

AFFIRM; and Opinion Filed May 9, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-01063-CV

IN THE MATTER OF C.G., Appellant

**On Appeal from the 305th Judicial District Court
Dallas County, Texas
Trial Court Cause No. JD-17-00800-X**

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Whitehill
Opinion by Justice Francis

C.G., a minor, appeals the trial court's judgment committing him to the Texas Juvenile Justice Department for ten years with possible transfer to the adult prison system. In his sole issue, C.G. contends the trial court abused its discretion by committing him to TJJD because the evidence is legally and factually insufficient to support the required statutory findings. We affirm.

The State filed a petition alleging C.G., fourteen years of age, was a child engaged in delinquent conduct. The petition alleged that on May 4, 2017, C.G. committed theft by intentionally and knowingly appropriating a purse and its contents from the person of Melissa Hite. Eight days later, the State filed a second petition, adding an allegation that on May 29, 2014, C.G. committed aggravated robbery; specifically, the petition alleged that while committing theft of property of Brenda Kappos, C.G. used or exhibited a firearm and intentionally or knowingly threatened or placed Kappos in fear of imminent bodily injury or death.

A predisposition report filed by the Juvenile Probation Department two days later stated appellant and another male suspect exited a stolen Acura and approached a woman standing outside her truck. The two suspects demanded cash from the woman at gunpoint and then forced her into the truck while they drove around trying to find a Wells Fargo ATM so they could use her ATM card. Once they found the bank, they tried to use the card but were unsuccessful. The suspects drove the truck to another location and got out, and the complainant jumped in the driver's seat and sped away.

The report also detailed the allegations of the theft. According to the report, a woman was seated on a bench at a DART station when two juveniles "snatched" her purse from her arm and fled. The woman chased the suspects and yelled for help. Two witnesses helped detain the suspects, one of whom was identified as C.G.

The trial court conducted an adjudication and disposition hearing. At the hearing, C.G. pleaded true to the allegations in the petition. The trial court accepted C.G.'s pleas, found he was a child engaged in delinquent conduct, and found he was subject to a determinate sentence for aggravated robbery. The trial court then heard evidence regarding the aggravated robbery.

C.G. testified he and three others—John, Luke, and Petie— were involved in the offense. According to C.G., John and Luke "ran up" on the lady and John pushed her into her truck; Petie drove the Acura that took them to the location. C.G. told the court he dropped "Luke at the Acura with [John] and Petie" and witnessed the event from a different vehicle. Afterwards, he said the others called him to see if he knew how to use the woman's ATM card. C.G. said he "was about to approach" the bank's ATM machine, but decided to give the card back to Luke. On cross-examination, C.G. said he tried to tell the others "not to do it" but they "kept pushing the lady" and John "shoved" her into the vehicle. When asked his role in the aggravated robbery, C.G. said, "With the ATM machine."

Kappos gave a vastly different version of C.G.'s role in the offense. She testified she arrived in Dallas from Austin shortly after 11 p.m. to visit her daughter and granddaughter. She parked her truck on the street temporarily so she could unload her belongings when two "kids" suddenly "rushed at" her. One of the kids was C.G. Kappos said C.G. shoved a gun into her stomach and demanded her money. When she refused to get in the truck with them, the other boy put a gun to her temple and another gun was put in her back. They told her to "get in the truck or you are dead."

Kappos said the boys shoved her into the truck and forced her at gunpoint onto the floorboard in the back seat. C.G. was in the backseat with her, holding a gun on her, while the other boy drove. They wanted money, and Kappos gave C.G. \$80 that was in her purse, but the boys were disappointed with the amount. She told them her money was in the bank and offered them her ATM card. During this ordeal, Kappos said the driver kept telling C.G. to "kill her, just kill her, just kill her." Both boys threatened her family and said they would find her daughter and get money from her.

The boys drove to a nearby townhome where she believed one of them lived; the driver talked to an adult through a window, showed off the truck they had stolen, and said Kappos was going to get them more money. From there, she tried to give them directions to an ATM she was familiar with, but the drive was "scary" because the driver went down the wrong way on one-way streets and ran red lights and stop signs. She said her abductors wanted to stay on "dark streets" and she believed they were going to get her money, dump the truck, and leave her "for dead."

Eventually, they found a Wells Fargo ATM machine, but neither boy could figure out how to use her card. They accused Kappos of lying to them about the card code and said she "was dead." The driver drove to a dark street and the two boys got out. While they were out of the vehicle, Kappos "jumped into the front" and drove off. She went to a Target, but it was closed.

An employee was leaving, and she asked him to call 911. She was “too scared” to stay because the parking lot was empty so she drove to another location and had the police come there. Kappos suffered a bruise to her leg from the gun being held to it. She said other than “poking the guns” at her, her assailants “weren’t physical” with her. She testified she believed the boys were going to kill her and believed C.G. should “do his time.”

Hope Valanos, the court assessment officer for the Juvenile Department, testified C.G. was in need of rehabilitation, and said a disposition should be made for the protection of the public and C.G. Valanos said the department recommended C.G. be placed on probation for one year at the Lyle B. Medlock facility, and she stood by that recommendation after hearing Kappos’s testimony. Valanos said a co-worker spoke to Kappos about restitution, but no one talked to her about what she went through during the robbery. Although the department did not know three weapons had been used, it considered Kappos to have been kidnapped and her life threatened. When asked if she believed C.G. was taking responsibility for his actions, Valanos said, “I don’t know.” Valanos recommended drug intervention for C.G. and acknowledged he could get it at TJJD. She also testified C.G. had committed a third offense, unlawful use of a motor vehicle on May 1, but no charges were filed. She said the department found supervision in C.G.’s home “questionable” and said C.G. had poor attendance at school and a history of being a runaway. Finally, Valanos testified C.G. was “in honors” in detention and had shown he can behave in a confined facility. She did not believe the department needed to “restaff” this case after hearing Kappos’s testimony.

C.G.’s mother, Brittany Newhouse, also testified. She agreed the offense committed by C.G. was serious and said if he were allowed to come home, she would supervise him 24 hours a day and had a team to support her. If the court followed the recommendation of probation, she also would support him. Newhouse did not, however, believe he should be jailed. When asked on cross-examination where he got the gun, she said she was surprised “at the whole situation.”

Although Newhouse acknowledged hearing Kappos's testimony that C.G. held a gun on her, Newhouse said, "Yes, she can say that. But, I mean, where is the gun? Okay."

During the hearing, the trial court admitted two exhibits—an addendum to the predisposition report and a psychological evaluation—and took judicial notice of the contents of its file. Those records showed that C.G. lived with his mother and three siblings in a three-bedroom apartment in Dallas. His mother was engaged to man she said had been in jail for the past ten months. His mother sometimes smoked marijuana to relieve her stress, but never smoked inside the home. C.G. said he saw his father occasionally and had a "good relationship" with him.

Although C.G. reported having a "great" relationship with his mother, his mother believed C.G. had "developed friendships" with people who had a negative influence on him. He had been sneaking out of the house, had "curfew issues," and had numerous referrals to law enforcement for running away from home. C.G., an eighth-grader, had "excessive absences" from school. The report indicated mother was providing for C.G.'s needs appropriately, but the "level of supervision" was questionable given the serious nature of the offense and C.G.'s association with older, negative peers, and his history of running away from home.

C.G. indicated he had two peer groups. The first was a group his age; they played football together and none used drugs or had juvenile referrals. The second group was older, ages fifteen to seventeen, smoked marijuana and had a history of arrests. C.G. said he smoked marijuana for the first time when he was with this latter group and now smoked marijuana two to three times a month.

In the second addendum to the predisposition report, the juvenile department concluded that C.G.'s needs could no longer be addressed in the community; all reasonable efforts had been considered to keep C.G. in the home, but that the "least restrictive environment" was to place C.G. outside the home in a "well-structured environment."

Likewise, the psychological assessment concluded C.G. was in need of a more intense level of supervision to promote better decision making. The report noted that C.G. stated he was in detention for “disobeying” and did not believe he should continue to be detained because he “learned his lesson.” The report found C.G. had poor judgment and lack of insight into the actions that led to him being detained; he displayed poor judgment at school as evidenced by reports that he left school without authorization; and the offenses he committed occurred within a short period of time and increased in severity.

At the conclusion of the evidence, the trial court found disposition was required for C.G.’s protection and rehabilitation and for the public’s protection. The court found the Department made all reasonable efforts to prevent or to eliminate the need to remove C.G. from his home, but C.G. cannot receive the quality of care, level of supervision, and support necessary to meet the terms and conditions of any probation. The court found, given the nature of the offense and the “school issues,” that C.G. needed a structured, secure environment and ordered him committed to the TJJD. This appeal followed.

In his sole issue, C.G. does not challenge the trial court’s findings that he committed the offenses of theft from a person and aggravated robbery. Rather, he limits his appeal to the issue of whether the trial court abused its discretion in committing him to TJJD instead of placing him on probation as recommended by the Juvenile Probation Department.

A juvenile court has broad discretion to determine the proper disposition of a child adjudicated as engaging in delinquent conduct. *See In re C.G.*, 162 S.W.3d 448, 452 (Tex. App.—Dallas 2005, no pet.). A trial court abuses its discretion when it acts unreasonably or arbitrarily and without reference to guiding rules and principles. *In re J.M.*, 433 S.W.3d 792, 795 (Tex. App.—Dallas 2014, no pet.). Absent an abuse of discretion, we will not disturb the trial court’s findings. *In re C.G.*, 162 S.W.3d at 452.

For a trial court to commit a juvenile to TJJD, it must find and include in the disposition order a determination that:

(A) it is in the child's best interest to be placed outside the home;

(B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and

(C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

See TEX. FAM. CODE ANN. § 54.04(i).

C.G. challenges the legal and factual sufficiency of the evidence to support these findings. Under an abuse of discretion standard in these types of cases, legal and factual sufficiency are relevant factors in assessing whether the trial court abused its discretion. *In re C.G.*, 162 S.W.3d at 452.¹ In reviewing the legal sufficiency of the evidence, we consider only the evidence and inferences tending to support these findings, and we set aside the judgment only if there is no evidence of probative force to support them. *Id.* In our factual sufficiency review, we consider and weigh all the evidence and set aside the judgment only if the finding is so against the great weight and preponderance of the evidence as to be manifestly unjust. *Id.*

The evidence was sufficient to support the trial court's findings. The evidence showed C.G. was not being adequately supervised at home. He had been sneaking out of his home, missing school, and was associating with an older group who negatively influenced him. He had numerous referrals to law enforcement for running away from home. Although C.G. had never been adjudicated delinquent before these incidents and had never been offered or ordered to receive

¹ Relying on an opinion from a sister court, *In re K.T.*, 107 S.W.65 (Tex. App.—San Antonio 2003, no pet.) (en banc), the State asserts our review for abuse of discretion is “divorced from evidentiary standards of legal and factual sufficiency.” The San Antonio court has since rejected the standard of review set out in *In re K.T.* and now holds, as we do, that legal and factual sufficiency are relevant factors in determining whether a trial court abuses its discretion in making the necessary findings under a disposition order. *In re E.K.G.*, 487 S.W.3d 670, 673–76 (Tex. App.—San Antonio 2016, no pet.) (en banc).

any rehabilitative services, the evidence showed he committed three offenses within a month, each more serious than the next.

On May 1, C.G. was involved in an unauthorized use of a motor vehicle offense, the circumstances of which were not detailed at trial. Three days later, a woman reported she was sitting on a bench at DART location when C.G. and another boy snatched her purse from her arm and ran away. Less than four weeks later, C.G. committed the aggravated robbery in which he and a friend abducted Kappos, held her at gunpoint, demanded her money, and threatened to kill her. She was able to escape when C.G. and his friend exited the vehicle.

At trial, C.G.'s version of his role in the aggravated robbery was much different than Kappos's version. C.G. essentially testified he was not one of the abductors and witnessed the incident from another vehicle. He claimed his only role was considering whether to help the boy get money from the ATM, which he said he decided not to do. But Kappos identified C.G. as the one who put a gun to her stomach, demanded her money, shoved her into the truck, and then held her at gunpoint in the backseat as the two drove her around looking for an ATM. C.G.'s failure to take any responsibility for his actions likely factored in the trial court's decision.

While the probation department did not recommend transfer to the TJJD, it did conclude that C.G. needed to be placed outside the home in a "well-structured environment." Likewise, the psychological report concluded C.G. needed a more intense level of supervision. And the trial court was not bound to follow the probation department's recommendation of probation.

In sum, we conclude that sufficient evidence supports each of the three required statutory findings of the trial court and further conclude the trial court did not abuse its discretion in ordering C.G. committed to the TJJD for ten years. We overrule C.G.'s sole issue.

We affirm the trial court's judgment.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN THE MATTER OF C.G., Appellant

No. 05-17-01063-CV

On Appeal from the 305th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. JD-17-00800-X.
Opinion delivered by Justice Francis;
Justices Fillmore and Whitehill
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 9th day of May, 2018.