

Affirmed and Opinion filed October 26, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00731-CR

OUIDA MERESHA PERKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 34,828**

O P I N I O N

Ouida Meresha Perkins appeals a state jail felony conviction for criminal mischief on the grounds that: (1) the evidence was legally and factually insufficient to prove the amount of pecuniary loss charged in the indictment; and (2) the court erred by admitting hearsay evidence as to the cost to repair the damaged property. We affirm.

Background

Appellant hit Cassandra Thomas's car numerous times with a baseball bat causing damage to the vehicle. A jury convicted appellant of felony criminal mischief, and the trial court assessed punishment of one year confinement, probated for one year.

Sufficiency of the Evidence

Issue one asserts that the evidence was legally and factually insufficient to prove the amount of pecuniary loss charged in the indictment because: (1) there was no evidence of the fair market value or reasonableness of the repair cost; and (2) the repair estimate included pre-existing damage.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ovalle v. State*, 13 S.W.3d 774, 777 (Tex. Crim. App. 2000). As it has been recently reformulated by the Court of Criminal Appeals, a factual sufficiency review asks whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or that the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *See Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000).

Sufficiency Review

Appellant was charged with damaging Thomas's automobile such that the pecuniary loss was at least \$1,500 but less than \$20,000. *See* TEX. PEN. CODE ANN. § 28.03(a)(1), (b)(4)(A) (Vernon 1994). For this purpose, the pecuniary loss is "the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred." TEX. PEN. CODE ANN. § 28.06(b) (Vernon 1994). Appellant contends that in order to establish the amount of pecuniary loss, the State was required, but failed, to prove the fair market value of the repairs. *See Elomary v. State*, 796 S.W.2d 191, 193 (Tex. Crim. App. 1990) ("[W]here damaged property is subject to being repaired, . . . the cost of the repair work is conditioned on what the fair market value of such [repair work] might be.")¹ Appellant's second issue, in part, similarly contends that McBride's testimony is not legally and factually sufficient to prove the cost of repairs because McBride was not qualified to give an expert opinion on repair costs.

¹ However, the State is not required to otherwise prove that the cost of repair was reasonable. *See Kinkade v. State*, 787 S.W.2d 507, 509 (Tex. App.—Houston [1st Dist.]1990, no pet.); *Dorado v. State*, 943 S.W.2d 94, 96 (Tex. App.—Corpus Christi 1997, no pet.).

A lay opinion on the amount of damage by an individual who is not competent to give an expert opinion on repair costs is not sufficient to prove pecuniary loss. *See Elomary*, 796 S.W.2d at 193. Conversely, an expert opinion on a repair estimate given by a witness, such as an insurance adjuster, who is qualified to testify as to the fair market value of the expected repair cost is sufficient to prove the pecuniary loss. *See id.*

In this case, Charles McBride, the owner and manager of the paint and body shop that repaired the damaged vehicle, testified that the actual cost to repair it was \$3,582.62. The State qualified McBride as an expert by establishing that he had been in the auto body repair business since 1973 and had specific experience in repairing the type of damage that was done to appellant's vehicle. McBride testified that he examined and evaluated the damage to Thomas's automobile and compared his examination to the insurance adjuster's estimate. McBride testified that everything on the insurance estimate was warranted and that insurance adjusters never figure in any extras. When the work was completed McBride submitted a supplemental bill for \$485.40 to reflect the amount by which the actual repair costs exceeded the initial estimate. We find that McBride's testimony on the cost to repair the automobile is sufficient to prove the fair market value of that cost.

Appellant also argues that the repair work included all dents and scratches on the car, whether or not they were caused by appellant. However, appellant has cited no evidence of any pre-existing damage, and Cassandra Thomas, the car's owner, and Ronnie Perkins, appellant's husband, each testified that there was no damage to the car prior to the evening of the incident. Moreover, even after deducting the cost to repair the dents and scratches to the body of the car, the remaining repair costs still exceeded \$1,500.² Because appellant's first and second issues do not establish that the evidence is legally or factually insufficient to prove the pecuniary loss charged in the indictment, her first issue and the sufficiency challenge in her second issue are overruled.

Hearsay

² The other costs were: \$1,431.96 to replace the glass, \$48.34 for a broken speaker, and \$40.95 for a divider bar on the left rear door, for a total of \$1,521.25.

Appellant's second issue also contends that the trial court erred in admitting McBride's hearsay testimony regarding the cost to repair the vehicle. Appellant argues that this testimony was inadmissible because it was based on an insurance agent's estimate, not on McBride's personal knowledge. However, appellant waived any hearsay complaint by failing to object to McBride's testimony on that basis at trial. *See* TEX. R. APP. P. 33.1(a). In addition, as discussed above, McBride's testimony regarding the repair cost was based on his own personal knowledge. Accordingly, appellant's second issue is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
 Justice

Judgment rendered and Opinion filed October 26, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do not publish — TEX. R. APP. P. 47.3(b).