

## Review of Recent Juvenile Cases (2012)

by  
The Honorable Pat Garza  
Associate Judge  
386th District Court  
San Antonio, Texas

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**Because Appellant did not object to the admission of the documents which he alleged was not provided prior to Discretionary Transfer Hearing, no error was found.[Thorn v. State](12-1-1B)**

**On November 23, 2011, the Tyler Court of Appeals concluded, because Appellant did not object to the admission of the documents, and because there was no hearing on the issue, there is no basis on which they could conclude that the juvenile court did not comply with its responsibility to provide the documents at least a day before the hearing.**

¶ 12-1-1B. **Thorn v. State**, MEMORANDUM, No. 12-10-00287-CR, 2011 WL 5877021 (Tex.App.-Tyler, 11/23/11).

**Facts:** The State filed a petition in April 2009 alleging that Appellant, who was then seventeen years of age, had committed a delinquent act. Specifically, the State alleged that he committed the felony offense of aggravated sexual assault. In June 2009, the State filed a petition requesting the juvenile court to waive its original jurisdiction and transfer this matter to district court where Appellant could be prosecuted as an adult.

The juvenile court held a hearing on the State's petition in August 2009. At the conclusion of the hearing, the juvenile court waived its jurisdiction and transferred the matter to district court. In the district court, Appellant pleaded guilty to the felony offense of indecency with a child. There was no plea agreement, and the trial court assessed a sentence of imprisonment for twelve years. This appeal followed.

In his first and second issues, Appellant argues that the juvenile court lacked jurisdiction to transfer his case to district court because it failed to serve his mother in advance of the transfer hearing and because all of the relevant documents were not provided to him prior to the transfer hearing.

**Held:** Affirmed

**Memorandum Opinion:** There are a number of procedural requirements that must be met before a juvenile court may waive its jurisdiction and transfer a child to district court. Two of those requirements are at issue here. The first requirement is that a juvenile court must issue a summons to the child and the child's parent, guardian, or custodian before holding a hearing. See TEX. FAM.CODE ANN. § 53.06(a), 54.02(b) (West 2008 & Supp.2010). This requirement is placed on the juvenile court, and the court lacks jurisdiction to transfer the matter to district court if it does not comply with the summons requirement. See *Carlson v. State*, 151 S.W.3d 643, 645–46 (Tex.App.-Eastland 2004, no pet.)(citing *Grayless v. State*, 567 S.W.2d 216 (Tex.Crim.App.1978); *Ex parte Burkhart*, 253 S.W. 259, 260 (Tex.Crim.App.1923) (op. on reh'g)).

The second requirement is that the court must provide to the child any written material it may consider at the hearing. The present law requires that this material be provided at least five days prior to the transfer hearing. See TEX. FAM.CODE ANN. § 54.02(e) (West Supp.2010). The previous requirement had been that the materials be provided one day in advance, and the law amending the statute continued in effect the previous law for adjudications of conduct that occurred before September 1, 2009. See Act of June 16, 1973, 63rd Leg., R.S., ch. 544, 1973 Tex. Gen. Laws 1460, 1476, amended by Act of Sept. 1, 2009, 81st Leg., ch. 1354, § 1, 2009 Tex. Gen. Laws 4287, 4287–88.

With respect to the requirement that a juvenile be provided with written material in advance of the hearing, Appellant argues that there is nothing in the record to indicate that he was provided with the written material in advance of the hearing as required by statute.

The documents considered by the court consist of reports from Child Protective Services, a report from the juvenile probation department, and a report and two addenda to that report from James Brown. Appellant is correct that there is no formal showing that the juvenile court provided the documents to his counsel as required by the statute. But there is also no showing that the documents were not provided, and Appellant did not object when the documents were introduced.

As the State notes, Appellant's counsel submitted a bill for her services in which she records that she received and reviewed the report and the two addenda from "Jim Brown" on June 25, 2009, July 24, 2009, and August 4, 2009, and that she met with Brown on July 20, 2009. Her billing also shows that she received and reviewed other items of discovery during the summer of 2009. In addition, Appellant's counsel appeared to have reviewed Brown's reports and specifically directed the court to the "last report from Mr. Brown" and to some of his conclusions that were helpful to Appellant's position during her presentation.

**Conclusion:** After considering all of the evidence, we cannot conclude that the juvenile court violated Section 54.02(e) by not providing written documents at least a day before the hearing. It appears that the documents were provided. Because Appellant did not object to the admission of the documents, and because there was no hearing on the issue, there is no basis on which we can conclude that the juvenile court did not comply with its responsibility to provide the documents at least a day before the hearing. We overrule Appellant's second issue.