Juvenile court did not abuse its discretion in waiving its exclusive jurisdiction, transferring juvenile to criminal district court, and certifying him to stand trial as an adult. [Gentry v. State](16-2-1A)

On January 21, 2016, the Houston Court of Appeals (1st Dist.) determined that in this Certification and Transfer hearing all of the juvenile court’s findings of fact supporting its reasons for waiving its exclusive jurisdiction were based on legally and factually sufficient evidence, and concluded that the juvenile court’s decision to transfer the juvenile to criminal district court for prosecution as an adult was not arbitrary, but instead represented a reasonably principled application of the legislative criteria found in Section 54.02.

¶ 16-2-1A. **Gentry v. State**, MEMORANDUM, No. 01-14-00335-CR, NO. 01-14-00336-CR, 2016 WL 269985, [Tex.App.—Houston (1st Dist.), 1/21/16].

**Facts:** Around 3:00 a.m. on January 19, 2012, Masario Garza was driving to work on Highway 90 in Fort Bend County. Highway 90 has four lanes, with two on each side of the road. Garza was in the outside lane. As he approached the intersection with FM359, Garza slowed down for a red light. Garza noticed that a gray truck was to his left in the inside lane. The truck was being driven by 22–year–old Daniel Desantiago–Caraza. Fourteen-year-old Damion Gentry was in the passenger seat. The truck stopped at the intersection, and Gentry got out of the passenger side.

Initially, Garza thought that Gentry had gotten out of the truck to ask him directions or to check something in the back of the truck. But then, Garza saw that Gentry was holding gun in his right hand. When he saw the gun, Garza immediately stepped on the gas to get away from the scene. Garza later testified that he fled because he thought that Gentry was “going to rob me or something.”

As Garza left the scene, Gentry shot into the driver’s side window of Garza’s car, shattering the glass. The glass cut Garza’s cheek and hand.

Traveling at a high rate of speed, Garza continued down Highway 90 in the outside lane. When he looked in his rearview mirror, Garza saw that the truck was in the inside lane and was getting closer. After a couple of miles, the truck, still in the inside lane, caught up to Garza and passed him. As the truck passed, Garza heard two more gunshots. The truck then made a U-turn through the grassy median and headed in the opposite direction on the highway. As the truck passed him heading in the other direction, Garza heard two more gunshots.

Garza pulled into a restaurant’s parking lot at the direction of the 9–1–1 operator, with whom Garza had been speaking during the incident. The police soon arrived, and Garza told them what had occurred.

At that same time, Nelson Alberto Mejia Escobar was performing his job of cleaning the parking lot of an Academy store in the Brazos Shopping Center. Around 3:30 a.m., Desantiago–Caraza and Gentry pulled into the Academy parking lot in the gray truck and approached Escobar. While still in the truck, Gentry spoke to Escobar in English. Escobar told Gentry in Spanish that he did not speak English. Gentry then got out of the truck and pointed a gun at Escobar’s head. In Spanish, Gentry told Escobar to give him $150. When Escobar indicated that he did not have any money, Gentry told him to empty his pockets. The only item that Escobar had in his pockets was the keys to his truck. Gentry demanded Escobar’s keys, and Escobar gave him the keys. While he was emptying his pockets, Gentry continued to point the gun at different parts of Escobar’s body. During this time, Escobar repeatedly begged Gentry not to shoot him and asked Gentry “[to] have mercy on me” and “[to] have pity on me.”

Gentry then lowered the gun, but Desantiago–Caraza told Gentry to shoot Escobar. Gentry turned the gun around with the grip facing outward. Gentry raised his arm to strike Escobar with the gun, but Escobar lifted his arm to deflect the blow. Escobar hit Gentry’s hand holding the gun, pushing the gun to the side.

Escobar turned and ran, and Gentry ran after him. As he chased Escobar, Gentry shot at Escobar’s back. Escobar continued to run, and Gentry continued to shoot at him. Gentry shot at Escobar three or four times. As he ran, Escobar tripped and fell to the ground. Gentry stopped shooting. Escobar heard Gentry say to Desantiago–Caraza, “I already killed him.” Gentry and Desantiago–Caraza then left the parking lot in the gray truck.

Meanwhile, around 3:30 a.m., Rosenberg Police Officer J. Thompson had gone to the Summer Lakes Subdivision to assist the fire department with a car fire. Officer Thompson was not needed at the scene of the fire but was asked by an arson investigator to check on a suspicious vehicle that had been seen at a nearby apartment complex that was under construction. The apartment complex was behind the Brazos Shopping Center where the Academy was located. Officer Thompson determined that the suspicious vehicle was the construction crew working at the building site. While at the construction site, Officer Thompson heard three or four gunshots coming from the parking lot in front of the Academy. He also heard tires squealing. Officer Thompson saw the gray pickup truck, being driven by Desantiago–Caraza, leaving the Academy parking lot. He then saw the truck run through a stop sign and turn into the Summer Lakes Subdivision.

Officer Thompson followed the truck into the subdivision. As the truck was stopping in front of a residence, Officer Thompson activated his emergency lights to initiate a stop, which also activated the patrol car’s video-recording equipment.

The truck stopped in front of a house. Officer Thompson instructed Desantiago–Caraza to get out of the truck. Officer Thompson was talking to Desantiago–Caraza when he heard over the police radio that there had been a shooting at Academy. Officer Thompson then ordered Gentry out of the truck, and he made both Gentry and Desantiago–Caraza lie on the ground. Officer Thompson drew his duty weapon and decided that he would wait for backup officers to arrive. Desantiago–Caraza and Gentry began conversing in Spanish. Officer Thompson told them to be quiet. Gentry suddenly stood up, ran to the front of the truck, and then fled the scene.

Rosenberg Police Detective R. Leonhardt then arrived at the scene. He viewed the video taken from Officer Thompson’s patrol car, showing the stop of truck, the detention of Desantiago–Caraza and Gentry, and Gentry’s flight from Officer Thompson. When he saw the video, Detective Leonhardt recognized Gentry.2 The police searched their records and determined Gentry’s last known address. Detective Leonhardt and other officers went to the address and found that Gentry still lived there.

Gentry’s step-father gave his consent to search the home. The officers searched the home for the gun that had been used in the robberies but did not find it. Gentry overheard the officers talking about the gun and told them that the gun had been thrown from the truck at the front of the subdivision.

The officers took Gentry to a juvenile processing office where he was read his statutory Miranda-style rights by Justice of the Peace Mary Ward, acting as a magistrate. Gentry then gave both an oral, recorded statement and a written statement to the police. Gentry reviewed the written statement with Judge Ward and signed it in her presence.

In the written statement, Gentry acknowledged that he been present during the incidents with Garza and Escobar; however, Gentry minimized his involvement, indicating that Desantiago–Caraza had been the primary actor with regard to each. Gentry claimed that it had been Desantiago–Caraza who had fired the gun at Garza. He also claimed that it had been Desantiago–Caraza who had struck Escobar and had first fired the gun at Escobar. Gentry admitted that, after Desantiago–Caraza had fired the gun one time, he also had fired it; but Gentry claimed that he had fired the gun only at the ground.

In his written statement, Gentry also admitted involvement in the car fire in the Summer Lakes Subdivision, which Officer Thompson had been dispatched to investigate. Gentry claimed that Desantiago–Caraza had set the fire with a lighter and that they stayed to watch the car bum. Gentry stated this had been before “the other events occurred.”

The State filed a petition for waiver of the juvenile court’s jurisdiction and discretionary transfer to criminal court for the aggravated-robbery offenses committed against Garza and Escobar. In November 2012, the juvenile court conducted a transfer hearing to determine whether it should waive its jurisdiction and transfer Gentry to criminal district court for prosecution as an adult.

During the three-day transfer hearing, the State presented the testimony of 11 witnesses. Shane Marvin, the court-liaison officer from the Fort Bend County Juvenile Probation Department, testified regarding Gentry’s history in the juvenile system. Marvin had been assigned to supervise Gentry since February 2012. Over the months, Marvin had met with Gentry one or two times a week. Marvin also conducted a social history and home study evaluation for Gentry, ordered by the juvenile court and filed in the record.

Marvin stated that Gentry’s first referral to the juvenile system was for running away in 2007 when Gentry was only 10 years old. Over the next five years, Gentry had 11 other referrals to the juvenile system. One of the referrals, in 2009, was for assault on a public servant. Gentry was placed on formal probation for that referral. Marvin testified that Gentry successfully completed that probation, but, during the term of the probation, Gentry had two violations, including a threat by Gentry to blow up his school.

Marvin testified that another of Gentry’s referrals was for “Class C gang affiliation membership.” Gentry was placed on formal probation for six months for that referral. Gentry ultimately completed that probation, but Marvin testified that, during the probationary term, Gentry received three violations and “an additional Class C citation for destruction of school classes.”

With respect to Gentry’s gang affiliation, Marvin testified that “over the course of a little bit less than 300 days since I supervised his case and reading his files, I’ve come to learn he’s associated, affiliated, or a member of the Southwest Cholos.” When asked what indicated Gentry was in a gang, Marvin explained that, in the past, Gentry had been found to possess certain indicia of gang association. For example, while he was on probation for gang affiliation, Gentry wore certain gang-related items such as a black and white bandana and an extra-long belt. He was also caught tagging textbooks and flashing gang signs in school in front of his teachers. In addition, Gentry had been found to have other indicia of gang affiliation such as writings, taggings, and drawings on his backpack and the number 13 on his belt. Marvin stated that Gentry also has three dots tattooed on his knuckle, which Marvin believed indicated gang affiliation.

At the November 2012 hearing, Marvin indicated that Gentry had been in a juvenile detention facility since the occurrence of the instant offenses in January 2012. Marvin testified that Gentry had been written up for 14 separate infractions since he has been in detention. These include write-ups for fighting and for assault of another child in the facility. Marvin stated that, following the assault, Gentry had to be physically restrained.

In addition, Marvin testified regarding the numerous services that the juvenile system has provided Gentry over the years, prior to the commission of the instant aggravated-robbery offenses. These services included individual, group, and behavior-modification counseling, probation, substance abuse counseling, including inpatient treatment, mental health services, boot camp, and a mentorship program. Marvin agreed that Gentry has had “access to every type of rehabilitation program the [juvenile] department offers.” Marvin testified that “at this point, you know, I think, it’s fair to say that as a department, we have exhausted everything.”

Marvin indicated that, if the court found that Gentry should remain in the juvenile system, Gentry was “absolutely not” a candidate for probation. With respect to why probation was not a good option for Gentry, Marvin testified:

[Gentry’s] Being on probation two times, formal probation, having 12 referrals, having been placed by this department. You know, we talked about services, we talked about probably not even half of the services that he’s actually received.

This child received—he’s participated in the TCOOMMI turnaround program, male mentor program which I refer to as Ramp, acronym for that is Ramp. When he was at JJAEP, he was in life skills training. You know, where they pull kids and they try to give them simple, basic understanding of money, or balancing a checkbook.

JJAEP itself, you know, there’s a component there, for lack of a better word, watered-down boot camp. So you know, he’s been there. He’s participated, he’s had teachers, he’s had drill instructors, he’s had probation officers, he’s had individual counseling, he’s had family counseling, he’s had grief counseling.

He has had multiple alcohol/drug assessments. He has had multiple sessions with alcohol drug counselors. He has had psychiatric evaluations; he has had psychological evaluations.

We have tried in hopes of keeping him at the house and not violating his terms of probation, we’ve attempted to place an electronic monitor on his ankle to keep him there; which, obviously, does not keep a person physically at the house. We’ve done anger management.

So when you ask me in reference to him being a candidate for probation, my personal opinion—and, I think, that the department would support me 100 percent that he is nowhere near being a candidate for probation.

Marvin also testified that Gentry could not be placed in one of the juvenile system’s programs. He explained,

The child has been placed; and the child has been with us since 2007, age 10, up until 2012. That is a five-year span. One thing, and a really strong point is in regards to him being a candidate for placement, I want to go back to the protection of the public and the weapon being used in the commission of this alleged offense.

I don’t think that a placement and let me just hit on that as far as not being a candidate for placement. Our placements have supervisors that have called around to the most severe, most restricted places that we have with regards to boot camp. He has called Grayson, he’s called Hayes County, and he’s called Nueces.

Based on the nature of this offense, based on the child’s now pending arson charges, they’re not going to accept a child into the facility like that. So that’s just not departmental. There’s not a placement that’s going to take him.

Marvin testified, “Our department’s recommendation is if [Gentry] remains in the juvenile system, that he be committed to the TJJD [Texas Juvenile Justice Department]” for confinement. With regard to how long Gentry would be committed to the TJJD, Marvin indicated that, given the nature of the instant offenses, the minimum amount of time Gentry would be committed to the TJJD was three years, though he could stay in the TJJD until he was 19 years old. Marvin testified that the TJJD, not the juvenile court, determined whether, after three years, Gentry could be released on parole. The juvenile court would not make that decision.

The State also offered the testimony and report of court-appointed forensic psychologist Dr. Karen Gollaher, who had interviewed and evaluated Gentry. Dr. Gollaher testified that testing showed Gentry’s IQ to be 107, which is in the average range. Dr. Gollaher indicated that Gentry had a history of depression. She opined that Gentry did not suffer from any mental deficit or psychosis that would have affected his ability to know right from wrong when he committed the instant offenses. Dr. Gollaher indicated that she had seen nothing to indicate that Gentry was under any type of duress or coercion when he committed the offenses.

Dr. Gollaher testified that she had diagnosed Gentry with conduct disorder. She explained that conduct disorder manifests itself by the individual “engaging in a pattern of defiance that’s usually a cross environment that can be at school, legal, and at home which is a precursor to antisocial personality disorder.” With regard to his behavior at home, Dr. Gollaher stated that Gentry had a history of running away.

Gentry had also displayed defiant behavior at school. Gentry told Dr. Gollaher that he had been suspended from school 10 to 15 times. At first, the suspensions were for acting out in class but later the suspensions were for fighting. Dr. Gollaher had learned that Gentry had been involved in numerous individual and gang-related fights. Dr. Gollaher testified that she had also learned that Gentry had been accused of choking a teacher, resulting in a referral to the juvenile system for assault on a public servant. Also taking the instant charges into consideration, Dr. Gollaher indicated that Gentry’s history demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. Dr. Gollaher testified, “[C]ertainly when you see someone who’s already engaged in a pattern of violent behavior, you’re wondering, okay, what’s next?”

Dr. Gollaher agreed that Gentry could benefit from rehabilitation, indicating that Gentry “needs help.” But she also indicated that probation or other treatmentbased programs, such as boot camp, would not be appropriate for Gentry. She stated that Gentry had done well in the past when placed in a structured environment.

With regard to the length of time Gentry should be removed from society, the following exchange occurred between the State and Dr. Gollaher:

[The State:] Knowing then that the minimum length of commitment for the offense of aggravated robbery, and there were two of them, that the minimum length of commitment is three years; and that after three years, he could be released back into society, but that’s the minimum.

What’s your opinion as to whether or not that is the kind of timeframe that is appropriate for him to be in a structured environment and not risk the public or risk the greater community with this [escalation] of violent behavior?

[Dr. Gollaher:] I would be concerned about just three years.

[The State:] Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?

[Dr. Gollaher:] Yes, ma’am.

In addition to expert evidence, the State presented the testimony of the following witnesses at the transfer hearing: (1) the complainants, Garza and Escobar; (2) the investigating police officers, including Officer Thompson, the detectives involved in arresting Gentry and taking his statements, and the arson investigator who investigated the car fire in which Gentry was involved; and (3) Judge Mary Ward, the magistrate who informed Gentry of his statutory rights before he made his statements to the police. The State has offered the following tangible evidence at the transfer hearing: (1) Gentry’s written statement; (2) the video taken from Officer Thompson’s patrol car during Gentry’s and Desantiago- Caraza’s detention, showing Gentry fleeing from Officer Thompson; and (3) the security video from the Academy parking lot, depicting the events surrounding the robbery of Escobar.

To defend against the waiver of jurisdiction, Gentry presented the testimony and report of forensic psychiatrist Dr. A. David Axelrad, who had been appointed by the juvenile court to aid the defense. In forming his opinions, Dr. Axelrad had relied on a neuropsychological evaluation of Gentry conducted by Dr. Larry Pollock. Dr. Pollock’s report was included as part of Dr. Axelrad’s report.

Dr. Axelrad testified that, after he had met with Gentry, he had requested Dr. Pollock to conduct a neuro-psychic examination because he had noticed that Gentry “was exhibiting some cognitive difficulties.” In addition, Dr. Axelrad had learned that Gentry had a history of head injuries and substance abuse. Dr. Axelrad testified that this information was sufficient “to suggest to me that he might have some neuropsychological deficits that may be relevant for the Court to be aware of as it approaches this decision on adult certification.” Dr. Axelrad stated that Dr. Pollock had concluded from the evaluation that [Gentry] has significant neuropsychological deficits, and intelligence processing speed, and executive functioning. He also found that his executive functioning deficits would affect his information processing, and make it difficult for him to comprehend and respond quickly. [Dr. Pollock] also arrived at conclusions that these deficits would have added an impact on his behavior at the time of the commission of these offenses.

Dr. Pollock also stated in his report that he had concerns about Gentry’s “ability to survive in an adult prison because of neuropsychological deficits, and his psychiatric problems.” Dr. Axelrad testified that Dr. Pollock also “indicated that the kinds of cognitive difficulties that Damion Gentry is experiencing is amendable to cognitive rehabilitation,” which should be done in a “juvenile setting.” One of the programs that Dr. Pollock suggested in his report to rehabilitate Gentry was an outpatient program run by Dr. Pollock called “Project Reentry.” Dr. Axelrad testified that the program would provide Gentry the cognitive treatment that he needs.

Dr. Axelrad further testified that he had consulted with Gentry’s treating psychiatrist, Dr. Nithi, who, since Gentry had been in juvenile detention for the instant offenses, had diagnosed Gentry with bipolar disorder. Dr. Axelrad stated that bipolar disorder is a treatable condition. He testified that Dr. Nithi had placed Gentry on two medications for his bipolar disorder and that Gentry was doing well on the medications. Dr. Axelrad stated that Gentry’s behavior had improved.

Dr. Axelrad pointed out Gentry was not being treated for either his bipolar disorder or his neuropsychological deficits when the instant offenses were committed. Dr. Axelrad also pointed out that Gentry had “been abusing alcohol and marijuana at the time this occurred” and had history of abusing alcohol and marijuana.

With respect to Gentry’s “maturity and sophistication,” Dr. Axelrad testified as follows:

Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he’s experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you’re going to utilize the word maturity and sophistication in a medical context or clinical context, he has a brain that has been injured, so he doesn’t have a mature brain because of that. And he certainly has problems involving his neuropsychological functioning. The evidence is very clear in that; and it’s in my report and Dr. Pollock’s report.

When asked his opinion regarding whether Gentry “fully understood the circumstances surrounding the incidents that he’s charged with” Dr. Axelrad testified as follows:

Upon the information that I have reviewed, as well as the psychological testing by Dr. Gollaher and Dr. Pollock, it is my opinion that Damion Gentry was impaired at the time of the commission of these alleged offenses. And that that impairment involved significant cognitive problems that he was experiencing that has been documented by Dr. Pollock’s neuro-physiological testing that he had an active bipolar disorder, bipolar-one disorder that significantly impaired his ability to control his behavior. In children and adolescents who experience bipolar disorder, whether it’s mixed hypomanic or manic, it does produce significant impairment in their behavioral control.

At the conclusion of the transfer hearing, the juvenile court stated as follows on the record:

I’m going to make the following findings: That the offense was against the person. That you are sufficiently sophisticated and mature enough to be tried as an adult. You are sufficient and mature enough to help your attorney in your defense. That you have a record, and your previous history is such that you should be certified to stand trial as an adult. The public cannot be protected if you remain in the juvenile system. And there’s a likelihood that the juvenile system could rehabilitate you is very remote. I think juvenile has tried just about everything they could to help you.

The fact that the alleged offenses were felonies of the first degree, and that you were 14 years of age when you committed those felonies. There has been no adjudication of the two felonies. And because of the seriousness of the alleged offenses, the public cannot be protected if you remain in the juvenile system. Because of the background, the public cannot be protected if you remain here. What I find based on your social evaluation and investigative report, and your psychological evaluations, that you should be certified and stand trial as an adult.

Since the petition has multiple accounts [sic], I am certifying you on both counts of aggravated robbery; both with a deadly weapon, and one was a victim who was over 65 years of age.

In each case, the juvenile court signed a “Waiver of Jurisdiction and Order of Transfer to A Criminal District Court” in which the juvenile court waived its jurisdiction, and ordered that Gentry be transferred to criminal district “for proper criminal proceedings.” In its order, the juvenile court made findings to support the waiver of its jurisdiction and its transfer of Gentry to criminal district court for prosecution.

Once transferred, Gentry moved to suppress the oral and written statements he gave to police after he was taken into custody. Among Gentry’s assertions was that the statements had not been taken in compliance with Juvenile Justice Code Section 51.095 and Code of Criminal Procedure Article 38.22. Gentry asserted that both his audio-recorded statement and his written statement should be suppressed because the audio recording did not contain the warnings required by Juvenile Justice Code Section 51.095 and by Code of Criminal Procedure Article 38.22(3)(a)(2). The trial court granted Gentry’s request to suppress the oral statement but denied his request to suppress his written statement.

The two aggravated-robbery offenses were tried together in criminal district court. The jury found Gentry guilty in each case. It assessed Gentry’s punishment at 50 years in prison for each offense.

Gentry now appeals both judgments of conviction. In each appeal, Gentry challenges the juvenile court’s order waiving jurisdiction and transferring him to criminal court for prosecution as an adult. Also in each appeal, he contends that the trial court abused its discretion by denying his request to suppress his written statement. In his appeal involving the aggravated robbery of Escobar, Gentry contends that the evidence was insufficient to support the judgment of conviction.

**Held:** Affirmed

**Memorandum Opinion:**

**Juvenile Justice Code Section 54.02**

In Moon v. State, the Court of Criminal Appeals stated:

The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule; the operative principle is that, whenever feasible, children and adolescents below a certain age should be “protected and rehabilitated rather than subjected to the harshness of the criminal system[.]”

451 S.W.3d 28, 36 (Tex.Crim.App.2014) (alteration in original) (quoting Hidalgo v. State, 983 S.W.2d 746, 754 (Tex.Crim.App.1999)).

The Moon court further explained, “The right of the juvenile offender to remain outside the jurisdiction of the criminal district court, however, is not absolute.” Id. at 38. Section 54.02(a) of the Juvenile Justice Code provides that the juvenile court may waive its exclusive original jurisdiction and transfer a child to the criminal district court for criminal proceedings if the following is determined:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was ... 14 years of age or older at the time [of the alleged] offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree[;] ... and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

TEX. FAM.CODE ANN. § 54.02(a) (Vernon 2014).

When determining the seriousness of the offense alleged or the background of the child as found in the third requirement, Section 52.04(f) requires the juvenile court to consider, “among other matters,” the following factors:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) the sophistication and maturity of the child;

(3) the record and previous history of the child; and

(4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

TEX. FAM.CODE ANN. § 54.02(f).

As the petitioner seeking waiver and transfer, the State has the burden “to produce evidence to inform the juvenile court’s discretion as to whether waiving its otherwise-exclusive jurisdiction is appropriate in the particular case.” Moon, 451 S.W.3d at 40. The State must “persuade the juvenile court, by a preponderance of the evidence, that the welfare of the community requires transfer of jurisdiction for criminal proceedings, either because of the seriousness of the offense or the background of the child (or both).” Id. at 40–41.

When exercising its discretion to transfer, the juvenile court must consider all four of the factors listed in Section 54.02(f). Id. at 41. Although it makes its final determination from the evidence concerning the Section 54.02(f) factors, the juvenile court “need not find that each and every one of those factors favors transfer before it may exercise its discretion to waive jurisdiction.” Id.

The Moon court, however, made clear that, as required by Section 54.02(h), if the juvenile court waives jurisdiction, it must “state specifically” in its order its reasons for waiver. See id.; see also TEX. FAM.CODE ANN. § 54.02(h). The order must also show that the juvenile court considered the four factors found in Section 54.02(f), although the court “need make no particular findings of fact with respect to those factors.” Id. at 41–42. With regard to the specificity requirement, the Moon court explained,

[T]he Legislature has required that, in order to justify the broad discretion invested in the juvenile court, that court should take pains to “show its work,” as it were, by spreading its deliberative process on the record, thereby providing a sure-footed and definite basis from which an appellate court can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasonable [.] Id. at 49.

**Standard of Review**

In Moon, the Court of Criminal Appeals clarified the standard of review to be applied by an appellate court when a juvenile court waives its exclusive jurisdiction pursuant to Section 54.02. The court held: “[I]n evaluating a juvenile court’s decision to waive its jurisdiction, an appellate court should first review the juvenile court’s specific findings of fact regarding the Section 54.02(f) factors under ‘traditional sufficiency of the evidence review.’ ” Id. at 47.

Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding and disregard contrary evidence unless a reasonable fact finder could not reject the evidence. Moon v. State, 410 S.W.3d 366, 371 (Tex.App.–Houston [1st Dist.] 2013), aff’d Moon, 451 S.W.3d at 52. If there is more than a scintilla of evidence to support the finding, the no-evidence challenge fails. Id. Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the court’s finding is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Id.

With regard to the sufficiency review, the Court of Criminal Appeals further held,

[I]n conducting a review of the sufficiency of the evidence to establish the facts relevant to the Section 54.02(f) factors and any other relevant historical facts, which are meant to inform the juvenile court’s discretion whether the seriousness of the offense alleged or the background of the juvenile warrants transfer for the welfare of the community, the appellate court must limit its sufficiency review to the facts that the juvenile court expressly relied upon, as required to be explicitly set out in the juvenile transfer order under Section 54.02(h). Moon, 451 S.W.3d at 50.

After conducting a “traditional sufficiency of the evidence review” of the juvenile court’s specific findings, the appellate court “should then review the juvenile court’s ultimate waiver decision under an abuse of discretion standard.” Id. at 47. With regard to the abuse-of-discretion analysis, the court explained,

[I]n deciding whether the juvenile court erred to conclude that the seriousness of the offense alleged and/or the background of the juvenile called for criminal proceedings for the welfare of the community, the appellate court should simply ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles. In other words, was its transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria? Id.

**Juvenile Court’s Orders**

In these cases, the juvenile court made the following determinations in its orders to support its decision to waive its exclusive jurisdiction and transfer Gentry to criminal district court for prosecution as an adult:

After full investigation and hearing, this Court specifically enters the following findings:

The child the subject of this suit was fourteen (14) years of age at the time of the alleged offenses made the basis of this suit. The child is currently fifteen (15) years of age.

The offenses are against the person.

That Damion Gentry is sufficiently sophisticated and mature enough to be tried as an adult.

That Damion Gentry is able to assist his attorney in his defense.

That Damion Gentry has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.

That the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote.

Further, the Court makes the following additional findings:

There is probable cause to believe that the child before the Court committed the offenses as alleged against a person, to wit: Aggravated Robbery (Two (2) Counts)

That Damion Gentry was fourteen (14) years old at the time of the commission of the acts alleged in the States’ Petition for Discretionary Transfer to a Criminal District Court.

Both acts made the basis of this suit would be felonies of the first degree under the penal laws of the State of Texas if committed as an adult.

No adjudication hearing has been conducted concerning the offenses made the basis of this suit.

The alleged offenses were of a serious nature, and involve the use of a deadly weapon. Additionally, that one victim was found to be over the age of sixty-five (65) years.

That because of the record and previous history of the child and because of the extreme and severe nature of the alleged offenses, the prospects of adequate protection of the public, and the likelihood or reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.

Therefore, the Court finds that after considering all of the testimony, diagnostic study, social evaluation, and full investigation of the child’s circumstances and the circumstances of the alleged offenses, the Court finds it is contrary to the best interest of the public to remain under juvenile jurisdiction.

The Court specifically finds that because of the seriousness of the alleged offenses and the background of the child, the welfare of the community requires criminal proceedings.

In Moon, the Court of Criminal Appeals determined that the juvenile court’s order waiving jurisdiction was deficient because it lacked sufficient specificity to support the transfer. Id. at 50–51. There, the only reason stated for waiver—seriousness of the offense—was not supported by “case-specific findings of fact.” Id. at 51. The Moon court observed that the juvenile court had found facts “that would have been relevant to support transfer for the alternative reason that the appellant’s background was such as to render waiver of juvenile jurisdiction,” however, “because the juvenile court did not cite the appellant’s background as a reason for his transfer in its written order, these findings of fact [were] superfluous.” Id.

The transfer orders in the instant cases do not suffer from the same defects. Here, the juvenile court’s orders expressly identify both Section 54.02(a)(3) reasons—(1) seriousness of the offenses and (2) Gentry’s background—to support its conclusion that the welfare of the community required transfer for criminal proceedings. See TEX. FAM.CODE ANN. § 54.02(a)(3), (h); cf. Moon, 451 S.W.3d at 51. The order also makes case-specific findings of fact to support the two stated reasons warranting waiver and transfer. The order also reflects that the juvenile court considered the factors delineated in Section 54.02(f). See Moon, 451 S.W.3d at 41–42.

We now examine the sufficiency of the evidence to support the case-specific findings of fact underlying the trial court’s orders waiving its exclusive jurisdiction and transferring Gentry for criminal prosecution as an adult.

**Analysis**

1. Seriousness of the Offenses

As a reason for waiving its jurisdiction, the juvenile court cited in its order the seriousness of the alleged offenses, which it recognized as being two counts of aggravated robbery. It described the offenses as being of an “extreme and severe” nature.

To support the seriousness-of-the-offense reason, the juvenile court considered, as required by Section 54.02(f)(1), whether the alleged offenses were “against person or property.” See TEX. FAM.CODE ANN. § 54.02(f)(1). The juvenile court found that “[t]he offenses are against the person.” Gentry does not dispute that the aggravated-robbery offenses are “offenses are against the person,” but, he points out that this finding alone would not support a determination by the juvenile court that the seriousness of the offense warranted transfer. See Moon, 451 S.W.3d at 48 (“If that is the only consideration informing the juvenile court’s decision to waive jurisdiction—the category of crime alleged, rather than the specifics of the particular offense—then ... the transfer decision would almost certainly be too ill-informed to constitute anything but an arbitrary decision.”).

Unlike in Moon, the juvenile court in this case made two additional, fact specific findings regarding the details of these two particular aggravated robbery offenses to support its determination that the seriousness of the offenses warranted waiver and transfer. The juvenile court found that the alleged offenses were of a serious nature because (1) the offenses “involve[d] the use of a deadly weapon,” and (2) “one victim was found to be over the age of sixty-five (65) years.”

The evidence offered at the transfer hearing by the State, including the testimony of complainants, Masario Garza and Nelson Alberto Mejia Escobar, supports these findings. With respect to the aggravated-robbery offense against Garza, the evidence indicated that Gentry had approached 68–year–old Garza at a stoplight with a gun in his hand. See TEX. PENAL CODE ANN.§ 1.07(a)(17)(A) (Vernon Supp.2015) (providing that “deadly weapon” means “a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury”).4 When Garza sped off, Gentry fired twice at the driver’s window, shattering the glass.5 The glass cut Garza’s hand and face. Garza heard two more gunshots being fired from the truck in which Gentry was a passenger as it passed him on the highway. Garza then heard another two gunshots come from the truck as it was traveling in the opposite direction on the other side of the highway.

The evidence also showed that, approximately 30 minutes after shooting at Garza, Gentry approached Escobar and demanded $150. When Escobar told Gentry he had no money, Gentry took Escobar’s truck keys and hit Escobar with the handle of the gun. Escobar ran, and Gentry ran after him shooting several times at Escobar’s back. Escobar tripped and fell. Gentry told Desantiago–Caraza, who was still in the truck, that he had killed Escobar. Gentry then left, believing that Escobar was dead.

We conclude that the record contains more than a scintilla of evidence to support the juvenile court’s findings that the offenses involved the use of a deadly weapon and that one of the victims was over 65–years–old. We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings.

We are mindful that the Court of Criminal Appeals recognized in Moon :

[T]he offense that the juvenile is alleged to have committed, so long as it is substantiated by evidence at the transfer hearing and of a sufficiently egregious character, will justify the juvenile court’s waiver of jurisdiction regardless of what the evidence may show with respect to the child’s background and other Section 54.02(f) factors.Id.

2. Gentry’s Background

The juvenile court also identified Gentry’s background as a reason to support waiver of its jurisdiction and warrant transfer for criminal proceedings. In support of this reason, the juvenile court made these relevant findings, which take into consideration the last three factors found in Section 52.04(f):

That Damion Gentry is sufficiently sophisticated and mature enough to be tried as an adult.

That Damion Gentry is able to assist his attorney in his defense.

That Damion Gentry has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.

That the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote.

...

That because of the record and previous history of the child and because of the extreme and severe nature of the alleged offenses, the prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.

See TEX. FAM.CODE ANN. § 54.02(f)(2),(3),(4).

We turn to the evidence admitted at the transfer hearing to determine if it supports these findings.

a. Sophistication and maturity

First, we discuss the finding that Gentry was sufficiently sophisticated and mature enough to be tried as an adult. See id. § 54.02(f)(2). Related to that finding is the juvenile court’s finding that Gentry is able to assist his attorney in his defense.

At the hearing, the court-appointed forensic psychologist, Dr. Gollaher, testified that she found Gentry to be “criminally sophisticated.” She based this on Gentry’s pattern of being “involved with increasingly more violent crime,” which began with him acting out at a young age, moved to him being involved in numerous fights, including gang fights, and had escalated to the aggravatedrobbery offenses involved in these cases.

Dr. Gollaher testified that, after interviewing Gentry, she did not find any “mental health impairment or psychosis” that would have affected Gentry’s ability to understand “the difference between right and wrong.” She also testified that there had been no indication that Gentry had acted under any type of coercion or duress at the time he committed the aggravated-robbery offenses.

With respect to his intellect, Dr. Gollaher testified that testing indicated that Gentry an IQ of 107, which is in the average range. She also indicated that, academically, testing showed that Gentry performed at or above grade level in all subjects, including reading, except for math for which he performed at a sixth grade level.

In his brief, Gentry challenges the juvenile court’s finding that he was sufficiently sophisticated and mature by citing Dr. Axelrad’s testimony in which the doctor addressed these issues:

Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he’s experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you’re going to utilize the word maturity and sophistication in a medical context or clinical context, he has a brain that has been injured[.]

Gentry then asserts in his brief as follows: “The evidence clearly showed Dr. Axelrad, a psychiatrist, for over 40 years, testified that [Gentry] suffered from head injuries and neuropsychological deficits that are involving the same areas of the brain that have not been fully matured or developed or mamelonated.”

At the hearing, Dr. Gollaher disagreed with Dr. Axelrad’s and Dr. Pollock’s conclusions that Gentry has significant neuropsychological issues. She stated that she looked at the data in Dr. Pollock’s neuropsychological evaluation and it does not support his diagnosis that Gentry has a cognitive disorder. Dr. Gollaher also indicated in her testimony that there were no medical records to substantiate information regarding any head injuries that Gentry had suffered in the past, as had been reported to Dr. Axelrad. On cross-examination, Dr. Gollaher further testified that she disagreed with Dr. Axelrad’s conclusion that Gentry lacked insight into his current situation. And Dr. Gollaher also disagreed with Dr. Axelrad’s finding that Gentry does not fully understand the consequences of being tried as an adult.

In addition to the experts’ testimony, the juvenile court also heard testimony from other witnesses that was relevant to Gentry’s sophistication and maturity. One of the detectives who interviewed Gentry testified as follows:

He’s very street smart. He’s very articulate. I think he’s intelligent on top of that, not just street smart, but just, you know, overall intelligence. He knows how to—to kind of work a [room]. And what I mean by that is, is he’s very polite. He has, you know, good manners. But he knows what—it’s like he almost knows what to say and what not to say. He’s careful about it. He’s very calculated on what he says.

When asked about her impressions of Gentry’s maturity, Judge Ward, who had read Gentry his rights and interacted with him after he was apprehended, testified, “[T]he way he came across to me that he was very streetwise, had learned—had that knowledge. And he could pretty much handle being a 17–or 18–year–old easy—easily.” She then stated that Gentry was “[a] mature young man.” We conclude that the record contains more than a scintilla of evidence to support the juvenile court’s findings that Gentry was sufficiently sophisticated and mature to be tried as an adult and that he was able to assist his attorney with his defense. We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings.

b. Record and referral history

The juvenile court also found that Gentry “has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.” See TEX. FAM.CODE ANN. § 54.02(f)(3). In his brief, Gentry challenges the juvenile court’s finding by asserting that his “record and history was minimal and non-violent.” He acknowledges that he had referrals for assaulting his teacher and for gang affiliation but notes that he had successfully completed probation for those two referrals.

As the State points out, Gentry minimizes his record and his history in his brief. Dr. Gollaher testified that she learned Gentry assaulted his teacher by choking the teacher. Dr. Axelrad wrote in his report that Gentry stated that he had hit the teacher in the face, causing a laceration, when the teacher had restrained Gentry during a fight.

With respect to Gentry’s probation for the assault on the teacher, Marvin testified that Gentry had two violations while he was on probation. One of the violations entailed a threat by Gentry to blow up his school.

Regarding Gentry’s referral for gang affiliation, the evidence showed that, even after he was placed on probation for that offense, he continued to be a member of a gang, the Southwest Cholos. Marvin testified that, during that probationary term, Gentry received three violations and “an additional Class C citation for destruction of school classes.” Dr. Gollaher testified that Gentry told her that he had been in many gang fights.

Marvin also testified that, in the past five years, Gentry had received a total of 12 referrals to the juvenile system. Gentry had his earliest referral when he was 10 years old for running away from home. Marvin further testified that, while in detention for the instant offenses, Gentry had been written up for 14 different infractions. One of these infractions was assaulting another juvenile in the detention facility, requiring Gentry to be physically restrained.

The juvenile court also heard testimony that Gentry had been involved in setting fire to a car. This had occurred the same night as he committed the aggravated-robbery offenses.

We conclude that the record contains more than a scintilla of evidence to support the juvenile court’s findings in each transfer order that Gentry “has a record and referral history and that previous history is such that Damion Gentry should stand trial as an adult.” We also conclude that these findings were not against the great weight of the evidence. Thus, the evidence was legally and factually sufficient to support the findings regarding Gentry’s record and referral history.

c. Rehabilitation and protection of the public

The trial court also found “the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote.” See id. § 54.02(f)(4). The court further found that “the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.” See id. In his brief, Gentry points out that both Dr. Axelrad and Dr. Gollaher testified that Gentry could benefit from rehabilitation and treatment.

Dr. Gollaher testified that she agreed with Dr. Axelrad that Gentry could use rehabilitation, but she clarified that she differed with Dr. Axelrad with regard to [w]here that happens and how that happens.” Dr. Axelrad indicated that Gentry could best receive “cognitive treatment” in a juvenile setting. However, Dr. Gollaher did not agree that Gentry had a cognitive disorder. She testified that Dr. Pollock’s data did not support this diagnosis.

In addition, while Dr. Axelrad indicated that Gentry could be treated through an outpatient program run by Dr. Pollock, Dr. Gollaher testified that, given his background, Gentry was not a candidate for probation or a treatment-based program. Dr. Gollaher testified that Gentry would do best receiving treatment in a structured environment. She also testified that she would be concerned if Gentry were to be released after three years, which is the minimum amount of time that he could be detained by the juvenile system. Dr. Gollaher responded affirmatively when asked, “Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?”

Dr. Gollaher also testified that Gentry’s history, including the instant offenses, demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. She stated, “[C]ertainly when you see someone who’s already engaged in a pattern of violent behavior, you’re wondering, okay, what’s next?” When asked whether Gentry’s behavior of engaging in arson was significant, Dr. Gollaher responded,

It’s not that common. It’s very unusual. Not very many people go out and bum things. And certainly the concern about getting to the point that you would engage in that behavior, that destructive behavior is concerning.... It’s just such a destructive behavior. And it’s so unusual that it would give me great concern, and it did when I found out.

Dr. Gollaher further testified with regard to Gentry’s escalating behaviors: “As you asked earlier on, at what point does that stop? I mean, the only next point is killing somebody.”

Furthermore, Marvin testified that Gentry was “absolutely not” a candidate for probation. He also stated that none of the outside treatment-based programs affiliated with the juvenile system would accept Gentry because of the nature of the pending charges. Marvin indicated that, if Gentry stayed in the juvenile system, he should be sent to a juvenile detention facility. Marvin also listed many of the numerous services, therapies, and programs that the juvenile system had already provided to Gentry over the years. Marvin stated, “[A]t this point, you know, I think, it’s fair to say that as a department, we have exhausted everything.”

We conclude that the record contains more than a scintilla of evidence to support the juvenile court’s findings that “the public cannot be protected if Damion Gentry remains in the juvenile system and that the likelihood that the juvenile system could rehabilitate Damion Gentry is very remote” and that “the likelihood of reasonable rehabilitation of the child by use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt.” We also conclude that these findings were not against the great weight of the evidence. Therefore, the evidence was legally and factually sufficient to support the findings.

**Conclusion:** Having determined that all of the juvenile court’s findings of fact supporting its reasons for waiving its exclusive jurisdiction were based on legally and factually sufficient evidence, we conclude that the juvenile court’s decision to transfer Gentry to criminal district court for prosecution as an adult was not arbitrary, but instead represented a reasonably principled application of the legislative criteria found in Section 54.02. Thus, we hold that the juvenile court did not abuse its discretion in waiving its exclusive jurisdiction, transferring Gentry to criminal district court, and certifying him to stand trial as an adult.