2014 IL App (5th) 110542-U

NO. 5-11-0542

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 11-CF-95
	)	
MICHAEL PUTMAN,	)	Honorable
	)	Michael N. Cook,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Cates and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Where the brief filed by the defendant egregiously fails to conform to the supreme court rules governing the contents of briefs, the brief is stricken and this appeal is dismissed.

¶ 2 The defendant, Michael Putman, was convicted of four felony counts, *viz.*: aggravated battery (720 ILCS 5/12-4(b)(10) (West 2010)), criminal sexual abuse (720 ILCS 5/12-15(a)(1) (West 2010)), domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)), and violation of an order of protection (720 ILCS 5/12-30(a)(1) (West 2010)). (The latter two offenses, which usually are misdemeanors, were felonies due to the defendant's prior conviction for violation of an order of protection. See 720 ILCS 5/12-

3.2(b), 12-30(d) (West 2010)). He now appeals from the judgment of conviction. However, due to egregious deficiencies in the brief that the defendant filed *pro se* in this court–including the absence of any applicable standard of review, any statement of facts, or any meaningful citation to legal authority–the defendant's brief is stricken, and this appeal is dismissed. Additionally, this court concludes that the arguments the defendant has attempted to make have no merit.

¶ 3 BACKGROUND

¶ 4 In this criminal case, the defendant knowingly and voluntarily waived his rights to an attorney and a trial by jury. The defendant represented himself at a bench trial, although standby counsel was appointed and was present throughout the trial.

¶ 5 *The State's Case in Chief*

¶ 6 The State's trial evidence showed that on December 28, 2010, in St. Clair County case No. 10-OP-987, the circuit court entered an *ex parte* emergency order of protection against the defendant, effective until January 18, 2011, at 5 p.m. The order prohibited the defendant from abusing Cathy Rainbolt, who was the petitioner in the action, and ordered him to stay away from Rainbolt. On December 29, 2010, a Belleville police officer served the defendant with a "short form notification" of the order. A certified copy of the order of protection was admitted into evidence.

¶ 7 Frank D. Moore, a sergeant with the Caseyville police department, testified that on the night of January 17, 2011, shortly before midnight, in response to a call about a man with a knife, Moore drove to the Esparza residence in Caseyville. There, Moore met up with another officer, Steve Epps. Moore saw the defendant walk out of the house's back

door. Moore ordered the defendant to stop and show his hands, but the defendant ignored these commands. Moore became aware of "at least two females" who walked out of the house through its front door and toward a pickup truck that was parked in the driveway. The defendant seemed to be walking toward the two females. The defendant's facial expressions, the "glassiness" of his eyes, and his unsteady gait caused Moore to conclude that the defendant was intoxicated. The defendant began to pull from his jacket pocket an object that "appeared to have a large black handle." Fearing a knife, Moore used his taser on the defendant. At that point, Epps attempted to handcuff the defendant, but the defendant resisted. Moore tased the defendant two additional times, allowing Epps to put on the handcuffs. A search of the defendant's pockets yielded a can of deodorant and a pocket knife.

¶ 8 A dispatcher informed Moore that the defendant "had an active order of protection" at the time and that the defendant's daughter, Cathy, was the protected party. The defendant told Moore that the order was "going to be dropped" in a day or two. Due to the defendant's remaining "combative" and "insulting," Moore decided to have him transported directly to the St. Clair County jail.

¶ 9 Moore further testified that the defendant's daughter was at the house. She appeared "extremely shook up" and "afraid for her own safety" that night. Also at the house that night were Sara Esparza, Louie Esparza, Jacob Esparza, Gino Esparza, and Sharon Harmon.

¶ 10 Sara Esparza (Sara) testified that she was 69 years old on the date of the instant offenses, January 17, 2011. On that day, the defendant and the defendant's daughter both

were staying at the Esparza residence. Because the defendant was drunk and drinking beer, Sara wanted him out of the house. She repeatedly told him to leave, but he did not leave, and he became angry. At some point that night, Sara was walking down the hallway toward the kitchen, and the defendant "shoved" her in the arm with his elbow. The shove caused Sara to become "scared" of the defendant. A bit later, Sara was outside, standing on her steps, while the defendant's daughter was sitting in the passenger seat of the Esparzas' nearby pickup truck, with the passenger's door open, and the defendant was standing outside the truck. Sara saw the defendant "kissing [his daughter] in the mouth" while rubbing her leg above the knee. The daughter looked "[s]tunned like she didn't want him doing it." Sara went inside the house. The defendant also walked back into the house, into the kitchen. Shortly thereafter, he walked out of the house through the kitchen door and encountered the police.

¶ 11 Cathy Rainbolt, age 21, testified that in December 2010, she obtained an emergency order of protection against her father, the defendant. On January 17, 2011, Rainbolt was staying at the Esparza residence. She was dating Gino Esparza (Gino), who lived there and was a grandson of Sara. Although the order of protection was still active, the defendant too was staying at the Esparza residence. At some point after dark on January 17, in Gino's room, the defendant, who was drunk, repeatedly pulled down Rainbolt's shirt, exposing her bra, and "grabb[ed] on [her] chest," touching her breast, despite Rainbolt's repeatedly telling him to stop. The defendant pulled out a small pocket knife, with the blade out, pointed it at Rainbolt, and made "threatening comments like he brought [her] into this world and he was going to kill [her]." This behavior frightened

Rainbolt and her friend, Sharon Harmon, who called the police. The defendant chased Rainbolt through the yard. Rainbolt and Harmon "hid in the truck." Before long, the police arrived and tased the defendant.

¶ 12 Rainbolt did not recall the defendant's kissing, or attempting to kiss her, on the mouth at the Esparza residence. During direct examination by the State, Rainbolt testified that she thought she saw the defendant push Sara with his hands in the hallway. However, during cross-examination by the defendant, Rainbolt testified that she did not see the defendant push Sara, that she "just heard [him] push her." At several points during the defendant's cross-examination of Rainbolt, the court admonished the defendant to stop "badgering" Rainbolt and to allow her to finish answering his questions.

¶ 13 Sharon Harmon testified that on January 17, 2011, she was living at the Esparza residence in Caseyville. That night, in Gino's room, the defendant, who was drunk, repeatedly pulled down Cathy Rainbolt's shirt, exposing her bra, grabbed Rainbolt's breasts, tried to "grab her between her legs," and tried to kiss her. In response, Rainbolt repeatedly told the defendant to stop. Harmon considered the defendant's behavior toward his daughter sexual and inappropriate. Rainbolt, crying, asked Harmon for help, and Harmon led Rainbolt out of Gino's room. The defendant, holding an opened knife, followed them and seemed to be trying to stab them. Harmon led Rainbolt into the living room. Afraid for her own and Rainbolt's safety, Harmon called the police. As Harmon was leading Rainbolt out of the house through the front door, she saw the defendant push Sara with his hands in the hallway, apparently to move Sara out of the way so that he could get to Harmon and Rainbolt. The police arrived and tased the defendant.

¶ 14 The defendant's cross-examination of Harmon is spread across 27 pages of trial transcript. It yielded little or no significant information. Much of it consisted of the defendant's own unsworn testimony and questions about irrelevant matters. Nevertheless, at the end of the cross-examination, the defendant told the trial judge that he might want to recall Harmon during his case in chief. The judge instructed the prosecutor to obtain a telephone number for Harmon in the event the defendant wanted to recall her.

¶ 15 Jacob Esparza (Jacob), age 15, testified that he was a grandson of Sara and the brother of Gino, and he lived at the Esparza home. On January 17, 2011, at night, Jacob was sitting at the kitchen table when he saw the defendant and Cathy Rainbolt standing on the porch. The defendant kissed Rainbolt on the lips and "was grabbing her boobs, her butt, her private area." Rainbolt "kept trying to push [the defendant] off," and Sara told the defendant to stop. Rainbolt walked off the porch and into Gino's room, and the defendant followed. Jacob, still in the kitchen, heard Gino say "you ain't going to kill nobody." Jacob walked into Gino's room. The defendant was drunk and was holding a knife. "[Gino] was like, dude, you need to leave. And [the defendant] was like, no, man. I'm just playing." Jacob remained in Gino's room for only a short time. Jacob did not see anyone push Sara. However, while Sara was in the hallway, Jacob heard her say, "now you don't shove me." A bit later, Rainbolt, Sharon Harmon, and the defendant were outside when the police arrived.

¶ 16 Gino Esparza, age 17, testified that during the evening of January 17, 2011, at the Esparza residence, the defendant was drinking beer and appeared drunk. At some point,

Gino observed the defendant pull down Cathy Rainbolt's shirt and touch her breast; the touching appeared to be intentional. Sometime later, in Gino's bedroom, the defendant opened a small pocket knife and "tossed" it to Rainbolt, who said that she did not want it. The defendant took back the knife and told Rainbolt, "I can stab you if I want" and "I brought you into this world, I can take you out." Sharon Harmon "grabbed" Rainbolt and led her out of the house. The defendant walked out of the house through another door and encountered the police. They ordered the defendant to remove his hands from his pockets, but he failed to comply and they tased him. Gino did not see the defendant push Sara in the hallway, but he heard Sara say, "why the hell did you do that for?"

¶ 17 Father James Blazine, a priest and chaplain of the Caseyville police department, testified that on January 17, 2011, he was "riding along" with Sergeant Moore. Father Blazine's testimony about the defendant's arrest was not inconsistent with Moore's testimony. According to Father Blazine, the defendant appeared "disheveled" and "confused," and he smelled of beer.

¶ 18 *The Defendant's Case in Chief*

¶ 19 For the defense, the defendant's older brother, Roger Putman, testified that the defendant was a peaceful person who loved his children and would never make sexual advances toward any of them. Roger also testified that the defendant had a longstanding drug addiction, which was the principal reason for the defendant's years of incarceration. Roger lacked any personal knowledge of the facts of the instant case.

¶ 20 The defendant called Louie Esparza (Louie), Sara's husband. The defendant's direct examination of Louie is spread across 98 pages of the report of proceedings, but it

yielded essentially no relevant or useful information. Louie recalled that the defendant stayed at his house for a time, and that the defendant was fond of drinking beer. Louie also recalled that Sara repeatedly told the defendant to leave the house, to no avail. However, Louie had no personal knowledge of the facts bearing upon the charges; he was sick and in bed at the time of the events.

¶ 21 The defendant recalled Gino and Jacob Esparza to testify during his case in chief. The defendant's direct examination of Gino is spread across 63 pages of record, and his direct examination of Jacob is spread across 18 pages. Neither examination yielded any new or important information. The defendant's questions, and these two witnesses' testimonies, were essentially the same as when the defendant cross-examined them during the State's case in chief.

¶ 22 The defendant also recalled Cathy Rainbolt to testify. The defendant's direct examination of Rainbolt is spread across more than 50 pages of the record, but it did not yield any important new information. The defendant asked many repetitive questions and many other improper questions–*e.g.*, asking Rainbolt to comment on other witnesses' testimonies, and asking her about plainly immaterial or irrelevant matters–and he frequently argued with Rainbolt and gave unsworn testimony of his own, all of which led to many objections by the State that were sustained by the court. In addition, the defendant frequently interrupted the trial judge as he ruled on objections or chastised the defendant, and it was for this reason that the judge eventually had the defendant temporarily removed from the courtroom. The judge then excused Rainbolt for the day. Later, the defendant was returned to the courtroom, and the judge told the defendant that

Rainbolt had been instructed to return the next day, and that he could complete his questioning of her at that time. Before adjourning for the day, the court chastised the defendant for asking Rainbolt the same questions he had asked during his cross-examination of Rainbolt during the State's case in chief. The court stated that Rainbolt "seem[ed] very fragile" emotionally, and ordered the defendant to ask only "new questions" when he resumed his direct examination of her.

¶ 23 The next day, Rainbolt did not appear in court. The judge declined to give the defendant time to try to reach Rainbolt by telephone and stated that he would not issue a bench warrant for Rainbolt. The judge told the defendant: "Your attempts at questioning her yesterday were probably the worst I've ever seen of anyone in this courtroom. *** And I am not going to issue a bench warrant for you to further badger that woman."

¶ 24 The defendant called Steve Epps to testify. Epps recalled arresting the defendant at the Esparza residence and finding cans of beer in the defendant's pockets.

¶ 25 Glenn Maiden, the defendant's friend since the 1970s, testified that when the defendant drank alcohol, he became "a happy drunk," never a violent one. Maiden could not imagine that the defendant ever would make sexual advances toward his own daughter, or that he would act aggressively toward any elderly woman. "Addictions" were the defendant's only problem. Maiden did not have any personal knowledge of the events that led to the instant charges.

¶ 26 The defendant recalled Caseyville police sergeant Frank Moore. He testified that he alone filed a police report in the instant case; Officer Epps did not file one. The last page of Moore's report indicated that police detective Scott Miller was the officer who

submitted the report and presented the case to the St. Clair County State's Attorney for review. At that point, the defendant represented to the court that he had not previously seen Moore's report's last page, but the prosecutor told the court that it had been included in the discovery that the State turned over to the defendant. The defendant was shown a copy of the report's last page, and had an opportunity to examine it. Moore confirmed that Detective Miller did not perform any investigation of his own in regard to the case. The defendant repeatedly asked Moore why he did not interview him. Moore answered that he did not interview the defendant at the time of arrest due to the defendant's belligerence; subsequent to that night, he did not interview the defendant because he believed that he already had gathered enough information about the case.

¶ 27 After Moore finished testifying for the defense, the defendant seemed to indicate a desire to recall Sharon Harmon to the witness stand. The judge stated that he was "going to deny [the defendant's] request to call [Harmon] at this time."

¶ 28 The defendant testified on his own behalf. Much of his testimony concerned immaterial or irrelevant matters, and events that occurred prior to the night of the alleged criminal acts. Essentially, the defendant testified that he was at the Esparzas' home in order to help his daughter Cathy Rainbolt, who was in dire straits, that he did not behave sexually toward her, and that he bumped into Sara accidentally.

¶ 29 The court found the defendant guilty on all four counts.

¶ 30 *Posttrial Motions and Sentencing*

¶ 31 The defendant, continuing to act *pro se*, filed a "motion to reconsider verdict," wherein he claimed that the State had not proved all the elements of aggravated battery.

He also filed a "motion to reopen, and demand for mistrial," wherein he raised several claims, including claims that the court erred in not allowing him to question Cathy Rainbolt further and in not allowing him to call Sharon Harmon to testify in his case in chief.

¶ 32 On December 2, 2011, the court heard arguments on the defendant's motion to reconsider verdict, and denied that motion. The defendant's motion to reopen and demand for mistrial was also argued and denied.

¶ 33 The cause proceeded to sentencing. The State's only evidence was a certified copy of the defendant's prior conviction for violation of an order of protection. When the court asked the defendant whether he had any witnesses or other evidence to present at the sentencing hearing, the defendant indicated that he planned to call his brother and Lieutenant Doug Jones but was not sure whether they were present. The bailiff checked the hallway and did not find any witnesses. The transcript of the sentencing hearing is not entirely clear, but it appears that the defendant did not take the steps necessary to have witnesses served with subpoenas. In response to the court's queries, the defendant acknowledged that arranging for subpoenas was his, not the court's, responsibility. At any rate, the defendant did not move to continue the sentencing hearing. The State and the defendant made recommendations as to sentencing. The defendant made a statement in allocution. On each of the four counts, the court sentenced the defendant to imprisonment for a term of five years, with the sentences to run concurrently.

¶ 34 ANALYSIS

¶ 35 In this court, the defendant, still acting *pro se*, has filed a brief wherein he attempts to present four contentions: (1) the State "misdirected" the trial court, and committed "prosecucutional [*sic*] misconduct" when it "knowingly used at trial a document which was at no time prior to the trial, contained there within the record"; (2) the trial court denied him "the right to further question Ms. Rainbolt"; (3) the trial court committed plain error by "refus[ing] the defense the right to question [Sharon Harmon] under direct for the purpose of impeachment"; and (4) the trial court denied the defendant "the right to call witnesses in mitigation" at sentencing. However, the defendant's brief is egregiously deficient in several respects. Perhaps the three most glaring deficiencies are the absence of any applicable standard of review, the absence of a statement of facts, and the near-total lack of citation to applicable legal authority. These deficiencies justify the harsh consequences of striking the defendant's brief and dismissing this appeal.

¶ 36 The contents of appellate briefs are governed by Supreme Court Rule 341 (eff. Feb. 6, 2013). The purpose of Rule 341's provisions is "to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Rule 341(h) lists the required parts of an appellant's brief in particular. Under subpart (3) of Rule 341(h), an appellant "must include a concise statement of the applicable standard of review for each issue, with citation to authority." Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Under subpart (6) of Rule 341(h), an appellant's brief must contain a statement of facts, "which shall contain the facts

necessary to an understanding of the case, stated accurately and fairly without argument or comment." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Under subpart (7) of Rule 341(h), an appellant's brief must contain an argument "with citation of the authorities." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 37 All of the rules governing the content of appellate briefs are requirements, not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Furthermore, a party's *pro se* status does not relieve him or her of the burden of complying with those rules. *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951). A reviewing court is not an advocate; its duties do not include searching the record for error or performing the legal research that the appellant should have performed. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). A court may justifiably strike an appellant's brief and dismiss an appeal where the brief lacks any substantial conformity to the supreme court rules governing the contents of briefs and thus hinders appellate review. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15. Indeed, the absence of a complete statement of facts, in and of itself, justifies striking an appellant's brief and dismissing an appeal. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001).

¶ 38 In the instant appeal, the deficiencies in the defendant's brief are too big to ignore. The brief gives the impression that the defendant did not even make a good-faith effort to comply with the rules. Harsh consequences are in order. Therefore, in light of the egregious deficiencies in the defendant's brief, the brief is hereby stricken and this appeal is hereby dismissed.

¶ 39 Furthermore, an examination of the record on appeal does not reveal any support for any of the defendant's contentions.

¶ 40 In his first contention, the defendant argues discursively that the State "knowingly used at trial a document which was at no time prior to the trial, contained there within the record." As legal authority, the defendant cites only "the 6th and 14th amendment" and "the SEC: Rule 412.9," with no elaboration. The "document" to which the defendant refers is apparently the last page of Sergeant Moore's written report on the instant case. Moore testified about this page during the defendant's case in chief. The content of that page is not entirely clear from the record, but apparently the page indicated that it was Detective Miller, and not Moore, who submitted Moore's report and presented the case to the State's Attorney. A defendant has a due process right to all of the State's evidence that is favorable to him and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). See also Ill. S. Ct. R. 412(c) (eff. Mar. 1, 2001) (codifying the *Brady* rule). However, even assuming that the State, during discovery in this case, failed to supply the defendant with a copy of the last page of Moore's report, it is impossible for this court to imagine how that page could have been exculpatory or at all helpful or favorable to the defendant. The defendant does not make any specific suggestion as to how the page might have benefitted him. At any rate, the defendant was shown a copy of the page at trial and had an opportunity to examine it. He did not request a continuance for the purpose of further investigation. The defendant clearly has not established a *Brady* violation or any discovery violation with uncured prejudice.

¶ 41 The defendant's second contention, which is completely unsupported by citation to legal authority, is that the trial court denied him "the right to further question Ms. Rainbolt." Here, the defendant is referring to the trial court's refusal to issue a bench warrant for victim-witness Cathy Rainbolt when she did not appear for further questioning by the defendant during his case in chief. The court did not err in refusing to compel Rainbolt to appear at the defendant's trial for what would have been her third time. The defendant's direct examination of Rainbolt ended prematurely due to the defendant's own misbehavior in constantly interrupting the judge; but for the defendant's misbehavior, he could have continued questioning Rainbolt until he finished.

¶ 42 Furthermore, the defendant clearly had abundant opportunities to question Rainbolt. During the State's case in chief, he cross-examined Rainbolt at length; this cross-examination is spread across 100 pages of the report of proceedings. During the defendant's case in chief, he also questioned Rainbolt at length; his direct examination of her is spread across 54 pages of the report of proceedings. Equally clear is that the defendant squandered those opportunities by asking many questions about immaterial or irrelevant matters, many repetitive questions, and many questions that were otherwise improper, and by injecting copious amounts of his own unsworn testimony when he should have been asking questions. On innumerable occasions, the trial judge admonished the defendant to ask relevant, nonrepetitive questions. On a few occasions, the judge admonished him to stop harassing Rainbolt. The defendant never heeded these admonishments.

¶ 43 A trial judge has a duty to control and expedite the trial proceedings, and has wide discretion in doing so. See, *e.g.*, *People v. Long*, 39 Ill. 2d 40, 42 (1968). Placing limits on a party's examination of witnesses is part of that discretion. See, *e.g.*, *In re W.D.*, 194 Ill. App. 3d 686, 702 (1990). Here, the trial judge did not abuse his discretion in refusing to compel Rainbolt to appear for yet another round of questioning by the defendant. There was no reason to expect that further questioning of Rainbolt by the defendant would be any more decorous or productive than his prior questioning had been.

¶ 44 The defendant's third contention, also completely unsupported by citation to legal authority, is that the trial court committed plain error by "refus[ing] the defense the right to question [Sharon Harmon] under direct for the purpose of impeachment." During the State's case in chief, the defendant had an opportunity to cross-examine Harmon at length concerning the events that led to the charges against him. He largely wasted the opportunity by asking many irrelevant questions and by larding the cross-examination with his own unsworn testimony. His cross-examination did not shake Harmon's testimony and did not yield any significant new information. It is difficult to imagine how further testimony by Harmon may have been favorable to the defendant. This court also notes that as the trial was about to commence, the judge asked the defendant to name the witnesses he expected to call at trial. The defendant named nine witnesses, but Harmon was not among them. The defendant apparently did not subpoena Harmon. The court did not err in denying the defendant's request to call Harmon to testify in his case in chief.

¶ 45 The defendant's fourth contention, also unsupported by any citation to authority, is that the trial court denied the defendant "the right to call witnesses in mitigation" at sentencing. A defendant may present evidence in mitigation at his sentencing hearing. See 730 ILCS 5/5-4-1(a)(4) (West 2010). Here, the court explicitly gave the defendant the opportunity to present witnesses at sentencing. However, the defendant apparently failed to subpoena, or otherwise arrange for, any witnesses. The court cannot be blamed for the defendant's failure.

¶ 46 For all of the aforementioned reasons, the defendant's brief is stricken, and this appeal is dismissed.

¶ 47 Appeal dismissed.