SIXTH DIVISION

Order filed: August 10, 2018

No. 1-17-1154

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 7521
	)	
NEEKHOACH YISREAL DUHART,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's brief did not comply with Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017). The State's evidence was sufficient to prove defendant guilty of criminal damage to government supported property beyond a reasonable doubt. The trial court did not abuse its discretion when it sustained the State's hearsay objection at trial when defense counsel asked an officer about statements contained in a police report.

¶ 2 Following a bench trial, defendant Neekhoach Yisreal Duhort was convicted of criminal damage to government supported property (720 ILCS 5/21-1.01(a)(1) (West 2014)). He was

sentenced to 24 months of "second chance" probation and ordered to pay restitution. Defendant now appeals the trial court's judgment *pro se*. We affirm.

¶ 3 At trial, defendant was represented by counsel. The parties stipulated that Gayle Gordon, who worked for the Department of Revenue for the City of Chicago, would testify that, on April 28, 2015, at 12:44 a.m., she put a City of Chicago parking boot, which is commonly referred to as a Denver boot, on a 2012 Ford Fusion vehicle that was parked on South Saginaw Avenue, in Chicago. The boot was operable and not damaged.

¶ 4 Chicago police officer Lonnell Williams testified that, on April 28, 2015, he was driving on the 8000 block of South Saginaw and saw defendant leaning down by the tire of a 2012 Ford Fusion vehicle. As Williams approached, he saw defendant removing the wheel, which had a City of Chicago boot attached to it, from the vehicle. Defendant had his foot on the boot and was pulling the tire off the boot and car. Defendant removed the tire from the boot and the car at the same time and then set the tire down on the grass. Williams got out of his vehicle and placed defendant into custody. The boot, which was used to lock wheels so vehicles could not be moved, was damaged and had a bent bar.

¶ 5 On cross-examination, Williams testified that, when he approached defendant, the tire was still attached to the vehicle and defendant had his foot on the boot. Defendant's "friend," who Williams identified by the last name of Davis, was standing next to defendant. There was another vehicle, which Williams believed defendant owned, that had its trunk open and was parked in front of the vehicle with the boot. Officer Pruszewski, who was not present at the scene of the incident, prepared the arrest report. Williams gave Pruszewski information about the

incident. The following exchange occurred when defense counsel asked Williams about statements contained in the arrest report:

"[DEFENSE COUNSEL]: And did you tell Officer [Pruszewski] that Offender Davis immediately –

[ASSISTANT STATE'S ATTORNEY]: Objection.

[DEFENSE COUNSEL]: What's the basis? It's in the arrest report.

THE COURT: The basis of your objection?

[ASSISTANT STATE'S ATTORNEY]: Judge, he can't be improperly [*sic*] impeached, because there is no foundation laid for the arrest report. It was not authored by this officer. Number two, what counsel is – the way he's phrased his question, the answer calls for hearsay.

THE COURT: Right, sustained.

[DEFENSE COUNSEL]: Judge, it doesn't – I –

THE COURT: You are trying to put in someone else's statement. That's hearsay.

[DEFENSE COUNSEL]: The officer said to the officer that prepared the report what the other offender said to him.

THE COURT: Right, and that's hearsay. That is actually totem pole hearsay."

¶ 6 The parties stipulated that Jim Curtin, who worked for the Department of Revenue for the City of Chicago, would testify that, on April 28, 2015, at 10:47 pm., he saw the boot at 8046 South Saginaw Avenue, in Chicago. The boot had been pried open and was bent, damaged, and

unusable. He would testify that the boot was the property of the City of Chicago and it was purchased with funds from both the City of Chicago and the State of Illinois governments.

¶ 7 Defendant testified that, on April 28, 2015, he was at 82nd Street and Saginaw because his sister lived on the block. He parked his vehicle on the street because there was something wrong with it and he wanted to fix it. In the area of his vehicle, there was another vehicle that had a boot on it. Defendant was not the owner of the vehicle with the boot and he did not know the owner. When police officers arrived, he was standing by his car about 15 feet away from the vehicle with the boot. Defendant never touched the boot and never attempted to remove the tire from it. Defendant's vehicle did not have a boot on it or any violations associated with it.

¶ 8 On cross-examination, defendant testified that, on April 28, 2015, he lived on South Maryland Avenue, in Chicago. When he parked his car on Saginaw that day, his tools were in his trunk, which was open. The vehicle with the boot was parked about two to three feet behind defendant's car.

¶ 9 The court found defendant guilty of criminal damage to government supported property. In doing so, the court stated that it had to make a credibility determination as to the believability of both the officer and defendant and it had no reason not to find the officer credible. The court subsequently denied defendant's motion for a new trial and sentenced him to 24 months of second chance probation (730 ILCS 5/5-6-3.4) (West 2014)) and ordered him to pay restitution to the City of Chicago Department of Revenue.[1]

[1] The record on appeal contains the sentencing order but does not contain the transcript of the sentencing hearing. On appeal, the parties do not raise issues with respect to defendant's sentence. Thus, the absence of the transcript of the sentencing hearing does not affect our disposition.

¶ 10 As an initial matter, as a reviewing court, we are entitled to the benefit of clearly defined issues with pertinent authority cited and cohesive legal arguments. *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 11. Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017) governs the content and format of appellate briefs. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. These rules are mandatory. *Voris*, 2011 IL App (1st) 103814, ¶ 8. When a party is a *pro se* litigant, he is not absolved from this burden on appeal. *Teton, Tack & Feed, LLC v. Jimenez*, 2016 IL App (1st) 150584, ¶ 19.

¶ 11 Defendant's brief does not comply with Rule 341(h). For example, defendant's statement of facts does not contain appropriate reference to pages of the record and asserts improper argument. See Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). Further, defendant's arguments contain no legal authority or citations to pages of the record. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). This court is not a repository into which an appellant may foist the burden of argument and research. *Enadeghe v. Dahms*, 2017 IL App (1st) 162170, ¶ 23. Accordingly, we may decline to address any arguments that defendant made that do not contain appropriate citation. *Id*.

¶ 12 Even though defendant's brief does not comply with Rule 341(h), we will not dismiss the appeal based solely on the deficiencies of the brief. Given that the issues are simple, the record is short, and we have the benefit of appellees's cogent brief on appeal, we can still discern, generally, his claims of error. We will therefore consider defendant's arguments despite his failure to adequately comply with Rule 341(h). See *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005) (" '[T]he striking of an appellate brief, in whole or in part, is a harsh sanction and is

appropriate only when the alleged violations of procedural rules interfere with or preclude review.' ") (quoting *Moomaw v. Mentor H/S, Inc*., 313 Ill. App. 3d 1031, 1035 (2000))).

¶ 13 Despite the deficiencies in defendant's *pro se* brief, we are able to identify two contentions of error that defendant appears to assert. First, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. Second, defendant contends that the trial court erred when it sustained the State's hearsay objection to defense counsel's questions regarding statements contained in a police report. To the extent defendant is attempting to raise any other contentions of error, we conclude that he has forfeited those contentions by failing to provide adequate argument and citation to authority. See *People v. Bock*, 242 Ill. App. 3d 1056, 1080-81 (1993).

¶ 14 With respect to the sufficiency of the evidence, when we review the sufficiency of the evidence on appeal, we must determine whether, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a bench trial, as here, it is the trial court's responsibility to determine the credibility of witnesses, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the evidence. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 62. We will not substitute our judgment for that of the trier of fact on questions about the weight of the evidence or the credibility of the witnesses. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 9. The testimony of a single witness is sufficient to convict if the witness is found to be credible. *Daheya*, 2013 IL App (1st) 122333, ¶ 62. Further, when parties enter into a stipulation, it is an

agreement between the parties or their attorneys with respect to an issue before the court and, generally, a defendant is precluded from attacking or otherwise contradicting any facts to which he stipulated. *People v. Woods*, 214 Ill. 2d 455, 468-69 (2005). We will not reverse a conviction unless the evidence is so improbable or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 15 To prove defendant guilty of criminal damage to government supported property as charged, the State had to prove beyond a reasonable doubt that defendant knowingly damaged any government supported property without the consent of the State. 720 ILCS 5/21-1.01(a)(1) (West 2014); See *People v. Carr*, 2013 IL App (3d) 110894, ¶ 18. Here, we find that the evidence was sufficient for a rational trier of fact to conclude that defendant was guilty of criminal damage to government supported property beyond a reasonable doubt.

¶ 16 The evidence at trial established that, in the early morning hours of April 28, 2015, the City of Chicago placed an operable and undamaged City of Chicago parking boot on a 2012 Ford Fusion vehicle that was parked on South Saginaw Avenue. That same day, Officer Williams saw defendant by the tire of the Ford Fusion vehicle, with the City of Chicago boot attached to the wheel. Defendant's foot was on the boot and he was pulling the tire off the boot and car. Defendant removed the tire from the boot and the car at the same time and then placed the tire in the grass. Williams testified that the boot was damaged and had a bent bar. Later that evening, an employee of the Department of Revenue of the City of Chicago saw the boot on South Saginaw and observed that it was bent, damaged, and unusable. The parties stipulated that the employee would testify that boot was the property of the City of Chicago and purchased with funds from

the City of Chicago and the State of Illinois governments. We find that this evidence was sufficient for a rational trier of fact to conclude that defendant was guilty of criminal damage to government supported property beyond a reasonable doubt.

¶ 17 Defendant argues that he was denied a fair trial because Williams testified inconsistently. He asserts that Williams first testified he saw defendant's foot on the boot pulling the tire and boot at the same time and later testified that he saw the tire with the boot attached in defendant's hand. As previously noted, as the fact finder, it was the trial court's responsibility to resolve alleged inconsistencies and conflicts in the evidence. *People v. Bannister*, 236 Ill. 2d 1, 18 (2009). From our review of Williams's testimony, we cannot find that his testimony was so inconsistent or insufficient that no reasonable person could accept it beyond a reasonable doubt. See *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) ("Testimony may be found insufficient *** only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.").

¶ 18 Further, we note that, although defendant testified that he never touched the boot or attempted to remove the tire from it, the trial court found Williams credible and necessarily accepted Williams's version of the incident over defendant's competing version. See *Daheya*, 2013 IL App (1st) 122333, ¶ 62 (the testimony of a single witness is sufficient to convict if the witness is found to be credible); see also *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) ("a fact finder need not accept the defendant's version of events as among competing versions").

¶ 19 In sum, viewing the evidence as a whole and in the light most favorable to the State, we conclude that a rational trier of fact could find defendant guilty of criminal damage to government supported property beyond a reasonable doubt.

¶ 20 To the extent defendant is arguing that the trial court improperly sustained the State's hearsay objection when defense counsel asked Williams about Davis's statements contained in the arrest report, we disagree. The general rule against hearsay does not allow, at trial, the introduction of an out-of-court statement offered to prove the truth of the matter asserted. *People v. Rush*, 401 Ill. App. 3d 1, 9 (2010). If police reports, which often consist almost entirely of out-of-court statements of persons other than the police officer, are offered to prove the truth of the matter asserted therein, they are hearsay. *People v. Banasik*, 93 Ill. App. 3d 612, 616 (1981).

¶ 21 Generally, the admission of evidence is within the sound discretion of the trial court, and we will not disturb a trial court's evidentiary ruling absent an abuse of that discretion. *People v. Hamerlinck*, 2018 IL App (1st) 152759, ¶ 39*; In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 20. We will only find that a trial court abused its discretion if its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Munoz*, 398 Ill. App. 3d 455, 479-80 (2010).

¶ 22 Here, defendant asserts that the trial court erred when it sustained the State's objection to defense counsel's question to Williams about Davis's statements contained in the police report. Defendant argues that the police report shows that Davis admitted that he removed the boot and was going to return it to the city and that defendant had nothing to do with this matter. Davis's statements contained in the police report were inadmissible hearsay because they were out of

court statements offered to prove the truth of the matter asserted, *i.e.* that Davis admitted he removed the boot and defendant had nothing to do with the matter. Accordingly, we find that the court did not abuse its discretion when it sustained the State's hearsay objection to defense counsel's questions about the statements contained in the police report.

¶ 23 Defendant argues that the State was allowed to have hearsay both ways and he was denied "fundamental fairness" because the court sustained the State's hearsay objection about the police report at trial but, at the preliminary hearing, his hearsay objection was denied when Pruszewski read the police report into the record. Initially, we note that the transcript of the preliminary hearing is not part of the record on appeal.[2] However, even if we accept defendant's representations as true, we find no error. Hearsay statements are admissible at preliminary hearings. See *People v. Garner*, 146 Ill. App. 3d 743, 746 (1986) (finding the court did not err in allowing hearsay testimony at a preliminary hearing); *People v. Anderson*, 112 Ill. App. 3d 270, 273 (1983) (noting that hearsay statement would have been allowed at preliminary hearing); *People v. Velez*, 72 Ill. App. 2d 324, 335 (1966) ("fundamental fairness does not require that hearsay evidence be excluded at the preliminary hearing"). Thus, we are unpersuaded by defendant's argument that he was denied a fair trial because hearsay was permitted at the preliminary hearing but excluded at trial.

¶ 24 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 25 Affirmed.

[2] Generally, it is appellant's burden to present a complete record on appeal and we presume in the absence of such a record that the trial court acted in compliance with the law. *People v. Threatte*, 2017 IL App (2d) 160161, ¶ 17 (citing *Foutch v. O'Bryant*, 99 511. 2d 389, 391-92 (1984)).