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HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

No. 01-24-00140-CR

IN THE FIRST COURT OF APPEALS
AT HOUSTON, TEXAS

CHIP ARDIE

v.

THE STATE OF TEXAS

On Appeal from 239th Judicial District

Court Of Brazoria County, Texas

Honorable JEREMY WARREN, County Court
Judge Presiding

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

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No. 01-24-00140-CR
Chip Ardie v. The State of Texas

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Point of Error

Point of Error :

The verdict is not supported by legally sufficient evidence to sustain the Appellant's conviction for criminal mischief, State Jail Felony.

No. 01-24-00140-CR

IN THE FIRST COURT OF APPEALS AT
HOUSTON, TEXAS

CHIP ARDIE

v.

THE STATE OF TEXAS

On Appeal from 239th Judicial District

Court Of Brazoria County, Texas

Honorable JEREMY WARREN, County Court #3
Judge Presiding

APPELLANT'S BRIEF

TO THE HONORABLE COURT OF APPEALS:

Statement of the Case

This is an appeal from a criminal jury trial in which the Defendant plead not guilty to the offense of Criminal Mischief; state jail felony under section 28.03(b)(4) of the Texas Penal Code (2 RR 144). After trial by jury the Appellant was convicted of the offence of criminal mischief as alleged in the Indictment. The Judge assessed his punishment at confinement in

the state jail for a term of 270 days, being not less than 180 days, nor more than two (2) years. Further assessing a fine of \$5,000.00, being not more than \$10,000.00. (CR 84; 5 RR 31).

Statement of Facts

In a jury trial on February 5th, 2024, Appellant pled not guilty to the charge against him of Criminal Mischief, as alleged in the indictment. Which states, “Appellant intentionally and knowingly damaged or destroyed tangible property, namely a fence used for the containment of cattle, located across the road from XXX, Alvin, Tx by taking down the fence on the property, without the effective consent of T.W., the owner of the property: and did thereby cause pecuniary loss of less than \$2,500.00 to the owner”.

On February 22, 2020, Appellant was arrested on a state jail felony, Criminal Mischief. It is not clear from the record on what date the Appellant allegedly damaged or destroyed the tangible property, namely, a fence used to contain cattle of T.W. and was questioned, and he answered that he had never seen Appellant (2 RR 153, 157).

Although Appellant admits to moving the fence, Appellant believed at the time that the property was in fact his due to the placement of the temporary fence built by T.W. (5 RR 21).

When Appellant questions T.W. on why he built the temporary fence where

he did (5 RR 20), T.W. responded: (a temporary fence) “**I built it, yes, not to have conflict with you**” (5 RR 21). T.W. states “**I had cows I needed to put there**” (5 RR 21). Indicating cattle were not present at the time the fence was allegedly damaged or destroyed by Appellant.

Summary of the Argument

Appellant asserts that the jury erred in finding him guilty of the charge of state jail felony, Criminal Mischief. Appellant asserts that there is insufficient evidence to support the verdict. Appellant believes that the verdict should be overturned. The State failed to prove beyond a reasonable doubt the pecuniary value of the damaged property, and the actual use of the fence.

The Appellant contends this error was calculated to cause and probably did cause the rendition of an improper judgment.

Further the verdict was not supported by legally sufficient evidence.

Argument and Authorities

Point of Error :

The jury verdict is not supported by legally sufficient evidence to sustain the Appellant's conviction for criminal mischief less than \$2,500, if the property was a fence used for the production or containment of:

- (i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; a state jail felony in Texas Penal Code section 28.03.

A legal sufficiency review. The evidence must be viewed in the light most favorable to the verdict. Martinez v. State, 924 S.W. 2d 693,696 (Tex. Crim. App. 1996). The issue is whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979). Appellant contends that any rational trier of fact would not find the essential elements of the crime beyond a reasonable doubt with the evidence presented at Appellant's trial.

Appellant was accused and convicted of Criminal Mischief, State Jail Felony Texas Penal Code section 28.03 (CR 84; 5 RR 31). Appellant believes that he should not have been convicted of any crime because there was no evidence to substantiate any of the allegations in the indictment. Evidence was not presented showing damage or destruction to the fence.

Appellant contents there was no evidence to substantiate the fair market value of the fence. The presence of cattle on the property as required by the statue. Texas Penal Code section 28.03.

The matter at issue in this appeal is whether the State proved beyond a reasonable doubt that the pecuniary loss to the victim in the case was within the range for a state jail felony, **\$2,500.00 or more but less than \$30,000.00**, and that there were cattle on the property at the time of the alleged damage or destruction of the fence. The Appellant asserts that the State failed to comply with the provisions of Texas Penal Code section 28.06 which outlines how to determine the pecuniary loss. As a result, the state failed to prove beyond a reasonable doubt that the Appellant committed the state jail felony offense of criminal mischief.

Appellant further asserts that any rational trier of fact could not find the essential elements of the crime beyond a reasonable doubt with the evidence presented at his trial. Jackson v. Virginia, Supra. Appellant contends that the holding in Deas v. State, 752 S.W. 2d 573 (1988), an en banc opinion of the Court of Criminal Appeals of Texas is directly on point and this Court should follow suit and remand this matter to the trial court with instructions and an order of acquittal be entered.

Determining how to calculate pecuniary loss depends on whether the property was destroyed or damaged. If there is evidence establishing that the property was destroyed, determination is based on: is *fair market value of the property at the time and place of the destruction* emphasis added. If the fair market value of the property cannot be

ascertained, the cost of replacing the property within a reasonable time after the destruction. See Texas Penal Code section 28.06 (a) (1) and (2). If there is sufficient evidence to establish that the property is damaged, the pecuniary loss is the cost of repairing or restoring the property within a reasonable time after the damage. See Texas Penal Code section 28.06 (b). Applying the reasoning of the Court in Deas, we assume that the fence was destroyed, not damaged:

In light of the jury verdict finding the appellant guilty of the felony offense of criminal mischief, we can infer that the jury found that appellant had destroyed the garage door since the only evidence of pecuniary loss ... was the testimony of what the owners paid to replace the door.

Deas v. State, 752 S.W. 2d 573 (1988) at 575

In the instant case, the only evidence presented to the Jury regarding pecuniary loss is the Voluntary Statement of T.W. offering an un-itemized invoice from Cemex in Alvin, Texas (6 RR Exhibits 1, 2). After reviewing exhibits, the record does not show any evidence that the fence was damaged or destroyed by the Appellant. As in Deas Supra, there was no evidence presented that the fence was destroyed or damaged, nor evidence that fair market value of the fence could be determined.

(In Deas the property damaged or destroyed was a garage door). "The testimony only showed that the owner(s) replaced the fence (garage door). Deas v. State at 575. T.W. did not ask if there was a prorated value to show depreciation of the fence, he just bought new items to repair and rebuild the fence. (2 RR 158, 6 RR Exhibits 1,2).

After further discussion, the record reflects the value in question: "If I add all those values together, it is \$971.00 (4 RR 10).

The only way under the statute to use replacement cost to determine pecuniary loss is to (1) have evidence of destruction and (2) evidence that fair market value of

the destroyed property could not be ascertained. There was no evidence to establish at any level of proof that the fence was destroyed and there was no evidence of fair market value: T.W. chose to replace the entire fence line and did not inquire as to the fair market value of the alleged damage (2 RR 158, 4 RR 10, 6 RR Exhibits 1,2)

The statute is clear: "to consider replacement cost in determining pecuniary loss requires the property to have been destroyed." Texas Penal Code section 28.06 (a)(2) and Deas v. State.

In the instant case, assuming that the jury legitimately determined, based on evidence presented by the State, that the fence was destroyed. Some evidence that the "fair market value of the property could not be ascertained is required for the replacement value to be used to determine the pecuniary loss." Texas Penal Code section 28.06(a)(2). There was not such evidence presented to the Jury by the State. The evidence presented to the jury regarding the replacement value of the fence was improperly admitted as evidence in this case after Appellant's objection (2 RR 160).

The identical scenario outlined in Deas occurred in the instant case: "the only evidence in the record to support a [felony] conviction was evidence of the

replacement value." "Before replacement value can be used to determine pecuniary loss, the evidence must demonstrate that the fair market value cannot be ascertained." Deas v. State at 575,576. In this case, T.W. showed replacement value vs. the fair market value on the fence.

Again, in an almost identical fact situation, the owner of the fence determined, in his mind, the fair market value of the fence was the replacement costs. T.W. did not testify that he inquires as to the cost of the fair market value of replacing the fence (2 RR 159). There was no testimony as to the alleged amount of fence line that was damaged or how much material was needed to make the repairs. The state did not offer evidence to show pictures of the fence prior to it being removed. The state did not offer evidence of the condition of the fence before it was allegedly removed by the Appellant.

The Court of Criminal Appeals in Deas determined that the evidence presented to the Jury was insufficient to support the conviction. As in Deas, the evidence in the instant case is insufficient to support Appellant's conviction and this court must do the same.

CONCLUSION

There was no evidence provided to establish damage or destruction of the fence. Further and the crux of this case in the Appellant's mind is that there was no evidence to show fair market value or that any attempt was made to discover fair market value. Secondly, the defense failed to show proof that cattle were on the property at the time of the alleged damage or destruction of the fence. Improper and insufficient evidence was presented to the jury.

Appellant asserts that there is insufficient evidence to support the verdict. Appellant prays that this matter be remanded to the trial court with instructions and an order of acquittal be entered. In the alternative, Appellant prays that this matter should be considered a class c misdemeanor.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully prays that this Court overturns the finding of guilt and provides any remedy, in law or equity, in which this Court determines is necessary to ensure that justice is done.

Respectfully submitted,

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Certificate of Compliance

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this brief contains 2409 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Faye Gordon
Faye Gordon

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this corrected document was served via fax upon an attorney for the State, Tom Selleck at bcdaeservice@brazoriacountytx.gov on August 30, 2024.

/s/ Faye Gordon
Faye Gordon

No. 01-24-00140-CR

IN THE FIRST COURT OF APPEALS
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CHIP ARDIE

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APPELLANT'S APPENDIX

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1 ready to read to you now. Fairly short compared to the
2 last one.

3 **CHARGE OF THE COURT**

4 This is Cause No. 89591-CR, State of Texas
5 vs. *Chip Ardie*, in the 239th District Court, Brazoria
6 County, Texas.

7 Jury Instructions on Punishment

8 Members of the jury:

9 Having found the defendant, Chip Ardie,
10 herein guilty of the offense of criminal mischief as
11 alleged in the indictment, it now becomes your duty to
12 assess the punishment in this cause.

13 Our law provides that the punishment for
14 State Jail Felony Criminal Mischief is by confinement in
15 the State jail for a period of not less than 180 days
16 nor more than two years. In addition to confinement, an
17 individual adjudged guilty of Criminal Mischief may be
18 punished by a fine not to exceed \$10,000.

19 Therefore, you will assess the defendant's
20 punishment within this range provided by the law.

21 You are further charged that in fixing the
22 defendant's punishment, you may take into consideration
23 all of the evidence submitted to you in the
24 guilt/innocence trial and punishment phase of this case,
25 and you will be bound by the instructions of the Court

1 covering this trial in determining what punishment to be
2 given to the defendant.

3 You are admonished that in deliberating
4 upon the punishment to be assessed against the defendant
5 in this case, you must not refer to nor discuss any
6 matter not in evidence before you. You must not arrive
7 at the punishment to be assessed in this case by any lot
8 or chance or by putting down any figures and doing any
9 dividing or by any system of averages. Under the
10 instructions herein given, it will not be proper for you
11 in determining the penalty to be assessed to fix the
12 same by any method other than a full, fair, and free
13 exercise of the opinions of the individual jurors under
14 the evidence submitted before you.

15 The defendant has a constitutional right
16 to remain silent. The defendant may testify on his own
17 behalf. The defendant may also choose not to testify.
18 The defendant's decision not to testify cannot be held
19 against him. You must not speculate, guess, or even
20 talk about what the defendant might have said if he had
21 taken the witness stand or why he did not. The
22 foreperson of the jury must immediately stop any juror
23 from mentioning the defendant's decision not to testify.

24 You are instructed that there is evidence
25 before you in this case regarding other crimes, wrongs,

1 or acts against this defendant other than the one
2 charged in this case. You must not consider said
3 evidence for any purpose unless you believe said
4 evidence beyond a reasonable doubt.

5 You are the exclusive judges of the facts
6 proved and the credibility of the witnesses, and of the
7 weight to be given to their testimony, but you are bound
8 to receive the law from the Court, which is herein given
9 you and be governed thereby.

10 Your verdict must be unanimous. After you
11 arrive at your verdict, you are to use one of the
12 forms -- there's actually only one -- of the forms
13 attached to these instructions. You should have your
14 foreperson sign his or her name to the particular form
15 that conforms to your verdict. In the event you desire
16 to communicate with the Court on any matter in
17 connection with your deliberations, your foreperson will
18 notify the bailiff, who will inform the Court thereof.
19 Any communication relative to the cause must be written,
20 signed by the foreperson, and submitted to the Court
21 through the bailiff of the court.

22 The original is signed on page 2 in blue
23 ink by me, Jeremy E. Warren, Judge presiding.

24 One verdict form, has the same cause
25 number and reads:

Verdict

We, the jury, having found the defendant,
Chip Ardie, guilty of the offense of criminal mischief,
as alleged in the indictment, assess his punishment at
confinement in the State jail for a term of blank
days/years, being not less than 180 days nor more than
two years.

8 We further assess a fine of blank, being
9 not more than \$10,000.

When you fill in the blank here for the days and years, you need to circle if you do days or circle if you do years. And then a spot for the foreperson, Mr. Pierce, to sign and then print your name underneath.

15 At this time the Court will permit closing
16 arguments first from the State.

17 MR. DONOVAN: Thank you, Your Honor. Your
18 Honor, again, the State would request all additional
19 time for rebuttal.

THE COURT: Granted.

CLOSING STATEMENT

22 MR. DONOVAN: Tom Willadson has been
23 dealing with Chip Ardie for a very long time; and no
24 matter what sentence Chip Ardie is given here today,
25 that is only going to be a fraction of the amount of

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Deas v. State

752 S.W.2d 573 (1988)

Thomas Ray DEAS, Appellant, v. The STATE of Texas, Appellee.

No. 582-84.

Court of Criminal Appeals of Texas, En Banc.

June 22, 1988.

JimVallers, Austin, for appellant.

James L. Chapman, Dist. Atty., Steven C. Copenhaver, Asst. Dist. Atty., Sulphur Springs, and Robert Huttash, State's Atty., Austin, for the State.

Before the court en bane.

OPINION ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

McCORMICK, Judge.

Appellant was convicted after a trial by jury of the offense of criminal mischief to property involving a pecuniary loss of more than \$200 and less than \$10,000. V.T.C.A., Penal Code, Section 28.03.[1] Appellant *574 elected to have punishment assessed by the court and received a sentence of three years' imprisonment. Appellant appealed to the Texarkana

Court of Appeals which affirmed his conviction. Deas v. State, 667 S.W.2d 304 (Tex.App.- Texarkana 1984). Appellant has petitioned this Court for discretionary review alleging twelve grounds for review. Grounds one through eight all relate to the sufficiency of the evidence.

Because of the nature of appellant's arguments, a review of the facts is necessary to understand the legal issues in this case. The record reflects that the events leading up to the commission of the offense were the result of a family quarrel. Appellant's father and stepmother had argued earlier in the day. Appellant's stepmother left the home she shared with appellant's father. The record shows she left driving one of their family cars. She drove to her daughter's house and parked the car in her daughter's garage and closed the garage door. The daughter and son-in-law of appellant's stepmother were not at home at the time the events pertinent to this case occurred.

Shortly after appellant's stepmother had parked her car and entered the house, appellant arrived driving a pickup truck with his father and his sister as passengers. The testimony from appellant's stepmother and a neighbor indicates that appellant pulled the truck directly into the driveway and parked it with the front of the truck facing the garage door. Appellant's father left the truck and went to the door of the house and announced that he was "coming in to get his car." Appellant's father then returned to the car. The record reflects that the garage door was electronically operated and that the principal means of opening and closing the door was to activate a small electronic "garage door-opener."

The testimony shows that appellant's sister left the vehicle and walked around the house and yard. She returned to the truck and got into it. Appellant then backed the pickup truck into the street and turned his vehicle around so that he was in a position to back the truck into the driveway with his rear bumper facing the garage door. Appellant then backed his pickup into the garage door. He then pulled the pickup forward slightly and parked it. He left the vehicle and he and his sister entered the garage through the hole made by the truck. Subsequent to these events, the owners of the garage door (the daughter and son-in-law of appellant's stepmother) filed a complaint with the authorities. Appellant was arrested and charged with the offense of criminal mischief. The complainants replaced the garage door at a cost of \$590.00.

The jury was authorized to convict appellant if they found that he either damaged or destroyed the garage door. The jury was further instructed as to the statutory provision by which the value of property is established in cases where the property is damaged and in cases in which it is destroyed and authorized a conviction for either. The language of the

court's charge closely tracks that of V.T.C.A, Penal Code, Section 28.06(a) and (b), which read as follows:

"(a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

- (1) the fair market value of the property at the time and place of the destruction; or
- (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

"(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

*575 In light of the jury verdict finding the appellant guilty of the felony offense of criminal mischief, we can infer that the jury found that appellant had destroyed (rather than damaged) the garage door since the only evidence of pecuniary loss in excess of \$200.00 was the testimony of what the owners paid to replace the door. To consider replacement cost in determining pecuniary loss requires the property to have been destroyed. Section 28.06(a)(2), *supra*.

Appellant argues that in spite of the evidence admitted at trial there is no evidence that the door was destroyed. Appellant reasons that the testimony only showed the owners replaced the door and that on cross-examination they admitted to having no expertise in the area of garage doors. At trial, appellant produced an expert witness who stated that in his opinion the door was only damaged and that it could have been repaired for a total cost of \$150.00. He further contends there is insufficient evidence to show that the door was destroyed. Appellant accordingly argues in his petition that the jury charge incorrectly authorized the conviction of appellant on the basis of the door's destruction.

The second aspect of appellant's complaint involves the related contention that since there was no evidence of destruction the proper measure of pecuniary loss under Section 28.06, *supra*, is repair cost and not replacement cost or the fair market value of the door.

Appellant argues that the testimony and evidence only established damage and that the testimony concerning pecuniary loss only established fair market or replacement loss. Arguing alternatively, appellant asserts that assuming arguendo that the evidence of destruction was sufficient, the owners were unqualified to testify as to fair market value. He relies on the provisions of Section 28.06, *supra*, which holds replacement value can only be used to prove pecuniary loss if the fair market value cannot be established. Appellant thus argues that no showing of the unavailability of evidence on fair market value of the door

was made and that the owners, unqualified to testify as to fair market value, only testified to replacement cost. Appellant relies on his cross-examination of the owners and the testimony of his expert witnesses to sustain this position.

Believing appellant to be correct in his argument, we will reverse the judgments of the trial court and the Court of Appeals and remand the cause with instructions that an order of acquittal be entered.

Appellant argues that the case of Stone v. State, 299 S.W.2d 304 (Tex.Cr.App.1957), although being a prosecution under former Article 1350, V.A.P.C. (1925), is controlling. There, the defendant was convicted of destroying personal property of over the value of \$50. The statute then provided that the offense could be committed by either injury to or destruction of the property. The State, in Stone, elected to proceed on a theory of destruction alone. The Court there noted in reversing Stone's conviction:

"There was no testimony showing that any of the property was destroyed, as distinguished from injured or damaged. There was no evidence indicating that the property could not have been repaired or restored to usefulness for the purpose for which it was constructed or made." Stone v. State, supra, at 305.

Even though the prosecution in the case at bar proceeded on an indictment alleging both damage or destruction, the evidence wholly fails to show the property was destroyed as distinguished from damaged. Like Stone, supra, there was no evidence indicating that the garage door could not have been repaired. On the contrary, appellant's expert produced evidence that the door could have been repaired at a nominal cost. For this reason alone, reversal is required.

Furthermore, the only evidence in the record to support a felony conviction was evidence of the replacement value. Before replacement value can be used to determine the pecuniary loss, the evidence must demonstrate that the fair market value cannot be ascertained. Section 28.06(a)(2), supra. The only evidence presented by the State as to fair market value came from *576 the complainant who, in response to the prosecutor's question, stated, over objection, that it was \$590.00. On cross-examination, however, the complainant testified that he did not know the fair market value of the garage door at the time of the incident, but based his opinion solely on what he had paid to replace the door. See In the Matter of M.T.B., 567 S.W.2d 46 (Tex.App.-El Paso 1978, no writ), and Phillips v. State, 672 S.W.2d 885 (Tex.App.-Dallas1984).

Having found the evidence insufficient to support the conviction, the judgments of the Court of Appeals and the trial court are reversed, and this cause is remanded to the trial court with instructions that an order of acquittal be entered. *Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978); and *Greene v. Massey*, 437 U.S. 19, 98 S. Ct. 2151, 57 L. Ed. 2d 15 (1978).

WHITE, J., concurs in the result.

NOTES

[1] Since amended by Acts 1981, 67th Leg., p. 66, ch. 29, § 1, eff. August 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, § 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., p. 2620, ch. 352, § 1, eff. Sept. 1, 1985. The offense appellant was charged with committing was then a third degree felony because it involved an alleged pecuniary loss (\$590.00) of more than \$200 but less than \$10,000. The Legislature has now determined that when criminal mischief results in a pecuniary loss of more than \$200 and less than \$750 the crime is punishable as a Class A misdemeanor.

Texas Penal Code

§ 28.03 Criminal Mischief

- (a) A person commits an offense if, without the effective consent of the owner:
- (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
 - (2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or
 - (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.
- (b) Except as provided by Subsections (f) and (h), an offense under this section is:
- (1) a Class C misdemeanor if:
 - (A) the amount of pecuniary loss is less than \$100; or
 - (B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;
 - (2) a Class B misdemeanor if the amount of pecuniary loss is \$100 or more but less than \$750;
 - (3) a Class A misdemeanor if:
 - (A) the amount of pecuniary loss is \$750 or more but less than \$2,500; or
 - (B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;
 - (4) a state jail felony if the amount of pecuniary loss is:
 - (A) \$2,500 or more but less than \$30,000;
 - (B) less than \$2,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;
 - (C) less than \$2,500, if the property was a fence used for the production or containment of:
 - (i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or
 - (ii) game animals as that term is defined by Section 63.001 (Game Animals), Parks and Wildlife Code; or
 - (D) less than \$30,000 and the actor:

- (i) causes wholly or partly impairment or interruption of property used for flood control purposes or a dam or of public communications, public transportation, public gas or power supply, or other public service; or
 - (ii) causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply;
- (5) a felony of the third degree if:
- (A) the amount of the pecuniary loss is \$30,000 or more but less than \$150,000; or
 - (B) the actor, by discharging a firearm or other weapon or by any other means, causes the death of one or more head of cattle or bison or one or more horses;
- (6) a felony of the second degree if the amount of pecuniary loss is \$150,000 or more but less than \$300,000; or
- (7) a felony of the first degree if the amount of pecuniary loss is \$300,000 or more.
- (c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:
- (1) diverted from passing through a metering device; or
 - (2) prevented from being correctly registered by a metering device; or
 - (3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.
- (d) The terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services franchised by the State of Texas or any political subdivision thereof.
- (e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.
- (f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000.
- (g) In this section:
- (1) "Explosive weapon" means any explosive or incendiary device that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes:
 - (A) an explosive or incendiary bomb, grenade, rocket, and mine;

- (B) a device designed, made, or adapted for delivering or shooting an explosive weapon; and
- (C) a device designed, made, or adapted to start a fire in a time-delayed manner.
- (2) "Firearm" has the meaning assigned by Section 46.01 (Definitions).
- (3) "Institution of higher education" has the meaning assigned by Section 61.003 (Definitions), Education Code.
- (4) "Aluminum wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent aluminum, including any tubing or conduit attached to the wire or cable.
- (5) "Bronze wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent bronze, including any tubing or conduit attached to the wire or cable.
- (6) "Copper wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent copper, including any tubing or conduit attached to the wire or cable.
- (7) "Transportation communications equipment" means:
- (A) an official traffic-control device, railroad sign or signal, or traffic-control signal, as those terms are defined by Section 541.304 (Traffic Control), Transportation Code; or
- (B) a sign, signal, or device erected by a railroad, public body, or public officer to direct the movement of a railroad train, as defined by Section 541.202 (Rail Transportation), Transportation Code.
- (8) "Transportation communications device" means any item attached to transportation communications equipment, including aluminum wiring, bronze wiring, and copper wiring.
- (h) An offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000 and the damage or destruction is inflicted on a public or private elementary school, secondary school, or institution of higher education.
- (i) Notwithstanding Subsection (b), an offense under this section is a felony of the first degree if the property is livestock and the damage is caused by introducing bovine spongiform encephalopathy, commonly known as mad cow disease, or a disease described by Section 161.041 (Disease Control)(a), Agriculture Code. In this subsection, "livestock" has the meaning assigned by Section 161.001 (Definitions), Agriculture Code.
- G) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if:
- (1) the tangible property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device; and
- (2) the amount of the pecuniary loss to the tangible property is less than \$150,000.
- (k) Subsection (a)(1) or (2) does not apply if the tangible personal property of the owner was a head of cattle or bison killed, or a horse killed, in the course of the actor's:
- (1) actual discharge of official duties as a member of the United States armed forces or the state military forces as defined by Section 437.001 (Definitions), Government Code; or

(2) regular agricultural labor duties and practices.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 66, ch. 29, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, Sec. 1, eff. Sept 1, 1983; Acts 1985, 69th Leg., ch. 352, Sec. 1, eff. Sept 1, 1985; Acts 1989, 71St Leg., ch. 559, Sec. 1, eff. June 14, 1989; Acts 1989, 71St Leg., ch. 1253, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71St Leg., tst C.S., ch. 42, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. u.280, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 747, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 976, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, Both Leg., RS., Ch. 690 (H.B. 1767), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 690 (H.B. 1767), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 638 (H.B. 1614), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 5, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 136 (H.B. 1257), Sec. 1, eff. September 1, 2017-

Acts 2017, 85th Leg., R.S., Ch. 500 (H.B. 2817), Sec. 2, eff. September 1, 2017.

Location:https://california.public.law/codes/ca_civ_proc_code_section_630.25.

Original Source: § 630.25, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=630.25. Last accessed Jun. 6, 2016).

Texas Penal Code

§ 28.06 Amount of Pecuniary Loss

- (a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:
 - (1) the fair market value of the property at the time and place of the destruction; or
 - (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.
- (b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.
- (c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:
 - (1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or
 - (2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.
- (d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c), the amount of loss is deemed to be greater than \$750 but less than \$2,500.
- (e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:
 - (1) the amount of pecuniary loss if the property is destroyed; or
 - (2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 2, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2015, 84th Leg., RS., Ch. 1251 (H.B. 1396), Sec. 6, eff. September 1, 2015.

Location:https://california.public.law/codes/ca_civ_proc_code_section_630.25.

Original Source: § 630.25, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=630.25.0 (last accessed Jun. 6, 2016).

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