

2011 IL App (1st) 100269-U
No. 1-10-0269

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FOURTH DIVISION
August 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 7347
)	
TONY BENSON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Salone and Sterba concurred in the judgment.

O R D E R

HELD: Defendant was properly proved guilty beyond a reasonable doubt of criminal damage to government supported property where defendant admitted setting fire to his cell and the trial court took judicial notice that the county jail where defendant's cell was located was a government institution.

¶ 1 In a bench trial, defendant Tony Benson was convicted of criminal damage to government supported property

worth \$500 or less and was sentenced to two years in prison. He now appeals, challenging the sufficiency of the evidence.

¶ 2 The sole witness at trial was Cook County correctional officer Mansell. He testified that he was working at Cook County Jail, located in Chicago, on March 13, 2009. At about 12:20 a.m. he saw smoke coming from cell number 1033, which was occupied by defendant. Officer Mansell went to the cell and saw smoke and what appeared to be fire coming from the top and bottom of the cell door. Smoke and flames were also coming from the door's peephole. Officer Mansell used a fire extinguisher in an attempt to put out the fire by spraying the outside of the door. He then opened the door and saw that debris, papers, and cartons were on fire at the bottom of the door. There was fire damage to the sheets on the bed, which were smoking. Defendant was in the cell by himself.

¶ 3 Officer Mansell and his lieutenant transported defendant to "Cermak" for medical attention. On the way to the hospital, defendant stated that he started the fire because he wanted medical attention and wanted to go to the "psych and medication deck." Without objection, Officer Mansell testified that he was able to determine that the value of the damage done by the fire was between three and four hundred dollars. Part of the damage was to the cell door, which had been set on fire. When the State asked if the bed and sheets inside the cell were

supported in full or in part with funds from "the local unit of government," the defense objected. The court then stated

"He may answer if he knows. I'll take
judicial notice of that. The county
jail is a government institution."

Officer Mansell then testified in the affirmative when asked if Cook County paid for the sheets and the cell and the upkeep of the door.

¶ 4 On cross-examination Officer Mansell testified that he did not see how the fire started in defendant's cell. He also testified that he was not in charge of purchasing any items for the Cook County jail. However when asked if he personally had receipts of the cost of items like sheets, he responded "We have a listing of what it costs."

¶ 5 Based upon this evidence the court convicted defendant and sentenced him to two years in prison. This appeal ensued.

¶ 6 Defendant contends that his guilt was not proven beyond a reasonable doubt. In evaluating such a claim on appeal we will view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 7 Citing to *People v. Bartlett*, 175 Ill. App. 3d 686 (1988), defendant asserts that the State failed to prove that the items damaged, the cell door and the bed sheets, were government supported property. But in *Bartlett* there was absolutely no evidence introduced at trial that a county jail cell damaged by the defendant was supported by State funds. *Bartlett*, 175 Ill. App. 3d at 691. The reviewing court found that it would be improper for it to take judicial notice that government funds were used to support the jail, reasoning that to do so on the appellate level would amount to assuming the role of advocate for the State and would be contrary to the principles of judicial review. *Bartlett*, 175 Ill. App. 3d at 691. In this case it was the trial court which took judicial notice that Cook County jail was a government institution. Officer Mansell testified that the cell door was set on fire and that there was smoke coming from the fire-damaged sheets on the bed in the cell. We find that any reasonable trier of fact would find that the State properly proved beyond a reasonable doubt that the fire caused damage to government supported property. As the trial court noted below, the dollar amount of damage was not a significant factor beyond the fact of such damage, because defendant was charged with less than \$500 in damage.

¶ 8 Defendant also contends that the State failed to prove beyond a reasonable doubt that he started the fire.

Officer Mansell testified that defendant was the sole occupant of the cell. Furthermore, the officer testified that defendant admitted setting the fire in order to obtain a transfer to a psychiatric ward. Defendant suggests that the fire could have been the product of faulty outlet or a defective light bulb. But it is not our function on review to elevate every remote possibility to the level of reasonable doubt. Officer Mansell's testimony of defendant's confession, coupled with the officer's description of the fire, sufficed to contradict any such theory of an alternative cause.

¶ 9 For the reasons set forth in this order, we affirm defendant's conviction and sentence.

¶ 10 Affirmed.