# YEAR 2006 CASE SUMMARIES

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



## Evidence was legally and factually sufficient to support juries finding of indecency with a child.[In the Matter of S.W.](06-1-15)

**On January 26, 2006, the Houston 1st Court of Appeals held that evidence was both legally and factually sufficient to support the finding of guilt and affirmed the judgment of the trial court for indecency with a child.**

¶ 06-1-15. **In the Matter of S.W.**, MEMORANDUM, No. 01-04-01054-CV, 2006 Tex.App.Lexis 712 (Tex.App.— Houston [1st Dist.], 1/26/06).

**Facts:** In September 2002, five-year-old complainant D.H. attended church services with his father R.H. and seven-year-old sister L.H. D.H. testified that after the services, S.W. saw him in the hallway, grabbed him, pulled him into the robe room, pulled down D.H.'s pants, and touched his private parts. D.H. testified that S.W. tried to show him a pair of sunglasses but he could not see them because the lights were off. He testified that S.W. then took him down the hallway, which was empty, to the men's restroom, put the sunglasses on D.H., and held him up to the mirror so he could see himself. D.H. testified that S.W. then pulled down his own pants and told D.H. to touch his private part and to lick his private part. He further testified that S.W. locked the door and pulled up his pants when L.H. knocked, but that D.H. then unlocked the door and ran with L.H. to tell their father what had happened. D.H. testified that the three of them then went out to the parking lot and looked in many cars before D.H. saw S.W. sitting in a car with another boy, Aaron, and told his father that S.W. was his assailant.

L.H. testified that she saw S.W. take D.H. into the robe room, that the lights were on, and that she saw S.W. put the sunglasses on D.H. in that room. She testified that she did not see any inappropriate touching in that room. L.H. testified that she followed R.H. and S.W. to the restroom and that they both knew she was following them. L.H. testified that she saw S.W. hold D.H. up to the mirror, and that after the door was shut, she immediately started banging on the door. She testified that she did not see any inappropriate touching, but that if it occurred, it had to be just before she started knocking on the door. She testified that D.H. then exited the bathroom, they ran to tell R.H., and then looked in several cars before finding S.W. sitting in a car with another boy, Aaron, who looked very similar to S.W.

R.H. testified that after D.H. and L.H. told him what happened, they went out in the parking lot and saw S.W.'s head pop up in one of the cars. R.H. testified that they did not look in any other cars, and that S.W. was alone in the car where they found him. He testified that when they saw S.W., D.H. said "there he is."

S.W. testified that he was in the robe room with D.H., a girl named Erin, and his brother T.W. He

testified that the lights were on, and that the door was open. S.W. testified that he showed the sunglasses to Erin, but that D.H. took them from her, so S.W. took them back from D.H. and gave them back to Erin. He testified that D.H. then kicked him in the groin and ran out of the room. [*4] S.W. testified that he then left the church building to go sit in someone's car and listen to music with his brother T.W., and that D.H. than approached the car with his sister and father and identified S.W. as his assailant. S.W. denied being in a restroom with D.H.

S.W.'s grandmother testified that she was in the hallway of the church when S.W. went into the robe room, and that she went into the ladies' restroom for about three minutes. She testified that when she left the restroom, S.W. and his brother were already outside, and that S.W. was in her view from the time she went outside until the time D.H. identified him in the car.

**Held:** Affirmed.

**Memorandum Opinion:** S.W. contends the evidence is legally and factually insufficient to establish his identity as the perpetrator of any delinquent conduct that may have occurred. In juvenile cases, we apply the criminal sufficiency standards of review. *In re L.R., 84 S.W.3d 701, 704 (Tex. App.--Houston [1st Dist.] 2002, no pet.)*. When evaluating the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979)*; *King v. State, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000)*. When evaluating factual sufficiency, we consider all the evidence in a neutral light to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Zuniga v. State, 144 S.W.3d 477, 484 (Tex. Crim. App. 2004)*. Evidence may be insufficient if, considered by itself, it is too weak to support the verdict, or if, weighing all the evidence, the contrary evidence is strong enough that the beyond-a-reasonable-doubt standard could not have been met. *Id. at 484-85*.

In his first issue, S.W. contends that because D.H., L.H., and R.H. all gave different accounts of the events, the evidence is legally insufficient to demonstrate beyond a reasonable doubt that S.W. was the perpetrator. However, the testimony of a child victim alone is sufficient to support a conviction for indecency with a child. *See TEX. CODE CRIM. PROC. ANN. art. 38.07* (Vernon 2005); *Perez v. State, 113 S.W.3d 819, 838 (Tex. App.--Austin 2003, pet. ref'd)*. A person commits indecency with a child if he engages in sexual contact with a child younger than seventeen. *TEX. PEN. CODE ANN. § 21.11* (Vernon 2003). D.H. testified that S.W. pulled him into the robe room and touched D.H.'s private parts, and then dragged D.H. into the men's bathroom, grabbed his hand, and made him touch S.W.'s private parts. This alone would be enough to support the conviction. In addition, L.H. and R.H. both testified that D.H. positively identified S.W. as the perpetrator in the parking lot immediately after the incident. Even S.W. testified that D.H. identified him as the perpetrator. Viewed in a light most favorable to the verdict, a rational jury could have found that S.W. engaged in sexual contact with D.H. Accordingly, we hold the evidence is legally sufficient, and overrule S.W.'s first issue.

In his second issue, S.W. contends the evidence of his identity as the perpetrator is factually insufficient because the evidence supporting the finding of guilt is too weak, and the evidence contrary to the finding is too strong, for the beyond-a-reasonable-doubt standard to have been met. S.W. claims the only evidence supporting the verdict is D.H.'s testimony that S.W. took him into the robe room and then into the restroom and had sexual contact with him, and L.H.'s corroborative testimony that S.W. took D.H. into the restroom and that D.H. then identified S.W. in the parking lot. He observes that L.H. offered conflicting evidence that the lights were on in the robe room, that she followed D.H. and S.W. down the hall to the restroom, and that S.W. was in the car with another similar looking boy. Moreover, L.H. could not independently identify S.W. In addition, R.H. offered conflicting evidence that S.W. was alone in the car and that they only looked in one car. S.W. contends that these conflicts affect the credibility of

all the witnesses, thus undermining the possibility that the jury could have found S.W. guilty beyond a reasonable doubt.

An appellate court should not substantially intrude on the jury's role as the sole judge of the credibility of the witnesses and the weight to be given the evidence. *TEX. CODE CRIM. PROC. ANN. art. 38.04* (Vernon 2005); *Wesbrook v. State, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000)*. Thus, the jury is permitted to believe or disbelieve any part of the testimony of any witness. *Jones v. State, 984 S.W.2d 254, 258 (Tex. Crim. App. 1998)*. Reconciliation of evidentiary conflicts is solely a function of the trier of fact. *Losada v. State, 721 S.W.2d 305, 309 (Tex. Crim. App. 1986)*. The jury could have accepted those portions of D.H.'s, L.H.'s, and R.H.'s testimony sufficient to support the conviction, and disregarded the inconsistencies. A decision is not legally or factually insufficient merely because the jury resolved the conflicting views of the evidence in favor of the State. *See Cain v. State, 958 S.W.2d 404, 410 (Tex. Crim. App. 1997)*. Accordingly, we hold the evidence is factually sufficient, and overrule S.W.'s second issue.

**Conclusion:** We hold the evidence is both legally and factually sufficient to support the finding of guilt and therefore affirm the judgment of the trial court.