

Juvenile Law Case Summaries

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[2002 Case Summaries](#) [2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

Evidence is factually sufficient to support aggravated assault as a probation violation [In re C.S.H.] (03-1-06).

On December 10, 2002, the Texarkana Court of Appeals held that evidence was factually sufficient to support an finding of aggravated assault by breaking an arm as a violation of probation.

03-1-06. In the Matter of C.S.H., UNPUBLISHED, No. 06-01-00157-CV, 2002 WL 31748927, 2002 Tex.App.Lexis ____ (Tex.App.-Texarkana 12/10/02) Texas Juvenile Law (5th Ed. 2000).

Facts: C.S.H. appeals the trial court's order modifying his juvenile disposition and committing him to the Texas Youth Commission (TYC). On October 31, 2000, the trial court found C.S.H. engaged in delinquent conduct under Tex. Fam.Code Ann. § 51.03(a)(1) (Vernon 2002) by committing burglary of a building, two misdemeanor theft offenses, and misdemeanor criminal mischief. See Tex. Pen.Code Ann. §§ 28.03(b)(2), 30.02(c)(1), 31.03(e)(2)(A)(I) (Vernon Supp.2003). The trial court adjudicated C.S.H. delinquent and placed him on two years' probation. Among the requirements of his probation, C.S.H. was ordered to "commit no offense against the laws of this or any other State, or of the United States."

About a year later, the State moved to modify C.S.H.'s disposition, alleging he violated the requirements of his probation by intentionally or knowingly causing serious bodily injury to Christopher Levi Bevington by severely breaking his arm. See Tex. Pen.Code Ann. § 22.02(a)(1) (Vernon 1994) (aggravated assault). After a hearing, the trial court found C.S.H. engaged in delinquent conduct, modified his disposition, and committed him to TYC.

C.S.H. contends there is factually insufficient evidence that he intentionally or knowingly caused serious bodily injury to Bevington. At the hearing, Bevington testified as follows. He and C.S.H. rode the same bus to and from school. On the day of the alleged assault, he and C.S.H. became involved in a physical confrontation on the bus on the way home from school. C.S.H. slapped Bevington on the cheek, and Bevington told him something to the effect of, "I swear to all the angels in heaven if you ever do that again I will ... kick [your] ass." C.S.H. then pinched him in the face, and the two began to scuffle.

Bevington further testified that the bus driver ordered him to sit at the front of the bus and C.S.H. to sit in the middle. C.S.H.'s stop was immediately before Bevington's, but the two stops were separated by about one hundred feet. Just before C.S.H.'s stop, Bevington obtained the bus driver's permission to retrieve his bag, which was at the back of the bus. As he walked past C.S.H., he heard C.S.H. say, "We are going to finish this." Other students asked him whether he was going to fight C.S.H., and he responded, "If I have to I will go ahead and do it."

C.S.H. exited the bus at his regular stop, but he immediately began walking toward Bevington's stop. Bevington exited the bus at his regular stop and walked about five or ten feet to meet C.S.H. The two faced each other, and C.S.H. told Bevington he was not going to do anything until the bus drove off. Eventually, Bevington turned to walk away.

As he was walking away, C.S.H. "grabbed [Bevington's] left arm and twisted it behind [Bevington's] back." Bevington described the remainder of the altercation as follows:

Q Why don't you stand up and show the judge how it happened?

A Okay. He--I will use the arm, he twisted it like that and back with his other arm, he had his other arm up against my shoulder and like that he was going to try to push me back and he was trying to trip me and make me fall backward. And I was able to push forward where I would get loose from him and his other arm got loose, was right across my shoulder and I was able to--he had his other arm around behind me so I was trying to get behind him so I might be able to hold onto him and maybe calm him down with that spare arm I'm pretty sure that he would hold my arm because there wasn't anything else that he could have kept it with.

Q Did he still have hold of your left arm at that time?

A Yes. He still has my left arm twisted. Right after that I heard a real loud crack sound and my arm throbbed in loss [sic] of pain. I was pretty sure it was broken. After that he just let my arm drop and just hang there. It wasn't working at all.

Q Did he say anything to you at that time?

A Yes. Right afterward he said, "How does that feel, bitch?"

Q Okay.

A After that I was able to get behind him, my arm was still just dangling, I got one blow like into it but after that I tripped him and when he fell to the ground he grabbed my shirt and pulled me with him and I landed on my right arm so I know I didn't break my arm when I landed on the ground. And when we was [sic] on the ground he got up before I did and he put my other arm in a twist, too, like he was going to try to break it, my other arm, just twisted it like that, put it right toward his stomach area, I saw that his body was--I saw his head was right there and I thought I would take a chance and I kneed him in the face, after that he used his left arm and pulled me and hit me in the face and ended up butting me and hit both of my wrists and made them pretty puffed up.

Bevington sustained breaks to both bones in his left arm and had to have two surgeries to set the bones. He later testified C.S.H. may have used his elbow to break his arm.

Keith Beason, who witnessed these events, testified that on the school bus, C.S.H. "tapped" Bevington on the face, the two stood nose-to-nose, Bevington warned C.S.H. not to do it again, C.S.H. "tapped him on the face again," the two began to scuffle, and the bus driver ordered the two separated. Beason testified he went to the front of the bus to throw away some trash, and Bevington told him "he was still mad about the whole situation and if he--if they got in another fight he didn't want me to break it up." He testified he told C.S.H. about Bevington's comments.

Beason testified that when C.S.H. exited the school bus, he immediately began walking toward Bevington's stop. When Bevington exited the bus, he walked toward C.S.H., meeting him almost halfway. He testified, however, that he did not see who threw the first punch and did not see how Bevington's arm was broken.

C.S.H. testified he thought he and Bevington were "playing" on the bus when he "tapped" Bevington on the face. However, Bevington became angry and told C.S.H. that if C.S.H. ever touched him again, he would kill C.S.H.

C.S.H. testified that after the bus driver separated them, Beason told him that "[Bevington] wanted to make it even and if [Bevington] got into a fight [Bevington] didn't want anybody to break it up." Beason also told him, "[A] couple of times [Bevington] had got mad about something and pulled a knife on a boy and threatened to kill him."

C.S.H. testified he was puzzled about why Bevington was still mad, so when he exited the bus, he walked toward Bevington's bus stop to "talk some sense into him." Bevington met him about halfway, "got nose-to-nose" with him, and said "he was going to whip my butt." He testified it was Bevington who made the first move.

[H]e had put his arm around, threw me, he hit me right here with the ring and I fought my way back up and he grabbed hold of my face and I was right here and he had my head like this and pushed my arm then he grabbed hold of my legs going to bring me down like a football tackle and my--he twisted me around like this, he twisted my face down with his arm under him and I landed on top of him and I heard something snap and I looked around, it wasn't no limbs or tree or anything, I knew that he was going--that something had broke.

He testified he did not intend to break Bevington's arm. He testified that after Bevington's arm was broken, the two went their separate ways.

Held: Affirmed.

Opinion Text: When considering a factual sufficiency challenge, we must consider and weigh all of the evidence, not just that evidence supporting the verdict. *Mar. Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex.1998). We may set aside the verdict only if it is so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust. *Id.* We are not a fact-finder. *Id.* Accordingly, we may not pass on the witnesses' credibility or substitute our judgment for the fact-finder's, even if the evidence would clearly support a different result. *Id.*

C.S.H. contends Bevington's version of the events is implausible because, according to Bevington, he was able to get free from C.S.H., move behind him, hit him, and trip him, all after having his arm broken in two places and rendered useless. He also observes the State failed to offer medical testimony to show whether the breaks were caused by Bevington's arm being twisted, by having an elbow forced against it, or by being injured in a fall. He contends a more plausible version of the events is that Bevington's arm was broken when the two young men fell to the ground. At most, C.S.H. contends the evidence shows he acted recklessly, but the State did not allege recklessness as a culpable mental state.

Aggravated assault is a result-of-conduct offense. *Mendenhall v. State*, 15 S.W.3d 560, 567 (Tex.App.-Waco 2000), aff'd on other grounds, 77 S.W.3d 815 (Tex.Crim.App.2002); *Brooks v. State*, 967 S.W.2d 946, 950 (Tex.App.-Austin 1998, no pet.). A person acts intentionally, or with intent, with respect to a result of his or her conduct when it is his or her conscious objective or desire to cause the result. Tex. Pen.Code Ann. § 6.03(a) (Vernon 1994). A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when the person is aware his or her conduct is reasonably certain to cause the result. Tex. Pen.Code Ann. § 6.03(b) (Vernon 1994).

There was evidence C.S.H. twisted Bevington's arm until it broke and then taunted him about his injury. Bevington also suggested C.S.H. used his elbow to break his arm. From this testimony, the trial court could have concluded by a preponderance of the evidence that it was C.S.H.'s conscious objective or desire to break Bevington's arm or that C.S.H. was aware his actions were reasonably certain to cause that result.

The verdict in this case revolved around the weight and credibility given to the witnesses' testimony. Because the only testimony regarding how Bevington's arm was broken came from Bevington and C.S.H., the trial court was faced with a decision about whom to believe. C.S.H. contends that the failure of the State to put on medical evidence about the injury demonstrates a weakness in the State's case. Either side could have offered such evidence. We do not find the State failed in its burden of proof by not presenting medical evidence.

The trial court watched Bevington demonstrate how he was injured. It also heard him testify about where his arm was broken. As fact-finder, the trial court had sufficient evidence to find that C.S.H. engaged in delinquent conduct by breaking Bevington's arm. Based on the record before us, we cannot say the verdict is so against the overwhelming weight of the evidence as to be clearly wrong or unjust.

[2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)