

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1482

KA 14-01983

PRESENT: WHALEN, P.J., SMITH, CARNI, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SAMUEL F. CRAWFORD, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (MARK C. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (ZACHARY S. MAURER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered September 25, 2014. The judgment convicted defendant, upon a jury verdict, of arson in the third degree, attempted insurance fraud in the fifth degree, conspiracy in the fifth degree, and arson in the fourth degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of arson in the third degree (Penal Law § 150.10 [1]), attempted insurance fraud in the fifth degree (§§ 110.00, 176.10), conspiracy in the fifth degree (§ 105.05 [1]), and two counts of arson in the fourth degree (§ 150.05 [1]), based on evidence that he conspired with others to set fire to his vacant rental property in order to collect insurance money. The fire destroyed defendant's property and caused damage to two neighboring properties. Contrary to defendant's contention, we conclude that County Court properly refused to suppress his statements to the police. The People proved beyond a reasonable doubt that the statements were not products of coercion, but rather were the "result of a 'free and unconstrained choice' " by defendant (*People v Thomas*, 22 NY3d 629, 641 [2014]; see *People v Buchanan*, 136 AD3d 1293, 1293-1294 [4th Dept 2016], *lv denied* 27 NY3d 1129 [2016]).

Contrary to defendant's further contention, the trial testimony regarding his parole status was properly admitted in evidence to complete the narrative of the events leading up to the charged crimes (see *People v Ramos*, 287 AD2d 471, 472 [2d Dept 2001], *lv denied* 97 NY2d 657 [2001]). Although we agree with defendant that the court abused its discretion in precluding defendant from cross-examining a prosecution witness concerning that witness's alleged prior threat to

burn down another person's house (see generally *People v Smith*, 27 NY3d 652, 668 [2016]), we conclude that the error is harmless because the evidence of defendant's guilt, including his videotaped confession, is overwhelming and there is no significant probability that defendant otherwise would have been acquitted (see *People v Morales*, 25 AD3d 624, 625 [2d Dept 2006], *lv denied* 6 NY3d 815 [2006]; see generally *People v Crimmins*, 36 NY2d 230, 241-242 [1975]).

Defendant's contention that he was deprived of a fair trial by prosecutorial misconduct during the cross-examination of defendant and on summation is not preserved for our review (see *People v Brown*, 120 AD3d 1545, 1545 [4th Dept 2014], *lv denied* 24 NY3d 1082 [2014]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). Viewing the evidence in light of the elements of the crimes as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict is not against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]).

Defendant's contention with respect to the court's alleged violation of his right to due process in imposing the maximum sentence is patently without merit. Finally, we conclude that the sentence is not unduly harsh or severe.