

CAUSE NO. 2022-JV-XXXXX

IN THE MATTER OF	§	IN THE 313TH DISTRICT COURT
	§	
J.J.T.	§	OF
	§	
A JUVENILE	§	HARRIS COUNTY, TEXAS

**RESPONDENT’S RESPONSE IN OPPOSITION TO THE STATE’S MOTION TO
WAIVE JUVENILE JURISDICTION AND TRANSFER TO CRIMINAL
DISTRICT COURT**

TO THE HONORABLE JUDGE OF SAID COURT:

Respondent J.J.T., by and through undersigned counsel, files this Response in Opposition to the State’s Motion to Waive Juvenile Jurisdiction and Transfer this Cause to Criminal District Court under *Texas Family Code* § 54.02(j). The State cannot carry its burden under either subsection (A) or subsection (B) of § 54.02(j)(4). The Court should deny the motion and dismiss this cause for want of jurisdiction.

I. INTRODUCTION

This case returns to this Court on remand from the Supreme Court of Texas. *See Matter of J.J.T.*, 711 S.W.3d 687 (Tex. 2025). The Supreme Court held that the Court of Appeals erred by treating the existence of probable cause before J.J.T.’s eighteenth birthday as dispositive under § 54.02(j)(4)(A), and that this Court’s prior findings were "inconsistent with the text of subsection (A)" because they impermissibly engrafted subsection (B)’s probable-cause requirement onto subsection (A). *Id.* at 698. The Supreme Court remanded for a new transfer hearing under the correct legal framework. *Id.* at 699.

On remand, the legal question is narrow but dispositive: **whether the State has proven, by a preponderance of the evidence, that "reasons beyond the control of the state" made it not practicable to proceed in juvenile court before J.J.T. turned eighteen.** § 54.02(j)(4)(A). The record cannot bear that weight. The delays at issue—the lead investigator’s caseload, his self-described "preference" not to interview juveniles, his decision to defer obtaining J.J.T.’s telephone records until after the eighteenth birthday, and the State’s general litigation choices—are precisely

the kind of delays the Court of Criminal Appeals and the Supreme Court have charged *to* the State, not *beyond* its control. *See Moore v. State*, 532 S.W.3d 400, 405 (Tex. Crim. App. 2017).

The State has likewise abandoned, and could not in any event satisfy, subsection (B). The Supreme Court confirmed that the parties "agree that, without a diligence finding, the juvenile court had no basis to transfer the case under subsection (B)." *Matter of J.J.T.*, 711 S.W.3d at 697. And in any event, probable cause to arrest J.J.T. existed well before his eighteenth birthday, foreclosing subsection (B)(i). *See In re J.J.T.*, 698 S.W.3d 320, 331–32 (Tex. App.—Houston [1st Dist.] 2023) (finding accomplice testimony was corroborated and established probable cause prior to age eighteen).

Because the State cannot satisfy either alternative ground under § 54.02(j)(4), the only remaining option is dismissal. *See In re N.J.A.*, 997 S.W.2d 554, 557 (Tex. 1999) ("If the person is over age eighteen, and section 54.02(j)'s criteria are not satisfied, the juvenile court's only other option is to dismiss the case.").

II. PROCEDURAL POSTURE AND RELEVANT FACTS

Several facts material to subsection (A) are undisputed on this record:

1. J.J.T. was sixteen years and eight months old on October 4, 2020, the date of the alleged offense. He turned eighteen in January 2022—one year and three months later.
2. Investigator Deputy David Crain identified Alfonso Tovar as a suspect within weeks of the shooting and obtained an arrest warrant for Tovar on November 12, 2020.
3. Tovar implicated J.J.T. shortly after his arrest, "claim[ing] that J.J.T. had shot Gutierrez and taken the marijuana." *Matter of J.J.T.*, 711 S.W.3d at 692.
4. In December 2021—while J.J.T. was still seventeen—Tovar made a formal proffer to prosecutors, recounted the offense in detail, and provided the passcode to his cellular telephone.
5. J.J.T. turned eighteen in January 2022.
6. Deputy Crain did not seek a warrant for J.J.T.'s telephone records until July 2022—six months after J.J.T. turned eighteen—and obtained the records within ten days. He did not

seek an arrest warrant for J.J.T. until November 2022, almost a year after the eighteenth birthday.

7. Deputy Crain testified that he generally avoids interviewing juveniles before arrest because handling juveniles is "not something I'm real comfortable with," and explained he prefers to "avoid contacting juveniles as much as possible until [the State] can get the order to apprehend and get them in." *Id.* at 692 n.2.
8. Deputy Crain attributed his delay to his "workload," the COVID-19 pandemic, and the wait for forensic decryption of Tovar's phone. *Id.* at 692.

III. THE LEGAL STANDARD THE STATE MUST MEET ON REMAND

A. The State carries the burden of proof by a preponderance of the evidence.

Juvenile courts have "exclusive original jurisdiction" over delinquency proceedings against minors. Tex. Fam. Code § 51.04(a). For a respondent who is over the age of eighteen at the time the State seeks to proceed, the juvenile court may waive that jurisdiction only if the State proves *every* element of § 54.02(j) by a preponderance of the evidence. *See* § 54.02(j); *Moore*, 532 S.W.3d at 405; *Matter of J.J.T.*, 711 S.W.3d at 695. If the State fails to satisfy each requirement, the juvenile court "must dismiss the case." *In re N.J.A.*, 997 S.W.2d at 557.

The Supreme Court has been emphatic that § 54.02(j) exists to **limit** adult prosecution for juvenile conduct: the statute's provisions "limit the prosecution of an adult for an act he committed as a juvenile if his case could reasonably have been dealt with when he was still a juvenile." *Moore*, 532 S.W.3d at 405.

B. The State must prove statutory good cause under either (j)(4)(A) or (j)(4)(B).

Beyond the threshold requirements (the alleged offense, the respondent's age at the time of the offense, the absence of a prior adjudication, and probable cause to believe the respondent committed the offense), § 54.02(j)(4) requires the State to prove **statutory good cause** for not having prosecuted J.J.T. before his eighteenth birthday. The State must prove **either**:

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

(B) that "after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because" the State lacked probable cause and new evidence has since been discovered, the person could not be found, or a prior transfer order was set aside.

Tex. Fam. Code § 54.02(j)(4)(A)–(B).

C. The Supreme Court's holding in *Matter of J.J.T.* defines the analysis on remand.

The Supreme Court held in this very case that "practicable to proceed" under subsection (A) is determined by "**a reason or reasons beyond the control of the State, not on the timing of the development of probable cause.**" *Matter of J.J.T.*, 711 S.W.3d at 697. The Court emphasized that "[t]he State has considerable discretion in the manner and means of conducting its investigation," but the juvenile court is "charged with examining whether the exercise of this discretion devolved into **unreasonable delay.**" *Id.* at 698 (emphasis added).

"Practicable" was given its ordinary meaning: "reasonably capable of being accomplished; feasible in a particular situation." *Id.* at 697 (quoting *Practicable*, Black's Law Dictionary (11th ed. 2019)). The relevant question, therefore, is whether the State has shown some *external* reason—not one of the State's own making—that rendered timely prosecution infeasible.

IV. ARGUMENT

A. The State has abandoned, and cannot satisfy, subsection (j)(4)(B).

The Supreme Court recorded the parties' agreement that "without a diligence finding, the juvenile court had no basis to transfer the case under subsection (B)." *Matter of J.J.T.*, 711 S.W.3d at 697. Independent of that concession, three textual obstacles foreclose (B):

1. Probable cause existed before J.J.T.'s eighteenth birthday, foreclosing (B)(i).

Subsection (B)(i) is available only if "the state did not have probable cause to proceed in juvenile court *and* new evidence has been found since the 18th birthday of the person." Tex. Fam. Code § 54.02(j)(4)(B)(i). Both conditions must be satisfied; neither is.

The Court of Appeals correctly held—and the Supreme Court did not disturb—that "Tovar's statement as an accomplice witness implicated J.J.T. and was corroborated with evidence sufficient

to establish probable cause to arrest J.J.T. before he turned eighteen." *Matter of J.J.T.*, 711 S.W.3d at 694 (describing *In re J.J.T.*, 698 S.W.3d at 331–32). Probable cause was therefore in hand by, at the latest, Tovar's December 2021 proffer—one month before J.J.T. turned eighteen.

2. The "new evidence" the State invokes is not new; it merely corroborates Tovar.

The cellular telephone records obtained in July 2022 "corroborated Tovar's story that he and J.J.T. were present at the shooting." *Matter of J.J.T.*, 711 S.W.3d at 692. Evidence that merely corroborates information already in the State's possession is not "new evidence" within the meaning of (B)(i); to hold otherwise would convert (B)(i) into a license for prosecutors to defer routine investigative steps until after a respondent's eighteenth birthday and then claim the resulting confirmation as a basis for transfer.

3. The State cannot show due diligence.

Subsection (B) requires "**due diligence of the state.**" Tex. Fam. Code § 54.02(j)(4)(B). On this record, the State did not promptly: (i) seek J.J.T.'s telephone records (a process that took ten days once initiated); (ii) reinterview J.J.T. notwithstanding the accomplice identification; or (iii) seek an arrest warrant after Tovar's formal proffer. The Supreme Court itself catalogued these as "delays attributable to the State." *Matter of J.J.T.*, 711 S.W.3d at 698. The absence of diligence forecloses subsection (B) as a matter of law.

B. The State cannot satisfy subsection (i)(4)(A), because the operative delays were within the State's control.

Subsection (A) requires "a reason beyond the control of the state" that made it not practicable to proceed before the eighteenth birthday. The reasons the State offered at the original hearing—the investigator's caseload, his "preference" not to interview juveniles, his decision to defer telephone-record warrants until after the eighteenth birthday, the pandemic generally, and the forensic decryption of Tovar's phone—cannot bear that weight. Each falls into one or more of the following categories of delays that controlling authority charges *to* the State.

1. Investigative caseload and resource limits are charged to the State. Moore v. State controls.

In *Moore v. State*, 532 S.W.3d 400 (Tex. Crim. App. 2017), the State similarly invoked an investigating detective's "heavy caseload" to justify a multi-year delay. The Court of Criminal

Appeals squarely rejected the argument, holding that "investigative delays are chargeable to the State in considering whether it was practicable for the State to proceed." *Id.* at 405. The Supreme Court reaffirmed *Moore*'s holding by name in this case, observing that "the State did not meet its burden where the delays were attributed to a heavy caseload and an error regarding the respondent's age." *Matter of J.J.T.*, 711 S.W.3d at 697. Deputy Crain's testimony that he was distracted by "workload" is on all fours with *Moore* and cannot satisfy subsection (A).

2. An investigator's personal "preference" not to interview juveniles is a State policy choice, not a reason beyond State control.

Deputy Crain testified candidly that he avoids interviewing juvenile suspects because "[h]onestly, it's not something that I'm real comfortable with," and that he tries "to avoid contacting juveniles as much as possible." *Matter of J.J.T.*, 711 S.W.3d at 692 n.2. That is a State actor's personal decision about how to investigate a case. It is the antithesis of a "reason beyond the control of the state." Tex. Fam. Code § 54.02(j)(4)(A). Permitting an investigator's self-described discomfort to satisfy subsection (A) would invert the statute: the more reluctant the State is to investigate juveniles, the more easily it could later transfer them to adult court after they age into adulthood. The Legislature did not write that statute.

3. The decision to defer J.J.T.'s telephone-record warrant until after his eighteenth birthday is a State decision.

Once Tovar made his December 2021 proffer, nothing prevented Deputy Crain from immediately seeking the same warrant he ultimately obtained in July 2022. The records issued within ten days of the eventual request. *Matter of J.J.T.*, 711 S.W.3d at 692. A ten-day administrative process easily could have completed before J.J.T.'s January 2022 birthday. The State's choice not to make that request was its own. *Cf. In re A.M.*, 577 S.W.3d 653, 670–72 (Tex. App.—Houston [1st Dist.] 2019, pet. denied) (investigators' desire for additional corroborating evidence is not a reason "beyond the control of the state").

4. The pandemic, standing alone, is not a reason beyond the State's control on this record.

The Supreme Court acknowledged that "the time between the commission of the offense and J.J.T.'s eighteenth birthday was relatively short, a year and four months, and *dovetailed with the pandemic.*" *Matter of J.J.T.*, 711 S.W.3d at 698. But the Supreme Court did not hold that the pandemic, by itself, supplied good cause. It expressly returned the case to this Court to weigh that

backdrop "against" the "delays attributable to the State." *Id.* Other courts have treated the pandemic as relevant only when paired with specific, *case-tied* obstacles—e.g., court continuances ordered by judicial emergency orders, defense-sought resets, or quarantines preventing access to witnesses. *See, e.g., In re N.J.T.*, No. 13-21-00089-CR, 2021 WL 4202165, at *5–7 (Tex. App.—Corpus Christi—Edinburg Sept. 21, 2021, no pet.). No analogous obstacle prevented the State from seeking ordinary records or reinterviewing J.J.T. The pandemic is on this record a generalized assertion, untethered to any specific impediment to action.

5. The forensic-decryption delay does not justify the broader inaction.

The record reflects that the State elected to wait on forensic decryption of Tovar's phone, even though Tovar had already implicated J.J.T. and even though, "[w]aiting on those results, Crain ceased investigating." *Matter of J.J.T.*, 711 S.W.3d at 692. Subsection (A) is not a safe harbor for an investigator's choice to stand still while waiting for cumulative evidence. The State could have proceeded in juvenile court on accomplice testimony, corroborating cell-site information available by warrant, and J.J.T.'s prior statements. The decision to defer rather than proceed was the State's.

6. Sufficient time and probable cause existed to proceed.

The State had fourteen months between the offense and J.J.T.'s eighteenth birthday, and at least one month after Tovar's formal proffer in December 2021. Other courts of appeals have affirmed transfers only where the timing was *genuinely* tight—for example, when the State had a mere twenty-five days between outcry and the eighteenth birthday. *In re B.C.B.*, No. 05-16-00207-CV, 2016 WL 3165595, at *5–6 (Tex. App.—Dallas June 7, 2016, pet. denied). That circumstance is nothing like this case. The State had more than ample time.

C. The statutory purpose of § 54.02(j) compels denial.

Section 54.02(j) was enacted to **"limit the prosecution of an adult for an act he committed as a juvenile if his case could reasonably have been dealt with when he was still a juvenile."** *Moore*, 532 S.W.3d at 405 (citation omitted). This case is the paradigm case for that limitation. The State identified J.J.T. promptly. The State obtained an accomplice identification promptly. The State had the testimony, the witness, and the time. It chose not to act. Transferring J.J.T. now would reward investigative inaction with adult prosecution—a result inconsistent with the statute and inconsistent with the rehabilitative purpose of the juvenile justice system.

D. Due-process and youth-jurisprudence considerations reinforce denial.

Although subsection (A) does not turn on constitutional analysis, the constitutional backdrop is consistent with denial. The United States Supreme Court has repeatedly recognized the diminished culpability of juvenile offenders for purposes of substantive criminal law. *See Roper v. Simmons*, 543 U.S. 551, 569–70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471 (2012). Where the State’s own delays operate to strip a juvenile of the juvenile-court protections he otherwise would have enjoyed, due process and equal protection concerns are at their apex. A respondent whose case is promptly investigated receives the protections of § 51.04; a respondent whose case is investigated slowly—for reasons of the State’s own making—should not be relegated to adult criminal liability simply because of the calendar.

V. CONCLUSION AND PRAYER

The State cannot prove statutory good cause under either subsection (A) or subsection (B) of § 54.02(j)(4). The delays at issue were investigative choices: caseload, comfort, sequencing, and decryption waits. None of them was "beyond the control of the state." Tex. Fam. Code § 54.02(j)(4)(A). The State concedes it cannot meet subsection (B). And the Supreme Court’s opinion in this case makes clear that the existence of probable cause before the eighteenth birthday—while no longer dispositive of (A)—is highly relevant to whether the State could "reasonably have dealt with" J.J.T.’s case as a juvenile.

Respondent J.J.T. respectfully prays that the Court **DENY** the State’s Motion to Waive Juvenile Jurisdiction and Transfer to Criminal District Court, **DISMISS** this cause for want of jurisdiction under *In re N.J.A.*, 997 S.W.2d at 557, and grant such other and further relief to which Respondent may be justly entitled.

Respectfully submitted,

[Counsel for Respondent]

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ATTORNEY FOR RESPONDENT J.J.T.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon counsel for the State of Texas by electronic service through the eFile system on this ____ day of _____, 20____.

[Counsel for Respondent]