



**In The  
Court of Appeals  
Sixth Appellate District of Texas at Texarkana**

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No. 06-16-00158-CR

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THERESA CLARK, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the County Court at Law  
Harrison County, Texas  
Trial Court No. 2016-0106

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Before Morriss, C.J., Moseley and Burgess, JJ.  
Memorandum Opinion by Chief Justice Morriss

## MEMORANDUM OPINION

Theresa Clark apparently had a problem with her neighbors, Raymond and Diane Stucks. After approximately eighteen months of harassing the Stuckses in various ways, Clark drove her vehicle across the front corner of their lawn on a rainy night in late 2015. Clark's act damaged three sprinkler heads of their sprinkler system. A Harrison County jury subsequently found Clark guilty of criminal mischief<sup>1</sup> and assessed her punishment at sixty days in the county jail and a fine of \$500. Based on the jury's recommendation, the trial court suspended Clark's sentence and placed her on twelve months' community supervision. On appeal, Clark challenges only the sufficiency of the evidence supporting proof that the damaged sprinkler heads were owned by Raymond. Because we find there is legally sufficient evidence that Raymond owned the sprinklers within the statute's meaning, we will affirm the trial court's judgment.

In evaluating legal sufficiency of the evidence,<sup>2</sup> we review all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 912 (citing *Jackson*, 443 U.S. at 319); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd). In our review, we defer to the responsibility of the jury “to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate

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<sup>1</sup>See TEX. PENAL CODE ANN. § 28.03(a)(1), (b)(2) (West Supp. 2016).

<sup>2</sup>Although Clark asserts in her point of error that the evidence was factually insufficient, the Court of Criminal Appeals has made clear that in criminal cases, the legal sufficiency standard found in *Jackson v. Virginia* is the only standard that we should apply in determining whether there is sufficient evidence to support the elements of a criminal offense that requires proof beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 894 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)).

facts.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Further, the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony and may “believe all of a witnesses’ testimony, portions of it, or none of it.” *Thomas v. State*, 444 S.W.3d 4, 11 (Tex. Crim. App. 2014). We give “almost complete deference to a jury’s decision when that decision is based on an evaluation of credibility.” *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008).

Sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The “hypothetically correct” jury charge is “one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State’s burden of proof or unnecessarily restrict the State’s theories of liability, and adequately describes the particular offense for which the defendant was tried.” *Id.* Under the information and the statute, the State was required to prove beyond a reasonable doubt that Clark (1) intentionally or knowingly (2) damaged or destroyed (3) sprinklers (4) by driving her car on the sprinklers (5) without Raymond’s effective consent, (6) causing a pecuniary loss of \$100 or more but less than \$750 and (6) that Raymond is the owner of the sprinklers. *See* TEX. PENAL CODE ANN. § 28.03(a)(1), (b)(2).

Clark challenges the sufficiency of the evidence regarding only the last element, that Raymond owned the damaged sprinklers. She argues that the State did not prove Raymond’s ownership of the property on which the sprinklers were placed and that, therefore, Raymond did not own the sprinklers. She also argues that the sprinklers were placed on property reserved to the

subdivision in which both Raymond and Clark live and, therefore, that she had an equal right of possession with Raymond. Finally, she argues that, even though the sprinklers were attached to Raymond's water supply, when he crossed his property onto the property owned by the subdivision, he lost his right of possession. Clark cites no case authority for any of her arguments.

The Texas Penal Code defines an "owner" as a person who, *inter alia*, "has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor." TEX. PENAL CODE ANN. § 1.07(a)(35)(A) (West Supp. 2016). Thus, ownership of property "may be proven in one of three ways: (1) title, (2) possession[,] or (3) a greater right to possession than the defendant." *Morrow v. State*, 486 S.W.3d 139, 164 (Tex. App.—Texarkana 2016, pet. ref'd) (alteration in original) (quoting *Alexander v. State*, 753 S.W.2d 390, 392 (Tex. Crim. App. 1988)). "'Possession' means actual care, custody, control, or management." TEX. PENAL CODE ANN. § 1.07(a)(39) (West Supp. 2016). The expansive definition of an owner under the Texas Penal Code "'give[s] ownership status to anyone with a rational connection to the property.'" *Morrow*, 486 S.W.3d at 164 (quoting *Ramirez v. State*, 429 S.W.3d 686, 688 (Tex. App.—San Antonio 2014, pet. ref'd) (quoting *Garza v. State*, 344 S.W.3d 409, 413 (Tex. Crim. App. 2011))). Thus, one way the State could establish Raymond's ownership of the sprinklers was by showing his actual care, custody, control, or management of the sprinklers, whether his care, custody, control, or management was lawful or not. *See Ramirez v. State*, 429 S.W.3d 686, 688 (Tex. App.—San Antonio 2014, pet. ref'd).

At trial, Raymond testified that he has owned the property with the address of 513 Shadowood, Marshall, Texas, for six years and that he installed sprinklers on the property five

years ago. He also testified that his property runs all the way to the road. On the night of November 5, 2015, he looked out of his front window to watch the rain and saw a slow moving vehicle drive across the front edge of his driveway and onto his property. As it passed his mailbox, Raymond testified that he heard the engine rev up and the vehicle accelerate and spin out across the front of his property. Once off his property, the vehicle slammed on its brakes and turned into the driveway across from his house. He testified that he saw that it was Clark who was driving the vehicle. Raymond called the Sheriff's Department, and Deputy Nelson Valle responded. He testified that they could see tire tracks that night, but did not realize the sprinklers were damaged until the next morning. Deputy Valle confirmed that, when he went out to the Stuckses' property that night, he saw tire imprints and a couple of sprinkler heads were damaged. Raymond testified that the next day he and Diane took photographs of the damage, which showed the tire tracks and three damaged sprinkler heads. On cross-examination, Raymond testified that one of the sprinkler heads that was damaged was five feet from the edge of the road. He also testified that Clark hit the sprinkler heads that are close to the road and that his sprinklers were about fifteen feet from the center of the road.

Also on cross-examination, Raymond agreed that his property began at the corner of the road right-of-way that was reserved to Shadowood Lake Estates (Shadowood). Although he acknowledged that his deed referred to a sixty-foot right-of-way, he disagreed that the right-of-way was thirty feet on either side of the center line of the road, but maintained that the right-of-way was only fifteen feet on either side of the center line. He also disagreed that the sprinkler heads were on property belonging to Shadowood. Raymond testified that, when he purchased his

lot, he had a survey performed and that the corners of the property were marked by the surveyor. Based on this and his plat that shows the boundary, he testified that he believed his property goes to the edge of the road. He also testified that there were five sprinkler heads that run across the front of the road and that three of them were no longer working properly.

Diane confirmed Raymond's testimony regarding the damage to the sprinkler heads. She also testified that Raymond controlled the sprinklers and ran them almost daily. In addition, Diane testified regarding the constant and varied forms of harassment the Stuckses had suffered from Clark beginning about a year and a half before this incident.

Clark called only one witness in her defense, Patsy Cox, County Clerk of Harrison County. Cox testified regarding the filing of the Shadowood Lake Estates plats in her office. Cox testified that the plats showed a sixty-foot right-of-way for Shadowood Lake Drive and that the lot owned by the Stuckses began at the northern boundary of that street. However, she had no opinion as to what the lines on the plat and the descriptions of the roadway and lots on the plat meant.

Although there was conflicting evidence as to whether the Stuckses' title extended to the edge of the road, the jury in resolving these conflicts could have reasonably believed Raymond's testimony that his survey showed his property line extending to the edge of the road. In addition, even assuming a portion of the sprinkler system was located on property owned by the Estates, the testimony of Raymond and Diane supports the inference that Raymond had the actual custody, control, and management of the sprinkler system, thus making him the "owner" within the terms of the statute. Based on this record, we find there is sufficient evidence to support the jury's finding that Raymond was the owner of the sprinklers. We overrule Clark's point of error.

We affirm the judgment of the trial court.

Josh R. Morriss III  
Chief Justice

Date Submitted: January 26, 2017  
Date Decided: March 20, 2017

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