2014 IL App (1st) 130563-U

SECOND DIVISION
November 10, 2014

No. 1-13-0563

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 12 MC1 202590
ELZAKH BEBATO,	)	The Honorable Thomas J. Byrne, Judge Presiding.
Defendant-Appellant.	)	

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court's finding that defendant was guilty of criminal damage to property would not be disturbed where the *pro se* defendant submitted an insufficient brief on appeal, and the record did not disclose a basis to disturb the result.

¶ 2 Following a bench trial, defendant Elzakh Bebato was found guilty of criminal damage to property, and was placed on supervision for one year and ordered to pay restitution in the amount of $2,300.

¶ 3 Defendant appeals *pro se*, essentially contending that the State's witnesses were not credible and that there were inconsistencies in the evidence. The State filed a motion to strike defendant's brief, which this court took with the appeal. In the motion, the State highlights the defects in defendant's brief, describes the brief as "incomprehensible," and argues that it consequently was not able to submit an appropriate response. The State did subsequently file a brief, and alternatively responds that defendant was proved guilty beyond a reasonable doubt.

¶ 4 Defendant's *pro se* brief fails to conform to the requirements prescribed by Illinois Supreme Court Rules 341 (eff. Feb. 6, 2013) and 342 (eff. January 1, 2005), which apply to criminal appeals pursuant to Illinois Supreme Court Rule 612(i) and (j) (eff. Feb. 6, 2013)). The brief also fails to present a clear and coherent argument, fails to cite legal authority, and fails to provide a sufficient basis for dismissing this appeal. See *In re Marriage of Snow*, 81 Ill. App. 3d 1148, 1149 (1980); *47th & State Currency Exchange, Inc. v. B. Coleman Corporation*, 56 Ill. App. 3d 229, 231-33 (1977). It is not the function of this court to research and argue the position of any party. See *People v. Simester*, 287 Ill. App. 3d 420, 428 (1997); *Vernon Hills III Ltd. Partnership v. St. Paul Fire & Marine Insurance Company*, 287 Ill. App. 3d 303, 311 (1997); *In re Estate of Divine*, 263 Ill.App. 3d 799, 810 (1994); *Nicholl v. Scaletta*, 104 Ill. App. 3d 642, 647 (1982).

¶ 5 We recognize that defendant is a *pro se* litigant, but he is required to comply with the procedural rules of the Illinois Supreme Court governing appellate review, and his *pro se* status did not excuse his failure to do so. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001); *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462-63 (1993). Therefore, we would be justified in granting the State's motion to strike defendant's brief. Despite the deficiencies in defendant's brief, we have considered the merits of his appeal, in which he challenges the credibility of the State's witnesses and argues that there were inconsistencies in the evidence.

¶ 6 At trial, Eric Gonzalez and his father, Carlos Guerrero, testified on behalf of the State. Luis Boultran, who was not related to any of the other witnesses, also testified for the State. Claire Pulgar, who was Eric Gonzalez's aunt, was called as a witness for the defense.

¶ 7 Eric Gonzalez testified that he was 23 years old and a full-time student at Northeastern Illinois University. He had recently started school, after having served in the Marines for four years. He did not know the exact address but he resided at his grandparents' house near the location of the incident on Berwyn Avenue. At approximately 1:30 p.m. on May 20, 2012, his birthday, he asked his parents if he could use the car to go to Montrose beach with his aunt, his girl friend, and his cousin, a 9-year old girl. They stopped at his grandparents' house at approximately 8700 West Berwyn Avenue first to pick up towels. When they got out of the car, Gonzalez noticed defendant, whom Gonzalez positively identified in court, driving toward them. Defendant did not slow down or stop his car while Gonzalez's 9-year old cousin was crossing the street. Gonzalez told defendant that there was a little girl crossing the street and asked defendant

what was wrong with him. Gonzalez then walked to his grandparents' house to get towels for the beach. Gonzalez was accompanied by four people: his girl friend, his aunt, his cousin, and his sister. All five entered the residence at some point. They were inside for approximately three to five minutes.

¶ 8 Gonzalez testified that when he left the residence, he saw defendant standing right by his (Gonzalez's) mother's car. Gonzalez noticed a scratch on the driver's side of the car from one-half of a block away. Gonzalez asked his aunt whether that was the same man whom he had admonished about the girl crossing the street, and his aunt said that it was. Gonzalez yelled out to defendant, '"hey."' Defendant was accompanied by his son, who appeared to be three or four years old. When Gonzalez yelled, '"hey,"' defendant grabbed his son by the hand and started to run. Gonzalez chased him, and Gonzalez's aunt, Claire Pulgar, ran right behind Gonzalez. Gonzalez eventually caught up to defendant, stood in front of him, and prevented him from leaving by holding up his (Gonzalez's) arms. The record reflected that Gonzalez was putting both arms forward with his palms open and away from his body. Gonzalez testified that at no point did he grab defendant, put his arms around defendant's neck, strike defendant, or lose sight of him.

¶ 9 Gonzalez testified that he told his aunt to call the police and he told his sister to get his father, who was the owner of the car, and the television technician also saw what happened.

¶ 10 Gonzalez identified photographs taken by his father of the damage to the car and testified that they depicted very deep scratches to the car. He described one as a "[v]ery very deep

scratch." He further testified that the car was in good condition prior to the incident, with no scratches.[1]

¶ 11 During cross-examination, Gonzalez testified that after he chased defendant down, he had his sister get his father, Carlos Guerrero, who was inside Gonzalez's grandparents' house. Carlos Guerrero was with the dish technician while the latter was working inside the house. Gonzalez was on the other side of the street while his cousin crossed Berwyn toward Oakview. She was moving away from Gonzalez toward his grandparents' house. Gonzalez did not see defendant scratch the car, but Gonzalez noticed the scratch and defendant standing right by the car. Gonzalez saw scratches on the car that did not exist when he entered his grandparents' house for three to five minutes. Gonzalez's aunt, Claire Pulgar, called the police. Gonzalez had told defendant to slow down before defendant scratched the car. Gonzalez had no criminal record and had been honorably discharged from the Marines. Gonzalez testified that he previously had testified that the dish technician asked him what had happened. Gonzalez told the dish technician that defendant had scratched the car. Gonzalez never grabbed defendant by the neck and never choked him and instead merely put his palms forward to stop defendant. Both sides of the car were damaged. He said something very sharp such as a key or a knife was used to damage the car. When Gonzalez ran his thumb down the scratch, it felt like a sharper object had been used because it was so deep.

[1] The photographs were not included in the appellate record.

¶ 12 During further redirect examination, Gonzalez testified that his vehicle was parked about a third of a block away from his grandparents' residence. Defendant stood right next to the car, by the driver's side, approximately a block away from where Gonzalez was standing. Defendant knew that the car was Gonzalez's because defendant had seen Gonzalez get out of the car.

¶ 13 Luis Boultran testified that he worked for Dish Net for a year and a half. At approximately 1:30 p.m. on May 20, 2012, Boultran was working at 4700 West Berwyn Avenue and putting his equipment back into his van, when he looked to his right and about 30 feet away saw the defendant walking from the passenger's side to the driver's side with his right arm trailing. When Boultran first saw defendant, defendant was standing on the passenger side of a metallic orange vehicle. When Boultran saw defendant walking, defendant was coming from the end of the vehicle, and Boultran saw a shiny object that he got toward the front. Boultran heard yelling, turned around, and saw two people running. Then defendant proceeded to run. At first, Boultran did not see anyone else, but then the little boy ran after defendant. Boultran continued to put everything away, then closed the van and walked over to see what the commotion was about. Boultran testified that he saw defendant walking alongside the car, and that he saw defendant's hand trailing his body walking with his right hand behind his body at hip level and slightly extended. Defendant ran as soon as they started yelling. Gonzalez and defendant were face to face. Boultran did not see Gonzalez strike defendant at any point. Boultran saw the metallic orange vehicle after the incident. Boultran was shown photographs and identified "[t]he deep cut going down the side of the vehicle." Other photographs showed scratches on the side of

the vehicle. Boultran testified that all of the photographs accurately showed the scratches he observed. Boultran did not know Gonzalez, Claire Pulgar, or Carlos Guerrero.

¶ 14 During cross-examination, Boultran had no previous contact with the other witnesses. He was wrapping up an installation. He was not parked right behind Guerrero's vehicle. Boultran was parked toward the end of the block about two cars across the street. Boultran had a view of the complete car but could see just the driver's side. Defendant was heading toward the front. Boultran could see defendant's back side and the back of his right arm. Boultran saw defendant coming from the passenger side around the back of the orange car. Defendant, who did not see Boultran, went to the side of the car, and Boultran saw defendant's right hand trailing and holding something shiny in his hand, but Boultran did not know what the shiny object was. Boultran kept going about his business. Boultran saw how deep the scratches were, and testified that he was not an expert at keying cars, but that if one stood close enough and pushed it in one could make an incision.

¶ 15 Carlos Guerrero testified that at approximately 1:30 p.m. on May 20, 2012, Guerrero was at his father-in-law's house at 5226 Oakview when Guerrero's 17-year-old daughter ran into the house and had a conversation with Guerrero. Guerrero then ran outside to the corner of Berwyn and Oakview to see what was happening. He saw his son, his sister-in-law, and defendant at approximately 8700 West Berwyn in Chicago. Defendant was standing directly in front of Guerrero's son "almost like facing one another." Defendant had no injuries and no marks on his neck that Guerrero could remember. Guerrero asked defendant what had happened. Defendant said that Guerrero's son was accusing him of scratching the vehicle. The police arrived, and

Guerrero took the photographs of the scratches on his vehicle the same day after they talked to the police. Guerrero testified the photographs accurately depicted the scratches on the car that had not previously been there. The court admitted the photographs into evidence. Guerrero absolutely did not give defendant permission to scratch up his vehicle. Guerrero said that the repair estimates were between $2,285 and $2,427. The repair estimates were from two different body shops, and were not included in the appellate record.

¶ 16 On cross-examination, Guerrero testified that he asked defendant why he scratched the car. Defendant said that he did not do it, and defendant further stated, "You can't prove that I did it ***." Defendant's son was standing right there. Guerrero said "we will let the police handle it." Guerrero's sister-in-law, Claire Pulgar, called the police while Guerrero's son chased or ran after defendant. Pulgar called the police several times before two police officers arrived. Guerrero told the officers that both his sister-in-law and his son had witnessed defendant scratching his (Guerrero's) vehicle and that he had an independent witness, Luis Boultran. Guerrero did not see defendant scratch the car. The officer did not ask Guerrero if he wanted to press charges. Guerrero asked the officer what the steps would be to proceed. The officer said that Guerrero would have to go to 5555 West Grand and file the charges, which Guerrero did the next day. In the original complaint, Guerrero said that defendant keyed his car; the vehicle was scratched with an object. Guerrero did not know what the object was; he was not there. There was no reason why he mentioned the word "key." When Guerrero arrived at the corner, defendant's son was standing next to Guerrero's sister-in-law, Claire Pulgar.

¶ 17 The State then rested.

¶ 18 The defense called Claire Pulgar as a witness.

¶ 19 Claire Pulgar, the sole witness for the defense, testified she was Guerrero's sister-in-law. Just before the incident, they went to Pulgar's residence to get towels for their trip to the beach. Pulgar's daughter got out of the vehicle, a hatchback, and as the 9-year-old started to cross the street, defendant was speeding down Berwyn and almost hit her daughter. Defendant slowed down approximately three feet from Pulgar's daughter and stopped right in front of the girl. Pulgar's nephew, Gonzalez, told defendant to watch where he was going and to slow down, that it was a residential area and that he needed to slow down. After Pulgar and her daughter got the towels they left and saw defendant standing by the vehicle. She saw "his body over a small car on the passenger side walking along the car looking very suspiciously when I called him out." She said she observed his arm moving. *** I seen his arm across his other arm on the side. His arm like this walking nonchalant like nobody was going to see him." "When we said, 'hey.' He looked up, startled and he ran." Gonzalez and Pulgar chased defendant, and when Gonzalez caught up to defendant, he told him to stop and told Pulgar to call the police.

¶ 20 On cross-examination, Pulgar testified that when she entered the house, the car did not have any scratches. But when she came out five minutes later there were scratches on the car, along the passenger side and a portion of the driver's side. When she first came out, she saw defendant running his hand alongside the car. "We screamed, hey."

¶ 21 Defendant did not testify. At the conclusion of the trial, the trial court observed that it had considered the testimony of all of the witnesses and that there were inconsistencies in the testimony, but that the inconsistencies were primarily concerning the distance the witnesses ran

and the amount of time they ran to catch defendant and were "not of any significance whatsoever." The court found that the State proved beyond a reasonable doubt that defendant had scratched and damaged the car with a sharp object after words were exchanged about his having sped through the neighborhood.

¶ 22 A criminal conviction will not be reversed on appeal unless the evidence, viewed in the light most favorable for the State, was so improbable as to create a reasonable doubt of guilt. See *People v. Slim*, 127 Ill. 2d 302, 307 (1989); *People v. Smith*, 299 Ill. App. 3d 1056, 1061 (1998). The reasonable doubt standard applies, whether the evidence is direct or circumstantial. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). The question on appeal is whether, after viewing the evidence in the light most favorable for the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. See *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *People v. Killingsworth*, 314 Ill. App. 3d 506, 510 (2000); *Smith*, 299 Ill. App. 3d at 1061. The credibility of the witnesses, the weight of the evidence, and the resolution of any conflicts in the evidence, are matters for the trial court to decide. *Slim*, 127 Ill. 2d at 307. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt). A court of review must not retry the defendant. *Cunningham*, 212 Ill. 2d at 279. "[A] reviewing court should bear in mind that the fact finder had the benefit of watching the witness' demeanor."

Cunningham, 212 Ill. 2d at 284. A person commits the crime of criminal damage to property when he knowingly damages another's property. 720 ILCS 5/21-1(a)(1) (West 2012).

¶ 23 In this case, defendant's arguments on appeal all relate to the credibility of the witnesses who testified against him. The resolution of defendant's guilt depended on the credibility of the witnesses and the weight accorded to their testimony by the trial court. These determinations were within the province of the trial judge, who observed the witnesses, listened to their testimony, and found that defendant had been proved guilty beyond a reasonable doubt of criminal damage to property. Furthermore, the trial court was entitled to find that the evidence presented by the State was sufficiently consistent to establish that defendant knowingly damaged Carlos Guerrero's hatchback car by scratching it with a sharp, shiny, metallic object. Any inconsistencies in the evidence were matters for the trial court, as the trier of fact, to resolve. Viewing the evidence, as we must, in a light most favorable for the State, we find that the evidence was sufficient to prove that defendant was guilty of criminal damage to property beyond a reasonable doubt.

¶ 24 Finally, defendant complains about an inconsistency between the witnesses' testimony and a police report contained in the common law record which indicated that Gonzalez grabbed him around his body and the contrary trial testimony. Police reports are inadmissible hearsay and not admissible evidence. *People v. Williams*, 240 Ill. App. 3d 505, 506 (1992). As such, they were not part of the evidence considered by the trial court and will not be considered on appeal. Defendant also complains that Gonzalez injured him. There was no evidence whatsoever in the record that Gonzalez injured defendant, and, more importantly, the trial was about whether

defendant damaged the car with criminal intent not whether he was injured by Gonzalez.

¶ 25 The State's motion to strike defendant's brief is denied, and the judgment of the circuit court is affirmed.

¶ 26 Affirmed; motion to strike denied.