

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 sufficient to support an adjudication for criminal trespass to a vacant apartment [In re. D.G.] (01-3-11).

On June 21, 2001, the El Paso Court of Appeals upheld an adjudication for criminal trespass in an apartment that was vacant. Whether a space is a habitation as defined in the criminal trespass law is a question of fact under all the circumstances.

¶ 01-3-11. In the Matter of D.G., UNPUBLISHED, No. 08-00-00059-CV, 2001 WL 695530, 2001 Tex.App.Lexis ____ (Tex.App.—El Paso 6/21/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: This is an appeal from an Order of Adjudication finding that D.G. engaged in delinquent conduct by committing the offense of criminal trespass.

A petition was filed on December 8, 1999, alleging D.G. had engaged in delinquent conduct by committing the offenses of criminal trespass (Count I) and evading arrest (Count II). On January 5, 2000, D.G. waived his rights to a hearing before a juvenile court judge and to a jury trial, agreeing to a non-jury trial conducted by the juvenile court referee. He pled not true to both counts, and the referee conducted a bench trial. Corissa Daugherty, property manager for the Sunrise Apartments, testified Apartment 113 was vacant on December 3, 1999, and that D.G. did not have permission to be inside. The apartment was secured with a keyed deadbolt, a keyed doorknob, and safety features on the windows. Jose Frescas IV, who lived on Casa Loma Street behind the apartments, testified that on December 3, 1999, at approximately 7 p.m. he was in his backyard. He looked across the arroyo between his house and the apartment complex and saw four persons entering an apartment through a window. Frescas saw three other people standing at the corner of the building, but he lost sight of them and did not know if they went inside the apartment or left. He called 911 to report the break-in. The police arrived ten to fifteen minutes later. After the police entered the apartment, he heard yelling and saw people running in different directions, some toward the playground on the side of the building.

Officer Luis Vasquez advised that he and his partner, Officer Acuna, were dispatched to the Sunrise Apartments to assist another unit regarding a burglary in process. He remained outside the building and saw three juveniles exit from a north window of Apartment 113. As the three youths ran in a northbound direction toward the YWCA, Vasquez radioed that he was in foot pursuit. The juveniles were approximately fifteen feet ahead of him. One juvenile made a right turn toward an apartment, another stopped and got to the ground upon instructions to do so, and a third continued running. Vasquez caught the third youth while Officer Alejandro Dominguez apprehended the juvenile on the ground. When Vasquez later entered Apartment 113, he did not observe any furniture but the unit was carpeted. However, he did state that the property was "a habitation, residential apartment complex." He did not recall where the playground was located, and had received no information that anyone was in the playground area.

Officer Dominguez testified that when he entered the apartment through a small open window in the back, he heard scuffling noises in another room and observed three subjects trying to exit through a window about twenty-five feet in front of him. One of the three was D.G. Officers detained one subject in the apartment and two others escaped. Dominguez exited through the window while observing three persons running ahead with Vasquez in pursuit. Dominguez identified the location of the trespass as an apartment complex. There were blinds on the windows.

D.G. testified that he had walked around the YWCA, headed back toward the Sunrise Apartments and was in front of Francisco Lopez's apartment when a police officer told him to get down on the ground. The officer kicked open the

Lopez apartment, arrested Francisco, returned, and handcuffed D.G. D.G. saw people running and Vasquez passed him. Dominguez told him to get down. He insisted that he never entered the apartment nor ran from the police. Victor Castaneda also maintained that D.G. did not enter Apartment 113.

The referee found that D.G. had engaged in criminal trespass, but had not evaded arrest. At the disposition hearing, D.G. was sentenced to the Texas Youth Commission.

Held: Affirmed.

Opinion Text: CRIMINAL TRESPASS

A person commits the offense of criminal trespass if, without effective consent, he enters or remains on property of another, knowingly, intentionally, or recklessly, when he has notice that entry was forbidden or he received notice to depart but failed to do so. *Day v. State*, 532 S.W.2d 302, 306 (Tex.Crim.App.1975). D.G. contends that the evidence was legally or factually insufficient to support the referee's order of adjudication. Specifically, he argues that the State failed to prove: (1) that he had notice that entry into Apartment 113 was forbidden; (2) that the apartment was a habitation; and (3) that he was one of the intruders into the apartment on the date in question. The elements charging a juvenile with an offense must be proven beyond a reasonable doubt. Tex.Fam .Code Ann. § 54.03(f)(Vernon Supp.2001); *In re Winship*, 397 U.S. 358, 368, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *In the Matter of A.S.*, 954 S.W.2d 855, 858-59 (Tex.App.–El Paso 1997, no writ), citing *In the Matter of M.M.R.*, 932 S.W.2d 112 (Tex.App.–El Paso 1996, no writ).

Standard of Review

In determining the legal sufficiency of the evidence to support a criminal conviction, we must determine whether, after viewing all the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Geesa v. State*, 820 S.W.2d 154, 156-57 (Tex.Crim.App.1991); *Hernandez v. State*, 946 S.W.2d 108, 110-11 (Tex.App.–El Paso 1997, no pet.). We do not resolve conflicts of fact or assign credibility to witnesses, as it was the function of the trier of fact to accept or reject any, part, or all of any witness's testimony. See *Lucero v. State*, 915 S.W.2d 612, 614 (Tex.App.–El Paso 1996, pet. ref'd). Our duty, rather, is to determine only if the explicit and implicit findings of the trier of fact are rational by viewing all the evidence in a light most favorable to the verdict. See *id.* We resolve any inconsistencies in the evidence in favor of the verdict. See *id.*

In reviewing factual sufficiency, we consider all of the evidence, but we do not view it in the light most favorable to the verdict. See *Clewis v. State*, 922 S.W.2d 126, 129 (Tex.Crim.App 1996); *Levario v. State*, 964 S.W.2d 290, 295 (Tex.App.–El Paso 1997, no pet.). We will set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. See *Levario*, 964 S.W.2d at 295. In conducting a factual sufficiency review, the reviewing court cannot substitute its conclusions for those of the fact finder. See *id.* It is not within the province of this court to interfere with the fact finder's resolution of conflicts in the evidence or to pass on the weight or credibility of the witness's testimony. See *id.* Where there is conflicting evidence, the fact finder's verdict on such matters is generally regarded as conclusive. See *id.*

Notice Requirement

Notice is defined as: (1) oral or written communication by the owner or someone with apparent authority to act for the owner; (2) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or (3) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden. See Tex.Penal Code Ann. § 30.05(b)(2)(B)(Vernon Supp.2001). D.G. maintains the State presented no evidence that he received notice that entry into Apartment 113 was forbidden. We are unpersuaded by his argument. The State's evidence was uncontroverted and sufficient to show D.G. had the requisite notice. The property manager testified D.G. did not have her permission to be in Apartment 113 and that the apartment was secured with a deadbolt lock, a keyed doorknob and safety features on the windows.

Definition of Habitation

A habitation is defined as a structure or vehicle that is adapted for the overnight accommodation of persons. See Tex.Penal Code Ann. § 30.01 (Vernon 1994). The Austin Court of Appeals recently determined that the controlling standard for ascertaining whether a structure qualifies as a "habitation" within the meaning of the statute is whether a structure was being used as a residence at the time of the trespass, whether the structure contained bedding, furniture, utilities, or other belongings common to a residential structure, and whether the structure was of such

character that it was likely intended to accommodate persons overnight. In the Matter of E.P., 963 S.W.2d 191, 193 (Tex.App.–Austin 1998, no pet.), citing Blankenship v. State, 780 S.W.2d 198, 209-10 (Tex.Crim.App.1989)(opinion on reh'g). D.G. contends there was insufficient evidence presented for a reasonable trier of fact to have concluded that the apartment was adapted for the overnight accommodation of persons, and therefore, it cannot be said the apartment met the statutory definition of a habitation. We disagree.

Whether a structure is suitable for overnight accommodation is a complex, factual question for the trier of fact's determination. See Blankenship, 780 S.W.2d at 209. We will overturn the fact finder's decision on appeal only if Appellant can show that no reasonable trier of fact could have found the property to be a habitation. Id. at 210. Apartment 113 was vacant and contained no furniture at the time of the trespass. There was no testimony as to whether the utilities were connected. However, the evidence does reveal that Apartment 113 is a three or four room unit located within a complex of several occupied units. We can assume it is wired for electricity and has water readily available. It is carpeted and has window blinds. The apartment complex employs a property manager and includes a playground for its tenants. Police officers described it as a habitation and residential apartment complex.

Appellant as an Intruder

D.G. suggests that the referee erred when he determined D.G. was one of the intruders. He contends he just happened to be outside the Sunrise Apartments at the time the officers were pursuing the juveniles fleeing the apartment. Officers Vasquez and Dominguez both identified D.G. as one of the persons who exited the apartment through the window and attempted to flee from the building. Vasquez testified D.G. stopped and dropped to the ground as instructed; Dominguez stated he yelled once for the suspects to stop running and that D.G. did stop. Dominguez never lost visual contact with D.G. from the time he first saw him until he had been taken into custody. We believe a rational trier of fact could have determined beyond a reasonable doubt that D.G. was in fact one of the trespassers.

Because the evidence is both legally and factually sufficient, we overrule both points of error and affirm judgment of the trial court.

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)