In a Discretionary Transfer to adult court, a finding based on the seriousness of the offense is not enough for transfer. [Moon v. State](15-1-5)

On December 10, 2014, the Texas Court of Criminal Appeals affirmed the Houston Court of Appeals (1st Dist.) holding that in a discretionary transfer to adult court, a finding based on the seriousness of the offense alone is not enough for transfer.

¶ 15-1-5. **Moon v. State**, No. PD-1215-13, --- S.W.3d ----, 2014 WL 6997366 (Tex.Crim.App., 12/10/14). On state's petition for discretionary review from the First Court of Appeals, Harris County.

Facts: On November 19, 2008, the State filed a petition in the 313th Juvenile Court in Harris County alleging that the appellant engaged in delinquent conduct by committing an intentional or knowing murder. On the same date, the State also filed a motion for the juvenile court to waive its exclusive jurisdiction and transfer the appellant to criminal district court for prosecution as an adult, alleging as grounds for the transfer that, because of the seriousness of the offense alleged, ensuring the welfare of the community required waiver of juvenile jurisdiction. The juvenile court granted the State's request for a hearing on the motion and, pursuant to Section 54.02(d) of the Juvenile Justice Code in the Texas Family Code,FN1 ordered that the Chief Juvenile Probation Officer obtain a complete diagnostic study, social evaluation, and full investigation of the appellant's background and the circumstances of the alleged offenses.FN2 The juvenile court also ordered the Mental Health and Mental Retardation Authority of Harris County to conduct an examination and file its report.

FN1. TEX. FAM.CODE title 3, Juvenile Justice Code (hereinafter, "the Juvenile Justice Code").

FN2. TEX. FAM.CODE § 54.02(d). The appellant complains that "[p]rior to the hearing, the State failed to conduct the statutorily mandated diagnostic or social evaluation[.]" Appellant's Response to the State's Brief on Discretionary Review at 1. But the appellant did not raise this issue as grounds for reversal on direct appeal, and we have no occasion to speak to it. See Appellant's Brief on Direct Appeal at 16.

At the hearing, the State called a single witness to testify: Detective Jason Meredith, the Deer Park Police officer who investigated the crime scene and interviewed a number of potential suspects, including the appellant. Meredith's testimony on direct examination took the form of a non-chronological account of his investigation of the murder, up to and including his interrogation of the appellant. At the end of his testimony, over no objection from the appellant, the State introduced the following documents: (1) a juvenile offense report revealing the appellant's "Previous Referral" for "MISCHIEF-$500/$1499.99," which, subsequent testimony would show, resulted from the appellant's alleged "keying" of another student's vehicle; (2) a

“Juvenile Probation Certification Report” detailing the positive and negative behaviors, as well as the academic history, of the appellant while he was under the observation of the juvenile-justice system; and (3) a “Physician's Medical Assessment” prepared by the Harris County Juvenile Probation Health Services Division, which listed the findings of the appellant's physical—but not any psychological or behavioral—examination.

For his part, the appellant elicited testimony from seven witnesses. Various family members, friends, and acquaintances testified both generally and specifically about the appellant's disadvantaged upbringing, fractured family life, and positive personal qualities, including politeness and pliability to adult supervision. Various actors within the juvenile-justice system testified both generally and specifically about the appellant's constructive conduct within, and positive progression through, the juvenile-justice system, characterizing him as “one of the best kids [to] come through as far as his intelligence and obedience and the way he carries himself in the facility.” The appellant also introduced into evidence, among other things, forensic psychiatrist Dr. Seth W. Silverman's detailed and thorough recommendation as to whether [the] facilities currently available to the juvenile court will provide adequate protection to the public, and ... the likelihood that the respondent will be rehabilitated should the court decide to use the facilities available to the juvenile court as well as the sophistication, maturity, and aggressiveness [of the appellant].

It was Dr. Silverman's ultimate opinion that the appellant, as a “dependent, easily influenced individual” whose “thought process lacks sophistication” (a characteristic Silverman considered “indicative of immaturity”) “would probably benefit from placement in a therapeutic environment specifically designed for adolescent offenders[.]” Silverman contrasted this environment to the “adult criminal justice programs[,]” which he deemed to have “few constructive, and possibly many destructive, influences to offer” the appellant. Silverman also noted that the appellant had, during his stint within the juvenile-justice system, already “responded to therapy.”

At the close of evidence, and after both parties delivered closing arguments, the juvenile court granted the State's motion to waive jurisdiction. At the behest of the appellant's counsel, the court also made the following oral findings: (1) “that there is insufficient time to work with the juvenile in the juvenile system”; (2) “that the seriousness of the offense, murder, makes it inappropriate to deal with in this system”; (3) that “the respondent did have a prior criminal mischief probation”; (4) that the instant offense “actually occurr[ed] at the time respondent was on probation which ... makes the services and resources of the juvenile system look to be inadequate”; (5) “that because there is a co-respondent [certified to stand trial in the adult criminal courts], there is a logic in putting respondents, where they are a year apart or two years apart, together”; and (6) that “judicial economy, although not the driving factor, is an issue” because “sometimes it's more convenient to hear the same matter, even though there are different

people involved, in the same court for the convenience of the witnesses, the attorneys, and the system in general."

The following day, the juvenile court signed and entered a written order waiving its jurisdiction. Closely following the language of the juvenile transfer statute, the order affirmed that the juvenile court had determined "that there is probable cause to believe that the child committed the OFFENSE alleged and that because of the seriousness of the OFFENSE, the welfare of the community requires criminal proceeding." FN3 The juvenile court again simply recited from the statute when it stated that:

[i]n making that determination, the Court ... considered among other matters:

> 1. Whether the alleged OFFENSE WAS against person or property, with the greater weight in favor of waiver 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 reasonable rehabilitation of the child by use of procedures, services and facilities currently available to the Juvenile Court.FN4

The juvenile court also specifically found in its written order: (1) that the appellant "is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived[,] ... to have aided in the preparation of HIS defense and to be responsible for HIS conduct;" (2) that the alleged offense "WAS against the person of another;" and that (3) "there is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of" the appellant "by use of procedures, services, and facilities currently available to the Juvenile Court."

FN3. TEX. FAM.CODE § 54.02(a).

FN4. Id. § 54.02(f).

Per the trial court's order, the appellant's case was transferred to the jurisdiction of the 178th District Court in Harris County, where he stood trial, certified as an adult, against the first-degree felony charge of murder. The jury convicted the appellant and sentenced him to thirty years' confinement in the penitentiary.

B. The Appeal

Before the First Court of Appeals, the appellant complained that the juvenile court's stated “reasons for waiver” were supported by insufficient evidence and that the juvenile court therefore abused its discretion by waiving jurisdiction over the appellant.FN5 Specifically, the appellant contended that, by focusing on the appellant's ability to “intelligently, knowingly, and voluntarily waive[ ] all constitutional rights heretofore waived,” the juvenile court “misunderstood and misapplied the ‘sophistication and maturity’ element” of Section 54.02(f)—and that, even if it did not, there was still “no evidence to support the [juvenile] court's sophistication and maturity finding” as expressed.FN6 Indeed, given that this Court opined in Hidalgo that the purpose of the Section 54.02(d) “psychological examination” is to “provide[ ] insight on the juvenile's sophistication, maturity, potential for rehabilitation, decision-making ability, metacognitive skills, psychological development, and other sociological and cultural factors[,]” the appellant found it troubling that “the State presented no evidence of this type whatsoever.” FN7 The appellant also maintained that there was “no evidence supporting the juvenile court's findings relating to adequate protection [of] the public and likelihood of rehabilitation,” FN8 since “the only evidence was that” the appellant “is amenable to rehabilitation” and the “State presented no contrary evidence.” FN9

FN5. See TEX. FAM.CODE § 54.02(h) (“If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver[.]”).

FN6. Appellant's Brief on Direct Appeal at 27.

FN7. Id. (emphasis added) (quoting Hidalgo v. State, 983 S.W.2d 746, 754 (Tex.Crim.App.1999)).

FN8. Id. at 30.

FN9. Id. at 34.

In a published opinion, the court of appeals agreed with the appellant that the evidence supported neither the juvenile court's “sophistication-and-maturity” finding nor its “adequate-protection-of-the-public-and-likelihood-of-rehabilitation” finding.FN10 The court noted that an “appellate court reviews a juvenile court's decision to certify a juvenile defendant as an adult ... under an abuse of discretion standard” and cited another of its own opinions for the proposition that “if an appellate court finds the evidence factually or legally insufficient to support the juvenile court's order ... it will necessarily find the juvenile judge has abused his discretion.” FN11 At the same time, the court of appeals recognized that “the juvenile court may order a transfer on the strength of any of the criteria listed in”Section 54.02(f).

FN10. Moon v. State, S.W.3d 366 (Tex.App.—Houston [1st Dist.] 2013).

FN11. Id. at 370–71 (citing In re G.F.O., 874 S.W.2d 729, 731–32 (Tex.App.—Houston [1st Dist.] 1994, no writ)).

Regarding the juvenile court's sophistication-and-maturity finding, while the State argued that "[the appellant]'s efforts to conceal the crime and avoid apprehension demonstrate that he knew the difference between right and wrong and that his conduct was wrong," the court of appeals pointed out that the "finding of the juvenile court ... was based on [the appellant]'s ability to waive his rights and assist counsel in preparing his defense, not an appreciation of the nature of his actions[.]" FN12 And since the State's evidence of the appellant's "efforts to conceal the crime" consisted primarily of the appellant's "text messages instructing [a compatriot] to not 'say a word,' [and to] '[t]ell them ... you don't know where I live,' " the court of appeals determined that there was "no evidence supporting the juvenile court's finding that [the appellant] was sufficiently sophisticated and mature to waive his rights and assist in his defense." FN13

FN12. Id. at 374.

FN13. Id.

With respect to the juvenile court's finding that "there is little, if any, prospect of adequate protection of the public and likelihood of rehabilitation ... by use of procedures, services, and facilities currently available to the Juvenile Court[,]" the court of appeals found it significant that the appellant "had a sole misdemeanor conviction for 'keying' a car, and while locked up in the juvenile facility was accused of four infractions." FN14 The court of appeals took this to be "more than a scintilla of evidence" to "support the court's finding" in this regard, and thus found the evidence to be at least "legally sufficient to support the court's determination" that the lack of "adequate protection of the public and likelihood of reasonable rehabilitation" weighed in favor of waiver.FN15 "However," the court of appeals continued, "careful consideration of all of the evidence[,]" including Dr. Silverman's report, led to the "further ... conclusion that the evidence is factually insufficient to support the juvenile court's finding." FN16 Responding to the State's argument to the contrary, the court of appeals described the appellant's act of "keying a car" as "an undeniably low level misdemeanor mischief offense" and "hardly the sort of offense for which 'there is little, if any, prospect of adequate protection of the public.' " FN17 The court of appeals was also influenced by the fact that the appellant's juvenile custodial officers testified that "he followed orders, attended classes, and was not aggressive or mean-spirited." FN18 Finally, the court of appeals was clearly influenced by Dr. Silverman's assessment that the appellant "would probably benefit from placement in a therapeutic environment specifically designed for adolescent offenders[.]" FN19

FN14. Id. at 376.

FN15. Id. at 377.

FN16. Id.

FN17. Id.

FN18. Id.

FN19. Id. at 376–77.

Thus, of the three “reasons for waiver” that the juvenile court specifically gave in its written order, the court of appeals determined that one reason, sophistication and maturity, was supported by legally insufficient evidence. It determined that another reason, the protection of the public and likelihood of rehabilitation, was supported by factually insufficient evidence. With respect to the juvenile court's third reason for waiving jurisdiction—that the appellant's offense constituted a crime against the person of another, and not a mere property crime—the court of appeals regarded this as an inadequate justification, by itself, for waiver. To transfer jurisdiction to the criminal court for this reason alone was, the court of appeals ultimately concluded, an abuse of discretion.FN20 The court of appeals reasoned that, “[i]f, as the State argues, the nature of the offense alone justified waiver, transfer would automatically be authorized in certain classes of ‘serious' crimes such as murder, and the subsection (f) factors would be rendered superfluous.” FN21 Concluding that the juvenile court abused its discretion to waive jurisdiction, the court of appeals vacated the district court's judgment of conviction, dismissed the criminal proceedings, and declared the case to be still “pending in the juvenile court.” FN22

FN20. Id. at 378.

FN21. Id. at 375 (citing R.E.M. v. State, 541 S.W.2d 841, 846 (Tex.Civ.App.—San Antonio 1976, writ ref'd n.r.e.), for the proposition that there is “nothing in the statute which suggests that a child may be deprived of the benefits of our juvenile court system merely because the crime with which he is charged is a ‘serious' crime.”).

FN22. Id. at 378.

C. The Petition for Discretionary Review

The State now challenges the court of appeals's ruling on four fronts. It argues that the court of appeals erred:

• to apply factual-sufficiency review to any aspect of its analysis of the question whether the juvenile court abused its discretion to waive jurisdiction.

• in failing to consider whether the seriousness of the offense could, by itself, justify the juvenile court's discretionary decision to waive jurisdiction.

• in limiting its abuse-of-discretion analysis to the reasons for waiver set forth in the juvenile court's written order, and failing to consider the reasons that the juvenile court proclaimed orally from the bench at the conclusion of the hearing.

• in limiting its abuse-of-discretion analysis to a review of the specific reasons the juvenile court gave (whether written or oral), rather than to assay the entire record for any evidence that would support a valid reason to waive jurisdiction, regardless of whether the juvenile court purported to rely on that evidence/reason.

Review of these various assertions necessitates a fairly global exegesis of the statutory scheme for the waiver of juvenile-court jurisdiction in Texas, as well as the abundant case law that has been generated in the courts of appeals over the past half a century.

Held: Court of Appeals order affirmed

Opinion: A. Kent v. United States

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[.]" FN23 Because the waiver of juvenile-court jurisdiction means the loss of that protected status, in Kent v. United States, the United States Supreme Court characterized the statutory transfer proceedings in the District of Columbia as "critically important," and held that any statutory mechanism for waiving juvenile-court jurisdiction must at least "measure up to the essentials of due process and fair treatment." FN24 Among the requisites of a minimally fair transfer process, the Supreme Court tacitly assumed in Kent, is the opportunity for meaningful appellate review.FN25 The appellate court must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not assume that there are adequate reasons, nor may it merely assume that full investigation has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the [relevant District of Columbia] statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of full investigation has been met; and that the question has received the careful consideration of the

Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review.FN26

In an appendix to its opinion in Kent, the Supreme Court included a policy memorandum promulgated by the District of Columbia Juvenile Court that describes “determinative factors” for guiding the juvenile court's discretion in deciding whether waiver of its jurisdiction over a particular juvenile offender is appropriate.FN27 The Texas Legislature soon incorporated those factors, albeit non-exclusively, into our own statutory scheme.FN28 Missing from the Supreme Court's Kent opinion, however, is any detailed description of a standard for appellate review of the juvenile court's transfer decision.

FN23. Hidalgo, S.W.2d at 754. See TEX. FAM.CODE § 51.01(2) (Juvenile Justice Code is to be construed to balance “the concept of punishment for criminal acts” with the ideal “to remove, where appropriate, the taint of criminality from children committing certain unlawful acts”—all “consistent with the protection of the public and public safety”).

FN24. U.S. 541, 560–62 (1966).

FN25. See id. at 561 (“Meaningful review requires that the reviewing court should review.”).

FN26. Id. (internal quotation marks omitted).

FN27. Id. at 565–67.

FN28. Acts 1967, 60th Leg., ch. 475, § 4, p. 1083–84, eff. Aug. 28, 1967 (currently codified at TEX. FAM.CODE § 54.02(f)). See Robert O. Dawson, Delinquent Children and Children in Need of Supervision: Draftsman's Comments to Title 3 of the Texas Family Code, 5 TEX. TECH. L.REV. 509, 562 (1974) (“Most of the procedural safeguards incorporated in [§ 54.02] are probably required as a matter of federal constitutional law by the Supreme Court's decision in Kent v. United States, 383 U.S. 541 (1966).”). But see, contra: Galloway v. State, 578 S.W.2d 142, 143 (Tex.Crim.App.1979) (“Kent did not purport to do more than construe the District of Columbia juvenile statutes, and it is not clear that it sets constitutional requirements.”).

B. The Statutory Scheme

The Juvenile Justice Code of the Texas Family Code specifically provides that the designated juvenile court of each county has “exclusive original jurisdiction over proceedings in all cases involving ... delinquent conduct ... engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct.” FN29 “Delinquent conduct” includes “conduct ... that violates a penal law of this state ... punishable by imprisonment or by confinement in jail;” FN30 and a “child,” as defined by the Juvenile Justice Code, is any “person

... ten years of age or older and under 17 years of age[.]” FN31 Thus, any person accused of committing a felony offense between his tenth and seventeenth birthdays is subject to the exclusive original jurisdiction of a juvenile court, meaning that the juvenile court has the “power to hear and decide” matters pertaining to the juvenile offender's case “before any other court[,]” including the criminal district court, can review them.FN32

FN29. TEX. FAM.CODE § 51.04(a).

FN30. Id. § 51.03(a)(1).

FN31. Id. § 51.02(2)(a).

FN32. BLACK'S LAW DICTIONARY (10th ed.2014) (defining “original jurisdiction” as “[a] court's power to hear and decide a matter before any other court can review the matter”). See also id. at 981 (defining “exclusive jurisdiction” as “[a] court's power to adjudicate an action or class of actions to the exclusion of all other courts”).

The right of the juvenile offender to remain outside the jurisdiction of the criminal district court, however, is not absolute. Section 54.02 of the Juvenile Justice Code provides that, if certain conditions are met, the “juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court ... for criminal proceedings [.]” FN33 Before it may exercise its discretion to waive jurisdiction over an alleged child offender, the juvenile court must find that (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 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 in the proper adult criminal court.FN34 “In making the determination required by Subsection [54.02](a)”—that is, whether the “welfare of the community” indeed requires adult criminal proceedings to be instituted against the juvenile,
the [juvenile] court shall consider, among other matters: (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.FN35

These non-exclusive factors serve, we have said, to facilitate the juvenile court's balancing of “the potential danger to the public” posed by the particular juvenile offender “with

the juvenile offender's amenability to treatment.” FN36 Finally, should the juvenile court choose to exercise its discretion to waive jurisdiction over the child, then the Juvenile Justice Code directs it to “state specifically” in a written order “its reasons for waiver and [to] certify its action, including the written order and findings of the court.” FN37

FN33. TEX. FAM.CODE § 54.02(a).

FN34. Id.

FN35. Id. § 54.02(f). These are the factors that derive from the Kent appendix. See note 27, ante. They are “intended to guide the [juvenile] court's discretion in making the determination to transfer.” Dawson, 5 TEX. TECH. L.REV. at 564. Initially, Section 54.02(f) embraced all six of the Kent factors, but the statute was amended in 1996 to remove two of them. Acts 1995, 74th Leg., ch. 262, § 34, p. 2533, eff. Jan. 1, 1996.

FN36. Hidalgo, S.W.2d at 754.

FN37. TEX. FAM.CODE § 54.02(h)

For the juvenile, there are a number of advantages to remaining outside of the jurisdiction of the adult criminal courts. Not the least of these advantages is that, with but a few exceptions, a “child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except... after transfer for prosecution in criminal court under Section 54.02[.]” FN38 Indeed, a juvenile offender may not even be handed a sentence—“no disposition may be made”—upon his being “found to have engaged in delinquent conduct” unless and until the juvenile court or a jury determines that “the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made.” FN39 And we ourselves have acknowledged the goals of the criminal justice system and the juvenile-justice system to be fundamentally different, describing the former as more “retributive” than its “rehabilitative” juvenile counterpart.FN40

FN38. There are other exceptions to this general rule not implicated in this case, including an exception for “temporary detention in a jail or lockup pending juvenile court hearing,”id. § 51.13(c)(1), as well as one for “transfer ... under Section 245.151(c), Human Resources Code.”Id. § 51.13(c)(3); see also TEX. HUM. RES.CODE § 245.151(c) (the Texas Juvenile Justice Department “shall transfer” an adjudicated juvenile offender “to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence” when, pursuant to court order under TEX. FAM.CODE § 54.11(i)(2) and TEX. HUM. RES.CODE § 244.014(a), the juvenile court determines that “the child's conduct” while under State supervision “indicates that the welfare of the community requires the transfer”).

FN39. See TEX. FAM.CODE § 54.04(c) ("If the court or jury does not so find, the court shall dismiss the child and enter a final judgment without any disposition."). In keeping with the Juvenile Justice Code's stated purpose to "remove, where appropriate, the taint of criminality from children committing certain unlawful acts[,]"TEX. FAM.CODE § 51.01(2)(B), the juvenile-justice equivalent of a "conviction" for delinquent conduct is referred to instead as an "adjudication," TEX. FAM.CODE § 54.03, and the juvenile-justice equivalent of a "sentence" for an adjudication is instead referred to as a "disposition." TEX. FAM.CODE § 54.04.

FN40. Hidalgo, S.W.2d at 755.

Prior to January 1, 1996, Section 56.01 of the Juvenile Justice Code provided, in one phrasing or another, that an appeal "from an order entered under ...Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult" could be taken "by or on behalf of a child" directly from the juvenile court to the proper court of appeals.FN41 What this meant in practical terms was that an alleged juvenile offender could complain immediately of the juvenile court's order waiving its jurisdiction, and, if appropriate, seek discretionary review from the Texas Supreme Court "as in civil cases generally." FN42 In 1995, however, the Legislature approved an amendment to the Juvenile Justice Code, effective January 1, 1996, in which the portion of Section 56.01(c) that provides for the direct, civil appealability of Section 54.02 waivers was struck.FN43 Contemporaneous with this amendment, the Legislature added Article 44.47 to the Texas Code of Criminal Procedure, providing in Section (b) thereof that a "defendant may appeal a transfer under [Section 54.02, Family Code] only in conjunction with the appeal of a conviction of ... the offense for which the defendant was transferred to criminal court." FN44 What this means in practical terms is that an alleged juvenile offender may no longer immediately appeal from the juvenile court's waiver of jurisdiction; instead, he must wait until such time as he may be convicted in an adult criminal court to complain, on appeal, of some error in the juvenile court's transfer ruling. Although the Legislature designated an appeal from a juvenile court's Section 54.02 order to be a "criminal matter ... governed by [the Code of Criminal Procedure] and the Texas Rules of Appellate Procedure that apply to a criminal case[,]" it nevertheless expressly provided, in Article 44.47(d), that an appeal under Article 44.47(b)"may include any claims under the law that existed before January 1, 1996, that could have been raised on direct appeal in a transfer under Section 54.02, Family Code." FN45

FN41. See Acts 1973, 63d Leg., ch. 544, § 1. p. 1483, eff. Sept. 1, 1973.

FN42. Id.

FN43. Acts 1995, 74th Leg., ch. 262, § 48, p. 2546, eff. Jan. 1, 1996.

FN44. Id. at § 85, p. 2584 (emphasis added).

FN45. Id.

What is lacking in our statutory scheme—as is lacking in Kent—is any express statement of the applicable standard of appellate review of the juvenile court's transfer order. In the absence of an explicit statutory standard of appellate review, the courts of appeals have filled the void with decisional law spelling out how they will go about providing the "meaningful review" contemplated by Kent.

C. The Consensus in the Courts of Appeals

In the absence of explicit provisions in the Juvenile Justice Code that define a standard for appellate review of juvenile transfer orders, the general consensus of the various courts of appeals has been as follows. The burden is on the petitioning party, the State, to produce evidence to inform the juvenile court's discretion as to whether waiving its otherwise-exclusive jurisdiction is appropriate in the particular case.FN46 Transfer of a juvenile offender to criminal court is appropriate only when the State can persuade the juvenile court, by a preponderance of the evidence,FN47 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).FN48 In exercising its discretion, the juvenile court must consider all of the Kent factors as currently codified in Section 54.02(f) of the Juvenile Justice Code; FN49 "it is from the evidence concerning [the Section 54.02(f)] factors that a [juvenile] court makes its final determination." FN50 But it need not find that each and every one of those factors favors transfer before it may exercise its discretion to waive jurisdiction.FN51 It may transfer the juvenile so long as it is satisfied by a preponderance of the evidence that the seriousness of the offense or the background of the child (or both) indicates that the welfare of the community requires criminal proceedings.FN52

FN46. Matter of Honsaker, S.W.2d 198, 201 (Tex.Civ.App.—Dallas 1976, ref'd n.r.e.); B.R.D. v. State, 575 S.W.2d 126, 131 (Tex.Civ.App.—Corpus Christi 1978, writ ref'd n.r.e.); Matter of M.I.L., 601 S.W.2d 175, 177 (Tex.Civ.App.—Corpus Christi 1980, no writ); Matter of E.D.N., 635 S.W.2d 798, 800 (Tex.App.—Corpus Christi 1982, no writ); Moore v. State, 713 S.W.2d 766, 768 (Tex.App.—Houston [14th Dist.] 1986, no writ).

FN47. Matter of P.B.C., S.W.2d.448, 453 (Tex.Civ.App.—El Paso 1976, no writ).

FN48. Faisst v. State, S.W.3d 8, 11 (Tex.App.—Tyler 2003, no pet.).

FN49. See In re J.R.C., S.W.2d 579, 584 (Tex.Civ.App.—Texarkana 1975, ref'd n.r.e.) (juvenile court's "findings should show an investigation in every material field [listed in Section 54.02(f)] was undertaken and the result thereof").

FN50. Matter of M.I.L., S.W.2d at 177.

FN51. E.g., Matter of J.R.C., S.W.2d 748, 753 (Tex.Civ.App.—Texarkana 1977, ref'd n.r.e.); D.J.R. v. State, 565 S.W.2d 392, 395 (Tex.Civ.App.—Fort Worth 1978, no writ); Matter of G.B.B., 572 S.W.2d 751, 756 (Tex.Civ.App.—El Paso 1978, ref'd n.r.e.); Casiano v. State, 687 S.W.2d 447, 449 (Tex.App.—Houston [14th Dist.] 1985, no writ); Matter of K.D.S., 808 S.W.2d 299, 302 (Tex.App.—Houston [1st Dist.] 1991, no writ); C.M. v. State, 884 S.W.2d 562, 564 (Tex.App.—San Antonio 1994, no writ).

FN52. See, e.g., Matter of J.R.C., S.W.2d at 753 ("Section 54.02 does not require that, in order for the juvenile court to waive its jurisdiction, all of the matters listed in Subsection (f) must be established. * * * The statute only directs that the juvenile court consider the matters listed under Subsection (f) in making its determination. * * * They are the criteria by which it may be determined if the juvenile court properly concluded that the seriousness of the offense or the background of the child required a transfer to criminal court."); In re Q.D., 600 S.W.2d 392, 395 (Tex.Civ.App.—Fort Worth 1980, no writ) ("[T]he [juvenile] court is bound only to consider all [of the Subsection (f)] factors. It need not find that each factor is established by the evidence."); P.G. v. State, 616 S.W.2d 635, 639 (Tex.Civ.App.—San Antonio 1981, ref'd n.r.e.) ("The [juvenile] court need not find that all the factors in subdivision (f) have been established, but it must consider all these factors and state the reasons for its transfer so that the appellate court may review the basis on which the conclusion was made and can determine whether the evidence so considered does in fact justify that conclusion."); Matter of E.D.N., 635 S.W.2d at 800 ("If the evidence establishes enough of the factors in subdivision (f) to convince the [juvenile] court that a transfer is in the best interest of the child and community, we will not disturb that order."); McKaine v. State, 170 S.W.3d 285, 291 (Tex.App.—Corpus Christi 2005, no pet.) ("While the juvenile court must consider all of these factors before transferring the case to district court, it is not required to find that each factor is established by the evidence. * * * The court is also not required to give each factor equal weight as long as each is considered.").

With respect to the adequacy of the written order mandated by Section 54.02(h), the courts of appeals have generally agreed, first of all, that the written order must reflect the juvenile court's "reasons" for waiving jurisdiction.FN53 Despite the express edict of the statute (i.e., the written order "shall state specifically [the juvenile court's] reasons for waiver"), the courts of appeals have sometimes sanctioned orders that recited the reasons for transfer in terms no more specific than the bare statutory language, namely, that because of the seriousness of the offense or the background of the child, transfer is required to ensure the welfare of the

community.FN54 In addition to specifying “reasons,” the order should also expressly recite that the juvenile court actually took the Section 54.02(f) factors into account in making this determination.FN55 But it need make no particular findings of fact with respect to those factors, FN56 notwithstanding Section 54.02(h)'s pointed requirement that the juvenile court “certify its action, including the ... findings of the court[.]”

FN53. See e.g., In re J.R.C., S.W.2d at 584 (“The reasons motivating the Juvenile Court's waiver of jurisdiction must expressly appear.”); P.G., 616 S.W.2d at 639 (juvenile court must “state the reasons for its transfer”).

FN54. Matter of Honsaker, S.W.2d at 200, 201–02 (construing In re J.R.C. and holding that a transfer order that recited the statutory criteria for waiver of juvenile jurisdiction and found them to be satisfied provided “sufficient specificity ... to allow an appellate court to review and understand the reason for the juvenile court's determination”); D.L.C. v. State, 533 S.W.2d 157, 159 (Tex.Civ.App.—Austin 1976, no writ) (order stating in conclusory terms that the Subsection (f) factors were satisfied, without going into detail, was nevertheless sufficient to comply with the requirement of written “reasons” in Subsection (h)); In re W.R.M., 534 S.W.2d 178, 181 (Tex.Civ.App.—Eastland 1976, no writ) (“In the instant case, the order discloses that the matters listed in Subsection (f) were considered, and the order states specific reasons for waiver. The fact that some of the recitations constitute conclusions does not require a reversal of the court's order.”); Q.V. v. State, 564 S.W.2d 781, 784 (Tex.Civ.App.—San Antonio 1978, ref'd n.r.e.) (written transfer order that merely stated conclusorily that Subsection (f) factors were satisfied, sans any detailed description of the evidence, was nevertheless “sufficiently specific as to the ‘reasons' for” the juvenile court's decision to waive jurisdiction); In re C.L.Y., 570 S.W.2d 238, 239, 241 (Tex.Civ.App.—Houston [1st Dist.] 1978, no writ) (same); Appeal of B.Y., 585 S.W.2d 349, 351 (Tex.Civ.App.—El Paso 1979, no writ) (“Reversible error is not present here by the fact that the [juvenile court's] order seems to parrot the Section 54.02 list of factors the [juvenile court] should consider in making a transfer; the enumerated reasons are supported by evidence. The order is sufficient.”); In re I.B., 619 S.W.2d 584, 587 (Tex.Civ.App.—Amarillo 1981, no writ) (same); Matter of T.D., 817 S.W.2d 771, 775–77 (Tex.App.—Houston [1st Dist.] 1991, writ denied) (same).

FN55. In re W.R.M., S.W.2d at 182 (order is sufficient if it “discloses that the matters listed in Subsection (f) were considered”); In re C.L.Y., 570 S.W.2d at 239 (transfer order stated that the juvenile court “has considered” the Subsection 54.02(f) factors); P.G., 616 S.W.2d at 638–39 (juvenile court's order “listed the ... factors of section 54.02(f) and stated that each had been considered in making a determination” that waiver of jurisdiction was appropriate); Casiano, 687 S.W.2d at 449 (“An order is sufficient which states [inter alia] that all factors listed in § 54.02(f) were considered by the [juvenile] court[.]”).

FN56. See note 54, ante. Early case law seemed to contemplate that greater specificity might be necessary to satisfy Kent 's emphasis on meaningful appellate review. See In re J.R.C., 522 S.W.2d at 583–84 (“To sum up, besides giving reasons for waiver in its order the Juvenile Court has a mandatory duty to file findings covering matters actually considered, including all matters mentioned in Subsection (f), and to certify such order and findings to the appropriate district court.”). This insistence on “rigid adherence to the governing statutes ... in proceedings of this nature[,]” id. at 584, however, soon gave way to a laxer attitude that, so long as the juvenile court's order identified the relevant factors (however conclusorily) and the evidence would support a transfer based on those factors, the order would be regarded as sufficient. See Douglas A. Hager, Does the Texas Juvenile Waiver Statute Comport with the Requirements of Due Process?, 26 TEX. TECH. L.REV. 813, 838–45 (1995) (tracing the retreat of the courts of appeals from “the procedural safeguards inherent in the J.R.C. holding”); Robert O. Dawson, Delinquent Children and Children in Need of Supervision: Draftsman's Comments to Title 3 of the Texas Family Code, 5 TEX. TECH. L.REV. 509, 564–65 (1974) (“The committee's draft [of Section 54.02(h)] stated that if the juvenile court waives jurisdiction ‘it shall briefly state in the order its reasons for waiver.’ The fact that the Legislature changed ‘briefly state’ to ‘state specifically’ indicates that it contemplated more than merely an adherence to printed forms and, indeed, contemplated a true relevation [sic] of reasons for making this discretionary decision.”).

The courts of appeals have also uniformly agreed that, absent an abuse of discretion, a reviewing court should not set aside the juvenile court's order transferring jurisdiction.FN57 What they mean by “abuse of discretion” in this context is not altogether clear. Some courts of appeals have declared that the juvenile court's decision must simply be a guided one, not arbitrary or capricious.FN58 Even so, the courts of appeals have entertained various challenges to the legal and/or factual sufficiency of the evidence presented at the transfer hearing to support the juvenile court's decision to waive its jurisdiction.FN59 Some courts of appeals (like the court of appeals in this case) have examined the evidence to determine its sufficiency to support specific findings of fact with respect to the Section 54.02(f) factors,FN60 while mindful that not every factor must support transfer before the juvenile court may exercise its discretion to waive jurisdiction.FN61 Other courts of appeals have accepted the juvenile offender's invitation to measure the sufficiency of the evidence to support the juvenile court's ultimate conclusion, pursuant to Section 54.02(a), that the seriousness of the offense or background of the child indicated the need for transfer in order to ensure the welfare of the community.FN62 No court of last resort in Texas, insofar as our research reveals, has yet spoken on these matters.

FN57. E.g., Matter of Honsaker, S.W.2d at 201; C.M., 884 S.W.2d at 563; Matter of J.P.O., 904 S.W.2d 695, 698 (Tex.App.—Corpus Christi 1995, writ denied); Matter of K.B.H., 913 S.W.2d 684, 687–88 (Tex.App.—Texarkana 1995, no pet.); In re J.J., 916 S.W.2d 532, 535 (Tex.App.—Dallas 1995, no writ); State v. Lopez, 196 S.W.3d 872, 874 (Tex.App.—Dallas 2006, pet. ref'd); Faisst, 105 S.W.3d at 12. Cf. T.P.S. v. State, 590 S.W.2d 946, 953–54 (Tex.Civ.App.—Dallas

1979, ref'd n.r.e.) (observing that Kent “recognizes that the statute of the District of Columbia there in question gave the juvenile court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached”) (internal quotation marks omitted).

FN58. See, e.g., Matter of M.D.B., S.W.2d 415, 417 (Tex.App.—Houston [14th Dist.] 1988, no writ) (“In reviewing the [juvenile] court's action for an abuse of discretion, this court must determine if the [juvenile] court acted without reference to any guiding rules and principles.”); Matter of T.D., 817 S.W.2d at 773 (“The [juvenile] court must act with reference to guiding rules and principles, reasonably, not arbitrarily, and in accordance with the law.”).

FN59. See, e.g., Matter of I.J., Jr., S.W.2d 110, 111 (Tex.Civ. App.—Eastland 1977, no writ) (finding the evidence to support “the findings in the transfer order” to be both legally and factually sufficient); Matter of T.D., 817 S.W.2d at 777 (“The [juvenile] court's findings of fact are reviewable for legal and factual sufficiency of the evidence to support them by the same standards applied in reviewing the legal or factual sufficiency of the evidence supporting the jury's answers to special issues.”); Matter of G.F.O., 874 S.W.2d 729, 731–32 (Tex.App.—Houston [1st Dist.] 1994, no writ) (“If an appellate court finds the evidence factually or legally insufficient to support the juvenile court's order transferring jurisdiction of a youth to the criminal district court, it will necessarily find the juvenile court has abused its discretion.”); Matter of J.P.O, 904 S.W.2d at 699–700 (“The juvenile court's findings of fact are reviewable for legal and factual sufficiency of the evidence to support them by the same standards as are applied in reviewing the legal or factual sufficiency of the evidence supporting a jury's answers to a charge.”); Matter of K.B.H., 913 S.W.2d at 688 (“Under an abuse of discretion standard, the legal sufficiency of the evidence is not an independent ground of error, but is a relevant factor in assessing whether the [juvenile] court abused its discretion.”); Faisst, 105 S.W.3d at 12 (“Relevant factors to be considered when determining if the [juvenile] court abused its discretion include legal and factual sufficiency of the evidence.”); Bleys v. State, 319 S.W.3d 857, 861 (Tex.App.—San Antonio 2010, no pet.)(same).

FN60. See, e.g., Matter of P.A.C., S.W.2d at 916–17 (finding that the evidence was factually sufficient to support the juvenile court's findings with respect to several of the subsection (f) factors); Moore, 713 S.W.2d at 768–70 (reviewing both the legal and factual sufficiency of the evidence to support the juvenile court's findings with respect to various subsection (f) factors); Matter of T.D., 817 S.W.2d at 777–79 (conducting legal and factual sufficiency analysis of the last subsection (f) factor); In re J.J., 916 S.W.2d at 537 (“Additionally, there was legally and factually sufficient evidence before the [juvenile] court supporting affirmative findings regarding each of the ... factors set forth in section 54.02(f) of the family code.”); Matter of D.D., 938 S.W.2d 172, 174–76 (Tex.App.—Fort Worth 1996, no writ) (reviewing the factual sufficiency of the evidence to support the juvenile court's finding regarding two of the subsection

(f) factors); Bleys, 319 S.W.3d at 862–63 (reviewing the factual sufficiency of the evidence to support the juvenile court's finding under Section 54.02(f)(4)).

FN61. See, e.g., L.M. v. State, S.W.2d 808, 813 (Tex.Civ.App.—Houston [1st Dist.] 1981, ref'd n.r.e.) ("Although all of the factors enumerated in section 54.02(f) must be considered by the [juvenile] judge, each one need not be present in a specific case."); Matter of E.D.N., 635 S.W.2d at 800 ("While the court must consider all of these factors, it need not find that they have all been established."); C.W. v. State, 738 S.W.2d 72, 75 (Tex.App.—Dallas 1987, no writ) ("The [juvenile] court is bound to consider, as it did in this case, all [of the] statutory factors, among other matters. It need not find that each of the ... factors is established by the evidence."); Matter of M.D.B., 757 S.W.2d at 417 ("[W]hile the juvenile court is required to consider all [of the] factors of § 54.02(f)..., it is not required to find that each factor is established by the evidence."); Matter of C.C.G., 805 S.W.2d 10, 15 (Tex.App.—Tyler 1991, writ denied) (same); In re J.J., 916 S.W.2d at 535 (same); Matter of D.D., 938 S.W.2d at 176 (same); Bleys, 319 S.W.3d at 862 (same).

FN62. See, e.g., Moore, S.W.2d at 767–68, 770 (reviewing the legal and factual sufficiency of the evidence to support the juvenile court's determination that the seriousness of the offense and the child's background justified transfer); Matter of T.D., 817 S.W.2d at 777 (at least nominally reviewing legal and factual sufficiency of the ultimate question of whether there is "probative evidence that the welfare of the community required a waiver of jurisdiction of the juvenile court and criminal proceedings against appellant"); Matter of J.P.O., 904 S.W.2d at 700–02 (Reviewing both the legal and factual sufficiency of the evidence to support the juvenile court's bottom-line conclusion that transfer was appropriate); In re J.J., 916 S.W.2d at 536–37 (finding the evidence sufficient to support the juvenile court's determination that both the seriousness of the offense and the child's background merited waiving jurisdiction); Matter of D.D., 938 S.W.2d at 176–77 (reviewing the factual sufficiency of the evidence to support the juvenile court's subsection (a) determination whether the seriousness of the offense or the child's background warranted transfer); Bleys, 319 S.W.3d at 862–63 (reviewing the factual sufficiency of the evidence to support the juvenile court's conclusion under Section 54.02(a)(3)).

The State argues that the court of appeals in this case erred in four respects. First, the court of appeals erred to conduct a factual-sufficiency review, since appeal from a juvenile transfer order is now "a criminal matter" that is "governed" by the Texas Code of Criminal Procedure and the rules of appellate procedure that apply to criminal cases.FN63 After all, this Court, in Brooks v. State, rejected factual sufficiency for purposes of criminal appeals.FN64 Second, the court of appeals erred to conclude that the seriousness of the offense could not, by itself, justify the juvenile court's transfer order. Third and fourth, the court of appeals erred by failing to take into account the reasons for waiver of jurisdiction that the juvenile court gave orally on the record, and, for that matter, any other justifications for transfer that may appear in

the record, regardless of whether the juvenile court purported to rely on them, either orally on the record or in its written order. These are questions that the courts of appeals have never explicitly addressed.

FN63. TEX.CODE CRIM. PROC. art. 44.47(c).

FN64. Brooks v. State, S.W.3d 893 (Tex.Crim.App.2010).

III. ANALYSIS

A. Factual Sufficiency Under Section 54.02

The State argues that the court of appeals erred to apply a factual-sufficiency standard to the Section 54.02(f)(4) factor, regarding “the prospects of adequate protection of the public and the likelihood of rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.” FN65 Indeed, in a supplemental brief filed after oral argument in this Court, the State argues that the appropriate standard of appellate review ought to be a bare abuse-of-discretion standard, unencumbered by any inquiry into the sufficiency of the evidence, either legal or factual, to support the juvenile court's transfer order. We disagree.

FN65. TEX. FAM.CODE § 54.02(f)(4). See Moon, 410 S.W.3d at 377 (holding that the evidence was legally sufficient to establish this factor, but factually insufficient).

That the appeal of a transfer order is now regarded as a “criminal matter,” under Article 44.47(c), does not in itself control the question of whether factual-sufficiency review is available on direct appeal.FN66 The juvenile transfer proceeding remains civil in character, governed by the Juvenile Justice Code; the proceedings do not become criminal unless and until the juvenile court waives its exclusive jurisdiction and transfers the child to a criminal court for prosecution as an adult. More to the point, the availability of factual-sufficiency review is, in any event, not so much a function of the character of the proceeding—civil versus criminal—as it is a function of the applicable burden of proof. As we have already pointed out, in a juvenile transfer proceeding, the burden is on the State to produce evidence that persuades the juvenile court, by a preponderance of the evidence, that waiver of its exclusive jurisdiction is appropriate. Facts which must be proven by a preponderance of the evidence are ordinarily susceptible to appellate review for factual sufficiency.FN67 In arguing that factual-sufficiency review is unavailable, the State analogizes to the juvenile-adjudication proceedings.FN68 In that context, the courts of appeals have declined to conduct factual-sufficiency review, noting that adjudication proceedings are “quasi-criminal” in nature.FN69 But the burden of proof in a juvenile-adjudication proceeding is beyond a reasonable doubt,FN70 not a preponderance of the evidence. In that context, it is certainly arguable that our holding in Brooks applies.FN71 In the review of any issue that is subject to a burden of proof less than beyond a reasonable doubt, however, the Texas Supreme Court has authorized the courts of appeals to conduct a factual-sufficiency

review.FN72 The particular appellate standard for factual sufficiency depends upon the level of confidence applicable to the burden of proof—whether preponderance of the evidence or clear and convincing evidence—in the trial court.FN73 But the courts of appeals have continued to address issues of factual sufficiency when they are raised on appeal in all but the juvenile-adjudication context. Indeed, even in criminal cases, we have said that the courts of appeals may conduct factual-sufficiency reviews when confronted with fact issues for which the burden of proof is by a preponderance of the evidence.FN74 The court of appeals did not err to address the appellant's contention that the evidence was factually insufficient to support the juvenile court's finding with respect to Section 52.04(f)(4).FN75

FN66. Indeed, in light of Article 44.47(d), it is arguable that factual sufficiency remains a viable claim on appeal from a transfer order, notwithstanding that it is now a “criminal matter.” After all, factual sufficiency was a “claim[ ] under the law that existed before January 1, 1996, that could have been raised on direct appeal of a transfer under Section 54.02, Family Code.”TEX.CODE CRIM. PROC. art. 44.47(d).

FN67. Matlock v. State, S.W.3d 662, 667 (Tex.Crim.App.2013).

FN68. State's Brief on the Merits at 12–13.

FN69. See In re R.R., S.W.3d 730, 734 (Tex.App.—Houston [14th Dist.] 2012, writ denied) (“Although juvenile [adjudication] proceedings are civil matters, the standard applicable in criminal matters [i.e., proof beyond a reasonable doubt] is used to assess the sufficiency of the evidence a finding the juvenile has engaged in delinquent conduct.”); In re A.O., 342 S.W.3d 236, 239 (Tex.App.—Amarillo 2011, writ denied) (same). Cf., In re B.L.D., 113 S.W.3d 340, 351 (Tex.2003) (juvenile delinquency cases are considered to be “quasi-criminal”). The State cites only one case which suggests, and then only in obvious dicta, that factual-sufficiency review may likewise be inappropriate for appellate review of juvenile transfer proceedings after the enactment of Article 44.47. See In re M.A.V., 88 S.W.3d 327, 331 n.2 (Tex.App.—Amarillo 2002, no pet.).

FN70. See TEX. FAM.CODE § 54.03(f) (“The child shall be presumed to be innocent of the charges against the child and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt.”).

FN71. In re R.R., S.W.3d at 734; In re A.O., 342 S.W.3d at 239; In re C.E.S., 400 S.W.3d 187, 194 (Tex.App.—El Paso 2013, no writ).

FN72. See In re C.H., S.W.3d 17, 25 (Tex.2002) (announcing the appropriate appellate standard for review of factual-sufficiency claims in cases of termination of parental rights, in which the State must satisfy a clear and convincing evidence burden of proof); In re J.F.C., 96 S.W.3d 256, 266–67 (Tex.2002) (same). And, indeed, in In re A.O., the Amarillo Court of Appeals, having refused to subject the juvenile-adjudication proceeding to factual-sufficiency review, in the next breath did conduct a factual-sufficiency review of the evidence proffered at the juvenile disposition hearing. 342 S.W.3d at 240.

FN73. See In re C.H., S.W.3d at 25 (distinguishing appropriate appellate standard for factual sufficiency depending upon whether the trial-level burden of proof is preponderance of the evidence or clear and convincing evidence); In re J.F.C., 96 S.W.3d at 267 (same). See also Southwestern Bell Telephone Co. v. Garza, 164 S.W.3d 607, 627 (Tex.2004) ("In sum, we think that whenever the standard of proof at trial is elevated, the standard of appellate review must likewise be elevated.").

FN74. See Matlock, S.W.3d at 667, 670 ("Prior to Brooks, we used the traditional Texas civil burdens of proof and standards of review in the context of affirmative defenses where the rejection of an affirmative defense is established by a 'preponderance of the evidence.' Our decision in Brooks did not affect that line of cases. * * * A criminal defendant might also raise a factual-sufficiency challenge to the jury's adverse finding on his affirmative defense.") (footnotes omitted).

FN75. The State does not take issue with the court of appeals's formulation of the difference, under current law, between legal- and factual-sufficiency analyses:

"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. * * * Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the [juvenile] court's finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust." Moon, S.W.3d at 370–71 (citations omitted).

Having said that, we do agree with the State's contention to the limited extent that it may argue that sufficiency review should not apply to appellate review of the ultimate question under Section 54.02(a)(3), that is, whether "because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings." The discretion of the juvenile court is at its apex when it makes this largely normative judgment.FN76 As long as the appellate court can determine that the juvenile court's judgment was based upon facts that are supported by the record, it should refrain from interfering with that judgment absent a scenario in which the facts identified in the transfer order, based on evidence produced at the transfer hearing as it relates to the non-exclusive Subsection (f) factors and

beyond, bear no rational relation to the specific reasons the order gives to justify the conclusion that the seriousness of the offense and/or the juvenile's background warrant transfer. The appellate courts should conduct appellate review of the juvenile court's discretionary decision to waive jurisdiction in essentially the same way that the El Paso Court of Appeals has said that the juvenile court's discretion in determining juvenile dispositions should be scrutinized on appeal, to wit:

We apply a two-pronged analysis to determine an abuse of discretion: (1) did the [juvenile] court have sufficient information upon which to exercise its discretion; and (2) did the [juvenile] court err in its application of discretion? A traditional sufficiency of the evidence review helps answer the first question, and we look to whether the [juvenile] court acted without reference to any guiding rules or principles to answer the second.FN77

Similarly, we hold that, in 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.” But it should then review the juvenile court's ultimate waiver decision under an abuse of discretion standard. That is to say, in 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? And, of course, reviewing courts should bear in mind that not every Section 54.02(f) factor must weigh in favor of transfer to justify the juvenile court's discretionary decision to waive its jurisdiction.FN78

FN76. Whether the offense is serious enough, and/or the juvenile's background demonstrates, that waiver of the juvenile court's jurisdiction is warranted to ensure the welfare of the community is, in many respects, similar to the question of whether the non-exclusive Keeton factors warrant a jury's prediction, at the punishment phase of a capital-murder trial, that the accused will probably commit criminal acts of violence that would constitute a continuing threat to society. Even before Brooks was decided, we insisted that this special issue, while not “wholly normative in nature,” is nevertheless too “value-laden” to be amenable to a factual-sufficiency review. McGinn v. State, 961 S.W.2d 161, 169 (Tex.Crim.App.1998); Keeton v. State, 724 S.W.2d 58, 61–64 (Tex.Crim.App.1987); TEX.CODE CRIM. PROC. art. 37.071 § 2(b)(1).

FN77. In re J.R.C.S., S.W.3d 903, 914 (Tex.App.—El Paso 2012, no writ). See also In re M.A.C., 999 S.W.2d 442, 446 (Tex.App.—El Paso 1999, no writ).

FN78. See Hidalgo, S.W.3d at 754 n. 16 ("The juvenile court is not required to find each criterion before it can transfer a case to district court. The court may order a transfer on the strength of any combination of the criteria.").

B. The Seriousness of the Offense

The State complains that the court of appeals should not have concluded that the juvenile court abused its discretion for waiving jurisdiction based upon the seriousness of the offense. The State points out that the juvenile court made an explicit finding of fact in its transfer order that the appellant's alleged offense was committed against the person of another, under Section 54.02(f)(1). This finding of fact was amply supported by the record, the State contends, and was sufficient by itself to provide a legitimate basis for the trial court's discretionary decision to waive jurisdiction. The court of appeals rejected this contention because "[i]f, as the State argues, the nature of the offense alone justified waiver, transfer would automatically be authorized in certain classes of 'serious' crimes such as murder, and the subsection (f) factors would be rendered superfluous." FN79 In support of the court of appeals's observation, the appellant reminds us that the Supreme Court in Kent seems to have disfavored the "routine waiver [of juvenile-court jurisdiction] in certain classes of alleged crime." FN80

FN79. Moon, S.W.3d at 375.

FN80. Appellant's Response to the State's Brief at 13 (citing Kent, 383 U.S. at 553 n. 15).

The courts of appeals have long held that the 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.FN81 This is different from holding that the mere category of offense the juvenile is alleged to have committed, without more, will serve to justify transfer. 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 we agree with the Supreme Court's intimation in Kent that the transfer decision would almost certainly be too ill-informed to constitute anything but an arbitrary decision.

FN81. The earliest case to so hold was In re Buchanan, 433 S.W.2d 787, 789 (Tex.Civ.App.—Fort Worth 1968, ref'd n.r.e.). Almost eight years later, another court of appeals reversed a juvenile transfer order, inter alia, because of a lack of evidence substantiating a bare recitation in the transfer order that "the offense was murder, committed against the person of another[.]" R.E.M., 541 S.W.2d at 846–47. The San Antonio Court of Appeals distinguished Buchanan, observing that there, "the 'evidence introduced at the hearing show[ed] without dispute that

appellant shot and killed a man without provocation or cause.' 433 S.W.2d at 789. Here there is no admissible evidence to that effect." R.E.M., supra, at 847. Later cases have likewise found the evidence sufficient to support waiver of juvenile jurisdiction based on the seriousness of the offense alone, as established by evidence presented at the transfer hearing. See e.g., Matter of C.C.G., 805 S.W.2d at 14–15 ("[A]ssuming, arguendo that there is insufficient evidence concerning the background of appellant, the juvenile court's determination that the seriousness of the offense, as substantiated by the evidence, is alone sufficient."); C.M., 884 S.W.2d at 564 ("The [juvenile court] is free to decide to transfer the case due to the seriousness of the crime, even if the background of the child suggests the opposite."); Matter of D.D., 938 S.W.2d at 177 ("The seriousness of the offenses D.D. is charged with [capital murder, murder, aggravated kidnapping, among others] is sufficient to support his transfer despite his background."); Faisst, 105 S.W.3d at 11 ("[C]ourt does not abuse its discretion by finding the community's welfare requires transfer due to the seriousness of the crime [intoxication manslaughter] alone, despite the child's background."); McKaine, 170 S.W.3d at 291 (same).

The transfer order in this case made no findings about the specifics of the capital murder, finding no more than probable cause to believe that the appellant committed "the OFFENSE alleged." It gave as the juvenile court's sole reason for waiving jurisdiction that, "because of the seriousness of the OFFENSE, the welfare of the community requires criminal proceedings[,]" and then it simply recited "that the OFFENSE allege [sic] to have been committed WAS against the person of another[.]" FN82 The evidence at the hearing, of course, painted a much more graphic picture of the appellant's charged offense. Whether the court of appeals should have taken that evidence into account in evaluating the juvenile court's exercise of discretion depends upon whether the abuse-of-discretion evaluation must be limited to a review of the "specific reasons" and facts in support thereof that are expressly set out in the juvenile court's written transfer order as per Section 54.02(h), or whether the court of appeals may take into account other reasons and other facts not explicitly set out in the transfer order. We turn to that question next.

FN82. The other two Subsection (f) findings of fact, stated equally conclusorily in the juvenile court's transfer order, corresponded to the sophistication-and-maturity factor (Section 54.02(f)(2)) and the prospects-for-adequate-public-protection-and-rehabilitation-of-the-juvenile factor (Section 54.02(f)(4)). Both of these factors seem far more relevant to the background-of-the-child reason for concluding that the welfare of the community requires criminal proceedings than to the seriousness-of-the-offense reason—the latter of which was the only Section 54.02(a)(3) reason that the juvenile court actually provided in its transfer order to justify the waiver of jurisdiction.

C. Appellate Review of the Reasons/Facts Cited in the Transfer Order

There is an inherent tension between the broad discretion that the juvenile court is afforded in making the normative judgment of whether to waive jurisdiction, on the one hand, and Kent 's insistence upon the primacy of appellate review in order to assure that the juvenile court's broad discretion is not abused, on the other. The legislative response to this inherent tension was to mandate, in Section 54.02(h), that the juvenile court "shall state specifically in its order its reasons for waiver and certify its action, including the written order and findings of the court[.]" FN83 Although the committee that drafted the Juvenile Justice Code had recommended a version of this provision that would have required no more than a "brief" statement of the reasons justifying transfer, the Legislature deemed this insufficient: "The fact that the Legislature changed 'briefly state' to 'state specifically' indicates that it contemplated more than merely an adherence to printed forms and, indeed, contemplated a true relevation [sic] of reasons for making this discretionary decision." FN84 Moreover, Section 54.02(h) obviously contemplates that both the juvenile court's reasons for waiving its jurisdiction and the findings of fact that undergird those reasons should appear in the transfer order.FN85 In this way the 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—in short, that it is a decision demonstrably deserving of appellate imprimatur even if the appellate court might have reached a different result. This legislative purpose is not well served by a transfer order so lacking in specifics that the appellate court is forced to speculate as to the juvenile court's reasons for finding transfer to be appropriate or the facts the juvenile court found to substantiate those reasons.FN86 Section 54.02(h) requires the juvenile court to do the heavy lifting in this process if it expects its discretionary judgment to be ratified on appeal. By the same token, the juvenile court that shows its work should rarely be reversed.

FN83. TEX. FAM.CODE § 54.02(h).

FN84. Dawson, 5 TEX. TECH. L.REV. at 564–65.

FN85. In re J.R.C., S.W.2d at 583–84.

FN86. Cf. State v. Cullen, S.W.3d 696, 698 (Tex.Crim.App.2006) (requiring trial courts to enter explicit findings of fact in the pre-trial motion to suppress context because "courts of appeals should not be forced to make assumptions (or outright guesses) about a trial court's ruling on a motion to suppress"; thus ensuring "a resolution [on appeal] that is based on the reality of what happened rather than on assumptions that may be entirely fictitious").

Given this legislative regime, we think it only fitting that a reviewing court should measure sufficiency of the evidence to support the juvenile court's stated reasons for transfer by

considering the sufficiency of the evidence to support the facts as they are expressly found by the juvenile court in its certified order. The appellate court should not be made to rummage through the record for facts that the juvenile court might have found, given the evidence developed at the transfer hearing, but did not include in its written transfer order. We therefore hold that, in 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).

D. Application of Law to Fact

The juvenile court did not "show its work" in the transfer order in this case. The only reason specifically stated on the face of the transfer order to justify waiver of juvenile jurisdiction is that the offense alleged is a serious one. The only fact specified in the written transfer order in support of this reason is that the offense that the appellant is alleged to have committed is an offense against the person of another. We agree with the court of appeals's conclusion that a waiver of juvenile jurisdiction based on this particular reason, fortified only by this fact, constitutes an abuse of discretion.

It is true that the juvenile court found other 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 appropriate. First, without going into any relevant detail, the juvenile court's order found that the appellant was sophisticated and mature enough to have been able to waive his constitutional rights effectively and assist in the preparation of his defense at trial, just as an adult would.FN87 Second, again without elaboration, the juvenile court found "little, if any" prospect of protecting the public and rehabilitating the appellant given its available resources. But, 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 are superfluous.

FN87. In any event, it is doubtful that the Legislature meant for the sophistication-and-maturity factor to embrace the juvenile's ability to waive his constitutional rights and assist in his defense. It is true that a great many of the courts of appeals seem to think that it does. The juvenile court's transfer order in the early case of In re Buchanan included such a finding. 433 S.W.2d at 788. So did the juvenile courts's orders in In re W.R.M., 534 S.W.2d at 181–82, Matter of Honsaker, 539 S.W.2d at 200, P.G., 616 S.W.2d at 639, Casiano, 687 S.W.2d at 449, and Matter of D.D., 938 S.W.2d at 175. Another relatively early case, however, found this emphasis on the juvenile's ability to waive his rights and assist in his defense "somewhat difficult to understand." R.E.M., 541 S.W.2d at 846. The San Antonio Court of Appeals "believe[d] that the requirement that the juvenile court consider the maturity and sophistication of the child refers to the question of

culpability and responsibility for his conduct, and is not restricted to a consideration of whether he can intelligently waive rights and assist in the preparation of his defense." Id. Later, the Houston 1st Court of Appeals observed that "[o]ur courts have held that the requirement that the [juvenile] court consider the child's sophistication and maturity refers to the question of culpability and responsibility of the child for his conduct, as well as the consideration of whether he can intelligently waive his rights and assist in his defense." Matter of S.E.C., 605 S.W.2d at 958 (emphasis added). Thus did the latter view of the relevance of a juvenile's ability to waive his rights and assist in his defense as an adult creep into our jurisprudence. No case has ever undertaken to explain, however, exactly how the juvenile's capacity (or lack thereof) to waive his constitutional rights and assist in his defense is relevant to whether the welfare of the community requires transfer, and we fail to see that it is. Other courts of appeals have rightly declared "the purpose of an inquiry into the mental ability and maturity of the juvenile [to be] to determine whether he appreciates the nature and effect of his voluntary actions and whether they were right or wrong." Matter of E.D.N., 635 S.W.2d at 801 (citing L.W.F. v. State, 559 S.W.2d 428, 431 (Tex.Civ.App.—Fort Worth 1977, ref'd n.r.e.)). In our view, the juvenile's capacity to waive his constitutional rights and help a lawyer to effectively represent him is almost as misguided as the juvenile court's logic in the present case when it orally pronounced that the appellant should be transferred, inter alia, merely for the sake of judicial economy, so that his case could be consolidated with that of his already-certified-as-an-adult co-defendant. Such a notion is the very antithesis of the kind of individualized assessment of the propriety of waiver of juvenile jurisdiction that both Kent and our statutory scheme expect of the juvenile court in the exercise of its transfer discretion.

Moreover, even were we to regard the recitation of these conclusory facts in the written transfer order to constitute an acceptably implicit indication that the juvenile court also considered the appellant's background as a reason for the transfer, we would nonetheless uphold the court of appeals's judgment. First, with respect to the appellant's sophistication and maturity, we agree with the court of appeals that the evidence was legally insufficient to support such a finding, since the State offered no evidence at the juvenile hearing to inform the juvenile court's consideration of that Section 54.02(f) factor.FN88 Second, with respect to the prospects for protecting the public and rehabilitating the appellant, we are not at liberty to second-guess the court of appeals's conclusion that the juvenile court's finding regarding this Section 54.02(f) factor was supported by factually insufficient evidence in that it was so against the great weight and preponderance of the evidence as to be manifestly unjust.FN89

FN88. See Moon, S.W.3d at 375 ("[T]here must be some evidence to support the juvenile court's finding that [the appellant] was sufficiently sophisticated and mature for the reasons specified by the court in order to uphold its waiver determination. Our review finds no evidence supportive of the court's finding that [the appellant] was 'of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived ...

[and] to have aided in the preparation of [his] defense.' "). We find no such evidence in the record either.

FN89. Id. at 377–78. See Cain v. State, 958 S.W.2d 404, 408 (Tex.Crim.App.1997) ("Our inability to decide questions of fact precludes de novo review of courts of appeals'[s] factual decisions."); Laster v. State, 275 S.W.3d 512, 519 (Tex.Crim.App.2009) ("We do not conduct a de novo factual sufficiency review."); Villarreal v. State, 286 S.W.3d 321, 328 (Tex.Crim.App.2009) ("Once a court of appeals has determined such a claim of 'factual' insufficiency, this Court may not conduct a de novo review of the lower court's determination.").

Conclusion: The court of appeals did not err to undertake a factual-sufficiency review of the evidence underlying the juvenile court's waiver of jurisdiction over the appellant. Because the juvenile court made no case-specific findings of fact with respect to the seriousness of the offense, we agree with the court of appeals that the evidence fails to support this as a valid reason for waiving juvenile-court jurisdiction. Even had the juvenile court cited the appellant's background as an alternative basis to justify his transfer, the court of appeals was correct to measure the sufficiency of the evidence to support this reason against the findings of fact made in the transfer order itself and to conclude that the evidence was insufficient to support those findings. We affirm the judgment of the court of appeals.FN90

FN90. Neither the State nor the appellant has contested the propriety of the court of appeals' ultimate disposition; neither party argues that the court of appeals erred, even in light of its holding that the juvenile court abused its discretion to waive jurisdiction, to declare that the cause remains "pending in the juvenile court." Moon, 410 S.W.3d at 378. The question nevertheless ineluctably presents itself: Pending for what? We leave that question for the juvenile court, but we do note that at least one legislatively provided alternative would seem to be for the juvenile court to conduct a new transfer hearing and enter another order transferring the appellant to the jurisdiction of the criminal court, assuming that the State can satisfy the criteria under Section 54.02(j) of the Juvenile Justice Code. See TEX. FAM.CODE § 54.02(j)("(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if: (1) the person is 18 years of age or older; (2) the person was: (A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed ... an offense under Section 19.02, Penal Code; ... (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; (4) the juvenile court finds from a preponderance of the evidence that: ... (B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because: ... (iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and (5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged."(emphasis supplied)).

It has been suggested that, rather than affirm the court of appeals's reversal of the juvenile court's transfer order, we should first remand the cause to the court of appeals with an order that the court of appeals remand the cause to the juvenile court for additional specific findings of fact to determine retroactively whether its original transfer order was valid. In State v. Elias, 339 S.W.3d 667, 675–77 (Tex.Crim.App.2011), for example, we held that the court of appeals should not have affirmed the trial court's grant of a motion to suppress without first remanding the case to the trial court to supply missing but critical findings of fact to inform appellate review of the ruling on that motion, under the aegis of Rule 44.4 of the Texas Rules of Appellate Procedure. Subsection (a) of this rule provides that "[a] court of appeals must not affirm or reverse a judgment or dismiss an appeal if: (1) the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and (2) the trial court can correct its action or failure to act." TEX.R.APP. P. 44.4(a). Subsection (b) requires the appellate court to "direct the trial court to correct the error." TEX.R.APP. P. 44.4(b). There are at least two problems with such a remand here. First of all, it is far from clear that Rule 44.4 can be read to authorize an appellate court to direct a juvenile court (not "the trial court") to supply a missing finding of fact. Secondly, and more fundamentally, there is a jurisdictional impediment to applying Rule 44.4 in the present context—a kind of chicken-and-egg paradox. The juvenile court has either validly waived its exclusive jurisdiction, thereby conferring jurisdiction on the criminal courts, or it has not. We cannot order the court of appeals to remand the cause to the juvenile court unless and until we affirm its judgment that the juvenile court's transfer order was invalid and that the criminal courts therefore never acquired jurisdiction. Unless and until the transfer order is declared invalid, the criminal courts retain jurisdiction, and the juvenile court lacks jurisdiction to retroactively supply critical findings of fact to establish whether or not it has validly waived its jurisdiction.

Keller, P.J., filed a dissenting opinion in which Hervey, J., joined.
Meyers, J., dissented.

Keller, P.J., filed a dissenting opinion in which Hervey, J., joined.

For almost forty years, the tendency among the courts of appeals has been to hold that a juvenile transfer order need not specify in detail the facts supporting the order. The court of appeals in this case broke rank with the weight of that authority, and this Court now goes along with the court of appeals's unconventional holding. I would, instead, stick with the conventional path followed by most of the courts of appeals. In the present case, the transfer order complied with the statute by listing the reason for the transfer. Moreover, the order was effective if the reason given for transfer—seriousness of the offense—was supported by sufficient evidence. The evidence clearly supports the reason given.

A. What the Statute Requires

1. The Text

The Family Code provides that, for a child above a certain age who commits one of the types of offenses listed, a juvenile court may waive its jurisdiction if, 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.FN1

In making this determination, the juvenile court must consider, among other matters:
(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.FN2

A juvenile court order waiving jurisdiction must “state specifically ... its reasons for waiver and certify its action.” FN3

FN1. TEX. FAMILY CODE § 54.02(a)(3).

FN2. Id. § 54.02(f).

FN3. Id. § 54.02(h).

2. The Transfer Order Need not Detail the Facts

In construing a statute, we give effect to the plain meaning of its text unless the language of the statute is ambiguous or the plain meaning leads to absurd results that the legislature could not have possibly intended.FN4 None of the provisions quoted above require the juvenile court to recite the facts upon which its transfer holding is based. Rather, the statutory scheme merely directs the juvenile court to state the reasons for the waiver. And as the Court's opinion makes clear, the weight of authority in the courts of appeals suggests that the reasons in support of transfer may be conclusory, and transfer orders may simply recite the statutory language.FN5 The legislature's failure to change the statutory wording in light of this authority is some indication that the legislature approves of the construction given.FN6 Moreover, if the legislature

had wanted to require the juvenile court to recite the facts that support its decision to transfer, the legislature could have easily drafted language to that effect.FN7

FN4. Boykin v. State, 818 S.W.2d 782, 785 (Tex.Crim.App.1991).

FN5. See Court's op. at n. 54.

FN6. State v. Colyandro, 233 S.W.3d 870, 878 (Tex.Crim.App.2007).

FN7. See e.g. TEX.CODE CRIM. PROC. art. 11.07, § 4(a) (requiring a subsequent application to contain sufficient "specific facts" establishing circumstances that would constitute an exception to the general rule prohibiting subsequent habeas applications).

And even assuming the Supreme Court's pronouncements in Kent v. United States FN8 influenced the statutory scheme before us, that case did not hold that a juvenile court was required to set forth in its order the facts that supported its transfer decision. Rather, the Supreme Court simply held that the federal statute before it required the juvenile court "to accompany its waiver order with a statement of the reasons or considerations therefor." FN9 The Supreme Court expressly stated that it did not read the federal statute to require that the statement of reasons "be formal or that it should necessarily include conventional findings of fact." FN10 The Supreme Court did suggest that a "statement of relevant facts" was necessary for appellate review, but that suggestion was made in the context of a case in which no hearing was held,FN11 and, so, no evidence would have been heard on the matter. In the present case, there was a hearing, the record of which can be reviewed on appeal to determine whether the facts elicited at the hearing support the juvenile court's stated reason for the transfer.

FN8. 383 U.S. 541 (1966).

FN9. Id. at 561.

FN10. Id.

FN11. Id.

3. The Four Statutory Factors are not Individually Subject to a Sufficiency Review

The court of appeals treated the four statutory factors outlined above as individually subject to a sufficiency review,FN12 and the Court upholds this approach as legitimate. But this approach artificially constrains a court's analysis beyond what the statute requires. If the legislature had wanted the factors listed to be supported by sufficient evidence and subject to a sufficiency review, it could have made them special issues, imposed a burden of proof with respect to the

individual factors, or required that a finding be made on a particular factor or factors.FN13 But the statute does not require the juvenile court to find any particular factor true, and the factors are not exclusive. The juvenile transfer statute's closest analogues to a special issue are the “seriousness of the offense” and “background of the child” reasons for transfer. The four statutory factors appear to be mere non-exclusive guides in deciding whether one of those two reasons for a transfer exists. In that respect, the four statutory factors appear to play a role similar to that of the Keeton factors with respect to the future-dangerousness special issue in capital murder cases.FN14

FN12. See Moon v. State, 410 S.W.3d 366, 372–78 (Tex.App.-Houston [1st Dist.] 2013, pet. granted).

FN13. See TEX.CODE CRIM. PROC. arts. 37.071, § 2(b) (special issues in a death penalty case), 42.12, § 3g(a)(2) (deadly-weapon finding).

FN14. See Keeton v. State, 724 S.W.2d 58, 61 (Tex.Crim.App.1987) (setting forth a list of factors that may be considered in assessing a defendant's future dangerousness).

Attempting to conduct a sufficiency review on the four factors individually creates myriad problems, especially when a factual sufficiency review is involved. If one conducts a factual sufficiency review of each factor individually, how does one account for the possible cumulative effect of multiple factors? That is, if two or more factors are supported by legally sufficient but factually insufficient evidence, must all of the factors be disregarded as insufficient, or can multiple factors that are individually supported by factually insufficient evidence nevertheless add up to sufficient evidence as a whole?

And conducting a sufficiency review of individual factors is not enough to resolve the transfer question because, at least in the Court's estimation, proof of an individual factor is not necessarily enough to support a transfer. If it were, appellant's transfer would clearly be supported because the first factor, whether the alleged offense is against a person or property, has been definitively established in the State's favor. Under the Court's reasoning, because proof of an individual factor is not necessarily enough, the appellate court must still decide whether the factors as a whole, and any other relevant factors, are sufficient to justify either the “seriousness of the offense” or “background of the child” reasons for transfer (or both). This results in a two-tiered approach to sufficiency: first analyzing the sufficiency of the individual factors, and then assessing the sufficiency of the factors as a whole. The closest analogue to this two-tiered approach is the test for constitutional speedy-trial violations, in which the individual factors are subject to a bifurcated standard of review and the balancing of those factors is subject to de novo review.FN15 But in that context, the factors are exclusive and, once a threshold showing is

made, they must all be balanced against each other FN16—neither of which is true of the statutory factors in the juvenile transfer context.

FN15. See Cantu v. State, 253 S.W.3d 273, 282 (Tex.Crim.App.2008); Johnson v. State, 954 S.W.2d 770, 771 (Tex.Crim.App.1997).

FN16. See Gonzales v. State, 435 S.W.3d 801, 808–15 (Tex.Crim.App.2014).

Moreover, the nature of at least two of the four statutory factors suggests that a sufficiency review of the individual factors is inappropriate. The first statutory factor—whether the alleged offense was against person or property—is just a question of law. The question is simply whether the offense alleged is a crime against a person, a crime against property, or a crime that falls within neither of those categories. The answer to that question can be resolved by looking solely to the State's charges. The fourth statutory factor—the prospects of protecting the public and rehabilitating the child—calls for predictions, and as such, would not seem to be the sort of issue that would be subject to a factual sufficiency review.FN17

FN17. See McGinn v. State, 961 S.W.2d 161, 168 (Tex.Crim.App.1998) ("But, predictions are not right or wrong at the time of trial—they may be shown as accurate or inaccurate only by subsequent events.... [O]nce the rationality of the prediction is established, attempting to determine whether a jury's prediction of the probability of future dangerousness is nevertheless wrong or unjust because of countervailing evidence is an impossible task.").

Finally, the non-exclusivity of the four statutory factors also raises the issue of the juvenile court importing its own factors and how we would conduct a sufficiency review in that context. This is not a mere hypothetical question because, in the present case, the transfer order included two factual conclusions that are not covered by the four statutory factors: (1) that appellant was charged with murder and (2) that there was probable cause to believe the offense had been committed. The first is undeniably true as a legal matter and the second is supported by legally and factually sufficient evidence. The fact that a trial court can import its own factors suggests that conducting a sufficiency review of an individual factor is myopic at best. The real, relevant question is whether the matters considered by the trial court are sufficient to justify a transfer on the basis of the seriousness of the offense or of the background of the child.

4. Factors Two and Four are Relevant to the Seriousness–of–the–Offense Reason for Transfer

The Court also errs when it concludes that the second and fourth statutory factors are relevant only to the "background of child" reason for transfer. The statutory language does not limit the purpose for which the four statutory factors may be considered, and the second and fourth factors in particular may well be relevant to the "seriousness of the offense" reason for transfer. The second factor—the sophistication and maturity of the child—relates to the seriousness-of-the-

offense reason for transfer in two ways. First, the more sophisticated and mature the child, the more blameworthy his conduct is likely to be.FN18 Blameworthiness is a legitimate factor in determining the seriousness of an offense.FN19 Second, the circumstances of the offense can be used to assess the sophistication and maturity of the child, at least in some respects.FN20

FN18. See Roper v. Simmons, 543 U.S. 551, 571 (2005) ("Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.").

FN19. See Penry v. Lynaugh, 492 U.S. 302, 322–28 (1989) (defendant's moral culpability constitutionally relevant to whether he should receive the death penalty and jury must be given a vehicle to give effect to evidence of facts that would reduce the defendant's blameworthiness).

FN20. See Ex parte Sosa, 364 S.W.3d 889, 894 (Tex.Crim.App.2012) ("We cannot agree that the facts of the offense are categorically irrelevant to the determination of mental retardation for Eighth Amendment purposes. The capital offense for which an Atkins claimant was convicted will generally be one of the best documented events in his life, and certain facts will have been proven to a jury beyond a reasonable doubt. In some cases—and we believe this is one of them—the complexity of the offense and the applicant's role in the offense need to be squared with a finding of mental retardation."); Ex parte Briseno, 135 S.W.3d 1, 8–9 (Tex.Crim.App.2004) (circumstances of offense may show forethought, planning, and complex execution of purpose).

With respect to the fourth factor, the circumstances of the crime and the background of the child are both relevant to determining whether society can be protected and the child can be rehabilitated. As we have explained in the capital murder context, the circumstances of the offense are highly relevant to determining whether a defendant poses a future danger to society, and sometimes are sufficient by themselves to do so.FN21 The protection-of-public/rehabilitation issue in the juvenile context is much like the inquiry into the future-dangerousness special issue.

FN21. Devoe v. State, 354 S.W.3d 457, 462 (Tex.Crim.App.2011) ("The circumstances of the offense and the events surrounding it may be sufficient in some instances to sustain a 'yes' answer to the future dangerousness special issue."); Druery v. State, 225 S.W.3d 491, 507 (Tex.Crim.App.2007) ("But the circumstances of the offense itself can be among the most revealing evidence of future dangerousness.") (internal quotation marks omitted).

B. The Statute Was Satisfied

The juvenile court's transfer order states that "because of the seriousness of the offense, the welfare of the community requires criminal proceeding." FN22 Under § 54.02(a)(3), this by itself was a sufficient reason to justify a transfer, if it is adequately supported by the record.

FN22. The exact wording of this portion of the juvenile court's order is as follows:

After full investigation and hearing at which hearing, the said CAMERON MOON, FATHER, MICHAEL MOON were present; the court finds that the said CAMERON MOON, is charged with a violation of a penal law of the grade of felony, if committed by an adult, to wit: MURDER committed on or about the 18TH day of JULY, 2008; that there has been no adjudication of THIS OFFENSE; that he was 14 years of age or older at the time of the commission of the alleged OFFENSE having been born on the 26TH day of FEBRUARY, 1992; that there is probable cause to believe that the child committed the OFFENSE alleged and that because of the seriousness of the OFFENSE, the welfare of the community requires criminal proceeding.

Moreover, the transfer order stated that the juvenile court had considered the four statutory factors, and the transfer order found three of those factors in the State's favor. With regard to the first factor, the court found and that this offense was one against the person. With regard to the second statutory factor, the juvenile court found that appellant was "of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived[,] ... to have aided in the preparation of his defense and to be responsible for his conduct." FN23 And with regard to fourth statutory factor, the juvenile court stated that, based on the evidence and reports presented, "there is little if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of [appellant] by use of procedures, services, and facilities currently available to the Juvenile Court." The transfer order also pointed out that appellant was charged with murder and concluded that there was probable cause to believe that the offense had been committed.

FN23. Emphasis added.

The evidence presented at the hearing demonstrates the seriousness of appellant's offense. Appellant pretended to be a drug seller and set up a fake drug deal in order to accomplish a robbery. He pursued and shot the victim as the victim fled. Appellant sent instructions by text message to a co-conspirator both before and after the offense. Text messages sent before the crime asked a co-conspirator if he was ready to begin and to bring a gun. In text messages after the crime, appellant attempted to cover up his involvement, saying: "Don't say a word." "Tell them my name is Crazy, and you don't know where I live."

The offense appellant was charged with—murder—is one of the most serious crimes in the Penal Code, but under the evidence presented, appellant's conduct—a murder in the course of a robbery—could have been charged as capital murder, the offense that carries the most serious punishment in this state.FN24 Appellant showed forethought in planning a robbery by setting up

a fake drug deal and giving instructions to his accomplice. He showed aggressiveness in pursuing the fleeing victim. And he attempted to cover up his involvement in the crime by admonishing his accomplice to refer to appellant only by a nickname and say he was unaware of where appellant lived. This evidence showed a crime that was serious, not only because of its effect, but also because of how it was conducted—with aggression and forethought and without apparent remorse.

FN24. See TEX. PENAL CODE § 19.03(a)(2).

This Court and the court of appeals not only arrive at the wrong result by applying the wrong standards; there are other flaws in those courts' analyses. In analyzing the sophistication-and-maturity factor, the court of appeals and this Court focus on appellant's ability to waive his constitutional rights and assist in his defense. But that was not the only aspect of sophistication and maturity described in the juvenile court's order. Overlooked by the court of appeals and this Court is the fact that the juvenile court also found appellant to have sufficient sophistication and maturity to be responsible for his conduct. That latter conclusion is amplysupported by the evidence in the record. And in connection with the fourth statutory factor, the court of appeals gave short shrift to the State's legitimate arguments regarding the circumstances of the offense and inaccurately accused the State of conflating various subsections of the statute.FN25 Given the flaws in the court of appeals's opinion and its clearly erroneous conclusions, we should not be affirming its decision today.

FN25. See Moon, 410 S.W.3d at 375 (acknowledging that the State pointed to the offense itself, to evidence showing that it was committed during a drug transaction, and to the fact that appellant repeatedly shot the victim while he fled and acknowledging the State's contention that "based on the seriousness of the offense alone, the evidence sufficiently demonstrated that appellant's transfer was consistent with the public's need for protection" but concluding that the State conflated subsections (a)(3) and (f) of the statute); id. at 376–78 (only discussion of the circumstances of the offense or the State's arguments was a passing reference to "the nature of the charged offense" as helping to establish the legal sufficiency (but not factual sufficiency) of the evidence to show the fourth statutory factor). Even if a factual sufficiency review could apply to the fourth statutory factor, the court of appeals's analysis would be inadequate for failing to "detail all the relevant evidence and ... explain in exactly what manner the evidence is factually insufficient." Steadman v. State, 280 S.W.3d 242, 247 (Tex.Crim.App.2009).

Dissent Conclusion: I would hold that the court of appeals improperly overturned the juvenile court's decision and that the juvenile court did not err in transferring appellant to adult criminal court. I respectfully dissent.