No. 05-20-00920-CV

In the Court of Appeals
Fifth District of Texas at Dallas

IN THE MATTER OF J.R.

ON APPEAL FROM THE 305TH JUDICIAL DISTRICT COURT
DALLAS COUNTY, TEXAS
TRIAL COURT CAUSE NO. JD-20-00313-X

BRIEF FOR THE STATE OF TEXAS

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Oral argument is requested.

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STATEMENT OF THE CASE

On March 5, 2020, the State of Texas filed a petition for discretionary transfer asking the 305th Judicial District Court to waive its jurisdiction over Appellant and transfer the case against him to the proper district court for criminal proceedings (1 C.R. at 14). On March 24, 2020, the State filed an amended petition for discretionary transfer (1 C.R. at 25). On October 5, 2020, the juvenile court held a hearing on the State's petition for discretionary transfer (2 R.R. at 1–134). On October 7, 2020, the trial court granted the State's petition for discretionary transfer and transferred the case to adult criminal court (1 C.R. at 93, 2 R.R. at 135–138).

ISSUES PRESENTED

Issue One – Neither section 54.02 nor Moon require a juvenile court to include all evidence that "weighs against" certification in its waiver and transfer order. Did the trial court abuse its discretion by setting out specific factual findings in the order that did not include evidence contrary to its decision to waive jurisdiction and transfer the case to adult court?

Issue Two – The record contains evidence that Appellant is sophisticated and mature. Is that evidence factually sufficient to support the trial court's finding that Appellant is sophisticated and mature, and did the trial court abuse its discretion to waive jurisdiction and transfer the case to adult court.

STATEMENT OF FACTS

Detective John Valdez

Dallas Police Detective John Valdez testified for the State (2 R.R. at 8). On October 31, 2019 at around 10:52 p.m., an unknown person called Dallas 911 to report a homicide in South Dallas (2 R.R. at 9–10, 12, 15). Valdez went to the scene (2 R.R. at 9). He discovered that 79 year old Gloria Roque had been shot and transported to a hospital where she later died of her injury (2 R.R. at 11, 13).

Roque was sitting on a couch in the living room of her apartment watching the news when she was shot in the back by a single bullet (2 R.R. at 11–13). Valdez determined that three or four shots were fired from the outside of the apartment (2 R.R. at 12). No one in the apartment or the neighborhood saw who fired the shots (2 R.R. at 12). A neighbor heard the shots and told Valdez she thought she saw a sedan fleeing southbound but couldn't give a clear description of the car (2 R.R. at 13). An autopsy revealed that the bullet lodged in Roque's body was from a 9 millimeter handgun (2 R.R. at 14).

The following day, Valdez and his partner recovered a video from a nearby house that showed a four-door sedan with a sunroof traveling northbound on Havana Street, making an immediate right onto Metropolitan Avenue at 10:47 p.m., and heading towards Meyers Street (2 R.R. at 15). The 911 call was at 10:52 p.m. (2 R.R. at 15). A second video was collected off Metropolitan showing the same car turning

right and going towards Meyers Street (2 R.R. at 16). The first video showed the car as silver or gray, but in the second video it appeared gold in color (2 R.R. at 16).

Valdez eventually received some text messages that led him to multiple social media accounts, which he got warrants for (2 R.R. at 17). One of the search warrants was for Appellant's Instagram account (2 R.R. at 17–18, 19). Valdez tied the Instagram account to Appellant through e-mails, phone numbers, and photographs (2 R.R. at 20–21). Valdez found an Instagram chat between Appellant, David Alvarado, Kimberly Garcia, and other persons (2 R.R. at 18).

Cell phone towers showed Appellant, David Alvarado, and Kimberly Garcia's cell phones starting in Seagoville-Balch Springs-Pleasant Grove (2 R.R. at 28). Around 10:30 pm it showed them hitting towers up highway 175 towards Dallas, hitting towers in the two-block area of Roque's home, and then traveling straight back down 175 back to their home (2 R.R. at 28).

Valdez interviewed Appellant with his Mother present (2 R.R. at 29). Appellant said he was in Garcia's car with Garcia, Alvarado, and another juvenile (2 R.R. at 29–30). They drove to South Dallas because Garcia had an issue with a man named Tommy cheating on her (2 R.R. at 30). Appellant told Valdez that somebody may have had two guns; at that point, his mother stopped the interview (2 R.R. at 30).

Valdez also interviewed Garcia (2 R.R. at 31). Garcia initially denied being involved in the offense but then said that she was with Appellant, a second juvenile, and Alvarado, and that she was the driver (2 R.R. at 32). Alvarado and Appellant were in the back seat (2 R.R. at 32). When they identified a car they thought was Tommy's, Alvarado fired out of the rear passenger door, and Appellant was standing up in the sunroof firing (2 R.R. at 32–33). Afterward, they drove off and Garcia took them home (2 R.R. at 32–33). She later found shell casings in her car and threw them away (2 R.R. at 33). Appellant wanted her to burn the car and brought over alcohol to her to wipe down the car (2 R.R. at 33). He was talking about a "purge" and said that they were going to "slide up" (drive by) on Tommy (2 R.R. at 33–34).

In the text chat between Alvarado, Garcia, and Appellant, Garcia sent Appellant a map on Instagram of the area where the offense occurred, and Appellant posted that Garcia has shown him where Tommy stays (2 R.R. at 26). Valdez believed that Appellant made several statements in the chat after the offense as follows:

"Hell, no, I aint' trying to get caught."

"I told you, lay low."

"Delete all your pictures."

"Don't say shit."

(2 R.R. at 23). Alvarado responded to the last text by stating, "[J.], chill." (2 R.R. at 24). The individuals also posted a picture of the crime scene taken from news reporters in their thread the following morning (2 R.R. at 24).

Valdez believed, based on his investigation, that this offense was planned (2 R.R. at 34). He testified that, for the welfare of the community, the seriousness of the offense, and the background of Appellant, criminal proceedings are required (2 R.R. at 37).

Testimony of Shannon Wright

Shannon Wright is a probation officer in the Dallas County court-assessment unit. Wright testified that Appellant's history with the juvenile department began in 2016 when he was referred on a misdemeanor graffiti charge that resulted in a successfully completed deferred prosecution program (2 R.R. at 83). Appellant's next referral was an aggravated robbery where Appellant and an accomplice forced a complaining witness at gunpoint to drive them to a 7-11 where they stole the complainant's vehicle, drove it until they ran out of gas, and then abandoned it (2 R.R. at 84). Appellant was eventually adjudicated on the aggravated robbery and ordered to the Dallas County Youth Village (2 R.R. at 86). After Appellant completed the program at the Youth Village, he was released to his grandmother on September 11, 2019 (2 R.R. at 86). The murder in the instant case occurred on October 31, 2020 (2 R.R. at 87).

The short time between Appellant's release and his participation in this murder showed that the Youth Village's failure to produce a change in behavior indicated that the community was in danger (2 R.R. at 87).

During the three months that Appellant was free on probation between the date of the offense and the date of his arrest, Appellant was plagued by school issues, substance abuse, and association with negative peers (2 R.R. at 89). Appellant also received a citation for being in a stolen car, refused to go to school, and violated his curfew (2 R.R. at 89). He was referred to home detention, tested positive for marihuana, and was reported to have displayed a gun on social media (2 R.R. at 89)

Wright described Appellant's sophistication as being 'excessive due to the referral history, the nature of the offense, the placement, and the youth would continue to engage in delinquent activities and continue to associate with peers that also [were] engaging in criminal and delinquent activities" (2 R.R. at 93).

Tami Coy

Appellant called TJJD/TDCJ liaison Tami Coy to testify. Coy described the sequence of events that would occur if Appellant was kept in the juvenile system and adjudicated of murder, and also described the TJJD capital offender unit program, the treatment available in that program, and the program's daily schedule (2 R.R. at 117–129).

SUMMARY OF THE ARGUMENT

Issue One

Neither section 54.02(h) of the Texas Family Code nor *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014) require a juvenile court to catalog all the evidence it considered in waiving jurisdiction or to explain why it relied on some evidence and rejected other evidence. The juvenile court's failure to cite evidence in its order does not prevent this Court from considering that evidence in a factual sufficiency review.

Issue Two

The evidence is factually sufficient to support the juvenile court's sophistication and maturity finding. The evidence that Appellant points to as contrary to the trial court's finding either does not support a contrary finding or is relatively weak in the face of the evidence that does support the finding. Moreover, the juvenile court did not abuse its discretion in waiving its jurisdiction and transferring the case to the criminal district court.

ARGUMENT

> **Response to Issue One** – The trial court is not required to include every fact in the record in its transfer order and explain why it based its decision on some facts and rejected others. It is only required to state specifically its reasons *for* waiver of jurisdiction. A court of appeals may then consider the factual sufficiency of those specific findings against the entire record.

In his first issue, Appellant asks this Court to determine whether the trial court failed to "honor § 54.02(h) and *Moon* [*v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014)]" when it failed to include in its transfer order any mention of Appellant's "low intellect, his mental disorders, his Autism Spectrum Disorder, his Bipolar Disorder, or his exceptional conduct when in juvenile custody . . ." (Appellant's Br. 11).

The State understands Appellant's argument to assert that a juvenile court must include in its order not only the reasons *for* waiving its jurisdiction, but also a recitation of all mitigating facts in the record along with an explanation for rejecting those facts in favor of waiver and transfer. But neither section 54.02(h) nor *Moon* require what Appellant asserts.

A. Standard of Review

In 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 factors under a traditional sufficiency of the evidence review. *Moon*,

451 S.W.3d at 47. Then it should review the juvenile court's ultimate waiver decision under and abuse of discretion standard. *Id.*

B. The statutory scheme for waiver of juvenile court jurisdiction

Section 54.02(a) permits a juvenile court to waive its exclusive original jurisdiction and transfer a child to an 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 . . . 14 years of age or older at the time he is alleged to have committed the office, if the offense is . . . a felony of the first 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).

In making its determination to waive jurisdiction and transfer a child to an appropriate district court or criminal district court for criminal proceedings, a juvenile court shall consider:

> (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.

Tex. Fam. Code Ann. § 54.02(f).

Finally, if "the juvenile court waives jurisdiction, it shall state specifically in the order its reasons *for* waiver . . . ." Tex. Fam. Code Ann. § 54.02(h) (emphasis added). The *Moon* court explained that the "legislative purpose" of section 54.02(h) "is not well served by a transfer order so lacking in specifics that the appellate court is forced to speculate as to the juvenile court's reasons *for* finding transfer to be appropriate or the facts the juvenile court found to substantiate those reasons." *Moon*, 451 S.W.3d at 49 (emphasis added).

C. A juvenile court is not required to list all the evidence in the record both in favor of and against its decision to waive jurisdiction.

Neither section 54.02(h), nor *Moon,* requires a juvenile court to include facts in its transfer order that it rejected and then explain why it rejected that evidence, and Appellant cites no explicit authority for that proposition. Section 54.02(h) requires the juvenile court to "state specifically in the [transfer] order its reason *for* waiver." Tex. Fam. Code. Ann. § 54.02(h) (emphasis added). *Moon* then restricts an appellate court's sufficiency review to the facts stated in the order.

Appellant argues that if "the juvenile court is allowed not to include the evidence that weighed against certification in the § 54.02(h) order, then appellate

courts are precluded from a meaningful sufficiency review" (Appellant's Br. at 41). But that's not true. The juvenile court's omission of mitigating evidence from its transfer order does not prevent this Court from considering that evidence in a factual sufficiency review on appeal. Once this Court determines what facts the trial court relied upon to exercise its discretion to waive jurisdiction, it then considers "all of the evidence presented to determine if the juvenile court's findings are so against the great weight and preponderance of the proof as to be clearly wrong or unjust." *In the Matter of L.W.*, No. 05-19-00966-CV, 2020 WL 728431, at *9 (Tex. App.—Dallas Feb. 13, 2020, no pet.) (mem. op.).

Appellant concedes that this Court has recently found a similarly worded transfer order satisfactory under section 54.02(h) (Appellant's Br. 40). *See L.W.*, 2020 WL 728431. He argues, however, that in *L.W.*, "unlike here, there is no indication that the juvenile court was presented with factors that weighed against certification" (Appellant's Br. 40). This is incorrect. After this Court determined that the trial court's transfer order was satisfactory under section 54.02(h), it then evaluated the legal and factual sufficiency of the evidence to support the trial court's transfer order. *Id.* at *11. This Court identified a reference to the juvenile's immaturity describing his behavior in detention as silliness and horseplay caused by immaturity. *Id.* With regard to the juvenile's record and previous history, this Court noted that L.W. did not have any previous history with the juvenile department. *Id.*

at *12. L.W. had been diagnosed with bipolar disorder, but financial constraints caused L.W. him to be inconsistent in taking medication necessary to treat the condition. *Id.* In reviewing the trial court's finding for factual sufficiency, this Court stated that it "must consider *any evidence* contrary to the 'juvenile court's determination and determine if, after weighing *all the evidence*," the juvenile court's finding was not so against the great weight and preponderance of the evidence as to be manifestly unjust.'" *Id.* at 11 (emphasis added). Thus, this Court's statement is broad enough to mean that "any evidence contrary to the juvenile court's determination" includes contrary evidence in the record regardless of whether the trial court mentioned it in the transfer order or not.

Appellant also contends that the "order does not show any deliberation, nor does it show that the juvenile court considered the substantial evidence that showed J.R.'s positive response to a rigidly structured environment" (Appellant's Br. 39). Appellant also argues that "the trial court's order does not show that the Court considered J.R.'s serious-mental-health problems, his Autism Spectrum disorder, his Bipolar Disorder, or his developmental problems" (Appellant's Br. 39). Appellant lists seventeen separate facts that he says the trial court did not consider (Appellant's Br. at 36–38). He sources four of these facts from the "Report of Psychological Evaluation and Diagnostic Study," ten from the "Social Evaluation and Investigative

Report," one from an addendum to that report, and two from the testimony at trial (Appellant's Br. at 36–38).

In support of this argument, Appellant cites to *In the Matter of A.K.*, No. 02-19-00385-CV, 2020 WL 1646899 (Tex. App.—Fort Worth Apr. 2, 2020, no pet.) (mem. op.) (Appellant's Br. 41). *A.K.* involved an as-applied Eighth Amendment challenge to section 54.02. Among other contentions, A.K. argued that under *Moon*, a juvenile court "'need not consider or make a finding on the mitigation evidence that encompasses the sophistication and maturity issues,' implying that the juvenile court did not consider the mitigation evidence" in that case. *Id.* at *8. But the court of appeals rejected this argument and noted that although it found the evidence to support the transfer order factually insufficient, "we cannot conclude from the juvenile court's oral rendition and written order that it did not consider *any* mitigation evidence. For example, the oral rendition and written order both indicate that the juvenile court considered the diagnostic report and the psychologist's evaluation." *Id.*

In this case, the juvenile court's transfer order reflects that it considered "all the testimony, [the] diagnostic study, [the] social evaluation, and [the] full investigation" in determining the State's petition for discretionary transfer (1 C.R. at 96–97). In other words, the trial court explicitly states in its order that it considered

the source of all the evidence Appellant contends that it did not consider (Appellant's Br. at 36–38).

Because neither section 54.02 nor *Moon* requires a juvenile court to set forth every piece of evidence in the record and explain why it accepted some evidence and not others, and because the record reflects that the trial court did consider the mitigating evidence Appellant claims it did not, Appellant's first issue is without merit and should be overruled.

> **Response to Issue Two** – The evidence is factually sufficient to support the juvenile court's sophistication and maturity finding, and the juvenile court did not abuse its discretion in waiving jurisdiction and transferring this case to a criminal district court.

In his second issue, Appellant contends that "the evidence is factually insufficient to support a finding that J.R.'s sophistication and maturity supported the certification" (Appellant's Br. at 45). He also contends that the court's order was an abuse of discretion (Appellant's Br. at 57-59).

A. Standard of Review

In 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 factors under a traditional sufficiency of the evidence review. *Moon*, 451 S.W.3d at 47. Then it should review the juvenile court's ultimate waiver decision under and abuse of discretion standard. *Id.*

"When conducting a factual sufficiency review [of a juvenile court's sophistication and maturity finding], [a court] must consider any evidence contrary to the juvenile court's determination and determine if, after weighing all the evidence, the 'juvenile court's finding that [the defendant] was of sufficient sophistication and maturity to be tried as an adult was not so against the great weight and preponderance of the evidence as to be manifestly unjust." *L.W.*, 2020 WL 728431, at *11.

B. The evidence is factually sufficient to support the juvenile court's sophistication and maturity finding.

In its transfer order, the court made findings that correspond to each factor set out in section 54.02(f), including a sophistication and maturity finding:

- The Court finds that the alleged offense was against a person and property" (1 C.R. at 96). *See id.* § 54.02(f)(1).

- "The Court finds the Respondent is of excessive sophistication and the Respondent's level of maturity is sufficient to be tried as an adult and to aid an attorney in his defense" (1 C.R. at 96). *See id.* § 54.02(f)(2).

- The "previous history of the Respondent indicates a present need for placement of the child in a controlled, structured facility" (1 C.R. at 97). *See id.* § 54.02(f)(3).

- The "prospects of adequate protection of the public and the likelihood of rehabilitation of the child by use of procedures, services, and facilities currently available to the Juvenile Court is remote" (1 C.R. at 97). *See id.* § 54.02(f)(4).

The court also made factual findings, including the following:

- The "Respondent has not accepted or responded to supervision" (1 C.R. at 97) (2 R.R. at 40, 100).

- The "child has not accepted or responded to supervision as he had several violations of probation after release from placement at the Dallas County Youth Village" (1 C.R. at 98) (2 R.R. at 40, 88–89, 100).

- The "child refused to remain away from associates in the community who habitually violate the law as evidenced by the fact that the accomplice in the alleged offense was an accomplice in a previous offense" (1 C.R. at 98) (2 R.R. at 98).

- The "Respondent was on probation for Aggravated Robbery when this offense [was] committed" (1 C.R. at 98) (2 R.R. at 98).

- The "respondent was previously adjudicated of Aggravated Robbery and placed at the Dallas County Youth Village" (1 C.R. at 98) (2 R.R. at 98).

- The "Respondent was on probation at the time the offense was committed and the offense was committed 6 (six) weeks after the Respondent was released from Dallas County Youth Village" (1 C.R. at 98) (2 R.R. at 87).

These six factual findings support the trial court's finding of sophistication and maturity (2 R.R. at 93). *See In the Matter of G.B.*, 524 S.W.3d 906, 919 (Tex. App.—Fort Worth 2017, no pet.) (citing facts involving prior juvenile referrals, violations of juvenile probation, and escalation of criminal conduct as supporting a finding of sophistication and maturity). Each of these findings is supported by record evidence. Both Detective Valdez and probation officer Wright testified that Appellant had not accepted to or responded to supervision (2 R.R. at 40, 100). Wright testified about Appellant's violations of probation after release from the Dallas County Youth Village (2 R.R. at 88–89), his association with accomplices from previous offenses (2 R.R. at 98), and the facts that, when the offense was committed, Appellant was on probation for Aggravated Robbery and had been released from the Dallas County Youth Village for less than six weeks (2 R.R. at 86–87, 98).

C. Appellant's "contrary evidence" isn't.

Appellant points to several facts in the record that, according to him, establish he is "an immature and unsophisticated youth who is far from prepared for the

responsibilities of adulthood" (Appellant's Br. 48–50). Some of these facts either do not support Appellant's position or support the opposite proposition.

The purpose of an inquiry into the mental ability and maturity of the juvenile is to determine whether he appreciates the nature and effect of his voluntary actions and whether they were right or wrong. *Moon*, 451 S.W.3d at 50 n. 87. In light of this, the facts that Appellant points to do not establish a lack of sophistication or maturity.

Social Media Chats and Posts

- "Discussion of the alleged offense in publicly accessible 'Instagram chat[s]'" (Appellant's Br. 48 citing 2 R.R. at 18).

- "Posting a news article concerning the shooting to a publicly accessible page on the social media website 'Instagram'" (Appellant's Br. 48 citing 2 R.R. at 24).

This evidence does not provide a basis for assessing Appellant's sophistication or maturity. We live in a world where sharing information on publicly accessible social media websites and applications has become a way of life. Evidence from social media accounts is common in adult criminal prosecutions and does not suggest a lack of sophistication and maturity in the context of juvenile transfer proceedings. *See McDade v. State*, ---S.W.3d---, 2020 WL 6440498 (Tex. App.—Dallas Nov. 3, 2020) (State offered character evidence consisting of rap songs featuring the defendant and social media photographs depicting the defendant); *Mohamed v. State*, No. 05-15-01329-CR, 2016 WL 7163848 (Tex.

App.—Dallas Dec. 6, 2016, no pet.) (mem. op., not designated for publication) (State offered a video file posted to an Instagram account); *Ex parte Comminey*, No. 05-19-00325-CR, 2019 WL 2912239 (Tex. App.—Dallas July 8, 2019, no pet.) (mem. op., not designated for publication) (State admitted photographs printed from Appellant's Instagram account).

Plans to Destroy Evidence

- "Proposing to burn the grandmother's car that was used in the shooting" (Appellant's Br. 48 citing 2 R.R. at 33).

Actions taken to conceal detection in a crime tends to show increased sophistication and maturity, not less. *See In the Matter of K.M.*, No. 01-20-00121-CV, 2020 WL 4210493, *11 (Tex. App.—Houston [1st Dist.] July 23, 2020, no pet.) (mem. op.) (noting concealment of participation in a crime as a fact to support a trial courts determination of sophistication and maturity). Moreover, concealing evidence of a crime is some indication that a person appreciates that their conduct was wrong. *Hill v. State*, No. 05-18-01011-CR, 2020 WL 2124520, at *6 (Tex. App.—Dallas May 5, 2020, no pet.) (mem. op., not designated for publication) (noting attempts to destroy or conceal evidence is evidence of a culpable mental state for murder).

Conduct in the Juvenile System

- "J.R. responded exceptionally well to a highly structure[d] environment and was placed in the Honors dorm while in Juvenile Detention" (Appellant's Br. 49 citing 1 C.R. at 35).

- "J.R. 'maintained positive attitude, since being in detention. He has continued to display positive behavior and has earned full points each shift. The subject currently lives in the Honors Dorm'" (Appellant's Br. 49 citing 1 C.R. at 44).

- "J.R. 'did not commit any new law violations while completing the Deferred Prosecution Program'" (Appellant's Br. 49 citing 1 C.R. at 43).

- "J.R. 'consistently earned all points and complied with the rules of the facility. He learned to accept responsibility for his actions by accepting consequences and redirection. [J.R.] completed [courses in] Family Training, Concord, Anger Management, Drug Group, and Gang Intervention." But that as soon as J.R. returned home and was no longer in the structured environment he relapsed and fell back into his bad habits (Appellant's Br. 49 citing 1 C.R. at 43).

Appellant contends that the "enormous difference between his exceptional conduct while in rigidly structured environments and his troubling conduct while in unstructured environments is attributable to his lack of sophistication and maturity" (Appellant's Br. at 54). He claims this connection is "predictable" and cites cases expounding on the immaturity of the adolescent brain (Appellant's Br. 55–56). *See Miller v. Alabama*, 567 U.S. 460 (2012); *NRA of Am. v. Bureau of Alcohol*, 700 F.3d 185 (5th Cir. 2012); *Khalifa v. Cash*, 594 F. App'x 339 (9th Cir. 2014); *Roper v. Simmons*, 543 U.S. 551 (2005), *Kelly v. Brown*, 851 F.3d 686 (7th Cir. 2017). But good behavior while incarcerated, in any form, should not cut against a finding of sophistication and maturity. Additionally, the final fact, that "J.R. . . . relapsed and fell back into his bad habits" as soon as he was released from detention could lead to an inference of sophistication. The juvenile court could have concluded from these facts that Appellant was sophisticated enough to follow through with what he needed

to do only long enough to be released from detention—in other words, that he is manipulative.

Appellant's Mental Health Status

- "That in November 2020, that J.R. had to be taken to Hickory Trails Health Center 'for stabilization'" (Appellant's Br. 49 citing 1 C.R. at 44).

- "That around the time of the shooting J.R.'s medications were not proper (Appellant's Br. 49 citing 1 C.R. at 44).

- "J.R. suffers from hallucinations when his medications are not precisely administered" (Appellant's Br. 49 citing 1 C.R. at 35).

- "J.R.'s exceptionally low intelligence tests (including scores in the bottom-four percent and a best score of in the bottom thirty-fourth percentile) (Appellant's Br. 50 citing 1 C.R. at 36, 38).

- "The Social Evaluation's conclusion that J.R. has 'below-average intelligence with no apparent physical or mental impairments'" (Appellant's Br. 50 citing 1 C.R. at 43).

- "J.R. suffers from depression and feels the need to cry but cannot" (Appellant's Br. 50 citing 1 C.R. at 37).

In the absence of additional evidence showing how any of these issues impact Appellant's ability to evaluate or process information, they are of low evidentiary value. *See In the Matter of A.J.F.*, 588 S.W.3d 322, 331 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (noting that the mere existence of "psychological issues" does not automatically mean that those issues impact a juvenile's ability to evaluate and process information). The only information concerning their impact on Appellant's ability to evaluate and process information comes in the form of a comparative

assessment that "his abilities to comprehend and reason with novel visual stimuli are significantly more developed than his abilities to apply information from his education and upbringing" (1 C.R. at 36). But this is not coupled with an objective standard to explain its significance in this context.

Association with Older Individuals

- "J.R.'s problems occur when he associates with older 'friends' who 'encourage[] negative behavior and the smoking of marijuana" (Appellant's Br. 50 citing 1 C.R. at 46).

Association with peers of an older age can indicate a higher level of sophistication and maturity for a person's age, not lower. *See Price v. State*, No. 05-01-00854-CR, 2002 WL 1131077, at *5 (Tex. App.—Dallas May 30, 2002, no pet.) (not designated for publication) (considering probation officer testimony of association with older age peers as indicating above average sophistication and maturity in a factual sufficiency analysis).

D. The evidence supporting the trial court's sophistication and maturity finding is not so against the great weight and preponderance of the evidence as to be manifestly unjust.

The juvenile court made findings that Appellant had not accepted or responded to supervision, refused to remain away from associates in the community who habitually violate the law, was on probation for aggravated robbery at the time the crime was committed, and was previously. As previously stated, these findings support a trial court's finding of sophistication and maturity. *See G.B.*, 524 S.W.3d

at 919 (citing facts involving prior juvenile referrals, violations of juvenile probation, and escalation of criminal conduct as supporting a finding of sophistication and maturity).

Appellant argues that the evidence in the record showing Appellant's social media posts, plans to destroy evidence, conduct while in the juvenile system, his mental health status, and association with older individuals overwhelms the trial court's findings to the contrary. But as explained above, much of the evidence Appellant relies upon does not support his position.

The only other evidence in the record that weighs against a sophistication and maturity finding is the fact that the juvenile probation department's social evaluation reflects that Appellant "has not demonstrated the ability to live independently of adult supervision" and "is reliant on his mother and grandparents for his basic needs" (1 C.R. at 46). But this, standing alone, does not make the trial court's finding so against the great weight and preponderance of the evidence as to make the trial court's finding obviously unjust.

E. The trial court did not abuse its discretion in waiving its jurisdiction and transferring Appellant to adult court.

Although Appellant's issue only complains that a single finding is factually insufficient, Appellant's sophistication and maturity, he also asks this Court to conduct a full *Moon* analysis and determine whether the trial court also abused its discretion in waiving its jurisdiction (Appellant's Br. at 57–61).

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, an 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." *Moon,* 451 S.W.3d at 37. "In other words, was its transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria?" *Id.* Moreover, "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.*

Appellant has not challenged the sufficiency of the evidence to support the juvenile court's section 54.02(f) findings except for that one dealing with sophistication and maturity which has already been addressed.

The Court found that the offense was one against both a person and property. Not only was Gloria Roque killed, but the testimony at the transfer hearing shows that there was damage to Roque's vehicle and damage to a house adjacent to Roque's (2 R.R. at 37–38). Additionally, because the offense was committed against a person, it is given more weight in favor of transfer than had it only been an offense against property. *See* Tex. Fam. Code Ann. § 54.02(f)(1).

The juvenile court also found that Appellant's previous history indicates a need for placement in a controlled structured facility. The juvenile court found that Appellant had a prior referral and placement on probation for Aggravated Robbery and had several violations of probation after release from placement at the Dallas County Youth Village. Juvenile probation officer Shannon Wright testified to as much during the transfer hearing (2 R.R. at 83–89).

The juvenile court finally found that the prospects for adequate protection of the public and the likelihood of rehabilitation of the child using procedures, services, and facilities currently available to the juvenile court was remote (1 C.R. at 97). The juvenile court found that Appellant's conduct was willful and violent and that a firearm was used during the commission of the offense (1 C.R. at 97). The Court further found that Appellant had not accepted or responded to supervision after release from placement at the Dallas County Youth Village (1 C.R. at 98). Appellant was on juvenile probation when he committed the offense and he committed the offense less than six weeks after being released from the Dallas County Youth Village (1 C.R. at 98).

The juvenile court considered the testimony of Detective John Valdez, Probation Officer Shannon Wright, and TJJD/TDCJ liaison Tami Coy. The Court further considered the diagnostic study, social evaluation and full investigation of the case (1 C.R. at 96–97).

Based on this record, the trial court's decision to transfer was not arbitrary and was not made without reference to guiding rules or principles. The juvenile court did not abuse its discretion in waiving jurisdiction and Appellant's second issue should be overruled.

PRAYER

The State prays this Court affirm the juvenile court's waiver of jurisdiction and order to transfer to a criminal district court.

Respectfully submitted,

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