

PROCEDURAL BACKGROUND

On August 14, 2017, the State filed a petition alleging S.T., who was sixteen, engaged in delinquent conduct on or about July 30, 2017, by: (1) intentionally and knowingly causing the death of C.O. by guiding J.L.G. to a location where J.L.G. fired six rounds at C.O.; (2) intentionally and knowingly destroying evidence at the scene of the murder; and (3) failing to report the

commission of a felony. The same day, the juvenile court held a detention hearing and ordered S.T. to be detained.

On October 4, 2017, the State filed its Petition for Discretionary Transfer to Criminal Court, asking the juvenile court to waive its exclusive jurisdiction and transfer S.T. to district court for criminal proceedings. After hearing three days of evidence, the juvenile court verbally pronounced its ruling waiving its jurisdiction and transferring S.T. to district court for criminal proceedings. The juvenile court signed a written order the same day. After listing the factors the juvenile court considered in making its decision, the juvenile court's order stated that the court specifically found probable cause to believe that S.T.: (1) intentionally and knowingly caused C.O.'s death by guiding J.L.G. to a secluded ranch where J.L.G. shot and killed C.O.; and (2) intentionally and knowingly altered, distressed, or concealed the body of C.O. by burning the body, cutting the body, placing the body in black garbage bags, and dumping the bags in a secluded ranch when S.T.: (a) knew an investigation was in progress into a missing child, C.O., with intent to impair the availability of C.O.'s body as evidence in the investigation; and (b) knew an offense had been committed, to-wit: the murder of C.O. with intent to impair the availability of C.O.'s body as evidence in any subsequent investigation or official proceedings relating to the offense. The juvenile court's order then listed the evidence elicited at the hearing in support of its probable cause finding. The juvenile court's order further stated the court found: (1) S.T. was of sufficient sophistication and maturity to be tried as an adult; (2) no testimony was provided of a record or previous history of S.T.; and (3) the prospects of adequate protection for the public and the likelihood of reasonable rehabilitation of S.T. by use of the procedures, services, and facilities that are currently available to the court were in doubt. The juvenile court's order also referred to specific evidence supporting two of the foregoing findings.

S.T. appeals.

TEXAS FAMILY CODE SECTION 54.02

Section 54.02(a) of the Juvenile Justice Code provides, in pertinent part, that the juvenile court may waive its exclusive original jurisdiction and transfer a child to district court for criminal proceedings if the following is determined:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was: (A) 14 years of age or older at the time [of the alleged] offense, if the offense is a ... felony of the first degree, ...; or (B) 15 years of age or older at the time [of the alleged] offense, if the offense is a felony of the second or third degree ..., and no adjudication hearing has been conducted concerning that offense; and
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

TEX. FAM. CODE ANN. § 54.02(a) (West 2014). When determining whether the welfare of the community requires criminal proceedings because of the seriousness of the offense alleged or the background of the child under the third requirement, section 52.04(f) requires the juvenile court to consider the following non-exclusive factors:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Id. at § 54.02(f).

STANDARD OF REVIEW

“[I]n evaluating a juvenile court’s decision to waive its jurisdiction, an appellate court should first review the juvenile court’s specific findings of fact regarding the Section 54.02(f) factors under ‘traditional sufficiency of the evidence review.’” *Moon v. State*, 451 S.W.3d 28, 47 (Tex. Crim. App. 2014). Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding if a reasonable factfinder could and disregard contrary evidence unless a reasonable fact finder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). If there is more than a scintilla of evidence to support the finding, a legal sufficiency challenge fails. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.—Tyler 2003, no pet.). Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the court’s finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. *Moon*, 451 S.W.3d at 46 n.75 (internal citations omitted); *C.M. v. State*, 884 S.W.2d 562, 563 (Tex. App.—San Antonio 1994, no writ). Our review of the sufficiency of the evidence supporting waiver is limited to the facts the juvenile court expressly relied on in its transfer order. *Moon*, 451 S.W.3d at 50.

We must then review the juvenile court’s ultimate waiver decision under an abuse of discretion standard. *Id.* at 47. “That is to say, in deciding whether the juvenile court erred to conclude that the seriousness of the offense alleged and/or the background of the juvenile called for criminal proceedings for the welfare of the community, the appellate court should simply ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles.” *Id.* We must, however, remain mindful that “not every Section 54.02(f) factor must weigh in favor of transfer to justify the juvenile court’s discretionary decision to waive its jurisdiction.” *Id.* A juvenile court does not abuse its discretion if its transfer decision “represent[s]

a reasonably principled application of the legislative criteria.” *Id.* The juvenile court must, however, “show its work” and specifically state the reasons for waiver. *Id.* at 49. “The juvenile court that shows its work should rarely be reversed.” *Id.*

ANALYSIS

In his brief, S.T. challenges the juvenile court’s findings that: (1) probable cause exists to support a determination that he committed the alleged offenses; and (2) the welfare of the community requires criminal proceedings because of the seriousness of the offense alleged or his background. *See* TEX. FAM. CODE ANN. § 54.02(a)(3).

A. Probable Cause

The juvenile court need only determine probable cause exists that the juvenile committed the offense charged. *In re A.A.*, 929 S.W.2d 649, 653 (Tex. App.—San Antonio 1996, no writ). “Probable cause” for this purpose is defined as “sufficient facts and circumstances to warrant a prudent individual to believe the suspect committed or was committing an offense.” *Id.* At a transfer hearing, the juvenile court is the sole judge of credibility and may choose to believe or disbelieve any or all of the witnesses’ testimony. *In re C.M.M.*, 503 S.W.3d 692, 709 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *In re K.B.H.*, 913 S.W.2d 684, 689 (Tex. App.—Texarkana 1995, no writ); *In re D.W.L.*, 828 S.W.2d 520, 525 (Tex. App.—Houston [14th Dist.] 1992, no writ).

In support of its finding that probable cause exists to believe S.T. committed the alleged offenses, the juvenile court’s order noted the “[t]estimony from Detective Humberto Vela, Sheriff’s Investigator Dario Marquez and Texas Ranger Eric Lopez established through interviews/confessions with [S.T.], [P.S.], [J.L.G.], and Salvador [T.] along with forensic reports provided by Dr. Frank P. Salinas, (Autopsy Report) and Dr. Tara Rios (Forensic Dental Report) along with physical evidence from the crime scene established the following:”

That [S.T.] met with [J.L.G.] and [P.S.] at a Whataburger to discuss the luring of the victim [C.O.] to an isolated location, to murder [C.O.]. [S.T.] then took [J.L.G.] to the isolated ranch and waited for [P.S.] to lure [C.O.] to said ranch. Once at the ranch [S.T.] led [P.S.] and [C.O.] to the abandoned house, where [C.O.] was shot and killed by [J.L.G.] after lying in wait. [S.T.] and [P.S.] then assisted in carrying [C.O.'s] corpse into a fire pit after [C.O.] was killed by [J.L.G.]. [S.T.] then recruited his cousin Salvador [T.] to help dispose of the corpse of [C.O.]. [S.T.] then assisted in mutilating [C.O.'s] corpse by burning it, then cut it up and dismembered it. Finally, [S.T.] helped place and dispose [C.O.'s] corpse into three black trash bags and dumped in the secluded ranch with the intent to impair [C.O.'s] corpse availability as evidence for any investigation.

The manner in which [C.O.'s] corpse was mutilated was evidenced by both the interviews/confessions of [S.T.], [P.S.], [J.L.G.], and Salvador, but also proven by the Autopsy Report submitted by Dr. Frank P. Salinas.

A person is criminally responsible for an offense committed by the conduct of another if the person solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense with the intent to promote or assist the commission of the offense. TEX. PENAL CODE ANN. § 7.02(a)(2) (West 2011). Ranger Eric Lopez testified J.L.G. implicated S.T. in C.O.'s murder by assisting P.S. in placing C.O.'s body in a burn pit after J.L.G. shot and killed C.O. The same night of the murder, S.T. and his cousin Salvador returned to the murder scene in an effort to locate and destroy gun shell casings and any other evidence. Although Salvador told the investigating officers he returned to the crime scene by himself to burn and dismember C.O.'s body, Ranger Lopez believed S.T. was present and assisting during that process. Investigator Dario Marquez also testified he believed S.T. was present during that process because S.T. knew the number, type, and color of the trash bags into which the dismembered body parts were placed and the location where the bags were thrown. Although Ranger Lopez and Investigator Marquez testified that none of the participants stated S.T. knew J.L.G. intended to lure C.O. to the abandoned house to murder him, the evidence established S.T. met with J.L.G. and P.S. prior to the murder, located the abandoned house where the murder occurred, and went to direct P.S. and C.O. to the location of the abandoned house as J.L.G. left the abandoned house to hide. Furthermore, when J.L.G. and P.S. dropped S.T.

back at his house after the murder, J.L.G. paid S.T. \$2,000. Having reviewed all of the evidence, we hold the evidence is legally and factually sufficient to support the juvenile court's finding that there were sufficient facts and circumstances to warrant a prudent individual to believe S.T. was a party to the murder and intentionally and knowingly altered, distressed, or concealed the body of C.O.¹

B. Welfare of the Community Requires Criminal Proceedings.

As previously noted, in determining whether this requirement is met, the juvenile court must consider the following non-exhaustive factors:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

Id. at § 54.02(f).

1. Section 54.02(f) Factors

Under the applicable standard of review, we first examine the sufficiency of the evidence to support the juvenile court's findings regarding the Section 54.02(f) factors. *Moon*, 451 S.W.3d at 47.

¹ In his briefing, S.T. argues the evidence is insufficient to support a finding that he was an active participant in the crime itself because his only participation was after the offense occurred. The juvenile court, however, is the sole judge of the weight to be given the testimony and the inferences to be drawn from the evidence. The juvenile court could have inferred S.T. was an active participant from the \$2,000 payment and S.T.'s actions in locating the abandoned house and directing P.S. and C.O. to the house while J.L.G. hid outside.

a. Nature of the Offense

After detailing the evidence supporting the serious, gruesome nature of the alleged offenses in support of its probable cause finding, the trial court also found the offenses were committed against a person. S.T. does not challenge the sufficiency of the evidence in support of this finding.

b. S.T.'s Sophistication and Maturity

S.T. was sixteen when the offense was committed and at the time of the hearing. In its order, the juvenile court found S.T. "is of sufficient sophistication and maturity to be tried as an adult." In support of this finding, the trial court noted S.T. "understands right from wrong and appreciates the consequences of his actions as testified to by both Juvenile Probation Officer Maricela Gutierrez and Dr. [Javier] Martinez; and can be considered reasonably intelligent as testified by Norma Villanueva, Ph.D. ... [and] the testimony of Rosanna Flores."

As evidence supporting a finding that a juvenile is of sufficient sophistication and maturity, this court has generally relied on evidence that the juvenile understands the seriousness of the charges against him, the difference between a juvenile and criminal proceedings, knows right from wrong, and is able to assist his attorney in his defense. *Rodriguez v. State*, 478 S.W.3d 783, 787 (Tex. App.—San Antonio 2015, pet. ref'd); *Gonzales v. State*, 467 S.W.3d 595, 600 (Tex. App.—San Antonio 2015, pet. ref'd); *see also In re K.J.*, 493 S.W.3d 140, 151 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (noting in maturity and sophistication, courts place weight on whether the juvenile knows, right from wrong, whether the juvenile can assist his or her attorney in their defense, and whether the juvenile understands the differences between the adult and juvenile system as it applies to his alleged crimes).

In this case, Maricela Gutierrez, the assistant chief of the Starr County Juvenile Probation Department who was assigned as S.T.'s probation officer when he was detained, testified S.T. understands right from wrong and appreciates the consequences of his actions. Javier Martinez,

Ph.D., a licensed psychologist who performed a psychological evaluation on S.T., testified S.T. knew the difference between right and wrong and had no issues that would affect his ability to understand the proceedings. Dr. Martinez also testified S.T. was trying to assist his attorneys in his defense. Although Dr. Martinez also testified adolescents do not have the same maturity level as an adult,² and Norma Villanueva, Ph.D., a licensed clinical social worker called as an expert witness for S.T., testified S.T. was an average adolescent, the juvenile court could have determined from all of the evidence presented that S.T. was sophisticated and mature enough to be transferred into the criminal justice system.

c. S.T.'s Record and Previous History

In its transfer order, the juvenile court found no testimony was provided of a record or previous history.³ In its order, the juvenile court noted testimony elicited of S.T. being distraught when he returned home and discovered his deceased grandfather⁴ lying on the floor which the juvenile court appeared to link to S.T.'s inability to maintain close relationships. In his brief, S.T. contends this evidence is not relevant to any finding of a prior history. First, we note the juvenile court expressly found no record or prior history. Second, we note the section 52.04(f) factors are non-exhaustive. Although this section 52.04(f) factor does not weigh in favor of the decision to transfer, the juvenile court's noting of S.T.'s inability to maintain close relationships can be weighed in determining whether the juvenile court abused its discretion in ordering the transfer. *See Moon*, 487 S.W.3d at 50 (providing appellate court must measure the sufficiency of the evidence to support facts expressly found by the juvenile court in its order).

² Dr. Martinez testified he would not recommend certification of any adolescent unless the adolescent "demonstrated a maturity level that is way above a typical adolescent" and stated he had never encountered such an "atypical juvenile" in his career.

³ Although the juvenile court found no record or history, we note the record establishes S.T. admitted to both marijuana and alcohol use.

⁴ The testimony actually related to his deceased grandmother.

d. Prospects of Adequate Protection and Likelihood of S.T.'s Rehabilitation

In its transfer order, the juvenile court found the “prospects of adequate protection for the public and the likelihood of reasonable rehabilitation of [S.T.] by the use of the procedures, services, and facilities that are currently available to the Juvenile Court are in doubt.” The order stated this finding was based on the following:

The options available to the Court range from Probation, Placement at a Camp and/or Placement in the Texas Juvenile Justice Department (Maricela 23-21 through 26-21) which may or may not include placement into the Giddings State School, Capital and Serious Violent Offender Treatment Program. Said program having a success rate of a maximum of 50% and a low success rate of 32% according to testimony by Norma Villanueva Ph.D. (21-14 through 22-4). Determinate Placement would allow [S.T.] a second opportunity for release before being transferred to the Texas Department of Corrections within the next 3 years. Placement in the Texas Juvenile Justice Department may or may not include placement into the Giddings State School, Capital and Serious Violent Offender Treatment Program. Because there is not definitive control to be retained by this Court under Determinate Placement nor Placement in the Texas Juvenile Justice Department, the Court is of the opinion that they are not adequate to provide the proper protection of the public.

The first recommendation of Gutierrez, S.T.'s probation officer, was to transfer S.T. to adult criminal court because she did not believe the programs available in the juvenile system were adequate. Although Dr. Martinez recommended a long-term correctional-type placement in the Texas Juvenile Justice System, Dr. Martinez testified he is not familiar with the programs available at the Giddings State School. Dr. Villanueva testified she believed the Giddings State School had a very good success rate but then admitted the school reported its minimum success rate was 32% and its maximum success rate was 50%. Although she believed the school defined the success rate as not reoffending, she was not certain what other markers the school used to define success and the TJJD official with whom she spoke could not provide exact answers. Finally, Dr. Villanueva testified TJJD makes the assessment of where a juvenile is placed, and there is no guarantee that TJJD would place S.T. at the Giddings State School.

Having reviewed all of the evidence, we hold the evidence is legally and factually sufficient to support the juvenile court's finding that the procedures, services, and facilities available to the juvenile court are inadequate to rehabilitate S.T. while also protecting the public.

2. Did the juvenile court abuse its discretion?

After reviewing the evidence to support the juvenile court's findings as to each of the section 54.02(f) factors, we next decide whether the juvenile court abused its discretion in determining the seriousness of the alleged offenses or S.T.'s background required criminal proceedings for the welfare of the community *Moon*, 451 S.W.3d at 47.

As previously detailed, the offenses involved murder followed by the gruesome burning and dismemberment of C.O.'s body, and the evidence supported a finding that probable cause existed that S.T. was a party to the murder. The evidence also supported a finding that probable cause existed that S.T. assisted in burning C.O.'s body, cutting it into pieces, placing those pieces in garbage bags, and dumping the bags on the secluded ranch. Given the juvenile court's detailed findings regarding the seriousness of the offenses, S.T.'s sophistication and maturity, and the doubtful ability of the juvenile system to rehabilitate S.T. while also protecting the public, we hold the juvenile court did not abuse its discretion in concluding the welfare of the community required criminal proceedings because of the seriousness of the alleged offense. *See Rodriguez*, 478 S.W.3d at 788 (“[A] court does not abuse its discretion by finding the community's welfare requires transfer due to the seriousness of the crime alone, despite the child's background.”) (quoting *Faisst*, 105 S.W.3d at 11).

CONCLUSION

The juvenile court's order is affirmed.

Sandee Bryan Marion, Chief Justice

APPENDIX TAB 3



Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. 04-18-00133-CV

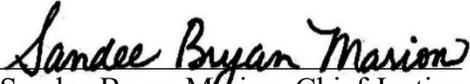
IN THE MATTER OF S.T.

From the County Court at Law, Starr County, Texas
Trial Court No. JV-17-035
Honorable Romero Molina, Judge Presiding

BEFORE CHIEF JUSTICE MARION, JUSTICE MARTINEZ, AND JUSTICE RIOS

In accordance with this court's opinion of this date, the order of the trial court is
AFFIRMED.

SIGNED November 14, 2018.


Sandee Bryan Marion, Chief Justice

APPENDIX TAB 4

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 3. Juvenile Justice Code (Refs & Annos)
Chapter 54. Judicial Proceedings (Refs & Annos)

V.T.C.A., Family Code § 54.02

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

Effective: September 1, 2013

[Currentness](#)

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was:

(A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of [Sections 53.04, 53.05, 53.06, and 53.07](#) of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) the sophistication and maturity of the child;

(3) the record and previous history of the child; and

(4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. Except as provided by Subsection (g-1), a child is not subject to criminal prosecution at any time for any offense arising out of a criminal transaction for which the juvenile court retains jurisdiction.

(g-1) A child may be subject to criminal prosecution for an offense committed under Chapter 19 or [Section 49.08, Penal Code](#), if:

(1) the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction; and

(2) on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or [Section 49.08, Penal Code](#), had not occurred.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under [Section 152.0015, Human Resources](#)

[Code](#), the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under [Article 4.19, Code of Criminal Procedure](#). A transfer of custody made under this subsection is an arrest.

(h-1) If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(i) A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under [Section 19.02, Penal Code](#);

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under [Section 19.02, Penal Code](#); or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) The petition and notice requirements of [Sections 53.04](#), [53.05](#), [53.06](#), and [53.07](#) of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j). The person's parent, custodian, guardian, or guardian ad litem is not considered a party to a proceeding under Subsection (j) and it is not necessary to provide the parent, custodian, guardian, or guardian ad litem with notice.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j). Except as otherwise provided by this subsection, a waiver of jurisdiction under Subsection (j) may be made without the necessity of conducting the diagnostic study or complying with the requirements of discretionary transfer proceedings under Subsection (d). If requested by the attorney for the person at least 10 days before the transfer hearing, the court shall order that the person be examined pursuant to [Section 51.20\(a\)](#) and that the results of the examination be provided to the attorney for the person and the attorney for the state at least five days before the transfer hearing.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection

(m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by [Section 54.01](#), except that the court shall order the respondent released unless it finds that the respondent:

- (1) is likely to abscond or be removed from the jurisdiction of the court;
- (2) may be dangerous to himself or herself or may threaten the safety of the public if released; or
- (3) has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term of jail or prison and is likely to commit an offense if released.

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

- (1) a certified juvenile detention facility as provided by Subsection (q); or
- (2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(s) If a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, are a part of the district clerk's public record.

Credits

Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975; [Acts 1987, 70th Leg., ch. 140, §§ 1 to 3, eff. Sept. 1, 1987](#); [Acts 1995, 74th Leg., ch. 262, § 34, eff. Jan. 1, 1996](#); [Acts 1999, 76th Leg., ch. 1477, § 8, eff. Sept. 1, 1999](#); [Acts 2009, 81st Leg., ch. 1354, § 1, eff. Sept. 1, 2009](#); [Acts 2011, 82nd Leg., ch. 1087 \(S.B. 1209\), § 4, eff. Sept. 1, 2011](#); [Acts 2011, 82nd Leg., ch. 1103 \(S.B. 1617\), § 1, eff. Sept. 1, 2011](#); [Acts 2013, 83rd Leg., ch. 1299 \(H.B. 2862\), § 16, eff. Sept. 1, 2013](#).

V. T. C. A., Family Code § 54.02, TX FAMILY § 54.02

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

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APPENDIX TAB 4