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QUICK LINKS

Juvenile Law Section Website
Nuts and Bolts of Juvenile Law
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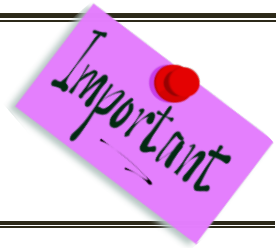
Dear Juvenile Law Section Members:

Welcome to the e-newsletter published by the Juvenile Law Section of the State Bar of Texas. Your input is valued so please take a moment to email us and tell us what you think of the new format.

The "Review of Recent Cases" includes cases that are hyperlinked to Casemaker, a free service provided by TexasBarCLE. To access these opinions, you must be a registered user of the TexasBarCLE website, which requires creating a password and log-in. If you do not wish to receive emails from TexasBarCLE, you can opt-out of their email list.



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EDITOR'S FOREWORD By Associate Judge Pat Garza

BRING THE FAMILY AND GET THERE EARLY!

Yes, this one's special. Our 30th Annual Juvenile Law Conference will be held at the end of this month and everyone is getting anxious. And for the first time, we are holding it at the Horseshoe Bay Resort, in Horseshoe Bay, Texas. Horseshoe Bay Resort is an expansive hotel with golf, tennis & restaurants, plus a marina & even a landing strip.

But there's more. Not only will this conference celebrate the 30th anniversary of the Juvenile Law Section Institute, we will also be celebrating the 50th anniversary of In re Gault. For those of you new to juvenile law, In re Gault was a 1967 landmark U.S. Supreme Court decision that held that juveniles accused of crimes in a delinquency proceeding must be afforded many of the same due process rights as adults, such as the right to timely notification of the charges, the right to confront witnesses, the right against self-incrimination, and the right to counsel.

Meanwhile, back at the party… The Kick Off Party and Golf Tournament is on registration Sunday (Feb 26) at 2:00 pm. For those of you that don't know how to play golf I will be offering free tips at the bar before play begins. Anyone who might actually need a tip to play at the Horseshoe Bay Whitewater Putting Course gets to buy me a drink. Ok, I lied the tips aren't free. But come on people, it's a putting course. This 18-hole putting course is designed like a regulation golf course complete with fairways, bunkers, water hazards and fully landscaped Bermuda grass. You know how this works. This is where all the non-golfers show up all the "real" golfers by kicking their butts in miniature golf. The best part is that this course is located on the grounds of the Horseshoe Bay hotel (just outside the back door). BTW: You don't have to play. Just come out to join the party. Also, at 8pm that evening, its Movie by the pool, so bring your swimming outfits. Don't worry about the weather, the pool is heated.

But there's more. On Monday night the Juvenile Law Foundation's annual Auction with live music and another cash bar will get underway. As always all proceeds raised at the auction will be used to provide scholarships to Texas juveniles. If you are interested in making a tax-deductible donation of an item for the Silent Auction, please contact the Juvenile Law Foundation at juvenilelawfoundation@gmail.com or Susan Clevenger at 281.580.4501 or gtclevenger@yahoo.com. You may donate items prior to or at the conference upon arrival.

And finally, Tuesday night at 7pm, it's the party no one should miss. The Juvenile Law Section's 30th Anniversary Party. For those of you that don't know, our Section started in 1987, as an idea by the late Professor Robert O. Dawson (which is why the institute is named after him). The idea was to create a conference that only dealt with juvenile law issues and that would bring juvenile law in Texas to the next level. This great Conference has spent the last 30 years educating and guiding juvenile justice practitioners in the State of Texas. This will be a celebration of us. Once again it will be an evening of music, dancing, a photo booth, and a great cash bar to celebrate all things past and present that have made this Conference and our Section so successful year after year. It's never too late to sign up.

BRING THE FAMILY AND GET THERE EARLY! Hope to see you there.

Officer and Council Nominees. The annual meeting of the Juvenile Law Section will be held Monday, February 27, 2017, at 4:15 p.m. The Council has made the following nominations: Chair-Elect: Kaci Singer; Treasurer: Michael Schneider; Secretary: Patrick Gendron; Council Members with Terms to Expire in 2020: Frank Adler, Kim Hayes, and Jana Jones. If you have someone that you would like to nominate from the floor, contact the Chair of the Nominations Committee, Kevin Collins, at (210) 223-9480 or kevin@kevincollinslaw.com .

Some of God's greatest gifts are unanswered prayers.

Garth Brooks

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CHAIR'S MESSAGE By Riley Shaw

Dear Section Members:

It has been quite a winter and the Texas Legislature is in full swing. As has been true for the past several sessions, Juvenile Justice Reform continues to be a priority in Texas. Topics of interest at the legislature this session are juvenile records, the age of juvenile court jurisdiction, regionalization (keeping kids closer to home), diverting youth from the juvenile justice system, and juvenile justice funding at the state and local levels. You may check out what's out there at www.capitol.state.tx.us. It's a great website and will help you stay active and informed about issues of interest to you.

In Section news, the 30th Annual Juvenile Law Conference is coming up in less than a month! This year, the conference will be at the beautiful Horseshoe Bay Resort on Lake LBJ in the scenic Texas Hill Country. The conference is scheduled for February 26 through March 1 and the slate of speakers is exceptional. The Course is approved for 16 hours of CLE, including 3 hours of ethics. We have fun activities for the entire family, including boat rides, golf, live music, and great food. Please go to www.juvenilelaw.org to take a look at the brochure and register today! Early registration rates are $250 for members, and $275 for non-members. The last day of early registration is February 12. Late and on-site registration is $325.

Horseshoe Bay was offering a room rate of $159 per night, however, as of the date of this publication, the reserved date for making reservations has passed. If Horseshoe Bay is unable to honor to rate, or is sold out of our block, the overflow hotel for this conference is the LaQuinta, located at 501 Hwy 2147 West in Marble Falls (roughly two miles from the resort property). The hotel is offering a discounted rate of $89 for a standard room (Sunday-Wednesday). For reservations at the LaQuinta, please contact the reservation line at 830.798.2020. If you call to make reservations, please specify that you are with the Juvenile Law Section to ensure the special conference rate. We look forward to seeing you there!

As always, we are grateful to the Honorable Pat Garza for all of the time-consuming work that he does to keep us all informed of the latest news from the appellate courts around the State and the Nation. Thank you, Judge Garza!

REVIEW OF RECENT CASES

By Subject Matter

By Case

CRIMINAL PROCEEDINGS

THE TEXAS FAMILY CODE AND THE TEXAS CODE OF CRIMINAL PROCEDURE EXCLUDE AN ADULT WITH A JUVENILE DETENTION RECORD FROM THE REMEDY OF EXPUNCTION.

¶ 17-1-3. **Ex Parte Enger,** No. 14-15-00846-CV, 2016 WL 717731 [Tex.App.—Houston (14th Dist.), 12/8/16]

Facts: This appeal arises from the trial court's order denying J.S.E.'s petition for expunction. Appellant contends the trial court erred in construing section 52.01(b) of the Texas Family Code and article 55.01 of the Texas Code of Criminal Procedure to exclude an adult with a juvenile detention record from the remedy of expunction. See Tex. Fam. Code Ann. § 52.01(b) (West 2014); Tex. Code Crim. Proc. Ann. art. 55.01 (West Supp. 2016).1 Further, appellant contends section 52.01 and article 55.01, as applied to him, violate his right to equal protection. See U.S. Const. amend. XIV, § 1. For the reasons stated below, we affirm.

Expunction is a statutory privilege, not a constitutional or common-law right. Tex. Dep't of Pub. Safety v. J.H.J., 274 S.W.3d 803, 806 (Tex. App.–Houston [14th Dist.] 2008, no pet.). Because an expunction proceeding is civil rather than criminal in nature, the petitioner bears the burden to prove all statutory requirements have been satisfied. Id. A petitioner is entitled to expunction only after all statutory conditions have been met. Id. The trial court has no equitable power to extend the protections of the expunction statute beyond its stated provisions. Id. We review the trial court's decision to deny a petition for expunction for abuse of discretion. See Heine v. Tex. Dep't of Pub. Safety, 92 S.W.3d 642, 646 (Tex. App.–Austin 2002, pet. denied).

The record reflects that at the age of sixteen, appellant was detained at school for possession of a simulated controlled substance. In exchange for appellant's removal from the school, "the matter was dropped." As an adult, a background check and social study report revealed documents regarding the detention.2 Appellant then petitioned for expunction of those records.

Held: Affirmed

Opinion: We "construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended." Williams v. State, 253 S.W.3d 673, 677 (Tex. Crim. App. 2008). Article 55.01(a) provides "[a] person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if ..." Tex. Code Crim. Proc. art. 55.01(a). Thus an arrest is a threshold requirement under the expunction statute. Quertermous v. State, 52 S.W.3d 862 (Tex. App.–Fort Worth 2001, no pet.) (citing Harris Cty. Dist. Attorney v. Lacafta, 965 S.W.2d 568, 570 (Tex. App.–Houston [14th Dist.] 1997, no pet.)). Pursuant to section 52.01(b) of the Texas Family Code, however, "[t]he taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search ..." Tex. Fam. Code § 52.01(b); see also Quertermous, 52 S.W.3d at 864 (citing Vasquez v. State, 739 S.W.2d 37, 42 (Tex. Crim. App. 1987)). A juvenile is not "arrested" until the juvenile court certifies him as an adult and signs a proper transfer order to district court. Tex. Fam. Code Ann. § 54.02(h) (West 2006); see also Quertermous, 52 S.W.3d at 864 (citing Vasquez, 739 S.W.2d at 43). It is the transfer of custody that constitutes an arrest. Tex. Fam. Code § 54.02(h); see also Quertermous, 52 S.W.3d at 864. Accordingly, for purposes of the expunction statute, appellant was never arrested.3 See id.; see also State v. J.B.C., 03–14–00034–CV, 2014 WL 4064412 (Tex. App.–Austin Aug. 13, 2014, no pet.) (mem. op.) (not designated for publication). Because appellant did not prove all statutory requirements were satisfied, we hold the trial court did not abuse its discretion in denying his petition for expunction. Appellant's first issue is overruled.

Conclusion: Appellant further claims that depriving him of the expunction remedy violates his right to equal protection. U.S. Const. amend. XIV, § 1. Appellant's argument, however, is that he is not being treated the same as people who were arrested when they were adults, not that he is being treated differently from others who were detained as juveniles. Because appellant is not claiming that people similarly situated to him are treated differently under the law, there is no equal protection violation. See Wesbrook v. State, 29 S.W.3d 103, 113 (Tex. Crim. App. 2000) (holding no equal protection violation from Legislature's decision to treat capital murder defendants differently from other murder defendants). We overrule appellant's second issue.
The order of the trial court is affirmed.

DISPOSITION PROCEEDINGS

MILLER V. ALABAMA DID NOT HOLD THAT MANDATORY LIFE SENTENCES FOR JUVENILE OFFENDERS WITH THE POSSIBILITY FOR PAROLE VIOLATE THE EIGHTH AMENDMENT.

¶ 17-1-4. **Hood v. Davis**, No. 3:15-CV-1821-BK, 2016 WL 7188299 (U.S. Dist, N.D. Texas, Dallas, 12/12/16).

Facts: In 1997, Petitioner was convicted of capital murder and sentenced to life imprisonment. See State v. Hood, No. F96-14800 (283rd Jud. Dist. Ct., Dallas County, Tex., 1997), aff'd, No. 05-97-01243-CR, 1999 WL 814296 (Tex. App. –Dallas 1999, no pet.). He later unsuccessfully challenged his conviction in state and federal habeas proceedings. See Hood v. Cockrell, No. 3:01-CV-02680-G, 2003 WL 22790858 (N.D. Tex. Nov. 21, 2003), recommendation accepted, 2003 WL 102621 (N.D. Tex. Jan. 8, 2003) (dismissing first federal habeas petition as time barred). In February 2015, he filed a second state application claiming that his mandatory life sentence, for a crime he committed as a juvenile offender, violated the Eighth and Fourteenth Amendments to the United States Constitution under Miller v. Alabama. The Texas Court of Criminal Appeals dismissed the application as successive, see Ex Parte Hood, No. WR-49,111-02 (Tex. Crim. App. May 6, 2015)1, and on May 27, 2015, Petitioner submitted this federal petition reiterating his Miller claim.2 Doc. 3 at 6-8. Subsequently, the Court of Appeals for the Fifth Circuit granted "tentative" authorization to file the successive application, directing this Court to consider whether the petition is time barred and whether Petitioner has made the showing required to file a successive application. Doc. 11 at 2-3.

Respondent argues that Miller is inapplicable because Petitioner was not sentenced to life imprisonment without the possibility of parole, therefore the petition is time barred and Petitioner also cannot make the requisite showing to file a successive application. Doc. 21 at 2-5. Petitioner replies that Miller is applicable because it prohibits mandatory life imprisonment for juvenile offenders who, like himself, ultimately may "not be eligible for parole" and, thus, face "the possibility of dying in prison." Doc. 28 at 2-3.

Held: Dismissed with Prejudice

Opinion: In Miller v. Alabama, the United States Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." Miller v. Alabama, ——U.S. ——, 132 S. Ct. 2455, 2469 (2012) (emphasis added). More recently, in Montgomery v Louisiana, —— U.S. ——, 136 S. Ct. 718, 734-736 (2016), the Supreme Court held that the Miller opinion announced a new substantive rule of constitutional law that is retroactive on state collateral review. That notwithstanding, Petitioner's reliance on Miller is misplaced.

The Miller holding is not applicable here because Petitioner's 1997 sentence of life imprisonment is not without the possibility of parole. Doc. 21-1 at 3 (judgment). Indeed, Petitioner has never been subject to a sentence of life without the possibility of parole. At the time Petitioner was sentenced, an individual adjudged guilty of a capital felony in a case in which the State did not seek the death penalty received an automatic life sentence that permitted parole. TEX. PENAL CODE § 12.31(a) (1994). And while subsequent amendments to that statute provided for the imposition of a sentence of life without parole for a capital offense committed by a defendant at least 17 years of age, in response to Miller, the Texas legislature amended section 12.31(a) to provide that "[a]n individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for: (1) life, if the individual committed the offense when younger than 18 years of age; or (2) life without parole, if the individual committed the offense when 18 years of age or older. TEX. PENAL CODE § 12.31(a) (2013)." Id.

That notwithstanding, Petitioner maintains that Miller "forbids a sentencing scheme that mandates life imprisonment for juvenile offenders who commit nonhomicidal offenses.3" Doc. 3 at 8; see also Doc. 28 at 3. In his reply, Petitioner also argues that because "TEXAS 'does not guarantee ... parole to any offender' " he "faces the possibility of dying in prison," which he argues is "an Eighth Amendment violation" under Miller. Doc. 28 at 2-3 (emphasis in original). Petitioner misstates the scope of the rule announced in Miller, however.

Conclusion: As has been repeated here, Miller did not hold that mandatory life sentences for juvenile offenders with the possibility for parole violate the Eighth Amendment. Rather, Miller's holding is limited to juvenile offenders sentenced to life imprisonment without the possibility of parole. Miller, 132 S. Ct. at 2469. Petitioner's wholly unsupported extrapolation of Miller's reach is of no moment.

SEARCH & SEIZURE

REASONABLE GROUNDS FOR STOP AND FRISK ALLOWED EVEN WHERE RUNAWAY WAS GONE FOR LESS THAN 24 HOURS.

¶ 17-1-2. **In the Matter of J.C.,** MEMORANDUM, No. 14-15-00696-CV, 2016 WL 7018207 [Tex.App.— Houston (14th Dist.), 12/1/16].

Facts: The Riverside Drive-In was robbed at gunpoint on Friday, May 2, 2014. Mr. Matthew, the complainant and part-owner of the Riverside Drive-In, testified that the robber was a male, wearing a long-sleeved T-shirt, black pants or jeans, and his face was covered with a white cloth and a "red thing on the head."1 Complainant also testified that the robber pointed a black gun at his head, directed him to the register, and handed him a grocery bag. Complainant gave the robber all the paper money in the register, about $260

to $270. The robbery took less than a minute and occurred around 8:45 in the evening. The Riverside Drive-In's surveillance video confirmed this testimony.

On the same evening, an individual parked a truck in front of Mr. and Mrs. Macha's house. Mr. Macha testified that the individual's face was covered "with a kind of reddish hat and some kind of light-colored face mask." The individual ran in the direction of the Riverside Drive-In located a third of a mile away. Thinking this behavior odd, Mr. Macha recorded the truck's license plate number and provided it to the police. The police later confirmed that the plates were registered to appellant's father.

Appellant, a 16-year-old juvenile at the time of the offense, lived in East Bernard with D.C., his legal guardian and paternal grandmother. Around 7:40 p.m., D.C. told appellant to walk the dogs and take the trash to their burn pit. D.C. generally allowed appellant to use a truck, which belonged to his father, to take the trash. Appellant left to complete his chores and returned in time to watch a 9:00 p.m. television show. The next morning, Saturday, May 3, 2014, D. C. noticed that both appellant and the truck were missing. Appellant did not have D.C.'s permission to leave home or take the truck.

D.C. tried contacting appellant, but he did not answer her calls. On Sunday, May 4, D.C. reported appellant as a missing runaway. Later on May 4, appellant contacted D.C. and told her he was with his girlfriend and on the river in New Braunfels. D.C. told appellant that he needed to come home with the truck. Appellant did not comply.

On May 5, Officer Bettice and Corporal Spence of the New Braunfels Police Department saw appellant sitting on the street curb wearing a white T-shirt wrapped around his head. Corporal Spence identified appellant and ran his name through dispatch. Corporal Spence learned that appellant was listed on the National Crime Information Center (NCIC) as a runaway child. The NCIC database described appellant as endangered because he was bipolar and off his medicine. Appellant was in possession of his father's truck. After officers made contact with appellant, they attempted to contact an adult responsible for him. After about forty minutes, officers decided to transfer appellant to the Juvenile Probation Office. Pursuant to a pat-down, the officers seized a black BB gun from appellant and testified that it looked like a realistic handgun. Detective White testified that the BB gun could be a deadly weapon and cause serious bodily injury if it discharged into a person's eye.

A jury found that appellant engaged in delinquent conduct by committing the offense of aggravated robbery. The trial court assessed appellant's sentence at eleven years' confinement in the Texas Juvenile Justice Department with the possibility of transfer to the Institutional Division of the Texas Department of Criminal Justice.

In his first point of error, appellant contends that the trial court erred in denying his motion to suppress the evidence, specifically appellant's BB gun that police seized following the pat-down.

Held: Affirmed

Memorandum Opinion: We review a motion to suppress for abuse of discretion. Lollie v. State, 465 S.W.3d 312, 314 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citing Lujan v. State, 331 S.W.3d 768, 771 (Tex. Crim. App. 2011) (per curiam)). In conducting this review, we employ a bifurcated standard. State v. Kerwick, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013). We give almost total deference to the trial court's determination of historical facts and mixed questions of law and fact that rely on credibility or demeanor. Id. We review de novo pure questions of law and mixed questions of law and fact that do not rely on the trial court's credibility determinations. Martinez v. State, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011). The scenario here is a mixed question of law and fact, the resolution of which turns on an evaluation of credibility and demeanor. The proper standard of review is therefore the first category, "almost total deference" to the trial ruling.

Juvenile adjudication hearings proceed under Chapter 38 of the Code of Criminal Procedure and the Texas Rules of Evidence applicable to criminal cases. Tex. Fam. Code Ann. § 54.03(d) (West 2014). Evidence obtained by an officer in violation of the Constitution or laws of the State of Texas is inadmissible at trial. Tex. Crim. Proc. Code art. 38.23 (West 2015).

A child may be taken into custody by a law-enforcement officer if there is probable cause to believe that the child has engaged in conduct indicating a need for supervision. Tex. Fam. Code Ann. § 52.01(a)(3)(B) (West 2014).2 Conduct indicating a need for supervision includes the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time. Tex. Fam. Code Ann. § 51.03(b)(3) (West 2014). Probable cause "ripens at the moment facts and circumstances within the officer's knowledge ... are sufficient to warrant a prudent man in believing the suspect has committed or is committing an offense." Johnson v. State, 171 S.W.3d 643, 649 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)).

In its ruling on appellant's motion to suppress, the trial court stated: "I find the stop proper. I find that they had information that this young man was a runaway. I do find that their taking the ... air pistol into custody,

was lawful." Appellant asserts that the police officers had no probable cause to take appellant into custody, and therefore no authority to conduct the pat-down, because based on their knowledge appellant was not absent from his home for a substantial length of time. See Tex. Fam. Code Ann. § 51.03(b)(2) (West 2014).

We have found no cases construing the term "substantial length of time" in the context of Section 51.03(b)(2) of the Texas Family Code. However, the Penal Code contains the same term. Compare Tex. Penal Code § 25.06(a)(2) (West 2015) ("[A runaway child] is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.") with Tex. Fam. Code Ann. § 51.03(b)(2) (West 2014) (defining conduct indicating a need for supervision as "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). We find the cases construing the term in the Penal Code instructive. The cases support the conclusion that the term could include a juvenile's absence for less than 24 hours. See Barrow v. State, 973 S.W.2d 764, 768 (Tex. App.—Amarillo 1998, no pet.) (5 hours); accord Urbanski v. State, 993 S.W.2d 789, 794–95 (Tex. App.—Dallas 1999, no pet.) (17 hours).

We adopt the reasoning as set forth in Urbanski to determine what period of absence is "substantial." The court in Urbanski reasoned that because the legislature did not assign a fixed number to the meaning of "substantial length of time," it left the issue to the fact finder to determine on a case-by-case basis. 993 S.W.2d at 794–95. To make this determination, the Urbanski court considered these factors: the child's duration of absence; time of day; the intent of the child in returning; authorization to leave; child's age; child's motive for running away; the child's activity during the absence; the child's distance from home; and the number, age, maturity, and experience of the persons, if any, accompanying or assisting the child during the absence.

Here, the police officers who seized appellant testified during the suppression hearing that they were made aware that appellant: was age 16; left his grandmother's home without her permission; took the truck without permission; was absent for at least one night; was located roughly 150 miles away from home; and, during his absence, was "off his meds and using drugs," and covered his face and head with a shirt or towel on a hot day. The police officers also knew appellant was in the NCIC runaway database.

Conclusion: Considering the evidence, we hold that the trial court would not have abused its discretion in finding that appellant was missing for a substantial length of time and that the police officers had probable cause to take appellant into custody under Section 52.01 of the Texas Family Code. The pat-down was therefore lawful and the BB gun was admissible. The trial court did not abuse its discretion in denying appellant's motion to suppress the BB gun.

WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT

WHERE OFFENSE WAS COMMITTED BY FIFTEEN YEAR OLD IN AUGUST, 1973, THE NOW FIFTY-EIGHT YEAR OLD, IS NOT A "CHILD" UNDER THE TERMS OF ARTICLE 2338–1, BECAUSE UNDER THAT PROVISION THE DETERMINATION OF A CHILD IS MADE AT THE TIME THE PERSON IS BROUGHT TO COURT, NOT AT THE TIME OF THE OFFENSE.

¶ 17-1-5. **In the Matter of M.K.,** __S.W.3d.__, No. 02-16-00291-CV, 2017 WL 281036 (Tex.App.—Ft. Worth, 1/23/2017).

Facts: Appellant M.K. is now fifty-nine years old. The State alleges that on August 7, 1973—when Appellant was fifteen years old—he murdered fourteen-year-old D.R.. The State previously filed a delinquent-child petition in juvenile court against Appellant in 1973 alleging that he murdered D.R., but the juvenile court ultimately dismissed the case at the State's request because of insufficient evidence. According to the State, the case went cold until 2015, when investigators discovered previously unknown evidence implicating Appellant in D.R.'s murder.

In reviewing the case file, Detective McCormack further learned that the State filed a delinquent-child petition against Appellant in juvenile court on August 24, 1973, alleging that he had murdered D.R. with a shotgun. The State amended its petition twice, filing its third and final amended petition on January 7, 1974, in which it alleged Appellant (1) had murdered D.R. on August 7, 1973 "by shooting him with a gun and stabbing and cutting him with a knife"; (2) had committed aggravated assault with a deadly weapon against R.H. on August 6, 1973; and (3) had committed aggravated assault with a deadly weapon against M.P. on August 6, 1973.

Held: Order Vacated, Appeal Dismissed.

Opinion: The arguments raised in Appellant's first issue, the State's reliance on subsection 54.02(j)(4)(A) for the efficacy of the juvenile court's amended waiver and transfer order, and our review of the record and governing legal authorities in light of the particularly unique facts of this case have led us to conclude that we must first consider (1) whether the juvenile court had subject-matter jurisdiction to conduct the waiver and transfer proceeding and render the amended waiver and transfer order that is the subject of this

appeal and, consequently, (2) whether we have jurisdiction to decide this appeal. See Freedom Commc'ns, Inc. v. Coronado, 372 S.W.3d 621, 623–24 (Tex. 2012) (stating that appellate courts have no authority to consider the merits of an appeal from an order rendered by a trial court that lacked jurisdiction). Although neither party raised this issue during the juvenile court's certification hearing or in their briefing before this court, subject-matter jurisdiction may not be waived, and we are obliged to consider it sua sponte. Id. (stating that jurisdiction must be considered, even if that consideration is sua sponte); Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 445 (Tex. 1993) (stating that subject-matter jurisdiction may not be waived). In undertaking that inquiry, we begin with an examination of the history of subsection 54.02(j)(4).

As it exists today, the Juvenile Justice Code is codified as Title 3 of the Texas Family Code. See Tex. Fam. Code Ann. §§ 51.01–61.107 (West 2014 & Supp. 2016). The legislature did not add the current version of subsection 54.02(j)(4) to Title 3 until 1995. See Act of May 25, 1973, 63rd Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476–1477, amended by Act of May 19, 1975, 64th Leg., R.S., ch. 693, § 16, 1975 Tex. Gen. Laws 2152, 2156–57, amended by Act of May 8, 1987, 70th Leg., R.S., ch. 140, § 3, 1987 Tex. Gen. Laws 309, 309, amended by Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 34, 1995 Tex. Gen. Laws 2517, 2533–34. Before the current version of subsection 54.02(j)(4) went into effect, subsection 54.02(j)(4) of the Texas Family Code provided as follows:

(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:

(4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

Act of May 8, 1987, 70th Leg., R.S., ch. 140, § 3, 1987 Tex. Gen. Laws 309, 309; see In re P.L.G., No. 05–95–00002–CV, 1995 WL 591208, at *2 n.1 (Tex. App.–Dallas Oct. 3, 1995, writ denied) (not designated for publication) (setting forth the text of subsection 54.02(j)(4) as it existed prior to the changes the 74th Legislature made to that subsection in 1995). In 1995, the legislature enacted H.B. 327, which amended the 1987 version of subsection 54.02(j)(4) to its current form. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 34, sec. 54.02, 1995 Tex. Gen. Laws 2517, 2533–34.

When comparing the current version of subsection 54.02(j)(4) with the previous version, it is evident that one change H.B. 327 made to subsection 54.02(j)(4) was to add for the first time the language that the State relies upon for the efficacy of the juvenile court's amended waiver and transfer order in this case—that is, it added the language authorizing a juvenile court to waive jurisdiction and transfer a person who is eighteen years of age or older and who committed an offense when he was a child to criminal district court by finding, by a preponderance of the evidence, that "for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person." See id.

H.B. 327 expressly provided that the changes it made to the law, which included the addition of this new provision, became effective January 1, 1996. See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 105, 1995 Tex. Gen. Laws 2517, 2590–91. However, while the amended subsection became effective January 1, 1996, H.B. 327 also expressly limited the applicability of the changes it made in the following way:

(a) Except as provided by Subsection (b)[7] of this section, this Act applies only to conduct that occurs on or after January 1, 1996. Conduct violating a penal law of this state occurs on or after January 1, 1996, if every element of the violation occurs on or after that date. Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106(a), 1995 Tex. Gen. Laws 2517, 2591.

It is undisputed that the conduct forming the basis of the State's waiver and transfer petition in this case occurred on August 7, 1973. Thus, under the plain terms of section 106 of H.B. 327, the changes made by that Act—which, as noted above, include the addition of the current subsection 54.02(j)(4)(A) language—do not apply to this case. Id. Rather, H.B. 327 mandates that because this case involves conduct that occurred before January 1, 1996, it is governed by the law in effect at the time the conduct occurred.8 Id.

Accordingly, we conclude that this case is governed by the law in effect on August 7, 1973, the date on which Appellant allegedly killed D.R. See id.; In re N.M.P., 969 S.W.2d 95, 98 (Tex. App.–Amarillo 1998, no pet.) (applying version of Texas Family Code in effect on September 2, 1987 notwithstanding fact that H.B. 327 became effective January 1, 1996, because September 2, 1987 is when the defendant allegedly engaged in the conduct at issue); In re N.J.A., 991 S.W.2d 868, 869–70, 870 n.2 (Tex. App.–Houston [1st Dist.] 1997) (applying statute in effect at the time the conduct occurred and

noting that "certain portions of the Family Code were amended in 1995, but they do not apply to the current case because the alleged delinquent conduct occurred in 1994." (citations omitted)), rev'd on other grounds, 997 S.W.2d 554 (Tex. 1999); In re J.E.V., No. 04–96–00125–CV, 1996 WL 591928, at *1 & n.1 (Tex. App.–San Antonio Oct. 16, 1996, no pet.) (not designated for publication) (applying law that existed on June 28, 1993, the date the conduct occurred, to allow interlocutory appeal of juvenile court's waiver and transfer order under subsection 54.02(j) even though H.B. 327 removed the provision in the Family Code that had previously permitted such interlocutory appeal and took effect on January 1, 1996, because conduct at issue occurred prior to January 1, 1996).

THE LAW IN EFFECT ON AUGUST 7, 1973

Title 3 was first enacted by the 63rd Legislature on May 25, 1973, but it did not become effective until September 1, 1973. See Act of May 25, 1973, 63rd Leg., R.S., ch. 544, §§ 1, 4, 1973 Tex. Gen. Laws 1460, 1460–85; Ex parte Morgan, 595 S.W.2d 128, 129 (Tex. Crim. App. 1980) (stating that Title 3 did not go into effect until September 1, 1973). Thus, Title 3 was not in effect on August 7, 1973. The predecessor statute to Title 3 was Article 2338–1 of the Revised Civil Statutes of Texas. See Act of Apr. 21, 1943, 48th Leg., R.S., ch. 204, 1943 Tex. Gen. Laws 313, amended by Act of June 9, 1949, 51st Leg., R.S., ch. 368, 1949 Tex. Gen. Laws 702, amended by Act of Apr. 26, 1951, 52nd Leg., R.S., ch. 156, 1951 Tex. Gen. Laws 270, amended by Act of May 5, 1953, 53rd Leg., R.S., ch. 165, 1953 Tex. Gen. Laws 475, amended by Act of May 8, 1959, 56th Leg., R.S., ch. 431, 1959 Tex. Gen. Laws 934, amended by Act of May 26, 1965, 59th Leg., R.S., ch. 577, 1965 Tex. Gen. Laws 1256, amended by Act of May 24, 1967, 60th Leg., R.S., ch. 475, 1967 Tex. Gen. Laws 1082, amended by Act of April 24, 1969, 61st Leg., R.S., ch. 171, 1969 Tex. Gen. Laws 505, amended by Act of May 27, 1969, 61st Leg., R.S., ch. 492, 1969 Tex. Gen. Laws 1598, amended by Act of May 28, 1969, 61st Leg., R.S., ch. 663, 1969 Tex. Gen. Laws 1963, amended by, Act of Oct. 13, 1972, 62nd Leg., 4th C.S., ch. 20, 1972 Tex. Gen. Laws 43, repealed by Act of May 25, 1973, 63rd Leg., R.S., ch. 544, § 3, 1973 Tex. Gen. Laws 1460, 1485; Morgan, 595 S.W.2d at 129 (noting that predecessor statute to Title 3 was Article 2338–1 of the Revised Civil Statutes of Texas); Ex parte Trahan, 591 S.W.2d 837, 838–39 (Tex. Crim. App. 1979) (same). Accordingly, we conclude that Article 2338–1, as effective on August 7, 1973, is the law that governs this case. Having so concluded, the jurisdictional question presented here is whether, under that law, the juvenile court in this case had jurisdiction to conduct the waiver and transfer proceeding that is the subject of this appeal. We conclude that it did not.

As effective on August 7, 1973, section 5 of Article 2338–1 vested the juvenile courts with "exclusive original jurisdiction in proceedings governing any delinquent child." See Act of May 24, 1967, 60th Leg., R.S., ch. 475, § 3, sec. 5(a), 1967 Tex. Gen. Laws 1082, 1083; Morgan, 595 S.W.2d at 129; Trahan, 591 S.W.2d at 841. Section 3 of Article 2338–1 defined the term "child" as "any person over the age of ten years and under the age of seventeen years." See Act of Oct. 13, 1972, 62nd Leg., 4th C.S., ch. 20, § 1, sec. 3, 1972 Tex. Gen. Laws 43, 43; Trahan, 591 S.W.2d at 841. The term "delinquent child" included any child who "violate[d] any penal law of this state of the grade of a felony[.]" See Act of Oct. 13, 1972, 62nd Leg., 4th C.S., ch. 20, § 1, sec. 3(a), 1972 Tex. Gen. Laws 43, 43. Under these provisions of Article 2338–1, "[t]he juvenile court is one of limited jurisdiction, and it is confined to those persons 'over the age of ten years and under the age of seventeen years.' " Miguel v. State, 500 S.W.2d 680, 681 (Tex. Civ. App.–Beaumont 1973, no writ) (quoting Article 2338–1, § 3). In stark contrast to Title 3, which mandates that the jurisdiction of the juvenile courts is determined by a person's age at the time he allegedly engaged in the delinquent conduct at issue rather than his age at the time of trial, see Tex. Fam. Code Ann. § 51.04(a); Moon v. State, 451 S.W.3d 28, 37–38 (Tex. Crim. App. 2014), the settled law in applying Article 2338–1 provided the opposite: under Article 2338–1, the jurisdiction of the juvenile courts was determined by the person's age at the time of trial, not his age at the time he allegedly engaged in the delinquent conduct. See, e.g., Morgan, 595 S.W.2d at 130 (holding that although defendant was a child at the time he committed the alleged offense, he was not charged with the offense until after he turned seventeen years of age and was no longer a juvenile; thus, the juvenile court never acquired jurisdiction under Article 2338–1); see also id. at 131 (Roberts, J., concurring) (stating that "the long–standing judicial rule ... [was] that the jurisdiction of the juvenile court was to be determined [by the defendant's age] as of the time of trial") (citing Salazar v. State, 494 S.W.2d 548 (Tex. Crim. App. 1973); Boyett v. State, 487 S.W.2d 357 (Tex. Crim. App. 1972); Dearing v. State, 151 Tex.Crim. 6, 204 S.W.2d 983 (1947); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944); Dillard v. State, 439 S.W.2d 460 (Tex. Civ. App.–Houston [14th Dist.] 1969, writ ref'd n.r.e.)). Thus, for the juvenile court to obtain jurisdiction over a proceeding under Article 2338–1, two elements must be present: "[f]irst, [the person] must be within the age limits set by Section 3 of [Article 2338–1], and second, he or she must have committed one of the enumerated acts." Miguel, 500 S.W.2d at 681 (quoting Steed v. State, 143 Tex. 82, 183 S.W.2d 458, 459–60 (1944)); see also Morgan, 595 S.W.2d at 130 n.1 (explaining same and stating that "if a person had already turned 17 by the time criminal charges were initiated against him, he was not charged as a child but as an adult[;] [h]e was not made subject to the jurisdiction of the juvenile court because the first requirement [that he be a person over the age of ten years and under the age of seventeen years] was lacking").

At the time the State filed its waiver and transfer petition in the juvenile court, Appellant was fifty-eight years of age. He therefore was not a "child" under the terms of Article 2338–1. See Act of Oct. 13, 1972, 62nd Leg., 4th C.S., ch. 20, § 1, sec. 3, 1972 Tex. Gen. Laws 43, 43; Morgan, 595 S.W.2d at 130 n.1. For that reason, in light of the authorities discussed above, we are compelled to conclude that the juvenile court lacked subject-matter jurisdiction to conduct the waiver and transfer proceeding and to render the amended waiver and transfer order that is the subject of this appeal.

When a court lacks subject-matter jurisdiction over a proceeding, any orders it renders in that proceeding are void. See State ex rel. Latty v. Owens, 907 S.W.2d 484, 485 (Tex. 1995) (stating that a judgment is void when "the court rendering the judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court"). Accordingly, because the juvenile court lacked subject-matter jurisdiction, its amended waiver and transfer order is void. Id. Our jurisdiction in an appeal from a void order is limited to only "determin[ing] that the order or judgment underlying the appeal is void and mak[ing] appropriate orders based on that determination." Freedom Commc'ns, Inc., 372 S.W.3d at 623. When an appealed-from judgment or order is void, we must declare it void, vacate it, and dismiss the appeal. See Mann v. Denton Cty., No. 02–13–00217–CV, 2014 WL 5089189, at *4 (Tex. App.–Fort Worth Oct. 9, 2014, pet. denied) (mem. op.) (citing Freedom Commc'ns, Inc., 372 S.W.3d at 623–24; Owens, 907 S.W.2d at 486; In re T.D.S.T., 287 S.W.3d 268, 272 n.8 (Tex. App–Amarillo 2009, pet. denied); Waite v. Waite, 150 S.W.3d 797, 800 (Tex. App.–Houston [14th Dist.] 2004, pet. denied)).

Conclusion: Having concluded that the juvenile court lacked subject-matter jurisdiction, we declare its August 24, 2016 amended waiver and transfer order void, vacate that order, and dismiss this appeal.

WHEN DISCRETIONARY TRANSFER HEARING TAKES PLACE AFTER CHILD'S 18TH BIRTHDAY, THE FINDINGS UNDER SECTION 54.02(J) MUST BE MET.

¶ 17-1-1. **Morrison v. State**, No. 14-15-00773, --- S.W.3d ----, 2016 WL 6652734 [Tex.App.—Houston (14th Dist.), 11/10/2016]

Facts: The State charged appellant and filed a petition for a discretionary transfer of the case from juvenile court to criminal district court before appellant turned eighteen years old; however, the juvenile court heard the petition and transferred the case after appellant had reached his eighteenth birthday. The jury in district court returned a guilty verdict and assessed punishment at 45 years' confinement.

Appellant contends that the juvenile court did not make the requisite statutory findings to waive its jurisdiction and transfer the case to district court and thus jurisdiction never vested in the district court. The State contends that appellant waived his complaint by failing to object at the transfer hearing.

Held: Vacated and Remanded

Opinion: A juvenile court has exclusive original jurisdiction in all cases involving delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child at the time of the conduct. Tex. Fam. Code § 51.04(a). The statute defines "child" as a person aged ten to sixteen or a person aged seventeen who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before turning seventeen. Id. § 51.02(2). A juvenile court may waive its jurisdiction and transfer the child to a district court under certain circumstances. Id. § 54.02. However, without such a waiver and transfer, notwithstanding certain exceptions inapplicable here, "a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age." Tex. Penal Code § 8.07(b).

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. Moon v. State, 451 S.W.3d 28, 45 (Tex. Crim. App. 2014). We first review the juvenile court's factual findings for legal and factual sufficiency of the evidence, and then review the court's ultimate waiver decision for an abuse of discretion. See id. at 47 (applying "traditional sufficiency of the evidence review" to juvenile court's fact findings under section 54.02(f)). We must answer the following question: was the juvenile court's transfer decision arbitrary, i.e., without reference to any guiding rules or principles, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria? See id.

In this case, we address first whether appellant preserved his jurisdictional challenge for our review. Then, we determine whether the juvenile court abused its discretion by transferring the case to district court.

I. Did appellant preserve his jurisdictional challenge for review?

The State argues that appellant waived his jurisdictional challenge by failing to object to the jurisdiction of the juvenile court at the discretionary transfer hearing. Under Texas Family Code section 51.042:
(a) A child who objects to the jurisdiction of the court over the child because of the age of the child must raise the objection at the adjudication hearing or discretionary transfer hearing, if any.

(b) A child who does not object as provided by Subsection (a) waives any right to object to the jurisdiction of the court because of the age of the child at a later hearing or on appeal.
Tex. Fam. Code § 51.042. See In re J.G., 495 S.W.3d 354, 364 (Tex. App.–Houston [1st Dist.] 2016, pet. filed) ("A child who objects to the jurisdiction of the juvenile court must raise the objection at the discretionary transfer hearing.").

As an initial matter, we note that section 51.042 uses the term "court" and not "juvenile court." Tex. Fam. Code § 51.042 ("A child who objects to the jurisdiction of the court over the child ..."). "Juvenile court" is defined in the statute as "a court designated under section 51.04 of this code to exercise jurisdiction over proceedings under this title." Id. § 51.02(6). As discussed, juvenile courts have exclusive original jurisdiction over illegal conduct engaged in by a child. Id. § 51.04(a). The plain meaning of section 51.042 read in context indicates that the section applies to juvenile courts because only they preside over adjudication hearings and discretionary transfer hearings. See id. §§ 54.02(a) (regarding discretionary transfer hearings: "[t]he juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if ... after a full investigation and hearing ...."), 54.03 ("A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of this section.").

Appellant does not challenge the jurisdiction of the juvenile court. He challenges the jurisdiction of the district court.[2] Accordingly, under the plain language of section 51.042, appellant was not required to object to the jurisdiction of the juvenile court under section 51.042 to preserve error on his complaint that the juvenile court's transfer of the case did not vest jurisdiction in the district court. See id. § 51.042.

The State argued during oral argument, however, that appellant was required to object under Rule of Appellate Procedure 33.1 even if section 51.042 did not apply. Appellant objected to the district court's jurisdiction by filing a "Motion to Set Aside the Indictment and Dismiss for Lack of Subject Matter Jurisdiction" in the district court. In the motion, appellant complained that "subject matter jurisdiction never vested in the District Court, [so] the Indictment should be set aside and the case dismissed." This complaint tracks appellant's jurisdictional challenge on appeal. We conclude that appellant has preserved this issue for our review.[3] See Tex. R. App. P. 33.1(a)(1) (establishing that timely request, objection, or motion sufficiently specific to apprise the trial court of basis for request, objection, or motion generally will preserve error).

II. Did the juvenile court abuse its discretion in transferring the case without making the statutorily mandated findings under Family Code section 54.02(j)?

Appellant argues that the juvenile court abused its discretion in failing to make the statutorily mandated findings that would allow a waiver of the juvenile court's jurisdiction and transfer of appellant's case to district court after appellant's eighteenth birthday. As a result, according to appellant, the district court was never vested with jurisdiction over the case. The State does not dispute that the juvenile court was required and failed to make the requisite findings. The State posits only that appellant failed to object to the juvenile court's jurisdiction and thus waived its objection to the transfer, an argument we have rejected.

Appellant was not yet eighteen years old when the State filed its petition to transfer. The State moved for a transfer under Family Code section 54.02(a). Section 54.02(a) sets forth the findings a trial court must make to waive its jurisdiction and transfer a child who is under the age of eighteen, including, among other things, 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." Tex. Fam. Code § 54.02(a). However, appellant was eighteen years old at the time of the transfer hearing.

The juvenile court had jurisdiction only to transfer the case or dismiss it after appellant turned eighteen.[4] Moore v. State, No. PD–1634–14, —— S.W.3d ——, —— –, 2016 WL 6091386, at *—— (Tex. Crim. App. Oct. 19, 2016). To transfer a respondent who is eighteen years old or older, a juvenile court must find, among other things, either that "for a reason beyond the control of the state it was not practicable to proceed in juvenile court before" appellant's eighteenth birthday or "after due diligence of the state it was not practicable to proceed in juvenile court before" appellant's eighteenth birthday. See Tex. Fam. Code § 54.02(j)(4).[5]

The juvenile court did not make these findings. The Court of Criminal Appeals recently confirmed that a juvenile court abuses its discretion when it transfers a case involving a respondent who is over eighteen years old without a showing that the factors under section 54.02(j) have been met. See Moore, —— S.W.3d at —— , 2016 WL 6091386, at *——.

The State has the burden of proof on these issues under 54.02(j). Id. But the State affirmatively argued at the transfer hearing that section 54.02(j) did not apply and failed to present evidence to support any findings under that section. Thus, even if the juvenile court had made the requisite findings, such findings would not

have been supported by legally or factually sufficient evidence.

Conclusion: We conclude that the juvenile court abused its discretion in transferring the case to district court without making the requisite findings under section 54.02(j), thus failing to waive its jurisdiction and preventing jurisdiction from vesting in the district court. See id. at ——, 2016 WL 6091386 at *——. We sustain appellant's first issue. We vacate the district court's judgment and remand the case to juvenile court for proceedings consistent with this opinion.[6]

Footnotes

2 We note that the issue of whether the juvenile court was required to make findings under Family Code section 54.02(j), discussed in more detail below, was before the juvenile court. During the transfer hearing, appellant's counsel repeatedly asked the court to examine the issue of due diligence. State's counsel responded that she did not need to prove due diligence "because this is not a proceeding under [section] 54.02–J."

3 Because we conclude that appellant did not waive this issue, we need not address the State's argument that jurisdiction in this context involves personal jurisdiction that can be waived, rather than subject matter jurisdiction that cannot.

4 Family Code section 51.0412, which addresses jurisdiction over incomplete proceedings, was amended after the transfer hearing to include "petition[s] for waiver of jurisdiction and transfer to criminal court under Section 54.02(a)." Tex. Fam. Code § 51.0412 (added by Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 7, eff. Sept. 1, 2013). Under the current version of the statute, when a petition to transfer is filed before a respondent turns eighteen and the proceeding is not completed before the respondent's eighteenth birthday, the juvenile court retains jurisdiction over the transfer proceeding if it makes a finding that "the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18." Id.

5 As in section 54.02(a), the juvenile court also must find that "there is probable cause to believe that the child before the court committed the offense alleged." Tex. Fam. Code § 54.02(a)(3), (j)(5).

6 In Moore, the First Court of Appeals vacated the district court's judgment and dismissed the case because the State's reasons for the delay—the State's heavy caseload and mistakes as to the juvenile's age—were not reasons beyond the States' control. —— S.W.3d at ——, 2016 WL 6091386, at *——, . Here, because the State did not present evidence of its reasons for delay, appellant seeks only a reversal and remand for the State to attempt to meet its burden under section 54.02(j). See In re M.A.V., 954 S.W.2d 117, 119 (Tex. App.–San Antonio 1997, pet. denied).