

Opinion issued February 6, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00593-CR

DAVID VILLALPANDO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 176th District Court
Harris County, Texas
Trial Court Case No. 1448180**

MEMORANDUM OPINION

When David Villalpando was 16, a juvenile court concluded that because of the seriousness of the offense with which he was charged—capital murder—the welfare of the community required him to be tried as an adult in criminal proceedings. The juvenile court therefore transferred his case to criminal district

court. A jury found Villalpando guilty of capital murder, and he was automatically sentenced to life in prison.

On appeal, Villalpando contends that under *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), the juvenile court abused its discretion by waiving jurisdiction without making adequate case-specific findings to support its conclusion that because of the seriousness of the offense, the welfare of the community required criminal proceedings.¹ Because *Moon* is on-point, binding, and compels the result, we conclude that the juvenile court did not provide sufficient case-specific findings to support its waiver of jurisdiction. We thus vacate the judgment of the criminal district court, dismiss the criminal case, and remand this case to the juvenile court for further proceedings consistent with this opinion.

We also note that under the current statutory scheme, this issue would have been resolved on interlocutory appeal, before trial occurred. We face the current posture here because this case arose at a time when the Legislature had removed the ability to challenge a transfer order on interlocutory appeal.²

¹ In the alternative, Villalpando argues that the criminal district court's judgment is void because the record does not demonstrate that the visiting judge who presided over his case took the constitutionally-required oath of office. Because we reverse on the first issue, we need not reach this question.

² Before January 1, 1996, the Juvenile Justice Code provided for an interlocutory appeal from a juvenile court's transfer order. *Moon v. State*, 451 S.W.3d 28, 39 (Tex. Crim. App. 2014). However, in 1995, the Legislature amended the Juvenile Justice Code, striking the provision that permitted interlocutory appeal of a transfer order, and revising the Code to provide that a person could appeal a transfer order

Background

In juvenile court, Villalpando was charged with four crimes: two aggravated robberies, aggravated sexual assault, and—at issue here—capital murder. The State moved to waive jurisdiction in all four cases, and the juvenile court held a hearing at which it heard evidence regarding all four charges.

With respect to the capital murder charge, the juvenile court heard evidence that an individual shot the complainant in the course of robbing his home. Fingerprints and DNA left by the perpetrator matched Villalpando.

After the hearing, the juvenile court entered an order reciting its findings and granting the State's motion to waive jurisdiction.³ The criminal district court then tried Villalpando, and he was convicted of capital murder. He now appeals.

only in conjunction with the appeal of a conviction of the offense for which the defendant was transferred to criminal court. *Id.* In 2015, the Legislature again amended the Juvenile Justice Code to reintroduce interlocutory appeal from a juvenile court's transfer order for orders issued on or after September 1, 2015. *See* Act of May 12, 2015, 84th Leg., R.S., ch. 74, § 3, 2015 Tex. Gen. Laws 1065, 1065. Villalpando's transfer order was entered after January 1, 1996, but before September 1, 2015.

³ The juvenile court also waived jurisdiction in the three other cases. In the criminal district court, Villalpando pleaded guilty to the two aggravated robbery charges in exchange for recommendations from the State that he be sentenced to 35 years' imprisonment, to run concurrently. The district court accepted Villalpando's pleas and, in accordance with the agreements, sentenced him to 35 years in prison, to run concurrently. The State then dismissed the aggravated sexual assault charge.

Discussion

In his first issue, Villalpando argues that we should vacate the criminal district court's judgment and remand his case to the juvenile court because the juvenile court's order waiving jurisdiction does not contain the findings necessary to satisfy *Moon*. In light of *Moon*'s clear and binding dictate, we agree.

A. Standard of Review and Applicable Law

Under Texas law, any person accused of committing a felony offense between his tenth and seventeenth birthdays is subject to the exclusive original jurisdiction of a juvenile court. *Moon*, 451 S.W.3d at 37. This means that the juvenile court has the power to hear and decide matters pertaining to the juvenile offender's case before any other court, including the criminal district court, can review them. *Id.* at 37–38.

Nonetheless, the right of a juvenile offender to remain outside the jurisdiction of the criminal district court is not absolute. *Id.* at 38. Section 54.02 of the Juvenile Justice Code permits juvenile courts, under certain conditions, to waive their exclusive original jurisdiction and transfer the child to the appropriate district court for criminal proceedings. *See* TEX. FAM. CODE § 54.02(a).

To waive jurisdiction and transfer a child to the criminal district court under section 54.02(a), a juvenile court must find: (1) the child was 14 years old or older 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.” *Id.* In deciding whether the welfare of the community requires criminal proceedings for one or both of these reasons, 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).

The transfer order must show that the juvenile court took the section 54.02(f) factors into account. *Moon*, 451 S.W.3d at 41. Nevertheless, express findings of fact regarding these four factors are not required. *Id.* at 41–42 (“[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[.]”).

Conversely, Texas law *requires* the juvenile court to set forth in the transfer order findings of fact supporting the juvenile court’s ultimate reason(s) for waiving its jurisdiction and ordering the transfer. *Id.* The Juvenile Justice Code states: “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[.]” See TEX. FAM. CODE § 54.02(h); *Moon*, 451 S.W.3d at 38. Accordingly, in *Moon*, the Court of Criminal Appeals concluded that a transfer order must specify the facts the juvenile court relied upon in making its decision. See *Moon*, 451 S.W.3d at 47, 49–50 (statute requires that juvenile court order “state specifically” findings regarding reasons for waiver).

Directly applicable in this case, the *Moon* Court—addressing a murder conviction—held that a juvenile court abuses its discretion if it waives jurisdiction based solely on the seriousness of the offense (not the background of the child) and supports its decision only by a finding that the offense was against a person.⁴ *Moon*, 451 S.W.3d at 50–51. The Court of Criminal Appeals made clear that a finding that the welfare of the community required criminal proceedings because of the seriousness of the offense must be supported by express case-specific findings about the offense, beyond a single statement that the offense was committed against a person. *Moon*, 451 S.W.3d at 50–51 (affirming reversal of murder conviction).

The *Moon* order lacked such requisite specific findings concerning the offense. There, the juvenile court’s order stated that the court considered the four section 54.02(f) factors, and it included several findings:

⁴ See TEX. FAM. CODE § 54.02(a) (juvenile court may find transfer warranted by seriousness of offense, background of child, or both).

- The offense was against a person;
- Moon was sufficiently sophisticated and mature to have intelligently, knowingly, and voluntarily waived all constitutional rights previously waived and to aid in his defense and be responsible for his conduct; and
- There was little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of Moon by use of procedures, services, and facilities currently available to the Juvenile Court.

See id.; TEX. FAM. CODE § 54.02(f). The Court of Criminal Appeals concluded that only the first of these was a case-specific finding about the offense; the rest were “superfluous” for these purposes. *See Moon*, 451 S.W.3d at 50–51. Thus, the Court of Criminal Appeals affirmed the court of appeals’ decision to vacate the trial court’s judgment of conviction, holding that the juvenile court abused its discretion. *See id.*

With this legal backdrop, we must determine whether the juvenile court’s written order here contains explicit findings that would support the stated reason for transfer. *See Ex parte Arango*, 518 S.W.3d 916, 922 (Tex. App.—Houston [1st Dist.] 2017, pet. ref’d). Notably, our review of the sufficiency of the evidence supporting waiver is limited to the fact findings the juvenile court expressly stated in support of the reason provided. *Moon*, 451 S.W.3d at 50–51. If the fact findings in the order would support the stated reason for transfer, an appellate court should then “review the juvenile court’s specific findings of fact regarding the Section 54.02(f) factors under ‘traditional sufficiency of the evidence review.’” *Moon*, 451 S.W.3d at 47; *see*

Arango, 518 S.W.3d at 922. Finally, if the findings of the juvenile court are supported by legally and factually sufficient proof, then we review the waiver decision for an abuse of discretion. *Moon*, 451 S.W.3d at 47.

B. Analysis

Moon compels our reversal. The juvenile court found that transfer was justified here based on “the seriousness of the offense,” TEX. FAM. CODE § 54.02(a)(3), not because of “the background of the child.” *Id.* Most of the juvenile court’s findings in this case are substantively identical to the findings made by the juvenile court in *Moon*. Specifically, the court here found:

- Villalpando is of sufficient sophistication and maturity to have validly waived any rights previously waived, to aid in the preparation of his defense, and to be responsible for his conduct;
- The offense was committed against the person of another; and
- There is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of Villalpando in the juvenile system.

See Moon, 451 S.W.3d at 33.

The juvenile court’s order in this case suffers from the same flaw as the *Moon* order: only one of the juvenile court’s findings—that the offense was committed against the person of another—is a case-specific finding about the offense. *See Moon*, 451 S.W.3d at 48; TEX. FAM. CODE § 54.02(f).

We are required to “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.” *Moon*, 451 S.W.3d at 50. We may not “speculate as to the . . . facts the juvenile court found to substantiate” its conclusion that the seriousness of the offense warranted criminal proceedings. *Id.* at 49–50. Thus, *Moon* does not allow us to review the evidence in the record—in addition to the express findings in the order—to determine whether it supports the conclusion that the seriousness of the offense warranted transfer.

Moon held that a juvenile court abuses its discretion when it concludes that criminal proceedings are required solely because of the seriousness of the offense, but the only finding about the specific offense is that it was against the person of another. *See id.* at 50 (waiver of juvenile jurisdiction based solely on seriousness of offense, “fortified only by [finding that offense was against person of another], constitutes an abuse of discretion”); *see also Arango*, 518 S.W.3d at 922–23 (under *Moon*, juvenile court abuses discretion when order waiving jurisdiction does not contain findings to support reason for transfer). That is precisely what we face here.

Moreover, the law is clear that where—as here—the juvenile court cited only the seriousness of the offense as the reason for transfer, the court’s findings regarding the juvenile’s sophistication and maturity, or the prospects for protecting the public or rehabilitation, are superfluous. *See Moon*, 451 S.W.3d at 48, 50–51

(only findings pertaining to specifics of offense supported conclusion that seriousness of offense warranted criminal proceedings).

The State seeks to distinguish *Moon*, but we are not persuaded. First, the State emphasizes that the juvenile court in this case made one finding not present in *Moon*: that Villalpando had a history of violence. The State contends that this finding differentiates this case from *Moon* because the seriousness of the offense is not the sole reason the juvenile court gave for the transfer.

Section 54.02(a)(3) lists potential reasons for transfer, however, and history of violence is not one of them. The finding that Villalpando had a history of violence may have supported a transfer based on the background of the child, had the juvenile court based the transfer on Villalpando's background. But the juvenile court did not do so here. The juvenile court also did not include this finding as a reason why the welfare of the community required criminal proceedings. Instead, the court included it in its findings supporting the stated reason for the transfer—the seriousness of the offense. We thus reject the State's argument.

Second, the State urges us to distinguish *Moon* on the basis that the juvenile court considered waiver in this case along with waiver in three other cases involving Villalpando. The State contends that we may consider the totality of all four orders in determining whether the reason for waiver was supported. But putting aside

whether we can even look to the other three orders, the State points us to nothing in those orders that bear on our analysis.

Because the only fact explicitly set out in the transfer order that pertains to the specifics of the offense here is that it was against the person of another, we must reverse. It is settled in Texas that a waiver of juvenile jurisdiction based on this particular reason, fortified only by this fact, constitutes an abuse of discretion. *Moon*, 451 S.W.3d at 50 (waiver of juvenile jurisdiction based solely on seriousness of offense, “fortified only by [finding that offense was against person of another], constitutes an abuse of discretion” and failed to vest jurisdiction in district court); *see Arango*, 518 S.W.3d at 922–23 (juvenile transfer order was facially invalid where transfer was based upon seriousness of the offense and only finding in order regarding specifics of offense was that it was against the person of another); *In re J.G.S.*, No. 03-16-00556-CV, 2017 WL 672460, at *3–5 (Tex. App.—Austin, Feb. 17, 2017, no pet.) (mem. op.) (vacating transfer order without reaching evidentiary sufficiency challenge, even though record included evidence regarding specifics of offense and juvenile’s background, because transfer order was devoid of case-specific findings supporting statutory criteria for transfer); *In re R.X.W.*, No. 12-16-00197-CV, 2016 WL 6996592, at *3 & n.1 (Tex. App.—Tyler, Nov. 30, 2016, no pet.) (mem. op.) (reversing transfer order for lack of case-specific findings supporting stated reason for waiving jurisdiction, and declining to address whether

findings were supported by sufficient evidence on basis that juvenile court’s “transfer order is deficient even if the findings were supported by legally and factually sufficient evidence”); *Yado v. State*, No. 01-14-00578-CR, 2015 WL 3982045, at *2 (Tex. App.—Houston [1st Dist.] June 30, 2015, no pet.) (mem. op., not designated for publication) (juvenile court abused discretion by waiving jurisdiction based solely on seriousness-of-the-offense where only finding regarding specifics of offense was that it was against person of another); *Guerrero v. State*, 471 S.W.3d 1, 4 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (mem. op.) (same); *see also In re S.G.R.*, 496 S.W.3d 235, 240 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (“If the juvenile court simply had concluded that the offense was against a person and made no additional findings,” waiver of jurisdiction based upon seriousness of offense may have been abuse of discretion).

We sustain Villalpando’s first issue.

Conclusion

We hold that the juvenile court abused its discretion by waiving jurisdiction and transferring Villalpando’s case to the criminal district court without including requisite findings in its transfer order. Accordingly, we vacate the juvenile court’s transfer order and the criminal district court’s judgment, dismiss the criminal district court case, and remand this case to the juvenile court for further proceedings consistent with this opinion. The case remains “pending in the juvenile court” where

“at least one legislatively provided alternative would seem to be for the juvenile court to conduct a new transfer hearing and enter another order transferring [Villalpando] to the jurisdiction of the criminal court, assuming that the State can satisfy the criteria under Section 54.02(j) of the Juvenile Justice Code” or another applicable section. *Moon*, 451 S.W.3d at 52 n.90; *see* TEX. FAM. CODE § 54.02(j).

Jennifer Caughey
Justice

Panel consists of Justices Jennings, Massengale, and Caughey.

Do not publish. TEX. R. APP. P. 47.2(b).