

NO. 12-17-00220-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>IN THE MATTER OF D.J.M.,</i>	§	<i>APPEAL FROM THE 392ND</i>
<i>A JUVENILE</i>	§	<i>JUDICIAL DISTRICT COURT</i>
	§	<i>HENDERSON COUNTY, TEXAS</i>

MEMORANDUM OPINION

D.J.M., a juvenile, appeals from the trial court's order committing him to intensive supervision probation for twelve months and placing him outside his home at Rite of Passage Lake Granbury Youth Services. D.J.M. raises three issues on appeal. We affirm.

BACKGROUND

D.J.M. was a student at Eustace Independent School District. Because of discipline issues, D.J.M. was assigned to the District Alternative Education Placement (DAEP) classroom. Jeff Brown was the director and principal of DAEP. On October 14, 2016, D.J.M. allegedly kicked and head butted Brown. The classroom in which the incident occurred and the adjacent parking lot were monitored by video recording. Brown saved the video recording of the incident.

After this incident, D.J.M. withdrew from Eustace ISD. He returned to Eustace ISD in February 2017. D.J.M. was again assigned to DAEP. David Page, another employee of Eustace ISD, assisted Brown in supervising D.J.M. A few days after his return, D.J.M. kicked Page in the head. Shortly thereafter, D.J.M. kicked Brown in the chest. Then, in March, D.J.M. spit on Cody Lowe, another employee of Eustace ISD. Finally, a couple of days later, D.J.M. rammed Page in the abdomen.

The Henderson County Attorney filed a petition alleging that D.J.M. engaged in delinquent conduct. The Henderson County Attorney then filed a first amended and a second

amended petition. The second amended petition contained five counts of allegedly delinquent conduct by D.J.M.: (1) intentionally, knowingly, and recklessly causing bodily injury to Brown by kicking him in the leg or shin with his foot and by head-butting and striking him in the head or face when D.J.M. knew that Brown was a public servant lawfully discharging an official duty; (2) intentionally, knowingly, and recklessly causing bodily injury to Brown by kicking him in the chest when D.J.M. knew that Brown was a public servant lawfully discharging an official duty; (3) intentionally, knowingly, and recklessly causing bodily injury to Page by kicking him in the face or head when D.J.M. knew that Page was a public servant lawfully discharging an official duty; (4) with intent to assault, harass, or alarm, caused Lowe to contact the saliva of D.J.M. when D.J.M. knew that Lowe was a public servant lawfully discharging an official duty; and (5) intentionally, knowingly, and recklessly causing bodily injury to Page by lowering his shoulder and charging into Page and hitting Page in the abdomen when D.J.M. knew that Page was a public servant lawfully discharging an official duty.

The matter proceeded to a jury trial, and the jury found all five counts of delinquent conduct by D.J.M. “true.” The trial court subsequently ordered D.J.M. placed on intensive supervision probation for twelve months and placed outside of the home at Rite of Passage, Lake Granbury Youth Services until D.J.M. successfully completes its Youth Services program. This appeal followed.

SUFFICIENCY OF THE EVIDENCE OF DELINQUENT CONDUCT

In his third issue, D.J.M. contends that the evidence is legally insufficient to support that D.J.M. engaged in delinquent conduct.

Applicable Law

As applicable here, delinquent conduct is conduct, other than a traffic offense, that violates a state or federal penal law and is punishable by imprisonment or confinement in jail. TEX. FAM. CODE ANN. § 51.03(a)(1) (West Supp. 2017). A person commits assault if he intentionally, knowingly, or recklessly causes bodily injury to another. TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2017). The assault is a third degree felony if the offense is committed against a public servant lawfully discharging an official duty. *Id.* at (b)(1). A person commits harassment of a public servant, a third degree felony, if, with the intent to assault, harass, or alarm, he causes another person the actor knows to be a public servant to contact the saliva of the

actor while the public servant is lawfully discharging an official duty. *Id.* § 22.11(a)(3), (b) (West Supp. 2017).

While juvenile proceedings are civil in nature, we apply the criminal sufficiency standard to assess the sufficiency of the evidence underlying a finding that the juvenile engaged in delinquent conduct. *In re A.O.*, 342 S.W.3d 236, 239 (Tex. App.—Amarillo 2011, pet. denied). In Texas, the *Jackson v. Virginia* legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of an offense that the State is required to prove beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See Jackson v. Virginia*, 443 U.S. 307, 316–17, 99 S. Ct. 2781, 2786–87, 61 L. Ed. 2d 560 (1979). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See id.*, 443 U.S. at 319, 99 S. Ct. at 2789. The evidence is examined in the light most favorable to the verdict. *Id.* A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See Tibbs v. Florida*, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2217–18, 72 L. Ed. 2d 652 (1982). This familiar standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789.

If we determine that the evidence was sufficient, we then examine the juvenile court’s exercise of discretion in its disposition order. *See In re C.J.B.*, 463 S.W.3d 626, 630 (Tex. App.—El Paso 2015, no pet.). Juvenile courts have broad discretion to determine the suitable disposition of children who have engaged in delinquent conduct. *In re M.A.L.*, 995 S.W.2d 322, 324 (Tex. App.—Waco 1999, no pet.). We review a juvenile court’s determination under an abuse of discretion standard. *See In re E.K.G.*, 487 S.W.3d 670, 673 (Tex. App.—San Antonio 2016, no pet.). A juvenile court abuses its discretion when it acts unreasonably, arbitrarily, or without reference to guiding rules or principles. *Id.* A juvenile court does not abuse its discretion when some evidence of substantive and probative character supports its decision. *In re M.A.S.*, 438 S.W.3d 803, 807 (Tex. App.—El Paso 2014, no pet.).

Application

D.J.M. argues in his first issue that State's Exhibit 5, a video recording of the incident between D.J.M. and Brown that occurred on October 14, 2016, was not properly authenticated. *See* TEX. R. EVID. 901. In his second issue, D.J.M. contends that State's Exhibit 5 was improperly admitted hearsay and that the State failed to satisfy the business records exception to the hearsay rule. *See* TEX. R. EVID. 803(6). D.J.M. argues in his third issue that the evidence is legally and factually insufficient to support the jury's verdict.

Even if we assume that the State's Exhibit 5 was improperly admitted, a matter that we need not decide, the jury found D.J.M. engaged in four additional acts of delinquent conduct, and his brief provides scant argument as to how the evidence is insufficient to support the finding that D.J.M. engaged in delinquent conduct as to any of those incidents. Specifically, after stating in conclusory fashion that State's Exhibit 5 was admitted to inflame and prejudice the jury, D.J.M. indicated that "the jury's verdict is contrary to the weight of the evidence and is legally and factually insufficient to support the elements of the offense[s]. . . ." D.J.M. then discussed the general standard of review for legal sufficiency before concluding, "Accordingly, Appellant argues the evidence was legally and factually insufficient to support a verdict of True on all counts."

Multiple witnesses testified that D.J.M. committed three other assaults of public servants and one incident of harassment of a public servant while the public servants were lawfully discharging an official duty. D.J.M. does not challenge their testimony as to these other assaults and the harassment incident. The evidence that D.J.M. engaged in delinquent conduct was strong and direct. Accordingly, we hold that the evidence is sufficient to support the delinquency finding. *See Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007) (duty of reviewing court is to ensure that evidence presented supports conclusion that actor committed crime charged).

Because the evidence is sufficient to establish that D.J.M. engaged in delinquent conduct, the trial court had broad discretion to determine the suitable disposition of D.J.M. *See In re M.A.L.*, 995 S.W.2d at 324. Aside from D.J.M.'s argument that the evidence was insufficient to support the finding that he engaged in delinquent conduct, D.J.M. does not contend that the trial court abused its discretion in its disposition.

In conclusion, because the evidence is sufficient to support the finding that D.J.M. engaged in delinquent conduct, we overrule D.J.M.'s third issue. Because of our resolution of D.J.M.'s third issue, we need not address D.J.M.'s first and second issues regarding the admission of the video recording of the October 14th incident in State's Exhibit 5. *See* TEX. R. APP. P. 47.1.

DISPOSITION

Having overruled D.J.M.'s third issue, which is dispositive of this appeal, we *affirm* the trial court's disposition placing D.J.M. on intensive supervision probation for twelve months and placing D.J.M. outside of his home at Rite of Passage, Lake Granbury Youth Services until D.J.M. successfully completes its Youth Services program.

BRIAN HOYLE
Justice

Opinion delivered June 6, 2018.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 6, 2018

NO. 12-17-00220-CV

IN THE MATTER OF D. J. M., A JUVENILE

Appeal from the 392nd District Court
of Henderson County, Texas (Tr.Ct.No. JUV17-0006-392)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the trial court's order.

It is therefore ORDERED, ADJUDGED and DECREED that the order of the court below placing D.J.M. on intensive supervision probation for twelve months and placing D.J.M. outside of his home at Rite of Passage, Lake Granbury Youth Services until D.J.M. successfully completes the Rite of Passage, Lake Granbury Youth Services program **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.