Juvenile Law Section
STATE BAR OF TEXAS

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NEWSLETTER EDITOR

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

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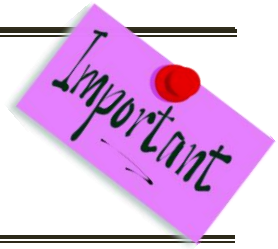
Dear Juvenile Law Section Members:

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

This month I had the pleasure of teaching at the Texas Center for the Judiciary's Regional A and B Conferences. These Regional Conferences are a continuing judicial education program designed especially for Texas judges and covers a wide spectrum of topics. This was my first time teaching for the Center for the Judiciary and want to compliment them on their outstanding conference preparedness and presentations. From "Social Media for Judges: Do's, Don'ts & Musts" to "Criminal, Civil, and Family Case Law Updates," each was informative and a good multipurpose education for judges.

I would like to send a special thank you to Courtney Gilason for her personal attention to my presentation and her work to make sure that my PowerPoint and videos played without a hitch. Congratulation! Well done TCJ staff.

32nd Annual Robert Dawson Juvenile Law Institute. The Juvenile Law Section's 32nd Annual Juvenile Law Conference was held February 24-27, 2019, at the Doubletree Hotel in Austin, Texas. Judge Mike Schneider did an outstanding job of having a broad spectrum of topics for both novice juvenile practitioners as well as the more experienced advocates. Social events highlighted the afternoons and evenings, with Casino Night being the hit of the conference.

Texas Juvenile Justice Updated Texas Model. On April 1, 2019 the Executive Director of TJJD published a letter to the Governor and report providing an update Texas Model as the strategic plan to improve and modernize the Texas juvenile justice system. The key tenets of the Model are: A greater focus on a single juvenile justice system as a partnership between county juvenile probation departments and TJJD; a commitment to the shortest appropriate length of stay and youth staying closer to their communities in every possible case; a foundation in trauma-informed care that allows a treatment-rich environment, new tools for de-escalation, and direct-care staff who reinforce treatment goals; and a strategy that provides for scalability and flexibility to meet changing or emerging needs. To read the whole report from the Executive Director on the Texas Model you can go to the TJJD website main page (www.tjjd.texas.gov.) and find it under Latest News and Events.

Officers and New Council Members. The election of officers and council members was conducted at our February 26, 2019 meeting and the following constitute our officers and new board members.

Officers
Mike Schneider, Chair
Patrick Gendron, Chair Elect
Bill Cox, Treasurer
Cindy Porter Gore, Secretary
Kaci Singer, Immediate Past Chair

Council Positions Ending 2022
Maggie Ellis, Austin, Texas
Robin Houston, Waco, Texas
Elizabeth Henneke, Austin, Texas

I'm always asked, 'What's the secret to success?'
But there are no secrets.
Be humble.
Be hungry.
And always be the hardest worker in the room.

Dwayne Johnson

CHAIR'S MESSAGE By Kaci Singer

This is my last official message as Chair of the Section, so I'm going to take a minute to indulge myself. I am so appreciative of the opportunity I have had to serve on the Juvenile Law Section's Council. I have made great friends, learned a lot about the juvenile justice system, and, hopefully, made lasting contributions to it.

Next year's Council is in place and committees are forming. Please contact me if you would like to serve on the Publications Committee, Social Committee, or Legislative Committee and I will put you in touch with the chairs of those committees.

Finally, save the date for the 33rd Annual Juvenile Law Conference, February 16 – 19, 2020, at the San Luis Hotel and Conference Center in Galveston. I look forward to seeing you all there.

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REVIEW OF RECENT CASES

By Subject Matter

By Case

RECENT CASES

APPEALS

IN ADULT TRIAL, FAILURE TO OBJECT AT PUNISHMENT HEARING TO IMPROPER JUVENILE ENHANCEMENT PARAGRAPH DOES NOT PRESERVE ERROR FOR APPEAL.

¶ 19-2-5. **Hestand v. State,** MEMORANDUM, No. 02-18-00334-CR, 2019 WL 1830642 (Tex.App.—Fort Worth, 4/25/2019).

Facts: Hestand was indicted for possession of less than one gram of methamphetamine, a state-jail felony. See Tex. Health & Safety Code Ann. § 481.115(a)–(b); Tex. Penal Code Ann. § 12.35(a). The indictment included two enhancement paragraphs, alleging that Hestand had been convicted of the felony offenses of possession of methamphetamine in 2013 and of the manufacture or delivery of a controlled substance in 2008. The indictment further contained three habitual-offender paragraphs, alleging that Hestand had been convicted of the felony offenses of bail jumping and possession of a controlled substance in 2008 and had been adjudicated as a juvenile of engaging in delinquent conduct for unauthorized use of a motor vehicle in 2001. Before trial, the State filed a notice that it intended to enhance the applicable punishment range from a state-jail felony to a second-degree felony by proving Hestand's 2013 possession conviction, his 2008 manufacture or delivery conviction, his 2008 bail-jumping conviction, his 2008 possession conviction, and his 2001 juvenile adjudication. See Tex. Penal Code Ann. § 12.425(b). See generally Brooks v. State, 957 S.W.2d 30, 33–34 (Tex. Crim. App. 1997) (recognizing State may notify defendant of sentence-enhancement convictions in a notice filed at least ten days before trial and is not required to amend indictment).

A jury found Hestand guilty of the indicted offense. At the punishment trial, the State proceeded on two of the enhancements: the 2008 manufacture or delivery conviction and the 2008 bail-jumping conviction, both felony convictions. It also proceeded on one habitual-offender allegation: the 2001 juvenile adjudication for the delinquent conduct of unauthorized use of a motor vehicle. Hestand pleaded not true.

The State introduced the penitentiary packets proving the 2008 felony convictions and introduced evidence of the 2001 juvenile adjudication. Hestand objected to the evidence of the 2008 felony convictions, relying on "Rule 403" and the fact that they were "more than 10 years old and stale." He objected to the evidence of his 2001 juvenile adjudication on the grounds of "staleness" and the lack of a fingerprint comparison. The trial court overruled Hestand's objections and admitted the evidence. The State also introduced evidence that Hestand had been convicted of offenses involving controlled substances four other times between 2004 and 2015. The jury additionally heard, over Hestand's rule-403 objection, that Hestand had been convicted of assault involving family violence in 2016, misdemeanor theft in 2015, and violating a protective order in 2016. The jury charge on punishment included instructions regarding the 2008 convictions for manufacture or delivery of a controlled substance and bail jumping—the enhancement allegations—and regarding the 2001 juvenile adjudication—the habitual-offender allegation; Hestand did not object to the jury charge.

The jury found the enhancement and habitual allegations true, enhancing the available punishment range to that of a second-degree felony, and assessed his sentence at fifteen years' confinement. See Tex. Penal Code Ann. § 12.33. Before the trial court orally pronounced sentence on June 21, 2018, Hestand's counsel voiced no objection to the imposition of the assessed sentence although given the opportunity to do so.

Hestand filed a pro se motion for new trial and argued that his sentence had been "illegally enhanced" through use of the juvenile adjudication, which was based on unauthorized use of a motor vehicle—a state-jail felony. See Tex. Penal Code Ann. § 31.07(b); see also id. § 12.425(b) (prohibiting use of state-jail felonies to enhance punishment range from that of a state-jail felony to a second-degree felony). The trial court held a nonevidentiary hearing on the motion on July 20, 2018, and orally denied it on the record. Because the trial court never entered a written order denying the motion, it was deemed denied on September 19, 2018—seventy-five days after sentence was imposed in open court. See Tex. R. App. P. 21.8(a), (c); State v. Zavala, 28 S.W.3d 658, 659 (Tex. App.—Corpus Christi 2000, pet. ref'd).

Hestand now appeals and argues that the State's "[u]se of a state jail felony (a juvenile adjudication) to enhance his sentence for a [state-jail] felony to a second[-] degree felony was invalid." The State argues that because Hestand failed "to alert the trial court" that the juvenile adjudication could not be used to enhance his punishment range, he has failed to preserve this issue for our review. See Tex. R. App. P. 33.1.

Held: Affirmed

Memorandum Opinion: The State fails to recognize that Hestand raised the issue in his pro se motion for new trial; however, waiting until a motion for new trial to raise an objection to a sentencing issue is untimely if there was an opportunity to object during the punishment hearing. See Burt v. State, 396 S.W.3d 574, 577 n.4 (Tex. Crim. App. 2013) (citing Hardeman v. State, 1 S.W.3d 689, 690 (Tex. Crim. App. 1999)); see, e.g., Sanchez v. State, 120 S.W.3d 359, 366–67 (Tex. Crim. App. 2003); Franks v. State, No. 07-18-00075-CR, 2019 WL 1349389, at *2 (Tex. App.—Amarillo Mar. 20,

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2019, no pet. h.) (mem. op., not designated for publication); Torres v. State, 424 S.W.3d 245, 256 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). Here, Hestand had multiple opportunities before trial and during the punishment phase to object to the enhancement and habitual-offender notices. The habitual-offender notice that Hestand specifically attacks here—the 2001 juvenile adjudication—was included in the indictment, the State's pretrial notice, the State's punishment evidence, and the jury charge on punishment. At no point did Hestand raise an objection to the propriety of enhancing his sentence with the 2001 juvenile adjudication. And although Hestand was given an opportunity to raise an objection to the jury-assessed sentence before it was imposed, he did not object on the basis that he asserts on appeal. The first time Hestand raised the issue he raises on appeal was in his pro se motion for new trial. Under the facts presented here, that was too late for preservation purposes. See Burt, 396 S.W.3d at 577 & n.4; Sanchez, 120 S.W.3d at 366–67.

Conclusion: Because Hestand did not preserve any error in his sentence for our review, we overrule his sole issue and affirm the trial court's judgment. See Tex. R. App. P. 43.2(a). We DENY court-appointed counsel's motion to withdraw, which he filed only at Hestand's insistence. See Miller v. State, No. 02-18-00467-CR, 2019 WL 1179421, at *1 (Tex. App.—Fort Worth Mar. 14, 2019, no pet.) (per curiam mem. op., not designated for publication); see also Tex. R. App. P. 48.4. We also DENY Hestand's pro se motion to "recuse" his appellate counsel.

THE QUESTION OF CONSIDERATION OF A PRIOR DEFERRED DISPOSITION IN TJJD COMMITMENT MUST BE PRESERVED FOR APPEAL BY AN OBJECTION AT TRIAL.

¶ 19-2-1B. **In the Matter of I.M.M.,** MEMORANDUM, No. 07-18-00303-CV, 2019 WL 922680 (Tex.App.—Amarillo, 2/25/2019).

Facts: According to the allegations of the State, thirteen-year-old I.M.M. engaged in delinquent conduct by committing the offenses of aggravated robbery1 of the Happy Stop convenience store in Plainview, Texas, and evading arrest or detention.2 The adjudication and disposition hearings in the case were tried to the bench. At the adjudication hearing, I.M.M. stipulated to his involvement in the offenses alleged and plead true to the State's allegations. The court found I.M.M. had engaged in the delinquent conduct alleged.

After the adjudication hearing the court convened a contested disposition hearing which is the focus of this appeal. I.M.M. did not contest placement outside the home. The question for the disposition hearing was whether the placement should be a "boys' ranch" or bootcamp, as I.M.M. requested, or commitment to TJJD, as the State sought. At the hearing's conclusion the court rendered findings, including those stating I.M.M. was in need of rehabilitation and protection, and the public required protection. It ordered I.M.M. committed to TJJD for an indeterminate period not to exceed his nineteenth birthday.

By his first issue, I.M.M. argues the trial court erroneously considered his involvement in a prior deferred disposition case from Tarrant County in reaching its determination to commit him to TJJD.

Held: Affirmed

Memorandum Opinion: We find this issue was not first presented to the trial court and an adverse ruling obtained. TEX. R. APP. P. 33.1(a). Accordingly, the question is not preserved for our review. I.M.M.'s first issue is overruled.

Conclusion: Having overruled I.M.M.'s three issues on appeal, we affirm the disposition order of the trial court.

DEFENSE COUNSEL

JUVENILE COUNSEL'S APPROACH OF AGREEING WITH THE STATE'S CASE, SITTING ALMOST COMPLETELY SILENT WHILE ELEVEN WITNESSES, OVER TWO DAYS, TESTIFIED AGAINST HIS CLIENT, AND MAKING INSENSITIVE, IRRELEVANT, AND INAPPROPRIATE "JOKES" AND COMMENTS DURING A "CRITICALLY IMPORTANT" PROCEEDING INVOLVING A CHILD, WAS NOT INDICATIVE OF A "COMMITMENT AND DEDICATION TO THE INTEREST OF [HIS] CLIENT" AND ZEALOUS "ADVOCACY UPON [HIS] CLIENT'S BEHALF" THAT IS EXPECTED BY THE LAWYERS IN THIS STATE.

19-2-4B. **In the Matter of B.M.**, No. 01-18-00898-CV, 2019 WL 1388561 [Tex.App.—Houston (1st Dist.), 4/30/2019]. Concurring opinion (released separately)

Facts: On May 10, 2018, the State filed its first amended petition for discretionary transfer to a criminal district court, alleging that B.M., at age 16:

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Ciro Benitez[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Benitez in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Margarita Cannon[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Cannon in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Allysha Samaniego[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Samaniego in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 16, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Lawrence Indefenso[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Indefenso in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Ryane Strother[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Strother in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Charles Borromeo[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Borromeo in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code; and

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Lee Tran[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Tran in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code.

Pursuant to Texas Family Code section 54.02, the State requested that the juvenile court waive its exclusive original jurisdiction over B.M.'s case and transfer it to a criminal district court for B.M. to stand trial as an adult for seven separate felony offenses of aggravated robbery. Prior to the transfer hearing, the juvenile court ordered a psychological evaluation and diagnostic study and a full investigation of B.M., his circumstances, and the circumstances of the alleged offenses.

In his sole issue, B.M. contends that the juvenile court erred in waiving its exclusive original jurisdiction and transferring his case to a criminal district court because the evidence is legally insufficient to support the trial court's findings of probable cause.

Held: Affirmed

Concurring Opinion: Julie Countiss Justice

In Kent v. United States, 383 U.S. 541 (1966), the Supreme Court determined that children in juvenile proceedings should not be denied procedural rights given to adult criminal defendants merely because juvenile proceedings are characterized as civil. See Hidalgo v. State, 983 S.W.2d 746, 750 (Tex. Crim. App. 1999) (citing Kent, 383 U.S. at 560). While identifying the determination to transfer a child from juvenile court to criminal court for prosecution as an adult "as 'critically important,' the [Supreme] Court held [that] a state juvenile transfer process must operate in accordance with traditional notions of fundamental fairness." Id. (quoting Kent, 383 U.S. at 560). And that "[t]he process must include a hearing, effective assistance of counsel, and counsel's access to the child's social file." Id. (emphasis added).

Further, in In re Gault, 387 U.S. 1 (1967), the Supreme Court held that the Fourteenth Amendment's Due Process Clause applied to juvenile proceedings "entitling children to notice of charges, defense counsel, the privilege against self-incrimination, confrontation of and cross[-]examination of witnesses." Hidalgo, 983 S.W.2d at 750–51 (citing In re Gault, 387 U.S. at 49); see also In re Gault, 387 U.S. at 13 ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.").

The Supreme Court has also determined that, as compared to adults, children under eighteen years of age lack of maturity, have "an underdeveloped sense of responsibility," and are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." Roper v. Simmons, 543 U.S. 551, 569 (2005) (internal quotations omitted). In the Roper majority opinion, Justice Kennedy further noted that "[t]hese qualities often result in impetuous and ill-considered actions and decisions" by a child. Id. Moreover, the Court explained that children "have less control, or less experience with control, over their own

environment" and their character "is not as well formed as that of an adult"; their personality traits are "more transitory, less fixed." Id. at 569–70. Based on these differences, the Court found suspect any conclusion that a child falls among the worst offenders because a child's "irresponsible conduct is [simply] not as morally reprehensible as that of an adult." Id. at 561, 570 (internal quotations omitted); see also Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) ("[T]he Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. ... Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his ... conduct while at the same time he ... is much more apt to be motivated by mere emotion or peer pressure than as an adult.").

Texas courts have also recognized that children are different from adult criminal defendants and warrant additional protections. See In re Hall, 286 S.W.3d 925, 927 (Tex. 2009) ("The Legislature enacted the Juvenile Justice Code as a separate system for the prosecution, adjudication, sentencing, and detention of juvenile offenders to protect the public and provide for the wholesome moral, mental, and physical development of delinquent children. This separate system often provides enhanced procedural protections to juvenile offenders, who, because of youth, ordinarily lack the mental and emotional maturity needed to ... maintain an adequate defense." (internal citations omitted)); Henderson v. State, 962 S.W.2d 544, 562 (Tex. Crim. App. 1997) ("[The] State has a legitimate, and in fact compelling, interest in protecting the well-being of its children. ... Children are deemed to warrant protection because of their inexperience, lack of social and intellectual development, moral innocence, and vulnerability."); Lanes v. State, 767 S.W.2d 789, 791–800 (Tex. Crim. App. 1989) (including historical discussion of juvenile justice policy and noting "rehabilitation and child protection remain as the pervasive and uniform themes of the Texas juvenile system"); In re S.G.R., 496 S.W.3d 235, 238 (Tex. App.—Houston [1st Dist.] 2016, no pet.) ("Children ordinarily are not subject to criminal proceedings like adults."); In re J.G., 905 S.W.2d 676, 680–81 (Tex. App.—Texarkana 1995), writ denied, 916 S.W.2d 949 (Tex. 1995) ("[A] juvenile is not similarly situated to an adult .... [T]he juvenile justice system is arranged with a special emphasis on the welfare of the child ...."); In re E.Q., 839 S.W.2d 144, 145–46 (Tex. App.—Austin 1992, no writ) ("The [S]tate has an interest in providing for the care, protection, and development of its children .... The civil juvenile justice system was established in part to insulate minors from the harshness of criminal prosecutions, to promote rehabilitation over punishment, and to eliminate the taint of criminal conviction after incarceration by characterizing such actions as delinquent rather than criminal."); see also TEX. FAM. CODE ANN. § 51.01 (purposes of Juvenile Justice Code include "provid[ing] treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct" and "provid[ing] for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions"). Thus, "[t]he transfer of a [child] 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) (third alteration in original) (internal quotations omitted); see also Lanes, 767 S.W.2d at 796 ("The Texas juvenile system ... seeks to avoid the taint of criminality in order to prevent recidivism and promote rehabilitation. The best method of avoiding attachment of a criminal taint is keeping the child completely out of the [criminal] system.").

Furthermore, because proceedings in juvenile court are quasi-criminal in nature, they are subject to numerous due process restrictions mirroring those at play in a full criminal trial. In re A.J.S., 442 S.W.3d 562, 565 (Tex. App.—El Paso 2014, no pet.); see also In re M.A.F., 966 S.W.2d 448, 450 (Tex. 1998); Smith v. Rankin, 661 S.W.2d 152, 153 (Tex. App.—Houston [1st Dist.] 1983, orig. proceeding). A child "is guaranteed the same constitutional rights as an adult in a criminal proceeding because a juvenile-delinquency proceeding seeks to deprive [him] of his liberty." State v. C.J.F., 183 S.W.3d 841, 847 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); see also In re M.S., 940 S.W.2d 789, 790 (Tex. App.—Austin 1997, no writ) ("A juvenile proceeding, which may deprive a child of his liberty for a number of years, is comparable in seriousness to a criminal prosecution. ... [F]or that reason, many of the due process protections applicable to criminal proceedings apply also to juvenile proceedings, such as the right to appeal and the right to assistance of counsel."); see, e.g., TEX. FAM. CODE ANN. §§ 51.10, 56.01.

A transfer hearing, such as the one in this case, is not held for the purpose of determining a child's guilt or innocence; it is held for the purpose of establishing whether the child's and society's best interests are met by maintaining custody of the child in the juvenile system or by transferring the child to criminal court for trial as an adult. See TEX. FAM. CODE ANN. § 54.02 (transfer hearing); State v. Lopez, 196 S.W.3d 872, 874 (Tex. App.—Dallas 2006, pet. ref'd); In re A.A., 929 S.W.2d 649, 653 (Tex. App.—San Antonio 1996, no writ). Notably, the law requires that a child in a Texas juvenile court has effective representation at a transfer hearing. See TEX. FAM. CODE ANN. § 51.10 (child entitled to representation by counsel at transfer hearing and may not waive right to counsel); Strickland v. Washington, 466 U.S. 668, 685–86 (1984) ("That a person who happens to be a lawyer is present at trial

alongside the accused ... is not enough to satisfy the constitutional command. ... [T]he right to the assistance of counsel ... envisions counsel[ ] playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair."); Hidalgo, 983 S.W.2d at 750 (child entitled to effective assistance of counsel at transfer hearing). Inexplicably, in the instant case, the record reveals that B.M., a minor child, was not represented by a zealous advocate at his transfer hearing.

At a transfer hearing, the juvenile court is the sole fact finder. In re D.W.L., 828 S.W.2d 520, 525 (Tex. App.—Houston [14th Dist.] 1992, no writ). However, in his damaging opening statement at the transfer hearing, B.M's court-appointed counsel immediately told the juvenile court: "[W]e do not dispute any of the facts alleged by the State of Texas at this time, Judge, nor do I believe we ever will." Then, about his own client, B.M.'s counsel announced to the court: "[N]ow it's time to pay the piper." This statement, which is often employed by the State in arguing that an adult criminal defendant must be severely punished, alone is contrary to B.M.'s interest. See, e.g., Lopez v. State, 318 S.W.3d 910, 913–14 (Tex. App.—Corpus Christi–Edinburg 2010, no pet.) (trial court adjudicated adult criminal defendant guilty of felony offense of murder and two separate felony offenses of aggravated assault after State argued "it's time to pay the piper for what [defendant] did"); Monroe v. State, No. 01-99-00791-CR, 1999 WL 1208523, at *1 (Tex. App.—Houston [1st Dist.] Dec. 16, 1999, no pet.) (not designated for publication) (trial court used phrase "pay the piper" when revoking adult criminal defendant's community supervision and sentencing him to confinement for ten years); Engle v. State, No. 09-93-155 CR, 1993 WL 389202, at *1–2 (Tex. App.—Beaumont Sept. 29, 1993, pet. ref'd) (not designated for publication) (jury sentenced adult criminal defendant to confinement for ninety-nine years after State used phrase "now it's time to pay the piper" in closing argument); Collins v. State, No. B14-90-00614-CR, 1991 WL 119182, at *1, *4–5 (Tex. App.—Houston [14th Dist.] July 3, 1991, pet. ref'd) (not designated for publication) (during punishment phase of trial, after adult criminal defendant found guilty of two separate felony offenses of aggravated sexual assault of child, State argued that defendant "got to pay the [p]iper today").

Beyond that, during the entire transfer hearing, B.M.'s counsel only raised two objections to the evidence presented by the State against B.M. and barely cross-examined any of the State's witnesses. More specifically, over the course of two days, the State elicited testimony from eleven witnesses, but B.M.'s counsel failed to ask eight of these witnesses—the majority of which were there to provide evidence to support the juvenile court's probable-cause findings—any questions at all. See In re Gault, 387 U.S. at 31–55 (child has due process rights of notice, counsel, confrontation, cross-examination, and privilege against self-incrimination). Of the remaining three witnesses, counsel asked a total of fourteen questions.4 Most disturbingly, the one question that B.M.'s counsel posed to Fort Bend County Sheriff's Office Detective D. Williams, who provided significant evidence to support the juvenile court's probable-cause findings and who also gave the sole evidence of the confession of B.M.'s alleged accomplice, was whether he was "around [Dr.] Blasey Ford" "[t]hirty-six years ago." Still yet, B.M.'s counsel expressly declined to cross-examine Sugar Land Police Department Officer J. Hatfield, the only other law enforcement officer called to testify at the transfer hearing, because he was "not old enough to know [Dr.] Blasey Ford."

Counsel eventually rested B.M.'s case without presenting any witnesses or evidence on behalf of his client. And then counsel again conceded in his closing argument to the juvenile court that the State had established probable cause for five of the seven aggravated robberies that the State alleged his client had committed. Surprisingly, counsel went further to tell the juvenile court that the State "did a great job" establishing probable cause.

Why does it matter that B.M.'s counsel's conceded probable cause and failed to substantively question any of the State's witnesses who were at the transfer hearing to provide probable-cause evidence against B.M.? Because in order for the juvenile court to waive its exclusive original jurisdiction and transfer B.M. to criminal court to stand trial as an adult, the juvenile court was required to find "that there [was] probable cause to believe that [B.M.] ... committed the [aggravated robbery] offense[s] alleged" by the State. See TEX. FAM. CODE ANN. § 54.02(a) (emphasis added) (juvenile court also required to find "that because of the seriousness of the offense[s] alleged or the background of [B.M.] ... the welfare of the community require[d] criminal proceedings."). Significantly, it was the State's burden to establish probable cause, and yet, B.M.'s own counsel helped the State meet its burden in the instant case. See Moon, 451 S.W.3d at 45 (State's burden); In re Honsaker, 539 S.W.2d 198, 201 (Tex. App.—Dallas 1976, writ ref'd n.r.e.) (State's burden to show probable cause exists to believe child committed offense alleged); see also U.S. v. Swanson, 943 F.2d 1070, 1074 (9th Cir. 1991) ("A lawyer who informs the [fact finder] that it is his view of the evidence that there is no reasonable doubt regarding the only factual issues that are in dispute has utterly failed to 'subject the prosecution's case to meaningful adversarial testing.' " (quoting U.S. v. Cronic, 466 U.S. 648, 659 (1984)); Osborn v. Shillinger, 861 F.2d 612, 625 (10th Cir. 1988) ("[A]n attorney who adopts and acts upon a belief that his client should be convicted 'fail[s] to function in any meaningful sense as the Government's adversary.' " (second alteration in original) (quoting Cronic, 466 U.S. at 666)).

Conclusion: In Texas, we hold attorneys to the highest standards of ethical conduct in their dealings with their clients. The duty is highest when the attorney ... takes a

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position adverse to his ... client's interest[ ]. As Justice Cardozo observed, "[a fiduciary] is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." Accordingly, a lawyer must conduct his ... business with inveterate honesty and loyalty, always keeping [his] client's best interest in mind.
Hoover v. Slovacek LLP v. Walton, 206 S.W.3d 557, 560–61 (Tex. 2006) (fourth alteration in original). B.M.'s counsel's approach of agreeing with the State's case, sitting almost completely silent while eleven witnesses, over two days, testified against his client, and making insensitive, irrelevant, and inappropriate "jokes" and comments during a "critically important" proceeding involving a child, is not indicative of a "commitment and dedication to the interest of [his] client" and zealous "advocacy upon [his] client's behalf" that is expected by the lawyers in this State. See Tex. Disciplinary Rules Prof'l Conduct R. 1.01 cmt. 6, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A; see also Lopez v. Munoz, Hockema & Reed, L.L.P., 22 S.W.3d 857, 867 (Tex. 2000) (Gonzales, J., concurring and dissenting) ("Fundamentally, a lawyer should always act in [his] client's best interest[ ].").

Countiss, J., concurring.

DISPOSITION PROCEEDINGS

TRIAL COURT'S FINDINGS UNDER THE FAMILY CODE WERE SUPPORTED BY THE EVIDENCE AND IT DID NOT ABUSE ITS DISCRETION IN COMMITTING CHILD TO TJJD FOR AN INDETERMINATE PERIOD NOT TO EXCEED HIS NINETEENTH BIRTHDAY.

¶ 19-2-1A. **In the Matter of I.M.M.,** MEMORANDUM, No. 07-18-00303-CV, 2019 WL 922680 (Tex.App.—Amarillo, 2/25/2019).

Facts: According to the allegations of the State, thirteen-year-old I.M.M. engaged in delinquent conduct by committing the offenses of aggravated robbery of the Happy Stop convenience store in Plainview, Texas, and evading arrest or detention. The adjudication and disposition hearings in the case were tried to the bench. At the adjudication hearing, I.M.M. stipulated to his involvement in the offenses alleged and plead true to the State's allegations. The court found I.M.M. had engaged in the delinquent conduct alleged.

After the adjudication hearing the court convened a contested disposition hearing which is the focus of this appeal. I.M.M. did not contest placement outside the home. The question for the disposition hearing was whether the placement should be a "boys' ranch" or bootcamp, as I.M.M. requested, or commitment to TJJD, as the State sought. At the hearing's conclusion the court rendered findings, including those stating I.M.M. was in need of rehabilitation and protection, and the public required protection. It ordered I.M.M. committed to TJJD for an indeterminate period not to exceed his nineteenth birthday.

By his second and third issues, I.M.M. argues the trial court abused its discretion by committing him to TJJD because the evidence was legally or factually insufficient to prove: (1) reasonable efforts were made to prevent or eliminate the need for his removal from the home and to make it possible for him to return to his home; and (2) in his home I.M.M. cannot be provided the quality of care and level of support and supervision he needs to meet the conditions of probation. See TEX. FAM. CODE ANN. § 54.04(i)(1)(B),(C) (West Supp. 2018).

Held: Affirmed

Memorandum Opinion: A juvenile court has broad discretion to determine the proper disposition of a child adjudicated as engaging in delinquent conduct. In re A.W.B., 419 S.W.3d 351, 359 (Tex. App.—Amarillo 2010, no pet.). A trial court abuses its discretion when it acts arbitrarily or without regard to guiding rules and principles. Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 241-42 (Tex. 1985). When the abuse of discretion standard is used to review a court's disposition order in a juvenile matter, legal and factual insufficiency are relevant factors. In re C.G., 162 S.W.3d 448, 452 (Tex. App.—Dallas 2005, no pet.).

An appellant attacking the legal sufficiency of an adverse finding on an issue on which he did not have the burden of proof must demonstrate there is no evidence supporting the adverse finding. In re J.W.M., 2008 Tex. App. LEXIS 3551, at *8-9 (citing Croucher v. Croucher, 660 S.W.2d 55, 58 (Tex. 1983)). In determining the legal sufficiency of the evidence, we consider the evidence in the light most favorable to the finding and indulge every reasonable inference that supports it. Scott's Marina at Lake Grapevine, Ltd. v. Brown, 365 S.W.3d 146, 151 (Tex. App.—Amarillo 2012, pet. denied) (citing City of Keller v. Wilson, 168 S.W.3d 802, 822 (Tex. 2005)).

Factual sufficiency review is subject to only one standard of review regardless of whether the court of appeals reviews a negative or affirmative finding or whether the complaining party bore the burden of proof on the issue. M.D. Anderson Hosp. & Tumor Inst. v. Felter, 837 S.W.2d 245, 247 (Tex. App.—Houston [1st Dist.] 1992, no writ) (citing M.J. Sheridan & Son v. Seminole Pipeline Co., 731 S.W.2d 620, 623 (Tex. App.—Houston [1st Dist.] 1987, no writ)). The court of appeals first examines all of the evidence, Lofton v. Texas Brine Corp., 720 S.W.2d 804, 805 (Tex. 1986) (per curiam), and, after considering and weighing all of the evidence, must set aside the verdict only if the evidence is so weak or the finding is so against the great weight and preponderance of the evidence that it

is clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam); Garza v. Alviar, 395 S.W.2d 821, 823 (Tex. 1965); Otis Elevator Co. v. Joseph, 749 S.W.2d 920, 923 (Tex. App.—Houston [1st Dist.] 1988, no writ). In a bench trial, the court, as fact finder, is the exclusive judge of the witnesses' credibility and the weight given their testimony, and is free to resolve any inconsistencies in the evidence. Iliff v. Iliff, 339 S.W.3d 74, 83 (Tex. 2011). It is authorized to believe some, all, or none of a witness's testimony. Rivas v. Rivas, No. 01-10-00585-CV, 2012 Tex. App. LEXIS 412, at *5 (Tex. App.—Houston [1st Dist.] Jan. 19, 2012, no pet.) (mem. op.).

Family Code section 54.04(i) requires that a court placing a child on probation outside the child's home or committing the child to TJJD shall include in its order its findings that:
(A) it is in the child's best interest to be placed outside the home;
(B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
(C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.
TEX. FAM. CODE ANN. § 54.04(i)(1).

The trial court's disposition order contains the required findings under section 54.04(i)(1) but as noted I.M.M. contends the evidence supporting the findings under subsections (B) and (C) is insufficient. After review of the record, we find the contention disregards the evidence the court heard and the posture of the parties at the disposition hearing.

Disposition hearing evidence showed I.M.M. was age thirteen. During the spring of 2018 I.M.M. lived in Fort Worth with his parents and was enrolled in the seventh grade. His mother, V.M., testified she withdrew him from school in late April and planned to begin homeschooling. Instead he was sent to Plainview to visit his grandmother until Mothers' Day. After arriving in Plainview, I.M.M. did not enroll in school.

Evidence showed I.M.M.'s seventeen-year-old brother, J.M., and his eleven-year-old cousin, A.G., also were staying with grandmother. J.M. arrived in Plainview some three or four months before I.M.M. and did not attend school. While in the care of grandmother, J.M. and A.G were allegedly involved in the robbery of another Plainview convenience store. At points during the disposition hearing, J.M. was referred to as the "ring leader" of the Happy Stop robbery.

There was hearing testimony that while in grandmother's care, I.M.M. smoked marijuana. J.M. became aware of this fact and used the threat of reporting it to grandmother or the boys' parents as leverage to coerce I.M.M. into robbing the Happy Stop.

The Happy Stop robbery occurred less than two weeks after I.M.M. arrived in Plainview. Evidence showed in the course of committing the offense I.M.M. wore a black ski mask and brandished a loaded .380 caliber handgun at the store attendant and her relative while demanding money. I.M.M. took money and cigars from the store and attempted to flee responding police officers. He was later apprehended, and officers recovered the money and cigars. The handgun was located on the floor of the store. After he was taken into custody, I.M.M. was transported to the Lubbock County Juvenile Detention Center where he remained under detention orders until completion of the disposition hearing. Detention center officers from the Lubbock facility testified I.M.M. had caused no problems since placed in their care.

I.M.M. testified on his own behalf and read a prepared, conciliatory statement to the trial court. I.M.M. clearly expressed regret and sorrow for what he had done. He told the court he did not want to spend the remainder of his teenage years "locked up."

The probation officer assigned I.M.M.'s case testified the juvenile probation department recommended the court commit I.M.M. to TJJD because of the seriousness of I.M.M.'s offense. The officer agreed that at the time I.M.M. did not have the quality of care and support in the home that would allow him to be placed on probation and returned to the home. We find the officer's conclusion supported by the undisputed evidence showing I.M.M.'s parents allowed their son to withdraw from the seventh grade and leave Fort Worth for the home of a grandmother who did not require school attendance and did not or could not provide proper supervision. We further find the conclusion supported by the evidence indicating the parents had found it necessary to place at least two of their children outside their home because of undescribed hardships. I.M.M.'s older brother J.M. had lived with grandmother for several months before I.M.M.'s arrival in Plainview. While in grandmother's care I.M.M. smoked marijuana and, like his brother, did not attend school; while at grandmother's I.M.M. obtained a handgun, a ski mask and black clothing, and formed and carried out a plan to place the lives of others in jeopardy for the sake of stealing what was not his.

V.M.'s parental statement, which was attached to the probation officer's social history and in evidence, states that the family "has always lived with other family members due to hardships," and that during 2017 they "had to stay at a motel." I.M.M.'s parents moved to Plainview from Fort Worth when I.M.M. was taken into custody after the robbery, and at the time of the hearing were staying in the home of the boys' maternal aunt.3 The probation officer further testified to her opinion a family placement was not possible and I.M.M.'s parents had not provided proper supervision for their son. On cross-examination, the probation officer agreed she had not performed an evaluation of I.M.M.'s parents' home in Fort Worth and could not tell the court whether that would be a proper placement

for I.M.M. That admission seems to us of little import, however, because it was undisputed the parents were no longer at home in Fort Worth; later, V.M., the mother, seemed to indicate they would move wherever I.M.M. was placed.

Although at the hearing V.M. wanted to take her son "home" and testified she had investigated community programs, I.M.M. did not dispute that he could not return home, whether to that of grandmother or his parents. The issue tried was where outside the home he should be placed. The court reasonably could have believed that alternatives to removal of I.M.M. from the home of his parents or grandmother were unavailable. In closing argument, in fact, counsel for I.M.M. made clear that I.M.M. could not be returned home. Counsel's argument was that I.M.M. should be placed in a "boys' ranch" or boot camp, placements that also are outside the child's home.

Conclusion: We conclude the court's findings under § 54.04(i)(1)(B),(C) are supported by sufficient evidence and the trial court did not abuse its discretion in making those findings. See In re A.W.B., 419 S.W.3d 351 (Tex. App.—Amarillo 2010, no pet.) (finding evidence under section 54.04(i) for commitment to former Texas Youth Commission sufficient); In re M.L.B., 184 S.W.3d 784 (Tex. App.—Amarillo 2006, no pet.) (same). Accordingly, we overrule I.M.M.'s second and third appellate issues contending otherwise. Having overruled I.M.M.'s three issues on appeal, we affirm the disposition order of the trial court.

WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT

WHILE THE JUVENILE'S AGE AT THE TIME OF THE ALLEGED INCIDENT WAS FUZZY AT BEST, UTILIZING THE LESS STRINGENT PREPONDERANCE-OF-THE-EVIDENCE STANDARD; THE EVIDENCE WAS BOTH LEGALLY AND FACTUALLY SUFFICIENT AND THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN TRANSFERRING JUVENILE TO ADULT COURT.

¶ 19-2-3. **In the Matter of A.B.**, MEMORANDUM, No. 02-18-00274-CV, 2019 WL 983751 (Tex.App.—Ft. Worth, 2/28/2019).

Facts: The Texas Family Code governs proceedings in all cases involving delinquent conduct engaged in by a person who was a child at the time the alleged conduct occurred. Id. § 51.04(a); In re D.S., No. 02-17-00050-CV, 2017 WL 3187021, at *1 (Tex. App.—Fort Worth July 27, 2017, pet. denied) (mem. op.). In such cases, the juvenile court's original jurisdiction is exclusive. Tex. Fam. Code Ann. § 51.04(a); D.S., 2017 WL 3187021, at *1.

While the family code vests juvenile courts with exclusive original jurisdiction over all proceedings involving delinquent children, it also provides that those courts have no jurisdiction to adjudicate or conduct a disposition hearing on a person who is 18 years old or older. See re N.J.A., 997 S.W.2d 554, 555 (Tex. 1999); D.S., 2017 WL 3187021, at *1. Rather, after a person has turned 18, the juvenile court's authority is generally limited to doing one of two things: it can (1) waive its exclusive original jurisdiction and transfer the person to the appropriate district or criminal district court in accordance with § 54.02(j)'s requirements or (2) dismiss the case. N.J.A., 997 S.W.2d at 556–57; D.S., 2017 WL 3187021, at *1.

Here, the State alleged that A.B. committed the offense of aggravated sexual assault of a child younger than 14 years of age, a first-degree felony, against Ariana2 on or about January 1, 2011. Tex. Penal Code Ann. § 22.021(a)(2)(B), (e). Ariana testified that the offense occurred while she was spending the night at A.B.'s—her cousin's—house with his mother and two of his siblings, a sister and a younger brother. But she could only roughly estimate when the offense allegedly occurred, initially estimating that she was seven or eight years old; later suggesting that she was eight or nine; and, by the time she testified in the summer of 2018, expanding the possibilities to having been eight, nine, or perhaps ten years old.3

To properly waive its jurisdiction and transfer the case under the family code, the juvenile court had to find that (1) the respondent (A.B.) was currently 18 years old or older; (2) A.B. was between 14 and 17 years old at the time he allegedly committed the offense; (3) the alleged offense had not been adjudicated or no adjudication hearing concerning the offense had been conducted; (4) by a preponderance of the evidence, that for a reason beyond the State's control it had not been practicable to proceed in the juvenile court before A.B.'s eighteenth birthday; and (5) there was probable cause to believe that he committed the alleged offense. Tex. Fam. Code Ann. § 54.02(j)(1), (2)(B), (3), (4)(A), (5).

Complying with § 54.02(j), the trial court found that (1) A.B. was 18 years old or older; (2) A.B. was 14 years old at the time the alleged acts occurred; (3) no adjudication hearing had been conducted; (4) for reasons beyond the State's control, it was not practicable to proceed in juvenile court before A.B.'s eighteenth birthday because by the time that Ariana made her outcry, A.B. was already 19 years old; and (5) based on Ariana's two forensic interviews, there was probable cause to believe that A.B. committed the alleged first-degree felony. See id. The only finding that A.B. disputes is the second one—that he was as old as 14 years when the offense allegedly occurred.

Held: Affirmed

Memorandum Opinion: By a preponderance of the evidence, the State bears the burden of persuading the juvenile court that waiving its jurisdiction is

appropriate. Moon v. State, 451 S.W.3d 28, 45 (Tex. Crim. App. 2014);4 see Tex. Fam. Code Ann. § 51.17(a) ("Except ... for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision ... or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title."). We thus review a juvenile court's factual findings supporting its waiver-and-transfer order under traditional civil evidentiary-sufficiency principles. See Moon, 451 S.W.3d at 47; D.S., 2017 WL 3187021, at *2.

In determining whether legally sufficient evidence supports a finding under review, we consider evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable factfinder could not. D.S., 2017 WL 3187021, at *2; see also In re G.B., 524 S.W.3d 906, 914 n.13 (Tex. App.—Fort Worth 2017, no pet.). If more than a scintilla of evidence supports the finding, then legally sufficient evidence supports it, and a legal-sufficiency challenge fails. D.S., 2017 WL 3187021, at *2; G.B., 524 S.W.3d at 914 n.13.

Under a factual-sufficiency challenge, we consider all the evidence presented to determine if the court's finding is so against the great weight and preponderance of that evidence as to be clearly wrong and unjust. D.S., 2017 WL 3187021, at *2. Put another way, we set the finding aside only if, after considering and weighing all the evidence pertinent to that finding, we determine that the credible evidence supporting it is so weak or so contrary to the overwhelming weight of all the evidence that it should be set aside. G.B., 524 S.W.3d at 914 n.13.

If the juvenile court's findings are supported by legally and factually sufficient evidence, then we review the ultimate waiver decision under an abuse-of-discretion standard. See Moon, 451 S.W.3d at 47; D.S., 2017 WL 3187021, at *3; G.B., 524 S.W.3d at 916–17. To determine whether the juvenile court abused its discretion, we ask whether it acted without reference to the guiding rules or principles in reaching its decision. See Moon, 451 S.W.3d at 47; D.S., 2017 WL 3187021, at *3.

The factfinder alone judges the witnesses' credibility and the weight to be given their testimony and is free to accept all, reject all, or accept only parts of any witness's testimony. In re E.P., 963 S.W.2d 191, 193 (Tex. App.—Austin 1998, no pet.). The factfinder is free to accept or reject any apparent inconsistencies in the testimony and reconcile them. See Anderson v. Durant, 550 S.W.3d 605, 616 (Tex. 2018); In re T.M., No. 04-07-00487-CV, 2008 WL 2115763, at *2 (Tex. App.—San Antonio May 21, 2008, no pet.) (mem. op.). As an appellate court, we must avoid substituting our judgment for the factfinder's. T.M., 2008 WL 2115763, at *2.

The Evidence

A.B. was born in August 1996 and so turned 14 years old in August 2010. According to a September 2017 "pre-diagnostic study" prepared for the juvenile court by court intake officer Patsy Paxton, who interviewed A.B. and his parents in January 2017 (when A.B. was 20), A.B. graduated from high school in 2014 with a B average and was on his school's swim team for three years. He later moved to Austin for community college, where, at the time of the January 2017 intake interview, he was one semester away from earning his degree, was living in a dormitory with a roommate, and was maintaining an A/B average while working two jobs.

A.B. has no criminal record5 nor any involvement with gangs or previous juvenile services. His parents, who have been married for over two decades, reported to Paxton that A.B. had "no history of behavior problems in the home. He has had good relationships with all family members. [A.B.] was always respectful and followed rules in the home."

As noted, the sole evidentiary dispute centers on whether Ariana described an offense committed before or after August 2010, the month in which A.B. turned 14. Ariana was born in June 2002 and was 16 when she testified in July and August 2018.

The record indicates that in May 2015, when Ariana was just one month shy of her thirteenth birthday, she and her father went to the police station to report that A.B., her cousin, had sexually assaulted her. At the transfer hearing, Ariana's father denied having told the police anything and asserted that it was Ariana who spoke to the police. But Ariana remembered things differently, stating that her father had done all the talking.6

Ariana's father explained what had precipitated her outcry. About three days before going to the police station,7 he had confronted her about being at a friend's home where there were boys, alcohol, and marijuana but no adult supervision. Concerned about the presence of boys, Ariana's father broached the subject of whether she was sexually active, and when Ariana denied having had sex, her father—"kind of playing the bluff game with her"—proposed taking her to the doctor, who—he asserted—would be able to tell. Ariana responded by making her outcry that A.B. had sexually assaulted her.

Ariana's father had no idea when the alleged offense had occurred and could not even recall whether Ariana had given him that information, explaining, "I can't remember the details because all I heard was—to be honest with you, was my daughter being violated." "And after that," he continued, "it was kind of the just—I mean, you know, with me being a father, hearing that from your daughter, I just—I wasn't looking for details or anything like that. I just immediately was upset."

The first detective assigned to the case arranged a forensic interview in July 2015, and at that interview Ariana, who identified A.B. by name, asserted that the offense had occurred when she was seven or eight years old.8 The assigned detective apparently later lost the DVD recording of this first interview, so the interviewer's notes were the only record of it.

Ariana's case then encountered an unexpected delay when the detective handling the case came under administrative investigation. Although the record does not reflect exactly when, the State's Brady9 notice shows that detective was ultimately "terminated for neglect of duty in violation of General Order of the Fort Worth Police Department General Orders/Code of Conduct 429.02 and for violation of General Order 704.00(F)(1)." General Order 704.00(F)(1) states that "[e]mployees shall be truthful at all times in their dealing with co-workers, supervisors, managers and other law enforcement personnel. Any statement or omission of pertinent or material information which misrepresents or misleads others will be considered a false statement." The record before us contains no other details about the original detective's apparent misrepresentation(s) that led to his termination, and no witness at the hearing referred to the State's Brady notice.

In any event, more than a year after Ariana and her father had first made a report, the case was reassigned to a second detective, Samantha Horner, who sent Ariana for a second forensic interview—this time in August 2016—with the same forensic interviewer. At this second interview, Ariana asserted that she was eight or nine when the offense occurred but was unsure of her attacker's name, that is, whether it was A.B. or Alex,10 one of A.B.'s brothers.

Although the paperwork for both forensic interviews showed that the offense allegedly occurred in 2011, the interviewer said that the first detective, not Ariana, provided that information; the interviewer had no idea where the first detective had gotten it. The same 2011 date appeared on the form for the second interview, but the interviewer thought that the second detective had simply copied that information from the first form.

Supplying a possible reason for the 2011 date's appearance, Detective Horner testified that the May 2015 police report made by an Officer Pelton indicated that the alleged offense occurred while Ariana was spending the night at A.B.'s "sometime in the year 2011." The police report, however, was not admitted into evidence.

In addition to sending Ariana for a second forensic interview, Detective Horner also sent her in August 2016 to Cook Children's Hospital to be seen by a CARE11 nurse. At the 2018 transfer hearing, Ariana could not recall having gone to Cook Children's Hospital. Regardless, the CARE nurse who saw her stated that Ariana had told her that the incident occurred when Ariana was about eight years old.

But Ariana testified in 2018 that she thought it had happened when she was nine or ten and did not remember ever saying that she had been seven or eight; she added that it could have occurred when she was eight, nine, or ten.

Another piece of evidence arguably anchored the alleged offense as having occurred before rather than after A.B.'s fourteenth birthday. A.B.'s pre-diagnostic study, which was admitted at the transfer hearing, showed that A.B. had two brothers, with the younger of the two—Bryan—having been born in March 2010. But when A.B.'s counsel asked Ariana if she knew Bryan, she was unaware that A.B. even had a second brother and denied ever having met him. She also denied that a baby was there the night of the alleged incident. Ariana testified that after this incident, she never went back to spend the night at A.B.'s home.

During argument, A.B.'s counsel emphasized that the offense must therefore have taken place before Bryan was born in March 2010 because Ariana had no idea who he was; and if the alleged offense occurred before March 2010, it necessarily happened before A.B.'s fourteenth birthday, which would have been five months later, in August.

After the fact, Ariana's mother also tried to determine when the alleged offense occurred. She testified that she noticed a difference in Ariana's behavior when Ariana was about eight years old, and she recalled that the only time Ariana went to her cousins' home by herself—without her older sister, Barbara—was when Ariana was about eight. Although Ariana testified that Barbara was not with her that night, Ariana also indicated that she had spent the night at A.B.'s home on other occasions but did not remember—one way or the other—whether Barbara was with her.

Detective Horner added more timing-related information: "[G]oing off of my memory, [Ariana] remembered that she was on winter break from school, and that's where we came [up] with approximately January of 2011." But Detective Horner admitted that nothing in writing supported her recollection. (Detective Horner might not have documented this information because she placed no importance on A.B.'s age at the time the offense allegedly occurred, asserting her belief that the State could prosecute A.B. even if he had committed the offense when he was 12 or 13 years old.)

Ariana herself testified that she did not remember the date, the month, the year, or even the time of year. In a similar manner, she did not remember the year that she made her outcry to her parents, although she remembered that she was 12 or 13 years old and that it was while she was attending middle school.

Discussion

Despite the uncertainty surrounding A.B.'s age at the time of the alleged offense and the possibility that he was under 14, and despite Ariana's incomplete and contradictory recollections, the record contains some evidence, as we have recounted it above, that the alleged incident occurred after August 2010 and therefore after A.B. turned 14. We hold that there is more than a scintilla of evidence supporting the trial court's finding and thus that the evidence is legally sufficient. See D.S., 2017 WL 3187021, at *2; G.B., 524 S.W.3d at 914 n.13.

Although A.B. correctly asserts that the evidence is contradictory and inexact, the trial court as the factfinder was free to accept or reject any or all of any witness's testimony. See E.P., 963 S.W.2d at 193. As the factfinder, the trial court was also free to reconcile any apparent inconsistencies in the testimony. See Anderson, 550 S.W.3d at 616. This means that the trial court was free to discount both Ariana's not knowing Bryan and the forensic interviewer's note that Ariana told her during the first interview that the offense occurred when Ariana was seven or eight; it also means that the trial court was free to give greater weight to the testimony suggesting that the offense occurred when she was eight—or even older, for that matter—and was consequently more likely to have occurred after A.B. had turned 14 years old. See id.

Moreover, the trial court was free to rely on Horner's testimony that she was able to determine that the offense most likely happened around January 1, 2011 "[f]rom the outcries" and because Ariana was "pretty sure it happened around 2011." That 2011 timeframe, coupled with Horner's explanation that Ariana "remembered that she was on winter break from school," provides some evidence that the offense likely occurred in the winter of 2011. Because A.B. turned 14 in the summer of 2010, the trial court's finding is supported by sufficient evidence. Thus, we hold that the evidence was not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust and was thus factually sufficient. See D.S., 2017 WL 3187021, at *2; G.B., 524 S.W.3d at 914 n.13.

Having concluded that the trial court's finding is supported by legally and factually sufficient evidence, we now consider whether the juvenile court abused its discretion by waiving its jurisdiction and transferring A.B.'s case. See Moon, 451 S.W.3d at 47; D.S., 2017 WL 3187021, at *4. The juvenile court's waiver and transfer order shows that it based its decision on its conclusion that the State had met all five of § 54.02(j)'s criteria. A.B. does not contest that the State met four of the five criteria, and we have held the evidence legally and factually sufficient to support the final criterion—his age—that he did contest. We now further hold that the trial court did not abuse its discretion by waiving its jurisdiction and transferring A.B.'s case because the record shows that it acted with reference to both the evidence and the guiding rules and principles in reaching its decision. See Moon, 451 S.W.3d at 47; D.S., 2017 WL 3187021, at *4.

Conclusion: Because our standard of review is not one that calls for proof beyond a reasonable doubt but simply a preponderance of the evidence, we overrule A.B.'s issue. Having overruled A.B.'s sole contention, we affirm the trial court's order.

IN CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES AND VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE JUVENILE COURT'S FINDINGS, THERE WAS MORE THAN A SCINTILLA OF EVIDENCE TO SUPPORT THE JUVENILE COURT'S DETERMINATION THAT THERE WAS PROBABLE CAUSE IN BELIEVING THAT THE JUVENILE COMMITTED SEVEN SEPARATE FELONY OFFENSES OF AGGRAVATED ROBBERY, AS ALLEGED BY THE STATE.

19-2-4A. **In the Matter of B.M.**, MEMORANDUM, No. 01-18-00898-CV, 2019 WL 1388561 [Tex.App.—Houston (1st Dist.), 3/28/2019].

Facts: On May 10, 2018, the State filed its first amended petition for discretionary transfer to a criminal district court, alleging that B.M., at age 16:

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Ciro Benitez[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Benitez in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Margarita Cannon[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Cannon in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 15, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Allysha Samaniego[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Samaniego in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 16, 2018, in Fort Bend County, Texas, did then and there while in the course of

committing theft of property owned by Lawrence Indefenso[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Indefenso in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Ryane Strother[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Strother in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code;

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Charles Borromeo[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Borromeo in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code; and

• on or about January 17, 2018, in Fort Bend County, Texas, did then and there while in the course of committing theft of property owned by Lee Tran[, the complainant,] and with intent to obtain and maintain control of the property, intentionally and knowingly threaten and place ... Tran in fear of imminent bodily injury and death, and ... did then and there use and exhibit a deadly weapon, to wit: a firearm; and that this act [was] a violation of section 29.03 of the Texas Penal Code.

Pursuant to Texas Family Code section 54.02, the State requested that the juvenile court waive its exclusive original jurisdiction over B.M.'s case and transfer it to a criminal district court for B.M. to stand trial as an adult for seven separate felony offenses of aggravated robbery. Prior to the transfer hearing, the juvenile court ordered a psychological evaluation and diagnostic study and a full investigation of B.M., his circumstances, and the circumstances of the alleged offenses.

In his sole issue, B.M. contends that the juvenile court erred in waiving its exclusive original jurisdiction and transferring his case to a criminal district court because the evidence is legally insufficient to support the trial court's findings of probable cause.

Held: Affirmed

Memorandum Opinion: At the transfer hearing, complainant Benitez testified that on January 15, 2018, he was "robbed at gunpoint" outside his home in a residential subdivision named Mission Bend in Fort Bend County, Texas. That night, at approximately 2:00 a.m., Benitez went outside to his car. As he did so, a blue or green car parked next to his car, and two young, thin, Hispanic males, wearing black, exited. One of the young men held a black firearm in his hand. The young men told Benitez "to give them everything [that he] had." The young man holding the firearm then "pointed it down and shot or fired [it] at [Benitez's] yard." Benitez feared injury or death and gave the young men his wallet, which contained $440. One of the young men also took Benitez's cellular telephone. After the two young men left, Benitez called for emergency assistance.

Complainant Cannon testified that on January 15, 2018, she was the complainant in an aggravated robbery outside her home in a residential subdivision in Fort Bend County, Texas. That night, at approximately 3:00 a.m. or 3:30 a.m., she went outside to her truck. As she sat in her truck, a person knocked loudly on her driver's side window. Cannon turned and saw a young, thin, Hispanic male, approximately sixteen years old, wearing a gray "hoodie." When Cannon lowered her truck's window, the young man put a black firearm close to her face and "asked [her] to give him whatever [she] had." When she told him that she "didn't have anything," the young man "fired a shot." Cannon feared serious bodily injury or death and gave the young man her bag. The young man then got into the passenger's side of a gray car, which another person was driving, and drove off quickly. Cannon called for emergency assistance. After a law enforcement officer came to Cannon's home, the officer found a shell casing from the firearm that the young man had shot.

Complainant Samaniego testified that in January 2018, she lived in a residential subdivision named Mission Bend in Fort Bend County, Texas. On the night of the aggravated robbery, at approximately 4:00 a.m., she drove her car into her driveway and began gathering her things. As she sat in her car, Samaniego heard "a bang" on her driver's side window and saw a young man with a light complexion. The young man yelled, "Give me your stuff," and pointed "a dark colored" firearm at her face. (Internal quotations omitted.) He reached for her cellular telephone, which Samaniego dropped, and then for Samaniego's car keys, which she was holding. The young man grabbed her keys, Samaniego yelled "stop," and the young man "chunked [her keys] ... towards the back of [her] car." Samaniego feared injury or death. The young man then got into the passenger's side of a car, which another person was driving, and drove away quickly. Samaniego called for emergency assistance. Samaniego noted that the young man ultimately did not take her cellular telephone because she dropped it, and although he took her car

keys, he did not keep them; instead, he threw them across the street.

Complainant Indefenso testified that on January 16, 2018, he was "robbed [at] gunpoint" outside his home in a residential subdivision named Teal Briar in Fort Bend County, Texas. That night, at approximately 12:00 a.m., Indefenso sat in his car in his driveway and a young male, wearing a gray "hoodie," "bang[ed] on" his driver's side window with "a silver pistol." The young man told Indefenso to open his window and stated that he would "shoot" Indefenso. Once he rolled down his window, the young man told Indefenso to "give [him] ... everything [t]hat [he] got." Indefenso feared injury or death and gave the young man his wallet, which contained $20, and his cellular telephone. The young man ran away, and Indefenso heard the wheels of a car, although he did not actually see the car. Indefenso's brother called for emergency assistance. Law enforcement officers later notified Indefenso that "they got the guy," and officers returned Indefenso's cellular telephone, which had been found.

Complainant Strother testified that on January 17, 2018, she was "robbed at gunpoint" outside her home in a residential subdivision named Village of Oak Lake in Fort Bend County, Texas. On that night, Strother was sitting in her car in her driveway when she heard a "big bang" on her driver's side door. Strother turned and saw a young, Hispanic male, with a fair complexion, wearing a gray "hoodie" and holding a firearm. The young man pointed the firearm at Strother and said, "Give me your shit." (Internal quotations omitted.) Strother feared serious injury or death and gave the young man her purse. Strother's mother called for emergency assistance.

Strother noted that during the aggravated robbery the young man's silver car was parked in front of her house with another person inside. And although she could not see the other person inside the car, she heard him tell the young man to "hurry up."

Strother further testified that later that night law enforcement officers informed her that they had found the young man that may have committed the robbery, and Strother went to the location where he had been apprehended. Strother identified B.M. as the young man that had taken her purse that night. Strother also identified B.M. at the transfer hearing. According to Strother, a few weeks after the aggravated robbery, law enforcement officers returned her cellular telephone and her "card," which they had found in B.M.'s possession.

Complainant Borromeo testified that on January 17, 2018, after 6:00 p.m., he was unloading groceries from his mother's car outside his home in a residential subdivision named Glen Laurel in Fort Bend County, Texas. It was dark outside, and when Borromeo walked to his mother's car to lock it, he saw a gray or silver car stop in front of his house. A young, Hispanic male, approximately sixteen to eighteen years old, wearing a gray "hoodie" exited the car from the passenger's side and walked up Borromeo's driveway. Although Borromeo did not see the driver of the car, he knew, because the young man had come from the passenger's side of the car, that there was also a driver. Initially, the young man asked for directions, but as he approached Borromeo, he "drew up ... a dark color[ed] handgun" and pointed it at Borromeo's chest. The young man then said, "give me ... any money, credit card, anything." When Borromeo stated that all he had was his mother's car keys, the young man looked at Borromeo's house and asked if there was anyone else at home. Borromeo replied, "yes"; and the young man looked at the house again, told Borromeo that he was "lucky," and ran back to his car. The car drove away quickly. Borromeo called for emergency assistance. Borromeo noted that throughout his entire exchange with the young man, the young man had his firearm pointed at Borromeo's chest, and Borromeo feared serious injury or death.

After a law enforcement officer arrived at Borromeo's home that night, the officer informed Borromeo that he was "aware that ... similar robberies ... and similar situations w[ere] happening within the vicinity" around the same timeframe. Later that night, the law enforcement officer returned to Borromeo's home and informed him that officers may have found the young man who had committed the robbery and "his accomplice." Borromeo went to the location where the young man had been apprehended, and he identified B.M. as the young man who had pointed a firearm at him that night. Borromeo also identified B.M. at the transfer hearing.

Sugar Land Police Department Officer J. Hatfield testified that on January 17, 2018, at approximately 8:00 p.m., he was dispatched to a home in Fort Bend County, Texas related to an aggravated robbery. Upon arrival, he spoke with complainant Tran who told him that when he and his family arrived home that night, Tran stopped his car in the driveway. A young, teenage, Hispanic male, wearing a "gray sweatshirt with the hood up," then said to Tran, "Stop right there, give me your phone and wallet." The young man had a "[s]ilver and black colored handgun," and he took Tran's wallet and cellular telephone while pointing the firearm at Tran. The young man then returned to the passenger's side of a "silver colored ... sedan" and left. Tran did not see the driver of the car. Tran told Hatfield that he feared serious bodily injury and death, and he cooperated with the young man because the man had pointed a firearm at him.

Officer Hatfield further testified that later that night, law enforcement officers "located a silver colored ... sedan" and made a traffic stop. Tran went to the location where a young man had been apprehended and identified B.M. as the young man who had pointed the firearm at him. Hatfield noted that B.M. had been found in the passenger's side of the silver car, wearing a gray sweatshirt with a hood. Law enforcement officers found a firearm and Tran's cellular telephone in

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the car's glove box, which was located in front of where B.M. was sitting. Officers also found Tran's wallet "in the area of the [car's] driver's seat."

Fort Bend County Sheriff's Office Detective D. Williams testified that aggravated robbery is a first-degree felony offense under Texas Penal Code section 29.03. Regarding the Benitez aggravated robbery, Williams explained that on January 15, 2018, Benitez was the complainant in an aggravated robbery. On that night, at 2:07 a.m., a law enforcement officer was dispatched to Benitez's home. Benitez told the officer that he had been "robbed by two unknown Hispanic males," who were in a "small silver four-door passenger car." Benitez explained that the men demanded money, they took $440 and his cellular telephone, and they shot a firearm once at the grass at the end of his driveway. According to Williams, while being interviewed by law enforcement officers, another individual, J.H., confessed to the Benitez aggravated robbery and implicated B.M. J.H. explained that he and B.M. "were following another vehicle when they saw [Benitez], ... they both got out of the[ir] vehicle[,] and [J.H.] had possession of ... a semi-automatic handgun." "[A]t first, [J.H.] did not have his finger on the trigger when he pointed the gun at [Benitez], and then he did" when he pointed it at Benitez's legs. J.H. told Benitez, "Give me everything you got," and when Benitez "didn't want to," J.H. "pointed the gun at the ground and shot into the grass." (Internal quotations omitted.) Benitez "got scared and gave up his wallet," and B.M. "was checking him." According to J.H., Benitez had "three $100 bills and six $20 bills" in his wallet.

Regarding the Cannon aggravated robbery, Williams testified that on January 15, 2018, Cannon was the complainant in an aggravated robbery. On that night, a law enforcement officer was dispatched at 3:57 a.m. to Cannon's home in Fort Bend County, Texas. Cannon told the officer that she was sitting in her car when a Hispanic male wearing a gray "hoodie" tapped on her window with a firearm. Cannon described the firearm as a "black semi-automatic handgun" and stated that the young man was in a "gray four-door car." Cannon further told the officer that the man had fired one shot with his firearm, and law enforcement officers recovered a shell casing from Cannon's driveway. Williams noted that after a similar aggravated robbery occurred on January 17, 2018, two individuals in a silver four-door car were apprehended and a firearm was recovered. The shell casing found in Cannon's driveway matched the firearm recovered by officers on January 17, 2018.

Detective Williams further testified, related to the Cannon aggravated robbery, that he interviewed J.H., who confessed to committing the aggravated robbery. J.H. also implicated B.M., stating that he and B.M. "had robbed a female in her driveway and [B.M.] had been the one to go up to the lady in her car." Further, according to J.H., B.M. "fired off about two rounds and ... got back in the car."

Regarding the Samaniego aggravated robbery, Detective Williams testified that on January 15, 2018, Samaniego was the complainant in an aggravated robbery. On that night, a law enforcement officer was dispatched to Samaniego's home at 4:01 a.m. Samaniego stated that an "unknown male suspect dropped a black bandana as well as a business card holder at the end of her driveway." During his interview with law enforcement officers, J.H. stated that he had committed the Samaniego aggravated robbery and he implicated B.M. J.H. explained that "he had [a] gun, he pointed it at" Samaniego and he "grabbed her cell phone out of her hand." J.H. stated that B.M. was "driving the car in th[e] incident." Samaniego identified J.H. in a photographic array as the person who had robbed her.

Regarding the Indefenso aggravated robbery, Detective Williams testified that on January 16, 2018, Indefenso was the complainant in an aggravated robbery. On that night, at 12:48 a.m., a law enforcement officer was dispatched to Indefenso's home in Fort Bend County, Texas. Indefenso told the officer that he "heard a male voice say, 'Open the door or I'm going to shoot you.' " According to Indefenso, the man had a "gray and silver handgun," and he took Indefenso's wallet, cellular telephone, driver's license, debit card, and credit card. During his interview with law enforcement officers, J.H. stated that "he did not participate in" the Indefenso aggravated robbery, but he implicated B.M., explaining that B.M. told him that he had "hit[ ] a lick." Indefenso's cellular telephone was later recovered by law enforcement officers.

Regarding the Strother aggravated robbery, Detective Williams testified that on January 17, 2018, Strother was the complainant in an aggravated robbery in Fort Bend County, Texas. Strother told law enforcement officers that "the suspect [was] a Hispanic male, thin build, ... and 15 to 17 years old[,] wearing a gray hoodie." She described the firearm that the man used as "[a] small gray pistol," and she stated that his car was "a silver or white colored passenger car, four-door." According to Williams, during his interview with law enforcement officers, J.H. confessed to the Strother aggravated robbery and implicated B.M. J.H. further stated that the firearm used in the robbery belonged to B.M. On January 17, 2018, Strother identified B.M. as the person who had robbed her.

Finally, Detective Williams testified that J.H. and B.M. committed multiple aggravated robberies in Fort Bend County and Harris County, and on January 17, 2018, three individuals identified B.M. as the person who had robbed them.

Conclusion: After the transfer hearing, the juvenile court found that there was probable cause to believe

that B.M. committed seven separate felony offenses of aggravated robbery, as alleged in the State's first amended petition for discretionary transfer to a criminal district court. The court also found, based on the seriousness of the alleged offenses and B.M.'s background, that the welfare of the community required criminal proceedings. The juvenile court waived its exclusive original jurisdiction over B.M.'s case and ordered it transferred to a criminal district court for B.M. to stand trial as an adult.

In Discretionary Transfer Hearing child was not represented by a zealous advocate. [In the Matter of B.M.] (19-2-4B)
On April 30, 2019, the Houston Court of Appeals (1st Dist.) released a concurring opinion, while affirming the discretionary transfer, finding that

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IN DISCRETIONARY TRANSFER TO ADULT COURT, JUVENILE COURT'S DECISION WAS NOT ARBITRARY OR MADE WITHOUT REFERENCE TO GUIDING RULES OR PRINCIPLES, IN THAT IT SHOWED ITS WORK IN ADDRESSING EACH OF THE SECTION 54.02(F) FACTORS IN ITS ORDER AND GAVE SPECIFIC REASONS AND FINDINGS IN SUPPORT OF ITS DECISION IN FAVOR OF CERTIFICATION.

¶ 19-2-2. **In the Matter of J.C.B.**, MEMORANDUM, No. 14-18-00796-CV, 2019 WL 758403 [Tex.App.—Houston (14th Dist.), 2/21/2019].

Facts: The State instituted this case in December 2017 by filing a petition for discretionary transfer to criminal district court seeking to certify appellant to stand trial as an adult. The State sought certification of the appellant as an adult due to the serious and severe nature of the alleged offense, the prospects of adequate protection of the public, and the improbable likelihood of rehabilitation of appellant by the use of the procedures, services, and facilities currently available to the juvenile court.

The juvenile court conducted a hearing on the State's petition. The State presented testimony from the complainant's mother; Detective Suni Jugueta of the Rosenberg Police Department; Vanessa Barriera, a forensic nurse employed by Ben Taub Hospital; Officer Steve Reprogle, Fort Bend County's juvenile probation placement services supervisor; Officer Jina Carmona, a Fort Bend County certified juvenile probation officer; and Dr. Karen Gollaher, a certified expert on juvenile sex offenders. Appellant did not present testimony on his own behalf.

The trial court admitted two exhibits offered by the State into evidence: Dr. Gollaher's psychiatric examination report and Detective Jugueta's social evaluation investigation report.

At the conclusion of the hearing, the juvenile court orally announced that it determined there was probable cause that appellant engaged in aggravated sexual assault as alleged in the petition in violation of section 22.021 of the Texas Penal Code. SeeTex. Penal Code Ann. § 22.021. The court then announced its findings under section 54.02 of the Texas Family Code, which weighed in favor of the juvenile court waiving its jurisdiction. SeeTex. Fam. Code Ann. § 54.02. The juvenile court later signed an order specifically stating the reasons for waiver. See Id. § 54.02(h). This appeal timely followed. Id. § 56.01(c)(1)(A).
Appellant asserts the juvenile court abused its discretion in waiving its exclusive juvenile jurisdiction and transferring the case to district court because the evidence is legally insufficient. The juvenile court is obligated to consider the factors set forth in section 54.02(f) to make the determination required under section 54.02(a)(3). Moon, 451 S.W.3d at 47. Not every factor in section 54.02(f) need weigh in favor of transfer. Id. Any combination of the criteria may suffice to support the juvenile court's waiver of jurisdiction. Id. at 47 & n.78.

Held: Affirmed

Memorandum Opinion:
"[T]he juvenile court that shows its work should rarely be reversed." Id. The record reflects the juvenile court addressed each of the section 54.02(f) factors in its order and gave specific reasons and findings in support of its decision in favor of certification. The juvenile court showed its work "by spreading its deliberative process on the record." Moon, 451 S.W.3d at 49.

The record reflects the juvenile court carefully considered this matter. The juvenile court made findings in its order of transfer that it considered the following witnesses' testimony credible: (1) the complainant's mother; (2) Vanessa Barriera, the Ben Taub forensic nurse; (3) Detective Suni Jugueta; (4) Officer Jina Carmona; (5) Officer Steve Reprogle; and (6) Dr. Karen Gollaher. The court further considered Dr. Gollaher's psychological report and Officer Carmona's social evaluation and investigation.

Conclusion: On this record, we cannot say that the juvenile court's decision was arbitrary or made without reference to guiding rules or principles. See Moon, 451 S.W.3d at 47. Accordingly, we find no abuse of discretion in the juvenile court's decision to waive jurisdiction and transfer appellant to district court. We overrule appellant's sole issue on appeal. We affirm the juvenile court's order waiving juvenile jurisdiction and transferring appellant to criminal district court.