



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-16-00058-CV

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IN THE MATTER OF D.L.C., A JUVENILE

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On Appeal from the County Court at Law No. 1  
Hunt County, Texas  
Trial Court No. J-02402

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Before Morriss, C.J., Moseley and Burgess, JJ.  
Memorandum Opinion by Justice Burgess

## MEMORANDUM OPINION

D.L.C.<sup>1</sup> appeals from a juvenile court's order certifying him to be tried as an adult for one count of sexual assault and one count of aggravated sexual assault. On appeal, D.L.C. argues that (1) the juvenile court failed to properly set out its findings of fact in its order granting transfer, and (2) the evidence was legally and factually insufficient to support the order transferring the case to district court. We affirm.

### I. Background

On November 4, 2015, Cindy and Joe Black arrived at the Hunt County Sheriff's Office and spoke with Joel Gibson, an investigator. The purpose of the Blacks' visit was to file a report alleging that D.L.C. had sexually assaulted their daughter, Jane,<sup>2</sup> in July 2014. During their meeting, the Blacks provided Gibson with D.L.C.'s contact information, and Cindy prepared and signed an affidavit.<sup>3</sup> Less than two weeks later, Jane met with Charlene Green, a forensic

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<sup>1</sup>We refer to Appellant by his initials in order to protect his privacy. See TEX. FAM. CODE ANN. § 109.002(d) (West 2014).

<sup>2</sup>We refer to the minor victim by her initials and to her parents by fictitious names to protect the privacy of the child. See *id.*

<sup>3</sup>In her affidavit, Cindy stated that, while Jane was away on a trip, she looked through Jane's cell phone, finding several old text messages. Cindy discovered that Jane had sent a text message to one of her friends, Seth Stevens, explaining that she had been physically and sexually abused. Cindy and Joe made the decision to wait until Jane returned home on October 31 to discuss the contents of the messages. Upon her return, Jane explained to her parents that she had seen D.L.C. at the lake on July 4, 2014, and that, when they parted, they began sending one another text messages. Eventually, D.L.C. went to Jane's home, where the pair began talking in the driveway of the residence. At some point, D.L.C. asked Jane if she would "ride around with him and insisted she get into his truck." Jane explained to her parents that she was not concerned because they "were only friends." D.L.C. then drove to an area that was unfamiliar to Jane. When D.L.C. stopped the truck, he took Jane's cell phone from her and demanded that Jane get in the back of the truck. Jane repeatedly refused D.L.C.'s requests until D.L.C. forced her into the backseat of the truck. According to Jane, D.L.C. removed her clothes, during which time, Jane was hitting D.L.C. Jane stated that D.L.C. hit her repeatedly, slammed her head into the door of the truck, put his hands around her throat, and pushed her head into the seat until she could not see in front of her. Jane explained that D.L.C. initially put his fingers inside her vagina and then forcefully inserted his penis. During the assault, D.L.C. stated, "[W]e will make cute babies" and "just [five]

interviewer at the Hunt County Child Advocacy Center (CAC). Jane's account of the incident was consistent with the facts contained in Cindy's affidavit.

On December 2, Jane met with Kim Bassinger, a sexual assault nurse examiner, and she submitted to a sexual assault medical forensic examination. On that same day, Gibson attempted to contact D.L.C. for the purpose of interviewing him about the incident. Gibson also attempted to contact D.L.C. on December 11. After failing to contact D.L.C. by telephone, Gibson went to D.L.C.'s home to make contact and schedule an appointment with him. On January 6, 2016, Gibson spoke with D.L.C. at Gibson's office. During the conversation, D.L.C. admitted he had had sexual relations with Jane but he claimed it was consensual.

On that same day, Gibson spoke with Seth Stevens, the young man who had received Jane's text message explaining she had been sexually and physically assaulted.<sup>4</sup> Stevens prepared an affidavit and provided it to Gibson on January 11. In addition to speaking with Stevens, Gibson interviewed Chad Cline on January 12, who also prepared an affidavit.<sup>5</sup> Gibson concluded his

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minutes more." Jane explained that when the assault was over, she saw blood on the seat. D.L.C. told Jane that, if she told anyone what happened, he would "make it all [Jane's] fault" and that she would "pay for it." Jane got out of the truck to re-dress, thinking she should run but chose not to because she was not certain of her location. She then got back into the truck, during which time D.L.C. continued to threaten her by telling her that, if she told anyone, "she would wish she had not." When they arrived back at Jane's home, D.L.C. drove to the end of the driveway, stopped suddenly, and ordered Jane to get out of the truck. As she did, D.L.C. pushed Jane to the ground and almost ran over her leg with the truck. When she entered the residence, she vaguely remembered seeing her mother. She discovered that she was bleeding "from [her] bottom" and that she had red marks on her legs. Jane explained that, following the events, she wrote a "letter of goodbye," then got a knife but was too afraid "to do that," so she put it away, went to bed, and cried herself to sleep. Cindy stated that, until she read the text messages, she had been unaware of what had occurred that day.

<sup>4</sup>The State offered, and the trial court admitted, a copy of Jane's text message to Stevens.

<sup>5</sup>Cline's affidavit stated,

After school [D.L.C.] called me and asked to meet at buffalo grill and me and him were talking about school and just life in general, then he had mentioned [Jane's] name and I had asked what about her and he told me that they had sex and I said quit lying I know [Jane] better than that then

investigation and, on January 14, submitted a paper referral to the Hunt County Juvenile Probation Office, alleging that D.L.C. had committed aggravated sexual assault. On January 27, the paperwork, along with a request for an adjudication petition, was sent to the County Attorney's Office of Hunt County. Gibson conceded that he was aware at the time he began his investigation that D.L.C. was seventeen years old and would turn eighteen in three months.<sup>6</sup>

On February 18, 2016, the State filed its original adjudication petition against D.L.C., alleging that he had committed the offense of aggravated sexual assault.<sup>7</sup> The petition stated that D.L.C. was sixteen years of age at the time of the alleged offense, but that he was seventeen years of age at the time the petition was filed. About a week later, the State filed its original adjudication petition seeking a determinate sentence setting forth substantially the same allegations as it had in its first petition; however, the offense charged was sexual assault.<sup>8</sup> On April 16, 2016, the State filed its petition for discretionary transfer to criminal court, alleging that D.L.C. had committed

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he had said that they really did and he felt like it was forceful and he knew it hurt her. I said are you serious and he said yes and he also mentioned that he "busted her cherry" and he said that she was hitting him and she was telling him to stop and he didn't and she was crying. Then I got mad and left.

<sup>6</sup>During the hearing on the State's petition, Gibson testified to these facts.

<sup>7</sup>In its petition, the State alleged, in part, "On or about the 4th day of July, 2014, in Hunt County, Texas, [D.L.C.], did then and there intentionally or knowingly cause the penetration of the sexual organ of Jane Doe . . . , by defendant's sexual organ, without the consent of the said Jane Doe . . . ."

<sup>8</sup>In its original adjudication petition seeking a determinate sentence, the State alleged, "On or about the 5th day of July, 2014, in the County of Hunt and the State of Texas, [D.L.C.] did then and there intentionally or knowingly cause the penetration of the sexual organ of Jane Doe . . . , by defendant's sexual organ, without the consent of the said Jane Doe . . . ."

aggravated sexual assault.<sup>9</sup> The trial court then issued an order to complete a diagnostic study, a social evaluation, and a full investigation.

Approximately one month later, the trial court received the report of Robert Lackey, Ph.D., who had conducted a psychological evaluation of D.L.C. Lackey's report stated, among other things,

With respect to [D.L.C.]'s Risk of Dangerous [sic], data collected in this evaluation revealed he is likely in the Moderate range of Risk as compared to other juvenile offenders. Results of this evaluation indicated [D.L.C] does not have a history of severe antisocial behavior. He noted that he has previously received "two or three" speeding tickets, a ticket for Disorderly Conduct – Fighting and was recently charged with possession of Alcohol and a "Marijuana pipe." He noted that when he was younger, approximately twelve years of age, that he was placed in detention for "Assault. . . ."

[D.L.C] did not report a history of engaging in unprovoked violent behavior; however, records provided by Glen Oaks, a local psychiatric facility, noted [D.L.C.] was hospitalized for assaulting his father's pregnant girlfriend by kicking her in the stomach. Throughout the psychiatric records are indications of "out of control behaviors, outbursts of anger, agitation and damage to property, reportedly "punching the walls of the home."

. . . .

[D.L.C.] appears to have demonstrated less serious violence toward individuals, noting the previous physical fight he was cited for and the previous "assault" which caused him to be placed in detention at twelve years of age. Reportedly these encounters were not serious and did not result in serious bodily injury. [D.L.C.] also appears to have previous minor criminal acts. Records revealed a history of reported suicidal and homicidal ideation and accompanying psychiatric hospitalization due to these thoughts of self[-]harm and intentions of harming others.

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<sup>9</sup>The State's petition for discretionary transfer to criminal court alleged the same factual bases as those contained in its original adjudication petition, stating the alleged offense occurred on July 4, 2014.

As compared to same aged peers who are also juvenile offenders or are also involved with the juvenile judicial system in some manner, [D.L.C.] is at the High range of Sophistication and Maturity.

. . . .

As compared to other juvenile offenders, [D.L.C.] appears to be in the Low range as to his treatment amenability. [D.L.C.]’s responses to various questionnaires and other psychological tools revealed he currently is not reporting symptoms of any mental health disorder. . . .

. . . .

[D.L.C.]’s responses to the PAI-A revealed an interest in and motivation for treatment which is below average in comparison to adolescents who are not being seen in a therapeutic setting and his treatment motivation is a great deal lower than is typical of individuals being seen in treatment settings. His responses suggest that he is satisfied with himself as he is, that he is not experiencing marked distress, and that, as a result, he sees little need for changes in his behavior. However, [D.L.C.] does report a number of strengths, namely his family and boss; that augur well for a relatively smooth treatment process if he were willing to make a commitment to treatment. His responses revealed he may not be experiencing sufficient distress to feel that treatment is warranted.

On July 7, 2016, the State filed its first amended petition for discretionary transfer to criminal court alleging one count of aggravated sexual assault and one count of the lesser-included offense of sexual assault. On July 22, 2016, approximately six weeks after D.L.C.’s eighteenth birthday, the trial court held a hearing on the State’s first amended petition for discretionary transfer. The trial court considered, among other things, “written reports from the probation officer, professional court employees and professional consultants in addition to the testimony of witnesses . . . .” At the conclusion of the transfer hearing, the trial court granted the State’s amended petition, finding that, among other things, (1) “there [was] probable cause to believe that

[D.L.C.] committed the offense as alleged based on testimony of Joel Gibson and Isaac Neal<sup>10</sup> and all the other evidence admitted during the hearing” and (2) “[f]or a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of [D.L.C.]” This appeal followed.

## II. Discussion

The juvenile court has exclusive, original jurisdiction over children sixteen years of age or younger. TEX. FAM. CODE ANN. § 51.04(a) (West Supp. 2016). Only after the State files a petition requesting waiver and transfer may the juvenile court discretionarily transfer, such as this case, to district court for criminal proceedings. TEX. FAM. CODE ANN. § 54.02(b) (West 2014). A certification hearing is not a trial on the merits of the alleged offense.<sup>11</sup> *State v. Lopez*, 196 S.W.3d 872, 874 (Tex. App.—Dallas 2006, pet. ref’d). During the hearing, the court may not consider guilt or innocence, but only whether the child’s and society’s best interests would be better served

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<sup>10</sup>Neal, who is a Hunt County juvenile community supervision officer, explained that his office had had contact with D.L.C. prior to the incident at issue. In August 2010, D.L.C. was referred to the juvenile department regarding an allegation that D.L.C. had assaulted his mother. That case was closed as “supervisory caution,” which meant that D.L.C. had completed a “first offender class” and an anger management class. As to the current charge, Neal explained that D.L.C. had been given court conditions in January 2016. D.L.C. violated those conditions when he was arrested on March 6, in Hopkins County, for possession of drug paraphernalia and minor in possession and being out past curfew. D.L.C. failed to report the encounter to the juvenile probation department. Over a month later, the juvenile department learned from Hopkins County that D.L.C. had been arrested on the charges. The juvenile department requested a directive to apprehend on April 15. On April 18, the juvenile court held a detention hearing in which D.L.C. was detained. Three days later, on April 21, 2016, the State filed its petition for discretionary transfer to criminal court. That was less than three weeks prior to D.L.C.’s eighteenth birthday. Neal also testified that there were no adequate rehabilitation options in the juvenile system that would assist D.L.C. When Neal was asked why, he stated, “It’s because he’s already 18. Being in the juvenile system, he would only have nine months, even if committed to TJJD. That does not give the -- enough time for accountability for the offense and -- or rehabilitation for this offense.” Neal also testified that it had been the State’s and the juvenile department’s intention in the beginning to seek a determinate sentence in D.L.C.’s cases, but their opinion of the situation changed due to D.L.C.’s behavior.

<sup>11</sup>The hearing on a motion for discretionary transfer is conducted without a jury. TEX. FAM. CODE ANN. § 54.02(c) (West 2014).

by allowing the case to remain in juvenile court or by transferring the case to district court. *Id.* The hearing is much like a probable cause hearing, and the trial court is not required to resolve evidentiary conflicts beyond a reasonable doubt. *Id.* Probable cause exists when there are sufficient facts and circumstances to warrant a reasonably prudent person to believe that the accused committed the alleged offense. *Grant v. State*, 313 S.W.3d 443, 445 (Tex. App.—Waco 2010, no pet.).

**A. The Trial Court Did Not Err in Considering Section 54.02(j) Factors**

Despite the fact that he was eighteen years of age at the time of the hearing, D.L.C. maintains that the juvenile court was required to consider the factors contained in Section 54.02(f) of the Family Code. *Kent v. United States*, 383 U.S. 541 (1966); *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014).<sup>12</sup> The State responds that the juvenile court was not required to consider the factors listed in Section 54.02(f) and that it properly considered the factors contained in Section 54.02(j). We agree.

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<sup>12</sup>In *Moon*, the court held that 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).” *Moon*, 451 S.W.3d at 40–41. The court goes on to state that the juvenile court must consider all of the *Kent* factors, which are codified in Section 54.02(f). *Id.* at 41 (citing *In re J.R.C.*, 522 SW.2d 579, 584 (Tex. Civ. App.—Texarkana 1975, writ ref’d n.r.e.) (juvenile court’s “findings should show an investigation in every material field [listed in Section 54.02(f)] was undertaken and the result thereof”). The juvenile court, however, “need not find that each and every one of those factors favors transfer before it may exercise its discretion to waive jurisdiction.” *Id.* But, it must “state specifically” in its order its reasons for waiver. *Id.* at 49. An appellate court “should *not* be made to rummage through the record for facts that the juvenile court *might* have found, given the evidence developed at the transfer hearing, but did not include in its written transfer order.” *Id.* at 50. Notably, in *Moon*, the accused had not turned eighteen years of age by the time the juvenile court held its hearing on the State’s petition to transfer, thus, Section 54.02(a) and (f) were applicable, and not 54.02(j), as in this case. While we note this distinction, Section 54.02(h) is applicable to both circumstances and states, in part, “If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its actions, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings . . . .” TEX. FAM. CODE ANN. § 54.02(h) (West 2014).



Section 54.02 establishes two procedures for discretionary transfer of juvenile proceedings to district court. TEX. FAM. CODE ANN. § 54.02 (West 2014). Section 54.02(a) applies where the juvenile is less than eighteen years of age at the time of the transfer hearing. *See* TEX. FAM. CODE ANN. § 54.02(a). Section 54.02(j) applies where the juvenile is eighteen years old at the time of the transfer hearing. The factors listed in Section 54.02(f) are not applicable to a discretionary transfer under Section 54.02(j). TEX. FAM. CODE ANN. § 54.02(f) (In making the determination required by Subsection (a) of this section, the court shall consider . . .”).

When an individual turns eighteen years of age pending resolution of a petition for discretionary transfer for a crime allegedly committed when he was sixteen years of age, the State is required to proceed under the statutory subsection applicable when the person to be certified is eighteen years of age or older (Section 54.02(j)), and not the subsection applicable when the person is under the age of eighteen (Section 54.02(a)). *Matter of M.A.V.*, 954 S.W.2d 117, 118 (Tex. App.—San Antonio 1997, pet. denied). This is so whether or not the first petition for waiver of jurisdiction was brought when the person was under eighteen because the application of either subsection is not expressly tied to the age of the person at the time the State filed its petition for discretionary transfer. *Id.* at 119.

Section 54.02(j) allows transfer of a case to criminal court of a person who, as in this case, although eighteen years of age or older, committed an applicable felony between the ages of ten and seventeen. Section 54.02(j) states,

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code [murder];

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code [murder]; or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

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

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

TEX. FAM. CODE ANN. § 54.02(j).

Because D.L.C. was sixteen years of age at the time the offenses were alleged to have occurred, seventeen years of age at the time the State filed its petition for discretionary transfer, and eighteen years of age at the time of the hearing on the State’s petition for discretionary transfer, the transfer was governed by Section 54.02(j), not Section 54.02(a). Accordingly, the factors listed in Section 54.02(f) did not apply, and the juvenile court considered the appropriate factors under Section 54.02(j).

We overrule D.L.C.’s first point of error.

**B. The Juvenile Court’s Order Waiving Jurisdiction and Transferring to Criminal Court<sup>13</sup>**

**1. The Trial Court’s Order Contained Sufficiently Specific Findings**

D.L.C. contends that the trial court failed to state in its order the specific reasons for waiving its jurisdiction and transferring this case to district court. Not only must the record substantiate the juvenile court’s findings, but the court must make “case specific findings of fact” with respect to the appropriate factors. *See Moon*, 451 S.W.3d at 51.<sup>14</sup> “With respect to the

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<sup>13</sup>To the extent D.L.C. contends there was legally insufficient evidence for the juvenile court to find that the 54.02(f) factors supported its waiver of jurisdiction, as we have already stated, the juvenile court’s findings were appropriately made pursuant to 54.02(j), and not 54.02(f). Thus, D.L.C.’s argument regarding 54.02(f) is misplaced.

<sup>14</sup>Quoting *Kent v. United States*, 383 U.S. 541 (1966), the Court of Criminal Appeals noted that an appellate court must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not assume that there are adequate reasons, nor may it merely assume that full investigation has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of reasons or considerations therefore. We do not read the [relevant District of Columbia] statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be

adequacy of the written order mandated by Section 54.02(h), the courts of appeals have generally agreed, first of all, that the written order must reflect the juvenile court’s ‘reasons’ for waiving jurisdiction.” *Id.* at 41 (citing *In re J.R.C.*, 522 S.W.2d 579, 584 (Tex. App.—Texarkana 1975, writ ref’d n.r.e.) (“The reasons motivating the Juvenile Court’s waiver of jurisdiction must expressly appear.”)). “In addition to specifying ‘reasons,’ the order should also expressly recite that the juvenile court actually took [the appropriate] factors into account in making this determination.” *Id.* at 41–42 (citing *In re W.R.M.*, 534 S.W.2d 178, 182 (Tex. Civ. App.—Eastland 1976, no writ)).

In cases under Section 54.02(a) where the trial court is required to consider the factors in Section 54.02(f), the courts have held that a juvenile court’s order may be adequate if it “discloses that the matters listed in Subsection (f) were considered.” *In re W.R.M.*, 534 S.W.2d 178, 182 (Tex. Civ. App.—Eastland 1976, no writ). In fact, there may be no reversible error even when the juvenile court’s order seemingly restates the factors contained in Section 54.02, as long as the enumerated reasons were supported by the evidence. *Appeal of B.Y.*, 585 S.W.2d 349, 351 (Tex. Civ. App.—El Paso 1979, no writ). “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.” *Moon*, 451 S.W.3d at 46.

Here, the juvenile court made the following findings:

1. There was probable cause to believe that D.L.C. violated penal laws of the State of Texas, to-wit, sexual assault, a second degree felony;

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sufficient to demonstrate that the statutory requirement of full investigation has been met; and that the question has received careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review. *Moon*, 451 S.W.3d at 37 (quoting *Kent*, 383 U.S. at 560–62).

2. D.L.C. was sixteen years of age at the time the alleged offense(s) occurred, and at the time of the hearing, he was eighteen years of age;

3. No adjudication hearing had been conducted concerning the alleged offenses;

4. Prior to the hearing, the juvenile “Court obtained a Clinical Evaluation, complete Diagnostic Study, Social Evaluation, and full investigation of the child, his/her circumstances[,] and the circumstances of the alleged offense(s)”;

5. For a reason beyond the State’s control, it was not practicable for the State to proceed in juvenile court prior to the person attaining the age of eighteen;

6. The juvenile court considered written reports from the probation officer, professional court employees, and professional consultants, as well as the testimony of witnesses;

7. There was “probable cause to believe that [D.L.C.] committed the offense as alleged based on the testimony of Joel Gibson and Isaac Neal and all other evidence admitted during the hearing.”

D.L.C. contends that the trial court’s findings were inadequate due to their lack of specificity. We disagree. The juvenile court provided “a sure-footed and definite basis from which [we] can determine that its decision was in fact appropriately guided by the statutory criteria, principled, and reasoned.” *Moon*, 451 S.W.3d at 49.

We overrule D.L.C.’s second point of error

## 2. There Was Sufficient Evidence to Support the Trial Court's Ruling<sup>15</sup>

D.L.C. maintains that the trial court erred when it found that for reasons beyond the State's control, it was not practicable for the State to proceed prior to D.L.C.'s eighteenth birthday.<sup>16</sup> D.L.C. emphasizes the lapse of time between the occurrence of the alleged offense and the date of the hearing on the State's petition. While the alleged offense did occur on July 4, 2014, the State did not become aware of the incident until well over a year later, when Jane's parents first reported it to Gibson on November 4, 2015. The fact that the information came to the State's attention over a year after the incident was alleged to have occurred was outside of the State's control.

Further, following receipt of the information from Jane's parents, Gibson set up Jane's interview with the CAC and then began his investigation, locating and speaking with potential

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<sup>15</sup>Initially, D.L.C. complains that the evidence was insufficient to support the juvenile court's finding that the State used due diligence in its attempt to bring the case before the juvenile court prior to his eighteenth birthday. Contrary to D.L.C.'s contention, the trial court's order did not address this particular factor. Thus, D.L.C.'s claim is inapplicable in this case.

<sup>16</sup>We review a juvenile court's specific findings of fact regarding a transfer decision under traditional sufficiency of the evidence standards. *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.—Tyler 2003, no pet.) (“The juvenile court's findings of fact are reviewable by the same standards as are applied in reviewing the legal or factual sufficiency of the evidence supporting a jury's answers to a charge.”). When we analyze legal sufficiency, we credit evidence favorable to the contested finding and discount contrary evidence unless a reasonable fact-finder could not reject the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We do not second-guess the fact-finder “unless only one inference can be drawn from the evidence.” *Faisst*, 105 S.W.3d at 12. When we analyze factual sufficiency, we consider the entire record to determine if the juvenile court's findings are against the great weight and preponderance of the evidence so as to be clearly erroneous. *Id.* We review a juvenile court's final decision to waive jurisdiction for an abuse of discretion. *Id.* We determine whether the juvenile court's transfer decision was “essentially arbitrary, given the evidence upon which it was based, or [whether] it represent[ed] a reasonably principled application of the legislative criteria.” *Moon*, 451 S.W.3d at 47.

In *Moon*, the Court of Criminal Appeals explained,

[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.’ But it should then review the juvenile court's ultimate waiver decision under an abuse of discretion standard.

*Id.* at 47. Although the Section 54.02(f) factors at issue in *Moon* do not apply to this case, the principle that “traditional sufficiency of the evidence review” governs the appellate court's review of the transfer decision does.

witnesses, as well as acquiring their sworn affidavits. Upon the completion of his investigation, Gibson submitted, almost immediately, a paper referral to the Hunt County Juvenile Probation Department, alleging that D.L.C. had committed aggravated sexual assault. Approximately two weeks later, the paperwork, along with a request for an adjudication petition was sent to the County Attorney's Office of Hunt County.

The record reflects that the State initially sought to proceed via the juvenile justice system by filing its original petition seeking a determinate sentence on February 26, 2016. While his case was pending, D.L.C. was arrested on two additional unrelated charges in another county. Notably, these two new charges were in direct violation of his conditions of release. Moreover, D.L.C. failed to inform the juvenile probation department of his pending charges, and a month passed before the Hunt County Juvenile Probation Department was informed by an outside source that D.L.C. had been arrested. This month-long delay in the process is directly attributable to D.L.C., not the State.

Had D.L.C. informed the State of his violations on his own accord, the result might have been different. However, because of D.L.C.'s own actions, it was then that the juvenile probation department determined that there was little hope that D.L.C. would benefit from any of the rehabilitation programs available to juveniles.<sup>17</sup> Thus, six days after the juvenile probation department learned of D.L.C.'s new charges and his arrest, the State filed its petition seeking

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<sup>17</sup>D.L.C.'s psychological evaluation also revealed that he had very little interest in availing himself of assistance through these programs.

transfer to criminal court. The date was April 21, 2016, approximately three weeks shy of D.L.C.'s eighteenth birthday.

The trial court found that “for a reason beyond the control of the state it was not practicable to proceed in juvenile court” before D.L.C. attained the age of eighteen. For the reasons above, we find that there was sufficient evidence, both factually and legally, to support the juvenile court’s finding.

Next, D.L.C. contends that the evidence was insufficient to support the trial court’s finding that there was probable cause to believe D.L.C. committed the offense of sexual assault. We disagree. The juvenile court heard testimony from Gibson regarding his investigation and the content of his discussions with potential witnesses, all of whom provided information consistent with the State’s allegations against D.L.C. In addition, the juvenile court reviewed (1) the sworn affidavit of Jane’s mother, restating Jane’s recitation to her of the events of July 4; (2) the text message from Jane to Stevens, which stated that she had been “raped/abused”; (3) the results of Jane’s sexual assault nurse examiner’s examination; (4) the interview with Jane wherein she explained the July 4, 2014, incident; and (5) the affidavit of Cline, who stated that D.L.C. told him that “he felt like it was forceful and he knew he hurt [Jane]” and that “she was telling him to stop and he didn’t and she was crying.” We hold that the juvenile court’s probable cause finding is supported by legally and factually sufficient evidence.

We overrule D.L.C.’s third point of error.



**III. Conclusion**

We affirm the trial court's judgment.

Ralph K. Burgess  
Justice

Date Submitted: November 22, 2016  
Date Decided: March 21, 2017