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**No. PD-1215-13**

In the  
Court of Criminal Appeals  
At Austin

◆  
**No. 01-10-00341-CR**

In the  
Court of Appeals  
For the  
First District of Texas  
At Houston

◆  
**No. 1196446**

In the 178th District Court  
Of Harris County, Texas

◆  
**CAMERON MOON**

*Appellant*

V.

**THE STATE OF TEXAS**

*Appellee*

◆  
STATE'S BRIEF ON DISCRETIONARY REVIEW  
◆

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**ORAL ARGUMENT REQUESTED**

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## **STATEMENT REGARDING ORAL ARGUMENT**

Since this Court granted oral argument in this case, the State looks forward to discussing the unique issues in this case with the Court.

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## **TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:**

### **STATEMENT OF THE CASE**

The State filed a petition alleging appellant, a juvenile, engaged in delinquent conduct by intentionally killing Christopher Seabreak.<sup>1</sup> (CR Supp II 34).<sup>2</sup> The State subsequently filed a motion asking the juvenile court to waive its jurisdiction of appellant and certify him to stand trial as an adult in a criminal district court. (CR Supp II 32-33). Following a hearing on the State's motion, the juvenile judge granted the motion and transferred appellant's case to the 178<sup>th</sup> District Court. (CR 3-4; RR I 128-129).<sup>3</sup> Appellant was convicted for the offense of murder and sentenced to 30-years confinement. (CR 2, 130).

### **STATEMENT OF THE PROCEDURAL HISTORY**

On direct appeal, appellant argued the juvenile judge erred in waiving jurisdiction over him and certifying him to stand trial as an adult. On July 30, 2013, a panel of the First Court of Appeals issued a published opinion in which it

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<sup>1</sup> The appellate court's opinion identifies the victim as "Christopher Seabrook." The victim's surname is actually "Seabreak." (CR 2).

<sup>2</sup> The appellate record contains three volumes of the clerk's record.

"CR" will refer to the clerk's record filed on June 18, 2010.

"CR Supp" will refer to the supplemental clerk's record filed on December 2, 2010.

"CR Supp II" will refer to the second supplemental clerk's record filed on March 2, 2012.

<sup>3</sup> "RR I" refers to the reporter's record for the certification hearing conducted on December 17, 2008, which bears the title "volume 1 of 1 volume." The 14 volumes of the reporter's record generated by the trial conducted in the 178<sup>th</sup> District Court will be referred to by the volume numbers appearing on the respective title pages.



agreed that the juvenile judge erred by transferring appellant's case to a criminal district court. *Moon v. State*, 410 S.W.3d 366, 378 (Tex. App.--Houston [1st Dist.] 2013, pet. granted). The court of appeals determined that the district court lacked jurisdiction over this case and, therefore, vacated its judgment and dismissed the case. *Id.* The court concluded that this case remains pending in the juvenile court. *Id.* No motion for rehearing was filed. This Court granted the State's petition for discretionary review on December 18, 2013.

### **FIRST QUESTION PRESENTED FOR REVIEW**

What is the correct appellate standard for reviewing the sufficiency of the evidence to support a juvenile judge's decision to waive jurisdiction over a juvenile offender - the civil sufficiency standard or the criminal sufficiency standard?

### **Argument and analysis**

In its evaluation of the sufficiency of the evidence to support the juvenile court's ruling to waive jurisdiction over appellant, the court of appeals reviewed the factual and legal sufficiency of the evidence under the appellate standards used in civil cases. *Moon*, 410 S.W.3d at 370-71 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.--Tyler 2003, no pet.)). The court of appeals erred in using the civil standards since relevant legislative amendments and recent case law demonstrate that the proper sufficiency standard of review is the one used in criminal cases. The determination

of the proper standard of review is particularly important in this case because the appellate court below found the evidence legally sufficient, but factually insufficient, to support one of the juvenile judge's findings supporting his waiver of jurisdiction.

Before discussing and analyzing this standard-of-review issue, however, it may be helpful to place the issue in the proper context by briefly examining: (1) the substantive law relating to juvenile certifications; (2) the juvenile judge's fact findings and ruling in this case; and (3) the appellate court's analysis of the sufficiency of the evidence to support these fact findings and ruling.

### **The applicable law for certification hearings**

When the State petitions a juvenile court to waive jurisdiction over a juvenile offender and certify him to stand trial as an adult, the juvenile court must conduct a hearing and consider transferring the juvenile for criminal proceedings. TEX. FAM. CODE ANN. § 54.02 (b), (c) (West Supp. 2012). The juvenile court may waive its exclusive original jurisdiction and transfer a juvenile to a criminal district court if: (1) the juvenile is alleged to have committed a felony offense; (2) the juvenile was at least 14 years old when he committed the offense if it was a first-degree felony (as in this case); and (3) "after a full investigation and hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the alleged offense and that because of the seriousness

of the alleged offense or the background of the child the welfare of the community requires criminal proceedings.” TEX. FAM. CODE ANN. § 54.02(a) (West Supp. 2012).

In making a determination on the third requirement, the court must consider:

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

TEX. FAM. CODE ANN. § 54.02 (f) (West Supp. 2012). If the juvenile court waives jurisdiction, it must state specifically in its order its reasons for waiver. TEX. FAM. CODE ANN. § 54.02 (h) (West Supp. 2012).

### **The juvenile court’s order and findings**

Following a hearing conducted pursuant to section 54.02, the juvenile court waived its jurisdiction over appellant. (CR 3-4). The waiver order states that, prior to the hearing, the court ordered and obtained a diagnostic study, social evaluation, and full investigation of appellant, his circumstances, and the circumstances of the alleged offense. (CR 3). Following a full investigation, the court concluded that: (1) appellant was charged with the felony offense of murder; (2) appellant was above the minimum age required for certification; and (3) there was probable cause

to believe appellant committed the alleged murder and that because of the seriousness of the offense, the welfare of the community required criminal proceedings. (CR 3). In making this determination, the court confirmed that it had considered the four factors listed in section 54.02(f). (CR 3).

The court's order further reflects that the judge "specifically finds that [appellant] is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by [appellant], to have aided in the preparation of his defense and to be responsible for his conduct; that the offense allege[d] to have been committed was against the person of another; and the evidence and reports heretofore presented to the court demonstrate to the court that there is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of [appellant] by use of procedure, services, and facilities currently available to the Juvenile Court." (CR 3-4).

In addition to these written findings, the judge also announced oral findings on the record. He found that, due to appellant's age, the juvenile system would not have sufficient time to "work with" him, an apparent reference to the lack of an opportunity for rehabilitation. (RR I 129-130). The judge further found that the seriousness of the offense rendered the case appropriate for a criminal district court, noting "this is as serious as it gets in our court." (RR I 130).

The judge also observed that appellant was actually on probation for another criminal offense, criminal mischief, when he committed the murder. (RR I 130). The judge found this circumstance to be an aggravating feature that reflected poorly on the rehabilitative effectiveness of the juvenile system in appellant's particular case. (RR I 130).

### **The appellate court's determination of the sufficiency of the evidence**

The court of appeals noted that the juvenile judge's waiver order states that his waiver of jurisdiction was supported by the first, second, and fourth factors under section 54.02(f). *Moon*, 410 S.W.3d at 373. The appellate court then analyzed the sufficiency of the evidence, under the civil standard of review, to support the juvenile judge's findings relating to these three factors.

#### **Second factor**

Regarding the second factor, the court of appeals ruled there was "no evidence" supporting the juvenile court's finding that appellant was "of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by [appellant], to have aided in the preparation of his defense and to be responsible for his conduct." (CR 3). *Moon*, 410 S.W.3d at 375. As such, the appellate court found the evidence supporting the juvenile court's finding regarding appellant's sophistication and maturity was legally insufficient. *Id.*

#### Fourth factor

The fourth factor considers the prospect of adequate protection of the public and the likelihood of the juvenile's rehabilitation. TEX. FAM. CODE ANN. § 54.02 (f)(4) (West Supp. 2012). At the time of the murder, appellant was already on probation for having committed the misdemeanor offense of criminal mischief. (RR I 71; Petitioner's exhibit 1). He also committed four infractions while housed in a juvenile facility after the murder; descriptions of three of the infractions mention physical altercations or fights. (RR I - Petitioner's exhibit 1). Based on this evidence, the court of appeals found the evidence was legally sufficient to support the juvenile judge's determination that "there is little, if any, prospect of adequate protection of the public and the likelihood of reasonable rehabilitation of [appellant] by use of procedures, services, and facilities currently available to the Juvenile Court." *Moon*, 410 S.W.3d at 377. (CR 4).

However, applying the civil standard for factual sufficiency review, the court of appeals determined the evidence was factually insufficient to support the juvenile judge's finding on the fourth factor. *Id.* at 377-78. The court explained that appellant's prior misdemeanor offense was non-violent and the report listing appellant's four infractions fails to detail the circumstances of his misconduct. *Id.* at 377. The appellate court also noted that a psychiatrist had determined that appellant has little inclination for violence or aggressive behavior and is "at little

risk” to harm others. *Id.* at 376. The appellate court also considered testimony indicating that appellant was amenable to treatment. *Id.* at 376-77.

#### First factor

The first factor considers whether the offense was committed against a person or property. TEX. FAM. CODE ANN. § 54.02 (f)(1) (West Supp. 2012). The court of appeals found the first factor was the only factor that weighed in favor of transferring appellant to district court. *Moon*, 410 S.W.3d at 378. Unlike its consideration of the other two factors, however, the court did not discuss the facts of the case as they relate to this factor. There was no analysis of the manner in which the murder was committed. *Id.*

#### The appellate court’s conclusion

Based on its sufficiency evaluations and determinations relating to these three factors, the court of appeals held that the juvenile judge erred when he certified appellant as an adult and transferred his case to the district court. *Moon*, 410 S.W.3d at 378. In other words, the court of appeals ruled that the evidence supporting the juvenile judge’s evaluation of the section 54.02(f) factors was insufficient to support the judge’s ultimate determination under section 54.02(a) that “because of the seriousness of the offense, the welfare of the community requires criminal proceedings.” TEX. FAM. CODE ANN. § 54.02 (a) (West Supp. 2012). (CR 3).

## Analysis

The court of appeals reviewed the juvenile judge's rulings under the dual sufficiency-of-the-evidence standards used in civil cases. Namely, the court reviewed the legal sufficiency by "credit[ing] evidence favorable to the challenged finding and disregard[ing] contrary evidence unless a reasonable fact finder could not reject the evidence." *Moon*, 410 S.W.3d at 371 (citing *City of Keller*, 168 S.W.3d at 827; *Faisst*, 105 S.W.3d at 12). It reviewed the factual sufficiency by considering "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*, 410 S.W.3d at 371 (citing *Faisst*, 105 S.W.3d at 12).

At one time, the civil sufficiency standard of review may have been the proper standard for reviewing the sufficiency of the evidence to support a juvenile judge's decision to waive jurisdiction of a juvenile. Due to statutory amendments, however, the criminal standard is now the proper standard.

In *In re J.J.*, for example, the court observed that juvenile transfer orders "are generally treated the same as other civil appeals." *In re J.J.*, 916 S.W.2d 532, 535 (Tex. App.--Dallas 1995, no writ).<sup>4</sup> The court, therefore, concluded that "the evidentiary standards applied in civil cases are applied to discretionary [juvenile]

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<sup>4</sup> In determining that the civil standard of sufficiency review was appropriate for reviewing the juvenile judge's rulings, the court below relied on *Faisst*, which in turn relied on *J.J.*, for this



transfer appeals.” *Id.* To support its determination that the civil standard was appropriate for reviewing juvenile transfer orders, the court cited the then-existing version of section 56.01 of the Texas Family Code. *Id.*

At that time, section 56.01(a) provided that an appeal from an order of a juvenile court is carried out as in civil cases generally. *See* Act of May 23, 1991, 72<sup>nd</sup> Leg., R.S., ch. 680, § 1, 1991 Tex. Gen. Laws, 2466. Section 56.01(c) provided that an appeal may be taken by a juvenile from an order entered under one of the five following family code statutes:

- (1) section 54.02 (relating to transfer of child to district court);
- (2) section 54.03 (relating to delinquent conduct determinations);
- (3) section 54.04 (relating to juvenile dispositions);
- (4) section 54.05 (relating to modifications of previous juvenile dispositions);
- (5) chapter 55 (relating to commission of juvenile to mental facility).

Since section 54.02 was specifically identified in section 56.01, which listed the family code provisions that were to be treated “as in civil cases generally,” it made sense to apply the civil sufficiency standard to appellate examinations of the sufficiency of the evidence to support a juvenile judge’s findings and rulings under section 54.02.

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proposition. *Moon*, 410 S.W.3d at 371. As will be demonstrated, reliance upon *J.J.* for this proposition is no longer proper due to relevant statutory amendments and additions.

However, section 56.01(c) was amended in 1995 and it no longer provides for appeals of section 54.02 transfers from juvenile court to district court. *Ex parte Venegas*, 116 S.W.3d 160, 163 (Tex. App.--San Antonio 2003, no pet.); Acts 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 48, 1995 Tex Gen. Laws, 2546. The amendment to section 56.01(c) expressly deleted section 54.02 orders from the list of orders from which an appeal may be taken, while sections 54.03, 54.04, 54.05, and chapter 55 remained on the list. *Id.*; TEX. FAM. CODE ANN. § 56.01 (c) (West Supp. 2012).

Contemporaneous with the 1995 amendment to section 56.01(c) of the Texas Family Code, the legislature added article 44.47 to the Texas Code of Criminal Procedure. Acts 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 85, 1995 Tex Gen. Laws, 2584. This statute authorizes appeals from certification orders under section 54.02, but provides such an appeal may be taken only in conjunction with the appeal of a conviction of the offense for which the defendant was transferred to criminal court. *Id.*; TEX. CODE CRIM. PROC. ANN. art. 44.47(a), (b) (West 2006). Significantly, when the legislature transferred the right of appeal from section 54.02 orders from the family code to code of criminal procedure, it announced that a section 54.02 appeal “is a criminal matter and is governed by [the Texas Code of Criminal Procedure] and the Texas Rules of Appellate Procedure that apply to a criminal case.” Acts 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 85, 1995 Tex Gen. Laws, 2584; TEX. CODE CRIM. PROC. ANN. art. 44.47(c) (West 2006); *see also In the Matter of*

*M.A.V.*, 88 S.W.3d 327, 331 n.2 (Tex. App.--San Antonio 2002, no pet.) (discussing 1995 amendments and indicating criminal sufficiency standards should apply to cases occurring after the effective date of the amendments).

Now that a section 54.02 appeal is considered a “criminal matter,”<sup>5</sup> rather than one to be treated as “in civil cases generally,”<sup>6</sup> appellate courts recognize that a juvenile judge’s findings under section 54.02 “are reviewed by the same standards applicable generally to legal and factual sufficiency review *in criminal cases.*” *Bleys v. State*, 319 S.W.3d 857, 861 (Tex. App.--San Antonio 2010, no pet.) (*italics added*). “In determining whether the trial court abused its discretion in certifying a juvenile defendant as an adult and transferring juvenile proceedings to a criminal court, the reviewing court considers the sufficiency of the evidence: the trial court’s findings of fact are reviewed by the same standards applicable generally to legal and factual sufficiency review *in criminal cases.*” 31 Tex. Jur.3d, *Delinquent Children* § 276 (2013) (*italics added*).

Furthermore, applying the criminal standard of sufficiency review to juvenile transfer orders would be consistent with other similar areas of juvenile law that incorporate the criminal standard. “Although juvenile proceedings are civil matters, the standard applicable in criminal matters [*Brooks v. State*] is used to assess the sufficiency of the evidence underlying a finding that a juvenile engaged

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<sup>5</sup> TEX. CODE CRIM. PROC. ANN. art. 44.47(c) (West 2006).

in delinquent conduct.” *In re R.R.*, 373 S.W.3d 730, 734 & n.2 (Tex. App.--Houston [14th Dist.] 2012, pet. denied); *In re A.O.*, 342 S.W.3d 236, 239 (Tex. App.--Amarillo 2011, pet. denied); *see also In re B.L.D.*, 113 S.W.3d 340, 351 (Tex. 2003) (recognizing “juvenile delinquency cases to be ‘quasi-criminal’ because” they are guided to some extent by the code of criminal procedure); *In re C.E.S.*, 400 S.W.3d 187, 194 (Tex. App.--El Paso 2013, no pet.) (refusing to conduct factual sufficiency review in juvenile case in light of *Brooks*); TEX. FAM. CODE ANN. § 54.03(f) (West Supp. 2012) (applying criminal burden-of-proof standard of “beyond a reasonable doubt” to juvenile adjudication hearings).

Since the criminal sufficiency standard of review is the appropriate standard for an appellate court to review a juvenile judge’s certification ruling, the appellate court below erred in applying the civil standard. Specifically, the court should not have employed the two different sufficiency standards used in civil cases, which resulted in the court finding the evidence legally sufficient, but factually insufficient, with regard to one of the juvenile judge’s findings. *Moon*, 410 S.W.3d at 377-78.

Rather, the court below should have applied the criminal sufficiency standard of review announced in *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). According to *Brooks*, a single standard of review, the familiar *Jackson*

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<sup>6</sup> TEX. FAM. CODE ANN. § 56.01(a) (West Supp. 2012).

*v. Virginia* standard<sup>7</sup>, is used to review both factual and legal sufficiency claims. *Id.*; *Infante v. State*, 404 S.W.3d 656 (Tex. App.--Houston [1st Dist.] 2012, no pet.) (“We review the factual sufficiency of the evidence under the same appellate standard of review as that for legal sufficiency.”). Accordingly, this case should be remanded to the court of appeals so that it may consider the sufficiency of the evidence under the proper appellate standard of review.

### **SECOND QUESTION PRESENTED FOR REVIEW**

Having determined that the evidence is sufficient to support only one of the trial judge’s three findings regarding the section 54.02(f) factors, did the court of appeals err by failing to consider or analyze whether that single factor is nevertheless sufficient, alone, to support the judge’s transfer order? (CR 3-4)

### **Argument and analysis**

In the order waiving jurisdiction over appellant, the juvenile judge affirmatively found that three of the four factors listed in section 54.02(f) support appellant’s transfer to a criminal district court. (CR 3-4). TEX. FAM. CODE ANN. § 54.02(f)(1),(2),(4) (West Supp. 2012). The court of appeals reviewed the sufficiency of the evidence supporting each of these three factors and determined

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<sup>7</sup> This standard requires an appellate court to review the sufficiency of the evidence by considering all of the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

the evidence was insufficient to support the findings relating to subsections (f)(2)<sup>8</sup> and (f)(4)<sup>9</sup>, but found the evidence sufficient to support the trial judge’s finding relating to subsection (f)(1)<sup>10</sup>. *Moon*, 410 S.W.3d at 374-78.

Having found the evidence sufficient to support the judge’s finding under one of the four section 54.02(f) factors, the court of appeals failed to consider or analyze whether this factor was sufficient, standing alone, to support the trial judge’s ultimate determination under section 54.02(a)(3) that the seriousness of the alleged offense requires criminal proceedings for the community’s welfare. (CR 3). Rather, the court of appeals simply concluded: “Under these circumstances, we hold that the juvenile court abused its discretion when it certified [appellant] as an adult and transferred his case to the district court.” *Moon*, 410 S.W.3d at 378. The court of appeals seemingly simply presumed that a single factor could not support a transfer order.

The court of appeals should have considered whether the single factor upon which it found sufficient supporting evidence was sufficient to support the transfer order. Although a juvenile court must consider all four factors listed in section 54.02(f), it is not required to find that each factor has been established, nor is it required to give each factor equal weight. *Bleys*, 319 S.W.3d at 862. The juvenile

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<sup>8</sup> The “sophistication and maturity” factor.

<sup>9</sup> The “adequate protection of the public and rehabilitation” factor.

<sup>10</sup> The “offense against person or property” factor.

court may order a transfer “on the strength of *any* combination” of the factors. *Hidalgo v. State*, 983 S.W.2d 746, 754 n.16 (Tex. Crim. App. 1999) (italics added). Therefore, the court of appeals should have analyzed whether the subsection (f)(1) factor was sufficient to support the transfer order.

At one time, there were six factors under section 54.02(f) - the current four factors plus: (1) whether the alleged offense was committed in an aggressive and premeditated manner; and (2) whether there is evidence on which a grand jury may be expected to return an indictment. Act of June 16, 1973, 63<sup>rd</sup> Leg., ch. 544, §54.02(f), 1973 Tex. Gen. Laws, 1477.<sup>11</sup> These two additional factors both relate to the circumstances of the alleged offense.

Courts interpreting the sufficiency of the evidence to support a transfer order under the old six-factor system determined that the evidence can be sufficient even when the evidence is insufficient as to three of those factors; notably three of the four modern-day factors: (1) sophistication and maturity; (2) previous history of the child; and (3) adequate protection of public and rehabilitation prospects. *In the Matter of C.C.*, 930 S.W.2d 929, 933-34 (Tex. App.--Austin 1996, no writ); *Casiano v. State*, 687 S.W.2d 447, 449 (Tex. App.--Houston [14th Dist.] 1985, no writ); *In re Q.D.*, 600 S.W.2d 392, 394-95 (Tex. App.--Fort Worth 1980, no writ). In other words, these courts found the evidence sufficient to support a transfer

order based solely on the strength of the circumstances of the alleged offense. *Id.*; *In re C.C.G.*, 805 S.W.2d 10, 15-16 (Tex. App.--Tyler 1991, writ denied) (evidence sufficient to support transfer based on only two of six factors – crime was an offense against a person and there was evidence that could support a grand jury indictment).

Similarly, in this case, the court of appeals should have considered the sufficiency of the evidence to support the transfer order based on the strength of the lone factor relating to the circumstances of the alleged offense, despite any evidentiary insufficiency of the other three factors. After all, by analogy, in the capital murder context, a defendant can be found to be a future danger based on the facts of the offense alone, a finding which then may lead to the imposition of a death sentence. *Freeman v. State*, 340 S.W.3d 717, 725 (Tex. Crim. App. 2011); TEX. CODE CRIM. PROC. ANN. art. 37.071 (West Supp. 2012). If the circumstances of the offense, alone, may be sufficient to impose a death sentence, the circumstances of the alleged offense, alone, potentially should be sufficient to determine that the “seriousness of the offense alleged” imperils “the welfare of the community.” TEX. FAM. CODE ANN. § 54.02 (a)(3) (West Supp. 2012). And this determination should be permitted by an analysis of the section 54.02(f)(1) factor,

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<sup>11</sup> The statute was amended in 1995 to reduce the factors to the current four. Act of May 31, 1995, 74<sup>th</sup> Leg., ch. 262, § 34, 1995 Tex. Gen. Laws, 2533.



the factor that permits a consideration of the manner in which the alleged offense was committed.

To be clear, the State is not suggesting that all juvenile murder cases require certification simply because murder is a serious offense. Murders can vary greatly factually, depending on the manner in which the murder is committed, the context in which it is committed, and the motivation for its commission. Therefore, the State is arguing that the *particular circumstances* under which a juvenile commits a murder may be sufficient, alone, to warrant a transfer, but not necessarily always.

In this case, for example, the circumstances reveal a particularly wanton murder, which warrants a transfer order. Appellant was charged with murder, but the record reflects that he committed the murder in the course of an attempted robbery. (RR I 14, 32). Such conduct constitutes a capital murder, the most serious offense in the penal code. TEX. PEN. CODE ANN. § 19.03(a)(2) (West Supp. 2012); TEX. PEN. CODE ANN. § 12.31 (West 2011). The seriousness of the offense is exacerbated by the fact that it was committed in the context of drug transaction. (RR I 4, 32). It is well settled and well known that weapons and violence are associated with the drug trade. *Martinez v. State*, 236 S.W.3d 361, 370 (Tex. App.-Fort Worth 2007, pet. dismiss'd, untimely filed). Furthermore, appellant personally shot the victim, he was not a mere party to the offense. And he shot the victim multiple times, continuing to shoot even after the victim began to run away. (RR I

6, 12-13). Appellant actually exited the vehicle and pursued the victim as he fled, shooting him in the back. (RR I 5-6, 12-13). Appellant engaged in this conduct in a grocery store parking lot, indicating he placed innocent bystanders at risk with his multiple gunshots in a public area. (RR 2, 46) Therefore, not only was the type of offense committed extremely serious, but the particular manner in which appellant committed it illustrates the serious nature of his conduct.

Accordingly, this case should be remanded to the court of appeals so that the court may consider whether the sole factor that it found to be supported by sufficient evidence is itself sufficient to support the juvenile judge's transfer order. *Cf. A.S. v. Tex. Dep't of Family & Protective Servs.*, 394 S.W.3d 703, 714 (Tex. App.--El Paso 2012, no pet.) (in context of parental rights termination, a nine-factor test is used to gauge the child's best interest; however, sufficient evidence of a *single factor* may be sufficient to support a finding that termination is in child's best interest); *In re M.R.J.M.*, 280 S.W.3d 494, 507 (Tex. App.--Fort Worth 2009, no pet.).

### **THIRD QUESTION PRESENTED FOR REVIEW**

May an appellate court refuse to consider a juvenile judge's oral finding on a section 54.02(f) factor when determining whether the evidence is sufficient to support a transfer order? (RR 130).

### **Argument and analysis**

In his written order waiving jurisdiction, the juvenile judge made specific written findings on three of the four factors listed in section 54.02(f). (CR 3-4). There is no written finding on appellant’s “record and previous history.” TEX. FAM. CODE ANN. § 54.02(f)(3) (West Supp. 2012).

At the certification hearing, however, defense counsel asked the judge to make findings supporting his decision to transfer appellant. (RR 129). The judge orally listed a number of factors supporting his ruling, including the fact that, at the time of the murder, appellant was actually on probation for having committed another offense. (RR 130). But the judge did not include this finding relating to appellant’s “record and previous history” in his written findings.

Absent a written finding on the “record and previous history” factor, the court of appeals presumed that the juvenile judge did not find that this factor supported the waiver of jurisdiction. *Moon*, 410 S.W.3d at 373 n.10, 378 n.15. Despite the juvenile judge’s failure to reduce this oral finding to writing in the order as required by statute<sup>12</sup>, the judge’s oral pronouncement of findings clearly indicates he made a finding on appellant’s criminal history and considered it in his ruling. (RR 130).

Since the trial judge clearly made this finding and relied on it in making his ultimate ruling, the court of appeals should have consider this factor as well. *In re*

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<sup>12</sup> TEX. FAM. CODE ANN. § 54.02(h) (West Supp. 2012).

*J.C.C.*, 952 S.W.2d 47, 49 (Tex. App.--San Antonio 1997, no writ) (reviewing court considered juvenile judge's oral findings under section 54.02 despite requirement that finding be specifically stated in order); *Cf. Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004) ("When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls.").

#### **FOURTH QUESTION PRESENTED FOR REVIEW**

When reviewing the sufficiency of the evidence to support a juvenile judge's finding on a section 54.02(f) factor, is the appellate court's evaluation of the evidence limited to the evidence cited by the juvenile judge in his written finding or may the appellate court consider the entire record in measuring the sufficiency of the evidence?

#### **Argument and analysis**

In determining whether to certify a juvenile to stand trial as an adult, a juvenile judge considers four factors, one of which is the juvenile's "sophistication and maturity." TEX. FAM. CODE ANN. § 54.02(f)(2) (West Supp. 2012). In this case, the juvenile judge made a written finding on this factor in which he determined appellant was of sufficient sophistication and maturity to knowingly waive constitutional rights and to aid in the preparation of his defense. (CR 3-4).

On direct appeal, appellant attacked the sufficiency of the evidence to support the judge's finding on this factor. The State responded that the manner in

which appellant planned and committed the offense and attempted to conceal his involvement sufficiently demonstrated appellant's sophistication and maturity.

However, the court of appeals refused to consider this evidence cited by the State in measuring the sufficiency of the evidence to support the maturity factor. Rather, the court of appeals limited its sufficiency analysis to a consideration of only the evidence described in the juvenile judge's written finding (i.e., appellant's ability to waive constitutional rights and aid in his defense). *Moon*, 410 S.W.3d at 374. Finding no evidence supporting the judge's specific finding on this particular aspect of appellant's maturity, the court of appeals ruled the evidence is insufficient to support the judge's determination regarding the maturity factor. *Moon*, 410 S.W.3d at 375.

The court of appeals erred by limiting its sufficiency analysis to the type of evidence cited in the trial judge's written finding (i.e., appellant's ability to waive constitutional rights and aid in his defense). In conducting its sufficiency-of-the-evidence analysis, the court of appeals should have considered the entire record of evidence (including the evidence argued by the State – the manner in which appellant planned and committed the offense). Such an approach would be consistent with the well-settled general principle that a reviewing court will sustain a trial court's decision if it is correct on any theory of law applicable to the case, even if the trial court used the wrong reason for its ruling. *Prystash v. State*, 3

S.W.3d 522, 527 (Tex. Crim. App. 1999). It would also be consistent with another well-settled general proposition: “we review the entire record – all of the record evidence and reasonable inferences therefrom – in assessing evidence sufficiency.” *Teer v. State*, 923 S.W.2d 11, 17 (Tex. Crim. App. 1996).

Accordingly, this case should be remanded to the court of appeals with instructions that it consider the entire record in reviewing the sufficiency of the evidence to support the trial court’s finding on the maturity factor.

## **CONCLUSION**

It is respectfully requested that the court of appeals' judgment be reversed and the cause be remanded to that court for further consideration.

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