

No. 1-13-0714

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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. 11 CR 20738
	)	
KAREN UZUANIS,	)	Honorable
	)	John J. Hynes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Rochford concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction for residential arson is affirmed where the evidence was sufficient to prove that she knowingly damaged the residence when she started the fire.

¶ 2 Following a bench trial, defendant Karen Uzuanis was convicted of residential arson and sentenced to four years' imprisonment. On appeal, defendant contends that the State failed to prove her guilty beyond a reasonable doubt because it failed to establish that she knowingly damaged the residence where she started the fires merely to destroy relationship memorabilia

and believed she had extinguished them. Alternatively, defendant contends that her conviction should be reduced to criminal damage to property because she acted recklessly. In addition, defendant asserts, and the State agrees, that her mittimus should be amended to reflect the correct number of days she spent in presentencing custody.

¶ 3 Defendant was tried on charges of aggravated arson and residential arson. On the night of November 25, 2011, defendant started two fires inside the townhome leased by her boyfriend, Scott Robertson. The first fire occurred when defendant used a lighter to set fire to a pair of Robertson's athletic shoes inside the bathtub on the second floor of the residence. The second fire occurred when defendant used a lighter to set fire to an oil painting inside the laundry room in the basement.

¶ 4 At trial, Maureen Shakeshaft testified that she lived with her family in a two-story townhome that was attached to similar townhomes in LaGrange, Illinois. On the night of November 25, 2011, the police came to her building in response to an argument between defendant and Robertson, who lived in the unit next door. Later that night, Maureen heard a lot of running water and someone running up and down the stairs next door, heard someone running between the back entrance and the dumpsters, and heard defendant yell "Oh, my God. My cats." Maureen called 911, opened her front door and saw defendant standing outside. A large amount of black smoke was coming from inside defendant's unit and flowing out the front door.

¶ 5 Daniel Shakeshaft, Maureen's husband, testified that he also heard defendant and Robertson arguing loudly inside their unit earlier in the evening. Shortly after midnight, Daniel heard defendant scream "Oh, my God; there's a fire." He then went outside and saw thick black smoke pouring out the front door of defendant's unit. Daniel notified a neighboring police officer about the fire, then entered defendant's unit to search for her cat, but could not remain inside

because the smoke was too thick. He escorted the firemen inside his own basement and saw thick, black smoke completely covering his entire basement ceiling. The smoke did not cause any permanent damage.

¶ 6 LaGrange fire captain Donald Gay, a certified fire and arson investigator, testified that about 12:15 a.m. on November 26, 2011, he responded to the fire at defendant's townhome and saw black smoke coming out the front door. Upon entering the unit, he saw smoke along the ceiling coming from the basement, where he found thick black smoke and a fire behind a door, which his crew extinguished. Captain Gay proceeded to the second floor of the unit where the windows had been opened. In one bedroom he found soot smeared on the wall, on a mattress, and in two areas on the floor, and a painting on the floor was ripped and had a scorch mark. In the bathroom, Captain Gay found burnt material consistent with athletic shoes inside the bathtub and toilet. It appeared that the shower had been turned on to extinguish a fire.

¶ 7 After the firemen ejected the smoke from the premises, Captain Gay returned to the basement and determined that the fire had been on the floor next to the furnace. He found a pile of debris burned into the linoleum tile and opined that the oil from the paint could have caused the linoleum to burn. He further found that a burned metal cushion frame consisting of springs and some wood had fallen into the furnace, and the cushion and half of the wood had been consumed by the fire. Captain Gay examined the furnace and found that Nicor had recently turned off the gas and main power panel, and thus, the furnace was not operational. The fire, heat and smoke had damaged some wiring and a switch on the furnace as well as the wall, ceiling and duct work in the laundry room. During his testimony, Captain Gay identified numerous photographs which depicted the damage to the basement and second floor of the residence. Captain Gay concluded that the fire was intentionally set by igniting painting material and

leather material from the fabric of the cushion. He further testified that the heat from a burning oil painting was sufficient to start a fire on a cotton or cloth material.

¶ 8 After his investigation, Captain Gay went outside and asked defendant if she knew how the fire started. Defendant claimed there was a problem with the furnace and suggested that was how it started. She denied that there was any other reason for the fire, and that any other area of the house had been on fire. Captain Gay noticed that defendant's hands and face were dirty with soot. Police investigator Fulla showed Captain Gay a burnt shoe and a crumpled canvas oil painting that was  $\frac{3}{4}$  burnt in one dumpster, and a bag of clothes with one burnt shoe in another dumpster. Later that evening, defendant admitted to Captain Gay that she intentionally started the fires with a lighter and burned Robertson's athletic shoes and the painting to get back at him because they were having relationship issues.

¶ 9 Scott Robertson testified that he and defendant were in a volatile relationship and had been living together for about 10 days in a townhome he rented. On the day of the fire, defendant had been drinking wine all day, and the police came to their house several times due to their arguing. Earlier in the evening, defendant went to the hospital and claimed Robertson had raped her, but then left, returned home, and broke into the townhome to be with Robertson. Later that night, defendant refused several police orders to leave the house, and Robertson voluntarily left to diffuse the situation, and slept in his car in the police station parking lot. About 6:15 a.m., an officer knocked on his car window and told him that there had been a fire at his home. Robertson then looked at his cell phone and saw several missed calls and text messages from defendant. Robertson testified that he had a workshop where he designed children's furniture in the larger room in his basement. He did not store any cushions or furniture in the room with the furnace, and after Nicor turned off the furnace, he removed everything from that room. The metal frame

that burned in the fire was from a children's chair that was in his workshop and it had a cushion made of fabric and foam. Two paintings that had been hanging in his bedroom, including an oil painting by his five-year-old son, were destroyed in the fire. Robertson denied ever painting any portraits or nude pictures of defendant.

¶ 10 LaGrange police investigator Patrick Fulla testified that while investigating the scene after the fire, he searched garbage dumpsters that belonged to another property across the alley and found a burnt athletic shoe in one dumpster, and in a second dumpster, found another burnt shoe inside a bag of wet clothes and a burnt painting. At the police station, defendant initially claimed that the fire started due to an electrical problem with the furnace. When Officer Fulla showed defendant photographs from the fire, she started crying loudly, requested a lawyer, and repeatedly said she wanted to go home. While being searched, defendant stated that she wanted to discuss the fire with police, waived her *Miranda* rights, and gave a written statement, which was published at trial.

¶ 11 Therein, defendant stated that on the day of the fire, she and Robertson had been arguing, and she called the police and told them he had raped her. They took her to the hospital, but she refused to submit to a rape kit because she did not like hospitals or doctors. She was then taken to the police station and offered assistance at a domestic abuse shelter, but she refused to go there and returned home. Defendant and Robertson again began arguing and the police returned to their home. Robertson left the house about 9 p.m., leaving her home alone. About 11 p.m., defendant went upstairs to the bedroom, saw the sheets missing from the bed, and called police to report them as stolen. The police came to the house and informed her that the sheets had been taken as evidence. As she sat in the house, defendant became angry with Robertson, saw his athletic shoes, and decided to burn them in the upstairs bathroom to get even with him.

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Defendant ignited the shoes using her lighter, then extinguished the fire by turning on the shower. She placed the shoes in a garbage bag with some wet clothes to prevent anything else from igniting, then went outside and threw the bag inside a garbage can across the alley. One of the shoes fell out of the bag, so she threw that shoe into a separate garbage can. Defendant then returned inside and opened all of the upstairs windows to air the smoke and smell from the house.

¶ 12 Defendant further stated that she then went into the basement and saw a painting that Robertson had made of her between the furnace and the dryer. She no longer wanted him to have it, so she lit it on fire with her lighter. As the painting burned, defendant panicked and took it outside, and when it was no longer on fire, she threw it into the garbage across the alley. Defendant returned inside and saw that a piece of leather and wood had caught fire and the basement was filling with smoke. She went outside and tried calling and texting Robertson, and when he did not answer, she screamed and called 911.

¶ 13 Officer Fulla further testified that the house sustained fire damage in the basement to the furnace, the floor, and the cement wall, with smoke damage to the rafters. The upstairs bathtub was damaged with melted plastic from the athletic shoes. In the master bedroom, there was a painting damaged by fire, and soot on the bed and in a circular pattern on the wall where it appeared someone had tried to remove it.

¶ 14 Defendant testified that after Robertson left the house, she grabbed a nude oil painting he had made of her off the wall in the upstairs hallway and lit it on fire with her lighter inside the bathtub so he could no longer have any part of her. As soon as it ignited, she immediately turned on the shower and extinguished the fire, but there was a lot of black smoke from the paint. Robertson's shoes and some of his clothes happened to be on the floor, so she threw them in the

tub to help smother the fire. She denied lighting his shoes on fire and claimed they ignited from the burning painting. Defendant took all of those items outside and threw them inside a dumpster. She returned inside the house and began collecting some of her personal items so she could move out. She went into the basement to check the dryer for her clothes, and placed her lit cigarette on top of the dryer. She then recalled that Nicor had turned off the gas and her clothes were still wet. Defendant could not recall what happened with her cigarette, but she knew she did not take it upstairs with her. Defendant denied lighting anything on fire in the basement.

¶ 15 Defendant further testified that she did not recall what was in her statement because she had been drinking wine that evening, Officer Fulla forced her to talk, and she could not read it without her reading glasses. She denied that the written statement was accurate, denied lighting a painting on fire in the basement, and denied any knowledge as to how that fire occurred. Defendant denied that she had any intention of igniting any portion of the house with the painting. Defendant testified that she did not start the fire in the bathtub out of anger, but instead, she burned that painting because she was sad and scared and did not want Robertson to have it anymore.

¶ 16 The trial court found that the State's witnesses were credible and corroborated each other, and that Captain Gay's testimony consistently explained how the extent of the damage occurred. Conversely, the court found that defendant's testimony was "highly suspect" and demonstrated "a severe lack of credibility." The court noted that Daniel Shakeshaft testified that there was no permanent damage to his adjoining property, and for that reason, the court found defendant not guilty of aggravated arson. However, the court further found that the evidence, including numerous photographs which were not submitted with the record on appeal, established that the damage to Robertson's unit was "quite extensive," had occurred in multiple locations within the

residence, and that defendant attempted to dispose of some of the damaged property. Based on these findings, the trial court found defendant guilty of residential arson and sentenced her to the minimum term of four years' imprisonment, with credit for 47 days in presentencing custody.

¶ 17 On appeal, defendant first contends that the State failed to prove her guilty of residential arson beyond a reasonable doubt because it failed to establish that she knowingly damaged the residence where she started the fires merely to destroy relationship memorabilia and believed she had extinguished the fires. Defendant admits that she started two fires in the house and acknowledges that those fires caused damage to the residence, but argues that there is no evidence that she intended to damage anything other than Robertson's shoes and painting. Defendant notes that she extinguished the first fire by turning on the shower, and thought she had extinguished the second fire. Defendant asserts that the statute requires an offender to knowingly cause damage, not knowingly start a fire.

¶ 18 The State responds that the evidence overwhelmingly established that defendant knowingly and deliberately set fire to a pair of shoes, a painting and a piece of furniture in two areas inside the home which caused fire and smoke damage to the residence. The State argues that it was foreseeable that defendant would damage the residence by starting the fires inside the home, especially on the floor next to the furnace, because smoke and fire damage are natural consequences of a fire.

¶ 19 When defendant claims that the evidence is insufficient to sustain her conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment

for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Jackson*, 232 Ill. 2d at 280-81. In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 20 In this case, defendant was convicted of residential arson. A person commits this offense when, in committing an arson, she knowingly damages, either partially or totally, any building or structure which is the dwelling place of another. 720 ILCS 5/20-1.2(a) (West 2010).<sup>1</sup>

¶ 21 The elements of residential arson, including the element of knowledge, do not need to be proven by direct evidence, but instead, the trier of fact may infer defendant's knowledge from the surrounding facts and circumstances. *People v. Stewart*, 406 Ill. App. 3d 518, 526 (2010).

Section 5/4-5 of the Criminal Code of 1961 states, in relevant part:

"A person knows, or acts knowingly or with knowledge of:

- (a) The nature or attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

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<sup>1</sup> Effective January 1, 2013, the residential arson statute was renumbered and now appears at 720 ILCS 5/20-1(b) (West 2013).

- (b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2010).

It is common knowledge that a natural consequence of fire is that it tends to spread. *Stewart*, 406 Ill. App. 3d at 526. Common sense further dictates that a fire produces thick black smoke, which causes damage and can be fatal.

¶ 22 Here, we find that the facts and circumstances surrounding defendant's conduct allowed the trial court to infer that she acted with the required knowledge to be convicted of residential arson. Defendant intentionally started two fires inside the residence by igniting items with her lighter. Defendant admits that she lit Robertson's athletic shoes on fire in the bathtub and acknowledges that there was a lot of black smoke from that fire, which caused her to open all of the upstairs windows. Captain Gay testified that there was soot smeared on the bedroom wall, the mattress, and in two areas on the bedroom floor, and identified photographs depicting this damage. Officer Fulla also testified that he saw soot on the bed and the wall, and noted that the damage to the wall was in a circular pattern where it appeared someone had tried to remove it. This testimony established that there was visible smoke and fire damage to the second floor of the residence as a result of the first fire started by defendant.

¶ 23 Following the initial fire and damage, and after disposing of the burnt shoes in a dumpster, defendant brought an oil painting into the laundry room in the basement, and using her lighter, lit that painting on fire on the floor next to the furnace. The second fire produced a substantial amount of thick black smoke and caused damage to the furnace, the linoleum floor, the cement wall, the duct work and the rafters. Common knowledge and common sense about fires and smoke notwithstanding, based on the circumstances of the black smoke and damage

produced by the initial fire, the trial court could infer that defendant had knowledge that there was a substantial probability that lighting the painting on fire would similarly produce thick black smoke and cause damage to the walls and tile in the basement. At the point of igniting the second fire, defendant would have been consciously aware that her conduct would result in smoke and fire damage. 720 ILCS 5/4-5 (West 2010). Accordingly, we find that the evidence was sufficient to prove defendant guilty of residential arson beyond a reasonable doubt.

¶ 24 In doing so, we reject defendant's argument that her act of extinguishing the first fire, and her belief that the second fire had been extinguished, shows that she did not intend to damage the residence. Defendant committed the offense of residential arson when she started the fires. See *People v. Bauer*, 393 Ill. App. 3d 414, 423 (2009) (the defendant's commission of aggravated arson was complete when she dropped the match starting the fire). Defendant's act of subsequently extinguishing the fires, and her belief that they had been extinguished, "is simply not relevant and therefore cannot absolve her from any criminal liability." *Id.* Based on our finding that the evidence was sufficient to sustain defendant's conviction, we reject her alternative argument that her conviction should be reduced to criminal damage to property because she acted recklessly.

¶ 25 Defendant next contends, and the State agrees, that she is entitled to sentencing credit for 110 days served in custody, rather than 47, and that her mittimus should be amended to reflect the correct number. Pursuant to our authority (Ill S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant is to receive 110 days of credit for time served.

¶ 26 For these reasons, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

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¶ 27 Affirmed; mittimus amended.