

YEAR 2004 CASE SUMMARIES

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Evidence was legally sufficient to support an adjudication for evading arrest or detention [In re L.M.M.] (04-4-08).

On October 13, 2004, the San Antonio Court of Appeals upheld an evading arrest adjudication on evidence the respondent ran from a school resource officer while on campus.

04-4-08. In the Matter of L.M.M., UNPUBLISHED, No. 04-04-00055, 2004 WL 2289731, 2004 Tex.App.Lexis ____ (Tex.App.-San Antonio 10/13/04) Texas Juvenile Law (6th Ed. 2004).

Facts: A jury found L.M.M., a juvenile, engaged in delinquent conduct by evading arrest, and the trial court assessed punishment. On appeal, L.M.M. asserts the trial court erred by admitting irrelevant evidence of criminal conduct of a third party and he challenges the legal and factual sufficiency of the evidence supporting the conviction.

Held: Affirmed.

Opinion Text: In his second and third issues, defendant asserts the evidence is legally and factually insufficient to sustain the conviction. The Texas Rules of Civil Procedure govern juvenile delinquency cases. Tex. Fam.Code Ann. § 51.17(a) (Vernon Supp.2004); In re E.U .M., 108 S.W.3d 368, 372 (Tex.App.-Beaumont 2003, no pet.). Rule 324 requires a motion for new trial as a prerequisite for challenging the factual sufficiency of the evidence at trial. In re E.U.M., 108 S.W.3d at 372; Tex.R. Civ. P. 324(b)(2). L.M.M. did not file a motion for new trial; therefore, he failed to preserve his factual sufficiency challenge for review. Accordingly, we consider only the legal sufficiency of the evidence. We review evidentiary contentions under the well-established standards for reviewing the sufficiency of the evidence in juvenile cases. See, e.g., In re J.M.B., 990 S.W.2d 294, 297 (Tex.App.-San Antonio 1998, pet. denied) (legal sufficiency).

The State was required to prove beyond a reasonable doubt L.M.M. intentionally fled from a peace officer who he knew was attempting lawfully to arrest or detain him. Tex. Pen.Code. Ann. § 38.04(a)(Vernon 2003). L.M.M. contends the evidence offered by the State as proof of his intent was insufficient.

On October 10, 2003, Michael Cruz, a teacher on the campus of Judson High School, observed that L.M.M. was not dressed in compliance with the school's dress code. Suspecting that L.M.M. was not a student, Cruz alerted one of the campus police officers, Sergeant Rodriguez. Rodriguez and another officer, Officer Hernandez, confronted L.M.M. Both of the officers were dressed in full uniform. Although Hernandez confirmed that L.M.M. was a student, he determined that L.M.M. was on the wrong campus. At this point, Hernandez informed L.M.M. that he was trespassing. L.M.M. offered no explanation for being on the wrong campus. While the officers were temporarily distracted, L.M.M. ran away. The officers yelled for him to stop. Hernandez chased L.M.M. and again instructed L.M.M. to return to Hernandez. L.M.M. initially complied, but as soon as he was close to the officer, L.M.M. ran away again. L.M.M. was eventually detained after running from Hernandez a total of three times.

L.M.M. argues that he was not told he could leave or that he had to stay, but only that he was trespassing. The thrust of L.M.M.'s argument is that because he was a student and was on campus to make up schoolwork he had missed, he could have believed that he had a right to be on campus and was not trespassing. Because no one told him he was under arrest, L.M.M. asserts "it is possible he believed he received a verbal warning from the officer and was free to leave."

However, L.M.M. ran from Officer Hernandez three times before he was finally stopped. The State concedes there is no direct evidence that L.M.M. heard the officers yelling for him to stop but other students in the vicinity heard the officers. Hernandez testified that L.M.M. attempted to flee again after Hernandez had chased him down and caught up with him. This evidence is legally sufficient to support the jury's verdict.

CRIMINAL CONDUCT OF A THIRD PARTY

In his first issue, L.M.M. contends the trial court erred by admitting evidence of the criminal conduct of a third party. Specifically, L.M.M. objected to testimony regarding the identity and involvement of a third party, as well as the subsequent arrest of that third party. The State asserts L.M.M. did not preserve this complaint for review. We agree. In order to preserve a complaint for appellate review, the complaining party must make a timely objection, request, or motion with sufficient specificity and obtain a ruling on that objection, request, or motion. Tex.R.App. P. 33.1 (a). In addition, "[o]verruling an objection to evidence will not result in reversal when other such evidence was received without objection, either before or after the complained of ruling." *Leday v. State*, 983 S.W.2d 713, 718 (Tex.Crim.App.1998); see also *Ethington v. State*, 819 S.W.2d 854, 858 (Tex.Crim.App.1991) (party must object each time inadmissible evidence is offered).

Testimony regarding the presence and criminal conduct of a third party was first offered during the State's direct examination of Michael Cruz. The State's questions specifically addressed the arrest of the third party and L.M.M. did not object. Similar testimony was offered during the defense's cross-examination of Cruz. On redirect, Cruz identified the third party. It was not until the State's examination of Officer Hernandez regarding the involvement and arrest of the third party that L.M.M.'s attorney objected. Because L.M.M. failed to object in a timely manner, he waived his opportunity for appellate review of his complaint on appeal.

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