

# Standards of Review and Error Preservation in Texas Criminal Law

Chief Justice Bonnie Sudderth  
Second District Court of Appeals – Fort Worth

## Sufficiency Challenges

- Two Basic Categories
  - Legal Sufficiency (“no evidence” standard)
  - Factual Sufficiency (“insufficient evidence” standard)

# Sufficiency Challenges

- Civil Cases
  - Legal Sufficiency
  - Factual Sufficiency
- Criminal Cases
  - Legal Sufficiency
  - (Most of the time)
- Juvenile Cases
  - Both Civil & Criminal standards apply
  - Depends on which phase of trial is challenged

## Criminal Cases - Factual Sufficiency

***Caveat: This is OLD law.***

- *Clewis v. State*, 922 S.W.2d 126 (CCA 1996) standard
  - Consider all evidence in a neutral light
    - Set aside verdict only if:
      - Evidence is so contrary to the overwhelming weight of the evidence as to be manifestly (clearly) wrong and unjust
- *Johnson v. State*, 23 S.W.3d 1 (CCA 2000)
  - Factual insufficiency if
    - Evidence so weak as to be clearly wrong and manifestly unjust or
    - The adverse finding is against the great weight and preponderance of the evidence
    - Court not required to give complete deference to the jury's weighing of the evidence
- Remedy: Reverse & Remand for New Trial

## Criminal Cases – Legal Sufficiency

- *Jackson v. Virginia*, 443 U.S. 307 (1979) standard
  - Consider all of the evidence in the light most favorable to the verdict
    - Could any rational factfinder have found the essential elements of the crime beyond a reasonable doubt?
  - Court defers to the factfinder's ability to weigh the evidence and resolve conflicts
- Remedy: Reverse and Acquit

## Criminal Cases - Factual vs. Legal Sufficiency

- Legal Sufficiency (*Jackson*)
  - Consider all of the evidence in the light most favorable to the verdict
  - Defer to the factfinder's ability to weigh the evidence and resolve conflicts
  - Could any rational factfinder have found the essential elements of the crime beyond a reasonable doubt?
  - Remedy: Reverse and Acquit
- Factual Sufficiency (*Clewis & Johnson*)
  - Consider all evidence in a neutral light, but don't completely defer to jury in weighing the evidence
  - Is the evidence so weak as to be clearly wrong and manifestly unjust?
  - Or is the adverse finding against the great weight and preponderance of the evidence?
  - Remedy: Reverse and Remand for New Trial

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