

Circuit Court for Worcester County
Case No. C-23-CR-22-000018

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2123

September Term, 2022

JOHN EDWARD CROPPER

v.

STATE OF MARYLAND

Arthur,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 12, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. R. 1 104(a)(2)(B).

The parties in this case ask our Court to consider whether the doctrine of transferred intent applies in arson cases. Because we find that there was sufficient evidence for the jury to find that John Cropper acted with specific intent, however, we decline to resolve this question.¹ As such, we affirm the judgment of the circuit court.

BACKGROUND

On June 22, 2021, there was a fire at 12849 Harbor Road (the Cottage). The fire spread to a boathouse and fishing boat on that property, and to two nearby residences (12845 Harbor Rd. (Rental #1), 12847 Harbor Rd. (Rental #2)) owned by the same landlord, and 12855 Harbor Rd. (Rental #3), owned by a third-party. Deputy Fire Marshal Chris Vieira conducted an investigation and found that the fire originated on the kitchen floor of the Cottage and that an accelerant was used. The fire was therefore ruled as incendiary, i.e., intentionally started.

Video cameras on the property recorded a car used by Cropper at the scene when the fire started. As the fire grew, the car was seen leaving the scene of the fire. When

¹ Cropper presents a second question for our review: that the trial court’s jury instruction for the reasonable doubt standard of proof is an unconstitutional violation of due process because it minimizes the level of certainty jurors should have to convict in a criminal case. We decline to address this claim because, as Cropper admits in his Brief, it was not objected to at trial and, therefore, is not preserved for our review. *See* MD. R. 8-131 (“[o]rordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised on or decided by the trial court”). Even if the issue were preserved, however, the trial court correctly instructed the jury on the reasonable doubt standard as required by *Ruffin v. State*, 394 Md. 355, 373 (2006) (requiring trial courts to “instruct the jury on ... the reasonable doubt standard of proof” in accordance with Maryland Criminal Pattern Jury Instruction 2:02). The trial court in this case did exactly that.

contacted by the Deputy Fire Marshal, Cropper said that he did not know anything about the fire, and that he was home when it occurred. That wasn't exactly true. Immediately after the fire, Cropper searched the web looking at the local fire department volunteer log, police scanners, and Facebook posts about the harbor fire. At that same time, Cropper was exchanging messages with a friend about the fire, which he later told the Deputy Fire Marshal that he knew nothing about.

Soon after investigations began, Cropper was arrested and charged with two counts of first-degree arson for burning two residences, the Cottage and Rental #3, second-degree arson for burning the boathouse behind the Cottage, willful and malicious injury to property for Rentals #1, #2, and a fishing boat, and two counts of recklessly engaging in conduct causing substantial risk of death or serious physical injury to a person.

At trial, the State presented evidence that Cropper had been evicted from Rental #2 one month before the fire and had only finished retrieving his belongings days before the fire. The State also presented evidence that Cropper was the only person who could have driven the car shown on the surveillance camera at the time of the fire. Cropper also worked on a fishing boat that operated out of the landlord's dock before the landlord terminated the lease for that boat a month before the fire. The State's theory was that Cropper started the fire as revenge against his landlord for ending the lease for his fishing boat and for evicting him from Rental #2. A jury in the Circuit Court for Worcester County convicted Cropper of all counts including first-degree arson and second-degree arson. The trial court sentenced him to an aggregated sentence of 59 years.

This timely appeal followed, in which Cropper argues that the court should have granted his motion for judgment of acquittal because the evidence that he intended to set the fire to all the properties that burned was insufficient.

DISCUSSION

Cropper argues that the trial court erred by denying his motion for judgment of acquittal because the evidence was insufficient to sustain his conviction. According to Cropper, he only intended to set the fire at the cottage and there was no evidence that he intended the fire to spread to the other properties. We disagree.

When reviewing the sufficiency of the evidence to support a criminal conviction, we must determine, after viewing the evidence in the light most favorable to the State, if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Burlas v. State*, 185 Md. App. 559, 568 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “If the evidence ‘either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt[,]’ then we will affirm the conviction.” *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)).

Under Maryland law, a person may not “willfully and maliciously set fire to or burn ... a dwelling ... or a structure in or on which an individual who is not a participant is present” or a “structure that belongs to the person or to another.” MD. CODE, CRIM. LAW (“CR”) §§ 6-102(a)(1)-(2), 6-103(a). “‘Willfully’ means acting intentionally, knowingly, and purposely,” and “‘[m]aliciously’ means acting with intent to harm a person or

property.” CR § 6-101(c)(e). Arson is, therefore, a specific intent crime that requires that a person “not only [have] an intent to do the immediate act of setting a fire, but also [embrace] the purpose of causing harm to person or property.” *In re David P.*, 234 Md. App. 127, 135 (2017) (citations omitted). As such, “[m]ere knowledge that a result is substantially certain to follow from one’s actions is not the same as the specific intent or desire to achieve that result” and “setting a fire with reckless and wanton disregard for the consequences” does not satisfy the “‘willful and malicious requirement’ of the statute.” *Id.* at 136.

Because of the “clandestine nature of arson[,]” malice is “ordinarily ... proved by circumstantial evidence.” *Brown v. State*, 39 Md. App. 497, 508-09 (1978); *see also Young v. State*, 303 Md. 298, 306 (1985). As such, “[i]t may be inferred as a matter of fact from the actor’s conduct and the attendant circumstances.” *Young*, 303 Md. at 306. The “use of an accelerant allows a reasonable inference of intent, because it forces one to the conclusion that the actor was intending to set fire to a building, as there is no other rational purpose for conduct such as splashing gasoline on building walls.” *In Re David P.*, 234 Md. App. at 139. Additionally, we will also consider “‘other facts of similar import tending to show that the fire had an incendiary origin.’” *Brown*, 39 Md. App. At 509 (quoting *Hughes v. State*, 6 Md. App. 389, 394 (1969)).

In his appeal, Cropper does not dispute that the evidence was sufficient to show that he intended to start the initial fire at the Cottage. Rather, Cropper argues that the evidence was insufficient to show that he also intended to burn the boathouse, the boat, and the other three residences. The State’s argument is that Cropper intended the fire to spread and burn

the additional properties. If that is true, the State argues that there was sufficient evidence presented to the jury to support Cropper’s convictions.²

Cropper takes issue with the fact that there was no direct evidence that he intended the fire to spread,³ but his argument fails to recognize that we must take the evidence, *all the evidence*, in the light most favorable to the prosecution. And as we stated, that evidence does not need to be direct evidence.

Looking at all the evidence presented to the jury, the trier of fact could have made a reasonable inference that Cropper intended to burn all the properties owned by the landlord and intended the fire to spread to other property surrounding the Cottage. And

² As we stated, the parties’ flagship arguments concern whether the doctrine of transferred intent applies in arson cases. The State argues that the doctrine of transferred intent applies to arson, while Cropper argues it does not apply to arson. We agree that this is an open question of Maryland law. *See Harrison v. State*, 382 Md. 477, 511 n.3 (2003) (Raker, J., dissenting) (stating that the doctrine of transferred intent was “not limited to killing” but “instead [was] ‘a general principal which permits liability for any crime involving a *mens rea* of intent—be it arson, assault, theft[,] or trespass—where the actual object of the crime is not the intended object.’” (quoting Anthony M. Dillof, *Transferred Intent: An Inquiry into the Nature of Criminal Culpability*, 1 BUFF. CRIM. L. REV. 501, 504 (1998))). Nevertheless, we need not resolve it because we hold that Cropper had the specific intent to burn all the buildings.

³ Cropper argues that even if he intended to start the fire at the Cottage, he could not be convicted of arson for the fire “negligently,” in his view, spreading to the additional properties. *In Re David P.*, 234 Md. App. at 136 (citing *Richmond v. State*, 326 Md. 257, 268 (1992)). We agree that under the current arson statute, Cropper could not be convicted of arson for the other properties that burned if he did not intend that the fire spread. *Id.* The State argued, however, because an accelerant was used, that the fire spreading was his intent. The State supported this argument, as the court explained, with evidence of his relationship with the landlord, the landlord’s ownership of some of the neighboring properties, the proximity of these and other properties to where the fire was started, and the strength of the fire. This was sufficient evidence for the jury to believe that Cropper intended that the other properties burn, and that the fire did not spread just from mere negligence.

“[w]here it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the trier of fact could have made other inferences from the evidence or even refused to draw any inference, but whether the inference it did make was supported by the evidence.” *Pryor v. State*, 195 Md. App. 311, 328-29 (2010) (cleaned up).

Here, the jury chose to infer that Cropper set fire to the Cottage as a result of his eviction from Rental #2 and intended for the surrounding properties to burn as well. That inference is reasonable based on the evidence presented and is sufficient to support Cropper’s conviction for first-degree and second-degree arson.

The State thus presented sufficient evidence in this case for a reasonable jury to infer that Cropper’s motive in setting the fire at the Cottage was done with the intention that all of the properties in that vicinity burn. We hold that the trial court did not err in denying Cropper’s motion for judgment of acquittal.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

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