

Year 2004 Case Summaries

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Jury verdict rejecting parental discipline defense in injury to child trial upheld [In re C.A.S.] (04-2-34).

On May 26, 2004, the San Antonio Court of Appeals held that the evidence was sufficient to support the jury's verdict rejecting the defense that respondent disciplined his brother as agent of their mother in a trial for injury to a child.

04-2-34. In the Matter of C.A.S., UNPUBLISHED, No. 04-03-00270-CV, 2004 WL 1159318, 2004 Tex.App.Lexis ____ (Tex.App.-San Antonio 5/26/04) Texas Juvenile Law (5th Ed. 2000).

Facts: On June 25, 2002, Galveston County Sheriff's Office Deputy Clayton Ray Black responded to a telephone call from Burena Ray Stockton. Mrs. Stockton told Deputy Black that she could no longer control her younger son, Ellis. Black also spoke with Ellis, who said he had been beaten with a belt and was "not okay." Black decided to investigate and proceeded to the Stockton home. After receiving permission from Mr. and Mrs. Stockton to enter their home, Black found Ellis lying on the couch with an ice pack on his hip. Black's ensuing interview and examination revealed bruises on Ellis's hip, buttocks, and back. According to Ellis, he had been whipped with a belt by his mother and also, at his mother's direction, by his stepbrother, C.A.S. The State charged C.A.S. with engaging in delinquent conduct by committing the offense of injury to a child. See Tex. Pen.Code Ann. § 22.04(a) (Vernon 2003) (A person commits the offense of injury to a child when he intentionally, knowingly, recklessly, or with criminal negligence causes serious bodily injury, bodily injury, serious mental deficiency, impairment, or injury to a child.). At trial, it was undisputed that C.A.S. had whipped Ellis with a belt at Mrs. Stockton's direction; but the evidence was conflicting regarding the extent of the whipping administered by C.A.S. and that administered by Mrs. Stockton, whether C.A.S. had whipped Ellis only with the belt strap or also with the belt buckle, and whether all of the bruises on Ellis's back, buttocks, and hip resulted from the June 25 whipping. At C.A.S.'s request, the jury was charged with the "reasonably necessary discipline" defense found in section 9.61 of the Texas Penal Code. See Tex. Pen.Code Ann. § 9.61 (Vernon 2003) (parent, stepparent, or one acting in loco parentis may use nondeadly force against a child younger than eighteen if the person "reasonably believes the force is necessary to discipline the child or to safeguard or promote [the child's] welfare"). In a unanimous verdict, the jury rejected C.A.S.'s defense and found the charge of injury to a child to be true. At disposition, the State and C.A.S. agreed to a sanction level four disposition; and the trial court placed C.A.S. on probation for twelve months. C.A.S. appeals.

Held: Affirmed.

Opinion Text: 1. C.A.S. first argues the evidence is legally and factually insufficient to support the jury's implied finding that he "did not reasonably believe the amount of force he employed on Ellis at the instruction of his stepmother was not necessary to discipline him," because "the undisputed medical records showed that the vast majority of bruises, and most likely all the bruises caused by the belt, showed only minor injury to Ellis"; "the evidence was undisputed that [Mrs. Stockton] used the technique of progressive discipline prior to instructing [C.A.S.] to employ corporal punishment on Ellis"; and "the testimony is undisputed that [C.A.S.] could not have known about the bruises inflicted on Ellis due to their location on his body." C.A.S. also argues "the evidence is factually insufficient to prove beyond a reasonable doubt that the bruising on Ellis was caused by [C.A.S.]" We review C.A.S.'s contentions under the well-established standards for reviewing the sufficiency of the evidence in juvenile cases. See, e.g., In re R .P., 37 S.W.3d 76, 78 (Tex.App.-San Antonio 2000, no pet.) (factual sufficiency); In re J.M.B., 990 S.W.2d 294, 297 (Tex.App.-San Antonio 1998, pet. denied) (legal sufficiency).

Ellis testified that C.A.S. whipped him with the belt; and "[i]t hurt." Even Ellis's testimony, standing alone, is sufficient to establish bodily injury. See Tex. Pen.Code Ann. § 1.07(8) (Vernon Supp.2003). And Ellis' testimony does not stand alone; it is corroborated by Deputy Black, who testified that Ellis was "quite shaken," "his voice was quivering and he was in a great deal of pain." Whether Mrs. Stockton

employed progressive means of punishment is irrelevant. And it was for the jury to determine, in light of all the evidence adduced at trial, whether C.A.S. reasonably believed the amount of force he used was necessary to discipline Ellis.

2. C.A.S. next argues the trial court erred in admitting Ellis's outcry statement to Deputy Black because Black did not use Ellis' exact words; Black's testimony at the hearing to determine the admissibility of the outcry statement was in one or more respects inconsistent with his testimony at trial; and Ellis testified that, contrary to Black's testimony, he had not been struck with the belt buckle. We disagree. C.A.S. has not cited any authority that required Black to use Ellis's exact words. And any inconsistencies between Black's testimony during the hearing and his testimony at trial would not affect the admissibility of the outcry statement; they would go only to its weight and should have been-and were-probed in cross examination. The trial court did not abuse its discretion in admitting the outcry statement.

3. C.A.S. next argues the trial court erred in excluding the testimony of his expert, Dr. Fuller, "on the issue of whether [C.A.S.] would likely have reasonably believed that the force he used on Ellis was necessary to discipline him, based on whether Ellis suffered from Attention Deficit Hyperactivity Disorder (ADHD), bipolar disorder, and unspecified anxiety disorder." However, both Dr. Fuller and Mrs. Stockton were permitted to testify extensively regarding Ellis's ADHD, bipolar disorder, the medications he took for these conditions, the related behavioral problems and his mother's attempts to discipline him, and the difficulties that typically arise with a child suffering from these conditions.

C.A.S. also argues the trial court erred in excluding Dr. Fuller's testimony regarding "the unlikelihood that [C.A.S.] caused bodily injury to Ellis due to [C.A.S.'s] physical infirmities." Dr. Fuller testified on voir dire that he was prepared to testify that, because of his juvenile diabetes, C.A.S.'s body mass and muscular strength were less than that of a typical fourteen-year-old boy. However, Mrs. Stockton testified that C.A.S. was physically incapable of causing Ellis bodily injury. Moreover, as the State points out, Dr. Fuller made no mention of having conducted any tests regarding C.A.S.'s muscular strength; nor did he attempt to explain why C.A.S. was medically unable to have committed the charged offense. Under these circumstances, we hold the trial court did not abuse its discretion in limiting Dr. Fuller's testimony as it did.

4. C.A.S. next argues the trial court erred in admitting the photographs showing the bruises on Ellis's body. However, C.A.S.'s sole objection to these photographs was made at a pretrial hearing on the parties' motions in limine. C.A.S. thus waived the error, if any, as to the admission of the photographs.

5. Finally, C.A.S. argues the trial court erred in excluding his expert witness, Dr. Fuller, from the courtroom during the testimony of other witnesses. Again, however, nothing is preserved for review. The record merely reflects that the Rule was invoked by C.A.S.'s attorney and that Dr. Fuller was present during the testimony of the State's expert witness.

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