No. 01-24-00529-CR

In the
First Court of Appeals
For the
State of Texas

Cause No. 1467534
In the 182nd District Court
Of Harris County, Texas

CAMERON MOON
Appellant
v.
THE STATE OF TEXAS
Appellee

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 38.1(e), 39.1, and 39.2, Appellant requests oral argument before this Court of Appeals. This is a meritorious appeal of a criminal case, and although Appellant represents that the facts and legal arguments are thoroughly presented in this brief and in the record, Appellant also believes the decisional process of the Court of Appeals will be significantly aided by the oral arguments of counsel.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.1(a), a complete list of the names of all interested parties is provided below.

Trial Judge:	Honorable Belinda Hill Visiting Judge, 182nd District Court Harris County, Texas
Appellant:	Cameron Moon TDCJ No. 02514360 TDCJ – Ramsey I Unit 1100 F.M. 655 Rosharon, Texas 77583
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TO THE HONORABLE FIRST COURT OF APPEALS:

STATEMENT OF THE CASE

On May 7, 2015, the 313th Juvenile District Court of Harris County, Texas, waived jurisdiction over Appellant and certified him to stand trial as an adult for the offense of murder, alleged to have occurred when Appellant was 16 years old. (1CR 5-6). On September 23, 2015, Appellant was indicted by a Harris County grand jury. (1CR 21). A jury was selected on June 28, 2024, and sworn on July 1, 2024. (2CR 1218-26; 2RR 16-181; 3RR 40). On July 5, 2024, the jury found Appellant guilty as charged in the indictment and on July 10, 2024, assessed punishment at confinement in the Texas Department of Criminal Justice—Institutional Division for a period of twenty-five (25) years. (2CR 1239, 1246, 1249-53, 1255-56; 6RR 65-67; 8RR 238-40). The trial court certified Appellant's right to appeal and Appellant filed timely notice of appeal. (2CR 1253, 1255-56; 8RR 242-43).

PROCEDURAL HISTORY

In December 2008, a juvenile court waived jurisdiction over 16-year-old Cameron Moon ("Appellant") and certified him to stand trial as an adult in criminal district court for the felony offense of murder. After a jury convicted him and assessed his punishment at 30 years' imprisonment, Appellant appealed, raising two issues: 1) that the juvenile court erred in waiving jurisdiction, and 2) that the trial court abused its discretion by denying Appellant's motion to suppress.

The First Court of Appeals ("this Court") held that the juvenile court abused its discretion in waiving jurisdiction over Appellant, vacated the criminal district court's judgment, and dismissed the case. *See Moon v. State*, 410 S.W.3d 366, 378 (Tex.App.—Houston [1st Dist.] 2013), *aff'd*, 451 S.W.3d 28 (Tex.Crim.App. 2014). On the State's petition for discretionary review, the Court of Criminal Appeals ("CCA") affirmed this Court's opinion. *See Moon v. State*, 451 S.W.3d 28, 52 (Tex.Crim.App. 2014).

Neither court reached the suppression issue.

On remand, the juvenile court again waived jurisdiction over Appellant, who was then over the age of 18, and recertified him to stand

trial as an adult in criminal district court for the same offense of murder. 1CR 5-16, 170-227, 275-82). Appellant filed a motion to dismiss and an application for a pretrial writ of habeas corpus with the criminal district court, both of which the district court denied. (1CR 78-115; 787-813).

Appellant appealed the criminal district court's denial of his application for a pretrial writ of habeas corpus. This Court initially affirmed the trial court's denial; however, on rehearing, this Court reversed the criminal district court's order and remanded the matter with instructions to enter an order granting Appellant's pretrial writ of habeas corpus and dismissing the case for lack of jurisdiction. *Ex parte Moon*, 649 S.W.3d 700, 720–21 (Tex.App.—Houston [1st Dist.] 2022).

The CCA granted the State's petition for discretionary review and ultimately concluded this Court lacked the authority to entertain Appellant's appeal. *Ex parte Moon*, 667 S.W.3d 796 (Tex.Crim.App. 2023). The CCA reversed this Court's judgment and remanded the case for this Court "to issue an order dismissing the appeal as unauthorized under former Article 44.47." *Id.* at 85. *See* TEX. CODE CRIM. PROC. art. 44.47(b)(repealed by Acts 2015, 84th Leg., ch. 74 (S.B. 888), § 4, p. 1066, eff. Sept. 1, 2015).

In July 2024, Appellant was re-tried, convicted, and sentenced to confinement in the Institutional Division of the Texas Department of Criminal Justice for a period of twenty-five (25) years. (2CR 1239, 1246, 1249-53, 1255-56; 6RR 65-67; 8RR 238-40)

Appellant seeks review from this Court of both the certification issue and his motion to suppress.

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TIMELINE OF LITIGATION

July 18, 2008	Offense date
July 19, 2008	Custodial interview of Appellant
Nov. 19, 2008	Petition alleging delinquent conduct filed
Dec. 17, 2008	Certification hearing
Dec. 18, 2008	Juvenile court waives jurisdiction
Dec. 22, 2008	Case filed in the 178th District Court (1196446)
March 3, 2009	Grand jury returns indictment
April 7, 2010	Hearing – motion to suppress statement
April 8, 2010	Motion to suppress statement denied
April 4, 2010	Appellant's jury trial begins
April 20, 2010	Appellant convicted; sentenced to 30yrs TDCJ-ID
Feb-Dec 2011	Appeal filed challenging certification and statement
July 30, 2013	1st Court of Appeals (COA) vacates & dismisses case
Dec. 8, 2013	Court of Criminal Appeals (CCA) grants PDR
Dec. 10, 2014	CCA affirms 1st COA, orders case dismissed
April 9, 2015	Second certification hearing
May 7, 2015	Juvenile court waives jurisdiction
May 8, 2015	Case filed in the 178th District Court (1467534)
Sept. 23, 2015	Grand jury returns indictment
July 31, 2017	Pretrial writ of habeas corpus filed (1467534-A)
Oct. 24, 2018	Pretrial writ denied by trial court

Nov. 2, 2018	Appeal filed challenging denial of pretrial writ
Feb. 20, 2020	1st COA affirms trial court's denial of pretrial writ
Sept. 24, 2021	Case transferred to 182nd District Court
May 12, 2022	1st COA grants rehearing, reverses and remands
Sept. 7, 2022	CCA grants State's PDR
May 3, 2023	CCA reverses and remands 1st COA
Oct. 12, 2023	1st COA dismisses appeal per CCA opinion
June 28, 2024	Appellant's jury trial begins
July 10, 2024	Appellant convicted; sentenced to 25yrs TDCJ-ID

ISSUES PRESENTED

First Issue: Did the juvenile court abused its discretion in certifying Appellant for trial as an adult?

Second Issue: Did the criminal district court abused its discretion by denying Appellant's motion to suppress his statements?

STATEMENT OF FACTS

The alleged facts of the case have stayed substantially the same for nearly twenty years:

> "In July 2008, Deer Park Police Detective Jason Meredith arrived at a grocery store parking lot to investigate a homicide and found Christopher Seabrook (sic) dead.[1] Seabreak's cousin, Able Garcia, told the Detective that he and Seabreak had made arrangements to buy a pound of

[1] The decedent's correct last name is "Seabreak."

marijuana from a seller whom Garcia knew as 'JT.' Garcia arrived first, and Seabreak pulled up and parked his truck alongside Garcia's car. The two cousins sat in Garcia's car until a third vehicle, driven by Gabriel Gonzalez, arrived and parked next to Seabreak's truck.

Seabreak approached Gonzalez's car, leaned in the window, and spoke to the front seat passenger. Garcia heard the conversation grow heated, saw Seabreak lunge into the passenger side window, and then heard gunshots. Seabreak then ran from the vehicle but was fired upon by someone who jumped from the passenger side of the car. The shooter, identified by Garcia only as a white male, returned to Gonzalez's car, which sped away.

Gonzalez later returned to the parking lot and admitted to the Detective that he was the driver of the third vehicle, the shooter whom Gonzalez identified as 'Crazy' had been seated next to him, and Emmanuel Hernandez was the backseat passenger. Gonzalez recounted that Seabreak pulled Crazy from the car and gunshots were fired. Gonzalez thereafter directed the police to where the shooter lived in La Porte. When recovered by the police, Seabreak's cell phone indicated that the last incoming call was from a phone owned by Moon.

The continued investigation at the parking lot led to the arrest of Hernandez for possession of marijuana and to the discovery of the pistol from which, a ballistic test confirmed, were fired three of the four bullets recovered from Seabreak's corpse. Hernandez identified Moon, who he knew as 'J.T.,' as the shooter and told the Detective that he and Moon had intended to 'jack' Seabreak. Text messages from Moon on Hernandez's cell phone before the shooting asked if he was 'ready to hit that lick' and to bring a gun; after the shooting the texts pleaded 'don't say a word' and 'tell them my name is Crazy, and you don't know where I live.'

> Moon later confessed to the shooting, was arrested, taken into custody and two days following the shooting, on July 20, 2008, taken to the Juvenile Detention Center."

Moon v. State, 410 S.W.3d 366, 378 (Tex.App.—Houston [1st Dist.] 2013), *aff'd*, 451 S.W.3d 28 (Tex.Crim.App. 2014).

SUMMARY OF THE ARGUMENTS

First Point of Error: The juvenile court abused its discretion in certifying Appellant for trial as an adult. Accordingly, Appellant's murder conviction should be vacated and dismissed.

Second Point of Error: The criminal district court abused its discretion by denying Appellant's motion to suppress his statements. Accordingly, Appellant's murder conviction should be reversed and remanded for a new trial.

APPELLANT'S FIRST POINT OF ERROR

The Juvenile Court Abused Its Discretion In Certifying Appellant For Trial As An Adult.

Appellant re-urges, without waiving, all briefing and arguments that were raised and preserved in his pretrial writ of habeas corpus.

CERTIFICATION SHOULD BE THE EXCEPTION, NOT THE RULE

In *Kent v. United States,* 383 U.S. 541 (1966), the United States Supreme Court stated that "[i]t is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile." *Id.* at 556. The Supreme Court characterized the "decision as to waiver of jurisdiction and transfer of the matter to the District Court [as] potentially as important to petitioner as the difference between five years imprisonment and a death sentence." *Id.* at 557.

In *Hidalgo v. State,* 983 S.W.2d 746 (Tex.Crim.App. 1999), the CCA likewise recognized that "transfer to criminal district court for adult prosecution is 'the single most serious act the juvenile court can perform ... because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available.'" *Id.* at 755. The *Hidalgo* Court noted that "transfer was intended to be used only in exceptional cases" and that "[t]he philosophy was that, whenever possible, children 'should be protected and rehabilitated rather than subjected to the harshness of the criminal system' because 'children, all children are worth redeeming.'" *Id.* at 754.

RELEVANT LAW

A juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or 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 capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or
> >
> > (B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, 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 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 sec. 54.02(a).

To limit the juvenile court's discretion in making the waiver determination, the Supreme Court set out a series of factors for juvenile courts to consider. *Hidalgo,* 983 S.W.2d at 754 (*citing Kent,* 383 U.S. at 566–67, 86 S.Ct. 1045). These factors are incorporated into sec. 54.02(f), which provides as follows:

> In making the determination required by Subsection (a) of this section, the court shall 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 sec. 54.02(f).

Section 54.02(j) sets out the parameters a juvenile court must follow if it seeks to certify an Appellant who is over 18 at the time of the certification:

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

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

(2) the person was:

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

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

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

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

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

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

(B) after due diligence of the state it was not practicable to proceed in juvenile court

> before the 18th birthday of the person because:
>
> (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;
>
> (ii) the person could not be found; or
>
> (iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and
>
> (5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

TEX. FAM. CODE sec. 54.02(j).

Appellant was 16-years old at the time of the offense and at the time of his first certification. On direct appeal, this Court found the evidence legally ***insufficient*** to support the juvenile court's findings related to Appellant's sophistication and maturity, as well as the prospect of adequate protection of the public and the likelihood of Appellant's rehabilitation. TEX. FAM. CODE sec. 54.02(f)(2)(4); *Moon v. State*, 410 S.W.3d 366 (Tex.App.—Houston [1st Dist.] 2020)(finding that the trial court's finding was so against the great weight and preponderance of the evidence as to be "manifestly unjust"). On petition for discretionary

review, the CCA agreed, and ordered the case dismissed. *Moon v. State*, 451 S.W.3d 28, 47 (Tex.Crim.App. 2014).

STANDARD OF REVIEW

In evaluating a juvenile court's decision to waive its jurisdiction, an appellate court reviews the juvenile court's factual findings under traditional sufficiency of the evidence principles. *Ex parte Moon*, 451 S.W.3d 28, 47 (Tex.Crim.App. 2014).[2] The CCA further held,

> "[I]n conducting a review of the sufficiency of the evidence to establish the facts relevant to the Section 54.02(f) factors and any other relevant historical facts, which are meant to inform the juvenile court's discretion whether the seriousness of the offense alleged or the background of the juvenile warrants transfer for the welfare of the community, the appellate court must limit its sufficiency review to the facts that the juvenile court expressly relied upon, as required to be explicitly set out in the juvenile transfer order under Section 54.02(h)."

Moon, 451 S.W.3d at 50.

After conducting sufficiency review, the appellate court should review the juvenile court's ultimate waiver decision under an abuse of discretion standard. *Moon*, 451 S.W.3d at 47. The CCA explained,

> "[I]n deciding whether the juvenile court erred to conclude that the seriousness of the offense alleged and/or the background of the juvenile called for criminal proceedings for the welfare of the community, the appellate court should

[2] The juvenile court is not required to make detailed fact findings in support of the transfer order. *Ex parte Thomas*, 623 S.W.3d 370)(Tex.Crim.App. 2021).

> simply ask, in light of its own analysis of the sufficiency of the evidence to support the Section 54.02(f) factors and any other relevant evidence, whether the juvenile court acted without reference to guiding rules or principles. In other words, was its transfer decision essentially arbitrary, given the evidence upon which it was based, or did it represent a reasonably principled application of the legislative criteria?"

Id.

A. Second verse, same as the first.

Despite this Court and the CCA already finding that the State failed to produce sufficient evidence to support the juvenile court's waiver of jurisdiction, on April 9, 2015, the State filed a second motion to waive jurisdiction under sec. 54.02(j), TEX. FAM. CODE. Appellant moved to dismiss the case on jurisdictional grounds. Appellant also filed objections to the State's motion to transfer and an application for writ of habeas corpus. Appellant argued that: 1) sec. 54.02(j), TEX. FAM. CODE, prohibited the juvenile court from taking any action but dismissal of the case because Appellant had previously been adjudicated; and 2) the State did not meet the evidentiary burden required in sec. 54.02(j)(4), TEX. FAM. CODE.

Incredibly, the State again offered *no* evidence to establish the statutory facts on which the State had the burden. The State, instead,

simply made conclusory and unsupported arguments that sec. 54.02(j)(3), TEX. FAM. CODE, means a *juvenile* adjudication. In other words, Appellant's adult murder conviction was not an adjudication.

On May 7, 2015, the juvenile court again waived its jurisdiction and transferred Appellant to criminal district court.

The State Court Denied Appellant's Writ

Upon transfer to criminal district court, Appellant immediately objected to the state court's jurisdiction, and filed a pretrial application for writ of habeas corpus challenging the propriety of the juvenile court's second certification and transfer order. (1CR 78-115). Appellant also filed a motion to dismiss the indictment for lack of subject matter jurisdiction. (1CR 787-813).

Appellant's writ application argued that the State failed to meet its burden of satisfying all the statutory criteria for waiver of juvenile jurisdiction and transfer to criminal court. Specifically, Appellant's writ demonstrated that, before a transfer pursuant to sec. 54.02(j)(3) was authorized, the State had the burden to show that "no *adjudication* concerning the alleged offense" or "no *adjudication hearing* concerning the offense" had been held. TEX. FAM. CODE § 54.02(j)(3)(emphasis

added). Appellant *had*, in fact, *been* "*adjudicated*" for the offense when he was previously tried, convicted, and sentenced in 2010, in cause number 1196446, in the 178th District Court of Harris County, Texas. The CCA has held that "*conviction" always and necessarily involves "adjudication of guilt" regardless of context*. *See McNew v. State,* 608 S.W.2d 166, 171-72 (Tex.Crim.App. 1978)(emphasis added). Indeed, there are particular classes of crimes in Texas that allow for *deferred adjudication* of the charge against them in *adult criminal court*, and the procedure by which the State seeks to revoke deferred adjudication of an offense is called a "motion to proceed in adjudication of guilt." *Hill v. State,* 704 S.W.2d 599, 600 (Tex.App.—Fort Worth 1986, no pet.). TEX. CODE CRIM. PROC. art. 42A108(c)(1).

The trial court denied Appellant's pretrial writ application and Appellant appealed the denial.

This Court ~~Denies~~ Grants Appellant's Writ

After losing at the trial court level, Appellant filed a petition for writ of habeas corpus to this Court. Appellant not only questioned the juvenile court's authority to re-certify Appellant and whether there had

been sufficient evidence to do so but also raised additional constitutional claims.[3]

The State responded that Appellant's challenge was not cognizable on a pretrial writ of habeas corpus and there had been no adjudication because the criminal court never acquired jurisdiction. *Ex parte Moon*, 649 S.W.3d at 710–11.

This Court initially denied Appellant's application. *Ex parte Moon*, No. 01-18-01014-CR, 2020 WL 827424 (Tex.App.—Houston [1st Dist.] Feb. 20, 2020), *opinion withdrawn and superseded on reh'g*, 649 S.W.3d 700 (Tex.App.—Houston [1st Dist.] 2022), *rev'd and remanded*, 667 S.W.3d 796 (Tex.Crim.App. 2023). Two justices on the panel, however, issued concurring opinions decrying the unjust and absurd requirement for Appellant to proceed through a second criminal trial in adult criminal court before he could challenge that court's jurisdiction to try him. The dissenting Justices said:

> It is undisputed that Moon did not receive the benefit of section 54.02(a). Requiring Moon to wait until after trial to

[3] Appellant argued that Texas Family Code §54.02(j)(4)(B)(iii) is facially unconstitutional, that transfer and retrial is barred by double jeopardy, and that certifying Appellant under §54.02(j) violated the prohibition on *ex post facto* laws because "substituting §54.02(j) alters the legal rules required to convict and substituting §54.02(j) for §54.02(a) deprives the juvenile of defenses available at the time of certification."

> challenge his transfer to the criminal district court under 54.02(j) effectively undermines the very right underlying his challenge—the right not be tried in the criminal district court absent compliance with the transfer requirements of section 54.02(a).
>
> ***
>
> Moon's due-process claim is not cognizable as an as-applied constitutional challenge to section 54.02(j) under existing precedent. But it should be. Requiring Moon to be tried as an adult in the criminal district court before we consider whether he is subject to trial there, as we must, makes no sense and serves no purpose.

Ex parte Moon, 2020 WL 827424, at *16–17 (Goodman, J., concurring)(emphasis added).

> [Moon's] complaints could also be considered an as-applied challenge, but as-applied challenges are generally not cognizable by pretrial habeas review. As a result, Moon will be forced to wait until he is potentially convicted and incarcerated for a second time before he can challenge the deprivation of his juvenile protections. This result contradicts the protective intent of our juvenile system.

Id. (Hightower, J., concurring)(emphasis added).

The State argued that the adult criminal court had jurisdiction over Appellant when it tried him, but that because its jurisdiction had been wrongfully acquired via the improper transfer order from the juvenile court, there was no previous adjudication. In light of Appellant's very real trial, conviction, and sentence of thirty (30) years in prison, this

argument is nonsensical. *See State v. Rhinehart*, 333 S.W.3d 154 (Tex.Crim.App. 2011)(signaling that a transfer order would still vest the district court with jurisdiction, even if the transfer order were somehow erroneous).

While Appellant's case was pending in this Court, the CCA decided *Ex Parte Thomas,* 623 S.W.3d 370 (Tex.Crim. App. 2021). In *Thomas,* the CCA held that a juvenile order could be factually insufficient and without case-specific findings and that such deficient order would not be invalid or deprive the court of jurisdiction. *Id.* at 373. The CCA clarified that "c]laims that a juvenile transfer order is void are cognizable on a writ of habeas corpus because they involve the jurisdiction of the trial court to hear a case." *Ex parte Thomas*, 623 S.W.3d at 375 (emphasis added)("Even the oft-stated holding that the writ of habeas corpus should not be used as a substitute for appeal pre-supposes that the judgment being reviewed was entered by a court with jurisdiction."). Applying *Ex parte Thomas*, this Court concluded that Appellant's challenge to the criminal court's jurisdiction was cognizable.

This Court vacated its prior opinion, reversed the criminal district court's order denying Appellant's application for a pretrial writ of habeas

corpus, and remanded the matter to the criminal district court "with instructions to enter an order granting Appellant the habeas relief requested in his pretrial writ of habeas corpus and dismissing the case for lack of jurisdiction." *Ex parte Moon*, 649 S.W.3d 700, 720–21 (Tex.App.—Houston [1st Dist.] 2022), *petition for discretionary review granted*, No. PD-0302-22, 2022 WL 4088312 (Tex.Crim.App. Sept. 7, 2022) *and rev'd and remanded*, 667 S.W.3d 796 (Tex.Crim.App. 2023), *reh'g denied*, 675 S.W.3d 11 (Tex.Crim.App. 2023).

This Court found that the State failed to satisfy the requirements of the transfer statute found in sec. 54.02(j)(3), TEX. FAM. CODE, which mandates that the State prove that "no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted[.]" *Id.* (citing TEX. FAM. CODE sec. 54.02(j)(3)).[4] .

This Court further found that the 178th District Court had jurisdiction over Appellant in 2010 when Appellant was adjudicated of

[4] The juvenile court's second transfer order incorporated findings of fact that Appellant was tried April 6, 2010 to April 20, 2010, convicted for the offense of murder, and sentenced to 30 years' imprisonment. The juvenile court further found that no adjudication concerning the offense had occurred and the juvenile court maintained jurisdiction of the case. *Id.*

the charged offense and that the juvenile court's conclusion of law was based on overruled authorities and erroneous. *Id.* at 718. This Court held that Appellant had in fact been adjudicated in 2010 and the State failed to meet the requirements of sec. 54.02(j)(3) when it moved to transfer Appellant a second time which resulted in the juvenile court lacking jurisdiction to transfer the case to criminal court. *Id.* "The juvenile court's only option was to dismiss the case." *Id.* at 713–20.

This Court rejected the State's argument that Appellant had an adequate remedy on appeal. *Id.* at 716-717. This Court aptly noted that denying Appellant's habeas relief would improperly require "Moon, who is now in his 30s … to wait until he is convicted a second time in criminal district court before he can challenge the Second Transfer Order and raise the threshold jurisdictional issue he now raises in his pretrial writ of habeas corpus." *Id.*

This Court found it unnecessary to address Appellant's other arguments challenging the validity of the transfer proceedings. *Id.* at 720–21 at n.18.

The CCA Reverses This Court's Reversal

The State sought discretionary review in the CCA, arguing this Court erred by holding that: (1) Appellant's claim was cognizable; and (2) the law-of-the-case doctrine did not control in this case; and (3) Appellant accepted the benefits of the holdings of the prior *Moon* opinions and should be estopped from arguing they were wrong. The CCA asked the parties to brief a fourth point which was "whether Section 54.02(j)(3)'s references to an 'adjudication' and an 'adjudication hearing' have applicability beyond what those terms mean in the Family Code's juvenile justice provisions themselves." *Ex parte Moon,* 667 S.W.3d 796 (Tex.Crim.App. 2023).

The CCA reversed this Court by simply holding that the "former Article 44.47(b)" prohibited "*any* purported appeal of the district court's pretrial habeas corpus order relating to the juvenile court's transfer order" and that this Court should have dismissed Appellant's appeal as premature. *Ex parte Moon*, 667 S.W.3d 796, 801 (Tex.Crim.App. 2023), *reh'g denied*, 675 S.W.3d 11 (Tex.Crim.App. 2023)(emphasis in original).

The CCA denied, without opinion, Appellant's motion for rehearing. Four judges dissented, noting that the CCA had recently reiterated "that

a habeas corpus proceeding has always been regarded as separate from a criminal prosecution." *Ex parte Moon*, 675 S.W.3d 11 (Tex.Crim.App. 2023)(Newell, J., dissenting). Incredibly, the CCA contradicted its own holding, issued just a year earlier, that "c]laims that a juvenile transfer order is void are cognizable on a writ of habeas corpus because they involve the jurisdiction of the trial court to hear a case." *Ex Parte Thomas,* 623 S.W.3d at 375.

B. This Court got it right.

There is no dispute that sec. 54.02(j) barred Appellant's second transfer to criminal court where the State failed to meet its burden showing the required factors of sec. 54.02(j) were met. *Moore v. State,* 532 S.W.3d 400, 405 (Tex.Crim.App. 2017). This Court correctly determined the State failed to meet its burden to show there had not been a prior "adjudication" as required by sec. 54.02(j)(3). *Ex parte Moon,* 649 S.W.3d at 720. The juvenile court transferred Appellant back to the criminal district court despite finding:

> 28. On April 6, 2010, jury trial began and continued through April 20, 2010, in criminal district court cause number 1196446 in the 178th District Court of Harris County.

> 29. On April 20, 2010, the respondent was convicted in criminal district court cause number 1196446 for the offense of murder which formed the basis for the Order to Waive Jurisdiction in 2008-06648J Amended and was sentenced to 30 years imprisonment after punishment was assessed by the jury.

Id. at 720. This Court concluded that an adjudication had in fact occurred and the juvenile court had no discretion to refuse to dismiss the case. *Id.* (*citing Ex parte Thomas,* 623 S.W.3d 370 (Tex.Crim.App. 2021)).

The State limited its argument on the issue of "adjudication" to its argument that the criminal court lacked jurisdiction and, thus, there was no adjudication. *Ex parte Moon*, 649 S.W.3d at n. 17. The State did not contest the definition of the term "adjudication" as briefed by Appellant. *Id.* The State did not argue that the criminal district court's judgment was not a "conviction" under sec. 54.02(j). *Id.* The juvenile court's findings that Appellant had been tried, convicted, and sentenced established that the criminal district court had jurisdiction when it tried Appellant. *Ex parte Moon,* 649 S.W.3d at 717.

Had the State challenged the definition of "adjudication" in the habeas proceeding, this Court noted that "such an argument would be unavailing." *Id.* The State's assertion of "adjudication" means "juvenile

adjudication, not conviction" is unsupported and wrong. This Court correctly held the following:

> - Nothing in the Family Code limits the meaning of "adjudication" in Section 54.02(j)(3) to "juvenile court adjudication;"
>
> - "[A]djudication" is defined broadly as 'the formal giving or pronouncing a judgment or decree in a cause.'" *Id.* (citing Black's Law Dictionary 39 (5th ed. 1979));
>
> - "…a conviction necessarily involves 'adjudication.'" *Id.* (citing *McNew v. State*, 608 S.W.2d 166, 172 (Tex. Crim. App. 1978) ("[A] 'conviction,' regardless of the context in which it is used, always involves an adjudication of guilt."); *Beedy v. State*, 194 S.W.3d 595, 599 (Tex. App.—Houston [1st Dist.] 2006), *aff'd*, 250 S.W.3d 107 (Tex. Crim. App. 2008) ("Simply put, whether examined in the context of the term's plain meaning or of its common usage, there can be no 'final conviction' without an adjudication of guilt.")).

Id. at n. 17. Because the State failed to meet its burden, dismissal was the only statutorily permissible action the juvenile court could take. *Id.* (citing *Moore v. State,* 532 S.W.3d 400, 405 (Tex.Crim.App. 2017)). Appellant was statutorily barred from a second prosecution because the juvenile court had no discretion to transfer his case.

This Court correctly granted Appellant's requested relief.

C. The evidence was insufficient to re-certify Appellant.

The State introduced no evidence that "after due diligence of the state" it was "not practicable to proceed in juvenile court before [Appellant's] 18th birthday." Tex. Fam. Code 54.02(j)(4)(B)(i)(ii)(iii). The State failed to prove that it lacked probable cause to proceed in juvenile court before Appellant was 18. *See* TEX. FAM. CODE sec. 54.02(j)(4)(B)(i).

Further, the State never contended, much less met its burden to show that "after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because: (ii) the person could not be found." *See* TEX. FAM. CODE sec. 54.02(j)(4)(B)(ii). The State's sole witness testified that at all relevant times before Appellant was 18, Appellant could be found because the State had Appellant in custody.

Next, the State failed to prove that, "after due diligence of the state," reversal of the previous transfer order made it impracticable to proceed in juvenile court before Appellant was 18. *See* TEX. FAM. CODE sec. 54.02(j)(4)(B)(iii). The State's choice to conduct a transfer hearing in 2008 without satisfying its statutory requirements, and to do so before trying Appellant in the adult criminal court system, precluded re-

certification under sec. 54.02(j). As a matter of law and logic, the *reversal* of the prior transfer order did not prevent the State from proceeding in juvenile court before Appellant turned 18. The reversal of the prior transfer order did not take place until *after* Appellant turned 18.[5] What prevented the State from proceeding in juvenile court before Appellant turned 18 was not the *reversal* of the transfer order; it was the State's own misguided decision to seek transfer without sufficient evidence to begin with.

D. Section 54.02(j) is facially unconstitutional.

The Texas Family Code creates a liberty interest in being treated as a juvenile and affords the protections and benefits of the juvenile system, including the right to *not* be transferred to adult criminal court when the State fails to meet its statutorily required burden.

Sections 54.02(a) and (f), TEX. FAM. CODE, specify the substantive and procedural requirements that must be met before the State can take away the liberty of a child under the age of 18. Appellant did not get the benefit of those substantive and procedural protections; he was certified

[5] The initial reversal by this Court was issued in 2013 when Appellant was 21; the CCA affirmed in December 2014, when Appellant was 22.

and deprived of his liberty interest without the statutory prerequisites having been met. This is why the original certification was reversed by this Court. And, as shown herein, it was allowed to happen not once, but twice.

Section 54.02(j) allows for certification without the same substantive and procedural requirements that are imposed on the State by sec. 54.02(a) and (f) for certifying, trying, and ultimately convicting a juvenile who is over 18 at the time of certification. It *changes the rules after the fact* in a way that materially changes the State's burden to certify and subjects the juvenile to certification on different levels of proof based on the juvenile's age at the time of certification rather than the time of the offense. As such, sec. 54.02(j) is an *ex post facto* law. *Carmell v. Texas*, 529 U.S. 513, 530 (2000))(law is invalid as an *ex post facto* law where it "alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.")

The State's failure or inability to meet one set of rules does not permit it to substitute a new, more lenient set of rules on remand. The juvenile court's certification of Appellant as an adult based on a standard

that did not apply to his original certification is a violation of due process. *Cf. Bouie v. City of Columbia*, 378 U.S. 347, 353-354 (1964)(applying Due Process Clause to *ex post facto* judicial decisions).

E. Section 54.02(j) is unconstitutional as applied.

Texas Family Code sec. 54.02(j) also violates the equal protection afforded to juveniles as applied to Appellant. It punishes juveniles who are certified before the age of 18 but return to court for recertification after the age of 18.

As noted, sec. 54.02(a) and (f), TEX. FAM. CODE, set the standards for certifying a juvenile as an adult when, at the time of certification, the child is under the age of 18. Section 54.02(j), TEX. FAM. CODE, which applies when the child has turned 18 before the certificaton hearing, imposes different – arguably lesser – standards for certification.

Appellant was almost 17 when he was orignially certified under sec. 54.02(a) and (f). Because (previous) TEX. CODE CRIM. PROC. art. 44.47(b) prevented him from immediately appealing the certification order, Appellant was over 18 by the time his certification order was reversed. As a result, on recertification, Appellant was subject to the less stringent requirements of sec. 54.02(j). In fact, the very reasons given by this Court

and the CCA for vacating Appellant's conviction *were not even litigated* during the second certification hearing.

Contrast Appellant's circumstances and timeline with that of a younger child whose certification is reversed, but recertification occurs while the child is still under 18. In that scenario, the recertification would again be subject to sec. 54.02(a) and (f). Because the statute is applied differently to juveniles based solely on their age at the time of certification, it runs afoul of equal protection when a juvenile faces recertificaiton after the age of 18.

This approach by the State begs the following question: why don't the same rules apply during the rare occurrence of recertificaiton? In light of the reversal of the first certification based on *insufficient evidence* under sec. 54.02(a) and (f), why wasn't the State held to the same evidentiary standard on remand? The right to appeal should not be punitive. Nor should the State be given the benefit of a lesser burden due to the passage of time. Public policy dictates that if a child is certified before the age of 18, and that certification is later deemed improper, the child should not be placed at a disadvantage when the State seeks to take a second bite at the apple.

CONCLUSION

This Court correctly vacated Appellant's conviction and dismissed his case due to insufficient evidence to support the juvenile court's waiver of jurisdiction during Appellant's first certification. To affirm the juvenile court's second waiver – on the same evidence, and post-adjudication – would lead to an absurd result.

Because the juvenile court abused its discretion in waiving jurisdiction during Appellant's second certification, Appellant's conviction should be vacated and his case dismissed.

APPELLANT'S SECOND POINT OF ERROR

The Criminal District Court Abused Its Discretion By Denying Appellant's Motion To Suppress His Statements.

Appellant re-urges, without waiving, all briefing and arguments that were raised and preserved in his pretrial motion to suppress.

PROCEDURAL HISTORY

In 2010, prior to Appellant's first trial, Appellant moved to suppress his oral and videotaped statements that were obtained by law enforcement in violation of sec. 51.095, TEX. FAM. CODE; the Fourth, Sixth and Fourteenth Amendments to the United States Constitution; Article

I, sections 9, 10, 13, 15 and 19 of the Texas Constitution, and Article 38.22 and 38.23 of the Texas Code of Criminal Procedure. The trial court denied Appellant's motion after a live hearing with Detective Jason Meredith ("Meredith").

During Appellant's second prosecution in 2024, rather than conducting a second live hearing, the trial judge reviewed the transcript from the 2010 hearing, the video-recorded statement, a transcript of the statement, the findings of fact and conclusions of law submitted by the previous trial judge, and heard the arguments of counsel.[6] (4RR 44-75). The State submitted proposed supplemental findings of fact and conclusions of law that were adopted by the trial court on October 30, 2024. (Supp CR 3-15).

The record reflects that the combined force of Meredith's statements and conduct deprived Appellant of his free will in a manner that violated Appellant's due process rights and resulted in an involuntary confession.

[6] The hearing on Appellant's motion to suppress was held on April 7, 2010. The full transcript from the hearing is filed in Volume 3 of the trial transcript for cause no. 1196446 and is incorporated herein by reference. Cites to this volume will be denoted as "1196446 3RR").

PERTINENT FACTS

On July 19, 2008, Meredith went to Sharon VanWinkle's ("VanWinkle") house to talk to Appellant about a shooting that occurred in Deer Park, Texas, the day before. VanWinkle is Appellant's maternal grandmother. VanWinkle advised Meredith that Appellant was with his aunt, Jennifer Laban ("Laban"). Meredith called Laban and asked her to bring Appellant to the police station for questioning. Laban asked who would be able to be with Appellant during questioning and Meredith told her they would discuss it when they got to the station.

Upon arrival, Meredith told Laban that he needed to talk to Appellant in the back. Laban wanted to join Appellant and Appellant wanted Laban with him, but Meredith refused. (1196446 3RR 69, 118, 184, 204-205, 208-209). Instead, Meredith allowed VanWinkle to accompany Appellant to the interview room. (1196446 3RR 184).

Importantly, before questioning ever began, Meredith's criminal investigation was already focused on Appellant. Meredith had already obtained statements from two witnesses identifying Appellant as the shooter. (1196446 3RR 54, 56). Meredith knew that the decedent was at the grocery store to participate in a drug deal and that the last number

on the decedent's phone was Appellant's. (1196446 3RR 78). Meredith also had text messages showing that Appellant told Emmanual Hernandez ("Hernandez") that he was ready to "hit a lick." Hernandez had identified Appellant as the shooter. (1996446 3RR 56). ***In short, probable cause was more than established***. *See In re J.G.*, 495 S.W.3d 354, 374 (Tex.App.—Houston [1st Dist.] 2016, pet. denied)(probable cause considers whether there are enough facts and circumstances to support a prudent person's belief that an accused child committed the offense); *see also, In re C.M.M.*, 503 S.W.3d 692, 702 (Tex.App.—Houston [14th Dist.] 2016, pet. denied)(the probable cause standard "requires more than mere suspicion but less evidence than needed to support a conviction or support a finding by preponderance of the evidence.").

Meredith began questioning Appellant without Laban and worked quickly to get VanWinkle out of the room. (1196446 3RR 41, 74). On the video, Appellant is visibly shaking and tells Meredith he is having a panic attack. Meredith told Appellant it was a voluntary statement, he was not under arrest, and he was free to go.

Meredith persuaded Appellant to talk to him without VanWinkle present, suggesting that kids are less likely to admit they made a mistake in front of family members and that VanWinkle was disrupting his interrogation. *Id.*. Once alone with Appellant, positioned between Appellant and the door, Meredith used his size and interrogation experience to his advantage when pressing Appellant for the "truth." (1196446 3RR 80, 133).

Appellant initially denied being present at the time of the shooting… then admitted he was at Hernandez's house, but not at the grocery store… then confessed he was in the car when the shooting occurred. (1196446 3RR 76-79, 83, 218). In addition to the probable cause that had been well-established before the interrogation ever began, Appellant had now placed himself at the scene. Nevertheless, Meredith failed to advise Appellant of his statutory or Constitutional rights, did not allow VanWinkle back into the room, and did not take Appellant before a magistrate. (1196446 3RR 224-25).

Meredith told Appellant that lying made him look like a suspect. (1196446 3RR 79). Meredith threatened Appellant that he would be certified as an adult and sent to adult jail. (1196446 3RR 80, 221). He

then cajoled Appellant into admitting his involvement in the shooting by giving him an out: perhaps it was an accident due to fear or even self-defense. (1196446 3RR 85).

STANDARD OF REVIEW

A trial court's ruling on a motion to suppress is subject to a bifurcated standard of review. *State v. Martinez*, 570 S.W.3d 278, 281 (Tex.Crim.App. 2019). The trial court is the sole trier of fact and judge of the witnesses' credibility and weight to be afforded their testimony. *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex.Crim.App. 2007). Accordingly, appellate courts give almost total deference to a trial court's determinations of historical fact, so long as such determinations are supported by the record, as well as to its rulings on mixed questions of law and fact that hinge on credibility and demeanor. *Martinez*, 570 S.W.3d at 281. Rulings on pure questions of law or mixed questions of law and fact that do not hinge on credibility or demeanor are reviewed de novo. *State v. Espinosa*, 666 S.W.3d 659, 667 (Tex.Crim.App. 2023). "The evidence and all reasonable inferences are viewed in the light most favorable to the trial court's ruling, and the trial court's ruling must be

upheld if it is reasonably supported by the record and is correct under a theory of law applicable to the case." *Id.*

A. Magistrate warnings were required.

The Texas Family Code controls a juvenile's substantive rights. *Roquemore v. State*, 60 S.W.2d 862, 866 (Tex.Crim.App. 2001). Section 54.03(e) provides that "[a]n extrajudicial statement which was obtained without fulfilling the requirements of this Title or the Constitution of this state or of the United States, may not be used[.]"

A juvenile's confession given under custodial interrogation without benefit of the Texas Family Code's required admonishments is inadmissible in a subsequent criminal trial. TEX. CODE CRIM. PROC. art. 38.23; *Miranda v. Arizona*, 384 U.S. 436 (1966); *Comer v. State*, 776 S.W.2d 191, 196 (Tex.Crim.App. 1989). The videotaping of Appellant's oral statements to Meredith brings those statement under the purview sec. 51.095(a)(5) of the Texas Family Code, which requires that "before making the statement, the child is given the warning described by Subdivision (1)(A) by a magistrate, the warning is a part of the recording, and the child knowingly, intelligently, and voluntarily waives each right stated in the warning[.]" *Id.* Appellant was never given the magistrate's

warnings before making the videotaped statements and he did not "knowingly, intelligently, and voluntarily waives each right stated in the warnings." The trial court therefore erred in finding that Appellant's statements met the requirements of sec. 51.095(a)(5)(A-D).

B. Appellant's statements were custodial.

This Court reviews de novo the trial court's ruling that Appellant's interrogation was not custodial. *In re D.J.C.*, 312 S.W.3d 704, 711 (Tex.App.—Houston [1st Dist.] 2009, no pet.). "Because the determination of custody is based on entirely objective circumstances, whether the law enforcement officials had the subjective intent to arrest is irrelevant unless that intent is somehow communicated to the suspect." *Id.* at 713; s*ee also, J.D.B. v. North Carolina*, 564 U.S. 261, 271 (2011)(noting that "subjective views harbored by either the interrogating officers or the person being questioned" are irrelevant to custody). A juvenile's videotaped statements obtained without a magistrate's warnings are inadmissible if the statements were made (1) while the child is in a detention facility or other place of confinement; [or] (2) while the child is in the custody of an officer[.] TEX. FAM. CODE sec. 51.095(d). Appellant's videotaped statements meet each of these requirements.

First, Appellant's statements were made while he was "in a detention facility or other place of confinement." It is undisputed that Appellant's statements were taken at the Deer Park Police Department in an interview room equipped with a recording device. This interview room was the designated juvenile processing office at Deer Park PD and was located in a secure, non-public area of the police station. In order to get to the interview room, it was necessary for Appellant to pass through secured areas with locked doors.

Second, Appellant's statements were made while he was in custody. The trial court erred in finding that Appellant "was not in custody initially" and "the consensual inquiry did not become custodial until [Appellant's] admission[.]" A person is considered in custody if, based upon the objective circumstances, a reasonable person would believe she was restrained to the degree associated with a formal arrest. *Stansbury v. California*, 511 U.S. 318, 322-24 (1994); *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex.Crim.App. 1996). The standard applied in determining whether a person is in custody involves a two-step analysis. *In re D.A.R.*, 73 S.W.3d 505, 510 (Tex.App.—El Paso 2002). The first step examines the factual circumstances to determine if a reasonable person would

believe that his freedom of movement was restrained to the degree associated with a formal arrest. *Id.* The second step considers whether a reasonable person "would have felt he or she was at liberty to terminate the interrogation and leave." *Id.* The analysis must consider whether a reasonable child of the same age would believe his freedom of movement was significantly restricted. *Id.* *See also J.D.B.,* 564 U.S. at 270-78 (holding that child's age is relevant objective factor to consider in determining whether child is "in custody" for *Miranda* purposes).

The trial court erred in finding that "no reasonable 16-year-old boy who was in [Appellant's] circumstances . . . would reasonably believe his freedom of movement was significantly restricted." In reaching this conclusion, the trial court rejected Appellant's testimony "that he was intimidated by Meredith's size, the gun, the positioning of the chair, the number of doors and hallways to be traversed to make an exit from the interview room, and the detective calling him a liar, which all combined to cause him to feel he was not free to leave the interview room[.]"

The trial court supported its conclusion that "a reasonable child of 16 would not believe that his freedom of movement was significantly restricted in any way," by noting that "[t]he room was lit, the door was

not locked [, and] Det. Meredith did not manifest to the Defendant any intention on his part to restrain, arrest for or charge him with any offense."

The record here belies the trial court's legal conclusions and confirms that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *See J.D.B.*, 564 U.S. at 272; s*ee also, Gallegos v. Colorado*, 370 U.S. 49, 54 (1962)("[N]o matter how sophisticated," a juvenile subject of police interrogation "cannot be compared" to an adult subject). The court misapplied the established law, holding that an officer's confrontation of a juvenile about inconsistencies in the child's statement, along with continued pressure on the juvenile for a "truthful statement," turns mere questioning into a custodial interrogation. *Jeffley v. State*, 38 S.W.3d 847, 853 (Tex.App.—Houston [14th Dist.] 2001, *pet. ref'd*); *see also D.J.C.*, 312 S.W.3d at 713 ("The mere fact that an interrogation begins as non-custodial, however, does not prevent it from later becoming custodial; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation.")(*quoting Dowthitt*, 931 S.W.2d at 255; *Jeffley*, 38 S.W.3d at 856). In *Jeffley*, a 15-year-old female

voluntarily accompanied a police officer to the station for additional questioning after the officer visited the juvenile and her family at home regarding a murder. The juvenile gave four oral, inconsistent statements, the last of which inculpated her in the murder. The officer then took the juvenile before a magistrate to receive her statutorily required juvenile warnings. *Jeffley*, 38 S.W.3d at 852. After receiving the warnings, the juvenile returned to the station and gave a written statement.

While giving the written statement, the juvenile's mother called the station asking if the juvenile was still there. The officer did not inform the mother that the juvenile was confessing. Upon completion of her written statement, Jeffley was taken back to the magistrate and administered a second set of warnings. Jeffley then signed her written statement and was taken back to the police station. The court observed that the "record clearly indicates that appellant gave her first written statement and four oral statements to [the police] at the police station without the protections afforded a juvenile in sec. 51.095 of the family code." *Jeffley*, 38 S.W.3d at 854.

The State did not dispute that Jeffley made her statements while being interrogated. Rather, the State argued that she was not "in custody" when the first written statement and four oral statements were given. The trial court agreed that Jeffley was not in custody at the time and that the officer was merely attempting to determine what happened and that the investigation had not centered on Jeffley. Here, the trial reached essentially the same conclusions as the court in *Jeffley*. The Fourteenth Court of Appeals in *Jeffley* properly found that the trial court erred in its conclusion because the objective circumstances of the child's encounter with the officer established that she was in custody as a matter of law as soon as the officer began pressing her for a "truthful statement." *Id.* at 857.

The officer did not give Jeffley any of her rights under the Texas Family Code but instead continued to confront her about discrepancies in her story until she finally gave a statement inculpating herself in the murder. The court considered the "naturally coercive nature of a police station, the authority entrusted a police officer, and the nature of [the officer's] interrogation" and concluded "a reasonable fifteen year would believe her freedom of movement had been significantly restricted to the

extent associated with a formal arrest soon after she gave her second oral statement." *Id.* at 857-58.

Meredith's interrogation of Appellant was custodial because he had probable cause to believe Appellant was the shooter before questioning ever began. Even as he took Appellant back to the secure interview room without Laban (Appellant's less deferential guardian) and got rid of VanWinkle, Meredith already had statements from two witnesses identifying Appellant as the shooter.

Appellant's story evolved, as they often do under pressure. Appellant first stated that he heard about the shooting on the internet and denied being present. Meredith immediately confronted Appellant, stating that Meredith knew Appellant was lying and that Meredith had Able Garcia and Seabreak's phones. (1196446 3RR 77). Meredith told Appellant that the last number Seabreak dialed was Appellant's. (1196446 3RR 78). Meredith then told Appellant that it did not matter if Appellant destroyed his phone because he could still get the phone data from Cricket. *Id.* After this verbal and physical intimidation, it is reasonable that a 16 year old would believe, as Appellant did, that he

could not leave with a large police officer, armed with a gun, blocking the closed door. (1196446 3RR 218-20).

When Appellant admitted he was with Hernandez but denied going to Gerlands, Meredith again confronted Appellant, accusing him of lying. Meredith told Appellant he had "no doubt" Appellant knew what happened. (1196446 3RR 78-79). Meredith first told Appellant that lying about a murder made him look like a suspect. (1196446 3RR 79). Meredith then threatened Appellant with certification as an adult and confinement in adult jail. (1196446 3RR 80, 221). Meredith's threat of certification would make a reasonable 16-year-old believe, as Appellant did, that he was a suspect in the murder and was not free to leave. Meredith used his physical size and body language to press Appellant for the "truth." Only then did Appellant admit to being at Gerlands.

Despite Appellant's incriminating admission that he was at the scene of the crime, Meredith still did not advise Appellant of any of his statutory or Constitutional rights. A reasonable 16-year-old would be, like Appellant, scared and wanting only to leave the station and go home. After Appellant placed himself at Gerland's, but before he confessed to being the shooter, VanWinkle returned and told Appellant to leave and

come with her. (1196446 3RR 84). Meredith remained silent and did not inform Appellant he could leave. Meredith also did not tell VanWinkle that Appellant had just put himself at the murder scene or advise Appellant of his statutory or Constitutional rights—including his right to remain silent. (1196446 3RR 84-85).

These objective facts establish two recognized custody situations for TEX. CODE CRIM. PROC. art. 38.22 purposes: (1) Meredith created a situation that would lead a reasonable person to believe his freedom of movement has been significantly restricted; and (2) probable cause existed and Meredith did not tell Appellant he was free to leave. *See Dowthitt*, 932 S.W.2d at 255. After VanWinkle exited, Meredith resumed his interrogation and went into "good cop" mode, offering Appellant an out: if Appellant had been scared during the incident it might justify whatever happened – perhaps shooting Seabreak was unintentional? (1196446 3RR 85). Meredith said, "you didn't want to kill him, did you?" *Id.* Upon Meredith's "friendly" suggestion that being scared would mean the shooting was only an accident, Appellant stated that Seabreak pulled him out of the car and Gonzales gave him a gun. *Id.*

Despite having elicited yet another incriminating statement, Meredith did not stop the interrogation and take Appellant before a magistrate to administer his warnings.

At the point in time when Appellant's "interview" became custodial, whether from the outset or when he first called Appellant a liar, Meredith was obligated to notify Appellant's custodian or guardian rather than purposefully exclude her. Meredith's failure to do so made any subsequent statements by Appellant inadmissible. *Horton v. State*, 78 S.W.3d 701 (Tex.App.—Austin 2002, *pet. ref'd*); *see also Jeffley*, 38 S.W.3d at 861 (noting that it was "of concern" that the police's failure to notify Jeffley's mother when the non-custodial interrogation became custodial but that Jeffley failed to preserve this claim on appeal).

Here, the trial court glossed over the voluntariness of Appellant's statements, making no findings of such factors as "duress, coercion, either emotional or physical, nor … any promises made in any way to induce [Appellant] to make the confession" implicating himself in the murder. *See Jeffley*, 38 S.W.3d at 860. The record demonstrates that Appellant did not intelligently, knowingly and voluntarily waive his right to counsel or his protection from self-incrimination. "[A]ny evidence that

the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." *Miranda v. Arizona*, 384 U.S. 436 (1966). Meredith vitiated the voluntariness of Appellant's confession by threatening him with adult certification before Appellant even admitted to being present at Gerlands, much less being the actual shooter.

Indeed, if Appellant's interrogation was not custodial, and if he was not a suspect, one wonders why Meredith would threaten him with certification and adult jail. Meredith's actions were "official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker." *In re R.J.H.*, 79 S.W.3d 1, 6 (Tex. 2002).

The trial court committed reversible error in admitting Appellant's incriminating statements because the statements were involuntary.

Appellant also had a reasonable expectation of privacy in his communications with VanWinkle. The trial court's finding that Appellant's statements to VanWinkle were "akin to a statement that was 'res gestae' of . . .the shooting death of the complainant" is plain error.

Section 51.095(a)(3) applies only to statements that are "res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest[.]" Appellant's statement to VanWinkle in no way qualified as a spontaneous reaction to "the shooting death of the complainant." *See Richardson v. Green*, 677 S.W.2d 497, 500 (Tex. 1984)("to be admissible as res gestae a statement must be shown to have been a spontaneous reaction to an exciting event[.]").

The trial court further erred in finding that Appellant "did not have a right to privacy in the interview room." The circumstances establish that Appellant had a reasonable expectation of privacy when speaking to VanWinkle. Section 61.103(a) of the Texas Family Code provides a "right to communicate in person privately with the child for reasonable periods of time" after the child is in custody. Section 61.103(a)(1) does not prescribe how the right to private communication must be invoked. Contrary to the trial court's conclusions, however, the record demonstrates that VanWinkle expressed her expectation that she was speaking privately with Appellant. VanWinkle testified that she asked the officer who was present if the recorder was on because she wanted to

talk to her grandson alone. VanWinkle then spoke with him only after being assured by the officer that the conversation was not being recorded.

These facts are legally sufficient to bring Appellant's statements within privilege of sec. 61.103(a)(1). To establish an expectation of privacy, a person must not only exhibit an actual (subjective) expectation of privacy, but that expectation must be one that society is ready to accept as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967). VanWinkle exhibited an actual (subjective) expectation of privacy when she sought assurances that her conversation with Appellant would be private. See also *Cortez v. State*, 240 S.W.3d 372 (Tex.App.– Austin 2007)(rejecting an expectation of privacy in a police interview room that doubled as the juvenile processing office absent any evidence that appellant was given the impression that his conversation would be private).

C. Appellant's statements were coerced.

Constitutional principles of due process preclude the use of coerced confessions as fundamentally unfair, regardless of whether the confession is true or false. *Lego v. Twomey*, 404 U.S. 477 (1972); *see also Miller v. Fenton*, 474 U.S. 104 (1985)(holding that under the due process

clause, "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned").

The due-process test for voluntariness takes into consideration the totality of the circumstances. *Dickerson v. United States*, 530 U.S. 428, 434 (2000); *see also In re R.J.H.*, 79 S.W.3d 1, 6 (Tex. 2002)(noting, in context of evaluating voluntariness of juvenile's confession, that "the totality of the circumstances surrounding the making of the confession must be examined to determine whether the confession was the product of an essentially free and unconstrained choice by its maker"). In situations involving statements made by juvenile defendants, courts have repeatedly recognized that the totality of the circumstances test must fully consider the juvenile's lack of experience and maturity as compared to an adult defendant. A 14– or 15–year–old "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962)(holding that the "youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court,

the failure to see to it that he had the advice of a lawyer or a friend—all these combine to make us conclude that the formal confession on which this conviction may have rested [ ] was obtained in violation of due process"); *see also Haley v. Ohio*, 332 U.S. 596, 599-601 (1948)(observing that 15-year-old suspect was an "easy victim of the law" and that "special care in scrutinizing the record must be used,"…"the age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction.").

As observed by the United States Supreme Court:

> "[A] 14–year–old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."

Gallegos, 370 U.S. at 54.

Thus, when evaluating the totality of the circumstances surrounding a juvenile's confession:

> "The totality approach permits – indeed, it mandates — inquiry into all the circumstances surrounding the interrogation, [including] evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."

Fare v. Michael C., 442 U.S. 707 (1979). When a juvenile makes an admission without counsel present, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *In re Gault*, 387 U.S. 1, 55 (1967).

Children are viewed differently than adults when they are questioned by police because they are more vulnerable and susceptible to pressure. *J.D.B.,* 564 U.S. at 271. The pressure of custodial interrogation "is so immense that it 'can induce a frighteningly high percentage of people to confess to crimes they never committed.'" *Id.* at 272. The risk is "all the more troubling – and recent studies suggest, all the more acute – when the subject of custodial interrogation is a juvenile." *Id.* at 269.

D. Admission of appellant's statements was harmful.

The admission of Appellant's statements had a harmful impact on both his certification as an adult and his subsequent criminal jury trial. The trial court's erroneous admission of Appellant's statements forced him to adopt an "imperfect self-defense" trial strategy.

The erroneous admission of his statements was harmful error because it contributed to the jury's verdict, regardless of any independent incriminating evidence. *See McCarthy v. State*, 65 S.W.3d 47, 56 (Tex.Crim.App. 2001), *cert. denied*, 536 U.S. 972 (2002); *see also, D.A.R.*, 73 S.W.3d at 512 ("In the present case, we cannot find beyond a reasonable doubt that the trial court's denial of the motion to suppress did not affect appellant's decision to plead guilty and the resulting conviction."). *See also Arizona v. Fulminante*, 499 U.S. 279, 292 (1991)("a defendant's confession is probably the most probative and damaging evidence that can be admitted against him").

Absent the testimony of co-conspirators (requiring corroboration) and phone data (limited by 2008 technology), the evidence against Appellant was thin, making a confession critical. Meredith knew this.

He eliminated distractions and put the pressure on a 16 year old boy to ensure he got one.

The admission of Appellant's unlawfully obtained statements resulted in harm and requires reversal.

CONCLUSION & PRAYER

It is respectfully submitted that the juvenile court abused its discretion in certifying Appellant as an adult; accordingly, Appellant's conviction should be vacated and dismissed.

It is further respectfully submitted that trial counsel rendered ineffective assistance at every stage of Appellant's trial; accordingly, Appellant's conviction should be reversed, and the case remanded for a new trial.

Respectfully submitted,

/s/ Inger H. Chandler

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on February 9, 2025.

/s/ Inger H. Chandler
INGER H. CHANDLER

CERTIFICATE OF COMPLIANCE

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