State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 16, 2026 CR-24-1557

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

BELVEN D. FAJARDO,
Appellant.

Calendar Date: June 1, 2026

Before: Clark, J.P., Fisher, Powers, Mackey and Corcoran, JJ.

John R. Trice, Elmira, for appellant.

F. Paul Battisti, District Attorney, Binghamton (*Mary E. Saitta* of counsel), for respondent.

Clark, J.P.

Appeal from a judgment of the County Court of Broome County (Joseph Cawley, J.), rendered October 26, 2018, upon a verdict convicting defendant of the crime of attempted arson in the first degree.

Defendant was charged by indictment with attempted arson in the first degree (*see* Penal Law §§ 110.00; 150.20 [1]) in connection with an incident that occurred on May 29, 2017 at his girlfriend's apartment building in Broome County. Following a jury trial, defendant was convicted as charged and sentenced to a prison term of seven years, to be followed by five years of postrelease supervision. Defendant appeals.

Defendant's sole argument on appeal is that the verdict is against the weight of the evidence. In undertaking such analysis, "we 'view the evidence in a neutral light and determine first whether a different verdict would have been unreasonable and, if not, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony to determine if the verdict is supported by the weight of the evidence' " (*People v Cokely*, 249 AD3d 1329, 1330 [3d Dept 2026], quoting *People v Warr*, 237 AD3d 1262, 1263 [3d Dept 2025], *lv denied* 43 NY3d 1059 [2025]; *see People v Bleakley*, 69 NY2d 490, 495 [1987]). To convict defendant of attempted arson in the first degree, the People were required to prove that he intended to commit such crime and "engaged in conduct that came dangerously near commission of the completed crime" (*People v Lendof-Gonzelez*, 36 NY3d 87, 91 [2020] [internal quotation marks and citations omitted]; *see* Penal Law § 110.00). "The dangerously near standard does not, however, mandate that the defendant take the final step necessary to complete the offense" (*People v Naradzay*, 11 NY3d 460, 466 [2008] [internal quotation marks and citations omitted]). A person commits arson in the first degree "when he [or she] intentionally damages a building . . . by causing an explosion or a fire and when (a) such explosion or fire is caused by an incendiary device propelled, thrown or placed inside or near such building . . . ; and when (b) another person who is not a participant in the crime is present in such building . . . ; and (c) the defendant knows that fact or the circumstances are such as to render the presence of such person therein a reasonable possibility" (Penal Law § 150.20 [1]). An incendiary device "means a breakable container designed to explode or produce uncontained combustion upon impact, containing flammable liquid and having a wick or a similar device capable of being ignited" (Penal Law § 150.20 [2]).

At trial, the People presented evidence that defendant got into a physical altercation with his girlfriend on the afternoon of May 29, 2017, while they were smoking crack together at her apartment on the third floor of a residential building. The girlfriend shared the apartment with two other individuals, one of whom was home on the afternoon in question (hereinafter the roommate). The girlfriend revealed that defendant became suspicious that she was cheating on him with the roommate, smashed her phone and hit her with an axe, and left the apartment. The roommate followed defendant out of the apartment and got into an altercation with him at the second floor of the building, during which the roommate managed to knock the axe out of defendant's hands and put him in a chokehold. Defendant then left the premises.

An hour or two later, the girlfriend and the roommate both heard a knock on their apartment door. When the roommate opened the door, he encountered defendant standing on the third-floor porch in front of the door with a kitchen knife in his hand and a beer

bottle that had a cotton rag stuffed inside of it, which appeared to be a Molotov cocktail.[1] The roommate testified that he attempted to close the door, ran back inside of the apartment, and yelled that defendant was "trying to set the house on fire." Both the roommate and the girlfriend heard a loud bang at the apartment door, which led the roommate to believe that defendant had thrown the lit bottle at the door. However, when they exited the apartment shortly thereafter, they did not observe any active fire on the third-floor porch in the vicinity of the apartment.

Another individual who lived at the subject building (hereinafter referred to as the neighbor) also testified about his observations on the date in question, explaining that, at some point that afternoon, he heard a "banging" sound outside of his apartment and someone yelling about a fire. When the neighbor left his apartment to investigate, he saw defendant standing outside with a butcher knife in his hand. The neighbor also observed two bottles on fire on the sidewalk in front of the building, which he extinguished by throwing dirt on them.

When police arrived at the scene, they found a beer bottle with a rag stuffed inside of it on the ground in front of the building. Two large burn marks were also present on the sidewalk in close proximity to the building. Police also observed a "dark area" that "appear[ed] to be a burn mark" on the third-floor porch outside of the girlfriend's apartment, along with shards of broken glass on the floor. The beer bottle located outside of the building was sent for forensic testing and the test results confirmed that it was filled with a liquid that ignited during a flammability test.

Defendant was ultimately taken into custody in connection with the underlying incident and he was interviewed by a detective at the police station. The People used the videotaped recording from defendant's interview as part of their case-in-chief at trial. During the interview, defendant admitted that he had gotten into a fight with the girlfriend and one of her roommates on the afternoon in question, that he left the apartment after they had disrespected him, and that he subsequently made two Molotov cocktails out of beer bottles, which he filled with water, gasoline and cotton rags. Defendant stated that he returned to the girlfriend's apartment with the Molotov cocktails because he did not have a "gang" to bring with him to seek revenge for the earlier incident, lit the wick of one of the bottles on the second-floor porch of the building, and brought both bottles upstairs to the third-floor porch in front of the girlfriend's apartment.

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[1] A Molotov cocktail is "a canister filled with gasoline and fitted with a lighting mechanism that, when lit and thrown, causes fire to spread in the area of impact" (*People v Parker*, 240 AD3d 66, 70 [3d Dept 2025], *lv denied* 43 NY3d 1047 [2025]).

Although defendant made conflicting statements about what he ultimately did with the Molotov cocktails, he denied throwing either of them toward the front door of the girlfriend's apartment, maintained that he extinguished the lit Molotov cocktail "right away" after lighting it, and claimed that he brought the Molotov cocktails to the building merely to scare the girlfriend and the roommate and not with the intent to set anything on fire. He also revealed during his interview that gasoline from the unlit bottle accidently spilled onto the third-floor porch while he was present there with the lit bottle and that he knew people were inside of the apartment when he brought the Molotov cocktails to the building.

Although a different verdict would not have been unreasonable given the conflicting accounts of the incident and defendant's assertion that he did not intend to cause a fire at the building, his underlying objective in bringing the Molotov cocktails to the building implicated a credibility determination for the jury to resolve (*see People v Bohn*, 242 AD3d 1357, 1366 [3d Dept 2025]; *People v Warrington*, 146 AD3d 1233, 1237 [3d Dept 2017], *lv denied* 29 NY3d 1038 [2017]). Defendant's intent to damage the building by causing a fire or an explosion with an incendiary device could be inferred from his conduct and the surrounding circumstances, particularly his statement that he returned to the building with the Molotov cocktails because did not have a gang to bring with him to seek revenge for the earlier incident with the girlfriend and the roommate, his action of lighting one of the bottles on a wooden porch at the premises while simultaneously holding a knife, and his admission that he knew the girlfriend and the roommate were present at the apartment (*see People v Pica-Torres*, 230 AD3d 855, 859 [3d Dept 2024], *lv denied* 42 NY3d 1054 [2024]; *People Kelly*, 202 AD3d 1158, 1159 [3d Dept 2022], *lv denied* 38 NY3d 1034 [2022]; *People v Johnson*, 186 AD2d 363, 364 [1st Dept 1992], *lv denied* 81 NY2d 763 [1992]). Defendant's conduct also came dangerously near the commission of a completed arson, as evidenced by the burn marks on the sidewalk in close proximity to the building and the fact that gasoline from the unlit bottle spilled onto the third-floor porch at the same time defendant was present there with the lit Molotov cocktail (*see People v Adams*, 222 AD2d 1124, 1124 [4th Dept 1995], *lv denied* 87 NY2d 1016 [4th Dept 1996]; *People v Johnson*, 186 AD2d at 364). Viewing the evidence in a neutral light and deferring to the jury's credibility determinations, we are satisfied that the verdict is not against the weight of the evidence (*see People v Daniels*, 97 AD3d 845, 848 [3d Dept 2012], *lv denied* 20 NY3d 931 [2012]; *People v Carrasquillo*, 71 AD3d 1591, 1591 [4th Dept 2010], *lv denied* 15 NY3d 803 [2010]; *People v Harrison*, 251 AD2d 893, 895 [3d Dept 1998], *lv denied* 92 NY2d 949 [1998]).

Fisher, Powers, Mackey and Corcoran, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court