

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
PANKAJUMAR N. PATEL	:	
	:	
Appellant	:	No. 1321 MDA 2022

Appeal from the Judgment of Sentence Entered July 25, 2022
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003745-2021

BEFORE: PANELLA, P.J., BENDER, P.J.E., and McCAFFERY, J.

MEMORANDUM BY PANELLA, P.J.:

FILED: NOVEMBER 22, 2023

Pankajumar Patel appeals his judgment of sentence for criminal mischief – damage to property, which Patel was charged with after key scratches were found on a vehicle parked in his employer’s parking lot. At Patel’s non-jury trial, the Commonwealth played a video from the surveillance cameras in the parking lot that purportedly showed Patel keying the vehicle, and the trial court found Patel guilty. Patel argues on appeal that the evidence was insufficient to sustain the criminal mischief conviction, emphasizing that the video played at trial does not show Patel causing the damage in question to the vehicle. We disagree and affirm his judgment of sentence.

Patel was employed at the driver licensing division at PennDOT’s Riverside Office Center (“ROC”) in Dauphin County for approximately ten years, including at the time of the incident in question. Patel regularly took

walks in the employee parking lot during his breaks, including his lunch break. Marie Mayhew also worked at the ROC, but in a different unit than Patel. Patel and Mayhew had never met, though Patel's wife worked in Mayhew's unit at some point.

On May 17, 2021, Mayhew called the police to report she had found key scratches on her vehicle parked in the ROC employee parking lot the preceding Friday, on May 14. Capitol Police Officer Justin Seibel responded to the report on May 18. He spoke with Mayhew and examined the damage to her car. PennDOT's internal security also provided Officer Seibel with a video clip from one of the surveillance cameras in the parking lot. The video was from a few minutes after noon on May 14, and showed a man later identified as Patel walking by Mayhew's vehicle in the parking lot.

On May 21, Officer Seibel interviewed Patel one-on-one about the damage to Mayhew's car. The officer stated that Patel, whose first language is Gujarati, was struggling with his English "but he seemed to understand me." N.T., 7/25/2022, at 28.

Officer Seibel informed Patel he was investigating the damage to Mayhew's vehicle and that "everything was on surveillance cameras," though he did not show any video footage to Patel. *Id.* at 24. According to Officer Seibel, Patel explained to him that he must have accidentally touched the vehicle. Patel provided the following verbatim handwritten statement to Officer Seibel:

I am Mr. Patel explaining accidently 5/14/21 touch but if any expense need I Pay for it from my finger nail it happens. I am extremely sorry for this all thing this true & never been happen

Commonwealth's Exhibit 4 (misspellings and grammatical mistakes in original).

The officer charged Patel with criminal mischief - damage to property, as a misdemeanor in the second degree. The case proceeded to a bench trial, where Patel had an interpreter.

The Commonwealth presented Mayhew as its first witness. Mayhew stated she worked at PennDOT's ROC and that she had seen Patel in passing, but she had never met him. **See** N.T., 7/25/2022, at 12. Mayhew explained she bought a new vehicle on April 3, 2021. She parked it at the ROC employee parking lot when she went to work, and within three weeks, she noticed key marks all over the back of her car. **See id.** at 13. Mayhew believed the scratches happened at work, and she therefore went to an employee at PennDOT's HR department to report the incident. She knew there were surveillance cameras used to monitor the parking lot, which, according to Mayhew, are clearly visible and record all activity in the parking lot. **See id.** at 17-18. Mayhew asked the HR employee to review the video from the parking lot, but the video footage did not show anything incriminating happen to Mayhew's car in the parking lot. **See id.** at 13.

Mayhew testified she continued to park in the ROC parking lot, but she began to check for new scratches every day in which she parked her car in

the parking lot. She stated that she checked the car in the morning, and then again in the afternoon when she left work. **Id.** On May 14, a Friday, Mayhew stated that she found “more scratches” on her car when she did her afternoon check of the car. **See id.**

Mayhew stated that she again went to her HR department to report the new scratches the following Monday morning, May 17. **See id.** In addition, Mayhew stated she also called the police to file a report on May 17. **See id.** at 16.

Mayhew was asked at trial to describe the damage to her car, which she described as:

There were several key scratches on the back. The back was very bad there, was like 7 key scratches, some were a couple inches, some were over 2 feet.

...There was one [on the] front car – of the car was like 12 inches, and then all the rest of the scratches were on the back of the car.

Id. at 14-15.

Officer Seibel also testified. He reiterated he responded on May 18 to a report of a parked car being keyed at ROC on May 14, at which time he spoke with Mayhew. According to Officer Seibel, Mayhew told him the scratches on her car had occurred on May 14 and she did not mention anything about any key scratches occurring prior to May 14. **See id.** at 28.

Officer Seibel stated he was also provided with a video clip from the surveillance cameras used in the parking lot. The Commonwealth played the

video clip, which is 57 seconds long and lasts approximately from 12:06 to 12:07 p.m. on May 14.

For context, the video, which this Court has reviewed, shows who everyone agrees is Patel briskly walking down a line of cars in the ROC parking lot. One of those cars belongs to Mayhew and Patel passes by the rear of Mayhew's car at approximately 12:06:23. He continues to briskly walk down the line of cars, passing 12 more parking spaces, and circles around the rear and side of the final car in the row. He then turns and continues to briskly walk the opposite way in the next row of cars, now passing the front end of the cars he just walked by in the previous row. He passes by the front of Mayhew's vehicle at approximately 12:07:04.

As the video was playing, the Commonwealth asked Officer Seibel to describe what he saw on the video as Patel approached the rear of Mayhew's car on his walk:

A. He's behind her Toyota RAV4 I believe it was or is.

Q. Can you describe any [movements], if any, that you see?

A. It's difficult to see from this vantage point. The surveillance cameras aren't mounted high on the building itself that covers this parking lot. But you can see he walked away from the car.

THE COURT: Did anybody else report any damage to any other cars?

THE WITNESS: Not to my knowledge. And now he's circling back. I don't know if you can slow that down more so.

I reviewed this [video] several times, numerous times, and very briefly when I was looking at it, it's hard to see on this monitor,

however, I can see his right hand extend to where the rear – or, I’m sorry, the front bumper, specifically the headlight, right below the headlight on the passenger side.

[PROSECUTOR]: I’m sorry, I don’t have that capability of slowing it down.

A: You can see his upper torso turn as he reaches with his right hand. Unfortunately, you really can’t see on this monitor, but that’s what I recall looking at.

Q. And you would say he pauses at the car?

A. Yea, very briefly. The scratch on the front was just one kind of an oblique, you know, mark. It wasn’t very deep into the paint, but it was definitely through the clear coat.

Q. So there is damage to the front of the car?

A. Yes. In reviewing the tape, I can’t see what happens to the rear of the vehicle. I just see that he’s there. However, when he comes to the front in the video as I reviewed the video, you could see him hesitate ever so briefly and extend his arm and his torso turned and – right to where that damage was found on the bumper.

Id. at 21-22.

The officer reiterated that when he interviewed Patel, Patel stated that he had accidentally touched the car, and the officer had Patel provide a written statement, the one quoted above. Based on this statement and the video, Officer Siebel charged Patel with criminal mischief, with an incident date of May 14, 2021. ***See id.*** at 26.

For his defense, Patel first provided the testimony of his co-worker of seven years from PennDOT, Denise Hunter-Govan. She testified Patel routinely took walks three times in the parking lot during the workday,

including one at lunchtime. She also testified that Patel's English was difficult to understand, and that his data entry job did not require a strong command of the English language. She told the court that she interpreted for Patel when Patel needed to communicate with someone at work outside their immediate work group. She described Patel as very agreeable, and Hunter-Govan said that she had never seen Patel get angry or mention someone by the name of Marie Mayhew. **See id.** at 32-33.

Patel also testified at trial, again, through an interpreter. He stated he had lost his job at PennDOT. **See id.** at 28. He explained he does not know or understand English well, as he had only immigrated to the United States from India when he was in his mid-forties. **See id.** at 39, 40.

Patel stated that when he worked at PennDOT, he went on walks in the parking lot three times a day during his breaks. **See id.** at 40. He would walk down the rows of cars and would walk close to the cars so as to avoid getting hit by the moving cars. **See id.** at 41. He agreed that many other people go on walks in the parking lot, and it is most crowded with other walkers around lunchtime. **See id.**

When questioning turned to the video, Patel confirmed he did pass by Mayhew's car, but he had no idea who the car belonged to. The court asked Patel "why did it look like you were crouching behind the car?" **Id.** at 42. To which Patel answered he did not remember, but perhaps he had something stuck on his foot. **See id.**

Patel also explained that when Officer Seibel interviewed him, the officer told Patel he had scratched Mayhew's car when he walked past it. **See id.** at 43. According to Patel, he tried to explain to the officer that he had not intentionally scratched anyone's car but if his hand had accidentally touched a car when passing by it, he was sorry. **See id.**

At the close of testimony, the trial court credited the testimony of Mayhew about the damage to her car and stated there was enough circumstantial evidence to convict Patel of the criminal mischief charge. The trial court noted that Patel had no criminal record and that Mayhew's insurance company had paid for the damage to the car, though Mayhew had a deductible of \$50. The court therefore ordered Patel to pay \$50 to Mayhew as restitution with no other penalty imposed.

Patel filed a notice of appeal. Both he and the trial court complied with Pa.R.A.P. 1925. On appeal, Patel raises the following issues for our review:

I. Was the evidence presented by the Commonwealth insufficient to prove beyond a reasonable doubt that Mr. Patel committed criminal mischief, where there is insufficient evidence to prove Appellant actually damaged a vehicle, rather than merely walked past that vehicle, on May 14, 2021?

...

II. Was the evidence presented by the Commonwealth insufficient to prove Appellant intentionally damaged a vehicle that he walked past on May 14, 2021?

...

III. Was the evidence presented by the Commonwealth insufficient to prove beyond a reasonable doubt that Appellant caused \$1,473.00 worth of damage to a vehicle on May 14, 2021?

...

IV. Was the trial court's verdict of guilty of criminal mischief against the weight of the evidence, even assuming the credibility of the victim who testified that scratches to her vehicle appeared prior to May 14, 2021, where there was no video footage of anyone damaging her car in the parking lot prior to May 14, 2021, where the Commonwealth produced only 57 seconds of video footage of parking lot activity from the full day victim's car was parked on May 14, where Appellant is seen merely walking past the vehicle, and where Appellant denied intentionally scratching the vehicle, even after being lead to believe that footage existed that showed him damaging the vehicle?

Appellant's Brief, at 4-5.

Patel's first three issues on appeal raise challenges to the sufficiency of the evidence to support his conviction for criminal mischief. A claim challenging the sufficiency of evidence presents a question of law. **See Commonwealth v. Widmer**, 744 A.2d 745, 751 (Pa. 2000). The evidence presented at trial is sufficient when, viewed in the light most favorable to the Commonwealth as the verdict winner, the evidence and all reasonable inferences derived from the evidence are sufficient to establish all of the elements of the offense beyond a reasonable doubt. **See Commonwealth v. Blakeney**, 946 A.2d 645, 651 (Pa. 2008). The fact-finder, which passes upon the weight and credibility of each witness's testimony, is free to believe all,

part or none of the evidence. **See Commonwealth v. Ramtahal**, 33 A.3d 602, 607 (Pa. 2011).

It is true, of course, that the Commonwealth may sustain its burden entirely by circumstantial evidence. **See id.** at 607. However, a conviction must be based on more than mere suspicion or speculation. **See Commonwealth v. Hargrave**, 745 A.2d 20, 23 (Pa. Super. 2000).

Here, Patel was charged and convicted of criminal mischief – damage to property – as a misdemeanor of the second degree. This required the Commonwealth to show that Patel intentionally damaged the real or personal property of another – Mayhew’s vehicle. **See** 18 Pa. C.S.A. § 3304 (a)(5). In order to grade the criminal mischief as a misdemeanor of the second degree, Patel must have intentionally or recklessly caused “pecuniary loss in excess of \$1,000.” 18 Pa. C.S.A. § 3304 (b). Since the Commonwealth charged Patel with criminal mischief as a misdemeanor, the value of the damages suffered by Mayhew was an essential element of the Commonwealth’s burden of proof at trial. **See Commonwealth v. Battiato**, 619 A.2d 359, 363 (Pa. Super. 1993) (abrogated on other grounds).

We have reviewed the briefs of the parties, the pertinent legal authority, the certified record, and the trial court’s thorough opinion. We agree with the trial court, which offered an exhaustive recitation of the evidence, that the Commonwealth presented sufficient evidence to support Patel’s conviction for criminal mischief. Therefore, we agree with the trial court that this issue lacks

merit, adopt the analysis set forth by the trial court in its written opinion and affirm on its basis. **See** Trial Court Opinion, 11/15/22, at 1-9.

In his final issue, Patel challenges the weight of the evidence supporting his conviction. Our review of a weight claim involves review of the trial court's exercise of discretion in addressing the issue in the first instance. **See Commonwealth v. Talbert**, 129 A.3d 536, 545-45 (Pa. Super. 2015). "In order for a defendant to prevail on a challenge to the weight of the evidence, the evidence must be so tenuous, vague and uncertain that verdict shocks the conscience of the court." **Id.** (citation and internal quotation marks omitted).

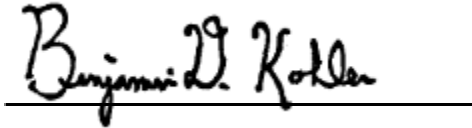
Here, the trial court relied on its own assessment of the credibility of the witnesses and review of the video recording in determining that the verdict did not shock its conscience. **See** Trial Court Opinion, 11/15/22, at 8. We can find no abuse of discretion in this reasoning, and therefore conclude this claim has no merit.

As none of Patel's issues on appeal merit relief, we affirm the judgment of sentence.

Judgment of sentence affirmed.

J-A16012-23

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/22/2023

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
:
v. : NO. 1321 MDA 2022
: 3745 CR 2021
:
PANKAJUMAR PATEL : CRIMINAL APPEAL

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 COUNTY

TRIAL COURT MEMORANDUM OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(A)

Appellant, Pankajumar Patel (“Appellant”) appeals from this Court’s Order dated July 25, 2022, which sentenced Appellant. This opinion is written pursuant to Pa.R.A.P. 1925(a).

Procedural History

On June 2, 2021, Appellant was charged with criminal mischief – damage to property.¹ Appellant was found guilty following a bench trial that was held on July 25, 2022. Appellant was ordered to pay \$50.00 in restitution with no further sentence.

On September 14, 2022, Appellant filed a notice of appeal in the Superior Court of Pennsylvania. On September 22, 2022, this Court ordered Appellant to file a concise statement of matters complained of on appeal. On October 13, 2022, Appellant complied with said order.

Factual Background

The following facts were established at a bench trial that took place on July 25, 2022. (Notes of Testimony, Bench Trial, 7/25/22) (hereinafter, “N.T.”).

On May 18, 2021, Marie Mayhew (Ms. Mayhew) reported that someone keyed her car at PennDOT where she works. (N.T., 9). Ms. Mayhew knew the Appellant from seeing him around PennDOT. (N.T., 12). Ms. Mayhew also worked with the Appellant’s wife at PennDOT. *Id.* Ms.

¹ 18 Pa.C.S.A. § 3304(A)(5).

Mayhew purchased a new vehicle on April 3, 2021. (N.T., 13). She parked it in PennDOT's parking lot. *Id.* She noticed key marks all over the back of her vehicle. *Id.* She went to the Human Resources department (hereinafter, "HR") to inform them. Ms. Mayhew testified that she had been sick for a few weeks and had not driven her vehicle many places. *Id.* HR initially could not find any video showing how the scratches occurred. (N.T., 13). Ms. Mayhew circled her vehicle every morning and every afternoon after work to observe any new marks. *Id.* On May 14, 2021, Ms. Mayhew noticed more scratches on her vehicle. *Id.* The following Monday morning, May 17, 2021, Ms. Mayhew went back to her HR department and demanded to see the video. *Id.* There were several key scratches to the back of Ms. Mayhew's vehicle. (N.T., 14). The back had approximately seven (7) key scratches, some over two (2) feet long. *Id.* The Commonwealth and the Defense stipulated to the fact that the video from HR showed the Appellant walking directly behind Ms. Mayhew's vehicle. *Id.* Ms. Mayhew testified that HR was unable to find the footage from when she first noticed scratches appearing, but they were able to find footage when she reported the scratches on May 17, 2021. (N.T., 15-16).

Officer Justin Seibel (hereinafter, "Officer Seibel") responded to PennDOT for a criminal mischief complaint. (N.T., 19-20). Officer Seibel reviewed the surveillance video and observed the Appellant walk behind Mr. Mayhew's vehicle, circle back to the vehicle again, then extend his right arm towards the vehicle, then pause at the vehicle. (N.T., 21-22). The places where Officer Seibel observed the Appellant pause and extend his arm match the areas on the vehicle with damage. (N.T., 22).

Officer Seibel interviewed Appellant the same week. (N.T., 23-24). Appellant explained to Officer Seibel that it was just an accident and that these things happen. (N.T., 24). Appellant explained that he accidentally touched the vehicle. (N.T., 26). Appellant provided a written

statement in English to the Officer that stated he might have done this with his fingernail on accident. (N.T., 24-25).

Denise Hunter-Govan (hereinafter, "Ms. Hunter-Govan"), a coworker of approximately seven (7) years, testified that Appellant would take walks three (3) times a day. (N.T., 30-31). Ms. Hunter-Govan testified that she would help the Appellant with English when he needed to speak to someone outside the department. (N.T., 33). She testified that the Appellant would misunderstand people and was generally agreeable. (N.T., 32-33).

James Murray (hereinafter, "Mr. Murray"), president of AFSCME at PennDOT, testified that he met with the appellant regarding the incident. (N.T., 34-35). He testified that he was present during a meeting between the Appellant and HR. (N.T., 35). The Appellant was asked why he scratched the vehicle and he answered, "Yes." (N.T., 37).

Appellant testified that he began working at PennDOT in 2011 as a clerk then a work leader. (N.T., 39-40). Appellant goes on a walk twice in during break time and once during lunch. *Id.* Appellant takes these walks in the parking lot. (N.T., 41). Appellant testified that he would circle the vehicles. *Id.* Appellant testified that he walked by Ms. Mayhew's vehicle, but he did not know who the vehicle belonged to. (N.T., 42). He testified that he could not remember why it looked like he was crouching behind Ms. Mayhew's vehicle. *Id.* Appellant testified that he did not scratch the vehicle and that if his hand touched it "or something" then he is sorry. (N.T., 43). He further testified that he was trying to explain to the officer that he did not do this and maybe his hand touched the vehicle. *Id.*

Appellant's Statement of Matters Complained of on Appeal

1. The [Appellant] was denied due process, in that he was denied exculpatory evidence and the opportunity to conduct discovery, including video footage prior to May 14, 2021, where the Court cited reliance on the credibility of surprise testimony regarding the

date(s) the damage occurred, despite the date noted on the charging documents, and where:

- a. Affiant testified that Mayhew never mentioned anything about damage occurring prior to May 14;
 - b. Mayhew's trial testimony regarding the existence of video footage prior to May 14 was inconsistent;
 - c. [Appellant] was never advised that HR had tried to find footage prior to May 14 or that Mayhew "knows" there's footage before then, and was therefore denied the opportunity to interview relevant witnesses and inspect relevant evidence;
 - d. The Commonwealth failed to produce any video footage of damage prior to May 14;
 - e. The Commonwealth failed to provide exculpatory evidence regarding the inspection of video footage prior to May 14 and the lack of any footage of the [Appellant] or any damage being caused to Mayhew's car; and
 - f. Affiant actively represented to [Appellant] that "everything" was caught on video on May 14.
2. The Commonwealth did not present sufficient evidence to prove beyond a reasonable doubt that [Appellant] actually caused damage to the vehicle belonging to Marie Mayhew observed on May 14, 2021, where:
- a. The May 14 video of Defendant did not show [Appellant] causing the damage and, alternately, demonstrated that the [Appellant] could not have caused the extent of damage charged, due to the manner and pace at which he walked past the vehicle, and
 - b. Affiant testified that he could not see what happened to the rear of the vehicle from reviewing the tape;
 - c. No video footage was produced of activity prior to May 14, and
 - d. Although the Court found Mayhew's surprise claim about the existence of previous damage credible, Mayhew also testified that HR had looked and found no footage of the Defendant prior to May 14, creating reasonable doubt as to the identity of the person or persons who caused the alleged previous damage.
3. The Commonwealth did not present sufficient evidence to prove beyond a reasonable doubt that [Appellant] possessed the intent to damage property belonging to Mayhew, where:
- a. [Appellant] was told, but not shown, that video evidence captured him "keying" Mayhew's car, and
 - b. Witness testimony and a written statement drafted by the [Appellant] established that [Appellant] struggled to convey that he did not intentionally cause damage but if there was video the only explanation is that it must have been accidental, and that he denied having a key in his hand, and
 - c. Testimony established that [Appellant] had never met the victim and had no motive to cause damage to her car.
4. The verdict was against the weight of evidence, where [Appellant] denied intentionally causing any damage, where video footage did not support the causation or extent of

damage alleged, where the court found Mayhew's surprise testimony credible regarding alleged damage caused prior to May 14 despite Mayhew's own testimony that HR could not find relevant video footage prior to May 14 and the affiant testified that Mayhew never mentioned any damage prior to May 14.

5. The Court abused its discretion in denying a motion for new trial, where the [Appellant] was denied the opportunity to conduct discovery that would have refuted the credibility of Mayhew and established no evidence of prior contact with Mayhew's vehicle.

Discussion

Appellant first argues that he was denied his due process rights. Specifically, Appellant argues that he was not permitted to conduct discovery and was denied exculpatory evidence regarding additional videos that were not played in court. We disagree. While the victim in this case referenced prior incidences in which she notices scratches, she also testified that HR only had video of the incident that occurred on May 14, 2021. (N.T., 15-16). This is the only video footage known to exist in this case. The Commonwealth provided said video to the defense and it was played in court during Appellant's bench trial. As all evidence regarding the video surveillance footage was handed over to the defense, we find that Appellant's due process rights were not violated. Additionally, contrary to Appellant's argument that this Court relied on surprise testimony, this Court explicitly stated on the record that the victim was credible in her testimony. (N.T., 48). This Court came to this conclusion based on the testimony and information provided in court, including the surveillance footage that was provided to the defense. *Id.* As such, we find this allegation of error is without merit.

Next, the Appellant argues that the evidence presented by the Commonwealth was insufficient to prove beyond a reasonable doubt that the Appellant caused damage to the vehicle or possessed the intent to damage the vehicle. The Superior Court said the following regarding sufficiency of evidence presented at trial:

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

Commonwealth v. Robinson, 817 A.2d 1153, 1158 (Pa.Super. 2003).

Additionally, the Superior Court in *Commonwealth v. Fitzpatrick*² stated, “[a]ny doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.”

The Supreme Court of Pennsylvania explained the appropriate standard of review when an appellate court is required to review an insufficiency of the evidence claim:

Normally, the evidence is deemed to be sufficient where there is testimony offered to establish each material element of the crime charged and to prove commission of the offense by the accused beyond a reasonable doubt. The question of credibility is left to the jury and the verdict will not be disturbed if the jury determined the evidence is worthy of belief. We have, however, made exception to the general rule that the jury is the sole arbiter of the facts where the testimony is so inherently unreliable that a verdict based upon it could amount to no more than surmise or conjecture.

Commonwealth v. Karkaria, 625 A.2d 1167, 1170 (Pa. 1993).

In order to address a sufficiency of the evidence argument, we must review the elements of said crime. *Id.* The statute regarding criminal mischief states in relevant part:

- (a) Offense defined. – A person is guilty of criminal mischief if he:
 - (5) Intentionally damages real or personal property of another.

² *Commonwealth v. Fitzpatrick*, 159 A.3d 562, 567 (Pa.Super. 2017) (quoting *Commonwealth v. Hutchinson*, 947 A.2d 800, 805-806 (Pa.Super. 2008)).

18 Pa.C.S.A. § 3304(A)(5).

In this case, the Commonwealth provided evidence in the form of testimony, a written statement, and video surveillance footage that established each element of the crime charged. First, both parties stipulated that the individual in the video was the Appellant. (N.T., 14). Second, Officer Seibel testified that the surveillance footage showed the Appellant walking behind Ms. Mayhew's vehicle, circle back to the vehicle again, then extend his right arm to the vehicle, then pause at the vehicle. (N.T., 21-22). Officer Seibel further testified that the places where the Appellant paused and extended his arm match the areas on the vehicle with damage. (N.T., 22). Officer Seibel also testified that Appellant stated during an interview that it was an accident and that these things happen. (N.T., 24). Appellant also provided a written statement in English that stated he might have done this with his fingernail on accident. (N.T., 24-25). The Appellant circled the vehicle, then came back to the vehicle, extended his arm and paused in the same places where the damage occurred. (N.T., 21-22). We find this is adequate evidence of the Appellant's intent. Additionally, this Court found the evidence produced at trial to be credible regarding the actual damage caused by the Appellant. Thus, we find this allegation of error to be meritless.

Next, the Appellant argues that the verdict rendered was against the weight of the evidence presented by the Commonwealth. The Pennsylvania Superior Court held the following as a standard for weight of the evidence arguments:

Whether new trial should be granted on grounds that verdict is against weight of evidence is addressed to sound discretion of trial judge, whose decision will not be reversed on appeal unless there has been an abuse of discretion. [The] [t]est in determining whether new trial should be granted on grounds that verdict is against weight of evidence is not whether court would have decided case in same way but whether verdict is so contrary to

evidence as to make award of new trial imperative so that right may be given another opportunity to prevail.

Commonwealth. v. Taylor, A.2d 1228 (Pa. Super. 1984).

Additionally, “A verdict is said to be contrary to the evidence such that it shocks one’s sense of justice when ‘the figure of justice totters on her pedestal,’ or when ‘the jury’s verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.” Commonwealth v. Cruz, 919 A.2d 279, 282 (Pa. Super. 2007).

We again point to the testimony, video surveillance footage, and Appellant’s written statement. The video footage shows that Appellant circled the vehicle, then came back to the vehicle, extended his arm and paused in the same places where the damage occurred. (N.T., 21-22). Officer Seibel also testified that Appellant stated during an interview that it was an accident and that these things happen. (N.T., 24). Appellant also provided a written statement in English that stated he might have done this with his fingernail on accident. (N.T., 24-25). This Court found the testimony of Ms. Mayhew and Officer Seibel credible. In conjunction with the video footage and the written statement provided by the Appellant, this Court’s verdict is not so contrary that it would shock one’s sense of justice. Thus, we find this allegation of error to be meritless.

Lastly, the Appellant argues that this Court abused its discretion in denying a motion for a new trial where Appellant was denied the opportunity to conduct discovery that would have refuted the credibility of Mayhew and established no evidence of prior contact with Mayhew’s vehicle. Again, this Court’s verdict did not rest on any testimony or inference of prior damage to the vehicle. This Court specifically stated that it relied on the testimony and video footage provided during trial. The video footage clearly shows the Appellant, as stipulated by the parties,

circling and pausing around Ms. Mayhew's vehicle and extending his arm in the same places where the damage occurred. (N.T., 21-22). Further, we have already discussed the discovery issue, *supra*. The defense was provided with the only video footage that exists regarding this incident.

For these reasons, we ask the Superior Court to uphold and affirm our judgment.

Respectfully submitted:



Deborah E. Curcillo, Judge

Dated: 11-15-22

Distribution: 11/15/22 @ 11:10am
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