**Opinion issued November 3, 2020**


**In The**

# Court of Appeals

**For The**

# First District of Texas

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**NO. 01-20-00064-CR**

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**VASHON EDWARDS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Court at Law No. 4**
**Travis County, Texas[1]**
**Trial Court Case No. C-1-CR-17-213438**

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[1] The Texas Supreme Court transferred this appeal from the Court of Appeals for the Third District of Texas. TEX. GOV'T CODE § 73.001 (authorizing transfer of cases between courts of appeals). We are unaware of any conflict between the precedent of the Court of Appeals for the Third District and that of this Court on any relevant issue in this case. *See* TEX. R. APP. P. 41.3.

## MEMORANDUM OPINION

A jury convicted appellant, Vashon Edwards, of criminal mischief, and the trial court assessed his punishment at fourteen days' confinement. In two issues on appeal, Edwards contends that (1) the trial court abused its discretion by admitting hearsay statements and (2) the State failed to prove all the elements of criminal mischief; specifically, the elements of "acting without the owner's consent" and "pecuniary loss." We overrule both issues and affirm.

## Background

In September 2017, Edwards was living in an apartment with Genyea Crenshaw. After two violent interactions between the two on September 5, Edwards left the residence to stay at a friend's house. During both incidents, Ms. Crenshaw contacted the police—but Edwards was not at the scene when they arrived.

The next morning, Edwards returned to the apartment to retrieve some items and discovered that Ms. Crenshaw had locked him out. Edwards then proceeded to kick down the door to gain entrance into the apartment. Officer C. Korzilius with the Travis County Sheriff's Department, one of the responding officers to Ms. Crenshaw's apartment, testified that when he arrived at Ms. Crenshaw's apartment, he found the front door was forced inwards "and there was significant damage to the door." The State introduced photographs into evidence showing the door was

ripped off its hinges, the doorframe was destroyed, and the surrounding sheetrock inside the apartment sustained significant damage.

Edwards was arrested and charged with assault and criminal mischief. Before trial, the State subpoenaed Ms. Crenshaw to testify but she did not appear. The State then moved in a pretrial hearing to admit Ms. Crenshaw's out-of-court statements under the doctrine of forfeiture by wrongdoing.[2] The State argued that the doctrine of forfeiture by wrongdoing allowed the admission of Ms. Crenshaw's out-of-court statements, as an exception to the hearsay rule, because her unavailability at trial was wrongfully procured by Edwards by engaging in a continuing pattern of abuse and threatening her. In support, the State introduced recordings of telephone calls placed by Edwards to his family members while in jail, as well as the testimony from officers who responded to Ms. Crenshaw's apartment on September 5 and 6.

Edwards argued that his actions did not invoke the doctrine of forfeiture by wrongdoing because they were contemporaneous with the charged offenses, not subsequent attempts to deter the witness from appearing at a later trial.[3] Edwards

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[2] The doctrine of forfeiture by wrongdoing, as codified in article 38.49 of the Code of Criminal Procedure, trumps the rule against hearsay when a party to a criminal case wrongfully procures the unavailability of a witness at trial. *See Colone v. State*, 573 S.W.3d 249, 264–65 (Tex. Crim. App. 2019); *see also* TEX. CODE CRIM. PROC. art. 38.49; TEX. R. EVID. 802.

[3] *But see Gonzalez v. State*, 195 S.W.3d 114, 125 (Tex. Crim. App. 2006) ("[T]he doctrine of forfeiture by wrongdoing may apply even though the act with which the accused is charged is the same as the one by which he allegedly rendered the witness unavailable.").

also argued there was no evidence that the recorded statements, made by Edwards while he was in jail, were ever communicated to Ms. Crenshaw. The trial court granted the State's motion, and the case proceeded to trial.

The jury acquitted Edwards of the assault charges but found him guilty of Class B criminal mischief. Edwards appealed.

**Admission of Ms. Crenshaw's Out-of-Court Statements**

In his first issue, Edwards contends the trial court abused its discretion and committed reversible error by admitting Ms. Crenshaw's out-of-court statements pursuant to the doctrine of forfeiture by wrongdoing. Edwards maintains, without any supporting argument or authority, that the admission of such "hearsay" statements was unfairly prejudicial and that the doctrine of forfeiture by wrongdoing cannot apply (1) when the alleged actions that deterred a witness from appearing at trial were contemporaneous with the original offense, or (2) when there is no evidence that the alleged statements were relayed to the absent witness.[4]

We review a trial court's decision admitting or excluding evidence for abuse of discretion. *Tarley v. State*, 420 S.W.3d 204, 206 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd). A trial court abuses its discretion only when its decision was so

[4] On appeal, Edwards does not argue that the admission of Ms. Crenshaw's out-of-court statements violated his Sixth Amendment right to confrontation. *See Colone*, 573 S.W.3d at 264 (concluding forfeiture by wrongdoing doctrine applies to both hearsay and confrontation claims).

clearly wrong as to lie outside that zone within which reasonable persons might disagree. *Id*.

In a criminal case, the erroneous admission of evidence is non-constitutional error. TEX. R. APP. P. 44.2(b). Under Rule of Appellate Procedure 44.2(b), any such error, defect, irregularity, or variance that does not affect substantial rights must be disregarded. *Id*; *Morales v. State*, 32 S.W.3d 862, 867 (Tex. Crim. App. 2000); *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998). A substantial right is not affected, and error will be deemed harmless, if, after reviewing the entire record, the appellate court determines that the error did not influence, or had only a slight influence, on the trial outcome. *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002). When conducting a harm analysis under Rule 44.2(b), everything in the record is a factor to be considered. *See Motilla*, 78 S.W.3d at 357.

Accordingly, to be entitled to reversal on this issue, Edwards must demonstrate that the trial court abused its discretion in admitting Ms. Crenshaw's out-of-court statements pursuant to the doctrine of forfeiture by wrongdoing *and* that such error was harmful, and thus reversible, under Rule 44.2(b). He failed to do so.

After asserting that the admission of these out-of-court statements was improper, Edwards's brief is devoid of any explanation about how or why any such abuse of discretion was harmful. As a result, we do not address whether the trial court abused its discretion in admitting Ms. Crenshaw's out-of-court statements

under the doctrine of forfeiture by wrongdoing because even if we were to agree with Edwards—which we do not decide—his brief fails to argue that he was harmed by its admission.

In order to assert an issue on appeal, an appellant's brief "must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). An appellant waives an issue on appeal if he does not adequately brief that issue, i.e., by presenting supporting arguments and authorities. *Cardenas v. State*, 30 S.W.3d 384, 393 (Tex. Crim. App. 2000). Moreover, an appellate court has no "obligation to construct and compose [an] appellant's issues, facts, and arguments with appropriate citations to authorities and to the record." *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008) (quotation omitted).

Here, Edwards does not describe the testimony that he claims is hearsay in his brief, nor does he cite to anywhere in the record where the challenged hearsay statements were admitted. The only record citations that Edwards includes in his brief are to portions of his counsel's argument at the pretrial hearing related to whether the State adequately showed forfeiture by wrongdoing. Apart from a single conclusory statement that Ms. Crenshaw's hearsay statements were "unfairly prejudicial," Edwards does not cite to the record, make any argument, or provide any supporting legal authority to explain how or why the admission of Ms.

Crenshaw's unidentified out-of-court statements might have affected his "substantial rights" or influenced the jury's verdict. *See* TEX. R. APP. P. 44.2(b) (non-constitutional error "must be disregarded" unless it affected the defendant's "substantial rights"); *Johnson*, 967 S.W.2d at 417 (admission of hearsay non-constitutional error subject to harm analysis under Rule 44.2(b)); *see also King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997) (defendant's substantial rights are affected "when the error had a substantial and injurious effect or influence in determining the jury's verdict").

Consequently, because Edwards has not adequately briefed this issue by identifying the harm he allegedly suffered as a result of the admission of the complained-of evidence, we hold Edwards has waived this issue. *See Cardenas*, 30 S.W.3d at 393 (issue inadequately briefed where "appellant d[id] not address the question of whether the alleged error . . . was harmless"); *see also Mims v. State*, 238 S.W.3d 867, 874 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (complaint on appeal waived where defendant failed to specifically identify statement he claimed was hearsay).

We overrule Edwards's first issue.

**Class B Criminal Mischief**

In his second issue, Edwards contends the State failed to prove all the elements of Class B criminal mischief. The elements of Class B criminal mischief

include: (1) intentionally or knowingly damaging or destroying the owner's tangible property, (2) without the owner's consent, and (3) resulting pecuniary loss that is more than $100, but less than $750. TEX. PENAL CODE § 28.03(a)(1), (b)(2). Edwards claims there is insufficient evidence of the second and third elements.

### A. Standard of Review

This Court reviews legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, 331 S.W.3d 49, 54 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (citing *Brooks v. State*, 323 S.W.3d 893, 912, 926–28 (Tex. Crim. App. 2010)). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009).

Viewed in the light most favorable to the verdict, evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n.11, 320; *Laster*, 275 S.W.3d at 518. Evidence also can be insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

In viewing the record, direct and circumstantial evidence are treated equally. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.* An appellate court determines "whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007).

It is presumed that the factfinder resolved any conflicting inferences in favor of the verdict and a reviewing court defers to that resolution. *See Jackson*, 443 U.S. at 326; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). A reviewing court also defers to the factfinder's evaluation of the credibility and weight of the evidence. *See Williams*, 235 S.W.3d at 750.

**B. No Consent from the "Owner"**

With respect to the second element, Edwards argues that both he and Ms. Crenshaw had equal rights to possess the apartment. Therefore, according to Edwards, neither of them were "owners" as defined in the court's charge and Ms. Crenshaw did not have a greater right to possession than him.

As stated above, for a criminal mischief conviction, the State must prove that a person intentionally or knowingly damaged or destroyed the owner's tangible property *without the owner's effective consent*. TEX. PENAL CODE § 28.03(a)(1). It

is no defense "that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe." TEX. PENAL CODE § 28.05. The Legislature has given the term "owner" in the Penal Code an expansive meaning. *See* TEX. PENAL CODE § 1.07(a)(35). It includes anyone with a rational connection to the property and anyone having a possessory interest in the property through title, possession, or a greater right to possession than the defendant. *Garza v. State*, 344 S.W.3d 409, 413 (Tex. Crim. App. 2011) (citing TEX. PENAL CODE § 1.07(a)(35)(A)). This meaning is broad enough to include third parties who have actual possession under a lease or rental contract. *See Salas v. State*, 548 S.W.2d 52, 53–54 (Tex. Crim. App. 1977).

A person's "right to possession" must be measured at the time of the accused's criminal act. *Morgan v. State*, 501 S.W.3d 84, 92 (Tex. Crim. App. 2016). When there are competing equal possessory interests in the property, the determination as to which of them has the greater right to possession is measured at the time of the commission of the offense. *Id.* The "owner" is the person who, at the time of the commissioned offense, has the greater right to possession of the property. *Id.*

Since the "owner" determination is measured at the time of the commission of the offense, so is the determination of a person's consent to enter. *Id.* Locking someone out of a residence at the time of the commission of an offense is a valid

way for an "owner" to revoke permission to enter the property—making any subsequent entry by the other being without the "owner's" consent. *Id.*

At the time of the commission of the offense, both Edwards and Ms. Crenshaw lived in and rented the apartment. As they were both renters, they each had the status of owner while in possession of the property. *Salas*, 548 S.W.2d at 53–54. At the time of the commission of the offense, Ms. Crenshaw had locked Edwards out of the apartment after they had argued and Edwards spent the night elsewhere.

By locking Edwards out of the apartment, Ms. Crenshaw effectively revoked her consent to allow Edwards to enter the apartment. *See Morgan*, 501 S.W.3d at 92. As a result, at the time of the commission of the offense, Ms. Crenshaw had custody and control of the apartment—making her the effective "owner" under the Penal Code and giving her a greater right of possession to the apartment than Edwards.

Accordingly, under this record, and the controlling standard of review, we conclude that a rational factfinder could have determined beyond a reasonable doubt that Ms. Crenshaw was the apartment's "owner" under the Penal Code, and thus the door's "owner" as well, at the time of the commission of the offense. By kicking down the door, Edwards gained access, and damaged the door and the surrounding area in the apartment, without Ms. Edward's consent. As a result, we hold there is sufficient evidence to support this element of the conviction of Class B criminal mischief.

### C. Pecuniary Loss

Edwards next argues there is insufficient evidence of the "pecuniary loss element" because the State did not introduce any direct evidence that the resulting damage was in excess of $100. Under the Penal Code, "pecuniary loss" includes "the cost of repairing the damaged property." TEX. PENAL CODE § 28.06(b).

In this case, there are numerous photographs in the record, and testimony by the responding officer, showing that the damage to the door, doorframe, and surrounding area in the apartment, due to Edwards kicking down the door, was "significant." According to Edwards, these photographs "are inadequate to allow the jury to determine beyond a reasonable doubt the cost of repairing or replacing the door."

In response, the State relies on *Nixon v. State*, 937 S.W.2d 610 (Tex. App.—Houston [1st Dist.] 1996, no pet.) (en banc), to argue that the jurors could view the photographs and correctly determine, based on their common knowledge, that the amount of pecuniary damages to the door and surrounding area was in excess of $100. We agree.

For a Class B criminal mischief conviction, the State must establish the pecuniary loss to the damaged property by calculating the cost of repairing or restoring the property within a reasonable time after the damage occurred. *Campbell v. State*, 426 S.W.3d 780, 784 (Tex. Crim. App. 2014) (quoting TEX. PENAL CODE

§ 28.06(b)). It is not required that the damaged property actually be repaired. *Barnes v. State*, 248 S.W.3d 217, 222 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

Expert testimony is ordinarily necessary to establish the pecuniary loss to damaged property. *Elomary v. State*, 796 S.W.2d 191, 193 (Tex. Crim. App. 1990). But, as *Nixon* instructs, that is not always true. 937 S.W.2d at 612–13. There, this Court recognized that the scientific, technical, or other specialized knowledge of an expert witness is not necessary to show the element of pecuniary loss in a criminal mischief case when there is other probative evidence in the record from which rational jurors could determine, based on their common knowledge, what the pecuniary loss would be. *Id.* at 613.

In *Nixon*, there was no expert testimony in the record about the pecuniary loss to the damaged property. But the record did include photographs showing the damage to the house of the defendant's estranged wife caused by the defendant crashing his truck into it. *Id.* The photographs depicted the defendant's truck inside the house with large pieces of sheetrock ripped from the walls, the wall between the kitchen and den crumbled, and furniture and other items destroyed. *Id.* A police officer at the scene also testified that the damage shown in the photographs was extensive. *Id.*

This Court held in *Nixon* that the photographs of the extensive damage, combined with the officer's testimony, was sufficient evidence for jurors to

determine, based on their common knowledge, that the pecuniary loss was in excess of $750, as required for a felony criminal mischief conviction. *Id.* at 613.

The record here is substantially similar to the record in *Nixon*. It includes numerous photographs depicting extensive damage to the door, door frame, and the surrounding area in the apartment. The photographs show the space where the front door used to be with the hinges ripped from wall, the door frame bent and pulled several inches away from the wall, and the wall inside the apartment cracked along the doorframe. They also show bits of sheetrock, hinges, the strike plate, and nails lying on the ground inside the apartment. In addition, there is testimony in the record from the responding officer that the damage shown in the photographs was "significant."

After reviewing all of the evidence, including the photographs and the testimony of the responding officer, we conclude, as in *Nixon*, that a rational juror would be convinced beyond a reasonable doubt that such significant damage would cost in excess of $100 to repair. Accordingly, we hold there is also sufficient evidence to support this element of the conviction of Class B criminal mischief.

We also overrule Edwards's second issue.

## Conclusion

We affirm the trial court's judgment.

Terry Adams
Justice

Panel consists of Chief Justice Radack and Justices Hightower and Adams.

Do not publish. TEX. R. APP. P. 47.2(b).