

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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