

In discretionary transfer to adult court, where case specific findings are made by the trial court in favor of transfer, the transfer will be upheld. [Gonzales v. State](15-2-2A)

On May 6, 2015, the San Antonio Court of Appeals concluded that a discretionary transfer to adult court was proper, where the juvenile trial court provided a sure-footed and definite basis from which an appellate court could determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable.

¶ 15-2-2A. **Gonzales v. State**, No. 04-14-00352-CR, --- S.W.3d ----, 2015 WL 2124773 (Tex.App.-San Antonio, May 6, 2015).

Facts: On August 13, 2012, David Estrada and Appellant Gonzales went to an apartment complex to purchase marijuana from James Whitley. Gonzales was fifteen-years-old at the time. Gonzales exchanged several phone calls with Whitley regarding the purchase of the marijuana. Before going to the apartment complex, Gonzales and Estrada decided to rob Whitley of the marijuana. Gonzales brought his Smith & Wesson .40 caliber semi-automatic firearm for purposes of the robbery.

Estrada and Gonzales were driven to the apartment complex by a third individual who did not know of their plans and did not know Gonzales brought a firearm to the meeting. When they arrived at the apartment complex, Estrada and Gonzales met Whitley and another individual, Pablo Pecina, by the washroom. Gonzales asked for the drugs and Whitley asked for the money. Estrada stalled and Gonzales lifted his shirt and pulled out his fire-arm. To Gonzales's surprise, Whitley also pulled a weapon and both men fired.

Whitley was struck in the thigh and died from his injuries; the bullet that struck Gonzales grazed his head, requiring a couple of staples. Gonzales and Estrada ran back to the vehicle and Gonzales asked the driver to take him to the hospital. Instead, the driver pulled into a gas station a short distance away. The driver called 911, told the dispatch, "Hey, my friend's been shot. Here he is," and he and Estrada left. Before leaving, Gonzales gave Estrada the firearm and told him to get rid of it.

While the San Antonio police officers were investigating Whitley's shooting, they received the call of Gonzales's shooting. It was not until later that the officers realized the two gunshot victims were connected. When officers arrived at the gas station, Gonzales reported "We were walking down the street, somebody drives by and shoots me." While they were investigating, Gonzales's mother arrived. His mother told him to tell the officers the truth. Gonzales finally told them "I was at the apartment complex, the guy shoots me and I shot him back." By all accounts, at that point in the evening, the officers were investigating the incident as a case of self-defense.

Gonzales was originally handcuffed and taken to the juvenile facility. However, shortly after arriving, the officers transported Gonzales to the Santa Rosa Children's Hospital to be

treated for his injuries. While Gonzales was at the emergency room, San Antonio Police Detective Raymond Roberts interviewed Estrada. Estrada told the officer that Whitley shot first; however, when confronted by the officer, Estrada confessed their plan to rob Whitley and identified Gonzales as possessing and firing the weapon. Detective Roberts requested Detective Kim Bower proceed to Santa Rosa Children's Hospital to check on Gonzales's condition and to tell his mother that Detective Roberts would like to speak to him. Detective Bowers testified she gave Gonzales's mother a card with her phone number and asked to her contact them when Gonzales was released.

Gonzales arrived at the police station between 2:30 a.m. and 3:00 a.m. Detective Roberts told both Gonzales and his mother "If y'all don't want to do it tonight, we don't have to do it tonight." The record shows Detective Roberts insisted Gonzales was not under arrest, and that Gonzales and his mother came in on their own, and they were both free to leave. In fact, Detective Roberts told both Gonzales and his mother that Gonzales would be leaving at the end of the interview. Detective Roberts did not Mirandize Gonzales and did not take him before a magistrate.

Detective Roberts asked Gonzales if he knew what was going on, if he was in pain, and how he felt. Gonzales responded, "I feel fine." Detective Roberts testified that Gonzales was able to answer all of his questions and did not appear to be in any distress. Gonzales originally told Detective Roberts that Whitley fired first and that he returned fire; Detective Roberts confronted him with Estrada's version of events and Gonzales ultimately told Detective Roberts their plan was to steal the marijuana from Whitley. Gonzales also told Roberts that he always takes a gun with him whenever he goes to buy weed.

When asked to relay what transpired, Detective Roberts described Gonzales's demeanor to the court. He "kind of chuckled, smiled and he said, 'That was my first mistake. My second was letting him stand up.' " When Detective Roberts asked Gonzales to explain what he meant, Gonzales explained that he should have pointed his weapon directly at Whitley instead of pointing it down.

Before leaving the police station, Detective Roberts gave Gonzales an opportunity to tell his mother the version of events he had relayed to the officer. Detective Roberts told Gonzales and his mother that the information would be presented to a magistrate and, if the magistrate determined the facts satisfied the elements set forth in the murder statute, then a warrant would issue. He also explained that if Gonzales ran, it would make matters worse. Later that morning, the magistrate issued an arrest warrant and Gonzales was arrested for the murder of James Whitley. On September 26, 2012, the State filed its original petition for waiver of jurisdiction and discretionary transfer to criminal court.

After a hearing, the juvenile trial court found probable cause to believe that Gonzales committed the offense. The court concluded that due to the nature of the offense, Gonzales's use of a deadly weapon, the psychiatric evaluation, the probation officer's certification and transfer

report, and the recommendations from the probation officers, the State's petition should be granted.

Gonzales contends the juvenile court erred when it found that the protection of the public and rehabilitation of Gonzales could not be served with the juvenile probation's resources and programs. At the hearing, defense counsel maintained that a Texas Juvenile Justice Department commitment would have adequately protected the public and rehabilitated Gonzales. Gonzales argued he was not a violent person by nature and exhibited excellent behavior throughout both the proceedings and all meetings with the probation officers. Defense counsel argued that Gonzales was the picture of someone who could be rehabilitated. He acknowledged the wrongfulness of Gonzales's delinquent behaviors and expressed his beliefs that Gonzales had improved because "he grew up."

On appeal, Gonzales further argues the trial court erred by failing to focus on the individual child. Instead, Gonzales contends the juvenile court focused solely on the severity of the allegations. Gonzales was cooperative with law enforcement and there were no reports of behavior issues during his incarceration. Gonzales suffers from cerebral palsy and epilepsy and requires services available through the juvenile system. Finally, counsel argues that determinate sentencing is a good option and would provide adequate protection to the community at large.

The State contends the factors weigh heavily in favor of transferring jurisdiction. Although the individual factors are subject to review, the ultimate determination is based on a review of the entire record. The State acknowledged Gonzales's cerebral palsy and epilepsy; yet, the State pointed out neither diagnosis prevented him from committing either this offense or previous offenses which invoked the juvenile justice system. Moreover, this was not just a murder—but felony murder. Gonzales went to the scene intending to steal drugs from a drug dealer. He took his own weapon to the drug deal and murdered the dealer. This was the third time in four years that Gonzales was involved in the legal system and, although he was not classified as a gang member, he did claim membership in YTC (Young Texas Click), a "tagging crew."

Held: Affirmed

Opinion: 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[.]" *Moon v. State*, 451 S.W.3d 28, 36 (Tex.Crim.App.2014) (alteration in original) (quoting *Hidalgo v. State*, 983 S.W.2d 746, 754 (Tex.Crim.App.1999)).

The State bears the burden to convince the juvenile court, by a preponderance of the evidence, that "the welfare of the community requires transfer of jurisdiction for criminal proceedings, either because of the seriousness of the offense or the background of the child (or

both.” Id. at 40–41 (citing Faisst, 105 S.W.3d at 11). The juvenile court's order must provide that the section 54.02(f) factors were taken into account in making the de-termination. Id. at 41–42. An appellate court may only set aside the juvenile court's de-termination upon a finding the trial court abused its discretion. Id. at 42.

C. Standard of Review

Until recently, the appellate courts applied different guidelines for the abuse of discretion standard. Compare *In re M.D.B.*, 757 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.”) with *Bleys v. State*, 319 S.W.3d 857, 862–63 (Tex.App.–San Antonio 2010, no pet.), abrogated by *Moon*, 451 S.W.3d at 47. (reviewing the factual sufficiency of the evidence to support the juvenile court's finding under Section 54.02(f)(4)). In *Moon*, 451 S.W.3d at 47, the Court of Criminal Appeals explained 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.

The court further explained, “In other words, was [the juvenile court's] transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria?” Id. Our review begins with an analysis of the factors outlined in Texas Family Code section 54.02(f).

D. Analysis under Texas Family Code section 54.02(f)

Gonzales's case was called before the juvenile court on October 19, 2012.

1. Whether Alleged Offense Was Against a Person or Property

The first factor listed in section 54.02(f) is “whether the alleged offense was against person or property.” TEX. FAM.CODE. ANN. § 54.02(f)(1). The alleged offense was the capital murder of James Whitley. Detective Roberts testified as to his conversation with Gonzales and his admitted involvement in the offense. Gonzales admitted that he and Estrada planned to rob Whitley during a marijuana purchase. Gonzales brought his firearm to the planned robbery. Gonzales planned the robbery and fired the shot that killed Whitley.

2. Sophistication and Maturity of the Child

The second factor is “the sophistication and maturity of the child.” Id. § 54.02(f)(2); *Faisst*, 105 S.W.3d at 11. Bexar County Juvenile Probation Officer Traci Geppert testified that she met with Gonzales and his family on multiple occasions and she considered him to be sophisticated and mature. She further relayed that he understood both the proceedings and the charges against him.

Also available to the trial court was the psychiatric evaluation requested by the juvenile probation office. Dr. Heather Holder's report provided that “[Gonzales] knows right from wrong

in a general sense, and he is specifically aware of the wrongfulness of the charge of which he is currently accused.” Additionally, she concluded “it is believed that [Gonzales] is mature and sophisticated in that he is responsible for his conduct and able to assist his attorney in his defense.” See TEX. FAM.CODE ANN.. § 54.02(f)(2).

Gonzales's mother also testified before the juvenile court. She described her son as very much in control during the incident. When he originally lied to the officer, she directed him to tell the officers the truth and he did so.

3. Record and Previous History of the Child

The third factor to consider is “the record and previous history of the child.” Id. § 54.02(f)(3); Faisst, 105 S.W.3d at 11. Gonzales had two prior juvenile probations. In 2008, he was placed on deferred probation for possession of a controlled substance, Xanax. In 2009, Gonzales was placed on formal probation for the charge of terroristic threats stemming from Gonzales threatening another student with a pair of scissors. See TEX. FAM.CODE ANN.. § 54.02(f)(3); Faisst, 105 S.W.3d at 11. He completed his probation in April of 2010. Both charges resulted in Gonzales being expelled from the school he was attending.

At the time of his arrest, Gonzales was a student at Robert E. Lee High School and several letters were presented to the trial court describing Gonzales as a nice student without any outward displays of violent behavior.

4. Adequate Protection of the Public and Likelihood of Rehabilitation

The fourth factor to consider is “the prospect of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.” TEX. FAM.CODE ANN. § 54.02(f)(4); Faisst, 105 S.W.3d at 11. At the time of the offense, Gonzales was living with his mother and two sisters. When his mother was notified of the shooting, her initial reaction was that it could not be Gonzales because he was at home. She was unaware that he had left the residence and did not know that he owned a firearm. Geppert further addressed Gonzales's cerebral palsy and epilepsy diagnoses. He had a special education distinction based on his orthopedic impairment and a reading disorder. He was mainstreamed at the high school and had not exhibited behavioral issues while in detention. During cross-examination, Gonzales's mother conceded that Gonzales had recently run away from home because he did not like “living by the rules.” However, after living on the streets for a period of time, he had returned to their home.

Geppert testified the juvenile court system's probation jurisdiction would end when Gonzales turned eighteen and the jurisdiction for Texas Youth Commission would end when Gonzales turned nineteen. Geppert explained the only other option, besides adult sentencing, was determinate sentencing. She did not believe determinate sentencing was proper because of the allegations: the charge was murder, Gonzales was carrying his weapon, and Gonzales was purchasing marijuana. Additionally, Geppert testified that she did not believe the juvenile probation system had sufficient time to work with Gonzales given the severity of the allegations.

See TEX. FAM.CODE ANN.. § 54.02(f)(3); Faisst, 105 S.W.3d at 11. Her supervisor agreed, and so did a staffing committee, consisting of two supervisors and a Child Protective Services representative.

5. Specific Factual Findings

Not only must the record substantiate the court's findings, but the juvenile court must make “case-specific findings of fact” with respect to the 54.02(f) factors. See Moon, 451 S.W.3d at 51. Here, the juvenile court judge made the following findings:

- 1) Gonzales was alleged to have committed murder under Texas Penal Code section 19.02;
- 2) Gonzales was sixteen at the time of the hearing;
- 3) Gonzales was fifteen at the time of the offense;
- 4) Gonzales's mother resides in Bexar County;
- 5) no adjudication hearing had yet been conducted;
- 6) the parties were properly notified of the hearing;
- 7) prior to the hearing, the trial court obtained a psychological assessment including a psychological examination, a complete diagnostic study, a social evaluation, full investigation of Gonzales, Gonzales's circumstances, and the circumstances of the alleged offense;
- 8) the offense was against a person;
- 9) Gonzales is sophisticated and mature enough to be transferred into the criminal justice system and he understands the allegations, the court proceedings, and their possible consequences;
- 10) the procedures, services, and facilities available to the Juvenile Court are inadequate for rehabilitation of Gonzales while also protecting the public; and
- 11) after a full investigation and hearing, Gonzales's circumstances, and the circumstances of the offense, there is probable cause to believe that Gonzales committed the offense and, because of the seriousness of the offense and the background of Gonzales, the welfare of the community required that criminal proceedings proceed in Criminal District Court.

Conclusion: Here, the juvenile court's findings are substantially more case-specific than the findings analyzed in Moon. See Moon, 451 S.W.3d at 51 (concluding the trial court's findings were superfluous because it only considered fact that offense was against another person). The juvenile court made specific findings as to Gonzales. Cf. id. Based on a review of the record, including the trial court's findings of fact, we conclude the trial court provided “a sure-footed and

definite basis from which an appellate court can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable.” Id. at 49; cf. Guerrero v. State, No. 14–13–00101–CR, 2014 WL 7345987, at *3 (Tex.App.–Houston [14th Dist.] Dec. 23, 2014, no pet.)(mem. op., not designated for publication) (concluding the trial court's order was deficient under Moon). Accordingly, we overrule Gonzales's first issue.