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Vol. 18, No. 39, October 11, 2010

Case Name: Kelvin Kianta Brooks v. The State of Texas

TIBA's Case of the Week

- OFFENSE: Possession of Controlled Substance w/ Intent to Deliver
- COUNTY: McLennan
- COURT OF APPEALS: Waco 2009
- C/A CITATION: Unpublished
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-0210-09 DATE OF OPINION: October 6, 2010
- DISPOSITION: Court of Appeals Reversed
- OPINION: Hervey, J. VOTE: 3-2-4
- TRIAL COURT: 19th D/C; Hon. Ralph Strother
- LAWYERS: Walter Reaves (Defense); John Messinger (State)

530 Sufficiency of the Evidence (Standards and Procedures for Review / "Legal" vs. "Factual"): Appellant was found with 4.72 grams of crack cocaine, and the jury determined he did do with intent to deliver. In an unpublished opinion, the Court of Appeals decided that "[s]tanding alone, 4.72 grams is insufficient evidence of intent [to deliver because this amount is also consistent with personal use], additional evidence is required." The court below held "the proof of guilt to be so weak as to render the jury's verdict clearly wrong and manifestly unjust." The State's PDR asked whether there "any meaningful distinction between legal sufficiency review under Jackson v. Virginia and [a factual] sufficiency review when that review is limited to the weakness of the evidence in the abstract and, if so, does it escape review in this Court?"

Holding: As the Court with final appellate jurisdiction in this State, we decide that the Jackson v. Virginia standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. All other cases to the contrary, including Clewis v. State, 922 S.W.2d 126 (Tex.Cr.App. 1996)(see , Vol. 4, No. 3; 02/08/1996), are overruled.

Concurring / Dissenting Opinions: Judge Cochran filed a concurring opinion and was joined by Judge Womack. She stated she was adhering "to my view that the 1996 judicial creation of the 'Clewis factual-sufficiency review was a well-intentioned but ultimately unworkable effort to incorporate civil standards of review on elements of a crime that must be proven beyond a reasonable doubt.'" Judge Price delivered a dissenting opinion and was joined by Judge Meyers, Judge Johnson, Judge Holcomb. He argued that the Court "cannot simply decide [Clewis] need not be 'retained' any longer absent a change in the constitutional and statutory provisions that confer that jurisdiction--or else a change in our own long-standing construction of those provisions.

Sidebars: (David A. Schulman) I have to endorse the Court's opinion, agree with Judge Cochran, and disagree with Judge Price, even though he is correct in his thought that nothing has really changed. In fact, I would say that, despite all that is included in this opinion, nothing changed between the time the Court

"gave" us Clewis, and when they finally took it away. If we're really honest about it, Clewis has always been nothing but a dead weight for the criminal appellate defense bar since the beginning. If you didn't include a factual sufficiency challenge in your brief, you would get the nasty letters from your client and his family and, sometimes another criminal appellate defense lawyer wanting to frag you with a writ. Worse, if you had a real good legal sufficiency claim and you included a factual sufficiency claim, you ran the risk of having the Court of Appeals or Court of Criminal Appeals ignore the problems with the legal challenge and sustain the factual challenge, thus giving the State another shot at your client. While I am fully aware that this case is not a good one for the defense, I'm happy Clewis and its progeny are now on the refuse heap of Texas jurisprudential history.

533.02 Sufficiency of the Evidence (Legal): Appellant was found with 4.72 grams of crack cocaine, and the jury determined he did do with intent to deliver. The Court of Appeals found that the evidence was legally insufficient. Appellant's PDR claimed the evidence was legally insufficient to establish appellant had the intent to distribute cocaine, where the court found the same evidence was factually insufficient to establish the necessary intent.

Holding: We must now decide how to dispose of this case. In light of our disposition of the State's first ground for review, it is unnecessary to address the State's second ground for review. And having decided that there is no meaningful distinction between a Clewis factual-sufficiency standard and a Jackson v. Virginia legal-sufficiency standard, we could decide that the Court of Appeals necessarily found that the evidence is legally insufficient to support appellant's conviction when it decided that the evidence is factually insufficient to support [Appellant]'s conviction. However, primarily because the "confusing" factual-sufficiency standard may have skewed a rigorous application of the Jackson v. Virginia standard by the Court of Appeals, we believe that it is appropriate to dispose of this case by sending it back to the Court of Appeals to reconsider the sufficiency of the evidence to support [Appellant]'s conviction under a proper application of the Jackson v. Virginia standard.