Opinion issued August 17, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00802-CV

IN THE MATTER E. H., Appellant

On Appeal from the County Court at Law No. 3 sitting as Juvenile Court
Brazoria County, Texas
Trial Court Case No. JV21037

MEMORANDUM OPINION

This is an interlocutory appeal from a juvenile court order waiving jurisdiction over appellant's case and transferring it to criminal district court. Concluding the juvenile court did not abuse its discretion, we affirm.

BACKGROUND

The charges against E.H. stem from his young niece's allegations that he exposed himself to her and sexually abused her when she was 7 years' old and he was almost 17 years' old. The Brazoria County District Attorney's Office filed a Petition for Discretionary Transfer to Criminal Court seeking to have proceedings against E.H. for indecency with a child and sexual assault of a child transferred from juvenile court to district court.

A. The Hearing

The following summary of the facts is taken for the testimony and evidence at the transfer hearing:

In December 2015, several members of E.H.'s family lived together on a property that housed two mobile-home trailers. The complainant (7-year-old N.P.), lived in one of the homes with her mother (Grace), her uncle (16-year-old E.H.), her grandmother (Eva), and her younger siblings. The other house was on the property was occupied by N.P's aunt (Nabilia), Nabilia's husband, and their three children.

At that time, Grace worked nights, and her children were usually in bed before she went into work at 9:00 p.m. Grace testified that she was talking to N.P. in January 2016 about the fact that she would be moving from working night shifts to day shifts. N.P. responded that she was excited about her mother's shift changes because "I just don't want [E.H.] messing with me no more." N.P. then started

crying and told Grace that, while she was working, E.H. had come into N.P.'s bedroom, N.P. saw him naked, and E.H. touched her. Grace believed she was telling the truth.

Grace reported N.P.'s outcry. The responding officer did not interview N.P or E.H. because they were juveniles, but arranged for E.H. to go stay with his brother, Lloel, in Lake Jackson and reported the incident to Child Protective Services.

Paige Newsome, an investigator with the Brazoria County Sheriff's Office, also testified at the transfer hearing about her investigation, and her report was admitted into evidence. She indicated that the Brazoria County Alliance for Children (CAC) conducted a forensic interview of N.P. Newsome watched the interview and summarized it in her report.

During the interview, N.P. did not want to talk about "what had happened" with E.H., although she indicated that E.H. said she was lying, but that she was telling the truth. She "didn't want to say anything else about [E.H.] and said it was because her mother would be mad at her and spank her if she talked about it." She eventually opened up, stating that E.H. "was rude, but acted like he was nice sometimes, but he was not really nice." N.P. made an outcry during the interview that E.H. had exposed his genitals to her and he actually penetrated her vagina with his fingers on more than one occasion.

Newsome also went to Lloel's home in Lake Jackson to interview E.H. Newsome's report reflects that Lloel's wife told Newsome that E.H. was back with his mother Eva, and that Eva had "kicked the 7 year old victim out of her house and that [E.H.] was moving back in" to Eva's trailer home. Newsome reached E.H. on his cell phone, and he gave her "a runaround and a lot of attitude."

Stephanie Centeno, the person who conducted N.P.'s CAC forensic interview, testified that she concluded N.P. knew the difference between a truth and lie. N.P. was happy and talkative when talking about other things, but hesitant and scared when asked about E.H. N.P., however, eventually told Centeno details about each incident, including that E.H. touched her inside with his fingers and that it hurt.

E.H. later agreed to be interviewed, and he and Eva came to the Sheriff's department. E.H. exhibited no emotion when Newsome explained N.P.'s allegations to him and, afterward, "[a]ll he would say is, 'I didn't do it, That's all I got to say to you.'" Newsome described E.H. as "very arrogant, cocky, [and] uncooperative." Newsome characterized his reaction as unusual, because generally when a suspect is told they are accused of sexual assault of a child, "you normally see emotion, whether it be anger that they didn't do it or remorse that they did or whatever in between." E.H., though, showed "no emotion, no concern for it, ... and he said, 'I don't have anything to say to you'. . . . . [I]t sounded like he had been coached to say, 'I didn't do it,' and don't say anything else."

E.H. told Newsome that he did not stay at Eva's very often, that he lived with his father most of the time. Eva, however, confirmed to Newsome that E.H. lived with her.

Daniella Hamilton, E.H.'s probation officer, testified that E.H. dropped out of school and used marihuana regularly. E.H. complied with the court's order to begin G.E.D. classes, but he failed a drug test and admitted to having smoked marihuana less than a month before the juvenile-certification hearing. E.H. was confined in juvenile detention after testing positive, and Hamilton had planned to recommend he be released about a week before the underlying hearing. Hamilton changed her mind, however, when she learned that E.H. had been written up for inappropriate sexual behavior, cursing at another juvenile, and looking up music on the computer instead of doing school work.

Hamilton also testified that E.H. would be 18 years old in less than five months after the hearing, and that five months is not "enough time for a person to get the help they need for a sexual charge." Rather, if a juvenile fully participates in the available programs, it takes a minimum of two years. Hamilton testified to her belief that E.H. "should be certified as an adult because our department is unable to give him any help, any programs to help him successfully complete our program." This is in part because E.H. "has not taken any responsibility for his actions." E.H. told Hamilton at his intake interview that he "he feels innocent."

Finally, Hamilton explained that the juvenile probation department "could only hold [E.H.] until he is 18, which is in [five months], and it would not allow him the time to complete the two-year minimum program that our department lays out." From her experience as a probation officer, Hamilton believes that "it would be best for the safety of the public and for [E.H.]'s rehabilitation that he be turned over to the adult system." Hamilton opined that E.H. has the maturity of a 17-year-old.

Dr. Michael Fuller, a psychiatrist with the University of Texas Medical Branch testified as to his examination of E.H., and his report was admitted into evidence at the hearing. He explained that examinations for purposes of certification entail (1) a clinical interview about a person's life circumstances, history, previous psychiatric or psychological problems, (2) a mental status examination to determine cognitive capabilities, the ability to relate and use memory for abstract thoughts, and (3) a fitness-to-proceed examination that involves information-gathering that yields additional information as to maturity, intellect, and understanding of the situation. E.H. was cooperative throughout Fuller's examination.

Through the examination, Fuller learned about E.H.'s history and that E.H. has a six-month old daughter. E.H. does not have a history of criminal charges, but has been in fights in school. E.H. dropped out of school in the tenth or eleventh grade. He had never been diagnosed with cognitive or intellectual deficits, and he

was never placed in special education classes. When E.H. was in the sixth grade, he was placed on anger-management medication.

Fuller concluded from E.H.'s mental examination that he was "manifesting no overt psychiatric illness." The only "notable finding" he observed was that E.H. has a "low average to borderline, high borderline overall cognitive function." Fuller explained that means E.H. functions in the low average range intellectually. E.H. performed surprisingly well in simple abstract thought, but his memory was somewhat substandard.

Fuller's clinical impression is that E.H is "a reasonable mature, reasonably facile individual of about 17 years old and that, from a psychiatric/psychological perspective, that it would be reasonable to consider him for waiver to adult court."

Eva, E.H.'s mom, testified against certification. She testified that, if E.H. was sentenced to juvenile probation, she and other family members could assist him with transportation to work and any required counseling. E.H. wants to join the military. E.H. has a child, as do Eva's other children. Eva understands the accusations against E.H., but does not believe them. No one in the family thinks he poses a danger to any of Eva's many grandchildren and, accordingly, she stated that no steps have been taken to protect them. Eva also opined that E.H.'s drug use was not a danger to others because she has "never seen him do anything bad."

E.H.'s sister, Nabilia, also testified in opposition to E.H.'s certification. She lives next door to Eva and E.H. and has small children but does not work, so she is available to help E.H. with things like transportation. She explained that E.H. has a vehicle, so as soon as he gets a drivers' license, he will not have transportation problems. Nabilia described E.H. as immature; he "will take everything as a joke" and is always laughing about even serious matters because he is nervous. She is willing to take on the role of helping E.H. set up appointments and get help for his drug use. Their brother Joel is available to do that as well. Nabilia does not believe the adult court system is appropriate for E.H. She and Joel do not allow E.H. to be alone with either of their children.

B. The Court's Order

The juvenile court signed a waiver of jurisdiction and order of transfer to criminal court. That order states it considered, among other things, (1) whether the alleged offenses were against person or property; (2) sophistication and maturity; (3) record and previous history, and (4) prospects of adequate protection of the public and likelihood of rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

The order contains the court's findings that the allegations constitute felonies, committed against a person, and that there is probable cause to believe that E.H.

committed the offenses. The order also contained the following findings in support of certification:

> The Court finds that the child is of sufficient sophistication and maturity to be tried as an adult. The Court specifically finds that the child is of sufficient sophistication and maturity to aid an attorney in his defense. The Court finds that because of the records and previous history of the child and because of the extreme and severe nature of the alleged offenses, the prospects of adequate protection for the public and likelihood of reasonable rehabilitation of the child by the use of the procedures, services and facilities which are currently available to the Juvenile Court are in doubt. The Court, after considering all of the testimony, diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offenses, finds that it is contrary to the best interests of the public to retain jurisdiction. The Court finds there is probable cause to believe that the child committed the alleged offenses and that because of the seriousness of the alleged offenses and the background of the child, the welfare of the community requires criminal proceedings. The court, in support of said findings, further finds:
>
> > The offense is against a person. The victim of the sexual assault was a 7 year old female child. The juvenile is the uncle of the victim. [E.H.] exposed himself to the child by pulling his sexual organ out of his clothes and showing it to the child. In addition [E.H.] placed his hand on the child's sexual organ under her clothing while she was pretending to sleep. [E.H.] penetrated the child's sexual organ with his fingers, causing her pain. The juvenile committed this offense a month before his 17th birthday. He will be 18 on February 8, 2017.
> >
> > The juvenile was examined by Dr. Michael Fuller. Dr. Fuller found that the juvenile's thought processes were logical, goal directed and appropriate. There was no overt evidence of psychotic illness, distorted or disrupted perceptions. There was no evidence of delusional thinking or racing thoughts. [E.H.] was oriented to person, place and time.
> >
> > [E.H.] demonstrated the ability to understand and state the charges against him, as well as to share adequate information with regard to

> the events leading to the charges against him. He is able to assist his attorney in his defense, and understands the adversarial process.
>
> Dr. Fuller found no evidence of mental illness that would impair his ability to proceed with trial. He is of average intelligence and he is able to stand trial as an adult. He appears to possess adequate cognition and maturity.
>
> The Court finds that the juvenile was not enrolled in school nor attending classes or training.

E.H. filed a motion for reconsideration, which the juvenile court denied. E.H. then timely brought this appeal. TEX. FAM. CODE ANN. § 56.01 (West 2014).

ISSUE ON APPEAL

E.H. raises the following single issue on appeal:

> The juvenile court's findings of facts in its transfer order are legally and factually insufficient to support the juvenile court's decision to waive jurisdiction; and, in light of the evidence and testimony presented at the transfer hearing, the juvenile court abused its discretion in waiving jurisdiction and acted without reference to guiding rules or principles and failed to represent a reasonably principled application of the legislative criteria necessary to transfer this case to adult court.

APPLICABLE LAW AND STANDARD OF REVIEW

To waive jurisdiction and transfer a child to the criminal district court, a juvenile court must find: (1) the child was at least 14 years old (or 15 years old, depending on the offense) at the time of the alleged offense; (2) there is probable cause to believe the child committed the offense; and (3) because of the seriousness of the alleged offense or the background of the child (or both), "the welfare of the community requires criminal proceedings." TEX. FAM. CODE ANN. § 54.02(a) (West

2014). In deciding whether the welfare of the community requires criminal proceedings, the juvenile court must consider four non-exclusive factors:

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

Id. § 54.02(f). Although all four of the section 54.02(f) factors need not weigh in favor of transfer in order for a juvenile court to waive its jurisdiction and the juvenile court is not required to make any specific findings regarding these factors, the order must show that the juvenile court took the section 54.02(f) factors into account. *Moon v. State*, 451 S.W.3d 28, 42 (Tex. Crim. App. 2014) ("[T]he order should . . . expressly recite that the juvenile court actually took the Section 54.02(f) factors into account in making this [waiver] determination, [b]ut it need make no particular findings of fact with respect to those factors[.]").

If the juvenile court waives jurisdiction, it "shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court." TEX. FAM. CODE § 54.02(h); *Moon*, 451 S.W.3d at 38. The order must specify which facts the juvenile court relied upon in making its decision that because of the seriousness of the offense or the background of the child (or both), the welfare

of the community requires criminal proceedings. *See Moon*, 451 S.W.3d at 47, 49 (statute requires that juvenile court order "state specifically" findings regarding section 54.02(a)(3) basis for waiver). An order finding that an offense was against the person of another, without any other findings about the specifics of the offense, is not sufficient to support a conclusion that the welfare of the community requires criminal proceedings because of the seriousness of the offense. *See id.* at 50.

The State has the burden to produce evidence that the waiver of jurisdiction is appropriate. *Moon*, 451 S.W.3d at 40. "On appeal, we first review the legal and factual sufficiency of the evidence relating to the juvenile court's specific findings of fact regarding the four factors stated in Section 54.02(f)." *In re S.G.R.*, 496 S.W.3d 235, 239 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citing *Moon*, 451 S.W.3d at 47). When reviewing the legal sufficiency of the evidence, we credit the proof favorable to the findings and disregard contrary proof unless a reasonable factfinder could not reject it. *Id*. If there is more than a scintilla of evidence supporting a finding, then the proof is legally sufficient. *Id*. When reviewing the factual sufficiency of the evidence, we consider all of the proof presented to determine if the juvenile court's findings are so against the great weight and preponderance of the proof as to be clearly wrong and unjust. *Id*. But our review of the sufficiency of the evidence supporting waiver is limited to the facts the juvenile court expressly relied on in its transfer order. *Moon*, 451 S.W.3d at 50.

"If the findings of the juvenile court are supported by legally and factually sufficient proof, then we review the ultimate waiver decision under an abuse of discretion standard." *S.G.R.*, 496 S.W.3d at 239 (citing *Moon*, 451 S.W.3d at 47). As with any decision that lies within the discretion of the trial court, the salient question is not whether we might have decided the issue differently. *Id*. at 49. Instead, we consider in light of our review of the sufficiency of the evidence whether the juvenile court's decision represents a reasonably principled application of the Section 54.02(f) factors or was essentially arbitrary or made without reference to the statutory criteria for waiver. *Moon*, 451 S.W.3d at 47. As long as the juvenile court correctly applies these statutory criteria and complies with the requirement to specifically state its supporting findings, its waiver decision generally will pass muster under this standard of review. *Id*. at 49.

SUFFICIENCY OF THE EVIDENCE

We first consider whether the court's findings are adequately stated and supported by sufficient evidence. The juvenile court may only waive jurisdiction in this case upon finding that: (1) the child was 14 or older at the time of the alleged offense; (2) there is probable cause to believe the child committed the offense; and (3) the seriousness of the alleged offense or the background of the child requires criminal rather than juvenile proceedings. *S.G.R.*, 496 S.W.3d at 238 (citing TEX. FAM. CODE § 54.02(a)).

E.H. does not challenge the court's findings on the first two elements. He does, however, challenge the third, i.e., whether the "seriousness of the alleged offense or the background of the child requires criminal rather than juvenile proceedings." That third element is evaluated in terms of 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 § 54.02(f).

The trial court's order specifically identified the above factors as those it considered. It then made findings relevant to each:

The offense is against a person. E.H. does not challenge this finding. There is legally and factually sufficient evidence to support this finding, as it is undisputed that the complainant, N.P., was a 7-year-old child. This weighs in favor of the juvenile court's waiver.

Sophistication and maturity. The trial court's order states that "[t]he Court finds that the child is of sufficient sophistication and maturity to be tried as an adult." The order notes that E.H. was almost 17 when he committed the alleged offense, and almost 18 years old at the time of the juvenile-certification hearing. The court order

references Dr. Fuller's examination and opinions regarding E.H.'s mental health, sophistication, and maturity. The order outlines the evidence the court relied upon, including the doctor's conclusions that (1) E.H.'s thought processes were logical, goal directed and appropriate, (2) there was no overt evidence of psychotic illness, distorted or disrupted perceptions, and no evidence of delusional thinking or racing thoughts, and (3) E.H. was of sufficient sophistication and maturity to aid an attorney in his defense, he understood the charges against him and understands the adversarial process. The court's order states that E.H. "is of average intelligence and he is able to stand trial as an adult," and that he "appears to possess adequate cognition and maturity." E.H.'s probation officer also opined that E.H. has the maturity of a 17 year old.

The court's findings related to this factor are sufficiently specific to E.H., and fully supported by the evidence at the hearing. Crediting the evidence favorable to the juvenile court's maturity and sophistication findings while disregarding any contrary proof unless a reasonable factfinder could not reject it, we conclude that there is more than a scintilla of evidence supporting these findings. *S.G.R.*, 496 S.W.3d at 239. Accordingly, the evidence is legally sufficient. *Id.*

In conducting a factual sufficiency review, we consider all of the proof presented to determine if the juvenile court's findings are so against the great weight and preponderance of the proof as to be clearly wrong and unjust. *Id*. In addition to

the evidence cited by the juvenile court in support of its findings, E.H. points to other testimony from Dr. Fuller that could support the opposite findings: (1) E.H. functions in the low average intellectual range, (2) some aspects of E.H.'s memory and vocabulary suggest a lowered overall cognitive function, (3) E.H.'s thought process lacked some sophistication, which was indicative of immaturity, and (4) E.H. may have ADHD, which would also make it difficult for him to perform well in school. Finally, E.H. cites his sister's testimony that he is not "arrogant," but instead "will take everything as a joke . . . because he gets so nervous and stuff . . . he is always laughing . . . even in a serious manner you can't ever get him to not laugh . . . because his nervousness gets to him."

Despite the evidence E.H. cites, Dr. Fuller took all of these facts into account before ultimately testifying that E.H. "has the sophistication and maturity to be transferred to adult court." The trial court's sophistication and maturity findings are not "so against the great weight and preponderance of the proof as to be clearly wrong and unjust." *Id*. Accordingly, these findings are supported by factually sufficient evidence.

***Record and Previous History*.** The juvenile court's order identifies E.H.'s "records and previous history" and "background" as factors the court considered that supports the court's waiver of jurisdiction. We agree with E.H. that the order does

not, however, identify any case-specific facts related to his background or history that would support weighing this factor in support of the juvenile court's waiver.

E.H. cites *In re R.X.W.*, No. 12-16-00197-CV, 2016 WL 6996592, at *3 (Tex. App.—Tyler Nov. 30, 2016, no pet.) (mem. op.) as an example of a case reversing "for failure to include findings regarding the child's record and previous history after citing the prior history of the child as a reason for the transfer." In that case, the juvenile court's order cited *only* "the prior history of the child" as the reason for waiving jurisdiction and transferring the cause to criminal court. *Id*. The findings in support of that sole reason, however, went only to a different factor, i.e., sophistication and maturity of the juvenile. *Id*. Because "*Moon* requires that the juvenile court's order waiving jurisdiction specifically state the reason for its waiver and the fact findings supporting that reason," *see* 451 S.W.3d at 50–51, the appellate court reversed and remanded to the juvenile court for further proceedings. *Id*.

The *R.X.W.* court notably recognized that the juvenile court's description of the alleged offense would have supported waiver on a different ground, if only the juvenile court had cited another ground:

> In other findings, the juvenile court described the particulars of the alleged offense and stated that the alleged offense was against a person. These findings would have supported waiver based on the seriousness of the offense. *See* TEX. FAM. CODE ANN. § 54.02(f)(1). But, because the court did not cite the seriousness of the offense as a reason for the transfer, these findings are superfluous. *See Moon*, 451 S.W.3d at 50–51.

In this case, unlike in *R.X.W.*, the trial court cited several factors in support of waiver, and cited case-specific evidence in support of weighing those factors towards waiver. Accordingly, we disagree with E.H. that the failure of the juvenile court to cite evidence of E.H.'s background and history in support of its waiver necessitates reversal. Rather, we examine if other factors cited by the juvenile court are supported by sufficient evidence and then review the juvenile court's ultimate waiver decision under an abuse of discretion standard. *See Moon*, 451 S.W3d at 47 (not all four factors must weigh in favor of waiver of juvenile court jurisdiction).

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. The juvenile court's order characterized the alleged offenses as "extreme and severe," and stated the court's view that "the prospects of adequate protection for the public and likelihood of reasonable rehabilitation of the child by the use of the procedures, services, and facilities which are currently available to the Juvenile Court are in doubt." The court recited the factual specifics the alleged offenses:

> [T]he victim of the sexual assault was a 7 year old female child. The juvenile is the uncle of the victim. [E.H.] exposed himself to the child by pulling his sexual organ out of his clothes and showing it to the child. In addition, [E.H.] placed his hand on the child's sexual organ under her clothing while she was pretending to sleep. [E.H.] penetrated the child's sexual organ with his fingers, causing her pain." The juvenile committed this offense a month before his 17th birthday.

The evidence from the hearing supports this recitation of facts.

The juvenile court heard Hamilton, E.H.'s probation officer, testify that E.H. would be 18 years old in less than five months after the hearing, and that five months is not "enough time for a person to get the help they need for a sexual charge." The juvenile department could only hold E.H. until he was 18. Hamilton noted that, if a juvenile fully participates in the available programs, it takes a minimum of two years. Hamilton testified to her belief that E.H. "should be certified as an adult because our department is unable to give him any help, any programs to help him successfully complete our program." From her experience as a probation officer, Hamilton shared her belief that "it would be best for the safety of the public and for [E.H.]'s rehabilitation that he be turned over to the adult system."

E.H.'s mother, Eva, testified that she does not believe the charges against E.H., so she has not taken steps to protect her other grandchildren from possible abuse by E.H. She testified, "I don't see that he is a danger to them."

E.H. points to Hamilton's testimony that general juvenile sex-offender probation conditions, coupled with participation in a drug-treatment program, would be appropriate for E.H. E.H. acknowledges the State's position that "sex-offender probation is approximately two years and that E.H. would only have five months before his eighteenth birthday." E.H. contends that this argument is fallacious, however, as it "completely ignores determinant sentencing authorized by Section

54.04(q) [of the Texas Family Code] under which E.H. can be given probation for a period of time not to exceed ten years." Although there is no explanation of why determinate sentencing is not appropriate in the juvenile-certification record, the State points out in its brief that the juvenile court does not have the authority to *sua sponte* impose a determinate sentence; rather, seeking a determinate sentence lies within the prosecutor's discretion, and the petition must be approved by at least nine members of a grand jury. Accordingly, the court's determination that "the prospects of adequate protection for the public and likelihood of reasonable rehabilitation of the child by the use of the procedures, services and facilities which are currently available to the Juvenile Court are in doubt," is supported by the evidence that E.H. could not complete adequate services through the juvenile system.

Finally, E.H. challenges the trial court's determination that the "seriousness" of his alleged offenses warrant criminal proceedings. Specifically, he argues that the trial court cannot rely on *the category* of his alleged offenses, i.e., indecency with a child by sexual contact, indecency with a child by exposure, and aggravated sexual assault of a child, rather than the underlying factual basis for the charges. While E.H. concedes that "allegation of a sexual crime against a child is always serious," he emphasizes that Section 54.02(a)(3) does not simply state that an offense "be serious" for transfer to adult court, but instead "requires the court to determine whether the seriousness of the offense alleged warrants transfer *for the welfare of*

the community." He contrasts this case to cases using words such as "sufficiently egregious character," "extreme and severe" and "especially egregious and aggravated to justify waiver of juvenile court jurisdiction. (citing *Moon*, 451 S.W.3d 28, 50; *Matthews v. State*, 513 S.W.3d 45, 60 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *S.G.R.*, 496 S.W.3d at 242.

Although, admittedly, most juvenile certification orders considered on appeal involve violent crimes, such as murder or aggravated robbery, nothing in the case law or statute expressly limits the juvenile court's ability to conclude that the particular circumstances of an aggravated sexual assault of a child (1st degree felony, TEX. PENAL CODE ANN. §22.021(e)) and indecency with a child by exposure (3rd degree felony, TEX. PENAL CODE ANN. § 21.11(a)(2), (d)) are sufficiently serious to warrant wavier of jurisdiction.

The court's findings related to the seriousness of the crime, inadequate protection of the public, and the inability of the juvenile system to serve E.H. effectively are sufficiently specific to E.H., and supported by testimony about details of the alleged offenses and by Hamilton's testimony. *E.g.*, *Faisst v. State*, 105 S.W.3d 8, 13 (Tex. App.—Tyler 2003, no pet.) (juvenile probation officer's testimony that, because of serious nature of offense, juvenile requires longer supervision than the juvenile justice system can provide is legally sufficient evidence to support court's finding that "because of the extreme and severe nature of the

alleged offense, the prospects of adequate protection for the public and likelihood of reasonable rehabilitation of the Child by the use of procedures, services and facilities which are currently available to the Juvenile Court are in doubt."). Crediting the evidence favorable to the juvenile court's findings while disregarding any contrary proof unless a reasonable factfinder could not reject it, we conclude that there is more than a scintilla of evidence supporting these findings. *S.G.R.*, 496 S.W.3d at 239. Accordingly, the evidence is legally sufficient. *Id*.

E.H. cites Dr. Fuller's testimony that he did not believe, based on the facts he had, that "the public is at risk for unpredictable or unprovoked acting out" by E.H."[1] E.H.'s sister likewise testified that E.H. is not a danger to the public and is not violent. The record reflects that E.H. was housed with other children in detention, indicating that detention staff was not worried about him being a danger to other children. E.H. contends several things show the likelihood of his rehabilitation through available means in the juvenile justice system: (1) he and his family cooperated in scheduling an interview with law enforcement and participating in Dr. Fuller's assessment, (2) he enrolled in a GED program when ordered, and (3) Hamilton testified about many services and facilities available to and through the

[1] Fuller testified that he does not know, however, "if there is any – sexual risk to children or others."

juvenile probation department, including outside agencies that offer sex offender services.

Despite the evidence E.H. cites, Hamilton took all of these facts into account before ultimately opining she did not "feel like the juvenile system is appropriate" for E.H. because of his age and his "not being remorseful, . . . there needs to be time, and he needs to want to work the program; and I don't think he wants to work the program." The trial court had before it this evidence, as well the evidence about the limited juvenile services available given E.H.'s age. The trial court was permitted to credit Hamilton's view that the available programs were inadequate. We thus conclude that the trial court's findings are not "so against the great weight and preponderance of the proof as to be clearly wrong and unjust." *S.G.R.*, 496 S.W.3d at 239. Accordingly, these findings are also supported by factually sufficient evidence.

ABUSE OF DISCRETION

In light of our analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, we must next review the trial court's ultimate waiver decision under an abuse-of-discretion standard, i.e., we must determine whether the juvenile court acted without reference to guiding rules or principles. *In re K.J.*, 493 S.W.3d 140, 154 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citing *Moon*, 451 S.W.3d at 47). "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*.

Applying this standard, we conclude that the juvenile court did not abuse its discretion in waiving jurisdiction and transferring appellant's case to criminal district court. Section 54.02(d) of the Texas Family Code 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.

Here, the court compiled and comprehensively reviewed all the materials required under section 54.02(d) & (e) and conducted the hearing as required under section 54.02(c). It was presented with evidence of sexual crimes, committed more than once, against a 7-year-old victim, when E.H. was almost 17 years' old. Dr. Fuller testified that E.H. has the sophistication and maturity to participate in an adult trial, and E.H.'s juvenile probation officer testified that she did not believe the juvenile court system could rehabilitate E.H. Based on our review of the entire record, summarized in the background section of this opinion, we conclude that E.H. 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. Accordingly, we hold that the juvenile court's waiver of jurisdiction and transfer to criminal district court was within the court's discretion.

We overrule E.H.'s sole point of error.

CONCLUSION

We affirm the trial court's order.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Brown and Lloyd.

Justice Brown, concurring.