AFFIRM; and Opinion Filed November 27, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00776-CR

DEAN THOMAS WILSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 199th Judicial District Court
Collin County, Texas
Trial Court Cause No. 199-80411-2016

MEMORANDUM OPINION

Before Justices Bridges, Francis, and Lang-Miers
Opinion by Justice Lang-Miers

Appellant Dean Thomas Wilson was convicted of illegal dumping in violation of the Texas Litter Abatement Act. He was sentenced to two years confinement in a state jail facility; imposition of that sentence was suspended and appellant was placed on community supervision for five years. Appellant raises two issues on appeal: (1) whether the evidence is sufficient to prove that the bulk of material on appellant's land constituted litter and (2) whether the weight or volume of that litter was sufficient to establish a state jail felony. We affirm.

Background

On July 27, 2015, Charles Sibley, a deputy and environment investigator with the Collin County Sheriff's Office was driving on County Road 447, a public highway, when he noticed

"fence panels that were dumped on the county road right-of-way" at a residence located at 2892 County Road 447. Sibley also noticed numerous other fence panels, fence posts, and piles of wood as well as other assorted debris including tires, aerosol spray cans, waste stain, waste lumber trash, contractor bags, concrete sacks and trash bags. He was able to view this debris from the roadway.[1] This property was bordered by three other private residences and was within 300 feet of a public highway.

Sibley contacted appellant who admitted that he was living on the property and had been for about a year. Appellant claimed that James Warrington owned the property.[2] Sibley learned that other people were living with appellant on the property including Warrington, Warrington's girlfriend Lisa Mayo, Mayo's son and his girlfriend, as well as appellant's girlfriend, Tonnye Mullas. Sibley believed that appellant was in control of the property.

Sibley returned to this property on August 21, 2015. He saw the same fencing materials and debris that he had in July. It appeared that more material had been brought to the property.

Appellant told Sibley that fence companies, particularly Cisco Fence Company,[3] would drop off waste fence panels and appellant would dismantle them and sell the scrap wood. He admitted a financial gain by telling Sibley that he was "turning their trash into his cash," though he did not tell Sibley how much he earned. Appellant told Sibley that he was the only one who dealt with the contractors.

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[1] Sibley had previously been to this property in either 2013 or 2014 to conduct a "welfare check." None of the fence panels and other debris had been on the property at that time.

[2] Warrington told Sibley that he had inherited this property from his late wife, though Sibley was not able to confirm this statement, or that Warrington actually owned the property. On appeal, appellant does not challenge that he had either an ownership or a possessory interest in the property.

[3] Sibley contacted Cisco Fence Company and was informed that the company had been dropping off old fence panels to appellant's various properties for nine years.

Appellant also told Sibley he was in the recycling business. Sibley determined that he did not have a license for that kind of business. Sibley also testified that "waste construction materials are required to go through the State purpose landfill for disposal." The property on County Road 447 did not qualify. Sibley told appellant these items could not be in the roadway and that he could not receive waste at this property.

Sibley testified that he had weighed "these fence panels on an electronic scale on numerous occasions and the average size is 50 pounds" for one fence panel. Sibley testified that there were "several thousand" fence panels on the property. In one photograph he counted 83 panels. In his opinion, the weight of all the debris on the property would clearly exceed both 1000 pounds "for personal offense" and the "200 pounds that the statute requires." In this estimate, Sibley included "[t]he wood panels, the posts . . . laying on the ground, all the sacks of trash, all the garbage, household garbage that's piled behind the residence, pieces of motorcycles and lawnmowers that are everywhere – all the solid waste on the property is included."

Although he visited several times, Sibley never saw any improvement in the condition of the property from July 27 to November of 2015.

Numerous photographs showing the condition of the property on July 27, 2015, and in November of 2015, were introduced into evidence. One of those photographs showed a credit card that had appellant's name on it and the activation sticker still attached.

The defense presented the testimony of Gerald Davis, the owner of a trash and recycling business. Davis testified that his company was hired by appellant and had picked up a load of "generally household" trash from the property on County Road 447 on August 8, 2015. The receipt from the dump reflected a weight of 3,100 pounds for this trash. Davis estimated that there were at least four to five more loads of trash that needed to be collected, but appellant did not contact him again. Davis' company did not pick up any fence panels.

Tonnye Mullas, appellant's girlfriend, testified for the defense. Mullas moved in with appellant in October of 2014. Mullas testified that when she moved in the premises around the house were "terrible;" there was "trash everywhere, debris (and) garbage from inside the house." Mullas testified that Warrington's girlfriend, Lisa Mayo, liked to "dumpster dive" and would bring home trash from the dumpsters she visited. The amount of trash increased during the time that Mullas lived there. According to Mullas, the trash did not belong to appellant.

Mullas testified that appellant was in the reclaimed fence panel business. The fencing materials on the property were appellant's inventory for his business[4] and were stored in an organized fashion. Mullas also testified that some of the contractors brought trash bags even though appellant told them not to. Mullas and appellant would go through the bags, re-cycle what they could, and burn the rest.

Also testifying for the defense was Richard Heileman who knew appellant and was familiar with the property on County Road 447. Heileman did some fencing work and would deal with appellant when he wanted cheaper materials. Heileman testified that appellant was knowledgeable about wood and fencing issues. Heileman was seeking to build a business with appellant and thought the name of appellant's business was "Fence Menders of Texas." He testified that when he had been on the property, it did not look like it did in the photographs taken by Sibley.

The trial court, in explaining its guilty verdict and rejecting appellant's defensive theory that he was running a business, stated as follows:

> [W]hat has been described and viewed in photographs goes well beyond stacked lumber for a business . . . I don't know how anybody could characterize . . . what's depicted in these photographs is (sic) a business area. I mean with the amount of stuff here and if you have people coming on the property to look and purchase as it's been described, they're lucky they didn't get a lawsuit with

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[4] Mullas testified that appellant was in business with Warrington. Mullas thought Warrington owned the property.

> somebody falling or tripping on some of this junk and harming themselves. So certainly all of this was not even resale lumber.
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> Also, I know that from the photographs as well as the testimony that in one of the pictures that they were burning – I don't know if it was called scrap lumber or lumber that couldn't be sold. So obviously there was some waste lumber that was on the property as well. But this . . . this is not appearing to be in an orderly fashion as has been stated.
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> I understand defense's position that some of this stuff, junk was there prior to him coming. But certainly when I look at the photographs and how it went over time, it appears to be more and more lumber in particular and other things here.

Illegal Dumping

A person commits the offense of illegal dumping if he "disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state." TEX. HEALTH & SAFETY CODE ANN. § 365.012(a).

The offense is a state jail felony if the litter or other solid waste to which the offense applies: (1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more or (2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more. TEX. HEALTH & SAFETY CODE ANN. § 365.012(g)(1), (2).

The indictment in this case, which contains two paragraphs, charged appellant with a state jail felony offense of illegal dumping as follows:

> then and there intentionally and knowingly dispose and allow and permit the disposal of litter and other solid waste: to-wit: wooden fencing panels, tires, aerosol spray cans, waste fence stain, waste lumber, trash bags filled with trash and construction debris in an amount that exceeded 1000 pounds at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way of a private road, a public highway or other public road or the right-of-way, on other public or private property.
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> then and there intentionally and knowingly dispose and allow and permit the disposal of litter and other solid waste: to-wit: wooden fencing panels, tires, aerosol

> spray cans, waste fence stain, waste lumber, trash bags filled with trash and construction debris in an amount that exceeded 200 pounds at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way of a private road, a public highway or other public road or the right-of-way, on other public or private property, and said disposal was for a commercial purpose.

Sufficiency of Evidence to Establish "Litter"

In his first issue, appellant claims that the evidence is insufficient to establish that the material on the property on County Road 447 constituted "litter" as defined by the Texas Litter Abatement Act. His argument focuses on the many fence panels and other fencing materials on the property which he claims were his inventory for his reclaimed fence panel business.

Standard of Review

A challenge to the sufficiency of the evidence is evaluated under the standards established in *Jackson v. Virginia* 443 U.S. 307, 316 (1979); *see also Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We review the evidence in the light most favorable to the verdict and determine whether a rational jury could have found all the elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 894–95. This standard of review for legal sufficiency is the same for both direct and circumstantial evidence. *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007); *Burden v. State*, 55 S.W.3d 608, 613 (Tex. Crim. App. 2001).

We defer to the trier of fact's resolution of any conflicting inferences that are raised in the evidence and presume that the trier of fact, in this case the trial court, resolved such conflicts in favor of the prosecution. *Jackson*, 443 U.S. at 318; *Brooks*, 323 S.W.3d at 894; *Sennett v. State*, 406 S.W.3d 661, 666 (Tex. App.—Eastland 2013, no pet.). We will uphold the verdict unless a rational factfinder must have had reasonable doubt with respect to any essential element of the offense. *Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 899. The State need not disprove all

reasonable alternative hypotheses that are inconsistent with appellant's guilt. *Wise*, 364 S.W.3d at 903. Rather, we consider only whether the inferences necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light most favorable to the verdict. *Hooper*, 214 S.W.3d at 13.

Statutory Definitions of Litter

"Litter" is defined by statute as follows:

> (A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products;
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> or
>
> (B) nondecayable solid waste, except ashes, that consists of:
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> (i) combustible waste material, including paper, rags, cartons, *wood*, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;
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> (ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
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> (iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, *building or construction materials*, appliances, and scrap metal.

TEX. HEALTH & SAFETY CODE ANN. § 365.011(6) (emphasis added).

Fence Panels and Materials

As noted above, appellant claims that the fence panels and other materials found on the property do not constitute "litter" but were, in fact, part of his business inventory. He points to evidence that fencing companies delivered their old materials to him which he, in turn, sold to others, such as Heileman.

The photographic evidence before the trial court, however, showed that appellant was running a dump, not a recycling operation.[5] The photos do not reveal, as the trial court recognized, a neatly organized inventory. The fencing materials, whether haphazardly stacked or jumbled in a pile, were often mixed in, or close to, other debris, such as plastic, metal and trash bags. The trial evidence showed only that a small amount of fencing ever left the property, *i.e.*, that which was sold to Heileman.

The evidence also showed that appellant received material with the fence panels that he merely burned. Appellant's girlfriend testified that some of the contractors brought trash bags which she and appellant would go through; they would re-cycle what they could and burn the rest.

Additionally, the evidence established that appellant paid Davis' company to haul away a large load of trash and debris, weighing 3,100 pounds, just days after Sibley's first visit to the property. This evidence reflects that appellant was attempting to clean up some of the property before he was charged with operating an illegal dump.

We conclude the evidence is sufficient to sustain the trial court's verdict that appellant violated the illegal dumping statute.

State Jail Felony Punishment

In his second issue, appellant claims that the weight or volume of the litter on his property was insufficient to establish a state jail felony.

Under the first paragraph of the indictment, the State had to prove that the litter on the property was in "an amount that exceeded 1000 pounds." Under the second paragraphs of the indictment, the State had to prove that appellant disposed of or permitted the disposal of litter in

[5] We have attached a representative sampling of these photographs as an appendix to this opinion.

an amount that exceeded 200 pounds and was for a commercial purpose. If found guilty under either paragraph, appellant could be punished for a state jail felony offense. TEX. HEALTH & SAFETY CODE ANN. § 365.012(g)(1), (2).

At trial, the State introduced evidence that the average weight of one fence panel is 50 pounds. Sibley testified that there were "several thousand" fence panels on the property. In one photograph he counted 83 panels. Simple math with respect to the fence panels shown in that one photograph indicated a total weight of approximately 4,150 pounds. Sibley also testified that the weight of all the debris on the property would clearly exceed 1000 pounds. In this estimate, Sibley included "[t]he wood panels, the posts . . . laying on the ground, all the sacks of trash, all the garbage, household garbage that's piled behind the residence, pieces of motorcycles and lawnmowers that are everywhere." And an officer's estimate of weight is evidence that the trial court could have considered. *See Burgess v. State*, 05-14-00216-CR, 2015 WL 4628728 at *3 (Tex. App.—Dallas 2015, pet. ref'd) (mem. op., not designated for publication) (holding that police officers' estimate that a glass cabinet they witnessed defendant topple and shatter was between 5 and 500 pounds was sufficient to establish weight or litter or solid waste).

The trial court refused to clarify for defense counsel the specific paragraph in the indictment on which the court relied in finding appellant guilty. As the trial court said: "I don't know that I'm required to go in and give you the specifics other than I believe the State has proven their case beyond a reasonable doubt and I found him guilty." However, in sentencing appellant, the trial court said as follows: "So the Court will sentence the defendant having found the defendant guilty of illegal dumping over 1,000 pounds as charged in the indictment . . ." We conclude the evidence was sufficient to prove that litter in an amount greater than 1000 pounds was illegally dumped on the property.

With respect to the second paragraph, Sibley's testimony, and the photographs of the property, also established that many items of trash and debris were mixed in with the fence panels and fencing materials. Sibley testified that he considered all items of waste on the property in giving his estimate as to the weight of the litter. When asked to further clarify how many pounds of waste there were on the property on County Road 447, Sibley testified as follows: "In excess of 1,000 pounds . . . and definitely in excess of 200 pounds that the statute requires." And Davis testified that he hauled off one load of trash that did not contain any fence panels from the property that weighed 3100 pounds; there were four of five more loads of items on the property, other than fence panels, that appellant did not ask him to haul away.

We conclude the evidence would be sufficient to support a finding that appellant disposed of or permitted the disposal of litter and other solid waste in an amount that exceeded 200 pounds.

We overrule appellant's second issue.

Conclusion

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

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Appendix

EXHIBIT
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Patrick

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STATE'S
EXHIBIT
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STATE'S
EXHIBIT
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DEAN THOMAS WILSON, Appellant	On Appeal from the 199th Judicial District Court, Collin County, Texas
No. 05-17-00776-CR V.	Trial Court Cause No. 199-80411-2016. Opinion delivered by Justice Lang-Miers.
THE STATE OF TEXAS, Appellee	Justices Bridges and Francis participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 27th day of November, 2018.