2023 IL App (4th) 230341-U

NO. 4-23-0341

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 13, 2023
Carla Bender
4th District Appellate
Court, IL

In re K.A., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Woodford County
Petitioner-Appellee,	)	No. 19JD26
v.	)	
K.A.,	)	Honorable
Respondent-Appellant).	)	Charles M. Feeney, III,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Cavanagh and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's decision finding respondent "not not guilty" of five counts of first degree murder, one count of aggravated arson, and two counts of arson, following a discharge hearing.

¶ 2 In October 2019, the State filed a petition for adjudication of wardship, alleging that respondent, K.A. (born January 2010), was a delinquent minor due to his having committed (1) five counts of first degree murder (720 ILCS 5/9-1(a)(3) (West 2018)), (2) one count of aggravated arson, (*id.* § 20-1.1(a)), and (3) two counts of arson (*id.* § 20-1(b)). The petition alleged generally that on April 6, 2019, respondent knowingly "set fire to the trailer residence located at 14 Cypress Court, Goodfield, Illinois," causing the deaths of (1) Jason Wall, (2) Damien Wall, (3) Kathryn Murray, (4) Ariel Wall, and (5) Rose A.

¶ 3 In July 2020, the trial court found that respondent was unfit and unlikely to attain fitness within a year's time. In August 2022, the court conducted a discharge hearing pursuant to

section 104-23 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/104-23 (West 2020)) at which the court determined that respondent was "not not guilty" on all counts.

¶ 4 Respondent appeals, arguing that (1) the State did not present sufficient evidence to prove respondent's guilt beyond a reasonable doubt and (2) respondent was denied a fair hearing because the trial court erred by (a) admitting other-crimes evidence, (b) denying respondent's motion to suppress his statements to law enforcement officers, and (c) permitting the admission of inadmissible hearsay. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Charges

¶ 7 In October 2019, the State filed a petition for adjudication of wardship, alleging that on April 6, 2019, respondent, who was nine years old at the time, committed (1) five counts of first degree murder (720 ILCS 5/9-1(a)(3) (West 2018)), (2) one count of aggravated arson (*id.* § 20-1.1(a)), and (3) two counts of arson (*id.* § 20-1(b) (West 2018)). The petition alleged generally that on April 6, 2019, respondent, "set fire to the trailer residence located at 14 Cypress Court, Goodfield, Illinois," causing the deaths of (1) Jason Wall, (2) Damien Wall, (3) Kathryn Murray, (4) Ariel Wall, and (5) Rose A.

¶ 8 B. The Pretrial Proceedings

¶ 9 1. *Respondent's Fitness*

¶ 10 In October 2019, the trial court conducted a hearing at which it (1) arraigned respondent on the petition and (2) appointed defense counsel and a guardian *ad litem* (GAL) for respondent. In December 2019, defense counsel filed a "Motion For Approval of Funds To Retain An Expert," alleging that, "based on my interaction and conversations with [respondent],

as well as his age," counsel had a *bona fide* doubt as to respondent's fitness to stand trial.

¶ 11 In March 2020, Eugene Griffin, a clinical psychologist who conducted respondent's fitness examination, filed his report, opining, "[Respondent] is unfit to stand trial or plead. Because of his mental condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. [Respondent] is not likely to attain fitness in one year, even if provided with a course of treatment." Specifically, Griffin noted that respondent had little understanding of the proceedings due to his having (1) attention-deficit disorder, (2) post-traumatic stress disorder related to the fire, (3) learning disabilities, and (4) developmental immaturity.

¶ 12 In July 2020, the trial court conducted a fitness hearing, at which the parties (1) stipulated that Griffin would testify consistent with his report and (2) agreed to set the matter for a discharge hearing pursuant to section 104-23 of the Procedure Code (725 ILCS 5/104-23 (West 2020)). Based on the stipulations, the court found that respondent was unfit and unlikely to attain fitness within a year's time.

¶ 13 2. *The Motions to Suppress and To Allow Respondent's Statements*

¶ 14 In December 2019, the State filed a motion to allow statements respondent made during a recorded interview with Detective Robert Gillson. The motion alleged that on April 8, 2019, Gillson interviewed respondent regarding the deadly trailer fire that occurred on April 6, 2019. During that interview respondent denied starting the fire. (We describe the details of that interview *infra* ¶¶ 40-44.)

¶ 15 In September 2020, respondent filed a motion to suppress the statements that he made to Gillson, alleging that he did not knowingly and voluntarily waive his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Specifically, respondent argued that he "was not

at an age or in a mindset to be interviewed about murder and arson, or to even understand what those two words meant," as evidenced by his being found unfit and not likely to become fit within a year. Respondent also claimed that, as a matter of law, a nine-year-old defendant "cannot voluntarily and knowingly waive his Miranda rights under the circumstances presented herein."

¶ 16 *3. The Motions To Allow Evidence of Other-Crimes*

¶ 17 In June 2021, the State filed a motion to allow evidence that respondent had set fires on previous occasions, namely—"[(1)] to a chair in the trailer that his aunt was asleep in, [(2)] a Frisbee in the minor's grandfather's garage that he had poured gasoline on, [(3)] a car seat in a van, [(4)] under the bed that [respondent's mother] was sleeping in, and [(5)] *** a corn field." The motion alleged that respondent "admitted to setting these fires in his interview on April 8, 2019."

¶ 18 In February 2022, the State filed a second motion to allow evidence of a fire that had taken place in September 2021, after the charged offenses occurred. The motion alleged that the Peoria Fire Department responded to a fire on September 24, 2021, at a house on northeast Adams Street in Peoria, Illinois. The fire investigator determined that the fire "originated on a bed in an upstairs bedroom where three children had been playing; those children being a five-year old girl, an eight-year old boy, and [respondent]" Based on witness statements and the physical evidence, the investigator opined that "the cause of the fire was lighting material at the foot of the bed on the mattress with a red Bic lighter set by [respondent]."

¶ 19 4. *The First Motions Hearing*

¶ 20 In April 2023, the trial court conducted a hearing regarding the State's motions to admit (1) other-crimes evidence and (2) respondent's statement to Gillson, as well as

respondent's motion to suppress his statement.

¶ 21 a. Samantha A.

¶ 22 Samantha testified that she was respondent's maternal aunt and respondent had started fires on three separate occasions prior to the April 2019 fatal fire. Specifically, Samantha stated that respondent set fires (1) in the winter of 2016, inside her apartment in Carlock, Illinois, (2) in the summer of 2018, inside her trailer in Goodfield, Illinois, to an armchair, and (3) "sometime after summer of 2018," to a car seat in a parked car outside her trailer in Goodfield.

¶ 23 Regarding the 2016 Carlock fire, Samantha testified that respondent and Katrina (respondent's mother and Samantha's sister) stayed overnight, with respondent and Katrina sleeping in one of the bedrooms while Samantha slept on the couch in the living room. During the night, Samantha woke to the smell of smoke and saw smoke coming from the bedroom. She opened the bedroom door and saw flames coming from the end of the bed in which Katrina was sleeping. Respondent was standing by the window watching the fire burn. Samantha, her mother (Lori A.), and her father (Michael A.) then worked together to put the fire out, finding a Zippo lighter under the bed. Samantha spoke with respondent afterwards, and he claimed he did not start the fire.

¶ 24 Regarding the summer 2018 armchair fire, Samantha was napping on the living room couch during the day. She was awakened by her mother's screaming while trying to put out a fire that had been started on Samantha's father's chair in the living room. Samantha did not see the fire, only the melted remains of her father's chair and the trashcan that was next to it.

¶ 25 Regarding the 2018 car seat fire, Samantha was inside her trailer with Lori A., Katrina, her daughter (Rose A.), and Michael A. Respondent was outside. At some point,

Samantha and Katrina went outside and saw smoke coming from the van. Katrina opened the van door and visible flames could be seen coming from the interior. Samantha testified, "I saw [Rose's] car seat on fire and also some of the plastic had dripped down, and it also started the rug on the bottom of the van on fire and some of the back seat of the driver's side on fire." Respondent was the only person near the fire at that time. Samantha asked respondent why he started the fire, but respondent denied starting the fire, alleging that some unnamed person ran away before Samantha and the others came out of the house.

¶ 26 b. Lori A.

¶ 27 Lori testified that she was respondent's grandmother. Regarding the Carlock fire, Lori stated that the fire occurred between 10 p.m. and 11 p.m. She was asleep at that time in the house and awoke to Samanatha "screaming" about a fire. Lori went to the bedroom where Katrina was sleeping and saw (1) flames on the end of the bed and carpet, (2) Katrina sleeping in the bed, and (3) respondent watching the fire burn. While the family attempted to put out the fire, respondent sat on the couch watching television. The source of the fire appeared to be her husband's Zippo lighter, which was found under the bed. Lori's husband usually kept the lighter in his sock drawer. After extinguishing the fire, Lori asked respondent why he started the fire, but he denied doing so. However, "six months to a year later he finally admitted to [Lori] that he started that fire." Lori then clarified that the admission was in relation to respondent's setting the armchair on fire in 2018.

¶ 28 Regarding the armchair fire, Lori testified that on that day, she was with the rest of the family taking care of Rose at Katrina's trailer on Cypress Court so that Samantha could take a nap. At some point, respondent entered the trailer and asked, "[Y]ou smell smoke?" Lori stated that she did not smell smoke but went to check outside. Once outside, Lori saw flames

through the window of the Birch Court trailer. Lori ran into the trailer, woke Samantha up, and put the fire out with buckets of water. Afterward, Lori spoke with respondent about the fire, asking. "[W]hy did you set Pawpaw's chair on fire?" Respondent replied, "I didn't. It was this other kid." However, Lori did not believe there were any other children in the area. Lori testified that two weeks later she had a conversation about fire and respondent said "that he was sorry that he had done the one in Carlock, set the bed on fire in Carlock. But he still told [her] he did not set [her] husband's chair on fire."

¶ 29 Regarding the car seat fire, Lori testified that the fire took place after the other fires. On that day, Lori walked outside and saw Katrina open the car door to reveal flames coming from the car seat inside the van. Respondent was standing outside the van watching the fire with no one else around. Once the fire was extinguished, Lori asked respondent why he would start the fire and "[h]e said he seen somebody running away from the van."

¶ 30 On cross-examination, Lori testified that the family had a policy of locking up their lighters when they were not in use.

¶ 31 c. Robert Gillson

¶ 32 Robert Gillson testified that he was a detective with the Woodford County Sheriff's Office who investigated the April 2019 fire that killed five people. Gillson interviewed respondent in April 2019 as part of his investigation. Gillson stated that respondent was accompanied by his attorney for the interview. At the beginning of the interview, Gillson explained to respondent that he was not in trouble, and he was free to leave at any time. Gillson also read respondent his *Miranda* rights, and respondent stated that he understood them and was willing to talk to Gillson. According to Gillson, respondent's lawyer also stated that respondent understood his *Miranda* rights and was willing to talk to Gillson. The interview video was

recorded and a copy of the interview was admitted into evidence (*infra* ¶¶ 40-44).

¶ 33 d. The Trial Court's Rulings on the Motions

¶ 34 The trial court granted the State's motion to admit evidence of the 2016 Carlock fire, 2018 armchair fire, and 2018 car seat fire, noting that the evidence was relevant and probative of respondent's knowledge, intent, and motive. The court did not address the State's motion to allow evidence of the September 2019 fire. The court also granted the State's motion to admit respondent's statements to Gillson.

¶ 35 5. *The Second Motion Hearing*

¶ 36 In May 2022, the trial court conducted a hearing on the State's motion to admit evidence of the September 2019 fire. The State offered to the court an exhibit that showed the testimony the State would present at a hearing on the motion for the purpose of establishing *modus operandi* for the other-crimes evidence. The court took the exhibit under advisement and advised the parties that it would consider the motion at the discharge hearing.

¶ 37 C. The Discharge Hearing

¶ 38 In August 2022, the trial court conducted respondent's discharge hearing, at which the court also considered the State's motion to admit evidence of the September 2019 Peoria fire.

¶ 39 1. *The State's Evidence*

¶ 40 a. Respondent's Interview with Gillson

¶ 41 The trial court admitted respondent's recorded interview with Gillson into evidence and allowed the State to play the video recording.

¶ 42 During the interview, respondent told Gillson that prior to the April 2019 fire he was watching a movie with his great-grandmother in her room. He heard a loud sound, which he

thought sounded like the furnace turning on. The smoke detector alerted, and he saw smoke coming out of the vents on the floor. Outside his great-grandmother's door he saw a trail of fire in the hallway and a large fire in the living room. He saw his mother through the wall of fire, and she told him that the furnace had exploded. He said that his mother kept passing out while they were talking, but later his mother told him that he had hallucinated that happening. He saw Jason Wall (Katrina's boyfriend) drag his mother out of the front door of the trailer before reentering the trailer.

¶ 43 Respondent said that before he escaped the fire, he shut the bedroom door and put a blanket over his great-grandmother's head. He then put his shirt over his nose, broke the bedroom window with his elbow, jumped out, and ran to his relatives' trailer, and then to his best friend's trailer, whose father came over to help.

¶ 44 Respondent admitted that he had played with fire in the past but denied starting the April 2019 fire. His best friend's father asked respondent if he started the fire, and respondent accidentally nodded his head yes. Respondent stated that he nodded yes because he was thinking about the fire and not listening to the question.

¶ 45 b. Michael A.

¶ 46 Michael testified that he was respondent's grandfather and he lived in a trailer at 13 Birch Court with Lori, Samantha, and Rose. Nearby at 14 Cypress Court lived Katrina, his mother-in-law (Kathy Murray), Jason, Aerial Wall, Damien Wall, and respondent. Shortly after 10 p.m. on April 6, 2019, he heard Samantha scream that the Cypress Court trailer was on fire. He got out of bed and saw the burning trailer. Michael attempted to enter the trailer to rescue the people inside but was unsuccessful.

¶ 47 Michael saw Katrina outside the trailer naked and in "total panic." Katrina kept

attempting to enter the trailer, but Michael told everyone to get away because there was nothing that could be done. Michael did not know where respondent "was during the whole thing," but he did see respondent in his living room when he ran to help with the trailer fire. He also noticed that the back door to the trailer was open and assumed that respondent used that door to escape the fire because respondent was the one who woke Samantha to tell her about the fire. The flames appeared to be coming from the living room where respondent slept.

¶ 48 c. Samantha A.

¶ 49 Samantha testified that she was respondent's aunt and Katrina's sister. On April 6, 2019, her daughter, Rose, was over at Katrina's trailer. Samantha was asleep in Michael's trailer but was awakened by respondent's pounding on the door. "[Respondent] said I'm sorry. I didn't mean to do it." She then noticed that Katrina's trailer was on fire and woke her parents. They attempted to enter Katrina's trailer but failed to do so. At some point, Katrina ran towards Samantha and Michael.

¶ 50 When asked about respondent's demeanor when he spoke to Samantha, she testified, "He was calm. Just calm as can be. *** Like, he wasn't panicking, he wasn't nothing. He was just calm when he said I didn't mean to do it."

¶ 51 Regarding the previous fires, she testified similarly to her testimony at the motions hearing. However, she also testified, "I was told by my mom that [respondent] and some other kid had came over to get something" while she was asleep on the day of the 2018 armchair fire.

¶ 52 d. Katrina A.

¶ 53 Katrina testified that respondent was her oldest son and that her other children, Damien and Arial, died in the fire. Katrina stated that, although respondent had a bedroom in her

trailer, in the weeks leading up to the April 2019 fire, respondent did not sleep in his room. Instead, he slept on the couch in the living room because "he was afraid sleeping all the way at the other end of the trailer away from everybody else."

¶ 54 Regarding potential sources of flame in the house, Katrina stated, "We did not have a regular stove, and we did not have a washer and dryer. And we used an electric skillet, a microwave, and then one of those, like, convection ovens and—because of [respondent] having started fires prior to that."

¶ 55 Katrina stated that when she escaped from the trailer fire, she ran to her parents' trailer and saw respondent sitting on the couch crying.

¶ 56 On April 10, 2019, respondent was removed from her care and placed into the custody of the Illinois Department of Children and Family Services (DCFS). In October 2019, at a DCFS supervised visit with respondent, Katrina spoke with respondent about the fire. Katrina testified as follows: "I said [respondent], you've always been honest with me any time you've done it. I go, even if you did do it, I would still love you. I just want to know. And he told me he did [it]. And he said that he prayed to God nobody would die, and that God let him down."

¶ 57 Katrina did not immediately tell anybody what respondent said because she did not want to hurt her son and hoped that he did not cause the fire. However, at the urging of her mother, Katrina later conveyed respondent's admission to police officers. Katrina said, "It was one of the hardest things I ever had to do besides bury my other children."

¶ 58 Regarding the previous fires, she testified similarly to her testimony at the motions hearing.

¶ 59 e. Michael Poel

¶ 60 Michael Poel testified that he was a special agent with the Office of the Illinois

State Fire Marshal, Division of Arson Investigation. On April 7, 2018, Poel arrived at the trailer and spoke with the local fire chief, who told him that the fire appeared to come from the midpoint of the trailer. Poel confirmed that the most damaged part of the trailer was the living room. Poel asked a crime scene investigator to photograph the scene.

¶ 61 Poel noted that the furnace was intact, which meant that it did not explode. He also examined the furnace wiring and determined that it, too, was not the origin of the fire because (1) he would expect the roof in that area to be burned away if that was where the fire started and (2) there was no "arcing" around the wiring. Poel also testified that if there had been a gas leak, the entire area around the furnace would have been destroyed in the fire.

¶ 62 When asked his opinion on the cause of the fire, Poel stated as follows:

> "I believe the origin of this fire is on, in, or around the couch at or near floor level, possibly with—given the information about the fire on the floor, that there may [have] been some type of an ignitable liquid utilized, and that the fire is, most likely, incendiary in nature and that it was intentionally set."

¶ 63 Defense counsel confronted Poel with a copy of a report Poel wrote regarding the fire, in which Poel noted that he had previously written that the cause of the fire was "undetermined" because he could not identify a specific ignition source. Poel explained that at the time of his report the guidelines suggested giving an "undetermined" classification if a specific ignition source could not be identified. However, the guidelines had been updated since then and now allowed for an opinion on whether the fire was incendiary in nature—meaning, "the result of a deliberate act or in circumstances in which the person or persons knows there should not be a fire"—even if an ignition source could not be determined.

¶ 64 Regarding his report, Poel testified that Katrina told him that she saw respondent

climbing out of her grandmother's window. She also told Poel about some problems with the water line in the trailer, as well as a hole in the trailer floor. Katrina also thought that maybe there was some heat tape on the water lines to keep them from freezing in the winter. Poel did not investigate the heat tape because the trailer floor had become too unsafe for him to examine as a result of the fire. Neither he nor anyone else followed up with the gas company about a potential gas leak.

¶ 65 f. Joshua Harris

¶ 66 Joshua Harris testified that he was a fire investigator with the Peoria Fire Department. In September 2021, he was called to investigate a fire in Peoria. When he arrived, he found a mattress on fire in an upstairs bedroom and saw three Bic lighters and a box of matches on the floor of the bedroom.

¶ 67 Harris spoke to the tenant of the house, Shannon Etheridge, who told him that she and her friend, Danielle Buss—respondent's father's girlfriend—were in the kitchen making dinner prior to the fire. Etheridge and Buss sent respondent upstairs to tell Etheridge's two children that dinner was ready. Respondent then came running downstairs and said that Oliver W., Etheridge's son, had done a bad thing. They ran upstairs and saw the bed on fire.

¶ 68 Later, Harris called Etheridge to follow-up on their previous conversation, and she informed him that her daughter, Charlie W., told her that Oliver had not started the fire, respondent had. Harris's colleague, Detective Jason Leigh, interviewed Charlie a few days later, and she told him that she and respondent were on Etheridge's bed, and respondent was playing with a lighter. Charlie said that respondent had started the fire and told her to say Oliver had done it. Leigh interviewed Oliver and gave him a lighter to light but he could not ignite the lighter. Neither Harris nor Leigh interviewed respondent. Based off those interviews, Harris

concluded that respondent had started the fire with a Bic lighter.

¶ 69 2. *Respondent's Evidence*

¶ 70 a. Terry Brown

¶ 71 Brown testified that he was the president and investigator for FireTech, Inc. After examining all the evidence, Brown opined that the cause of the fire was undetermined, which means he was unable "to develop enough data from the fire scene to eliminate multiple potential ignition sources" and he "[could not] reach a conclusion, a firm conclusion, as to what caused the fire." Regarding Poel's report and later reclassification of the trailer fire, Brown explained that the 2017 guidelines contained four classifications for fires, including incendiary and undetermined, but the 2021 guidelines changed the classification system. Brown testified that regardless of the changes, Poel should have changed his classification of the fire only if new facts came to light, which had not occurred.

¶ 72 Brown testified that the quality of the photos taken by the crime scene investigator was too poor for Brown to opine the origin of the fire because the investigator who took the photos was not trained to document how fires start. He also testified that had he been able to examine the trailer, he could have conducted three tests—namely, (1) arc mapping of the electrical system, (2) depth of char test, and (3) depth of calcination. These tests could have helped him determine the origin of the fire.

¶ 73 b. Stipulations

¶ 74 The parties stipulated that Gillson would testify that both Katrina and Samantha told him that they believed the furnace had been tampered with. Samantha also told Gillson that respondent had a history of taking the blame for things he did not do.

¶ 75 The parties also stipulated that Officer Jesse Polston, also of the Woodford

County Sheriff's Office, would testify that he was one of the first responders to the fire, and Katrina told him that she thought the furnace had exploded.

¶ 76 3. *The Trial Court's Decision*

¶ 77 Following closing arguments by the parties, the trial court discussed its findings. First, the court discussed the other-crimes evidence, stating that the prior fires were evidence of respondent's knowledge of the nature of fires. The court found that the slight differences in the family's stories regarding the prior fires may help their credibility because it indicates "they didn't get together and have a family meeting to coordinate their stories. That they, in fact, told their recollections. But all of their recollections have something, and that's the [respondent] at the center of the fire."

¶ 78 The trial court continued as follows:

> "And then you—as to the—so it's relevant for a lot of reasons to show what happens when you mess with fire. The absence of mistake, if you will, his intent. It goes towards that. The *modus operandi*, I agree, you know, that there is striking similarities in these fires. Just because the other people were able to get on the fire and put it out, that's the striking difference. But that is not attributable to the [respondent]. If you recall from the Carlock fire, for instance, he was just sitting there and while his mother is asleep in bed and her bed was starting to get burnt. So—so I find that evidence to be very striking.
>
> As to the Peoria fire, the subsequent offense, I find it's admissible and because it's strikingly similar as well. People in the home, setting the fire. And we— and he clearly in that instance understood the wrongfulness of his conduct because he had made attempts to induce another to get the blame for it. So his

efforts to cover up his conduct in the Peoria fire shows his deceptiveness and his understanding of the wrongfulness of his conduct in—in that regard. But it shows his mode of operation and absence of mistake as well. So I find they're admissible."

¶ 79 The trial court stated what evidence it found to be compelling, stating as follows:

"Well, first of all, so did we know the [respondent] has experience with fire? We know that he admitted to people that he did this. And the interesting thing is he admitted to people, and I am supposed to believe that they don't have credibility. But at his age who would I expect him to admit to? Who would I expect him to express his sorrow for having done something wrong? To his family. Not some detective that he doesn't know but his family.

*** There were periods of denial, and then he would admit to family members what he did.

The fact that he told a story or that Katrina told a story about the furnace, we know that's a make-believe story. We know that from the evidence that was presented that the furnace absolutely did not explode. ***

And—but as far as their story, [Katrina] said it was to protect him. We know that that story about the furnace simply wasn't true. We know that because the furnace was in the condition the furnace was in. And that—I think Mr. Poel went over those pictures and explained it, and I found that very credible.

As far as the fire, quote, 'experts' and their manual, that's not conclusive. You know, whether within some manual's determination of whether a fire is incendiary or otherwise, that doesn't—I'm not saying it's not relevant, but it's not

conclusive. *** This court is to consider all of the evidence. And including, for instance, somebody's admission, including the evidence of other fires in this instance given these facts."

¶ 80 In March 2023, the trial court issued its written order, finding that the evidence was sufficient to prove respondent guilty beyond a reasonable doubt of all counts. The court ordered respondent to undergo an extended period of treatment pursuant to section 104-25(d) of the Procedure Code (725 ILCS 5/104-25(d) (West 2022)) and for respondent to be reevaluated by Dr. Ryan Finkenbine "for fitness issues."

¶ 81 This appeal followed.

¶ 82 II. ANALYSIS

¶ 83 Respondent appeals, arguing that (1) the State did not present sufficient evidence to prove respondent's guilt beyond a reasonable doubt and (2) respondent was denied a fair hearing because the trial court erred by (a) admitting other-crimes evidence, (b) denying respondent's motion to suppress his statements to law enforcement officers, and (c) permitting the admission of inadmissible hearsay. We disagree and affirm.

¶ 84 A. Expedited Appeal Deadline

¶ 85 Initially, we note that this case is an accelerated appeal under Illinois Supreme Court Rule 660A (eff. July 1, 2018) because it arises from a final judgment in a juvenile delinquency proceeding. Rule 660A requires this court to issue its decision within 150 days after the filing of the notice of appeal unless there has been "good cause shown." Ill. S. Ct. R. 660A(f) (eff. July 1, 2018).

¶ 86 Here, respondent's notice of appeal was filed on April 14, 2023, and this court's disposition was due to be filed by September 10, 2023. Respondent requested oral argument,

which was conducted on October 31, 2023. Accordingly, given the need to schedule and conduct oral argument, we conclude "good cause" exists for issuing our disposition after the 150-day deadline.

¶ 87 B. The Sufficiency of the Evidence

¶ 88 Respondent argues that we should reverse the trial court's finding that the State proved respondent's guilt beyond a reasonable doubt because the State did not present sufficient evidence to show that respondent started the fire. Specifically, respondent argues that the State's case was almost entirely dependent on the credibility of respondent's family, whose testimony was "riddled with inconsistencies, outright lies, and open hostility to the defense." We disagree.

¶ 89 1. *The Applicable Law and Standard of Review*

¶ 90 "[A] discharge hearing [pursuant to section 104-25 of the Procedure Code (725 ILCS 5/104-25 (West 2022))] is not a criminal prosecution. Rather, it is an innocence-only hearing that is civil in nature and simply enables an unfit defendant to have the charges dismissed if the State does not have the evidence to prove he committed the charged offenses beyond a reasonable doubt." (Internal quotation marks omitted.) *People v. Cardona*, 2013 IL 114076, ¶ 23, 986 N.E.2d 66. Because the standard of proof at a discharge hearing is the same standard as required for a criminal conviction, the appropriate standard of review 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 offense beyond a reasonable doubt. *People v. Mayo*, 2017 IL App (2d) 150390, ¶ 29, 79 N.E.3d 359.

¶ 91 Section 20-1 of the Criminal Code of 2012 provides, in part, that "[a] person commits arson when, by means of fire or explosive, he or she knowingly[ ] *** [d]amages any real property, or any personal property having a value of $150 or more, of another without his or

her consent[ ].” 720 ILCS 5/20-1 (West 2018). Generally, proof of any criminal offense requires proof that (1) a crime occurred and (2) the person charged with the crime committed the offense. *People v. Ehlert*, 211 Ill. 2d 192, 202, 811 N.E.2d 620 (2004). (We do not include any other offense in this section because respondent concedes that if the State proved arson, the evidence was sufficient to prove the more serious offenses.)

¶ 92 2. *This Case*

¶ 93 Respondent’s argument essentially is a request that this court reassess the trial court’s credibility findings. However, “[a]ny time a trial court serves as a fact finder, perhaps the single most important thing the court can do is say whom it believes and whom it does not. When the trial court favors us with such a finding, we are at the height of our deference to that court.” *People v. Carter*, 2021 IL App (4th) 180581, ¶ 68, 188 N.E.3d 391.

¶ 94 Defendant correctly points out that this case turns on the credibility of respondent’s family members who testified. And here, the trial court made numerous credibility findings when it issued its decision. For example, the court explicitly found (1) Samantha and Katrina’s testimony that respondent admitted to starting the fire was credible, (2) Katrina’s original story regarding how the fire started was not credible, (3) Poel’s opinion of the fire’s origin was credible, (4) Katrina’s trial testimony regarding what occurred the night of the fire was credible, and (5) respondent’s denials were not credible.

¶ 95 Nothing in the record undermines these credibility findings or the trial court’s ultimate conclusion that respondent was “not not guilty” of arson.

¶ 96 Viewing the evidence in the light most favorable to the prosecution, the trier of fact could conclude that (1) respondent confessed to Samantha and Katrina that he started the fire, (2) the fire was intentionally started and originated in the living room, (3) respondent slept

in the living room, (4) respondent had started other fires before, and (5) respondent alerted Samantha to the fire, fully dressed while most everyone else was asleep. To paraphrase what the State said at the discharge hearing, respondent would have to be "the unluckiest kid in the world" because fires seem to ignite wherever he goes, regardless of whom he is around. Accordingly, a rational trier of fact could easily have found on this evidence the elements of the offense beyond a reasonable doubt.

¶ 97 Because we conclude that (1) the evidence was sufficient to prove the offense of arson and (2) the evidence is undisputed that five people died in the fire, the evidence was similarly sufficient to prove aggravated arson and first degree murder.

¶ 98 C. Other-Crimes Evidence

¶ 99 Respondent next argues that the trial court erroneously admitted evidence showing that respondent started other fires prior to the charged offense. Respondent further asserts that the court relied on propensity evidence due to the lack of reliable testimony or physical evidence that respondent started the April 2019 fire. We disagree.

¶ 100 1. *The Applicable Law*

¶ 101 "The term 'other-crimes evidence' encompasses misconduct and criminal acts that occurred before or after the alleged charged conduct, including acts of misconduct for which the defendant was not charged or convicted." *People v. Adams*, 2023 IL App (2d) 220061, ¶ 67. Generally, other-crimes evidence is inadmissible to show a defendant's propensity to commit the charged offense. *People v. Watts*, 2022 IL App (4th) 210590, ¶ 39. However, other-crimes evidence may be admissible to demonstrate defendant's "motive, intent, identity, absence of mistake, *modus operandi*, or any other relevant fact other than propensity." (Internal quotation marks omitted.) *Id.* "Indeed, other-crimes evidence is admissible to prove any material fact other

than propensity that is relevant to the case." (Internal quotation marks omitted.) *Id.* Other-crimes evidence may be admitted even though such evidence concerned crimes that occurred after the crime charged. See, e.g., *People v. Johnson*, 2020 IL App (1st) 162332, ¶ 48, 148 N.E.3d 126; *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 70, 40 N.E.3d 118; *People v. McLaurin*, 2015 IL App (1st) 131362, ¶ 53, 32 N.E.3d 94.

¶ 102 Appellate courts will not reverse a trial court's decision to admit other-crimes evidence absent an abuse of discretion. *Id.* ¶ 42. "An abuse of discretion has occurred when the trial court's decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the position adopted by the trial court." *People v. Wilson*, 2015 IL App (4th) 130512, ¶ 75, 44 N.E.3d 632.

¶ 103 2. *This Case*

¶ 104 The trial court found the evidence of respondent's starting four other fires to be admissible for the purpose of showing his knowledge, absence of mistake, intent, and *modus operandi*. We note that even "[i]f only one of those purposes survives scrutiny, that is enough for us to uphold the court's ruling." *People v. Jones*, 2020 IL App (4th) 190909, ¶ 145, 173 N.E.3d 978.

¶ 105 We agree with the trial court that the evidence of the four fires—namely, (1) the 2016 Carlock fire, (2) the 2018 armchair fire, (3) the 2018 car seat fire, and (4) the Peoria fire—was clearly admissible to show respondent's knowledge and absence of mistake. In support of this conclusion, we note that defense counsel in his closing argument asserted that the State did not present evidence that respondent knew what could occur if he started a fire in the trailer. The other-crimes evidence was highly probative to refute that assertion and that evidence was also supportive of the State's claim that respondent knowingly started the April 2019 fire.

¶ 106 D. Respondent's Motion to Suppress His Recorded Statements

¶ 107 Respondent argues that the trial court erred by not granting his motion to suppress his statements to officer Gillson because he did not voluntarily, knowingly, and intelligently waive his *Miranda* rights before making those statements. However, we need not definitively answer that question because we agree with the State that, even assuming the admission of respondent's statement to Gillson was improper, the error was harmless.

¶ 108 1. *The Applicable Law*

¶ 109 The improper admission of a defendant's statements to police as substantive evidence is subject to harmless error analysis. *People v. Wilson*, 2020 IL App (1st) 162430, ¶ 57, 170 N.E.3d 83. If the error was evidentiary or constitutional in nature, then differing standards apply. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 104, 5 N.E.3d 328. For purely evidentiary errors, the State need only show that no reasonable probability existed in which the jury would have acquitted the defendant absent the error. *Id.* For errors violating a defendant's constitutional rights, the State must demonstrate the error was harmless beyond a reasonable doubt. *Id.* We note that Illinois courts have yet to establish which harmless error standard applies for a *Miranda* rule violation (see *People v. Kleopa*, 2023 IL App (1st) 210746-U, ¶ 49 (discussing *Miranda* and harmless error)). However, we will assume in this case that the alleged error had to be harmless beyond a reasonable doubt to avoid any problem without our ultimate conclusion.

¶ 110 2. *This Case*

¶ 111 Respondent asserts that "the trial court here relied on [respondent's] statements [to Gillson] in concluding that he started the trailer fire," pointing to the following remarks the trial court made when issuing its decision at the discharge hearing:

> "We know that [respondent] admitted to people that he did this. And the

interesting thing is he admitted to people, and I am supposed to believe that they don't have credibility. But at his age who would I expect him to admit to? Who would I expect him to express his sorrow for having done something wrong? To his family. Not some detective that he doesn't know but his family.

And, quite honestly, I'm not sure that's really considered in the *modus operandi* in the sense of how crime is committed when they eventually get around to admitting it. But it is similar. There were periods of denial, and then he would admit to family members what he did."

¶ 112 In light of the above remarks by the trial court, it is hard to see how respondent's statements to Gillson contributed in any way to the court's judgment. First, the court's remarks do not establish that respondent's statements to Gillson played a role in the court's decisions. Second, respondent's statement to Gillson essentially consisted of (1) testimony regarding how he escaped the fire, (2) a denial that respondent started the fire—the only denial the record contains—and (3) an admission that he started fires in the past. Because (1) respondent's denial and version of events can be categorized only as helpful to respondent and (2) the court had other evidence to establish that respondent had both knowledge and a lack of mistake regarding starting fires, we conclude that any erroneous admission of respondent's interview statements with Gillson was harmless beyond a reasonable doubt.

¶ 113 E. Hearsay Arguments

¶ 114 Respondent argues that he was denied a fair discharge hearing because the trial court improperly admitted and relied on hearsay statements by Samantha, Poel, and Harris. In particular, respondent claims "the court allowed [(1) Samantha] to testify that [Lisa] told her that [respondent] entered her trailer while she was asleep on the couch, [(2) Poel] to testify about

what others had told him about the fire scene, *** and [(3) Harris] to testify about what every single witness had told him about the Peoria fire." Respondent claims that he properly preserved for review the issue of the court's admission of the hearsay statements of Harris and Samantha and that those errors were not harmless. Further respondent asserts that, regardless of whether those errors were preserved, the admission of the hearsay statements of Samantha, Poel, and Harris amounted to first and second prong plain error. We disagree with both arguments.

¶ 115 As an initial matter, we note that respondent is correct that this issue is preserved for review because after respondent objected to Poel's statement, the trial court overruled the objection, stating, "Actually, hearsay is not an appropriate objection at a discharge hearing." That statement by the court rendered any later objection by respondent to the admission of inadmissible hearsay fruitless; thus, respondent's initial objection was sufficient to preserve further alleged hearsay violations for review. See *People ex rel. Klaeren v. Vill. of Lisle*, 202 Ill. 2d 164, 178, 781 N.E.2d 223 (2002) ("[T]here is no need to object when it is apparent that an objection would be futile.").

¶ 116 Although section 104-25 of the Procedure Code (725 ILCS 5/104-25(a) (West 2020)) does contain some unique rules for hearsay—specifically that "[t]he [trial] court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, court and business records, and public documents"—that section does not eliminate the evidentiary rules governing hearsay at discharge hearings. See *People v. Orengo*, 2012 IL App (1st) 111071, ¶ 25, 982 N.E.2d 917 ("[U]nless otherwise noted in section 104–25, the same rules governing the admission of evidence in a criminal proceeding should apply in a discharge hearing."). Accordingly, the trial court's statement that "hearsay is not an appropriate

objection at a discharge hearing" was not correct.

¶ 117 1. *Harmless Error*

¶ 118 Nonetheless, the trial court's admission of the hearsay statements of Samantha and Harris was harmless error because their testimony was used merely to admit other-crimes evidence of respondent's starting two other fires—namely, the 2018 armchair fire and the Peoria fire—which were both duplicative of other, properly admitted evidence. Further, the record does not show that the court improperly considered the witnesses' alleged hearsay for any improper purpose. Indeed, Harris's statements were appropriate at a motion *in limine* hearing (*People v. Peterson*, 2017 IL 120331, ¶ 44, 106 N.E.3d 944; Ill. R. Evid. 104(a) (eff. Jan. 1, 2011)), which, as we noted earlier, took place at the same time as the discharge hearing.

¶ 119 The trial court is presumed to know the law and use evidence only for its proper limited purpose (*People v. Felton*, 2019 IL App (3d) 150595, ¶ 48, 123 N.E.3d 1118), and nothing in the record shows that the court improperly considered the hearsay testimony. Further, because of the strength of the State's case against respondent (see *supra* ¶ 96), the worst that could be said of the admission of this hearsay testimony was that it amounted to harmless error.

¶ 120 2. *Plain Error*

¶ 121 a. The Applicable Law

¶ 122 The plain error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and

challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

¶ 123 "We begin a plain-error analysis by first determining whether any error occurred at all. [Citation.] If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. [Citation.] Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion." (Internal quotation marks omitted.) *In re D.D.*, 2022 IL App (4th) 220257, ¶ 31, 215 N.E.3d 302.

¶ 124 "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *People v. Sebby*, 2017 IL 119445, ¶ 53, 89 N.E.3d 675.

¶ 125 b. This Case

¶ 126 Here, respondent cannot satisfy either prong of the plain error test because (1) the evidence was not closely balanced and (2) the alleged errors did not affect the fairness of respondent's hearing.

¶ 127 As we noted during our discussion of the sufficiency of the evidence (*supra* ¶¶ 93-97)—(1) respondent admitted to two people that he committed the arson, (2) the fire started in the living room where respondent had been sleeping, (3) respondent was the first person to report the fire and the only person at that time in a condition to do so, (4) the fire was incendiary in nature, and (5) respondent had previously started three other fires and was at least present at the Peoria fire. Accordingly, because the evidence was not closely balanced, respondent cannot establish first prong plain error.

¶ 128 Respondent also argues that the admission of the hearsay statements constitutes

second prong plain error because the cumulative effect of evidentiary errors case rendered his discharge hearing fundamentally unfair. Specifically, respondent asserts the hearing was unfair because "[t]he court told defense counsel that all hearsay was admissible at a discharge hearing, despite the statute's [(725 ILCS 5/104-23 (West 2020))] clear limitation on acceptable hearsay." However, respondent does not explain how the improper admission of several hearsay statements rendered the hearing fundamentally unfair.

¶ 129 The supreme court has equated second prong plain error with "structural error," which is an error that "necessarily renders a criminal trial fundamentally unfair or is an unreliable means of determining guilt or innocence." *People v. Moon*, 2022 IL 125959, ¶ 28, 215 N.E.3d 58. Examples of structural errors "include a complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in the selection of a grand jury, and a defective reasonable doubt instruction." *Id.* ¶ 29.

¶ 130 Regarding hearsay-related errors, Illinois courts have consistently held that the erroneous admission of hearsay testimony is "not of such a serious character that [it] challenge[s] the integrity of the judicial process." *People v. Pearson*, 2018 IL App (1st) 142819, ¶ 28, 116 N.E.3d 304; see *People v. Prince*, 362 Ill. App. 3d 762, 777, 840 N.E.2d 1240 (2005) (finding that the erroneous admission of hearsay evidence was subject to harmless error analysis); *People v. Patterson*, 217 Ill. 2d 407, 424-27, 841 N.E.2d 889 (2005) (holding that even a confrontation clause violation based on the improper admission of testimony is a trial error subject to harmless error review).

¶ 131 Accordingly, respondent's plain error arguments fail.

¶ 132 III. CONCLUSION

¶ 133 For the reasons stated, we affirm the trial court's judgment.

¶ 134 Affirmed.