NO. PD-1215-13
IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

NO. 01-10-00341-CR
IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS

IN THE 178th DISTRICT COURT
HOUSTON, TEXAS

THE STATE OF TEXAS

Petitioner

v.

CAMERON MOON

Respondent

RESPONSE TO THE STATE'S BRIEF ON DISCRETIONARY REVIEW

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Statement of Jurisdiction

Cameron Moon respectfully submits that this Court lacks subject matter jurisdiction over the State's Petition for Discretionary Review because Article V, Section 5 of the Texas Constitution limits the appellate jurisdiction of this Court to "criminal cases" and the issues presented for review here arise solely out of a discretionary ruling by a civil court in a civil case under the civil Family Code. The Legislature has stated that the appeal of a certification order shall be treated as a "criminal matter" (not a "criminal case"). This Court's equitable writ jurisdiction in "criminal matters" granted by Article V, Section 5, is not invoked by the State's Petition for Discretionary Review.

This Court also has no subject matter jurisdiction under Article V, section 6(a), of the Texas Constitution and under TEX. GOV'T CODE ANN. § 22.225(a) to review the factual sufficiency of the evidence to support the juvenile court's findings.

Statement Regarding Oral Argument

As this Court has granted oral argument in this case, Cameron Moon looks forward to participating and hopes to meaningfully assist this Court in the Correct resolution of this case.

Issues Presented

Did the State waive its argument that the Court of Appeals applied the wrong standard of review by affirmatively advocating that same standard of review in its brief in the court below and never suggesting that the standard the State is now advocating should apply?

Did the juvenile court erroneously base its transfer order on factors that are not proper considerations in the waiver analysis, including but not limited to "judicial economy" and the "convenience" of the court?

Is appellate review limited to the juvenile court's actual stated "reasons for waiver" or may the court presume additional reasons for waiver that the juvenile court did not include in its order, particularly when the juvenile court's failure to find such additional reasons for waiver was supported by the evidence?

Did the juvenile court misconstrue and misapply the sophistication and maturity element that it was required to consider in deciding whether to waive its exclusive original jurisdiction and certify a child for trial as an adult?

Did the juvenile court abuse its discretion and violate the constitutional due process afforded by the Legislature to protect the juvenile's liberty interest in the protections afforded by the Family Code by waiving its jurisdiction without a specific statement of its reasons for waiver particularized to the individual being

transferred, and without certifying its fact findings, as required by the Constitution and Family Code to ensure meaningful review on appeal.

Statement of Facts

On July 20, 2008, just 4 months after turning 16, Cameron Moon was placed in the Harris County Juvenile Justice Center accused of participating in a fatal shooting. On November 19, 2008, the State filed a motion asking the juvenile court to waive jurisdiction and certify Cameron as an adult for trial. Prior to the hearing, the State failed to conduct the statutorily mandated diagnostic study or social evaluation, and at Cameron's certification hearing the State presented only testimony concerning the alleged crime. *See* Tex. Fam. Code § 54.02(d), (f). Nonetheless, Judge Pat Shelton signed a form fill-in-the-blank order waiving jurisdiction on December 18, 2008. CR. 3-4. The form order tendered by the State and signed by Judge Shelton makes the same findings in every case.

The State's sole witness at the certification hearing was Detective Jason Meredith, who arrived at the crime scene soon after the shooting. Cause #2008-06648J, Cert. Hearing at 3 (hereafter RR __). Meredith testified that the decedent's cousin, Able Garcia (Garcia), told him that Garcia and the decedent had arranged a meeting at a store parking lot where they planned to buy a pound of marijuana for $400. *Id*. at 3-4. Garcia arrived first. The decedent then arrived in a pickup truck and parked alongside Garcia. *Id*. A third vehicle, a Kia Spectra driven by Gabriel Gonzalez, arrived next and parked alongside the decedent's truck. *Id*. at 4, 7, 25. Cameron was seated next to Gonzalez in the front passenger

seat of the Kia. In the back seat of the Kia was Emmanuel (Manny) Hernandez, with whom Garcia and the decedent had met earlier that day to arrange the sale. *Id*. at 8, 28.

According to Garcia, the decedent got out of his truck, walked to the passenger side of the Kia and began talking to someone through the back passenger window. The decedent then began talking to another person through the front passenger window. *Id*. at 30. The discussion became heated and the decedent "lunge[d] into the passenger side window" of the Kia, after which Garcia heard gunshots. *Id*. at 5, 30-31, 48. Garcia told the first officer to interview him that he "observed a handgun extended from the back rear passenger window" that started shooting at the decedent. *Id*. at 25-27. Garcia also stated that when the decedent began running, a person came out of the passenger side of the other car and continued shooting. *Id*. at 5-6. The shooter got back into the Kia, which fled the scene. *Id*. at 7. From his vantage point, Garcia could not identify the shooter. *Id*. at 5-6.

Gabriel Gonzalez, the driver of the Kia, returned to the scene while the investigation was ongoing. *Id*. at 7. Gonzalez told police that not only did the decedent lunge though the front window of the car, but that he also pulled Cameron from the front passenger seat of the car. *Id*. at 37-38. Gonzalez also

identified Manny Hernandez as the third person in the back seat of the Kia from which Garcia said the shots had been fired. *Id*. at 8, 25-27.

Detective Meredith testified that when the police went to interview Hernandez they found him in possession of marijuana and also found a .25 caliber pistol in the waistband of his shorts. RR 10-11, 41. A ballistics test showed that the pistol seized from Hernandez was the weapon that killed the decedent. *Id*. Hernandez then confessed during a custodial interview, after having been *Mirandized*, that he shot the decedent. RR 42-43. Detective Meredith believed Hernandez's confession and was convinced at that time that Hernandez was in fact "the shooter." RR 47-48.

Upon being placed in a jail cell, Hernandez changed his story and claimed instead that sixteen-year old Cameron was the shooter. RR 62. Consistent with Hernandez's confession, however, gunshot residue tests on Hernandez came back positive, while the same tests on Cameron were negative. RR 46, 54. At the time of the certification hearing, the State had charged Hernandez as the shooter.

Over the course of the investigation, the police questioned a number of witnesses, each of which was Mirandized, some of them multiple times, before they gave any statements to the police. *Id*. at 21. In contrast, Cameron was not informed of his rights before being questioned. *Id*. at 56. No notice was given to Cameron's father and neither Cameron nor any of his family members were

informed of the teenager's rights either by the police or by a magistrate as the Family Code requires. *Id*. at 56. *See* Tex. Fam. Code § 51.095(a)(5). After Detective Meredith told Cameron that the decedent "tried to attack whoever was in the car" and suggested to Cameron that the person being attacked "needed to defend himself" and that the death was "an accident," Cameron also confessed to shooting the decedent. RR at 57-58.

After Detective Meredith testified, the State introduced only two exhibits, a Court Report Information Summary and Probation Report, the substance of which is less than three pages, and a certified copy of service on Cameron, and then rested. Cert Hearing Px. 1, Px 2, and RR 71. The only prior record for Cameron reflected in the State's exhibits was for allegedly scratching a car, for which he was placed on probation and after which he went to stay with his grandmother. Cert Hearing Px. 1 and RR 115.

There is no history of gang activity. *See* Cert Hearing Px 1. There is no history of attendance issues or negative behavior at school. *Id*.; RR 90-91. While on probation for the car scratching incident Cameron abided by his curfew, gave his grandmother no problems, continued attending school, passed all classes and always called and checked in with his probation officer and followed her instructions. Cert Hearing Px 1 and RR 91-92. He attended and completed all programs and workshops as requested. *Id*. Every witness characterized Cameron

as a "good kid," "extremely polite," "very respectful," "obedient," "compliant," "cooperative" and never "aggressive" even when picked on at school. RR 89-92, 97-101, 103-06, 113. No one testified to the contrary.

Detention Officer Ulysses Galloway, an employee of the Juvenile Probation Department, even approached Cameron's counsel on his own initiative, volunteering to testify on Cameron's behalf at the transfer hearing. *Id*. at 99. Officer Galloway testified that "[Cameron] is a good kid, young man. I have been doing this for eleven years, and I see a lot of kids come and go. Mr. Moon is one of the best kids I have seen come through…". *Id*. at 97-98. He also testified that he considered Cameron amenable to treatment, that Cameron followed orders, attended classes, was not aggressive, mean-spirited or mean and followed the rules. *Id*. at 98. Officers Warren Broadnax and Michael Merrit, who also supervised Cameron, testified that their observations were exactly the same as Galloway's. *Id*. at 100, 101.

All of this is particularly significant in light of Cameron's family history. Cameron's mother has been incarcerated since he was a toddler. *Id*. at 77. In the summer of 2007, just a year before the shooting, Cameron learned why. His mother killed Cameron's newborn sister by suffocating her, and dumped her in a trash can. *Id*. at 75, 80. Cameron was only two and a half at the time. *Id*. CPS removed Cameron and his older brother from the home and Cameron never saw his

mother again. *Id*. at 75. Since then, his father has been married and divorced twice. *Id*. at 76-80. His father works 24 hour shifts as an EMT and often is not home, which is why Cameron went to stay with his grandmother after the car scratching incident.

Forensic psychiatrist Seth Silverman M.D., who evaluated Cameron, submitted a report attesting that Cameron "had no history of aggressive or violent behavior," that he "has little inclination towards violence" and "does not fit the mold of individuals treated and assessed who have been charged with similar offenses, and he does not appear to be a flight risk or prone to aggressive behavior." CR. 16-19. Dr. Silverman's uncontroverted report further attests that Cameron's "thought process lacks sophistication which is indicative of immaturity." *Id*. He found Cameron to be "mild mannered, polite, and dependent almost to the point of being fearful, easily influenced and confused." *Id*. Dr. Silverman noted that Cameron was "a dependent, easily influenced individual who might have a biologic psychiatric illness and who has responded to therapy" and that he would "benefit from placement in a therapeutic environment specifically designed for adolescent offenders." *Id*. Dr. Silverman concluded that it would be "inappropriate to place [Cameron] in an adult facility," that the juvenile system is best suited to rehabilitate Cameron and that the adult system may actually harm Cameron. *Id*. The State introduced no contrary evidence.

At the conclusion of the certification hearing on December 18, 2008, Judge Shelton found probable cause to believe Cameron committed the offense alleged and signed a form fill-in-the-blank order waiving jurisdiction. The form order tracks the language of the Family Code, but gives no reasons and makes no factual findings specific to this case other than the nature of the offense. CR. 3-4. Following Judge Shelton's waiver of jurisdiction, Cameron was transferred to the Harris County Jail. At the time, when juveniles younger than 17 were transferred, they were placed in solitary confinement for their protection. Cameron was placed in solitary confinement for more than two months until February 26, 2009, when he turned 17, after which he was placed with the general population where he remained until trial.

Summary of the Argument

The State's first point of error argues that the Court of Appeals applied the wrong standard of review. The Court of Appeals, however, applied the exact standard of review advocated by the State in its brief below. The State never argued for a different standard of review like the one it now advocates in this Court. Thus, The State's first argument was waived and, in fact, any claimed error was invited by the State. Significantly, the State does not argue that the Court of Appeals erred in its ruling under the evidentiary standard of review it applied or

even that the new standard of review that the State advocates for the first time in this Court would generate a different result.

The State's remaining points of error are all an effort to rewrite the juvenile court's order to include different "reasons for waiver" that the juvenile court did not actually include in its order.

The Family Code requires a juvenile court to "state specifically in the order its reasons for waiver…". Tex. Fam. Code § 54.02(h). The State, however, repeatedly asks this Court to expand the juvenile court's findings beyond anything the juvenile court actually found, even when the evidence plainly supports the juvenile court's failure to make broader or different findings like the ones now advocated by the State. Not only are the State's arguments meritless, but they would violate due process by requiring an appellant to challenge potential "reasons for waiver" that the lower court did not in fact find were reasons for waiver.

For example, the juvenile court found under § 54.02(f) that the alleged crime "was against the person of another." CR. 3-4. This finding adds nothing to the court's finding under § 54.02(a)(3) that there was "probable cause to believe that the child committed the OFFENSE alleged." CR. 3. While the State concedes that it "is not suggesting that all juvenile murder cases require certification," its second point argues that the juvenile court *could* have found that there were aggravating circumstances such that this particular incident could have supported waiver based

on the nature of the crime alone. Whatever the State argues the juvenile court *could* have found, the fact is that it did not make any finding regarding aggravating circumstances. It found only that the alleged crime "was against the person of another." The evidence amply supports the juvenile court's failure to make any finding like that suggested by the State. Indeed, there was evidence at the certification hearing that Cameron was attacked, dragged out of front seat of the car and was being beaten by the decedent, when someone else – Manny Hernandez – shot the decedent from the back seat of the car.

Similarly, the State's third point argues that the Court should imply or presume a finding that the "record and previous history of the child" is a reason for transfer even though (1) the State's own Motion to Waive Jurisdiction did not assert the background of the child as a reason for waiver, (2) the juvenile court did not find that the record and previous history of the child was a "reason for waiver" in its order, (3) the statute as well as the rulings by this Court require all the reasons for waiver to be "stated specifically in the order," and (4) the evidence fully supports the juvenile court's failure to find that the record and previous history of the child supports waiver.

Finally, the State's fourth point argues that the Court of Appeals erred by limiting its sufficiency of the evidence analysis to the juvenile court's actual finding regarding the child's sophistication and maturity "(i.e. appellant's ability to

waive constitutional rights and aid in his defense)" (Br. at 22) and argues that the Court of Appeals should have looked to other evidence beyond the juvenile court's actual finding. Notably, the State does not argue that this additional evidence relates to the juvenile Court's actual finding regarding Cameron's ability to waive constitutional rights and aid in his defense. Rather it argues for a substantially different type of sophistication and maturity relating to the supposed planning and concealment of the crime, which the juvenile court did not find; hence the State's complaint that the Court of Appeals should have gone beyond the scope of the juvenile court's actual finding. Once again, the evidence was sufficient to support the juvenile court's failure to find more than it found. There was overwhelming and uncontradicted evidence that Cameron was not sophisticated and mature in the criminal sense now advocated by the State or in any other sense.

The State makes no argument regarding the juvenile court's finding dealing with protection of the public and rehabilitation of the child, and does not contend that the Court of Appeals erred in ruling that there was insufficient evidence to support that finding. The error in that finding alone is sufficient to affirm the Court of Appeals ruling because the juvenile court made an error of law in failing to properly apply the statutory factors it was required to consider in making the decision to waive jurisdiction. *Johnson v. State, 954 S.W.2d 770, 771 (Tex. Crim. App. 1997).*

Argument

I. Introduction

A. Section 54.02 of the Family Code Limits the Juvenile Court's Discretion to Waive Its Exclusive Original Jurisdiction.

Section 54.02 of the Family Code governs certification of juveniles for trial as adults. More specifically, it grants limited authority to the juvenile court to "waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings." Tex. Fam. Code §54.02(a).

Beyond certain technical requirements concerning the age of the child and an alleged felony crime, which are not at issue here, § 54.02(a)(3) permits the juvenile court to waive jurisdiction only if "after full investigation and hearing," there is (1) "probable cause to believe that the juvenile committed the offense alleged," *and* (2) "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 § 54.02(a)(3).

In making the "welfare of the community" determination, § 54.02(f) of the Family Code requires the court to consider (1) whether the crime was against person or property, (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 rehabilitation of the child. Tex. Fam. Code §54.02(f).

These § 54.02(f) factors are derived from the United States Supreme Court's seminal decision in *Kent v. U.S.*, 383 U.S. 541 (1966). As this Court has recognized, the *Kent* factors "limit the juvenile court's discretion in making the transfer determination." *Hidalgo v. State of Texas*, 983 S.W.2d 746, 754 (Tex. Crim. App. 1999).

The Supreme Court in *Kent* stated, "[i]t is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile." *Kent*, 383 U.S. at 556. The Court characterized the "decision as to waiver of jurisdiction and transfer of the matter to the District Court [as] potentially as important to petitioner as the difference between five years imprisonment and a death sentence." *Id.* at 557. This Court echoed those same sentiments: "[T]ransfer to criminal district court for adult prosecution is 'the single most serious act the juvenile court can perform ... because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available.'" *Hidalgo*, 983 S.W.2d at 755.

A transfer to a criminal district court permanently deprives a child of a liberty interest granted by the State; specifically, the right to be detained in the protective environment of the Juvenile Justice Center and to benefit from the

rehabilitative and educational programs available only under the Family Code if the proceeding remains in a juvenile court. [1]

For those reasons, under the legislative standards derived from *Kent*, "transfer was intended to be used *only in exceptional cases*." *Hidalgo*, 983 S.W.2d at 754 (emphasis added). In addition, "rigid adherence" to the *Kent* certification and review requirements is necessary to provide the due process protection afforded to the child's liberty interest before a court may waive its jurisdiction over a juvenile. *In the Matter of J.R.C.*, 522 S.W.2d 579, 582-83 (Tex. Civ. App.—Texarkana 1975, writ ref'd n.r.e.)

The statute does not permit waiver based on the category of the crime alone. In fact, *Kent* stated expressly that the statute "prevents routine waiver in certain classes of alleged crimes." *Kent*, 383 U.S. at 554, n.15. That is why the statute requires that in all cases, even those involving a "capital felony" — the highest level of offense —the court must consider the four enumerated *Kent* factors limiting the court's discretion to waive jurisdiction. The legislative philosophy was that "*whenever possible*, 'children should be protected and rehabilitated rather than subjected to the harshness of the criminal system'...". *Hidalgo*, 983 S.W.2d at 754 (emphasis added). *See Lanes v. State*, 767 S.W.2d 789, 795 (Tex. Crim. App.

[1] The Legislature enacted the Texas Family Code to embody this State's commitment to juvenile rehabilitation rather than punishment. *See Lanes*, 767 S.W.2d at 795 ("One of the fundamental goals of the juvenile system is rehabilitation.").

1989) ("[A]s statutorily evidenced, rehabilitation and child protection remain as the pervasive and uniform themes of the Texas juvenile system."). As this Court has recognized, however, "if sent to a typical adult prison, [the child] is likely to be subjected to physical, and even sexual abuse by older inmates, and his chances for rehabilitation are likely to decrease significantly." *Hidalgo*, 983 S.W.2d at 755, n.18.

To enable the court to evaluate and apply the § 54.02(f) *Kent* standards, § 54.02(d) requires that "[p]rior 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." Tex. Fam. Code §54.02(d). Addressing this requirement in *Hidalgo*, this Court wrote:

> [T]he law requires a psychological examination by a doctor with specialized training in adolescent psychology and forensic assessment. The exam provides insight on the juvenile's sophistication, maturity, potential for rehabilitation, decision making ability, metacognitive skills, psychological development, and other sociological and cultural factors.

Hidalgo, 983 S.W.2d at 754 (citation omitted). *Accord In re B.T.*, 323 S.W.3d 158 (Tex. 2010) (granting mandamus requiring completion of diagnostic study before juvenile court could proceed with certification hearing).

Since this Court's decision in *Hidalgo*, the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551, 578 (2005), *Graham v. Florida*, 560 U.S. 48, 82 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), have further

exposed the great difficulty in determining such critical factors as a child's sophistication and maturity and amenability to rehabilitation. Likewise, this Court recently recognized the "great difficulty" in "distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Ex Parte Maxwell*, __ S.W.3d __, 2014 WL 941675 *5 (Tex. Crim. App., March 12, 2014) (quoting *Miller*, 132 S.Ct. at 2469). These decisions reinforce the critical function of the complete diagnostic study required by §54.02(d).

Finally, to assure that the *Kent* standards have been correctly applied and the court's decision making process can be "meaningfully reviewed" as *Kent* requires, "[i]f 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*…". Tex. Fam. Code § 54.02(h) (emphasis added). As one court pointed out after reviewing the legislative history of § 54.02(h), "[t]he fact that the Legislature changed 'briefly state' to 'state specifically' indicates that it contemplated more than merely an adherence to printed forms and, indeed, contemplated a true revelation of reasons for making this discretionary decision." *Matter of J.R.C.*, 522 S.W.2d 579, 582-83 (Tex. Civ. App.—Texarkana 1975, writ

ref'd n.r.e.). The same court went on to hold that this statutory language requires both a statement of the specific reasons for waiver and separate findings. *Id.*[2]

The juvenile court's order "should be sufficient to demonstrate that the statutory requirement of 'full investigation' has been met, and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review." *Kent*, 383 U.S. at 561. "Without both the reasons motivating a waiver decision and findings of fact supporting them, *Kent's* promise of due process through a meaningful review is, in Texas, an illusion." Douglas A. Hager, "Does the Texas Juvenile Waiver Statute Comport with the Requirements of Due Process?," 26 Tex. Tech. L. Rev. 813, 856 (1995).

B. The Juvenile Court's Fill-In-The-Blank Order Does Not Comply With the Required Standards.

The juvenile court's form fill-in-the-blank order, which makes the same findings in every case, complies with none of the required standards under *Kent* and §54.02(d), (f) and (h).

Tracking the language of § 54.02(a)(3), the order recites that:

> [T]here is probable cause to believe that the child committed the OFFENSE alleged and that because of the seriousness of the

[2] *See also Matter of J.R.*, 907 S.W.2d 107 (Tex. App. —Austin 1995, no writ) ("Because 'reasons' are distinguishable from 'findings,' section 54.02(h) has been interpreted as imposing a mandatory duty on the juvenile court to file findings separately from the order containing the court's reasons.").

> OFFENSE, the welfare of the community requires criminal proceeding. [sic]

C.R. 3. The juvenile court did not rely on "the background of the child" as a basis for its conclusion that "the welfare of the community requires criminal proceedings." *See* Tex. Fam. Code § 54.02(a)(3).

The form order goes on to track the language of § 54.02(d), and recites, *erroneously*, that "[p]rior [to the hearing] the Court had ordered and obtained a diagnostic study, social evaluation, full investigation of the child, his circumstances, and the circumstances of the alleged offense...". CR. 3. Although the court *ordered* a diagnostic study and social evaluation, the State never *obtained* one; instead, only a physical evaluation was done. *See* Cert Hearing Px. 1 (stating that the study was waived). The waiver of the study left the State's proof deficient on the §54.02(f) *Kent* factors.

The order goes on to parrot the statute, reciting that the court considered the four mandatory §54.02(f) *Kent* factors "among other matters." CR. 3. The order, however, does not identify any of these "other matters."

Although the court purportedly "considered" all four §54.02(f) factors, the order relies on only three of the four as "reasons for waiver":

> The Court specifically finds that the said CAMERON MOON is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by the said CAMERON MOON, to have aided in the preparation of HIS defense and to be responsible for HIS conduct; that the OFFENSE

> allege [sic] 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 the said CAMERON MOON by use of procedures, services, and facilities currently available to the Juvenile Court.

CR. 3-4. The court did not find that "the record and previous history of the child" was a "reason for waiver." *See* Tex. Fam. Code § 54.02(f)(3). This was consistent with the fact that the court did not rely on the "background of the child" in its §54.02(a)(3) finding.

Although § 54.02(h) requires the juvenile court to "state specifically in the order" its "reasons for waiver," the order states nothing about the "other matters" that the court considered. *See* Tex. Fam. Code § 54.02(h). The only way to divine what these other matters may have been, and "meaningfully review" them as *Kent* requires, comes from the court's statements on the record. Orally, the court relied on there being insufficient time for "punishment" of the child in the juvenile system and "judicial economy" because the other individuals involved in the alleged crime were adults and it would be "more convenient to hear" the cases together. RR 130-32. If these "other matters" constituted additional reasons for waiver as the court's statements on the record indicate, then the court violated the statutory command to "state *specifically* in the order" its "reasons for waiver."

More importantly, the juvenile court's statements demonstrate that, like the lower court whose decision was reviewed in *Kent*, the juvenile court here

"misconceived the basic issue and the underlying values in this case." *Kent*, 383 U.S. at 560. The court's orally expressed considerations are in plain violation of the State's role as *parens patriae* and the legislative philosophy underlying the juvenile system identified in *Hidalgo* that "*whenever possible*, 'children should be protected and rehabilitated rather than subjected to the harshness of the criminal system'...". *Hidalgo*, 983 S.W.2d at 754 (emphasis added). *Accord Lanes v. State*, 767 S.W.2d at 795. Punishment may be a permitted consequence of certification, but it is not a permitted reason for certification. *Lanes*, 767 S.W.2d at 791 ("The philosophical basis of this separation [of the juvenile and adult systems] was to create a system wherein juveniles were rehabilitated rather than incarcerated, protected rather than punished--the very antithesis of the adult criminal system.") Moreover, the court's statements suggesting that it was appropriate to sacrifice a child to the adult system for "judicial economy" and because it was "more convenient" violate *Kent's* command that jurisdiction may not be waived "for the purpose of easing the docket." *Kent*, 383 U.S. at 553 n. 15.

The juvenile court's weighing of these improper factors – punishment of the juvenile and convenience of the court – is a legal error requiring reversal of the certification order. *See Johnson v. State*, 954 S.W.2d 770, 771 (Tex. Crim. App. 1997) (reversing because "it was improper to balance the abstract concept of

community interest in weighing" one of the four factors relevant in determining a party's right to a speedy trial).

Although Cameron presented a number of arguments to the Court of Appeals related to the certification procedure, that court focused on only two: The sufficiency of the evidence to support the juvenile court's findings regarding Cameron's sophistication and maturity, and the sufficiency of the evidence to support the juvenile court's finding regarding likelihood of rehabilitation and protection of the public. The Court of Appeals found legally insufficient evidence to support the finding on sophistication and maturity and factually insufficient evidence to support the finding on protection of the public and likelihood of rehabilitation. Because the evidence did not support two of the three "reasons for waiver" expressly relied on by the juvenile court in its written order, the Court of Appeals found that the juvenile court abused its discretion by misapplying the statutory standards for waiver of its jurisdiction and remanded to the juvenile court.

II. The State's Arguments Regarding the Standard of Review Are Without Merit.

While the State contends that the Court of Appeals used the wrong evidentiary standards to evaluate the juvenile court's findings on the *Kent* factors, it does not dispute that the Court of Appeals' ruling with respect to those factors was correct under the standards it applied, nor does the State make any argument

that the result would be different under the new evidentiary standard it now advocates.

A. The Court of Appeals Applied the Correct Standard of Review.

Every case to have considered the issue has held that abuse of discretion is the standard of review from an order certifying a child as an adult. *See, e.g.*, *Bleys v. State*, 319 S.W.3d 857, 861 (Tex. App.--San Antonio 2010, no pet.); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.--Tyler 2003, no pet.).[3] Indeed, the State itself, citing both *Bleys* and *Faisst*, argued in the Court of Appeals that the standard of review was abuse of discretion. Ct. App. Br. at 6.

The abuse of discretion standard is multifaceted. If a court fails to correctly analyze the law, makes an error of law, or misapplies the law to the facts, it commits an abuse of discretion. *In re B.T.*, 323 S.W.3d 158, 160 (Tex. 2010); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). In that case, the abuse of discretion standard is equivalent to *de novo* review because the court has no

[3]*Accord State v. Lopez*, 196 S.W.3d 872, 874 (Tex. App.-Dallas 2006, pet ref'd) ("The juvenile court's findings regarding transfer are reviewed for an abuse of discretion."); *Matter of K.B.H.*, 913 S.W.2d 684, 687-88 (Tex. App. —Texarkana 1995) ("The question for an appellate court reviewing a trial court's decision … is whether the trial court abused its discretion in certifying the child…".); *Matter of G.F.O.*, 874 S.W.2d 729, 731-32 (Tex. App. —Houston [1st Dist.] 1994, no writ) ("If an appellate court finds the evidence factually or legally insufficient to support the juvenile court's order transferring jurisdiction of a youth to the criminal district court, it will necessarily find the juvenile court has abused its discretion."); *Almanzar v. State*, 2012 WL 6645003 (Tex. App. – Houston [1st Dist.] 2012, pet. ref'd.)("We review challenges to a juvenile court's findings in a waiver and transfer order under an abuse of discretion standard."); *Thorn v. State*, 2011 WL 5877021 (Tex. App. – Tyler 2011, no pet.) ("An appellate court reviews a juvenile court's decision to waive jurisdiction and transfer a juvenile to the adult criminal justice system for an abuse of discretion.")

discretion to misapply the law. A court also commits an abuse of discretion if it bases its decision on findings that are not supported by legally or factually sufficient evidence. *LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 483 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

Here, the Family Code required the juvenile court to weigh and balance carefully the four specified *Kent* factors. This balancing of factors is a legal issue. As this Court held when considering the standard of review applicable to a similar balancing test: "Review of these individual factors necessarily involves fact determinations and legal conclusions. The balancing test as a whole, however, is a purely legal question. Legal questions are reviewed de novo." *Johnson v. State*, 954 S.W.2d at 771.

Reversal is required if the juvenile court engaged in a flawed analysis of any one of the balancing factors. *Id*. This is particularly so where, as here, evidence supporting the court's conclusion on other factors is weak at best, or the other factors weigh only slightly in favor of waiving jurisdiction, because the factors are not viewed in isolation. *See Johnson v. State*, 975 S.W.2d 644, 649 (Tex. App.—El Paso 1998) (on remand). It cannot be presumed that had the lower court properly applied a particular factor that it misunderstood or misapplied, its ultimate conclusion resulting from the balancing process would have been the same.

B. The State Waived Its First Point That the Court of Appeals Applied the Wrong Standard of Review.

The State first argues that the Court of Appeals erred in applying a "civil" rather than "criminal" standard in reviewing the sufficiency of the evidence to support the juvenile court's ruling. In its brief below, however, the State affirmatively argued for the same standard of review actually applied by the Court of Appeals. The State cited both *Bleys* and *Faisst* as stating the correct standard of review, and stated unequivocally that the correct standard of review was "abuse of discretion":

> An appellate court reviews a juvenile court's decision to certify a juvenile defendant as an adult and transfer the proceedings to a criminal court under an abuse of discretion standard. *Bleys v. State*, 319 S.W.3d 857, 861 (Tex. App.--San Antonio 2010, no pet.); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.--Tyler 2003, no pet.).

Ct. App. Br. at 6. The State never suggested any other standard, and never suggested, as it does now, that these two cases applied different standards. Not surprisingly, the Court of Appeals correctly relied on *Faisst*.

Given that the Court of Appeals applied the standard advocated by the State, the State has waived any argument for a different standard of review. *See* TEX. R. APP. P. 38.1(i).[4] Indeed, not only did the State waive its first point of error, but

[4] *Washington v. State*, 856 S.W.2d 184, 187 n. 3 (Tex.Crim.App. 1993) ("we find that the State waived this claim [as to why work product privilege did not apply] by not presenting it before the court of appeals…".); *Rochelle v. State*, 791 S.W.2d 121, 124 (Tex.Crim.App. 1990) ("the State, by raising its Art. 1.14(b) waiver argument for the first time in its motion for rehearing [in the court of appeals], failed to raise the issue in either a timely or orderly fashion" and therefore

any claimed error in this regard was invited by the State when it argued that the standard of review is abuse of discretion under *Bleys* and *Faisst*. *Druery v. State*, 225 S.W.3d 491, 505-06 (Tex.Crim.App. 2007) ("law of invited error estops a party from making an appellate error of an action it induced").

C. There Is No Conflict In the Case Law Regarding the Standard of Review.

While the State's brief in the Court of Appeals cited both *Bleys* and *Faisst* as correctly stating the same standard of review, the State argued in its Petition for Discretionary Review that this Court should grant review because there was a conflict in the case law as to whether a criminal or civil standard of review applies. Specifically, the State contended that *Bleys* applied a "criminal" standard while *Faisst* applied a "civil" standard. The State made no such argument in the court below.

Moreover, the State's argument is wrong; *Bleys* and *Faisst* applied exactly the same standard. In fact, *Bleys* relied on *Faisst*. *See Bleys*, 319 S.W.3d at 861. Both cases held that the standard was abuse of discretion and both recognized that

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waived the argument); *Emery v. State*, 800 S.W.2d 530, 536 (Tex.Crim.App. 1990) ("the State waived its waiver argument by failing to dispute in any way, at the hearing held on its own motion, that a court reporter was ever requested to record pretrial hearings."); *Tallant v. State*, 742 S.W.2d 292 (Tex.Crim.App. 1987) ("the contention is being advanced for the first time in this Court, we thus reject it, and will affirm the judgment of the … Court of Appeals."); *State v. Consaul*, 982 S.W.2d 899, 902-03 (Tex.Crim.App. 1998) (rejecting attempt by the State "to bring before this Court an issue that it has failed to present to … the Court of Appeals."); *Farrell v. State*, 864 S.W.2d 501 (Tex.Crim.App. 1993) ("the State did not raise the … issue in the Court of Appeals; the issue is being raised for the first time in the State's petition. … Therefore, we will not reach the merits of the State's ground for review.")

an abuse of discretion occurs when, among other things, there is legally or factually insufficient evidence to support the findings on which the exercise of discretion was based. *See Bleys v. State*, 319 S.W.3d at 861; *Faisst v. State*, 105 S.W.3d at 12.

In *Bleys*, which the State now claims applied the "criminal" standard of review, Bleys challenged only the factual sufficiency of the evidence to support the juvenile court's findings. The court articulated the standard of review as follows:

> An appellate court reviews a juvenile court's decision to certify a juvenile defendant as an adult and transfer the proceedings to criminal court under an abuse of discretion standard.
>
> * * *
>
> In determining whether the trial court abused its discretion, the reviewing court considers the sufficiency of the evidence.
>
> * * *
>
> Here, Bleys challenged only the factual sufficiency of the evidence to support the trial court's findings relating to rehabilitation and community welfare. We will, therefore, consider all of the evidence to determine if the court's finding is so against the great weight and preponderance of the evidence as to be manifestly unjust.

Bleys, 319 S.W.3d at 861 (citations omitted). In *Faisst*, which the State cites as applying the "civil" standard of review, the court applied exactly the same standard:

> The standard of review for an appellate court in reviewing a juvenile court's decision to certify a juvenile defendant as an adult is abuse of discretion.

* * *

> Relevant factors to be considered when determining if the court abused its discretion include legal and factual sufficiency of the evidence.

* * *

> [W]hen the factual sufficiency of the evidence to support a certification and transfer order is challenged, we consider all of the evidence to determine if the court's finding is so against the great weight and preponderance of the evidence as to be manifestly unjust.

Faisst, 105 S.W.3d at 12 (citations omitted). The Court in *Faisst*, went on to articulate the legal sufficiency standard, which was not at issue in *Bleys*, as follows:

> When the legal sufficiency of the evidence supporting a certification and transfer order is challenged, we view the evidence in the light most favorable to the court's findings and determine whether there is any evidence to support such findings. It is not within our power to second guess the factfinder unless only one inference can be drawn from the evidence. If there is more than a scintilla of evidence to support the finding, the no evidence challenge fails.

Id. (citation omitted).

In short, the State cannot now contend that the Court of Appeals erred in applying the very standard and case law that the State itself cited as correctly stating the standard of review, nor is there any conflict in the jurisprudence of the State regarding the standard of review that is necessary for this Court to resolve.

D. The *Brooks* Standard of Review Does Not Apply

The State's argument that *Bleys* states the correct "criminal" standard of review is also hopelessly at odds with its argument that the standard of review in *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010), should apply. As shown, *Bleys* applied the well-established factual sufficiency standard to review a juvenile court's findings as part of its abuse of discretion analysis. In contrast, the *Brooks* standard now advocated by the State for the first time in this Court applies only to adjudicatory proceedings "in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." *Brooks*, 323 S.W.3d at 895. This standard does not apply to discretionary rulings or to fact findings by a civil court in a civil proceeding, such as the certification proceeding, where the burden of proof is not beyond a reasonable doubt. A juvenile certification is not an adjudicatory proceeding, nor is the issue whether the State proved each element of a criminal offense beyond a reasonable doubt. *See, e.g.*, *State v. Lopez*, 196 S.W.3d 872, 874 (Tex. App.-Dallas 2006, pet. ref'd).

The State's reliance on Article 44.47(c) of the Code of Criminal Procedure as a source for imposing a different standard of review is misplaced. The purpose of Article 44.47(c) was simply to provide a single consistent set of procedural rules for an appeal of a criminal conviction of a certified juvenile. Article 44.47(c), does

not purport to redefine the standard of review for a discretionary ruling that was a civil decision when it was made. It merely states that "[a]n appeal under this section is a criminal matter and is governed by this code and the Texas Rules of Appellate Procedure that apply to a criminal case." Neither the Code of Criminal Procedure nor the Rules of Appellate Procedure, however, specify a standard of review. The standard of review is dictated not by the label placed on the case, but by the nature of the issue being addressed, which here is a discretionary ruling of a civil court, under a civil statute, regarding a waiver of its own jurisdiction to adjudicate what would otherwise be a civil matter.

The *Brooks* opinion, in contrast, was based on criminal adjudicatory considerations that have no application in this context. Those considerations include double jeopardy concerns as well as the perceived incompatibility of the previously existing factual sufficiency standard with the "beyond a reasonable doubt" standard of proof. *Brooks*, 323 S.W.3d at 902-06, 915,[5] 924[6].

Nonetheless, the State advocates application of the *Brooks* standard because "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 in

[5]*Brooks*, 323 S.W.3d at 915 ("a factual sufficiency standard of review that was developed for civil trials employing a preponderance-of-the-evidence standard of proof atop a legal sufficiency standard of review that was developed for criminal trials employing a beyond-a-reasonable-doubt standard of proof does not work.").

[6]*Brooks*, 323 S.W.3d at 924 ("this civil standard of review did not align with the criminal burden of proof.").

delinquent conduct." Br. at 12-13. But of course, in deciding whether to grant a transfer order, the juvenile court was not tasked with finding whether the child had in fact engaged in delinquent conduct. The juvenile court had only to find "probable cause to believe" that the child may have committed the offense. Tex. Fam. Code § 54.02(a)(3).

Not surprisingly, none of the cases cited by the State applying *Brooks* involves a transfer order or any type of discretionary ruling. All of them involve a finding beyond a reasonable doubt that a juvenile engaged in delinquent conduct. *See, e.g., In re R.R.*, 373 S.W.3d 730 (Tex. App.-Houston [14th Dist.] 2012, pet. denied). No case reviewing a juvenile court's transfer order has applied the *Brooks* standard of review.

E. If the *Brooks* Standard Applied to the Review of the Juvenile Court's Findings, the Result Would Necessarily Be the Same Because that Standard Is Less Deferential than the Standard Applied by the Court of Appeals.

Even assuming the *Brooks* standard applied to a review of the sufficiency of the evidence to support the juvenile court's stated § 54.02(f) reasons for waiver, the State makes no argument that the Court of Appeals could possibly have reached a different result. As noted, the State contends that the Court of Appeals applied the wrong standard of review to two of the juvenile court's findings. The State, however, does not attempt to show that the Court of Appeals' rulings with

respect to those findings would be different if the new standard of review now advocated by the State applied to those findings.

The *Brooks* legal sufficiency standard requires the appellate court to determine if "[c]onsidering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt." *Brooks*, 323 S.W.3d at 899. This standard must be applied to "each element of a criminal offense." *Id*. at 912.

The standards applied by the Court of Appeals were *more* deferential to the juvenile court than the *Brooks* standard would have been. *See Brooks*, 323 S.W.3d at 917 ("[T]here is no higher standard of appellate review than the standard mandated by *Jackson*. All civil burdens of proof and standards of appellate review are lesser standards than that mandated by *Jackson*.") (Cochran J. concurring).

The Court of Appeals articulated the legal sufficiency standard as follows:

> Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding and disregard contrary evidence unless a reasonable fact finder could not reject the evidence.

410 S.W.3d at 371 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005) (requiring the reviewing court to view "the evidence in the light most favorable to the verdict, and indulge every reasonable inference that would support it."). In other words, the standard applied by the Court of Appeals not only considered the evidence in the light most favorable to the juvenile court's findings,

but disregarded contrary evidence, which it would not have been permitted to do under the *Brooks* standard. Indeed, the narrower scope of review applied by the Court of Appeals would not pass constitutional muster in a criminal adjudication. *See Jackson v. Virginia*, 443 U.S. 307 (1979).

Requiring the Court to expand its legal sufficiency review to consider contrary evidence as well, *i.e.* all the evidence, *and* requiring the Court of Appeals to take into account a higher standard of proof, could only reinforce the result reached by the Court of Appeals.

F. The State Mischaracterizes The Court of Appeals' Ruling.

The State erroneously paraphrases the Court of Appeals' ruling. Specifically, the State says:

> 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 54.02(a) that "because of the seriousness of the offense, the welfare of the community requires criminal proceedings."

PDR Br. at 8. The State's argument conflates the sufficiency of the evidence to support the juvenile court's stated "reasons for waiver" under 54.02(f) with question of whether the juvenile court properly weighed and balanced those 54.02(f) factors in concluding, under § 54.02(a), that the welfare of the community required criminal proceedings.

As already discussed, the Family Code not only requires the juvenile court to "consider" the four § 54.02(f) *Kent* factors, but requires the juvenile court to state specifically in its order its "reasons for waiver." The reason for this requirement is so those "reasons for waiver" can be "meaningfully reviewed" as *Kent* requires in order to assess the basis for the juvenile court's ultimate ruling that the welfare of the community requires criminal proceedings for that particular alleged offense. Appellate review of the *Kent* factors would be meaningless if that ultimate ruling were treated as merely another fact finding that could be upheld on a scintilla of evidence even when the juvenile court conducted a flawed legal analysis of the statutory factors on which its ultimate ruling was based.[7] Such a process would impermissibly allow courts to skip over the 54.02(f) *Kent* factors, which is contrary to the dictates of the statute and due process protections afforded to the child's liberty interest in the benefits granted by the Family Code. The appellate court cannot presume the juvenile court would have reached the same ultimate conclusion had it correctly applied the statutory factors.

[7] The abuse of discretion review must be sufficiently robust to allow for an assessment of the juvenile court's transfer decision without shielding from review whether that court made the individualized determination of the § 54.02 factors for the juvenile that is required by *Kent* and *Hidalgo*. *See State in re VA*, 50 A.3d 610 (N.J. 2012) (holding that meaningful review under abuse of discretion standard requires that statement of reasons must evidence actual consideration for each particular juvenile of weighing factors and that cursory conclusions mirroring language of certification guidelines are insufficient because they will not reveal evaluation used in making decision to waive particular juvenile).

The juvenile judge's "ultimate determination" as to whether the "the welfare of the community requires criminal proceedings" is a legal conclusion based on a weighing and application of statutory factors specifically designed to limit the judge's discretion to certify a child as an adult. *Cf Johnson v. State*, 954 S.W.2d at 771 ("The balancing test as a whole … is a purely legal question.") Thus, the issue is not whether there is "some evidence" that could support the "ultimate conclusion." The issue is whether the statutory "reasons for waiver" on which juvenile court based that conclusion were erroneous. This is why the Family Code does not invest the juvenile court with boundless discretion simply to find that "the welfare of the community requires criminal proceedings." Rather Texas law requires the juvenile court to "state specifically in its order" the "reasons for waiver" so those reasons can be meaningfully reviewed as *Kent* requires. When that meaningful review determines that the juvenile court's reasons for waiver were erroneous, its exercise of discretion is likewise erroneous.

The Court of Appeals determined that there was no evidence or insufficient evidence to support two of the three "reasons for waiver" relied on by the juvenile court to conclude that the welfare of the community required Cameron to be tried in an adult criminal court. Therefore the juvenile court's exercise of discretion was made on the basis of erroneous presumptions about this child's sophistication and maturity, amenability to rehabilitation and the prospects for protection of the

public. The State has made no showing that had the juvenile court correctly evaluated these § 54.02(f) statutory factors and understood that the evidence did not support two of its three "reasons for waiver," that the court still would have waived its jurisdiction.

III. The Court of Appeals Did Not Fail To Analyze Whether the Remaining Section 54.02(f) Factor was Sufficient Alone to Support Transfer.

The State's second point asks whether the Court of Appeals erred by failing to consider whether the one factor on which there was evidence is sufficient alone to support the judge's transfer order. Contrary to the State's argument, the Court of Appeals did not "simply presume that a single factor could not support a transfer order." PDR Br. at 15. On the contrary, the Court of Appeals fully recognized that a "juvenile court 'may order a transfer on the strength of any combination of the criteria' listed in subsection (f)." *Moon v. State*, 410 S.W.3d at 372. The Court of Appeals went on to discuss the alleged nature of the crime and whether it alone could support certification. *Id*. at 375-76.

The juvenile court's remaining finding under §54.02(f) stated only that "the OFFENSE allege [sic] to have been committed WAS against the person of another." This finding adds absolutely nothing to the juvenile court's finding under §54.02(a)(3) "that the said CAMERON MOON is charged with the violation of a penal law of the grade of felony, if committed by an adult, to wit: MURDER" and that "there is probable cause to believe that the child committed the OFFENSE

alleged." CR. 3. Obviously the offense of murder is "against the person of another." Indeed, the 54.02(a)(3) finding is more specific than the §54.02(f) finding that the alleged crime was against the person of another. Yet the statute and *Kent* are clear that a juvenile court cannot order certification on the sole basis of the 54.02(a)(3) finding alone even when the crime alleged is murder. Even the State concedes that point. Br. at 18 ("the State is not suggesting that all juvenile murder cases require certification simply because murder is a serious offense.")

The State argues "by analogy" that in the capital murder context, a defendant can be found to be a future danger based on the facts of the offense alone, and then contends that the particular circumstances in which a juvenile commits a murder may be sufficient alone to warrant transfer. Br. at 17-18. At the outset, the State's "analogy" is deeply flawed. Predicting future dangerousness for an adult is a completely different matter than the unquestionably difficult task of predicting future dangerousness for a child. *Ex Parte Maxwell*, 2014 WL 941675 *5; *Miller v. Alabama*, 132 S.Ct. at 2469; *Roper v. Simmons*, 543 U.S. at 578; *Graham v. Florida*, 560 U.S. at 82.

Moreover, even assuming the "particular circumstances" of a crime may be sufficient to warrant transfer in some cases, the juvenile court made no finding regarding the "particular circumstances" of this alleged crime. It also made no finding that the circumstances of the crime alone warranted transfer in this case,

and its order gives no indication that it would have waived its jurisdiction absent the other factors it relied on as "reasons for waiver."

The juvenile court certainly made no findings about the circumstances of the alleged crime remotely like the picture painted by the State. There was good reason the juvenile court made no such findings – the evidence regarding the circumstances of the alleged crime was heavily disputed at the certification hearing. That evidence fully supports the juvenile court's failure to make any "aggravated circumstances" finding like that suggested by the State. An appellate court cannot expand the juvenile court's findings, or infer findings like the one now suggested by the State that the juvenile court chose not to make, when the evidence is disputed.

There was evidence that, at the time of the incident, Cameron was in the front passenger seat of an automobile and Emmanuel (Manny) Hernandez was in the rear passenger seat. RR 7-9, 28. The decedent came to the passenger side of the car, began yelling at the people in the car, "lunge[d] into the passenger side window" of the car, and pulled Cameron from the front passenger seat after which the decedent's cousin "*observed a handgun extended from the back rear passenger's window*," where Hernandez was seated, that began shooting at the decedent. RR 5, 25-27, 30-31, 48.

When Hernandez was arrested, the police found him in possession of the .25 caliber pistol that killed the decedent. RR 10-11, 41. Hernandez confessed during a custodial interview, after having been *Mirandized*, that he shot the decedent. RR 42-43. Detective Meredith believed Hernandez's confession and was convinced at that time that Hernandez was in fact "the shooter." RR 47-48. Consistent with Hernandez's confession, gunshot residue tests on Hernandez came back positive, while the same tests on Cameron were negative. RR 46, 54. At the time of the certification hearing, the State had charged Hernandez as the shooter.

In short, given the conflicting evidence at the certification hearing, it is hardly surprising that the juvenile court found nothing about the particular circumstances of the crime alleged other than that it was "against the person of another." The evidence fully supports the juvenile court's failure to find the type of aggravating circumstances argued by the State. An appellate court cannot assume that the juvenile court found more than it found.

No case relied on by the State or located by Cameron's counsel has upheld the certification of a child after finding that the evidence was insufficient to support one or more of the 54.02(f) *Kent* factors relied on by the juvenile court. Certainly no case has upheld a certification on the basis of findings the juvenile court did not make, such as a non-existent "aggravated circumstances" finding.

Every case cited by the State that upholds a transfer order has found the evidence sufficient to support the factors relied on by the juvenile court in its certification order. *Matter of C.C.*, 930 S.W.2d 929, 934 (Tex. App. —Austin 1996, no writ) ("we find the evidence factually sufficient to support the two contested findings."); *In re Q. D.*, 600 S.W.2d 392 (Tex. Civ. App. —Fort Worth 1980, no writ) ("we hold there was sufficient evidence to support the findings of the trial court with respect to each of the challenged criteria."); *Casiano v. State*, 687 S.W.2d 447 (Tex. App. —Houston [14th Dist.] 1985, no writ) ("[t]he evidence is sufficient to support the trial court's waiver of jurisdiction.").

To the extent these cases suggest in *dicta* that the lack of evidence to support one or more of a juvenile court's stated reasons for waiver might not result in reversal, their analysis is flawed. First, none of these cases discuss application of the abuse of discretion standard of review. They address only sufficiency of the evidence and fail to recognize other courts' holdings that insufficiency of the evidence to support the factors on which the exercise of discretion was based is central to whether there is an abuse of discretion. Thus, they fail to recognize that the misapplication of a statutory factor constitutes an abuse of discretion.

Second they rely on the fact that a juvenile court need not find that all the §54.02(f) factors support waiver in order to validly exercise its discretion to waive

jurisdiction. It does not follow, however, that an *erroneous* determination as to those factors is irrelevant.

Finally, none of these cases suggests that, contrary to the statute and *Kent*, the category of crime alone can support certification.

IV. The Juvenile Court's Oral Statements Cannot Support its Order

A. The "Reasons for Waiver" Are Required to Be Stated in the Juvenile Court's Order.

The State's third point argues that, based on a verbal statement made by the juvenile court, this Court should *assume* that "the record and previous history of the child" was one of the juvenile court's "reasons for waiver." Br. at 20. "There are several problems with that line of reasoning, not the least of which is that the District Court did not articulate it" as a reason for waiver. *See United States v. Taylor*, 487 US 326, 337 (1988).

To indulge any such assumption would be directly contrary to the language of the statute, which requires the juvenile court to state specifically in its order its reasons for waiver, as well as contrary to *Hidalgo* and *Kent*. Substituting findings that the State contends could have been made in the order, but were not, would also violate due process, which requires that the reasons for waiver be stated in the order so they can be meaningfully reviewed as a check on the juvenile court's exercise of discretion.

Section 54.02(h) of the Family Code expressly requires the juvenile court to "state specifically *in the order* its reasons for waiver…". Tex. Fam. Code § 54.02(h) (emphasis added). *Hidalgo*, 983 S.W.2d at 754 n.16 ("Should the juvenile court decide to waive its exclusive jurisdiction, *the court is required to state in its order the specific reasons for waiver*.") (emphasis added). *Accord Kent*, 383 U.S. at 561. If there were additional "reasons for waiver" not stated in the juvenile court's order then it is a plain violation of the statute and can only be yet another reason to reverse.

Notably, the juvenile court's failure to find that "the record and previous history of the child" was a "reason for waiver" under § 54.02(f) was consistent with the fact that the court also did not rely on the "background of the child" in its §54.02(a)(3) finding. In fact, the State did not even assert the "background of the child" as a basis for transfer under §54.02 in its Motion to Waive Jurisdiction, and actually asserted relevancy objections to evidence of Cameron's background. 2nd Supp. CR. at 32; RR at 73, 110-111.

B. Even Verbally the Juvenile Court Did Not Say The Record And Previous History of the Child Supported Certification.

The juvenile court never said that the record and previous history of the child was one of its "reasons for waiver." The juvenile court merely observed that the child "had a prior criminal mischief probation" for scratching a car at the time of the incident at issue in this case. RR. 130. But the juvenile court said nothing

suggesting that this observation meant that "the record and previous history of the child" supported certification or outweighed the extensive evidence showing that the record and history of the child did not support certification.

As stated above, there was no history of gang activity. *See* Cert Hearing Px 1. There is no history of attendance issues or negative behavior at school. *Id*.; RR 90-91. After the car scratching incident Cameron abided by his curfew, gave his grandmother no problems, continued attending school, passed all classes and always called and checked in with his probation officer and followed her instructions. Cert Hearing Px 1 and p. 91-92. He attended and completed all programs and workshops as requested. *Id*. And then, of course, there is the fact that Cameron learned of the reason for his mother's incarceration shortly before the incident at issue here, which was unquestionably traumatic.

The evidence, therefore, clearly supports the juvenile court's failure to find that the record and previous history of the child supports transfer. In light of that evidence, as well as the statutory language requiring the juvenile court to "state specifically in the order its reasons for waiver," and the holdings in *Hidalgo* and *Kent*, there is no permissible basis for presuming the juvenile court made a finding that it did not in fact make.

Creating a rule allowing appellate courts to engage in such assumptions is not only contrary to the explicit language and purpose of the statute and this

Court's holding in *Hidalgo*, but is also contrary to the Supreme Court's edict in *Kent* precluding appellate courts from engaging in assumptions about the reasons for waiver. It would require every appellant to challenge hypothetical reasons for waiver not stated in the order even though the statute requires the juvenile court to state all of its reasons for waiver in the order. This Court should decline to indulge the assumption advocated by the State.

V. The Court of Appeals Considered All of The Evidence That Could Potentially Have Supported the Juvenile Court's Stated Reasons For Waiver.

A. The Court of Appeals Properly Considered Whether the Evidence Supported the Finding Actually Made by the Juvenile Court.

The State's fourth point asks whether "the appellate court's evaluation of the evidence is 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" to support the sophistication and maturity finding. Br. at 21. This point is inexplicable as phrased. The juvenile judge did not "cite evidence in his written finding," nor did the Court of Appeals limit the evidence it considered. The Court of Appeals considered all the evidence potentially supporting the juvenile court's finding on sophistication and maturity.

Significantly, the State does not argue in its brief that the evidence supports the juvenile court's finding as written or that the Court of Appeals was wrong in finding that it did not. Instead, the State argues that the "court of appeals limited

its sufficiency analysis to a consideration of only … the juvenile judge's [actual] written finding (i.e., appellant's ability to waive constitutional rights and aid in his defense)." Br. at 22. That is, the State contends that the Court of Appeals should have gone beyond the juvenile court's actual finding to look for some evidence from which a *different* sophistication and maturity finding could have been made. Thus, once again, the State asks this Court to expand or alter the juvenile court's findings beyond what the juvenile court actually found.

The State, however, does not argue that the evidence it relies on – the supposed planning and attempted concealment of the crime – conclusively established another basis for or type of sophistication and maturity. The juvenile court could have rejected that evidence or found such supposed efforts anything but sophisticated or mature. There was a great deal of evidence that this child was neither sophisticated nor mature. That evidence fully supports the juvenile court's failure to make a different or broader sophistication and maturity finding than the one it actually made. There is no permissible basis for grafting something additional onto the juvenile court's finding for the purpose of appellate review.

The Court of Appeals did not fail or refuse to consider any evidence potentially supporting the juvenile court's actual findings. It explicitly considered all the evidence in the light most favorable to the juvenile court's findings:

> Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding and disregard contrary evidence unless a

> reasonable fact finder could not reject the evidence. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); *Faisst*, 105 S.W.3d at 12. If there is more than a scintilla of evidence to support the finding, the no evidence challenge fails. *Faisst*, 105 S.W.3d at 12.

Moon v. State, 410 S.W.3d at 371. The Court of Appeals went on to discuss and consider the very evidence relied on by the State here and concluded that it did not support the finding made by the juvenile court. *Id.* at 373-75. The State concedes this point in the body of its argument. Br. at 22 ("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 on the maturity factor.").

The State does not contend that the evidence it relies on supports the juvenile court's *actual* finding. Rather, it argues that the evidence might support a different "sophistication and maturity" finding that the juvenile court did not make, and that the juvenile court's ruling should be sustained "if it is correct on any theory of law applicable to the case, even if the trial court used the wrong reason in its ruling." Br. at 22. The case cited by the State, however, does not support the State's argument. *Prystash v. State*, 3 S.W.3d 522, 527 (Tex.Crim.App. 1999), merely holds that where a court properly excludes certain evidence it does not matter if the reason given for excluding the evidence was wrong. It in no way suggests that when a juvenile court makes a particular finding that is not supported

by the evidence, an appellate court can substitute a different finding that the juvenile court chose not to make and on which there is conflicting evidence.

The Court of Appeals was therefore not authorized to substitute a different sophistication and maturity finding for the one made by the juvenile court.

B. The Juvenile Court Misunderstood and Misapplied the "Sophistication and Maturity" Factor.

In the Court of Appeals, Cameron argued not only that there was no evidence or insufficient evidence to support the juvenile court's "sophistication and maturity" finding, but also that the finding itself demonstrated that the juvenile court misunderstood and misapplied that statutory factor. The Court of Appeals construed part of Cameron's argument as being that the sophistication and maturity element "relates only to the question of culpability and criminal sophistication" and declined to adopt that position. *Moon v. State*, 410 S.W.3d at 373-74. Moon's argument, however, was not so limited and the Court of Appeals did not address all of Moon's points. Regardless of this Court's ruling on the State's arguments, the result reached by the Court of Appeals should nevertheless be affirmed on the alternate grounds that (1) the juvenile court made an error of law in its construction and application of the sophistication and maturity element that it was required to consider in determining whether to waive its jurisdiction, and (2) the sophistication and maturity finding is inadequate to permit meaningful review as required by

Kent. Alternatively, this Court should remand to the Court of Appeals to consider Moon's additional points.

1. The juvenile court's finding on sophistication and maturity is legally erroneous.

The juvenile court found that Cameron "is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by the said Cameron Moon to have aided in the preparation of his defense and to be responsible for his conduct." CR. 3-4. That finding makes no sense in the context of the record of this case and demonstrates a misunderstanding of this element.

This "sophistication" finding suggests that Cameron "heretofore waived" constitutional rights. The record, however, is completely devoid of any mention of any waiver of any constitutional rights whatsoever, much less a waiver that was done "intelligently, knowingly and voluntarily."

If one assumes this finding is not that Cameron actually waived constitutional rights, but only that he was "of sufficient sophistication and maturity" to do so, it is also legally erroneous. As a matter of law, there is *no* level of sophistication and maturity that is "sufficient" for a child "to ... waive ... constitutional rights."

Waiver of rights by a child in Texas is governed by statute. Under that statute, a child *cannot* waive constitutional rights by virtue of being "of sufficient

sophistication and maturity." Tex. Fam. Code § 51.09, §53.06(e). *See In the Matter of D.W.M.*, 562 S.W.2d 851, 853 (Tex. 1978) (per curiam) ("[T]he court of civil appeals held that service of summons was waived because the juvenile ... was found to be mature and intelligent enough to waive any statutory rights given to him, and failed to object to the lack of summons. Such a holding constitutes error in view of our interpretation of section 53.06(e) that a juvenile cannot waive service of summons."). The juvenile court's finding states a legal impossibility and is legally erroneous.

2. The court misunderstood and misapplied the sophistication and maturity element.

Not only is the juvenile court's sophistication and maturity finding legally and factually incomprehensible, it also affirmatively demonstrates that the court misunderstood and misapplied that statutory element of the waiver analysis.

Each of the four § 54.02(f) *Kent* factors is intended to inform the question of *whether the welfare of the community requires adult criminal proceedings*. And as this Court has well recognized, it is only the exceptional case where that will be so. *Hidalgo*, 983 S.W.2d at 754. Accordingly, this factor cannot not weigh in favor of certification of a child with only the sophistication and maturity typical of a juvenile. To weigh in favor of certification, the child's sophistication and maturity should be such that it provides a reason why this is an exceptional case where the welfare of the community requires criminal proceedings.

Both society and the law recognize that juveniles, as a group, are neither sophisticated nor mature:

> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class—*e.g.*, limitations on their ability to marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.

J.D.B. v. N. Carolina, 131 S. Ct. 2394, 2397 (2011).

The Courts and Legislature have repeatedly recognized that universal lack of maturity in different contexts ranging from a juvenile's right to marry[8] or to seek an abortion,[9] to their ability to waive rights,[10] or cope with a police interrogation,[11] to the appropriate sentencing for crimes.

For example, in *Miller v. Alabama*, the U.S. Supreme Court reiterated its findings about juveniles in *Roper* and *Graham*:

> Those cases relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility,'" leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125

[8] *See J.D.B. v. N. Carolina*, 131 S. Ct. at 2397.

[9] *See* Tex. Fam. Code § 33.003 (restricting a juvenile to obtain an abortion without parental consent unless she can show that: (1) she is mature and sufficiently well informed to make the decision to obtain an abortion without notifying a parent; (2) notifying a parent would not be in her best interest; or (3) notifying a parent may lead to physical, sexual, or emotional abuse of the minor.) *See also In re Doe*, 19 S.W.3d 249 (Tex. 2000).

[10] *See* Tex. Fam. Code § 51.09 (restricting the ability of a child to waive rights); § 53.06(e) (precluding a child from waiving service of summons).

[11] *J.D.B. v. N. Carolina*, 131 S. Ct. at 2397.

> S.Ct. 1183. Second, children "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid*. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." *Id*., at 570, 125 S.Ct. 1183.

Miller v. Alabama, 132 S.Ct. at 2465. These cases have recognized that this lack of maturity is not simply the "inexperience of youth." It is a function of physiological brain development:

> [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.

Graham v. Florida, 130 S.Ct. at 2026. *Accord Miller*, 132 S.Ct. at 2465. The regions of the brain that are most important for controlling impulse, planning, consideration or consequences, reasoning, and moral judgment are the last regions to mature.[12] The American Academy of Child and Adolescent Psychiatry has "determined that the brain does not physically stop maturing until a person is about 20 years old."[13]

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[12] Marrus, Ellen, and Irene Merker Rosenberg, "After Roper v. Simmons: Keeping Kids Out of Adult Criminal Court," 42 San Diego L. Rev. 1151 at n. 77 (Fall 2005) (citing Declaration of Ruben C. Gur, Ph.D.).

[13] *See* Brief for the American Medical Association et al. at 2, *Roper v. Simmons*, 543 U.S. 551 (2005), 2004 WL 1633549; Brief for the American Psychological Association and the Missouri Psychological Association as Amici Curiae, 2004 WL 1636447; Brief of the Coalition for Juvenile Justice as Amicus Curiae in Support of Respondent.

Given the reality that juveniles are universally recognized as not sophisticated or mature, and the fact that certification is reserved for "exceptional cases," the sophistication and maturity element cannot weigh in favor of certification when the child's sophistication and maturity is merely average. An average child's level of sophistication and maturity does not tend to show that the welfare of the community requires criminal proceedings. If it did, transfer would be the rule rather than the exception.

While juveniles are not generally sophisticated and mature, that does not mean they are generally incompetent to aid their counsel in the preparation of their defense. The juvenile court's finding that the child was sophisticated and mature enough "to aid in the preparation of his defense" (which most l2-year olds could do), confuses mere competency to stand trial[14] with the type of sophistication and maturity that suggests this is the rare type of child for which the welfare of the community requires criminal proceedings rather than rehabilitation efforts. Put simply the welfare of the community does not require criminal proceedings because a child is able to assist in the preparation of his defense.

Another court found a nearly identical finding to be "somewhat difficult to understand":

[14] *See Drope v. Missouri,* 420 U.S. 162 (1975). ("The due process right to a fair trial prevents the government from subjecting a person to trial whose 'mental condition is such that he lacks the capacity … to assist in preparing his defense.'")

> The trial court also found that appellant is of "sufficient sophistication and maturity to have intelligently, knowingly, and voluntarily waived all constitutional and statutory rights heretofore waived" by him "and to have aided in the preparation of this [sic] defense." This finding is somewhat difficult to understand. 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 of Texas, 541 S.W.2d 841, 846 (Tex. Civ. App.—San Antonio 1975, writ ref'd n.r.e.) (emphasis added; reversing certification order).

Similarly, this Court, focusing on culpability and the possibility of reform, has suggested that the sophistication prong deals with whether the child is "criminally sophisticated" and a potential threat to the juvenile system — something the juvenile court did not find here:

> State legislatures originally devised the process as means of removing serious or persistent juvenile offenders generally not amenable to rehabilitation to the adult criminal system. The presence of such juveniles in the juvenile system was seen as a threat to the fundamental structure of the juvenile system and the less *criminally sophisticated*. Transfer was intended to be used only in exceptional cases.

Hidalgo, 983 S.W.2d at 754 (emphasis added). There was no evidence offered at the certification hearing to suggest that Cameron was the type of criminally sophisticated hopeless juvenile offender that warranted transfer.

Under these authorities, and given that waiver of jurisdiction is to be the exception rather than the rule, simply being as sophisticated and mature as the

average sixteen-year old (or, more accurately, as unsophisticated and immature as the average sixteen-year old), or merely being competent to assist in one's defense, cannot weigh in favor of treatment as an adult. The child's level of sophistication must be greater than the ordinary juvenile and more akin to an adult criminal's level of sophistication and maturity before this prong supports waiving jurisdiction. The juvenile court made no such finding.

3. The court's finding on sophistication and maturity is inadequate for meaningful review on appeal.

Kent requires the juvenile court's findings be sufficiently specific to permit meaningful review. *Kent*, 383 U.S. at 561. Not only is the sophistication and maturity finding legally erroneous and inapposite to the question of whether the welfare of the community requires criminal proceedings, but it is inadequate to permit meaningful review.

As noted, the record is devoid of any mention of any waiver of any constitutional rights. An appellate cannot "meaningfully review" a finding that Cameron was "of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived" when it is impossible to tie the finding to anything in the record. There is no way to meaningfully review how a non-existent waiver could be "intelligent, knowing and voluntary," or evaluate the child's level of sophistication and maturity to do something that never happened at all and that is precluded by statute in any event.

Indeed, if no rights were waived then the finding is completely hypothetical.[15] And because there is no way to tell what level of sophistication the juvenile court erroneously *thought* was sufficient for a child to waive rights, there is no way to evaluate the court's conclusion that this factor somehow supports waiving jurisdiction.

Under *Kent*:

> Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver, including, of course, a statement of the relevant facts. It may not "assume" that there are adequate reasons, nor may it merely assume that "full investigation" has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor.

Kent, 383 U.S. at 561.

Here, however, an appellate court is remitted to assumptions about whether the juvenile court thought constitutional rights had actually been waived; if so, under what circumstances; if not, why the juvenile court thought the child was sufficiently sophisticated and mature to have done so when the law precludes sophistication and maturity as authorizing waiver; and whether the question has actually "received the careful consideration of the Juvenile Court" as *Kent* requires, given that the order is nothing more than a fill-in-the-blank form that

[15] There is a serious question as to whether the court even has the power to make such a hypothetical, and arguably advisory, finding. *See Firemen's Co. v. Burch*, 442 S.W.2d 331, 333 (Tex. 1968).

makes the same findings in every case. This is particularly so in light of the recitation in the order that the court "obtained a diagnostic study, social evaluation and full investigation of the child [and] HIS circumstances," when in fact the court did not.

Under similar circumstances, this Court has required lower courts to make findings of fact and conclusions of law to prevent the appellate courts from being "left in the undesirable position of having to make assumptions about the reasons for the trial court's decision":

> In this case, the trial court's refusal to act prevented the court of appeals from meaningful review of the decision to grant the motion to suppress. Without findings of fact and conclusions of law, the court of appeals was left in the undesirable position of having to make assumptions about the reasons for the trial court's decision. … [T]he efficient administration of justice will be served by a requirement that trial judges respond to a request for findings of fact and conclusions of law. Effective from the date of this opinion, the requirement is: upon the request of the losing party on a motion to suppress evidence, the trial court shall state its essential findings. By "essential findings," we mean that the trial court must make findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts.

State v. Cullen, 195 S.W.3d 696, 698-99 (Tex.Crim.App. 2006). Indeed, making such findings is an "important component of due process." *United States v. Hernandez–Meza*, 720 F.3d 760, 767–68 (9th Cir. 2013).

The Texas Supreme Court has imposed a similar requirement when the maturity of a juvenile is at issue:

> [I]f a court determines that a minor has not demonstrated that she is mature enough to make a decision to undergo an abortion, then *the court should make specific findings concerning its determination so that there can be meaningful review on appeal*. Similarly, if a court concludes that a minor is not credible in some respect that directly relates to its determination of maturity, the court should make specific findings in that regard as well.

In re Doe, 19 S.W.3d 249, 257 (Tex. 2000) (emphasis added).

This Court should impose a similar rule for juvenile certification orders that, at a minimum, requires findings tailored to the individual case rather than form findings that are the same for every certification. Such a requirement would not only be consistent with *Kent*, but with the statutory requirement that the juvenile court "shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court." Tex. Fam. Code §54.02(h).

VI. The Juvenile Court's Use Of A Form Order Deprived Cameron of A Liberty Interest Without Due Process.

There is no dispute that adjudication as a juvenile, rather than prosecution as an adult, carries significant benefits for a juvenile. These benefits include, but are not limited to, a determination of delinquency rather than criminality; confidentiality; limitations with respect to sentencing; isolation from the adult criminal population; and perhaps most significantly, rehabilitation. As the Supreme Court recognized in *Kent*, by placing jurisdiction over all juveniles initially, and, presumptively permanently, in the juvenile court, and permitting the

court to waive its jurisdiction only after meeting procedural requirements, including a full investigation, the statute at issue there created a substantial and vested liberty interest in juvenile status. *Kent*, 383 U.S. at 561. Likewise, here, in conferring these benefits, the Texas Family Code created a liberty interest in Cameron's juvenile status that may not be removed without due process under both the Fourteenth Amendment of the United States Constitution and Article I § 19 of the Texas Constitution.

Here, Cameron's right to due process was violated because the State's use of a fill-in-the-blank form order that does not contain individualized findings – such as the reference to waiver of constitutional rights that were not and could not be waived – does not allow for meaningful review of the juvenile court's exercise of discretion. To enable a child to defend against a motion to certify the proceedings to adult court, this Court should conclude that due process requires the State to make findings of fact and conclusions of law under §54.02 to enable the juvenile to obtain the "meaningful review" of the grounds supporting certification. A fill-in-the-blanks order with canned findings and prefabricated reasons for waiver does not satisfy the due process required to protect a child's liberty interest, which *Kent* reflects when it says the order must show it that the certification received the genuine attention of the court.

The State's points of error and arguments asserted here underscore the due process violation. The State effectively argues that the form order – which the State itself prepared for the court – does not reflect the real reasons for waiver. The State claims that a reviewing court must and should be allowed look to oral statements and unstated assumptions and inferences to provide reasons not stated in the order itself. The shifting sands review advocated by the State empowers the juvenile court with unfettered discretion to abdicate the liberty interest entrusted to it by the Family Code and does not comport with due process requirements.

VII. Conclusion

Cameron Moon respectfully requests that this Court affirm the judgment of the Court of Appeals. Alternatively, in the event this Court reverses the Court of Appeals, Cameron Moon requests that this Court remand to the Court of Appeals to consider Cameron Moon's remaining points that were not previously considered by that Court. Cameron moon further requests such additional relief to which he may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel for the State of Texas by electronic filing or certified mail, return receipt requested, on this 18th day of March, 2014.

/s/ David Adler
David Adler

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of 14,374 words, based upon the representation provided by the word processing program that was used to create the document.

Certified to this the 18th day of March 2014.

/s/ David Adler
David Adler