Review of Recent Juvenile Cases (2007)

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

Evidence that assault was on teacher's aide was sufficient to establish assault on teacher.[In the Matter of S.C.](07-3-13)

On July 5, 2007, the Texarkana Court of Appeals held that in Assault on a Public Servant, evidence that complainant was a teacher's aid was sufficient to establish the element of public servant, even where petition alleged complainant was "a teacher."

¶ 07-3-13. **In the Matter of S.C.,** No. 06-06-00053, 2007 Tex.App.Lexis 5194 (Tex.App.— Texarkana, 7/5/07).

Facts: Who started the pushing that morning at Paris High School was disputed. All agreed that S.C. and Cleda Brownfield were at cross purposes before normal school hours began. S.C., then a fourteen-year-old high school freshman, wanted into the school building. Brownfield, a "special services aide, teacher's assistant," was tasked to keep out all students except those having business which specifically authorized early entry. [1] S.C. thought her business justified her early entry; Brownfield ruled to the contrary. The ensuing altercation resulted in S.C. being charged with, tried for, and found guilty by a six-person jury as having engaged in, delinquent conduct by assaulting a public servant. [2] *See TEX. FAM. CODE ANN. § 54.03* (Vernon Supp. 2006).

> 1 One of Brownfield's duties at the time of the altercation was to keep unauthorized students out of the school building before the bell rang for general classes at 8:30 a.m. The first bell rang at 8:00 a.m. At that time, authorized students could come in for tutorials and other specified purposes until 8:05 a.m., when the second bell rang. At that point, the doors were again closed until 8:30 a.m., when general admission began. Brownfield and other school personnel testified that S.C. initiated physical contact before 8:30 by pushing Brownfield. S.C. and two classmates testified that Brownfield initiated the contact. S.C. also stated that Mr. Fleming, a science teacher, pushed S.C. while stepping on her shoe string and that, as a result, she fell and stuck herself in the hand with a pencil she was carrying.
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> 2 After the trial court heard further evidence, it committed S.C. to the Texas Youth Commission (TYC) for an indeterminate sentence. *See TEX. FAM. CODE ANN. § 54.04* (Vernon Supp. 2006).

On appeal, [3] S.C. contends that the evidence is insufficient because the State did not prove that S.C. was under seventeen years of age; that Brownfield was a school teacher as alleged in the State's petition; or that Paris High School is a governmental entity, a requirement to establish that Brownfield was a public servant. S.C. also argues that she had ineffective assistance of counsel at trial. [4]

> 3 We note that, though numerous reports in the public media discuss S.C.'s case as being one involving issues of racial discrimination, no racial issues have been raised in this appeal.

4 At oral argument, acknowledging that S.C. has now been released from TYC, counsel waived his arguments that the trial court abused its discretion at the disposition phase by committing her for an indeterminate sentence.

Held: Affirmed

Opinion: S.C.'s next contention is that the evidence is insufficient because the State did not prove that Brownfield was a "school teacher," but instead proved only that she was a "teacher's aide." Thus, she argues, the petition's allegations were not met, and we should find the evidence insufficient.

The jury was charged to determine whether S.C. had committed delinquent conduct by committing assault on a public servant. *See TEX. PENAL CODE ANN. § 22.01* (Vernon Supp. 2006). Among other things, as presented to the jury, that includes "an officer, employee, or agent of government."

The petition alleges that S.C. caused bodily injury to Cleda Brownfield, a school teacher, and a person said defendant knew was a public servant, while Cleda Brownfield was lawfully discharging an official duty, or in retaliation or on account of exercise of official power or performance of an official duty as a public servant, by pushing Cleda Brownfield.

On appeal, S.C. focuses on a single portion of the petition, the language describing Brownfield as a school teacher. S.C. argues that the evidence does not support a finding that Brownfield was a school teacher, and cites a series of criminal cases involving fatal variances between the allegation and the proof. [6]

6 *See generally Weaver v. State, 551 S.W.2d 419 (Tex. Crim. App. 1977)* (Ruger, or Luger, pistol).

This is an allegation of criminal action, the truth of which is determined by the fact-finder. Thus, we apply the analysis used in criminal cases to review alleged charge error, or claims that the evidence is insufficient to support a jury's determination.

In reviewing the legal sufficiency of the evidence, we view all of 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 crime beyond a reasonable doubt. *Johnson v. State, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000)*.

In a factual sufficiency review, we also view all the evidence, but do so in a neutral light and determine whether the evidence supporting the verdict is so weak that the jury's verdict is clearly wrong or manifestly unjust or against the great weight and preponderance of the evidence. *Roberts v. State, 220 S.W.3d 521 (Tex. Crim. App. 2007)*; *Marshall v. State, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006)*.

The Texas Court of Criminal Appeals has mandated that sufficiency of the evidence is to be analyzed under the hypothetically correct jury charge. *Gharbi v. State, 131 S.W.3d 481, 483 (Tex. Crim. App. 2003)* (allegation which is not statutory element or "an integral part of an essential element of the offense" need not be included in hypothetically correct jury charge); *see Fuller v. State, 73 S.W.3d 250, 252 (Tex. Crim. App. 2002)* (allegation which is not statutory element need not be included in hypothetically correct jury charge); *see also Gollihar v. State, 46 S.W.3d 243, 256 (Tex. Crim. App. 2001)*.

A variance occurs when there is a discrepancy between the allegations in the charging instrument and the proof at trial. *Hart v. State, 173 S.W.3d 131, 144 (Tex. App.--Texarkana 2005, no pet.)* (quoting *Gollihar, 46 S.W.3d at 246*). "The widely-accepted rule, regardless of whether viewing variance as a sufficiency of the

evidence problem or as a notice-related problem, is that a variance that is not prejudicial to a defendant's 'substantial rights' is immaterial." *Id*. (quoting *Gollihar, 46 S.W.3d at 247-48*; and referencing *Rojas v. State, 986 S.W.2d 241, 246 (Tex. Crim. App. 1998)*).

To determine whether a defendant's "substantial rights" have been prejudiced, we consider two questions: whether the indictment, as written, informed the defendant of the charge against him or her sufficiently to allow such defendant to prepare an adequate defense at trial, and whether prosecution under the deficiently drafted indictment would subject the defendant to the risk of being prosecuted later for the same crime. *See Dickey v. State, 189 S.W.3d 339, 345 (Tex. App.--Texarkana 2006, no pet.)* (citing *Gollihar, 46 S.W.3d at 248*).

In this instance, the statute criminalizes assault on a public servant. It is not limited to assault on a school teacher. *TEX. PENAL CODE ANN. § 22.01(b)(1)*. It is undisputed that Brownfield was a teacher's aide employed by the Paris Independent School District at the time of the altercation. A "public servant" is "a person elected, selected, appointed, employed, or otherwise designated as . . . an officer, employee, or agent of government." *TEX. PEN. CODE ANN. § 1.07(a)(41)(A)* (Vernon Supp. 2006). Thus, the evidence shows that Brownfield was a public servant. *See Moore v. State, 143 S.W.3d 305, 311 (Tex. App.--Waco 2004, pet. ref'd)*.

The petition clearly provides sufficient information for the defendant to prepare an adequate defense at trial. The State was not required to prove the more specific allegation, but only what was required by the hypothetically correct jury charge: that Brownfield was a public servant.

A number of courts have expressly answered the question by concluding that public school teachers fall within the broad definition of "public servant" provided by the current version of *Section 1.07(a)(41)(A) of the Texas Penal Code*. *See In re J.P., 136 S.W.3d 629, 630 (Tex. 2004)* (juvenile assaulted public servant per *Section 22.01(b)(1)* by hitting and kicking public school teacher); *Moore, 143 S.W.3d at 311* (school superintendent was "public servant" under *Section 1.07(a)(41)(A)*); *In re F.C., No. 03-02-00463-CV, 2003 Tex. App. LEXIS 4709, at *10-11 (Tex. App.--Austin June 5, 2005, no pet.)* (mem. op., not designated for publication) (teacher at Dobie Middle School was "public servant" for purposes of *Section 22.01(b)(1)*); *In re J.L.O., No. 03-01-00632-CV, 2002 Tex. App. LEXIS 5730, at *8-9 & n.1 (Tex. App.--Austin Aug. 8, 2002, no pet.)* (mem. op., not designated for publication) (education assistant at public school satisfied Texas Penal Code definition, which Legislature intentionally made broad "to extend the law's protection to all school employees"); *In re B.M., 1 S.W.3d 204, 207 (Tex. App.--Tyler 1999, no pet.)* (public servants include employees of independent school districts).

Other Issues Omitted.

Conclusion: Accordingly, we conclude that Brownfield's undisputed testimony that she was a "teacher's aide" employed by the Paris Independent School District at Paris High School provided legally and factually sufficient evidence to establish this element of the offense. *See In re L.M., 993 S.W.2d 276, 284 (Tex. App.--Austin 1999, pet. denied)*; *In re P.N., No. 03-04-00751-CV, 2006 Tex. App. LEXIS 6878 (Tex. App.--Austin Aug. 4, 2006, no pet.)* (mem. op., not designated for publication).