Year 2004 Case Summaries

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Evidence was factually sufficient to support a burglary adjudication [In re J.A.D.] (04-3-08).

On June 23, 2004, the Waco Court of Appeals held that the evidence was factually sufficient to support an adjudication for burglary and that a witness' mention that the respondent was on parole did not require a mistrial.

04-3-08. In the Matter of J.A.D., UNPUBLISHED, No. 10-03-00077-CV, 2004 WL 1418665, 2004 Tex.App.Lexis ___ (Tex.App.-Waco 6/23/04) Texas Juvenile Law (5th Ed. 2000).

Facts: This is a juvenile case. J.A.D. was charged with delinquent conduct, i.e., burglary of a habitation. A jury found the allegations to be true, and the court signed an order that committed him to the Texas Youth Commission (TYC) for an indeterminate period not to exceed age twenty-one and ordered that the person responsible for his support pay monthly child support to the TYC.

On appeal, J.A.D. asserts that the court erred in failing to grant motions for mistrial.

The State did not file a brief. When the time for filing one passed, we requested that a brief be filed or we be notified that no brief would be filed. We received no response.

Held: Affirmed.

Opinion Text: TESTIMONY ABOUT PAROLE

J.A.D. filed, and the court granted, a motion in limine to exclude evidence of his prior juvenile record. During the direct testimony of R.D., the State's counsel informed the court in a bench conference that the witness had previously stated that J.A.D. said, "I'm going to go rob another house or break into another house," and that he might testify about a gun. The court excused the jury and inquired of the State's counsel whether the witness had been cautioned not to mention that J.A.D. was in possession of a firearm. Counsel replied that he had done so and told the court that the witness would testify that J.A.D. told him, "I'm going to go rob a house. I just robbed one previously." The judge then asked R.D., "Do you understand that under no circumstances are you to mention that gun?" R.D. replied, "Yes, ma'am." A short time later, in response to a question from State's counsel about what he and J.A.D. "planned to do," R.D. replied, "Well, we just planned to move in. He was-he was going to get off parole and-." J.A.D.'s objection was sustained, the jury was instructed not to consider the statement for any purpose, and a motion for a mistrial was denied.

This issue is governed by our decision in Murray v. State, involving an officer's unembellished testimony about contacting the defendant's "parole officer." Murray v. State, 24 S.W.3d 881, 892 (Tex.App.-Waco 2000, pet. ref'd). The testimony was followed by an immediate instruction to disregard. Id. We found that the testimony was not so inflammatory as to suggest that the curative instruction was inadequate, and that the trial court did not err in denying Murray's motion for a mistrial. Id. Applying the same reasoning here, we overrule the first issue.

FACTUAL SUFFICIENCY

J.A.D.'s second issue is couched in terms of error in the denial of a motion for a mistrial, but the substance of the complaint is that the evidence is factually insufficient [FN1] to support the jury's finding that he committed burglary of a habitation.

FN1. Although the brief mentions legal sufficiency of the evidence, the cases cited support only a review of factual sufficiency.

In the adjudication phase of a juvenile proceeding, the criminal standard for testing the factual sufficiency of the evidence is employed. In re C.P., 998 S.W.2d 703, 708 (Tex.App.-Waco 1999, no pet.). There is only one question to be answered in a factual-sufficiency review: Considering all of the evidence in a neutral light, was a jury rationally justified in finding guilt beyond a reasonable doubt? Zuniga v. State, No. 539-02, 2004 WL 840786 at *7 (Tex.Crim.App. April 21, 2004). However, there are two ways in which the evidence may be insufficient. Id. First, when considered by itself, evidence supporting the verdict may be too weak to support the finding of guilt beyond a reasonable doubt. Id. Second, there may be both evidence supporting the verdict and evidence contrary to the verdict. Id. Weighing all the evidence under this balancing scale, the contrary evidence may be strong enough that the beyond-a-reasonable-doubt standard could not have been met, so the guilty verdict should not stand. Id. This standard acknowledges that evidence of guilt can "preponderate" in favor of conviction but still be insufficient to prove the elements of the crime beyond a reasonable doubt. Id. Stated another way, evidence supporting guilt can "outweigh" the contrary proof and still be factually insufficient under the beyond-a-reasonable-doubt standard. Id.

Zuniga also reminds us that we must defer to the jury's determination. See id. at *3 (citing Cain v. State, 958 S.W .2d 404, 407 (Tex.Crim.App.1997). The jury determines the credibility of the witnesses and may "believe all, some, or none of the testimony." Chambers v. State, 805 S.W.2d 459, 461 (Tex.Crim.App.1991). It is the jury that accepts or rejects reasonably equal competing theories of a case. Goodman v. State, 66 S.W.3d 283, 285 (Tex.Crim.App.2001). The evidence is not factually insufficient merely because the factfinder resolved conflicting views of evidence in favor of the State. Cain, 958 S .W.2d at 410.

J.A.D. says that the evidence is factually insufficient in the second way, i.e, that considering the evidence supporting the verdict and evidence contrary to the verdict under the balancing scale, the contrary evidence is strong enough that the beyond-a-reasonable-doubt standard was not met. Zuniga, No.2004 WL 840786 at *7. He says that far more evidence points to R.D. as the guilty party than points to J.A.D.

We have reviewed all the evidence in a neutral light and find it was within the province of the jury to choose between reasonably equal competing theories of the case. Goodman, 66 S.W.3d at 285. The determination turns on the credibility of the witnesses, and we will not disturb it. We overrule the second issue.

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