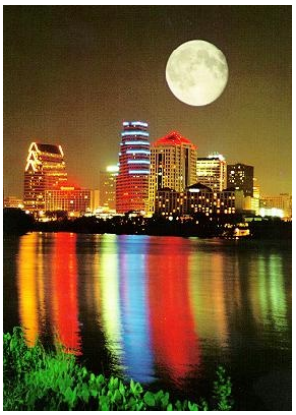

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Vol. 32, No. 20 - May 27, 2024

Case Name: ***Ijah Iwasey Baltimore v. The State of Texas***

- **OFFENSE**: Unlawfully Carrying a Handgun
- **COUNTY**: McLennan
- **COURT OF APPEALS**: Waco 2022
- **C/A CITATION**: Not Designated for Publication
- **C/A RESULT**: Conviction Affirmed
- **CCA. CASE No**. PD-0436-22 **DATE OF OPINION**: May 22, 2024
- **DISPOSITION**: Court of Appeals Affirmed
- **OPINION**: Judge David Newell **VOTE**: 6-3
- **TRIAL COURT**: 54th D/C
- **LAWYERS**: Jessica Freud (Defense); Emily Johnson-Liu, John Messinger, Stacey Soule (SPA)

(**Background Facts**): Appellant went to the Crying Shame, a bar located in McLennan County. He parked his motorcycle near the bar's entrance, and before he entered the establishment, he put his registered handgun in the saddle bag attached to his vehicle. After spending less than thirty minutes inside, Appellant exited the bar to go home. At his motorcycle, Appellant retrieved his gun from the saddle bag and placed it in the waistband of his pants. Before Appellant left the parking lot, three bar patrons, James Johnson, Davina Cook, and Leonard Hill, exited the bar and approached Appellant. A few months prior to this, Appellant and Johnson had gotten into a verbal disagreement at the same bar. That night, however, the dispute escalated into a physical altercation between Appellant, Johnson, and Hill. The parties contested the precise location where the altercation started, how it started, and whether Appellant walked towards Johnson and Hill before pointing the gun at Johnson. But it is clear from the record that the altercation took place in the parking lot inside or near Appellant's parking spot outside the bar. At some point during the altercation, Appellant's gun was removed from his pants and Hill threw it onto the roof of the bar. During the altercation, the bar's management called the police and locked the remaining patrons inside the bar. When officers arrived, the altercation had de-escalated,

and Appellant, Johnson, and Hill were standing on the sidewalk located just outside the bar's entrance.

[ꕥ **543 Sufficiency of the Evidence / Weapons Offenses**]: Johnson was arrested on the scene for outstanding warrants. At the jail, he gave a statement about the altercation. Johnson stated that Appellant had pointed the gun at him during the altercation, but that Johnson did not fear for his life in that moment. The State charged Appellant with unlawful carrying of a weapon, typically a Class A misdemeanor offense. However, the State enhanced the charge to a third-degree felony by alleging the offense occurred on a "premises" licensed to sell alcoholic beverages. Appellant initially pled guilty but shortly thereafter withdrew his plea because a proposed condition of the deferred adjudication community supervision was that he would not be allowed to possess a handgun. Appellant then proceeded to trial. The State presented evidence that the Crying Shame was a bar and neither the bar nor the parking lot in front of the bar were under Appellant's control. The State's evidence that the parking lot was included within the bar's "premises" consisted of opinion testimony from Detective Williams who was never asked to give a basis for that opinion. Neither was he asked to explain his understanding of the legal meaning of the word "premises." The State also elicited testimony from Cook who testified that the parking lot was part of the "property" of the Crying Shame, but the State did not ask her to give a basis for that opinion either. The remainder of the testimony established that the Crying Shame was a bar licensed to sell alcohol and that the offense occurred in the parking lot in front of the bar's entrance. The Court of Appeals initially held that the State's evidence was sufficient to prove beyond a reasonable doubt that Appellant committed the offense on the bar's "premises" and affirmed the trial court's judgment. In its analysis, the court of appeals relied on the Alcoholic Beverage Code's definition of "premises" for purposes of analyzing sufficiency of the evidence. Neither party challenged the use of the Alcoholic Beverage Code's definition of "premises" for evaluating the sufficiency of the evidence on appeal.

Holding: This Court granted Appellant's petition for discretionary review challenging the court of appeals' legal sufficiency analysis. Shortly thereafter, we decided ***Curlee v. State***, 620 S.W.3d 767 (Tex.Cr.App. 2021)(see ꕥ, Vol. 29, No. 14; 04/19/2021). In ***Curlee***, we held that factually unsupported lay opinion testimony was insufficient to support the legal conclusion that a playground was "open to the public" as required to uphold the defendant's conviction for possession of a controlled substance within 1,000 feet of a drug-free zone. We remanded to the court of appeals for reconsideration in light of our opinion in ***Curlee*** noting it "might apply to the testimony about whether Appellant was on a 'premises' licensed to sell alcoholic beverages" (see ꕥ, Vol. 29, No. 9; 10/11/2021). *** On remand, the Court of Appeals held that the State's evidence was legally insufficient to support the statutory enhancement beyond a reasonable doubt. *** The Court of Appeals reversed Appellant's conviction, held he was guilty of the lesser-included Class A misdemeanor offense, and remanded to the trial court for a new punishment hearing. *** Viewing the evidence in a light most favorable to the verdict, the State established that 1) the Crying Shame is a bar licensed to sell alcoholic beverages; 2) Appellant possessed a firearm in the parking lot in front of the Crying Shame and, during an altercation, outside of his motor vehicle; and 3) Appellant had no control over the parking lot. On the question of whether the parking lot was part of the "premises" of the Crying Shame, the State presented two witnesses who opined that the parking lot at issue was part of the "premises" or

"property" of the Crying Shame. Neither gave a basis for their respective opinions, and neither explained their understanding of the legal definition of "premises" in the context of unlawfully carrying a weapon. *** We have repeatedly held that unsupported opinions do not always satisfy the beyond a reasonable doubt standard by themselves. For example, in ***Winfrey v. State***, 393 S.W.3d 763 (Tex.Cr.App. 2013)(see ☙, Vol. 21, No. 09; 03/04/2013), we noted in our legal sufficiency review the concerns about reliance upon opinion testimony interpreting canine reactions to scent-discrimination lineups in a legal sufficiency analysis. *** More recently, in ***Edwards v. State***, 666 S.W.3d 571 (Tex.Cr.App. 2023)(see ☙, Vol. 31, No. 5; 02/20/2023), we held that an expert witness' opinion was legally insufficient to establish that an infant suffered a "serious mental deficiency, impairment, or injury" as a result of ingesting cocaine through the defendant's breastmilk. *** In Appellant's case, Detective Williams was the only witness that testified that the parking lot was the "premises" of the Crying Shame. Detective William's opinion testimony is on par with opinion testimony we have previously held legally insufficient by itself. Like the officer in ***Curlee***, Detective Williams did not offer any basis, such as familiarity with the business or the parking lot, for his opinion that the parking lot was part of the "premises" of the Crying Shame. And like the owner of the drug screening center in ***Edwards***, Williams' opinion regarding whether the parking lot at issue was part of the "premises" of the Crying Shame was factually unsupported. *** The State maintains that because Appellant parked in close proximity to the bar's entrance, that it was reasonable for the jury to infer that the parking lot was under the Crying Shame's control. But a parking lot is not necessarily "directly or indirectly under the control" of an establishment simply because the lot is connected to or adjacent to the establishment. Nor is it reasonable for a jury to infer that a parking lot is always under an establishment's control due to its proximity to its building because, for example, a permit or license applicant can exclude a portion of the property from its "premises" for purposes of the Alcoholic Beverage Code. The proximity of the parking lot to an establishment is not necessarily determinative of control and to conclude otherwise would be mere speculation. *** [The] State asks us to hold that the parking lot was the "premises" of the Crying Shame because two witnesses with no established familiarity with the location "believed" it to be. But it was still incumbent upon the State to prove the "premises" element beyond a reasonable doubt. None of the evidence presented by the State, by itself or when considered in its totality, supports the legal conclusion that the parking lot was part of the Crying Shame's "premises" beyond a reasonable doubt. *** Viewing the evidence in Appellant's case in a light most favorable to the verdict and allowing the jury to draw reasonable inferences, the State has not met its burden in proving the "premises" element beyond a reasonable doubt. While the State introduced some evidence on that point, the opinion testimony by itself were merely supportive evidence that did not provide legally sufficient evidence without additional facts in the record to support those conclusions.

> **Concurring / Dissenting Opinions**: Judge Kevin Yeary filed a dissenting opinion and argued that the Court's opinion in ***Curlee*** was incorrectly decided. He would remand to the Court of Appeals, "*as we should have done in the first instance, for that court to reconsider both of its former opinions, but this time to begin by properly construing the meaning of the phrase "premises licensed or issued a permit by this state for the sale of alcoholic beverages*." Judge Mary Lou Keel also dissented. She

was joined by **Presiding Judge Sharon Keller** and argued that it was logical for the jury to conclude that a bar's "premises" included an adjacent parking lot. She would reverse the Court of Appeals and uphold the trial court's judgment.

Sidebars

(**David A. Schulman**) The "premises" question is part and parcel of the question of where alcohol may be sold. As one who has been involved with businesses that sold alcohol and being fairly familiar with the rules and regulations, I believe that the parking lot is NOT part of "a 'premises' licensed to sell alcoholic beverages." I believe that, if the owner of an establishment like the Crying Shame wanted to have an outside event at which alcohol would be sold in their parking lot, a special permit would need to be acquired from TABC and probably the local authorities. Presuming that's true, would a parking lot ever qualify as "a 'premises' licensed to sell alcoholic beverages?" I think not.

(**John G. Jasuta**) Adjacent is an interesting term but offers no assistance in deciding the issue of the bar's premises. If the bar is in a shopping center, is there a limit to the adjacent nature or is the entire parking lot the premises of the bar because it is adjacent? Premises is a more precise term, worthy of more precise thinking.