

---

## YEAR 2006 CASE SUMMARIES

---

By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

[2005 Summaries](#) [2004 Summaries](#) [2003 Summaries](#) [2002 Summaries](#) [2001 Summaries](#) [2000 Summaries](#) [1999 Summaries](#)

---

### **CPS investigator was considered the outcry witness where statements to father were general in nature and failed to describe offense in some discernible manner.[In the Matter of J.R.](06-3-5B)**

**On December 14, 2006, the San Antonio Court of Appeals held that although the complainant communicated to his father that he had been sexually abused, he did not describe the details of the alleged abuse until interviewed by the CPS worker, who then became the outcry witness.**

¶ 06-3-5B. **In the Matter of J.R.**, MEMORANDUM, No. 04-04-00925-CV, 2005 Tex.App.Lexis 10847 (Tex.App— San Antonio, 12/14/05).

**Facts:** The complainant's father directly contacted CPS and reported the sexual assault allegations against J.R.. The CPS worker called J.R.'s parents and requested an interview. The CPS worker testified that the purpose of J.R.'s visit to her office was to interview him regarding allegations of sexual abuse made against him, as well as to interview him as an alleged victim of sexual abuse.

J.R. pled no contest to having engaged in delinquent conduct by committing the offense of indecency with a child by contact. J.R. entered his plea after the trial court ruled that a Child Protective Services worker could testify as the outcry witness and that the statement given by J.R. to the CPS worker was admissible. On appeal, J.R. contends that the trial court's pre-trial rulings were erroneous because the complainant's father was the proper outcry witness and J.R.'s statement was inadmissible because the CPS worker did not administer *Miranda* warnings.

**Held:** Affirmed

**Memorandum Opinion:** The record contains no evidence that any relationship had developed between the police and the CPS worker with regard to the allegations against J.R. The record also does not contain any evidence that the CPS worker considered herself to be acting in tandem with the police or that J.R. held such a perception. In *Wilkerson v. State*, the Texas Court of Criminal Appeals held that "only when a CPS investigator (or other non-law enforcement state agent) is acting in tandem with police to investigate and gather evidence for a criminal prosecution are [*Miranda*] warnings required." *173 S.W.3d 521, 523 (Tex. Crim. App. 2005)*. To determine if this type of tandem relationship exists, we consider: (1) information about the relationship between the police and the CPS worker; (2) the CPS worker's actions and perceptions; and (3) J.R.'s perceptions of the encounter. *Id. at 530-31*. In this case, there is no evidence to support the existence of a tandem or consensual relationship.

J.R. further contends that the trial court erred in allowing the CPS worker to testify as the outcry witness. The Texas Family Code contains an "outcry" exception to the hearsay rule for the first report of sexual

abuse that a child makes to an adult. *In re Z.L.B.*, 102 S.W.3d 120, 121 (Tex. 2003); TEX. FAM. CODE ANN. § 54.031 (Vernon 2002). In applying the outcry exception to juvenile delinquency cases, the Texas Supreme Court has followed the rule applied in criminal trials that the outcry statement must be one that "in some discernible manner describes the alleged offense." *In re Z.L.R.*, 102 S.W.3d at 122 (quoting *Garcia v. State*, 792 S.W.2d 88, 91 (Tex. Crim. App. 1990)). "It also 'must be more than words which give a general allusion that something in the area of child abuse was going on.'" *Id.* (quoting *Garcia*, 792 S.W.2d at 91). In this case, although the complainant generally communicated to his father that he had been sexually abused, the complainant did not describe the details of the alleged abuse until he was interviewed by the CPS worker. The only information the complainant gave his father was that J.R. threw him on a bed, took his clothes off, got on top of him, and would not allow him to stand up or call his father. The father testified that the complainant did not tell him the details of the abuse because he "did not ask him." The father explained that he "did not want to know the details of what [J.R.] was trying to do."

**Conclusion:** Accordingly, the trial court did not err in admitting the CPS worker's testimony.