2020 IL App (1st) 191294-U

No. 1-19-1294

Order filed December 24, 2020

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 18 MC1 222452
	)	
GHALEB AZROUI,	)	Honorable
	)	Daniel Gallagher,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Delort and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that defendant was guilty of criminal damage to property is affirmed over defendant's contention that the State failed to establish that the property was damaged when he wrote on a window.

¶ 2 Following a bench trial, defendant Ghaleb Azroui was found guilty of criminal damage to property and sentenced to 12 months' supervision. On appeal, defendant argues that the trial

court's judgment[1] must be reversed because the property was not damaged when he wrote on a window. For the following reasons, we affirm.[2]

¶ 3 Defendant was charged by misdemeanor complaint with criminal damage to property. The complaint alleged that on or around October 10, 2018, defendant knowingly and unlawfully damaged the property of Avenue Property Management located on the 5300 block of North Cumberland Avenue in Chicago, Illinois without consent, said damage being less than $300 (720 ILCS 5/21-1(a)(1) (West 2018)). See 720 ILCS 5/21-1(d)(1)(B) (West 2018) (when the damage to property does not exceed $500, the offense is a Class A misdemeanor). The complaint was subsequently amended to include the words "he wrote on glass windows with a permanent marker causing damage."[3]

¶ 4 Jimmy Hallars, the maintenance engineer for Catherine Courts Condominiums located on the 5300 block of North Cumberland Avenue in Chicago, Illinois, testified that around 9 p.m. on October 7, 2018, he learned that the property's lobby windows were damaged. In the lobby, Hallars observed "[w]riting on the windows with a permanent Magic Marker." Hallars believed the writing was in permanent marker because he tried to remove it with a wet rag but "it wouldn't come off." The following morning, Hallars purchased a product to assist in removing the writing, but when he returned to the property, the window was clean.

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[1] Both defendant and the State use the word "conviction" to describe the trial court's judgment in this case. However, if defendant successfully complies with all of the terms of supervision, the court may dismiss the charges against him, 730 ILCS 5/5-6-3.1(e)(West 2018), and would not result in a conviction. 730 ILCS 5/5-6-3.1(f)(West 2018). Thus, we will refer to the "conviction" as the trial court's judgment or finding of guilt.

[2] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

[3] The reports of proceedings show the court allowed the amendment without objection. The amended complaint is not included in the record on appeal.

¶ 5 Later that day, Hallars reviewed security footage of the lobby taken around 8:45 p.m. on October 7, 2018. The video was played in court. Hallars testified that he recognized the man in the video to be defendant, whom he identified in court. The court noted that defendant appeared to be holding a "pen or something" in his right hand. Hallars also identified a photograph of the writing on the window.[4]

¶ 6 Paula Walega, the president of the Catherine Courts Condominiums Association, testified she worked with the board's management company, "Avenue One," to oversee daily operations. Walega testified that defendant, whom she identified in court, owned a condominium in the property. On October 7, 2018, Walega learned that there was writing on the property's lobby window. At a board meeting around November 1, 2018, Walega spoke to defendant about the writing on the window. According to Walega, during that conversation, defendant stated "there was no damage and that he own[ed] the building so he felt he had a right." In the past, defendant had taped typewritten fliers around the building on walls, elevators, and doors, which were removed by the association. Walega testified that defendant was upset that board members removed his fliers, so he felt forced to write on the window.

¶ 7 On cross-examination, Walega testified that she never saw defendant write on the window. To Walega's knowledge, no one gave defendant permission to write on the window. On redirect examination, Walega testified that in order for someone to utilize the common areas of the

[4] Neither the video containing security footage of the lobby nor the photograph of the writing on the window are included in the record on appeal. As the appellant, it is defendant's burden to provide a sufficiently complete record on appeal so that this court can be fully informed about the issues. *People v. Moore*, 377 Ill. App. 3d 294, 300 (2007). Absent a complete record, we must presume the trial court's judgment conforms to the law and has a sufficient factual basis. *Id.* Any doubts arising from the incomplete record will be resolved against defendant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

property, they needed permission from the association. On recross examination, Walega testified that such permission is requested through the property manager.

¶ 8 Ronald Ohr, a licensed representative for Avenue One Management and the property manager of Catherine Courts Condominiums, testified that if anyone wanted to mark the walls or post fliers in a common area, they needed to seek his permission. Ohr testified that defendant did not ask for permission to write on the property's lobby window. On cross-examination, Ohr testified that there were numerous people who could provide permission to post fliers in a common area, including Avenue One Management's office staff or Walega.

¶ 9 After closing arguments, the trial court found defendant guilty of criminal damage to property. The court stated it watched "a sequence of videos" which "clearly show[ed]" defendant writing on the window. The court further noted that "damage can be temporal," explaining that if a baseball is thrown through a window, breaks the window, and then the window is fixed, that "doesn't mean there wasn't damage temporally." Instead, "the remediation simply mitigates the concept that there was damage."

¶ 10 The court immediately proceeded to sentencing. Following a hearing, it sentenced defendant to 12 months' supervision and to either 10 days of "SWAP" or a mental health evaluation and recommended treatment. The court also imposed $270 in fines, fees, and costs, and $250 in restitution for cleaning fees.

¶ 11 Defendant filed a motion to reconsider the finding or, in the alternative, for a new trial, which the court denied. Defendant also filed a motion to reconsider sentence, which the court

granted in part, waiving defendant's fines, fees, and costs along with his restitution "because it was not proved." Defendant appealed.[5]

¶ 12 On appeal, defendant argues that the trial court's finding of guilt must be reversed because the State failed to prove that the window was "damaged" when he wrote on it.

¶ 13 When reviewing a challenge to the sufficiency of the evidence, we ask whether, "after viewing the evidence in a light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt." *People v. White*, 2017 IL App (1st) 142358, ¶ 14. We draw all reasonable inferences from the evidence in favor of the State. *People v. Hardman*, 2017 IL 121453, ¶ 37. It is the trier of fact's duty "to assess the credibility of witnesses, weigh and resolve any conflicts in the evidence, and draw reasonable conclusions from the evidence." *People v. Church*, 2017 IL App (5th) 140575, ¶ 21. Thus, we will not substitute our judgment in those areas for that of the trier of fact. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 44. Still, we may reverse a finding of guilt where the evidence "is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 14 The evidence at trial had to establish beyond a reasonable doubt that defendant knowingly damaged the property of Avenue Property Management when he wrote on the window with a permanent marker. 720 ILCS 5/21-1(a)(1) (West 2018). Defendant does not deny that he wrote on

[5] A finding of guilt that results in supervision is not a final judgment as it leaves open whether the defendant will be sentenced at all. *People v. Saleh*, 2013 IL App (1st) 121195, ¶ 11 (when supervision is completed successfully, the charges are dismissed and the result resembles an acquittal). However, we have jurisdiction to consider defendant's challenge to the court's nonfinal judgment here under Illinois Supreme Court Rule 604(b) (eff. July 1, 2017). *People v. Bozarth*, 2015 IL App (5th) 130147, ¶ 12; Ill. S. Ct. R 604(b) (a defendant placed under supervision "may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both").

the window with a marker. He solely argues the State failed to prove the window was in fact damaged when he wrote on it, an essential element of the offense.

¶ 15 Contrary to defendant's contention, we find that the evidence at trial was sufficient to establish the property was damaged by his conduct. Defendant intentionally wrote on the window. See 720 ILCS 5/4-5(b) (West 2018) ("When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally."). Hallars testified he was unable to remove the writing with a wet rag, and thus believed it was done in permanent marker, necessitating his purchase of a special product to clean the window. Although the window was cleaned before Hallars returned, the court found that the temporary existence of writing on the window sufficed to show that it was damaged. The trial court viewed the video footage of the lobby and the photograph showing the writing on the window, and concluded the window was damaged. As this evidence is not included in the record on appeal, we must resolve any doubts arising from the record against defendant and presume the trial court's finding conformed to the law and had a sufficient factual basis. See *Moore*, 377 Ill. App. 3d at 300.

¶ 16 Still, defendant asserts that the window was not damaged as required for the offense because it was restorable to its previous condition and "damage" implies permanence. He contends that because the window's "glass was obviously cleaned with simple measures, was not broken, and did not have to be replaced," but was merely "temporarily dirty," his conduct fell short of causing damage.

¶ 17 Defendant points out that the criminal damage to property statute does not define "damage," and contends that, to the extent construction of the statute is required, our review here

is *de novo*. The State responds that the statute's language is "plain and unambiguous," so the court "must apply the statute without resort to further aids of statutory construction." See *People v. Anthony*, 2011 IL App (1st) 091528, ¶ 18. We agree with the State that the language of the statute is plain and unambiguous.

¶ 18 We give the language of a statute its plain and ordinary meaning and consider the statute as a whole. *People v. Smith*, 2016 IL 119659, ¶ 27. Using Black's Law Dictionary for the definition of "damage," the plain and ordinary meaning of the word "damage" is "1. Loss or injury to person or property; esp. physical harm that is done to something or to part of someone's body, actionable damage resulting from negligence. 2. By extension, any bad effect on something." *Damage*, Black's Law Dictionary (11th ed. 2019). "Injury" is "1. The violation of another's legal right, for which the law provides a remedy; a wrong or injustice *** 3. Any harm or damage." *Injury*, Black's Law Dictionary (11th ed. 2019). "Harm" is "injury, loss, damage; material or tangible." *Harm*, Black's Law Dictionary (11th ed. 2019). Just as the criminal damage to property statute contains no requirement that the "damage" be permanent or that "damage" cannot be temporary (see 720 ILCS 5/21-1(a)(1) (West 2018)), the plain and ordinary meaning of damage does not specify that the damage be irremediable. We will not read a temporal limitation into the statute that it does not contain. See *People v. Lavallier*, 187 Ill. 2d 464, 468 (1999) ("When the language of a statute is plain and unambiguous, courts will not read in exceptions, limitations, or other conditions."). Accordingly, putting aside the fact there was no evidence regarding who cleaned the window and how easy it was to clean, the fact that the window was at some point cleaned does not negate the fact that defendant knowingly damaged it when he intentionally wrote on it.

¶ 19 Defendant adds that because his conduct did not cause damage to the property, the State also failed to prove he acted with the necessary intent. However, because we conclude that the requisite damage was adequately proved by the State, we need not address this claim. Suffice it to say that, given defendant intentionally wrote on the window with a permanent marker, damage to that window was practically certain to occur as common sense dictates that writing with a permanent marker on a window results in injury to that window. See 720 ILCS 5/4-5(b) (West 2018) (a person acts knowingly when he is consciously aware that the result of his conduct, as described by the statute defining the offense, "is practically certain to be caused by his conduct").

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.