Affirmed and Opinion filed December 9, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-99-00136-CR

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ALDEN D. HOLFORD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 7
Harris County, Texas
Trial Court Cause No. 5217

O P I N I O N

Alden D. Holford (Appellant) appeals from the judgment of the county criminal court, affirming the judgment of the municipal court which found him guilty of violating an ordinance of the City of Houston.[1] Upon his conviction, Appellant was assessed a fine of $1,000. Appellant assigns four points of error, contending that the trial court erred in (1) denying his motion to quash the complaint for failure to sufficiently track the language of ordinance section 10-451(b)(10), (2) refusing to admit evidence from the civil case,

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[1] Appellant is an attorney licensed by the State Bar of Texas. He is before this Court *pro se.*

(3) refusing to admit Appellant's expert testimony on the proper construction of ordinance section 10-451(b)(10), and (4) that the verdict is contrary to the law and the evidence. We affirm.

BACKGROUND

Appellant owns a home located at 7515 Kensico. The lawn surrounding his home is comprised of Saint Augustine grass and other vegetation. Appellant allows all the vegetation to grow to its "natural height." He does not mow his lawn. This practice offends several of Appellant's neighbors and the City of Houston. Ultimately, the City charged Appellant with the misdemeanor offense of unlawfully and knowingly permitting the existence and growth of weeds in excess of nine inches in height. Following a jury trial in the municipal court, Appellant was convicted and assessed a $1,000 fine. He appealed to the county criminal court at law. The judgment was affirmed.[2]

DISCUSSION

In his first point, Appellant contends that the trial court erred in not granting his motion to quash because the complaint failed to sufficiently track the language of ordinance section 10-451(b)(10).

A motion to quash should be granted only when the language concerning the defendant's conduct is so vague or indefinite as to deny him effective notice of the acts he allegedly committed. *DeVaughn v. State*, 749 S.W.2d 62, 67 (Tex.Crim.App. 1988). To survive a timely motion to quash, the charging instrument, on its face, must contain allegations of the facts necessary to show that the offense was committed, to bar subsequent prosecution for the same offense, and to give the defendant notice of precisely what he is charged with. *Id*. Upon review, we must first determine if the notice given is sufficient. If it is, our inquiry is ended; if not, the record must be examined to determine the impact of the deficiency on an appellant's defense and its extent. *Hillin v. State*, 808 S.W.2d 486, 488 (Tex.Crim.App. 1991). We review the trial court's ruling on a motion to quash under an abuse of discretion standard. *Cameron v. State*, 988 S.W.2d 835, 849 (Tex.App.–San Antonio 1999, no pet.).

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[2] Article 4.03 of the Code of Criminal Procedure vests this Court with jurisdiction over cases which were appealed to the county criminal court from an inferior court where the fine imposed exceeds $100. *See* TEX. CODE CRIM. PROC. ANN. art. 4.03 (Vernon Supp. 1999).

Ordinance section 10-451 identifies certain neighborhood nuisances within the City of Houston. *See* HOUSTON, TEX., CODE OF ORDINANCES, ch. 10, art. XI, § 10-451 (1999). In pertinent, section 10-451 provides the following:

> (a) Whatever is dangerous to human health or welfare, or whatever renders the ground, the water, the air, or food a hazard to human health is hereby declared to be a nuisance.
>
> (b) The following specific acts, conditions, and things are declared to constitute public nuisances and are hereby prohibited and made unlawful:
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> . . .
>
> (10) Permitting the existence of weeds, brush, rubbish, and all other objectionable, unsightly, and insanitary matter of whatever nature covering or partly covering the surface of any lots or parcels of real estate situated within the city . . . .
>
> The word "weed" as herein used shall include all rank and uncultivated vegetable growth or matter which has grown to more than nine inches in height . . . . The words "any and all other objectionable, unsightly, or insanitary matter of whatever nature" shall include all uncultivated vegetable growth, objects and matters not included within the meaning of the other terms as used herein, which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the premises within the general locality where the same are situated, and shall also include any species of ragweed or other vegetable growth which might or may tend to be unhealthy to individuals residing within the general locality of where the same are situated.

Id.

The complaint filed by the City of Houston against Appellant, in pertinent part, charged the following:

> [That Appellant] did then and there unlawfully and knowingly permit the existence of weeds on property located at 7515 Kensico, and the said growth of weeds was in excess of nine (9) inches in height.

Appellant maintains that the complaint was insufficient because "it left out 'rank and uncultivated vegetable growth or matter,' which had to be proved in addition to 'in excess of nine inches in height.'" We disagree.

The ordinance makes it an offense to permit the growth of weeds or other vegetation nine inches or more in height. *See id.* This is precisely what the City of Houston alleged against Appellant in its complaint. It was not necessary for the City of Houston to define the term "weeds" in its complaint. Such a definition would not have added clarity to the notice. The language set forth in the complaint concerning Appellant's conduct is not so vague or indefinite as to have denied him effective notice of the acts he allegedly committed. *See DeVaughn*, 749 S.W.2d at 67. On its face, the complaint contains allegations of the facts necessary to show that the offense was committed and gives sufficient notice of precisely what Appellant is charged with. *See id.* Thus, we discern no abuse of discretion in not granting Appellant's motion to quash. *See Cameron*, 988 S.W.2d at 849. Point of error one is overruled.

In his second point of error, Appellant contends that the trial court erred in refusing to admit any evidence from his former civil case[3] against the City of Houston in his criminal case.

Concerning the admission of evidence, as a prerequisite to presenting a complaint for appellate review, the record must show that the complaint was made to the trial court by a timely request, objection, or motion. *See* TEX. R. APP. P. 33.1(a). The complaint must state the grounds for the ruling that the complaining party sought from the trial court and must comply with the Rules of Evidence. *See id.* The record must also show that the trial court ruled on the request, objection, or motion or that it refused to rule on the request, objection, or motion and the complaining party objected to such refusal. *See id.* Here, there is nothing in the record to indicate that Appellant sought to introduce any evidence from his former civil case in this case.[4] Therefore, nothing is presented for our review. Point of error two is overruled.

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[3] In his civil case against the City of Houston, Appellant sought a temporary injunction to prevent the city from mowing his lawn. *See Holford v. City of Houston*, No. 95-034862 (295th Dist. Ct., Harris County, Tex. Aug. 4, 1995).

[4] We note that Appellant presented the trial court with formal bills of exception concerning the evidence he wanted made part of the record. *See* TEX. R. APP .P. 33.2. The trial court rejected each bill of exception and concluded in its written order that each bill of exception was "incorrectible" [sic]. To challenge such a ruling, a complaining party may file with the trial court clerk the bill that was rejected by the trial judge. *See* TEX. R. APP. P. 33.2(c)(3). The complaining party must also file the affidavits of at least three people who observed the matter to which the bill of exception is addressed. *See id.* The affidavits must attest to the correctness of the bill as presented by the party. *See id.* The truth of the bill of exception will (continued...)

In his third point of error, Appellant contends that the trial court erred in refusing to admit his expert testimony concerning statutory construction of ordinance section 10-451(b)(10), *supra*.

First, this issue was not preserved for appellate review. No offer of proof was made to show what the testimony would have been. *See* TEX. R. APP. P. 33.1(a). Also, while Appellant did file a formal bill of exception to address this evidence, it was rejected by the trial court. *See* note 4, *supra*. Consequently, nothing is presented for our review. Second, the record shows that Appellant was permitted to testify concerning the meaning of ordinance section 10-451(b)(10). He was permitted to testify that in his opinion, the ordinance makes it an offense to permit "uncultivated weeds" to grow to more than nine inches in height, but that the ordinance does not address whether it is an offense to permit "cultivated Saint Augustine grass" to grow to more than nine inches in height. Appellant testified that the definition of "weeds" found in the ordinance does not encompass cultivated Saint Augustine grass. Therefore, the record refutes Appellant's contention that he was not permitted to testify concerning his construction of ordinance section 10-451(b)(10). Point of error three is overruled.

In his fourth point of error, Appellant contends that the jury's verdict is contrary to the law and the evidence. We interpret Appellant's final point of error as a challenge to the sufficiency of the evidence.

In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict. *Clewis v. State*, 922 S.W.2d 126, 133 (Tex.Crim.App. 1996). We accord great deference "to the responsibility of the trier of fact [to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979)). We presume that any conflicting inferences from the evidence were resolved by the jury in favor of the prosecution, and we defer to that resolution. *Id.* at n. 13 (quoting *Jackson*, 443 U.S. at 326, 99 S.Ct. 2793). In our review, we determine only whether "*any* rational trier of fact could have found the essential elements of the crime

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[4] (...continued)
be determined by the appellate court. *See id.* In this case, Appellant failed to follow the procedures necessary to preserve this issue for appellate review. No affidavits were filed by Appellant to support his respective bills of exception.

beyond a reasonable doubt." *Id.* (quoting *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789) (emphasis in original).

Employing this deferential standard of review, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Appellant committed the offense alleged in the complaint. Appellant admits that he does not mow his lawn and that the vegetation surrounding his residence has grown beyond nine inches in height. Under ordinance section 10-451, Appellant's lawn constitutes a neighborhood nuisance. Therefore, the evidence is legally sufficient to support Appellant's conviction beyond a reasonable doubt. *See Clewis*, 922 S.W.2d at 129, 133.

Next, we review the factual sufficiency of the evidence to support Appellant's conviction. In reviewing the factual sufficiency of the evidence, we "view all the evidence without the prism of 'in the light most favorable to the prosecution'" and will set aside the verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust." *Clewis*, 922 S.W.2d at 134. However, appellate courts "are not free to reweigh the evidence and set aside a jury verdict merely because the judges feel that a different result is more reasonable." *Id*. at 135. In other words, we will not substitute our judgment for that of the jury. *Id*. at 133. Such action would violate a defendant's right to trial by jury. *Id*. To find the evidence factually insufficient to support a verdict, the appellate court must conclude that the jury's finding is manifestly unjust, shocks the conscience, or clearly demonstrates bias. *Id*. at 135.

The record in this matter is replete with testimony showing that Appellant does not maintain or mow the vegetation in his lawn, that the vegetation has grown beyond nine inches in height, that rodents have been seen coming from the direction of Appellant's lawn, and that many of Appellant's neighbors find that Appellant's lawn renders the neighborhood atmosphere unhealthy, unwholesome, and obnoxious. On the other hand, Appellant testified that no rodents were living in his lawn and that no "weeds" had grown beyond nine inches in height. The gravamen of Appellant's testimony, and all his complaints, is that his lawn's "cultivated Saint Augustine grass" is not "uncultivated weeds" and therefore no violation of the city ordinance ever existed. However, ordinance section 10-451(b)(10) does not address only the existence

of uncultivated weeds. Its scope is broader than Appellant argues. The ordinance addresses "all objectionable, unsightly, and unsanitary matter of *whatever nature*" that has grown beyond nine inches in height. *See* HOUSTON, TEX., CODE OF ORDINANCES, ch. 10, art. XI, § 10-451(b)(10) (1999) (emphasis added). The evidence from Appellant's neighbors and the City of Houston inspectors established that the vegetation surrounding Appellant's residence is objectionable, unsightly and insanitary, so as to constitute a neighborhood nuisance. Under this evidence, we cannot find that the verdict is so contrary to its overwhelming weight as to be clearly wrong or unjust. *See Clewis*, 922 S.W.2d at 134. Accordingly, the evidence in this case is factually sufficient to support Appellant's conviction and fine. Point of error four is overruled.

The judgment is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed December 9, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).