Opinion issued July 21, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00510-CR

KENDALL BELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Case No. 1394740

O P I N I O N

After the juvenile court waived jurisdiction[1] and certified appellant, Kendall Bell, to stand trial as an adult in criminal district court, appellant, without an agreed punishment recommendation from the State, pleaded guilty to the felony

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1 *See* TEX. FAM. CODE ANN. § 54.02(a).

offense of aggravated robbery.[2] The criminal district court then deferred adjudication of appellant's guilt and placed him on community supervision for six years. The State, alleging certain violations of the conditions of his community supervision, subsequently moved to adjudicate appellant's guilt. After a hearing, the criminal district court found an allegation true, found appellant guilty, and assessed his punishment at confinement for twenty years. On original submission, appellant contended that the juvenile court erred in transferring his case to the criminal district court and the evidence was insufficient to support the criminal district court's finding that he violated a condition of his community supervision.

Previously, this Court, relying on *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), *overruled by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), held that the juvenile court erred by "waiving jurisdiction and transferring [appellant's] case to the criminal district court." *Bell v. State*, 512 S.W.3d 553, 554–60 (Tex. App.—Houston [1st Dist.] 2016) (*Bell I*) (concluding, based on now-overruled *Moon*, "the juvenile court did not provide sufficient case-specific findings to support its waiver of jurisdiction" and holding "juvenile court abused its discretion by waiving jurisdiction and transferring [appellant's] case to the criminal district court"), *rev'd on other grounds*, 515 S.W.3d 900 (Tex. Crim. App. 2017) (*Bell II*). Accordingly, we vacated the juvenile court's transfer order and the

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[2] *See* TEX. PENAL CODE ANN. § 29.03(a), (b); *see also id.* § 29.02(a).

criminal district court's judgment, dismissed the criminal district court case, and remanded appellant's case to the juvenile court for further proceedings consistent with our opinion. *Bell I*, 512 S.W.3d at 560.

The State then filed a petition for discretionary review with the Texas Court of Criminal Appeals, arguing, in part, that this Court lacked jurisdiction to consider appellant's complaint that the juvenile court erred in transferring his case to the criminal district court because appellant did not raise his complaint until after the criminal district court entered its judgment adjudicating appellant's guilt.[3] *See Bell II*, 515 S.W.3d at 901 ("The State has filed a petition for discretionary review challenging appellant's ability to attack his transfer order on appeal from the adjudication of his guilt. The State maintains that a defendant cannot attack the original proceedings on appeal from an order that adjudicated guilt after a revocation of community supervision. The State's argument suggests that the court of appeals did not have jurisdiction to address the merits of appellant's c[omplaint] . . . ." (internal citations omitted)). Because the State had not raised its

[3] The State also asserted that (1) this Court misinterpreted the Texas Court of Criminal Appeals's now-overruled opinion in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), *overruled by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), and "erroneously held that the [juvenile court's] transfer order . . . was deficient" and (2) the Texas Court of Criminal Appeals's *Moon* opinion needed to be "reexamined." *Bell v. State*, No. PD-1383-18, 2021 WL 2677442, at *1 n.1 (Tex. Crim. App. June 30, 2021) (not designated for publication) (*Bell IV*) (noting "two other grounds" raised by State in petition for discretionary review filed after *Bell I*).

jurisdictional argument in this Court, the Court of Criminal Appeals granted the State's petition as to that argument, vacated this Court's judgment, and remanded the case so that we could consider the State's jurisdictional issue "in the first instance." *Id.*

On remand, this Court addressed whether we had jurisdiction to hear appellant's complaint that the juvenile court erred in transferring his case to the criminal district court even though appellant "did not raise his [complaint] when the [criminal district] court entered its order of deferred adjudication" and instead raised his complaint on appeal from the criminal district court's judgment adjudicating appellant's guilt and assessing his punishment at confinement for twenty years. *Bell v. State*, 569 S.W.3d 241, 243–47 (Tex. App.—Houston [1st Dist.] 2018) (*Bell III*), *rev'd on other grounds*, No. PD-1383-18, 2021 WL 2677442, at *1 (Tex. Crim. App. June 30, 2021) (not designated for publication) (*Bell IV*). After concluding that we had jurisdiction to consider appellant's complaint, we adopted our previous opinion in *Bell I*, which relied on the Texas Court of Criminal Appeals's now-overruled *Moon* opinion, and held that the juvenile court erred by "waiving jurisdiction and transferring [appellant's] case to the criminal district court." *Bell III*, 569 S.W.3d at 243–47; *see also Bell I*, 512 S.W.3d at 554–60. We again vacated the juvenile court's transfer order and the criminal district court's judgment, dismissed the criminal district court case, and

remanded appellant's case to the juvenile court for further proceedings consistent with our opinion. *Bell I*, 512 S.W.3d at 560; *see also Bell III*, 569 S.W.3d at 243, 247 (adopting this Court's prior opinion in *Bell I*).

The State filed another petition for discretionary review with the Texas Court of Criminal Appeals, again asserting that this Court lacked jurisdiction to address appellant's complaint that the juvenile court erred in transferring appellant's case to the criminal district court, which the court granted. *Bell IV*, 2021 WL 2677442, at *1 ("On remand, the court of appeals concluded that it had jurisdiction to consider [a]ppellant's *Moon* challenge. It then adopted its prior holding finding the transfer order defective, vacating the conviction, and remanding the case to the juvenile court. The State again petitioned for discretionary review, and we granted the State's petition to consider whether the court of appeals correctly held that it had jurisdiction to consider [a]ppellant's challenge to his transfer order at this procedural juncture." (internal citations omitted)). But the Texas Court of Criminal Appeals noted that after it granted the State's petition for discretionary review, it issued an opinion in *Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), which "disavowed" and overruled *Moon*—the Texas Court of Criminal Appeals's opinion relied on by this Court in *Bell I* and *Bell III*. *Bell IV*, 2021 WL 2677442, at *1. Because this Court "did not have the benefit of [the Texas Court of Criminal Appeals's *Ex parte*] *Thomas*

[opinion]" when we issued *Bell I* and *Bell III*, the Texas Court of Criminal Appeals vacated this Court's judgment and remanded appellant's case to this Court "for further consideration and disposition of [a]ppellant's issues in a manner consistent with [the court's recent decision in *Ex parte*] *Thomas*." *Id.*

On remand, we now address appellant's two issues on appeal: whether the juvenile court erred in transferring his case to the criminal district court and whether the evidence was insufficient to support the criminal district court's finding that he violated a condition of his community supervision.

We affirm.

Background

When appellant was sixteen years old, the State filed a petition in juvenile court, alleging that appellant had engaged in delinquent conduct by committing the felony offense of aggravated robbery.[4] The State then moved for the juvenile court to waive its exclusive original jurisdiction over appellant's case and transfer the case to the criminal district court for appellant to stand trial as an adult.[5]

At the transfer hearing on the State's motion,[6] Harris County Sheriff's Office ("HCSO") Deputy A. Alanis testified that on March 9, 2013, an aggravated

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4 *See* TEX. PENAL CODE ANN. § 29.03(a), (b); *see also id.* § 29.02(a).

5 *See* TEX. FAM. CODE ANN. § 54.02(a).

6 *See id.* § 54.02(c) ("The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.").

robbery occurred at a Family Dollar Store in Harris County, Texas.[7] Alanis investigated the aggravated robbery and viewed a surveillance videotaped recording from the store.

As to the aggravated robbery Deputy Alanis explained that a white truck[8] "pulled up to the Family Dollar [Store]." As the store clerk opened the door to the store for a customer to enter, four males, wearing handkerchiefs over the lower part of their faces,[9] jumped out of the truck and ran into the store. The first male, T.J., entered the store holding a firearm that he pointed at the store clerk. Appellant was the last male to enter the store, and he also had a firearm. After entering the store, T.J. and two of the males forced the store clerk and the store manager to move to the store register, while appellant walked to the back of the store to "clear[] the store[] . . . aisle [by] aisle." In the back of the store, appellant found a woman and a small child. He pointed the firearm at the woman and the child, took the woman's purse, and walked back to the store register where T.J. and the other males were "trying to force" the store manager and store clerk to "open a safe." T.J. held his firearm on the store clerk's back, and he hit the clerk in the back of

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7 Although Deputy Alanis testified that the aggravated robbery occurred on March 9, 2013, a subsequent witness's testimony focused on March 10, 2013, rather than March 9, 2013.

8 Deputy Alanis testified that the truck had been stolen "a couple hours prior to the [aggravated] robbery."

9 Deputy Alanis stated that the four males' eyes and noses were still visible.

the head. The store clerk and store manager were unable to open the store register because of a "time delay."

According to Deputy Alanis, at some point, T.J., appellant, and the other two males "realize[d] that [law enforcement officers] were on the way," and they ran out of the store and jumped into the stolen white truck. The truck drove off, and law enforcement officers pursued it. During the pursuit, the driver of the truck "crash[ed]" into a bayou, and five males—the four males who had entered the Family Dollar Store and the driver of the truck—exited. Four of the males ran westbound on the bayou and one male ran eastbound. Eventually, three males were detained by law enforcement officers, including T.J. and another male, C.H.

T.J. later gave a statement to law enforcement officers about who participated in the aggravated robbery. T.J. named appellant as one of the participants in the aggravated robbery as well as C.H. T.J. also told law enforcement officers that "they [first] stole the truck" and then "went into the Family Dollar [Store] to rob the store." T.J. only knew appellant, who he described as "a heavy[-]set guy," and C.H. He did not know the other two males involved in the aggravated robbery.

C.H. also gave a statement to law enforcement officers, telling officers that his "good friend," appellant, was involved in the aggravated robbery. C.H. described appellant as "a big, heavy-set guy." C.H. told law enforcement officers

that he and appellant had previously "been involved in . . . another scene . . . where they were both shot at [an apartment complex] . . . in the stomach."

Deputy Alanis further testified that after learning appellant's address, he went to appellant's home to speak with him. When Alanis saw appellant, based on "the way [appellant] was walking, his height, his stature, [and] his build," Alanis knew appellant was the fourth male that he had seen on the store's surveillance videotape recording of the aggravated robbery.

Appellant later gave a statement to law enforcement officers and denied being involved in the aggravated robbery. He told officers that on March 9, 2013, he woke up at 1:00 p.m. and went to a friend's house. Appellant stayed at his friend's house until 11:00 p.m. and then came home. He stayed awake playing videogames at his house until 2:00 a.m. and then fell asleep. Appellant admitted that he knew C.H. and that they were friends.

According to Deputy Alanis, appellant actively participated in the aggravated robbery of the Family Dollar Store and pointed his firearm at the woman and the child hiding in the store. Appellant took the woman's purse. Alanis was "[one] hundred percent positive" that appellant was involved in the aggravated robbery on March 9, 2013 at the Family Dollar Store.

Sherri Smith, appellant's mother, testified that on March 10, 2013, she had a "purse party" at her home. Appellant was at Smith's home during the purse party.

According to Smith, appellant was "standing outside" her home between 9:00 p.m. and 10:00 p.m. that night. Smith noted that she could not see appellant during the entire night, and she did not know "exactly where he was the entire night."

Wanda Martin testified that she was at Smith's house for the purse party. She saw appellant in the kitchen at about 9:00 p.m. or 10:00 p.m.

The juvenile court admitted into evidence a "probation report." As to the aggravated robbery, the report stated that four males, T.J.,[10] C.H.,[11] appellant, and another male, D.M.,[12] "forced their way into the store at gun point and robbed the store." One of the males "placed a gun to the back of [the store manager's] head and forced him to open the register." One of the males "punched [the store manager] because he could not open the safe." The four males took the store manager's wallet "along with cash from the [store's] register and several cigarette cartons."

Law enforcement officers "saw the [four males] flee the scene in a white . . . truck and pursued the [truck] into a neighborhood" where the males "crashed into a bayou and fled on foot." T.J., D.M., and C.H. were "found hiding behind some bushes in the bayou."[13] T.J., D.M., and C.H. gave statements to law

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10 The probation report stated that T.J. was an "Adult Co-Actor[]."

11 The probation report stated that C.H. was a "Juvenile Co-Actor."

12 The probation report stated that D.M. was an "Adult Co-Actor[]."

13 According to the report, a fifth male was "shot at the scene and pronounced dead."

enforcement officers, and T.J. and C.H. identified appellant as "the fourth male" who had "robbed the store."[14] When appellant was later interviewed by law enforcement officers, he "denied being involved in the [aggravated] robbery."

The probation report also noted that while detained following the aggravated robbery, appellant was cited twice for "[n]ot following directions." And the probation report stated that, according to the HCSO, appellant was "a member of the T. Y. C. gang."

The probation report also stated that, as to the 2012–2013 school year, appellant first attended Klein Forest High School and then attended "Juvenile Justice Charter School." Klein Forest High School records showed that appellant was withdrawn from school in December 2012 "because of having surgery on his stomach." Appellant also "had too many unexcused absences at Klein Forest High School" but he had "regular attendance at Juvenile Justice Charter School." Appellant was "suspended once [during the 2012–2013 school year] for not following directions." In the previous school year, appellant had poor attendance.

The psychiatric evaluation included with the probation report stated that appellant was sixteen years old at the time of the transfer hearing. Appellant reported that he last attended Klein Forest High School and was in the tenth grade.

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[14] The report noted that the store's surveillance videotaped recording showed appellant with the bottom of his face covered with a handkerchief during the aggravated robbery, but he "could be identified due to his size and physical shape."

He was in "regular" education classes. Appellant was "unsure as to whether he passed" his classes but stated that he thought he "ma[de] average grades." Appellant "never had to repeat a grade." He "withdr[ew] from [Klein Forest High School] because [he] ha[d] surgery on his stomach after a gunshot wound." When asked about his behaviors at school, appellant reported that "he was suspended a number of times in middle school and perhaps two times in [the] ninth grade."

Appellant stated that he had never taken "medications for his behavior, mood, or attention span." He had never participated in counseling or psychotherapy. According to appellant, he had "at least one good friend whom his mother like[d]." But his family had "warned him about some of the other peers with whom he spent time." Appellant denied "hanging out with gang members and stated that he d[id] not know anything about the gang" mentioned in the probation report. Appellant denied having a history of antisocial behaviors, stealing, or vandalism.

As to the clinical interview and mental status examination, the psychiatric evaluation stated that appellant willingly entered the interview. He made good eye contact throughout the interview and was "relatively personable." He spoke at "a normal rate" and "maintained an appropriate affect throughout the interview." He showed no evidence of "responding to hallucinations or delusions." Appellant was "oriented" during the cognitive evaluation.

When asked about the offense with which he was charged, appellant stated that he "ha[d] been accused of aggravated robbery." As to "what that mean[t]," appellant explained that it was "a felony," he "kn[ew] [that] robbery mean[t] stealing from someone," and "the aggravated part of the term . . . mean[t] that a weapon was involved." Appellant knew that he was "being considered for certification," which meant that his case could be "sen[t] . . . to the county," meaning "adult people jail." (Internal quotations omitted.) Appellant also knew that the juvenile court judge "ma[de] th[at] decision." When asked "to give an example of a crime considered more serious than the one [with] which he ha[d] been accused," appellant stated "murder." He stated that "a less serious crime would be a misdemeanor," like assault or evading arrest.

Related to courtroom roles, appellant stated that his attorney's job was "to fight for him." Appellant reported that he had told his attorney "his side of the story and [he] felt comfortable with" his attorney. Appellant stated that he should "tell his lawyer the truth." Appellant knew his attorney's name. Appellant also discussed consulting his attorney about "the choice between having a judge or a jury make [a] decision in a trial" and stated that he should tell his attorney if a witness lied. Appellant said he would ask his attorney if he did not understand something.

When asked about the attorneys "on the other side," appellant identified them as the "D.A.s." Appellant stated that the district attorneys tried to "send people to jail" because "they think the person did the crime." Appellant remembered that the district attorneys worked for the State. Appellant noted that the judge "ma[de] the decision in the courtroom" and that "the jury would be the other group of people that could also make the decision in a trial." Appellant knew that the jury was a group of "random people from the community." Appellant stated that after the jury listened in the courtroom, "they talk[ed] about what they learned and choose a punishment." The jury "tr[ied] to decide if the person did the crime or not first." When asked "what it would be called if [a] person was found to have done the crime," appellant said, "guilty." (Internal quotations omitted.) Appellant also stated that "if the person was found not to have done the crime, they would be innocent." According to appellant, "people who [were] raising their right hand and saying something in court [were] swearing not to lie" and "if they lie[d] they could get their own charge and get time."

As to diagnostic impressions, the psychiatric evaluation stated that appellant had been diagnosed with "Disruptive Behavior Disorder, NOS," which suggested that he had "some problematic behaviors which d[id] not meet [the] criteria for a more specific behavior disorder." Appellant was not "imminently suicidal or homicidal" but showed "some chronic risk for self-destructive and aggressive

behaviors." He "showed no evidence of the type of emotional symptoms which could preclude his being found competent." Appellant "showed an understanding of his charge as well as [the] possible consequences of being found responsible for th[e] charge." Appellant had an "understanding of the court proceedings which he face[d] as well as the roles of various individuals and the jury in the courtroom." The psychiatric evaluation concluded that appellant would "be able to assist his attorney in his defense if given concrete directives and advice." Appellant was "competent and fit to proceed."

As for recommendations, the psychiatric evaluation stated that if appellant was found "responsible" for the aggravated robbery, he might "benefit from a residential treatment program where he c[ould] learn to take responsibility for his actions and develop empathy for victims."

The psychological evaluation included with the probation report stated that appellant was sixteen years and three months old at the time of the transfer hearing and he was charged with the offense of aggravated robbery. There was nothing unusual about appellant's posture or hygiene. Appellant's mood was euthymic. He did not have deficits in expressive or receptive language abilities. Appellant's attention was on task during the interview. His concentration and effort "were good." There were "no overt signs of delusions, hallucinations, or the presence of a thought disorder." Appellant's memory abilities were "intact and [he] was able

to provide current personal and historical information." He was "oriented to time, place, and person."

During the interview, appellant denied gang membership and denied that any of his friends were "gang members." Appellant last attended the tenth grade at Klein Forest High School but was withdrawn from that school in December 2012 after suffering a gunshot wound. Appellant reported that he was suspended in middle school "for playing around," and he was suspended twice in the ninth grade for "watching a fight." (Internal quotations omitted.) Appellant had not failed a grade and had no history of attending special education classes. Appellant reported that his "grades [were] C's." (Internal quotations omitted.) Appellant also noted that he had been in one fight while in elementary school and stated that he did not have a history of fire setting, cruelty to animals, vandalism, theft, or running away.

As to testing results, the psychological evaluation stated that appellant "obtained a Full Scale IQ of 78, which place[d] him in the [b]orderline range of intelligence." But because of "significant discrepancies among index scores, [appellant's] Full Scale IQ of 78 [was] likely not a good indication of his overall cognitive ability." Appellant's "auditory concentration, attention and short-term/working memory [were] a relative strength." His ability to "perform simple, clerical-type tasks quickly [was] a relative weakness."

For a summary, the psychological evaluation stated:

> During the clinical interview[,] [appellant] reported a history of behavior problems in the school setting. He reported suspensions in middle school for "playing around" and disrupting class, and two suspensions in [the] 9th grade, one of which was for "watching a fight." He reported no suspensions from school [during the 2012–2013] school year, but it [was] reported that he was not attending school during the first two months of the spring semester. Intelligence testing indicated that he is of below average intelligence, and achievement testing indicated that his academic skills are commensurate with his intelligence. Achievement testing also indicated that he is well below grade level in all academic areas. These factors may have made school a somewhat frustrating experience, and contributed to his behavior problems in the school setting. He denied any history of gang involvement, but acknowledged that he has associated with friends of whom his family disapproved because of their negative influence, which may . . . have contributed to his behavior problems.

The psychological evaluation also addressed "factors relevant to waiver" of the juvenile court's exclusive original jurisdiction. It stated that appellant was "functioning in the [b]orderline range of intelligence" and his "academic skills [were] commensurate with his intelligence." He did not report a history of gang involvement and "denied that any of his friends were gang members," but acknowledged that "he had associated with friends who were negative influences." As to previous rehabilitation efforts, the psychological evaluation stated that appellant had not previously been referred to the Harris County Juvenile Probation Department so "there ha[d] been no previous attempts at rehabilitation." As to the possibility of re-offending, the psychological evaluation explained that appellant

had a moderate risk of re-offending based on certain risk factors. The evaluation also detailed appellant's "[c]ompetency/[f]itness to [p]roceed."

As to final findings, the psychological evaluation stated:

> 1. Appellant "does not qualify for a diagnosis of a major mental illness or mental retardation."
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> 2. Appellant "understands what he is charged with and [the] possible consequences of such a charge." Appellant "knows that he is facing possible certification to adult court and that his judge, Judge Phillips, will make this decision. He can define the roles that the various courtroom participants will play in his proceedings." Appellant "knows what guilty and innocent mean. He understands what constitutes appropriate courtroom behavior." Appellant "knows that people swear to tell the truth in the courtroom and can face punishment if they do not."
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> 3. Appellant "says that he has explained to his attorney his version of what happened." Appellant "is capable of assisting his attorney in his defense and appears motivated to do so."

The psychological evaluation ultimately concluded that appellant was "competent to stand trial and fit to proceed in any legal proceedings of which he [was to be] subject, including the waiver of juvenile court jurisdiction."

Following the transfer hearing, the juvenile court waived its exclusive original jurisdiction over appellant's case and ordered the case transferred to the criminal district court for appellant to stand trial as an adult.[15] In its order, the juvenile court stated:

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[15] *See* TEX. FAM. CODE ANN. § 54.02(a) ("The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate . . . criminal district court for criminal proceedings if: (1) the child is alleged to have violated a

After a full investigation and hearing, . . . the court finds that [appellant] is charged with a violation of a penal law of the grade of felony, if committed by an adult, to wit: aggravated robbery committed on or about the 10th of March, 2013; that there has been no adjudication of this offense; that he was 14 years of age or older at the time of the commission of the alleged offense . . . ; that there is probable cause to believe that [appellant] committed the offense alleged and that because of the seriousness of the offense, the welfare of the community requires criminal proceeding[s]. In making that determination, the [c]ourt has considered among other matters:

1. Whether the alleged offense was against person or property, with the greater weight in favor of waiver 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 reasonable rehabilitation of the child by use of procedures, services and facilities available to the [j]uvenile [c]ourt.

The [c]ourt specifically finds that [appellant] is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights . . . waived by [appellant], to have aided in the preparation of his defense and to be responsible for his conduct; that the offense allege[d] to have been committed was against the person of another; and the evidence and reports heretofore presented to the court demonstrate to the court that there is little, if

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penal law of the grade of felony; (2) the child was . . . 14 years of age or older at the time he is alleged to have committed the offense, if the offense is . . . a felony of the first degree, and no adjudication hearing ha[d] been conducted concerning the offense; . . . and (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.").

> any, prosect of adequate protection of the public and likelihood of reasonable rehabilitation of [appellant] by use of procedures, services, and facilities available to the [j]uvenile [c]ourt.

(Emphasis omitted.)

After appellant's case was transferred to the criminal district court, appellant, without an agreed punishment recommendation from the State, pleaded guilty to the felony offense of aggravated robbery. The criminal district court deferred adjudication of appellant's guilt and placed appellant on community supervision, subject to certain conditions, including:

> (1) Commit no offense against the laws of this or any State or the United States; and
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> . . .
>
> (20) You are forbidden to own or be in possession of any firearms during the term of supervision.

(Emphasis omitted.)

Later, the State filed a motion to adjudicate appellant's guilt, alleging that appellant had violated the above conditions of his community supervision as follows:

> Committing an offense against the State of Texas, to-wit: on or about April 5, 2014, in Harris County, Texas, [appellant] . . . did then and there unlawfully[,] intentionally and knowingly cause bodily injury to [D.L.], hereinafter called the [c]omplainant[,] by shooting the complainant with a firearm, and [appellant] used and exhibited a deadly weapon, namely a firearm[;] and

> . . . [O]n or about April 5, 2014, [appellant] was in possession of a firearm.

(Emphasis omitted.)

At the hearing on the State's motion to adjudicate guilt, Harris County Probation Officer E. Pawlowski testified that on July 18, 2013, appellant was placed on community supervision for six years after pleading guilty to the offense of aggravated robbery. While on community supervision, appellant "picked up a law violation for [the offense of] aggravated assault which occurred on April 5, 2014," and at the time of that offense, appellant "had a firearm or was in possession of a firearm."

The complainant, a seventeen-year-old high school student, testified that on April 5, 2014, he went to a party at a house in Harris County. The complainant attended the party with his girlfriend, B.M., his brother, his brother's girlfriend, M.R., and another friend. The complainant did not know the person who owned the house, but he knew other people at the party. When he arrived at the party, around 9:00 p.m. or 10:00 p.m., the house was crowded, and he estimated that about 130 people were at the party. The complainant, his brother, B.M., M.R., and the complainant's other friend left the party about 2:00 a.m. when someone told the complainant's brother that the complainant's group should "leave the party."

The complainant, his brother, B.M., M.R., and the complainant's other friend left the party through the back door of the home and walked up the driveway

toward the front of the house. The complainant's car was parked on the street in front of the house. Two males followed the complainant out of the party. One of the males was behind him and the other male was "on the side" of him. As the complainant got to the front of the house, one of the males said, "Hey, are you looking for my brother?" The complainant responded, "What?" The male asked the complainant "one more time," and then both males "pulled out guns and started shooting." The complainant believed that the males were about ten feet away from him when they pulled out their firearms and started shooting. According to the complainant, "[a]fter the third time [that he] was shot," and after he had fallen in the street, he "got up and started to run." The complainant was first "shot . . . in [his] groin," then shot in his hip, and then shot in his hip again. The complainant eventually got behind a car, but he was afraid that the males "could kill [him] right there" so he "took off running." A friend took the complainant to the hospital. The complainant was shot six times—"[o]nce in [his] groin, tw[ice] in [his] hip, on[c]e in [his] inner thigh on [his] right leg[,] and [twice] in [his] ankle."

The complainant explained that the two males that he saw shooting at him were "Jordan" and "Tony."[16] He did not see appellant shoot at him, but he felt that "there was a third shooter" that night. The complainant believed that there was a third shooter because he "felt bullets coming from the back where [he] was

[16] Tony is also referred to as D.T. during certain witnesses' testimony. For ease, we will continue to refer to him as "Tony."

running," but he could not get "a direct clear view of [the] other shooter" because he "was running toward[] the car." As the complainant explained, he knew where Jordan and Tony "were and the direction they were at" and "there w[ere] bullets coming from a third direction." The complainant never identified appellant as the third shooter. The complainant noted that M.R. was with him when shots were first fired at him.

M.R., a seventeen-year-old high school student, testified that on April 5, 2014, she went to a party at a house. M.R. arrived at the party with a few friends, including the complainant, around 10:00 p.m. There were a lot of people at the party, about 200 people. Later, M.R., the complainant, and M.R.'s other friends decided to leave the party after they "heard something from someone," and they left through the back door of the home. Appellant[17] and two other males, Jordan and Tony, followed M.R., the complainant, and M.R.'s other friends out the back door.

As M.R., the complainant, and M.R.'s other friends began walking down the driveway toward the front of the house, Jordan and Tony approached the complainant. After Jordan and Tony said something to the complainant, Jordan and Tony "started shooting" at the complainant. Jordan and Tony "started

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[17] M.R. stated that she knew appellant because "he used to go to" the same school as her and M.R. was friends with appellant's ex-girlfriend. M.R. noted that she knew appellant's name and she had seen him before the night of the party.

shooting basically . . . at the same time," but Jordan shot at the complainant first. At the time the shooting began, Jordan was "[p]retty close" to the complainant, and M.R. was standing "right there by" the complainant. Appellant was standing behind Jordan and Tony. After Jordan fired his firearm, Tony and appellant fired their firearms.

According to M.R., she saw appellant shoot at the complainant, and she saw appellant holding a black firearm. M.R. saw appellant point his firearm at the complainant, and she saw him "actually . . . shoot the weapon at" the complainant. M.R. stated that she was "[n]ot that many feet away" from appellant when she saw him shooting at the complainant. After M.R. saw appellant shooting at the complainant, M.R. ran to the "side of the house" and got behind a gate. M.R. did not start running until "a couple of shots" had been fired, and the shooting continued as she ran. When asked whether on April 5, 2014, she saw appellant shoot at the complainant with a firearm, M.R. stated, "Yes." Appellant was "one of the shooters" that night. M.R. knew appellant from school and "by name and sight."

B.M., a high school student, testified that on April 5, 2014, she went to a party with her boyfriend, the complainant, M.R., and other friends. B.M., the complainant, M.R., and B.M.'s other friends arrived at the party around 10:00 p.m. or 10:30 p.m. There were more than 100 people at the party. B.M., the

complainant, M.R., and B.M.'s other friends left the party around 1:00 a.m. or 2:00 a.m. and went out the back door of the house. The group then made their way toward the front of the house. As B.M. got to the front of the house, she looked back and she saw "someone running down the driveway and then a shot was fired." B.M. did not know "who . . . r[an] down the driveway," and she did not see the first shooter. The complainant was standing next to B.M., and he pushed B.M. to the side and "pushed [her] out [of] the way." The complainant began to run across the yard, and B.M. ran with M.R. B.M. saw the complainant "get shot when he ran across the yard."

B.M. testified that she saw appellant shoot a firearm that night, while appellant was standing "on the side of [a] car in the yard." She saw appellant shoot as the complainant was running across the yard, and she was running. According to B.M., as she was running, she was able to "look[] back and . . . see[]" appellant "standing on the side of the car shooting." Appellant shot "in the same direction" that the complainant was running. B.M. could not describe the firearm that appellant was shooting, but she saw "shots . . . coming from his direction." Appellant "pulled out [his] gun after the first shot was fired." B.M. saw appellant with a firearm.

B.M. stated that appellant was "one of the shooters that evening," and B.M. was "sure that the shooter that [she] saw" was appellant. B.M. noted that she also

saw Tony shooting "in the middle of the yard," but she did not see Jordan shoot anyone. As B.M. explained, after the first shot was fired, the complainant "took off running" and then appellant "beg[an] to shoot" at the complainant. B.M. did not see the person who fired the first shot, but appellant and Tony were together shooting. B.M. heard twenty to twenty-five shots that night. When asked whether she was sure that appellant was "the one with the firearm that night shooting at [the complainant]," B.M. responded, "Yes."

K.M., a sixteen-year-old high school student, testified that she is B.M.'s sister. K.M. knew appellant through Instagram,[18] and before April 5, 2014, they were "friends on Instagram." K.M. was able to recognize appellant because he had posted pictures of himself on Instagram.

On April 5, 2014, K.M. went to a party at a house with two friends. The party was "crowded," and there were "[m]ore than 130" people at the party. While at the party, K.M. saw appellant inside the house on the stairs. About 1:30 a.m. or

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[18] *See Graham v. Prince*, 265 F. Supp. 3d 366, 372 n.2 (S.D.N.Y. 2017) (op. & order) ("Instagram . . . describes itself as 'a fun and quirky way to share your life with friends through a series of pictures.' . . . The platform allows users to 'post' images online to share with their 'followers' or the public. Instagram also permits users to 'like' or comment on one another's image posts."); *Rodriguez v. Instagram, LLC*, No. C 12-06482 WHA, 2013 WL 3732883, at *1 (N.D. Cal. July 15, 2013) (order) ("Instagram is a web-based photograph- and video-sharing platform through which users host and share user-generated content. Instagram provides an application for mobile devices that allows users to upload photos, apply digital filters to those photos, and share them with others on Instagram and other social networking websites like Twitter and Facebook.").

2:00 a.m., K.M. and her friends decided to leave because "[e]verybody was leaving." K.M. exited through the front door of the house, and she was near the driveway "[w]hen the shooting began." The complainant, B.M., and M.R. were also near her. The complainant was "next to" her when the shooting began. According to K.M., someone pushed her to the ground and "that's when [']they[']began to shoot" at the complainant. K.M. saw Tony shoot a firearm at the complainant.

K.M. noted that appellant was behind her when she exited the house before the shooting, and she also saw appellant outside the house during the shooting. And when K.M. was on the ground, she saw appellant walking through the front yard. Appellant had a black firearm. K.M. did not see appellant shoot the firearm.

K.M. also testified that appellant is "related to somebody in some way named [A.C.]." And A.C. and B.M., K.M.'s sister, had "gotten into a fight before." B.M. and A.C. did not like each other. But K.M. did not "lie about what [she] saw" the night of the party "because of the relationship [between her] sister" and A.C.—appellant's friend or relative.

Lashonda Williams testified that she owned the house where there was a party on April 5, 2014. Williams also testified that she knew appellant because she was friends with his mother and appellant was at the party at her house on April 5, 2014. According to Williams, "a bunch of kids just ended up" at her house and

there were more than 100 people at the house. Williams first saw appellant at about 10:00 p.m., and the party ended about 2:00 a.m.

At some point in the night, "a lot" of shots were fired outside the house, while Williams was inside. Williams testified that, at the time shots were fired outside, appellant was upstairs in the house with Williams's daughter in Williams's bedroom. Appellant was "upstairs . . . at the time of the shooting." Williams did not see appellant with a firearm or shooting a firearm.

P.J. testified that on April 5, 2014, there was a party at his home. Williams, P.J., and P.J.'s two sisters lived at the house. Appellant was one of P.J.'s good friends, and appellant and appellant's mother were "close family members" with P.J. and P.J.'s mother, Williams.

On the day of the party, P.J. was at the house all day. "[A] lot of people" came to the party, including Jordan and Tony. The house was "pretty crowded." About the time that "the party was starting to be over with," "all of the commotion . . . started," and shots were fired. At the time the shots were fired, P.J. was inside the house "[i]n the front room with [Williams] and [his] little sister." P.J. and Williams were both downstairs. Appellant was in Williams's bedroom upstairs. P.J. did not see appellant with a firearm and did not see appellant shoot a firearm.

C.C. testified that on April 5, 2014, he went to a party at a home. There were more than seventy people at the party. Appellant was in C.C.'s "circle of friends" and was at the party. At some point, C.C. heard shots outside the house when he was in the living room. Appellant was inside the house when the shots were fired. He was in an upstairs bedroom.

P.M. testified that on April 5, 2014, he went to a party. He was in the living room of the house when shots were fired outside. Appellant, P.M.'s friend, was inside the house at the time the shots were fired. P.M. saw appellant "going up the stairs." Appellant did not have a firearm, and P.M. did not see appellant shoot a firearm. P.M. noted that there were more than 100 people at the party and "the majority of the people [were] inside the house."

B.H. testified that on April 5, 2014, she went to a party where a shooting occurred. B.H. was inside the house when the "shooting happened." She was on the stairs and ran up the stairs into a bedroom when she heard the shots. Appellant, who B.H. knew from school, was standing on the stairs and then ran up the stairs when the shooting began. B.H. did not see appellant with a firearm and did not see him shooting a firearm. B.H. noted that more than 100 people were at the party.

T.B. testified that on April 5, 2014, he went to a party. T.B. was inside the house when he heard shots outside. At the time, appellant was inside the house and on the stairs. T.B. "kn[e]w of" appellant because they went to school together.

T.B. noted that there were "[o]ver 100" people at the party and it was "[p]retty crowded." T.B. went upstairs when he heard the shots, and appellant was behind him.

R.J. testified that on April 5, 2014, he went to a party at a house. At some point, shots were fired. R.J. was standing by the stairs and then ran to the kitchen. Appellant was on the stairs when the shots were fired. Appellant came downstairs when law enforcement officers "made everybody come downstairs." R.J. met appellant the day of the party.

K.H. testified that on April 5, 2014, he went to a party at a house and shots were fired. K.H. was in the living room on the floor when he heard the shots. K.H. went to school with appellant and saw him "going upstairs." K.H. noted that there were "a lot of people" at the party.

D.T. testified that on April 5, 2014, he went to a party at a house. At some point, he heard shots while he was in "the main room where the party was going on close by one of the windows." D.T. "got down" and focused on "[g]et[ting] away from the windows." Appellant was on the stairs when the shots were fired and was "going upwards." D.T. did not see appellant shoot a firearm, and he did not see appellant with a firearm. Appellant came to the party with D.T. D.T. noted that about fifty-five to sixty people were at the party and it was "pretty crowded."

K.J. testified that on April 5, 2014, she went to a party at a house. At some point, "[s]ome girls" had a fight and Williams "put everybody out [of] the house." K.J. went out the back door. While outside, K.J. heard shots but did not see anyone shooting. K.J. "ducked" and "squat[ted]." K.J. saw appellant on the stairs before she heard shots, and she told him "bye." K.J. noted that appellant was "like [her] brother."

C.H.[19] testified that on April 5, 2014, he went to a party at a house. When C.H. arrived at the party, he saw appellant "on the stairs." At some point, there was a shooting. At the time of the shooting, C.H. was in the living room, and he "laid down." C.H.'s main concern was "to get down on the ground"; he did not look for appellant. Appellant came downstairs when law enforcement officers came inside the house after the shooting. C.H. did not see appellant with a firearm and did not see appellant shooting a firearm. C.H. stated that he knew appellant from school.

K.T. testified that on April 5, 2014, he was at a party at a house. When K.T. heard shots, he was inside the house by the stairs. He then ran to the kitchen. Appellant, who K.T. knew through a cousin, was on the stairs at the time of the shooting. About fifteen or twenty people were in the house when the shooting occurred.

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[19] It is unclear from the record whether this is the same C.H. that participated in the aggravated robbery with appellant.

Appellant testified that he went to a party on April 5, 2014 at a house. While there, he heard shots. When he heard the shots, he was standing on the stairs inside the home. He then ran up the stairs to a room. Appellant was not in possession of a firearm that day, and he did not shoot anyone. Law enforcement officers did not find any firearms in the house. According to appellant, he stayed on the stairs during the entire party, but at one point, "way before the party was . . . over," he "walked to the back door and walked right back."

Appellant also testified that Jordan was his stepbrother, and Jordan lived with appellant. Appellant did not know the complainant, M.R., or B.M. As to why M.R. and B.M. would say that they saw appellant shoot the complainant, appellant stated:

> My ex-girlfriend, her sister had got into a fight with the girl [B.M.] or something and I guess they just been picking on her . . . -- I guess so they knew I was like, really close to her. So I guess, they like -- that could get to her if something happened to me.

A.C. testified she and appellant "are like brother[] and sister[]" and she also knew B.M. B.M. and A.C. had "plenty of altercations." They "had a fight last year" and "another fight recently." A.C. also fought K.M., B.M.'s sister. According to A.C., B.M. and K.M. "br[ought] th[e] charges against [appellant] because of his relationship" with her. A.C. was not at the party on April 5, 2014.

Following the hearing on the State's motion to adjudicate, the criminal district court found true the allegation that appellant "committ[ed] an offense

against the State of Texas," found appellant guilty, and assessed his punishment at confinement for twenty years. (Emphasis omitted.)

Appellate Jurisdiction

As an initial matter, we note that the State argues that this Court lacks jurisdiction to consider appellant's complaint that the juvenile court erred in transferring appellant's case to criminal district court because appellant "did not raise his [complaint] when the [criminal district] court entered its order of deferred adjudication" and instead raised his complaint on appeal from the criminal district court's judgment adjudicating appellant's guilt and assessing his punishment at confinement for twenty years. *See Bell III*, 569 S.W.3d at 343–47 (setting out State's jurisdictional argument).

"Courts always have jurisdiction to determine their own jurisdiction." *Harrell v. State*, 286 S.W.3d 315, 317 (Tex. 2009) (internal quotations omitted). Whether we have jurisdiction is a question of law, which we review de novo. *See Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007); *Comunidad Corp. v. State*, 445 S.W.3d 401, 404 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

In *Bell III*, we previously held that this Court has jurisdiction to consider appellant's complaint that the juvenile court erred in transferring appellant's case to the criminal district court. *See Bell III*, 569 S.W.3d at 243–47. Although the

State, after this Court issued its opinion in *Bell III*, filed a petition for discretionary review with the Texas Court of Criminal Appeals, asserting that this Court erroneously concluded that it had jurisdiction, the Texas Court of Criminal Appeals, in its opinion remanding the case to this Court, did not disapprove of our holding as to jurisdiction. *See Bell IV*, 2021 WL 2677442, at *1. Instead, the Texas Court of Criminal Appeals remanded the case to this Court "for further consideration and disposition of [a]ppellant's issues in a manner consistent with [the court's recent decision in *Ex parte*] *Thomas*." *Id.* *Ex parte Thomas* is relevant to the merits of appellant's complaint that the juvenile court erred in transferring his case to the criminal district court and has no impact on this Court's previous holding that it has jurisdiction to consider appellant's complaint on an appeal from the criminal district court's judgment adjudicating appellant's guilt and assessing his punishment at confinement for twenty years. *See Ex parte Thomas*, 623 S.W.3d at 372–73, 375–83. Thus, we adopt the portion of our previous opinion in *Bell III* holding that this Court has jurisdiction to address appellant's complaint that the juvenile court erred in transferring appellant's case to criminal district court. *See Bell III*, 569 S.W.3d at 243–47.

Waiver of Jurisdiction

In his first issue, appellant argues that the juvenile court erred in transferring his case to criminal district court because "the evidence was insufficient to support a waiver of jurisdiction."[20]

Juvenile courts have exclusive original jurisdiction over cases involving delinquent conduct by children. *See* TEX. FAM. CODE ANN. §§ 51.02(2) (defining "[c]hild" (internal quotations omitted)), 51.03(a) (defining "[d]elinquent conduct"), 51.04(a); *see also In re B.M.*, No. 01-18-00898-CV, 2019 WL 1388561, at *6 (Tex. App.—Houston [1st Dist.] Mar. 28, 2019, no pet.) (mem. op.). But the right of a juvenile offender to remain outside the jurisdiction of the criminal district court is not absolute. *Ex parte Arango*, 518 S.W.3d 916, 920 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). A juvenile court may, after an evidentiary

[20] Appellant, relying on the Texas Court of Criminal Appeals's now-overruled *Moon* opinion, also argues that the juvenile court erred in transferring the case to the criminal district court because the juvenile court failed to make adequate "case-specific findings" to support its waiver of exclusive original jurisdiction. We note that this argument was made by appellant before *Moon* was overruled. Although we have addressed this portion of appellant's argument in our previous opinions in this case, this portion of appellant's argument is no longer viable following the Texas Court of Criminal Appeals's decision in *Ex parte Thomas*. *See Ex parte Thomas*, 623 S.W.3d 370, 372–83 (Tex. Crim. App. 2021) ("A juvenile transfer order entered after the required transfer hearing [that] compl[ies] with the statutory requirements constitutes a valid waiver of jurisdiction even if the transfer order does not contain factually-supported, case-specific findings."); *see also In re D.I.R.*, No. 08-20-00178-CV, --- S.W.3d ---, 2021 WL 4708023, at *6 n.5 (Tex. App.—El Paso Oct. 8, 2021, no pet.) ("*Moon* suggested case-specific fact-findings are a requirement for transfer orders in the juvenile framework, which the Court of Criminal Appeals expressly overruled in *Ex parte Thomas* . . . .").

hearing, waive its exclusive original jurisdiction and transfer a child to an appropriate criminal district court for criminal proceedings if certain conditions are met. *See* TEX. FAM. CODE ANN. § 54.02; *In re B.M.*, 2019 WL 1388561, at *6; *Ex parte Arango*, 518 S.W.3d at 920.

Under Texas Family Code section 54.02(a), a juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate criminal district court for criminal proceedings if:

> (1) the child is alleged to have violated a penal law of the grade of felony;
>
> (2) the child was:
>
> > (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is . . . a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; [and]
> >
> > . . .
>
> (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause[21] to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

TEX. FAM. CODE ANN. § 54.02(a); *see also In re Z.T.*, No. 05-21-00138-CV, 2021 WL 3645103, at *8 (Tex. App.—Dallas Aug. 17, 2021, pet. denied) (mem. op.); *In re B.M.*, 2019 WL 1388561, at *6–7.

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21 Appellant does not challenge the juvenile court's probable cause determination on appeal.

The State has the burden to 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 alleged or the background of the child or both. *In re A.K.*, No. 02-20-00410-CV, 2021 WL 1803774, at *19 (Tex. App.—Fort Worth May 6, 2021, pet. denied) (mem. op.). In deciding whether the preponderance of the evidence supports the third requirement of Texas Family Code section 54.02(a), the juvenile court must consider, among other matters:

> (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 ANN. § 54.02(f); *see also In re Z.T.*, 2021 WL 3645103, at *8; *In re K.M.*, No. 01-20-00121-CV, 2020 WL 4210493, at *8 (Tex. App.—Houston [1st Dist.] July 23, 2020, no pet.) (mem. op.).

These section 54.02(f) factors are non-exclusive factors that facilitate the juvenile court's balancing of potential danger to the public posed by the juvenile offender with his "amenability to treatment." *In re C.O.*, No. 02-21-00235-CV,

2021 WL 5933796, at *5 (Tex. App.—Fort Worth Dec. 16, 2021, pet. denied) (mem. op.) (internal quotations omitted). Any combination of these factors may suffice to support a waiver of the juvenile court's exclusive original jurisdiction and not every factor need weigh in favor of transfer to the criminal district court. *In re B.M.*, 2019 WL 1388561, at *7; *see also In re K.M.*, 2020 WL 4210493, at *8 ("All four of the section 54.02(f) criteria need not weigh in favor of transfer for a juvenile court to waive its jurisdiction."). The juvenile court need not consider any other factors, nor need it find that the evidence establishes each factor. *In re Z.M.*, No. 02-21-00213-CV, 2021 WL 4898851, at *1 (Tex. App.—Fort Worth Oct. 21, 2021, no pet.) (mem. op.). "The factors are simply non-exclusive guides in deciding whether one or both of the two reasons for transfer exist[]." *In re Z.T.*, 2021 WL 3645103, at *8.

Although the juvenile court, when waiving its exclusive original jurisdiction, must state in its order the reasons or considerations for waiving its jurisdiction, the juvenile court need not set forth detailed, case-specific findings as to the Texas Family Code section 54.02(f) factors. *See Ex parte Thomas*, 623 S.W.3d at 381–83; *In re C.O.*, 2021 WL 5933796, at *4 & n.8; *see also In re D.I.R.*, No. 08-20-00178-CV, --- S.W.3d ---, 2021 WL 4708023, at *6 n.5 (Tex. App.—El Paso Oct. 8, 2021, no pet.). "A juvenile transfer order entered after the required transfer hearing [that] compl[ies] with the statutory requirements constitutes a

valid waiver of jurisdiction even if the transfer order does not contain factually-supported, case-specific findings." *Ex parte Thomas*, 623 S.W.3d at 383; *see also In re Z.M.*, 2021 WL 4898851, at *1.

We review a juvenile court decision to waive its exclusive original jurisdiction and transfer a case to criminal district court using two steps. First, we review the juvenile court's findings using the traditional evidentiary sufficiency review. *In re C.C.C.*, No. 13-21-00371-CV, 2022 WL 710143, at *8 (Tex. App.—Corpus Christi–Edinburg Mar. 10, 2022, no pet.) (mem. op.); *In re Z.M.*, 2021 WL 4898851, at *2; *see also In re A.M.*, 577 S.W.3d 653, 658–59 (Tex. App.—Houston [1st Dist.] 2019, pet. granted). In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the juvenile court's findings and disregard contrary evidence unless a reasonable fact finder could not reject it. *In re B.M.*, 2019 WL 1388561, at *7; *see also Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.—Tyler 2003, no pet.). If there is more than a scintilla of evidence to support the findings, then the evidence is legally sufficient. *In re B.M.*, 2019 WL 1388561, at *7; *see also Faisst*, 105 S.W.3d at 12. Under a factual-sufficiency review, we consider all the evidence presented to determine if the juvenile court's findings conflict with the great weight and preponderance of the evidence so as to be clearly wrong or unjust. *In re C.C.C.*, 2022 WL 710143, at *8; *In re B.M.*, 2019 WL 1388561, at *7; *see also Faisst*, 105 S.W.3d at 12.

If the juvenile court's findings are supported by legally and factually sufficient evidence, we review the juvenile court's ultimate waiver decision for an abuse of discretion. *In re C.C.C.*, 2022 WL 710143, at *8; *In re Z.M.*, 2021 WL 4898851, at *2; *In re A.M.*, 577 S.W.3d at 659. A juvenile court abuses its discretion if it acts without reference to any guiding rules and principles. *In re Nat'l Lloyds Ins., Co.*, 507 S.W.3d 219, 226 (Tex. 2016); *In re C.C.C.*, 2022 WL 710143, at *8. A juvenile court abuses its discretion when its transfer decision is essentially arbitrary, given the evidence upon which it was based. *In re Z.M.*, 2021 WL 4898851, at *2. By contrast, a waiver decision representing "a reasonably principled application of the legislative criteria" generally will pass muster under the abuse-of-discretion standard of review. *Id.* (internal quotations omitted). An abuse of discretion does not occur when the juvenile court bases its decision on conflicting evidence. *In re B.N.F.*, 120 S.W.3d 873, 877 (Tex. App.—Fort Worth 2003, no pet.).

Appellant argues that the evidence is insufficient to support the juvenile court's findings as to the Texas Family Code section 54.02(f) factors because although the aggravated robbery offense constituted an offense "against [a] person[]," the other factors—the sophistication and maturity of appellant, the record and previous history of appellant, and the prospects of adequate protection

of the public and the likelihood of rehabilitation of appellant—did not support transfer.

In its order waiving its exclusive jurisdiction and transferring appellant's case to the criminal district court for appellant to stand trial as an adult, the juvenile court stated that it found that appellant was "charged with a violation of a penal law of the grade of felony, if committed by an adult," namely "aggravated robbery," appellant was "14 years of age or older at the time of the commission of the . . . offense," "there [was] probable cause to believe that [appellant] committed the offense," and "because of the seriousness of the offense, the welfare of the community require[d] criminal proceeding[s]." The juvenile court noted that "[i]n making [its] determination," it considered "[w]hether the . . . offense was against person or property," "[t]he sophistication and maturity" of appellant, "[t]he record and previous history of" appellant, and "[t]he prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of [appellant] by use of procedures, services[,] and facilities available to the [j]uvenile [c]ourt." The juvenile court further found that appellant was "of sufficient sophistication and maturity to have intelligently, knowingly[,] and voluntarily waived all constitutional rights . . . waived by [appellant], to have aided in the preparation of his defense and to be responsible for his conduct"; that the offense was "committed . . . against the person of another"; and that "the evidence and

reports . . . presented to the court demonstrate[d] to the court that there [was] little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of [appellant] by use of procedures, services[,] and facilities available to the [j]uvenile [c]ourt."

As to the aggravated robbery offense, at the transfer hearing, Deputy Alanis testified that on March 9, 2013, appellant participated in an aggravated robbery at a Family Dollar Store. According to Alanis, a white truck, that had been stolen "a couple hours prior to the [aggravated] robbery," "pulled up to the Family Dollar [Store]." As the store clerk opened the door to the store for a customer to enter, four males—one of whom was appellant—jumped out of the truck and ran into the store. The first male, T.J., entered the store holding a firearm that he pointed at the store clerk. Appellant entered the store last, carrying a firearm. T.J. and two of the males forced the store clerk and the store manager to move to the store register, while appellant walked to the back of the store to "clear[] the store[] . . . aisle [by] aisle." In the back of the store, appellant found a woman and a child. He pointed the firearm at the woman and the child, took the woman's purse, and walked back to the store register where T.J. and the other males were "trying to force" the store manager and store clerk to "open a safe." T.J. held his firearm on the store clerk's back, and he hit the clerk in the back of the head.

At some point, the four males "realize[d] that [law enforcement officers] were on the way," and they ran out of the store and jumped into the stolen white truck. The truck drove off, and law enforcement officers pursued it. During the pursuit, the driver of the truck "crash[ed]" into a bayou, and five males—the four males who had entered the Family Dollar Store and the driver of the truck—exited. Four of the males ran westbound on the bayou and one male ran eastbound. Law enforcement officers detained three of the males, including T.J. and C.H. T.J. and C.H. told law enforcement officers that appellant was involved in the aggravated robbery. Deputy Alanis was able to identify appellant on the store's videotaped surveillance recording from the aggravated robbery.

According to Deputy Alanis, appellant actively participated in the aggravated robbery and pointed his firearm at the woman and the child hiding in the store. Appellant took the woman's purse.

The probation report, which was admitted into evidence at the transfer hearing, stated that four males, T.J.,[22] C.H.,[23] appellant, and D.M.,[24] "forced their way into the store at gun point and robbed the store." One of the males "placed a gun to the back of [the store manager's] head and forced him to open the register." One of the males "punched [the store manager] because he could not open the

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22 The probation report stated that T.J. was an "Adult Co-Actor[]."

23 The probation report stated that C.H. was a "Juvenile Co-Actor."

24 The probation report stated that D.M. was an "Adult Co-Actor[]."

safe." T.J., C.H., appellant, and D.M. took the store manager's wallet "along with cash from the [store's] register and several cigarette cartons."

Law enforcement officers "saw [T.J., C.H., appellant, and D.M.] flee the scene in a white . . . truck and pursued the [truck] into a neighborhood" where they "crashed [the truck] into a bayou and fled on foot." T.J., D.M., and C.H. were "found hiding behind some bushes in the bayou."[25] T.J. and C.H. told law enforcement officers that appellant was one of the males who had "robbed the store." The store's surveillance videotaped recording showed appellant with the bottom of his face covered with a handkerchief participating in the aggravated robbery. Appellant "could be identified due to his size and physical shape."

Aggravated robbery is a serious offense against a person, which weighs heavily in favor of transfer. *See* TEX. FAM. CODE ANN. § 54.02(f)(1); TEX. PENAL CODE ANN. §§ 12.04(a) ("Classification of Felonies"), 29.03(b) (aggravated robbery constitutes first-degree felony offense); *Dawson v. State*, No. 13-11-00447-CR, 2012 WL 506560, at *9 (Tex. App.—Corpus Christi–Edinburg Feb. 16, 2012, pet. ref'd) (mem. op., not designated for publication) (first-degree felony offense of aggravated robbery "is classified within the second most serious category of offenses in Texas; only capital-offense felonies are more serious"; "the [Texas] Legislature consider[s] the crime of aggravated robbery serious enough to

[25] According to the report, the fifth male involved in the aggravated robbery was "shot at the scene and pronounced dead."

deserve a sentence of up to life imprisonment"); *see also In re T.C.*, No. 06-21-00075-CV, 2022 WL 398419, at *1, *4 (Tex. App.—Corpus Christi–Edinburg Feb. 10, 2022, no pet.) (mem. op.) (Texas Family Code section 54.04(f)(1) factor weighed heavily in favor of transfer where alleged offense committed against person and involved firearm); *In re R.I.C.*, No. 04-19-00834-CV, 2020 WL 806947, at *4 (Tex. App.—San Antonio Feb. 19, 2020, pet. denied) (mem. op.) ("[T]he evidence supports the juvenile court's finding that the alleged offense was against a person, and this factor is given greater weight in favor of transfer."); *Rodriguez v. State*, 478 S.W.3d 783, 787 (Tex. App.—San Antonio 2015, pet. ref'd) ("This was an offense against the person and as such should be given greater weight in favor of transfer."). The juvenile court "is free to decide to transfer [a] case due the seriousness of the crime, even if the background of the child suggests the opposite." *C.M. v. State*, 884 S.W.2d 562, 564 (Tex. App.—San Antonio 1994, no pet.); *see also In re Z.M.*, 2021 WL 4898851, at *5 (nature and seriousness of alleged offense, alone, may justify juvenile court's waiver of jurisdiction "notwithstanding other [Texas Family Code] section 54.02(f) factors, so long as the offense: (1) is substantiated by evidence at the transfer hearing, and (2) is of sufficiently egregious character"). Appellant does not dispute that because the aggravated robbery offense constituted an offense against a person, this factor weighed in favor of transfer.

As to appellant's sophistication and maturity, the psychiatric evaluation, admitted into evidence at the transfer hearing, stated that appellant was sixteen years old at the time of the transfer hearing. Appellant was in the tenth grade and was in "regular" education classes. Appellant thought that he "ma[de] average grades," and he "never had to repeat a grade."

As to the clinical interview and mental status evaluation, the psychiatric evaluation stated that appellant willingly participated in the interview. He made good eye contact throughout the interview and was "relatively personable." He spoke at "a normal rate" and "maintained an appropriate affect throughout the interview." He showed no evidence of "responding to hallucinations or delusions." Appellant was "oriented" during the cognitive evaluation.

When asked about the offense with which he was charged, appellant stated that he "ha[d] been accused of aggravated robbery." As to "what that mean[t]," appellant explained that it was "a felony," he "kn[ew] [that] robbery mean[t] stealing from someone," and "the aggravated part of the term . . . mean[t] that a weapon was involved." Appellant also knew that he was "being considered for certification," which meant that his case could be "sen[t] . . . to the county," meaning "adult people jail." (Internal quotations omitted.) Appellant knew that the juvenile court judge "ma[de] th[at] decision." When asked "to give an example of a crime considered more serious than the one [with] which he ha[d] been

accused," appellant stated "murder." He stated that "a less serious crime would be a misdemeanor," like assault or evading arrest.

Related to courtroom roles, appellant knew that his attorney's job was "to fight for him," and appellant reported that he had told his attorney "his side of the story and [he] felt comfortable with" his attorney. Appellant stated that he should "tell his lawyer the truth." Appellant knew his attorney's name. Appellant also discussed consulting his attorney about "the choice between having a judge or a jury make [a] decision in a trial" and stated that he should tell his attorney if a witness lied. Appellant said he would ask his attorney if he did not understand something.

When asked about the attorneys "on the other side," appellant identified them as the "D.A.s." Appellant stated that the district attorneys tried to "send people to jail" because "they think the person did the crime." Appellant remembered that the district attorneys worked for the State. Appellant noted that the judge "ma[de] the decision in the courtroom" and that "the jury would be the other group of people that could also make the decision in a trial." Appellant knew that the jury was a group of "random people from the community." Appellant stated that after the jury listened in the courtroom, "they talk[ed] about what they learned and choose a punishment." The jury "tr[ied] to decide if the person did the crime or not first." When asked "what it would be called if [a] person was found

to have done the crime," appellant said, "guilty." (Internal quotations omitted.) Appellant also stated that "if the person was found not to have done the crime, they would be innocent." According to appellant, "people who [were] raising their right hand and saying something in court [were] swearing not to lie" and "if they lie[d] they could get their own charge and get time."

As to diagnostic impressions, the psychiatric evaluation stated that appellant had been diagnosed with "Disruptive Behavior Disorder, NOS," which suggested that he had "some problematic behaviors which d[id] not meet [the] criteria for a more specific behavior disorder." Appellant was not "imminently suicidal or homicidal," but showed "some chronic risk for self-destructive and aggressive behaviors." He "showed no evidence of the type of emotional symptoms which could preclude him being found competent." Appellant "showed an understanding of his charge as well as [the] possible consequences of being found responsible for th[e] charge." Appellant had an "understanding of the court proceedings which he face[d] as well as the roles of various individuals and the jury in the courtroom." The psychiatric evaluation concluded that appellant would "be able to assist his attorney in his defense if given concrete directives and advice." Appellant was "competent and fit to proceed."

The psychological evaluation, admitted into evidence at the transfer hearing, stated that appellant was sixteen years and three months old at the time of the

transfer hearing and he was charged with the offense of aggravated robbery. Appellant was in high school and last attended the tenth grade. Appellant had not failed a grade and had no history of attending special education classes. Appellant reported that his "grades [were] C's." (Internal quotations omitted.)

According to the psychological evaluation, there was nothing unusual about appellant's posture or hygiene. Appellant's mood was euthymic. He did not have deficits in expressive or receptive language abilities. Appellant's attention was on task during the interview. His concentration and effort "were good." There were "no overt signs of delusions, hallucinations, or the presence of a thought disorder." Appellant's memory abilities were "intact and [he] was able to provide current personal and historical information." He was "oriented to time, place, and person."

As to testing results, the psychological evaluation stated that appellant "obtained a Full Scale IQ of 78, which place[d] him in the [b]orderline range of intelligence." But because of "significant discrepancies among index scores, [appellant's] Full Scale IQ of 78 [was] likely not a good indication of his overall cognitive ability." Appellant's "auditory concentration, attention and short-term/working memory [were] a relative strength." His ability to "perform simple, clerical-type tasks quickly [was] a relative weakness."

As to "[c]ompetency/[f]itness to [p]roceed," the psychological evaluation explained that appellant "understood that he was charged with [a]ggravated

[r]obbery." Appellant stated that robbery meant "[s]tealing from someone" and "the term aggravated meant [w]ith a weapon or something." (Internal quotations omitted.) When asked to give an example of an offense more serious than the offense of aggravated robbery, appellant said, "[m]urder[ing] somebody." (Internal quotations omitted.) When asked to give an example of an offense less serious than the offense of aggravated robbery, appellant said, "[e]vading arrest." (Internal quotations omitted.)

Appellant also "knew that he was facing possible certification on [his] charge," meaning that his case would go "to the county," i.e., "[g]rown people's jail." (Internal quotations omitted.) Appellant explained that the juvenile court judge "would make the decision of possible certification," and appellant knew the name of the judge for his case.

Appellant further reported that his attorney "would be in the courtroom to help him," and appellant knew his attorney's name. According to appellant, his attorney's job was "[t]o fight for" appellant. (Internal quotations omitted.) Appellant had met with his attorney and had "explained his version of what happened." Appellant knew that he should talk to his attorney "if something happened in court that he did not understand."

Appellant identified the attorneys "for the other side" as "[t]he DA's." (Internal quotations omitted.) The district attorneys worked for "[t]he [S]tate."

(Internal quotations omitted.) Appellant understood "that there was another group of people who could make decisions in a regular courtroom proceeding, and he named them as the jury." He stated that the jury's job was to "[l]isten" and decide if the person "did it or not." (Internal quotations omitted.) When asked who the jury listened to, appellant said, "[his] lawyer, the DA, the judge, [and] a witness." (Internal quotations omitted.) Appellant was not sure whether he would "prefer to have a jury or a judge make the decision in [his] case if he were ever given the opportunity," but he stated that he would "[a]sk [his] lawyer" because "he was unsure." (Internal quotations omitted.) According to appellant, "if you were found guilty that meant that you did the crime, and not guilty meant you didn't do the crime."

Appellant further explained "what a witness was" and stated that "when a witness raised [his] right hand" in court, he was "[s]wearing" "[t]o not lie." (Internal quotations omitted.) When asked what he would do if a witness said something in court that appellant did not think was true, appellant said that he would tell his attorney, and appellant noted that a witness "could be in trouble" if the witness "lied in court." (Internal quotations omitted.)

As to final findings, the psychological evaluation stated that appellant did not "qualify for a diagnosis of a major mental illness or mental retardation"; appellant understood "what he [was] charged with and [the] possible consequences

of such a charge." Appellant knew that he was "facing possible certification to adult court and that [the juvenile court] judge" would "make th[e] decision." Appellant could "define the roles that the various courtroom participants [would] play in his proceedings." And he knew "what guilty and innocent mean[t]." Appellant also understood what constituted "appropriate courtroom behavior" and knew that "people swear to tell the truth in the courtroom and [could] face punishment if they" did not. Appellant had "explained to his attorney his version of what happened," and appellant was "capable of assisting his attorney in his defense and appear[ed] motivated to do so." The psychological evaluation concluded that appellant was "competent to stand trial and fit to proceed in any legal proceedings of which he [was to be] subject, including the waiver of juvenile court jurisdiction."

In assessing the sophistication and maturity of the child, the juvenile court places emphasis on whether the evidence shows that the child knew right from wrong and could assist his attorney in his defense. *See In re Z.T.*, 2021 WL 3645103, at *14; *In re J.R.*, No. 05-20-00920-CV, 2021 WL 777090, at *10 (Tex. App.—Dallas Mar. 1, 2021, pet. denied) (mem. op.); *In re K.J.*, 493 S.W.3d 140, 151–52 (Tex. App.—Houston [1st Dist.] 2016, no pet.); *see also In re A.K.*, 2021 WL 1803774, at *22 (holding evidence sufficient to support juvenile court's finding that child's sophistication and maturity weighed in favor of transfer where

child "could appreciate the nature and effect of his actions and understood right from wrong" and "[t]he evidence . . . show[ed] that he could assist in his defense"). Evidence that the child understands the seriousness of the charge against him as well as the proceedings support a juvenile court's finding that the child's sophistication and maturity weigh in favor of transfer. *Rodriguez*, 478 S.W.3d at 787; *Gonzales v. State*, 467 S.W.3d 595, 600–01 (Tex. App.—San Antonio 2015, pet. ref'd) (citing child's understanding of proceedings and alleged offense as evidence of sophistication and maturity); *In re S.E.C.*, 605 S.W.2d 955, 958 (Tex. App.—Houston [1st Dist.] 1980, no writ) (child "appeared to understand the function of his attorney, seemed to relate to her adequately," and "had a rational and factual understanding of the proceedings against him"). And evidence that a child attempted to conceal his participation in an offense, for instance by fleeing, demonstrates both the child's sophistication and maturity as well as culpability. *In re Z.T.*, 2021 WL 3645103, at *14; *see also In re T.C.*, 2022 WL 398419, at *4 (in assessing child's sophistication and maturing, noting evidence showed child "absconded after committing the alleged offenses" and "[f]rom th[at] fact, the juvenile court could have concluded that [the child] was aware that his actions were wrong"); *In re K.M.*, 2020 WL 4210493, at *11–12 (evidence child attempted to conceal participation in offense supported juvenile court's finding that child's sophistication and maturity weighed in favor of transfer); *In re G.B.*, 524 S.W.3d

906, 920 (Tex. App.—Fort Worth 2017, no pet.) (decisions child made after committing offense to avoid punishment, such as "getting rid of [the complainant's] phone to avoid being tracked," were decisions "more sophisticated and mature than the decisions made by most fourteen-year-old children" and supported juvenile court's finding that child "was sufficiently sophisticated and mature to stand trial as an adult").

Appellant asserts that the "sophistication and maturity" factor cannot weigh in favor of transfer because the evidence showed that "he was functioning well below grade level," he had an "IQ of 78, which place[d] him in the [b]orderline range of intelligence," and "he was less mature than an average 16[-]year[-]old." But a "borderline IQ" and educational abilities that are "below grade level" are not determinative of a child's sophistication and maturity, and "how to weigh the evidence [is] a matter of the juvenile court's discretion." *See In re J. F. C.*, No. 01-17-00411-CV, 2017 WL 6374660, at *4 (Tex. App.—Houston [1st Dist.] Dec. 14, 2017, no pet.) (mem. op.); *Almanzar v. State*, No. 01-11-01058-CR, 2012 WL 6645003, at *4–5 (Tex. App.—Houston [1st Dist.] Dec. 20, 2012, pet. ref'd) (mem. op., not designated for publication) (internal quotations omitted); *see also In re A.F.*, No. 11-20-00199-CV, 2021 WL 687294, at *4–5 (Tex. App.—Eastland Feb. 23, 2021, no pet.) (mem. op.) (holding evidence sufficient to support juvenile court's finding that child's sophistication and maturity supported transfer even

though child had "low score on an IQ test" because physician who administered IQ test explained child "did not seem to be intellectually disabled"); *In re K.D.S.*, 808 S.W.2d 299, 302–03 (Tex. App.—Houston [1st Dist.] 1991, no pet.) (explaining "I.Q. is only one element to be used to determine whether a [child] is of sufficient sophistication and maturity to be tried as an adult" and holding evidence sufficient to support juvenile court's finding that child's sophistication and maturity weighed in favor of transfer because even though child had "maturity of a nine to 11-year[-]old child," evidence showed child "was capable of understanding the proceedings against her," could assist her attorneys in her defense, and "was intellectually capable of distinguishing right from wrong").

Further, we note that the psychological evaluation explained that appellant's "IQ of 78 [was] likely not a good indication of his overall cognitive ability" due to certain "significant discrepancies" in testing and appellant did not qualify for a diagnosis of "a major mental illness or mental retardation." Appellant also reported that he attended "regular" education classes in school, he had never failed a grade, and he had never attended special education classes. And the psychological evaluation stated that appellant "exhibit[ed] a moderate level of sophistication and a level of maturity commensurate with what would be expected of someone his age." *See Alamanzar*, 2012 WL 6645003, at *4 (sophistication-and-maturity factor weighed in favor of transfer where despite

child's "below average intellectual abilities," diagnostic study "concluded that [his] overall sophistication and maturity level were average in comparison to other [children] of the same age"); *see also In re J.R.*, 2021 WL 777090, at *10 ("As for [the child's] mental health status and low intelligence, there is no evidence that these issues impacted his ability to evaluate and process information. To the contrary, after weighing the results of all the testing, the psychologist concluded that [the child] was not a person with mental retardation or a person with significant mental illness as defined by statute and determined that, overall, [the child] appeared to be capable of understanding the legal implications of a discretionary transfer motion and of assisting his attorney in his defense."); *In re W.D.H.*, No. 14-17-00164-CV, 2017 WL 3090049, at *9 (Tex. App.—Houston [14th Dist.] July 20, 2017, no pet.) (mem. op.) (evidence supporting juvenile court's finding that child's level of sophistication and maturity weighed in favor of transfer included evidence that child "attend[ed] high school, did not report a learning disability, ha[d] not been diagnosed with mental disorders, and d[id] not have issues of drug or alcohol abuse"); *In re S.E.C.*, 605 S.W.2d at 958 (evidence child "was a normal sixteen year old, cooperative, [and] candid" during psychiatric examination supported juvenile court's finding child was sophisticated).

As to appellant's "record and previous history," the evidence from the transfer hearing did not show that appellant had been previously adjudicated

delinquent by a juvenile court. And the psychological evaluation stated that appellant had not been "previously . . . referred to the Harris County Juvenile Probation Department," so "there ha[d] been no previous attempts at rehabilitation." But the probation report noted that while appellant was detained following the aggravated robbery, appellant was cited twice for "[n]ot following directions." And, according to the HCSO, appellant was a member of "the T. Y. C. gang." The probation report also stated that appellant had been suspended from school during the 2012–2013 school year "for not following directions."

Further, the psychiatric evaluation stated that appellant reported being "suspended [from school] a number of times in middle school and perhaps two times in [the] ninth grade." And appellant reported that his family had "warned him about some of the . . . peers with whom he spent time." But he denied "hanging out with gang members and stated that he d[id] not know anything about the gang" mentioned in the probation report. Appellant denied having a history of antisocial behaviors, stealing, or vandalism. As to diagnostic impressions, the psychiatric evaluation explained that appellant had been diagnosed with "Disruptive Behavior Disorder, NOS," which suggested that he had "some problematic behaviors which d[id] not meet [the] criteria for a more specific behavior disorder." Appellant was not "imminently suicidal or homicidal," but showed "some chronic risk for self-destructive and aggressive behaviors."

The psychological evaluation stated that appellant denied gang membership and "denied that any of his friends were gang members." Appellant reported that he was suspended in middle school "for playing around," and he was suspended twice in the ninth grade for "watching a fight." (Internal quotations omitted.) Appellant admitted that he had been in one fight while in elementary school but stated that he did not have a history of fire setting, cruelty to animals, vandalism, theft, or running away.

The psychological evaluation summarized:

> . . . [Appellant] reported a history of behavior problems in the school setting. He reported suspensions in middle school for "playing around" and disrupting class, and two suspensions in [the] 9th grade, one of which was for "watching a fight." He reported no suspensions from school [during the 2012–2013] school year, but . . . he was not attending school during the first two months of the spring semester. . . . [Appellant] denied any history of gang involvement, but acknowledged that he ha[d] associated with friends of whom his family disapproved because of their negative influence, which may . . . have contributed to his behavior problems.

A juvenile court may give significant weight to a child's gang affiliation when assessing the child's previous history, even when the evidence on the subject is disputed. *See In re K.M.*, 2020 WL 4210493, at *12; *see also In re S.G.R.*, 496 S.W.3d 235, 241–42 (Tex. App.—Houston [1st Dist.] 2016, no pet.). And the juvenile court may consider disciplinary measures taken by the child's school and rule infractions while the child is in the juvenile detention facility following the commission of the offense in determining whether the child's record and previous

history weigh in favor of transfer. *See In re K.J.*, 493 S.W.3d at 152–53; *see also In re R.I.C.*, 2020 WL 806947, at *7 ("[T]he juvenile court could have placed greater weight on [the child's] disciplinary record while in detention which demonstrated his inability to comply with the facility's rules . . . ."); *In re J. F. C.*, 2017 WL 6374660, at *4 (noting child's school suspensions and misconduct while detained following offense); *In re D. R. B.*, No. 01-16-00442-CV, 2016 WL 6873067, at *7 (Tex. App.—Houston [1st Dist.] Nov. 22, 2016, no pet.) (mem. op.) (noting juvenile court "found that [the child] had four behavior infractions while in the Harris County Juvenile Detention Center").

Appellant argues that his record and previous history do not weigh in favor of transfer because he "d[id] not have any prior felony or misdemeanor offenses on his record," "[h]is disciplinary issues prior to [the aggravated robbery] were limited to poor attendance in school and a few school suspensions that occurred when he was younger," and "he was not involved in gang activity." A child need not have a prior record with the juvenile department for his record and previous history to weigh in favor of transfer. *See In re L.W.*, No. 05-19-00966-CV, 2020 WL 728431, at *12 (Tex. App.—Dallas Feb. 13, 2020, no pet.) (mem. op.); *see also In re S.G.R.*, 496 S.W.3d at 241–42 (sufficient evidence supported juvenile court's finding child's record and previous history weighed in favor of transfer even though child's record did "not reflect prior delinquency or criminal

proceedings"); *In re D. R. B.*, 2016 WL 6873067, at *7 ("[Texas Family Code] [s]ection 54.02(f)(3) asks the [juvenile] court to consider the record and previous history of the child, but it does not limit the court to adjudicated delinquent behavior."). Transfer may still be warranted even when it is a child's "first referral to the juvenile system." *See Rodriguez*, 478 S.W.3d at 787–88. Further, appellant does not provide any support for his assertion that the juvenile court should not have considered his prior "disciplinary issues" in making its transfer decision because his suspensions from school occurred when he was "younger" and his issues "were limited to poor attendance." *Cf. In re J. D. H.*, Nos. 01-17-00889-CV, 01-17-00890-CV, 2018 WL 2107244, at *11–12 (Tex. App.—Houston [1st Dist.] May 8, 2018, no pet.) (mem. op.) (when discussing child's record and previous history, noting child's poor school attendance); *In re J. F. C.*, 2017 WL 6374660, at *4 (considering child's prior school suspensions as well as his unexcused absences during school year when discussing "[r]ecord and previous history of the child"). As to appellant's gang affiliation, although there was conflicting evidence presented to the juvenile court as to appellant's gang membership, the juvenile court, as the fact finder, was the sole judge of witnesses' credibility, could choose to believe or disbelieve a witness's testimony, in whole or in part, and was tasked with weighing the evidence and resolving any inconsistencies. *See In re K.M.*, 2020 WL 4210493, at *8.

As to adequate protection of the public and the likelihood of rehabilitation, we note that appellant participated in an aggravated robbery, which was serious in nature. Appellant was one of four males who entered a Family Dollar Store holding a firearm. During the aggravated robbery, appellant pointed his firearm at a woman and a child and took a woman's person. The other males involved held a firearm to the store clerk's back and hit or punched the clerk. The four males took the store manager's wallet, "along with cash from the [store's] register and several cigarette cartons." When law enforcement officers arrived, appellant fled the scene in a stolen truck with the other males, driving through a neighborhood until ultimately crashing in a bayou. Appellant then fled on foot. One of the participants in the aggravated robbery was "shot at the scene and pronounced dead." At least two of the males that participated in the aggravated robbery with appellant were adults, rather than juvenile offenders.

The psychological evaluation stated that appellant was sixteen years and three months old at the time of the transfer hearing. Appellant reported that he "associated with friends of whom his family disapproved because of their negative influence," which the evaluation concluded "may have contributed to [appellant's] behavior problems." C.H., one of the participants in the aggravated robbery, described appellant as a "good friend." And the probation report stated that, according to the HCSO, appellant was a "member of the T. Y. C. gang."

The psychological evaluation concluded that appellant had a moderate risk of re-offending because of certain risk factors. And the psychiatric evaluation noted that appellant showed "some chronic risk for self-destructive and aggressive behavior." Appellant was diagnosed with "Disruptive Behavior Disorder, NOS" because he had "some problematic behaviors which d[id] not meet [the] criteria for a more specific behavior disorder." According to the probation report, while detained following the aggravated robbery, appellant was cited twice for "[n]ot following directions."

The age of the child at the time of the transfer hearing is relevant to the "likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court" because the resources of the juvenile court are designed to assist and rehabilitate children, not adults. *In re Z.T.*, 2021 WL 3645103, at *13 (internal quotations omitted) (noting juvenile court loses jurisdiction over child once he reaches age of nineteen); *see also In re T.L.*, No. 02-19-00200-CV, 2019 WL 4678565, at *9 (Tex. App.—Fort Worth Sept. 26, 2019, no pet.) (mem. op.) (considering child "would possibly age out [of the juvenile system] before he could complete participation in beneficial programs"); *Thorn v. State*, No. 12-10-00287-CR, 2011 WL 5877021, at *4 (Tex. App.—Tyler Nov. 23, 2011, no pet.) (mem. op., not designated for publication) (child was "nearing his eighteenth birthday"). And the juvenile court may consider the

serious nature of the offense committed by the child, as well as any gang affiliation, in determining whether the protection of the public and the likelihood that the child can be rehabilitated weigh in favor of transfer. *See In re A.F.*, 2021 WL 687294, at *5; *In re J.C.B.*, No. 14-18-00796-CV, 2019 WL 758403, at *7 (Tex. App.—Houston [14th Dist.] Feb. 21, 2019, no pet.) (mem. op.); *In re W.D.H.*, 2017 WL 3090049, at *10–11 (evidence sufficient to support juvenile court's finding "that consideration of adequate protection of the public as well as the likelihood of reasonable rehabilitation weighed in favor of certification as an adult" where child "committed an aggravated robbery against a woman walking alone in a parking lot late at night" and "[t]here was . . . evidence that the car [the child] allegedly used to commit the offense was stolen").

To assert that the adequate-protection-of-the-public and likelihood-of-rehabilitation factors did not weigh in favor of transfer, appellant focuses on a couple sentences in the psychiatric evaluation, which stated that appellant, should he be found "responsible for" the aggravated robbery, "may benefit from a residential treatment program where he can learn to take responsibility for his actions and develop empathy for victims." But the juvenile court was not bound by this recommendation in the psychiatric evaluation nor was the recommendation in the psychiatric evaluation unequivocal. *See Thorn*, 2011 WL 5877021, at *4.

Based on the foregoing and applying the traditional evidentiary sufficiency standards of review set forth earlier in this opinion, we hold that the juvenile court's findings under Texas Family Code section 54.02(f) are supported by legally and factually sufficient evidence. Further, we hold that the juvenile court did not abuse its discretion when it transferred appellant's case to the criminal district court.

We overrule appellant's first issue.

Adjudication of Guilt

In his second issue, appellant argues that the criminal district court erred in adjudicating his guilt because the evidence is insufficient to support a finding that he violated a condition of his community supervision.

Appellate review of an order adjudicating guilt is limited to determining whether the criminal district court abused its discretion. TEX. CODE CRIM. PROC. ANN. art. 42A.108; *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The criminal district court's decision must be supported by a preponderance of the evidence. *Rickels*, 202 S.W.3d at 763–64. The evidence meets this standard when the greater weight of the credible evidence creates a reasonable belief that a defendant has violated a condition of his community supervision. *Id.* We will conclude that the criminal district court did not abuse its discretion if the record shows proof by a preponderance of the evidence of the alleged violation of a

condition of community supervision. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980).

We examine the evidence in the light most favorable to the criminal district court's order. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981); *Jones v. State*, 787 S.W.2d 96, 97 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd). As the sole trier of fact, the criminal district court determines the credibility of witnesses and the weight to be given to their testimony. *See Garrett*, 619 S.W.2d at 174; *Jones*, 787 S.W.2d at 97.

Proof of a single violation is sufficient to support revocation of community supervision. *Moore*, 605 S.W.2d at 926; *Akbar v. State*, 190 S.W.3d 119, 123 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

After appellant, without an agreed punishment recommendation from the State, pleaded guilty to the felony offense of aggravated robbery, the criminal district court deferred adjudication of his guilt and placed him on community supervision, subject to certain conditions, including that appellant must "[c]ommit no offense against the laws of this or any State or the United States." Later, the State moved to adjudicate appellant's guilt, alleging that appellant,

> Committ[ed] an offense against the State of Texas, to-wit: on or about April 5, 2014, in Harris County, Texas, [appellant] . . . did then and there unlawfully[,] intentionally and knowingly cause bodily injury to . . . the [c]omplainant[,] by shooting the complainant with a firearm, and [appellant] used and exhibited a deadly weapon, namely a firearm.

(Emphasis omitted.) The criminal district court, after the hearing on the State's motion to adjudicate, found true the allegation that appellant "committ[ed] an offense against the State of Texas," found appellant guilty, and assessed his punishment at confinement for twenty years. (Emphasis omitted.)

A person commits the offense of assault if he "intentionally[] [or] knowingly . . . causes bodily injury to another." TEX. PENAL CODE ANN. § 22.01(a)(1). A person commits the offense of aggravated assault if he commits assault, as defined in Texas Penal Code section 22.01, and he "uses or exhibits a deadly weapon during the commission of the assault." *Id.* § 22.02(a)(2). "Bodily injury" means "physical pain, illness, or any impairment of physical condition." *Id.* § 1.07(a)(8) (internal quotations omitted). A firearm constitutes a deadly weapon per se. *See id.* § 1.07(a)(17)(A); *see also Braughton v. State*, 522 S.W.3d 714, 728 (Tex. App.—Houston [1st Dist.] 2017), *aff'd*, 569 S.W.3d 592 (Tex. Crim. App. 2018).

At the hearing on the State's motion to adjudicate, Harris County Probation Officer Pawlowski testified that on July 18, 2013, appellant was placed on community supervision for six years after pleading guilty to the offense of aggravated robbery. While on community supervision, appellant "picked up a law violation for [the offense of] aggravated assault which occurred on April 5, 2014."

At the time of that offense, appellant "had a firearm or was in possession of a firearm."

The complainant, a seventeen-year-old high school student, testified that on April 5, 2014, he went to a party at a house in Harris County. The complainant attended the party with his girlfriend, B.M., his brother, his brother's girlfriend, M.R., and another friend. When appellant arrived at the party around 9:00 p.m. or 10:00 p.m., the house was crowded, and he estimated that about 130 people were at the party. The complainant, his brother, B.M., M.R., and the complainant's other friend left the party about 2:00 a.m. when someone told the complainant's brother that the complainant's group should "leave the party."

The complainant, his brother, B.M., M.R., and the complainant's other friend left the party through the back door of the home and walked up the driveway toward the front of the house. The complainant's car was parked on the street in front of the house. Two males followed the complainant out of the party. One of the males was behind him and the other male was "on the side" of him. As the complainant got to the front of the house, one of the males said, "Hey, are you looking for my brother?" The complainant responded, "What?" The male asked the complainant "one more time," and then both males "pulled out guns and started shooting." The complainant believed that the males were about ten feet away from him when they pulled out their firearms and started shooting at him. According to

the complainant, "[a]fter the third time [that he] was shot," and after he had fallen in the street, he "got up and started to run." The complainant was first "shot . . . in [his] groin," then shot in his hip, and then shot in his hip again. The complainant eventually got behind a car, but he was afraid that the males "could kill [him] right there" so he "took off running." In total, the complainant was shot six times—"[o]nce in [his] groin, tw[ice] in [his] hip, on[c]e in [his] inner thigh on [his] right leg[,] and [twice] in [his] ankle."

The complainant explained that the two males that he saw shooting at him were Jordan and Tony. He did not see appellant shoot at him, but he felt that "there was a third shooter." The complainant believed that there was a third shooter because he "felt bullets coming from the back where [he] was running," but he could not get "a direct clear view of [the] other shooter" because he "was running toward[] the car." As the complainant explained, he knew where Jordan and Tony "were and the direction they were at" and "there w[ere] bullets coming from a third direction."

M.R., a seventeen-year-old high school student, testified that on April 5, 2014, she went to a party at a house. M.R. arrived at the party with a few friends, including the complainant, around 10:00 p.m. There were a lot of people at the party, about 200 people. Later, M.R., the complainant, and M.R.'s other friends decided to leave the party after they "heard something from someone," and they

left through the back door of the home. Appellant[26] and two other males, Jordan and Tony, followed M.R., the complainant, and M.R.'s other friends out the back door.

As M.R., the complainant, and M.R.'s other friends began walking down the driveway toward the front of the house, Jordan and Tony approached the complainant. After Jordan and Tony said something to the complainant, Jordan and Tony "started shooting" at the complainant. Jordan and Tony "started shooting basically . . . at the same time," but Jordan shot at the complainant first. At the time the shooting began, Jordan was "[p]retty close" to the complainant, and M.R. was standing "right there by" the complainant. Appellant was standing behind Jordan and Tony. After Jordan fired his firearm, Tony and appellant fired their firearms.

M.R. testified that she saw appellant shoot at the complainant, and she saw appellant holding a black firearm. M.R. saw appellant point his firearm at the complainant, and she saw him "actually . . . shoot the weapon at" the complainant. M.R. stated that she was "[n]ot that many feet away" from appellant when she saw him shooting at the complainant. After M.R. saw appellant shooting at the complainant, M.R. ran to the "side of the house" and got behind a gate. M.R. did

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[26] M.R. stated that she knew appellant because "he used to go to" the same school as her and M.R. was friends with appellant's ex-girlfriend. M.R. noted that she knew appellant's name and she had seen him before the night of the party.

not start running until "a couple of shots" had been fired, and the shooting continued as she ran. When asked whether on April 5, 2014, she saw appellant shoot at the complainant with a firearm, M.R. stated, "Yes." Appellant was "one of the shooters" that night. M.R. knew appellant from school and "by name and sight."

B.M., a high school student, testified that on April 5, 2014, she went to a party with her boyfriend, the complainant, M.R., and other friends. B.M., the complainant, M.R., and B.M.'s other friends arrived at the party around 10:00 p.m. or 10:30 p.m. There were more than 100 people at the party. B.M., the complainant, M.R., and B.M.'s other friends left the party around 1:00 a.m. or 2:00 a.m. and went out the back door of the house. The group then made their way toward the front of the house. As B.M. got to the front of the house, she looked back and she saw "someone running down the driveway and then a shot was fired." B.M. did not know "who . . . r[an] down the driveway," and she did not see the first shooter. The complainant was standing next to B.M., and he pushed B.M. to the side and "pushed [her] out [of] the way." The complainant began to run across the yard. B.M. saw the complainant "get shot when he ran across the yard."

B.M. testified that she saw appellant shoot a firearm at the complainant, while appellant was standing "on the side of [a] car in the yard." She saw appellant shoot as the complainant was running across the yard. According to

B.M., she was able to "look[] back and . . . see[]" appellant "standing on the side of the car shooting." Appellant shot "in the same direction" that the complainant was running. B.M. could not describe the firearm that appellant was shooting, but she saw "shots . . . coming from his direction." Appellant "pulled out [his] gun after the first shot was fired." B.M. saw appellant with a firearm.

According to B.M., appellant was "one of the shooters" that shot at the complainant that night. And B.M. was "sure that the shooter that [she] saw" was appellant. B.M. noted that she also saw Tony shooting "in the middle of the yard," but she did not see Jordan shoot anyone. As B.M. explained, after the first shot was fired, the complainant "took off running" and then appellant "beg[an] to shoot" at the complainant. B.M. did not see the person who fired the first shot, but appellant and Tony were together shooting. B.M. heard twenty to twenty-five shots that night. When asked whether she was sure that appellant was "the one with the firearm that night shooting at [the complainant]," B.M. responded, "Yes."

K.M., a sixteen-year-old high school student, testified that she is B.M.'s sister. K.M. knew appellant through Instagram, and before April 5, 2014, they were "friends on Instagram." K.M. was able to recognize appellant because he had posted pictures of himself on Instagram.

On April 5, 2014, K.M. went to a party at a house with two friends. The party was "crowded," and there were "[m]ore than 130" people at the party. While

at the party, K.M. saw appellant inside the house on the stairs. About 1:30 a.m. or 2:00 a.m., K.M. and her friends decided to leave because "[e]verybody was leaving." K.M. exited through the front door of the house, and she was near the driveway "[w]hen the shooting began."

K.M. noted that appellant was behind her as she exited the house before the shooting, and she saw appellant outside the house during the shooting. And when K.M. was on the ground, she saw appellant walking through the front yard holding a black firearm.

Appellant argues that the evidence presented at the hearing on the State's motion to adjudicate did not show that appellant violated a term of his community supervision by "committ[ing] a new offense" because the complainant "did not identify [appellant] as a party to the offense," appellant testified that "he was inside the house when the shooting happened," lots of "witnesses at the party disputed . . . that [appellant] shot the complainant," and the State's witnesses "had a grudge against [appellant's] good female friend."

As the fact finder at the hearing on the State's motion to adjudicate, the criminal district court was the sole judge of each witness's credibility and the weight to be given to each witness's testimony. *See Guevara v. State*, No. 04-13-00883-CR, 2015 WL 1393424, at *2 (Tex. App.—San Antonio Mar. 25, 2015, no pet.) (mem. op., not designated for publication); *Shah v. State*, 403

S.W.3d 29, 34 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd). And as such, the criminal district court was free to believe or disbelieve all or part of any witness's testimony. *Guevara*, 2015 WL 1392424, at *2; *see also Reasor v. State*, 281 S.W.3d 129, 133–34 (Tex. App.—San Antonio 2008, pet. ref'd). Notably, the number of witnesses testifying for one side or the other is not determinative as to whether the preponderance of the evidence shows that appellant violated a term of his community supervision. *See Guevara*, 2015 WL 1392424, at *2. Both M.R. and B.M. testified that they saw appellant shoot a firearm at the complainant, and the complainant testified that he was shot six times. *See, e.g.*, *Morales v. State*, No. 10-20-00093-CR, 2022 WL 1041158, at *2–3 (Tex. App.—Waco Apr. 6, 2022, pet. ref'd) (mem. op., not designated for publication) (evidence sufficient to support conviction for offense of aggravated assault where evidence showed defendant shot firearm at complainant); *Desrochers v. State*, No. 04-17-00650-CR, 2018 WL 4208827, at *2–3 (Tex. App.—San Antonio Sept. 5, 2018, no pet.) (mem. op., not designated for publication) (evidence sufficient to support conviction for offense of aggravated assault where witness testified she saw defendant "pull out a gun immediately before [the complainant] was shot"); *Hambrick v. State*, 369 S.W.3d 535, 539 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (testimony defendant and another person "brandished firearms and opened fire on" complainant "satisfie[d] the elements of the . . . felony [offense] of

aggravated assault"); *see also Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971) (eyewitness testimony alone sufficient to support conviction); *Davis v. State*, 177 S.W.3d 355, 359 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (conviction may be based on testimony of single eyewitness). The criminal district court was entitled to believe those witnesses, rather than appellant and the other defense witnesses. *See Guevara*, 2015 WL 1393424, at *2 ("[T]he [criminal district] court could have reasonably believed the probation officer and [law enforcement] officer over the defense witnesses . . . .").

Viewed in the light most favorable to the criminal district court's order adjudicating appellant's guilt, the greater weight of the evidence supports a reasonable belief that appellant violated a condition of his community supervision by "committing an offense against the State of Texas." (Emphasis omitted.) Thus, we hold that the criminal district court did not err in finding that appellant violated a condition of his community supervision and the criminal district court did not err in adjudicating appellant's guilt.

We overrule appellant's second issue.

Conclusion

We affirm the judgment of the criminal district court.

Julie Countiss
Justice

Panel consists of Justices Kelly, Countiss, and Rivas-Molloy.

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