

In discretionary transfer to adult court, juvenile court need not resolve admissibility of evidence prior to child's transfer to adult court.[Navarro v. State](12-4-4)

On August 30, 2012, the Houston Court of Appeals (1st Dist.) held that the juvenile court was not required to resolve the admissibility of appellant's statements before the transfer hearing.

¶12-4-4. **Navarro v. State**, MEMORANDUM, No. 01-11-00139-CR, 01-11-00140-CR, , 2012 WL 3776372 (Tex.App.-Hous. (1 Dist.), 8/30/12).

**Facts:** After appellant, then fifteen years of age, was charged with the murder of Matthew Haltom FN4 and the aggravated assaults of Joe Eodice FN5 and Joel Arnold, the State filed a Petition for Discretionary Transfer in the juvenile court, requesting that it waive its jurisdiction and certify appellant to stand trial as an adult in criminal district court.

FN4. Trial court cause number 10–DCR–05236A; appellate cause number 01–11–00139–CR.

FN5. Trial court cause number 08–DCR–050238; appellate cause number 01–11–00140–CR.

Before the transfer hearing, appellant moved to suppress certain statements that he had made to police officers. The State argued that the juvenile court was not required to consider the motion because a transfer hearing is “only a baseline finding as to whether or not [the juvenile court believes] that there is probable cause” that appellant committed the offense. The juvenile court agreed that appellant was not entitled to a hearing on his motion, and, at the conclusion of the transfer hearing, it granted the State's petition.

**Held:** Affirmed

**Memorandum Opinion:** At a transfer and certification hearing, a juvenile court need only determine if there is “probable cause” that the juvenile committed the charged offense. In re D.W.L., 828 S.W.2d 520, 524 (Tex.App.-Houston [14th Dist.] 1992, no writ). The transfer and certification hearing is a nonadversary preliminary hearing, in which the juvenile court may rely upon hearsay as well as written and oral testimony. L.M.C. v. State, 861 S.W.2d 541, 542 (Tex.App.-Houston [14th Dist.] 1993, no writ). A transfer hearing “does not require the fine resolution of conflicting evidence that an adjudication of guilt or innocence requires”; the hearing's only goal is to determine the proper forum in which to adjudicate the defendant's guilt or innocence. *Id.*

Numerous courts of appeals have held that juvenile courts are not required to consider the admissibility of statements at a transfer hearing. See, e.g., In re T.L.C., 948 S.W.2d 41, 44 (Tex.App.-Houston [14th Dist.] 1997, no writ); L.M.C., 861 S.W.2d at 542; In re M.E.C., 620

S.W.2d 684, 686–87 (Tex.Civ.App.-Dallas 1981, no writ); *In re Y.S.*, 602 S.W.2d 402, 404–05 (Tex.Civ.App.-Amarillo 1980, no writ). For example, in *L.M.C.*, a juvenile defendant argued that the juvenile court erred in admitting his confession at a transfer hearing. 861 S.W.2d at 541–42. The court noted that the juvenile court was required to consider whether there was “evidence on which a grand jury may be expected to return an indictment,” and a grand jury is not bound by the rules of evidence in making a probable cause determination. *Id.* at 542 (citing TEX. FAM.CODE ANN. § 54.02(f)(3) (Vernon 1986)). The court further noted that a juvenile defendant's constitutional rights would not be violated by considering the confession during a transfer hearing because:

A transfer hearing does not require the fine resolution of conflicting evidence that an adjudication of guilt or innocence requires.... Moreover, appellant's rights will be fully protected when the case reaches trial, whether it ultimately takes place before the juvenile court or the criminal district court.

In support of his argument that the juvenile court erred in not holding a hearing on his motion to suppress evidence, appellant relies on two cases from the San Antonio Court of Appeals. See *In re S.A.R.*, 931 S.W.2d 585 (Tex.App.-San Antonio 1996, writ denied); *R.E.M. v. State*, 541 S.W.2d 841 (Tex.App.-San Antonio 1976, writ ref d n.re.). In *S.A.R.*, the juvenile defendant argued that his statements were inadmissible at the transfer hearing because they were obtained in violation of section 51.09(b) of the Texas Family Code, which 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 child is read his legal rights and told the consequences and sentencing possibilities of admitting to various crimes. 931 S.W.2d at 587 (citing TEX. FAM.CODE ANN. § 51.09(b) (Vernon Supp.1996)). The State argued that it was unnecessary to consider the admissibility of the statements because “a waiver and certification hearing” is “not adjudicatory in nature.” *Id.* The court held that the plain language of section 51.09(b), which refers to “any future proceeding,” requires the juvenile court to consider the admissibility of the juvenile defendant's statements at the transfer hearing. *Id.*

The court in *S.A.R.* relied in part on *R.E.M.*, in which the juvenile defendant argued that the juvenile court improperly relied on witness testimony from a previous transfer hearing in waiving its jurisdiction. *R.E.M.*, 541 S.W.2d at 845. The juvenile defendant relied on the evidentiary rule that “the testimony of a witness given at a prior trial of the same case” may only be introduced into evidence if the witness is otherwise unable to testify. *Id.* (citing *Houston Fire & Cas. Ins. Co. v. Brittan*, 402 S.W.2d 509, 510 (Tex.1966)). The court held that there is “no reason why the rule should not be applied in a hearing for the purpose of determining whether a youthful offender is going to be deprived of the protection afforded by the juvenile court system.” *Id.* The court concluded that the juvenile court erred in relying on the prior witness testimony, and it remanded the case to juvenile court. *Id.* at 847.

Appellant notes that the Juvenile Justice Code was amended to delete the provision that the juvenile court, during a transfer hearing, “shall consider, among other matters ... whether there is evidence on which a grand jury may be expected to return an indictment.” Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106(a), 1995 Tex. Gen. Laws 2517, 2591. However, as noted in *L.M.C.*, the consideration of grand-jury evidence was only one justification for not requiring juvenile courts to rule on the admissibility of evidence during a transfer hearing. 861 S.W.2d at 541–42. The Texas Family Code still only requires a juvenile court to determine whether there is probable cause that the juvenile committed the alleged offense. TEX. FAM.CODE ANN. § 54.02(a)(3). Thus, a transfer hearing remains a “nonadversarial preliminary hearing” and “appellant's rights will be fully protected when the case reaches trial.” *L.M.C.*, 861 S.W.2d at 542; see also *State v. Lopez*, 196 S.W.3d 872, 874 (Tex.App.-Dallas 2006, pet. ref'd) (holding juvenile defendant was not entitled to jury trial at transfer hearing because, during such hearing, juvenile court “is not required to conform to all of the requirements of a criminal trial or even of the usual administrative hearing” and transfer hearing “is comparable to a criminal probable cause hearing and the court need not resolve evidentiary conflicts beyond a reasonable doubt”).

**Conclusion:** Accordingly, we opt to agree with our sister court in *L.M.C.* and hold that the juvenile court was not required to resolve the admissibility of appellant's statements before the transfer hearing. We overrule appellant's second issue.