Juvenile Court did not abuse its discretion by waiving jurisdiction and transferring juvenile case to the criminal court because the evidence was legally and factually sufficient to support its findings of fact. [In re K.J.](16-3-1)

On April 28, 2016 the Houston (1st Dist) Court of Appeals applied a two-pronged analysis in determining that the juvenile court did not abuse its discretion in discretionary transfer to adult court: (1) the juvenile court had sufficient information upon which to exercise its discretion; and (2) the juvenile court did not err in its application of its discretion?

¶ 16-3-1. **In re K.J.**, NOS. 01–15–00947–CV, 01–15–00948–CV, 01–15–00949–CV --- S.W.3d ----, 2016 WL 1714886 [Tex.App.—Houston (1st Dist.), 4/28/16].

**Facts:** Appellant is charged with three counts of armed robbery against three different complainants in three separate incidents. At the time of the alleged offenses, appellant was 14 years old. The State filed a petition in all three cases asking the juvenile court to waive jurisdiction and transfer the cases to criminal district court.

Relying on evidence taken at an evidentiary hearing, as well as appellant’s juvenile probation report and a psychological evaluation, the juvenile court granted the State’s motions with the following November 5, 2015 order:

ORDER TO WAIVE JURISDICTION

ON THE 1ST DAY OF OCTOBER, 2015, this Court held a hearing in the above styled and numbered petitions pursuant to Section 54.02 of the Texas Family Code. After reviewing all the testimonial and documentary evidence admitted at the hearing, the Court’s files under these cause numbers of which it took judicial notice, and the Respondent’s demeanor and conduct before this Court at the hearing and during interactions with the Court before the hearing, the Court now decides to waive its exclusive, original jurisdiction and discretionarily transfer the Respondent to the Criminal District Court. The Court reaches this decision because the welfare of the community requires criminal proceedings based on the seriousness of the offenses alleged and the background of the child.

In reaching this decision, the Court makes the following findings of fact:

1. There is probable cause to believe the Respondent committed the offenses, as alleged in the petitions, namely the offenses of Aggravated Robbery, which are first degree felonies. The Respondent, having been born on November 22, 2000, was 14 years old on April 12 and 13, 2015, the dates of the commission of the alleged offenses.

2. The Respondent was properly served with the petitions and summons in compliance with the notice requirements of Section 53,04,53,05, 53.06, and 53.07 of the Texas Family Code including that the summons stated the purpose of the hearing was to consider discretionary transfer to Criminal District Court. Moreover, the Respondent received the petitions and summons at least two days before this Court conducted the hearing.

3. The Court ordered a complete diagnostic study, social evaluation, and full investigation of the Respondent, his circumstances, and the circumstances of the alleged offenses. The Court did receive a full investigation of the Respondent, his prior referrals, a social evaluation, diagnostic study, and his circumstances.

4. At least five days before this hearing, the attorney for the Respondent and attorney for the State received a copy of all reports this Court considered in reaching its decision, namely: the probation report, the Court Report Information Summary and 315th District Court Certification Report.

The Court then weighed, in addition to the above, the following factors and makes the below listed findings that support its decision, namely:

1. This Court reviewed and considered whether the alleged offenses were against person or property and finds in support of discretionary transfer specifically as follows:

There is probable cause to believe the Respondent committed multiple offenses against the person of another, and that because they are against the person it gives greater weight in favor of discretionary transfer under this factor.

More specifically, the Court finds the following aspects of the alleged offenses, and the Respondent’s alleged participation in it, particularly egregious and aggravating:

The Respondent used and exhibited a deadly weapon, namely a firearm, during the commission of each of these offenses. On April 12, 2015, the Respondent stole a white SUV from a complainant in an apartment complex parking lot. The Complainant located pictures that had been taken with his stolen cellphone that were uploaded to his photo album on his iCloud account. The Respondent is in the pictures and is seen holding a .380 caliber pistol. The complainant identified the Respondent as the individual who held the gun to him and took his property. The Complainant stated to the officer that he was scared for his life. The Respondent later admitted in a recorded interview with police officers that he had driven a white SUV.

Further, on April 13, 2015, the Respondent threatened an eighty-year-old Complainant by pointing a firearm to her while demanding that she exit her vehicle. This action put the Complainant in fear of death or serious bodily injury. The Respondent then drove away in the complainant’s vehicle. The Respondent was later identified by the complainant as the gunman in the aggravated robbery.

Additionally, on April 13, 2015, the Respondent approached a Complainant in her apartment complex and pointed a firearm to her face and demanded her keys, cellphone, and the passcode to her phone. The Complainant testified that she was terrified and was scared for her life. The Complainant identified the Respondent as the person who held the gun up to her head. The Complainant’s stolen cellphone was later recovered with a video of the Respondent on it, as well as, photos of the Respondent holding guns and displaying gang signs.

2. This Court reviewed and considered the sophistication and maturity of the Respondent and finds in support of discretionary transfer specifically as follows:

The Respondent’s level of Sophistication–Maturity, according to Dr. John Webb, was in the middle range in comparison to most individuals his age. Dr. Webb stated that the Respondent exhibits an average level of intellectually based sophistication and an average level of criminal sophistication.

Additionally, the Respondent was found to be at a moderate risk for future offending. Dr. Webb listed out the following risk factors that are associated with reoffending that he saw present in the Respondent: Attention–Deficit/hyperactivity difficulties, a history of nonviolent offending, past supervision/intervention failures, poor school achievement, peer delinquency, stress and poor coping, community disorganization, risk taking/impulsivity, substance use difficulties, anger management problems, poor compliance, and low interest/commitment to school.

Further, the Respondent demonstrated that he clearly understands and is very aware that there are different consequences in the juvenile compared to the adult justice system.

3. This Court reviewed the Respondent’s record and previous history and finds in support of discretionary transfer specifically as follows:

The Respondent had several prior referrals to the Harris County Juvenile System. The Respondent was placed on deferred adjudication probation for the misdemeanor offense of Criminal Trespass that was referred on August 5, 2013. On December 9, 2014, the Respondent was placed on probation for the felony offenses of Unauthorized Use of a Motor Vehicle and Criminal Mischief ($1,500–20,000) and the misdemeanor offense of Burglary of a Vehicle.

The Respondent was not compliant on his probation. In addition to being charged with three aggravated robbery charges, he violated his court ordered curfew, admitted to using marijuana while on probation, and failed to attend the Reality Oriented Physical Experience System program as directed by his probation officer. Additionally, the Respondent was reported as a runaway to his probation officer in March, 2015, and again in April, 2015.

The Respondent was placed in the Gang Supervision Program from December 9, 2014 to present.

The Respondent had fourteen (14) disciplinary write-ups while detained at the Harris County Juvenile Detention Center, including violations for refusal to attend school, assaulting staff/another resident, exhibiting behavior that poses a threat to the safety/security of the facility, inciting a riot, destroying/defacing county property, and disrespecting staff.

4. This Court reviewed and considered the prospects of adequate protection of the public and the likelihood, if any, of the rehabilitation of the Respondent by use of the procedures, services, and facilities currently available to the Juvenile Court and based on the above and its knowledge of the rehabilitative services that may be provided under Title III of the Texas Family Code and the age restrictions placed on under the Texas Human Resources Code, finds In support of discretionary transfer specifically as follows:

The Respondent’s mother reported that while on probation, the Respondent brought a gun into her home and discharged the weapon. She also reported that the Respondent would leave for days while under her supervision and she did not know his whereabouts. She stated that she was frustrated with his noncompliance and negative behavior.

Further, the efforts of the Harris County Juvenile Probation Department to rehabilitate the Respondent for past criminal behavior have been unsuccessful, and instead the Respondent’s criminal behavior escalated in the more serious offense of Aggravated Robbery,

Further, the crimes the Respondent is alleged to have committed are so egregious and aggravated that this Court determines that based on these offenses and his prior referral history, that he will not be amenable to this Court’s additional efforts to rehabilitate him,

Further, the decision to seek a determinate petition is in the discretion of the prosecutor and the prosecutor chose not to seek grand jury approval in these cases. See TEX. FAM.CODE ANN. § 53.045(a)(West 2014).

Based on the above, as well as the totality of the evidence presented in the clerk’s record, at the hearing, in the written reports, studies, and investigations, this Court ORDERS and CERTIFIES that its jurisdiction sitting as a Juvenile Court, be WAIVED, and that [K.J.] be hereby REMANDED to the custody of the Sheriff of Harris County, Texas and is hereby transferred to the Criminal District Court of Harris County, Texas, for criminal proceedings to be dealt with as an adult in accordance with the Texas Code of Criminal Procedure.

The Court further stated orally on the record on the 1ST day of OCTOBER, 2015, and in writing in this Order that the Juvenile may immediately appeal the certification decision under Family Code Section 56.01; and that by Order of the Texas Supreme Court, the appeal is accelerated under the Texas Rules of Appellate Procedure applicable to accelerated appeals.

Appellant timely brought this appeal.

**Held:** Transfer to Adult Court Affirmed

**Opinion:** As long as the appellate court can determine that the juvenile court’s judgment was based upon facts that are supported by the record, it should refrain from interfering with that judgment absent a scenario in which the facts identified in the transfer order, based on evidence produced at the transfer hearing as it relates to the non-exclusive Subsection (f) factors and beyond, bear no rational relation to the specific reasons the order gives to justify the conclusion that the seriousness of the offense and/or the juvenile’s background warrant transfer.” Moon, 451 S.W.3d at 46.

Until recently, the Texas courts of appeals were split in their approaches to reviewing a juvenile court’s certification decision. The Court of Criminal Appeals recently resolved that split, explaining that “an appellate court should first review the juvenile court’s specific findings of fact regarding the Section 54.02(f) factors under ‘traditional sufficiency of the evidence review.’ But it should then review the juvenile court’s ultimate waiver decision under an abuse of discretion standard.” Id. at 47. In so doing, it approved of the El Paso Court of Appeals’ approach:

We apply a two-pronged analysis to determine an abuse of discretion: (1) did the juvenile court have sufficient information upon which to exercise its discretion; and (2) did the juvenile court err in its application of discretion? A traditional sufficiency of the evidence review helps answer the first question, and we look to whether the juvenile court acted without reference to any guiding rules or principles to answer the second. Id. at 47 (quoting In re J.R.C.S., 393 S.W.3d 903, 914 (Tex.App.–El Paso 2012, no pet.)).

**A. Sufficiency of the evidence to support section 54.02(f) findings?**

We limit our 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.

**[The appellate court then went on a section by section analysis of 54.02(f) and the juvenile courts fact findings, which I have omitted here]**

**B. Did the juvenile court abuse its discretion?**

In Moon, the Court of Criminal Appeals provided the following guidance about how we are to proceed once we determine that the juvenile court’s findings are supported by sufficient evidence:

[W]e hold that, in evaluating a juvenile court’s decision to waive its jurisdiction, an appellate court should first review the juvenile court’s specific findings of fact regarding the Section 54.02(f) factors under “traditional sufficiency of the evidence review.” But it should then review the juvenile court’s ultimate waiver decision under an abuse of discretion standard. That is to say, in deciding whether the juvenile court erred to conclude that the seriousness of the offense alleged and/or the background of the juvenile called for criminal proceedings for the welfare of the community, the appellate court should simply ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles. In other words, was its transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria? And, of course, reviewing courts should bear in mind that not every Section 54.02(f) factor must weigh in favor of transfer to justify the juvenile court’s discretionary decision to waive its jurisdiction.

451 S.W.3d at 47.

Applying this standard, we conclude that the juvenile court did not abuse its discretion in waiving jurisdiction and transferring appellant’s cases to criminal district court. Section 54.02(d) mandates the court “order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.” The court must hold a hearing, § 54.02(c), during which the court may consider “written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses.” § 54.02(e). Finally, the court must state specifically in any transfer order the reasons for waiver.

**Conclusion:** The juvenile court set forth relevant and comprehensive reasons for its decision to waive jurisdiction and transfer appellant. Because appellant has not established that the court “acted without reference to guiding rules or principles,” or that its transfer was “arbitrary, given the evidence on which it was based,” Moon, 451 S.W.3d at 47, we conclude that the juvenile court’s order was within its discretion.