

---

## YEAR 2005 CASE SUMMARIES

---

By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

[2005 Summaries](#) [2004 Summaries](#) [2003 Summaries](#) [2002 Summaries](#) [2001 Summaries](#) [2000 Summaries](#) [1999 Summaries](#)

---

### **In determinate sentence transfer hearing appellant waived his complaint as to the lack of the twenty-four hour period and failed to properly preserve his issue for appeal. [In The Matter of L.D.M.](05-2-29)**

**On April 21, 2005, the Houston Court of Appeals (1<sup>st</sup> Dist.), held that Appellant's trial counsel waived error when she conceded she had had an opportunity to review all of the TYC's reports and never objected to the failure to receive them more than twenty-four hours before the beginning of the hearing.**

05-2-29. In The Matter of L.D.M., MEMORANDUM, No. 01-04-00699-CV, 2005 Tex. App. Lexis 3027 [Tex. App-Houston (1<sup>st</sup> Dist.) 4/21/05].SP

Facts: The County Court at Law No. 1, Galveston County, Texas, entered an order transferring juvenile from a youth facility to the Texas Department of Criminal Justice (TDCJ) to complete the remainder of his 15-year determinate sentence for the offenses of Aggravated Robbery. Juvenile appealed.

Held: Affirmed

Memorandum Opinion: In his sole issue, appellant contends the trial court erred in failing to *sua sponte* declare a mistrial. In order to preserve error on appeal, a party must make a specific objection and obtain a ruling from the trial court, or object to the trial court's refusal to rule. TEX. R. APP. P. 33.1. Arguments on appeal must comport with the objection at trial, or the error is waived. *See Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002); *see also Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995). This is true even when the complaint is on constitutional grounds. *Espinosa v. State*, 29 S.W.3d 257, 260 [\*5] (Tex. App.--Houston [14th Dist.] 2000, pet. ref'd). *See In re K.H.*, 2003 Tex. App. LEXIS 4617, No. 12-01-00342, 2003 WL 744067, (Tex. App.--Tyler, Mar. 5, 2003, no pet.) (memorandum opinion), in which the court held that (1) section 54.11(d) is not jurisdictional in nature, and (2) the purpose of the section is to provide appellant's counsel with sufficient time to review pertinent records before the trial court receives evidence. *See In re D.S.*, 921 S.W.2d 383, 387 (Tex. App.--Corpus Christi 1996, writ dism'd w.o.j.) (rejecting appellant's ineffective assistance of counsel issue and stating that on appeal, appellant may not complain about "allegedly unconstitutional hypothetical possibility" because trial counsel conceded that he had adequate time to review written materials pursuant to section 54.11(d)).

On the first day of the transfer hearing, Appellant's trial counsel learned that she had reviewed only a five-page summary report from TYC. Appellant's trial counsel stated that she was unaware that the individual incident reports were part of the court's file, and then requested her twenty-four hour period to

review the documents. The trial court granted her request. She continued her cross-examination of Leonard Cuculo, the TYC representative, the State re-examined Cuculo, and then the trial court recessed Appellant's transfer hearing.

When the transfer hearing reconvened two days later, the following exchange occurred:

THE COURT: Ms. Meier, are you ready?

TRIAL COUNSEL: Yes, Your Honor. And let me-as a preliminary matter, I guess I should give the Court back the volumes of reports.

THE COURT: Okay. For the record, have you had a chance to review all the Court's written material, Ms. Meier?

TRIAL COUNSEL: Yes, Your Honor, I have.

Appellant's trial counsel conceded in open court that she had an opportunity to review all of the TYC's reports. She never objected to the failure to receive them more than twenty-four hours before the beginning of the hearing, nor did she request a mistrial on that basis. Moreover, she was given a twenty-four hour period to review the materials before the second day of the transfer hearing. Appellant did not object at the transfer hearing when trial counsel learned that she had not reviewed all 160 of the TYC reports, nor did she request a mistrial. Instead, she continued her cross-examination. Two days later, when the transfer hearing reconvened, trial counsel conceded in open court that she had an opportunity to review all of the written materials. We conclude that Appellant waived his complaint as to the lack of the twenty-four hour period and failed to properly preserve his issue for appeal.

Conclusion: We affirm the trial court's order.