

ONTARIO COURT OF JUSTICE

CITATION:

DATE: 2015-11-26

COURT FILE No.: Peterborough 14-2377

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

KIMBERLY PIDGEON

Before Justice S. W. Konyer

Heard on May 27, June 1, 3, July 7, 8, August 17, 19, September 25, 2015

Reasons for Judgment released on November 27, 2015

Ms. A. Kok counsel for the Crown
Mr. K. Mitchell-Gill counsel for the accused Kimberly Pidgeon

KONYER J.:

Introduction

1. Kimberly Pidgeon was tried before me on two arson-related offences. These charges that were laid after multiple fires were discovered in her home at 20 Centre Street in the village of Millbrook on June 10, 2014. Specifically, she is charged with intentionally or recklessly causing damage by fire to a property owned in part by another person, and with causing damage by fire with intent to defraud an insurance company, contrary to sections 434 and 435(1) of the *Criminal Code* respectively. It is admitted that she owned this property jointly with her former partner, Sean Kane, and that Ms. Pidgeon was the holder of a home insurance policy on the property that was in effect at the time of the fire.

2. On June 10, 2014, Kimberly Pidgeon and her mother Shirlee Pidgeon visited the home in the late morning. They left about an hour later. Within minutes of their departure, neighbours noticed smoke coming from the house and called the fire department. Subsequent investigation at the residence, which suffered minimal damage from the fire, revealed three suspicious sites within the home. First, there was evidence of an active fire in the upstairs bathroom. Second, there was evidence that one of the elements on the kitchen stove had been left on underneath a pot of food. Third, there was evidence of an active fire in the basement in the area of the electrical panel. For ease of reference, I shall refer to these three sites as “fires” throughout the balance of these reasons, though I appreciate that the stovetop was only smoldering and that the power to the stove had been cut off by the time firefighters arrived.
3. There were only two people inside the residence at the time that the stove was turned on and the two fires started in the bathroom and basement – namely, Kimberly and Shirlee Pidgeon. Both women testified. They each denied making a deliberate attempt to set the house on fire. They each claimed that the other had an opportunity to set the fires, and they each claimed that the other made statements from which I can draw an inference of responsibility for setting the house on fire.
4. Like any person charged with an offence, Kimberly Pidgeon is presumed innocent. She must be acquitted unless the Crown has proven her guilt beyond reasonable doubt. Since the case against her is circumstantial, in order to convict I must be satisfied that the only reasonable inference to be drawn from the established facts is that Kimberly Pidgeon is responsible for deliberately setting one or more of the fires. The defence argues that the circumstantial evidence is reasonably capable of supporting other inferences – namely, that the fires were accidental, that the fires were set by Shirlee Pidgeon, or a combination of these two possibilities.
5. Kimberly Pidgeon has testified in her own defence and has denied deliberately setting any of the three fires. Clearly, if I believe her evidence, I must find her not guilty. Further, if I am left with a reasonable doubt after considering her evidence in the context of the evidence as a whole, I must find her not guilty. Finally, even if her evidence does not leave me with a reasonable doubt, I must decide whether the Crown has proven the case against her beyond a reasonable doubt based on the evidence that I do accept.
6. There are three contentious issues that I must decide. First, whether the Crown has proven beyond reasonable doubt that the fires were deliberately set and were not the result of accidents. If so, then I must go

on to decide the second issue: whether the Crown has proven beyond reasonable doubt that Kimberly Pidgeon is responsible for setting the fires. If so, then I must go on to decide the third issue, which relates to count 2 only: whether the Crown has proven beyond reasonable doubt that Kimberly Pidgeon set the fires with the intention of defrauding her insurer.

7. The following facts are relevant to my determination of the three issues in dispute.

Summary of the Relevant Facts

8. The Crown called numerous witnesses including neighbours who saw a fire on June 10, 2014 in Ms. Pidgeon's home and called 911, fire investigators from both the Office of the Fire Marshall and the company that held the insurance policy on the home, an employee of the bank that held the mortgage on the home, and Ms. Pidgeon's immediate ex-partner, who had recently moved out of the home at 20 Centre Street in Millbrook. In addition, the Crown tendered two statements given by Ms. Pidgeon to the police. Most importantly, the Crown called the accused's mother, Shirlee Pidgeon, as a witness. Shirlee and Kimberly Pidgeon were alone together in the Millbrook residence immediately before the fires started, and were seen leaving the residence together minutes before neighbours noticed smoke.
9. Ms. Pidgeon testified at trial in her own defence, and also called evidence from a friend who visited her at her home on June 10, 2014 shortly before the fires are known to have started. Given the importance of the evidence of the two Pidgeon women in this case, for ease of reference I shall refer to them as Kimberly and Shirlee throughout the balance of these reasons.
10. Kimberly and her then-partner Sean Kane jointly purchased the house at 20 Centre Street, Millbrook on December 15, 2007. Prior to that, Kimberly had resided in a house that she owned in Ajax, Ontario. According to both her trial testimony and her post-arrest police interview, the Millbrook house was in need of a good deal of work, and she had been talked into the purchase by Mr. Kane. Their plan was to move to Millbrook and renovate the house while living in it. Some renovations were done, however Kimberly and Mr. Kane separated permanently in 2009 after he was charged with domestic violence towards her, at which point he moved out of the home. Although he has not lived in the residence

or made any mortgage payments since that time, Mr. Kane remains on title as a joint owner of the property.

11. In 2010, Kimberly began a new domestic relationship with Sean King. They lived together in the house at 20 Centre Street intermittently until the spring of 2014, when they separated.
12. Mr. King first moved into the home with Kimberly in the fall of 2010, but they were both forced to leave in January 2011 as a result of a flood which caused extensive damage to the home. They moved back into the home following repairs in August 2011, although they were dissatisfied with the state of repair.
13. They lived at the Millbrook home together until August 2012, when they moved to Trenton, Ontario in order to be closer to Mr. King's mother, who was sick at the time. Kimberly was employed full time as a personal support worker throughout their relationship, while Mr. King was unemployed and did not drive.
14. While they lived in Trenton, the Millbrook home was rented out to a group of tenants for approximately one year. The rental proved to be disastrous, as the tenants apparently caused extensive damage and kept many cats that sprayed urine all over the interior walls and floors. The tenants were evicted by September 2013, and the house sat empty until Kimberly and Mr. King moved back in on February 25, 2014. In addition to cat urine and feces throughout the home, it was discovered that the house was infested by bugs and that much of the electrical and plumbing had been damaged. Kimberly and Mr. King began doing repairs to the home after moving back in, but they split up for good in May 2014 when Mr. King moved out.
15. On Saturday, June 7, 2014, Kimberly drove to her mother's residence in Campbellford, about an hour's drive from Millbrook. She planned to attend a family wedding that day, and then stay overnight. She ended up staying over both Saturday and Sunday night. On Monday, June 9, Kimberly went to work. After work, she returned to her home in Millbrook. She became upset at being alone, and called her mother Shirlee who invited her to spend another night at her Campbellford home. Since Tuesday was her regular scheduled day off, Kimberly accepted the invitation, and spent the night of Monday, June 9 at her mother's home.
16. The following day, June 10, 2014, Kimberly and her mother left Campbellford in the late morning in order to visit Kimberly's home. Both testified that Shirlee had never been to the house before that date. The Millbrook house is a two story structure with a basement. Shirlee was given

a tour of the main floor and the upstairs. She testified that she was horrified at the mess, smell and state of disrepair, and could not believe that her daughter was living in such conditions.

17. While at the house, Kimberly decided to take a bath in the upstairs bathroom. Kimberly's evidence was that she wanted to take a bath at home because the water at her mother's house "smelled funny". Shirlee testified that her daughter appeared agitated and said that she suggested that Kimberly take a bath in order to relax. Kimberly testified that she lit candles while bathing, as was her habit. This is a habit that Shirlee was aware of, on the evidence of both women. Kimberly kept a collection of candles on the ledge of the bathtub, near a window that was covered by a curtain. This is significant because subsequent investigation would identify this window as one of three sources of ignition for the fire in the house. While Kimberly bathed, both women agree that Shirlee waited in an upstairs bedroom.
18. After the bath, both women agree that they went to the main floor kitchen in order to get some food. They had apparently discussed taking a frozen turkey from Kimberly's freezer back to Campbellford for dinner that evening. At some point after bathing, Kimberly also began to cook frozen hash browns in a pot with vegetable oil on the stove. This is significant because the fire investigators determined that the burner under this pot had been left on.
19. Kimberly testified that after she started to cook the hash browns, someone knocked on the front door. Thinking it was a neighbour with whom she did not get along, Kimberly ignored the knock at first. When the knocking persisted, she went out the back door and snuck around the front of the house to see who was there. She discovered that it was her friend Pauline Lewis, who was called as a defence witness at trial. Kimberly and Ms. Lewis spent some time having a discussion outside the home, while Shirlee remained inside the home alone. Shirlee agreed that Kimberly left the house and had a conversation with someone outside, but was unable to estimate how long this took. Kimberly estimated that her mother was alone in the house for between 10 and 20 minutes. This is significant because this sequence of events provided Shirlee an opportunity to be alone inside the home.
20. Both Kimberly and Shirlee agree that Kimberly returned inside the house following her conversation with Ms. Lewis, and that they both left the house for good shortly afterwards. Kimberly testified that she was sure that she had turned off the burner on the hashbrown pan before leaving the house. Kimberly and Shirlee agree that the reason for the change in plans from sharing a meal to leaving the house without eating was a request by Shirlee to leave. Shirlee testified that she was nauseated by

the overpowering smell inside the house and could not bear to eat there. The decision to leave without eating was made after Kimberly re-entered the house following her conversation in the yard with Pauline Lewis. Kimberly says that she was rushed out of the house by Shirlee, who insisted that they leave immediately, and that Shirlee would not even allow her the chance to pack some clothes. Shirlee, on the other hand, denies that she rushed Kimberly from the house. In fact, she testified that she left first and waited in Kimberly's truck in the driveway for approximately 10 minutes while Kimberly was alone in the house.

21. The evidence on this point is crucial. If Kimberly's version is accurate, it bolsters the defence theory that Shirlee was responsible for setting the fires while Kimberly was outside the home speaking with her friend, as this would explain Shirlee's insistence on leaving the house immediately. If Shirlee's version is accurate, however, it provides Kimberly with an opportunity to have set the fires on her own immediately before leaving the house, while Shirlee waited in the truck.
22. For her part, Pauline Lewis testified that she stopped by the house at 20 Centre Street that day upon noticing Kimberly's truck in the driveway. She confirmed that she knocked at the door, and that Kimberly approached the front door from the outside of the house. She confirmed that she and Kimberly had a conversation outside the house. She testified that after their conversation ended, she noticed Kimberly's mother at the truck, which was parked in the driveway. According to her, Kimberly then said she needed to get her purse, went inside the house for a matter of seconds, then came back out, got in the truck and drove away.
23. Kimberly was interviewed by police the day after the fire, and the voluntariness of her statement was conceded. In this statement, she told the investigating officer that Pauline Lewis left after their conversation ended. Kimberly told the police that she went back in the house, that her mother was wandering around the main floor of the house looking at things, that she went to the kitchen and started cooking the hash browns at this time, and not before the conversation with Pauline Lewis. Kimberly said that Shirlee questioned her about the damage and mess inside the home, and then complained about the overpowering smell of cat urine and asked to leave without eating¹. The pot containing the hash browns was later discovered on the stove on top of an element that had been left on.
24. In this same statement to police, Kimberly also repeatedly told the investigating officer that she had to assist her mother, who was then 76 years

¹ Exhibit 4B, transcript of the police interview of Kimberly Pidgeon on June 11, 2014, pp. 37-8.

old, up and down the stairs inside the house². In cross-examination at trial, she confirmed that she had to help her mother up and down the stairs to the second floor of the house.

25. I heard evidence from Bill and Betty Coles, neighbours from across the street, who witnessed Kimberly and her mother driving away from the house on June 10. Within minutes of their departure, Ms. Coles noticed smoke coming from the windows of Kimberly's house. She yelled to her husband, who called 911, prompting response from the police and fire departments.
26. After the fire was extinguished by first responders, the origin and cause of the fire was investigated by trained fire investigators from both the Office of the Fire Marshall and Rochon Engineering, a company hired by the insurer. Both William Hay from the Office of the Fire Marshall and Jason D'Ornellas from Rochon Engineering testified as expert witnesses in the area of fire investigation for determining the origin and cause of fires and explosions.
27. Both experts agreed that there were three separate and distinct areas of origin for the fires within the home. The first was in the upstairs bathroom where Kimberly took a bath. The covering on the window next to the tub had been consumed by fire. A number of candles were located on the tub in close proximity to the window. The experts agreed that there were two possible sources of ignition for this fire – that it had been deliberately set, or that it was accidentally set as a result of an unattended lit candle.
28. The second area of origin was the kitchen stove. A pot containing hash-browns and vegetable oil was located on one of the rear burners, which had been left on in the "high" position. A dishcloth was draped over the rear control panel for the stove in close proximity to this burner, although the cloth did not catch fire. This area was found to be smoldering, but was not an active fire. According to Fire Marshall Hay, this area had "self-extinguished", likely as a result of electrical power to the stove being cut off due to the third simultaneous area of origin, described below. The smoldering on the stove could have been deliberate, or the result of the rear burner being accidentally left on.
29. The third area of origin was the home's electrical panel, located on a wall in the basement. Immediately underneath the panel was a chest of drawers that had a quantity of papers and a candle on top. Investigation determined that there had been an extensive fire in this area with evidence of burning and charring on the top of the chest of drawers, inside

² Exhibit 4B, pp. 29-30.

and around the electrical panel, and above the panel including the wall and floor joists immediately above the panel. Both experts agreed that this fire did not originate in the electrical panel, but instead was caused by the application of external flame, most likely from the paper found on top of the chest of drawers. In the opinion of the expert witnesses, despite vigorous challenge by defence counsel, this fire was not caused accidentally, and was not the result of any mechanical failure.

30. Both experts also concluded that the totality of the evidence of the three simultaneous areas of fire origin meant that the fires were deliberately set. In their opinion, while the areas of origin in the kitchen and bathroom could have been caused accidentally, the simultaneous nature of all three fires eliminated the possibility that the fires were accidental. In short, their opinion was that the fires within Kimberly Pidgeon's home on June 10, 2014 were deliberately set.
31. It was suggested to both experts in cross-examination by defence counsel that the kitchen and basement fires could have been linked, in that the basement fire could have started in the electrical panel as a result of an overload caused by the stove being left on. As I understood his evidence, Mr. Hay conceded that this was a remote possibility, though unlikely in his opinion. Mr. D'Ornellas, who conducted a more thorough examination of both the electrical panel and the stove, was firmly of the opinion that the electrical panel fire was not causally connected to the kitchen stove, and that the damage observed to the electrical panel was caused by an external source of flame. From the evidence he observed, the obvious source was the paper atop the chest of drawers located below the electrical panel.
32. I also heard evidence with respect to Kimberly's attachment to the home. Another neighbour, Yvonne Hunt, testified that she had a conversation with Kimberly a week or two before the fire. According to her, Kimberly discussed the fact that Sean King had just moved out, that she was unsure how she would be able to pay all of the bills without contributions from Mr. King, and that she may have to put the house up for sale. Sean King testified that he contributed financially towards the mortgage payments for the house, and confirmed that the house was in a constant state of disrepair.
33. Both Kimberly and Pauline Lewis testified that, on the day of the fire, they discussed the possibility of Ms. Lewis moving into the house with Kimberly and paying rent. Ms. Lewis made it clear that significant work would have to be done before she would consider moving in, including cleaning and fumigating to remove the bugs and the stench of cat urine which permeated the house.

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34. In her initial statement to police, Kimberly provided conflicting accounts of her views of the house. She described the extensive damage done by the tenants and said that she and Sean King “were going to fix it up, get rid of it and get out of there and he just couldn’t take it anymore. Every time we did something, something else was wrong. And he had enough, he left two weeks ago.”³ She described how being alone in the house they had shared together after Mr. King left upset her.
35. She also told the police that “I’ve been through hell saving that house”⁴, describing how she had used her insurance payment from the 2011 flood to pay off back taxes and overdue mortgage payments, how she and Mr. King had replaced all the copper piping, how she had planted a new garden, and how she had been using food banks in order to save money to put towards the mortgage and repairs. She described how she had been convinced by Sean Kane to “sell that beautiful little house in Ajax”⁵ that she had previously owned in order to purchase the house on Centre Street in Millbrook. She came to believe that Mr. Kane had used her to secure the mortgage because he did not qualify for one himself, and detailed how he began physically abusing her almost immediately after they moved in together.
36. She also recounted to the police the damage done by the tenants, referred to earlier, and described how her mother was horrified to discover how she had been sleeping in the living room after discovering bugs in the master bedroom. Kimberly told the investigator how she would not let people inside her home due to the mess and stench, and described an occasion where another police officer came to the home looking for one of the former tenants. She spoke to that officer on the front porch, and recalls that he could smell the odour of cat urine from outside of her home. Kimberly Pidgeon told the lead police investigator on June 11, 2014, the day after the fire:

So I don’t let people in the house. It’s embarrassing, because I’m a clean freak. You know, I’m a clean person and the way I’m living now with boxes everywhere and we didn’t want to unpack anything. Our closets are gone. They took the poles out of the closets, we’ve got no shelves anymore. You know, everything is torn apart. They never fixed after the flood. So I said ‘I don’t want people to see me living like that.’ Normally you walked in my house, everything is where – even the newspaper is where it’s supposed to be. So it’s embarrassing. I didn’t

³ Exhibit 4B, p. 12

⁴ Exhibit 4B, p. 18

⁵ Exhibit 4B, p. 19

want anyone – even my kids haven’t been coming to my house.⁶

37. However, when it was suggested to her by the investigating officer that it would have been a relief to be rid of the house, Kimberly was adamant that she wanted to keep and fix up the home. She also denied that she tried to burn down the house in order to collect on the home insurance. She repeatedly responded to any suggestion that she wanted to be rid of the house and all its problems by saying things like “I fought for that house not to burn it down and make money, I fought for that house for it to be – finally be stress free and be my home.”⁷ At another point she stated: “I love my home and I would never burn it down because I always had this dream of I’m going to see this house finished and I’m going to show these people that I can do this, that I can make this house look beautiful.”⁸
38. Kimberly maintained much the same position in her testimony. While acknowledging the many problems with the condition of the house, she maintained that it was easily fixable; while acknowledging that the repair bills and mortgage payments were a hardship, she maintained that the situation was improving and that the future was promising given her new employment; and while acknowledging that almost all of her memories and emotions associated with that house were negative she insisted that she was not anxious to rid herself of the house.
39. I also heard evidence from Brenda Bedford, a collections officer at the Kawartha Credit Union, the financial institution which held the mortgage on the house at 20 Centre Street in the name of both Kimberly Pidgeon and Sean Kane. She took over supervision of this mortgage in 2011. She testified that it was Kimberly who made the mortgage payments, and that there were numerous times where the payments were in default. After three months without payment, the institution’s policy was to commence power of sale proceedings. Although notice of intent to commence a power of sale was given to Kimberly on three occasions, she always came through with the necessary payments to hold off this action.
40. Ms. Bedford also testified that Kimberly did not always have insurance coverage on the home. The policy of the institution is that all homes on which they hold a mortgage must be insured, in order to protect their interest in those homes. When a homeowner does not have proper insurance, the institution will purchase its own insurance and add the insur-

⁶ Exhibit 4B, p. 40-41

⁷ Exhibit 4B, p. 96

⁸ Exhibit 4B, p. 92

ance premiums to the mortgage payments. As I understood her evidence, the Kawartha Credit Union kept their own insurance policy on the house from July 2013 through to July 2014, even though they received information that Kimberly purchased insurance in the spring of 2014. They did so because of her history of letting insurance policies lapse. It was admitted by the defence for the purpose of this trial that Kimberly Pidgeon was the holder of a home insurance policy on the house on June 10, 2014, the date of the fire. In her testimony, Kimberly denied being motivated to burn the house in order to collect on the insurance. She testified that it took years for her to collect insurance payments for the damage caused by the flood in 2010, because Sean Kane was still on title as a joint owner of the home.

41. I heard a good deal of evidence about the basement of the Centre Street home, which is significant as the basement is the source of the one fire for which there is no possible innocent or accidental explanation. In her statements to police, Kimberly insisted that she had not been inside the basement of the house since she moved back into the house in February, 2014 because it was disgusting and she believed it was full of bugs. She denied going in the basement on June 10, 2014, and told the police that “I have always been terrified of basements my entire life. My mom can tell you that.”⁹ She also stated that when she lived in the house with Sean King that she would not use the clothes dryer in the basement and that he would have to take wet laundry to the basement to be put in the dryer.
42. In his evidence Sean King denied the suggestion that Kimberly refused to go to the basement to use the clothes dryer. Though he agreed she did not like the basement, he testified that she had been in the basement many times, including in 2014 after the renters had left, in order to clean and to fix the lights.
43. Shirlee Pidgeon testified that Kimberly showed her the basement on June 10, 2014. Both Shirlee and Kimberly agreed that this was the only time that Shirlee had been to the house, and her evidence was that Kimberly took her to the basement, where she pointed out clothing and garbage that the tenants had left behind. Shirlee estimated that they spent about 5 minutes in the basement that day. In cross-examination, Shirlee admitted that she had told the police in an interview the day after the fire that she had not been in the basement, and that to her knowledge Kimberly had not either. When pressed about this contradiction, Shirlee testified that she had driven to the police station with Kimberly for the interview, and she stated that during the drive Kimberly asked her

⁹ Exhibit 4B, pp. 99-100

not to tell the police that they had gone to the basement.

44. Pauline Lewis, the friend who came to visit while Kimberly and Shirlee were at the house, testified that one of the things she discussed with Kimberly that day was the possibility that she would move into Kimberly's house and help pay expenses. She told Kimberly the house would need to be cleaned first. When Kimberly told her the house was being fumigated, she told Kimberly to make sure they fumigated the basement as it was a mess and it stunk. When asked in cross-examination about the source of her knowledge of the condition of the basement, she stated that she had never been in the basement, but that Kimberly had invited her to look into the basement from the top of the stairs on one occasion. This was during an earlier visit where Kimberly invited her in the house to show her the damage done by the tenants. From the top of the basement stairs she testified that she could see and smell the junk in the basement. She also testified, quite emphatically, that Kimberly did not like basements, that she was aware of this fact, and that this was a trait common to many people.
45. Finally, each of Kimberly and Shirlee Pidgeon testified about inculpatory verbal statements made by the other. Kimberly testified that when Shirlee saw the condition of the house on June 10, 2014, she was horrified and said "the best thing that could happen to you Kim is this house would burn down, you would take the money and run." Kimberly said she was upset by her mother's comments and responded to her negatively. This occurred just before Kimberly took the bath described earlier. Kimberly testified that she did not mention her mother's statement during the course of her police interviews on June 11 or July 7, 2014 because she "thought it was just a stupid comment she made."
46. After being charged, Kimberly lived with her mother in Campbellford for several months. Kimberly testified that she asked her mother numerous times whether she set the fire in a misguided effort to help Kimberly escape a desperate situation. She claimed that although Shirlee never outright admitted to setting the fires, she did not deny doing so either, which Kimberly interpreted to be a tacit admission of responsibility.
47. Shirlee, on the other hand, testified that she had her own suspicions that Kimberly set the fire, particularly after Kimberly told her not to tell the police that they had been in the basement. In the months after Kimberly was charged and was living with her, Shirlee said that she asked her daughter numerous times "why did you do it". According to Shirlee, Kimberly would respond by saying that she "had to" and would always mention that Shirlee had not tried to stop her. Shirlee said she took these statements to be an admission from Kimberly that she was responsible for setting the fires.

48. Like Kimberly, Shirlee was also interviewed by police the day after the fire occurred. During the course of this interview, she did not mention that she and Kimberly had been in the basement of the house, nor did she mention that she had waited alone in the truck for several minutes while Kimberly was inside immediately prior to leaving the house. She mentioned these things for the first time on the day she was scheduled to testify. When she was being prepared to give evidence, she was apparently told that the suggestion could be put to her by the defence that she was responsible for setting the fires, and it was only then that she provided a new statement containing this damaging information about her daughter Kimberly.

Analysis of the evidence

49. The circumstantial evidence supports an inference that the fires were started while the two Pidgeon women were inside the home. I can only conclude that Kimberly is responsible if I can be sure that the fires were not accidental, and that Kimberly was involved in the deliberate setting of the fires. If I am satisfied that Kimberly deliberately set the fires, I must then consider whether she did so with the intention of defrauding her insurer. I will consider each issue in turn.
- a) Has the Crown proven beyond reasonable doubt that the fires were not accidental?
50. The defence argues that I cannot be sure that there was a deliberately set fire within Kimberly Pidgeon's home on June 10, 2014 because I cannot discount the possibility that the bathroom and kitchen fires were accidental, and that the basement fire occurred as a consequence of the kitchen stove overloading the circuits in the electrical panel.
51. It was, however, the opinion of each of the two properly qualified experts, arrived at independently, that there were three distinct areas of origin for the fires. Their opinions, which I accept, were that the fire at the basement electrical panel was caused by an external flame, and not by an overheated kitchen stove. Rather, in an ironic twist, the fire at the electrical panel caused a loss of power to the kitchen stove, preventing the stovetop from developing beyond a smoldering event. The defence did not call any expert evidence to support its theory that the electrical

panel fire was caused by the events occurring at the kitchen stove. The defence theory is plausible only if there is some basis for rejecting the opinion of both properly qualified experts. I can find no basis for doing so in the evidence.

52. I accept the experts' conclusion that, when the three areas of origin are considered collectively, the only logical inference is that the fires were deliberately set. The likelihood of two accidental fires occurring at the same time in different areas of the house is so improbable as to defy common sense. The likelihood of accidental fires occurring on the ground and upper floors at the same time as a deliberately set basement fire is so remote as to be practically impossible. The only logical conclusion that I can arrive at from the evidence is that these three fires were deliberately set shortly before Kimberly and Shirlee Pidgeon left the home. Further, the fact that the bathroom and kitchen fires were set in locations where a candle had been lit and the stove used leads me to conclude that an attempt was made to make it appear as though the fires were caused accidentally by Kimberly's forgetfulness. Since only Kimberly and Shirlee Pidgeon were inside the home at the time the fires were known to have been set, the irresistible inference is that one or both of these women is responsible for setting those fires.

b) Has the Crown proven beyond reasonable doubt that it was Kimberly Pidgeon, and not Shirlee Pidgeon, who set the fires?

53. The case against Kimberly Pidgeon is circumstantial, as is almost always the case in arson prosecutions. The Crown argues that Kimberly had the only real motive to set the house on fire, and that only Kimberly had a sufficient and exclusive opportunity to do so, after her mother left the house and waited in the truck. The defence counters that Shirlee Pidgeon had equal opportunity to set the fires while Kimberly was outside the house with Pauline Lewis, and had a motive to assist her daughter by ridding her of a troublesome house.
54. Since the case against Kimberly is circumstantial, in order to convict I must be satisfied that no other reasonable inference can be drawn from the proven facts other than that Kimberly Pidgeon was involved in setting the fires in the bathroom, kitchen and basement of her home on June 10, 2014.
55. On the evidence, there are three possible ways in which these fires were set: by Kimberly alone, by Shirlee alone, or by Kimberly and

Shirlee acting together. Kimberly denied that she was involved in any way in setting the fires. If I believe her testimony or am left with a reasonable doubt after considering her testimony in the context of the evidence as a whole that she was not involved in setting the fires, I must find her not guilty.

56. I have reached the conclusion that I do not believe the testimony of Kimberly Pidgeon, and further, that her testimony does not leave me with a reasonable doubt, for a number of reasons. Most importantly, her testimony at trial differed in several material respects from the statement she gave to police the day after the fire occurred. As a matter of common sense, material inconsistency between trial testimony and an earlier statement is an important factor that detracts from the credibility of any witness.
57. The most important inconsistency between Kimberly's testimony and her earlier statement to police is the length of time that passed between the end of Kimberly's conversation with Pauline Lewis and the point at which she left the house with her mother. According to her police statement, there was no great urgency to leave after she returned inside following her conversation with Pauline Lewis. Her mother wandered about the main floor of the house commenting on the living conditions while Kimberly started preparing a meal in the kitchen by turning on the stove under the pot of hashbrowns. They left when Shirlee could no longer stand the smell in the house. On this account, it would have been impossible for Shirlee to have been responsible for leaving the stove on, and it seems improbable that Shirlee would have lit the basement or upstairs fire and then lingered in the home.
58. At trial, Kimberly's testimony on the sequence of events changed from what she told police. She testified that she had turned on the stove before going outside to speak to Pauline Lewis, and claimed that after this conversation she was rushed from the house in a hurry by her mother. She had time only to turn off the stove and grab a turkey from the freezer before leaving the house.
59. The impact of this shift in her evidence is significant. If Kimberly did not set the fires, the only other person who had opportunity was Shirlee. They both agree that Shirlee was alone in the house while Kimberly was outside speaking to Ms. Lewis. On the version Kimberly provided to police, it would seem unlikely that Shirlee lit a series of fires while Kimberly was outside speaking to Pauline and then calmly waited while Kimberly began meal preparations before taking any steps to leave the home. If Shirlee had set the fires without Kimberly's knowledge, it seems inconceivable that she would have remained in the house with Kimberly afterwards. I do not believe Kimberly's testimony that she was rushed

from the house by Shirlee because it is inconsistent with her statement to the police. It makes no sense that she would have been untruthful with the police on this detail.

60. Furthermore, Kimberly told police that she had hugged Pauline Lewis goodbye, and that Ms. Lewis left the property when she returned inside the home. At trial, however, they both testified that Ms. Lewis was still present on the front porch when Shirlee and Kimberly rushed from the home almost immediately after Kimberly went inside. Yet they both agree that Ms. Lewis did not speak to Shirlee, and that Kimberly did not introduce her mother to her friend, which seems unnatural. For her part, Ms. Lewis was an overtly hostile witness whose bias towards her friend Kimberly was so readily apparent that her evidence must be approached with great caution. I do not believe any of her testimony aside from the uncontentious fact that she attended at Kimberly's residence and had a conversation for several minutes in the yard with Kimberly on June 10, 2014.
61. The only logical explanation for these significant changes in Kimberly's account of events between her police statement on June 11 and her testimony at trial is that Kimberly intentionally tried to shift the focus of blame onto her mother for setting the fires. Naturally, the changing nature of her evidence on crucial points makes her testimony less reliable. These inconsistencies do not relate to minor or peripheral matters; rather, they relate to the only real issue at trial – the identity of the person who set the fires.
62. Furthermore, Kimberly's testimony is internally inconsistent and illogical in several ways. First, she claimed at trial that she began cooking the hashbrowns, which were frozen, by placing them in a pot with vegetable oil on the stove. She turned on the stove before leaving the house and having the conversation with Pauline Lewis. She estimated that she was outside the home for approximately 10 to 20 minutes, after having turned on the stove burner, thus leaving the food unattended. It strikes me as incredible that she would not have taken some steps to ensure that the meal did not burn, by either returning to the kitchen herself or calling out to her mother to stir the food. The more logical sequence of events is what Kimberly told police on June 11 – that the food preparation was started after Pauline Lewis had departed, when Kimberly returned inside the home.
63. Second, Kimberly testified that when she returned inside the house after the conversation with Pauline Lewis, her mother was in such a rush to leave (presumably, on the defence theory, because her mother had just finished lighting the fires) that Kimberly had no time to do anything but shut off the stove and grab a frozen turkey from the freezer before rush-

ing from the home. Yet the stove element under the pot containing the hash browns was found to be on, and set in the “high” position, which means that Kimberly could not have turned off the stove. Although there was some evidence that the switch to this element tended to stick on in the high position, Kimberly would have been well aware of this fact and presumably would have taken care to ensure that this element was shut off properly.

64. Third, the pot of hash browns was left on the stove. On Kimberly’s evidence, they would have been partially cooked when she left the house. She insisted to police that she was in the process of cleaning and restoring the house to order after the damage caused by the tenants, and that she herself was a “clean freak”. Yet she was leaving the house with the intention of spending the night at her mother’s residence. She was scheduled to work the following day, so would not have returned to her own residence until after work the following day at the earliest. She knew that her house had an infestation of bugs, and claimed that she was taking steps to attempt to rid the house of bugs. It makes no sense that she would leave a pot full of partially cooked food sitting out on the kitchen stove knowing that she would not be returning home for well over 24 hours.
65. Fourth, there is no reason for Kimberly to have been so rushed to leave the home as she claimed. She told the police and she testified that her mother said she wanted to leave the house due to the overpowering smell of cat urine permeating the residence, which is completely understandable. This is Kimberly’s explanation for leaving in a rush without even packing any additional clothes or personal items. She had not initially planned to stay the extra days at her mother’s residence, having gone there only to stay overnight following a family wedding some two days before. If she needed additional clothing, toiletries or other items due to her stay being extended, which one would reasonably expect, there is no reason why Kimberly could not have spent the few minutes necessary to collect those items once her mother was outside the residence. There is no reason why Kimberly could not have returned to the home, for example, once her mother was seated inside the vehicle away from the offending odour. She could have also used this opportunity, being a “clean freak”, to dispose of the open food she had left sitting on the stove. Had Kimberly taken this logical step of collecting clothes and putting away food, there is no doubt she would have discovered the fires that her mother must have set while Kimberly was outside with Pauline Lewis. I find that Kimberly concocted this implausible story, and altered this aspect of her police statement, in an effort to explain how she could have failed to notice that her mother had set her house on fire.

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66. Fifth, Kimberly's testimony that Pauline Lewis was still outside her house when she and her mother left the residence also makes no sense. The visit by Ms. Lewis was unplanned, the result of an impulse by Ms. Lewis when she saw Kimberly's truck parked in the driveway. Kimberly told the police on June 11 that after their visit outside the home, she and Ms. Lewis hugged one another, and that Ms. Lewis left to continue on her walk, which accords with common sense. At trial, however, both Kimberly and Ms. Lewis insisted that Ms. Lewis waited outside the house for no real reason until Kimberly and her mother exited the home. If true, this would bolster Kimberly's claim that she was rushed from the house by her mother, a claim I reject as nonsensical. The only sensible explanation for the evidence heard at trial is that Kimberly and Ms. Lewis testified untruthfully in an effort to persuade me that Kimberly was not responsible for setting the fires.
67. Sixth, Kimberly told the police on June 11 that she had to physically help her 76 year old mother up and down the stairs between the first and second story of her home during the June 10 visit. She confirmed this aspect of events in her testimony at trial, although she also asserted that her mother "had no problem moving quickly out of the house" when she testified that Shirlee rushed her out of the house. I do not believe Kimberly when she says that her mother rushed from the house for the reasons already given, and I do believe that Kimberly had to assist her mother up and down the stairs on the day of the fire. There is no reason for Kimberly not to have been truthful about her mother's physical state, and her evidence about the need to assist her mother with stairs is consistent with my observations of Shirlee Pidgeon's frailty in the courtroom. Although I cannot determine whether Shirlee Pidgeon could have climbed and descended stairs without assistance, her obvious frailty makes it less plausible that she would have chosen to set fires on all three floors of her daughter's house.
68. The inconsistencies between Kimberly's trial testimony and her prior statement to police, together with the internal inconsistencies compel me to the conclusion that I must reject her evidence as untrue and incapable of supporting any real doubt in my mind.
69. I also reject Kimberly's testimony that Shirlee uttered words to her that "the best thing that could happen to you is this house would burn down" while they were inside the house on June 10, 2014. Kimberly was interviewed the following day about the fire in her home and claims she forgot to mention this statement by her mother. According to her testimony, she did not deliberately omit this information in an attempt to protect her mother, but she simply forgot that her mother made this statement. Kimberly was being interviewed by police about the fire, the day after

the fire occurred. She reported to the police details of mundane conversations that occurred between herself and her mother, as well as between herself and Ms. Lewis, at the house that day. It strikes me as inconceivable that she would not recall a statement made bearing upon the very subject of the interview.

70. I also reject Kimberly Pidgeon's testimony about her avoidance of the basement at the residence. Her insistence that she avoided the basement because of the filth and a fear of bugs is inconsistent with the fact that she continued living, for months, in the house after learning that it was infested with bugs. The house clearly was filthy and stunk of cat urine, yet she continued to live there. Therefore, neither filth nor bugs constitute a logical reason for Kimberly to avoid the basement.
71. Sean King seemed genuinely puzzled at the suggestion that Kimberly avoided going in the basement. Pauline Lewis' insistence that Kimberly had a well-known fear of basements also seems bizarre given the slight nature of their friendship at the time of the fire. It simply defies common sense that someone who is a mere acquaintance would insist so strongly that Kimberly would not have gone in the basement of her home. On the evidence, Ms. Lewis would not have a sufficient knowledge base to make this claim with any certainty. Ms. Lewis' claim that Kimberly stood at the top of the basement stairs and invited her to inspect the horrible state of the basement contradicts Kimberly's assertion in her police statement that she avoided letting anyone from the community see the true state of her home.
72. Ms. Lewis was so hostile in her demeanour, so argumentative when answering simple questions, and so insistent on implausible details that she has no credibility as a witness, and I have grave concerns that much of her evidence was fabricated. In argument, the defence wisely conceded that Ms. Lewis' credibility was fatally damaged by her manner of giving evidence, and that I could not properly rely on her testimony in deciding this case.
73. The testimony of Kimberly and Ms. Lewis about the basement strikes me as concocted, presumably to deflect responsibility away from Kimberly for setting the fire in that area of the home. I reject their claim that Kimberly had any unwillingness to go to the basement of her home.
74. I have also considered Kimberly's insistence that she loved her house and that the repairs it needed were minor in the face of overwhelming evidence that the house was filthy and in a poor state of repair as a result of damage caused by the tenants. Although her evidence on this issue may have been somewhat illogical, I am not prepared to disbelieve her in this regard. The uncontroverted evidence is that the house

had been in poor repair for a long time, and it is also uncontroverted that Kimberly battled to keep paying the mortgage on the home despite all of its problems. People's feelings towards their homes are not governed strictly by rules of logic, and Kimberly Pidgeon would not be the first person to have an unrealistic attachment to a home that was, viewed objectively, undesirable.

75. Finally, Kimberly Pidgeon's demeanour in the witness box undermined her credibility as a witness. She was argumentative, often rambling and refused to make reasonable concessions. Although I appreciate that the assessment of credibility through demeanour is highly subjective, the manner in which Kimberly testified did little to inspire confidence in the veracity of her evidence. While this factor alone would not be determinative of the issue, I do find that her demeanour is a relevant consideration.
76. For all of these reasons, I reject the evidence of Kimberly Pidgeon that she did not set the fires in her house. Her testimony does not raise a reasonable doubt in my mind.
77. Of course, this is not the end of the matter. Even though the defence evidence does not raise a reasonable doubt in my mind, I must go on to consider whether the Crown has proven the guilt of the accused beyond reasonable doubt on the basis of the evidence which I do accept.
78. For the reasons previously given, I find that there were three separate areas where attempts were made to set a fire within Kimberly Pidgeon's home on June 10, 2014. Fires were deliberately set in the upstairs bathroom and in the basement in the area of the electrical panel. An attempt was made to start a third fire on the kitchen stove. Only two persons had the opportunity to start these fires – Kimberly Pidgeon and Shirlee Pidgeon.
79. Shirlee Pidgeon testified for the Crown. She testified that she did not set any of the fires, and had no knowledge of an attempt to set fire to the home. By necessary inference, if I accept Shirlee's evidence, then it must have been Kimberly who set the fires.
80. The evidence of Shirlee Pidgeon, much like that of her daughter, was problematic. She too gave a statement to police the day after the fire which contradicted her testimony on material points. She told police that she had never been in the basement of Kimberly's house, but testified that she and Kimberly had been in the basement. She attempted to explain her account to the police by claiming that Kimberly "threatened" her before she spoke to the police. When asked to explain how she was threatened by Kimberly, she claimed that Kimberly told her she could be

charged with perjury if she told the police that she and Kimberly had been in the basement. I agree with the defence that this explanation for lying to the police makes no sense, for it would be impossible to commit perjury by telling the truth.

81. Shirlee's demeanour also failed to inspire much confidence in her truthfulness. She too was rambling and argumentative in much of her testimony.
82. I have serious reservations about much of her evidence, particularly her claim that she had no knowledge of the fire in the home at the time that she and Kimberly left the residence. As with any witness, however, I am entitled to accept some, none or all of her evidence. Despite my misgivings about much of her evidence, I do accept that she did not set the fires alone, without her daughter's knowledge. I make this finding because of the sheer implausibility of her setting all three fires on her own.
83. The only opportunity that Shirlee would have had to set the fires without Kimberly's knowledge would have been while Kimberly was outside the house speaking with Pauline Lewis in the yard. Yet Shirlee did not know who Kimberly was speaking with, because when Kimberly went outside neither of them knew who was knocking at the door. Shirlee would have had no way of knowing how long Kimberly would remain outside. Nor could she have any way to be sure that Kimberly would agree to leave the house immediately once the fires were set, such that she would not discover what Shirlee had done. It would have been unreasonable for her to believe she could set the house on fire while her daughter stepped outside for an unknown length of time, and that her actions would not be discovered.
84. Nor did Shirlee have any real motive to set the house on fire. While she undoubtedly was upset over the awful living conditions in Kimberly's home, there were countless ways of ameliorating the situation short of destroying the home. In order for Shirlee to be solely responsible for setting the fires, she would have had to have acted without Kimberly's knowledge or consent, without even knowing whether the house was insured in Kimberly's name, and she would have had to have acted in a manner that risked her getting caught.
85. For the fires to have been set without Kimberly's involvement, then of necessity on these facts Shirlee must have set them acting alone. For this to have happened, however, the following would have had to occur. This 76 year old woman, visiting the house for the first time, who had difficulty climbing up and down the stairs, would have had to ignite fires in three separate areas of the home on three different floors. She would have had to have done so in secret, while her daughter stepped outside

to see who was at the front door, without knowing how long Kimberly would remain outside. If her motive was to assist her daughter by rid-
ding her of the burden of owning the home, there is no evidence that
Shirlee knew whether the house was insured, or if Kimberly would bene-
fit financially if the house were to burn down. Shirlee would have had to
have chosen the drastic step of setting the house on fire without Kimber-
ly's knowledge rather than taking some less drastic method of alleviating
her daughter's hardship, such as encouraging Kimberly to sell the home,
or offering to have Kimberly move in with her until the home was
cleaned and repaired. Finally, she would have had to have taken the
steps necessary to set the fires knowing that Kimberly would be coming
back inside the house to retrieve food and cook a meal, without knowing
for sure that she would be able to persuade Kimberly to leave the house
before the fires were discovered.

86. In my view, this is simply not a reasonably plausible scenario. I appreci-
ate that there is no burden whatsoever on Kimberly to prove how some-
one other than her may have set the fires, but the evidence in this case
is such that the only possible alternative, if Kimberly herself was not in-
volved, is that her mother Shirlee set the fires acting alone. This is sim-
ply not a reasonable inference available on the circumstantial evidence
in this case. Therefore, the only reasonable inference that is available is
that Kimberly Pidgeon was involved in setting the fires, either alone or
acting in concert with her mother.
87. While I strongly suspect that Kimberly and Shirlee acted together, and
that Shirlee at a minimum encouraged Kimberly in setting the house on
fire, I cannot be sure that Shirlee participated. What I am sure of, how-
ever, is that Kimberly Pidgeon was at least a party to setting these fires.
Whether she acted alone or with the assistance or encouragement of
her mother, she is criminally liable for setting the fires within the resi-
dence located at 20 Centre Street, Millbrook, on June 10, 2014.
88. With respect to Count 1, the charge pursuant to section 434, the only
remaining element, namely that the property was not wholly owned by
Kimberly Pidgeon, has been admitted. Accordingly, she is found guilty
on that Count.

c) Has the Crown proven that Kimberly Pidgeon set the fires with
the intention of defrauding her insurer?

89. With respect to Count 2, the Crown has asked that I draw an inference

pursuant to section 435(2) that Kimberly Pidgeon had the requisite intent to defraud the insurance company which provided the policy that she held on this property. On the unique facts of this case, however, I am not satisfied that I should draw this inference. The uncontradicted evidence is that it took years for Kimberly to collect a settlement from the flooding that occurred previously in the home, precisely because the insurance company would not simply give the money to her as long as Sean Kane remained on title. Had she turned her mind to the possibility of making an insurance claim after the fire, Kimberly could only have reasonably anticipated similar difficulties in collecting any money for damages resulting from the fire.

90. Nor can I reasonably draw any inference from the fact that Kimberly purchased insurance in April 2014, about three months before the fire. On the evidence I have heard, Kimberly had a pattern of buying insurance only to let it lapse, just as she had a history of falling behind on mortgage payments and property taxes over the course of the five years that she owned the home at 20 Centre Street. In those circumstances, it would not be reasonable to infer that Kimberly purchased this policy with the intent of defrauding her insurer. Further, I have heard no evidence that she even made a claim to collect on this policy.
91. It may simply be the case that Kimberly set the house on fire to relieve herself of the ongoing financial burden of making mortgage payments as well as relieving herself of the heartache which the home represented for all of the reasons referred to earlier. The police officer who interviewed her the day after the fire, and Crown counsel at trial suggested these alternative motives to Kimberly as being reasonable motives for setting the fires. I cannot disagree with their assessment.
92. Therefore, I am not satisfied that Kimberly Pidgeon set the fires with the specific intent to defraud her insurer, and accordingly she is found not guilty on Count 2.

Signed: “Justice S. W. Konyer”