

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 24, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1590-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

EMMANUEL L. BRANCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County: MICHAEL KIRCHMAN, Judge. *Affirmed.*

¶1 DEININGER, J.¹ Emmanuel Branch appeals a judgment convicting him of causing criminal damage to another's property. He appears to challenge

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the sufficiency of the evidence to support the jury's guilty verdict. After reviewing the record, we affirm the conviction.

BACKGROUND

¶2 The State filed a criminal complaint charging Branch with one count of causing criminal damage in excess of \$1,000 to another's property, a felony, and one count of trespass to land. The latter count was apparently dismissed, and the criminal damage charge, reduced to a misdemeanor, was tried to a jury after the trial court determined that Branch was competent to assist in his own defense. Branch represented himself at trial, with standby counsel present as ordered by the court.²

¶3 The State presented testimony from the investigating officer who stated that Branch had admitted to him that he, Branch, had dug an eight-foot wide by three-foot deep trench across the driveway on property owned by one Pearson. The officer also identified photographs he had taken of the excavation, which were received into evidence. Pearson testified that he had not consented to Branch's actions. A surveyor testified that he had surveyed the real estate in question, which Branch had once owned, and that "90%" of the driveway across which Branch had dug the trench was situated on Pearson's property. He also testified that he had had conversations with Branch, and that based on those conversations, Branch was aware of the location of the property lines: "He knows where we set the stakes."

² Branch does not challenge on appeal the trial court's determination that he was competent to proceed, or the trial court's decision to allow him to discharge his counsel and represent himself at trial, with appointed counsel standing by.

¶4 The State also called a township official, who testified that the town had repaired the damage to the Pearson driveway because it was situated in the town road right-of-way, and that access to the Pearson residence for fire and ambulance purposes would not have been possible because of the trench. The official also verified that the town had not consented to the excavation, and that the repair costs exceeded \$1,000. Finally, the State presented testimony from an attorney who had drafted and notarized Branch's signature on an easement agreement between Branch and one of Pearson's predecessors in title. The agreement granted Branch a drainage easement, but made its "construction," "location and layout" subject to the grantor's approval.

¶5 In his defense, Branch presented only his own testimony and numerous exhibits. He told the jury that he had not intended to do damage, but only to "improve property, and to remove the obstruction to drainage to the garden and to place a driveway in a place where it would improve the property." The jury found him guilty of causing criminal damage to Pearson's property. Branch appeals the judgment of conviction subsequently entered.

ANALYSIS

¶6 The State asserts that Branch's brief to this court is completely inadequate, in that Branch's arguments are unsupported by references to legal authority, and that it is unclear what issues Branch is attempting to raise or what his arguments are. That is the sum total of the State's response to Branch's appeal. We largely agree with the State's characterization of Branch's brief, and with its assertion that a pro se appellant who is not incarcerated is generally bound by the same rules which apply to counsel in this court. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). We also acknowledge that

we may decline to review an issue that is inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). However, while much of Branch's submission to this court borders on gibberish, we believe that he may be claiming that there was insufficient evidence before the jury to support its finding of guilt on the criminal damage charge.³ Accordingly, we have reviewed the transcript of the jury trial and the exhibits accepted into evidence during the trial.

¶7 We have summarized the evidence adduced at trial above. In order to convict Branch of misdemeanor criminal damage to property, in violation of WIS. STAT. § 943.01(1), the State was obligated to convince the jury beyond a reasonable doubt that five elements were established:

The first element requires that the defendant caused damage to physical property. The word "damage" includes anything from mere defacement to total destruction.

The second element requires that the defendant intentionally caused damage to physical property. The term "intentionally" means that the defendant had the mental purpose to damage the property or was aware that the conduct was practically certain to cause that result.

....

The third element requires that the property belonged to another person.

³ Branch's "statement of the issues" in his opening brief includes the following: "Lack of facts in record backed by any other than fraudulent documents upon which plaintiff could get any legal warrent [sic] for arrest for any reason or purpose except torture in attempt to get false confession from 75 year old defendant." (The only other issue identified in the "statement of issues" is "[r]eview and restore right of Jury to determine the application of the law and the facts as established by William Penn and our ancestors covenant with God that circuit court denied." We decline to address this "issue" for the reasons advanced by the State, noted above.)

The fourth element requires that the defendant caused damage to the property without the consent of [the owner]. “Without consent” means that there was no consent in fact by [the owner].

The fifth element requires that the defendant knew the property belonged to another person and knew that the other person did not consent to the damage of the property.

WIS JI—CRIMINAL 1400 (footnotes omitted). Based on our review of the record, we are satisfied that the jury had sufficient evidence before it to support its verdict.

¶8 Our review of jury verdicts on sufficiency of the evidence challenges is highly deferential. The supreme court in *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990), discussed the difference between a jury’s obligation to acquit unless the State has proven a defendant guilty beyond a reasonable doubt, and our standard for reviewing the sufficiency of the evidence to support a jury’s verdict of guilty:

The test is not whether this court or any of the members thereof are convinced [of the defendant’s guilt] beyond reasonable doubt, but whether this court can conclude the trier of facts could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true.... The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted....

Id. at 503-04 (citation omitted). The court explained that the “reasonable doubt standard of review” is thus as follows:

[I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

Id. at 507 (citation omitted).

¶9 Branch did not dispute that he dug the trench at issue, and there was ample evidence, in the form of the owner's testimony, that of the town official, and from photographs, that the trench constituted "damage" to Pearson's driveway. Testimony from the surveyor and Pearson were sufficient to establish that the damaged driveway "belonged to another," and that Branch was aware of that fact. The jury heard first-hand testimony that neither the town nor Pearson had consented to the excavation of Pearson's driveway, and the jury could reasonably infer from "all the facts and circumstances" that Branch knew they had not consented to it.

¶10 That leaves the element of intent to cause damage, which appears to have been the basis of Branch's defense at trial. He maintained that, for a variety of reasons, he had some responsibility to "improve" Pearson's driveway in the manner he did. The jury was entitled to reject his explanation for his actions, and to conclude that, even if he did not have the "mental purpose" to damage

Pearson's driveway, he certainly was aware that his "conduct was practically certain to cause that result." *See WIS JI—CRIMINAL 1400.*⁴

¶11 In short, we have found no basis in our review of the record to conclude that "no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See Poellinger*, 153 Wis. 2d at 507. Accordingly, we affirm Branch's conviction.

CONCLUSION

¶12 For the reasons discussed above, we affirm the appealed judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See WIS. STAT. RULE 809.23(1)(b)4.*

⁴ The jury was instructed as follows regarding the element of intent to cause damage to physical property:

Intent to cause damage to physical property must be found as a fact before you can find the Defendant guilty. You cannot look into a person's mind to find intent. You may determine such intent directly or indirectly from all of the facts in evidence concerning this offense. You may consider any statements or conduct of the Defendant which indicate state of mind.

You may find intent to cause damage to property from such statements or conduct, but you are not required to do so.

