

## Review of Recent Juvenile Cases (2008)

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

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### **Evidence was sufficient to justify child engaged in delinquent conduct by committing the offense of criminal trespass.[In the Matter of T.M.](08-3-4)**

**On May 21, 2008, the San Antonio Court of Appeals held that evidence was factually sufficient and the trial court was justified in finding that respondent engaged in delinquent conduct, having been found to have committed the offense of criminal trespass.**

¶ 08-3-4. **In the Matter of T.M.**, MEMORANDUM, No. 04-07-00487-CV, 2008 WL 2115763 (Tex.App.-San Antonio, 5/21/08) .

**Facts:** This appeal stems from a juvenile adjudication and disposition in which Appellant T.M. was adjudicated delinquent, having been found beyond a reasonable doubt to have committed the offense of criminal trespass, and sentenced to a term of nine months community supervision. On appeal, T.M. challenges the factually sufficiency of the evidence. After a dispute with her mother, sixteen-year-old T.M. moved into the apartment of Zachary Shannon and his fiancée, Lisa Weiss. After about a month, Shannon told T.M. that she had to move out of the apartment. Shannon further requested that T.M. return the apartment key and informed her that she was not welcome to return to the apartment. Although T.M. left the apartment and returned her key, she left several of her belongings at the apartment.

About two months later, on November 14, 2006, Shannon and Weiss were at Randy Dunn's apartment, a mutual friend, when T.M. called. T.M. informed Dunn that she and her boyfriend were going to Shannon and Weiss's apartment and were going to take items. The conversation was overheard by Shannon and Weiss and all three immediately proceeded to the apartment.

Upon arriving at the apartment complex, Shannon and Weiss went to their apartment while Dunn remained in the car. The door was unlocked and both Shannon and Weiss testified that they observed T.M.'s boyfriend placing Shannon's PlayStation 2 into a backpack while being groped by T.M. When she saw Shannon and Weiss, T.M. began screaming hysterically and apologizing. As Shannon attempted to secure T.M.'s boyfriend, T.M. fled the premises. Although it is unclear exactly what happened next, T.M.'s boyfriend also managed to escape. San Antonio police officers arrived at the scene, took statements from Shannon, Weiss and Dunn, but did not enter the apartment.

T.M. testified she never went to Shannon's apartment, and that she and her boyfriend had gone to the movies during the time of the altercation. As proof of such, T.M. provided the movie stubs from a theater where they had seen "Flushed Away."

**Held:** Affirmed

**Memorandum Opinion:** The elements of criminal trespass are: (1) a person; (2) without effective consent; (3) enters or remains on the property, building, or aircraft of another; and (4) he had notice that entry was forbidden or received notice to depart but failed to do so. [Tex. Pen.Code Ann. § 30.05\(a\)](#) (Vernon 2003); [De Vaughn v. State, 239 S.W.3d 351, 356 \(Tex.App.-San Antonio 2007, pet. ref'd\)](#). During the State's case, Shannon testified that approximately two weeks prior to the incident, he notified T.M. that she was forbidden to enter the apartment. He confirmed that her presence at the apartment, on November 14, 2006, was without his effective consent. T.M. asserts the evidence is factually insufficient to prove she was even at the apartment on the day in question.

#### ANALYSIS

T.M. acknowledges that Shannon and Weiss testified they were eyewitnesses to the attempted burglary. But, T.M. asserts that the inconsistencies in the testimony of both Shannon and Weiss affects their credibility and thus, the evidence was factually insufficient to support the trial court's adjudication. We disagree.

The trial court was free to accept or reject any apparent inconsistencies in the testimony. Weiss testified that T.M. was asked to leave the apartment because she was messy, while Shannon stated she was asked to leave because of her relationship with her older boyfriend. Although Shannon and Weiss both testified that they heard T.M. state that she was planning to burglarize the apartment and have sex there, Dunn later testified that she only heard T.M. say that she was going to the apartment. T.M. also points to the conflicting testimony over whether the cell phone conversation was actually heard through a speaker phone or the volume was loud enough for Shannon and Weiss to hear. Finally, Weiss testified that she did not see T.M. or her boyfriend walking to the apartment, while both Shannon and Dunn claimed to have seen them.

During her testimony, T.M. explained that she was at the movie theater watching "Flushed Away" at the time of the altercation. As proof of her alibi, T.M. and her mother offered two ticket stubs. No other evidence was provided regarding the whereabouts of either T.M. or her boyfriend and no eye witness placed them at the theater at the time of the altercation.

Each of these alleged inconsistencies was argued before the trial court and we are bound to give deference to the court's findings with regard to credibility. Considering the totality of the evidence in a neutral light, the great weight and preponderance of the evidence does not contradict the trial court's verdict.

**Conclusion:** We, therefore, hold that the evidence was factually sufficient and the trial court was justified in finding that T.M. engaged in delinquent conduct, having been found beyond a reasonable doubt to have committed the offense of criminal trespass. Accordingly, we affirm the judgment of the trial court.

