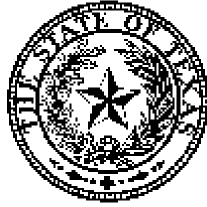
Affirmed and Opinion filed March 2, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-98-00307-CR

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LINDA RUTH HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 775,323

O P I N I O N

Linda Ruth Hall appeals her conviction by a jury for recklessly injuring a child. The jury assessed her punishment at 20 years imprisonment. In one point of error, appellant contends the evidence is factually insufficient to sustain her conviction. We affirm.

On February 26, 1997, appellant was baby-sitting the fourteen-month-old victim, Lane Unruh (Lane), in her home. Lane's mother, Marla Gilcrest (Marla), left Lane with appellant at 6:00 a.m. that morning, and then went to work at Randall's corporate offices in Houston. Marla had used appellant as a baby-sitter for about three weeks, and paid appellant fifty dollars a week to take care of Lane during the weekdays while she was working. Marla testified that

she left Lane at appellant's house on a couch, and that Lane had no injuries or bruises on him at that time.

Appellant testified that she was in her kitchen at about 2:00 p.m. cooking a turkey dinner for her family when she heard a "thump." She looked out into the living room and saw Lane hanging onto a shelf on a bookcase by his hands. Appellant stated she had to "look up at him," and she shouted at him: "Lane, no." She started toward Lane, and saw Lane "let go" of the bookshelf, fall, and hit his head on a picnic table in front of the bookcase. She picked up Lane, ran to the telephone, called her daughter, Shannon, and told her to come home. Shannon came to appellant's house, and then took Lane to the Katy Columbia Medical Center. Appellant then called another daughter, Robin Hileman (Robin), and asked her to come home. Appellant told Robin she needed her to take care of the kids because Lane had an accident and might have broken his neck. Robin drove up in her 1996 Ford truck, and met appellant in the driveway. Robin left the motor running in the truck, and went into appellant's house. Appellant then took Robin's truck and drove to Brenham where she hid in some woods for four days before turning herself into the police.

Appellant testified she ran away and hid in the woods because she panicked, and was "scared to death." Appellant further testified that she was on probation for a 1987 conviction of felony theft, and had not paid all of the restitution. Appellant stated she also ran because she was afraid she would be arrested for probation violations, and then sent to the penitentiary. She stated she turned herself into the police because she had "heard" she was being charged with murder, and she did not kill Lane.

Dr. Donald Nelms, a pediatrician, examined Lane at Katy hospital and found numerous bruises on his body. After a CT scan revealed a brain hemorrhage, Dr. Nelms suspected child abuse and had a nurse call the police. Lane was subsequently transferred to Hermann Hospital where he was examined by several doctors.

Sergeant Gay Dickinson investigated the offense and went to the hospital at 2:41 p.m. and talked to Shannon, Marla, and appellant's mother, Vera Brandenburg (Vera). Dickerson

then went to appellant's home at 4:30 p.m. to check on the report that Lane had fallen from a bookshelf. Dickerson stated that there was dust moved on the second from the top shelf, and also the fourth from the top shelf. Dickerson stated this could possibly have been caused by a child climbing on the shelf.

Dr. Brad Alpert testified that Lane had a fractured occipital bone in the rear of his skull, a subdural hematoma, a subarachnoid hemorrhage, and swelling of the brain. Lane also suffered retinal hemorrhage in both eyes, and Dr. Alpert testified that these injuries together with the bleeding injuries in Lane's brain led him to believe that Lane suffered from Shaken Baby Syndrome or Shaken Baby Impact Syndrome. Dr. Alpert stated that retinal hemorrhages occur in between 70 and 100 percent of babies with the shaken baby syndrome, and that children who fall from very tall places rarely have retinal hemorrhages. Dr. Alpert stated the Lane's skull fracture was caused by impact with a hard, flat surface.

Dr. Patricia Moore, Harris County medical examiner, performed an autopsy on Lane's body on February 27, 1997. She testified that Lane had five separate bruises of recent origin to his head, four bruises on the right upper arm of recent origin, and two bruises on his thigh of recent origin. Dr. Moore testified that these bruises were purple-red in color and were less than twelve hours old. Lane sustained two skull fractures: one three and one-fourth inches to the back of his head, and one small fracture near his left ear. She stated that the subarachnoid hemorrhage, the subdural hemorrhage, the cerbral edema, plus the retinal hemorrhage, were consistent with the shaken baby impact syndrome. She stated that this means the baby was shaken, plus it was either hit by something or hit on top of something, to cause the injury on that side of the head. She stated that Lane's injuries could not have been incurred by falling seven feet onto a plastic picnic table or a carpeted floor. Dr. Moore stated her conclusion was that Lane died of craniocerebral injury due to blunt force trauma. In her opinion, Lane's death was a homicide.

In her sole point of error, appellant challenges only the factual sufficiency of the evidence to sustain her conviction. She admits the evidence is legally sufficient to sustain her conviction.

Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex.Crim.App.1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that the evidence is legally sufficient. *Id.* In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. The appropriate remedy on reversal is a remand for a new trial. *Id.*

A factual sufficiency review must be appropriately deferential so as to avoid the appellate court's substituting its own judgment for that of the fact finder. *Santellan v. State*, 939 S.W.2d 155, 164 (Tex.Crim.App.1997). This court's evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *Id.* The appellate court maintains this deference to the fact findings, by finding fault only when "the verdict is against the great weight of the evidence presented at trial so as to be clearly wrong and unjust." *Id.*

Appellant's defense was that Lane was injured when he fell from the bookcase. Appellant denied having shaken Lane, and denied striking Lane. She further stated that Lane had a bruise on his forehead when he was left by Marla that morning. Appellant further stated that Lane had numerous bruises on his body when Marla left him there that morning. She stated she drove Robin's truck to Brenham and hid in the woods for four days because she was scared

and thought she might get sent to the penitentiary for probation violations. The expert medical testimony contradicted appellant's claim that Lane fell from a book case. The State challenged appellant's statements that Lane somehow managed to climb up the bookcase and fall.

Appellant's case depended on the credibility of the witnesses and the weight given their testimony by the jury. What weight to give contradictory testimonial evidence is within the sole province of the trier of the fact, because it turns on an evaluation of credibility and demeanor. *Cain v. State,* 958 S.W.2d 404, 408-09 (Tex.Crim.App.1997). Accordingly, we must show deference to the jury's findings. *Id.* at 409. A decision is not manifestly unjust merely because the jury resolved conflicting views of the evidence in favor of the State. *Id.* at 410. In performing a factual sufficiency review, the courts of appeals are required to give deference to the jury verdict, examine *all* of the evidence impartially, and set aside the jury verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Cain*, 958 S.W.2d at 410; *Clewis,* 922 S.W.2d at 129. After reviewing the record, we conclude the jury's finding that appellant recklessly caused injury to a child is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We find the evidence is factually sufficient to sustain appellant's conviction, and we overrule her sole point of error.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed March 2, 2000.
Panel consists of Justices Cannon, Draughn, and Hutson-Dunn .*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.