the YMCA TEXAS YOUTH & GOVERNMENT

ATTACHMENT 2

2016-2017 APPELLATE CASE MATERIALS

THE TEXAS COURT OF CRIMINAL APPEALS

No. YAG-APP-2016

Jenny Smith, Appellant

v.

The State of Texas, Appellee

On Appeal from
The 15th Court of Appeals

THE TEXAS COURT OF CRIMINAL APPEALS

JENNY SMITH, Appellant

v.

THE STATE OF TEXAS, Appellee

Docket No. Y&G-APP-2016
September 3, 2016

CASE BELOW:

Appeal is **GRANTED** so that the court may hear and consider the issues raised by the record.

The issues before the Court are:

(1) Whether the trial judge abused his discretion by refusing to suppress the statement made by the Appellant to police.

And

(2) Whether the Court abused its discretion in certifying Appellant as an adult.

It is further ordered that this case be set down for an expedited hearing in the January 2017 term of this court. The Appellant, Jenny Smith, shall present argument first.

Jeremiah Benes

Jeremiah Benes, Chief Justice

MEMORANDUM TO THE COURT

To: Court of Criminal Appeals

From: Stephanie Schmidt, Law Clerk

We have received a new appeal from the 15th Court of Appeals. At your request, I have reviewed the appeal and the record and provide this summary of the case:

Facts:

This case involves the death of Benjamin Netlo, age 7 as a result of multiple stab wounds. Fifteen year old Jenny Smith was certified as an adult and subsequently tried and convicted of first degree murder.

Appellant argues two issues on appeal: First, that the court abused its discretion in not suppressing statements made by Jenny Smith to the police. Second, Jenny Smith should not have been certified to stand trial as an adult.

Appellant was convicted in the 1st District Court of Coco County, Texas of first degree murder. She was sentenced to 50 years in prison.

RECORD ON APPEAL

1. 15th Court of Appeals Decision
2. Trial Record

NO. 12-YAG-15THAPP

IN THE COURT OF APPEALS

FOR THE 15TH DISTRICT OF TEXAS

AT COCO COUNTY

PANEL A

SEPTEMBER 3, 2016

Jenny Smith, Appellant
v.
State of Texas, Appellee

FROM THE 1ST CRIMINAL DISTRICT COURT OF COCO COUNTY

NO. 12-654321; HONORABLE NATHAN CAPPER, JUDGE

Before Penner, N., Reagan, K. and Willoughby, M.

Willoughby dissented and filed an opinion

OPINION

By, Penner, N., Justice

Defendant was convicted in the 1st District Court of Coco County, Texas of first degree murder. She was sentenced to life in prison. This direct appeal followed. We affirm.

On appeal, Appellant raises two issues:

(1) That the Trial Court abused its discretion in not suppressing Appellants statements to the police as such statements were not made voluntarily; and

(2) That the Court abused its discretion in certifying Appellant to stand trial as an adult.

I.
FACTUAL BACKGROUND

Seven year old Benjamin Netlo disappeared from the Penny Park playground in Brookbend, Texas on January 7, 2016. Appellant Jenny Smith was spotted in the park around the same time Benjamin disappeared. Appellant was picked up at her home and taken to the Brookbend police station to be interviewed. A phone call was made by the Brookbend Police Department to Appellant's guardian. Appellant's guardian was not available so a message was left for her.

At the police station, Appellant admitted being in the park but denied having talked to or seeing Benjamin. The police then took Smith back to the park to determine where she had been in the park. While at the park an empty hole was spotted near the spot where Appellant had been seen. Appellant admitted to digging the hole. The police officers called for more officers to search the rest of the wooded area in the park. The officers found a second, shallower hole dug in the same rectangular shape and used as a grave. Benjamin Netlo's body was found in the grave covered in about five inches of dirt and leaves. Benjamin appeared to have been stabbed multiple times. An ambulance was called and Benjamin's body was transported to the Brookbend Hospital Morgue.

Appellant was transported back to the Benbrook Police Station which also serves as a holding facility for juvenile offenders who have been arrested. Detective Sergeant Hodges and Officer Donny Murray met with Smith and informed her that Benjamin's body had been found in close proximity to the hole that she had dug. At that point, Detective Hodges called in a magistrate to issue Appellant her 51.095 Miranda type warning in accordance with the Texas Family Code. Juvenile Officer Leah Korte was also called to assist in the questioning of Appellant. Detective Hodges, Officer Murray and Officer Korte remained in the room when the magistrate issued the warnings and then proceeded to take Appellant's statement and interviewed the Appellant for approximately three hours.

According to Appellant, during the interrogation Juvenile Officer Leah Korte indicated to her that "she was on her side" and that "she worked with juveniles all the time and always had their best interests at heart. Appellant also stated in her Motion to Suppress that Officer Korte told her that if she would just help her out by telling her what happened, she would go to bat for her and see what she could do to help her out. The Motion to Suppress also states that Officer Korte also told Jenny that "this is the sort of case that will get you certified to stand trial as an adult." According to Appellant, she didn't want to talk at first but that Officer Korte just kept saying that she had to tell the truth in order for Korte to get her help. Officer Korte tells a different story. She acknowledges that she told Appellant she had handled many juvenile cases but denies offering to go to bat for her and help her out. Officer Korte stated at the suppression hearing that she told Appellant she would tell the district attorney that she had cooperated with the police but that she did not offer her any deals or make her any promises. Ultimately Jenny provided an oral videotaped confession to the police, stating "ok, I did it."

Hodges, Murray and Korte continued interviewing Appellant. They noted that she did not appear as if she had killed within the past 24 hours and that she seemed lucid, calm and collected. She was not stand-offish but did not show much emotion either. They further noted that Appellant was cooperative and gave answers that made sense and were easy to comprehend and that Appellant was not psychotic or manic during the interview. That she in fact seemed to be in touch with reality. After a statement was taken from Appellant indicating that she indeed had lured Benjamin away from the playground, stabbed him multiple times and then buried him, Appellant was then arrested for the murder of Benjamin Netlo and her guardian was contacted again to provide an update. Appellant was then transferred to a juvenile holding cell. Subsequently, a Petition to certify Appellant as an adult was filed and a hearing timely set and heard. Jurisdiction was waived by the juvenile court and the case was transferred to Criminal District Court where Appellant was tried and found guilty.

Appellant argues that her statements to Detective Hodges and Officer Murray should be suppressed as they were not voluntary. Appellant also argues that the court abused its discretion in not suppressing her statement to the police. Appellant also argues it was an abuse of discretion to certify her to stand trial as an adult. We disagree and will affirm the judgment of the trial court on both issues.

II.
SUPPRESSION OF STATEMENT

It is well established law that Juveniles are entitled to the same protections as adult defendants during investigation and questioning. *See Tex. Fam. Code Ann.* I51.095(Vernon Supp. 2002); *See also, In Re Gault,* 387 U.S. 1, 55 (1967). The requirements that must be met in order for a statement from a juvenile to be admissible at a trial on the case are outlined in section 51.095 of the Texas Family Code. If the requirements of Tex. Fam Code Ann. I51.095 are not met, then those statements are inadmissible under Article 38.23 of the Texas Code of Criminal Procedure.

A. Standard of Review

"A trial court's ruling on a motion to suppress, like any ruling on the admission of evidence, is subject to review on appeal for abuse of discretion." *Amador v. State,* 275 S.W.3d 872, 878 (Tex.Crim.App.2009); *see Swain v. State,* 181 S.W.3d 359, 365 (Tex.Crim.App. 2005). In evaluating whether a trial court's ruling on a motion to suppress is supported by the record, we consider only evidence presented at the hearing on that motion. *Hardesty v. State,* 667 S.W.2d 130, 133 n. 6 (Tex.Crim.App.1994); *DeLeon v. State,* 985 S.W.2d 117, 199 (Tex.App.-San Antonio 1998, pet. ref'd).

A trial court's ruling on a Motion to Suppress is generally reviewed under an abuse of discretion standard. *Jackson vs. State*, 33 S.W.3d 828, 838 (Tex.Crim.App. 2000). If the resolution of an issue is based upon the evaluation of witness credibility or demeanor, the appellate court must grant almost total deference to the trial court's determination of the historical facts. *In Re: C.R.*, 995 S.W.2d 778, 782 (Tex.App. – Austin 1999, pet. den'd). The trial court is the exclusive fact finder in a Motion to Suppress hearing and, therefore, it may choose to believe or disbelieve any or all the witness testimony. *Romero vs. State*, 800 S.W.2d 539, 543 (Tex.Crim.App. 1990). An appellate court conducts a *de novo* review, however, of the trial court's application of the laws to those facts. *Carmouche vs. State*, 10 S.W.3d 323, 327 (Tex.Crim.App. 2000); *Guzman vs. State*, 955 S.W.2d 85, 89 (Tex.Crim.App. 1997). "In reviewing a trial court's ruling on a motion to suppress, appellate courts must view all of the evidence in the light most favorable to the trial court's ruling." *State v. Garcia–Cantu,* 253 S.W.3d 236, 241 (Tex.Crim.App. 2008); *Roquemore vs. State*, 60 S.W.3d 862, 866 (Tex.Crim.App. 2001). The trial court's finding may not be disturbed on appeal absent a clear abuse of discretion. *Alvarado v. State,* 853 S.W.2d 17, 23 (Tex.Crim.App. 1993).

B. Discussion

When the voluntariness of a confession is raised, it is the State that carries the burden of proving the confession was given voluntarily. *Griffin v. State,* 765 S.W.2d 422, 430 (Tex.Crim.App. 1989). In considering whether a juveniles' statement was voluntary, the court must examine the totality of the circumstances. *R.J.H.,* 79 S.W.3d at 8; *Rodriguez v. State,* 968 S.W.2d 554, 558 (Tex.App.-Houston [14th Dist.] 1998, no pet.). If the circumstances indicate that the juvenile defendant was threatened, coerced,

promised something in exchange for his confession, or if he was incapable of understanding his rights and warnings, the trial court must exclude the confession as involuntary. *Darden v. State,* 629 S.W.2d 46, 51 (Tex.Crim.App.1982).

For a statement to be involuntary, there must have been "'official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker.'" *In re R.J.H.* 79 S.W.3d 1, 6 (Tex. 2002)(quoting *Alvarado v. State,* 912 S.W.2d 199, 211 (Tex.Crim.App.1995)). Appellant asserts that she provided a confession because she was promised help and leniency by police officers. A promise will render a confession involuntary under Article 38.21 of the Texas Code of Criminal Procedure if it: (1) is of some benefit to the accused; (2) is positive; (3) is made or sanctioned by a person in authority; and (4) is of such a character as would likely influence the accused to speak untruthfully. *Martinez v. State,* 127 S.W.3d 792, 794 (Tex.Crim.App.2004) (citing *Henderson v. State,* 962 S.W.2d 544, 564 (Tex.Crim.App.1997)); *Smith v. State,* 779 S.W.2d 417, 427 (Tex.Crim.App.1989); *Espinosa v. State,* 899 S.W.2d 359, 363 (Tex. App.—Houston [14th Dist.] 1995, pet. ref'd). The relevant inquiry is not whether the defendant actually spoke truthfully or not, but whether the officially sanctioned, positive promise would be likely to influence the defendant to speak untruthfully. *Martinez*, 127 S.W.3d at 794-95.

According to Appellant's verified Motion to Suppress, during the interrogation Juvenile Officer Leah Korte indicated to her that "she was on her side" and that "she worked with juveniles all the time and always had their best interests at heart. Appellant also stated in her Motion to Suppress that Officer Korte told her that if she would just help her out by telling her what happened, she would go to bat for her and see what she could do to help her out. According to Appellant, she didn't want to talk at first but that Officer Korte just kept saying that she had to tell the truth in order for Korte to get her help. Subsequently, Appellant signed a confession. These brief statements are the only reference in Appellant's verified motion to any promises or allegedly coercive conduct by the police. The trial court was free to disbelieve appellant's allegation that the police made this statement. *See Kober v. State,* 988 S.W.2d 230, 234 (Tex.Crim.App. 1999); *see also Manzi v. State,* 88 S.W.3d 240, 243-44 (Tex.Crim.App. 2002).

Even should we assume that the officers did tell the Appellant that making a statement would help her, such a remark by the officers, standing alone and viewed within the totality of the circumstances surrounding appellant's interrogation, does not make the statement involuntary. *Espinosa v. State,* 899 S.W.2d 359, 362-64 (Tex.App.—Houston [14th Dist.] 1995, pet. ref'd). In *Espinosa,* we found that the mere fact the officer told the suspect to "Go ahead and tell us what happened ... Everything will be better for you ... You will get less time" did not render the defendant's statement involuntary. *Id.*

However, here the record does not support Appellant's contention that her confession was not made voluntarily. In contrast to Appellant's testimony, Juvenile Officer Leah Korte, Detective Amelie Hodges and Officer Donny Murray were all present in the room during the interrogation. All three testified at the Motion to Suppress hearing that no promises were made to Appellant. At most, Juvenile Officer Korte explained to Appellant that she often worked with juveniles and that if Appellant would confess, Officer Korte would let the district attorney know that Appellant had cooperated.

A trial court is the sole finder of fact at a suppression of hearing and may choose to believe or disbelieve any of the evidence presented. *Pace v. State*, 986 S.W.2d 740, 744 (Tex. App.—El Paso 1999, no pet.). The appellate court must then review the trial court's findings based using a totality of circumstances test. *Brewer v. State*, 932 S.W.2d 161, 166 (Tex. App.—El Paso 1996). Therefore,

considering the totality of the circumstances, we do not find that the trial court abused its discretion in refusing to suppress Appellant's confession.

III.
CERTIFICATION TO STAND TRIAL AS AN ADULT

Appellant argues that it was an abuse of discretion for the court to certify her to stand trial as an adult because the court failed to conduct a full investigation and diagnostic evaluation and failed to properly consider the factors set forth in section 54.02(f)(3-4) of the Texas Family Code.

A. Standard of Review

The determination of whether there exists sufficient information for a court to certify a juvenile under Family Code I 54.02 (d) is a matter completely within the court's discretion. *In the Matter of J. C. J.,* 900 S.W.2d 753, 754 (Tex.App. -Tyler 1995, *no writ*).

To determine whether a court abused its discretion, the reviewing court must consider whether the challenged ruling was compelled by the facts and circumstances or was "arbitrary, unreasonable, or reached without reference to any guiding rules or principles." *In re Home State Co. Mut. Ins. Co.*, 2007 WL 1429584 (Tex. App.—Tyler 2007, orig. proceeding) (not designated for publication). With respect to fact issues, an abuse of discretion is shown when the record establishes that "the trial court could reasonably have reached only one decision." *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). "When the factual sufficiency of the evidence to support a certification and transfer order is challenged, we consider all of the evidence to determine if the court's finding is so against the great weight and preponderance of the evidence as to be manifestly unjust." *Faisst v. State*, 105 S.W.3d 8, 12 (Tex.App.—Tyler 2003, no pet h.)(*citing C.M. v. State,* 884 S.W.2d 562, 563 (Tex.App.—San Antonio 1994, no writ)); *Matter of C.C.*, 930 S.W.2d 929, 933 (Tex.App.—Austin 1996, no writ); *Matter of M.A.,* 935 S.W.2d 891, 891-96 (Tex.App.—San Antonio 1996, no writ)(stating "We will uphold the trial court's findings unless we find the evidence too weak to support the findings, or the findings are so against the overwhelming weight of the evidence that they are manifestly unjust.")

A trial court also commits an abuse of discretion when it fails to analyze or apply the law correctly. *Walker v. Packer*, 827 S.W.2d at 840. "A trial court has no 'discretion' in determining what the law is or applying the law to the facts. Thus a clear failure by the court trial court to analyze or apply the law correctly will constitute an abuse of discretion." *Id.* "[A] clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion." *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 271 (Tex. 1992)(quoting *Walker*, 827 S.W.2d at 840). "When the legal sufficiency of the evidence supporting a certification and transfer order is challenged, we view the evidence in the light most favorable to the court's findings and determine whether there is any evidence to support the findings." *Faisst*, 105 S.W.3d at 12 (*citing In re J.J.*, 916 S.W.2d 523, 535 (Tex.App.—Dallas 1995, no writ). To determine whether the evidence is legally sufficient to support the transfer of a juvenile proceeding for criminal prosecution, we consider only evidence and inferences tending to support the finding of the trier of fact. *Matter of C.C.*, 930 at 933. "We do not second guess the fact finder unless only one inference can be drawn from the evidence, and a no evidence challenge fails if there is more than a scintilla of evidence to support the juvenile court's finding." *Faisst,* 105 S.W.3d at 12.

Absent a showing of an abuse of discretion, the juvenile court's findings will not be disturbed. *In re D.W.L.*, 828 S.W.2d 520, 525 (Tex.App.—Houston [14th Dist.] 1992, no writ).

B. Certification

A juvenile court has exclusive jurisdiction over criminal offenses committed by juveniles, with some exceptions set forth in Texas Penal Code (TPC) 8.07(a)(1)-(5), unless jurisdiction is waived and the case is transferred to criminal court for prosecution. Tex.Fam.Code Ann. 51.04(a)(Vernon Supp.2001); *In the Matter of N.J.A.,* 997 S.W.2d 554 (Tex.1999). A juvenile court may waive its exclusive original jurisdiction and transfer a juvenile to a criminal district court for criminal proceedings if:

1. the child is alleged to have committed a felony;
2. the child meets one of two age requirements; and
3. after a full investigation and hearing, the juvenile court determines that probable cause exists to believe the juvenile committed the alleged offense and that the community's welfare requires criminal proceedings because of the serious nature of the offense or the child's background.

See TEX. FAM. CODE ANN. I 54.02(a) (Vernon 2009).

1. Diagnostic Study

Appellant first argues that the transfer proceeding lacked a full investigation and diagnostic study. Appellant describes the social and psychological evaluations as minimal and conclusory and argues that they do not constitute a full investigation as required by Section 54.02(d).

Prior to a transfer hearing, a "juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense." *Id.* I54.02(d). This is a mandatory requirement and there is no room for discretion. *R. E. M. v. State*, 532 S.W.2d 645 (Tex.App.—San Antonio1975, *no writ*) (holding that the requirements of section 54.02 (d) are mandatory and must be strictly followed); *In re I.L v. State*, 577 S.W.2d 375, 376 (Tex.App.—Austin 1979, *no writ*) (same). "The statutory requirement of a complete diagnostic study bears upon the maturity and sophistication of the child and relates to the questions of culpability, responsibility for conduct, and ability to waive rights intelligently and assist in the preparation of a defense." *L.M. v. State*, 618 S.W.2d 808, 811 (Tex.App.—Houston [1st Dist.] 1981, *writ ref'd n.r.e.*).

"Full investigation" is not defined in Section 54.02." *Turner v. State,* 796 S.W.2d 492, 497 (Tex.App.—Dallas 1990, no writ). Likewise, a "complete diagnostic study," as required under section 54.02(d), has also not been defined. *See In re B.T.*, 323 S.W.3d 158, 161–62 (Tex. 2010); *Pipkin v. State*, 329 S.W.3d 65 (Tex.App.—Houston [14 Dist.] 2010, pet. ref'd). "[A]ny inquiry into the circumstances of an offense must be one of degree." *In re I.B.*, 619 S.W.2d 584, 586 (Tex.Civ.App.—Amarillo 1981, no writ). "It is a matter of common knowledge that the course and scope of an investigation will vary according to the circumstances surrounding the events." *Id.* The primary function of the investigation is to discover evidence of probative force, whether for or against the child, for presentation at the hearing. *Id.* The issue of whether an investigation is complete is determined by the court that ordered the investigation. *Matter of C.C.,* 930 S.W.2d 929, 934 (Tex.App.—Austin 1996, no writ).

"Typically, the certification report includes a psychiatric report, a psychological report, and a report by a probation department caseworker." *In re J.S.C.*, 875 S.W.2d 325, 326–27 (Tex. App.—Corpus Christi 1994, writ dism'd). However, section 54.02(d) does not necessarily require a psychological or

psychiatric evaluation to render a diagnostic study complete. *See L.M.*, 618 S.W.2d at 811 (involving a diagnostic report in which psychological tests of a juvenile were not attached to diagnostic report and no psychiatric examination was conducted); *I—L— v. State*, 577 S.W.2d 375, 376 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.) (upholding judgment ordering transfer of juvenile to stand trial as adult even though no psychological examination was made). Instead, a court considers the qualitative content of a diagnostic study rather than a "mere quantitative 'check-list'" of included items. *B.T.*, 323 S.W.3d at 161–62 (quoting *L.M.*, 618 S.W.2d at 811–12). "The completeness of such a diagnostic report is to be determined by the juvenile court itself." *In the Matter of J. C. J.,* 900 S.W.2d 753, 754 (Tex.App. -Tyler 1995, *no writ*).

In the case at bar, the social study portion of the diagnostic evaluation contained in the record consisted of a six pages, single spaced document detailing the referrals of the juvenile department, including the current offense and statement of circumstances, and that there were no prior offenses. The evaluation also described the Appellant: her description, attitude, school records, religion, hobbies, residence, sophistication and maturity. Finally, it contained the recommendation that the petition for discretionary transfer be granted. Appellant's argument is that the evaluation submitted into evidence consisted of eight pages but only six were submitted into evidence. Appellant objected to this at the hearing but the objection was overruled.

The psychological portion of the diagnostic evaluation is a four-page single-spaced document. It states that the instruments utilized in making the evaluation were a clinical interview, mental status exam, and review of records. It also refers to a recent psychological assessment and the subsequent psychological screening conducted by other professionals. It also includes the results of an intelligence and an achievement test. It details Appellant's answers to questions about her background, the facts supporting the behavioral observations and mental status conclusions, and testing results.

Appellant contrasts these reports to the documents considered by the juvenile court in *I—L— v. State*, 577 S.W.2d 375, 376 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.): a psychiatrist's report, a social evaluation and investigation by a court investigator, monthly progress reports from a one-year stay at the Texas Youth Council, and an intelligence test. Appellant also refers to a scholarly recommendation that a full investigation should include examinations by a psychiatrist and a clinical psychologist and an evaluation by a probation department caseworker. *See id.* The gist of her argument is that there is no psychiatric, and thus no medical, examination here. However, unlike in *I.L., id.,* where the child's prior offenses included burglary, aggravated assault, and stabbing, Appellant had no prior offenses. The psychological evaluation states that "[t]he results of personality testing indicated no significant difficulties associated with a severe psychiatric disorder," and Appellant did "not appear to be experiencing severe psychological distress...." Under these circumstances, we cannot say that the absence of a psychiatric examination here resulted in an incomplete investigation or diagnostic study.

Under the facts of this case, we conclude the documents presented are sufficient to constitute the "full investigation" required by section 54.02(d) and reject Appellant's first argument regarding the certification procedure.

2. Criteria in making transfer decision

Appellant next argues that the transferring court erred in not giving proper weight to the third and fourth of the transfer criteria set forth in section 54.02(f)

In order to waive jurisdiction and transfer a case under Section 54.02(a), Texas Family Code I 54.02(f) requires the juvenile court to consider the following criteria in making the transfer decision:

1. whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
2. the sophistication and maturity of the child;
3. the record and previous history of the child; and
4. the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

The transferring court found the evidence presented in relation to the factors as set forth in section 54.02(f) was sufficient to warrant transfer Appellant's case to a criminal district court. With regard to section 54.02(f)(1), the offense was obviously committed against a person. The offense was particularly brutal, and there was testimony very few acts seen committed by a juvenile in Coco County were more violent than the one committed by Appellant.

With regard to section 54.02(f)(2), the juvenile court is not required to find that the respondent is as sophisticated and mature as others his age. This inquiry is to determine whether he or she appreciates the nature and effect of his voluntary actions and whether they were right or wrong. *In the Matter of E.D.N.,* 635 S.W.2d 798 (Tex.App.—Corpus Christi 1982, no writ). It also refers to the child's culpability and responsibility for the conduct, as well as whether the respondent can intelligently waive his rights and assist in his defense. *In re C.L.Y.,* 570 S.W.2d 238 (Tex.Civ.App.—Houston [1st Dist.] 1978, no writ). The intellectual quotient (I.Q.) of the respondent is only one element to be considered with regard to whether he or she is sufficiently sophisticated and mature to be tried as an adult. *In the Matter of K.D.S.,* 808 S.W.2d 299 (Tex.App.—Houston [1st Dist.] 1991, no writ). Here, there was evidence in the record from the court appointed psychiatrist indicating that Appellant understood the nature of her actions and the proceedings against her. Appellant's aptitude scores placed her in the above average intelligence range. Appellant also indicated an understanding of her conduct, the seriousness of the offense.

With regard to the third factor found in section 54.02(f)(3), the Appellant has no prior record and that until months before the murder had exhibited no history of rage or violence and the transferring court does not dispute this. However, the Appellant claims that because this factor was not met, the case should not have been transferred to criminal district court.

The next transferring factor of which Appellant complains is the fourth: "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. I 54.02(f)(4). Appellant argues that the transferring court failed to properly weigh the possibility of rehabilitation through the use of procedures and services (ie: proper psychiatric care) and facilities available to the juvenile court (ie: a psychiatric hospital). Appellant argues that given her medical and psychiatric history, proper psychiatric treatment would be sufficient to facilitate rehabilitation such that there would be no danger to the public or herself upon release from juvenile facilities. However, with regard to section 54.02(f)(4), the court also expressed a concern that although there was a program in the Texas Juvenile Justice Department (TJJD) specifically designed for offenders such as Appellant, the realities of the juvenile justice system would not allow adequate time to have an appreciable effect on Appellant's future conduct.

Even though there is some evidence of probative force on the factors found in section 54.02(f)(3-4), it is factually insufficient. Even assuming Appellant is correct, while juvenile court is required to consider the statutory factors in 54.02(f) it is not required to find that each factor is established by the evidence, nor is it required to give equal weight to each factor. *In the Matter of C.C.G.,* 805 S.W.2d 10 (Tex.App.—Tyler 1991, writ denied); *Moore v. State,* 713 S.W.2d 766 (Tex.App.—Houston [14th Dist.] 1986, no writ); *Matter of M.A.,* 935 S.W.2d 896 (Tex.App.—San Antonio 1996, no writ). Findings on three factors or even two of the factors would be sufficient to support the order of transfer, so long as the juvenile court considered each of the statutorily mandated factors. *See In re C.C.G.,* 805 S.W.2d 10, 16 (Tex.App.—Tyler 1991,writ denied); *In re Q.D.*, 600 S.W.2d 392, 395 (Tex.Civ.App.—Fort Worth 1980, no writ). The juvenile court is not required to make findings of fact on each of the factors in TFC 54.02(f), but if it does, a transfer order will not be reversed because there is insufficient evidence to support one or more of the findings as long as there is sufficient evidence to support the ultimate conclusion that the welfare of the community requires criminal proceedings. *In the Matter of K.D.S.,* 808 S.W.2d 299 (Tex.App. – Houston [1st Dist.] 1991, no writ); *In the Matter of C.C.G.,* 805 S.W.2d 10 (Tex.App. – Tyler 1991, writ den.); *C.W. v. State,* 738 S.W.2d 72 (Tex.App. – Dallas 1987, no writ); *In re C.L.Y.,* 570 S.W.2d 238 (Tex.Civ.App. – Houston [1st Dist.] 1978, no writ); *Meza v. State,* 543 S.W.2d 189 (Tex.Civ.App. – Austin 1976, no writ).

Here, the juvenile court's order reflects that the court considered all four of the factors. While appellate record does not contain a reporter's record of the certification hearing. The clerk's record, however, contains appellant's social case history and the report of psychological evaluation conducted of appellant. Although appellant argues that the juvenile court should have reached a different conclusion with regard to the factors related to her certification, the record contains information the juvenile court could have viewed as supporting its decision. A court does not abuse its discretion when it reaches a conclusion based on conflicting evidence. *Unifund CCR Partners v. Villa,* 229 S.W.3d 92, 97 (Tex. 2009); *In re B.N.F.,* 120 S.W.3d 873, 877 (Tex.App.—Fort Worth 2003, no pet.); *In re Barber*, 982 S.W.2d 364, 366 (Tex. 1998)(orig. proceeding).

In the case at bar, the evidence is both factually and legally sufficient to support the trial court's decision. The brutal nature of the crime involved is particularly compelling in light of factors one and four set forth in section 54.02(f). The transfer decision can be based on the seriousness of the offense alone. It must not also be based on the background of the respondent. *In the Matter of C.C.G.,* 805 S.W.2d 10 (Tex.App.—Tyler 1991, writ den.) (respondent shot his step-father four times, tried to prevent medical attention for him, and said "I want him to die.").

IV.
CONCLUSION

Having overruled Appellant's two issues, we affirm the judgment of the trial court.

Nick Penner

Justice Nick Penner

DISSENT By Willoughby, M.

I dissent.

Appellant is a 15 year old female with no prior criminal record and no acts of violence or aggression until approximately six months prior to the murder of seven year old Benjamin Netlo. Certainly the murder in this case is abhorrent and my dissent is not meant to trivialize Benjamin's death. However, the majority would compound this tragedy by affirming the actions of the trial court and the transferring court.

I.
SUPPRESSION OF STATEMENTS

Contrary to the majority opinion, I do not find that the juvenile Appellant's statements were knowingly, intelligently and voluntary. When the voluntariness of a confession or statement is raised, the State carries the burden of proving the confession was given voluntarily. *Griffin vs. State*, 765 S.W.2d 422, 427 (Tex.Crim.App. 1989). In considering whether the juvenile Appellant's statement was voluntary, a Court must examine the totality of the circumstances. *In Re: R.J.H.*, 79 S.W.3d 1, 8 (Tex. 2002); *Rodriguez vs. State*, 968 S.W.2d 554, 558 (Tex.App.—Houston [14th Dist.] 1998, no pet.). A juvenile defendant must understand his rights and the warnings concerning same. *In Re: R.M.*, 880 S.W.2d 297 (Tex.App.--Ft. Worth 1994).

Appellant's custodial statement to police, which prosecutors have treated as a confession, should have been suppressed. Here, Appellant was in custody and interrogated for three hours without the benefit of counsel. Nor was she offered the opportunity to contact her guardian. The officers questioning the Appellant, in particular Juvenile Officer Leah Korte used "deceptive tactics" while encouraging the teenager to tell the truth about the death of Benjamin Netlo. Based upon the information submitted at the suppression hearing, it appears clear that Officer Korte led Appellant to believe that she was there as the Appellant's "advocate." This deception likely misled the Appellant to believe that Officer Korte was there to look after her best interests when, in fact, this was not her role." Officer Korte further misled Appellant by telling her that the Juvenile Court's only focus was "treatment", which could imply to Appellant that she would only receive treatment for her actions instead of adult punishment.

Juvenile Officer Korte's participation in the interrogation of Appellant went far beyond her statutory role which is limited to observation and protection of the juvenile's rights. The statements made to Juvenile Officer Korte, Detective Hodges and Officer Murray by Appellant could still have been admissible but for the actions of the juvenile officer. Officer Korte urged Appellant repeatedly that she had to tell the truth and told her that if she would help out the police, that they would go to bat for her with the district attorney.

Constitutional error requires reversal of the judgment or punishment unless the reviewing court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. TEX.R.APP. P. 44.2(a); *Franklin v. State,* 138 S.W.3d 351, 354–55 (Tex.Crim.App. 2004). Any other error, defect, irregularity, or variance not affecting substantial rights must be disregarded. TEX.R.APP. P. 44.2(b); *Franklin,* 138 S.W.3d at 354–55. Because the improper admission of a statement in response to custodial interrogation implicates the constitutional right against self-incrimination, the trial court's error in this case was constitutional error. *Jeffley v. State,* 38 S.W.3d 847, 858 (Tex.App.-Houston [14th Dist.]

2001, pet. ref'd). Accordingly the trial court's ruling should have be reversed as the admission of the Appellant's statements contributed to the appellant's conviction.

II.
CERTIFICATION

Juvenile transfer hearings are the avenue by which the state may seek to prosecute a child as an adult." As such, the stakes involved in such a proceeding are high. Transfer of a juvenile to an adult criminal court is perhaps the worst punishment a juvenile court is empowered to inflict upon a juvenile offender. Thus, extreme care must be taken by the juvenile court and the appellate courts to ensure that justice is done. The Supreme Court has explicitely stated that "the determination of whether to transfer a child from the statutory structure of the Juvenile Court to the criminal processes of the District Court is `critically important.'" *Kent v. U.S.*, 383 U.S. 541, 560 (1966).

Transferring a juvenile to the adult criminal system can expose him to the severest of punishments, the type of punishment that "is the kind of judgment that, if it can be made at all, must be made rarely and only on the surest and soundest of grounds." *Naovarath v. State*, 779 P.2d 944, 947 (Nev. 1989). A transfer to criminal district court for prosecution of a juvenile as an adult is "the single most serious act the juvenile court can perform...because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available." *Id*. (citing *State v. R.G.D.*108 N.J. 1, 527 (1987)) ("Once transferred, a child will be subject to the retributive punishment of the criminal justice system instead of the rehabilitative goals of the juvenile justice system").

The Supreme Court in *Kent* noted the potential for "procedural arbitrariness" and set forth standards which limit a juvenile court's discretion in these matters. 383 U.S. at 555. The decision to transfer jurisdiction can only be made after "meaningful review," including a statement of reasons for the waiver of jurisdiction, supported by a statement of the relevant facts. *Id.* The appellate court reviewing these matters may not "assume" adequate reasons exist or that a full investigation has been made, but rather it must "set forth the basis for the order with sufficient specificity to permit meaningful review." *Id.* The failure of a juvenile court to apply the *Kent* standards "cannot be said to be harmless error." *Id.* at 564

Because the consequences of certifying a juvenile to stand trial as an adult are so serious, important procedural protections are required. *Id.* at 554. There is "no place in our system of law for reaching a result of such tremendous consequences without ceremony." *Id.* The arbitrary transfer of a juvenile to adult criminal court contains extremely high risks because it results in the "virtual destruction" of a child who can still turn his life around and benefit society. *See* Ellen Marrus and Irene Merker Rosenberg, *After Roper v. Simmons: Keeping Kids Out of Adult Criminal Court*, 42 San Diego L. Rev. 1151,1182 (Fall 2005). The San Antonio court of appeals has noted:

> If, despite the gravity of the charged offense, the child can be successfully rehabilitated by resort to the facilities available to juvenile court, it is clear that such rehabilitation will promote the "welfare of the community" at least as effectively as criminal prosecution with no prospects of rehabilitation, while, at the same time, it accords to the child the beneficial results which our Legislature has concluded can be achieved by protecting youthful offenders from the stigma and demoralizing effects of criminal prosecution.

R.E.M. v. State, 541 S.W.2d 841, 847 (Tex.App.—San Antonio 1976, writ refused n.r.e.).

Twenty years ago, the Texas Court of Criminal Appeals observed: "Our juveniles are being thrust into a precarious system where all personnel are presumed to consider the child's best interests, yet none has the time...or...even the inclination to do so...loose procedure, high-handed methods, and crowded court calendars have resulted in "arbitrariness" and assembly line dispositions." *Lanes v. State*, 767 S.W.2d 789, 799 (Tex. Crim. App. 1989)(*citing In re Gault,* 387 U.S. 1, 19 (1967), in reference to Lehman, *A Juvenile's Right to Counsel in a Delinquency Hearing,* 17 Juv. Court Judges Jour. 53, 54 (1966)).

Unfortunately, little has changed since the decision in *Lanes*. The "assembly line dispositions" so disdained by the *Lanes* court are still evident by the fact that *Kent* set forth binding guidelines on juvenile transfer proceedings, and yet the *Kent* guidelines have only been cited in Texas cases 95 times in 42 years. These dispositions can further be seen in statistical evidence. For example, the year 2008 saw the number of children in Texas certified to stand trial as adults increase by 30.9 percent. S*ee OIO Special Report: SB 103 and Rising Adult Certification Rates in Texas Juvenile Courts* (January 12, 2009)[1] This is the largest increase since 1999. *Id.*

While I agree with the majority with regard to the factors required to be considered in determining whether the community welfare requires a juvenile be certified for trial in adult criminal proceedings, it is clear from the Texas juvenile courts' use of boiler plate, form orders transferring children to adult criminal court and the Courts of Appeals' rubberstamping of the same that there is a gross misunderstanding of how to apply these mandatory factors. While the trial court must consider all of these factors before transferring a case to district court, it is not required to find that each factor is established by the evidence. Tex. Fam. Code Ann. I 54.02(f)). The trial court is not required to give each factor equal weight so long as each is considered. *Id.* (citing *In re J.I.*, 916 S.W.2d 532, 535 (Tex. App.—Dallas 1995, no writ)). This is problematic. "The fact that a court *may* undertake an act, but is not required to do so, does not mean that a court is free to do as it pleases." *In the Matter of T.D.*, 817 S.W.2d 771, 773 (Tex. App.—Houston [1st Dist.] 1991)(citing *Lamar Builders,Inc. v. Guardian Sav. & Loan Ass'n*, 789 S.W.2d 373, 374 (Tex. App.—Houston [1st Dist.] 1990, no writ)). The juvenile court "must act with reference to guiding rules and principles, reasonably, not arbitrarily, and in accordance with the law." *Id.* Juvenile courts, which have been charged with the responsibility for the welfare of children as well as the appellate court charged with reviewing their decisions must consider more deeply the transfer statute (54.02) and what it means.

Texas appellate courts are split as to how the 54.02 factors should be applied. One example is found in *The Matter of T.L.C.* where the Fourteenth Court of Appeals overruled a juvenile's challenge to a form order merely parroting the statutory considerations. *In the Matter of T.L.C.*, 948 S.W.2d 41, 43 (Tex. App.—Houston [14th Dist.] 1997, no pet.). The juvenile in that case challenged the waiver of jurisdiction over him, alleging that the the U.S. and Texas Constitutions and Family Code were violated by the juvenile court, which failed to specifically state the reasons for the waiver in its Order. *Id.* The court of appeals noted that *Kent*[2] requires a juvenile court to include in its waiver order a statement of reasons or considerations sufficient to demonstrate that the statutory requirement of "full investigation" has been met and that the court gave careful consideration to the question. *Id.*

[1] http://www.campaignforyouthjustice.org/documents/OIO_AdultCert_SpecialReport.pdf

[2] 383 U.S. at 556 (1996).

The juvenile court in *T.L.C.* stated that the *Kent* rule was complied with by a form order as long as it is supported by the record. *Id.* at 44. The record in *T.L.C.* showed that the juvenile court had before it evidence of the juvenile's alleged crimes, the juvenile's conduct while in confinement, his school record, and several psychiatric examinations. *Id.* However, the opinion did not identify or describe what any of that evidence showed. *Id.* Despite this, the appellate court rubber stamped the juvenile court's order by holding that the juvenile court carefully considered all the required factors and that the order was sufficient. *Id.* Surely this is not the meaningful review meant by the U.S. Supreme Court in *Kent.*

Similarly, in the case at bar, the juvenile court filled out a form order stating that all the required factors were considered but nothing in the Order indicates what evidence the juvenile court had before it in order to reach such a conclusion or if there was such evidence, what such evidence showed. *See* Order to Waive Jurisdiction. Here, the juvenile court's order is nothing more than a recitation of the required factors set forth in 54.02. *Id.* While the order here does use the words "specifically finds," the court fails to enumerate what exactly it considered in its specific findings when it stated "evidence and reports heretofore presented to the court demonstrate to the court that there is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of the said Jenny Smith by use of procedures, services, and facilities currently available to the Juvenile Court." *Id.*

The form order issued here clearly contradicts the evidence presented to the court, as expert witness Dr. O'Reilly specifically stated that Appellant is amenable to rehabilitation should she receive proper psychiatric treatment that does not involve the use of SSRIs. There is no evidence in the record to support the court's finding that Appellant has "little, if any, prospect of…reasonable rehabilitation," again, indicating the court did not conduct a meaningful investigation and merely rubberstamped the waiver. As Justice O'Connor from the First Court of Appeals of Texas states in his dissent in *In the Matter of T.D.*, "[t]o reproduce the statutory requirements as the findings, makes a mockery of the entire proceeding." *In the Matter of T.D.*, 817 S.W.2d at 783.

In contrast to opinions accepting boilerplate orders, the San Antonio Court of Appeals performed a meaningful review of a juvenile court's form order in *R.E.M. R.E.M. v. State*, 541 S.W.2d 841, 847 (Tex. App.—San Antonio 1976, writ refused n.r.e.). It held that nothing in the transfer statute suggests that it is acceptable to deprive a child of the benefits of the juvenile court system merely because he is accused of committing a serious crime since doing so is a presumption that such child cannot be successfully rehabilitated. *Id.* If an appellate court finds the evidence "factually or legally insufficient to support the juvenile court's order transferring jurisdiction of a youth to the criminal district court, it will necessarily find that the juvenile court has abused its discretion." *In the Matter of T.D.*, 817 S.W.2d at 774.The trial court here abused its discretion when it failed to consider the factors mandated by the Supreme Court in *Kent* and the Family Code and refused to acknowledge that Appellant could be rehabilitated despite the offer of overwhelming testimony from Dr. Kathryn O'Reilly and LPC Joanna Steblay, testimony which the juvenile court ignored. These individuals testified that Appellant had no history of aggressive or violent behavior and was amenable to rehabilitation and posed no threat to the community, satisfying the fourth factor listed in the Family Code. Psychological therapy and placement in a therapeutic environment for adolescent offenders would be in the best interest of Appellant.

The Juvenile Court Act was intended to guide and direct juveniles, and the State is to serve as *parens patriae*, not to convict and punish juveniles. *Thompson v.Oklahoma*, 487 U.S. 815, 825, n.23 (1988). Theoretically the juvenile court's jobs is to determine the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child…not to fix criminal responsibility, guilt and punishment. *Kent*, 383 U.S. at 555. Senate Bill

103 enacted by the Texas Legislature in 2007 mandates that "providing appropriate treatment to our youth is a ***requirement***, not an exception." *See Final Report on the Progress & Impact of Senate Bill 103, Executive Summary and Future Outlook* (December 1, 2008)(emphasis added).

The judge in a juvenile court should not be one who administers the law in the normal meaning of criminal law. Rather he should "diagnose, investigate, counsel and advise." *Lanes*, 767 S.W.2d at 792. In this respect, "in order to provide optimal flexibility in diagnosis and treatment with the constant focus being the child's lifestyle and character rather than whether he committed the crime," the juvenile court has been given broad discretion *Id.* at 793. In the case at bar, the juvenile court judge failed to do any of these things, despite the United States Supreme Court's admonishment that "non-criminal treatment is to be the rule—and the adult criminal treatment, the exception which must be governed by the particular factors of individual cases." *Kent*, 383 U.S. at 560-561 (citing *Harling v. U.S.*, 295 F.2d 161, 164-65 (U.S. App. D.C. 1961).

For the reasons stated above, the trial court abused its discretion by waiving jurisdiction and ordering Appellant transferred to adult jail to await trial rather than sending him to TJJD. The majority compounds this mistake by upholding the decision of the transferring court. On this issue, I would remand the cause to the trial court to make specific factual findings to support the certification order.

Justice Michelle Willoughby

TRIAL CLERK'S RECORD

VOLUME 1

Trial Court Case No. 12-654321
In the 108th Criminal District Court
Coco County, Texas
Honorable Nathan Capper, Judge Presiding

THE STATE OF TEXAS

V.

JENNY SMITH

CASE NO. 12-123456J

IN THE MATTER OF	I	**IN THE 1st DISTRICT COURT**
	I	
JENNY SMITH,	I	**OF COCO COUNTY, TEXAS**
	I	
A CHILD	I	**SITTING AS A JUVENILE COURT**

PETITION FOR DISCRETIONARY TRANSFER TO CRIMINAL COURT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Monica Earley, District Attorney of Coco County, Texas, for the State of Texas, hereinafter styled Petitioner, upon information in his possession and believing it to be true, requesting a complete diagnostic study, social evaluation and full investigation of the child, the child's circumstances and the circumstances of the alleged offenses, and respectfully represents to the Court that because of the seriousness of the offenses and the background of the child, the welfare of the community requires

that the Juvenile Court waive jurisdiction and have Jenny Smith transferred to Criminal Court for criminal proceedings concerning the following felony offenses and all criminal conduct occurring in said criminal episodes:

The said child engaged in delinquent conduct, to wit: that on or about January 7, 2016, in Coco County, Texas, the said child violated a penal law of this state punishable by imprisonment/confinement in jail, to wit: MURDER, Section 19.02 of the Texas Penal Code, in that the said child, Jenny Smith did then and there intentionally or knowingly cause the death of an individual, namely Benjamin Netlo, by stabbing with a knife; same being a first degree felony if committed by an adult.

And it is further presented that the child used or exhibited a deadly weapon, to wit: a knife in the manner and means of its use and intended use was capable of causing death and serious bodily injury, during the commission of said offense.

II.

That the said Jenny Smith is a female person who resides at 2525 Penny Lane, Brookbend, Coco County, Texas, was born on August 1, 2000 and was 15 years of age at the time she was alleged to have committed the offenses, a first degree felony, and that no adjudication hearing has been conducted concerning the said offenses.

That the parents of the child are as follows:

MOTHER: deceased
FATHER: Drew Smith – incarcerated
GUARDIAN: Kara Smith - aunt
ATTORNEY: Paige Tipton

IV.

That because of the extreme and severe nature of the alleged offenses above mentioned, the prospects of the adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of the procedures, services and facilities currently available to the Juvenile Court is in serious doubt.

V.

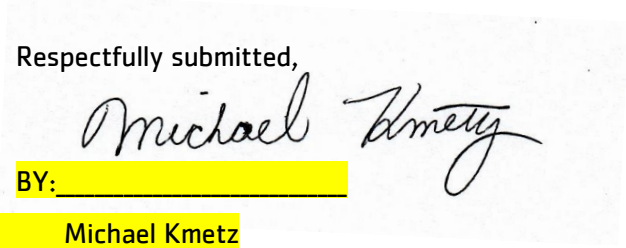
That the evidence in the above listed offense is sufficient for the juvenile court to determine that there is probable cause to believe that Jenny Smith, the child before the court, committed the offenses alleged.

VI.

That the evidence in the above listed complete diagnostic study, social evaluation and full investigation of the child, the child's circumstances and the circumstances of the alleged offenses is sufficient for the Juvenile Court to determine that there are not resources available to the Juvenile Probation Department that can adequately rehabilitate Jenny Smith the child before the court, and that the seriousness of the offenses and the protection of the community require that the matter be transferred to the appropriate Criminal Court for criminal proceedings pursuant to I54.02 of the Texas Family Code.

WHEREFORE, Petitioner prays that summons as required by law be issued and that this Honorable Court waive its jurisdiction over the said Jenny Smith and order that the said Jenny Smith be transferred to the proper Criminal Court for criminal proceedings therein.

Respectfully submitted,



BY:_____

Michael Kmetz
District Attorney
State Bar No. 52453709

CASE NO. 12-123456J

STATE OF TEXAS	I	IN THE 1st DISTRICT COURT
	I	
COUNTY OF COCO	I	OF COCO COUNTY, TEXAS

ORDER TO WAIVE JURISDICTION

IN THE MATTER OF **JENNY SMITH**.

On the 22nd day of March, 2016, a hearing was held in the above styled and numbered cause under Section 54.02 of the Family Code, on the issue of waiver of jurisdiction. Prior thereto the Court had ordered and obtained a diagnostic study, social evaluation, a full investigation of the child, HER circumstances and the circumstances of the alleged OFFENSE; counsel, **Paige Tipton** was **APPOINTED** more than ten (10) days prior to the hearing; the counsel for the child was given access to all written matter to be considered by the court in making the transfer decision more than one (1) day prior to the hearing; and said child **JENNY SMITH** and her **FATHER DREW SMITH** and her **GUARDIAN KARA SMITH** HAD BEEN SERVED WITH CITATION MORE THAN TWO (2) DAYS PRIOR TO THE HEARING. After full investigation and hearing at which hearing, the said **JENNY SMITH** and her **GUARDIAN KARA SMITH** were present; the court finds that the said **JENNY SMITH** is charged with a violation of penal law of the grade of felony, if committed by an adult, to wit: **MURDER** committed on or about the **7th** day of **JANUARY, 2016;** that there has been no adjudication of THIS OFFENSE; that she was 15 years of age or older at the time of the commission of the alleged OFFENSE having been born on the **1st** day of **AUGUST, 2000**; that there is probable cause to believe that the child committed the OFFENSE alleged and that because of the seriousness of the OFFENSE, the welfare of the community requires criminal proceeding. In making that determination, the Court has considered among other matters:

1. Whether the alleged OFFENSE WAS against person or property, with the greater weight in favor of waiver given to offenses against the person;
2. The sophistication and maturity of the child;
3. The record and previous history of the child; and

4. The prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of the child by use of procedures, services and facilities currently available to the Juvenile Court.

The Court specifically finds that the said **JENNY SMITH** is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by the said **JENNY SMITH**, to have aided in the preparation of HER defense and to be responsible for HER conduct; that the OFFENSE alleged to have been committed WAS against the person of another; and the evidence and reports heretofore presented to the court demonstrate to the court that there is little, if any, prospect of adequate protection of the public and likelihood of reasonable rehabilitation of the said **JENNY SMITH** by use of procedures, services, and facilities currently available to the Juvenile Court.

IT IS THEREFORE ORDERED that the jurisdiction of this Court sitting as a Juvenile Court, be and it is hereby waived, and the said **JENNY SMITH** be and the same is hereby transferred to the Criminal District Court of Coco County, Texas, for criminal proceedings in accordance with the Code of Criminal Procedure.

SIGNED on the 22nd Day of March, 2016

JUDGE Ashley L. Wipick
1st DISTRICT COURT
COCO COUNTY, TEXAS

CASE NO. 12-654321

STATE OF TEXAS	I	**IN THE 108th DISTRICT COURT**
	I	
vs	I	
	I	
JENNY SMITH	I	**COCO COUNTY, TEXAS**

CERTIFICATION ORDER

On this the 22nd day of March, 2016 it appearing to this court that the 1st District Court, sitting as a Juvenile Court of Coco County, Texas, has certified to this Court that it has waived jurisdiction of Case Number 12-123456J upon the docket of said court, styled In the Matter of Jenny Smith, a delinquent child, and has transferred to this court said Jenny Smith for Criminal proceedings, and to be

dealt with as an adult in accordance with the law; and it appearing to the court from said court's certification, including the written order and finding of the court accompanied by a complaint in said case against said Jenny Smith is charged with a violation of a penal law with the:

OFFENSE(S) OF: MURDER, COMMITTED ON OR ABOUT THE 7th DAY OF January, 2016; a felony and that said Jenny Smith was fifteen years of age or older at the time of the commission of said alleged offense.

IT IS ACCORDINGLY CONSIDERED, ORDERED AND ADJUDGED THAT jurisdiction of this court of said Jenny Smith for criminal proceedings be and the same are hereby assumed by this court; that this cause be filed and docketed and this order entered in the minutes of this court, and that a certified copy of same be certified to said Judicial District Court, sitting as a Juvenile Court, for observance.

IT IS FURTHER ORDERED THAT the Sheriff of Coco County, Texas, take custody of said Jenny Smith and confine her in the jail of Coco County, Texas, until further orders of this court.

A certified copy of this order is to be delivered to the Sheriff of Coco County, Texas, for said certified copy will be the authority of the Sheriff of Coco County, Texas for arresting and holding said Jenny Smith

No bond set.

SIGNED on the 22nd Day of March, 2016

JUDGE _____ DISTRICT COURT
COCO COUNTY, TEXAS

INDICTMENT

STATE OF TEXAS
vs.
JENNY SMITH DOB: 08/01/2000
2525 Penny Lane Date Prepared: 04/02/2016
Brookbend, Coco County, Texas By: Coco County District Attorney

Felony Charge: 1st degree Murder Arrest Date: 01/8/2016

Cause Number: 12-12345 Bail: $0
Coco County District Court No: 108

In the name and by authority of the State of Texas:

The duly organized grand jury of Coco County, State of Texas, of the district court of said county, in said court at said term, do present that Jenny Smith, hereinafter referred to as Defendant, on or about January 7, 2016 in the County of Coco, State of Texas, the defendant after deliberation, intentionally or knowingly caused the death of Benjamin Netlo by committing an act clearly dangerous to human life, namely cutting his throat and stabbing him multiple times with a knife in violation of Section 19.02 of the Texas Penal Code. Defendant is charged to have committed the felony of murder in the first degree punishable and upon conviction shall be punished under Section 12.32 of the Texas Penal Code by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.

Against the peace and dignity of the State.

Morgan Taylor

Foreman of the Grand Jury

CASE NO. 12-654321

STATE OF TEXAS	**I**	**IN THE 108th**
	I	
vs	**I**	**CRIMINAL DISTRICT COURT**
	I	
JENNY SMITH	**I**	**COCO COUNTY, TEXAS**

MOTION TO SUPPRESS STATEMENTS

COMES NOW JENNY SMITH, through undersigned counsel, and moves this Court to suppress evidence of any and all statements taken from the accused by law enforcement agents that the state intends to introduce into evidence against her at trial. These statements were obtained in violation of

Jenny's rights against self-incrimination, right to counsel, and due process of law as guaranteed by Article I, Section 10 of the Texas Constitution and Section 51.095 of the Texas Family Code. Movant states that the Defendant's statements to law enforcement were not voluntary.

The length and nature of defendant's custody and the duration and nature of defendant's interrogation and the conditions under which it was conducted, were inherently coercive as applied to a person of defendant's age, education, background, and physical and mental condition at the time such interrogation occurred. Defendant Jenny Smith, a 15 year old female, was subjected to mental and physical duress prior to and during the interrogation, and the statement obtained was the direct result of promises made to defendant prior to and during the interrogation by the interrogating officials.

Based upon a statement from a teenage boy, Defendant was picked up at her home and taken to the Brookbend police station to be interviewed regarding the disappearance of Benjamin Netlo. A phone call was allegedly made by the Brookbend Police Department to Jenny's guardian; however the guardian was unavailable. At the police station, Jenny admitted being in Penny Park at the same time as Benjamin but denied having talked to or seen Benjamin. The police then took Jenny back to the park to determine where she had been in the park. While at the park an empty hole was spotted near the spot where Jenny had been seen. Jenny admitted to digging the hole. All of the proceeding events occurred without Jenny being read her rights by a Magistrate.

The police officers subsequently located Benjamin's body in a second hole in the woods. At that point, Jenny was transported back to the Benbrook Police Station which also serves as a holding facility for juvenile offenders who have been arrested. Detective Sergeant Hodges and Officer Donny Murray met with Smith and informed her that Benjamin's body had been found in close proximity to the hole that she had dug. At that point, Detective Hodges called in a magistrate to issue Appellant her 51.095 Miranda type warning in accordance with the Texas Family Code. Juvenile Officer Leah Korte was also called to assist in the questioning of Appellant. Detective Hodges, Officer Murray and Officer Korte remained in

the room when the magistrate issued the warnings and then proceeded to take Appellant's statement and interviewed the Appellant for approximately three hours.

During the interrogation Juvenile Officer Leah Korte indicated to Jenny that "she was on her side" and that "she worked with juveniles all the time and always had their best interests at heart. Officer Korte also told Jenny that if she would just help her out by telling her what happened, she would go to bat for her and see what she could do to help her out. Jenny didn't want to talk at first but Officer Korte just kept saying that she had to tell the truth in order for Korte to get her help. Officer Korte also told Jenny that "this is the sort of case that will get you certified to stand trial as an adult." Jenny believed that Officer Korte was the only one in the room working for her. She did not have counsel present and had not yet been permitted to contact her guardian. Because Jenny relied upon the promises made by Juvenile Officer Korte, Jenny provided the officers with an oral confession.

For these reasons, we request that the Court suppress the statements made by Jenny Smith to Juvenile Officer Leah Korte, Detective Sergeant Amelie Hodges and Officer Donny Murray.

Respectfully submitted,

BY: Paige Tipton
Paige Tipton
Attorney for Defendant
State Bar No. 63542628

VERIFICATION

STATE OF TEXAS I
COUNTY OF COCO I

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared Jenny Smith, a person whose identity is known to me. After I administered an oath to her upon her oath, she said:

"My name is Jenny Smith. I am capable of making this verification. I read the Motion to Suppress Statements. The facts stated in it are within my personal knowledge and are true and correct."

Reagan D'iané
Notary Public, State of Texas
My commission expires
November 12, 2017

Jenny Smith

SUBSCRIBED AND SWORN TO BEFORE ME, this the 14th day of June, 2016

NOTARY PUBLIC, State of Texas

CASE NO. 12-654321

STATE OF TEXAS	I	**IN THE 108th**
	I	
vs	I	**CRIMINAL DISTRICT COURT**
	I	
JENNY SMITH	I	**COCO COUNTY, TEXAS**

ORDER ON MOTION TO SUPPRESS STATEMENTS

On the 25th day of June, 2016, the Court conducted a hearing on the Motion to Suppress Statements filed by Jenny Smith. The hearing consisted not only of argument of counsel, but also testimony from witnesses, the admission of affidavits and other documentary evidence. The Court after considering the pleadings, the testimony, the arguments, and briefs of counsel, Orders that Defendant's Motion to Suppress should be denied.

The Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Juvenile Officer Leah Korte, Detective Sergeant Amelie Hodges, Officer Donny Murray and Defendant Jenny Smith testified at the Motion to Suppress hearing.

2. Defendant's statements, the subject of this Motion, were made while the Defendant was in custody.

3. Defendant was read her rights by a Magistrate and signed off that she understood her right to counsel, her right not to speak and that she understood that anything she said could be used against her in a court of law.

4. Juvenile Officer Leah Korte's statements to Defendant in interrogation did not rise to the level of promises.

5. Juvenile Officer Leah Korte did nothing more than tell Defendant that she had worked with juveniles previously and that if she cooperated, Korte would tell the district attorney that Defendant had cooperated

6. Given the facts and circumstances, Defendant's statements to Juvenile Officer Leah Korte, Detective Sergeant Amelie Hodges and Officer Donny Murray were made voluntarily and without coercion.

CONCLUSIONS OF LAW

1. For a statement to be involuntary there must have been official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker.

2. A promise will render a confession involuntary under Article 38.21 of the Texas Code of Criminal Procedure if it: (1) is of some benefit to the accused; (2) is positive; (3) is made or sanctioned by a person in authority; and (4) is of such a character as would likely influence the accused to speak untruthfully.

3. The relevant inquiry is not whether the defendant actually spoke truthfully or not, but whether the officially sanctioned, positive promise would be likely to influence the defendant to speak untruthfully. *Martinez*, 127 S.W.3d at 794-95.

4. The Court concludes that the Defendant's statement was made voluntarily.

The Court concludes that based upon the above factual determinations and consideration of the applicable law, that the Defendant's Motion to Suppress her statement should be denied.

SIGNED this the 25th day of June, 2016,

Nathan Cagle

JUDGE PRESIDING

CASE NO. 12-654321
INCIDENT NO./TRN: 12-654321

THE STATE OF TEXAS	I	IN THE 108TH
	I	
V.	I	CRIMINAL DISTRICT COURT
	I	
JENNY SMITH	I	COCO COUNTY, TEXAS
	I	
STATE ID NO.: TX	I	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. Nathan Capper	Date Judgment Entered:	July 2, 2016
Attorney for State:	MONICA EARLEY	Attorney for Defendant:	PAIGE TIPTON

Offense for which Defendant Convicted:
MURDER

Charging Instrument:	Statute for Offense:
INDICTMENT	19.02
Date of Offense:	
1/7/2016	
Degree of Offense:	Plea to Offense:
1ST DEGREE FELONY	NOT GUILTY
Verdict of Jury:	Findings on Deadly Weapon:
GUILTY	N/A

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	July 2, 2016	July 2, 2016

Punishment and Place of Confinement: **50 YEARS** **INSTITUTIONAL DIVISION, TDCJ**

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .**

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ 10,000	$ 900.00	$ N/A	☐ VICTIM (see below) ☒ AGENCY/AGENT (see below)

☐ **Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.**

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

Time Credited:
If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.
From to From to From to
From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
N/A DAYS NOTES: **N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **Tarrant** County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury**. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court**. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election**. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 I 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ.** The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Coco County District Attorney's Office. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY.** The Court **ORDERS** Defendant to proceed immediately to the Office of the County . Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

N/A

Signed and entered on July 2, 2016

Nathan Capper
JUDGE PRESIDING