**Affirmed and Opinion filed March 15, 2000.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-99-00901-CR**
**NO. 14-99-00902-CR**
**NO. 14-99-00903-CR**
**NO. 14-99-00904-CR**

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**JOHN RICHARD CLARK, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 10th District Court**
**Galveston County, Texas**
**Trial Court Cause No's. 98CR1278, 98CR1279, 98CR1280, 98CR1281**

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## O P I N I O N

This is a consolidated appeal from four separate convictions for indecency with a child. TEX. PEN. CODE ANN. § 21.11(a)(1) (Vernon Supp. 2000). In each case, a jury found appellant guilty as charged and sentenced him to four separate terms of imprisonment in the Texas Department of Criminal Justice – Institutional Division. In cause numbers ending 1278 through 1280 the jury assessed punishment at confinement for four years each while

in the cause number ending 1281 appellant received eight years. Challenging these convictions, appellant now asserts that the evidence at trial was factually and legally insufficient to support a finding of guilt. For the reasons set out below, we affirm.

**Legal Sufficiency**

We first consider appellant's attacks on the legal sufficiency of the evidence to support the jury's verdicts on all counts. In determining whether the evidence is legally sufficient to support the verdict, we view the evidence in the light most favorable to the verdict, asking whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, (1979)). The evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge for the case. *Malik v. State*, 953 S.W.2d 234, 239-40 (Tex. Crim. App. 1997). We consider all evidence adduced at trial whether or not properly admitted. *See Fuller v. State*, 827 S.W.2d 919, 931 (Tex. Crim. App. 1992)

In his legal sufficiency issue, appellant argues the evidence adduced at trial by the State was insufficient to show he acted with intent to arouse and gratify his sexual desire. We disagree. The offense of indecency with a child consists of the following elements: 1) any touching of the anus, breast, or any part of the genitals, 2) of a child, 3) younger than 17 years of age, 4) not the offender's spouse, and 5) with the intent to arouse or gratify the sexual desire of any person. TEX. PEN. CODE ANN. §§ 21.11(a)(1), 21.01(1)(B)(2) (Vernon Supp. 2000 & Vernon 1994). The specific intent to arouse or gratify the sexual desire of a person can be inferred from conduct, remarks, or all the surrounding circumstances. *McKenzie v. State*, 617 S.W.2d 211, 216 (Tex. Crim. App. [Panel Op.] 1981). Additionally, an oral expression of intent is not required, and a defendant's conduct alone is sufficient to infer intent. *Tyler v. State*, 950 S.W.2d 787, 789 (Tex.App.—Fort Worth 1997, no pet.).

During trial, the complainant testified that appellant, her stepfather, touched her breasts and genital area several times while she was under the age of seventeen. Complainant also testified that appellant offered her money, on more than one occasion, to expose her breasts to him. Viewing this evidence in a light most favorable to the jury's verdict, we find that there was evidence upon which a rational trier of fact could have found the essential elements of indecency with a child beyond a reasonable doubt. We overrule appellant's legal insufficiency issue.

**Factual Sufficiency**

Having found that the State's evidence was legally sufficient, we now turn to appellant's factual sufficiency issue. In contrast to a legal sufficiency review, a review of factual sufficiency dictates that the evidence be viewed in a neutral light, favoring neither party. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) (citing *Clewis v. State*, 922 S.W.2d. 126,134 (Tex. Crim. App. 1996). We conduct such a review by examining the evidence weighed by the jury that tends to prove the existence of an elemental fact in dispute and comparing it with the evidence tending to disprove that fact. *Johnson*, 23 S.W.3d at 7. Under a factual sufficiency review, a court will set aside a verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id*. Finally, while a reviewing court is authorized to disagree with the fact finder's determination in its factual sufficiency review, it must employ appropriate deference to the fact finder's judgment. *Id.* In practice, then, a factual sufficiency analysis generally requires deference to a fact finder's determinations as a reviewing court can consider only those few matters bearing on credibility that can be fully determined from a cold appellate record. *Id*. at 9.

As in his legal sufficiency challenge, appellant argues that the State's evidence at trial was factually insufficient to support a finding that his sexual contact with complainant was done with intent to arouse and gratify his sexual desire. We disagree. At trial, the State offered testimony from the complainant providing that appellant touched her naked breasts

and genitals on many occasions over a period of years. On some of these occasions, complainant testified that this consisted of appellant fondling her bare breasts for extended periods while watching television. The complainant also testified that, at other times, appellant would offer her money to expose her naked breasts. Conversely, appellant offers no proof or argument that he acted without intent to arouse his sexual desire but only that the State offered no proof on the issue. Moreover, Texas courts recognize that a defendant's conduct alone is sufficient to infer intent. *See Tyler v. State*, 950 S.W.2d at 789. Therefore, we hold that the jury's verdict was not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Accordingly, we overrule appellant's factual sufficiency issue and affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Senior Chief Justice Murphy and Justices Hudson and Amidei.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1]Senior Chief Justice Paul C. Murphy and Former Justice Amidei sitting by assingment.