Juvenile Law Section
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NEWSLETTER EDITOR

Associate Judge Pat Garza
386th District Court I San Antonio, Texas

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Dear Juvenile Law Section Members:

Welcome to the e-newsletter published by the Juvenile Law Section of the State Bar of Texas. Your input is valued so please take a moment to email us if you have any suggested commentary for future newsletters.

The "Review of Recent Cases" includes cases that are hyperlinked to Casemaker, a free service provided by TexasBarCLE. To access these opinions, you must be a registered user of the TexasBarCLE website, which requires creating a password and log-in. If you do not wish to receive emails from TexasBarCLE, you can opt-out of their email list.

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EDITOR'S FOREWORD By Associate Judge Pat Garza

Juvenile delinquency defense is an important and vital part of a functioning juvenile justice system. Research shows that juveniles who experience incarceration are more likely to commit adult offenses than similarly situated juveniles who avoid incarceration. Juveniles in custody experience trauma, violence, disengagement from family and community and exacerbated mental health problems including suicide, and sexual abuse in prisons. Dedicated, high quality, properly resourced, developmentally-informed defense for juveniles creates profound opportunities for children accused of delinquent and status offenses.

Jim Bethke, the Executive Director of the Texas Indigent Defense Commission has asked that we publish "A Juvenile Defense Self-Assessment Tool." The piece was produced by the National Juvenile Defender Center (NJDC) and the Juvenile Committee of the National Association for Public Defense (NAPD) and distributed to create an opportunity to reflect on practices in public and private defender offices pertaining to the defense of juveniles in delinquency proceedings. Jim, a great friend of juvenile law in Texas, is a past-chair of the Juvenile Law Section Council as well as a past-chair of the Juvenile Law Exam Commission for the Texas Board of Legal Specialization. The piece is geared to public and private defender offices to help identify gaps in juvenile defense services, but can help all of us on focusing on the importance of a competent and well-trained defense.

Juvenile Defense Self-Assessment Tool. In this issue I have included a Juvenile Defense Self-Assessment Tool, produced by the National Juvenile Defender Center (NJDC) and the Juvenile Committee of the National Association for Public Defense (NAPD) and distributed to create an opportunity to reflect on practices in public and private defender offices pertaining to the defense of juveniles in delinquency proceedings.

Nuts and Bolts Conference. The Nuts and Bolts of Juvenile Law Conference will be held on June 27-29, 2016, at the Holiday Inn NW SeaWorld in San Antonio, Texas. This would be a good time to bring the entire family to a conference. Daily sessions will end early and the Section is working on discounts to some of the local attractions so that participants can enjoy them with their families. Don't miss this one!

29th Annual Robert Dawson Juvenile Law Institute. The Juvenile Law Section's 29th Annual Juvenile Law Conference was held February 22-24, 2016 at the Wyndham Riverwalk Hotel in San Antonio, Texas. Congratulations to Riley Shaw and his committee for the great job in setting it all up. San Antonio continues to be a favorite of the section.

It is what we think we know already that often prevents us from learning.

Claude Bernard

NJDC
NATIONAL JUVENILE DEFENDER CENTER

NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

Juvenile Defense Self-Assessment Tool

Dear Public Defense Leader:

Juvenile delinquency defense is an important and vital part of a functioning public defender system. Research shows that juveniles who experience incarceration are more likely to commit adult offenses than similarly situated juveniles who avoid incarceration. Juveniles in custody experience trauma, violence, disengagement from family and community and exacerbated mental health problems including suicide, and sexual abuse in prisons. Dedicated high quality, properly resourced, developmentally-informed defense for juveniles creates profound opportunities for children accused of delinquent and status offenses.

While public defender offices are underfunded, and often stretched to and beyond the breaking point, we believe that defense in juvenile delinquency cases requires carefully cultivated and properly developed juvenile defenders. Skilled advocates who choose the juvenile defense field should be placed on an equal footing with their counterparts in adult criminal defense. The defense of juveniles is a highly complex and specialized practice. The role of the juvenile defender has evolved to require a challenging and complex skillset needed to meet core ethical obligations. Youth need attorneys who are well-versed in the science of adolescent development and who can leverage that understanding to help youth navigate the complexities of the justice system; present the legal and the social cases; promote accuracy in youthful client decision making; provide alternatives for system decision makers; enforce the client's due process rights; and monitor institutional treatment, aftercare, and re-entry.

The Juvenile Committee of the National Association for Public Defense (NAPD) and the National Juvenile Defender Center (NJDC) have developed a Self-Assessment Tool that is intended to create an opportunity to reflect on practices in your office that you may not have considered before. We hope you will complete this assessment and fairly consider the juvenile practice in your office.

The National Juvenile Defender Center and the National Association For Public Defense stand ready to assist your office in completing the self-assessment or in developing solutions that will improve juvenile defense delivery to ensure children's access to counsel and quality of representation.

Sincerely,

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THE LEGAL AID SOCIETY

Dear Colleagues:

We all work each day to ensure that public defender offices are well-resourced, that defenders are well-trained, and that the defense profession is respected and valued by all stakeholders. We know that only by elevating the practice of public defenders do those accused and charged truly get the benefit of a justice system. We also know, like you, that this is an uphill battle requiring our collective and collaborative support for each other. Organizations that provide defenders the ability to share tools, techniques, successes and lessons learned, like the National Association of Public Defenders (NAPD) and the National Juvenile Defender Center (NJDC), are at the center of many of the innovative and creative ways in which we work together towards our common goal of justice for all.

To this end, we share a recognition of the critical importance of a well-funded, fully resourced, expertly trained juvenile defense workforce, one that recognizes the nuanced and complex work of representing juveniles who have been charged with crimes. The manner in which juvenile defense is provided is vastly different from state to state, in fact, even the definition of who is a juvenile varies from jurisdiction to jurisdiction. But one thing remains clear: children deserve the same robust, innovative and thoughtful defense as adults targeted to their needs and issues, and adult defense offices are in the best position to champion this cause.

Attached to this letter, you will find a Juvenile Defense Assessment Tool created via a partnership between NAPD's Juvenile Committee and the NJDC. This excellent tool was designed to assess the state of juvenile defense in your jurisdictions, and to give thoughtful pause to the priority placed on juvenile defense provision. It is not a test, nor an evaluation, more simply an outline that will assist defender offices in looking more closely and carefully at whether juveniles receive appropriate and meaningful defense services. NAPD's Juvenile Committee and NJDC are staffed by juvenile defense attorneys who are the experts in their field, and remain at the ready to assist any public defender office who, after utilizing the assessment tool would like to take a deeper look at how to improve juvenile defense.

So, please join us, in promoting the strongest juvenile defense system possible and ensuring that all children charged with crimes receive focused, comprehensive and quality legal representation. The Juvenile Defense Assessment Tool is just one step towards realizing that goal.

Sincerely,

Tina Luongo
Attorney-in-Charge, The Legal Aid Society
Criminal Defense Practice

Paul DeWolfe
Public Defender
State of Maryland

This tool is intended to assist defender leaders who want to ensure that juvenile defense is sufficiently resourced and that juvenile defense delivery complies with national standards. Throughout this material NAPD referenced the NJDC and NLADA Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems, which are online at: http://njdc.info/wp-content/uploads/2013/11/Principles-in-Practice_Promoting-Accountability-Safety-and-Fairness-in-Juvenile-Delinquency-Proceedings.pdf

The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist.

1. **Does your office/agency employ juvenile defender specialists whenever possible? Where employing a juvenile defender specialist[1] is not possible, is an attorney's juvenile practice considered just as important in terms of evaluation and promotion as their adult practice?**

   Representing children is a legal specialty that requires advanced knowledge and training in both juvenile law, and how to work effectively with juveniles.[2] The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist. Organizations with effective juvenile defender specialists encourage them to view their role as a career, not merely as a starting point towards adult practice. Juvenile defender specialists in those organizations have the same opportunities for promotion and advancement as their adult counterparts, and are given access to needed training and resources in juvenile representation.[3]

   In those communities where it is not possible to employ a juvenile specialist, such as in rural communities where an attorney must cover every court, it is critical that the attorney's juvenile cases are treated on par with their adult cases in terms of caseload assignment, evaluation, and promotion.[4] Though juvenile cases are often relegated to lower level courts, they are generally closer to adult felony cases than misdemeanor cases in terms of the amount of time and resources required. For example, the NAC Standards developed in the early 1970s identified maximum caseloads of 150 felonies, 200 juvenile cases, and 400 misdemeanor cases.[5] A juvenile case was therefore considered twice as time consuming as a typical misdemeanor, and 3/4ths as time consuming as a typical felony. Especially in offices without meaningful caseload limitations, placing a significantly higher priority on adult cases within a mixed caseload deprives juvenile clients of the full measure of representation that they are entitled to. This is why it is better to have juvenile specialists whenever possible.

2. **Are there any obstacles for promotions/professional advancement for defenders dedicated to specializing in juvenile defense? Do juvenile defenders have salaries in parity with adult defenders in adult court with the same level of experience?**

   In order to ensure that juveniles receive the same quality representation afforded to adults, systems should encourage juvenile representation "without limiting access to promotions, financial advancement, or personnel benefits for attorneys and support staff."[6] At its most basic level, this means that an adult defender or employee with a certain level of experience should not be paid more than a juvenile court attorney or employee with the same level of experience.

   While many defender offices have objective standards for promotion and advancement, those standards may include factors that will not fall equally on adult and juvenile defenders.

   While many defender offices have objective standards for promotion and advancement, those standards may include factors that will not fall equally on adult and juvenile defenders. For example, if jury trial litigation and experience is a prerequisite for promotion in a jurisdiction without juvenile jury trials, then the most effective juvenile specialists will rarely qualify for promotion.

…juvenile defenders should be provided with not only a healthy career path, but an office environment which is client centered and focused on providing quality representation for all clients.

One way to check to see if the office's human resources and promotion system is not treating juvenile representation the same as adult representation is to see whether the profile of the typical adult defender in terms of age, years of experience, etc., is the same as the typical juvenile court attorney. If not, and especially if the adult unit employs many former juvenile specialists, then it is probable that either the promotion system itself, or the culture surrounding it, has made clear that juvenile representation is not valued the same as adult representation for purposes of advancement.

In order to address this issue, systems must either (a) identify criterion for promotion, such as quality of legal representation and advocacy as well as overall experience, which ensures adult and juvenile defenders have equal opportunity for promotion and advancement, or alternatively (b) identify separate juvenile standards that ensure that juvenile attorneys have the same opportunities for promotion or advancement as their adult counterparts, without having to abandon juvenile practice.

Finally, juvenile defenders should be provided with not only a healthy career path, but an office environment which is client centered and focused on providing quality representation for all clients. Accordingly, defender offices should ensure that juvenile defenders have the same opportunities for professional development, including opportunities to assume a leadership role and training in how best to perform in that role, as their counterparts in adult defender units.

As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.

3. **Does your office provide procedures for specialized representation for children prosecuted in adult court?**

Jurisdictions differ significantly in the methods by which children may find themselves tried as an adult. Regardless of the method, the fact remains that the defendant is still a child, and that carries with it certain benefits, even in the adult system. Moreover, children differ from adults in a variety of areas related to maturity and decision-making which can often be relevant in a criminal trial, not just as a defense to the crime, but as a basis for suppressing a statement or a search, and in other ways. Communication with a child-client is a specialized skill, so professionals experienced in communicating with child clients should be available to assist a child to understand the nature of the proceedings, and to explain plea negotiations, collateral consequences, trial strategy, and other matters related to the proceeding. As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.[7] This expectation should apply whenever a person under the age of 18 is being prosecuted in adult court, even if the law of the jurisdiction treats the child as an adult at an earlier age.

4. **Does your office/agency ensure that juvenile defenders have access to investigators, social workers, mental health, education and alternative sentencing experts to address the unique needs of adolescent clients?**

NJDC and NLADA's "Ten Core Principles" require both "resource parity" with adult systems, but also that the system recognize "that legal representation of children is a specialized area of the law", which requires the use of "expert and ancillary services."[8] Ensuring parity of resources between adult and juvenile defenders therefore does not mean treating both groups identically.

In addition to the basic investigative and administrative support resources which all defense attorneys require, effective representation in a juvenile case often requires access to professional support with training in social work, educational advocacy, and other disciplines which are not utilized to the same extent in adult cases. These individuals require specialized training to communicate effectively with juvenile clients, and also require training about the educational and social services protections and resources that are available to children that are not available to adults.

Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys. As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.

5. **Does the office/agency provide juvenile defense attorneys and other experts (or "the juvenile defense team") with access to specialized training?**

   As noted above, juvenile representation is a specialized area of the law, which requires specialized training both in working with a juvenile population, and in the requirements of the jurisdiction's juvenile code. Supervisors are required to ensure that all juvenile attorneys have "access to specialized training" in juvenile matters.[9] Training topics include not only updates in the jurisdiction's juvenile law, but also updates in recent developments in our understanding of adolescent development, education, and the treatment of delinquent children.

   While in-house or statewide training opportunities are superior for dealing with issues related to the jurisdiction's juvenile law, in many areas training in adolescent development, education and treatment will require participation in regional or national training events, conducted in non-local live conferences or through video webinar.

In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.

6. **Has your office/agency or your jurisdiction adopted standards of practice in juvenile court, which incorporate best practices and are consistent with national standards of juvenile representation?**

   Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys.[10] As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.[11] As in the rest of the public defender system, juvenile standards should be used to evaluate an attorney's performance in juvenile cases. Even if they are not personally practicing juvenile cases, supervisors and evaluators should be trained in the standards to ensure that they are evaluating attorney performance in juvenile practice appropriately.[12]

7. **Does the office/agency build community relationships with schools, other service providers, and other government agencies who specifically assist the juvenile population?**

   The requirement that juveniles be placed in the "least restrictive alternative" places a premium on counsel's awareness of local treatment alternatives that may be offered by schools or community organizations.[13] Public defender agencies should build relationships with these programs with an eye towards ensuring that public defender clients have equal access to these resources when needed. This is part of the specialization that is unique to juvenile representation, and may require additional staffing, workload adjustment or office/agency support.

8. **Recognizing the complex and time-consuming nature of most juvenile cases, does the office utilize juvenile-specific caseload controls?**

   A controlled caseload is critical to ensuring effective representation in any juvenile case.[14] Methods of controlling caseloads vary by jurisdiction, and many jurisdictions still lack effective caseload controls. In jurisdictions that impose hard caps on defender caseloads, juvenile caseload caps should be identified which reflect the complexity and relative difficulty of juvenile cases. As noted above, nationally recognized caseload standards have identified a juvenile case as being slightly less time consuming than a felony case, and about twice as time consuming as the typical misdemeanor.[15]

   In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.[16] In most of these jurisdiction leaders are also advocating for additional resources, based on their evaluation of systemic

Studies have repeatedly confirmed that most juveniles either would not be considered competent in adult court, or would be regarded as only marginally so.

shortfalls. As with those states which set hard caseload limits, it is important in making evaluations about an individual attorney's caseload, or the number of attorneys needed to adequately represent all clients, to recognize the complexity and relative difficulty of juvenile cases.

9. **Does the office/agency ensure regular in-person contact between attorney and the juvenile client and parent or guardian, including regular contact with out-of-custody clients?**

Studies have repeatedly confirmed that most juveniles either would not be considered competent in adult court, or would be regarded as only marginally so.[17] Not only do juveniles have difficulty with comprehension, they are subject to peer pressure, pressure from parents and others, and other factors that make it significantly more difficult for them to manage their own case. For this reason, regular in-person client contact is essential to effective representation.[18] Contact in the courtroom on the morning of the case is not sufficient.

...the ABA has resolved that jurisdictions should not only ensure adequate resources for appellate representation in juvenile cases, but should be tracking the number of juvenile appeals to ensure that such resources are utilized.

In addition to expecting regular visits to clients in custody, public defender systems should ensure that attorneys are regularly visiting juveniles out of custody as well. As juveniles generally are less able to come to a public defender office to meet, this will often require the attorney to visit the child at the child's school or place of residence. Further, time must be dedicated to communication with a child's guardians/caretakers. While client privilege certainly extends to juvenile clients, there is often a need to communicate appropriately about proceedings with the child's guardian/caretaker with the client's consent. This is an important consideration for juvenile supervision, workload monitoring, and staffing juvenile programs.

10. **Does the office/agency provide appellate and post-disposition representation as required by law?**

Appellate and post-depositional representation is a critical part of protecting the rights of juveniles, and part of the constitutional criteria of effective assistance of counsel. Where the law of the jurisdiction creates a defender system to provide representation in post-trial matters, such as appeals or post-conviction, whether that is through the same system that provides trial representation or through a separate system, such as an appellate defender, that system must ensure that juveniles have the same access to representation as adults do.

Moreover, as the facts underlying the Gault decision indicate, children are expected to give up core rights, such as the right to bail or a jury trial, in return for rehabilitative care that is not always provided.[19] It is incumbent upon the public defender system of each state to ensure that some body, either the trial system or the relevant post-trial system, is ensuring that the juvenile court's judgments are carried out in accordance with the rationale of the juvenile justice system, and that youth are not trapped in a custodial setting which is either not providing effective care or is retaining the child long after care has ceased to be effective.[20]

However, the American Bar Association, reviewing a recent study on the rate of appeals in juvenile cases, noted that "[t]he extent of the lack of appeals is profound and raises questions about the inability of juvenile courts to ensure just outcomes."[21] As a result, the ABA has resolved that jurisdictions should not only ensure adequate resources for appellate representation in juvenile cases, but should be tracking the number of juvenile appeals to ensure that such resources are utilized. While the report did not identify a benchmark, it did note that "When only five out of 1000 cases juvenile convictions are appealed, it is difficult to maintain that minors are protected from error."[22]

Juveniles require access to counsel post-disposition in order to effectively access the courts.[23] Children should have representation to ensure that the child is receiving the services contemplated by the court, and that the treatment being offered is effective and consistent with best practices. That representation on these issues may be provided by the trial office, or by an independent post-disposition defender.

In addition, children are entitled to representation to assist them in determining whether the child received effective representation at trial, and to investigate the for trial error, and to file appropriate post-disposition actions on those grounds. Because effective representation on those issues requires and investigation and evaluation of trial counsel's performance, where possible, representation on those issues should be provided by a specialized post-disposition counsel not associated with the trial defender. Post-disposition counsel generally need extensive specialized training in a variety of areas, including post-conviction law, methods of effective juvenile treatment, and other areas.

Due to the unique nature of juveniles, and the need to evaluate both the case and the child's circumstances, juvenile post-disposition representation is resource intensive. As noted above, most juveniles are not highly competent, and educating the child about their rights and options takes substantial time. Also, juvenile confidentiality laws can create obstacles to effective post-disposition representation. For example, post-disposition counsel may be barred from accessing confidential court files unless they become "counsel of record", which may require them to participate in all future court proceedings involving the child. These obstacles may need to be addressed in coordination with other stakeholders in order to provide this fundamental element of juvenile defense practice.

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1. The term "specialist" is being used in this document to refer to an attorney whose assigned caseload consists exclusively or almost exclusively of juvenile cases. It is not intended to communicate that the attorney must meet the requirements of a state or local bar to refer to herself as a specialist in any area of law.
2. See NJDC and NLADA, *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems* (2nd Edition, July 2008) ("NJDC and NLADA *Ten Core Principles*"), Principle 2; See Also NJDC National Juvenile Defense Standards, Std. 1.3.
3. See NJDC and NLADA *Ten Core Principles*, Principle 3.
4. *Id.*, see also Principle 5.
5. See Report of the National Advisory Commission on Criminal Justice Standards and Goals: Courts 276 (1973). This assessment predated the development of modern juvenile standards of practice and has been criticized for insufficient rigor in its development. While its instruction that juvenile cases are twice as time-consuming as misdemeanor cases is instructive, leaders should take care not to give these standards more weight than warranted in evaluating caseloads and caseload limitations, and should carefully measure and consider the needs of clients in local practice.
6. *Id.*, Principle 3, comment A.
7. See NJDC National Juvenile Defense Standards, Std. 8.1 (online at: http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf); see also NJDC 10 Core Principles, Principle 2, Comment A; The Campaign for the Fair Sentencing of Youth, Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence, Guideline 2.1.
8. See NJDC and NLADA *Ten Core Principles*; Principles 2, 3, and 4.
9. NJDC National Juvenile Defense Standards, Std 9.2; NJDC 10 Core Principles, Principle 7.
10. ABA Ten Principles of a Public Defense Delivery System, Principle 10. Online at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf
11. NJDC and NLADA *Ten Core Principles*; Principles 2 and 6.
12. *Id.*, Principle 6; NJDC National Juvenile Defense Standards, Std. 9.4
13. NJDC and NLADA *Ten Core Principles*; Principles 8 and 9.
14. ABA Ten Principles, Principle 5, NJDC and NLADA *Ten Core Principles*, Principle 5.
15. Supra, note 4.
16. ABA Formal Opinion 06-441, online at: http://dpa.ky.gov/NR/rdonlyres/0A06F4ED-7907-40C8-BC9A-1AD7D8E33421/0/ABAFormalOpinion.pdf The ABA has adopted standards for managing caseload controls as a follow-up to ethics opinion 06-441. See *ABA Eight GuideVines Related to Public Defense Caseload* (2009).
17. Grisso, et. al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 J.Law and Human Behavior 333 (2003).
18. NJDC National Juvenile Defense Standards, Std. 2.4.
19. Gerald Gault was 15 years old when he was sent to the Industrial School until he was 21 for a series of prank phone calls which would have resulted in, at most, a 2 month sentence had he been an adult. See *In re Gault*, 387 U.S. 1, 7-9 (1967).
20. A recent example of the importance of post-disposition representation was the "Kids for Cash" scandal that unfolded in Luzerne County, PA in 2008. In that case, youth were sentenced without trial counsel to excessive detention sentences for extremely minor offenses, allegedly as part of a kickback scheme between the judges and the detention center. The Juvenile Law Center of Philadelphia entered the case post-disposition and petitioned the Pennsylvania Supreme Court for emergency relief to release the youth from custody. That petition was eventually granted. For more see: http://jlc.org/luzerne-county-kids-cash-scandal.
21. Report, ABA Resolution 103A (Adopted Feb 14, 2014), pg. 2, citing Megan Annitto, *Juvenile Justice on Appeal*, 66 U. Miami L. Rev. 671 (2012), online at: http://www.americanbar.org/content/dam/aba/images/abanews/2014am_hodres/103a.pdf
22. Report, *supra*, pg. 6.
23. NJDC National Juv

"NAPD is committed to zealous advocacy for persons whose liberty is threatened by a criminal charge or conviction or by a juvenile petition or other status. Included in our commitment is a strong belief that an excellent juvenile practice is an integral part of every strong public defense system. We have been strongly supportive of our Juvenile Committee that has created the Juvenile Defense Assessment Tool in collaboration with the National Juvenile Defender Center. This assessment tool is an important way for public defense systems to look at their system and evaluate it in light of best practices. It is not enough to put a lawyer in a courtroom next to a child. Rather, these best practices, from client contact to creating juvenile specialties to controlling caseloads to establishing juvenile post-dispositional sections, now express what should be expected of every public defense system. NAPD heartily endorses the use of this assessment tool by all public defense organizations."

- **Ernie Lewis**, *NAPD Executive Director*

"Six years ago we created the Youth Advocacy Division to handle all juvenile matters from misdemeanors to murder cases and juvenile lifer parole release hearings. Developing a statewide juvenile defender program that aspires to meeting all of these principles is one of the more important things we have done for clients and for our client communities since our inception as an agency in 1984. Having this tool gives us something to use on a regular basis to help us set goals and measure our progress in our quest to provide consistently zealous and comprehensive advocacy for every client."

- Anthony Benedetti, *Chief Counsel, Committee for Public Counsel Services (Massachusetts)*

"The NAPD/NJDC Juvenile Defense Self-Assessment Tool is an invaluable resource. My administration has always focused on promoting a strong juvenile defender unit, which has provided a career path to well-trained attorney and social work teams. This tool will ensure that defenders in juvenile and criminal court are properly trained and will lead to fair and just outcomes for youth."

- **Jeff Adachi,** *San Francisco City and County Public Defender*

"I am pleased that the National Association for Public Defense and the National Juvenile Defender Center have aligned efforts to advance the increasingly specialized practice of juvenile defense. Just as the Supreme Court continues to recognize that kids are categorically less culpable than adults, committed leadership is required to ensure that representation of children is always provided by skilled attorneys who have the training and resources required to meet national practice standards. The Self-Assessment Tool is a key new resource to guide the efforts of defender leaders in this critically important area of practice."

- **Stephen Bush,** *Shelby County Public Defender, Law Offices of the Shelby County Public Defender (Memphis, TN)*

NJDC
NATIONAL JUVENILE DEFENDER CENTER

National Juvenile Defender Center
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www.njdc.info

The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.

National Association for Public Defence
PO Box 211
Frankfort, KY 40602

www.publicdefenders.us

The National Association for Public Defense (NAPD) engages all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people.

Through affordable dues, relevant benefits and accessible real-life expertise, NAPD currently unites more than 12,000 practitioner-members across professions, cases and systems into a cohesive community for justice reform.

CHAIR'S MESSAGE By Riley Shaw

What a great start to the year! The 29th Annual Robert O. Dawson Juvenile Law Conference in San Antonio this winter was a huge success. Thank you to all of the speakers and participants who came together and made this year's conference one to remember. Also, a special thank you to our partners at the Texas Juvenile Justice Department and the State Bar of Texas who were instrumental in getting the word out and keeping things running smoothly.

Please don't forget about the Nuts and Bolts of Juvenile Law Conference coming up June 27-29, 2016 near SeaWorld in San Antonio, Texas – this year's conference will be limited to half-day sessions so that you and your family can enjoy some vacation time, in addition to getting a great education. For more information, or to sign up for the conference, please go to www.juvenilelaw.org.

As I sat down to write this note, I caught myself thinking: "Didn't we finish the last legislative session just a few weeks ago?" It sure seems like it. Nevertheless, we are mere months away from the 2017 session of the Texas Legislature, and we should start seeing some significant proposed legislation affecting juvenile justice as the year progresses. Please be on the lookout for bills that revise the way juvenile records are handled, and that seek to make changes to the way that sex offender registration operates with regard to juvenile-age offenders. In addition, you should probably expect to see further work related to regionalization and another run at "raise the age". It looks to be a pretty exciting session for juvenile justice practitioners, and I look forward to seeing each of you in Austin between January and May as the legislature works through the bills that will affect the work that we all do on a daily basis.

I'm excited about the Section and I'm excited about the things that we can do for you. Please know that all of your Council members are available to help you with any issue at any time – send any one of us an email with questions, comments, ideas and issues. You can find our email addresses on our website www.juvenilelaw.org. While you're there, take advantage of our new forms bank– it is a great resource for you.

I'd like to thank the Hon. Pat Garza for his selfless and inexhaustible work in putting this issue together. We couldn't do it without you, Judge.

Finally, I want to thank each of you who read this – thank you for caring about the futures of our children and the safety of our local communities. When we work together, there is nothing we can't accomplish for our great State. Keep the faith.

The Juvenile Law Section of the State Bar of Texas
and the Texas Juvenile Justice Department Present

NUTS AND BOLTS OF JUVENILE LAW

Monday, June 27–Wednesday, June 29, 2016
Holiday Inn San Antonio NW – Sea World
10135 State Highway 151, San Antonio, Texas 78251

ACCREDITATION
This conference has applied for 10.75 participatory hours from the State Bar of Texas for CLE and Judiciary credit and the Texas Juvenile Justice Department. For those individuals attempting to complete the required 60 hours of training for the Specialization exam, you may use hours received from this course.

ADDITIONAL COURSE MATERIALS
Each registered, paid participant will receive conference materials. If you are interested in purchasing additional copies of the course materials or cannot attend the conference, course materials are available for purchase by filling out the appropriate information when you register. The cost of materials is $50 each. Materials will be mailed within two weeks after the conclusion of the conference.

IF YOU REGISTER BUT CANNOT ATTEND
If you register but cannot attend and would like a refund, fax your refund request to Monique Mendoza at (512) 490.7919. Refund requests must be received by June 1, 2016. No refunds will be given without written notification by the deadline. All refunds will be subject to a $25 processing fee.

AUDIO/VIDEO RECORDING
This course will not be audio or video recorded.

HOTEL ACCOMMODATIONS
The training will be held at the Holiday Inn NW in San Antonio. A limited number of hotel rooms will be available before June 6, 2016, or until the reserved block of rooms is depleted, whichever is earlier. The hotel is offering a discounted rate of $84/single and double. When making accommodations, please contact the hotel at (210) 520.2508 and refer to the Nuts & Bolts of Juvenile Law Conference room block. You may also make your reservations online at: http://bit.ly/1LTCKP6.

PARKING AND SHUTTLE
Complimentary surface parking is available on-site. For those individuals flying in to San Antonio International Airport, the Holiday Inn does not offer airport shuttle service. Please arrange ground transportation individually.

DRIVING DIRECTIONS
The Holiday Inn NW is conveniently located on the service road of State Highway 151 West. For detailed driving instructions, please visit your favorite travel navigation website or the Holiday Inn page at http://bit.ly/1RSI4BM.

QUESTIONS AND CORRESPONDENCE
Juvenile Law Section of the State Bar of Texas
c/o Monique Mendoza
P.O. Box 12757 I Austin, Texas 78711
Tel: 512.490.7913 I Fax: 512.490.7919
Email: Monique.Mendoza@tjjd.texas.gov

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- ○ **$100.00** Juvenile Probation Personnel, Juvenile Law Section Members, Judges, Associate Judges, Referees, and Masters [Payment must be received by June 1, 2016, otherwise on-site fee will apply.]
- ○ **$125.00** Others [Payment must be received by June 1, 2016, otherwise on-site fee will apply.]
- ○ **$150.00** On-Site [Includes onsite or if payment is received after June 1, 2016.]
- ○ **$50.00** Conference Materials Only [I am unable to attend the conference, but would like to purchase the course materials.]

PAYMENT
Payment can be made by credit card, check, or money order payable to the Juvenile Law Section. Mail your registration form along with payment to the correspondence address listed to the left in the text box. An e-confirmation will be sent once you are registered. This confirmation will be for registration only and will not necessarily mean that you are paid. No purchase orders or vouchers will be accepted. Select your method of payment:

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NUTS AND BOLTS OF JUVENILE LAW

Sponsored by the Juvenile Law Section of the State Bar of Texas and the Texas Juvenile Justice Department

Schedule of Events

June 27-29, 2016 | Holiday Inn NW Sea World | San Antonio, Texas

SUNDAY, JUNE 26

4:00 p.m. **Registration**
Early registration is scheduled from 4:00–5:00 p.m. on Sunday, June 26. Conference attendees may register at any time during Sunday's registration period or on Monday upon arrival. Registration on Sunday is not required.

5:30 p.m. **Welcoming Reception** [Details TBA]

MONDAY, JUNE 27 [3.25 TOTAL HOURS]

8:00 a.m. **Breakfast Buffet** *[Provided]*

8:55 a.m. **Welcoming Remarks**

9:00 a.m. **Introduction to Juvenile Law** (0.75 Hour Ethics)
Stephanie Stevens, Professor
St. Mary's University School of Law

9:45 a.m. **Juvenile Court Jurisdiction** (0.50 Hour)
Jill Mata, General Counsel
Texas Juvenile Justice Department

10:15 a.m. **Break**

10:30 a.m. **Police Interactions with Juveniles** (1.00 Hour)
The Honorable Pat Garza, Associate Judge
386th District Court, San Antonio, Texas

11:30 a.m. **Intake and Detention** (0.50 Hour)
Taylor Ferguson, Attorney at Law
Fort Worth, Texas

12:00 p.m. **Deferred Prosecution** (0.50 Hour)
Patrick Gendron, Attorney at Law
Bryan, Texas

12:30 p.m. **Adjourn**

TUESDAY, JUNE 28 [3.75 TOTAL HOURS]

8:00 a.m. **Breakfast Buffet** *[Provided]*

8:30 a.m. **Adjudication Hearings** (0.75 Hour)
Cyndi Porter Gore, Attorney at Law
Allen, Texas

9:15 a.m. **Dispositions and Modifications** (0.75 Hour)
Leslie Barrows, Attorney at Law
Fort Worth, Texas

10:00 a.m. **Break**

See reverse side for registration form.

10:15 a.m. **Determinate Sentence** (0.75 Hour)
Riley Shaw, Chief Juvenile Prosecutor
Tarrant County District Attorney's Office

11:00 a.m. **Certification** (0.75 Hour)
Kameron Johnson, Chief Juvenile Public Defender
Travis County Public Defender's Office

11:45 a.m. **Legal Issues with Juveniles Charged with Sex Offenses** (0.75 Hour)
Laura Peterson, Attorney at Law
Garland, Texas

12:30 p.m. **Adjourn**

WEDNESDAY, JUNE 29 [3.75 TOTAL HOURS, 1.0 HR ETHICS]

8:00 a.m. **Breakfast Buffet** *[Provided]*

8:30 a.m. **Ethical Considerations in Chapter 55**
(1.00 Hour Ethics)
Kevin Collins, Attorney at Law
San Antonio, Texas

Ryan Mitchell, Attorney at Law
Houston, Texas

The Honorable Mike Schneider, District Judge
315th District Court, Houston, Texas

9:30 a.m. **Case Law Update** (0.75 Hour)
The Honorable Pat Garza, Associate Judge
386th District Court, San Antonio, Texas

10:15 a.m. **Break**

10:30 a.m. **Confidentiality and Sealing of Records** (0.75 Hour)
Kaci Singer, Staff Attorney
Texas Juvenile Justice Department

11:15 a.m. **Collateral Issues: Immigration, School Offenses, TJJD Minimum LOS** (0.75 Hour)
Elizabeth Henneke, Police Attorney
Texas Criminal Justice Coalition

12:00 p.m. **Juvenile Law: Where Are We Going** (0.50 Hour)
Patricia Cummings, Chief of Conviction Integrity Unit
Dallas County District Attorney's Office

12:30 p.m. **Adjourn**

CONTINUING EDUCATION CREDITS:

Monday	03.25 Participatory Hrs
Tuesday	03.75 Participatory Hrs
Wednesday	03.75 Participatory Hrs, 1.0 Hr Ethics
Total	10.75 Participatory Hrs (1.0 Hour Ethics)

REVIEW OF RECENT CASES

ADJUDICATION PROCEEDINGS

A TRIAL COURT DOES NOT HAVE A DUTY TO ADMONISH A DEFENDANT THAT A GUILTY PLEA HAS THE CONSEQUENCE OF POTENTIALLY ENHANCING HIS PUNISHMENT IN A SUBSEQUENT CASE.

¶ 16-2-2. **Nash v. State**, MEMORANDUM, No. 11-13-00340—CR, 2016 WL 368353 (Tex.App.-Eastland, 1/28/2016).

Facts: On June 12, 2012, three armed men robbed a 7–Eleven convenience store in Wichita County. Surveillance video depicted three men in masks entering the 7–Eleven convenience store with a long rifle or shotgun, taking money from the cashier, and taking DVDs from the front counter. Appellant's half brother, Kadeem Emmers, admitted to participating in the robbery. He identified Appellant and Appellant's cousin, Quawannocci Moore, as his accomplices. Emmers was given a plea deal, which involved a twenty-three-year sentence for aggravated robbery, in exchange for his testimony at Appellant's trial. Appellant's mother, Michelle Nash, testified that the three men were at her home before the robbery, left around midnight, and returned two hours later with money and DVDs.

In his third issue, Appellant challenges the use of his prior juvenile felony adjudication to enhance the applicable punishment range for his conviction for a first-degree felony. See Thompson v. State, 267 S.W.3d 514, 517 (Tex.App.–Austin 2008, pet. ref'd) (explaining how a juvenile felony adjudication can be used to enhance the minimum punishment range for a first-degree felony). He asserts that the trial court in the juvenile proceeding failed to admonish him that a juvenile plea could be used against him in a subsequent adult adjudication. Appellant contends that the prior juvenile felony adjudication deprived him of the right to have the jury grant him community supervision because his minimum term of confinement was a term of fifteen years. See id.

At the punishment phase, the State offered into evidence various documents from the juvenile proceeding, including the stipulation of evidence, waiver of jury trial, judgment, waiver of appeal, and order of commitment. These documents indicate that Appellant was represented by counsel in the juvenile proceeding and that he did not contest the State's allegation of delinquent conduct or the trial court's imposition of the sentence.

Held: Affirmed

Memorandum Opinion: On appeal, Appellant is essentially making a collateral attack on his prior juvenile felony adjudication. A prior conviction used to enhance a subsequent offense may only be collaterally attacked on direct appeal of the subsequent conviction if the prior conviction is void. Rhodes v. State, 240 S.W.3d 882, 887 (Tex.Crim.App.2007). When prior convictions are collaterally attacked, the judgments reflecting those prior convictions are presumed to be regular, and the accused bears the burden of overcoming that presumption by making an affirmative showing that error occurred. Breazeale v. State, 683 S.W.2d 446, 450 (Tex.Crim.App.1985) (op. on reh'g). The presumption of regularity applies to a collateral attack of a judgment of conviction for an offense committed as a juvenile when that judgment is used to prove an enhancement allegation. Johnson v. State, 725 S.W.2d 245, 247 (Tex.Crim.App.1987).

Appellant contends that the trial court in the juvenile proceeding should have admonished him about the potential effect of his guilty plea on a subsequent criminal proceeding. However, Appellant did not provide the trial court or this court with a reporter's record from the juvenile proceeding. Furthermore, in Green v. State, the Court of Criminal Appeals held that a trial court does not have a duty to admonish a defendant that a guilty plea has the consequence of potentially enhancing his punishment in a subsequent case. 491 S.W.2d 882, 883 (Tex.Crim.App.1973).

Conclusion: Thus, the fact that Appellant was, possibly, not warned by the trial court in the juvenile proceeding prior to entering a guilty plea that the adjudication might later be used for enhancement did not preclude the State from later using the adjudication for enhancement purposes. Id. We conclude that the trial court did not abuse its discretion by its implicit determination that Appellant's prior juvenile adjudication was not void. We overrule Appellant's third issue. We affirm the judgment of the trial court.

CONFESSIONS

WRITTEN STATEMENT HELD ADMISSIBLE WHERE VIDEO RECORDED STATEMENT TAKEN AT THE SAME TIME WAS NOT.

¶ 16-2-1B. **Gentry v. State**, MEMORANDUM, No. 01-14-00335-CR, NO. 01-14-00336-CR, 2016 WL 269985, [Tex.App.—Houston (1st Dist.), 1/21/16].

Facts: Around 3:00 a.m. on January 19, 2012, Masario Garza was driving to work on Highway 90 in Fort Bend

County. Highway 90 has four lanes, with two on each side of the road. Garza was in the outside lane. As he approached the intersection with FM359, Garza slowed down for a red light. Garza noticed that a gray truck was to his left in the inside lane. The truck was being driven by 22–year–old Daniel Desantiago–Caraza. Fourteen-year-old Damion Gentry was in the passenger seat. The truck stopped at the intersection, and Gentry got out of the passenger side.

Initially, Garza thought that Gentry had gotten out of the truck to ask him directions or to check something in the back of the truck. But then, Garza saw that Gentry was holding gun in his right hand. When he saw the gun, Garza immediately stepped on the gas to get away from the scene. Garza later testified that he fled because he thought that Gentry was "going to rob me or something."

As Garza left the scene, Gentry shot into the driver's side window of Garza's car, shattering the glass. The glass cut Garza's cheek and hand.

Traveling at a high rate of speed, Garza continued down Highway 90 in the outside lane. When he looked in his rearview mirror, Garza saw that the truck was in the inside lane and was getting closer. After a couple of miles, the truck, still in the inside lane, caught up to Garza and passed him. As the truck passed, Garza heard two more gunshots. The truck then made a U-turn through the grassy median and headed in the opposite direction on the highway. As the truck passed him heading in the other direction, Garza heard two more gunshots.

Garza pulled into a restaurant's parking lot at the direction of the 9–1–1 operator, with whom Garza had been speaking during the incident. The police soon arrived, and Garza told them what had occurred.

At that same time, Nelson Alberto Mejia Escobar was performing his job of cleaning the parking lot of an Academy store in the Brazos Shopping Center. Around 3:30 a.m., Desantiago–Caraza and Gentry pulled into the Academy parking lot in the gray truck and approached Escobar. While still in the truck, Gentry spoke to Escobar in English. Escobar told Gentry in Spanish that he did not speak English. Gentry then got out of the truck and pointed a gun at Escobar's head. In Spanish, Gentry told Escobar to give him $150. When Escobar indicated that he did not have any money, Gentry told him to empty his pockets. The only item that Escobar had in his pockets was the keys to his truck. Gentry demanded Escobar's keys, and Escobar gave him the keys. While he was emptying his pockets, Gentry continued to point the gun at different parts of Escobar's body. During this time, Escobar repeatedly begged Gentry not to shoot him and asked Gentry "[to] have mercy on me" and "[to] have pity on me."

Gentry then lowered the gun, but Desantiago–Caraza told Gentry to shoot Escobar. Gentry turned the gun around with the grip facing outward. Gentry raised his arm to strike Escobar with the gun, but Escobar lifted his arm to deflect the blow. Escobar hit Gentry's hand holding the gun, pushing the gun to the side.

Escobar turned and ran, and Gentry ran after him. As he chased Escobar, Gentry shot at Escobar's back. Escobar continued to run, and Gentry continued to shoot at him. Gentry shot at Escobar three or four times. As he ran, Escobar tripped and fell to the ground. Gentry stopped shooting. Escobar heard Gentry say to Desantiago–Caraza, "I already killed him." Gentry and Desantiago–Caraza then left the parking lot in the gray truck.

Meanwhile, around 3:30 a.m., Rosenberg Police Officer J. Thompson had gone to the Summer Lakes Subdivision to assist the fire department with a car fire. Officer Thompson was not needed at the scene of the fire but was asked by an arson investigator to check on a suspicious vehicle that had been seen at a nearby apartment complex that was under construction. The apartment complex was behind the Brazos Shopping Center where the Academy was located. Officer Thompson determined that the suspicious vehicle was the construction crew working at the building site. While at the construction site, Officer Thompson heard three or four gunshots coming from the parking lot in front of the Academy. He also heard tires squealing. Officer Thompson saw the gray pickup truck, being driven by Desantiago–Caraza, leaving the Academy parking lot. He then saw the truck run through a stop sign and turn into the Summer Lakes Subdivision.

Officer Thompson followed the truck into the subdivision. As the truck was stopping in front of a residence, Officer Thompson activated his emergency lights to initiate a stop, which also activated the patrol car's video-recording equipment.

The truck stopped in front of a house. Officer Thompson instructed Desantiago–Caraza to get out of the truck. Officer Thompson was talking to Desantiago–Caraza when he heard over the police radio that there had been a shooting at Academy. Officer Thompson then ordered Gentry out of the truck, and he made both Gentry and Desantiago–Caraza lie on the ground. Officer Thompson drew his duty weapon and decided that he would wait for backup officers to arrive. Desantiago–Caraza and Gentry began conversing in Spanish. Officer Thompson told them to be quiet. Gentry suddenly stood up, ran to the front of the truck, and then fled the scene.

Rosenberg Police Detective R. Leonhardt then arrived at the scene. He viewed the video taken from Officer Thompson's patrol car, showing the stop of truck, the detention of Desantiago–Caraza and Gentry, and Gentry's flight from Officer Thompson. When he saw

the video, Detective Leonhardt recognized Gentry.2 The police searched their records and determined Gentry's last known address. Detective Leonhardt and other officers went to the address and found that Gentry still lived there.

Gentry's step-father gave his consent to search the home. The officers searched the home for the gun that had been used in the robberies but did not find it. Gentry overheard the officers talking about the gun and told them that the gun had been thrown from the truck at the front of the subdivision.

The officers took Gentry to a juvenile processing office where he was read his statutory Miranda-style rights by Justice of the Peace Mary Ward, acting as a magistrate. Gentry then gave both an oral, recorded statement and a written statement to the police. Gentry reviewed the written statement with Judge Ward and signed it in her presence.

In the written statement, Gentry acknowledged that he been present during the incidents with Garza and Escobar; however, Gentry minimized his involvement, indicating that Desantiago–Caraza had been the primary actor with regard to each. Gentry claimed that it had been Desantiago–Caraza who had fired the gun at Garza. He also claimed that it had been Desantiago–Caraza who had struck Escobar and had first fired the gun at Escobar. Gentry admitted that, after Desantiago–Caraza had fired the gun one time, he also had fired it; but Gentry claimed that he had fired the gun only at the ground.

In his written statement, Gentry also admitted involvement in the car fire in the Summer Lakes Subdivision, which Officer Thompson had been dispatched to investigate. Gentry claimed that Desantiago–Caraza had set the fire with a lighter and that they stayed to watch the car bum. Gentry stated this had been before "the other events occurred."

The State filed a petition for waiver of the juvenile court's jurisdiction and discretionary transfer to criminal court for the aggravated-robbery offenses committed against Garza and Escobar. In November 2012, the juvenile court conducted a transfer hearing to determine whether it should waive its jurisdiction and transfer Gentry to criminal district court for prosecution as an adult.

During the three-day transfer hearing, the State presented the testimony of 11 witnesses. Shane Marvin, the court-liaison officer from the Fort Bend County Juvenile Probation Department, testified regarding Gentry's history in the juvenile system. Marvin had been assigned to supervise Gentry since February 2012. Over the months, Marvin had met with Gentry one or two times a week. Marvin also conducted a social history and home study evaluation for Gentry, ordered by the juvenile court and filed in the record.

Marvin stated that Gentry's first referral to the juvenile system was for running away in 2007 when Gentry was only 10 years old. Over the next five years, Gentry had 11 other referrals to the juvenile system. One of the referrals, in 2009, was for assault on a public servant. Gentry was placed on formal probation for that referral. Marvin testified that Gentry successfully completed that probation, but, during the term of the probation, Gentry had two violations, including a threat by Gentry to blow up his school.

Marvin testified that another of Gentry's referrals was for "Class C gang affiliation membership." Gentry was placed on formal probation for six months for that referral. Gentry ultimately completed that probation, but Marvin testified that, during the probationary term, Gentry received three violations and "an additional Class C citation for destruction of school classes."

With respect to Gentry's gang affiliation, Marvin testified that "over the course of a little bit less than 300 days since I supervised his case and reading his files, I've come to learn he's associated, affiliated, or a member of the Southwest Cholos." When asked what indicated Gentry was in a gang, Marvin explained that, in the past, Gentry had been found to possess certain indicia of gang association. For example, while he was on probation for gang affiliation, Gentry wore certain gang-related items such as a black and white bandana and an extra-long belt. He was also caught tagging textbooks and flashing gang signs in school in front of his teachers. In addition, Gentry had been found to have other indicia of gang affiliation such as writings, taggings, and drawings on his backpack and the number 13 on his belt. Marvin stated that Gentry also has three dots tattooed on his knuckle, which Marvin believed indicated gang affiliation.

At the November 2012 hearing, Marvin indicated that Gentry had been in a juvenile detention facility since the occurrence of the instant offenses in January 2012. Marvin testified that Gentry had been written up for 14 separate infractions since he has been in detention. These include write-ups for fighting and for assault of another child in the facility. Marvin stated that, following the assault, Gentry had to be physically restrained.

In addition, Marvin testified regarding the numerous services that the juvenile system has provided Gentry over the years, prior to the commission of the instant aggravated-robbery offenses. These services included individual, group, and behavior-modification counseling, probation, substance abuse counseling, including inpatient treatment, mental health services, boot camp, and a mentorship program. Marvin agreed that Gentry has had "access to every type of

rehabilitation program the [juvenile] department offers." Marvin testified that "at this point, you know, I think, it's fair to say that as a department, we have exhausted everything."

Marvin indicated that, if the court found that Gentry should remain in the juvenile system, Gentry was "absolutely not" a candidate for probation. With respect to why probation was not a good option for Gentry, Marvin testified:

[Gentry's] Being on probation two times, formal probation, having 12 referrals, having been placed by this department. You know, we talked about services, we talked about probably not even half of the services that he's actually received.

This child received—he's participated in the TCOOMMI turnaround program, male mentor program which I refer to as Ramp, acronym for that is Ramp. When he was at JJAEP, he was in life skills training. You know, where they pull kids and they try to give them simple, basic understanding of money, or balancing a checkbook.

JJAEP itself, you know, there's a component there, for lack of a better word, watered-down boot camp. So you know, he's been there. He's participated, he's had teachers, he's had drill instructors, he's had probation officers, he's had individual counseling, he's had family counseling, he's had grief counseling.

He has had multiple alcohol/drug assessments. He has had multiple sessions with alcohol drug counselors. He has had psychiatric evaluations; he has had psychological evaluations.

We have tried in hopes of keeping him at the house and not violating his terms of probation, we've attempted to place an electronic monitor on his ankle to keep him there; which, obviously, does not keep a person physically at the house. We've done anger management.

So when you ask me in reference to him being a candidate for probation, my personal opinion—and, I think, that the department would support me 100 percent that he is nowhere near being a candidate for probation.

Marvin also testified that Gentry could not be placed in one of the juvenile system's programs. He explained,

The child has been placed; and the child has been with us since 2007, age 10, up until 2012. That is a five-year span. One thing, and a really strong point is in regards to him being a candidate for placement, I want to go back to the protection of the public and the weapon being used in the commission of this alleged offense.

I don't think that a placement and let me just hit on that as far as not being a candidate for placement. Our placements have supervisors that have called around to the most severe, most restricted places that we have with regards to boot camp. He has called Grayson, he's called Hayes County, and he's called Nueces.

Based on the nature of this offense, based on the child's now pending arson charges, they're not going to accept a child into the facility like that. So that's just not departmental. There's not a placement that's going to take him.

Marvin testified, "Our department's recommendation is if [Gentry] remains in the juvenile system, that he be committed to the TJJD [Texas Juvenile Justice Department]" for confinement. With regard to how long Gentry would be committed to the TJJD, Marvin indicated that, given the nature of the instant offenses, the minimum amount of time Gentry would be committed to the TJJD was three years, though he could stay in the TJJD until he was 19 years old. Marvin testified that the TJJD, not the juvenile court, determined whether, after three years, Gentry could be released on parole. The juvenile court would not make that decision.

The State also offered the testimony and report of court-appointed forensic psychologist Dr. Karen Gollaher, who had interviewed and evaluated Gentry. Dr. Gollaher testified that testing showed Gentry's IQ to be 107, which is in the average range. Dr. Gollaher indicated that Gentry had a history of depression. She opined that Gentry did not suffer from any mental deficit or psychosis that would have affected his ability to know right from wrong when he committed the instant offenses. Dr. Gollaher indicated that she had seen nothing to indicate that Gentry was under any type of duress or coercion when he committed the offenses.

Dr. Gollaher testified that she had diagnosed Gentry with conduct disorder. She explained that conduct disorder manifests itself by the individual "engaging in a pattern of defiance that's usually a cross environment that can be at school, legal, and at home which is a precursor to antisocial personality disorder." With regard to his behavior at home, Dr. Gollaher stated that Gentry had a history of running away.

Gentry had also displayed defiant behavior at school. Gentry told Dr. Gollaher that he had been suspended from school 10 to 15 times. At first, the suspensions were for acting out in class but later the suspensions were for fighting. Dr. Gollaher had learned that Gentry had been involved in numerous individual and gang-related fights. Dr. Gollaher testified that she had also learned that Gentry had been accused of choking a teacher, resulting in a referral to the juvenile system for assault on a public servant. Also taking the instant charges into consideration, Dr. Gollaher indicated that Gentry's history demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. Dr. Gollaher testified, "[C]ertainly when you see someone who's already engaged in a pattern of violent behavior, you're wondering, okay, what's next?"

Dr. Gollaher agreed that Gentry could benefit from rehabilitation, indicating that Gentry "needs help." But she also indicated that probation or other

treatmentbased programs, such as boot camp, would not be appropriate for Gentry. She stated that Gentry had done well in the past when placed in a structured environment.

With regard to the length of time Gentry should be removed from society, the following exchange occurred between the State and Dr. Gollaher:
[The State:] Knowing then that the minimum length of commitment for the offense of aggravated robbery, and there were two of them, that the minimum length of commitment is three years; and that after three years, he could be released back into society, but that's the minimum.
What's your opinion as to whether or not that is the kind of timeframe that is appropriate for him to be in a structured environment and not risk the public or risk the greater community with this [escalation] of violent behavior?
[Dr. Gollaher:] I would be concerned about just three years.
[The State:] Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?
[Dr. Gollaher:] Yes, ma'am.

In addition to expert evidence, the State presented the testimony of the following witnesses at the transfer hearing: (1) the complainants, Garza and Escobar; (2) the investigating police officers, including Officer Thompson, the detectives involved in arresting Gentry and taking his statements, and the arson investigator who investigated the car fire in which Gentry was involved; and (3) Judge Mary Ward, the magistrate who informed Gentry of his statutory rights before he made his statements to the police. The State has offered the following tangible evidence at the transfer hearing: (1) Gentry's written statement; (2) the video taken from Officer Thompson's patrol car during Gentry's and Desantiago- Caraza's detention, showing Gentry fleeing from Officer Thompson; and (3) the security video from the Academy parking lot, depicting the events surrounding the robbery of Escobar.

To defend against the waiver of jurisdiction, Gentry presented the testimony and report of forensic psychiatrist Dr. A. David Axelrad, who had been appointed by the juvenile court to aid the defense. In forming his opinions, Dr. Axelrad had relied on a neuropsychological evaluation of Gentry conducted by Dr. Larry Pollock. Dr. Pollock's report was included as part of Dr. Axelrad's report.

Dr. Axelrad testified that, after he had met with Gentry, he had requested Dr. Pollock to conduct a neuro-psychic examination because he had noticed that Gentry "was exhibiting some cognitive difficulties." In addition, Dr. Axelrad had learned that Gentry had a history of head injuries and substance abuse. Dr. Axelrad testified that this information was sufficient "to suggest to me that he might have some neuropsychological deficits that may be relevant for the Court to be aware of as it approaches this decision on adult certification." Dr. Axelrad stated that Dr. Pollock had concluded from the evaluation that [Gentry] has significant neuropsychological deficits, and intelligence processing speed, and executive functioning. He also found that his executive functioning deficits would affect his information processing, and make it difficult for him to comprehend and respond quickly. [Dr. Pollock] also arrived at conclusions that these deficits would have added an impact on his behavior at the time of the commission of these offenses.

Dr. Pollock also stated in his report that he had concerns about Gentry's "ability to survive in an adult prison because of neuropsychological deficits, and his psychiatric problems." Dr. Axelrad testified that Dr. Pollock also "indicated that the kinds of cognitive difficulties that Damion Gentry is experiencing is amendable to cognitive rehabilitation," which should be done in a "juvenile setting." One of the programs that Dr. Pollock suggested in his report to rehabilitate Gentry was an outpatient program run by Dr. Pollock called "Project Reentry." Dr. Axelrad testified that the program would provide Gentry the cognitive treatment that he needs.

Dr. Axelrad further testified that he had consulted with Gentry's treating psychiatrist, Dr. Nithi, who, since Gentry had been in juvenile detention for the instant offenses, had diagnosed Gentry with bipolar disorder. Dr. Axelrad stated that bipolar disorder is a treatable condition. He testified that Dr. Nithi had placed Gentry on two medications for his bipolar disorder and that Gentry was doing well on the medications. Dr. Axelrad stated that Gentry's behavior had improved.

Dr. Axelrad pointed out Gentry was not being treated for either his bipolar disorder or his neuropsychological deficits when the instant offenses were committed. Dr. Axelrad also pointed out that Gentry had "been abusing alcohol and marijuana at the time this occurred" and had history of abusing alcohol and marijuana.

With respect to Gentry's "maturity and sophistication," Dr. Axelrad testified as follows:
Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he's experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you're going to utilize the word maturity and sophistication in a medical context or clinical

context, he has a brain that has been injured, so he doesn't have a mature brain because of that. And he certainly has problems involving his neuropsychological functioning. The evidence is very clear in that; and it's in my report and Dr. Pollock's report.

When asked his opinion regarding whether Gentry "fully understood the circumstances surrounding the incidents that he's charged with" Dr. Axelrad testified as follows:
Upon the information that I have reviewed, as well as the psychological testing by Dr. Gollaher and Dr. Pollock, it is my opinion that Damion Gentry was impaired at the time of the commission of these alleged offenses. And that that impairment involved significant cognitive problems that he was experiencing that has been documented by Dr. Pollock's neuro-physiological testing that he had an active bipolar disorder, bipolar-one disorder that significantly impaired his ability to control his behavior. In children and adolescents who experience bipolar disorder, whether it's mixed hypomanic or manic, it does produce significant impairment in their behavioral control.

At the conclusion of the transfer hearing, the juvenile court stated as follows on the record:
I'm going to make the following findings: That the offense was against the person. That you are sufficiently sophisticated and mature enough to be tried as an adult. You are sufficient and mature enough to help your attorney in your defense. That you have a record, and your previous history is such that you should be certified to stand trial as an adult. The public cannot be protected if you remain in the juvenile system. And there's a likelihood that the juvenile system could rehabilitate you is very remote. I think juvenile has tried just about everything they could to help you.
The fact that the alleged offenses were felonies of the first degree, and that you were 14 years of age when you committed those felonies. There has been no adjudication of the two felonies. And because of the seriousness of the alleged offenses, the public cannot be protected if you remain in the juvenile system. Because of the background, the public cannot be protected if you remain here. What I find based on your social evaluation and investigative report, and your psychological evaluations, that you should be certified and stand trial as an adult.
Since the petition has multiple accounts [sic], I am certifying you on both counts of aggravated robbery; both with a deadly weapon, and one was a victim who was over 65 years of age.

In each case, the juvenile court signed a "Waiver of Jurisdiction and Order of Transfer to A Criminal District Court" in which the juvenile court waived its jurisdiction, and ordered that Gentry be transferred to criminal district "for proper criminal proceedings." In its order, the juvenile court made findings to support the waiver of its jurisdiction and its transfer of Gentry to criminal district court for prosecution.

Once transferred, Gentry moved to suppress the oral and written statements he gave to police after he was taken into custody. Among Gentry's assertions was that the statements had not been taken in compliance with Juvenile Justice Code Section 51.095 and Code of Criminal Procedure Article 38.22. Gentry asserted that both his audio-recorded statement and his written statement should be suppressed because the audio recording did not contain the warnings required by Juvenile Justice Code Section 51.095 and by Code of Criminal Procedure Article 38.22(3)(a)(2). The trial court granted Gentry's request to suppress the oral statement but denied his request to suppress his written statement.

The two aggravated-robbery offenses were tried together in criminal district court. The jury found Gentry guilty in each case. It assessed Gentry's punishment at 50 years in prison for each offense.

Gentry now appeals both judgments of conviction. In each appeal, Gentry challenges the juvenile court's order waiving jurisdiction and transferring him to criminal court for prosecution as an adult. Also in each appeal, he contends that the trial court abused its discretion by denying his request to suppress his written statement. In his appeal involving the aggravated robbery of Escobar, Gentry contends that the evidence was insufficient to support the judgment of conviction.

Held: Affirmed

Memorandum Opinion: In his second issue raised in each appeal, Gentry asserts, "The trial court committed reversible error and abused its discretion in denying [Gentry's] motion to suppress his written statement." Gentry argues that, because his oral statement was suppressed for non-compliance with Family Code Section 51.095, his written statement likewise should have been suppressed.

Section 51.095 of the Juvenile Justice Code governs the admissibility of custodial statements made by a juvenile.6 See TEX. FAM.CODE ANN. § 51.095 (Vernon 2014). Section 51.095(a)(5) requires that a juvenile's oral statement be recorded by an electronic recording device. Id. § 51.095(a)(5). This section also requires a magistrate to give the juvenile the warning described in Section 51.095(a)(1)(A) before the juvenile makes the statement.7 Id. The warning must be part of the recording, and the child must knowingly, intelligently, and voluntarily waive each right stated in the warning. Id.

The audio-recording of Gentry's statement, admitted for purposes of the suppression hearing, did not contain the statutory warning. Judge Ward testified

that she gave the required statutory warning to Gentry before he gave his oral statement. And Gentry's written statement reflects that Judge Ward informed him of his statutory rights. Judge Ward acknowledged, however, that the statutory warning was not part of the recording of Gentry's oral statement.

At the suppression hearing, Gentry asserted that his oral statement should be suppressed because it did not comply with Juvenile Justice Code Section 51.095's requirement that the statutory warning be part of the recording. Gentry also indicated that his recorded statement did not comply with Code of Criminal Procedure Article 38.22, Section 3(a)(2), which is similar to Juvenile Justice Code Section 51.095(a)(5). Under Article 38.22, Section 3(a)(2), before an oral recorded statement may be admitted into evidence, the State must show that "prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning."8 TEX.CODE CRIM. PROC. ANN. art. 38.22 § 3(a)(2) (Vernon Supp.2014).

In addition, Gentry asserted at the hearing that his written statement was involuntary. He claimed that the audio recording revealed that the police officers taking his statement had directed him to write certain statements. Because it was involuntary, Gentry argued that the written statement should be excluded under Code of Criminal Procedure article 38.23(a), which prohibits the admission of evidence obtained in violation of the constitution or laws of the State of Texas. See TEX.CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon 2005).

The trial court granted Gentry's request to suppress his oral recorded statement. From the context of the record, it is clear that the trial court suppressed that statement because the oral recorded statement had not been taken in compliance with Section 51.095's requirement that the magistrate provide the statutory warnings as part of the recording. See TEX. FAMILY CODE ANN. § 51.095(a)(5).

The trial court denied Gentry's request to suppress his written statement and made the following findings of fact and conclusions of law: (1) "the written statement complied with Article 38.22"; (2) the written statement complied with Family Code section 51.095 "to the degree necessary"; and (3) Gentry, "prior to and during the making of the written statement[,] knowingly, intelligently and voluntarily waived the rights set out in the warning prescribed by Subsection A of Section 2 of Article 38.22."

On appeal, Gentry argues that his written statement should have been suppressed because "[the] written statement derives from the illegally obtained audio recording which was suppressed during a motion to suppress hearing." Gentry asserts that "testimony from the suppression hearing clearly shows that the written statement was taken simultaneously during the recording of the audio statement, which was suppressed. The audio recording was obtained in violation of Section 51.095 of the Texas Family Code." Gentry argues that the written confession should be suppressed because it "was the fruit of the tainted oral, audio confession." In other words, Gentry asserts that the written statement was not admissible because it was made at the same time he gave his oral, audio-recorded statement, which was suppressed due its non-compliance with Section 51.095.

On appeal, Gentry does not make an express argument that the written statement was involuntary due to any overreaching by the police. In his brief, he does point out that, in his audio recorded statement, "The police are [heard] talking with the Appellant ... for a lengthy period of time, discussing with Appellant what Appellant should include in his written statement. Appellant never had a period of time to reflect before providing his written statement." Gentry makes this statement to support his assertion that his written statement should be suppressed because it was not made separately from his oral statement, which was not taken in compliance with Section 51.095.

We find the Court of Criminal Appeals's opinion in Heiselbetz v. State, 906 S.W.2d 500, 512 (Tex.Crim.App.1995) to be instructive. There, the appellant signed a transcription of his oral, audio-recorded statement. Id. The signed transcription was introduced against the appellant at trial over his objection. Id. The appellant argued, "because the audio recording did not contain the warnings required by [Code of Criminal Procedure] Article 38.22(3)(a)(2), the transcription of that statement, even though it does contain the required written warning, is infirm and should have been suppressed." Id.
Overruling the appellant's claim, the Court of Criminal Appeals wrote:
We note that there are no allegations of involuntariness, or coercion, or of lack of warnings regarding either the original recorded statement or the signing of the transcribed statement; appellant alleges merely that the recording did not comply with statutory requirements. Under these facts, we agree with the State that the transcription of the oral statement stands on its own. As long as the confession is voluntary, law officers are currently permitted to reduce defendants' oral statements into writing; they are even allowed to paraphrase the statements.... And as long as the warnings appear on the written statement, it is admissible. The trial court did not err in allowing appellant's written statement into evidence. Id.

From Heiselbetz, we learn that a written statement, taken in compliance with the requirements for its

admissibility, will not be rendered inadmissible on the basis that it was derived from an oral, recorded statement that is inadmissible due to simple statutory noncompliance. See id.

Here, the State agrees that Gentry's oral statement was inadmissible because it did not comply with Section 51.095's provisions governing the admissibility of oral statements. At the same time, the State correctly points out that Section 51.095 has separate provisions governing the admissibility of written statements. The State asserts that Gentry's written statement was taken in compliance with those provisions, as found by the trial court, and was therefore admissible. We agree.

With respect to written statements, as it applies in this case, Section 51.095(a)(1) provides that "the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if ... the statement is made in writing [while the child is in police custody] and
(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:
(i) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;
(ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;
(iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and
(iv) the child has the right to terminate the interview at any time;
(B) and:
(i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child; and
(ii) the magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must sign a written statement verifying the foregoing requisites have been met;
(C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate; and
(D) the magistrate certifies that the magistrate has examined the child independent of any law enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or other court personnel, and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights[.] See TEX. FAMILY CODE ANN. § 51.095(a)(1).

Here, the record, including Judge Ward's testimony and the form on which Gentry made his written statement, shows that the written statement was taken in compliance with these provisions, and Gentry does not contend otherwise. Of particular relevance, Judge Ward testified that, before Gentry gave his oral and written statements, she informed him of the statutory rights listed in Section 51.095(a)(1). The juvenile statement form on which Gentry made his written statement also contains the statutory warnings. Judge Ward testified that she placed a checkmark by each right as she read it to Gentry. She then had Gentry place his initials by each right when he indicated to her that he understood it. Judge Ward indicated that she told Gentry that he was not required to talk to the police, but Gentry indicated to Judge Ward that he wanted to give a statement.

Conclusion: When he had finished making his statements, Judge Ward read the written statement to Gentry. Gentry indicated to Judge Ward that it was his statement and that he had made it voluntarily. Judge Ward gave Gentry the opportunity to make any corrections or changes to his statement, but Gentry made no changes to it. In the form, Judge Ward indicated that she was "fully convinced" that Gentry had "knowingly, voluntarily, and intelligently" waived his statutory rights both before and during the making of his written statement. Judge Ward also indicated that Gentry voluntarily signed the statement in her presence with no law enforcement present. Judge Ward signed the form certifying and verifying that the requisites of Section 51.095 had been met. Based on the record, we hold that the trial court did not abuse its discretion when it denied Gentry's request to suppress his written statement. We overrule Gentry's second issue in each appeal.

EVIDENCE

WHERE AN ELEMENT OF THE OFFENSE IS "THE INTENT TO CAUSE ALARM," A JUVENILE'S WORDS AND ACTIONS MAY GIVE RISE TO A REASONABLE INFERENCE THAT KNEW HIS WORDS AND ACTIONS WOULD BE COMMUNICATED TO HIS VICTIM.

¶ 16-2-5. **In the Matter of R.D.**, No. 02-15-00115-CV, --- S.W.3d ----, 2016 WL 551906 (Tx.App.-Fort Worth, 2/11/2016).

Facts: Darryl Brown, a teacher for the Fort Worth Independent School District, testified at the adjudication hearing that on October 16, 2014, he was serving as an on-campus intervention teacher,

supervising students "who have behavior problems." According to Brown, the campus police officer, Deautric Sims, brought R.D. to his classroom. Brown said that Sims held R.D. by "both of his arms" as he brought him to the class and that R.D. declared to Sims, "I'm going to get you. I'm going to kill you." Brown testified that Sims "set [R.D.] down and then ... left." Brown averred that after Sims left, R.D. continued with his declarations by stating, "I swear on my momma. I'm going to bring something here, bring a gun here and kill him." Brown said that he told R.D., "Son, you don't want to say that." According to Brown, another student also stated to R.D., "No, man. You don't want to say that." Brown said that R.D.'s response was to continue making statements that he was going to "get" Sims and that R.D. then left the room. Brown said that R.D. ignored his repeated instruction to come back.

Brown said that he is required to report all threats, so he reported this incident to the assistant principal. In his report, Brown recalled that R.D. had stated, "I swear on my momma, you know. I'm going to bring a gun here. I'm going to shoot this place up. I'm going to kill that man." Brown said that although Sims heard R.D.'s initial statement that he was going to kill Sims, Sims was not present in the room when R.D. stated that he was going to bring a gun to school in order to do so. Brown averred that he was not afraid of R.D. and that he did not know whether R.D. was carrying a weapon when he made his declarations.

R.D. testified that on the day in question, Sims had taken him to the on-campus intervention room in error. By R.D.'s account, Sims had "said [he] was skipping" class, but he was not. R.D. said that Sims had restrained him by his arms and that Sims and "[t]he lunch ladies" were laughing at him. R.D. said that Sims's conduct upset him and that he began to cry. R.D. said that he never threatened Sims to his face and that he never said that he was going to bring a gun to school or that he was going to kill Sims; rather, R.D. said that he declared that he was going to tell his dad and uncle to come to school and fight Sims. R.D. averred that he did not have access to a gun and that he never intended for his comments to be heard by Sims. When asked why Brown said that R.D. had threatened to bring a gun to school and shoot Sims, R.D. said that Brown had "heard [him] wrong."

Based on the evidence presented regarding the threat charge, and based on stipulated-to evidence regarding charges of criminal trespass and failure to identify that the State had also alleged as delinquent conduct, the trial court adjudicated R.D. delinquent. After a disposition hearing, the trial court placed R.D. on probation for one year. This appeal followed.

Held: Affirmed

Opinion: In one point, R.D. argues that the evidence is insufficient to support the trial court's finding that he intended to alarm Sims when he threatened to bring a gun to school and shoot him. Specifically, R.D. argues that the evidence is insufficient to show that he intended to carry out his threat and that the evidence demonstrates that Sims was not present to hear R.D.'s threat to bring a gun to school and shoot him.

The State argues that Sims's presence was not necessary to prove that R.D. intended to alarm Sims and that when taking R.D.'s words in context, the evidence supports the trial court's finding that R.D. made his threats intending to alarm Sims. We agree with the State.

A. Standard of Review in Juvenile Proceedings

Although juvenile proceedings are civil matters, the standard applicable in criminal matters is used to assess the sufficiency of the evidence underlying a finding that the juvenile engaged in delinquent conduct. In re R.R., 373 S.W.3d 730, 734 (Tex.App.–Houston [14th Dist.] 2012, pet. denied); In re A.O., 342 S.W.3d 236, 239 (Tex.App.–Amarillo 2011, pet. denied). According to that standard, in our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); Dobbs v. State, 434 S.W.3d 166, 170 (Tex.Crim.App.2014). This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Jackson, 443 U.S. at 319, 99 S.Ct. at 2789; Dobbs, 434 S.W.3d at 170.

The trier of fact is the sole judge of the weight and credibility of the evidence. See Tex.Code Crim. Proc. Ann. art. 38.04 (West 1979); Dobbs, 434 S.W.3d at 170. Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. Isassi v. State, 330 S.W.3d 633, 638 (Tex.Crim.App.2010). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. Sorrells v. State, 343 S.W.3d 152, 155 (Tex.Crim.App.2011); see Temple v. State, 390 S.W.3d 341, 360 (Tex.Crim.App.2013). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. Jackson, 443 U.S. at 326, 99 S.Ct. at 2793; Dobbs, 434 S.W.3d at 170.

We measure the sufficiency of the evidence by the elements of the offense as defined by the

hypothetically correct jury charge for the case, not the charge actually given. Byrd v. State, 336 S.W.3d 242, 246 (Tex.Crim.App.2011) (citing Malik v. State, 953 S.W.2d 234, 240 (Tex.Crim.App.1997)); see Crabtree v. State, 389 S.W.3d 820, 824 (Tex.Crim.App.2012) ("[T]he essential elements of the crime are determined by state law."). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. Byrd, 336 S.W.3d at 246. The law as authorized by the indictment means the statutory elements of the charged offense as modified by the factual details and legal theories contained in the charging instrument. See Daugherty v. State, 387 S.W.3d 654, 665 (Tex.Crim.App.2013); see also Rabb v. State, 434 S.W.3d 613, 616 (Tex.Crim.App.2014) ("When the State pleads a specific element of a penal offense that has statutory alternatives for that element, the sufficiency of the evidence will be measured by the element that was actually pleaded, and not any alternative statutory elements.").

B. Evidence Supports the Trial Court's Finding

Under the Texas Education Code's "Exhibition of Firearms" statute, a person commits an offense if, in "a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally exhibits, uses, or threatens to exhibit or use a firearm" on school property. Tex. Educ.Code Ann. § 37.125(a) (West 2007). Intent may be inferred from circumstantial evidence such as acts, words, and the conduct of the appellant. Guevara v. State, 152 S.W.3d 45, 50 (Tex.Crim.App.2004).

In this case, the State specifically pleaded that R.D. intended to cause alarm to Sims when he threatened to bring a gun to school and shoot him. Thus, the law authorized by the State's charging instrument, as modified by the factual details pleaded by the State, required the State to prove that R.D. intended to cause alarm to Sims when he declared that he was going to bring a gun to school to "shoot this [school] up" and kill Sims. See Rabb, 434 S.W.3d at 616.

1. Whether R.D. Had the Capacity to Carry Out His Threat

In part of his sole point, R.D. argues that there is no evidence to support a finding that R.D. intended to or was capable of carrying out his threat to bring a gun to school and shoot Sims. But "it is immaterial to [a threat] offense whether the accused had the capability or the intention to carry out his threat." Walker v. State, 327 S.W.3d 790, 794 (Tex.App.–Fort Worth 2010, no pet.) (citing Dues v. State, 634 S.W.2d 304, 305 (Tex.Crim.App.1982)). Thus, we overrule this portion of R.D.'s point.

2. Whether R.D. Intended to Alarm Sims

In the remainder of his sole point, R.D. cites cases dealing with assault by threat and robbery by threat and argues that because "Sims was not present when" R.D. made his threat, there is insufficient evidence to support the trial court's finding that he intended to alarm Sims. See Boston v. State, 410 S.W.3d 321, 326 (Tex.Crim.App.2013) (analyzing robbery by threat); Olivas v. State, 203 S.W.3d 341, 345–46 (Tex.Crim.App.2006) (analyzing assault by threat). The State counters that exhibition of firearms is more akin to terroristic threat than other threat offenses and offers two example cases regarding terroristic threat in which the complainant did not immediately perceive the threat. See Zorn v. State, 222 S.W.3d 1, 3 (Tex.App.–Tyler 2002, pet. dism'd) (holding that terroristic threat "does not require the victim or anyone else to be actually placed in fear of imminent serious bodily injury"); Cook v. State, 940 S.W.2d 344, 349 (Tex.App.–Amarillo 1997, pet. ref'd) ("[I]t is of no consequence whether the [threat] was heard live, or recorded and heard later.").

Like R.D. and the State, this court has found no case analyzing the education code's exhibition-of-firearms statute. We agree, however, that the exhibition-of-firearms statute is similar to the terroristic threat statute in that both statutes require that there be a threat and the intent to place another in a disturbed state of mind. Compare Tex. Penal Code Ann. § 22.07 (West 2011) (terroristic threat) with Tex. Educ.Code Ann. § 37.125(a) (exhibition of firearm by threat). That is, much like the terroristic threat offense element that the action intend to place another "in fear of imminent serious bodily injury" by a threat, the exhibition-of-firearms statute requires that the threat be made in such a manner that it intends to "alarm" another. Tex. Educ.Code § 37.125(a); Tex. Penal Code Ann. § 22.07.

Viewing the evidence in the light most favorable to the trial court's finding, we determine that a reasonable inference from the cumulative force of the evidence supports the trial court's finding that R.D. intended to alarm Sims when he repeatedly stated that he was going to "kill" Sims by bringing a gun to the school grounds and "shoot" him. Indeed, a reasonable inference to be drawn from R.D.'s comments is that he was angry with Sims because Sims had brought him to the detention hall in a manner that R.D. testified had upset him and caused him to cry. Brown testified that R.D. told Sims directly, "I'm going to kill you." Further, despite both a teacher and fellow student expressing to R.D. that he should not make such threatening statements, R.D. persisted in his statements that he was going to "get" Sims and that he was going to do so by bringing a gun to school to shoot him. R.D. followed his statements by leaving the classroom and ignoring Brown's pleas for him to return.

Conclusion: R.D.'s statements, coupled with the fervor in which he repeated them, followed by his flight from the classroom despite instruction that he return, give

rise to a reasonable inference that he knew his actions and words would be communicated to Sims, the on-campus police officer. Thus, it is a reasonable inference that R.D. intended that his threats would be conveyed to Sims and that they were intended to cause alarm to Sims. Cf. In re C.S., 79 S.W.3d 619, 622 (Tex.App.–Texarkana 2002, no pet.) (holding evidence sufficient to support adjudication of juvenile for terroristic threat where evidence demonstrated that juvenile stated to multiple school employees that he was "going to blow up the school" because he believed that teachers had mistreated him and that evidence supported finding that he intended to prevent or interrupt the occupation of a building, room, or place of assembly).

While R.D. may be correct that it is also a reasonable inference that he never intended that Sims learn of his threats, we must resolve the conflict in these reasonable inferences in favor of the trial court's finding. Jackson, 443 U.S. at 326, 99 S.Ct. at 2793; Dobbs, 434 S.W.3d at 170. Thus, we overrule the remainder of R.D.'s sole point. Having overruled R.D.'s sole point on appeal, we affirm the trial court's judgment.

SUFFICIENCY OF THE EVIDENCE

EVIDENCE WAS LEGALLY AND FACTUALLY SUFFICIENT TO SUPPORT THE TRIAL COURT'S FINDING THAT REASONABLE EFFORTS WERE MADE TO PREVENT THE CHILD'S REMOVAL FROM THE HOME.

¶ 16-2-6. **In the Matter of K.A.**, Memorandum, No. 05-15-00982-CV, 2016 WL 1104839 (Tex.App.—Dallas, 3/22/16).

Facts: On July 23, 2015, appellant entered a plea of true to the State's petition alleging he engaged in delinquent conduct on March 7, 2015 by committing the felony offense of aggravated robbery with a deadly weapon in violation of section 29.03 of the Texas Penal Code. See TEX. PENAL CODE ANN. § 29.03 (West 2011). The trial court accepted the plea and found appellant to be a child engaged in delinquent conduct. The trial court then proceeded to disposition.

At the disposition hearing, the State presented several investigative reports and assessments of appellant. Among other things, the reports detailed appellant's prior referrals to the juvenile department for delinquent conduct. In particular, the reports stated appellant had been arrested four times, had been placed on probation for the commission of misdemeanor criminal trespass and misdemeanor theft of property, had two pending referrals for the misdemeanor assaults of his sister and his aunt, with whom he lived, and had a referral for a separate aggravated robbery offense that occurred in Tarrant County. The risk and needs assessment considered appellant to be high risk and high needs, and the psychological assessment recommended a highly structured and highly supervised environment for appellant.

In addition to this evidence, the State called Stephen McGee, a Dallas County probation officer, to testify. He recommended that appellant be assigned to progressive sanction Level 6 or 7, and be committed to the care and custody of the TJJD, as he needs rehabilitation and for the protection of the public. He explained that the juvenile department made that recommendation based on the very serious nature of the offense during which appellant fired a firearm several times. In addition, he testified that it appeared appellant had not been in school since October 2013, was a gang member, and had a history of marijuana use.

Appellant also testified at the disposition hearing. He apologized for "everything" he had done and expressed gratitude for the time to "get [his] life on the right track." He said, "I'm willing to take however long I can get on probation, be home with my mama." He explained he would do community service, go back to school, and do "whatever it takes just to be back home."

At the conclusion of the hearing, the trial court found appellant was a child in need of rehabilitation and that the protection of the public and the child required a disposition. The trial court determined that "the child in the child's home cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation," that it was "in the best interest of the child to be placed outside the home," and that "reasonable efforts were made to prevent the child's removal from home." The trial court assigned appellant to progressive sanction Level 7 and ordered placement in TJJD for a period of five years. This appeal followed.

Held: Affirmed

Memorandum Opinion: At the disposition hearing, the trial court or jury decides whether the child is in need of rehabilitation or whether the protection of the public or the child requires that disposition be made. TEX. FAM.CODE ANN. § 54.04(c) (West Supp.2015). When a juvenile is adjudicated delinquent for conduct that constitutes a felony, the trial court or jury may commit the juvenile to TJJD for a proscribed term of years as set out by the code with a possible transfer to Texas Department of Criminal Justice. Id. § 54.04(d)(3). The trial court may commit a juvenile to TJJD if it determines that: (1) it is in the child's best interests to be placed outside the child's home; (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and

(3) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation. Id. § 54.04(i).

On appeal, appellant argues that nothing in the record supports the trial court's finding regarding efforts to prevent the removal of appellant from the home. We disagree. This was not the first referral of appellant to the juvenile department. The State presented evidence of appellant's prior in-home probation, and continued delinquent conduct including physical assaults of family members and conduct involving deadly weapons. It is appropriate for the court to consider the juvenile's prior referral history. See In re K.T., 107 S.W.3d 65, 74–75 (Tex.App.—San Antonio 2003, no pet.). In fact, a trial court is permitted to decline third and fourth chances to a juvenile who has abused a second chance. In re J.P., 136 S.W.3d 629, 632 (Tex.2004). Moreover, the State presented evidence of appellant's gang membership, drug use, and failure to attend school, and offered appellant's probation officer's updated predisposition report dated July 13, 2015, in which he states, inter alia, that:
[T]he subject[']s needs can no longer be addressed within the community due to the seriousness of the offenses poor school performance poor behavior in the home curfew violations association with negative peers drug use and gang involvement. Alternative options have been considered and rehabilitative efforts have been made to maintain the subject in the home. It is believed that the least restrictive environment at present is commitment to the care and custody of the Texas Juvenile Justice Department.

Conclusion: While the alternative options considered and the rehabilitative efforts made are not set forth in the report, we find no contrary evidence in the record. In addition, the record shows appellant had previously been given an opportunity to remain in the home while he was on probation, and he nevertheless continued to engage in delinquent behavior, including physical abuse of persons in the home. Thus, appellant's own actions foreclosed the option of remaining in the home. Accordingly, we conclude the evidence is legally and factually sufficient to support the trial court's finding that reasonable efforts were made to prevent the child's removal from the home. See, e.g., In re C.G., 162 S.W.3d 448, 453–54 (Tex.App.—Dallas 2005, no pet.). We overrule appellant's sole issue. We affirm the trial court's judgment.

TRANSFER FROM JUSTICE OF THE PEACE COURT

A TRUANCY COURT MAY REFER A CHILD TO THE JUVENILE PROBATION DEPARTMENT FOR EITHER FAILURE TO OBEY A TRUANCY ORDER OR DIRECT CONTEMPT; HOWEVER, SUCH A REFERRAL REQUIRES TWO PRIOR INSTANCES OF CONTEMPTUOUS CONDUCT REGARDLESS OF FORM-EITHER FAILURE TO OBEY A TRUANCY ORDER OR DIRECT CONTEMPT.

¶ 16-2-7A. Tex. AG Op. **KP-0064**, 2/16/16.

Re: Circumstances under which a truancy court may refer a child to the juvenile probation department, and circumstances under which a child may be prosecuted for delinquent conduct (RQ-0046-KP)

Query: You ask us to construe two provisions in newly-added chapter 65 of the Family Code, which now governs court jurisdiction and procedures relating to truancy. You first ask about a truancy court's referral of a child to a juvenile probation department. Request Letter at 1-3.

Subsection 65.251(b) of the Family Code provides, in relevant part, that [i]f a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt of court on two or more previous occasions, the truancy court ... may refer the child to the juvenile probation department .... TEX. FAM. CODE § 65 .251 (b). You explain that this provision could be interpreted in a number of ways depending on the grammatical construction of the phrases beginning with the words "or" and "and" in the sentence. Request Letter at 2. Thus, you ask this office for assistance in determining the meaning of subsection 65.251(b} Ii at 2-3.

Opinion: As with any statute, our goal in construing subsection 65.251(b) is to give effect to the Legislature's intent. Lippincott v. Whisenhunt, 462 S.W.3d 507, 509 (Tex. 2015). "[W]hen statutory language is susceptible to more than one reasonable interpretation, [a court] look[s] beyond its language for clues to the Legislature's intended meaning." In re Smith, 333 S.W.3d 582, 586 (Tex. 2011). One such clue comes from another subsection of section 65.251. See Tex. Student Hous. Auth. v. Brazos Cty. Appraisal Dist., 460 S.W.3d 137, 141(Tex.2015) (stating that when construing a statute, a court will focus "not on isolated words or phrases but on the statute as a cohesive, contextual whole"). Subsection 65 .251 (a) provides that "[i]f a child fails to obey an order issued by a truancy court ... or a child is in direct contempt," a truancy court may impose a fine, restrict driving privileges, or both. See TEX. FAM. CODE§ 65.25l(a). Subsection 65.251(a)'s imposition of these penalties upon a single occurrence of either truancy order defiance or direct contempt suggests that subsection 65 .251 (b) requires something more than a single occurrence of either behavior to trigger its provisions. Otherwise, there would be no reason to express the penalty for a single occurrence in a separate subsection. See City of Dallas v. TC! West End, Inc., 463 S.W.3d 53, 55-56 (Tex. 2015) (stating that "an interpretation that renders any part of the statute meaningless" should be avoided).

The grammatical structure of subsection 65.251(b) can thus be read to pivot on the conjunctive word "and," requiring the occurrence of some additional condition expressed after the conjunction. The question then is whether either of the additional conditions (i.e., the child failing to obey an order or engaging in direct contempt) must have occurred "on two or more previous occasions" or whether that phrase refers only to direct contempt. Again, we seek clarity from the surrounding text by examining subsection 65 .251 (c), which sets forth the documentation required when a referral to a juvenile probation department is made. That subsection, in relevant part, requires a truancy court to provide documentation of all truancy orders for each of the child's previous truancy referrals, including: (A) court remedies and documentation of the child's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and (B) documentation describing the child's direct contempt of court, if applicable[.]
TEX.FAM. CODE § 65.251 (c)(2) (emphasis added).

Thus, subsection (c) suggests that, regardless of the category, there must have been two or more previous occurrences of an offending behavior before the truancy court may refer the child to a juvenile probation department. No language in chapter 65 appears to limit the prior contemptuous behavior requirement to the same category. Thus, one instance of truancy order defiance together with one instance of direct contempt would constitute the requisite "two or more previous occasions" of offending behavior for purposes of subsection 65 .251 (b). This construction also simplifies the execution of the statute because it results in a child's eligibility for juvenile probation department referral upon the third commission of any combination of the offending behaviors, thus making it consistent with the Legislature's express purpose in "creating simple civil judicial procedures" for holding a child accountable for excessive school absences. Id. § 65.00l(b). In sum, a court would likely conclude that under subsection 65.251(b) of the Family Code, a truancy court may refer a child to the juvenile probation department for either failure to obey a truancy order or direct contempt; however, such a referral requires two prior instances of contemptuous behavior regardless of form-either failure to obey a truancy order· or direct contempt.

Summary: A court would likely conclude that under subsection 65.251(b) of the Family Code, a truancy court may refer a child to the juvenile probation department for either failure to obey a truancy order or direct contempt; however, such a referral requires two prior instances of contemptuous conduct regardless of form-either failure to obey a truancy order or direct contempt.

A JUVENILE PROSECUTOR MAINTAINS DISCRETION TO PROSECUTE A CHILD REFERRED FROM TRUANCY COURT FOR DELINQUENT CONDUCT EVEN ON A CHILD'S INITIAL REFERRAL TO JUVENILE COURT.

¶ 16-2-7B. **Tex. AG Op. KP-0064**, 2/16/16.

Re: Circumstances under which a truancy court may refer a child to the juvenile probation department, and circumstances under which a child may be prosecuted for delinquent conduct (RQ-0046-KP)

Query: Your second question concerns prosecutorial discretion under section 65.252 of the Family Code. See Request Letter at 3-4. Under section 65.252, after a child is referred to a juvenile court, "the juvenile court prosecutor shall determine" whether there is probable cause to believe the child engaged in direct contempt or failed to obey a truancy order under circumstances that would constitute contempt of court. TEX. FAM. CODE§ 65.252(a). If there is no probable cause, the juvenile court must order the child to continue his or her compliance with the truancy order and must notify the truancy court. Id. § 65.252(c). On a finding of probable cause, "the prosecutor shall determine whether to request an adjudication" from the juvenile court. Id. § 65.252(a). Subsections 65.252(a) and (b) describe this particular adjudication process, which would involve "a hearing to determine if the child engaged in conduct that constitutes contempt of the order issued by the truancy court or engaged in direct contempt of court." Id. § 65.252(a)-(b). During this hearing, if the juvenile court makes a finding of either such behavior, the court, among other things, "shall ... admonish the child ... of the consequences of subsequent referrals to the juvenile court, including ... a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court." Id. § 65.252(b). Subsection 65.252(d), however, expressly states that section 65 .252 "does not limit the discretion of a juvenile prosecutor or juvenile court to prosecute a child for conduct under Section 51.03." Id. § 65.252(d).

Opinion: House Bill 2398 amended the definition of "delinquent conduct" in subsection 51.03(a) to include "conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in ... a truancy court." Act of May 30, 2015, 84th Leg., R.S., ch. 935, § 18, Tex. Gen. Laws 3224, 3233 (codified at TEX. FAM. CODE§ 51.03(a)(2)(C)) (emphasis added). Thus, you ask "whether a prosecutor and juvenile court must comply with Section 65.252(a)-(c) of the Texas Family Code in the first instance of a child's referral ... to juvenile court, or whether a prosecutor and juvenile court maintain discretion under Section 65.252(d) to prosecute the child for delinquent conduct at any time." Request Letter at 4.

Although the mandatory admonishments to be given by the juvenile court in subsection 65 .252(b) do refer to a possible delinquent conduct charge in future terms upon "subsequent" referrals, suggesting that such a prosecution would not be the consequence of a child's initial referral to juvenile court, subsection (b) must be read in conjunction with subsection (a). Subsection 65.252(a) gives a juvenile prosecutor the discretion to "determine whether to request" the adjudication process described by subsections (a) and (b) in the first instance. TEX. FAM. CODE § 65.252(a) (emphasis added). Only if the prosecutor requests an adjudication under subsection 65.252(a) does a juvenile court proceed to "adjudicate" on the question of contempt, and only upon an affirmative finding does the juvenile court admonish the child regarding a "possible" future charge of delinquent conduct. By expressly stating that section 65.252 does not limit the prosecutor's discretion to prosecute the child on a formal delinquent conduct charge under other law, the Legislature has indicated that the adjudication process of 65.252 is at the discretion of the juvenile prosecutor. Thus, the prosecutor maintains discretion under subsection 65.252(d) to prosecute a child for delinquent conduct as set forth in subsection 5 l .03(a)(2)(C) even on a child's initial referral to juvenile court. This construction affords a juvenile prosecutor the flexibility to handle a child's defiance of a truancy order with the level of severity most appropriate for that child. See id § 65.012 (authorizing the Texas Supreme Court to promulgate "guidelines [for] the informal disposition of truancy cases"); see also id § 65.00l(c) (stating that in adjudicating a child's truant conduct, "[t]he best interest of the child is the primary consideration").

Summary: A court would likely conclude that a juvenile prosecutor maintains discretion under subsection 65.252(d) of the Family Code to prosecute a child for delinquent conduct as set forth in subsection 51.03(a)(2)(C) of the Family Code even on a child's initial referral to juvenile court.

WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT

IN CERTIFICATION AND TRANSFER HEARING JUVENILE COURT'S DECISION TO TRANSFER THE JUVENILE TO CRIMINAL DISTRICT COURT FOR PROSECUTION AS AN ADULT WAS NOT ARBITRARY, BUT INSTEAD REPRESENTED A REASONABLY PRINCIPLED APPLICATION OF THE LEGISLATIVE CRITERIA FOUND IN SECTION 54.02.

¶ 16-2-1A. **Gentry v. State**, MEMORANDUM, No. 01-14-00335-CR, NO. 01-14-00336-CR, 2016 WL 269985, [Tex.App.—Houston (1st Dist.), 1/21/16].

Facts: Around 3:00 a.m. on January 19, 2012, Masario Garza was driving to work on Highway 90 in Fort Bend County. Highway 90 has four lanes, with two on each side of the road. Garza was in the outside lane. As he approached the intersection with FM359, Garza slowed down for a red light. Garza noticed that a gray truck was to his left in the inside lane. The truck was being driven by 22–year–old Daniel Desantiago–Caraza. Fourteen-year-old Damion Gentry was in the passenger seat. The truck stopped at the intersection, and Gentry got out of the passenger side.

Initially, Garza thought that Gentry had gotten out of the truck to ask him directions or to check something in the back of the truck. But then, Garza saw that Gentry was holding gun in his right hand. When he saw the gun, Garza immediately stepped on the gas to get away from the scene. Garza later testified that he fled because he thought that Gentry was "going to rob me or something."

As Garza left the scene, Gentry shot into the driver's side window of Garza's car, shattering the glass. The glass cut Garza's cheek and hand.

Traveling at a high rate of speed, Garza continued down Highway 90 in the outside lane. When he looked in his rearview mirror, Garza saw that the truck was in the inside lane and was getting closer. After a couple of miles, the truck, still in the inside lane, caught up to Garza and passed him. As the truck passed, Garza heard two more gunshots. The truck then made a U-turn through the grassy median and headed in the opposite direction on the highway. As the truck passed him heading in the other direction, Garza heard two more gunshots.

Garza pulled into a restaurant's parking lot at the direction of the 9–1–1 operator, with whom Garza had been speaking during the incident. The police soon arrived, and Garza told them what had occurred.

At that same time, Nelson Alberto Mejia Escobar was performing his job of cleaning the parking lot of an Academy store in the Brazos Shopping Center. Around 3:30 a.m., Desantiago–Caraza and Gentry pulled into the Academy parking lot in the gray truck and approached Escobar. While still in the truck, Gentry spoke to Escobar in English. Escobar told Gentry in Spanish that he did not speak English. Gentry then got out of the truck and pointed a gun at Escobar's head. In Spanish, Gentry told Escobar to give him $150. When Escobar indicated that he did not have any money, Gentry told him to empty his pockets. The only item that Escobar had in his pockets was the keys to his truck. Gentry demanded Escobar's keys, and Escobar gave him the keys. While he was emptying his pockets, Gentry continued to point the gun at different parts of Escobar's body. During this time, Escobar repeatedly begged Gentry not to shoot him and asked Gentry "[to] have mercy on me" and "[to] have pity on me."

Gentry then lowered the gun, but Desantiago–Caraza told Gentry to shoot Escobar. Gentry turned the gun

around with the grip facing outward. Gentry raised his arm to strike Escobar with the gun, but Escobar lifted his arm to deflect the blow. Escobar hit Gentry's hand holding the gun, pushing the gun to the side.

Escobar turned and ran, and Gentry ran after him. As he chased Escobar, Gentry shot at Escobar's back. Escobar continued to run, and Gentry continued to shoot at him. Gentry shot at Escobar three or four times. As he ran, Escobar tripped and fell to the ground. Gentry stopped shooting. Escobar heard Gentry say to Desantiago–Caraza, "I already killed him." Gentry and Desantiago–Caraza then left the parking lot in the gray truck.

Meanwhile, around 3:30 a.m., Rosenberg Police Officer J. Thompson had gone to the Summer Lakes Subdivision to assist the fire department with a car fire. Officer Thompson was not needed at the scene of the fire but was asked by an arson investigator to check on a suspicious vehicle that had been seen at a nearby apartment complex that was under construction. The apartment complex was behind the Brazos Shopping Center where the Academy was located. Officer Thompson determined that the suspicious vehicle was the construction crew working at the building site. While at the construction site, Officer Thompson heard three or four gunshots coming from the parking lot in front of the Academy. He also heard tires squealing. Officer Thompson saw the gray pickup truck, being driven by Desantiago–Caraza, leaving the Academy parking lot. He then saw the truck run through a stop sign and turn into the Summer Lakes Subdivision.

Officer Thompson followed the truck into the subdivision. As the truck was stopping in front of a residence, Officer Thompson activated his emergency lights to initiate a stop, which also activated the patrol car's video-recording equipment.

The truck stopped in front of a house. Officer Thompson instructed Desantiago–Caraza to get out of the truck. Officer Thompson was talking to Desantiago–Caraza when he heard over the police radio that there had been a shooting at Academy. Officer Thompson then ordered Gentry out of the truck, and he made both Gentry and Desantiago–Caraza lie on the ground. Officer Thompson drew his duty weapon and decided that he would wait for backup officers to arrive. Desantiago–Caraza and Gentry began conversing in Spanish. Officer Thompson told them to be quiet. Gentry suddenly stood up, ran to the front of the truck, and then fled the scene.

Rosenberg Police Detective R. Leonhardt then arrived at the scene. He viewed the video taken from Officer Thompson's patrol car, showing the stop of truck, the detention of Desantiago–Caraza and Gentry, and Gentry's flight from Officer Thompson. When he saw the video, Detective Leonhardt recognized Gentry.2

The police searched their records and determined Gentry's last known address. Detective Leonhardt and other officers went to the address and found that Gentry still lived there.

Gentry's step-father gave his consent to search the home. The officers searched the home for the gun that had been used in the robberies but did not find it. Gentry overheard the officers talking about the gun and told them that the gun had been thrown from the truck at the front of the subdivision.

The officers took Gentry to a juvenile processing office where he was read his statutory Miranda-style rights by Justice of the Peace Mary Ward, acting as a magistrate. Gentry then gave both an oral, recorded statement and a written statement to the police. Gentry reviewed the written statement with Judge Ward and signed it in her presence.

In the written statement, Gentry acknowledged that he been present during the incidents with Garza and Escobar; however, Gentry minimized his involvement, indicating that Desantiago–Caraza had been the primary actor with regard to each. Gentry claimed that it had been Desantiago–Caraza who had fired the gun at Garza. He also claimed that it had been Desantiago–Caraza who had struck Escobar and had first fired the gun at Escobar. Gentry admitted that, after Desantiago–Caraza had fired the gun one time, he also had fired it; but Gentry claimed that he had fired the gun only at the ground.

In his written statement, Gentry also admitted involvement in the car fire in the Summer Lakes Subdivision, which Officer Thompson had been dispatched to investigate. Gentry claimed that Desantiago–Caraza had set the fire with a lighter and that they stayed to watch the car bum. Gentry stated this had been before "the other events occurred."

The State filed a petition for waiver of the juvenile court's jurisdiction and discretionary transfer to criminal court for the aggravated-robbery offenses committed against Garza and Escobar. In November 2012, the juvenile court conducted a transfer hearing to determine whether it should waive its jurisdiction and transfer Gentry to criminal district court for prosecution as an adult.

During the three-day transfer hearing, the State presented the testimony of 11 witnesses. Shane Marvin, the court-liaison officer from the Fort Bend County Juvenile Probation Department, testified regarding Gentry's history in the juvenile system. Marvin had been assigned to supervise Gentry since February 2012. Over the months, Marvin had met with Gentry one or two times a week. Marvin also conducted a social history and home study evaluation

for Gentry, ordered by the juvenile court and filed in the record.

Marvin stated that Gentry's first referral to the juvenile system was for running away in 2007 when Gentry was only 10 years old. Over the next five years, Gentry had 11 other referrals to the juvenile system. One of the referrals, in 2009, was for assault on a public servant. Gentry was placed on formal probation for that referral. Marvin testified that Gentry successfully completed that probation, but, during the term of the probation, Gentry had two violations, including a threat by Gentry to blow up his school.

Marvin testified that another of Gentry's referrals was for "Class C gang affiliation membership." Gentry was placed on formal probation for six months for that referral. Gentry ultimately completed that probation, but Marvin testified that, during the probationary term, Gentry received three violations and "an additional Class C citation for destruction of school classes."

With respect to Gentry's gang affiliation, Marvin testified that "over the course of a little bit less than 300 days since I supervised his case and reading his files, I've come to learn he's associated, affiliated, or a member of the Southwest Cholos." When asked what indicated Gentry was in a gang, Marvin explained that, in the past, Gentry had been found to possess certain indicia of gang association. For example, while he was on probation for gang affiliation, Gentry wore certain gang-related items such as a black and white bandana and an extra-long belt. He was also caught tagging textbooks and flashing gang signs in school in front of his teachers. In addition, Gentry had been found to have other indicia of gang affiliation such as writings, taggings, and drawings on his backpack and the number 13 on his belt. Marvin stated that Gentry also has three dots tattooed on his knuckle, which Marvin believed indicated gang affiliation.

At the November 2012 hearing, Marvin indicated that Gentry had been in a juvenile detention facility since the occurrence of the instant offenses in January 2012. Marvin testified that Gentry had been written up for 14 separate infractions since he has been in detention. These include write-ups for fighting and for assault of another child in the facility. Marvin stated that, following the assault, Gentry had to be physically restrained.

In addition, Marvin testified regarding the numerous services that the juvenile system has provided Gentry over the years, prior to the commission of the instant aggravated-robbery offenses. These services included individual, group, and behavior-modification counseling, probation, substance abuse counseling, including inpatient treatment, mental health services, boot camp, and a mentorship program. Marvin agreed that Gentry has had "access to every type of rehabilitation program the [juvenile] department offers." Marvin testified that "at this point, you know, I think, it's fair to say that as a department, we have exhausted everything."

Marvin indicated that, if the court found that Gentry should remain in the juvenile system, Gentry was "absolutely not" a candidate for probation. With respect to why probation was not a good option for Gentry, Marvin testified:

[Gentry's] Being on probation two times, formal probation, having 12 referrals, having been placed by this department. You know, we talked about services, we talked about probably not even half of the services that he's actually received.

This child received—he's participated in the TCOOMMI turnaround program, male mentor program which I refer to as Ramp, acronym for that is Ramp. When he was at JJAEP, he was in life skills training. You know, where they pull kids and they try to give them simple, basic understanding of money, or balancing a checkbook.

JJAEP itself, you know, there's a component there, for lack of a better word, watered-down boot camp. So you know, he's been there. He's participated, he's had teachers, he's had drill instructors, he's had probation officers, he's had individual counseling, he's had family counseling, he's had grief counseling.

He has had multiple alcohol/drug assessments. He has had multiple sessions with alcohol drug counselors. He has had psychiatric evaluations; he has had psychological evaluations.

We have tried in hopes of keeping him at the house and not violating his terms of probation, we've attempted to place an electronic monitor on his ankle to keep him there; which, obviously, does not keep a person physically at the house. We've done anger management.

So when you ask me in reference to him being a candidate for probation, my personal opinion—and, I think, that the department would support me 100 percent that he is nowhere near being a candidate for probation.

Marvin also testified that Gentry could not be placed in one of the juvenile system's programs. He explained,

The child has been placed; and the child has been with us since 2007, age 10, up until 2012. That is a five-year span. One thing, and a really strong point is in regards to him being a candidate for placement, I want to go back to the protection of the public and the weapon being used in the commission of this alleged offense.

I don't think that a placement and let me just hit on that as far as not being a candidate for placement. Our placements have supervisors that have called around to the most severe, most restricted places that we have with regards to boot camp. He has called Grayson, he's called Hayes County, and he's called Nueces.

Based on the nature of this offense, based on the child's now pending arson charges, they're not going to accept a child into the facility like that. So that's just

not departmental. There's not a placement that's going to take him.

Marvin testified, "Our department's recommendation is if [Gentry] remains in the juvenile system, that he be committed to the TJJD [Texas Juvenile Justice Department]" for confinement. With regard to how long Gentry would be committed to the TJJD, Marvin indicated that, given the nature of the instant offenses, the minimum amount of time Gentry would be committed to the TJJD was three years, though he could stay in the TJJD until he was 19 years old. Marvin testified that the TJJD, not the juvenile court, determined whether, after three years, Gentry could be released on parole. The juvenile court would not make that decision.

The State also offered the testimony and report of court-appointed forensic psychologist Dr. Karen Gollaher, who had interviewed and evaluated Gentry. Dr. Gollaher testified that testing showed Gentry's IQ to be 107, which is in the average range. Dr. Gollaher indicated that Gentry had a history of depression. She opined that Gentry did not suffer from any mental deficit or psychosis that would have affected his ability to know right from wrong when he committed the instant offenses. Dr. Gollaher indicated that she had seen nothing to indicate that Gentry was under any type of duress or coercion when he committed the offenses.

Dr. Gollaher testified that she had diagnosed Gentry with conduct disorder. She explained that conduct disorder manifests itself by the individual "engaging in a pattern of defiance that's usually a cross environment that can be at school, legal, and at home which is a precursor to antisocial personality disorder." With regard to his behavior at home, Dr. Gollaher stated that Gentry had a history of running away.

Gentry had also displayed defiant behavior at school. Gentry told Dr. Gollaher that he had been suspended from school 10 to 15 times. At first, the suspensions were for acting out in class but later the suspensions were for fighting. Dr. Gollaher had learned that Gentry had been involved in numerous individual and gang-related fights. Dr. Gollaher testified that she had also learned that Gentry had been accused of choking a teacher, resulting in a referral to the juvenile system for assault on a public servant. Also taking the instant charges into consideration, Dr. Gollaher indicated that Gentry's history demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. Dr. Gollaher testified, "[C]ertainly when you see someone who's already engaged in a pattern of violent behavior, you're wondering, okay, what's next?"

Dr. Gollaher agreed that Gentry could benefit from rehabilitation, indicating that Gentry "needs help." But she also indicated that probation or other treatmentbased programs, such as boot camp, would not be appropriate for Gentry. She stated that Gentry had done well in the past when placed in a structured environment.

With regard to the length of time Gentry should be removed from society, the following exchange occurred between the State and Dr. Gollaher:
[The State:] Knowing then that the minimum length of commitment for the offense of aggravated robbery, and there were two of them, that the minimum length of commitment is three years; and that after three years, he could be released back into society, but that's the minimum.
What's your opinion as to whether or not that is the kind of timeframe that is appropriate for him to be in a structured environment and not risk the public or risk the greater community with this [escalation] of violent behavior?
[Dr. Gollaher:] I would be concerned about just three years.
[The State:] Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?
[Dr. Gollaher:] Yes, ma'am.

In addition to expert evidence, the State presented the testimony of the following witnesses at the transfer hearing: (1) the complainants, Garza and Escobar; (2) the investigating police officers, including Officer Thompson, the detectives involved in arresting Gentry and taking his statements, and the arson investigator who investigated the car fire in which Gentry was involved; and (3) Judge Mary Ward, the magistrate who informed Gentry of his statutory rights before he made his statements to the police. The State has offered the following tangible evidence at the transfer hearing: (1) Gentry's written statement; (2) the video taken from Officer Thompson's patrol car during Gentry's and Desantiago- Caraza's detention, showing Gentry fleeing from Officer Thompson; and (3) the security video from the Academy parking lot, depicting the events surrounding the robbery of Escobar.

To defend against the waiver of jurisdiction, Gentry presented the testimony and report of forensic psychiatrist Dr. A. David Axelrad, who had been appointed by the juvenile court to aid the defense. In forming his opinions, Dr. Axelrad had relied on a neuropsychological evaluation of Gentry conducted by Dr. Larry Pollock. Dr. Pollock's report was included as part of Dr. Axelrad's report.

Dr. Axelrad testified that, after he had met with Gentry, he had requested Dr. Pollock to conduct a neuro-psychic examination because he had noticed that Gentry "was exhibiting some cognitive difficulties." In addition, Dr. Axelrad had learned that Gentry had a history of head injuries and substance abuse. Dr.

Axelrad testified that this information was sufficient "to suggest to me that he might have some neuropsychological deficits that may be relevant for the Court to be aware of as it approaches this decision on adult certification." Dr. Axelrad stated that Dr. Pollock had concluded from the evaluation that [Gentry] has significant neuropsychological deficits, and intelligence processing speed, and executive functioning. He also found that his executive functioning deficits would affect his information processing, and make it difficult for him to comprehend and respond quickly. [Dr. Pollock] also arrived at conclusions that these deficits would have added an impact on his behavior at the time of the commission of these offenses.

Dr. Pollock also stated in his report that he had concerns about Gentry's "ability to survive in an adult prison because of neuropsychological deficits, and his psychiatric problems." Dr. Axelrad testified that Dr. Pollock also "indicated that the kinds of cognitive difficulties that Damion Gentry is experiencing is amendable to cognitive rehabilitation," which should be done in a "juvenile setting." One of the programs that Dr. Pollock suggested in his report to rehabilitate Gentry was an outpatient program run by Dr. Pollock called "Project Reentry." Dr. Axelrad testified that the program would provide Gentry the cognitive treatment that he needs.

Dr. Axelrad further testified that he had consulted with Gentry's treating psychiatrist, Dr. Nithi, who, since Gentry had been in juvenile detention for the instant offenses, had diagnosed Gentry with bipolar disorder. Dr. Axelrad stated that bipolar disorder is a treatable condition. He testified that Dr. Nithi had placed Gentry on two medications for his bipolar disorder and that Gentry was doing well on the medications. Dr. Axelrad stated that Gentry's behavior had improved.

Dr. Axelrad pointed out Gentry was not being treated for either his bipolar disorder or his neuropsychological deficits when the instant offenses were committed. Dr. Axelrad also pointed out that Gentry had "been abusing alcohol and marijuana at the time this occurred" and had history of abusing alcohol and marijuana.

With respect to Gentry's "maturity and sophistication," Dr. Axelrad testified as follows:
Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he's experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you're going to utilize the word maturity and sophistication in a medical context or clinical context, he has a brain that has been injured, so he doesn't have a mature brain because of that. And he certainly has problems involving his neuropsychological functioning. The evidence is very clear in that; and it's in my report and Dr. Pollock's report.

When asked his opinion regarding whether Gentry "fully understood the circumstances surrounding the incidents that he's charged with" Dr. Axelrad testified as follows:
Upon the information that I have reviewed, as well as the psychological testing by Dr. Gollaher and Dr. Pollock, it is my opinion that Damion Gentry was impaired at the time of the commission of these alleged offenses. And that that impairment involved significant cognitive problems that he was experiencing that has been documented by Dr. Pollock's neuro-physiological testing that he had an active bipolar disorder, bipolar-one disorder that significantly impaired his ability to control his behavior. In children and adolescents who experience bipolar disorder, whether it's mixed hypomanic or manic, it does produce significant impairment in their behavioral control.

At the conclusion of the transfer hearing, the juvenile court stated as follows on the record:
I'm going to make the following findings: That the offense was against the person. That you are sufficiently sophisticated and mature enough to be tried as an adult. You are sufficient and mature enough to help your attorney in your defense. That you have a record, and your previous history is such that you should be certified to stand trial as an adult. The public cannot be protected if you remain in the juvenile system. And there's a likelihood that the juvenile system could rehabilitate you is very remote. I think juvenile has tried just about everything they could to help you.
The fact that the alleged offenses were felonies of the first degree, and that you were 14 years of age when you committed those felonies. There has been no adjudication of the two felonies. And because of the seriousness of the alleged offenses, the public cannot be protected if you remain in the juvenile system. Because of the background, the public cannot be protected if you remain here. What I find based on your social evaluation and investigative report, and your psychological evaluations, that you should be certified and stand trial as an adult.
Since the petition has multiple accounts [sic], I am certifying you on both counts of aggravated robbery; both with a deadly weapon, and one was a victim who was over 65 years of age.

In each case, the juvenile court signed a "Waiver of Jurisdiction and Order of Transfer to A Criminal District Court" in which the juvenile court waived its jurisdiction, and ordered that Gentry be transferred to criminal district "for proper criminal proceedings." In its order, the juvenile court made findings to support the

waiver of its jurisdiction and its transfer of Gentry to criminal district court for prosecution.

Once transferred, Gentry moved to suppress the oral and written statements he gave to police after he was taken into custody. Among Gentry's assertions was that the statements had not been taken in compliance with Juvenile Justice Code Section 51.095 and Code of Criminal Procedure Article 38.22. Gentry asserted that both his audio-recorded statement and his written statement should be suppressed because the audio recording did not contain the warnings required by Juvenile Justice Code Section 51.095 and by Code of Criminal Procedure Article 38.22(3)(a)(2). The trial court granted Gentry's request to suppress the oral statement but denied his request to suppress his written statement.

The two aggravated-robbery offenses were tried together in criminal district court. The jury found Gentry guilty in each case. It assessed Gentry's punishment at 50 years in prison for each offense.

Gentry now appeals both judgments of conviction. In each appeal, Gentry challenges the juvenile court's order waiving jurisdiction and transferring him to criminal court for prosecution as an adult. Also in each appeal, he contends that the trial court abused its discretion by denying his request to suppress his written statement. In his appeal involving the aggravated robbery of Escobar, Gentry contends that the evidence was insufficient to support the judgment of conviction.

Held: Affirmed

Memorandum Opinion:
Juvenile Justice Code Section 54.02
In Moon v. State, the Court of Criminal Appeals stated:
The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule; the operative principle is that, whenever feasible, children and adolescents below a certain age should be "protected and rehabilitated rather than subjected to the harshness of the criminal system[.]"
451 S.W.3d 28, 36 (Tex.Crim.App.2014) (alteration in original) (quoting Hidalgo v. State, 983 S.W.2d 746, 754 (Tex.Crim.App.1999)).

The Moon court further explained, "The right of the juvenile offender to remain outside the jurisdiction of the criminal district court, however, is not absolute." Id. at 38. Section 54.02(a) of the Juvenile Justice Code provides that the juvenile court may waive its exclusive original jurisdiction and transfer a child to the criminal district court for criminal proceedings if the following is determined:
(1) the child is alleged to have violated a penal law of the grade of felony;
(2) the child was ... 14 years of age or older at the time [of the alleged] offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree[;] ... and
(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.
TEX. FAM.CODE ANN. § 54.02(a) (Vernon 2014).

When determining the seriousness of the offense alleged or the background of the child as found in the third requirement, Section 52.04(f) requires the juvenile court to consider, "among other matters," the following factors:
(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
(2) the sophistication and maturity of the child;
(3) the record and previous history of the child; and
(4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.
TEX. FAM.CODE ANN. § 54.02(f).

As the petitioner seeking waiver and transfer, the State has the burden "to produce evidence to inform the juvenile court's discretion as to whether waiving its otherwise-exclusive jurisdiction is appropriate in the particular case." Moon, 451 S.W.3d at 40. The State must "persuade the juvenile court, by a preponderance of the evidence, that the welfare of the community requires transfer of jurisdiction for criminal proceedings, either because of the seriousness of the offense or the background of the child (or both)." Id. at 40–41.

When exercising its discretion to transfer, the juvenile court must consider all four of the factors listed in Section 54.02(f). Id. at 41. Although it makes its final determination from the evidence concerning the Section 54.02(f) factors, the juvenile court "need not find that each and every one of those factors favors transfer before it may exercise its discretion to waive jurisdiction." Id.

The Moon court, however, made clear that, as required by Section 54.02(h), if the juvenile court waives jurisdiction, it must "state specifically" in its order its reasons for waiver. See id.; see also TEX. FAM.CODE ANN. § 54.02(h). The order must also show that the juvenile court considered the four factors found in Section 54.02(f), although the court "need make no particular findings of fact with respect to those factors." Id. at 41–42. With regard to the specificity requirement, the Moon court explained,

[T]he Legislature has required that, in order to justify the broad discretion invested in the juvenile court, that court should take pains to "show its work," as it were, by spreading its deliberative process on the record, thereby providing a sure-footed and definite basis from which an appellate court can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable [.] Id. at 49.

Standard of Review

In Moon, the Court of Criminal Appeals clarified the standard of review to be applied by an appellate court when a juvenile court waives its exclusive jurisdiction pursuant to Section 54.02. The court held: "[I]n evaluating a juvenile court's decision to waive its jurisdiction, an appellate court should first review the juvenile court's specific findings of fact regarding the Section 54.02(f) factors under 'traditional sufficiency of the evidence review.' " Id. at 47.

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 366, 371 (Tex.App.–Houston [1st Dist.] 2013), aff'd Moon, 451 S.W.3d at 52. If there is more than a scintilla of evidence to support the finding, the no-evidence challenge fails. Id. Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the court's finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Id.

With regard to the sufficiency review, the Court of Criminal Appeals further held,

[I]n conducting a review of the sufficiency of the evidence to establish the facts relevant to the Section 54.02(f) factors and any other relevant historical facts, which are meant to inform the juvenile court's discretion whether the seriousness of the offense alleged or the background of the juvenile warrants transfer for the welfare of the community, the appellate court must limit its sufficiency review to the facts that the juvenile court expressly relied upon, as required to be explicitly set out in the juvenile transfer order under Section 54.02(h). Moon, 451 S.W.3d at 50.

After conducting a "traditional sufficiency of the evidence review" of the juvenile court's specific findings, the appellate court "should then review the juvenile court's ultimate waiver decision under an abuse of discretion standard." Id. at 47. With regard to the abuse-of-discretion analysis, the court explained,

[I]n deciding whether the juvenile court erred to conclude that the seriousness of the offense alleged and/or the background of the juvenile called for criminal proceedings for the welfare of the community, the appellate court should simply ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles. In other words, was its transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria? Id.

Juvenile Court's Orders

In these cases, the juvenile court made the following determinations in its orders to support its decision to waive its exclusive jurisdiction and transfer Gentry to criminal district court for prosecution as an adult:

After full investigation and hearing, this Court specifically enters the following findings:

The child the subject of this suit was fourteen (14) years of age at the time of the alleged offenses made the basis of this suit. The child is currently fifteen (15) years of age.

The offenses are against the person.

That Damion Gentry is sufficiently sophisticated and mature enough to be tried as an adult.

That Damion Gentry is able to assist his attorney in his defense.

That Damion Gentry has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.

That the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote.

Further, the Court makes the following additional findings:

There is probable cause to believe that the child before the Court committed the offenses as alleged against a person, to wit: Aggravated Robbery (Two (2) Counts)

That Damion Gentry was fourteen (14) years old at the time of the commission of the acts alleged in the States' Petition for Discretionary Transfer to a Criminal District Court.

Both acts made the basis of this suit would be felonies of the first degree under the penal laws of the State of Texas if committed as an adult.

No adjudication hearing has been conducted concerning the offenses made the basis of this suit.

The alleged offenses were of a serious nature, and involve the use of a deadly weapon. Additionally, that one victim was found to be over the age of sixty-five (65) years.

That because of the record and previous history of the child and because of the extreme and severe nature of the alleged offenses, the prospects of adequate protection of the public, and the likelihood or reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.

Therefore, the Court finds that after considering all of the testimony, diagnostic study, social evaluation, and full investigation of the child's circumstances and the circumstances of the alleged offenses, the Court finds it is contrary to the best interest of the public to remain under juvenile jurisdiction.

The Court specifically finds that because of the seriousness of the alleged offenses and the background of the child, the welfare of the community requires criminal proceedings.

In Moon, the Court of Criminal Appeals determined that the juvenile court's order waiving jurisdiction was deficient because it lacked sufficient specificity to support the transfer. Id. at 50–51. There, the only reason stated for waiver—seriousness of the offense—was not supported by "case-specific findings of fact." Id. at 51. The Moon court observed that the juvenile court had found facts "that would have been relevant to support transfer for the alternative reason that the appellant's background was such as to render waiver of juvenile jurisdiction," however, "because the juvenile court did not cite the appellant's background as a reason for his transfer in its written order, these findings of fact [were] superfluous." Id.

The transfer orders in the instant cases do not suffer from the same defects. Here, the juvenile court's orders expressly identify both Section 54.02(a)(3) reasons—(1) seriousness of the offenses and (2) Gentry's background—to support its conclusion that the welfare of the community required transfer for criminal proceedings. See TEX. FAM.CODE ANN. § 54.02(a)(3), (h); cf. Moon, 451 S.W.3d at 51. The order also makes case-specific findings of fact to support the two stated reasons warranting waiver and transfer. The order also reflects that the juvenile court considered the factors delineated in Section 54.02(f). See Moon, 451 S.W.3d at 41–42.

We now examine the sufficiency of the evidence to support the case-specific findings of fact underlying the trial court's orders waiving its exclusive jurisdiction and transferring Gentry for criminal prosecution as an adult.

Analysis

1. Seriousness of the Offenses

As a reason for waiving its jurisdiction, the juvenile court cited in its order the seriousness of the alleged offenses, which it recognized as being two counts of aggravated robbery. It described the offenses as being of an "extreme and severe" nature.

To support the seriousness-of-the-offense reason, the juvenile court considered, as required by Section 54.02(f)(1), whether the alleged offenses were "against person or property." See TEX. FAM.CODE ANN. § 54.02(f)(1). The juvenile court found that "[t]he offenses are against the person." Gentry does not dispute that the aggravated-robbery offenses are "offenses are against the person," but, he points out that this finding alone would not support a determination by the juvenile court that the seriousness of the offense warranted transfer. See Moon, 451 S.W.3d at 48 ("If that is the only consideration informing the juvenile court's decision to waive jurisdiction—the category of crime alleged, rather than the specifics of the particular offense—then ... the transfer decision would almost certainly be too ill-informed to constitute anything but an arbitrary decision.").

Unlike in Moon, the juvenile court in this case made two additional, fact specific findings regarding the details of these two particular aggravated robbery offenses to support its determination that the seriousness of the offenses warranted waiver and transfer. The juvenile court found that the alleged offenses were of a serious nature because (1) the offenses "involve[d] the use of a deadly weapon," and (2) "one victim was found to be over the age of sixty-five (65) years."

The evidence offered at the transfer hearing by the State, including the testimony of complainants, Masario Garza and Nelson Alberto Mejia Escobar, supports these findings. With respect to the aggravated-robbery offense against Garza, the evidence indicated that Gentry had approached 68–year–old Garza at a stoplight with a gun in his hand. See TEX. PENAL CODE ANN.§ 1.07(a)(17)(A) (Vernon Supp.2015) (providing that "deadly weapon" means "a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury").4 When Garza sped off, Gentry fired twice at the driver's window, shattering the glass.5 The glass cut Garza's hand and face. Garza heard two more gunshots being fired from the truck in which Gentry was a passenger as it passed him on the highway. Garza then heard another two gunshots come from the truck as it was traveling in the opposite direction on the other side of the highway.

The evidence also showed that, approximately 30 minutes after shooting at Garza, Gentry approached Escobar and demanded $150. When Escobar told Gentry he had no money, Gentry took Escobar's truck keys and hit Escobar with the handle of the gun. Escobar ran, and Gentry ran after him shooting several times at Escobar's back. Escobar tripped and fell. Gentry told Desantiago–Caraza, who was still in the truck, that he had killed Escobar. Gentry then left, believing that Escobar was dead.

We conclude that the record contains more than a scintilla of evidence to support the juvenile court's findings that the offenses involved the use of a deadly weapon and that one of the victims was over 65–years–old. We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings.

We are mindful that the Court of Criminal Appeals recognized in Moon :

[T]he offense that the juvenile is alleged to have committed, so long as it is substantiated by evidence at the transfer hearing and of a sufficiently egregious character, will justify the juvenile court's waiver of jurisdiction regardless of what the evidence may show with respect to the child's background and other Section 54.02(f) factors.Id.

2. Gentry's Background

The juvenile court also identified Gentry's background as a reason to support waiver of its jurisdiction and warrant transfer for criminal proceedings. In support of this reason, the juvenile court made these relevant findings, which take into consideration the last three factors found in Section 52.04(f):

That Damion Gentry is sufficiently sophisticated and mature enough to be tried as an adult.

That Damion Gentry is able to assist his attorney in his defense.

That Damion Gentry has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.

That the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote.

...

That because of the record and previous history of the child and because of the extreme and severe nature of the alleged offenses, the prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.

See TEX. FAM.CODE ANN. § 54.02(f)(2),(3),(4).

We turn to the evidence admitted at the transfer hearing to determine if it supports these findings.

a. Sophistication and maturity

First, we discuss the finding that Gentry was sufficiently sophisticated and mature enough to be tried as an adult. See id. § 54.02(f)(2). Related to that finding is the juvenile court's finding that Gentry is able to assist his attorney in his defense.

At the hearing, the court-appointed forensic psychologist, Dr. Gollaher, testified that she found Gentry to be "criminally sophisticated." She based this on Gentry's pattern of being "involved with increasingly more violent crime," which began with him acting out at a young age, moved to him being involved in numerous fights, including gang fights, and had escalated to the aggravatedrobbery offenses involved in these cases.

Dr. Gollaher testified that, after interviewing Gentry, she did not find any "mental health impairment or psychosis" that would have affected Gentry's ability to understand "the difference between right and wrong." She also testified that there had been no indication that Gentry had acted under any type of coercion or duress at the time he committed the aggravated-robbery offenses.

With respect to his intellect, Dr. Gollaher testified that testing indicated that Gentry an IQ of 107, which is in the average range. She also indicated that, academically, testing showed that Gentry performed at or above grade level in all subjects, including reading, except for math for which he performed at a sixth grade level.

In his brief, Gentry challenges the juvenile court's finding that he was sufficiently sophisticated and mature by citing Dr. Axelrad's testimony in which the doctor addressed these issues:

Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he's experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you're going to utilize the word maturity and sophistication in a medical context or clinical context, he has a brain that has been injured[.]

Gentry then asserts in his brief as follows: "The evidence clearly showed Dr. Axelrad, a psychiatrist, for over 40 years, testified that [Gentry] suffered from head injuries and neuropsychological deficits that are involving the same areas of the brain that have not been fully matured or developed or mamelonated."

At the hearing, Dr. Gollaher disagreed with Dr. Axelrad's and Dr. Pollock's conclusions that Gentry has significant neuropsychological issues. She stated that she looked at the data in Dr. Pollock's neuropsychological evaluation and it does not support his diagnosis that Gentry has a cognitive disorder. Dr. Gollaher also indicated in her testimony that there were no medical records to substantiate information regarding any head injuries that Gentry had suffered in the past, as had been reported to Dr. Axelrad. On cross-examination, Dr. Gollaher further testified that she disagreed with Dr. Axelrad's conclusion that Gentry lacked insight into his current situation. And Dr. Gollaher also disagreed with Dr. Axelrad's finding that Gentry does not fully understand the consequences of being tried as an adult.

In addition to the experts' testimony, the juvenile court also heard testimony from other witnesses that was relevant to Gentry's sophistication and maturity. One of the detectives who interviewed Gentry testified as follows:

He's very street smart. He's very articulate. I think he's intelligent on top of that, not just street smart, but just, you know, overall intelligence. He knows how to—to kind of work a [room]. And what I mean by that is, is he's very polite. He has, you know, good manners. But he knows what—it's like he almost knows what to say and what not to say. He's careful about it. He's very calculated on what he says.

When asked about her impressions of Gentry's maturity, Judge Ward, who had read Gentry his rights and interacted with him after he was apprehended, testified, "[T]he way he came across to me that he was very streetwise, had learned—had that knowledge. And he could pretty much handle being a 17–or 18–year–old easy—easily." She then stated that Gentry was "[a] mature young man." We conclude that the record contains more than a scintilla of evidence to support the juvenile court's findings that Gentry was sufficiently sophisticated and mature to be tried as an adult and that he was able to assist his attorney with his defense. We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings.

b. Record and referral history

The juvenile court also found that Gentry "has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult." See TEX. FAM.CODE ANN. § 54.02(f)(3). In his brief, Gentry challenges the juvenile court's finding by asserting that his "record and history was minimal and non-violent." He acknowledges that he had referrals for assaulting his teacher and for gang affiliation but notes that he had successfully completed probation for those two referrals.

As the State points out, Gentry minimizes his record and his history in his brief. Dr. Gollaher testified that she learned Gentry assaulted his teacher by choking the teacher. Dr. Axelrad wrote in his report that Gentry stated that he had hit the teacher in the face, causing a laceration, when the teacher had restrained Gentry during a fight.

With respect to Gentry's probation for the assault on the teacher, Marvin testified that Gentry had two violations while he was on probation. One of the violations entailed a threat by Gentry to blow up his school.

Regarding Gentry's referral for gang affiliation, the evidence showed that, even after he was placed on probation for that offense, he continued to be a member of a gang, the Southwest Cholos. Marvin testified that, during that probationary term, Gentry received three violations and "an additional Class C citation for destruction of school classes." Dr. Gollaher testified that Gentry told her that he had been in many gang fights.

Marvin also testified that, in the past five years, Gentry had received a total of 12 referrals to the juvenile system. Gentry had his earliest referral when he was 10 years old for running away from home. Marvin further testified that, while in detention for the instant offenses, Gentry had been written up for 14 different infractions. One of these infractions was assaulting another juvenile in the detention facility, requiring Gentry to be physically restrained.

The juvenile court also heard testimony that Gentry had been involved in setting fire to a car. This had occurred the same night as he committed the aggravated-robbery offenses.

We conclude that the record contains more than a scintilla of evidence to support the juvenile court's findings in each transfer order that Gentry "has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult." We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings regarding Gentry's record and referral history.

c. Rehabilitation and protection of the public

The trial court also found "the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote." See id. § 54.02(f)(4). The court further found that "the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt." See id. In his brief, Gentry points out that both Dr. Axelrad and Dr. Gollaher testified that Gentry could benefit from rehabilitation and treatment.

Dr. Gollaher testified that she agreed with Dr. Axelrad that Gentry could use rehabilitation, but she clarified that she differed with Dr. Axelrad with regard to [w]here that happens and how that happens." Dr. Axelrad indicated that Gentry could best receive "cognitive treatment" in a juvenile setting. However, Dr. Gollaher did not agree that Gentry had a cognitive disorder. She testified that Dr. Pollock's data did not support this diagnosis.

In addition, while Dr. Axelrad indicated that Gentry could be treated through an outpatient program run by Dr. Pollock, Dr. Gollaher testified that, given his background, Gentry was not a candidate for probation or a treatment-based program. Dr. Gollaher testified that Gentry would do best receiving treatment in a structured environment. She also testified that she would be concerned if Gentry were to be released after

three years, which is the minimum amount of time that he could be detained by the juvenile system. Dr. Gollaher responded affirmatively when asked, "Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?"

Dr. Gollaher also testified that Gentry's history, including the instant offenses, demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. She stated, "[C]ertainly when you see someone who's already engaged in a pattern of violent behavior, you're wondering, okay, what's next?" When asked whether Gentry's behavior of engaging in arson was significant, Dr. Gollaher responded,

It's not that common. It's very unusual. Not very many people go out and bum things. And certainly the concern about getting to the point that you would engage in that behavior, that destructive behavior is concerning.... It's just such a destructive behavior. And it's so unusual that it would give me great concern, and it did when I found out.

Dr. Gollaher further testified with regard to Gentry's escalating behaviors: "As you asked earlier on, at what point does that stop? I mean, the only next point is killing somebody."

Furthermore, Marvin testified that Gentry was "absolutely not" a candidate for probation. He also stated that none of the outside treatment-based programs affiliated with the juvenile system would accept Gentry because of the nature of the pending charges. Marvin indicated that, if Gentry stayed in the juvenile system, he should be sent to a juvenile detention facility. Marvin also listed many of the numerous services, therapies, and programs that the juvenile system had already provided to Gentry over the years. Marvin stated, "[A]t this point, you know, I think, it's fair to say that as a department, we have exhausted everything."

We conclude that the record contains more than a scintilla of evidence to support the juvenile court's findings that "the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote" and that "the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt." We also conclude that these findings were not against the great weight of the evidence. Therefore, the evidence was legally and factually sufficient to support the findings.

Conclusion: Having determined that all of the juvenile court's findings of fact supporting its reasons for waiving its exclusive jurisdiction were based on legally and factually sufficient evidence, we conclude that the juvenile court's decision to transfer Gentry to criminal district court for prosecution as an adult was not arbitrary, but instead represented a reasonably principled application of the legislative criteria found in Section 54.02. Thus, we hold that the juvenile court did not abuse its discretion in waiving its exclusive jurisdiction, transferring Gentry to criminal district court, and certifying him to stand trial as an adult.

BETWEEN 1995 AND SEPTEMBER 2015 AN APPEAL OF A JUVENILE COURT ORDER CERTIFYING A JUVENILE TO ADULT CRIMINAL COURT COULD BE MADE ONLY AFTER THE COMPLETION OF THE ADULT CRIMINAL TRIAL.

¶ 16-2-3. **In the Matter of J.R. Jr,** MEMORANDUM, No. 13-15-00201-CV, 2016 WL 354554 (Tex.App.-Corpus Christi-Edinburg, 1/28/2016).

Facts: Appellant, J.R., Jr., a juvenile, has filed an appeal herein from the trial court's order transferring his case to adult court. As stated herein, we dismiss the appeal for want of jurisdiction.

The date of the trial court's order of transfer to adult criminal court was March 20, 2015. Appellant's notice of appeal was filed on April 17, 2015. The State has filed a motion to dismiss this appeal on grounds that we lack jurisdiction. This Court requested, but did not receive, a response to the motion to dismiss from the appellant.

Held: Dismissed for want of jurisdiction.

Memorandum Opinion: According to the State, the law in effect at the time that the trial court signed the order transferring the cause to the adult criminal court does not afford this Court jurisdiction over an immediate appeal from such a certification order. This matter was discussed by the parties during remand, and the trial court issued findings including, inter alia: The issue is whether an appeal is timely. The court rules that an appeal is not timely. Under the law in effect at the time of the transfer hearing, an appeal of the juvenile court's ruling in a discretionary transfer case is allowed only after the completion of the criminal case in district court. Therefore, the appellate court should dismiss the appeal as untimely until such time as the district court concludes with the trial of the criminal case.

In 1995, the Legislature repealed Section 56.01(c)(1)(A) of the Texas Family Code which had authorized the immediate appeal of a juvenile court order certifying a juvenile to criminal court. After the effective date of this amendment to the Texas Family Code, an appellate court no longer had jurisdiction over an attempted immediate appeal from a certification order, and any such attempted appeal was dismissed for want of jurisdiction. See Rodriguez v. State, 191 S.W.3d 909, 910 (Tex.App.—Dallas 2006, no pet.); Small v. State, 23 S.W.3d 549, 550 (Tex.App.—Houston [1st Dist.] 2000,

pet. ref'd); see also In re R.A., No. 08–09–00073–CV, 2009 WL 4146768, *1 (Tex.App.—EI Paso 2009, no pet.) (not designated for publication). However, in 2015 the Legislature once again amended Section 56.01 of the Texas Family Code, this time adding section 56.01(c)(1)(A), which once again allows the appeal of certification orders. See Tex. Fam.Code Ann. § 56.01(c)(1)(A) (West, Westlaw through 2015 R.S.). Nevertheless, the Legislature stated that the effective date of this 2015 amendment was September 1, 2015, and that:

The change in law made by this Act applies only to an order of a juvenile court waiving jurisdiction and transferring a child to criminal court that is issued on or after the effective date of this Act. An order of a juvenile court waiving jurisdiction and transferring a child to criminal court that is issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose. Acts 2015, 84th Leg., ch. 74 (S.B.888), § 5, eff. Sept. 1, 2015.

Conclusion: Because the transfer order which appellant attempts to appeal was signed on March 20, 2015, it was made before the effective date of the 2015 amendment, and therefore, this case is governed by the law in effect on the date the order was issued. Accordingly, this Court is without jurisdiction to hear this appeal. We grant the State's motion to dismiss and we dismiss the appeal for want of jurisdiction.

JUVENILE HAS NO RIGHT OF CONFRONTATION AT A DISCRETIONARY TRANSFER HEARING.

¶ 16-2-4. In the Matter of H.C., III, MEMORANDUM, No. 02-15-00149-CV, 2016 WL 354297 (Tex.App.-Fort Worth, 1/28/2016).

Facts: After a plea bargain, a visiting judge adjudicated Appellant H.C. Ill delinquent and committed him to the Texas Juvenile Justice Department (TJJD) for five years with a possible transfer to the Texas Department of Criminal Justice Correctional Institutions Division (TDCJ–CID). Less than three years later, upon the recommendation of the TJJD and after a hearing, the trial court ordered that Appellant be transferred to the TDCJ–CID to serve the remainder of his sentence. In three issues, Appellant complains of the trial court's transfer order. He contends that (1) section 54.11 of the Texas Family Code is unconstitutional because in its operation, it violated his right to confront and cross-examine adverse witnesses, (2) his right to cross-examination and confrontation of multiple adverse witnesses was violated when the trial court was allowed to consider hearsay statements contained within a written record, and (3) the evidence is insufficient to support a finding of transfer. Because we hold that Appellant had no right of confrontation at the transfer hearing and that the trial court did not abuse its discretion by ordering his transfer to the TDCJ–CID, we affirm the trial court's order.

Held: Affirmed

Memorandum Opinion: Section 54.11(d) of the family code allows a trial court faced with the issue of transferring a youth from the TJJD to the TDCJ–CID to "consider written reports and supporting documents from probation officers, professional court employees, professional consultants, employees of the [TJJD], or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses" and expressly provides that "[a]ll written matter is admissible in evidence at the hearing." In his first issue, Appellant contends that section 54.11 is unconstitutional because in its operation, it violated his right to confront and cross-examine adverse witnesses. In his second issue, he complains that his right to the cross-examination and confrontation of multiple adverse witnesses was violated when the trial court was allowed to consider hearsay statements contained within a written record. This court, however, has repeatedly held that a juvenile has no right of confrontation at a discretionary transfer hearing. We therefore overrule both issues.

In his third issue, Appellant challenges the sufficiency of the evidence supporting the transfer. Initially, he contends that his transfer was unauthorized because the evidence did not meet both prongs of the test for transfer set out in human resources code section 244.014(a). That section provides that the TJJD may refer a juvenile offender aged sixteen to nineteen years old serving a determinate sentence to the committing court for approval of transfer to the adult prison system if "the child has not completed the sentence" and his "conduct ... indicates that the welfare of the community requires the transfer." The statute does not address the trial court's decision to transfer the child to the adult prison system. Instead, it concerns the TJJD's decision to refer the child for transfer. We overrule this part of Appellant's issue.

Appellant also contends that the evidence is insufficient to support the trial court's transfer order. We review the trial court's transfer order for an abuse of discretion. In appropriate cases, legal and factual sufficiency of the evidence are relevant factors in assessing whether the trial court abused its discretion. In determining whether the trial court abused its discretion, we review the entire record.

A trial court abuses its discretion when it acts without reference to any guiding rules or principles, that is, when the act is arbitrary or unreasonable. An appellate court cannot conclude that a trial court abused its discretion merely because the appellate court would have ruled differently in the same circumstances. A trial court also abuses its discretion by ruling without

supporting evidence. But an abuse of discretion does not occur when the trial court bases its decision on conflicting evidence and some evidence of substantive and probative character supports its decision.

Section 54.11(k) of the family code provides a list of nonexclusive factors that a trial court may consider in reaching its transfer decision:
the experiences and character of the person before and after commitment to the [TJJD] or post-adjudication secure correctional facility, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the [TJJD], county juvenile board, local juvenile probation department, and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

Within its discretion, the trial court may assign different weights to the factors it considers, and the court need not consider every factor.

Appellant points to some positive evidence: he had completed some vocational courses while confined that would make him more employable; if released on parole, he would live with his father under strict conditions; and he was compliant with his psychiatric medication. Further, most of his behavioral problems occurred before he received psychiatric treatment.

But the trial court also was privy to the facts of the conduct for which Appellant had been adjudicated. Along with an adult, Appellant committed three aggravated robberies in a period of three days in August 2012, using a firearm in each. Appellant shot one of the complainants; his accomplice shot another.

Further, according to Leonard Cucolo, the TJJD court liaison, after his commitment to the TJJD, Appellant performed poorly behaviorally while he[was] confined. He[was] involved in 120 documented incidents of misconduct. Of the 120, 62 of the incidents were actual referrals to the security unit. The security unit is basically [the] detention center within a highly structured facility, high-restriction facility, and of the 62, he had 24 admissions into the security unit. He engaged in over 20 major rule violations, which are basically new offenses that a youth can commit while confined.
There's major and minor rule violations. Major rule violations are basically ... offenses that a youth would be arrested for if they were committed in the free, such as assault, which he was involved in, assault on staff, assault on youth, fleeing apprehension.

Additionally, less than three months before the transfer hearing, Appellant, along with six other confined youths, sought out a teacher who Appellant had announced was "his girl" and from whom Appellant had been ordered to stay away. The pack of youths went to the wrong classroom.

Cucolo also testified about Appellant's lack of progress while confined. Cucolo stated that twelve to eighteen months is a reasonable period of time for a confined youth to reach Stage 5, which indicates "parole readiness." After twenty-nine months of confinement, Appellant was on Stage 1, the entry stage of the TJJD's treatment program. Cucolo reported that Appellant's "risk to ... students and staff within TJJD appear[ed] high and his prognosis for a successful treatment outcome appear[ed] low."

The prosecutor and the TJJD both recommended Appellant's transfer to the TDCJ–CID. The complainants of Appellant's three aggravated robberies did not appear at the transfer hearing.

Conclusion: Given the evidence, particularly the nature of the delinquent conduct and Appellant's major violations while at the TJJD facility, we cannot conclude that the trial court abused its discretion by ordering Appellant's transfer to the TDCJ–CID. We overrule his third issue. Having overruled Appellant's three issues, we affirm the trial court's transfer order.