

No. 1-11-3608

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 9464
	)	
WILSON FIGUEROA,	)	Honorable
	)	Rosemary Grant-Higgins,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOWSE delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**O R D E R**

¶ 1 **Held:** The State proved beyond a reasonable doubt that defendant knew or reasonably should have known that the fire defendant set in a vacant residential garage would spread to an occupied apartment building that was located about 10 feet from the garage, and therefore proved defendant guilty of aggravated arson. Defendant's mittimus should be corrected to reflect that his convictions for aggravated arson and arson merged.

¶ 2 Following a jury trial, defendant Wilson Figueroa was found guilty of aggravated arson and arson. The trial court merged the convictions and sentenced defendant to 15 years' imprisonment. Defendant appeals, contending the State failed to prove beyond a reasonable doubt that he committed aggravated arson where defendant set fire to an unoccupied garage that was on the property of an unoccupied home. Alternatively, defendant contends that his mittimus must be corrected because it fails to reflect the merger.

¶ 3 The State charged defendant with committing the offense of aggravated arson "in that, he in the course of committing arson, by means of fire, knowingly damaged real property, to wit: a building located at 2941-43 N. Kedzie, Chicago, Cook County, Illinois, and he knew or reasonably should have known that one or more persons were present therein[.]" See 720 ILCS 5/20-1.1(a)(1) (West 2008). Defendant contends that for him to have been convicted of aggravated arson, the State had to prove that he knew or reasonably should have known that one or more persons were present "in the building at the time that defendant set the fire." He argues that because no one was in the garage or the residence that was associated with the garage, and because there was no evidence that he expected people to be present in the garage because it was only used for storage, the State therefore failed to prove beyond a reasonable doubt that persons were in fact present in the garage that he set on fire. The State responds, however, that defendant set fire to the garage knowing that persons resided in the adjacent apartment buildings where the fire spread.

¶ 4 At trial, defendant presented an unsuccessful alibi defense, and argued that he was mistakenly identified as the arsonist. Defendant's mother, Luc Chaparro and Nadio Cardose, defendant's girlfriend, testified that defendant was at the family home in Maywood, Illinois, and was not near the scene of the fire at the time of the fire. On appeal, however, defendant has

abandoned his alibi defense, and does not dispute that he set fire to the garage at 2945 North Kedzie or that he was positively identified as the perpetrator. Therefore, our recitation of the facts will focus on the evidence the State presented at trial regarding the circumstances surrounding how the fire was set and subsequently spread from the garage to the next door apartment building.

¶ 5 Ronald Anderson testified that in May 2009, he lived at 2951 North Kedzie Avenue in Chicago, Illinois. Defendant had lived next door to Anderson, at 2945 North Kedzie Avenue, for many years but moved out of the building about two years prior to the incident. Anderson was an "alley mechanic" who did automotive repair work in the alley behind his home. One of the garages he used for his repair work was located at 2945 North Kedzie, where he also kept two vehicles. Anderson showed defendant the vehicles on May 2, 2009.

¶ 6 On May 4, 2009, Anderson and defendant agreed that Anderson would complete repairs to defendant's girlfriend's car. Anderson received money to repair the car, but was unable to complete the work on the budget and within the time frame that they established and provided this update to defendant. Defendant became very angry and told Anderson to fix the car, "[o]r else you don't know who your [*sic*] f'ing dealing with, you better fix my f'ing car, or I'm going to take care of you." Anderson communicated to defendant that he no longer wanted to repair defendant's car. He told defendant to pick up the car on Troy Street, that there would be \$100 and the car keys in the ashtray, and the rear passenger side door would be unlocked.

¶ 7 After speaking to defendant, Anderson returned to work on another vehicle. Shortly after midnight, Anderson heard the sound of car doors opening and closing. He observed defendant entering the parked car through the rear passenger door, as instructed.

¶ 8 Anderson then watched defendant throw an item that was on fire into the garage located at 2945 North Kedzie, and run north out of the alley. After defendant ran away, Anderson tried to extinguish the fire using his garden hose, but was unsuccessful. He called 911 and took photographs of the fire with his cellular phone. The garage was destroyed and so were the vehicles that Anderson stored there. Anderson also saw that the back porches at 2941 North Kedzie were “completely engulfed in flames” and the fences on both properties were also damaged.

¶ 9 Alma Tamayo was presented as an eyewitness to defendant's starting the fire. She testified that the fire was “pretty bad,” and explained that it spread to the first floor rear porch of the 2941 building. The garage was between 6 and 10 feet from the apartment building. The flames nearly reached the second floor of the 2941 building.

¶ 10 Miguel Arocho testified that he is one of the owners of the buildings at 2941-43 North Kedzie building. He lived in the front first-floor unit with his family at the time of the fire. Shortly after midnight, Arocho saw smoke and went outside along the gangway of his apartment where he saw that the garage at 2945 North Kedzie and a tree were on fire. He alerted his family and tenants and evacuated the building. Arocho unsuccessfully tried to extinguish the fire using a garden hose. The fire damaged the rear porches, stairwell, windows, and parts of the first floor rear apartment at 2941 North Kedzie. Arocho’s apartment building was completely occupied when the fire occurred and when defendant lived in the house next door about two years prior to the fire.

¶ 11 Marisol Salis testified that at the time of the fire, she lived in the rear first-floor apartment at 2941 North Kedzie with her eight-year-old son. She was awakened by Tamayo calling to say her building was on fire. Salis testified that the alley-facing wooden porch attached to her

building burned as a result of the fire. She saw “a big ball of flames” in her kitchen and evacuated her apartment along with her son and dog. Salis' entire porch, windows and blinds, and the television in the kitchen were burned.

¶ 12 Detective Michael Vogenthaler of the Chicago Police Department testified that he observed the buildings at 2941-43 North Kedzie had severe charring to the rear porch and interior damage to one of the apartments. The burned garage was about 8 to 10 feet from 2941-43 North Kedzie.

¶ 13 Arson investigator for the Chicago Police Department, Detective Harriett Lewis, testified that when she arrived at the scene at about 2 a.m., the garage at 2945 North Kedzie was “completely burned to the ground” and the building at 2945 North Kedzie was “heavily fire damaged[.]” The building’s siding was melted and “completed destroyed.” She also testified that an accelerant was lit with an open flame and placed either on the doors or near the doors of the garage, which caused the fire to burn so hot at the doors that it turned to ash “and the fire communicated through the rest of the garage.” The occupied apartment building at 2941-43 North Kedzie and the garage at 2945 North Kedzie were only separated by a gangway. That building also had “heavy” charring to the outside wooden porch and stairwell area. The first and second floor porches were heavily scorched and the stairwell was heavily charred.

¶ 14 Adrienne Bickel, a forensic scientist of trace chemistry at the Illinois State Police Forensic Science Center, examined and tested the debris from the fire at 2945 North Kedzie and concluded that, in her opinion, the debris sample taken from the garage contained an “ignitable liquid” that appeared to be gasoline, although she could not say definitively whether it was gasoline or a “heavy petroleum distillate” such as diesel fuel or kerosene.

¶ 15 The jury found defendant guilty of aggravated arson and arson. The trial court sentenced him to 15 years' imprisonment and merged the offenses. Defendant's mittimus shows that he was convicted of both offenses, and indicates that he was sentenced to 15 years' imprisonment for arson.

¶ 16 Defendant appeals, contending, first, that the State failed to prove beyond a reasonable doubt that he knew or reasonably should have known that one or more persons were present in the garage or in the building at 2945 North Kedzie at the time defendant ignited the fire since the garage was only used for storage and the building was not occupied. The State replies that the evidence established beyond a reasonable doubt that defendant set the garage at 2945 North Kedzie on fire knowing that people resided in the nearby occupied apartment building at 2941-43 North Kedzie, where the fire quickly spread and extensively burned.

¶ 17 At the outset, the parties dispute which standard of review should be applied. Defendant argues that because he is not questioning the credibility of the witnesses and is challenging whether the uncontested facts were sufficient to prove him guilty, this court should review his claim *de novo*. Defendant relies on *People v. Thomas*, 384 Ill. App. 3d 895, 898-99 (2008). *Thomas* is distinguishable because there, the reviewing court interpreted the home invasion statute and determined whether, based on uncontested facts, the State proved defendant violated the statute where defendant contended the home was empty prior to the victims' entry with the offenders. Here, we are not asked to interpret the aggravated arson statute. Rather, defendant contends that he cannot be found guilty of aggravated arson of the apartment building located at 2941-43 North Kedzie because he set fire to the unoccupied garage located at 2945 North Kedzie. Although these facts are uncontested, that defendant set the fire to the garage and the garage spread to the adjacent apartment building, defendant ultimately asks this court to review

the jury's determination that he knew or reasonably should have known that the fire he started in the garage of 2945 North Kedzie would spread to the occupied apartment building next door. Therefore, defendant is challenging the inferences that can be drawn from the evidence, which constitutes a challenge to the sufficiency of the evidence. See *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010) (rejecting the defendant's argument for *de novo* review where the defendant did not dispute witness credibility and the facts were uncontested, but the defendant claimed the State failed to prove him guilty of aggravated arson beyond a reasonable doubt).

¶ 18 Defendant argues that because the garage was unoccupied when he set it on fire, the State failed to prove him guilty of aggravated arson. However, defendant was not charged with aggravated arson of the garage; he was charged and convicted of aggravated arson of the occupied apartment building at 2941-43 North Kedzie.

¶ 19 The applicable standard is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1978); *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we allow all reasonable inferences from the record in favor of the State. *Id.* The trier of fact is not required to disregard inferences that flow normally from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8.

¶ 20 Defendant was convicted of aggravated arson. The aggravated arson statute provides, in relevant part:

"A person commits aggravated arson when in the course of committing arson he or she knowingly damages, partially or totally, any building or structure, including any adjacent building or structure, \*\*\* and (1) he knows or reasonably should know that one or more persons are present therein \*\*\*." 720 ILCS 5/20-1.1 (West 2008).

We find there was sufficient evidence to prove defendant knowingly caused damage to the building at 2941-43 North Kedzie where the evidence showed that he used gasoline as an accelerant to start the fire and the garage was, by all accounts, less than 10 feet from the apartment building. See *Stewart*, 406 Ill. App. 3d at 526. Further, the back porch and stairwell of the building was constructed of wood, increasing the likelihood that it would burn when exposed to the fire defendant started in the nearby garage. "There can be no dispute that a natural consequence of fire is that it tends to spread." *Stewart*, 406 Ill. App. 3d at 527.

¶ 21 Next, we determine whether defendant knew or reasonably should have known that the 2941-43 North Kedzie building was occupied. Our supreme court has concluded that, while not dispositive of the question of whether defendant should have known that one or more persons were present, the evidence of one or more persons' actual presence is "certainly indicative" of that conclusion. *People v. Thomas*, 137 Ill. 2d 500, 531 (1990). In determining that defendant knew or should have known that the apartment building located at 2941-43 North Kedzie was occupied at the time of the fire, the jury could consider the time of the incident, after midnight, and the fact that both the building and neighborhood were residential. See e.g., *People v. Burrett*, 216 Ill. App. 3d 185, 180 (1991) (explaining that the jury could consider the above factors as well as that a family occupied the house that was fire-bombed for four months prior to the fire and that the defendant sought to deliver a racially motivated message to the family).

¶ 22 Defendant does not dispute that he set fire to the garage at 2945 North Kedzie and that the fire then spread to the occupied apartment building at 2941-43 North Kedzie. Defendant brings to this court's attention *People v. Thomas*, 137 Ill. 2d 500 (1990), to argue that there was no evidence that he expected or believed there would be other people inside the garage or house at 2945 North Kedzie when he started the fire. In that case, the defendant knew the victim stored a large quantity of perfume in her garage and he went there intending to steal a bottle of perfume. *Id.* at 512. However, the victim entered the garage while the defendant was there with the perfume. *Id.* The defendant then repeatedly stabbed the victim and set the garage on fire to conceal the murder. *Id.* at 512-13. He was charged and convicted of aggravated arson for knowing the victim was present, and also while he should have known that others were present. On appeal, the defendant solely argued that because the victim was dead at the time he started the fire, his conviction could not stand because the aggravated arson statute only applies when a living person is present. *Id.* at 531.

¶ 23 Our supreme court explained in *Thomas* that the defendant "was charged generally with violating the aggravated arson statute and that this charge properly alleged that he committed arson when he should have known that other people were present." *Id.* at 531. The court found that there was, in fact, an elderly couple in a unit of the structure when the defendant started the fire, and their presence was "certainly indicative" of the conclusion that defendant should have known that other people were present. Further, the defendant should have known that others were present because he previously worked in the apartment building that he set on fire. *Id.*

¶ 24 Here, the evidence established that the apartment building at 2941-43 North Kedzie was occupied when defendant lived next door two years prior, and was in fact occupied when defendant started the fire in the garage next door. The evidence showed that although the garage

was vacant when defendant set fire to it, the occupied apartment building was between 6 and 10 feet from the garage. Further, only a gangway separated the two structures, and defendant used gasoline as an accelerant to ignite the fire. Based on these circumstances, we believe that a rational trier of fact could find that the fire defendant set in the garage at 2945 North Kedzie would spread to the occupied apartment building at 2941 North Kedzie, immediately adjacent to the garage. See e.g., *Stewart*, 406 Ill. App. 3d at 526-27 (reaching a similar conclusion where defendant set a vacant building on fire and the fire spread to an occupied house 300 feet away in windy conditions and there were no structures between the two buildings). Accordingly, a rational trier of fact could conclude that defendant committed aggravated arson.

¶ 25 Next, defendant contends, and the State agrees, that his mittimus should be corrected to reflect that the trial court merged defendant's arson and aggravated arson convictions. Currently, defendant's mittimus shows that defendant was convicted of both offenses, but does not indicate that they merged, and states that defendant was sentenced to 15 years' imprisonment for the arson conviction. "[W]hen multiple convictions are had for offenses arising out of a single act, the rule is that the sentence is imposed on the most serious offense." *People v. McLaurin*, 184 Ill. 2d 58, 104 (1998). An oral pronouncement represents the court's judgment, and the mittimus is merely evidence of the court's judgment. *People v. Williams*, 97 Ill. 2d 252, 310 (1983). Defendant's mittimus should conform to the court's oral judgment. *People v. Brown*, 255 Ill. App. 3d 425, 438 (1993). Therefore, we order the clerk of the Circuit Court to correct defendant's mittimus to reflect that defendant was sentenced to 15 years' imprisonment for aggravated arson only.

¶ 26 Based on the foregoing, we affirm the judgment of the circuit court of Cook County and order the clerk of the circuit court to correct defendant's mittimus.

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¶ 27 Affirmed; mittimus corrected.