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## BACKGROUND

¶ 4

The facts stated are derived from the defendant's jury trial and sentencing hearing. We note that the State also charged the defendant with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a), (e) (West 2010)), but the jury returned a not guilty verdict on that charge, so we do not relate the evidence concerning that charge. On Wednesday, April 7, 2010, four members and the pastor of the Smith Memorial AME Zion Church were gathered in the sanctuary for a prayer and praise service. Each church member and the pastor testified that, sometime after the service began, the defendant came into the church through a set of interior double doors. John Peters testified that the defendant "disturbed the meeting" by "ranting and raving making a lot of noise and cursing." Peters said that the defendant called them all "hypocrites and he said he could kill us all." Peters told the defendant to leave, and when the defendant did not leave, Peters left the church to summon the police.

¶ 5

Frankie Worthington testified that the defendant was very angry and cursing when he came into the church. The defendant showed the pastor, Teresa Flagg, the back of his head, which had blood on it. The defendant called Worthington and some of the others derogatory names. She said the defendant was very agitated and that he was inside the church about five minutes. She testified that, as he left, he knocked his hand through a window pane in the door leading out of the sanctuary. The court noted for the record that she had gestured "with her right hand with a closed fist indicating punching forward with it." Worthington said that, after the defendant hit the glass with his fist, "the window shattered and all the glass went into the vestibule," which was just beyond the sanctuary doors. On cross-examination, Worthington testified again that the defendant was "still upset" as he was leaving, and "so when he got to

the door he just knocked his fist through the door." The court again noted for the record that Worthington had gestured "with a closed fist and her right arm and punching it forward as if she was a boxer."

¶ 6 Edward Lanum testified that, about 30 minutes after the beginning of the service, the defendant came into the church, swung the door open hard, started walking up and down the aisle, called them hypocrites, and swore at them. Lanum said that, after about 5 to 15 minutes, the defendant left through the doors into the vestibule. He said those doors have a glass partition in them, and the defendant "just took his fist and went right through it." The court noted that Lanum had gestured "with his left arm punching it forward as a boxer would punch with a closed fist." Lanum stated that he was certain the defendant was not trying to push the door open when he used his fist to punch the glass partition in the door.

¶ 7 Norbert Brown testified that the defendant came into the sanctuary of the church "kind of abruptly" and started "walking around" and "cursing" and "acting bad as if he was intoxicated or something." Brown saw the blood on the back of the defendant's head. Brown said that the defendant had previously attended the church on "many Sundays." Brown testified that, as the defendant left the sanctuary, he "was angry" and "put his fist through the door." The court noted for the record that Brown "balled his hand into a fist and indicated in a punching maneuver." Brown explained that the double interior doors the defendant used to enter and exit the sanctuary opened only one way. From the vestibule, the doors swung into the sanctuary. From inside the sanctuary, a person had to use the door handles to pull them into the sanctuary in order to exit. Brown said that, from inside the sanctuary, "no matter how hard you push or punch you are not going to open them without pulling."

¶ 8 Pastor Flagg testified that the defendant interrupted the service by coming into

the sanctuary "kind of abruptly" and began "ranting and raving" about what someone had done to him. Pastor Flagg "quit the service and began to speak with him to ask him what was going on." She confirmed that the defendant made derogatory comments about those present. She said that, as the defendant was leaving the church, he "put his fist through the little glass thing in the door." She stated that she did not believe he was trying to open the door but that he punched the glass "out of anger."

¶ 9 DuQuoin police officer Jeff Jacoby testified that he went to the church after Peters came to the police station to report the defendant's behavior. When Officer Jacoby arrived at the church, the defendant had already left, and the glass window was broken. Those attending the church service told him that the defendant had broken the window. He asked Pastor Flagg if she wanted to press charges against the defendant, and she told him she did not. Pastor Flagg testified that she did not want to press charges because the defendant's soul was more important to her than the window, and she "did not want to hinder the opportunity of being able to minister to him in the future." Before Officer Jacoby left the church, he told Pastor Flagg and the others that he would look for the defendant in order to tell him that he would be arrested for trespassing if he came back to the church.

¶ 10 The defendant testified that he broke the window accidentally, but he acknowledged that he was angry when he was at the church. He denied that he was angry at the people in the church and said he was angry only at the people who had beaten him up earlier.

¶ 11 After the jury convicted the defendant of criminal damage to property, he filed a posttrial motion, arguing that the State failed to prove his guilt beyond a reasonable doubt and challenging the constitutionality of the statute under which he was

convicted. The trial court denied the defendant's posttrial motion. During the sentencing hearing, the trial court stated that it had considered the factors in mitigation and found several that applied to the defendant. The court found that "the defendant's criminal conduct neither caused nor threatened serious physical harm to another" and that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another. The court determined that the defendant was acting under the strong provocation of the earlier altercation when he committed the crime of criminal damage to property and that his criminal conduct was induced or facilitated by someone else. The court also found that the defendant's criminal conduct was the result of circumstances unlikely to recur.

¶ 12 The court found that several factors in aggravation should apply to the defendant's sentence. The court noted that the defendant had a history of prior delinquency or criminal activity. Specifically, within the last 10 years, the defendant had pled guilty to at least three prior felony offenses. The court also found that attempts to rehabilitate him through probation and conditional discharge had been a "total failure." Accordingly, the court determined that a sentence of probation or conditional discharge would deprecate the seriousness of the crime and be inconsistent with the ends of justice. The court found that a sentence of imprisonment was also necessary to deter others from committing the same crime and that the defendant's prior felony convictions of the same or greater class supported an extended-term prison sentence. Finally, the court stated that "the offense took place in a place of worship or on the grounds of a place of worship immediately prior to, during or immediately following worship services." 730 ILCS 5/5-5-3.2(a)(11) (West 2010). The court made no further comment about the factor of the crime being committed during a worship service.

¶ 13 On September 8, 2010, the court sentenced the defendant to six years' imprisonment. On September 28, 2010, the defendant filed a *pro se* motion to overturn or reduce his sentence by 50%. On October 6, 2010, the defendant's attorney filed a motion for reduction of sentence, arguing that his sentence was too harsh. On February 1, 2011, the trial court entered an order denying the defendant's motion to reconsider his sentence. The defendant filed a timely notice of appeal on February 14, 2011.

¶ 14 ANALYSIS

¶ 15 The defendant argues that the State failed to prove him guilty beyond a reasonable doubt of the charge of criminal damage to property because that offense requires proof that he knowingly damaged the property, but the evidence showed only that he acted recklessly when he broke the glass in the church door. The defendant argues only that there is insufficient proof of the requisite mental state. He does not deny that he damaged church property. The defendant was convicted of section 21-1(1)(a) of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5/21-1(1)(a) (West 2010)), which provides that a "person commits an illegal act when he \*\*\* knowingly damages any property of another." Subsection (2) of that statute (720 ILCS 5/21-1(2) (West 2010)) provides that the offense is a Class 4 felony "if the damage to property does not exceed \$300" and "if the damage occurs to property of a school *or place of worship* or to farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns." (Emphasis added.) The Criminal Code defines the mental state of knowledge as follows:

"A person knows, or acts knowingly or with knowledge of:

- (a) The nature or attendant circumstances of his or her conduct,

described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

(b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that the result is practically certain to be caused by his conduct.

\*\*\*

When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally." 720 ILCS 5/4-5 (West 2010).

¶ 16 When a defendant challenges the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 208 (2004). "A reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* When the defendant challenges the jury's finding of the requisite mental state, the rule is that the jury's determination "will not be disturbed on review unless it clearly appears that there exists a reasonable doubt of the defendant's guilt." *People v. Brown*, 199 Ill. App. 3d 860, 872-73 (1990). It is the jury's function to determine the credibility of the witnesses and to draw reasonable inferences from the evidence. *People v. Robinson*, 167 Ill. 2d 397, 413 (1995). "We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 17 We find that there was ample evidence from which the jury could reasonably

find that the defendant knew that he was practically certain to break the glass or that he intended to break the glass in the door of the church when he shoved his fist through it. The force of the defendant's action caused the glass to shatter into the vestibule. The defendant had used that door several times before this incident and had knowledge that it did not swing both ways but that it had to be pulled toward him using the handles when going from the sanctuary to the vestibule. Therefore, when he punched the glass with his fist, he could not reasonably expect that action to open the door but could expect only that the glass would shatter. Each of the five eyewitnesses testified that the defendant was acting very angry the entire time he was in the church and that he used his fist to punch the glass in the door as he left the sanctuary. The jury was free to infer from the defendant's behavior that he was angry and that he intentionally punched the glass pane in the door in order to break it. The jury's guilty verdict is not unreasonable, improbable, or unsatisfactory, and there is no reasonable doubt that the defendant knew that his actions would damage the church's property.

¶ 18 The defendant next argues that the statute under which he was convicted is "an unconstitutional violation of the establishment clause." He acknowledges that statutes carry a strong presumption that they are valid. *People v. Falbe*, 189 Ill. 2d 635, 639 (2000). He contends that the statute under which he was convicted violates the establishment clause of the first amendment to the United States Constitution (U.S. Const., amend. I) and the Illinois Constitution (Ill. Const. 1970, art. I, § 3). While the defendant sets out the holdings in several cases that consider similar issues, he does not state why those cases compel a ruling from this court that the statute here is unconstitutional. Instead, the defendant argues only that, in similar cases, "the statutes in question were designed to deter crime and protect *people* near places of

worship, particularly at the time of services." (Emphasis in original.) See *Falbe*, 189 Ill. 2d at 657; *People v. Daniels*, 307 Ill. App. 3d 917, 922-23 (1999); and *People v. Carter*, 228 Ill. App. 3d 526, 535 (1992). From these cases, the defendant concludes that the statute here is unconstitutional because it protects property belonging to churches rather than people attending church functions. The defendant maintains that there is "simply no reason to treat the bricks and mortar of a building used for religious purposes any differently than the bricks and mortar of a building used to sell clothing."

¶ 19 The State argues that the defendant has not met his burden to show that the statute is unconstitutional. The party challenging the validity of the statute has the burden to clearly establish that it is unconstitutional. *People v. Fisher*, 184 Ill. 2d 441, 448 (1998). It is the court's duty to construe statutes in a way that upholds their validity if that can reasonably be done. *Id.* Doubts about the statute's validity are to be resolved in favor of finding it valid. *Id.* "The constitutionality of a statute is a question of law which we review *de novo*." *Id.*

¶ 20 The trial court considered the defendant's argument and found the statute constitutional, relying on *Falbe*. We too find the court's analysis in *Falbe* instructive. There, the defendants were charged with "violations of section 401(c)(2) of the Illinois Controlled Substances Act (720 ILCS 570/401(c)(2) (West 1998)) (unlawful possession of cocaine with intent to deliver), said conduct allegedly occurring while defendants were on a public way within 1,000 feet of a church, a circumstance enhancing a Class 1 felony to a Class X felony (720 ILCS 570/407(b)(1) (West 1998))." *Falbe*, 189 Ill. 2d at 637. Similar to the case at bar, the defendants in *Falbe* argued that section 407(b)(1) was unconstitutional as a violation of the establishment clauses of both the Illinois and United States Constitutions. *Id.* at 645. In addressing

the issue of the statute's constitutionality, the court noted that the "establishment clause of the first amendment \*\*\* prohibits state and federal action 'favoring the tenets or adherents of any religion or of religion over nonreligion.'" *Id.* (quoting *McDaniel v. Paty*, 435 U.S. 618, 638 (1978)). The restrictions imposed by the establishment clause of the Illinois Constitution "have been held to be identical to those imposed by the first amendment to the Constitution of the United States." *Id.* "Thus, any statute which is valid under the first amendment is also valid under the Constitution of Illinois." *Id.*

¶ 21 In *Falbe*, the court applied the three-part test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). "Under *Lemon*, to pass constitutional muster, a statute's legislative purpose must be secular, its principal or primary effect cannot advance or inhibit religion, and it must not foster an excessive governmental entanglement with religion." *Falbe*, 189 Ill. 2d at 646. We also follow the *Lemon* three-part test in deciding whether the statute under which the defendant in this case was convicted violates the establishment clause of the first amendment.

¶ 22 Applying the three-part test to the statute in our case, we first consider the statute's purpose. The defendant argues that the statute's main purpose is to protect church property, an improper purpose. The State responds that buildings that primarily house places of worship also provide space for numerous civic and community functions beyond the purely religious, such as food pantries, clothing dispensaries, and meeting places for scouts, blood drives, counseling, and weight-loss groups. The State contends that, due to the numerous beneficial community functions of places of worship, criminal damage to places of worship harms the community because it impedes the beneficial community activities that often occur there. The State submits that these community functions provide "a sound secular reason" to

protect the property of places of worship. The State points out that this statute also protects property belonging to schools and "farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns." 720 ILCS 5/21-1(2) (West 2010).

¶ 23 "The Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity was motivated wholly by religious considerations." *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984). When we consider the statute in question against that requirement, it is easy to see that the defendant has not shown that a secular purpose is lacking or that the statute was motivated wholly by religious considerations. Rather, it is much more reasonable to conclude that the purpose of the statute is to prevent damage to the property of schools, places of worship, and certain agricultural structures and equipment because the legislature deemed those places in need of enhanced protection, which is a secular purpose.

¶ 24 On the question of whether the statute's principal or primary effect is to advance or inhibit religion, the defendant makes no argument. The State argues that the principal effect of this statute "is not to advance religion, but to punish those persons who harm the community by damaging property of a place of worship and to deter those who would commit that crime." We agree. Numerous similar protections have been upheld by our courts in the past. *Id.* at 681-82 (public funding for textbooks and transportation to church-sponsored elementary and secondary schools, federal grants to church-sponsored colleges and universities, and tax exemptions for church properties are among the examples listed). We find no effect that advances or inhibits religion resulting from the enforcement of this statute. On the contrary, as in *Carter*, we find only an indirect benefit to religion because the primary effect of the

statute is to punish offenders for damaging property belonging to schools, places of worship, and certain agricultural structures and equipment. *Carter*, 228 Ill. App. 3d at 535 (the only benefit to religion from a sentencing statute that imposes a more severe sentence upon defendants who commit offenses in places of worship is indirect; the primary effect "falls on criminals rather than on their victims").

¶ 25 Under the third prong of the test, we consider whether the statute creates an excessive entanglement of government with religion. The Supreme Court found such excessive entanglement in *Lemon*, where two states had enacted laws that provided state aid to church-related schools. *Lemon*, 403 U.S. at 606. The Court found excessive entanglement in part because continuous state surveillance was required to ensure that the statutory restrictions were met and that the first amendment was respected. *Id.* at 619. The defendant has not suggested that any such entanglement is produced by the statute we consider, nor do we find any. Therefore, the defendant has failed to show that any prong of the three-part test is violated by this statute. There is no basis upon which to find the statute unconstitutional.

¶ 26 The defendant's final argument is that the trial court erred in considering a factor in aggravation of his sentence that is an inherent element of the offense of which he was convicted. The defendant refers to a subsection of the sentencing statute that allows the court to consider that "the offense took place in a place of worship or on the grounds of a place of worship, immediately prior to, during or immediately following worship services" as a factor in aggravation of the defendant's sentence. 730 ILCS 5/5-5-3.2(a)(11) (West 2010). For purposes of this subsection, the term "place of worship" means "any church, synagogue or other building, structure or place used primarily for religious worship." 730 ILCS 5/5-5-3.2(a)(11) (West 2010). The defendant asserts that this factor in aggravation is the same as the element

of the offense of criminal damage to property that elevated his sentence from a Class A misdemeanor to a Class 4 felony. 720 ILCS 5/21-1(2) (West 2010) (enhancing sentence where the damage to the property does not exceed \$300 "if the damage occurs to property of a \*\*\* place of worship"). The State responds that the plain language of the two statutes is different, and the court's consideration of both was not an improper double enhancement of the defendant's sentence because the two statutes require two separate considerations. We agree with the State.

¶ 27 "It is a general rule of construction regarding sentencing schemes that a factor implicit in the offense for which defendant is convicted cannot be used as an aggravating factor at sentencing." *People v. Rissley*, 165 Ill. 2d 364, 390 (1995). The double-enhancement rule is based on the assumption that the legislature considered the factors inherent in the offense in determining the appropriate range of penalties for that crime. *Id.* "In determining whether the legislature intended a double enhancement, we look to the statute itself as the best indication of legislative intent." *Id.* at 390-91. If the statutory language is clear and unambiguous, the court's duty is to enforce the law as enacted without resort to principles of statutory construction. *Id.* at 391. There is a strong presumption that the trial court based its sentencing decision on proper legal reasoning. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). We review the sentencing determination of the trial court with great deference. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. "The burden is on the defendant to affirmatively establish that the sentence was based on improper considerations." *Dowding*, 388 Ill. App. 3d at 943. When we consider if the trial court based its sentence on proper mitigating and aggravating factors, we "should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *Id.* The issue of whether the trial court relied on an improper factor

in imposing a sentence "ultimately presents a question of law to be reviewed *de novo*." *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 28 The defendant's argument fails because the two considerations are different and involve different evidence to support them. Proof that a defendant criminally damaged the property of a place of worship requires only that the offense occur to property belonging to a place of worship. By contrast, the factor in aggravation at issue required the court to consider whether the offense occurred "in a place of worship or on the grounds of a place of worship immediately prior to, during or immediately following worship services," which involves evidence about the location of the crime and what was happening at the time of the offense. The defendant does not deny that this factor applies, because he acknowledges that the offense occurred in a place of worship during a worship service. He argues only that the court should not have considered the factor because doing so amounted to an improper double enhancement. However, as the State points out, for a conviction of criminal damage to the property of a place of worship, the crime can occur at any time, regardless of when any religious services occur at that location. Additionally, proof of the offense does not require that the property damaged must be located in a building that houses religious services because property such as hymnals, church vans, or other personal property belonging to a church can be damaged at a location other than a church and at a time other than immediately before, during, or after a religious service. Because the evidence necessary to support the element of the offense enhancing it to a Class 4 felony is not the same as the evidence supporting the factor in aggravation, there was no improper double enhancement.

¶ 29 Here, the trial court noted the evidence that it found supported several mitigating factors. The court also found several aggravating factors applicable. The

court briefly mentioned the aggravating factor that the offense occurred in a place of worship during a worship service. The court thoroughly explained the basis of the sentence it imposed on the defendant. The defendant does not argue any sentencing error except his claim of double enhancement, which we find did not occur. Therefore, we affirm the defendant's sentence.

¶ 30

#### CONCLUSION

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For all of the reasons stated, we affirm the defendant's conviction and sentence.

¶ 32

Affirmed.