

Juvenile Law Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)

Eyewitness testimony was not inadmissible because the witness had before the adjudication hearing identified the respondent from a one photograph display [In re I.M.] (01-2-06)

On March 14, 2001, the San Antonio Court of Appeals held that in court identification of the respondent in a burglary case was admissible despite the witness having identified the respondent from a one photo display because the witness had even earlier identified the respondent based on a chance encounter.

¶ 01-2-06. In the Matter of I.M., UNPUBLISHED, No. 04-00-00201-CV, 2001 WL 246569, 2001 Tex.App.Lexis ____ (Tex.App.—San Antonio 3/14/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: The trial court found that I.M. engaged in delinquent conduct by committing the felony offense of burglary of a habitation and sentenced him to juvenile probation for twelve months. I.M. appeals, contending the circumstantial evidence is legally and factually insufficient to support the trial court's finding and the court erred in admitting an unduly suggestive in- court identification.

Held: Affirmed.

Opinion Text: LEGAL AND FACTUAL SUFFICIENCY

I.M. first contends the evidence is legally and factually insufficient to support the trial court's finding. We disagree.

Standards of Review

To prove burglary of a habitation, the State must prove a person entered a habitation without the effective consent of the owner and with the intent to commit a felony or theft. Tex.Penal Code Ann. § 30.02(a)(1) (Vernon Supp.2000). In reviewing the legal sufficiency of the evidence to establish burglary, we view the evidence in the light most favorable to the trial court's finding and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See *In re A.C.*, 949 S.W.2d 388, 389 (Tex.App.—San Antonio 1997, no pet.). In reviewing for factual sufficiency, we review all the evidence to determine whether the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. See *id.*

Discussion

Two eyewitnesses saw a person they later identified as I.M. carrying a backpack and sitting outside the complainant's apartment shortly before the window into the living room was broken; shortly after the window was broken, one eyewitness saw I.M. run back up the stairs; another eyewitness testified he did not go back downstairs or exit the area outside the complainant's apartment by scaling the railing and jumping to the ground below; and the record establishes a window on the back of the complainant's apartment was broken. Missing from the apartment were a Sony Playstation, CDs, and jewelry. We hold this evidence, although circumstantial, is legally and factually sufficient to support the trial court's finding.

IN-COURT IDENTIFICATION

I.M. next complains the trial court erred in admitting one of the eyewitnesses' in-court identification of I.M. as the person she saw outside the complainant's apartment on the day of the burglary, because it was unduly suggestive.

An in-court identification is inadmissible if, "considering the totality of the circumstances, 'the ... identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" *Loserth v. State*, 963 S.W.2d 770, 772 (Tex.Crim.App.1998) (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968)). If the procedure was impermissibly suggestive, we must "weigh [] against the corrupting effect of any suggestive identification procedure" (1) "[t]he opportunity of the witness to view the [defendant] at the time of the crime;" (2) "[t]he witness' degree of attention;" (3) "[t]he accuracy of the witness' prior description of the [defendant];" (4) "the level of certainty demonstrated by the witness at the confrontation;" and (5) "[t]he length of time between the crime and the confrontation." *Loserth*, 963 S.W.2d at 772 (citing *Neil v. Biggers*, 409 U.S. 188, 199 (1972)).

I.M. argues the in-court identification was unduly suggestive because the eyewitness identified him as the person she had seen outside the complainant's apartment from a one photograph lineup. However, a short time after the burglary and long before the in-court identification, the same eyewitness had unequivocally and without hesitation identified I.M. after a chance encounter in the complainant's apartment complex; and she so testified at trial without objection. Indeed, it was this out-of-court identification that led to I.M.'s apprehension. Under these circumstances, we hold the error, if any, in admitting the in-court identification was harmless.

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)