

Year 2004 Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

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Evidence was sufficient to support adjudications for aggravated sexual assault and indecency with a child [In re J.F.] (04-1-20).

On February 6, 2004, the Dallas Court of Appeals held that the evidence was sufficient legally and factually to support adjudications for aggravated sexual assault and indecency with a child.

04-1-20. In the Matter of J.F., UNPUBLISHED, No. 05-03-00027-CV, 2004 WL 225583, 2004 Tex.App.Lexis ____ (Tex.App.-Dallas 2/6/04) Texas Juvenile Law (5th Ed. 2000).

Facts: J.F. appeals the order adjudicating him to be a child engaged in delinquent conduct for the crimes of aggravated sexual assault and indecency with a child. After the trial court found the allegations true, the court placed appellant on probation for three years. Appellant brings four issues asserting the evidence is legally and factually insufficient to convict him of the crimes.

The facts in this case are known to the parties, and we do not recite them here in detail. The charges against appellant alleged he committed aggravated sexual assault by causing the complainant's anus to contact appellant's sexual organ and by causing the complainant's mouth to contact appellant's sexual organ. The petition alleged appellant committed indecency with a child by engaging in sexual contact with the complainant.

At the time of the offense, the complainant was about five years old and appellant was about twelve years old. The complainant testified he was taking a shower at his grandmother's house when appellant joined him in the shower and put his "weenie" in the complainant's "butt." The complainant also testified that appellant touched the complainant's "weenie" with his hand. The complainant testified this abuse occurred on about five separate occasions and always in the shower at the grandmother's house. The complainant denied touching appellant's penis with his mouth. The complainant's testimony was inconsistent concerning the dates on which the abuse occurred, but he testified the abuse happened within a short period of time and while the weather was hot. The complainant's mother testified the complainant told her about the abuse and identified appellant as his abuser. The complainant identified appellant in court as the person "who did this to [him]." The complainant also testified his mother told him what to say and that she told him to tell the truth.

The complainant's mother testified she is divorced from the complainant's father. The complainant told her about the abuse. Although the complainant sometimes lies to her, she believed him. The complainant also told her his father had sexually abused him, so she does not permit the complainant's father to have visitation with the complainant. She testified she told the complainant to tell the truth when testifying.

The complainant's father and grandmother testified the abuse could not have occurred at the grandmother's house because the complainant was never out of their sight and appellant was living in Bonham, Texas during the summer. However, both admitted they did not see the complainant when he was in the bathroom, and appellant was sometimes present at the grandmother's house during the summer. The complainant's grandmother testified the complainant never showered at her house, but the complainant's father testified the complainant would shower there if he got "real dirty" playing outside. The complainant's father testified that the complainant's mother is "a very mean" and "very angry person."

The trial court found true the allegations that appellant committed indecency with a child and that appellant committed aggravated sexual assault by causing the complainant's anus to contact appellant's sexual organ. The trial court found not true the allegation that appellant committed aggravated sexual assault by causing the complainant's mouth to contact appellant's sexual organ.

Held: Affirmed.

Opinion Text: In a juvenile case, the standards of review for legal and factual sufficiency of the evidence are the same as in a criminal case. In re S.B., 117 S.W.3d 443, 445 (Tex.App. Fort Worth 2003, no pet.); In re Z.L.B., 115 S.W.3d 188, 190 (Tex.App. Dallas 2003, no pet.). When reviewing the legal sufficiency of the evidence, this Court must examine the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979); Young v. State, 14 S.W.3d 748, 753 (Tex.Crim.App.2000); Wilson v. State, 7 S.W.3d 136, 141 (Tex.Crim.App.1999). Questions concerning the credibility of witnesses and the weight to be given their testimony are to be resolved by the trier of fact. Mosley v. State, 983 S.W.2d 249, 254 (Tex.Crim.App.1998); Whitaker v. State, 977 S.W.2d 595, 598 (Tex.Crim.App.1998).

In analyzing whether the evidence was factually sufficient to support the conviction, we must determine "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." Johnson v. State, 23 S.W.3d 1, 11 (Tex.Crim.App.2000). We must set the verdict aside only if it is so factually insufficient or against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Id.; Clewis v. State, 922 S.W.2d 126, 129 (Tex.Crim.App.1996). In conducting this analysis, the appellate court must defer to the trier of fact's determination concerning the weight given contradictory evidence. Johnson, 23 S.W.3d at 8.

Appellant asserts the evidence is legally and factually insufficient because the complainant was not telling the truth. Appellant argues the complainant's confusion over the dates when the abuse occurred and over who owned the house where the abuse occurred, together with his mother's testimony that the complainant had accused his father of abusing him show he was not telling the truth. Appellant also argues the complainant's father's and grandmother's testimony that it was impossible for the abuse to have occurred shows the complainant was not telling the truth. We disagree. The credibility of the complainant's and his mother's testimony was an issue for the trial court as the trier of fact to resolve, and the court apparently concluded the complainant and his mother were credible. Furthermore, appellant's father's and grandmother's testimony did not establish that the abuse was impossible.

Appellant also asserts the insufficiency of the evidence is established by the fact the trial court found not true the allegation that appellant committed aggravated sexual assault by causing the complainant's mouth to contact appellant's sexual organ. However, the two aggravated sexual assault charges were not interdependent, and appellant's acquittal on one charge does not require his acquittal on the other.

Finally, appellant argues the evidence is insufficient because no medical evidence shows the complainant was sexually assaulted. Medical evidence is not required to prove sexual assault, and the complainant's testimony is sufficient to affirm his conviction. Rodriguez v. State, 819 S.W.2d 871, 873 74 (Tex.Crim.App.1991); Bottenfield v. State, 77 S.W.2d 349, 356 (Tex.App. Fort Worth 2002, pet. ref'd), cert. denied, 123 S.Ct. 2275 (2003).

After reviewing all the evidence under the relevant standards of review, we conclude the evidence is both legally and factually sufficient to support the findings of true to the allegations of aggravated sexual assault and indecency with a child. We resolve appellant's four issues against him.

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