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

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

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**IN THE 178<sup>th</sup> DISTRICT COURT  
HOUSTON, TEXAS**

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**THE STATE OF TEXAS**

**Petitioner**

**v.**

**CAMERON MOON**

**Respondent**

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**RESPONSE TO THE STATE'S  
POST-SUBMISSION BRIEF**

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## **I. Introduction**

Respondent Cameron Moon respectfully files this response to the State's Post-Submission Brief, including arguments raised for the first time in that brief.

In the Court of Appeals the State argued that the standard of review was abuse of discretion, and cited cases standing for the proposition that part of the abuse of discretion analysis was whether the evidence was legally or factually sufficient to support the findings on which the juvenile court based its exercise of discretion to waive its jurisdiction. *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.). The Court of Appeals, like virtually every other court reviewing a certification ruling, applied the standard advocated by the State. Notably, the State has continued to advocate that same standard in subsequent cases. *See State's Br. in Guerrero v. State*, No. 14-13-00101-CR ("An appellate court reviews a juvenile court's decision to certify a juvenile defendant as an adult ... under an abuse of discretion standard. ... In determining whether the juvenile court abused its discretion, the reviewing court considers the sufficiency of the evidence. ... A trial court's findings of fact are reviewed by the same standard generally applicable to sufficiency review in criminal cases.") (excerpt attached as Ex. A).

In its Petition for Discretionary review, the State argued that there was a conflict between *Bleys* and *Faisst*, when in fact those cases applied exactly the same standard for reviewing the evidence. *See Bleys*, 319 S.W.3d at 861, *Faisst*, 105 S.W.3d at 12.<sup>1</sup>

Next, in its opening brief, the State argued that the standard of review in *Brooks v. State*, 323 S.W.3d 893, 895 (Tex.Crim.App. 2010), was the proper sufficiency standard to incorporate into the abuse of discretion analysis. The *Brooks* standard is *less deferential* than the standard actually applied by the Court of Appeals. *Id.* 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*.”)

The *Brooks* standard requires the appellate court to determine whether, “Considering all of the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt.” 323 S.W.3d at 899. In contrast, the legal sufficiency standard applied by the Court of Appeals required it to “credit evidence favorable to the challenged finding *and disregard contrary evidence* unless a reasonable fact finder could not reject the evidence.” *Moon v. State*, 410 S.W.3d 366, 371 (Tex.App.-Houston [1st Dist.] 2013). Under this standard, “[i]f there is more than a scintilla of evidence to support the finding,

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<sup>1</sup> *Bleys* considered only factual sufficiency, as legal sufficiency was not urged. *Faisst* considered both legal and factual sufficiency.

the no evidence challenge fails.” *Id.* The factual sufficiency standard applied by the Court of Appeals allowed the court to “consider all of the evidence” but only permits reversal “if the court's finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust.” Both the legal and factual sufficiency standards are *more deferential* to the juvenile court than the *Brooks* standard.

For the first time during oral argument, the State proposed yet another standard of review, which counsel stated he had only thought of the night before; specifically, that the standard for certification should be “probable cause,” and should be reviewed accordingly.

Notably, the State highlights its own shifting position. It admits that in its briefing to this Court it “maintained that a *criminal* sufficiency analysis [*Brooks*], rather than a *civil* sufficiency analysis was the proper standard to incorporate” in the abuse of discretion analysis, while “[i]n its oral argument ... the State modified its position by arguing that there was no need to impose *any* type of sufficiency-of-the-evidence analysis onto the abuse of discretion analysis.” State’s Post-Submission Br. at 1.

Finally, in its post-submission brief, the State now once again argues that abuse of discretion is the proper standard of review, and that “[t]he court of appeals *correctly* determined that a trial judge’s findings are reviewed for an abuse of



discretion.” *Id.* (emphasis added). However, the State now suggests yet another evidentiary standard of review that should be part of the abuse of discretion analysis, although it is equivocal about exactly what that standard should be. On the one hand, it states that there is “no need to impose any type of sufficiency analysis,”<sup>2</sup> while on the other hand it states that the Court should “view[] the evidence in the light most favorable to the trial judge’s ruling, deferring to the trial judge’s credibility determinations” (*id.* at 4), which is what the Court of Appeals did.

Refusing to do any type of sufficiency analysis would not be consistent with due process. The Family Code requires the juvenile court to “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 Ann. §54.02(h). *Hidalgo v. State*, 983 S.W.2d 746 754 n.16 (Tex. Crim App. 1999) (“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). This is required to satisfy *Kent*’s requirement that the reasons for certification are subject to “meaningful review.” *Kent v. U.S.*, 383 U.S. 541, 561 (1966) (the juvenile court “must set forth

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<sup>2</sup>In advocating this standard, it does not rely on cases dealing with certification of a child as an adult. Instead, it relies on *In re K.T.*, 107 S.W.4d 65, 66-67 (Tex. App. – San Antonio 2003, no pet), which dealt with “the standard for reviewing orders committing a juvenile to TYC for an indeterminate sentence,” and *In re J.W.R.*, 879 S.W.2d 254, 255 (Tex. App. – Dallas 1994, no writ), which dealt with an order transferring an 18 year old, who had been given a 32 year determinate sentence, to the Texas Department of Criminal Justice.

the basis for the order with sufficient specificity to permit meaningful review.”) Relying on rote recitations of the reasons for certification in a form order without any analysis of the sufficiency of the evidence to support those stated reasons for certification does not constitute meaningful review and is not consistent with the abuse of discretion standard.

## **II. The Abuse of Discretion Standard**

First, the State concedes that “the abuse of discretion standard permits the appellate court to review questions of law de novo.” State’s Post-Submission Br. at 3. The juvenile court has no “discretion” with respect to errors of law.

Second, as to matters that are not questions of law, the State now concedes that there must be consideration of the evidence. Specifically, it argues that the appellate court should examine “‘whether the trial court acted without reference to any guiding rules or principles’ after viewing the evidence in the light most favorable to the trial judge’s ruling, deferring to the trial judge’s credibility determinations, and presuming that all reasonable fact findings in support of the ruling were made.” *Id.* at 4. As already noted, the Court of Appeals did “view[] the evidence in the light most favorable to the trial judge’s ruling, deferring to the trial judge’s credibility determinations.”<sup>3</sup> *Moon v. State*, 410 S.W.3d at 371.

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<sup>3</sup> The Court of appeals did not and could not “presume” other “fact findings in support of the ruling were made” that the juvenile court did not actually make and include in its order. The Family Code requires all of the juvenile court’s reasons for waiver to be specifically stated in the order and the juvenile court did so. Tex. Fam.Code Ann. § 54.02(h); *Hidalgo*, 983 S.W.2d at

Thus, how the abuse of discretion standard applies depends on the nature of the error. Here, the juvenile court committed legal errors, errors in making its findings, and acted without reference to guiding rules and principles.

**A. The Juvenile Court Committed Errors of Law Subject to De Novo Review Under the Abuse of Discretion Standard.**

The juvenile court's errors with respect to the individual statutory factors it considered in deciding whether to certify Cameron, comprised both legal errors and errors in making the findings based on the evidence.

For example, the juvenile court found that Cameron was "of sufficient sophistication and maturity to have intelligently knowingly and voluntarily waived all constitutional rights heretofore waived by said CAMERON MOON...". 1 CR 3. This was an error on a question of law because, no matter what the evidence may have been, there is no level of "sophistication and maturity" that is "sufficient" to allow a juvenile, by himself or herself, to waive constitutional rights. Statute prohibits it. 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

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754 n. 16. Thus there cannot have been additional reasons for waiver. Moreover, indulging in such presumptions would run afoul of the Supreme Court's decision in *Kent* and make it impossible for respondent to know what he had to challenge on appeal. Notably, *J.W.R.* relied on the Texas Supreme Court's decision in *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844 (Tex. 1992), in which, the Supreme Court held that findings of fact and conclusions of law were not required when a trial court imposed discovery sanctions. Discovery sanctions are hardly analogous to the present matter. More importantly, of course, the Family Code specifically requires the Juvenile Court to "state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court" in order that an appellate court can conduct "meaningful review."

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 abused its discretion in certifying Cameron on the basis of this finding.

The juvenile court also committed an error of law when it stated, as a reason for waiver, that Cameron was “of sufficient sophistication and maturity ... to have aided in the preparation of his defense.” This is an error of law because, regardless of what the evidence was regarding Cameron’s sophistication and maturity, “the welfare of the community” does not “require criminal proceedings” because a child may be able to assist in his or her defense. A child’s ability to assist in his or her defense is not a standard for certification as an adult; it is the standard for proceeding *at all*. Tex. Fam. Code Ann. § 55.31(a) (“a child ... who ... lacks capacity ... to assist in the child's own defense is unfit to proceed ...”). This Court has made clear that certification is reserved for “exceptional cases.” *Hidalgo*, 983 S.W.2d at 754. Bare competence to stand trial does not satisfy that exceptional standard as a matter of law; if it did, every child who was merely competent to stand trial would be subject to certification.

The juvenile court committed other legal errors as well. The juvenile court explicitly considered factors that, as a matter of due process, it was prohibited from considering in deciding whether to certify Cameron. On the record, the court considered “judicial economy” as supporting certification 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. Considering “judicial economy” and “convenience” as reasons for waiving jurisdiction was an error of law. *Kent* prohibits waiving jurisdiction “for the purpose of easing the docket.” *Kent*, 383 U.S. at 553 n. 15.

The balancing of the statutory factors for certification as a whole is also a legal issue: “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 770, 771 (Tex. Crim. App. 1997) (considering balancing test applicable to speedy trial issue). Thus, where the court has misconstrued or misapplied any of the factors that go into the balancing test, whether the error as to any *individual* factor involves a fact determination or a legal conclusion, the court has committed a legal error with respect to the balancing test as a whole. *Id.*

Stated another way:

- The juvenile court acted without reference to guiding rules and principles when it made a finding that Cameron was sophisticated enough to waive constitutional rights when, by statute, he cannot do so.
- The juvenile court acted without reference to guiding rules and principles when it found that Cameron's supposed ability to assist in his defense supported certification; "the welfare of the community" does not "require criminal proceedings" because a child is able to assist in his or her defense. The court confused mere competence to stand trial with the exceptional circumstances required for certification.
- The juvenile court acted without reference to guiding rules and principles when it considered "judicial economy" and "convenience" as permissible reasons for certifying a child as an adult.
- The juvenile court acted without reference to guiding rules and principles in the weighing the statutory factors for certification because the errors above are at odds with the applicable guiding rules and principles and tainted the weighing process.

**B. The Court of Appeals Applied the Correct Standard in Reviewing Sufficiency of the Evidence.**

The State argues that a court reviewing a certification order should “view[] the evidence in the light most favorable to the trial judge’s ruling, deferring to the trial judge’s credibility determinations.” The Court of Appeals did exactly that. It specifically stated that: “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.” *Moon v. State*, 410 S.W.3d at 371. The Court of Appeals also fully recognized that “the juvenile court was entitled to disbelieve Dr. Silverman's testimony that Moon lacked sophistication and maturity.” *Id.* at 375.

There is no more deferential evidentiary standard than crediting evidence favorable to the finding and disregarding contrary evidence. The State simply introduced no evidence to support the juvenile court’s sophistication and maturity finding (which, as noted, is legally erroneous in any event regardless of what the evidence was).

With respect to the juvenile court’s finding regarding amenability to rehabilitation, the Court of Appeals found the evidence factually insufficient. In its original brief in this Court, the State did not argue that the Court of Appeals erred in ruling that there was insufficient evidence to support the juvenile court’s finding dealing with rehabilitation of the child.

The State's new argument does not support reversal. The type of evidence relied on by the State is not legally probative evidence to support the juvenile court's finding regarding Cameron's amenability to rehabilitation.

Both the U.S. Supreme Court and this Court have 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*, 424 S.W.3d 66, 75 (Tex.Crim.App. 2014) (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012)).

Similarly, this Court in *Hidalgo* stated:

To assist the court in assessing these factors, the law requires a psychological examination by a doctor with specialized training in adolescent psychology and forensic assessment [citation omitted]. 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. In this case, the State waived that examination.<sup>4</sup> In the absence of such an examination, there was no evidence of the type required to conclude that Cameron was not amenable to rehabilitation.

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<sup>4</sup> During oral argument, the State's counsel stated that Respondent waived the examination. Respondent cannot unilaterally waive the statutorily mandated examination. The State had to waive it as well.



The State relies on the fact that Cameron had previously been placed on probation for allegedly “keying” a car and that the probation report contains one line references to “altercations,” with no detail or testimony about the circumstances. This is not “evidence” that Cameron was not subject to rehabilitation because it is not the type of information from which a layman such a judge can draw a conclusion about amenability to rehabilitation.

Drawing any conclusion about the potential for rehabilitation for a particular individual requires expert testimony from those qualified on the subject of adolescent rehabilitation, and even then it is difficult to draw such conclusions. *Roper v. Simmons*, 543 U.S. 551, 573 (2005) (“It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”) The State introduced no such evidence. The only evidence of that type was introduced by the defense and that evidence was uniformly that Cameron was amenable to rehabilitation.

Laymen, including judges, are not qualified to infer from the type of evidence relied on by the State that a particular child such as Cameron is not amenable to rehabilitation. *See id.* The State introduced no details regarding the type of programs Cameron attended after the car keying incident, but it is virtually certain that they were not comparable to the Capital & Serious Violent Offender

Treatment Program administered by the Texas Juvenile Justice Department (TJJD, formerly the Texas Youth Commission). Indeed, according to the TJJD's web site, "The Giddings Capital and Serious Violent Offender Program has gained worldwide attention and been featured on several national news programs. It is one of TJJD's most promising specialized treatment programs." Not surprisingly many individuals undergoing that program have prior offenses; yet the program is effective. There is no evidence that it would not have been effective for Cameron.

The State produced no evidence that just because Cameron had been through certain programs (the details of which the State failed to introduce into evidence) as a result of the car keying incident that he was not amenable to rehabilitation under the programs available for more serious offenses. Such evidence could have included, for example, not only evidence relating to Cameron himself, but evidence about the efficacy of such programs for children who had previously committed minor offenses. There is no such evidence in the record.

**C. This Court Cannot Presume Findings That the Juvenile Court Did Not Make.**

The State argues that the Court should "presume[e] that all reasonable fact findings in support of the ruling were made." Post-Submission Br. at 4. Under the language of both the Family Code and *Kent*, the Court cannot presume findings the juvenile court did not actually make and affirm certification on that basis. A reviewing court is limited to the reasons for waiver articulated by the juvenile

court. *Kent*, 383 U.S. at 561 (the reviewing court “may not ‘assume’ that there are adequate reasons” for waiver).

As noted, the statute requires the juvenile court to “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 Ann. §54.02(h). *Hidalgo*, 983 S.W.2d at 754 n.16. The purpose of this requirement is to insure “meaningful review” of the *stated* reasons for waiver.

Here, as the statute requires, the Court did state in its order its reasons for waiver. Under the statute, any unstated *potential* reasons for waiver were necessarily rejected by the juvenile court when it did not include them in its order. This Court may not “presume” there are other adequate reasons for waiver not stated, nor may it substitute a different finding that the juvenile court chose not to make and on which there is conflicting evidence, because the juvenile court necessarily rejected any such additional or alternate bases for certification when it did not include them in its order:

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. Thus this Court may not affirm certification based on any ground for which it can find support in the record, thereby substituting its own basis for certification for the actual basis relied on by the juvenile court.

The reasons for the statutory requirement that the juvenile court state its reasons for waiver are well illustrated by this Court's decision in *State v. Cullen*; basing review on assumptions about the reasons for the juvenile court's ruling does not constitute meaningful review:

The refusal of trial courts to enter findings of fact when timely requested by the State leaves appellate courts with nothing to review except a one-word ruling and forces the courts of appeals to make assumptions about the trial court's ruling. The ruling could be based on a mistake of law, on the trial court's disbelief of the testimony presented, or even on a clerical error. There is the possibility that we are basing our entire appellate review on the wrong word being circled. We agree with Judge Womack's concurring opinion in *Ross* that courts of appeals should not be forced to make assumptions (or outright guesses) about a trial court's ruling on a motion to suppress evidence. *De novo* review of such a ruling does not resolve this issue because the trial court is still in the best position to judge the credibility and demeanor of the witnesses at a pretrial suppression hearing. Instead, the proper solution to this problem is to require the trial courts to enter findings of fact and conclusions of law when ruling on a motion to suppress evidence.

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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.

*State v. Cullen*, 195 S.W.3d 696, 698-99 (Tex.Crim.App. 2006).

#### **D. The Standard for Certification Is Not “Probable Cause.”**

During oral argument, the State argued that probable cause should be the standard for certification. That is grammatically incorrect under the language of the statute, legally incorrect under the rules of statutory construction and insufficient to comport with due process.

##### **1. Probable cause is not the standard of proof applicable to the determination of whether the welfare of the community requires criminal proceedings.**

Section 54.02(a) states:

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

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

Tex. Fam. Code. §54.02(a)(3) (emphasis added).

The first “that” and the subsequent “and that” create two independent clauses and have the effect of limiting the “probable cause” wording to the first “that” clause.

As shown by the rewording below, which omits the first “that,” it makes a difference where the “probable cause to believe” phrasing is placed in the statute:

(3) after a full investigation and a hearing, the juvenile court determines there is probable cause to believe **that** the child before the court committed the offense alleged **and that** because of the

seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

If the statute were construed this way, the first “that” contained in the statute as it is *actually* written would serve no grammatical function.<sup>5</sup>

The phrase “**that** there is probable cause to believe that the child before the court committed the offense alleged” is an independent noun clause modifying the verb “determines.” The phrase “that the child before the court committed the offense alleged” is a subordinate clause that is part of the larger noun clause. The subsequent phrase “**and that** because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings” is another independent clause.

## **2. The statute must be construed in favor of the accused.**

If there is any doubt about the proper grammatical construction of this provision, it must be resolved in favor of the accused. *Weinn v. State*, 326 S.W.3d 189 (Tex.Crim.App. 2010) (“in the event that legislative intent is unclear, the court should apply the rule of lenity to find in favor of appellant.”); *Cuellar v. State*, 70

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<sup>5</sup> This is also consistent with other provisions of the Family Code. Section 51.17(a) states

Except as provided by Section 56.01(b-1) and except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title.

Tex. Fam Code § 51.17(a). The Texas Rules of Civil Procedure establish “preponderance of the evidence” as the default burden of proof. *See* Tex. R. Civ. P. 226a (requiring juries to be instructed on preponderance of the evidence).

S.W.3d 815, 821-26 (Tex.Crim.App.2002)(Cochran, J., concurring) (“it is a fundamental tenet of criminal jurisprudence that, when courts must choose between two reasonable readings of a statute to determine what conduct the legislature intended to punish, courts apply the policy of lenity and adopt the less harsh meaning.”)<sup>6</sup>

**3. As a matter of Due Process, probable cause cannot be the standard for depriving a child of the liberty interest granted by the Family Code.**

There is, however, an even more fundamental infirmity in the State’s proposed construction of the statute: The legislature’s creation of a statutory right to adjudication in a juvenile court and the benefits attendant to that process gives rise to a liberty interest protected by the due process clause of the 14th Amendment. *Kent v. United States*, 383 U.S. at 556-57, 560 (the statute “confers upon the child a right to avail himself of that court’s ‘exclusive’ jurisdiction.”). *See Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974) (Statutory right to credits for good behavior created a protected liberty interest such that “there must be a ‘written statement by the factfinders as to the evidence relied on and reasons’ for the disciplinary action” resulting in reduction of “good time credit” for inmates).

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<sup>6</sup> *See Murray v. State*, 21 Tex. App. 620, 633, 2 S.W. 757, 761 (1886); *Ladner v. United States*, 358 U.S. 169, 178, 79 S.Ct. 209, 3 L.Ed.2d 199 (1958) (“When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity.”); *Bell v. United States*, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955)(same).

Depriving a child of the liberty interest guaranteed by the Family Code based on nothing more than “probable cause” would violate due process. As this Court recognized in *Hidalgo*, certification as an adult is more serious than a determination of delinquency; certification “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.

Therefore probable cause cannot, consistent with due process, be the standard for certification.<sup>7</sup> A determination of delinquency cannot be made based on mere probable cause; it requires proof beyond a reasonable doubt. Tex. Fam. Code Ann. § 54.03(f) (“no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt.”) Arguably, therefore, the State’s burden in a certification proceeding should be proof beyond a reasonable doubt. Indeed, the State’s argument for the *Brooks* evidentiary standard for reviewing findings subject to the beyond a reasonable doubt standard is fully consistent with this. And under the *Brooks* standard, the Court of Appeals’ evidentiary rulings should be

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<sup>7</sup> Cf. *Blount v. Rizzi*, 400 U.S. 410 (1971) (“probable cause” standard was insufficient to support a temporary mail detention order); *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989) (rejecting on constitutional grounds the pre-trial seizure of certain expressive material that was based upon a finding of “no more than probable cause to believe that a RICO violation had occurred.”)



affirmed since *Brooks* establishes a tougher standard than the one the Court of Appeals applied.

**E. Respondent Presented Evidence to the Juvenile Court Related to Adolescent Brain Development.**

During oral argument the Court questioned whether it could consider information regarding adolescent brain development of the type underlying the U.S. Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551, 578 (2005), *Graham v. Florida*, 560 U.S. 48, 82 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2397 (2011), and recognized in this Court's decisions in *Hidalgo* and *Ex Parte Maxwell*, 424 S.W.3d 66, 75 (Tex.Crim.App. 2014) (quoting *Miller*, 132 S.Ct. at 2469).

These cases establish as a matter of law that adolescent brains are different from adult brains in ways that are critical to determining whether they should be certified as adults. But even apart from this case law, the juvenile court was presented with a great deal of information of this type.

In response to the State's motion to transfer, Respondent's counsel filed a brief with exhibits containing the type of scientific data relied on by the United States Supreme Court. See Second Supplemental Clerk's Record at 59-327 (hereinafter "SSCR").

This material was offered into evidence without objection from the State, and included articles discussing the harmful effects of solitary confinement on a

child (SSCR 58-59, 72, 133-151), and scientific data, as relied on by the Supreme Court in *Roper*, establishing that adolescent's brains are different than those of adults. SSCR 63-68, 106-161, 168-205, 206-243, 250-273. Counsel also directed the juvenile court to numerous law review articles, scientific studies, and the Amicus Brief for the American Medical Association in *Roper v. Simmons*, 125 S.Ct. 1183 (2005), available at 2004 WL 1633549, and provided the juvenile court with evidence that juvenile rehabilitation promotes the welfare of society while also affording protection to the child in keeping with the purpose of the Family Code. SSCR 67.

### **III. Conclusion**

Respondent Cameron Moon respectfully prays that the Court of Appeals be affirmed and for such other relief to which he may be entitled.

Respectfully submitted,

/s/ David Adler

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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 28th day of August, 2014.

/s/ David Adler

David Adler

### **CERTIFICATE OF COMPLIANCE**

The undersigned attorney certifies that this computer-generated document has a word count of 5197 words, based upon the representation provided by the word processing program that was used to create the document.

Certified to this the 28th day of August 2014.

/s/ David Adler

David Adler

**No. 14-13-00101-CR**

In the  
Court of Appeals  
For the  
Fourteenth Judicial District of Texas  
At Houston

FILED IN  
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**No. 1354948**

In the 338th District Court of  
Harris County, Texas

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**JORGE GUERRERO**

*Appellant*  
V.

**THE STATE OF TEXAS**

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STATE'S APPELLATE BRIEF

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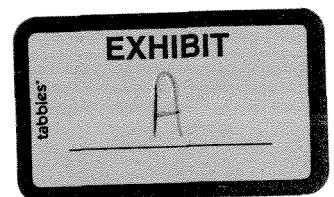
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**Oral Argument Requested Only If Requested By Appellant**



waive jurisdiction and that there was little, if any, prospect of adequate protection of the public and little, if any, likelihood of reasonable rehabilitation of appellant by the use of procedures, services and facilities available to the court. In making these arguments, appellant ignores Officer Grard's testimony, the two assessments of appellant from child psychologists, Linda Wittig and Uche Chibueze, and the information included in the Court Report Information Summary, which supports the juvenile court's findings. Thus, the juvenile court did not abuse its discretion in waiving jurisdiction over appellant.

### ***Standard of Review***

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. *Moon v. State*, 410 S.W.3d 366, 370 (Tex. App.—Houston [1st Dist.] 2013, pet. granted); *Bleys v. State*, 319 S.W.3d 857, 861 (Tex. App.—San Antonio 2010, no pet.). Absent an abuse of discretion, an appellate court will not disturb a juvenile court's transfer and certification order. *Moon*, 410 S.W.3d at 370; *Bleys*, 319 S.W.3d at 861. In determining whether the juvenile court abused its discretion, the reviewing court considers the sufficiency of the evidence. *Moon*, 410 S.W.3d at 370; *Bleys*, 319 S.W.3d at 861. A trial court's findings of fact are reviewed by the same standard generally applicable to sufficiency review in criminal cases. *Moon*, 410 S.W.3d at 370; *Bleys*, 319 S.W.3d at 861.

Under a sufficiency challenge, appellate courts credit evidence favorable to the challenged finding and disregard contrary evidence unless a reasonable fact finder could not reject the evidence. *Moon*, 410 S.W.3d at 371. If there is more than a scintilla of evidence to support the finding, the no evidence challenge fails. *Id.* at 377.

### ***Applicable Law***

A juvenile court may waive its exclusive jurisdiction and transfer a child to a criminal court after conducting a full investigation and hearing. Tex. Fam. Code Ann. §54.02(a) (West 2013). The child must have been fourteen years old at the time that the child is alleged to have committed the offense and the offense must be a felony. Tex. Fam. Code Ann. §54.02(a)(2) (West 2013). The court must determine that there is probable cause to believe that the child committed the offense alleged and that, because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings. Tex. Fam. Code Ann. §54.02(a)(3) (West 2013).

### ***Analysis***

- a. The trial court did not abuse its discretion in finding that the evidence submitted at the hearing provided probable cause that appellant committed the offense of aggravated robbery.**
  - i. The evidence sufficiently established probable cause that appellant committed the offense alleged.**

While appellant argues that the State offered “absolutely no evidence that he was anything more than a party” to the offense, appellant ignores the testimony of