Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-00549-CR

KENNETH WAYNE EVANS , Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 728,593

O P I N I O N

Kenneth Wayne Evans was convicted by a jury of indecency with a child. The jury found "true" an enhancement paragraph in the indictment; the trial court entered judgment on a sentence of 30 years in prison. In one point of error Evans contends the trial court erred in sentencing him to 30 years in prison because a conflict in the jury's verdict on punishment rendered that verdict indefinite and uncertain and therefore void. We affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

The ten-page jury charge at punishment included three pages of verdict forms. The first page of the verdict forms contained the style of the case and the heading, "CHOOSE ONE." Each page offered the jury a different range of punishments and the option of assessing a fine or not assessing a fine. For example, the first page read:

CHOOSE ONE

> We, the Jury, having found the defendant, Kenneth Wayne Evans, guilty of the felony offense of indecency with a child, do further find the allegations in the enhancement paragraph are true and assess his punishment at confinement in the institutional division of the Texas Department of Criminal Justice for life.
>
> /s/ Anna C. Gardner
> Foreman of the Jury

> We, the Jury, having found the Defendant, Kenneth Wayne Evans, guilty of the felony offense of indecency with a child, do further find the allegations on the enhancement paragraph are true and assess his punishment at confinement in the institutional division of the Texas Department of Criminal Justice for life, and in our discretion, assess a fine in the amount of $_____.
>
> _____
> Foreman of the Jury

Similarly, the second page offered the choice of finding the enhancement paragraph "true," but instead of setting punishment at life contained blanks for a term of years in prison; the third offered the choice of finding the enhancement paragraph "not true" with corresponding blanks for punishment.

The foreman of the jury signed the first block, setting Evans' punishment at life in prison but with no fine. She also signed the first block on the second page, setting Evans'

punishment at thirty years but again without a fine. The record of the punishment hearing, and the judgment reflects the judge simply sentenced Evans to thirty years in prison.

Evans argues the two signed verdict forms are in hopeless conflict, that the judge erred in accepting the conflicting verdict and that he was harmed by this error. The state contends that if the judge did err, Evans should not be permitted to complain when the error was resolved in his favor; alternatively, because the lower of the two punishments were actually assessed against him he could not show harm. We believe the verdict is not in hopeless conflict and that the jury's intent can be Reasonably discerned.

It is well-established that a verdict will be upheld as sufficient if its meaning can be reasonably ascertained from the words used. *Brinson v. State*, 570 S.W.2d 937, 938 (Tex. Crim. App.[Panel Op.] 1978) *Ainsworth v. State*, 517 S.W.2d 274, 277 (Tex. Crim. App. 1975). Furthermore, a verdict should receive a liberal rather than a strict construction and, when a finding of the jury can be reasonably ascertained, the verdict is sufficient. *Smart v. State*, 144 Tex. Crim. 93, 161 S.W.2d 97, 99 (1942).

We find the case of *White v. State*, 866 S.W.2d 78 (Tex. App.–Beaumont 1993, no writ) on point. In *White*, as here, the jury foreman signed off on two verdict forms, one purporting to sentence the defendant to life and the other to 60 years. The court found that since the foreman signed the life verdict form first, then went on to fill in the blank with 60 years and signed the second form, the jury must have intended 60 years as the sentence. *Id.* at 86.

We can use similar reasoning to reach a similar conclusion here. Having signed off on the first available verdict form, the foreman went on to the next page, filled in the blank with "<u> thirty </u> years" and signed that form. As the *White* court put it, "[a] reasonable and liberal construction of the verdict forms leads us to no other conclusion." *Id.*

We therefore overrule Evans' only point of error and affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed November 18, 1999.

Panel consists of Justices Sears, Cannon, and Draughn.*

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* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.