

Opinion issued July 23, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-20-00121-CV

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**IN THE MATTER OF K.M.**

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**On Appeal from the 313th District Court  
Harris County, Texas  
Trial Court Case No. 2019-03416J**

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**MEMORANDUM OPINION**

The juvenile court entered an order waiving its jurisdiction and transferring K.M. to the criminal district court to stand trial as an adult. K.M. appeals contending that the juvenile court abused its discretion because the evidence is legally and factually insufficient to support the juvenile court's findings that:

- (1) probable cause to believe she committed the charged offense of first-degree murder exists; and

(2) the factors set forth in section 54.02(f) of the Family Code support transferring her to be tried as an adult.

We affirm.

## **BACKGROUND**

The State petitioned to adjudicate K.M., a juvenile who was 16 years of age at the time of the alleged offense, delinquent. The State alleged that K.M. intentionally and knowingly caused the death of another, Delindsey Mack, by shooting him with a firearm. The State later moved the juvenile court to waive its jurisdiction over K.M. and transfer her to the criminal district court.

At the certification hearing, the State called several witnesses: T. Miller, a homicide detective with the Houston Police Department; A. Bock, a detective assigned to a multi-agency gang task force; P. Bonds and T. Hall, two juvenile detention officers at the facility in which K.M. is housed; Dahlia Mack, the mother of the victim; and Dr. Matthew Shelton, the deputy director of residential services for the county's juvenile probation department. The defense called several witnesses, including K.M.'s father, mother, aunt, and grandmother; Florencia Iturri, K.M.'s therapist at the juvenile detention facility; Autumn Lord, the associate manager of the intake unit at the facility for delinquent girls; and Dr. Uche Chibueze, chief psychologist for the county's juvenile forensic department.

Detective Miller investigated the murder of Mack, who attended Lamar High School and associated with a street gang called “Free Money.” In November 2018, Mack was gunned down near the school shortly after noon. Mack and Robin Hale, a female classmate, were walking down a nearby street when two masked gunmen exited a vehicle and opened fire. Hale was wounded and fled. Mack was shot several times and died at the scene.

Police later found the gunmen’s abandoned vehicle. From the vehicle, the police recovered the fingerprints of Brent Williams and Kendrick Johnson. Johnson was later arrested and charged with Mack’s murder, remaining in custody at the time of K.M.’s certification hearing. Both Williams (who remains a suspect in Mack’s murder) and Johnson are members of the street gang “103,” shorthand for “100 Percent Third Ward,” a rival of “Free Money.”

Early in the investigation, Miller interviewed Hale and K.M. Hale told Miller that K.M. had directed them to the location of the shooting. Hale also told Miller that K.M. was not upset after the shooting. K.M. told Miller that she, Hale, and Mack had left school at lunch to get something to eat. But halfway through the parking lot, K.M. turned around and returned to school because she was concerned about tardiness. She began running away when the shooting started.

A couple of days after K.M.’s initial interview, she sat for a second interview. K.M. related the same basic facts as before—that she initially accompanied Mack

and Hale to get lunch together, changed her mind and returned to school halfway through the parking lot, and ran away when the shooting began.

K.M. consented to a search of her phone, from which multiple deleted text messages were recovered. These included texts between K.M. and Johnson the morning of the day Mack was murdered. In these texts, K.M. indicated that she was with Mack in class that morning. The texts also included the following exchange:

Johnson: Don't betray me keep yo mouth closed & I'll do the same

K.M.: come on now it's you over any of these n\*\*\*\*\*<sup>1</sup>

In another text shortly before noon, Johnson asked, "He left yet," and K.M. responded, "no." By this point, detectives suspected that K.M. might be involved in Mack's murder or, at the very least, knew more than she admitted.

Miller interviewed K.M. a third time after the phone search. K.M. initially gave the same story she had during the prior two interviews. Miller then confronted K.M. with the deleted text messages, and she "kind of sank down and realized she had been caught in something." At this point, K.M. changed her story. She admitted that Johnson knew where to find Mack the day of the murder because she told Johnson. K.M. said that she thought Johnson just wanted to assault Mack.

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<sup>1</sup> K.M. used a variant of the familiar racial slur commonly referred to as the n-word. We have replaced all instances of this word in this opinion with n\*\*\*\*\* or n\*\*\*\*\*, depending on whether it was used in the singular or plural.

When the police arrested Johnson, he had a pistol. Ballistics evidence showed that the pistol was used in Mack's murder. Johnson was later charged with the murder, and the detectives continued investigating the crime.

The day Johnson was charged, one of Miller's colleagues interviewed K.M. a fourth time to try to learn the identity of the second shooter. K.M. initially stated that she and Johnson discussed assaulting Mack the night beforehand but later said they planned the assault for two weeks. K.M. did not dispute that she knew Johnson intended to assault Mack. She answered "no" to whether she concealed her involvement for fear of gang retaliation. Miller concluded that K.M. concealed her involvement and its extent to avoid accountability for her role in Mack's murder. K.M. did not identify the second shooter. But Miller believed K.M. knew the second shooter's identity.

The search of K.M.'s phone also revealed romantic conversations between her and Mack. These conversations began about two weeks before the murder. K.M. had no contact with Mack before this time. Despite K.M.'s romantic conversations with Mack, she characterized him as "evil" during her fourth interview. Of Mack's murder, K.M. stated, "you get what's coming to you." K.M.'s actual boyfriend at the time of her romantic conversations with Mack was Williams. K.M. had a sexual relationship with Johnson as well at some point. She stated she knew that Williams and Johnson are members of the "103" gang.

The State also introduced statements K.M. made on her public Twitter account after the murder. Eight days after Mack's murder, K.M. tweeted, "She handle the business & don't ever tell." She retweeted this statement after her third interview with detectives.

K.M. was eventually questioned before a grand jury. Around this time, the authorities again got consent to search her phone. The second search of her phone revealed a series of text messages between her and her mother after K.M. had been served with a grand jury subpoena. These texts read:

Mother: I wonder what they want. I hope they don't want you to testify because you continue to talk to that n\*\*\*\*. What about [Instagram]. Has anyone been messaging you?

K.M.: don't mention anything about him calling me cause they don't know about that & no

Mother: You think they don't know. Trust me there is no privacy in prison.

K.M.: don't bring it up. even if they ask if i've talked to him no i didn't

Mother: They can easily find out who he has been calling. You better not answer another call from that n\*\*\*\*. For real

Mother: I'm not going to bring it up, but if you lie then what?

K.M.: can't get in trouble for that.

Mother: For lying. Yes you can because now they don't believe anything you say

Records and recordings show that K.M. was in contact with Johnson after his arrest and jailing. Detectives also learned that K.M.'s mother drove her to the jail to visit Johnson on one occasion.

Based on the investigation, Miller arrested K.M. for her role in Mack's murder. K.M. was taken to a juvenile detention facility afterward.

Defense counsel asked Miller whether Hale told detectives she had led Mack to the location of the shooting. Miller said he did not recall Hale saying so. He conceded he did not know whether Hale or K.M. had led Mack there, but he thought that Hale did so. Miller further conceded that it was "not impossible" that Johnson learned where Mack would be the day of the shooting from someone other than K.M.

Miller agreed that once detectives confronted K.M. with the deleted texts showing her involvement, she consistently maintained that she thought Johnson was going to confront and assault Mack, not murder him. But Miller also testified that K.M. told him she never knew of Johnson or the "103" gang's participation in a fistfight. She "only knew them to shoot."

Miller acknowledged that K.M. had no prior criminal history. He also agreed that no evidence connected K.M. to the "103" street gang other than her relationships with Williams and Johnson.

Detective Bock testified about an ongoing gang war between "103" and its rivals. He stated that gangs use the term "op," short for "opposition," to refer to

anyone “on the other side of the conflict” or a rival gang member. The State then introduced a video recovered from Mack’s cell phone. The video shows Mack and K.M. engaged in playful banter in school. In the video, Mack calls K.M. an “op.” Bock opined that Mack did so because K.M. is “very closely aligned with other 103 gang members.” In the same video, Mack joked that if he ended up dead, the viewer of the video would know that K.M. had killed him.

Bock also testified about K.M.’s social media accounts and activities. K.M. began texting and videoconferencing with Mack via Facetime about a week before the murder. In their texts, Mack evinced surprise at K.M.’s interest in him but told her he had feelings for her.

Records of K.M.’s communications show that she had been seeing Williams romantically on and off again for several months before Mack’s murder. Before they began seeing each another, K.M. dated another member of “103.” Bock testified about K.M.’s tweets, in which she referred to “103” and some of its members by their nicknames. K.M. talked to at least seven members of “103” by text.

During Bock’s testimony, the State introduced text messages between K.M. and Williams that transpired well after Mack’s murder in which Williams sent K.M. photographs of a pistol and loaded magazine. In these messages, they profess their love for each another. After Mack’s murder, K.M. also retweeted another’s tweet, which read “Free Kendrick he innocent.”



P. Bonds, a guard at K.M.'s juvenile detention facility, described K.M. as being more intelligent and sophisticated than her peers. According to Bonds, K.M. is "very mature for her age" and also manipulative. Bonds recounted overhearing K.M. tell another girl that the incident which led to her confinement was not the first time she had "done things" but that it was the first time someone got killed as a result. K.M. said that "the setup" was not supposed to "go this way."

T. Hall, another guard at the juvenile detention facility, likewise testified that K.M. is more intelligent and sophisticated than other girls of similar age at the facility. Hall agreed that K.M. is manipulative and characterized her as "a leader in the sense of chaos, mess, drama." According to Hall, K.M. "can be very suggestive" with the other girls at the facility, who then follow K.M.'s lead.

Mack's mother testified about her son. In the weeks before Mack's murder, he became more concerned with his personal appearance. When she asked Mack about it, he told her that a girl had taken an interest in him.

K.M.'s father testified that she is "a good kid" who has "never been in trouble." She was in a magnet program at Lamar High School and excelled in her schoolwork. He stated that Mack's murder traumatized her and that she is remorseful about it. He does not think she will be a threat to the community after her release.

But K.M.'s father conceded the strangeness of his daughter's continuing to speak with Johnson and visit him in jail after Johnson's arrest. The following colloquy occurred between K.M.'s father and the State's counsel:

Q. You agree with me then that it's strange to continue to call the person and visit the person in jail that did the shooting that day. Right?

A. Yeah.

Q. If you were really afraid of what that person had been doing that day, especially the triggerman you wouldn't think you would continue to have contact with that person. Right?

A. No.

Q. If someone shot at you, would you call them on the phone while they were in jail charged with the murder that you were shot at?

A. No.

Q. Would you go visit them at the Harris County Jail?

A. No.

He also acknowledged that his daughter's online communications show her choice to associate with gang members.

K.M.'s mother testified that her daughter is book smart but sometimes lacks common sense or knowledge about "street stuff." K.M. got good grades. With the exception of one brief suspension for fighting, K.M. had no disciplinary problems in school. Nor has K.M. been in trouble with the law before. K.M. and her mother

regularly attended church. Her mother described K.M. as “definitely mature for her age.”

K.M.’s mother did not know that her daughter associated with gang members. She knew that K.M. was talking on the phone with Williams and that their relationship was romantic in nature. K.M. first mentioned Johnson to her mother about two or three weeks before the murder. K.M.’s mother has since learned that Williams and Johnson are “103” gang members, but she did not know this beforehand. K.M. also first mentioned Mack to her mother about two or three weeks before his murder. K.M. told her mother that Mack was a classmate and a friend and that he liked her. K.M. did not, however, indicate interest in dating Mack.

K.M.’s mother went to Lamar High School shortly after Mack’s murder. When she arrived, K.M. was “hysterical.” After K.M.’s mother learned of Johnson’s gang affiliation, she told her daughter to stay away from him. But she knew that K.M. continued to talk to Johnson after he was charged for Mack’s murder. K.M.’s mother even took her to jail to visit Johnson once. Doing so was a stupid mistake, K.M.’s mother said, but she explained that she did so because her daughter said Johnson “had something really important to tell her in reference to everything that happened.” K.M.’s mother likewise knew that her daughter remained in contact with Williams, who had since been arrested, charged, and jailed in connection with an unrelated capital murder case.

K.M.'s mother conceded that her daughter's interactions with Mack were "unusual." The following exchange occurred between K.M.'s mother and the State's counsel:

Q. Did you hear the message I played yesterday when she said that she decided two weeks before he was dead that he was a bad guy?

A. Yes.

Q. So it's really strange that the person you've decided is so evil and so bad, two weeks before his death is when you start contacting him. Right?

A. Right.

Q. That's highly suspect. Right?

A. Unusual.

Q. That looks manipulative. Right?

A. I don't know if it's manipulative. I don't know why she was talking to him. I don't know the reason why—the why behind it happened, so I can't really say.

Q. You would agree with me that if you thought of someone as evil, you probably don't have multiple Facetime phone calls with them. Right?

A. Right.

K.M.'s mother testified that her daughter eventually confessed to helping plan Johnson's ambush of Mack but said that it was just supposed to be a fight. K.M.'s mother agreed, however, that her daughter expressed strong disgust with respect to Mack by describing him as "evil," and she acknowledged that K.M. told detectives

Mack got what was coming to him. She also agreed that K.M. lied about her involvement in the case.

K.M.'s aunt testified that K.M. is a good child who has never before been in trouble with the law. She described K.M. as intelligent, a good student, and a typical teenager. She did not think that K.M. would be a danger to the community after her release.

K.M.'s grandmother offered similar testimony, stating that K.M. is a smart, sweet, typical teenager. She thought neither that it was in K.M.'s nature to commit murder nor that K.M. would be a danger to the community after her release. She testified that K.M. is remorseful.

P. Bedford, a juvenile detention hearing officer, testified that he has had contact with K.M. on several occasions and that she was respectful and obeyed the rules in his presence. But he acknowledged that K.M. was once admonished for misbehavior—glaring at the prosecutor—by the court during a hearing. Bedford described K.M. as “mature for her age.” Based on his experience, he does not think she is a hardened offender and does not think she will be a danger to society in the future. He testified that she could be rehabilitated within the juvenile justice system.

D. Bailey, a deputy with the Harris County Sheriff's Office, has known K.M. since she was “a very young girl.” He met K.M. through church, where he once served as a youth pastor. Bailey testified that K.M. is intelligent but “immature,”

“not street smart,” and “easily influenced.” He opined that she could and should be rehabilitated within the juvenile justice system. But he conceded that K.M.’s alleged role in this crime was offensive and dangerous.

Florencia Iturri, a doctoral candidate in psychology, is an intern at the Harris County Juvenile Probation Department, where she evaluates offenders and provides therapy. She has been providing therapy to K.M. in which K.M. has not discussed the facts of this case based on defense counsel’s advice. But K.M. has expressed remorse, and she eagerly participates in therapy. Iturri testified that K.M.’s intelligence is “average, maybe above average.” K.M. is “mature in some moments and then also shows very typical teenage behaviors in others.” Iturri stated that K.M. is “not immature, but she is more mature about some topics than others.” Iturri did not think that K.M. was manipulative. Iturri opined that K.M. benefits from therapy and is amenable to rehabilitation.

Autumn Lord, associate manager of the intake unit at the facility for delinquent girls, also testified. She supervises mental health services and specialized treatment programs at the facility. Upon intake, girls receive a comprehensive psychological evaluation, and the staff creates individual treatment plans. The facility offers specialized treatment for girls who have committed violent criminal offenses. This specialized treatment program lasts from six to nine months. Lord has not met K.M. and does not have an opinion about K.M.’s amenability to treatment

within the juvenile justice system. Given K.M.'s current age, however, Lord agreed that K.M. could only receive treatment at the facility for about 18 months because juveniles must be released from the juvenile justice system when they turn 19.

Dr. Uche Chibueze, chief psychologist for the Harris County Juvenile Forensic Department, also testified. She supervises Dr. Chelsea McCann, who met with K.M. and prepared a certification report. Chibueze has not met K.M. but did review and approve McCann's certification report. In preparing the report, McCann reviewed K.M.'s probation records, medical records, and the offense report. McCann interviewed K.M. and her mother; K.M. completed a cognitive assessment and other tests, including a test to ascertain her sophistication, dangerousness, and amenability to treatment in the juvenile justice system as well as her risk of reoffending.

K.M.'s IQ—"in the high average range with a score of 110"—indicates "above-average intelligence." She has "traumatic symptoms" from Mack's murder and moderately severe post-traumatic stress disorder. Her sophistication, dangerousness, and treatment amenability were assessed on two scales, only one of which considered the underlying offense. These assessments are relative to other youth in the juvenile justice system, not youth in the general population.

In terms of intellectual sophistication, K.M. is "above average." K.M. is more mature "than most individuals involved in juvenile court." She is "sophisticated in

maturity in her general interactions.” Her criminal sophistication “was found to be in below average range without the offense taken into consideration.” But when considering Mack’s murder, K.M. “has an elevated level of criminal sophistication.”

In general, K.M.’s assessment indicated below average dangerousness because she “does not have an extensive history of being violent.” When considering Mack’s murder, K.M.’s dangerousness is in the “middle range.” Chibueze explained:

Now, once the offense was taken into consideration, these scales did change, specifically her violent and aggressive tendencies elevated to the middle range just because the act is a violent act that violates the rights of others. Also the planned and extensive criminality scale elevated to the middle range. This is an indication, based on the offense report, that there was some shared leadership and some premeditation there. Her psychopathic features elevated to the higher range. This is because the nature of the offense is usually an indication of lack of empathy. There were some indications in the offense report that suggest that there was a lack of remorse and guilt for her involvement and also that manipulation was utilized.

\* \* \*

Okay. So part of the reason why it’s elevated with the offense is because there were indications of manipulation. Also she utilized some of her sophistication and maturity in a sense for crimogenic purposes. So she has good interpersonal skills. She is able to make friends easily. People find her to be likeable. According to the offense report, that was utilized to lure the decedent to be shot by somebody.

As to whether K.M. is manipulative in general, Chibueze acknowledged that one of K.M.’s self-assessment tests indicated she was manipulative. She also stated that K.M.’s testing indicated “she is somebody that likes to take control in her social



relationships and she is somebody that has good self-concept and good self-esteem,” which are traits that indicate K.M. is “less likely to be influenced by other people.”

Considering the offense did not affect assessment of K.M.’s amenability to treatment. Her score fell in the high range either way, indicating amenability to treatment. Chibueze opined that K.M. has “a high treatment amenability.” But she agreed that rehabilitation is more difficult if a juvenile does not regret or otherwise show remorse for her actions.

A separate assessment predicted the likelihood of K.M.’s committing future violent crimes. This assessment considered six protective criteria, which indicate a low risk of reoffending. K.M. satisfied all six criteria, which notably is uncommon. K.M.’s satisfaction of all six criteria also increases the odds that she will do well in treatment. This assessment also considers twenty-four risk factors for reoffending. Without considering Mack’s murder, K.M. met the criteria for just five of these risk factors, which “is also a positive indication.” When considering Mack’s murder, K.M. met the criteria for nine of these risk factors, which is still in the “low range because she does not meet the criteria for many of the risk factors associated with violent offenders.”

Chibueze conceded that the professionals who evaluate juvenile offenders cannot guarantee their predictions. She agreed that “there is always room for human error” in these evaluations. Chibueze also agreed that K.M. “may not necessarily be

representative in the population” that the tests included in the evaluation were “normed on” in that, unlike K.M., most juveniles in the juvenile justice system tend to come from low-income families, have little family support, and have prior criminal histories.

The State called Dr. Matthew Shelton as a rebuttal witness. Shelton is the deputy director of residential services for the Harris County Juvenile Probation Department. His doctorate is in psychology. He testified that P. Bedford’s opinions did not represent the department’s and that Bedford was not qualified to opine about gang membership or future dangerousness.

The juvenile court entered an order waiving its jurisdiction and transferring K.M. to the criminal district court. In its order, the juvenile court found probable cause to believe that K.M. committed murder existed. It also found that several considerations weighed in favor of transfer. In particular, it found that:

- the murder was an egregious crime against a person;
- K.M. showed a high level of sophistication and maturity;
- her previous history supported transfer; and
- the need to protect the public and the unlikelihood that K.M. would be rehabilitated in the juvenile system supported transfer.

The juvenile court recited extensive facts in support of these four findings.

K.M. appeals. *See* TEX. FAM. CODE § 56.01.

## DISCUSSION

K.M. contends the juvenile court abused its discretion by waiving its jurisdiction and transferring her to the criminal district court to stand trial as an adult because the evidence is legally and factually insufficient to support its findings.

### Waiver of Juvenile Jurisdiction

Juveniles are not ordinarily subject to criminal proceedings. *In re S.G.R.*, 496 S.W.3d 235, 238 (Tex. App.—Houston [1st Dist.] 2016, no pet.) Instead, juvenile courts have exclusive original jurisdiction over cases involving offenses committed by juveniles between 10 and 17 years of age. FAM. §§ 51.02(2)(a), 51.03(a)(1), 51.04(a). If, however, a juvenile court finds that certain conditions are met after an evidentiary hearing, it may waive its jurisdiction and transfer a juvenile to the criminal district court for criminal proceedings. *Id.* § 54.02(a), (c).

Two standards for the waiver of juvenile jurisdiction exist: one for juveniles under eighteen years of age and another for those who have reached the age of eighteen since the commission of the alleged offense. *In re H.Y.*, 512 S.W.3d 467, 476 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Because K.M. was seventeen at the time of the certification hearing, the former standard applies.

Under this standard, transferring a juvenile charged with a first-degree felony, like murder, to the criminal district court requires the juvenile court to find:

- the juvenile was 14 years of age or older at the time of the alleged offense;

- probable cause to believe the juvenile committed the offense exists; and
- the alleged offense's seriousness or the juvenile's background requires criminal rather than juvenile proceedings.

FAM. § 54.02(a). In deciding whether a preponderance of the evidence supports the third requirement, the juvenile court must consider four factors:

- (1) whether the alleged offense was against a person or property, with the former weighing more heavily in favor of transfer;
- (2) the sophistication and maturity of the juvenile;
- (3) the record and previous history of the juvenile; and
- (4) the prospects of adequate protection of the public and the likelihood of rehabilitation of the juvenile by use of procedures, services, and facilities currently available to the juvenile court.

*Id.* § 54.02(f).

All four of the section 54.02(f) criteria need not weigh in favor of transfer for a juvenile court to waive its jurisdiction. *In re S.G.R.*, 496 S.W.3d at 238. Any combination of these criteria may suffice. *Id.* But a juvenile court that waives its jurisdiction must enter a written order in which it specifically states its reasons for waiver and its findings. FAM. § 54.02(h).

### **Standard of Review**

We review a juvenile court's fact findings in support of a transfer decision under traditional evidentiary sufficiency principles. *In re H.Y.*, 512 S.W.3d at 478–79. In a legal-sufficiency review, we credit evidence favorable to the challenged

finding and disregard contrary evidence unless a reasonable factfinder could not do so. *In re J.W.W.*, 507 S.W.3d 408, 413 (Tex. App.—Houston [1st Dist.] 2016, no pet.). If more than a scintilla of evidence supports a finding, the evidence is legally sufficient. *Id.* In a factual-sufficiency review, we consider all the evidence to determine whether the juvenile court’s findings are so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.*

Because the juvenile court sits as factfinder and evaluates the witnesses in person, it is the sole judge of their credibility. *Moon v. State*, 410 S.W.3d 366, 375 (Tex. App.—Houston [1st Dist.] 2013), *aff’d*, 451 S.W.3d 28 (Tex. Crim. App. 2014). The juvenile court can choose to believe or disbelieve a witness’s testimony in whole or part, including an expert witness’s testimony. *S.G.R.*, 496 S.W.3d at 241. As factfinder, the juvenile court weighs the evidence and resolves any inconsistencies. *In re T.S.*, 548 S.W.3d 711, 730 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

If the evidence is legally and factually sufficient to support the juvenile court’s findings, then we review its ultimate waiver decision for abuse of discretion. *See id.* at 725, 730–31. The question is not whether we would have decided the issue differently. *See id.* at 721–22, 725. Instead, we consider whether the juvenile court’s waiver was arbitrary or made without reference to the statutory criteria. *See id.* at 731. If the juvenile court correctly applies these statutory criteria and specifically

states its supporting findings, its waiver decision generally will satisfy our review for abuse of discretion. *Id.* at 722.

### **Probable Cause Finding**

K.M. contends the juvenile court's finding that probable cause exists to believe she committed murder is not supported by legally and factually sufficient evidence. She argues that there is no probable cause because there is no evidence she knew Mack would be murdered and thus no evidence of the requisite mental state for murder.

### ***Applicable Law***

In reviewing a probable cause finding, we consider whether there are sufficient facts and circumstances to support a prudent person's belief that the juvenile committed the charged offense. *In re C.M.*, 571 S.W.3d 849, 858 (Tex. App.—Houston [1st Dist.] 2018, no pet.). Probable cause requires more than mere suspicion but less evidence than needed to support a conviction or even a finding by a preponderance of the evidence. *Id.* We consider the totality of the circumstances when reviewing a probable cause finding. *Id.*

K.M. is charged with murder. In general, a person is guilty of murder if: (1) she intentionally or knowingly causes someone's death; or (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes someone's death. TEX. PENAL CODE § 19.02(b)(1)–(2). A person is also criminally

responsible for a murder committed by another if she solicits, encourages, directs, aids, or attempts to aid the other person in committing the offense and does so with the intent to promote or assist the commission of the murder. *See id.* § 7.02(a)(2).

In determining whether a person is a party to a murder that she did not personally commit, we may consider events before, during, and after the murder. *Gross v. State*, 380 S.W.3d 181, 186 (Tex. Crim. App. 2012). Circumstantial evidence may suffice to show that person’s involvement in the murder. *Id.* Each fact or circumstance need not point directly to the person’s involvement, as long as the cumulative effect of the evidence is sufficient to do so. *Id.*

### *Analysis*

K.M. does not dispute that she helped plan or coordinate Johnson’s ambush of Mack. But K.M. insists that she thought Johnson would merely assault Mack, not murder him. She maintains that Mack’s murder was unexpected and upsetting, so much so that she developed post-traumatic stress disorder.

We focus on the sole element that K.M. challenges—intent to commit murder. Contrary to K.M.’s argument, we conclude that legally and factually sufficient evidence supports the juvenile court’s finding that probable cause exists to believe that K.M. intended to aid Johnson in Mack’s murder, not just Mack’s assault.

The morning of Mack’s murder, K.M. and Johnson exchanged text messages regarding Mack’s whereabouts. K.M. knew of Johnson’s membership in the “103”

street gang. K.M. further knew that “103” has a reputation for resolving its disputes with rival gangs with guns, not fists.

The record shows that K.M. was aware of Mack’s affiliation with a rival street gang. Among other things, Mack referred to K.M. as an “op” in her presence and joked that if he turned up dead, she would be his killer.

K.M. departed school with Mack and Hale around noon. The three ostensibly were going to eat lunch together off campus. K.M., however, reconsidered on the way and headed back to school shortly before the shooting took place.

After the authorities discovered K.M.’s role in the ambush, which she tried to conceal by giving untruthful interviews and deleting text messages, K.M. maintained she was shocked and dismayed by Mack’s murder. In support, her mother testified that K.M. was “hysterical” immediately afterward. But contrary evidence exists. Hale told detectives that K.M. was not upset afterward.

In addition, K.M. continued associating with Johnson after his charge for Mack’s murder. Even K.M.’s father thought K.M.’s continued association with one of Mack’s killers was strange given her claim of surprise.

More than once after Mack’s murder, K.M. indicated on social media that she had taken care of business and kept her mouth shut about it. She also publicly asserted—by retweeting another’s tweet to this effect—that Johnson was innocent even though she knew through her own involvement that Johnson was guilty.



When confronted with her involvement in the ambush during her third interview, K.M. said Mack was an evil person who got what he deserved, notwithstanding her mother's testimony that K.M. had described Mack as a friend. K.M.'s mother characterized her daughter's interactions with Mack as unusual, given K.M.'s highly negative assessment of Mack's character.

Based on this record, we hold that more than a scintilla of evidence supports the juvenile court's probable cause finding. We further hold that, when all the evidence is considered, the juvenile court's probable cause finding is not so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust.

We acknowledge that the juvenile court's probable cause finding depends on inferences drawn from the surrounding circumstances. But intent to murder may be proved by circumstantial evidence. *See Gross*, 380 S.W.3d at 186. On this record, a prudent person could believe that K.M. intended to aid in Mack's murder.

We overrule K.M.'s first issue.

### **Section 54.02(f) Findings**

K.M. contends that the juvenile court's section 54.02(f) findings are not supported by legally and factually sufficient evidence. She argues that the record strongly shows that she is amenable to rehabilitation and poses no danger to the public.

### *Applicable Law*

Not all four criteria enumerated in section 54.02(f) need weigh in favor of transfer to justify a juvenile court's waiver of its jurisdiction. *Moon v. State*, 451 S.W.3d 28, 47 (Tex. Crim. App. 2014). In general, any combination of these criteria may justify the waiver of juvenile jurisdiction. *Id.* at 47 n.78. In reviewing the sufficiency of the evidence underlying the juvenile court's decision, we may consider only the express findings it made as to these criteria. *Id.* at 49–50. But we must bear in mind that the juvenile court is not required to exhaustively catalogue all the evidence that supports its findings. *See In re S.G.R.*, 496 S.W.3d at 241.

### *Analysis*

#### *Egregious Offense Against the Person*

The juvenile court determined that Mack's murder, an offense against the person, was particularly egregious because K.M. deliberately lured Mack into an ambush with knowledge of the purpose to harm him. The juvenile court recited extensive facts in support of this determination, including that:

- K.M. assisted Johnson in planning to ambush Mack;
- K.M. befriended Mack about two weeks beforehand;
- K.M. informed Johnson as to Mack's location;
- K.M. abruptly left Mack's company before the ambush;
- K.M. tried to conceal her role in the ambush;

- after K.M.'s role was uncovered, she indicated that Mack was an evil person who got what he deserved; and
- K.M. knew that gang members, like Johnson, commonly settle their disputes with rival gang members, like Mack, with guns.

The record amply supports the juvenile court's recitation of facts.

K.M. posits that because she thought Johnson was going to assault Mack rather than murder him, her role in the crime is less egregious and thus does not weigh in favor of transfer to the criminal district court. Even if we were to accept K.M.'s premise, an assault is a crime against the person, not property. Moreover, a planned assault that results in death may support a conviction for the charged offense of murder under circumstances like those in this case. *See* PENAL § 19.02(b)(2); *Forest v. State*, 989 S.W.2d 365, 368 (Tex. Crim. App. 1999). We therefore reject K.M.'s argument that the crime was not an egregious one.

In essence, the juvenile court found that Mack's murder was egregious because it was planned in advance and carried out via subterfuge. K.M. also lied about her role afterward and was callous about Mack's death when her role was exposed. More than a scintilla of evidence supports the juvenile court's finding that the murder was egregious. The great weight and preponderance of the evidence is not to the contrary. The evidence is thus legally and factually sufficient to support the juvenile court's finding that section 54.02(f)(1) favors waiver of its jurisdiction.

### *K.M.'s Sophistication and Maturity*

The juvenile court determined that K.M. showed a high degree of sophistication and maturity and that these qualities weighed in favor of transfer. The juvenile court recited extensive facts in support of this determination, including that:

- K.M. was 17 years old at the time of the certification hearing;
- K.M. has above-average intelligence;
- K.M. is more mature than the average person her age;
- K.M. was manipulative in feigning friendship with Mack;
- K.M. helped plan and coordinate the ambush; and
- K.M. tried to conceal her participation in the crime.

The record amply supports the juvenile court's recitation of facts.

Some witnesses testified that K.M. lacks common sense or street smarts. Most of the evidence, however, shows that K.M. is intelligent and mature for her age. For example, K.M.'s mother testified that her daughter is intelligent and mature. K.M.'s certification evaluation confirms this assessment. Dr. Chibueze testified that K.M. is above average in intelligence and intellectual sophistication. Chibueze also stated that K.M. is more mature than her peers within the juvenile justice system.

While Chibueze opined that K.M.'s criminal sophistication was below average, this was only true absent consideration of Mack's murder. When accounting for Mack's murder, K.M. "has an elevated level of criminal

sophistication.” In its recitation of facts, the juvenile court relied on the criminal sophistication that K.M. displayed in Mack’s murder in significant part, noting that K.M.’s involvement in the crime included planning, trickery, and concealment. Notably, this remains true regardless whether K.M. intended murder or, as she insists, some lesser assault.

K.M. complains that the juvenile court additionally relied on her “knowledge of the law and legal consequences” in assessing her sophistication and maturity. K.M. argues that her ability to understand and heed her attorney’s advice “should not be a basis for findings weighing in favor of transfer” because if “she was incapable of processing this information” then she would be adjudicated incompetent. We disagree. Whether a juvenile can assist her attorney in her defense is a relevant consideration when assessing the juvenile’s maturity and sophistication. *In re K.J.*, 493 S.W.3d 140, 151 (Tex. App.—Houston [1st Dist.] 2016, no pet.).

In essence, the juvenile court found that K.M. is sophisticated and mature in general and that she used her sophistication and maturity in the commission of the charged offense. More than a scintilla of evidence supports the juvenile court’s finding, and the great weight and preponderance of the evidence is not to the contrary. The evidence is thus legally and factually sufficient to support the juvenile court’s finding that section 54.02(f)(2) favors waiver of its jurisdiction.

### *K.M. 's Record and Previous History*

The juvenile court determined that K.M. does not have a record of delinquent conduct but that her previous history nonetheless weighs in favor of transfer. Among many other circumstances, the juvenile court relied on K.M.'s association with a criminal street gang. In support, the juvenile court noted that K.M. had extensive communications with members of the "103" street gang and that she continued to associate with Johnson, a member of the gang, even after Mack's murder.

K.M. argues no evidence of negative previous history exists to support the juvenile court's finding that her history favors waiver. On the contrary, she argues, the evidence shows that before Mack's murder she was a good student, typical teenager, and loving member of her family. K.M. further argues that the juvenile court improperly considered K.M.'s conduct after Mack's murder in assessing her history.

A juvenile court may give significant weight to gang affiliation when assessing previous history. *In re S.G.R.*, 496 S.W.3d at 242. While the evidence on this subject was disputed, the juvenile court heard substantial evidence that K.M. knowingly associated with members of the "103" street gang before planning to ambush Mack with some of them. The record indicates that she had a romantic or physical relationship with more than one member before Mack's murder. Her affinity for the "103" street gang was so well known that Mack, who associated with

a rival gang, referred to K.M. as an “op” on a video introduced at the hearing. Moreover, while K.M. did not have a record, a guard at the juvenile detention facility testified that she overheard K.M. state that Mack’s murder was not the first time she had “done things.” The juvenile court could have reasonably considered this admission as evidence of prior uncharged delinquent conduct in evaluating K.M.’s prior history. *See id.* at 241–42 (considering delinquent conduct admitted by juvenile despite lack of record).

As to K.M.’s contention that the juvenile court should have confined its evaluation of her previous history to conduct predating Mack’s murder, we disagree. K.M. has not cited any authority in support of her position, and decisions to the contrary exist. *See, e.g., In re K.J.*, 493 S.W.3d at 153 (considering rule infractions while in juvenile detention facility as part of juvenile’s record and previous history). Evidence of a juvenile’s conduct postdating the charged offense is at the very least relevant to the extent it sheds light on the juvenile’s history predating the charged offense. Detective Bock testified that K.M. was “very closely aligned with other 103 gang members.” The defense hotly contested Bock’s opinion. The juvenile court did not err in relying on K.M.’s continued contact with Johnson after his charge for Mack’s murder—contact that K.M. tried to conceal—as evidence that she previously had formed a high degree of loyalty or commitment to the “103” street gang.

In conclusion, more than a scintilla of evidence supports the juvenile court’s

finding that K.M.'s previous history weighs in favor of transfer despite her lack of a record of delinquency. While some evidence in the record shows that K.M. was in some other respects an ordinary teenager, the great weight and preponderance of the evidence is not so contrary to the juvenile court's finding as to make it clearly wrong and unjust. The evidence is thus legally and factually sufficient to support the juvenile court's finding that section 54.02(f)(3) favors waiver of its jurisdiction.

*Protection of the Public and K.M.'s Rehabilitation*

The juvenile court found that the need for adequate protection of the public and the unlikelihood of rehabilitation in the juvenile justice system weigh in favor of transfer. The juvenile court recited several supporting facts, including that:

- K.M. participated in gang-related organized criminal activity that involved "conduct fundamentally dangerous to the community through gunfire in an open area in the middle of the day"; and
- K.M. cannot be rehabilitated in the juvenile justice system because she is 17 years old, which does not leave the system sufficient time to rehabilitate her given the egregiousness of her crime.

In its written order, the juvenile court also referenced provisions of the Family Code that place age restrictions on its juvenile jurisdiction. In addition, the juvenile court heard evidence—Lord's testimony—that K.M. could remain at the facility for female juvenile delinquents only for about 18 months due to her age.

K.M. urges that the ability to adequately protect the public and rehabilitate her within the juvenile justice system heavily weighs against transfer to the criminal



district court—so heavily, she asserts, that it also outweighs the other three section 54.02(f) criteria. In support, K.M. primarily relies on Dr. Chibueze’s testimony. Chibueze opined that K.M. has “a high treatment amenability” and that K.M.’s odds of reoffending are low.

However, Chibueze’s conclusions were not binding on the juvenile court. *See In re S.G.R.*, 496 S.W.3d at 241. It instead concluded that the danger K.M. currently poses to the public—as demonstrated by her role in a gang-related murder—makes rehabilitation in the juvenile justice system unlikely given the limited time K.M. would be subject to it. Evidence in the record supports the juvenile court’s assessment of K.M.’s current dangerousness. Chibueze assessed K.M.’s dangerousness as being in the middle range when accounting for Mack’s murder. In doing so, Chibueze relied on some of the same circumstances recited by the juvenile court in its transfer order, like the premeditated and manipulative nature of the crime.

K.M. argues that the juvenile court’s reliance on her age and the limited jurisdiction of the juvenile justice system is improper because these facts would support waiver of juvenile jurisdiction in any instance involving an older juvenile. But K.M.’s argument misapprehends the juvenile court’s ruling, which is not premised solely on her age. Rather, the juvenile court found that the limited time K.M. could remain in the juvenile justice system made the system inadequate to protect the public or rehabilitate her given the particularly serious nature of her

offense. This is not an improper application of section 54.02(f)(4). *See Faisst v. State*, 105 S.W.3d 8, 12–15 (Tex. App.—Tyler 2003, no pet.) (upholding finding that juvenile justice system was inadequate to protect public and rehabilitate juvenile based on evidence that system could not address serious offense—intoxication manslaughter—given that juvenile was already 17 at certification hearing).

The record does not contain any direct evidence that the limited amount of time K.M. could be subject to the juvenile justice system would be inadequate to protect the public and rehabilitate her. No witness testified that this limited amount of time would be inadequate. (No witness testified it would be adequate either.) But the juvenile court heard evidence from which it reasonably could infer such inadequacy. Evidence of K.M.’s persistent loyalty to the “103” street gang, for example, suggests that rehabilitating her so that she will not pose a danger to public upon her release may be difficult. *See In re S.R.G.*, 496 S.W.3d at 242–43 (affirming similar finding based in part on evidence of juvenile’s close association with gang). In addition, Chibueze agreed that a lack of regret or remorse makes rehabilitation more difficult. While conflicting evidence existed as to K.M.’s remorse, it is undisputed that she asserted Mack was evil and suggested he got what was coming to him after detectives told her they knew of her involvement in his murder

On this record, more than a scintilla of evidence supports the juvenile court’s finding that the prospect of protecting the public and the likelihood of rehabilitating

K.M. in the juvenile justice system weigh in favor of waiver. As K.M. contends, contrary evidence, like Chibueze's testimony, indicates that she could be rehabilitated within the juvenile justice system. But when all the evidence is taken into account, the great weight and preponderance of the evidence is not so contrary to the juvenile court's finding as to make it clearly wrong and unjust. The evidence therefore is legally and factually sufficient to support the juvenile court's finding that section 54.02(f)(4) favors waiver of its jurisdiction.

We overrule K.M.'s second issue.

### **CONCLUSION**

The juvenile court's findings are supported by legally and factually sufficient evidence. In addition, the juvenile court correctly applied the statutory criteria governing the waiver of its jurisdiction to its fact findings. We therefore hold that the juvenile court did not abuse its discretion by waiving its jurisdiction and transferring K.M. to the criminal district court to stand trial for murder.

We affirm.

Gordon Goodman  
Justice

Panel consists of Justices Kelly, Goodman, and Hightower.