



IN THE
TENTH COURT OF APPEALS

No. 10-18-00322-CR

KEYANA NICOLE CLARK,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the County Court at Law
Hill County, Texas
Trial Court No. M0515-18

MEMORANDUM OPINION

In one issue, Appellant Keyana Nicole Clark challenges her misdemeanor conviction for making abusive or harassing calls to a 911 service. We affirm.

Background

The underlying facts are undisputed. On April 29, 2018, Clark made a series of telephone calls to 911 and to the Hill County Sheriff's Office. The Hill County Sheriff's office dispatcher handles both emergency and non-emergency calls. Clark stipulated at trial that none of the calls she made were an emergency. All the calls were recorded and

were introduced at trial. Clark had far-ranging complaints for which she requested law enforcement assistance on both the Hill County “admin,” or non-emergency, line and the 911 line. Clark requested law enforcement assistance for such reasons as unauthorized cameras were placed in her residence, CPS was unable to meet her son’s medical needs, law enforcement officers threatened to arrest her for filing false charges, and law enforcement officers threatened to arrest her for abusing the 911 system. One officer was dispatched to Clark’s residence four separate times. Clark did not curse at the 911 dispatchers or use threatening language.

A jury found Clark guilty, and the trial court sentenced her to 120 days in the county jail. In her sole issue, Clark asserts that the evidence is insufficient to sustain her conviction.

Discussion

While Clark identifies her sole issue as one of sufficiency of the evidence, she is actually arguing that the calls she made do not constitute a violation of the statute under which she was convicted – § 42.061 of the Penal Code. TEX. PEN. CODE ANN. § 42.061.

The usual standard for reviewing the sufficiency of the evidence to support a conviction is whether, after viewing the evidence in the light most favorable to the prosecution, any rational finder of fact could have found the essential elements of the offense beyond a reasonable doubt. In some cases, however, a sufficiency-of-the-evidence issue turns on the meaning of the statute under which the defendant has been prosecuted. Does certain conduct actually constitute an offense under the statute with which the defendant has been charged? That question, like all statutory construction questions, is a question of law, which we review *de novo*.

Liverman v. State, 470 S.W.3d 831, 835-36 (Tex. Crim. App. 2015) (footnotes and citations omitted). While statutory-construction complaints may generally not be raised for the

first time on appeal, appellate construction of a statute may be necessary “to resolve an evidence-sufficiency complaint when alternative statutory interpretations would yield dissimilar outcomes.” *Moore v. State*, 371 S.W.3d 221, 227 (Tex. Crim. App. 2012) (citing *Ramos v. State*, 303 S.W.3d 302, 305 (Tex. Crim. App. 2009)). “This is because an appellate court must determine what the evidence must show before that court can assess whether evidence is sufficient to show it.” *Id.*

The information filed by the State alleged:

[T]hat KEYANA NICOLE CLARK, who is hereinafter styled defendant, on or about the 29TH DAY OF APRIL, 2018 and before the making and filing of this Information, in the County and State aforesaid, did then and there, when there was not an emergency, intentionally and knowingly make a telephone call to a 9-1-1 service, and intentionally and knowingly make abusive or harassing statements to Hill County Sheriff’s Office, which statements were of the following tenor, to wit: made 7 non-emergency calls.

...

Section 42.061 provides, in pertinent part,:

- (b) A person commits an offense if the person makes a call to a 9-1-1 service, or requests 9-1-1 service using an electronic communications device, when there is not an emergency and knowingly or intentionally:
- (1) remains silent; or
 - (2) makes abusive or harassing statements to a PSAP employee. . . .

TEX. PEN. CODE ANN. § 42.061(b). “PSAP” is a “public safety answering point” which is defined as “a continuously operated communications facility that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.” TEX. HEALTH & SAFETY CODE ANN. § 771.001(9). The question before this Court is whether the

State presented sufficient evidence to support Clark's conviction through proof that she made seven non-emergency telephone calls to the 9-1-1 operator.

Clark does not dispute that she made seven non-emergency calls to 9-1-1, but contends that the calls she made were not abusive or harassing as she did not threaten anyone, she did not use profanity, nor did she raise her voice. As the Penal Code does not define "abusive" or "harassing," Clark points to definitions used in the Administrative Code, the Family Code, and the Human Resources Code. Clark also points to § 42.07 of the Penal Code, which prohibits harassing another individual. *See* TEX. PENAL CODE ANN. § 42.07. Section 42.07 does not specifically define harass but prohibits several actions made "with the intent to harass, annoy, alarm, abuse, torment, or embarrass another. . . ."

Because § 42.061 does not define "abusive" or "harassing," we must look to general statutory construction rules which requires us to interpret a statute in accordance with its plain meaning unless the language is ambiguous or the plain meaning leads to absurd results that the Legislature could not have intended. *Wagner v. State*, 539 S.W.3d 298, 306 (Tex. Crim. App. 2018).

In determining plain meaning, we employ the rules of grammar and usage, and we presume that every word in a statute has been used for a purpose and that each word, clause, and sentence should be given effect if reasonably possible. If a word or a phrase has acquired a technical or particular meaning, we construe the word or phrase accordingly. If, after using these tools of construction, the language of the statute is ambiguous, we can resort to extratextual factors to determine the statute's meaning.

Liverman, 470 S.W.3d at 836 (footnotes and citations omitted). If the language of a statute is plain, we need not resort to extra-textual sources to determine its meaning. *Wagner*,

539 S.W.3d at 307. A statute is ambiguous if it may be reasonably susceptible to more than one meaning. *Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013). The plain meaning of a word may be found in a simple dictionary. *See Wagner*, 539 S.W.3d at 308. Because we find that Clark’s actions were harassing, we need not address whether they were abusive.

Webster’s New World College Dictionary defines “harass,” in part, as “to trouble, worry, or torment, as with cares, debts, repeated questions, etc.” WEBSTER’S NEW WORLD COLLEGE DICTIONARY (4th ed. 1999). The *Wagner* court, in evaluating § 25.07, noted another dictionary’s definition of “harassing:”

Applying the ordinary meanings of the statutory terms, a person communicates in a “harassing manner” if the mode or method by which he communicates is such that it would persistently disturb, bother continually, or pester another person. *See* WEBSTER’S ENCYCLOPEDIA UNABRIDGED DICTIONARY 645 (1989). The definition’s description of the phrases “persistently disturb” and “bother continually” necessarily requires multiple events of harassing communication. Similarly, the word “pesters,” in turn, has a commonly understood meaning of troubling or annoying someone with frequent or persistent requests or interruptions. *See Pester*, NEW OXFORD AMERICAN DICTIONARY 1310 (3d ed. 2010). Our interpretation of the word “harassing” is consistent with the court of appeals’s interpretation of that term in accordance with its plain meaning.

Wagner, 539 S.W.3d at 309 (footnotes and citations omitted).

We conclude that the term “harassing,” viewed in the context of the statute, has an ordinary meaning that is commonly understood. Clark repeatedly called 911 despite being told that her concerns did not constitute an emergency. Clark’s calls were such that they would “persistently disturb, bother continually, or pester another person,” and fit the plain definition of “harassing” even though she did not curse, threaten, or raise her

voice. *Wagner*, 539 S.W.3d at 309. We overrule Clark’s single issue, concluding that there was sufficient evidence to convict her of a violation of § 42.061.

Conclusion

Having overruled Clark’s single issue, we affirm the judgment of the trial court.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed

Opinion delivered and filed November 24, 2020

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