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

Evidence was factually and legally sufficient to support an adjudication for aggravated sexual assault [In re M.L.C.] (01-3-10).

On June 20, 2001, the Dallas Court of Appeals upheld an adjudication for aggravated sexual assault over a challenge for factual and legal sufficiency. It also held that a motion for new trial is not required to make a factual sufficiency claim about an adjudication in a nonjury trial.

¶ 01-3-10. In the Matter of M.L.C., UNPUBLISHED, No. 05-00-01235-CV, 2001 WL 687814, 2001 Tex.App.Lexis ___ (Tex.App.—Dallas 6/20/01).

Facts: M.L.C., a juvenile, appeals the trial court's order adjudicating him delinquent for aggravated sexual assault of a child and from the subsequent modification of his probation in a previous assault case. Appellant contends the evidence is legally and factually insufficient to support his adjudication. Appellant also claims the trial court erred by refusing to consider mitigating evidence during the disposition hearing. We affirm the judgment of the trial court.

Appellant was charged with aggravated sexual assault of a child. At trial, the victim, appellant's twelve-year-old stepsister, D.B., testified that when the offense occurred, she was eleven-years-old and living with her mother Sraya; her mother's boyfriend, Zachary; her brother, A.G.; her half-sister, Z.A.; and Zachary's sixteen-year-old son, appellant. D.B. testified that Eric, appellant's fifteen-year-old friend, was visiting appellant when appellant came upstairs to D.B.'s room and told her she "should stop being scared and do it."

Appellant went back downstairs. Eric then came upstairs and had intercourse with D.B. She testified she told no one because she was scared, and because appellant told her she "would get in trouble and get beat up." A few nights later, D.B. was asleep in her bed when appellant woke her up and told her he had something to show her. She followed him into the hallway, but there was nothing there. He then began "feeling on [her] and stuff." Appellant pulled down his shorts and D.B.'s pants. D.B. testified, "He started pushing his [private] in mine." After the incident, appellant told D.B. she had "better not tell." D.B. testified appellant then "put [his private] this time in [her] mouth." "He--didn't move it. He just did my head like that." D.B. indicated a back and forth motion. She stated that something came out of appellant's penis that tasted like "some snot" and "was kind of like white, kind of clear."

Appellant did not attempt to have intercourse with D.B. again, but D.B. testified that appellant "tried it one time from--from the behind, but it didn't work." D.B. testified that on one other occasion appellant "put it in [her] mouth and started doing that again."

D.B. did not tell her mother what happened with Eric or appellant because she was "[a]fraid, and [she] didn't know how to tell her." Appellant had hit D.B. before when D.B. had worn appellant's jacket. Appellant told D.B. no one would believe her and she would "get in trouble." The first time D.B. told anyone what happened was when D.B.'s mother realized D.B. was pregnant. D.B.'s mother and Zachary took her to the Plano police station to report the incident. Initially D.B. did not report appellant's involvement because she "was scared to say something." The next day D.B. spoke with Officer Chaney. D.B. told Officer Chaney of appellant's involvement. She told Officer Chaney that she had not had intercourse with anyone else except for Eric and appellant; D.B. admitted at trial that was not true. Her mother and Zachary were upset that D.B. accused appellant and her accusations caused problems within the family. D.B. admitted that she did not always tell the truth; however, she contended she told the truth about the incident with Eric and appellant.

Appellant's father, Zachary, testified that upon confronting D.B. with the results of the pregnancy test, she originally told him she had no sexual contact with anyone. D.B. later admitted she had sex with Eric. However, D.B. told Zachary she had not had sex with anyone else. Zachary testified he asked D.B., "Did [appellant] touch you?" D.B. said no. Zachary learned later, after the police were contacted, that D.B. told her mother that appellant also "did it to her." D.B. told Zachary appellant was at home when Eric had intercourse with D.B. Zachary testified that appellant told him he was not present when Eric had sex with D.B. Zachary stated appellant told him that D.B. was willing to have sex with appellant's friends because "she used to harass them about it." Appellant told Zachary he heard D.B. had sex with his friends. Zachary testified he was aware D.B. had sex previously with appellant's friends and her nine-year-old uncle when she was nine-years-old. He was also aware she had sex with her fifteen-year-old uncle when she was eleven-years-old. Zachary stated D.B. "got in trouble for it." Zachary believed it was consensual that D.B. had sex with Eric. Zachary testified D.B. has a bad reputation. Zachary testified that D.B. is aware that both he and her mother think D.B. is lying about appellant.

David Wilson, a criminal investigator with the Plano Police Department, testified appellant did not admit to having sex with D.B. DNA tests showed neither appellant nor Eric was the father of D.B.'s child. Several possible suspects were investigated. Officer Wilson stated that D.B.'s mother wanted the investigation dropped and stated she was sorry she had ever brought the matter to police attention.

D.B.'s mother, Sraya, testified that after learning D.B. was pregnant, she questioned D.B. When confronted with the positive pregnancy test results, D.B. simply said she "just don't know." After further questioning, D.B. told her mother about the incident with Eric. After taking D.B. to the police station, Sraya learned appellant was also implicated. Sraya testified that D.B. had a bad reputation in their community for not telling the truth. Sraya testified appellant was not violent with D.B., except for the one incident regarding the jacket. Sraya asked the D.A.'s office to drop the charges against appellant and asked for probation in Eric's case.

Appellant testified he told Zachary and Sraya he was concerned about D.B. because she was "trying to make passes at a couple of [his] friends." Appellant stated he did not know for a fact that D .B. had sex with his friends; however, he had heard rumors to that effect. Appellant denied having sex with D.B. and denied threatening her. Appellant testified that during the period of time the incident for which he was accused occurred, he was out of the house on at least three occasions--in detention twice and in California once.

Eric testified appellant did not encourage him to have sex with D .B. Eric stated appellant was in the house when Eric had sex with D.B., and he assumed, but did not know for certain, that appellant knew Eric had intercourse with D.B.

Appellant was charged by the State's petition filed October 19, 1999 for aggravated sexual assault. Appellant was adjudicated delinquent in cause no. 219-70274-99 by order dated July 31, 2000, after pleading not true and waiving a jury trial. After the disposition hearing on June 8, 2000, and a finding that the 1) public needed protection; 2) appellant's conduct was willful; 3) appellant was not being provided suitable care or supervision by a parent or guardian; 4) appellant repeatedly violated the laws of this State; 5) appellant showed a need for closer and stricter supervision; and 6) there was no suitable alternative to commitment to the Texas Youth Commission (TYC), appellant was sentenced to TYC for an indeterminate amount of time not to exceed the time when he shall be twenty-one years of age or until duly discharged.

Based in part on appellant's aggravated sexual assault of D.B., the State also filed a motion on October 19, 1999 to modify disposition of appellant's existing probation in cause no. 219-70111-98, a prior assault complaint. Appellant pleaded not true and, after a hearing on the motion, the court found: appellant violated his probation; it was in the best interest of appellant to be placed outside appellant's home; reasonable efforts were made to prevent the removal of appellant from his home; appellant's home could not provide the quality of care and level of supervision needed to meet the conditions of probation; and appellant and the community would be better served by placing appellant at TYC. On August 1, 2000, the trial court granted its order to modify disposition and appellant was sentenced to TYC for an indeterminate amount of time not to exceed the time when he shall be twenty-one years of age or until duly discharged. This appeal followed.

Held: Affirmed.

Opinion Text: Legal Sufficiency

In Appellant's first point of error, he contends the evidence is legally insufficient to support his adjudication of delinquency for aggravated sexual assault.

When reviewing the legal sufficiency of the evidence to support a guilty verdict against a juvenile, we view the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See In the Matter of C.D.F., 852 S.W.2d 281, 284 (Tex.App.--Dallas 1993, no writ). In a juvenile case, the question is whether the evidence, considered as a whole, shows the State sustained its burden of proof beyond a reasonable doubt. Id. The trier of fact determines the credibility of witnesses and can believe or reject any part of the testimony. Id. The trier of fact draws reasonable inferences and makes reasonable deductions. Id.

The offense of aggravated sexual assault of a child is delineated in section 22.021 of the Texas Penal Code. The elements of the offense relevant to the present case are: 1) intentional or knowing, 2) penetration of the mouth; 3) of another person by the sexual organ of the actor, 4) and the victim is younger than fourteen years of age and not the spouse of the actor.

Appellant contends that the evidence is legally insufficient because the proof in this case rests on the testimony of D.B., and she is not capable of being believed. However, the truthfulness of a witness goes to the issue of credibility which is within the sole province of the fact finder. C.D.F., 852 S.W.2d at 284. The uncorroborated testimony of the victim alone is enough to sustain a conviction for aggravated sexual assault of a child when the victim was under the age of eighteen at the time of the offense. See Tex.Code Crim. Proc. Ann. art. 38.07 (Vernon Supp.2001). D.B. testified appellant placed his penis in her mouth. She described his movements, as well as the appearance and taste of his ejaculate. We conclude the evidence is legally sufficient to support appellant's conviction. Appellant's first point of error is overruled.

Factual Sufficiency

In appellant's second point of error, appellant complains the evidence is factually insufficient to support his delinquency adjudication. We disagree with the State's contention that appellant waived his complaint because appellant failed to file a motion for new trial. Challenges to the factual sufficiency of the evidence can be made for the first time on appeal from nonjury trials. See Tex.R.Civ.P. 324. Therefore, no predicate was required for appellant to challenge the factual sufficiency of the evidence on appeal.

When reviewing a factual sufficiency challenge in a juvenile case, we consider the totality of the evidence to determine whether the evidence supporting the finding is so weak or the evidence contrary to the finding is so overwhelming that it is clearly wrong and unjust. See In re H.G., 993 S.W.2d 211, 213 (Tex.App.--San Antonio 1999, no pet.); In re S.H., 846 S.W.2d 103, 106 (Tex.App .--Corpus Christi 1992, no writ). The trier of fact is the exclusive judge of the credibility of the witnesses, and, as such, may believe or disbelieve any witness and may resolve any inconsistencies in the testimony of any witness. S.H., 846 S.W.2d at 107.

Appellant contends that the evidence is factually insufficient because of the "inconsistencies and impossibilities" in D.B.'s testimony. However, the fact finder is the sole judge of the weight and credibility of the witnesses, and may accept or reject any or all of the testimony of any witness. See Matter of S.J., 940 S.W.2d 332, 336-37 (Tex.App.--San Antonio 1997, no writ).

Appellant also contends that there is "no evidence" to show that D.B. was not married to appellant. Although appellant frames this complaint as a factual sufficiency issue, it appears appellant is challenging the legal sufficiency of his adjudication on this ground. Regardless, our determination would be the same under either standard. Appellant testified at trial that he was not married. The record is replete with evidence that this was a family unit with appellant and D.B. living as brother and sister. D.B. and appellant did not share a bedroom. Appellant and Zachary both testified that D.B. and appellant did not like each other. There is no evidence to suggest that D.B. and appellant shared any relationship other than that of brother and sister, and assailant and victim.

Although the State has the burden to prove every element of the offense, the appellate court will review the evidence in the light most favorable to, or consistent with, the verdict of guilt. The fact finder may draw reasonable inferences and make reasonable deductions from the evidence. See C.D.F., 852 S.W.2d at 284. We cannot say that the evidence supports any inference other than that the victim was not the spouse of the appellant. See Wendt v. State, 664 S.W.2d 730, 732 (Tex.App.--Waco 1983, writ ref'd) (holding that uncontroverted evidence of the complaining witnesses' youth was sufficient to establish that neither was defendant's spouse). We conclude the evidence is factually sufficient to support appellant's adjudication. Appellant's second point of error is overruled.

Predetermination of Punishment

In appellant's third point of error, he contends the trial court erred by refusing to consider mitigating evidence during

the disposition hearing. [FN2] Appellant contends the trial court refused to consider other options available to appellant as punishment and therefore predetermined appellant's sentence. Appellant has waived this argument because he failed to object to the trial court or move for a new trial on that ground. Cole v. State, 931 S.W.2d 578, 579-80 (Tex.App.--Dallas 1995, writ ref'd).

> FN2. Appellant asserts that the trial court's failure to consider mitigating evidence resulted in appellant's commitment to TYC and thus "the punishment assessed was cruel and unusual." However, appellant has failed to provide any argument or authorities to support his contention that the punishment was cruel and unusual and has therefore waived this complaint on appeal. See Tex.R.App.P. 38.1(h).

Furthermore, appellant was given the opportunity to present mitigating evidence, and, in fact, appellant's father testified in favor of probation and offered to provide supervision and counseling for appellant. Appellant does not inform this Court what evidence he was denied the opportunity to present, nor can we discern from the record that the trial court failed to consider all the evidence offered. We presume the trial court's actions were correct, absent a showing to the contrary. Hardin v. State, 471 S.W.2d 60, 63 (Tex.Crim.App.1971); Cox v. State, 843 S.W.2d 698, 703 (Tex.App.--Corpus Christi 1992, writ ref'd). We overrule appellant's third point of error.

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries