2015 IL App (3d) 150005-U

Order filed April 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re N.O.M.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0005
	)	Circuit No. 13-JD-462
v.	)	
	)	
N.O.M.,	)	Honorable
	)	Albert L. Purham,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: State failed to prove respondent guilty of aggravated arson beyond a reasonable doubt where no evidence led to the inference that respondent knowingly caused damage to school building.

¶ 2 Pursuant to a delinquency petition, respondent, N.O.M., was found guilty of aggravated arson (720 ILCS 5/20-1.1 (West 2012)) and sentenced to five years' probation.. On appeal, respondent argues that the State failed to prove beyond a reasonable doubt that she knowingly

damaged the building in which she set a fire. We vacate the trial court's adjudication of delinquency and remand the matter for further proceedings.

¶ 3 FACTS

¶ 4 Respondent was charged in a delinquency petition with arson (720 ILCS 5/20-1(a)(1) (West 2012)) and aggravated arson (720 ILCS 5/20-1.1 (West 2012)). The petition alleged that on December 16, 2013, respondent, "by means of fire, knowingly damaged a building of Peoria School District 150, being Trewyn School[.]" In regard to the aggravated arson count, the petition also alleged that respondent knew that students and teachers were in the building at the time she started the fire.

¶ 5 At trial, the parties stipulated that Trewyn School principal Renee Andrews would testify consistently with her testimony at a previous hearing on a motion to suppress.[1] At the earlier hearing, Andrews testified that on December 16, 2013, a fire was discovered in a second-floor bathroom. After the fire had been extinguished and the students had been cleared to reenter the building, Andrews reviewed surveillance footage from outside the bathroom. Upon review of the surveillance footage, Andrews discovered that respondent was the last person in the bathroom before the fire.[2] Andrews retrieved respondent at the request of the police.

¶ 6 Andrews brought respondent to a conference room, along with a fire investigator and a Peoria police officer. Andrews requested that a secretary call Lillian M. to inform her of the situation. Though Andrews referred to Lillian as respondent's grandmother, she is actually respondent's great aunt and adoptive mother. Before Lillian's arrival in the conference room, respondent told the assembled authorities that a friend named Brittany had given her a lighter the

[1] The trial court's ruling on the motion to suppress is not at issue in this appeal.

[2] This surveillance footage was subsequently admitted into evidence and shown at trial.

previous night at Kroger. Respondent related that Brittany told her to "light it up." Respondent stated that she lit a toilet paper roll, but never saw flames.

¶ 7 After approximately 15 minutes, Lillian arrived at the conference room. Upon hearing respondent's story, Lillian explained that respondent had not been to Kroger the night before and that "there [was] no Brittany[.]" According to Andrews, Lillian pled with respondent to tell the truth. Respondent admitted that she had taken the lighter from home. She knew that she would be alone in the bathroom at some point in the day. She again confessed to lighting the inside of the toilet paper roll, but reiterated that she never saw flames.

¶ 8 At trial, Brad Pierson testified that he was an arson investigator for the Peoria fire department. Pierson investigated the fire at Trewyn School on December 16, 2013. Upon arriving at the school, Pierson was led to the second-floor bathroom. Pierson noticed soot and other fire combustion products on the floors, walls, and ceiling of the bathroom. One stall had extensive fire damage. Pierson testified that "a toilet roll holder, a plastic one, an industrial one, had been on fire." That holder had broken off, falling into the toilet. Pierson stated that the firefighters on the scene told him "they had to put very little water on it because the water in the toilet bowl also had extinguished some of the fire."

¶ 9 After documenting the scene, Pierson went to the conference room where respondent and Peoria police detective Tim Turner were located. Pierson testified that respondent initially told them that someone had made her start the fire, but recanted that story when Lillian arrived. Respondent then admitted that she started the fire on her own accord. Pierson described the admission:

> "[S]he stated that she went into the bathroom and used the lighter to light a piece of toilet paper on fire and then once that was done, she took the lighter and—there

was a, I don't know, maybe an inch crack or half inch crack between the toilet and the wall right there, and she stuffed the lighter in there and then left the bathroom to go back to the classroom."

Pierson was later able to retrieve the lighter from the location described by respondent.

¶ 10 Pierson identified a number of photographs that he took showing the damage to the bathroom. He testified that a majority of the damage done to the building was from smoke, and noted that the insurance estimate of the damage was $20,000. Pierson opined that the fire started with the toilet paper, then spread to the plastic toilet paper holder and eventually the wall of the stall. He testified that if a fire is "in an enclosed area or it's going up into some type of container, you may not notice it right away."

¶ 11 Turner testified that he questioned respondent in the conference room. Respondent initially stated that she was given the lighter and told to start the fire, but changed her story when Lillian arrived. She admitted to lighting the toilet paper on fire. Respondent told Turner that she did not know if the fire had gone out when she left the bathroom. Turner explained that respondent had lit the toilet paper that was hanging down from the "toilet paper corral holder," but she did not know whether the toilet paper inside the holder had caught afire.

¶ 12 Respondent testified that she was 12 years old at the time of trial. Her birthday was September 26, 2002, indicating that she was 11 years old on December 16, 2013. On that morning, respondent testified that she went to the restroom with a lighter in her pocket. "[W]hen I got done using the rest room [*sic*], I lit the toilet paper and then I looked under it and then I didn't see it any more so I thought it was gone and then I left," respondent testified.

¶ 13 On cross-examination, respondent clarified that she had not planned to light the fire when she came to school that day. She testified: "[O]nce I got to the bathroom, something just told me

to do it." She reiterated that she set the toilet paper on fire, but when she looked under the toilet paper holder she did not see any fire anymore. Respondent stated that "If I would have seen it, I would have tried to put it out, but I didn't see it any more [*sic*]."

¶ 14 The trial court found respondent guilty of aggravated arson and arson. The court opined that it "would have convicted [respondent of arson] based upon just the videotape." The court stated that the video proved respondent was the cause of the fire, which "was enough for [the court] to convict [respondent] beyond a reasonable doubt[.]" In describing the events of the day in question, the court found that respondent "watches as the flame goes up into the plastic dispenser, it gets out of sight, and she just assumes that it's done." The court stated that it could not find respondent's actions reckless because she intentionally lit the fire.

¶ 15 The parties presented no formal evidence in aggravation or mitigation at sentencing. Following arguments, the court imposed a sentence of five years' probation on the aggravated arson charge. This appeal follows.

¶ 16 ANALYSIS

¶ 17 On appeal, respondent argues that the State failed to prove her guilty of arson—and, in turn, aggravated arson—beyond a reasonable doubt. She contends that the evidence adduced at trial merely shows that she was reckless with respect to the results of her conduct. We agree, and find that the State failed to prove that respondent knew that damage to the school building would result from her conduct.

¶ 18 The standard of proof and rules of evidence applicable in criminal proceedings are equally applicable in juvenile delinquency hearings. 705 ILCS 405/5-605(3)(a) (West 2012). Thus, it is the State's burden to prove a minor guilty beyond a reasonable doubt of an offense charged in the delinquency petition. See *id.*; see also, *e.g.*, *In re S.M.*, 2015 IL App (3d) 140687,

¶ 13. When a minor presents a challenge to the sufficiency of the evidence on appeal, it is the task of the reviewing court to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47. In making this determination, we review the evidence in the light most favorable to the prosecution. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). However, those inferences which are not reasonable will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 19 A person commits arson when, by means of fire, she knowingly damages any real or personal property having a value of $150 or more without consent. 720 ILCS 5/20-1(a)(1) (West 2012). A person commits aggravated arson when, in the course of committing an arson, she knows or reasonably should know that one or more persons are present in the building. 720 ILCS 5/20-1.1(a) (West 2012). A person acts knowingly, or with knowledge of the result of her conduct, when she is "consciously aware that that result is practically certain to be caused by [her] conduct." 720 ILCS 5/4-5(b) (West 2012) (defining "knowledge" *mens rea*). In the context of arson then, one acts knowingly when she is practically certain that her conduct will result in damage to real or personal property having a value of $150 or more. See *People v. Stewart*, 406 Ill. App. 3d 518, 526 (2010) (applying statutory knowledge definition to offense of arson).

¶ 20 The element of knowledge is rarely susceptible of direct proof. *People v. Nwosu*, 289 Ill. App. 3d 487, 494 (1997). Where a defendant denies that she knowingly brought about the proscribed result, the State must prove the defendant's mental state through circumstantial evidence. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2007). "For example, intent may be

inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself." *Id.*

¶ 21 In the case *sub judice*, respondent admitted that she set the toilet paper on fire. After the visible toilet paper had burned, however, respondent looked under the toilet paper roll holder to be sure that there was no more fire. Respondent saw no flames, and was apparently satisfied that the fire was out. She testified that she would not have left the bathroom if she knew the fire was ongoing. Based on the direct evidence, it is apparent that respondent actually sought to avoid any damage to the bathroom—a stark contrast from being practically certain that the bathroom would be damaged.

¶ 22 In light of the lack of direct evidence of respondent's mental state, we next look to the circumstantial evidence. The State cites extensively to *Stewart*, 406 Ill. App. 3d 518, as an example of a case in which the trier of fact inferred knowledge of damage. *Stewart*, however, is distinguishable from the present case, and actually serves to illustrate the lack of facts supporting such an inference in the case at hand. In *Stewart*, the defendant was charged with aggravated arson in that he knowingly damaged a building at 5354 South Princeton in Chicago. *Id*. at 520, 526. The defendant conceded that he started a fire at 5405 South Shields, but argued that the State had failed to prove that he knowingly damaged the adjacent building on South Princeton. *Id*. at 526.

¶ 23 The First District rejected the defendant's argument, finding that "the facts and circumstances surrounding the defendant's conduct support[ed] the inference" that the defendant knowingly damaged the adjacent building. *Stewart*, 406 Ill. App. 3d at 526. The court pointed out that the record established that the defendant started the fire by igniting a flammable substance that he had poured from a gas can, creating a huge and heavy amount of fire. *Id.* Further, the fire was started on a second-floor, wooden balcony on the building on South Shields.

Id. Finally, the court noted that the wind was very strong that night, approximately 27 miles per hour. *Id*. at 526-27. The court concluded:

> "Given the weather conditions at the time, a jury could rationally conclude that defendant's actions of using a flammable substance to ignite a fire on an outdoor wooden structure attached to the building at 5405 South Shields made it a practical certainty that the fire would spread to a nearby building." *Id*. at 527.

¶ 24 Unlike in *Stewart*, here there are no facts which would support the inference that respondent was practically certain her conduct would cause damage to the building. The pictures admitted into evidence show a bathroom containing materials that do not seem inherently flammable: tile floors, porcelain sinks and toilets, and metal garbage cans. Compared to the gasoline-soaked wooden balcony in gusting winds in *Stewart*, the school bathroom is a far more controlled environment. Even Pierson testified that a fire in an enclosed area or container—such as the toilet paper holder—might not be noticeable. While the State argues that it was "reasonably foreseeable" that setting fire to the toilet paper would cause further damage to the building, reasonable foreseeability is not the standard prescribed in the arson statute. The direct evidence shows that respondent expected the toilet paper, and nothing else, would burn. No facts concerning the respondent's conduct surrounding her act or the act itself give rise to an inference that respondent was practically certain that more damage would result.

¶ 25 Our conclusion is bolstered by the comments made by the trial court in delivering its judgment. The court emphasized that respondent had set the fire intentionally, even opining that it would have found her guilty based solely on surveillance video of respondent entering the bathroom prior to the fire. While the video may have been sufficient to establish that respondent intentionally set the fire, it does not speak to whether respondent was practically certain that the

bathroom would be damaged. Further, the court commented that it could not find respondent's actions reckless, because she intentionally lit the fire. However, such a finding would not foreclose the possibility that respondent was reckless as to the *result* of the fire. It is unclear on the record before us whether the trial court considered the result element of the offense.

¶ 26 We find that the evidence adduced at trial was sufficient only to prove that respondent acted recklessly. See 720 ILCS 5/4-6 (West 2012) (defining recklessness as when a person "consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow"). The evidence, therefore, supports only a finding of guilt on the charge of criminal damage to property (720 ILCS 5/21-1(a)(2) (West 2012)), a lesser included offense of arson. *E.g.*, *People v. Phillips*, 383 Ill. App. 3d 521, 541 (2008). Respondent concedes that the evidence is sufficient to prove beyond a reasonable doubt that she acted recklessly and thus committed criminal damage to property.

¶ 27 A reviewing court has the authority to reduce the degree of the offense of which defendant was convicted when the evidence fails to prove beyond a reasonable doubt an element of the greater offense. Ill. S. Ct. R. 615(b)(3). This authority includes the power to reduce a conviction to an uncharged offense that is deemed a lesser included offense of the offense charged. *People v. Kennebrew*, 2013 IL 113998, ¶ 21-22. Accordingly, we vacate the trial court's adjudication of delinquency based upon aggravated arson and remand the matter so that the trial court may enter an adjudication of delinquency based upon criminal damage to property and resentence respondent.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Peoria County is vacated and remanded with instructions.

¶ 30 Vacated; remanded with instructions.