IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-220484 TRIAL NO. C-21CRB-22547
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N.*
RONIESHA ROBINSON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Appellant Discharged

Date of Judgment Entry on Appeal: July 7, 2023

Melissa A Powers, Hamilton County Prosecuting Attorney, *Mark E. Piepmeier*, Chief Assistant Prosecuting Attorney, and *Sean Donovan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *Krista Gieske*, Assistant Public Defender, for Defendant-Appellant.

BOCK, Judge.

{¶1} Defendant-appellant Roniesha Robinson appeals her conviction for criminal damaging in violation of R.C. 2909.06(A)(1), arguing that her conviction was based on insufficient evidence and contrary to the weight of the evidence. Because the state failed to produce evidence of an element of the offense, we reverse the trial court's judgment and discharge Robinson from further prosecution.

I. Facts and Procedure

{¶2} Steve Adams, Lakisha Deloach's nephew, was sitting near the front door of his grandmother's home around nightfall on Christmas 2021 when he saw a gray Audi slowly drive down the street and park next to Deloach's vehicle. Adams asserted that Robinson got out of the Audi and hid herself between it and Deloach's vehicle. Adams came outside about four or five minutes after the Audi left, saw the scratches on Deloach's vehicle, and called Deloach.

{¶3} Deloach testified that Kiara Bryant, the mother of Deloach's grandchildren, called her around 8:00 p.m. on Christmas Day. According to Deloach, Bryant had called her to warn her son, Savahn Deloach, to move his car because Robinson was going to damage it. Bryant's phone call caused Deloach to rush to her mother's house, where Savahn's car was parked, which was four minutes away from her home.

{¶4} Deloach said that she saw Robinson as they both stopped at a stop sign about seven houses from Deloach's mother's home. When she arrived at her mother's house, Savahn's car was not there but Deloach saw scratches on her Hyundai.

{¶5} A neighboring home's security camera footage showed the street outside Deloach's mother's home on December 25, 2021, at 8:17 p.m. The video showed a car

drive down the street and stop briefly, then continue down the street without headlights and park in the middle of the street next to Deloach's Hyundai. The driver exited from the vehicle and crouched down beside the Hyundai. The audio from the security footage reflected what sounded like scraping noises. The video ended before the driver returned to the parked car. Deloach identified the light-colored car in the video as Robinson's car. Deloach also identified a photo that depicted the extensive scratches on her front and rear driver's side doors. Before that evening, her car had no damage or scratches on the doors.

{¶6} Franklin Colon, Deloach's fiancé, testified that he and Deloach were at home when they "got a call from [Bryant] that * * * somebody was going to * * * [his] mother-in-law's house, and do something to the car over there." Colon was listening to the call over the speaker on Deloach's phone. He left for Deloach's mother's house shortly after Deloach left.

{¶7} Colon testified that he saw Robinson drive past him in a gray car close to his mother-in-law's home and saw the scratches on the car door after he arrived. Colon identified Deloach's vehicle and Robinson's gray Audi in the security footage. He testified that it looked like Robinson had tried to scratch her name into Deloach's car door as he could see an "R" and an "S." Colon took pictures of the scratches.

<u>Bryant provided Robinson's alibi</u>

{¶8} Bryant, Robinson's girlfriend at the time of the incident, testified that Robinson was at her home on Christmas morning, left around noon to visit her family, then returned to Bryant's home between 6:00 p.m. and 7:00 p.m. and never left.

{¶9} Bryant testified that, between 7:00 p.m. and 8:00 p.m., Savahn was dropping their children off at her home when he began to bang on the door. She

asserted that when Robinson opened the door, Savahn threw toys at her. Bryant called the police and Deloach because Savahn had been "taunting" Robinson and threatened to damage Robinson's vehicle. Bryant denied telling Deloach that Robinson was going to damage Savahn's vehicle.

{¶10} The responding officer arrived at Bryant's home around 10:57 p.m. Bryant told the officers that Savahn had been banging on the door, he and Robinson had exchanged words, and Savahn had threatened to spit on Robinson's car and "taunt[ed]" her. She asserted that she called the police due to her concern that Savahn would follow through with his threats because he was driving back and forth on her street.

{¶11} According to Bryant, Robinson moved her car from the front of Bryant's apartment building to the back due to Savahn's threats, taking "less than five minutes." Bryant testified that guests from their Christmas party accompanied Robinson to make sure Savahn "did not do anything to her." Bryant stated that Deloach's mother lived about 15 minutes away from her apartment, and Robinson was not gone for that amount of time. According to Bryant, Robinson did not come outside to speak with the officers because she was standing behind the closed front door talking on the phone to her mother while Bryant spoke with the officers.

Robinson denied damaging Deloach's vehicle

{¶12} Robinson testified that she had been at Bryant's house since the previous night until noon on Christmas day, then went to see family in Loveland before returning to Bryant's home for the evening. Robinson described her relationship with Savahn as "cool" in the beginning, but it became "rocky." She denied putting scratches in Deloach's car door.

{¶13} Robinson testified that she answered the door when Savahn arrived, "[p]robably like 8:00, 9-ish * * * 7-ish," and Savahn began to throw toys at her, called her a "[b]unch of names, gay names," and threatened to "kick [her] car in." Robinson stated that the encounter ended when she and Bryant called the police. Robinson also testified that guests went outside with her to move her car "so [Savahn] couldn't do nothing to [her]." Robinson asserted that Savahn "basically said, 'I know where your car is,' " and he "spit on it and kicked it," but there were no damages. She testified that she was upset with Savahn for acting out toward her and "embarrassed because everybody was right there."

{¶14} Robinson claimed that she did not speak to the police that evening because she did not "want to get involved with a lot" and was "already upset and on the phone with [her] mother." She stated that she "didn't even have time to even tell [her] side of the story to the police" because she "didn't really know they were all off talking to [Bryant] until [she] like saw them knocking * * *."

{¶15} The trial court found Robinson guilty. Deloach offered an estimate of the damages to her vehicle after the close of evidence. Robinson stated that the estimate was too high, so the court requested a second estimate and ordered a restitution hearing. At sentencing, the trial court imposed a 90-day sentence and ordered Robinson to pay an agreed-upon amount of $1,688.29 in restitution.

II. Law and Analysis

{¶16} In her sole assignment of error, Robinson argues that the state did not provide sufficient, credible evidence of the identity of the person who damaged Deloach's vehicle, nor did it meet the lack-of-consent element under R.C. 2909.06(A)(1).

{¶17} We hold that the state provided sufficient evidence to show that Robinson damaged Deloach's vehicle. But we reverse Robinson's conviction because the state failed to prove an essential element of the offense: that Deloach did not consent to the damage.

<u>The state failed to prove criminal damaging beyond a reasonable doubt</u>

{¶18} The test for determining the sufficiency of the evidence is whether "after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt." *State v. MacDonald*, 1st Dist. Hamilton No. C-180310, 2019-Ohio-3595, ¶ 12, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983). It is a question of law for the court to determine and this court is not to weigh the evidence unless, after viewing the evidence, it weighs heavily against conviction. *Id.* at ¶ 12.

{¶19} "[C]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof." *City of Cleveland v. Graham*, 8th Dist. Cuyahoga No. 100394, 2014-Ohio-3413, ¶ 25, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph one of the syllabus. " 'Circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt.' " *Id.* at ¶ 26; *see State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 75, quoting *State v. Heinish*, 50 Ohio St.3d 231, 238, 553 N.E.2d 1026 (1990), *limited on other grounds*, *Jenks* at paragraph one of the syllabus.

{¶20} While the state may rely upon circumstantial evidence to meet its

burden of proof, "[w]e simply cannot fill in the blanks * * * where the state has failed to meet its burden of proving all the elements [] beyond a reasonable doubt." *City of Akron v. Garrett*, 9th Dist. Summit No. 24412, 2009-Ohio-1522, ¶ 11, quoting *Heinish* at 239, *limited on other grounds*, *Jenks* at paragraph one of the syllabus (concluding that both direct and circumstantial evidence are subject to the same standard of proof).

{¶21} The state charged Robinson with criminal damaging under R.C. 2909.06(A)(1). Thus, the state was required to prove beyond a reasonable doubt that (1) Robinson, (2) knowingly by any means, (3) caused physical harm, (4) to property belonging to another, (5) without consent. R.C. 2909.06(A)(1).

{¶22} The legislature chose to include "without consent" as an element of the offense, rather than an affirmative defense. Accordingly, the state had the burden to prove beyond a reasonable doubt that Deloach did not consent to Robinson damaging her car.

{¶23} Clearly, "[s]imple logic dictates that few property owners would consent to individuals" damaging their property. *Garrett* at ¶ 13-15. But this court cannot assume that a property owner did not consent to the damage. Instead, the state must prove lack of consent.

{¶24} In *Garrett*, two bartenders saw the defendant throw a rock at one of the surveillance cameras in their employer's parking lot. *Id.* at ¶ 2. The reviewing court held that the state offered no direct or circumstantial evidence to demonstrate the property owner's lack of consent for criminal damaging because (1) no one testified that Garrett lacked permission to be in the parking lot where he was arrested, (2) he did not flee when police arrived, (3) there was no evidence of "no trespassing" signs

being posted or statements that would indicate that Garret acted without consent, and (4) there was no testimony from the owner of the surveillance camera as to consent. *Id.* at ¶ 12.

{¶25} When a property owner's son immediately reports damage to the police and testifies that he did not consent to the damage, the state proves lack of consent. *State v. Baldwin*, 9th Dist. Medina No. 10CA0078-M, 2011-Ohio-4988, ¶ 17-18. In *Baldwin*, a vehicle owner's son was in possession of the vehicle when he discovered that a window had been smashed and the bed of the truck had been covered in red paint. *Id.* The owner's son testified that he did not consent to the damage and he immediately reported the damage to the police. *Id.* at ¶ 17.

{¶26} Evidence is sufficient to show lack of consent when multiple factors demonstrate that the owner did not consent. *State v. Myles*, 2d Dist. Montgomery No. 25297, 2013-Ohio-2227. In *Myles*, Ely, the victim, and Mason, a witness, saw Myles, who had been carrying an umbrella, drive close to Ely's car with her window down, "creeping" past the victim's car. *Id.* at ¶ 15. Ely and Mason found "deep marks" in the paint on the driver's side of the vehicle. *Id.* The state provided evidence that Ely had called the police that same day, received an estimate to repair the damage, and shortly before the incident, the defendant and Ely had exchanged threatening words. *Id.* at ¶ 19. The reviewing court found that the state presented sufficient evidence from which the trial court could have concluded that Myles had knowingly caused physical damage to the car without permission. *Id.* at ¶ 20.

{¶27} Other Ohio cases held that circumstantial evidence sufficient to infer a lack of consent tends to include factors such as (1) an altercation that occurred between the property owner and the defendant, (2) the property was not previously damaged,

(3) the owner immediately called the police and signed the complaint, (4) the owner obtained an estimate of the damages and filed an insurance claim, (5) the defendant fled when police arrived, and (6) the defendant lacked permission to be on the property where the damage occurred. *See State v. Drane*, 2d Dist. Montgomery No. 21626, 2007-Ohio-2591, ¶ 15-18 (The state's circumstantial evidence established that defendant acted without consent where a witness saw the defendant damage the vehicles after defendant had argued with one of the victims, the vehicles were not damaged before the defendant's arrival, the victims immediately called the police upon learning of the damage to their vehicles, and the victims obtained estimates to repair the damage.); *State v. Carson*, 2d Dist. Montgomery No. 27566, 2018-Ohio-4352, ¶ 4, 30 (Circumstantial evidence supported a lack of consent to damage the truck where the defendant initiated a verbal altercation with the victim immediately before "keying" the truck, the owner called the police, and the truck was undamaged before the defendant arrived.); *State v. Murray*, 7th Dist. Mahoning No. 07 MA 21, 2008-Ohio-1537, ¶ 33-34 (Testimony supported lack of consent where the owner immediately called the police.); *State v. Stout*, 9th Dist. Wayne No. 96CA0038, 1997 Ohio App. LEXIS 1492, *4-6 (Apr. 6, 1997) (A jury could infer an owner's lack of consent from circumstantial evidence that "no trespassing" signs were posted on the property, the defendant fled when police arrived, the defendant attempted to hide the tire iron that he used to break the windows, and the defendant lacked permission to be on the property.).

{¶28} Here, Adams testified to seeing Robinson pull up, crouch down between her and Deloach's vehicles, then leave. Adams discovered the scratches after the fact. This is evidence sufficient to show that Robinson knowingly damaged the vehicle. *See*

Garrett, 9th Dist. Summit No. 24412, 2009-Ohio-1522, at ¶ 10.

{¶29} But the stated failed to produce sufficient evidence to show that Robinson acted without consent.

{¶30} First, Deloach rushed to her mother's house after learning that Robinson was going to damage *her son's* vehicle—not hers.

{¶31} Second, there is no evidence that Deloach and Robinson had exchanged words or that there was any tension between them. Any evidence involving tension was between Savahn and Robinson, not Deloach and Robinson.

{¶32} Third, there was no evidence at trial that Deloach called the police at any time, much less immediately after she discovered the damage to her car. The only evidence about police involvement was the police responding to Bryant's apartment after Savahn allegedly threatened Robinson. There was no testimony that Deloach signed the complaint, which was not offered as evidence.

{¶33} Fourth, there was no evidence at trial that Deloach filed an insurance claim or received an estimate on the cost of repairs to her vehicle. Evidence involving the cost of repairs was only offered at the restitution hearing.

{¶34} While it seems absurd to require evidence that a property owner does not consent to someone damaging it, the legislature has chosen to make lack of consent an element of this offense. This court cannot change the laws simply because we disagree that lack of consent should be an element. And the state's burden to prove lack of consent easily could be fulfilled by one question to the victim: "Did you consent to the defendant damaging your property?" Otherwise, the state would have to produce sufficient circumstantial evidence to show lack of consent. The state failed to

adduce that evidence. Therefore, it failed to carry its burden to prove lack of consent beyond a reasonable doubt. We sustain Robinson's assignment of error.

III. Conclusion

{¶35} The evidence was insufficient to show that Deloach did not consent to Robinson damaging her vehicle. While common sense tells us that no person would consent to someone damaging their property, the state must prove this element beyond a reasonable doubt. It failed to do so.

{¶36} We reverse the trial court's judgment convicting Robinson of criminal damaging and discharge Robinson from further prosecution.

Judgment reversed and appellant discharged.

ZAYAS, P.J., and **WINKLER, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.