Juvenile Law Section
STATE BAR OF TEXAS

Volume 29, Number 4 November 2015

Visit us online at
www.juvenilelaw.org

NEWSLETTER EDITOR
Associate Judge Pat Garza
386th District Court
San Antonio, Texas

OFFICERS AND COUNCIL MEMBERS

Kevin Collins, Chair
Vogue Building, 600 Navarro, Ste. 250
San Antonio, TX 78205

Riley Shaw, Chair-Elect
Tarrant County District Attorney's Office
401 W. Belknap, Ft. Worth, TX 76196

Kameron Johnson, Treasurer
Travis County Public Defender's Office
P.O. Box 1748, Austin, TX 78767

Kaci Singer, Secretary
Texas Juvenile Justice Department
P.O. Box 12757, Austin, TX 78711

Laura Peterson, Immediate Past Chair
Humphreys & Peterson PLLC
5502 Broadway, Garland, TX 75043

Terms Expiring 2016
Kim Brown, Ft. Worth
Anne Hazlewood, Lubbock
Lisa Capers, Austin

Terms Expiring 2017
Patrick Gendron, Bryan
Jill Mata, San Antonio
Mike Schneider, Houston

Terms Expiring 2018
William "Bill" Cox, El Paso
Patricia Cummings, Round Rock
Michael O'Brien, Dallas

QUICK LINKS

Juvenile Law Section Website
State Bar of Texas Website
State Bar of Texas Annual Meeting
Texas Bar CLE
Texas Bar Circle
State Bar of Texas Facebook

Dear Juvenile Law Section Members:

Welcome to the e-newsletter published by the Juvenile Law Section of the State Bar of Texas. Your input is valued so please take a moment to email us and tell us what you think of the new format.

The "Review of Recent Cases" includes cases that are hyperlinked to Casemaker, a free service provided by TexasBarCLE. To access these opinions, you must be a registered user of the TexasBarCLE website, which requires creating a password and log-in. If you do not wish to receive emails from TexasBarCLE, you can opt-out of their email list.

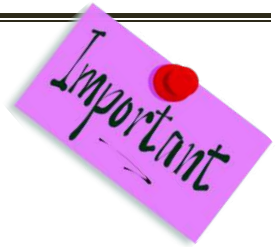


TABLE OF CONTENTS

EDITOR'S FOREWORD By Associate Judge Pat Garza

Being our first November issue, I would like to send a message of thanksgiving to all our members and to everyone who feels as I do, to be truly blessed with great friends and family. After all, on this year's Thanksgiving the Cowboys will be playing Carolina at 3:30pm and my Longhorns will be playing Texas Tech and 6:30pm. So, the real question for Thanksgiving this year is should we have a Thanksgiving lunch or a Thanksgiving dinner? Now, there is no doubt that a Thanksgiving lunch this year would probably work out pretty well. After all, the Detroit Lions, who have been playing on Thanksgiving since 1934, will have the early game. And since no one in Texas (including me) really cares, a Thanksgiving lunch would be great. I mean think about it, there would be nothing better than to be slicing a good pumpkin or pecan pie as the Cowboy game gets started. No whipped cream on mine, thank you. And if, heaven forbid, the Cowboys suck, a nap before the 6:30 Texas game would fit in nicely. Oh, I'm sorry, I know what you are thinking… Thanksgiving is not about football and football should not dictate when Thanksgiving dinner should be served! Ok, ok, it get it.

Thanksgiving is the day we celebrate with friends and family, eat good food and give thanks for our blessings. We should never forget that. From the roof over our heads to the wonderful bounty before us, to our friends and family who have stood by us through good times and bad, we give thanks. Especially family. Although sometimes they may make us crazy, there is no substitute for family. Please do as I really do do (man that sounds weird), give thanks on that special day for those family and friends who have decided to share it with us, and remember those family and friends who are not at the table with us, but who are with us in our hearts. Remember, the people at Thanksgiving dinner are the same people who will come to your funeral when the time comes and, incidentally, the same people who will come to visit you if you are ever committed to an institution. Just saying. So, happy Thanksgiving to all and please stay safe during this holiday weekend. Now, does anybody know if Romo's playing? Just kidding. Have a happy and safe Thanksgiving everyone.

29th Annual Robert Dawson Juvenile Law Institute. The Juvenile Law Section's 29th Annual Juvenile Law Conference will be held February 22-24, at the Wyndham Riverwalk Hotel, San Antonio, Texas. Chair-Elect Riley Shaw and his planning committee have been working hard to put together an interesting and exciting conference. The conference flyer will be in your mailbox soon, but it may also be found at the end of this newsletter and online at www.juvenilelaw.org.

Officer and Council Nominees. The Annual Juvenile Law Section meeting will be held in San Antonio, Texas on February 22, 2015, in conjunction with the Juvenile Law Conference. The Juvenile Law Section's nominating committee submitted the following slate of nominations:

Council Positions Ending 2019
Riley Shaw, Chair
Kameron Johnson, Chair-Elect
Kaci Singer, Treasurer
Mike Schneider, Secretary
Kevin Collins, Immediate Past Chair

Council Members: Terms Expiring 2019
Cyndi Porter Gore, McKinney, TX
Elizabeth Henneke, Austin, TX
Stephanie Stevens, San Antonio, TX

Nominations from the floor during the meeting will be accepted. If you have someone that you would like to nominate from the floor, contact the Chair of the Nominations Committee, Laura Peterson, at (972) 303-4529 or laura@humphreysandpetersonlawfirm.net.

Not what we say about our blessings,
but how we use them
is the true measure of our thanksgiving.

W.T. Purkiser

Click Here to Return to Table of Contents

CHAIR'S MESSAGE By Kevin Collins

I had a great time speaking at the Houston Bar Association Juvenile Conference back in September, although it caused me to miss my monthly golf outing with Judge Pat Garza and the Crew! Nevertheless, it was well worth it because I was able to meet and greet several of the Houston juvenile lawyers, I do not see that often. I spoke on the topic of Juvenile Sex Offender Registration (thank you for the materials Laura Peterson!). This is the very first topic I ever presented at our Annual Conference, back when the law did not allow the opportunity of de-registration or unregistration. What a difference a decade (or two) has made in juvenile jurisprudence in Texas!

The San Antonio Bar Association also had its annual conference and I did not speak this year for the first time since its inception. (Thank you for the break, Judge Parker!). Like the Houston Conference, it was a well really put together presentation. However, the State Bar Annual Conference offers a different experience, as the most thorough and in-depth conference to cover Juvenile Law in the State of Texas. I am glad individual associations put together their own programs, and I am a part of many of them. But the scope of our Annual conference, and the presentations by nationally known speakers, are unparalleled. I encourage folks to attend their local conferences, but to also attend the Annual Conference. You will be on top of your game by doing so.

It is Halloween as I write these words, so have a Happy Halloween, and a great rest of the Holiday Season!

REVIEW OF RECENT CASES

DEFENSE COUNSEL

THERE WAS NO INEFFECTIVE ASSISTANCE OF COUNSEL WHERE IT WAS PROBABLE THAT THE END RESULT WOULD HAVE BEEN THE SAME EVEN WITHOUT THE EVIDENCE REGARDING EXTRANEOUS OFFENSES THAT COUNSEL FAILED TO OBJECT TO.

¶ 15-3-6. **In the Matter of R.F.**, MEMORANDUM, No. 02-14-00345-CV, 2015 WL 5893465 (Tex.App.—Fort Worth, 10/8/2015).

Facts: R.F. was twelve years old when he committed two counts of aggravated sexual assault of a child. After pleading "True" to the charges, R.F. was found to have engaged in delinquent conduct in violation of penal code section 22.021, and the trial court sentenced him to a period of two years' probation with placement in a residential sexual offender treatment facility and boot camp program.

On June 23, 2014, the State petitioned to modify R.F.'s disposition on the grounds that he had violated his conditions of probation by (1) committing the further offense of recklessly exposing his genitals with the intent to arouse or gratify his sexual desire; (2) failing to complete the Boot Camp's programs, follow all of the facility's rules, and not leave the facility without permission; and (3) failing to attend, participate in, and successfully complete a sex offender counseling program and an aftercare program with a registered sex offender treatment therapist.

At the modification hearing, the state called three witnesses: Karla Doster, Jonathan Neece and Scott Gieger. Doster, R.F.'s case manager, testified that almost immediately after R.F. began the Boot Camp program on September 6, 2013, he started accumulating behavior citations for breaking the rules.2 According to Doster, R.F. exhibited defiance toward staff and authority figures, cursed at and threatened staff, and refused to participate in the program. During his nine-month stay at the Boot Camp, R.F. received 113 violations for misbehavior, ranging from using profanity, disrupting group therapy sessions, making inappropriate sexual comments, gestures, and overtures toward peers and staff, and making false allegations towards staff, to exposing his genitals. Doster also testified generally about R.F.'s disrespect for authority and refusal to take personal responsibility for his choices.

Neece, R.F.'s sex offender treatment therapist, testified that the Boot Camp program consisted of three phases, and that most program participants completed the first phase within four to five months. After nine months in the program, R.F. remained in phase one. Neece testified that, while in early 2014 R.F. began to apply himself and succeed in school, R.F.'s defiant and disrespectful behavior toward the rules and authority never waned.

Both Doster and Neece testified that on June 11, 2014, R.F. exposed his genitals to another resident. R.F admitted that he did this.

Gieger, R.F.'s juvenile probation officer, testified that the June 11 incident, in combination with his ongoing concerns regarding R.F.'s overall lack of progress in the program, was the last straw. R.F. was discharged from the Boot Camp two days later.

The trial court found that R.F.'s act of exposing himself to other program participants on June 11 and his subsequent discharge from Boot Camp constituted violations of the conditions of his probation and ordered that R.F. be committed to Texas Juvenile Justice Department (TJJD) for a period of time "not to exceed the time when he shall be 19 years of age." See Tex. Fam.Code Ann. § 54.05 (West 2014); Tex. Hum. Res.Code Ann. § 245.151 (West 2013).

R.F. complains in one issue of ineffective assistance of counsel. His complaint focuses on Gieger's testimony that in reviewing R.F.'s progress and making the decision to remove R.F. from the program, "the fact that there was another offense that basically was a sexual act," was "kind of [the] straw that broke the camel's back." He also complains about Doster's testimony that "several other recruits were providing statements that [R.F.] was touching them, rubbing against them, et cetera, during the POD and in class," that "other inmates wrote statements" and that "there 'were allegations made by the other residents that he was engaged in ... sexual impropriety'." R.F. contends that by failing to object to the testimony regarding these extraneous offenses under the Confrontation Clause, his counsel provided ineffective assistance of counsel.

Held: Affirmed

Memorandum Opinion: The effectiveness of counsel's representation in a juvenile proceeding is to be reviewed under the two prong Strickland v. Washington standard. 466 U.S. 668, 687–88, 104 S.Ct. 2052, 2064 (1984). To establish ineffective assistance of counsel, the appellant must show by a preponderance of the evidence that his counsel's representation was deficient and that the deficiency prejudiced the

defense. Id. at 687; Nava v. State, 415 S.W.3d 289, 307 (Tex.Crim.App.2013); Hernandez v. State, 988 S.W.2d 770, 771 (Tex.Crim.App.1999). An ineffective-assistance claim must be "firmly founded in the record," and "the record must affirmatively demonstrate" the meritorious nature of the claim. Thompson v. State, 9 S.W.3d 808, 813 (Tex.Crim.App.1999).

Direct appeal is usually an inadequate vehicle for raising an ineffective-assistance-of-counsel claim because the record is generally undeveloped. Menefield v. State, 363 S.W.3d 591, 592–93 (Tex.Crim.App.2012); Thompson, 9 S.W.3d at 813–14. In evaluating the effectiveness of counsel under the deficient-performance prong, we look to the totality of the representation and the particular circumstances of each case. Thompson, 9 S.W.3d at 813. The issue is whether counsel's assistance was reasonable under all the circumstances and prevailing professional norms at the time of the alleged error. See Strickland, 466 U.S. at 688–89, 104 S.Ct. at 2065; Nava, 415 S.W.3d at 307. Review of counsel's representation is highly deferential, and the reviewing court indulges a strong presumption that counsel's conduct was not deficient. Nava, 415 S.W.3d at 307–08.

It is not appropriate for an appellate court to simply infer ineffective assistance based upon unclear portions of the record or when counsel's reasons for failing to do something do not appear in the record. Menefield, 363 S.W.3d at 593; Mata v. State, 226 S.W.3d 425, 432 (Tex.Crim.App.2007). Trial counsel "should ordinarily be afforded an opportunity to explain his actions before being denounced as ineffective." Menefield, 363 S.W.3d at 593. If trial counsel is not given that opportunity, we should not conclude that counsel's performance was deficient unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." Nava, 415 S.W.3d at 308.

The prejudice prong of Strickland requires a showing that counsel's errors were so serious that they deprived the defendant of a fair trial, i.e., a trial with a reliable result. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064. In other words, the appellant must show there is a reasonable probability that, without the deficient performance, the result of the proceeding would have been different. Id. at 694, 104 S.Ct. at 2068; Nava, 415 S.W.3d at 308. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland, 466 U.S. at 694, 104 S.Ct. at 2068; Nava, 415 S.W.3d at 308. The ultimate focus of our inquiry must be on the fundamental fairness of the proceeding in which the result is being challenged. Strickland, 466 U.S. at 697, 104 S.Ct. at 2070.

No record was developed of counsel's reasons for failing to lodge a Confrontation Clause objection to the testimony regarding these extraneous offenses. Our scrutiny of his performance "must be highly deferential, and every effort must be made to eliminate the distorting effects of hindsight." Lopez v. State, 80 S.W.3d 624, 630 (Tex.App.—Fort Worth 2002), aff'd, 108 S.W.3d 293 (Tex.Crim.App.2003). Because the record is silent, R.F. has failed to rebut the presumption that his counsel acted reasonably. See, id. ("Where the record is silent as to counsel's reasons for failing to object, the appellant fails to rebut the presumption that counsel acted reasonably.").3

Even if the Confrontation Clause would render the statements by Doster and Neece inadmissible, the second prong of Strickland requires that the failure to object be so serious that it deprived R.F. of a fair trial, i.e., a trial with a reliable result. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064.

Doster and Neece testified that R.F. admitted to them that he had exposed his genitals to another resident, and as a result, he was expelled from the program. Doster listed in her summary of his placement stay that this occurred on June 11, 2014, and the trial court admitted her summary as part of Gieger's supplemental case history at the hearing. Notwithstanding whether R.F. engaged in any other extraneous offenses, proof by a preponderance of the evidence of any one of the alleged violations of the probation conditions is sufficient to support the revocation order. Moore v. State, 605 S.W.2d 924, 926 (Tex.Crim.App. [Panel Op.] 1980) (proof by a preponderance of the evidence of any one of the alleged violations of the conditions of community supervision is sufficient to support a revocation order).

Therefore, this evidence of the June 11 incident, standing alone, was sufficient to support the revocation of R.F.'s probation. See, e.g., In re R.L.R. Ill, No. 14–06–00926–CV, 2008 WL 323758, at *4 (Tex.App.—Houston [14th Dist] Feb. 7, 2008, no pet.) (counsel was not ineffective when appellant had admitted to his probation officer that he violated the conditions of his probation); Bennett v. State, 705 S.W.2d 806, 807 (Tex.App.—San Antonio 1986, no writ) ("In the light of appellant's admission [to violating three conditions of his probation], it is difficult to see how his attorney's conduct could effect a different result."); Herrera v. State, 656 S.W.2d 148, 149 (Tex.App.—Waco 1983, no writ) ("[A]n oral admission of a violation of the probation terms, made by probationer to his probation officer, is sufficient to revoke probation.").

Conclusion: Therefore, there is no reasonable probability that the proceeding's result would have been different even without the evidence regarding extraneous offenses. See Strickland, 466 U.S. at 694, 104 S.Ct. at 2068; Nava, 415 S.W.3d at 308. Thus, counsel's failure to object to this testimony did not deprive R.F. of a fair trial. We overrule R.F.'s sole issue.

DETERMINATE SENTENCE TRANSFER

IN A TJJD TRANSFER HEARING TO TDCJ, IF SOME EVIDENCE EXISTS TO SUPPORT THE TRIAL COURT'S DECISION, THERE IS NO ABUSE OF DISCRETION.

¶ 15-3-3. **In the Matter of M.J.-M.**, MEMORANDUM, No. 02-14-00367-CV, 2015 WL 4663978 (Tex.App.-Fort Worth, 8/6/15).

Facts: In two points, appellant M.J.-M. appeals the trial court's order transferring him from the Texas Juvenile Justice Department (TJJD) to the Texas Department of Criminal Justice (TDCJ) to complete his determinate ten-year sentence for aggravated assault on a public servant while in TJJD's custody.FN2 See Tex. Penal Code Ann. § 22.02(b)(2)(B) (West 2011) (aggravated assault on a public servant is a first-degree felony); Tex. Fam.Code Ann. § 53.045(a)(6) (West 2014) (aggravated assault offense is eligible for determinate sentence). We affirm.

FN2. M.J.-M. was fourteen years old when he was committed to TJJD in April 2011 after his community supervision was revoked. He pleaded "true" to committing an aggravated assault on a public servant in 2012 while in TJJD's custody (after the State gave notice that it sought a determinate sentence for the offense). See Tex. Fam.Code Ann. § 54.04(d)(3)(A)(ii) (West 2014) (providing for possible transfer from TJJD to TDCJ for a term of not more than forty years for a first-degree felony). M.J.-M.'s stipulation to the evidence reflected that he struck a TJJD officer in the face while she was supervising the juvenile inmates in TJJD custody and fractured her cheek bone and the bone around her left eye (left orbital). Her injuries necessitated medical treatment from an eye specialist and caused her to miss more than a month of work.

In 2014, after M.J.-M. turned eighteen years old, the State moved to transfer M.J.-M.'s determinate sentence to TDCJ. At the November 7, 2014 hearing, the State's sole witness was Leonard Cucolo, TJJD's court liaison. The trial court took judicial notice of the court's file and the TJJD records and Cucolo's report without objection. It also admitted without objection Petitioner's Exhibit 1, a November 3, 2014 incident report from TJJD that documented an incident that had occurred four days prior to the transfer hearing wherein M.J.-M. exposed his penis to female staff members and masturbated in front of them. M.J.-M. raised no objections during Cucolo's testimony.

Cucolo testified that M.J.-M. met all of the criteria for transfer to TDCJ to complete his sentence by: committing new felony offenses and Class A misdemeanors, engaging in chronic disruption, violating twenty-six major rules, resulting in sixteen Level II hearings, and failing to progress in treatment despite having been provided with services to help remediate his behavior, including individual counseling, group counseling, and specialized treatment programs. In total, the evidence of M.J.-M.'s behavioral history reflected more than 200 documented incidents of misconduct, 131 referrals to the security unit, and 86 security placements. FN3

FN3. These numbers include misconduct occurring prior to M.J.-M.'s receiving his determinate sentence.

Cucolo stated that M.J.-M. was chronically disruptive and engaged in violent, aggressive behavior with staff and youth, "making it very difficult—an unsafe environment for the staff, unsafe environment for the kids, and it's making it difficult for the other youth that are there for similar offenses, determinate sentences as well, to engage in the program." According to Cucolo, M.J.-M. had continued to engage in serious misconduct, assaults, "major disruption[s] of facility," fleeing from apprehension, and exposure, even after he was warned in February 2014 that his psychological evaluation would be shared with the special services committee to make a decision about a return to court. Cucolo described M.J.-M. as a danger to any community to which he might be released.

M.J.-M. and his paternal aunt S.M. both testified, seeking leniency, and the trial court permitted S.M. to testify about hearsay statements over the State's objection. During M.J.-M.'s testimony, he admitted that while incarcerated he had committed unprovoked assaults on other youths on numerous occasions and agreed that many of his fights and major rule violations were a direct result of gang violence, either his own fighting for other gang members or his "being run up on by other members." FN4 M.J.-M. said that he was 5'4" tall and that all of his fights had been with people bigger than him. He stated that if he refused to beat people up as directed by his gang, there would be consequences, such as being assaulted himself. After hearing testimony from the State's sole witness and M.J.-M. and his aunt, the trial court granted the motion.

FN4. The offense for which M.J.-M. had received the determinate sentence involved his attempt to get into a gang.

In his two points, M.J.-M. challenges the sufficiency of the evidence to support the trial court's finding that he was a threat or danger to himself or others and complains that the only evidence presented by the State was "unreliable and non-credible hearsay testimony" in violation of his right to confrontation under the Sixth Amendment.

In his second point, M.J.-M. asks us to adopt the dissenting opinion in In re M.P., 220 S.W.3d 99, 115 (Tex.App.–Waco 2007, pet. denied) (Vance, J., dissenting) (concluding that a juvenile should be

afforded the Sixth Amendment confrontation right in the dis-position phase of a juvenile proceeding). Doing so would require a departure from our conclusion in In re S.M., 207 S.W.3d 421, 425 (Tex.App.–Fort Worth 2006, pet. denied), that Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), does not apply in juvenile transfer hearings.FN5 We decline this invitation.

FN5. See S.M., 207 S.W.3d at 425 (concluding that Russeau v. State, 171 S.W.3d 871, 880–81 (Tex.Crim.App.2005), cert. denied, 548 U.S. 926 (2006)—which held that the introduction of prison incident and disciplinary reports violated the Sixth Amendment's Confrontation Clause—did not apply to juvenile proceedings because the Confrontation Clause explicitly applies to "criminal prosecutions," the reports in Russeau were admitted at the punishment stage of the defendant's criminal trial, and a transfer hearing under family code section 54.11 is not a trial because the juvenile is neither being adjudicated nor sentenced; instead, the transfer hearing is a "second chance hearing" after the juvenile has already been sentenced to a determinate number of years); see also In re C.E.C., No. 02–06–00065–CV, 2006 WL 3627134, at *2 (Tex.App.–Fort Worth Dec. 14, 2006, no pet.)(mem.op.) ("A juvenile... has no right of confrontation at a discretionary transfer hearing. There-fore, the trial court did not abuse its discretion by overruling appellant's objection based on the Confrontation Clause."); In re D.J., 909 S.W.2d 621, 623 (Tex.App.–Fort Worth 1995, writ dism'd w.o.j.) ("A seeming violation of a juvenile's Sixth Amendment right to confrontation is not error at a transfer hearing.").

Held: Affirmed

Memorandum Opinion: We review a trial court's decision to transfer a juvenile under family code section 54.11 for an abuse of discretion. In re J.M., No. 02–05–00180–CV, 2005 WL 3081648, at *3 (Tex.App.–Fort Worth Nov. 17, 2005, no pet.)(mem.op.). If some evidence exists to support the trial court's decision, there is no abuse of discretion. Id. As set out above, some evidence supports the trial court's decision; therefore, we overrule this portion of M.J.-M.'s two points.

Because he did not lodge any objections to any of the evidence admitted in the transfer hearing, M.J.-M. failed to preserve the remainder of his points for our review. See Tex.R.App. P. 33.1. Therefore, we overrule the remainder of his two points as unpreserved.

Conclusion: Having overruled both of M.J.-M.'s points, we affirm the trial court's order of transfer.

SEARCH & SEIZURE

USING A CELL PHONE ON SCHOOL GROUNDS DOES NOT AUTOMATICALLY TRIGGER AN ESSENTIALLY UNLIMITED RIGHT ENABLING A SCHOOL OFFICIAL TO SEARCH ANY CONTENT STORED ON THE PHONE.

¶ 15-3-2. **G.C. v. Owensboro Public Schools,** No. 11-6476, 711 F.3d 623, (6th Cir., 2013).

Facts: During his freshman year at Owensboro High School, G.C. began to have disciplinary problems. Shortly thereafter, he communicated with school officials that he used drugs and was disposed to anger and depression. The relevant incidents and discussions are as follows. On September 12, 2007, the first incident in the record, G.C. was given a warning for using profanity in class. R. 69-7 (Referral at 1) (Page ID #466). In February 2008, G.C. visited Smith's office and expressed to Smith "that he was very upset about an argument he had with his girlfriend, that he didn't want to live anymore, and that he had a plan to take his life." R. 69-8 (Smith Aff. at ¶ 4) (Page ID #467). In this same meeting, G.C. told Smith "that he felt a lot of pressure because of football and school and that he smoked marijuana to ease the pressure." Id. ¶ 5. As a result of this interaction, Smith met with G.C.'s parents and suggested that he be evaluated for mental health issues. Id. ¶ 6. G.C.'s parents took him to a treatment facility that day. Id.; R. 69-28 (Bio-Psycho Social Assessment) (Page ID #536–48).

On November 12, 2008, G.C. was given a warning for excessive tardies, and on November 17, 2008, G.C. was disciplined for fighting and arguing in the boys locker room. R. 69-12 (Referrals at 1) (Page ID #490). On March 5, 2009, G.C. walked out of a meeting with Summer Bell, the prevention coordinator at the high school, and left the building without permission. R. 69-8 (Smith Aff. at ¶ 7) (Page ID #468); R. 69-10 (Bell Tr. at 40:19–21) (Page ID #484). G.C. made a phone call to his father and was located in the parking lot at his car, where there were tobacco products in plain view. R. 69-8 (Smith Aff. at ¶ 8) (Page ID #468). G.C. then went to Smith's office, and Smith avers that G.C. "indicated he was worried about the same things we had discussed before when he had told me he was suicidal." Id. She states that she "was very concerned about [G.C.'s] well-being because he had indicated he was thinking about suicide again. I, therefore, checked [G.C.'s] cell phone to see if there was any indication he was thinking about suicide." Id. ¶ 9. The record also indicates that G.C. visited a treatment center that day, and the counselor recommended that he be admitted for one to two weeks. R. 69-28 (Bio-Psycho Social Assessment) (Page ID #560–61).

On March 9, 2009, school officials convened a hearing with G.C. and his parents regarding the March 5 incident, at which both G.C. and school officials gave testimony. R. 69-13 (Hearing Minutes at 1–2) (Page ID #491–92). G.C. was placed on probation and assigned four days of in-school suspension. Id. at 3 (Page ID #493). On April 8, 2009, G.C. was suspended after yelling and hitting a locker. R. 69-15 (Referral at 1) (Page ID #497). At the end of the 2008–09 academic year, Burnette recommended that Vick revoke G.C.'s authorization to attend Owensboro High School. R. 69-17 (Vick Aff. at ¶ 10) (Page ID #500). Vick did not follow this recommendation, and on June 15, 2009, he met with G.C.'s parents to discuss "what was expected of [G.C.] to be permitted to continue attending the [Owensboro Public School District] as an out-of-district student." Id. According to Vick, he described the expectations as follows:

At this meeting, I explained to [G.C.'s] parents that they had three options regarding their son's education. First, I told them they could send [G.C.] to the [Daviess County Public School District] since they resided in that school district with their son. I told them their second option was to actually move into the [Owensboro Public School District] and that, upon so doing, [G.C.] would be entitled to all the rights of a resident student. Finally, I told them that despite . . . Burnette's recommendation, I would allow [G.C.] to continue to attend school in the [Owensboro Public School District] as a non-resident student for the 2009–10 school year on the condition and understanding that, if he had any further disciplinary infraction, this privilege would be immediately revoked and he would be required to return to his home school district.
Id. ¶ 11.

On August 6, 2009, G.C.'s parents registered G.C. to attend Owensboro High School for the 2009–10 academic year. R. 69-16 (Registration Form at 1) (Page ID #498). Unlike in years past, however, they filled out an in-district registration form and listed G.C.'s physical address as that of his grandparents, who lived in the Owensboro Public School District. Id. On the same form, they stated that G.C. lived with his parents, who maintained their residence in the Daviess County School District. Id.

On September 2, 2009, G.C. violated the school cell-phone policy when he was seen texting in class. R. 69-4 (Brown Aff. at ¶ 4) (Page ID #384). G.C.'s teacher confiscated the phone, which was brought to Brown, who then read four text messages on the phone. Id. ¶¶ 4–6 (Page ID #384–85). Brown stated that she looked at the messages "to see if there was an issue with which I could help him so that he would not do something harmful to himself or someone else." Id. ¶ 6 (Page ID #385). Brown explained that she had these worries because she "was aware of previous angry outbursts from [G.C.] and that [he] had admitted to drug use in the past. I also knew [he] drove a fast car and had once talked about suicide to [Smith]. . . . I was concerned how [he] would further react to his phone being taken away and that he might hurt himself or someone else." Id. ¶ 5 (Page ID #384–85).

After this incident, Burnette recommended to Vick that G.C.'s out-of-district privilege be revoked, and this time Vick agreed. R. 69-17 (Vick Aff. at ¶ 16) (Page ID #501). G.C.'s parents were contacted and told that they could appeal the decision if desired. Id. ¶¶ 17–19. (Page ID #501–02). On October 15, 2009, Vick, Burnette, and other school officials met with G.C.'s parents and their attorney. Id. ¶ 21 (Page ID #502). Vick explained that G.C. "had violated the condition of his out-of-district privilege to attend Owensboro High School by texting in class." Id. Despite the revocation, Vick avers that G.C. continued to have the right to attend high school in Daviess County. Id. ¶ 22 (Page ID #503).

On October 21, 2009, G.C. filed an action for declaratory and injunctive relief, as well as compensatory and punitive damages, in the U.S. District Court for the Western District of Kentucky. R. 1 (Compl.) (Page ID #1). G.C. alleged violations of his First, Fourth, and Fifth Amendment rights as well as violations of the Kentucky Constitution. Id. at ¶¶ 18–37 (Page ID #1–5). G.C. moved for a temporary restraining order and preliminary injunction, seeking to enjoin the defendants from denying G.C. his right to an education, which the district court denied on November 16, 2009. R. 6 (Pl.'s Mot. at 1) (Page ID #36); R. 20 (Order Denying Preliminary Injunctive Relief at 1) (Page ID #123). G.C. then amended his complaint to include a Rehabilitation Act claim. R. 36 (First Am. Compl. at ¶¶ 39–48) (Page ID #195–96). On June 2, 2011, the defendants filed a motion for summary judgment on all of G.C.'s claims, which the court granted as to G.C.'s federal claims. R. 69-1 (Defs.' Mot. for Summ. J. at 1) (Page ID #315); R. 85 (Order at 25) (Page ID #767). The court declined to exercise supplemental jurisdiction over G.C.'s state-law claims. R. 85 (Order at 25) (Page ID #767). In the same order, the district court denied G.C.'s motion requesting a Daubert hearing on the qualifications of the defendants' Rehabilitation Act expert witness. Id. at 19–21.
(Page ID #761–63).

Held: Reversed

Opinion: G.C. argues that the district court erred when it granted summary judgment to the defendants on his Fourth Amendment claim. G.C. conceded at oral argument that the March 2009 search of his cell phone was justified in light of the surrounding circumstances, yet maintains that the September 2009 search was not supported by a reasonable suspicion that would justify school officials reading his text messages. The defendants respond that reasonable suspicion existed to search his phone in September 2009 given his documented drug abuse and suicidal thoughts,

particularly under the lower standard applied to searches in a school setting. Appellees Br. at 21–26. They argue that the searches were limited and "aimed at uncovering any evidence of illegal activity" or any indication that G.C. might hurt himself. Id. at 28.

The Supreme Court has implemented a relaxed standard for searches in the school setting: [T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider whether the action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. New Jersey v. T.L.O., 469 U.S. 325, 341–42 (1985) (internal quotation marks, citation, and alterations omitted). "A student search is justified in its inception when there are reasonable grounds for suspecting that the search will garner evidence that a student has violated or is violating the law or the rules of the school, or is in imminent danger of injury on school premises." Brannum v. Overton Cnty. Sch. Bd., 516 F.3d 489, 495–96 (6th Cir. 2008). "Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." T.L.O., 469 U.S. at 342. "In determining whether a search is excessive in its scope, the nature and immediacy of the governmental concern that prompted the search is considered." Brannum, 516 F.3d at 497 (internal quotation marks omitted). "In order to satisfy the constitutional requirements, the means employed must be congruent to the end sought." Id.

Because this court has yet to address how the T.L.O. inquiry applies to the search of a student's cell phone, the parties point to two district court cases that have addressed this issue. In J.W. v. DeSoto County School District, No. 2:09-cv-00155-MPM-DAS, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010), the case relied upon by the defendants and cited by the district court, a faculty member observed a student using his cell phone in class, took the cell phone from the student, and "opened the phone to review the personal pictures stored on it and taken by [the student] while at his home." Id. at *1. The district court found the faculty member's actions reasonable, explaining that "[i]n assessing the reasonableness of the defendants' actions under T.L.O., a crucial factor is that [the student] was caught using his cell phone at school." Id. at *4. The court further reasoned that "[u]pon witnessing a student improperly using a cell phone at school, it strikes this court as being reasonable for a school official to seek to determine to what end the student was improperly using that phone." Id.

Such broad language, however, does not comport with our precedent. A search is justified at its inception if there is reasonable suspicion that a search will uncover evidence of further wrongdoing or of injury to the student or another. Not all infractions involving cell phones will present such indications. Moreover, even assuming that a search of the phone were justified, the scope of the search must be tailored to the nature of the infraction and must be related to the objectives of the search. Under our two-part test, using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction. Because the crux of the T.L.O. standard is reasonableness, as evaluated by the circumstances of each case, we decline to adopt the broad standard set forth by DeSoto and the district court.

G.C. directs the panel to Klump v. Nazareth Area School District, 425 F. Supp. 2d 622 (E.D. Pa. 2006), a case in which a student was seen using his cell phone, followed by two school officials accessing the student's text messages and voice mail; searching the student's contacts list; using the phone to call other students; and having an online conversation with the student's brother. Id. at 630. The court initially determined that the school officials were "justified in seizing the cell phone, as [the student] had violated the school's policy prohibiting use or display of cell phones during school hours." Id. at 640. The court found that the school officials were not, however, justified in calling other students, as "[t]hey had no reason to suspect at the outset that such a search would reveal that [the student] himself was violating another school policy." Id. The court further discussed the text messages read by the school officials, concluding that although the school officials ultimately found evidence of drug activity on the phone, for the purposes of a Fourth Amendment claim, the court must consider only that which the officials knew at the inception of the search: "the school officials did not see the allegedly drug-related text message until after they initiated the search of [the] cell phone. Accordingly, . . . there was no justification for the school officials to search [the] phone for evidence of drug activity." Id. at 640–41. We conclude that the fact-based approach taken in Klump more accurately reflects our court's standard than the blanket rule set forth in DeSoto.

G.C.'s objection to the September 2009 search centers on the first step of the T.L.O. inquiry—whether the search was justified at its inception. G.C. argues that the school officials had no reasonable grounds to suspect that a search of his phone would result in evidence of any improper activity. The defendants counter that the search was justified because of G.C.'s documented drug abuse and suicidal thoughts. Appellees Br. at 26. Therefore, they argue, the school officials had reason to believe that they would find

evidence of unlawful activity on G.C.'s cell phone or an indication that he was intending to harm himself or others. Id. at 26–27.

We disagree, though, that general background knowledge of drug abuse or depressive tendencies, without more, enables a school official to search a student's cell phone when a search would otherwise be unwarranted. The defendants do not argue, and there is no evidence in the record to support the conclusion, that the school officials had any specific reason at the inception of the September 2009 search to believe that G.C. then was engaging in any unlawful activity or that he was contemplating injuring himself or another student. Rather, the evidence in the record demonstrates that G.C. was sitting in class when his teacher caught him sending two text messages on his phone. R. 69-4 (Brown Aff. at ¶ 4) (Page ID #384). When his phone was confiscated by his teacher pursuant to school policy, G.C. became upset. Id. ¶ 3. The defendants have failed to demonstrate how anything in this sequence of events indicated to them that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school. On these facts, the defendants did not have a reasonable suspicion to justify the search at its inception.

The defendants further argue that G.C.'s claim must fail because he did not suffer any harm as a result of the search; specifically, they point to the fact that he "was not disciplined based on the contents of his phone." Appellees Br. at 28. However, the issue of injury and compensable damages has not been developed before us. Even if G.C. cannot establish compensable damages, he may be entitled to nominal damages. See Carey v. Piphus, 435 U.S. 247, 266 (1978) ("[W]e believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury."); Slicker v. Jackson, 215 F.3d 1225, 1231 (11th Cir. 2000) ("We have held unambiguously that a plaintiff whose constitutional rights are violated is entitled to nominal damages even if he suffered no compensable injury."); Briggs v. Marshall, 93 F.3d 355, 360 (7th Cir. 1996) (recognizing that nominal damages are available for Fourth Amendment claims). Moreover, punitive damages sometimes attach to an award comprised solely of nominal damages. See Romanski v. Detroit Entm't, L.L.C., 428 F.3d 629, 645 (6th Cir. 2005) ("But this is a § 1983 case in which the basis for the punitive damages award was the plaintiff's unlawful arrest and the plaintiff's economic injury was so minimal as to be essentially nominal."). Therefore, we remand to the district court to address the issue of injury and damages in the first instance.

Conclusion : We therefore REVERSE the district court's grant of summary judgment as to G.C.'s Fourth Amendment claim based on the September 2009 search.

SUFFICIENCY OF THE EVIDENCE

IT IS FOR THE TRIAL COURT, AS FACT FINDER, TO JUDGE THE CREDIBILITY OF WITNESSES AND THE WEIGHT TO BE GIVEN TO THEIR TESTIMONY, TO DRAW REASONABLE INFERENCES FROM THE TESTIMONY, AND TO RESOLVE ANY EVIDENTIARY CONFLICTS.

¶ 15-3-1. **In the Matter of G.L.R. Jr.**, MEMORANDUM, No. 04-14-00708-CV, 2015 WL 4478052 (Tex.App.-San Antonio, July 22, 2015).

Facts: The evidence shows the complainant parked his vehicle, a Ford F–250 pickup truck, outside a hotel where he was staying. The next morning, the complainant discovered his truck was missing and called police.

Later that morning, at an apartment complex, a maintenance man, Nathaniel Ortiz, saw a truck idling in the parking lot. He testified he saw two men inside the truck. Because the men were wearing fluorescent work vests, Mr. Ortiz believed the men might be working on the property; he initially did not believe they were out of place. However, approximately thirty minutes later, he saw the same two men exiting the property. At that time, they were no longer wearing the vests; rather, one man was wearing a muscle shirt and the other was wearing a t-shirt. Mr. Ortiz informed Terry Gleason, a maintenance supervisor at the same apartment complex, about the men's actions.

Mr. Gleason testified he also saw the two men in the idling truck. He saw the men exit the vehicle and walk away. Suspicious, Mr. Gleason called Detective Richard Buchanan, a police officer Mr. Gleason had dealt with in the past. Detective Buchanan came to the complex at Mr. Gleason's request. When he arrived, the detective ran the truck's license plate number and discovered the truck had been reported stolen. The truck was the one reported stolen by the complainant. Detective Buchanan took a description of the two men from Mr. Gleason, which he recalled in court as two Hispanic males, one five-two and the other five-five, both approximately 120–125 pounds, with brown hair and brown eyes. During a search of the truck, Detective Buchanan found the stub of a "Black & Mild" cigar on the floorboard of the truck. He also found two fluorescent traffic vests, one in the back seat of the truck, the other on the ground near the truck.

While Detective Buchanan was conducting his investigation, Mr. Ortiz alerted Mr. Gleason that the two men who had been in the truck were walking along outside the gate of the complex, watching the officers. Mr. Gleason then saw the two men standing about a half a block away, still watching, and told Detective Buchanan. Mr. Gleason got in his vehicle and Detective

Buchanan followed him, heading toward the two men. At that time, the men fled. Detective Buchanan pursued and arrested the two men. When he searched the men, Detective Buchanan found a two pack of "Black & Mild" cigars with one of the cigars missing. According to the detective, officers brought Mr. Ortiz to where the two men were being detained and he was able to positively identify them as the men who had been sit-ting in the idling truck.

Mr. Gleason affirmatively identified the fleeing men as those he saw sitting in the truck that morning. Mr. Gleason stated in court that the suspects were wearing a white t-shirt and a white muscle shirt, and they were both wearing khaki bottoms—one man was wearing pants, the other man, shorts.

In court, neither Mr. Gleason nor Mr. Ortiz could positively identify G.L.R. Jr. as the same man who had been sitting in the truck the day of the theft. However, they both positively stated that one of the persons who was arrested that day was one of the men they saw sitting in the truck. Detective Buchanan identified G.L.R. Jr. as the person he arrested for theft and as the person identified at the time by Mr. Gleason and Mr. Ortiz as one of the men who had been sitting in the truck the day of the theft.

Ultimately, the trial judge found G.L.R. Jr. engaged in delinquent conduct by commit-ting theft. After disposition, G.L.R., Jr. perfected this appeal.

As noted above, G.L.R. Jr. raises one point of error, challenging the sufficiency of the evidence. Specifically, he contends the evidence was insufficient to establish he was the perpetrator of the offense. In other words, G.L.R. Jr. claims the evidence is insufficient to prove identity.

Held: Affirmed

Opinion: To establish G.L.R. Jr. committed the offense of theft as alleged in the petition, the State had to prove beyond a reasonable doubt G.L.R. Jr. appropriated the truck without the owner's effective consent with the intent to deprive the owner of the truck. See Tex. Penal Code Ann. § 31.03(a), (b)(1) (West 2011).FN1 As we have noted, G.L.R. Jr. contends the State failed to prove he was the one who took the truck, i.e., the State failed to prove identity. He specifically points out that neither eyewitness—Mr. Ortiz or Mr. Gleason—was able to identify him in court as the person they saw in and around the truck on the day of the theft. However, the identity of an alleged perpetrator may be proven by circumstantial evidence, and may, in fact, be proven by inferences; direct evidence is not required. See Orellana, 381 S.W.3d at 653; In re C.D.S., No. 10–07–00226–CV, 2008 WL 257238, at *3 (Tex.App.—Waco Jan. 30, 2008, no pet.)(mem.op.). Proof by circumstantial evidence is not subject to a more rigorous standard of proof, and circumstantial evidence alone may be sufficient to establish guilt. Carrizales v. State, 414 S.W.3d 737, 742 (Tex.Crim.App.2013).

FN1. It is undisputed the value of the truck was more than $1,500.00, but less than $20,000. Accordingly, the offense charged by the State is a state jail felony. See TEX. PENAL CODE ANN. § 31.03(e)(4)(a).

As detailed above, the evidence established two witnesses—Mr. Ortiz and Mr. Gleason—saw G.L.R. Jr. in the vehicle soon after it was stolen. Although neither witness was able to identify G.L.R. Jr. in court, Detective Buchanan specifically testified Mr. Gleason told him on the day of the theft that earlier that day, he had seen two men sitting in the truck, but they had left the property. Mr. Gleason also informed the detective the men were nearby and watching while officers processed the truck; he pointed them out to the detective. When the detective caught up to the men, G.L.R. Jr. was one of the men who had been pointed out by Mr. Gleason. Moreover, after he apprehended G.L.R. Jr. and his companion, Detective Buchanan testified Mr. Ortiz was able to identify G.L.R. Jr. at the scene as one of the men he had seen that morning in the stolen truck. In court, Detective Buchanan identified G.L.R. Jr. as one of the men he apprehended and arrested. Additionally, G.L.R. Jr. matched the general description provided by Mr. Gleason—Hispanic male, between 5'2"> and 5'5", approximately 120–125 pounds, with brown hair and brown eyes. Mr. Ortiz's description in court included a recollection that the men were wearing fluorescent vests, and two such vests were found in or near the truck.

In addition, the evidence establishes G.L.R. Jr. fled when he noticed Mr. Gleason and the detective looking at him and his companion. See Devoe v. State, 354 S.W.3d 457, 470 (Tex.Crim.App.2011) (quoting Alba v. State, 905 S.W.2d 581, 586 (Tex.Crim.App.1995) (holding that flight is admissible as circumstance from which inference of guilt may be drawn)); Clayton v. State, 235 S.W.3d 772, 780 (Tex.Crim.App.2007) (holding that fact finder may draw inference of guilt from circumstance of flight). Finally, Detective Buchanan found the stub of a "Black & Mild" cigar in the stolen truck. When the detective apprehended G.L.R. Jr. and his companion, a two-pack of "Black & Mild" cigars was found on G.L.R. Jr.'s companion; the pack was missing a single cigar.

Based on the evidence—viewed in the light most favorable to the verdict—we hold the evidence is legally sufficient to support the trial court's finding that G.L.R. Jr. committed the offense of theft. See Mayberry, 351 S.W.3d at 509. It was for the trial court, as fact finder, to judge the credibility of witnesses and the weight to be given to their testimony, to draw reasonable inferences from the testimony, and to

resolve any evidentiary conflicts. See Orellana, 381 S.W.3d at 653. Given the testimony, we hold the trial court had sufficient evidence to find G.L.R. Jr. committed theft, i.e., stole the truck. Accordingly, we overrule G.L.R. Jr.'s sole point of error.

Conclusion: Based on our analysis of the evidence within the prism of the applicable standard of review, we hold the evidence was sufficient to support the trial court's finding of delinquency based on the offense of theft. We therefore affirm the trial court's judgment.

TRIAL PROCEDURE

TO OBTAIN A JURY INSTRUCTION UNDER ARTICLE 38.23(A) (EVIDENCE NOT TO BE USED), THE DISPUTED FACT PROPOSED TO THE JURY MUST BE ONE THAT AFFECTS THE DETERMINATION OF THE LEGAL ISSUE.

¶ 15-3-4. **In the Matter of T.L.R.**, MEMORANDUM, No. 04-14-00596-CV, 2015 WL 5157031 (Tex.App.-San Antonio, 9/2/15).

Facts: Jonathan Tamayo, a security guard, was in his car patrolling The Vineyard Shopping Center when he saw two juvenile males walking from behind Gabriel's Liquor. Tamayo said he was wearing a blue polyester uniform, with a security badge and his name tag on his chest, and a patch on each arm. A placard on Tamayo's car read Texas Lawman Security.

Tamayo testified he identified himself as security, approached the boys in a casual, nonconfrontational manner, and asked what they were doing. He said both boys were cordial, and responded that they were passing through to "do some tricks." One of the boys (later identified as appellant) had a bicycle, and both carried backpacks. Tamayo said he told the boys they could not do tricks on the property. According to Tamayo, the boys were courteous and compliant; they said thank you; and then they walked away. Tamayo stated he continued his patrol around the property, and about an hour later he saw the two boys again. This time, Tamayo saw appellant doing tricks on his bike in a small drainage culvert behind Target. Tamayo said he asked the boys for identification. He testified the boys were not required to respond and they were free to leave. Tamayo said the other boy was calm, but appellant was "fidgety ... kind of moving side to side [and] pacing back and forth." After appellant handed Tamayo his school identification, Tamayo asked both boys to sit on the curb. Because appellant was acting nervous, Tamayo asked the boys whether "they had anything that would be considered illegal to any Texas peace officer on them." According to Tamayo, appellant asked for "clarification," and Tamayo told him "in layman's terms if he had anything illegal on him that a cop would think that—you know, a police officer would think was illegal." Appellant responded that he had a knife in his backpack, and he began to reach for the backpack. Tamayo said he told appellant not to reach for the backpack, and appellant then admitted he also had brass knuckles in the backpack. Tamayo said he told appellant he would retrieve the item(s) from the backpack and he asked appellant if he had a problem with that, to which appellant responded "no."

Tamayo said he retrieved the brass knuckles, which contained a concealed switchblade. Tamayo said he then called the San Antonio Police Department and asked that the patrol officer assigned to the area call him. Tamayo testified that when Officer James Van Kirk called him, he told the officer he had informed the boys they could not do tricks and had to leave the property, and about the knife/brass knuckles. Tamayo said the officer told him to "[g]o ahead and hook them up." Tamayo said he then handcuffed the boys, placed appellant's backpack on the hood of his car, and placed the knife/brass knuckles on the passenger seat of his car. A few minutes later, Officer Van Kirk arrived at the scene, and Tamayo said he gave the officer the knife/brass knuckles.

Officer Van Kirk testified he was dispatched to a location where a security officer had detained two juvenile males who had been asked to leave the property, but refused to do so. Van Kirk said that, without knowing more, this was a call for criminal trespass, which is an arrestable offense. Van Kirk thought he saw both backpacks in front of the boys, within their immediate physical control. Van Kirk testified he placed both boys under arrest for criminal trespass, and then he asked both boys what was inside their backpacks. Officer Van Kirk said the boys "freely admitted ... that inside of their backpacks were illegal items such as drug paraphernalia, marijuana and brass knuckles with a knife." Van Kirk stated he asked the boys what was inside their backpacks because Tamayo had told him the boys made the statement about the weapon to him. Van Kirk said he conducted a search incident to arrest, and found the knife/brass knuckles inside appellant's backpack. Van Kirk said he handcuffed both boys, but he could not remember whether they were already handcuffed when he arrived at the scene and he did not remember telling Tamayo to handcuff them.

The last witness to testify was D.T., the other boy who was with appellant. D.T. testified he had marijuana with him at the time, but he did not know if appellant had anything with him. D.T. said Tamayo asked them what they were doing, but he did not ask them to leave during the first encounter. FN1 D.T. said Tamayo asked them to leave during the second encounter, and began to question them. According to D.T., appellant was acting "normal" and he was not nervous. However, D.T. later said appellant was acting nervous and fidgeting around. D.T. could not remember what appellant said when Tamayo asked what was in his backpack, but he admitted Tamayo found "like paraphernalia and a weapon." D.T. said he did not feel free to leave prior to

being handcuffed. D.T. said Officer Van Kirk also searched the backpacks, which were on the hood of Tamayo's car. D.T. did not see where Tamayo put the knife/brass knuckles after retrieving them from the backpack, but he remembered that Officer Van Kirk pulled them from the backpack.

FN1. On cross-examination, D.T. said Tamayo did ask them to leave during the first encounter.

Held: Affirmed

Memorandum Opinion: In his second and final issue on appeal, appellant asserts the trial court erred by denying his request for the following jury charge:

You are instructed that under our law as applicable to this case any search of [appellant] or his property without a search warrant or the voluntary consent of [appellant] to such search without probable cause or other legal justification would not be lawful. Therefore, in this case, should you fail to find from the evidence beyond a reasonable doubt or if you have a reasonable doubt thereof, that consent to search [appellant] and his property was granted voluntarily and understandingly given or that there was other legal justification for such search then such search would be unlawful and you would wholly disregard the same and any evidence obtained as a result thereof.

Do you find, from the evidence, beyond a reasonable doubt, that the search of [appellant] and the seizure of the knuckles was lawful?

"No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." Tex.Code Crim. Proc. Ann. art. 38.23(a) (West 2005).

"In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained." Id.

A defendant's right to the submission of jury instructions under article 38.23(a) is limited to disputed fact issues that are material to his claim of a constitutional or statutory violation which would render evidence inadmissible. Madden v. State, 242 S.W.3d 504, 509–10 (Tex.Crim.App.2007). The terms of the statute are mandatory, and when an issue of fact is raised, a defendant has a statutory right to have the jury charged accordingly. Id. at 510. A defendant must satisfy the following three requirements before he is entitled to the submission of a jury instruction under article 38.23(a): (1) the evidence heard by the jury must raise an issue of fact; (2) the evidence on that fact must be affirmatively contested; and (3) the contested factual issue must be material to the lawfulness of the challenged conduct in obtaining the evidence. Id. If there is no disputed factual issue, the legality of the conduct is determined by the trial court as a question of law. Id. Also, if other undisputed facts are sufficient to support the lawfulness of the challenged conduct, then the disputed fact issue is not submitted to the jury because it is not material to the ultimate admissibility of the evidence. Id. The disputed fact must be an essential one in deciding the lawfulness of the challenged conduct. Id. at 511.

During the charge conference and on appeal, appellant asserts he was entitled to the requested instruction because he satisfied the three requirements. First, appellant contends the fact issue raised by the evidence is whether the knife/brass knuckles was still in appellant's backpack (as stated by Officer Van Kirk) or was it out of appellant's reach on the passenger seat of Tamayo's car (as stated by Tamayo). Second, appellant asserts the evidence on this fact was affirmatively contested based on defense counsel's two objections to the admission of the weapon on the grounds that testimony about the weapon's location was in conflict.FN2 Third, appellant contends the contested fact issue was material because appellant's confession was not voluntarily made; therefore, Tamayo had no right to seize the weapon. As to this final requirement, appellant asserts that if Tamayo's version of events is true, then the weapon was illegally placed in his car and it posed no threat to anyone's safety. On the other hand, appellant asserts that if Officer Van Kirk's version is true, then the weapon was in appellant's backpack and within appellant's reach; therefore, Van Kirk had the right to conduct a search incident to the criminal trespass arrest.

FN2. The two objections were raised during trial when the State asked to admit into evidence the evidence envelope that contained the knife/brass knuckles (Exhibit 2) and the knife/brass knuckles (Exhibit 3). The first time defense counsel objected, counsel took Officer Van Kirk on voir dire and elicited the following: Van Kirk could not remember if the boys were already in handcuffs when he arrived; he handcuffed the boys when he decided to arrest them; he found the knife/brass knuckles in the course of searching the backpack and he "did not believe" the weapon was given to him by someone else; and he thought both the boys and Tamayo told him the weapon was in the backpack. After this testimony, defense counsel objected to the admissibility of the evidence "because of the direct conflict between the two individuals that have testified on where this item was found and how this officer came into possession of it." The trial court overruled the objection to admission of the knife/brass

knuckles. Later in trial, the State asked to publish Exhibits 2 and 3 and the trial court asked for objections. Defense counsel did not object to Exhibit 3. Counsel's objection to Exhibit 2, the envelope, was "based upon the conflict of the testimony. We candidly don't know where this officer got the evidence."

In this case, although Tamayo's testimony and Officer Van Kirk's testimony about the location of the backpack when it was searched conflicted, this factual issue was not material to the lawfulness of the search of the backpack and seizure of the knife/brass knuckles. Appellant does not contest the voluntariness of his statement that he had a knife in his backpack, and we have already concluded his statement regarding the brass knuckles was voluntary. Even if appellant's statement about the brass knuckles should have been excluded, appellant makes no argument on appeal that Tamayo was not justified in searching the backpack based on appellant's voluntary statement that there was a knife in the backpack.

As to Officer Van Kirk, he testified the backpack was in front of and within appellant's immediate control, and he testified he conducted a search of the backpack incident to the arrest of appellant. The justification for permitting [a warrantless search incident to arrest] is (1) the need for officers to seize weapons or other things which might be used to assault [a]n officer or effect an escape, and (2) the need to prevent the loss or destruction of evidence. State v. Granville, 423 S.W.3d 399, 410 (Tex.Crim.App.2014) (internal quotations omitted). A search is incident to arrest only if it is "substantially contemporaneous" with the arrest and is confined to the area within the immediate control of the arrestee. Id. Therefore, even if appellant's statement about the brass knuckles should have been excluded, under Officer Van Kirk's version of events, he was justified in conducting a warrantless search of the backpack incident to appellant's arrest based on appellant's voluntary statement that there was a knife in the backpack and the backpack was within appellant's immediate control.

"[T]o obtain a jury instruction under Article 38.23(a), the disputed fact must be one that affects the determination of the legal issue." Madden, 242 S.W.3d at 517. The legal question here is whether there was probable cause or justification to search appellant's backpack and, therefore, to seize the knife/brass knuckles. If the justification for the search of the backpack—conducted by either Tamayo or Officer Van Kirk—rested solely on the backpack's location, then a dispute about that fact would require a jury instruction. But, if the search was justified under either version of events, then the dispute over the location of the backpack when it was searched need not be submitted to the jury. Here, the latter is the case; therefore, no fact issue material to whether the search was justified was raised. Accordingly, the trial court did not err by refusing appellant's requested instruction. See id. at 517–18 ("Of course, a trial judge might err on the side of caution and submit a jury instruction even when the disputed fact does not appear to be outcome determinative, because appellate courts might disagree on the legal question of sufficient facts to support reasonable suspicion. But it would be absurd to say that a factual dispute about whether the defendant was wearing green socks or red socks, or whether he was going 61 m.p.h. or 65 m.p.h. in a 55 m.p.h. zone, requires a jury instruction. Neither of these disputed facts are material, much less crucial, to the determination of the legal question [of whether the officer had reasonable suspicion to detain defendant].").

Conclusion: We overrule appellant's issues on appeal and affirm the trial court's judgment.

WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT

A DISCRETIONARY TRANSFER ORDER WILL BE CONSIDERED FACTUALLY AND LEGALLY SUFFICIENT WHEN THE JUVENILE COURT PROVIDES A "SURE-FOOTED AND DEFINITE BASIS" FOR ITS DECISION.

¶ 15-3-5. **Rodriguez v. State**, No. 04-15-00108-CR, --- S.W.3d ----, 2015 WL 5438997 (Tex.App.-San Antonio, 9/16/15).

Facts: Rodriguez was born June 1, 1996, and was living with the victim, Adriana Terry, at the time she was murdered. Although Terry and Rodriguez were not biologically related, Rodriguez's mother had dated Terry's son. Terry was a grandmother figure to Rodriguez, and even had temporary conservatorship at one point during his childhood.

As a result of his mother's drug habit, and the accompanying unstable family life, Rodriguez lived with Terry at several points in his life. During those times, Terry enrolled Rodriguez in four different schools. On the day she was murdered, Terry had withdrawn Rodriguez from Premier Academy and was enrolling him at Madison High School. Gema Ramirez, Terry's niece, explained that as a result of Terry moving back to Benavides, Texas, Rodriguez was moving back to his mother's house.

Around 2:00 p.m. on September 12, 2012, Ramirez, who also lived at Terry's home, found a damaged bathroom door, partially off the hinges, and Terry in the bathroom bleeding profusely from a skull fracture. Terry also had multiple abrasions, contusions, and stab wounds to her abdomen. Terry was still alive, but could not speak and was experiencing trouble breathing. EMS was contacted and Terry was transported to hospital where she died several hours later from cranial cerebral injuries, or skull fractures.

When police arrived to investigate, they found an aluminum baseball bat near the entry to the bathroom, along with a knife blade and knife handle. The bat and the knife blade were both bloody and located approximately three feet from where Terry was found. Rodriguez arrived while police were investigating the crime scene. Witnesses reported Rodriguez walked up the middle of the street and straight toward the house, disregarding the obvious chaos of the scene. Ramirez approached him and asked him where he had been. Rodriguez simply responded that he "went to eat." Officer Teresa Martin stopped Rodriguez from entering the house. She questioned him, but he was unresponsive. Rodriguez looked at the front door of Terry's home, and stated "I did it."

Rodriguez was detained following his statement. Officer Tim Bowen drove Rodriguez to youth services, to the magistrate's office to be magistrated, and then returned Rodriguez to youth services. While on a restroom break, Rodriguez asked Officer Bowen if he could talk to him. Rodriguez again confessed, "I did it," telling the officer that he wanted to make his father proud. After further questions, Officer Bowen asked Rodriguez "if he was talking about what happened to his grandmother, and [Rodriguez] said, 'I did it because I love my daddy.' " Officer Bowen inquired whether his father told him to do it, and Rodriguez responded in the negative.

Rodriguez was charged with murder. On October 24, 2012, the State filed its original petition for waiver of jurisdiction and discretionary transfer to criminal court. In the time leading up to the transfer hearing, Bexar County Juvenile Probation Officer Traci Geppert attempted to obtain a psychological evaluation of Rodriguez. However, based on the advice of counsel, Rodriguez refused to participate in the evaluation.

After a hearing, the juvenile trial court found probable cause to believe that Rodriguez committed the offense. The court concluded that due to the serious nature of the offense and for protection of the public, the State's petition for transfer to criminal court should be granted.

After his motion to suppress was overruled by the trial court, Rodriguez entered a plea of guilty to murder in district court. He was sentenced to thirty years' confinement in the Institutional Division of the Texas Department of Criminal Justice and assessed a fine in the amount of $1,000.00.

On appeal, Rodriguez contends that the juvenile court had insufficient evidence to transfer his case to criminal court.

Rodriguez argues the evidence was factually insufficient. He also contends the court's transfer order used boilerplate language, without the required case-specific findings, to support the juvenile court's waiver of jurisdiction.

Held: Affirmed

Opinion: Texas Family Code section 54.02(a)(3) provides that prior to transferring a juvenile to criminal court for prosecution, and after a full investigation and a hearing, the juvenile court must determine (1) probable cause exists to believe the juvenile committed the alleged offense and (2) the seriousness of the offense, the background of the child, and the welfare of the community require criminal prosecution. See TEX. FAM.CODE ANN. § 54.02(a)(3) (West 2014); see also Gonzales v. State, No. 04–14–00352–CR, ––S.W.3d ––, ––––, 2015 WL 2124773, at *3 (Tex.App.–San Antonio May 6, 2015, pet. ref'd).

At the juvenile court, the State bears the burden of proving, by a preponderance of the evidence, that waiver of the juvenile court's jurisdiction is appropriate. Moon v. State, 451 S.W.3d 28, 40–41 (Tex.Crim.App.2014); Faisst v. State, 105 S.W.3d 8, 11 (Tex.App.–Tyler 2003, no pet.). The juvenile court's order must show that the 54.02(f) factors were considered in making the determination. Moon, 451 S.W.3d at 41–42. "If the juvenile court waives jurisdiction, it is required to 'state specifically in the order its rea-sons for waiver and certify its action, including the written order and findings of the court.' " Guerrero v. State, No. 14–13–00101–CR, ––S.W.3d ––, ––––, 2014 WL 7345987, at *2 (Tex.App.–Houston [14th Dist.] Dec. 23, 2014, no pet.)(mem.op.) (quoting TEX. FAM.CODE ANN. § 54.02(h)); accord Moon, 451 S.W.3d at 38.

Standard of Review

In Moon, 451 S.W.3d at 47, the Court of Criminal Appeals set forth two questions in determining whether the juvenile court abused its discretion:

(1) did the [juvenile] court have sufficient information upon which to exercise its discretion; and

(2) did the [juvenile] court err in its application of discretion? A traditional sufficiency of the evidence review helps answer the first question, and we look to whether the [juvenile] court acted without reference to any guiding rules or principles to answer the second. Id. (alterations in original); accord Gonzales, –– S.W.3d at ––––, 2015 WL 2124773, at *4.

The court warned, "As long as the appellate court can determine that the juvenile court's judgment was based upon facts that are supported by the record, it should refrain from interfering with that judgment." Moon, 451 S.W.3d at 46

Facts Presented Before the Juvenile Court

Our review begins with an analysis of the factors outlined in section 54.02(f) of the Texas Family Code. See TEX. FAM.CODE ANN. § 54.02(f).

1. Whether Alleged Offense Was Against a Person or Property

We first look at "whether the alleged offense was against person or property." Id. § 54.02(f)(1). Here, the alleged offense was the murder of Adriana Terry, a first-degree felony.

At the crime scene, prior to any questions asked by the officer, Rodriguez told Officer Martin, "I did it." Officer Martin explained that he understood Rodriguez to be saying he caused Terry's injuries. We note Rodriguez volunteered this information prior to being identified as a suspect and while staring at the front door of Terry's home in the midst of the crime scene investigation.

After Rodriguez was magistrated, Rodriguez requested to speak to Officer Bowen and Rodriguez again made the statement, "I did it." Officer Bowen confirmed Rodriguez was confessing to the injuries suffered by Terry. See Gonzales, —— S.W.3d at ——, 2015 WL 2124773, at *4 (holding defendant's confession to murder met factor 54.02(f)(1)); see also Bleys v. State, 319 S.W.3d 857, 860 (Tex.App.–San Antonio 2010), abrogated by Moon v. State, 451 S.W.3d 28 (Tex.Crim.App.2014) (confessing to aggravated assault).

Rodriguez struck Terry with a baseball bat and inflicted stab wounds to her abdomen. The use of multiple weapons is an indication of the seriousness of the offense. See Garcia v. State, No. 09–10–00020–CR, 2011 WL 379117, at *7 (Tex.App.–Beaumont Feb. 2, 2011, pet. ref'd) (mem. op., not designated for publication) (finding a beating that led to death was extremely brutal due in part to the use of both a knife and chair spindles). This was an offense against the person and as such should be given greater weight in favor of transfer. See TEX. FAM. CODE ANN. § 54.02(f); Moon, 451 S.W.3d at 38.

2. Sophistication and Maturity of the Child

The second factor is "the sophistication and maturity of the child." TEX. FAM. CODE ANN. § 54.02(f)(2); Faisst, 105 S.W.3d at 11.

Probation Officer Traci Geppert met with Rodriguez twice a week for three months leading up to his transfer hearing. In creating her Discretionary Transfer Hearing Report, Geppert interviewed Rodriguez's parents, school officials, Texas Department of Criminal Justice officials, Texas Juvenile Justice Department officials, and detention officials; she also reviewed the police reports and district attorney's file. Rodriguez's case was also re-viewed by Geppert's supervisor and by the staffing committee.

Rodriguez was sixteen and a half years old at the time of his detention, and he dis-played behavior in line with his age. Geppert testified Rodriguez was sophisticated and mature and, at times, even felt he was manipulating the conversation. Rodriguez was able to understand the seriousness of the charge against him and the difference between a juvenile and a criminal proceeding. See Gonzales, —— S.W.3d at ——, 2015 WL 2124773, at *4 (citing understanding of proceedings and charge as evidence of sophistication and maturity). Geppert relayed Rodriguez was able to communicate with the employees, teachers, and other detainees at the detention center. See Matter of S.E.C., 605 S.W.2d 955, 958 (Tex.Civ.App.–Houston [1st Dist.] 1980, no writ) (holding psychiatrist's description of appellant as "cooperative, candid, and very articulate" supported finding that appellant was sophisticated). Geppert explained,

I believe that he is sophisticated and mature enough. That he understands the information that has been provided to him. He understands the differences between the adult and the juvenile system regarding the allegations that have been made against him. I do believe [that] he's sophisticated and mature enough to stand trial as an adult.

Finally, Geppert opined Rodriguez's ability to understand and follow his attorney's direction not to participate in the psychological examination was further evidence that he was sophisticated and mature enough to capably assist his counsel.

3. Record and Previous History of the Child

We turn to the third factor—"the record and previous history of the child." TEX. FAM. CODE ANN. § 54.02(f)(3); Faisst, 105 S.W.3d at 11.

This was Rodriguez's first referral to the juvenile system in Bexar County. However, "a court does not abuse its discretion by finding the community's welfare requires transfer due to the seriousness of the crime alone, despite the child's background." Faisst, 105 S.W.3d at 11; accord McKaine v. State, 170 S.W.3d 285, 291 (Tex.App.–Corpus Christi 2005, no pet.)(op. on reh'g); see also In re M.A., 935 S.W.2d 891, 897 (Tex.App.–San Antonio 1996, no writ) (finding sufficient evidence to transfer the case from juvenile court to district court due to seriousness of the crime even absent a previous criminal record).

Although Rodriguez had no juvenile record, his previous history substantiates years fraught with problems. Rodriguez began abusing alcohol as early as seven years of age and started using marijuana at the age of nine. Geppert reported, due to his moving around between family members, Rodriguez attended at least twelve schools throughout his childhood. At his most recent school, Rodriguez was in trouble for not following directions, sleeping in class, not being redirected, and being unresponsive toward the

teachers. When the principal at this school intervened on one occasion, Rodriguez very nonchalantly responded, "I don't know what you're talking about." Rodriguez's troubling history, and lack of response to authority figures, support a finding that the juvenile system is not prepared to adequately protect the public and rehabilitate him.

4. Adequate Protection of the Public and Likelihood of Rehabilitation

The fourth factor we consider is "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)(4); Faisst, 105 S.W.3d at 11.

Geppert testified that although the resources of the juvenile system would be helpful to Rodriguez, he would soon "age out" of the system. Rodriguez was sixteen and a half at the time of the transfer hearing and the juvenile probation system would only retain jurisdiction until he turned nineteen. The only option besides adult sentencing would be determinate sentencing. Given the serious nature of the offense, and the short time available to the juvenile system, Geppert testified,

I don't feel that the juvenile probation department has the time nor the resources to work with [Rodriguez] based on his nature of the offense.

She explained that there was a huge need for rehabilitation and two and a half years simply was not sufficient. Geppert continued she also did not believe the public would be adequately protected if Rodriguez were left in the juvenile system. See Gonzales, ––– S.W.3d at ———, 2015 WL 2124773, at *5 (finding that the severity of the crime and the short time available to the juvenile system supported the trial court's transfer order); Faisst, 105 S.W.3d at 15 (finding that maintaining the jurisdiction of the juvenile system was not appropriate due to the severity of the offense which required a long period of supervision and probation).

5. Specific Factual Findings

Not only must the record substantiate the juvenile court's findings, but the juvenile court must make "case-specific findings of fact" with respect to the 54.02(f) factors. See Moon, 451 S.W.3d at 51. Here, after careful consideration of all the evidence presented, the juvenile court made the following findings:

1. Rodriguez was alleged to have committed murder under Section 19.02 of the Texas Penal Code.

2. Rodriguez was sixteen years old at the time of the transfer hearing.

3. Rodriguez was fourteen years or older but under seventeen years old at the time he is alleged to have committed the offense.

4. Rodriguez's mother resides in Bexar County.

5. No adjudication hearing has been conducted to this point.

6. The notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 were satisfied.

7. Prior to the hearing, the Court ordered a psychological examination, complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense; although Rodriguez refused to cooperate in the psychological examination, all other studies were completed.

8. The Court considered whether the offense was against person or property and found the offense was against a person.

9. The Court considered Respondent's sophistication and maturity and found him sophisticated and mature enough to be transferred into the criminal justice system; he understands the allegations, court proceedings, and possible consequences.

10. After considering the record and previous history of the child, the prospects of adequate protection of the public, and the likelihood of rehabilitation of the child by use of the procedures, services, and facilities currently available to the Juvenile Court, the Court found the Juvenile Court inadequate for the rehabilitation of the child while also protecting the public.

11. Following a full investigation and hearing, the Court found probable cause to believe the child committed the offense and that the seriousness of the offense, background of the child, and welfare of the community requires that the criminal proceedings move to Criminal District Court.

Conclusion: Based on a review of the entire record, we conclude the transfer order is factually and legally sufficient to uphold the juvenile court's finding that the case should be transferred to criminal court. After a hearing, with extensive cross-examination by defense counsel, the juvenile court's order clearly substantiates that the 54.02(f) factors were considered in the juvenile court's determination. See Moon, 451 S.W.3d at 40–41; Gonzales, ––S.W.3d at ———, 2015 WL 2124773, at *5; see also TEX. FAM.CODE ANN. § 54.02(h); Moon, 451 S.W.3d at 38.

Given the evidence in the record and the specific factual findings of the juvenile court, we cannot conclude that the juvenile court's determination to move the proceedings to criminal court was arbitrary or unreasonable. See Faisst, 105 S.W.3d at 12. To the contrary, the juvenile court provided a “sure-footed and definite basis” for its decision. Moon, 451 S.W.3d at 49.

Accordingly, we affirm the juvenile court's order and overrule Rodriguez's sole issue on appeal.

ROBERT O. DAWSON
JUVENILE LAW INSTITUTE

29TH ANNUAL
JUVENILE LAW CONFERENCE

2016

MONDAY-WEDNESDAY
FEBRUARY 22-24

WYNDHAM RIVERWALK
SAN ANTONIO, TEXAS

IMPORTANT DATES

FEBRUARY 1

Last day to receive discount hotel rate.

FEBRUARY 1

Last day to register and pay to receive early-bird discount. If you register or pay after this date, the onsite fee will apply.

FEBRUARY 5

Last day to cancel and receive partial refund.

CONFERENCE, REGISTRATION, AND SOCIAL EVENTS AT A GLANCE

SUNDAY, FEBRUARY 21

4:00 pm – 5:30 pm	Registration
5:30 pm	Social Events

MONDAY, FEBRUARY 22

7:30 am – 5:00 pm	Registration
8:55 am – 4:45 pm	Conference
5:00 pm	Section's Annual Meeting and Election of Officers
5:20 pm	Multi-Discipline Caucus

TUESDAY, FEBRUARY 23

8:00 am – 4:30 pm	Registration
8:30 am – 5:15 pm	Conference
5:15 pm	TBLS Answers Your Questions
6:00 pm	Social Events

WEDNESDAY, FEBRUARY 24

8:30 am – 12:15 pm	Registration
8:30 am – 12:15 pm	Conference

CONFERENCE ATTENDEE SCHOLARSHIPS AVAILABLE

The Texas Juvenile Law Section is providing scholarships for conference registration to deserving attorneys actively engaged in the field of juvenile justice who demonstrate a financial need. To be considered for a scholarship, an applicant must submit a written request:

1. Verifying the applicant is a licensed attorney;
2. Verifying the applicant is a member of the Juvenile Law Section;
3. Explaining the applicant's involvement in the field of juvenile justice; and
4. Demonstrating financial need.

A limited number of scholarships will be awarded, in the order received, to qualified applicants meeting all considerations above. The deadline to submit a request is **Friday, January 15** and must be submitted, along with a completed registration form, to **Monique.Mendoza@tjjd.texas.gov**. Incomplete or late requests will not be considered. Granting of scholarship requests is not guaranteed. Individuals who submit a request will receive written notification of awarded scholarships by Friday, January 22 so appropriate travel arrangements may be made in a timely manner.

These scholarships are limited to the conference registration fee only. Scholarship recipients will be required to pay for their own travel arrangements and all other expenses related to his or her participation in and attendance to the conference. Questions regarding the scholarships may be directed to Monique Mendoza at 512.490.7913.

INTERESTED IN BECOMING AN EXHIBITOR/SPONSOR?

This conference brings together over 400 juvenile justice professionals statewide. This year, the Juvenile Law Section is offering a variety of opportunities for your organization to take part in the 29th Annual Juvenile Law Conference through exhibiting at or sponsoring this great conference. Examples include registration sponsorships to gain high visibility (i.e., totes, lanyards, etc.), hospitality sponsorships, travel scholarships, or exhibitor booths. If you are interested or need additional details, please feel free to contact **Susan Clevenger** at **281.580.4501** or **gtclevenger@yahoo.co**. Don't miss out on this great opportunity for exposure.

CONTINUING EDUCATION CREDITS

The *Juvenile Law Section* has requested continuing education credits from the following agencies, organizations or associations for approximately 15.75 hours (including 4.5 hours of ethics): State Bar of Texas, Texas Center for the Judiciary, Texas Association of Counties, Texas Juvenile Justice Department and TCOLE.

As the Conference approaches, you may contact **Monique Mendoza** at **512.490.7913** or online at **juvenilelaw.org/CLE.htm** to see how many hours are approved.

VIDEO DOWNLOADS FREE TO ATTENDEES

Online videos of the presentations will be available to registrants 6-8 weeks after the conference on TexasBarCLE. **A VALID email address must be included on the registration form so we may alert you when these benefits are available and how to access them.** (Note: Presentation lengths may vary from times that were advertised.)

PERSONS WITH DISABILITIES

Persons with disabilities who plan to attend this conference and are in need of auxiliary aids or services should contact **Monique Mendoza** at **512.490.7913** at least seven (7) working days prior to the conference so that appropriate arrangements may be made.

CONFERENCE QUESTIONS AND CORRESPONDENCE

Juvenile Law Section
c/o Monique Mendoza
P.O. Box 12757

Austin, Texas 78711

PHONE: 512.490.7913
FAX: 512.490.7919
EMAIL: Monique.Mendoza@tjjd.texas.gov

SCHEDULE OF EVENTS

15.50 HOURS (INCLUDING 5.00 HOURS OF ETHICS)

SUNDAY, FEBRUARY 21

4:00 pm **Registration (4:00 pm - 5:30 pm)**

5:30 pm **Social Events**

MONDAY, FEBRUARY 22

6.50 HOURS (INCLUDING 2.75 HOURS OF ETHICS)

7:30 am **Registration**

The registration table will be open throughout the duration of the conference.

8:15 am **Breakfast Buffet** (provided)

8:55 am **Welcoming Remarks**

Riley Shaw, Chair-Elect
Juvenile Law Section

9:00 am **KEYNOTE ADDRESS**
The State of Texas v. Cameron Moon:
Ethical Issues in Assessing Whether Youth Should be Certified (1.00 Hour Ethics)

D. Christene Wood and Jack Carnegie
Appellate Counsel for Cameron Moon
Houston, Texas

10:00 am **BREAK**

10:15 am **How to Handle Certification Hearings** (0.50 Hour)

Kameron Johnson, Chief Juvenile Public Defender
Austin, Texas

10:45 am **Determinate Sentence** (0.75 Hour)

Ryan Mitchell, Attorney at Law
Houston, Texas

11:30 am **Lunch** (on your own)

1:00 pm **Title TBD** (0.75 Hour)

Brad Schuelke, Assistant Attorney General
Paul Singer, Assistant Attorney General
Office of the Attorney General
Austin, Texas

1:45 pm **Chapter 55: Ethical Issues When Dealing with an Incompetent Youthful Offender** (0.50 Hour Ethics)

Bill Cox, Deputy Public Defender
El Paso County Public Defender's Office
El Paso, Texas

2:15 pm **Break**

2:30 pm **Police Interactions with Juveniles** (1.00 Hour)

The Honorable Pat Garza
Associate Judge, 386th District Court
San Antonio, Texas

3:30 pm **Ethics: Cognitive Bias in Photo Line Ups** (1.25 Hour Ethics)

Mike Corley, Chief
Brownwood Police Department

Debbie Jones, Victims Advocate

4:45 pm **Adjourn**

5:00 pm **Juvenile Law Section Annual Meetings and Election of Officers**

5:20 pm **Multi-Disciplinary Caucus**
The Juvenile Law Section will host individualized caucuses based on your discipline for an opportunity to set up a network to discuss best practices, current issues, and share trends within the scope of your functional area. Each caucus is scheduled to last approximately one hour.

Prosecutorial Caucus
[Facilitated by Riley Shaw]

Defense Caucus
[Facilitated by Frank Adler]

Judicial Caucus
[Facilitated by Laura Parker]

Probation/State Agency Caucus
[Facilitated by James Williams]

TUESDAY, FEBRUARY 23

6.50 HOURS (INCLUDING 0.75 HOUR OF ETHICS)

7:45 am **Breakfast Buffet** (provided)

8:30 am **TJJD: Intake, MLOS, Placement, Parole, Regionalization, and Other Initiatives** (0.75 Hour)

Jill Mata, General Counsel
Texas Juvenile Justice Department
Austin, Texas

9:15 am **KEYNOTE ADDRESS**

The Thin Blue Line: Why Brady Matters (0.75 Hour)

Speaker TBA

10:00 am **Break**

10:15 am **In the Wake of Michael Morton Brady v. Maryland & Texas Discovery**

Professor Geary Reamey
St. Mary's University School of Law
San, Antonio, Texax

11:00 am **Synthetics360: Latest Trends, Court Rulings, Detection and Testing** (0.75 Hour)

Don Flanary, Attorney at Law
San Antonio, Texas

11:45 am **Lunch** (on your own)

1:15 pm **Investigating the Case: Your Ethical Duty to Know What's Going On** (0.75 Hour Ethics)

Robert James Herrera
Attorney at Law
Dallas, Texas

2:00 pm **The Clock is Ticking, It's Not a Hoax: The Intersection of Juvenile Justice and School Discipline** (0.75 Hour)

Eric Ransleben, Attorney at Law
Trophy Club, Texas

2:45 pm **Break**

3:00 pm **Representing Sex Offenderss** (0.75 Hour)

David Gonzalez, Attorney at Law
Austin, Texas

3:45 pm **Sealing the Deal: Persuasive Arguments** (0.75 Hour)

Tyrone Moncriffe, Attorney at Law
Houston, Texas

4:30 pm **Mental Health and IDD Commitments to the Mexica State Supported Living Center**

Mike Davis, Director
Mexia State Supported Living Center

5:15 pm **Adjourn**

5:15 pm **Texas Board of Legal Specialization: Answers to All of Your Questions About Becoming Board Certified**

Facilitated by Odessa Bradshaw
State Bar of Texas

6:00 pm **Social Events**

WEDNESDAY, FEBRUARY 24

3.25 HOURS (INCLUDING 1.50 HOUR OF ETHICS)

7:45 am **Breakfast Buffet** (provided)

8:30 am **Ethical Issues in Representing Children with Special Needs** (0.75 Hour Ethics)

Karen Dalglish Seal, Attorney at Law
San Antonio, Texas

9:15 am **In Review: Changes in the Juvenile Justice System from the 84th Texas Legislative Session** (0.50 Hour)

Riley Shaw, Chief Juvenile Prosecutor
Tarrant County District Attorney's Office
Fort Worth, Texas

9:45 am **Supreme Court of Texas: Factual Sufficiency of Evidence in Juvenile Appeals** (0.50 Hour)

Brian Fischer, Attorney at Law
Houston, Texas

10:15 am **Break** 30 Minute Break to Allow for Adequate Time to Check-Out

10:45 am **Ethics: Privacy and Confidentiality of Juvenile Hearings and Dealing with the Media** (0.75 Hour Ethics)

Patricia Cummings, Chief
Conviction Integrity Unit
Dallas County District Attorney's Office
Dallas, Texas

11:30 am **Case Law Update** (0.75 Hour)

The Honorable Pat Garza
Associate Judge, 386th District Court
San Antonio, Texas

12:15 pm **Adjourn**

REGISTRATION FEES AND DEADLINES

	EARLY Registration and Payment RECEIVED BY FEB 1ST	LATE/ON-SITE Registration or Payment RECEIVED AFTER FEB 1ST
Members of the Juvenile Law Section, Juvenile Probation Officers, Judges, Associate Judges, Referees, and Masters	$250	$325
Non-Members of the Juvenile Law Section	$275	$325
Conference Materials Only	$75	$100

- Conference fees are inclusive of attendance to any or all scheduled days. No special rate is available for partial attendance, students or non-profit agencies.
- If you need clarification on whether or not you are a member of the Juvenile Law Section, please contact the State Bar of Texas Sections Division at 512.427.1420 or view your MyBarPage online at texasbar.com.
- NOTE: You cannot register for this conference through the State Bar or Texas Bar CLE.

HOW TO REGISTER

To register, please complete the registration form on the following page. You may fax or mail in your completed registration form to the contact listed at the bottom of the page. You may also scan and email your completed form to Monique.Mendoza@tjjd.texas.gov. Online registration is not available.

PAYMENT

The registration fee may be paid by credit card, check or money order. No purchase orders are accepted. Please make checks payable to the **Juvenile Law Section**.

REGISTRATION FEE INCLUDES

The registration fee includes the breakfast on Monday, Tuesday, and Wednesday, breaks for three days, and the materials electronically.

MATERIALS EMAILED EARLY

Course materials will be distributed in electronic format. If registration AND payment information is received by February 12, you will receive an email with a link to all materials received to date approximately one week prior to the conference. You may then print the materials if you would like to bring a hard copy to the conference. The Section will have a limited number of electrical outlets for those wishing to bring a laptop or other mobile devices.

CONFIRMATION

You will receive an electronic confirmation that your registration was received. Please include a copy of your confirmation or a copy of your registration form if you mail in your payment.

CANCELLATION, REFUNDS, AND NO-SHOWS

Conference cancellations and refund requests must be made in writing to the Conference Coordinator. Please fax or e-mail your request for a refund to Monique Mendoza to 512.490.7919 or Monique.Mendoza@tjjd.texas.gov.

Cancellation requests must be received by **February 5** for a partial refund (less a $25 processing fee). Verbal cancellations will not be accepted.

Refunds will not be granted for no shows; however, course materials will be provided electronically within one week after the conclusion of the Conference.

SUBSTITUTIONS

Before the Conference, you may make a substitution request. Please contact Monique Mendoza at 512.490.7913 or Monique.Mendoza@tjjd.texas.gov and request that the substitution be made and the existing payment be transferred.

NOTE: Substitutions cannot be made for individual sessions and/or days.

REGISTRATION CHECK-IN

When you check-in, you can pick up your name badge and related conference information. The registration desk will be open Sunday afternoon from 4:00 p.m. – 5:30 p.m. and then again on Monday morning at 7:30 a.m. The conference kicks off at 8:55 a.m. on Monday morning.

REGISTRATION FORM

STEP 1: GENERAL INFORMATION

PRINTED NAME BAR CARD NUMBER

JOB TITLE

COUNTY AGENCY / DEPARTMENT

ADDRESS

CITY, STATE, ZIP

PHONE ( ) EMAIL*

** Please be diligent in providing an accurate, legible email address. Emails will be sent both for registration confirmation and to email the materials just prior to the conference. A VALID email address is required to view the videotape of the conference from Texas Bar CLE after the conclusion of the conference.*

STEP 2: REGISTRATION FEES AND COURSE MATERIALS (CHECK ONE)

	EARLY Registration and Payment **RECEIVED BY FEB 1**	LATE/ON-SITE Registration or Payment **RECEIVED AFTER FEB 1**
Members of the Juvenile Law Section, Juvenile Probation Officers, Judges, Associate Judges, Referees, and Masters	☐ **$250**	☐ **$325**
Non-Members of the Juvenile Law Section	☐ **$275**	☐ **$325**
I cannot attend the Conference, however, I want to purchase the electronic materials only (USB drive).	☐ **$75**	☐ **$100**
Scholarship Applicant (Incomplete or late requests will not be considered. See page 3 for additional details.)	☐ **$0 (Request must be received by JAN 15.)**	

STEP 3: PAYMENT

Payment can be made by credit card, check, or money order made payable to the Juvenile Law Section. No purchase orders or vouchers will be accepted. The Juvenile Law Section's Federal Tax ID is 74-6000148. Mail your registration form, along with payment, to: **Juvenile Law Section, c/o Monique Mendoza, P.O. Box 12757, Austin, Texas 78711.** An e-confirmation will be sent once you are registered.

METHOD OF PAYMENT: ◯ Check ◯ Money Order ◯ Visa ◯ MC ◯ American Express ◯ Discover

[All information requested below is required if paying by credit card.]

CARD NUMBER EXPIRATION

VERIFICATION CODE (The 3-digit code on the back of your card)

NAME AS IT APPEARS ON THE CARD

BILLING ZIP CODE

SIGNATURE DATE

You should receive an electronic confirmation via email within 72 hours. Please note that this confirmation is for receipt of your registration, not necessarily your registration fee. Please print a copy of your confirmation or this form and mail it along with payment (as specified in the email confirmation).

CONFERENCE QUESTIONS AND CORRESPONDENCE

JUVENILE LAW SECTION, c/o Monique Mendoza
P.O. Box 12757, Austin, Texas 78711
PHONE: 512.490.7913 FAX: 512.490.7919 EMAIL: Monique.Mendoza@tjjd.texas.gov

STATE BAR OF TEXAS
JUVENILE LAW SECTION
P.O. Box 12487
Austin, Texas 78711-2487

HOTEL ACCOMMODATIONS

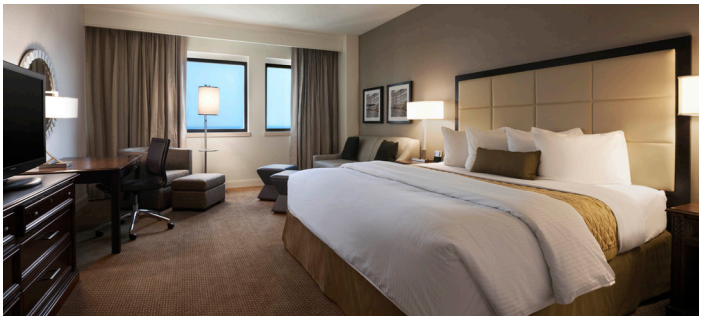
WYNDHAM RIVERWALK HOTEL

111 E. Pecan Street
San Antonio, Texas 76102

210.354.2800
wyndhamsariverwalk.com

Check-In is at 3:00 p.m. I Check-Out is at 11:00 a.m.

You'll always remember your stay at the Wyndham San Antonio Riverwalk when you experience its luxury and opulence. From the deck of our third-floor rooftop pool with its breathtaking views of the San Antonio skyline to our contemporary lobby designed for intimate gatherings, our deluxe accommodations are sure to rejuvenate and delight visitors traveling to sunny San Antonio. Relax in the hotel's newly renovated guest rooms and enjoy some of today's most desired amenities or savor contemporary regional fare in our lobby-level restaurant for the complete San Antonio Wyndham River Walk experience.



RATES AND RESERVATIONS

The hotel is offering a discounted rate of $120 for a Standard Room.

The deadline to make reservations is January 31, 2016. Reservations made after this deadline will only be honored based on availability.
Make your reservations online at:
https://resweb.passkey.com/go/TJJD16

This is a customized website for attendees of the Juvenile Law

Conference only, therefore, the rates listed should automatically be at the contracted rate. You may also contact the Wyndham Reservation Line directly at 866.764.8536. If you call to make accommodations, please specify that you are with the Juvenile Law Section to ensure the special conference rate. For your convenience, the hotel is extending the conference rate for guests staying up to two days prior to or one day after the conference, based on availability.

PARKING

The Wyndham Riverwalk will offer a discounted rate of $12 for overnight, covered self-parking. Valet parking is available for approximately $30.31 per day.

HOTEL SHUTTLE

The hotel is approximately 9.0 miles or 13 minutes away from the airport. Conference participants flying in to San Antonio International Airport will need to arrange ground transportation individually (shuttle service, cab, etc.). The hotel does not offer any courtesy transportation.