SECOND DIVISION
December 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRIAN CHURCH, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 CR 10985 (01) The Honorable Thaddeus L. Wilson, Judge Presiding.
THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JARED CHASE, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 CR 10985 (02) The Honorable Thaddeus L. Wilson, Judge Presiding.
THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRENT BETTERLY, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 CR 10985 (03) The Honorable Thaddeus L. Wilson, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* In appeal 1-14-1607, Brian Church's convictions were affirmed where the State presented sufficient evidence of the defendant's guilt of possession of an incendiary device and mob action; the trial court's failure to excuse a witness from the stand during a sidebar did not take place during a critical stage of the trial; and the pipe bomb instructions found in the defendant's apartment were admissible at trial. In appeal 1-14-1608, Jared Chase's convictions were affirmed where the State presented sufficient evidence of the defendant's guilt of possession of an incendiary device and mob action; the trial court's failure to excuse a witness from the stand during a sidebar did not take place during a critical stage of the trial; the pipe bomb instructions found in the defendant's apartment were admissible at trial; and there was no *bona fide* doubt as to the defendant's fitness to stand trial. In appeal 1-14-2138, Brent Betterly's convictions were affirmed where the State presented sufficient evidence of the defendant's guilt of possession of an incendiary device and mob action; the trial court's failure to excuse a witness from the stand during a sidebar did not take place during a critical stage of the trial; the pipe bomb instructions found in the defendant's apartment were admissible at trial; the defendant failed to demonstrate that he would not have been indicted absent allegedly false and misleading grand jury testimony; and evidence of the defendant's Facebook messages and statement that he had previously thrown acid bombs at police were admissible.

¶ 2 Following a jury trial, the defendants, Brian Church, Jared Chase, and Brent Betterly, were each convicted of two counts of mob action (720 ILCS 5/25-1(A)(2) (West 2012)) and two counts of possession of an incendiary device with the intent to commit arson (720 ILCS 5/20-2(A) (West 2012)). The trial court sentenced each of the defendants to 30 days' imprisonment on the merged mob action counts. With respect to the merged counts for possession of an incendiary device, Church was sentenced to 5 years' imprisonment, Chase to 8 years' imprisonment, and Betterly to 6 years' imprisonment.

¶ 3 On appeal, all of the defendants argue that the State failed to prove them guilty beyond a reasonable doubt, the trial court's absence during a critical stage of the proceedings violated their due process rights, and the trial court erred in admitting into evidence handwritten instructions on how to make a pipe bomb. In addition, Chase argues that the trial court erred in failing to hold a fitness hearing on his fitness to stand trial. Betterly also argues that his indictment was secured with misleading testimony, and the trial court erred in admitting certain Facebook

messages and other-crimes evidence against him. For the reasons that follow, we affirm all of the defendants' convictions.

¶ 4 BACKGROUND

¶ 5 Grand Jury Proceedings & Indictment

¶ 6 On June 11, 2012, Officer Marcia Peot of the Chicago Police Department testified in grand jury proceedings against the defendants. Peot testified that during an investigation conducted by the Chicago Police Department ("CPD"), she learned the following information: the defendants planned to commit acts of terrorism in Chicago around the dates of the NATO summit to be held on May 20 and 21, 2012. In late April 2012, the defendants traveled from Florida to Chicago, where they stayed in an apartment on West 32nd Street. Beginning May 1, 2012, two undercover police officers made contact with the defendants at a Mayday march. The defendants informed the undercover officers that they were not familiar with Chicago and needed help finding targets or places in or around the city to attack. The defendants also intended to perform reconnaissance work to identify targets, cameras, and escape routes.

¶ 7 On May 2, 2012, the undercover officers met with the defendants again. At that time, Church asked where he could buy three AR assault rifles and a long rifle. Church also stated that if a cop was going to point an AR at him, he would point one back at the officer. Church told the undercover officers that he intended to attack four CPD stations to destroy as many police vehicles as possible, with a goal of placing the CPD at a disadvantage prior to the NATO summit. Church indicated that he needed four groups of four people to conduct the attacks and that he had already performed surveillance at police headquarters. In addition, Church indicated that he wanted to shoot an arrow with a note on it through the window of the home of Chicago's mayor. Church stated that Chicago did not know what it was in for, after NATO Chicago would never be the same, and he would be leaving Chicago immediately after NATO.

¶ 8 On May 4, 2012, Church stated to the undercover officers that he had observed a sheriff's station that would be a good target for May 15, 2012. In addition, Church and another individual demonstrated how to resist arrests and how to bend officers' hands or fingers backwards to break their grasps on arrestees.

¶ 9 On May 6, 2012, Church and Chase met with the undercover officers and discussed a plan to break the windows on President Obama's campaign headquarters on May 16, 2012. Church and Chase indicated that they had a slingshot capable of breaking the windows, and they also discussed using metal pipes to break the windows. Church and Chase indicated that they would perform reconnaissance on the headquarters.

¶ 10 On May 8, 2012, the undercover officers went to a social gathering at the defendants' apartment, and all three defendants were present. While there, the officers observed a bow and arrow set with ten arrows, two metal swords, one silver metal Chinese throwing star, two silver metal knives with brass knuckle handles, a black gas mask, kneepads, shin pads, arm pads, a belt and a black semiautomatic holster, and a small container of gasoline. On that same evening, Church indicated that he had constructed something he described as a mortar, and Church and Chase indicated that they had built a wooden shield to use against the police. Chicago police eventually recovered that shield and found it to be approximately seven feet long and two-and-a-half feet tall, with multiple sharp screws protruding from it.

¶ 11 On May 14, 2012, the undercover officers met with Church, who indicated that he was going to make Molotov cocktails for use during NATO. Church described the method of making Molotov cocktails as filling a beer bottle with alcohol, soaking a piece of cloth in it, and lighting it on fire.

¶ 12 On May 16, 2012, the undercover officers met with all three defendants at their apartment. During that time, Betterly gave instructions on how to construct a Molotov cocktail,

including that rags should be used as the wicks of the cocktails and that the gasoline should not be poured onto the rags, but the rags should soak up the gasoline from inside the bottle. In addition, Chase described the process for making a napalm bomb. Chase and one of the undercover officers went to a nearby gas station and purchased gasoline. Church, Chase, and Betterly then constructed four Molotov cocktails in the presence of the undercover officers. In doing so, Chase filled four beer bottles with gasoline and used pieces of a bandana to make wicks. During this time, Church asked if the undercover officers were ready to see a police officer on fire and indicated that there was a police station nearby where they could burn police cars.

¶ 13 Upon execution of a search warrant at the defendants' apartment and Church's vehicle, officers recovered the four Molotov cocktails, the bow and arrow set with ten arrows, swords, a Chinese throwing star, knives with brass knuckle handles, and a length of PVC pipe containing what police believed to be soot or fire residue.

¶ 14 Peot further testified that during the investigation, she learned that the defendants had met and discussed committing the above-described acts of violence during the NATO summit, had used cell phones to make calls and send text messages discussing committing these acts of violence during the NATO summit, and gathered supplies for the purposes of committing these acts of violence at the NATO summit. In addition, Peot learned that the defendants trained in tactics to defeat arrest and researched potential targets for their planned acts of violence.

¶ 15 Following Peot's testimony, the grand jury returned an indictment containing 11 counts against each of the defendants: one count of providing material support for terrorism (720 ILCS 5/29D-29.9(a) (West 2012)) (Count 1); one count of conspiracy to commit terrorism (720 ILCS 5/8-2(a) (West 2012); 720 ILCS 5/29D-14.9(a) (West 2012)) (Count 2); one count of possession of an incendiary device with the intent to commit terrorism (720 ILCS 5/20-2(a)) (Count 3); one

count of possession of an incendiary device with the intent to commit arson (720 ILCS 5/20-2(a)) (Count 4); one count of possession of an incendiary device with the knowledge that another intended to commit arson (720 ILCS 5/20-2(a)) (Count 5); one count of possession of an incendiary device with the knowledge that another intended to commit terrorism (720 ILCS 5/20-2(a)) (Count 6); one count of conspiracy to commit arson (720 ILCS 5/8-2(a); 720 ILCS 5/20-1 (West 2012)) (Count 7); one count of solicitation to commit arson (720 ILCS 5/8-1(a) (West 2012); 720 ILCS 5/20-1) (Count 8); one count of attempt arson (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/20-1) (Count 9); and two counts of unlawful use of a weapon (720 ILCS 5/24-1(c)(7)(iii) (West 2012)) (Counts 10 and 11).

¶ 16 Betterly filed a motion to dismiss the indictment against him on the basis that the State presented false and misleading testimony to the grand jury. The trial court denied that motion. The State eventually dismissed Counts 7, 9, 10, and 11, and proceeded to trial on the remaining seven counts.

¶ 17 Chase's Fitness

¶ 18 During a status hearing on October 1, 2013, counsel for Chase informed the trial court that they had become concerned about behaviors and physical speech issues exhibited by Chase, namely, speaking as if his jaw was broken or wired shut, difficulty communicating, and acting very fidgety. At the urging of Chase's mother, he was tested for Huntington's disease, a fatal disorder that results in the death of brain cells, and the tests confirmed that Chase did, in fact, have Huntington's. Chase's counsel expressed concern about Chase's ability to receive the necessary treatment while in custody and indicated that he would possibly be filing a number of motions, including one for a protective order on the handling of Chase's medical records and one to obtain bond to allow Chase to get treatment. The trial court indicated that it would sign a protective order for Chase's medical records.

¶ 19 On October 17, 2013, after Chase was charged with aggravated battery of a peace officer in a separate case, the trial court stated that based on the nature of that new charge and the previous information it had regarding Chase's health, it felt "compelled to order a BCX for the limited purpose of just for defendant [*sic*]—to make sure defendant understands the proceedings as we go forward here. It doesn't deal with anything in the past or anything else." Upon request of counsel for Chase, the trial court held that order in abeyance until counsel could file a motion on the issue and be heard.

¶ 20 On October 21, 2013, Chase filed "Defendant's Motion for an Examination for Physical and Mental Fitness to Stand Trial by a Qualified Expert, in Addition to Any Fitness Examination Ordered by the Court." In that motion, Chase agreed that an examination was necessary, but requested that the trial court appoint Dr. Kathleen Shannon from Rush University Medical Center, as she was a part of the Huntington's Disease Society of America Center for Excellence and, thus, was experienced with Chase's medical condition. According to Chase, a standard BCX by Forensic Clinical Services alone would be insufficient, given the complicated nature of Huntington's disease. Following a hearing on the matter, the trial court appointed both Forensic Clinical Services and Dr. Shannon to conduct examinations of Chase regarding whether he was physically and mentally fit to stand trial and whether he was mentally fit at the time of the offense.

¶ 21 Following receipt of correspondence from two doctors at Forensic Clinical Services, both of whom found Chase to be fit to stand trial and legally sane at the time of the offense, and a letter from Dr. Shannon concluding that Chase was fit to stand trial, the trial court concluded that there was no *bona fide* doubt as to Chase's fitness to stand trial. Subsequently, Dr. Shannon submitted a second letter, stating that she also found Chase to have been legally sane at the time

of the offense. The trial court then found there to be no *bona fide* doubt as to either Chase's fitness to stand trial or his sanity at the time of the offense.

¶ 22 Trial

¶ 23 At the joint jury trial of all three defendants, the following evidence was presented through the testimony of Officers Nadia Chikko and Mehmet Uygun of the Chicago CPD. In February 2012, Chikko was put on a 90-day detail with the Intelligence Unit public safety assignment related to the May 2012 NATO summit to be held in Chicago. As a part of that assignment, Chikko and Uygun, while undercover, were to visit various locations, such as coffee shops, protests, meetings, rallies, and concerts, to observe and listen for any potential criminal activity. They were then to report back to their superiors any criminal activity and that intelligence was to assist the CPD in allocating its resources in preventing any violence during the NATO summit.

¶ 24 On May 1, 2012, while working this assignment, Chikko and Uygun met up with Henry Edwards, whom they had met in April at another event, at the Bank of America building in downtown Chicago. Edwards told the officers that they needed to "bloc up," meaning that they were to put black bandanas over their faces to conceal their identities from law enforcement. From there, the officers, Edwards, and some others made their way to Union Park where a Mayday rally was set to begin. The officers participated in the Mayday march. All three defendants were also participants in the rally.

¶ 25 Following the march, the officers went to an after party at the MultiKulti Cultural Center. While there, the officers were approached by Church and Chase. Church told the officers that he recognized them from the rally earlier in the day and from a protest outside City Hall the day before. Church informed the officers that he, Chase, Betterly, and another individual named Hank Dimouro had driven up from Miami for the NATO summit. The group then broke apart,

and Chikko stepped outside to check in with her surveillance team. When she returned to the club, she was again approached by Church, this time alone. Church told her that because he was new to the area, he needed her and Uygun to help him do some reconnaissance work downtown to find targets for before and during the NATO summit. Church also told Chikko that he had brought several weapons with him, including a bow and arrow, swords, knives, and a throwing star. In addition, upon arriving in Chicago, Church and the other two defendants built a large shield to be used during the NATO summit. Ultimately, Chikko agreed that she and Uygun would help, and she and Church exchanged phone numbers.

¶ 26 The following day, Church texted Chikko and they arranged to meet at the White Palace Grill at Roosevelt and Canal in Chicago. Chikko and Uygun met Church as arranged. When Church arrived, he appeared to be a little paranoid and was looking around. He asked Chikko and Uygun to remove the batteries from their cell phones, because the government had ways of listening to people's conversations. Church stated that he could not continue a conversation until they did so. The officers complied and then, at Church's request, the group started walking north on Canal. As they walked, Church told the officers that he wanted to do reconnaissance work—look for targets, such as banks, cameras, and escape routes.

¶ 27 The group then turned east on Madison and started walking toward the Chase Bank building. While walking, Church told the officers about his dislike for city officials, namely Mayor Rahm Emmanuel. Church described how he wanted to create a diversion outside of the mayor's home so that he could shoot an arrow with a note attached through the mayor's window.

¶ 28 When they arrived at the Chase Bank building, Church looked up at the building, said it was beautiful, and stated that it would probably be his first target as early as the following week. He then began to walk along the building, looking it up and down. At one point, Church knelt down next to the building as if to tie his shoe. When Chikko noticed that he was not actually

tying his shoe, she asked what he was doing, and he responded that he was pretending to tie his shoe but was actually measuring the thickness of the glass window. When Church finished, he got back up and the group continued to walk around the building. As they did so, Church continued to look up at the building. Uygun asked Church what he was doing, and Church said that he was counting the cameras and that he had already counted six.

¶ 29 After Church finished examining the building, the three sat down on a nearby ledge and Church told the officers his plan for attacking the Chase Bank building. He would come out of a nearby alley, change his clothes, and cut the surveillance cameras. He would then go down into a recessed area near the building to begin his attack. He intended to destroy all of the windows on the bank using different weapons. He also stated that he wanted to "tag" the building and do as much damage as possible. He said that he would probably make his attack sometime after midnight and during the "haunting hours," *i.e.*, 1:00, 2:00, 3:00 in the morning. The group then relocated to a nearby restaurant patio, where Church continued to talk about his planned attack on the Chase Bank building. He stated that perhaps instead of using an alley to escape or change his clothes, he would use the Blue Line subway to either take a train away from downtown or to change his clothes.

¶ 30 Church then told the officers that he had once attended military school and had learned tactics for evading law enforcement. He offered to teach the officers these tactics on the following Friday, May 4, 2012. Church also told the officers that if they knew anyone else who was "down," they should bring them along. Chikko understood that to mean anyone who "wanted to elude the police, did not like police officers, and wanted to commit the same type of tactics" as Church. Church continued the discussion by again describing all of the weapons that he had brought with him to Chicago and by identifying additional tactics to evade police, such as how to avoid leaving fingerprints or footprints.

¶ 31 After leaving the restaurant patio, the group walked south on Dearborn. While walking, Church told the officers that he had already done some reconnaissance work by checking out a couple of police stations, including the CPD headquarters. According to Church, he planned to conduct simultaneous attacks on four police stations using four groups of four people. These attacks were to take place around May 15 or May 16, 2012. Church requested that the officers do an internet search for two other police stations to attack, because he did not want to do the internet searches himself, given his attempts to elude law enforcement. He also asked the officers where he could purchase three assault rifles and a long rifle. When asked what he needed them for, Church said that if an officer was going to point one at him, he was going to point one back. Before the officers and Church parted ways, Church reiterated that he wanted to have a tactical meeting on May 4 and then stated that the city did not know what it was in for and that after the NATO summit, the city would never be the same.

¶ 32 On May 3, 2012, the officers met the three defendants and some others at the DuSable Museum. Church told the officers that there was a dinner at the museum that night for some dignitaries who were in town for the NATO summit and that they (Church and the other protestors) wanted to disrupt the dinner so that it could not occur. However, Church also told the officers that security was tight and would not let the group near the entrance, so Church considered the attempt a bust and stated that the group was going to relocate to the Woodlawn Mental Health Clinic ("Woodlawn"), where people had been protesting its recent closure.

¶ 33 When the officers arrived at Woodlawn and after they had joined the group of people gathered there, Church asked Chikko if he could speak to her for a minute. They moved to the side and Church told Chikko that Betterly had spoken with him about the police station attack that was supposed to happen on May 15 and 16, 2012. Betterly told Church that the attacks should be moved closer to the time of the NATO summit, so that they would not get arrested and

the police would not be able to destroy the Black Bloc during the summit. Chikko and Church then rejoined the group of Chase, Betterly, Uygun, and some other individuals that Chikko did not know. Church told them that the tactics training he had previously mentioned was still on for the following day and that if Chikko or Uygun knew anyone who was "cool," they should bring them along. Church also stated that following the tactics training, they would all probably dress in black and walk around the downtown area to get the police's attention. Chase stated that although they would go downtown to let the police know that they were there and to make their presence felt, they would not be committing any criminal acts that night.

¶ 34 After the May 3, 2012, meeting with the defendants, the officers obtained a consensual overhear order from the circuit court, which allowed them to secretly record all further interactions with the defendants.[1]

¶ 35 On May 4, 2012, Chikko and Uygun met Church, Chase, and Edwards in Palmisano Park. During this meeting, Church described de-arrest tactics. Edwards raised the topic of sock bombs, which Uygun testified were a type of explosive. Chikko asked who was going to make them and then asked Chase specifically if he was going to make them. Chase replied, "Hell yeah." Uygun testified that he did not make mention of the sock bomb in his debriefing notes or report for that date because he did not know at that time what a sock bomb was. After he listened to the recordings a few days later, he heard the reference again and looked up what a sock bomb was. Nevertheless, he did not make mention of it to the detective or state's attorney with whom he interviewed shortly after the defendants' arrest.

¶ 36 At one point, Chase asked the officers if they brought any Molotov cocktails, to which Uygun responded that he would make some. Uygun testified that he made that statement

[1] The actual recordings, along with transcripts of those recordings developed by the undercover officers and the State, were entered into evidence. Although this Court has listened to all of the admitted recordings, because there is no substantial disagreement about the content of the transcripts, to avoid reinventing the wheel, for purposes of this decision, all quotes from the recordings will be taken from the transcripts.

because if Chase was going to be making some, Uygun wanted to be included. According to Uygun, this was the first time that any of the defendants mentioned Molotov cocktails to him. Chase went on to describe how he wanted to put fuel in glass jars and then drop M80s and other fireworks into them: "You put one of those in a bottle and throw that shit, the fuckin' glass will explode everywhere, you cover 'em in a ball of fuckin' fire…" During a discussion about how best to penetrate police formations during the NATO summit, the topic of shields was raised and Uygun referenced a long shield that was to be made. Chase responded, "Yeah. That will be a good spot like, when we have that big ass shield, like, behind that, we should be behind that, like, throwing Molotovs…over that shit." Chikko asked if Chase was going to make the Molotov cocktails, and Chase answered that he was. When Edwards suggested that the police might start shooting if Molotov cocktails were used, Chase disagreed, stating that "[c]ops get lit on fire all the fuckin' time" and then laughed. Later in the conversation, the officers, Chase, and Church joked that Chase would use a trench coat to hide his Molotov cocktails. Chase stated, "I wanna like wheel up like a whole cart of just like Molotovs and fireworks and just like start lighting shit off behind the shield, the big ass shield we got."

¶ 37 The topic then turned to the G8 summit that was to occur on May 15, 2012. Chase said that they needed to perform some sort of attack that night, and Church suggested that if they were able to round up enough people who would not turn them in, they could do the simultaneous attack on four police stations. Edwards asked what the four-station attack was, but Church put Edwards off, telling Edwards that he would fill him in later. After Edwards left the gathering, Church told the officers that Edwards made him nervous and was "sketchy as hell." The officers, Church, and Chase continued to discuss what kind of attack to perform during the G8 summit and the possibility of a police station attack. During that conversation, Church said that Betterly did not seem like he was interested in participating in the police station attack, but

Chase stated that Betterly planned to get arrested during the NATO summit. Church also described some reconnaissance that he had done for the police station attack, but said that the station he observed had steel bar fencing and he wanted one with chain link fencing for easier access. When Chikko asked what he wanted to do for the G8 then, Church said that he had seen a sheriff's station near Cermak. Chase suggested that they target a federal building.

¶ 38 When Chikko asked what Church and Chase were going to do that night after the meeting, Chase and Church responded that they planned to drink and chill, as they had contributed to the purchase of two 30-packs of beer.

¶ 39 The following day, May 5, 2012, Chikko received a text message from Chase, stating that they had figured out something cool to do on the 15th. On May 6, 2012, Chikko and Uygun received text messages from Church, directing the officers to meet him at Palmisano Park again. The officers complied and met Church and Chase at the park again that evening. During that meeting, Chase suggested that for their attack on May 15, 2012, they attack Obama's headquarters. According to Church, "This mother fucker Obama's not saying anything to these fucking brutal ass police forces. We gotta send a message." Although Chase had not yet made a plan for the attack at the time of the meeting, he suggested that they scope out the building first, and he and Church began to ask the officers questions about the building, including its location, the level of security, and how many windows it had. Church stated that he and Chase would check out the building the following day.

¶ 40 When Chikko asked what they planned to use in the attack, Chase answered that they had a slingshot that would break the windows. Chikko summarized the conversation by saying, "You guys [Church and Chase] are gonna do the recon work and then just let us [the officers] know." Church responded, "Cool, yeah, um do you think you guys could find some like metal pipes and shit for us. We don't have any kind of like [sound effect] type shit." Chikko testified

that the sound Church made during that statement was a blasting sound. Later in the conversation, when Chikko asked if Church and Chase knew where to get pipes, Church answered that they could find some if they looked and noted the proximity of steel mills in the area. Uygun testified that he understood this conversation to mean that Church and Chase wanted to use pipe bombs to attack Obama's headquarters. On cross-examination, Uygun acknowledged that he did not include a mention of pipe bombs in his debriefing for May 6, 2012, nor did he mention a discussion of pipe bombs to the detective or state's attorney with whom he interviewed shortly after the defendants' arrest. In fact, Uygun had never before told another person about or documented his belief about his belief that Church and Chase wanted to use pipe bombs to attack Obama's headquarters.

¶ 41 They also discussed transportation arrangements to the May 15th attack, and Chase suggested the following: "[W]e should proly [*sic*] take the car and park it like, you know, a couple blocks away from this place, and then like walk plain clothes in through like an alley somewhere like around the corner from that mother fucker and then we just fuckin' move in. *** And then do the same shit, you have fucking 30 fucking seconds to get back in the fuckin' alley, get back into what the fuck you got, disappear." With respect to who might be involved in the plan, Church stated that Betterly did not seem like he was "down for some black ops type shit" but Chase said that Betterly was "down to fuck cops up though."

¶ 42 At one point in the conversation, the following colloquy occurred:

"UCO UYGUN: Damn dude, you smoke some bud or something?

CHURCH: Yeah.

UCO UYGUN: Yeah I can tell you are like so chill, you are like.

CHASE: And we're a little drunk.

UCO UYGUN: Oh that too? I be like…

CHASE: We bought like three 30 packs today.

UCO CHIKKO: What'd y'all do last night?

CHURCH: Same shit.

UCO CHIKKO: It was Cinco de Mayo.

CHURCH: Yeah, whatever.

CHASE: I don't remember what we did last night.

CHURCH: It was something…"

Chikko testified that she found Church to be coherent at the time. When Church lamented their lack of progress in getting more done during the meetings, Uygun responded, "Well, I mean it's like you just gotta come up with something, like you know like, maybe, maybe before, right before you hit the bowl in the morning, make a list." Chikko testified that she understood Uygun to mean that Church should make a list before he went to the bathroom in the morning. Uygun, on the other hand, testified that he was referring to Church making a list before he smoked marijuana. Once the meeting was over and the group was splitting up, Church indicated that he and Chase were going to go back to their apartment and drink some more. Chikko asked when she and Uygun could go drink with Chase and Church, and Chase told her that they could come over anytime and Uygun stated that he and Chikko would bring some 30-packs of beer.

¶ 43 On the night of May 8, 2012, Chikko and Uygun met up with Church and Chase at the apartment where the defendants and others were staying. While the officers were there, Church told them that he had made a mortar and showed them the PVC pipe he used to make it. He also showed the officers a number of weapons that he had brought with him from Florida. Specifically, he showed them two knives with brass knuckle handles, a bow and ten arrows, a throwing star, and two double-bladed swords. While discussing the bow and arrow, Chase noted that arrows are not stopped by bullet-proof vests and that they could penetrate Kevlar. During

his testimony, Uygun identified a photo of his personal Kevlar vest and testified that the vest cost $600 to purchase.

¶ 44 Two days later, on May 10, 2012, the officers met Chase and Church for a protest at another mental health clinic that had been closed. While there, the group had a conversation with an unidentified male, who said that he had come to Chicago for the NATO summit and that he had arrived early because his friends wanted him to make contacts in the area and find out what was going on. Church agreed that they had also come up early to "get to know the locals and shit."

¶ 45 The officers did not meet with any of the defendants on May 11 or May 12, 2012, but did meet with Church and Chase on the evening of May 13, 2012, first at the intersection of Jackson and LaSalle and then in an alley near the Occupy[2] headquarters on West Cermak. In that alley, Church and Chase showed the officers a large shield that they had made after they came to Chicago. Church and Chase told the officers that because of the shield's size, they did not have anywhere to store it, so they were hiding it in the alley until the NATO summit. Chikko described the shield as being so large that it would require three to four people to hold and maneuver the shield. On the back of the shield, there were two handles to hold it. A number of screws had been put into the back of the shield in such a way that they protruded out the front of the shield. Another member of the group, Sebastian Senakiewicz, stated that his girlfriend worked at Blue Cross, which was next door to the Obama headquarters, and that she had a parking pass for the Millennium Park parking garage. Senakiewicz stated that he could get a

[2] The Occupy Wall Street movement is an international social movement that began in 2011 and that, according to its website, "is fighting back against the corrosive power of major banks and multinational corporations over the democratic process, and the role of Wall Street in creating an economic collapse that has caused the greatest recession in generations. The movement ***aims to fight back against the richest 1% of people that are writing the rules of an unfair global economy that is foreclosing on our future." Occupy Wall Street, *About*, http://occupywallst.org/about (last accessed December 13, 2017).

parking permit for the garage so that they could store his shield and the defendants' shield until the NATO summit.

¶ 46 The next day, May 14, 2012, the officers met Chase and Church at the MultiKulti. There, they discussed the projected turnout for the NATO summit. Church estimated that there would be thousands of people there and informed the officers that the Department of Homeland Security had purchased forty million hollow point rounds for the summit. According to Church, the Department of Homeland Security was "preparing for the civil war." When done at the MultiKulti, the officers, Church, Chase, and Dimouro drove to Senakiewicz's residence in Church's vehicle. On the way there, the following exchange between Church and Uygun occurred:

"CHURCH: You guys ever want to see a cop car burn?

UCO UYGUN: A what burn?

CHURCH: Cop car?

***

UCO UYGUN: Oh, you talking about on NATO? I thought you were talking about right now I'm like what.

CHURCH: When there's ten thousand people that are very angry…

UCO UYGUN: Yeah, yeah I know.

CHURCH: …it's very easy to start a riot."

Later that evening, after discussing how they would all need to disappear after the NATO summit, Church described how he made a mortar and stated that he had used it to shoot off bottle rockets.

¶ 47 On May 15, 2012, Chikko and Uygun met all three defendants at a "Fuck the Police" march. Although the officers carried their recording devices that day, according to Chikko, the devices picked up a lot of shouting, chanting, and yelling of the marchers, and the officers were unable to have a private conversation with any of the defendants.

¶ 48 On May 16, 2012, following a protest at Federal Plaza, the officers met all three defendants outside the Occupy headquarters where they got into Church's car with the defendants. The officers and defendants discussed how driving Church's vehicle to the NATO summit was not feasible. The defendants indicated that they intended to forego public transportation and instead walk to the summit:

> "UCO UYGUN: that's what I'm saying, exactly, that way you can keep your car, that way they won't fucking take it and we can be up out of this fucking city after we terrorize this mother fucker.
>
> CHURCH: Huh, huh.
>
> UCO UYGUN: I hear that fucking satanic laugh back there.
>
> (Overlapping conversations).
>
> BETTERLY: Yeah pretty much, last day of NATO is what I'm thinking, I wanna…
>
> UCO CHIKKO: You guys, ah…
>
> BETTERLY: …be there for the whole summit, last day, do whatever and then bounce."

¶ 49 When the group returned to the defendants' apartment, they went to the back porch. While out there, Chase put a Lemonhead candy in his beer and it caused a reaction. As the group was joking about it, Church said, "You know what's real fun? Put potassium permanganate and brake fluid together." He described how putting the potassium permanganate and brake fluid in

a bottle, shaking it up, and tossing it would allow pressure to build until the bottle explodes and acid explodes everywhere. Betterly described it as "just like an acid bomb" created using muriatic acid and a small piece of aluminum foil. He then said, "Me, and my friend, me and my friend, and my brother threw a bunch of acid bombs in Broward sheriff's office, police stations, and their cars." Church responded, "Like if, if we throw one of them bottles with the potassium and brake fluid in it, and it explodes behind them, they're getting holes eaten in their clothes by that shit. Fuckin' fire, and acid, and, gross." The others followed up:

"BETTERLY: But we don't do things like that.

UCO UYGUN: No, no not at all.

CHASE: Yeah, we're peaceful.

BETTERLY: Peaceful protesters."

Chikko testified that when Betterly and Chase said that they were peaceful, they had sarcastic expressions on their faces, as did Church when he watched Betterly and Chase make those statements. Uygun also testified that his understanding of that exchange was that Chase and Betterly were being "very sarcastic." Church then went on to say that during the NATO protests, he intended to look for the officers who had participated in the traffic stop of him and another officer whose picture he had as the screensaver on his cell phone.

¶ 50 Later, during a discussion between the officers and the defendants about police officers' dislike of protestors, the following exchange occurred:

"CHURCH: Yeah, they do not like us at all.

(Pause.)

UCO UYGUN: No. they're not gonna like us when we throw shit at them either.

CHASE: When they take a brick in the face…

BETTERLY: Boom.

UCO UYGUN: Yeah, Molotov? Make it rain. (Sound effect.) We should just do, we should just do like a mob of 'em…

CHURCH: Just a rain of fucking fire."

Betterly then went on to talk about how he wanted to obtain some kind of trophy from a police officer, such as a badge or a hat.

¶ 51 Chikko described her attempt to make a mortar. After asking Church numerous questions on how to complete the project, she said, "Alright, man, my mortar thing is done, I've gotta think of some new shit, that shit is fuckin' wack." Uygun responded, "Dude, we got Molotovs, that's not wack," and Chase agreed, saying, "No." The conversation continued:

"UCO CHIKKO: I don't have no gasoline though.

(Pause.)

CHURCH: We can use vodka.

CHASE: We can siphon some.

UCO UYGUN: Are you serious, oh yeah you can do that.

UCO CHIKKO: You have any gasoline?

UCO UYGUN: Or you can just get one of those gas cans right? And just fill it up a little bit.

CHASE: Yeah, you can go siphon some.

UCO CHIKKO: You guys have gasoline?

CHASE: I dunno.

UCO UYGUN: He said you can use vodka.

CHURCH: It's flammable.

UCO CHIKKO: Should we make some? You guys got, you guys got bottles?

CHURCH: We got a few.

UCO CHIKKO: Should we make some?

CHASE: Let's do it.

UCO CHIKKO: Let's do it. Come on."

Chikko testified that she, Uygun, Church, and Chase then walked into the kitchen of the apartment, where Chase gave her a boost to reach some beer bottles. As they were retrieving the bottles, Chase said, "I wish we had fireworks. Yo, I wanna try that shit with the fireworks." Chikko and Uygun both testified that they understood him to mean that he wanted to try Molotov cocktails using a firework as a detonator.

¶ 52 While the group discussed what could be used as an accelerant other than gasoline, Chase interjected that he had made napalm. According to him, napalm could be made by double boiling gasoline and adding soap until it gets sticky. It would then stick to the target and not come off. Around the same time, a person referred to as Big Mike walked in, and Chikko testified that the defendants stopped talking about Molotov cocktails and napalm while Big Mike was present. Church grabbed two of the beer bottles they had retrieved and Chikko grabbed the other two, and the group exited to the apartment's back porch. Out there, Church placed his bottles in a pair of boots on the back porch and motioned for Chikko to do the same with her bottles.

¶ 53 The group then discussed that videos of them at protests were played on the news, and Betterly mentioned that a photo of him and Church at a protest running with a flag was on the front page of the Chicago Sun-Times. Betterly then stated, "NATO shit. There's gonna be a lot more than that."

¶ 54 In response to a dog barking, Chase said that he was going to test one of the Molotov cocktails on the dog. Church, Chase, and Chikko then discussed the need for gasoline. When Chase suggested siphoning gasoline from the tank of Church's vehicle, Church refused because he had paid for the gas in the tank. Betterly indicated that the "only way to make a proper Molotov" is to use gasoline. Uygun stated that he had two dollars and that they would go fill up a gas can, to which Chase replied, "Let's do it." During his testimony, Uygun denied that his reference to having two dollars was an offer to purchase the gas, explaining that, instead, he made that statement only to make sure that he was included when the defendants went to purchase gas. Church declined to go with Uygun and Chase to the gas station, saying that he wanted to drink instead. Uygun and Chase left to go to a nearby gas station. Uygun left his backpack, and thus his recording device, behind at the defendants' apartment with Chikko. Accordingly, any conversations during his and Chase's trip to and from the gas station were not recorded.

¶ 55 Before going to the gas station, Uygun and Chase stopped at Church's vehicle and retrieved a red gas can from the trunk of the vehicle. The two men then proceeded to the BP gas station located at Halsted and 31st Street. When they arrived at the station, Chase handed the gas can to Uygun and told Uygun that he was going to go inside and that Uygun should wait by the gas pump. When Chase returned to Uygun from inside, Uygun asked him how much he had paid for the gas, and Chase responded that he had paid "three-something." Chase then took the gas nozzle with one hand and put it into the gas can, which he was holding with the other. Afterwards, while the men were leaving the gas station, Chase told Uygun to hold the gas can because Chase was going to smoke a cigarette.

¶ 56 During their walk back to the defendants' apartment, Chase asked Uygun if he knew what was really cool. Uygun asked what, and Chase said, "napalm bombs." Uygun asked Chase

what they were and if Chase had ever made any. Chase said he had and described the process as follows: Boil gasoline. When it comes to a boil, boil it a second time—in other words, the gasoline is double boiled. At that point, chunks of soap are added until the mixture becomes creamy. Chase told Uygun that when it is creamy and thrown at police, it sticks to their uniform and faces and burns holes in them.

¶ 57 While Uygun and Chase were gone, Church, Betterly, and Chikko discussed how the defendants came to be in Chicago and the upcoming protests and marches. During that conversation, Betterly indicated that he had been talking about the NATO summit for over a year and that although he was participating in other protests and marches while in Chicago, he had really come for the NATO summit.

¶ 58 When Uygun and Chase returned to the apartment, Chikko, Church, and Betterly were on the back porch. Chase asked where the bottles were, and Uygun and Church told him that they were hidden in the shoes. Uygun picked up a red rag that was lying on the ground and asked if they should cut the rag down into two parts or just use the whole thing. In response, Betterly demonstrated that the rag should be cut. Betterly and Chase then began to discuss how best to get gasoline on the rags of the Molotov cocktails:

"UCO UYGUN: Like that? That much?

BETTERLY: Well, 'cause, you don't want it too full with gas.

UCO UYGUN: Yeah, yeah, no 'bout that much, right?

BETTERLY: Yeah, then you want to stick it all the way in there so the whole rag soaks.

UCO UYGUN: Yeah.

CHASE: Like, you can just soak it in the gas first and then stick it in there.

BETTERLY: But, if you stick enough of that in there, you don't have to soak the whole rag in gas and get it on your hands and all over the place.

UCO UYGUN: Yeah. Right, right.

BETTERLY: But, if you fill it with gas and stick that all the way in there, the whole rag will soak without you touching it. There you go. You do not want to have gas on your hands when you're lighting Molotovs."

¶ 59 The group then discussed what it would take to get police officers at the NATO summit to beat up protestors. Betterly stated that it would take some "serious escalation" by the protestors to get the officers to beat up anyone, because the officers were going to be on their best behavior, given the international importance of the summit. Chase stated that he was going to take a brick to an officer's face, to which Betterly replied, "That's not what I mean by serious escalation." Chase then said, "I'm ready to escalate. I'm not scared. Fuck, I'll start a mother fuckin' riot." In response to the mention of a riot, Betterly stated, "It's gonna happen, but it's not gonna, they're not gonna…be the ones that draw the first blood."

¶ 60 Chase retrieved the beer bottles from the boot, and Betterly gave instructions on how to make the Molotov cocktails, saying, "Just fill 'em like a quarter of the way. Stuff the rag down in there *** and, just a little bit hanging out. Tip it real quick to soak the rag, and that's it." He continued, "The shit should just soak into the, into the rag. You don't want to soak the rag first 'cause then you're just gonna get gas everywhere." Chase removed the top of the gas can, releasing the odor of gasoline, and said, "Smells like victory." Chase proceeded to pour gasoline into the bottles, and Uygun asked Church if the amount of gasoline was correct. Church responded, "Yeah. *** Uh, I guess. I mean *** I've never made a Molotov." Uygun told Chase, "Whooo. Nice. Good job, Jay." Because it then began to get dark outside, Chase struggled to see how much gas was in each of the dark colored bottles. At one point, as Chase continued to

pour gasoline into the bottles, he missed, spilling some of the gasoline onto the porch. During this time, Church and Betterly remained on the porch with Chase and the officers, with the exception of a couple of seconds when Betterly went into the apartment. When he returned to the porch, Betterly stated that it smelled like gasoline in the apartment.

¶ 61 Meanwhile, Chikko and Church discussed what they were going to do with the Molotov cocktails. Church stated that there was a quarry in the park. Chikko asked where they would throw the Molotov cocktails in the quarry and Church said that they could throw them against the stone. Chikko agreed, stating that they could take the Molotov cocktails to the quarry, "play with one[,] and see if it works." Church declined, however, stating that he was too cold to go anywhere and that he just wanted to wrap up in a blanket and go to sleep.

¶ 62 When Chase spilled the gasoline on the porch, it spilled on the red rag. Uygun offered one of his bandanas as a replacement. At one point, Uygun asked if anyone had a knife, and Church tossed him a Swiss-Army-type knife. Uygun then used the pliers portion of the tool to cut one of his bandanas. Chikko asked what they are going to throw the Molotov cocktails at, and Church responded, "I'm sure we'll figure something out. There's a nice little bank on the corner right there." After responding to Chikko's question, Church walked closer to Uygun and told him that he was using the wrong knife to cut the bandana. Chase demonstrated to Uygun how to stuff the rags into the bottles and pull a bit out to serve as a wick, and then proceeded to place wicks into the remaining bottles. Uygun wiped the bottles down with a rag before placing them into his backpack.

¶ 63 During this time, Church asked Chikko, "You ready to see a police officer on fire?" Church went on to suggest:

> "CHURCH: There's a police station over here that you guys can throw those over the fence and dip out. Hit some cars and shit. Burn some police cars. And at the march I'm

sure, I'm sure there's gonna be some people that are gonna be fuckin' up some police cars, yo. (Bomb sound.) I might take a brick to a window here and there.

UCO CHIKKO: Uh-huh.

CHURCH: I might be participating in some property damage.

UCO CHIKKO: Uh-huh.

CHURCH: Now, if there's a throw down with the police, I'm definitely gonna be participating in fuckin' some murder fuckin' cops up. I don't, I don't really believe in the property damage, that just makes us look bad…

¶ 64 Church and Chase directed Uygun to place the completed Molotovs in Church's vehicle with the other weapons. After getting the keys to the vehicle from Chase, Uygun took his backpack with the Molotov cocktails and began to walk toward where the vehicle was parked. When he got to the mouth of the alley, he phoned his immediate supervisor to inform him about the Molotov cocktails and ask what he should do with them. Uygun's supervisor told him to use good judgment. Uygun then headed back to the apartment and when he arrived, he went straight into the bathroom. There, he put the four Molotov cocktails into a white trash can and covered the can. Uygun testified that he put the Molotov cocktails in the trash can rather than the trunk of Church's vehicle because he wanted to make sure that they were in a more secured and controlled environment than the vehicle, given that the car could leave at any time.

¶ 65 Meanwhile, Chikko sent a text to the police surveillance team, telling them what was happening. They informed Chikko that they were in the process of preparing a search warrant and needed Chikko and Uygun to buy them some time. When Uygun returned to the back porch, Chikko suggested that they go to CVS to buy some beer, which they did along with Chase. Before going to the CVS, however, they walked to Church's vehicle with Betterly. After Chase poured the remaining gasoline from the red can into the vehicle, placed the can in the trunk, and

gave the vehicle keys to Betterly, Betterly returned to the apartment and the officers and Chase proceeded to CVS. As the group was walking back to the defendants' apartment, Uygun worried that when Chase put the gas can in the trunk of Church's vehicle, he noticed that Uygun had not put the Molotov cocktails in the trunk. As a result, Uygun told Chase that he had hidden the Molotov cocktails in the apartment bathroom. Chase indicated that he wanted Uygun to hide the Molotov cocktails somewhere else—perhaps in the trunk of Church's vehicle, just somewhere other than the bathroom. In the meantime, Church and Betterly drove to a truck stop to pick up Bobby LaMort. When everyone had returned to the apartment, Betterly and LaMort went to CVS. Shortly thereafter, the police executed a search warrant on the apartment and arrested Chikko, Uygun, Church, and Chase. Betterly was arrested later.

¶ 66 Chikko acknowledged on cross-examination that prior to May 16, 2012, she did not see any of the defendants commit any criminal acts. Although she admitted that the defendants were drinking on the night of May 16, 2012, Chikko denied that any of them were intoxicated. She acknowledged, however, that on that night, she offered Church one of the beers she had brought with her and ultimately gave him half of a beer. She also identified recordings in which she stated that she would share beer with the defendants and in which Uygun offered beer to the defendants. She testified that she and Uygun would bring beer with them in order to have a reason to carry their backpacks, which housed their recording devices, and to have beer to hold while with the defendants, so as to fit in with the crowd. She also denied having ever been with Church or Chase while they were intoxicated or having seen any of the three defendants intoxicated.

¶ 67 Similarly, Uygun acknowledged that he gave Betterly two cans of beer on May 8, 2012, and that between him and Chikko, they gave Church three beers that day. He also acknowledged possibly giving one beer to Chase over the course of the investigation. Uygun also admitted that

on May 8, 2012, he tried to mobilize the defendants to leave their apartment, but Church refused to leave until his marijuana dealer arrived. Uygun identified a recording from May 14, 2012, in which Church stated that he was too drunk to drive his car and Chikko volunteered to drive. Nevertheless, Uygun testified that, based on his experience having previously seen drunk people during his work as a police officer, none of the defendants were drunk when he spoke to them in any of the recorded conversations.

¶ 68 Officer Russell Bacius of the CPD testified that on May 4, 2012, he installed a GPS tracking device on Church's vehicle. The tracker remained on Church's vehicle until May 17, 2012, when Bacius removed it. Data from that tracker indicated, in Bacius's opinion, that on May 11, 2012, the individual or individuals in Church's vehicle drove around downtown Chicago looking for potential targets. Bacius formed this opinion based on the fact that Church's vehicle passed areas including the Chicago Board of Trade, the Federal Reserve, Obama's headquarters, numerous banks, and the U.S. Secret Service Headquarters. In Bacius's opinion, the areas passed by Church's vehicle that day and the zig-zagging order in which they were passed would not be expected of a reasonable person partaking in a simple sightseeing or joyriding trip. Bacius also testified that the data recovered from the tracker indicated that on May 15, 2012, Church's vehicle crossed a perimeter around Obama's headquarters programmed into the tracking software by the police. This meant that Church's vehicle came within two to three blocks of Obama's headquarters.

¶ 69 Officer Robert Arnolts of the Chicago Police Department testified that on May 14, 2012, he and two other officers retrieved a large shield from an alley near the Occupy headquarters. The shield was a large piece of pressed wood, approximately eight feet long and three to three and a half feet wide. It had rope handles attached with screws that protruded out through the front of the shield. Arnolts also testified that on May 16, 2012, he observed Betterly driving

Church's vehicle, with Church in the front passenger seat, to Lake Station, Indiana, where they picked up another individual from a gas station. They then returned to Chicago.

¶ 70 During the execution of the search warrant at the defendants' apartment, officers recovered the four Molotov cocktails from the bathroom garbage can. Officer Clarence Jordan, one of the officers present at the time, testified that there was a strong odor of gasoline emanating from the garbage can and, inside the garbage can, he observed four amber colored bottles with black cloth sticking out of the opening of each bottle. Analysis later showed that fingerprints found on one of the recovered bottles matched those of Church. Other testing showed that the cloths in the bottles contained gasoline and that the liquid found in the bottles was gasoline.

¶ 71 Also during the execution of the search warrant, officers recovered from the trunk of Church's car a guitar case that contained two knives with sheaths, two swords in a single sheath, a compound bow with six arrows, one throwing star, and a pair of handcuffs. Also in the trunk, police found a red gas can. In the backseat of Church's car, officers found a computer, two vests, a gas mask, a surgical rubber tube containing liquid, and a bag of unidentified fireworks. Testing revealed that that gas can and rubber tube contained gasoline.

¶ 72 PVC pipes recovered from the defendants' apartment were found to contain a black residue on the inside. Testing indicated that black powder—an explosive and propellant—was burned inside the pipes. Alan Osoba, the trace chemist with the Illinois State Police who performed the tests, testified that the presence of the black powder in the pipes would be consistent with someone shooting a bottle rocket out of the pipes.

¶ 73 The State also presented evidence that a computer, which did not belong to any of the defendants, was recovered from the defendants' apartment and was used in May 2012 to access articles regarding the use of Molotov cocktails during protests in other cities and to access

Betterly's Facebook account. The forensic examiner could not, however, identify who was using the computer at the time these items were accessed.

¶ 74 Abdullah Norat testified that in May 2012, he was the manager of a BP gas station at 3047 South Halsted in Chicago. On May 19, 2012, he met with police officers and provided them with footage from the gas station's surveillance system that was recorded on May 16, 2012, between 8:00 p.m. and 8:10 p.m. That video depicted Chase and Uygun walk up to the gas station. Chase handed Uygun a gas can and then proceeded inside where he purchased $3.75 in gasoline, as evidenced by a receipt produced by Norat. Chase returned to Uygun, who was waiting outside by a gas pump. Chase then pumped gas into the gas can and when he was done, the two men left.

¶ 75 In addition to identifying Chase as one of the men on the surveillance video, Norat testified that he had previously seen all three defendants in the gas station before, purchasing various items. On May 15, 2012, in particular, he observed Church come into the station with an empty plastic milk gallon jug. At the time, Norat was working the cash register, and Church told him that he wanted to buy $2.00 in gasoline for his lawnmower. Norat told Church that he could not sell him the gasoline, because it was illegal to sell gas in containers such as milk jugs. On cross-examination, Norat admitted that he only told the State about this interaction with Church on January 5, 2014, despite having met with officers on May 19, 2012, and despite seeing Church's picture in the newspaper a few days later, then remembering the incident, and knowing that the video of the incident would be erased after 30 days.

¶ 76 A number of private Facebook messages and posts from Betterly's and Church's Facebook accounts were introduced into evidence. Many of the private conversations related to the logistics of making the trip to Chicago to attend the NATO summit protests. Others

discussed their expectations of the protests, such as this April 19, 2012, conversation between Betterly and Bobby Lamorte[3]:

Betterly: "i want a captain america shield for chicago"

Lamorte: "i went to the china mart today hahaha[.] they're pretty cheap"

Betterly: "theyre expect close to 10000 proetesters"

Lamorte: "nice[.] hopefully it'll be what j17 wanted to be[.] lets just hope the cops are a little ballsier"

Betterly: "dude the natianl guard is gonna be there"

Lamorte: ":D"

Betterly: "were definitely gonna get our riot"

In several conversations with a person named Bri Love, Betterly again referred to his expectation that a "riot" would take place surrounding the NATO summit in Chicago and, on one occasion, stated, "maybe ill catch some charges in Chicago." When Love mentioned on April 24, 2012, that she would soon have some vacation time from work and would like to go somewhere, the following exchange ensued:

Betterly: "chicago? riot!!"

Love: "lol. could..you see me rioting? haha, i would yelling at everyone and then apologizing for it[.] lmfao"

Betterly: "lmao u cant apologize after throwing a molotov cocktail"

Love: "..oops? hahahaha[.] i support from a distance. and do what i can w/out hardcore confrontation, only when necessary[.] yup, im a sissy lmao"

Betterly: "aww[.] ill get u a riot shield"

[3] All of the spelling, grammatical, and capitalization errors in the below-quoted Facebook conversations appear in the original exhibit.

Love: "you find me in the middle in a fetal position crying[.] you would* :)"

Betterly: "i wanna make a captain America shield for chicago"

In an April 28, 2012, conversation with Glen Quick, after Betterly arrived in Chicago, he told Quick that he was in Chicago to "fuck somme shit up for the NATO summit" and that he "cant wait" for the "riots in the streets."

¶ 77 On May 3, 2012, Betterly posted a link to a video on YouTube purporting to show a traffic stop of the defendants by Chicago police. Betterly's comment on the video was the following: "so this was our warm welcome by chicago pd. random ass traffic stop where they surrounded us with eight cars and attempted to scare us out of town before NATO. this tells me only one thing. theyre fucking scared shitless. GOOD. cant wait…"

¶ 78 Church engaged in a private Facebook conversation with Danielle Hiller on April 19, 2012. In that conversation, he stated, "i absolutely hate fighting and violence and senseless waste of life *** but if i need to defend myself or the life of an innocent being, thats when the rage happens. the only way to stop me when that happens is to put a bullet in my head." He then told Danielle that a "quiet war" was being fought in America and sent her a YouTube video on the New World Order and the existence of government concentration camps in America. He went on:

> "its important to understand, especially the younger generations, so we know how to fight back and who we are fighting against. and how long the fight is going to be. re the ipidimy of evil. i kid you not. we cannot allow this to happen[.] *** as stupid as it may sound, they wont just stop with the actual criminals, they already have gas chambers and furnaces set up. what are they gassing and burning?? *** i cannot let them harm innocent people, as little as that may be. but they plan on killing children too, that makes it even worse. they truely ARE innocent. these people the generations before mine put in

> to power really fucked up. so now we have to fix it. make it right. make it better. *** its going to be alot of hard work. there are a number of things that could happen too, i could get arrested, i could get beat. hell, i could be shot and killed, then they would really be fucked, cuz id b comin back with a mother fuckin vengance lolol[.]"

¶ 79 In a May 15, 2012, conversation with Stephanie Lisa Auguiste, Betterly mentioned that he was staying with some others involved in the Occupy Chicago movement, but that Jacob (presumably, Church) and some others got him thrown out due to their drinking and fighting. Betterly also stated that "jacob seems to love tripping on cough medicine." He then went on to say that it was mostly the others' fault, as Jacob "isnt too bad when its just him."

¶ 80 On April 28, 2012, Church posted on Facebook that he was "[c]old and wet." In a comment on that post, Megan Straley asked where he was, and Church answered that he was in Chicago and would be there for the whole month for the NATO summit. When Straley told Church to have fun, he responded, "oh, you know how i do it :P the PD isnt going to know what hit them xD this is what i have been talking about for soo long. doom on." Then, on May 12, 2012, Church sent a message to Mark Allan Puchala II in which he stated, "the intimidation tactics the police are using here is ridiculous. its time to show them that the people are watching, we WILL not stand for harassment, intimidation, brutality, and murder. i may not HAVE to do anything. if the government, local state and federal keep playing these dangerous games, the people WILL fight back."

¶ 81 Finally, Yvens Augustin, an explosive technician with the CPD, testified that a Molotov cocktail is "a glass container that is easily broken that has a wick protruding from it, and it's filled with a flammable liquid[,] typically gasoline." He went on, "[O]nce the Molotov is constructed the bottle would be ignited at the wick, and the bottle would be tossed at its target, and once it hits its target the liquid would be dispersed and would be ignited from the flame."

He testified that the four Molotov cocktails recovered from the defendants' apartment were functional Molotov cocktails. In his opinion, there is no lawful purpose for a Molotov cocktail and it is inherently dangerous. According to Augustin, if thrown into a building or a vehicle, a Molotov cocktail would ignite any combustible materials and would be the cause of a fire. If one were used against a person, it could cause fatal injury.

¶ 82 Augustin also identified a handwritten document recovered from the kitchen table of the defendants' apartment as containing instructions on how to build a pipe bomb. Augustin opined that if a person were to follow the instructions written on the paper, he or she would build a functional pipe bomb. The parties stipulated that the handwriting on the instructions did not match the handwriting of any of the defendants and that the document was not submitted for fingerprint analysis.

¶ 83 The State then rested. The defendants did not present any evidence, and the cases were submitted to the jury. Following deliberations, the jury returned guilty verdicts against the defendants on counts 1 (mob action), 2 (mob action), 4 (possession of an incendiary device—intent to commit arson), and 5 (possession of an incendiary device—knowledge that another intended to commit arson). The defendants were acquitted on all of the terrorism-related charges. Following unsuccessful motions for new trials, the trial court sentenced defendants. In each case, the two counts of mob action merged, and the defendants each received 30 days' imprisonment on those convictions. The defendants' convictions for possession of an incendiary device also merged, and Church was sentenced to 5 years' imprisonment, Chase was sentenced to 8 years' imprisonment, and Betterly was sentenced to 6 years' imprisonment.

¶ 84 The defendants then filed these timely appeals.

¶ 85 ANALYSIS

¶ 86 On appeal, all of the defendants argue that the State failed to prove them guilty beyond a reasonable doubt, the trial judge's absence during a critical stage of the proceedings violated their due process rights, and the trial court erred in admitting into evidence handwritten instructions on how to make a pipe bomb. In addition, Chase argues that the trial court erred in failing to hold a fitness hearing on his fitness to stand trial. Betterly also argues that his indictment was secured with misleading testimony, and the trial court erred in admitting certain Facebook messages and other-crimes evidence against him. We address each of the defendants' appeals in turn, but find no merit in any of them.

¶ 87 I. Appeal No. 1-14-1607 (Brian Church)

¶ 88 Sufficiency of the Evidence

¶ 89 Church first argues that the State failed to prove him guilty beyond a reasonable doubt of possession of an incendiary device and mob action, because the State failed to prove that he intended to commit arson or had knowledge that someone else intended to commit arson. Upon reviewing the evidence presented at trial, we conclude that the jury could have found that Church possessed the Molotov cocktails with the requisite intent and knowledge.

¶ 90 In a challenge to the sufficiency of the evidence, we will not reverse a criminal conviction unless the evidence "is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *People v. Moore*, 2015 IL App (1st) 140051, ¶ 19. The question we are charged with answering is whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is not our function to retry the defendant and we must remember that it is the trier of fact's province to assess credibility and assign the appropriate weight to the testimony. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 18. All reasonable inferences are to be made in favor of the State, but where

the record supports conflicting inferences, the resolution of the conflict is best left to the trier of fact. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 19.

¶ 91 To prove Church guilty of possession of an incendiary device, the State was required to prove that Church possessed or manufactured an incendiary device with the intent to commit any offense or knowledge that another intended to use the incendiary device to commit a felony. 720 ILCS 5/20-2(a). The State specifically charged Church with possession of an incendiary device with the intent to commit arson and possession of an incendiary device with the knowledge that another intended to commit arson. A person acts with the intent to commit arson when his "conscious objective or purpose" is to knowingly damage real or personal property having a value of $150 or more by means of fire or explosive without the consent of the property owner. See 720 ILCS 5/4-4 (West 2012); 720 ILCS 5/20-1(a)(1) (West 2012). A defendant has knowledge that another intends to commit arson when he is aware that there is a "substantial probability" that another intends to knowingly damage real or personal property having a value of $150 or more by means of fire or explosive without the consent of the property owner, or when he is "consciously aware" that another intends to knowingly damage real or personal property having a value of $150 or more by means of fire or explosive without the consent of the property owner. See 720 ILCS 5/4-5 (West 2012); 720 ILCS 5/20-1(a)(1).

¶ 92 As mentioned, Church contends that the State failed to prove his intent to commit arson or that he had knowledge that another intended to commit arson. Criminal intent is a factual question to be determined by the jury. *People v. Maggette*, 195 Ill. 2d 336, 354 (2001); *People v. Carlisle*, 2015 IL App (1st) 131144, ¶59. A defendant's mental state is most often inferred from and proved by circumstantial evidence, such as the defendant's conduct and the surrounding circumstances. *Maggette*, 195 Ill. 2d at 354; *Carlisle*, 2015 IL App (1st) 131144, ¶59.

¶ 93 Church bases his contention that the State failed to prove his intent to commit arson or knowledge that another intended to commit arson on three main arguments: (1) he and the other defendants were either drunk or high most of the time, and their statements consisted of nothing more than drunken blustering; (2) the construction of the Molotov cocktails was at the encouragement of and with the assistance of the undercover officers; and (3) a specific target and plan for the use of the Molotov cocktails was never developed. We conclude that there was sufficient evidence for the jury to find that Church possessed the Molotov cocktails with the intent to commit arson and with the knowledge that another intended to commit arson.

¶ 94 Before we address Church's contentions in detail, however, we pause to note a couple of points relevant to the entirety of our discussion. First, in support of his argument that he and the other defendants were too intoxicated to form the requisite intent, Church repeatedly cites to recordings made by the undercover officers that were not admitted into evidence at trial. Clearly, Church's reliance on such unadmitted evidence is improper, and we will disregard all such recordings and arguments based on those recordings. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶20. Second, throughout his argument on the sufficiency of the evidence, Church attempts to address each of the recorded conversations admitted into evidence in isolation and without consideration of how they fit into the larger context. This, again, is improper, and when we conduct our review of whether the State presented sufficient evidence of Church's intent and knowledge, we will consider all of the evidence as a whole. See *People v. Dent*, 230 Ill. App. 3d 238, 243 (1992) ("The fact finder(s) do not have to be satisfied beyond a reasonable doubt as to each link in the chain of circumstantial evidence [citation]; rather, it is sufficient if all the evidence taken as a whole satisfies the fact finder(s) beyond a reasonable doubt of defendant's guilt.").

¶ 95 Finally, in reviewing the evidence presented at trial, we observe that the trial court found that there was evidence that the defendants were engaged in a conspiracy and instructed the jury that all co-conspirator statements made in furtherance of the conspiracy were admissible against each of the defendants. See *People v. Ervin*, 297 Ill. App. 3d 586, 592 (1998) ("In Illinois, the conconspirator exception to the hearsay rule allows into evidence the acts and declarations of a coconspirator, made in furtherance of the conspiracy, even when those acts and declarations are made out of the defendant's presence."). In addition, the trial court instructed the jury on the theory of legal accountability, under which each defendant could be held legally responsible for the conduct of his co-defendants, as if he had engaged in the conduct himself. See *People v. Ross*, 329 Ill. App. 3d 872, 885 (2002) ("A person is legally accountable for the conduct of another when he solicits, aids, abets, agrees or attempts to aid another in the commission of a crime.").

¶ 96 Although Church does not challenge the trial court's decision to so instruct the jury, he does argue that the jury's acquittal of the defendants on the charges of conspiracy to commit terrorism and the State's pre-trial dismissal of the charges of conspiracy to commit arson constitutes rejection of the notion that the defendants were co-conspirators. We disagree. These charges consist of a number of elements other than just the defendants' engaging in a conspiracy. The jury could have acquitted the defendants on the conspiracy to commit terrorism charges because it concluded that the State failed to prove one of the other elements of those charges, not just that the State failed to prove a conspiracy. Moreover, we hardly think that the State's pre-trial dismissal of the conspiracy to commit arson charge was indicative of a lack of proof of a conspiracy amongst the defendants; after all, the trial court found sufficient evidence of a conspiracy to warrant giving the co-conspirator instruction, even after the State's pre-trial dismissal of the conspiracy to commit arson charge.

¶ 97 Similarly, Church contends that the jury rejected the notion that the defendants intended to help each other commit arson—and thus were legally accountable for each other's actions—by acquitting the defendants of the charge of solicitation to commit arson. A person commits solicitation to commit arson when he or she, "with the intent that [arson] be committed, *** commands, encourages, or requests another to commit the offense." 720 ILCS 5/8-1(a). As stated above, "[a] person is legally accountable for the conduct of another when he solicits, aids, abets, agrees or attempts to aid another in the commission of a crime." *Ross*, 329 Ill. App. 3d at 885. We fail to see how a conclusion that the defendants did not command, encourage, or request each other to commit arson means that they did not aid, abet, agree or attempt to aid each other in the commission of arson. Accordingly, we reject Church's contention that we should disregard the admission of co-conspirator statements or the theory of legal accountability in assessing the sufficiency of the evidence presented.

¶ 98 Having addressed these initial matters, we turn to Church's specific contentions. First, Church argues that the State failed to prove that he or the other defendants had the intent to commit arson, because they were drunk or high on drugs most of the time. Much of the evidence on which Church relies in making this argument is the above-referenced recordings that were never admitted into evidence and that we, thus, cannot consider. Although it certainly appears that Church and the other defendants drank beer and/or smoked marijuana at times, when examining only those recordings and other evidence actually admitted at trial, the only possible evidence of any true intoxication was the conversation on May 5, 2012, in which Church admitted to having smoked some marijuana and Chase stated that they were "a little drunk." Despite these admissions by Church and Chase, the recordings do not otherwise contain any indication that Church and Chase were so intoxicated that they were unable to participate in the conversation meaningfully or with intent. Rather, Church and Chase were coherent enough to

carry on a conversation that included their reasons for wanting to attack Obama's headquarters, asking for details about the building in which Obama's headquarters were housed, asking for assistance in obtaining metal pipes, conducting reconnaissance of Obama's headquarters, and discussing transportation arrangements for the May 15th attack on Obama's headquarters. As for the other relevant dates, although the record indicates that the defendants had an interest in drinking and did, in fact, consume some alcohol, it does not demonstrate that the defendants were ever too intoxicated to understand what was happening or to form the requisite intent. Moreover, both Uygun and Chikko specifically testified that, in their experience as officers, none of the defendants were intoxicated during the conversations on the admitted recordings. We also note that Church's specific plans for attacking the Chase Bank building and the four-police-station-attack plan, along with the defendants' efforts to hide their activities from Edwards and their roommates suggest that the defendants were engaged in more than mere drunken blustering.

¶ 99 Second, Church argues that neither he nor the other defendants had the intent to commit arson, because the construction of the Molotov cocktails was done at the encouragement of and with the assistance of the undercover officers. Church is careful to note that he is not raising the defense of entrapment—likely because that defense presumes that the defendants, in fact, committed the offenses charged—but instead is merely arguing that the actions of the undercover officers demonstrate that the defendants did not have the requisite intent. If Church does not mean to argue any sort of entrapment, it is unclear to us how any encouragement or assistance of the officers necessarily negates the intent of Church and his co-defendants. After all, it is entirely possible that—even assuming the officers' actions are considered encouragement or assistance—Church and his co-defendants intended to commit arson independent of the officers' actions. Nothing in the record suggests that the undercover officers forced the defendants to engage in these activities, exercised undue influence over the defendants, or somehow placed the

defendants under duress. In fact, as will be discussed below, the record—when taken as a whole and not parsed as Church attempts to do—would certainly allow the jury to find that the defendants' intent existed separate and apart from the actions of the undercover officers.

¶ 100 Third, Church contends that the State failed to prove he intended to commit arson or knew that another intended to commit arson, because he and the others never settled on a specific target or plan for the use of the Molotov cocktails. According to him, caselaw requires that a "concrete step" be taken toward committing arson before an intent to commit arson can be found, and here there was not even a plan in place. Like his other contentions, we find this one to be unavailing. As an initial matter, the caselaw cited by Church involved charges of arson or attempted arson, where the State was, in fact, required to prove that the defendant took a substantial step toward the commission of the crime. The charges in this case are not arson or attempted arson; instead, the present charges simply require that the State prove that Church had the intent to commit arson.[4]

¶ 101 The offense of possession of an incendiary device with the intent to commit arson requires a defendant to possess an incendiary device with the intent to knowingly damage real or personal property having a value of $150 or more by means of fire or explosive without the consent of the property owner. 720 ILCS 5/20-1(a)(1). It does not require the defendant to have settled on a specific plan or target, so long as the defendant intends to knowingly damage *some* piece of property valued over $150 by way of fire or explosive. Just because a defendant has not yet decided which property to destroy by fire or explosive does not mean that he does not intend to destroy *some* property by fire or explosive. Certainly, as we will now discuss, the evidence presented at trial was more than sufficient to allow the jury to conclude that Church (and the other defendants) intended to damage property by fire—police uniforms and equipment, police

[4] In any case, certainly the construction of an incendiary device would constitute a "concrete step" toward the commission of arson.

cars, the Chase Bank building, Obama's headquarters, the bank on the corner, etc.—and knew that another intended to damage property by fire.

¶ 102 In assessing the evidence presented at trial, as discussed above, we are mindful that we must view the evidence as a whole and of the trial court's instructions on coconspirator statements and legal accountability. Given the volume of evidence presented at trial, we will do our best to recite the supporting evidence as succinctly as possible. First, the evidence presented indicates that from the beginning of the officers' interactions with Church, he was focused on finding targets to attack around the time of the G8 and NATO summits. On May 1, 2012, the first day that the officers met the defendants, Church attempted to enlist the officers in assisting him in doing reconnaissance and finding targets. The following day, the officers met Church and followed him around downtown Chicago while he cased the Chase Bank building. He even filled the officers in on the details of his plan for attacking the building, including the alleys he would use to change his clothes, cutting the surveillance cameras, the time of his attack, and his escape route. He also informed the officers regarding his plans for simultaneously attacking four police stations, an attack which he later informed the officers that Betterly thought best suited to be carried out near the time of the NATO summit.

¶ 103 On May 4, 2012, during a conversation about sock bombs instigated by Edwards, Chikko asked Chase if he was going to make some, to which he responded, "Hell, yeah." Chase also asked the officers that day if they had brought any Molotov cocktails. This was the first mention of Molotov cocktails in the admitted recordings. Chase described putting fireworks in the Molotov cocktails and throwing them at officers to "cover 'em in a ball of fuckin fire…" He also expressed a desire to throw a cartful of Molotov cocktails at officers from behind the large shield the defendants had. Chase also told Chikko that he was going to make Molotov cocktails. During that same conversation, Church once again raised his idea of the four-police-station

attack, describing the reconnaissance he had done, and suggesting that if they moved that attack closer to the time of the NATO summit, they could then attack a sheriff's station near Cermak around the time of the G8 summit. Chase also suggested targeting a federal building.

¶ 104 On May 5, 2012, Chase suggested to the officers that they attack Obama's headquarters. Church agreed, saying that they needed to send Obama a message. Both Church and Chase then questioned the officers about the building that housed Obama's headquarters and the difficulty in entering it, and they indicated that they would check it out the following day. Church then asked if the officers knew where they could get some metal pipes, because "[w]e don't have any kind of like [blasting sound] type shit."

¶ 105 On May 14, 2012, during a conversation about the potential for riots at the NATO summit, Church asked the officers if they ever wanted to see a cop car burn.

¶ 106 On May 16, 2012, during a conversation about various types of explosives, Betterly told Church, Chase, and the undercover officers that he, his friend, and his brother had previously thrown acid bombs at the Broward County Sheriff's Office, police stations, and police cars. Church responded that throwing a bottle of potassium and brake fluid behind police officers would result in the mixture eating holes into the officers' clothes. Betterly and Chase then sarcastically stated that they did not do things like that because they are peaceful protestors. Church stated that at NATO he would be looking for specific officers, namely, those who had conducted a traffic stop on his vehicle and another whose picture he had saved on his cell phone. In discussing police officers' dislike for protestors, the following exchange occurred:

"CHURCH: Yeah, they do not like us at all.

(Pause.)

UCO UYGUN: No, they're not gonna like us when we throw shit at them either.

CHASE: When they take a brick in the face…

BETTERLY: Boom.

UCO UYGUN: Yeah, Molotov? Make it rain. (Sound effect.) We should just do, we should just do like a mob of 'em…

CHURCH: Just a rain of fucking fire."

¶ 107 The talk then turned to the construction of Molotov cocktails. In response to Chikko stating that she did not have any gasoline to construct some, Church and Chase both offered up solutions: Church suggested using vodka, and Chase suggested siphoning some gasoline from somewhere. Chikko then asked if they should make some Molotov cocktails, and Chase responded, "Let's do it." Thereafter, Uygun, Church, Chase, and Chikko retrieved four beer bottles from the apartment kitchen, during which time Chase again expressed his desire to try using a firework with Molotov cocktails.

¶ 108 Returning to the back porch, the group continued to discuss the need for an accelerant. Betterly stated that the "only way to make a proper Molotov" was to use gasoline. Uygun and Chase then left to go purchase gasoline from a nearby gas station. At the gas station, Chase purchased the gas and pumped the gas into the gas can. On the way back, Chase described to Uygun how to make napalm and told him that when it was thrown at police officers, it would stick to their uniforms and faces and burn holes in them.

¶ 109 When Uygun and Chase returned to the apartment's back porch, Betterly, Church, and Chikko were there, and the construction of the Molotov cocktails began. When Uygun asked whether they should use an entire rag for a single wick or cut it into parts, Betterly demonstrated that Uygun should cut the rag and gave specific and detailed instructions on how full to fill the beer bottles with gasoline, how to use the rags as wicks, and the best technique for soaking them in the gasoline. At the smell of gasoline, Chase stated that it smelled like victory.

¶ 110 During a discussion of what it would take to provoke police to beat up protestors, Betterly stated that it would take some "serious escalation." Chase suggested taking a brick to an officer's face, and Betterly replied that that was not what he meant by serious escalation. Chase stated that he was not scared, that he was ready to escalate, and that he was going to start a riot. Betterly agreed that a riot would happen, but stated that it would not be the police who drew first blood.

¶ 111 As Chase was working to fill the beer bottles with gasoline, he spilled some of the gasoline, soaking the rag that was to be used as wicks. Uygun then offered a bandana of his and asked if anyone had a knife to cut the bandana. Church gave Uygun a Swiss-Army knife and even pointed out that Uygun was attempting to use the wrong knife to cut the bandana.

¶ 112 Chikko and Church discussed what to do with the Molotov cocktails. During this conversation, Church offered a variety of potential targets, including a quarry, a bank on the corner, police officers, and a police station with police cars. More specifically, Church stated at various times during the conversation: "I'm sure we'll figure something out. There's a nice little bank on the corner right there." "You ready to see a police officer on fire?" "There's a police station over here that you guys can throw those over the fence and dip out. Hit some cars and shit. Burn some police cars. And at the march I'm sure there's gonna be some people that are gonna be fuckin' up some police cars, yo. (Bomb sound.)"

¶ 113 Uygun testified that his Kevlar vest cost $600.00.

¶ 114 In addition to the testimony from Uygun and Chikko, other trial evidence indicating an intent on the part of the defendants to commit arson and their knowledge that another intended to commit arson included the following: GPS tracking showing that Church's vehicle, on May 11, 2012, took a zig-zagging path through downtown, passing by the Chicago Board of Trade, the Federal Reserve, Obama's headquarters, numerous banks, and the U.S. Secret Service

headquarters. On May 15, 2012, the day before the Molotov cocktails were constructed, Church attempted to purchase $2.00 in gasoline for his lawnmower using a plastic milk jug. In numerous Facebook messages and posts, Betterly referenced participating in riots during the NATO summit, referenced Molotov cocktails in the context of rioting during NATO, and expressed pleasure at his perception that Chicago police officers were "fucking scared shitless" by protestors. Church, on more than one occasion, in discussions with the undercover officers and in a Facebook post, stated that Chicago and its police department would never be the same and would not know what hit them.

¶ 115 From all of this, we have no difficulty in concluding that the State presented sufficient evidence that Church (and the other defendants) intended to commit arson and had knowledge that another intended to commit arson. With respect to Church specifically, the jury could have easily found that he intended to commit arson based on, among a number of other things, his attempts to recruit the undercover officers to scope targets; his casing of the Chase Bank building and police stations; his specific plans to attack the Chase Bank building and police stations; repeated references to burning police officers and police cars; offering accelerant alternatives for constructing the Molotov cocktails; providing Uygun a knife to cut wicks from a bandana; suggesting the use of the finished Molotov cocktails at a nearby bank, police stations, police cars, and police officers; the GPS tracking showing his vehicle passing near several possible targets; and his attempt to purchase $2.00 in gas for a lawnmower he did not own.

¶ 116 In addition, the jury could have easily concluded that Church had knowledge that Chase and Betterly intended to commit arson, because the evidence also supported a conclusion that they intended to commit arson. Specifically, the evidence with respect to Chase was that he told the undercover officers that he would make sock bombs and Molotov cocktails; he was the first to mention Molotov cocktails to the undercover officers by asking if they brought any; he

repeatedly mentioned his desire to put fireworks in Molotov cocktails and to throw them at police officers; he suggested targeting a federal building and Obama's headquarters; he helped Church question the undercover officers about the security at Obama's headquarters; he sarcastically stated that he was a "peaceful protestor"; he suggested siphoning gasoline to make Molotov cocktails; he purchased and pumped the gasoline that was used to make the Molotov cocktails; and he was the main participant in the construction of the Molotov cocktails. As for Betterly, the jury could have found his intent to commit arson based on his participation in discussions about harming police officers; his assistance in the construction of the Molotov cocktails by stating that gasoline was the only proper way to make a Molotov cocktail and offering specific instructions on how best to make them; stating that "serious escalation" would be needed by protestors at the protests and that the police would not be the ones to draw first blood (thereby implying that it would be the protestors who did so); and referencing on Facebook starting riots and being glad that the police were scared of protestors. Given that many of these actions and statements by Chase and Betterly took place in the presence of Church, and because all three were present at and participated in the construction of the Molotov cocktails, a jury could conclude that Church had knowledge of Chase's and Betterly's intent to commit arson.

¶ 117 Church points out that he had little hands-on participation in the physical construction of the Molotov cocktails, but we find this of little relevance to the question of whether he intended to commit arson or knew another intended to commit arson. Certainly, one can intend to commit arson but enlist or rely on others to gather or construct the supplies necessary to commit the arson. Moreover, as discussed above, there was ample other evidence from which the jury could infer Church's intent to commit arson.

¶ 118 Church also claims that his convictions represent a criminalization of his anti-establishment and anti-police rhetoric. This argument appears to be a response to the State's contention that Church's statements in the days leading up to the construction of the Molotov cocktails are relevant to the determination of whether Church intended to commit arson. Church's argument is without merit. Church was not convicted for disliking the government or police. He was convicted because he possessed Molotov cocktails with the intent to commit arson with them and with the knowledge that others (Chase and Betterly) intended to commit arson with them. Church's anti-establishment and anti-police statements in the days leading up to May 16, 2012—although not criminal themselves—were evidence of the existence of Church's criminal intent with respect to the Molotov cocktails.

¶ 119 Finally, Church argues that for the same reasons that the State failed to prove him guilty of possession of an incendiary device, it also failed to prove him guilty of mob action. A defendant is guilty of mob action when he or she engages in "the knowing assembly of 2 or more persons with the intent to commit or facilitate the commission of a felony or misdemeanor." 720 ILCS 5/25-1(a)(2). According to Church, the State failed to prove that he had the intent to commit any felony or misdemeanor because it failed to prove that he had the intent to commit arson. Given that we conclude that the jury could have found that Church intended to commit arson, we must also conclude that the jury could have found that he intended to commit a felony.

¶ 120 In sum, the State presented sufficient evidence from which the jury could find that Church possessed an incendiary device with the intent to commit arson, possessed an incendiary device with the knowledge that another intended to commit arson, and participated in mob action.

¶ 121 Absence of the Trial Judge

¶ 122 Church and his co-defendants[5] contend that their due process rights were violated when the trial court "paused" the cross-examination of a State witness and held an in-chambers sidebar conference with the attorneys. At one point during the cross-examination of Uygun, a sidebar was held in the trial judge's chambers to discuss an objection made by the State. The defendants' presence at the sidebar was waived. In the middle of the discussion of the State's objection, the following colloquy suddenly occurred between counsel for Betterly, counsel for Church, and the State:

> "MS. ARMOUR [Betterly's counsel]: The witness is out there engaging with the jurors. He is telling jokes with them. What's going on with that?
>
> MR. DEUTSCH [Church's counsel]: Take your witness off the stand.
>
> MR. BIESTY [State]: He is not my witness. He is on cross-examination.
>
> MS. ARMOUR: He is pacing back and forth. I have never seen anything like that."

The record then reflects that there was a brief pause before the attorneys resumed their discussion of the State's objection that necessitated the sidebar in the first place. No further mention of the alleged actions by Uygun was made anywhere in the record on appeal.

¶ 123 Defendants argue that they were deprived of a trial judge and an attorney to protect their rights "*during*" a critical stage of trial because neither the witness nor the jury was excused from the courtroom during the sidebar conference. Generally, we review *de novo* whether the trial judge's absence deprived defendants of their due process right to a fair trial. *People v. Radcliff*, 2011 IL App (1st) 091400, ¶ 22 (citing *People v. Graham*, 206 Ill. 2d 465, 474 (2003)). However, the State argues that this unpreserved error is forfeited and only reviewable under the plain error doctrine. We agree.

[5] Because all of the defendants make essentially the same argument in this respect, to save resources, we address them all together here.

¶ 124 The plain error doctrine may be invoked in criminal cases under two limited circumstances (*People v. Vargas*, 174 Ill. 2d 355, 363 (1996)), *i.e.*, where the evidence is closely balanced, or, regardless, where the error is of such magnitude that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process (*People v. Sebby*, 2017 IL 119445, ¶ 48). The first step under either prong of the plain error doctrine is determining whether a clear or obvious error occurred at trial (*Sebby*, 2017 IL 119445, ¶ 49), because "[a]bsent reversible error, there can be no plain error" (*People v. McDonald*, 2016 IL 118882, ¶ 48 (citing *People v. Williams*, 193 Ill. 2d 306, 349 (2000)).

¶ 125 Defendants cite *Vargas*, 174 Ill. 2d at 366, for the general proposition that judicial absence from any portion of a felony trial is *per se* reversible error because that error is inherently prejudicial to a defendant's right to a fair trial and to the integrity of the judicial process. Betterly also cites, *inter alia*, *People v. Foster*, 168 Ill. 2d 465, 481 (1995), for the general proposition that a complete denial of counsel at a critical stage of trial justifies a presumption of prejudice. Defendants argue that the objectionable conduct here was when the witness under cross-examination joked with jurors during the sidebar conference. Chase reasons that the trial judge's absence from the courtroom allowed the witness to joke with jurors, "engaging in 'objectionable conduct' which may have prejudiced the jury against the defense, and strengthened the credibility of the State's witness."

¶ 126 The State argues that unlike the cases cited by the defendants, where the presentation of evidence continued outside of the trial court's presence, the sidebar conference here temporarily "halted" the trial proceedings, such that no testimony was given or arguments were made during that time. The State also notes that defense counsels waived defendants' presence during the sidebar conference. Defendants concede in their reply briefs that "the sidebar was a break in proceedings," but maintain that the error in this case was more like that in *Vargas*, 174 Ill. 2d

355, 366, and *Radcliff*, 2011 IL App (1st) 091400, ¶¶ 22-24, where the trial judge was absent during a portion of defense counsel's cross-examination. However, beyond this blanket assertion, defendants offer no well-reasoned argument as to how the error in this case was "more like" that in *Vargas* and *Radcliff*. Defendants have arguably forfeited their challenges under these circumstances. See, *e.g.*, *Silverberg v. Haji*, 2015 IL App (1st) 141321, ¶ 40 (defendant cites no relevant authority for his arguments but for a general citation); *People v. Bradley*, 2017 IL App (4th) 150527, ¶ 24 (the prosecution forfeited its argument by failing to cite legal authority and present well-reasoned argument).

¶ 127 Forfeiture aside, we find no error in the trial court's decision to pause the cross-examination of a State witness and hold an in-chambers sidebar conference with the attorneys, without excusing the witness or the jury from the courtroom. Section 2:19 of the Trial Handbook for Illinois Lawyers states:

> "It is not always feasible to have every private conversation between the court and counsel held out of the presence of the jury, so the solution is often to have a bench or sidebar conference. If the object is to converse out of the hearing of the jury, the judge should take precautions to be sure that the conversation cannot be heard by the jury. If there is danger that the jury can hear remarks it should not hear, the conference should be in chambers, or the jury should be excused to the jury room." 1 Robert S. Hunter, Trial Handbook for Illinois Lawyers-Criminal § 2:19 (9th ed. 2017).

Considering these guidelines and the cases cited by the State, we find that defendants have failed to show that an error occurred in the first instance. Put another way, we agree with the State that under the circumstances presented here, defendants were not deprived of a trial judge and an attorney to protect their rights during a critical stage of trial, because the pause in proceedings for

the sidebar was not a critical stage of the trial.[6] It necessarily follows that defendants cannot establish plain error and we must honor their procedural default. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010); *People v. Flemming*, 2015 IL App (1st) 111925-B, ¶ 73.

¶ 128 We also note that, even if the sidebar could be considered a critical stage of trial, without a record of what, exactly, transpired in the courtroom while the trial court and the attorneys were in chambers, we are unable to assess what, if any, prejudice the defendants suffered by the trial court's failure to excuse the witness from the stand. See *People v. Ortiz*, 313 Ill. App. 3d 896, 900 (2000) ("To determine whether a claimed error warrants relief, a court of review must have before it a complete record of the proceedings from which an appellant claims error. [Citation.] The burden of presenting a sufficiently complete record rests with the appellant, and any doubts arising from an incomplete record will be resolved against the appellant.").

¶ 129 Admission of Pipe Bomb Instructions

¶ 130 Church's final argument on appeal is that the trial court erred in admitting into evidence the handwritten instructions for constructing a pipe bomb, which were found on the kitchen table in the apartment where the defendants were staying. We also note that Chase and Betterly make a nearly identical argument in their appeals. Therefore, we shall address them all at the same time. According to the defendants, the pipe bomb instructions should have been excluded as irrelevant, because they were not connected to any of the defendants and their only purpose was to suggest that the defendants intended to use explosive devices and associated with dangerous individuals. We do not find any merit to these contentions.

¶ 131 Physical evidence is generally admissible so long as there is some proof to connect it with the defendant and the crime. *People v. Free*, 94 Ill. 2d 378, 415 (1983). The connecting

[6] Although we find no reversible error here, we observe that the better practice would have been for the trial court to excuse either the jury or the witness or both during the pendency of the sidebar in chambers. Doing so would have avoided any potential prejudice or appearances of impropriety.

proof may be circumstantial, and there is no requirement that there be proof that the evidence was actually used in the commission of the crime, so long as it was suitable for the commission of the crime. *People v. Walker*, 253 Ill. App. 3d 93, 108 (1993). The defendant's possession of the evidence—or lack of possession—goes to the weight to be assigned to the evidence by the jury, not the admissibility of the evidence. *People v. Jones*, 22 Ill. 2d 592, 599 (1961) (stating that it had rejected "the argument that a weapon is admissible only when it is found in the control or possession of the defendant or in his dwelling at or near the time of his arrest"); *People v. De La Fuente*, 92 Ill. App. 3d 525, 532 (1981) (concluding that a gun later found on the ground near where the defendant was arrested for armed robbery was sufficiently linked to the defendant to be admissible, and "[t]he fact that it was not actually found in the defendant's possession at the time of his arrest was a matter for the jury or judge to consider in weighing the evidentiary value of the gun, at least in indicating the type of gun used by defendant"). As always, our review of the trial court's decision to admit the pipe bomb instructions is reviewed for an abuse of discretion.[7] *Walker*, 253 Ill. App. 3d at 108.

¶ 132 After hearing arguments from the parties, the trial court admitted the pipe bomb instructions, finding them relevant and sufficiently connected to the defendants, because they were found on the kitchen table of the apartment where the defendants were living. We agree with this analysis. The defendants were charged with and tried on a number of offenses, including conspiracy to commit terrorism, possession of an incendiary device with the intent to commit terrorism or knowledge that another intended to commit terrorism, and possession of an

[7] The defendants attempt to argue that we should apply a *de novo* standard of review because "[t]he facts are not in dispute" and only the legal relevance of the evidence is at issue. Unsurprisingly, given the well established application of the abuse-of-discretion standard to evidentiary matters, the defendants are unable to cite any caselaw that suggests that, in the context of the admission of evidence, a *de novo* standard is applied when the only question is the relevance of evidence. Rather, the defendants rely on the case of *People v. Ramos*, 396 Ill. App. 3d 869, 878-79 (2009). *Ramos*, however, did not address a question of evidence admissibility, but instead considered whether the defendant was denied a fair trial by the trial court's comments to the jury. Accordingly, we are unconvinced that we should review this issue *de novo*.

incendiary device with the intent to commit arson or knowledge that another intended to commit arson. The presence of the pipe bomb instructions in the common area of the defendants' apartment, coupled with the evidence that Church inquired where the defendants could obtain metal pipes while making a blasting sound, is certainly relevant to the question of whether the defendants intended to commit terrorism and/or arson. That the defendants ultimately chose to manifest that intent through the construction of Molotov cocktails rather than pipe bombs does not negate the relevance of the pipe bomb instructions in demonstrating their ultimate intent. After all, it is unnecessary that the evidence actually be used in the commission of the offense to be considered admissible. See *Walker*, 253 Ill. App. 3d at 108 (concluding that Vaseline found in the defendant's vehicle "was suitable for the commission of the offense because it could have facilitated defendant's forceful intercourse"); *People v. Coleman*, 222 Ill. App. 3d 614, 624-25 (1991) (although not identified by the victim as the weapon used, caulking gun found in the area of the attack admissible to corroborate victim's testimony that a hard metal object was placed to her head).

¶ 133 Moreover, the contention that the State failed to specifically connect the instructions to the defendants through handwriting, fingerprints, or other direct evidence of possession does not affect our determination that the trial court did not abuse its discretion in admitting the pipe bomb instructions. Although possession is one factor that may be considered in analyzing the connection between evidence and the accused, it is not the only factor, nor is it a decisive factor. See *Jones*, 22 Ill. 2d at 599 (stating that direct possession is not the only circumstance under which physical evidence is admissible and that there may be times when physical evidence found in the direct possession of the accused is inadmissible); *De La Fuente*, 92 Ill. App. 3d at 532 (stating that the defendant's lack of possession of the evidence goes to the weight to be afforded

to that evidence). As our supreme court has stated on multiple occasions, we must be careful not to confuse the admissibility of evidence with its probative value:

> "The argument of the defendant that the wrench must first be connected with the defendant before it may be admitted into evidence confuses the distinction between the admissibility of evidence and its probative value. *** The defendant is entitled to argue to the jury the lack of any connection between the wrench and the defendant, or the lack of proof that the defendant owned or used the wrench; he may point out the weakness of its probative value, but he cannot bar its admission." *People v. Scott*, 29 Ill. 2d 97, 113-14 (1963); see also *Free*, 94 Ill. 2d at 416-17.

¶ 134 Finally, the defendants argue that the admission of the pipe bomb instructions suggested that the defendants associated with potentially dangerous individuals, because the instructions were found on the kitchen table of their apartment, which they shared with numerous other people. According to Church and the other defendants, this made the admission of the pipe bomb instructions akin to admitting evidence that the defendants were gang affiliated. This argument, like the others, is without merit. First, Church has waived this argument for failing to raise it in the trial court. Although Church objected to the admission of the pipe bomb instructions, he never did so on the basis that it was akin to gang affiliation evidence. *People v. Berberena*, 265 Ill. App. 3d 1033, 1050 (1994) ("Because objections at trial on specific grounds waive all other grounds of objections, defendants have waived the right to object on the grounds they now assert on appeal."). Second, even if Church had not waived this contention, he has not offered any argument or authority in support of the proposition that a conclusion by the jury that Church roomed with a "potentially dangerous individual[]" carries the same negative import as evidence that he was a member of a street gang. As Church points out, courts have recognized that society looks upon street gangs with strong prejudice and disfavor. *People v. Strain*, 194 Ill.

2d 467, 477 (2000). Absent any reasoned argument or authority in support, we cannot agree that simply rooming with another person who is "potentially dangerous" rises to the same level as belonging to a street gang.

¶ 135 II. Appeal No. 1-14-1608 (Jared Chase)

¶ 136 Sufficiency of the Evidence

¶ 137 Chase first argues that the State failed to prove him guilty of possession of an incendiary device, because it failed to present sufficient evidence that he intended to commit arson or knew that another intended to commit arson. In support, Chase makes many of the same arguments as Church. Specifically, Chase argues that his actions and statements were the result of a constant state of intoxication and fueled by the encouragement of the undercover officers. He also argues that the defendants lacked a specific plan or target for the use of the Molotov cocktails. In addition, he argues that the jury rejected any notion that the defendants were co-conspirators or should be legally accountable for each other's actions by acquitting them of the conspiracy to commit terrorism and solicitation to commit arson charges.

¶ 138 Chase's arguments in these respects are substantially the same as those made by Church. He even attempts to rely on evidence that was not admitted into evidence and to parse the trial evidence into pieces in much the same way as Church did. Because we addressed all of these contentions in Church's arguments, we see no reason to address them again when the reasoning is nearly identical. We note only one small difference in Chase's argument, and that is that he argues that Chikko's and Uygun's assessment of his level of intoxication should be disregarded because they were not credible where the recordings belied the officers' claims that they did not give Church and Chase any beer. We need not address whether any inconsistency actually existed in the officers' testimony, because even if it did, the jury heard the evidence and it was up to the jury to assess what, if any, effect that inconsistency had on the credibility of the

officers. We are not in a position to reassess the credibility of the trial witnesses. *Maldonado*, 2015 IL App (1st) 131874, ¶ 18. This being the only difference in these arguments by Church and Chase, we reject these contentions by Chase for the same reasons that we rejected them when Church made them.

¶ 139 Chase does make the novel argument that his Huntington's disease would have made it impossible for him to engage in any long-range, complex planning. In support, Chase cites to a handout for law enforcement on the symptoms of Huntington's disease and the concerns it raises in the context of incarceration and confinement. This handout appears only in Chase's appendix and does not appear in the record. Therefore, we cannot consider it. *Hunter*, 2016 IL App (1st) 141904, ¶ 20. Moreover, there was no evidence presented to the jury regarding Chase's condition or the effect that it would have had on his ability to form the requisite intent. In addition, Chase was found by experts to be mentally fit at the time of the offense and to stand trial and, as is discussed below, we see no reason to disturb those findings. Accordingly, Chase's suggestion that his condition had some sort of effect on his ability to form the requisite intent must be rejected.

¶ 140 Moreover, for the reasons discussed above in our analysis of Church's sufficiency-of-the-evidence argument, we conclude that the State presented sufficient evidence to prove Chase guilty of possession of an incendiary device with the intent to commit arson, possession of an incendiary device with the knowledge that another intended to commit arson, and mob action.

¶ 141 Absence of the Trial Judge

¶ 142 As noted above, Chase's argument on this issue is substantially the same as Church's and, thus, we also find that it has no merit. See paragraphs 121-128.

¶ 143 Admission of Pipe Bomb Instructions

¶ 144 As noted above, Chase's argument on this issue is substantially the same as Church's and, thus, we also find that it has no merit. See paragraphs 129-34.

¶ 145 Fitness

¶ 146 Chase next argues that the trial court erred when it failed to order a fitness hearing following his Huntington's diagnosis. He submits that his diagnosis resulted in an "acknowledged" *bona fide* doubt as to his fitness to stand trial and obligated the trial court to conduct a fitness hearing. Chase contends that the trial court's failure to conduct the required fitness hearing resulted in a violation of his due process rights.

¶ 147 As a threshold matter, Chase acknowledges that this issue was not properly preserved for appellate review because it was not cited as an error in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a posttrial motion and that his failure to satisfy both requirements results in forfeiture of appellate review of his claim). In an effort to avoid forfeiture, however, Chase invokes the plain error doctrine, which provides a limited exception to the forfeiture rule and allows for review of forfeited issues on appeal if the evidence is closely balanced or the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Belknap*, 2014 IL 117094, ¶ 48; *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). It is well-established that a defendant's fitness to stand trial implicates a fundamental right and that fitness issues are subject to review under the second-prong of the plain error doctrine. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996); *People v. Tolefree*, 2011 IL App (1st)100689, ¶ 50-59. The first step in any plain error analysis, however, is to determine whether any error actually

occurred. *Piatkowski*, 225 Ill. 2d at 565; *People v. Rinehart*, 2012 IL 111719, ¶ 15. Keeping this standard in mind, we turn now to evaluate the merit of Chase's claim.

¶ 148 The principles of due process prohibit the prosecution and sentencing of a criminal defendant who is unfit to stand trial. *People v. Burson*, 11 Ill. 2d 360, 368 (1957); *People v. Stahl*, 2014 IL 115804, ¶ 24. A criminal defendant is deemed legally unfit "if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2012); see also *People v. Easley*, 192 Ill. 2d 307, 320 (2000) ("Fitness speaks only to a person's ability to function within the context of a trial. It does not refer to sanity or competence in other areas. A defendant can be fit for trial although his mind may be otherwise unsound"). Every criminal defendant is presumed fit to stand trial, enter a plea, and be subject to sentencing absent the existence of circumstances that create a *bona fide* doubt as to the defendant's fitness. 725 ILCS 5/104-10; *Easley*, 192 Ill.2d at 318; *People v. Sanchez*, 169 Ill. 2d 472 (1996). A *bona fide* doubt has been defined as a "real, substantial and legitimate doubt" and the test is an objective one. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). Factors to consider in determining whether a *bona fide* doubt of fitness exists include a defendant's behavior and demeanor, counsel's representations concerning the competence of his or her client, and any prior medical opinion on the defendant's competence to stand trial. *People v. Hanson*, 212 Ill. 2d 212, 223 (2004); *Easley*, 192 Ill. 2d at 319; *Eddmonds*, 143 Ill. 2d at 518. These factors all relate to the "critical determination of whether the defendant can understand the nature and purpose of the criminal proceedings and is able to assist defense counsel." *Hanson*, 212 Ill. 2d at 222. The aforementioned factors, however, are not dispositive as there "[t]here are 'no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are

implicated.' " *Eddmonds*, 143 Ill. 2d at 518 (*quoting Drope v. Missouri*, 420 U.S. 162, 180 (1975)). Ultimately, the question of whether there is a *bona fide* doubt as to a defendant's fitness to stand trial involves a fact-specific inquiry (*People v. Tapscott*, 386 Ill. App. 3d 1064, 1077 (2008)) and the final determination rests within the sound discretion of the circuit court, which is in the best position to observe the defendant and evaluate his conduct (*People v. Simpson*, 204 Ill. 2d 536, 550 (2001); *Tolefree*, 2011 IL App (1st) 100689, ¶ 53). An abuse of discretion will be found only where the ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the circuit court. *Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 149 Section 104-11 of the Illinois Code of Criminal Procedure of 1963 (Code) sets forth the conditions pursuant to which fitness examinations and fitness determinations are governed. It provides as follows:

"§104-11

(a) The issue of the defendant's fitness for trial, to plead, or to be sentenced may be raised by the defense, the State or the Court at any appropriate time before a plea is entered or before, during, or after trial. When a bona fide doubt of the defendant's fitness is raised, the court *shall* order a determination of the issue before proceeding further.

(b) Upon request of the defendant that a qualified expert be appointed to examine him or her to determine prior to trial if a bona fide doubt as to his or her fitness to stand trial may be raised, the court, in its discretion, *may* order an appropriate examination. However, no order entered pursuant to this subsection shall prevent further proceedings in the case." (Emphasis added.) 725 ILCS 5/104-11 (a), (b) (West 2012).

¶ 150 While section (a) "places a mandatory burden on the trial court judge to order a determination of a defendant's fitness when a *bona fide* doubt of that fitness is raised," (*People v. Mitchell*, 189 Ill. 2d 312, 330 (2000)), section (b), in contrast, affords a trial court that has not been convinced that a *bona fide* doubt of fitness exists, with the discretion to appoint an expert to examine the defendant and help the court determine whether a *bona fide* doubt of fitness exists (*People v. Garcia*, 2012 IL App (1st) 103590, ¶ 124).

¶ 151 Our supreme court has explained the interplay between sections (a) and (b) as follows:

> "Sections 104-11(a) and (b) may be applied in tandem or separately, depending on if and when the trial court determines a *bona fide* doubt of fitness is raised. If the trial court is not convinced *bona fide* doubt is raised, it has the discretion under section 104-11(b) to grant the defendant's request for appointment of an expert to aid in that determination. 725 ILCS 5/104-11(b) (West 2000). Even for a motion filed under section 104-11(a), the trial court could specify its need for a fitness examination by an expert to aid in its determination of whether a *bona fide* doubt is raised without a fitness hearing becoming mandatory. In either instance, after completion of the fitness examination, if the trial court determines there is a *bona fide* doubt, then a fitness hearing would be mandatory under section 104-11(a) (725 ILCS 5/104-11(1) (West 2000)) [Citations.] Conversely, if after the examination the trial court finds no *bona fide* doubt, no further hearings on the issue of fitness would be necessary. Alternately, section 104-11(b) may be bypassed entirely if the trial court has already determined without the aid of a section 104-11(b) examination that there is a *bona fide* doubt of the defendant's fitness. In that instance, the trial court would be obligated under section 104-11(a) to hold a fitness hearing before proceeding further. 725 ILCS 5/104-11(a) (West 2000). In sum, the primary distinction between sections 104-11(a) and 104-11(b) is that section 104-11(a) ensures that a

> defendant's due process rights are not violated when the trial court has already found *bona fide* doubt to have been raised while section 104-11(b) aids the trial court in deciding whether there is a *bona fide* doubt of fitness." *Hanson*, 212 Ill. 2d at 217-18.

¶ 152 In this case, Chase's argument that the trial court erred in failing to preside over a fitness hearing is premised on his assertion that there was an agreement or acknowledgment between the parties and the court that there was a *bona fide* doubt as to his fitness to stand trial. Chase's characterization of the purported agreement, however, is belied by the record. The record reveals that after the circuit court became apprised of Chase's Huntington's diagnosis and his aggravated battery of a police officer while incarcerated, the court informed the parties that it "fel[t] compelled to order a BCX for the limited purpose of *** mak[ing] sure defendant understands the proceedings as we go forward from here." At defense counsel's request, the court held the matter in abeyance so that counsel could file a motion and be heard on the matter. In the motion that defense counsel subsequently filed, counsel expressly acknowledged that "the Court did not indicate whether it had a bona fide doubt as to Defendant's fitness, or if it was ordering the fitness examination to assist in that determination," but counsel nonetheless agreed that a fitness examination was warranted. Counsel also argued that a standard BCX examination by Forensic Clinical Services would be insufficient to ascertain Chase's fitness given the complicated nature of Huntington's disease, and specifically requested that Chase be examined by Dr. Kathleen Shannon, a physician well-versed in Chase's condition. During a hearing on Chase's motion for fitness hearing, the State raised no objection to his request for a fitness examination, and the court ultimately elected to order both Forensic Clinical Services and Dr. Shannon to examine Chase to ascertain whether he was both physically and mentally fit to stand trial and to determine whether he was sane at the time of the offense. In accordance with the trial court's order, Dr. Shannon and two doctors from Forensic Clinical Services conducted the

requisite examinations and each of them opined that Chase was fit to stand trial and that he was legally sane at the time he committed the offense. After reviewing the written opinions of the doctors who examined Chase, the trial court concluded that there was no *bona fide* doubt as to Chase's fitness and the matter subsequently proceeded to trial.

¶ 153 The State's failure to object to defense counsel's request for a fitness examination does not, as Chase seems to suggest, constitute evidence that the State believed that there was a *bona fide* doubt as to Chase's fitness to stand trial. See *Hanson*, 212 2d at 222-23 (rejecting the defendant's argument that the State's failure to object to defense counsel's motion for a psychological examination constituted an acknowledgement that there existed a *bona fide* doubt as to the defendant's fitness to stand trial, reasoning that the State's failure to object could be attributed to the belief that section 104-11(b) rather than section 104-11(a) was being applied and that the request for an evaluation was simply to determine whether, in fact, there existed a *bona fide* doubt as to the defendant's fitness). Similarly, the fact that the trial court granted defense counsel's request for a fitness examination is not indicative that the trial court believed that there existed a *bona fide* doubt as to Chase's fitness to stand trial. *Id*. at 222 ("The mere act of granting a defendant's motion for a fitness examination cannot, by itself, be construed as a definitive showing that the trial court found a *bona fide* doubt of the defendant's fitness"). Indeed, based on our review of the trial court's statements, it is evident that the trial court did not order a fitness examination because it entertained a *bona fide* doubt as to Chase's fitness to stand trial; rather, the court ordered the examination to determine whether, in fact, a *bona fide* doubt existed. After reviewing the opinions of the three doctors who examined Chase, each of whom determined that Chase was fit to stand trial, the trial court concluded that there was no *bona fide* doubt as to Chase's fitness and the matter proceeded to trial. We find no error. The record does

not support a finding of *bona fide* doubt as to Chase's fitness to stand trial necessitating a fitness hearing.

¶ 154 As set forth above, the factors relevant to the determination as to whether a *bona fide* doubt as to a defendant's fitness exists include: (1) the defendant's behavior and demeanor; (2) counsel's statements concerning his client's competency; and (3) any prior medical opinions concerning the issue of the defendant's fitness. *Id*. at 223; *Eddmonds*, 143 Ill. 2d at 518. Turning to the first factor, there is no evidence in the record that Chase's behavior and demeanor during pretrial proceedings was anything other than rational and appropriate. For example, in response to questions by the trial court, Chase acknowledged that he understood that he had a right to a separate trial apart from his codefendants, but responded that he desired a single trial with a single jury. Although there is no dispute that Chase was diagnosed with Huntington's disease and that the disease is associated with a variety of cognitive and physical infirmities, there is no evidence that his diagnoses impacted his ability to understand and participate in court proceedings. *Eddmonds*, 143 Ill. 2d at 519 (concluding that the mere existence of a mental disturbance or the need for medical care does not require a finding of *bona fide* doubt because "a defendant may be competent to participate at trial even though his mind is otherwise unsound").

¶ 155 With respect to the second factor, we acknowledge that in Chase's motion for a fitness examination, defense counsel represented that there was a "doubt as to [Chase]'s physical fitness based on the recent diagnosis of Huntington's Disease, his lack of treatment in custody, and the dire need for his consultation with medical experts sufficiently experienced in the prognosis and treatment of Huntington's Disease." This statement, standing alone, is insufficient to raise a *bona fide* doubt as to Chase's fitness. See *Id*. ("[A]n assertion by counsel that a defendant is unfit does not, of itself, raise a bond fide doubt of competency"). More importantly, we note that counsel never voiced any concerns about Chase's ability to understand the proceedings or assist

in his defense. Thus, this factor does not support a finding of *bona fide* doubt of Chase's fitness to stand trial.

¶ 156 Turning to the last factor, we note that the doctors called upon to examine Chase unanimously concluded that Chase was fit to stand trial. Although Chase acknowledges the uniformity of opinion amongst medical personnel tasked with evaluating him, he takes issue with the qualifications of those individuals to deliver those opinions. For example, he argues that Dr. Shannon, although familiar with Huntington's disease, was unqualified to render an opinion to as his fitness to stand trial. Chase concedes that Dr. Nadkarni and Dr. Jasinski, with Forensic Clinical Services, were experienced in delivering fitness assessments, but argues that the doctors lacked familiarity with Huntington's disease and failed to specifically mention Chase's Huntington's diagnosis in their written opinions, thereby rendering their opinions suspect. We find Chase's arguments unavailing. We note that Chase specifically requested that Dr. Shannon examine him and that any purported errors associated with her examination and opinion as to his fitness were invited by defendant. See generally *People v. Carter*, 208 Ill. 2d 309, 319 (2003) ("Under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was error"). Moreover, his assertion that the doctors of Forensic Clinical Services lacked familiarity with Huntington's disease and failed to specifically "mention" his diagnosis is belied by Dr. Nadkarni's written report, which specifically references the fact that Chase was prescribed Haldol, "an antipsychotic used to improve movement dysfunction of Huntington's disease."

¶ 157 Ultimately, having reviewed the relevant factors, we cannot say that the record supports a finding of *bona fide* doubt as to Chase's fitness to stand trial. Therefore, the trial court did not err in declining to hold a fitness hearing. "Having found no error, there can be no plain error." *Bannister*, 232 Ill. 2d at 79. Moreover, having found no error, Chase's alternative argument that

defense counsel was ineffective for failing to include this issue in Chase's posttrial motion is likewise unavailing. *Id*. (citing *People v. Hall*, 194 Ill. 2d 305, 354 (2000), and *People v. Alvine*, 173 Ill. 2d 273, 297 (1996)).

¶ 158 III. Appeal No. 1-14-2138 (Brent Betterly)

¶ 159 Sufficiency of the Evidence

¶ 160 Like Church and Chase, Betterly argues that the State failed to prove him guilty of possession of an incendiary device and mob action. Also like Church and Chase, Betterly argues that the State failed to present sufficient evidence that he intended to commit arson or had knowledge that another intended to commit arson, in that much of the defendants' talk was alcohol and drug induced and that the undercover officers spurred on the construction of the Molotov cocktails. Betterly, too, relies on evidence that was not admitted at trial and attempts to view each piece of evidence in isolation. For the same reasons that these contentions failed when made by Church and Chase, they also fail here.

¶ 161 Betterly does argue, however, that the recordings show that he was absent for many of the conversations with the undercover officers that lead up to the construction of the Molotov cocktails on May 16, 2012. We certainly do not disagree with that notion. That being said, as discussed above as a part of Church's sufficiency-of-the-evidence argument: (1) because the defendants were charged as co-conspirators and there was sufficient evidence of aiding and abetting for the defendants to be legally accountable for each other's actions, the actions and statements and Church and Chase are admissible against Betterly; and (2) even without taking into consideration the conversations Church and Chase had with the undercover officers leading up to May 16, 2012, there was sufficient evidence from which the jury could find that Betterly intended to commit arson. In addition, even setting aside the conversations Church and Chase had with the undercover officers outside Betterly's presence, the evidence of Church's and

Chase's actions and statements on May 16, 2012, (as previously discussed) were sufficient to allow a jury to find that Betterly knew that Church and/or Chase intended to commit arson.

¶ 162 Betterly argues that his silence during portions of the recordings of May 16, 2012, and his statement that it smelled like gas inside the apartment indicate that he was not on the back porch with the other defendants and the undercover officers during the entire time that the Molotov cocktails were being constructed, but instead had gone inside. Accordingly, Betterly argues, it is unknown what, if any, portions of the co-defendants' statements Betterly heard. While this might be the case, the unrebutted testimony of the undercover officers is that Betterly remained on the back porch the entire time that the Molotov cocktails were being constructed, except for a few brief seconds when he went inside. Given that we are required to view the evidence in the light most favorable to the State (*Brown*, 2013 IL 114196, ¶ 48), this was sufficient for the jury to conclude that Betterly knew his co-defendants' intent. Moreover, even if Betterly was inside for a portion of the time when the Molotov cocktails were being constructed, that does not negate the recordings that demonstrate that Betterly instructed the others on just how to construct the Molotov cocktails: namely, advising them that gasoline was the only proper fuel for Molotov cocktails, describing how full to fill the bottles with gasoline, and advising them on how to insert the wicks into the bottles so as to not get gasoline all over their hands.

¶ 163 Finally, Betterly argues that his Facebook messages to Love and his statement about throwing acid bombs at Broward County police should not be considered in determining whether the State proved him guilty beyond a reasonable doubt, because they are not relevant to the issue of his intent. These contentions are substantially intertwined with his arguments regarding the admissibility of these pieces of evidence. For the reasons discussed below, we conclude that the Facebook messages and acid bomb statement were relevant to Betterly's guilt and properly considered.

¶ 164 In sum, as was the case for his co-defendants, the State presented sufficient evidence to permit the jury to find that Betterly possessed an incendiary device with the intent to commit arson, possessed an incendiary device with the knowledge that another intended to commit arson, and committed mob action.

¶ 165 Absence of the Trial Judge

¶ 166 As noted above, Betterly's argument on this issue is substantially the same as Church's and, thus, we find that it has no merit. See paragraphs 121-128.

¶ 167 Admission of Pipe Bomb Instructions

¶ 168 As noted above, Betterly's argument on this issue is substantially the same as Church's and, thus, we find that it has no merit. See paragraphs 129-134.

¶ 169 Indictment

¶ 170 Betterly next argues that the trial court erred in denying his motion to dismiss the indictment against him. According to Betterly, the State presented false and misleading testimony to the grand jury that resulted in the return of the indictment against him. More specifically, Betterly argues that the State improperly attributed to him acts and statements of Church and Chase, which prevented the grand jury from conducting a meaningful consideration of whether to return an indictment against him and violated his due process rights.

¶ 171 Generally, indictments returned by legally constituted grand juries are not subject to challenge. *People v. DiVincenzo*, 183 Ill. 2d 239, 255 (1998). One exception to this is that a defendant may challenge an indictment that is obtained through prosecutorial misconduct that is so severe that it deprives the defendant of due process or constitutes a miscarriage of justice. *Id.* at 255, 257. "The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence." *Id.* at 257. To warrant dismissal of the

indictment, the due process violation must cause prejudice that is "actual and substantial." *People v. Fassler*, 153 Ill. 2d 49, 58 (1992). The defendant bears the burden of proving this prejudice, and the trial court should only dismiss the indictment when a due process violation is clear and established with certainty. *People v. Torres*, 245 Ill. App. 3d 297, 300 (1993). As the court in *People v. Oliver*, 368 Ill. App. 3d 690, 696-97 (2006), stated:

> "a due process violation consisting of prosecutorial misconduct before a grand jury is actually and substantially prejudicial only if without it the grand jury would not have indicted the defendant. *** If the evidence was strong enough that the grand jury would have indicted the defendant despite the misconduct, the misconduct was not prejudicial. However, if the evidence was so weak that the misconduct induced the grand jury to indict, prejudice is shown."

Where, as here, there are no disputes on any issues of fact, our review is *de novo* on the issues of whether the defendant suffered a prejudicial denial of due process. *Id.* at 695.

¶ 172 Betterly contends that in questioning Peot during the grand jury proceedings, the State often grouped the defendants together when asking about the defendants' activities, resulting in the attribution of acts and statements to Betterly for which he was not present. In particular, Betterly points out that Peot testified that all three defendants told the officers that they were new to Chicago and needed help finding targets and places to attack and to perform reconnaissance work. Betterly, however, was not present for these conversations. In addition, Peot testified that Betterly was present when Church asked the undercover officers where he could purchase some rifles, despite the fact that Betterly was not present at that time. Peot's testimony that Betterly was present on May 8, 2012, when Church showed the undercover officers his cache of weapons, was also incorrect.

¶ 173 Betterly also takes issue with Peot's testimony that on May 14, 2012, Church told the officers that he was making Molotov cocktails for use during the NATO summit when, in actuality, Church had only discussed his construction of a mortar and asked the officers if they ever wanted to see a cop car burn. Finally, Betterly points out that Peot testified that he was arrested at the defendants' apartment when he was arrested elsewhere, and he argues that there was no evidence that he discussed committing acts of violence, used a cell phone or sent text messages, gathered supplies, or trained in tactics to defeat arrest.

¶ 174 Because, as we will discuss, the State presented some evidence from which the grand jury could infer criminal conduct on the part of Betterly, we need not address the veracity of each of the complained of pieces of testimony. Nevertheless, we pause to comment on some of them, as it further relates to their lack of prejudicial effect. First, although the trial evidence does indicate that Betterly was not present when Church asked the undercover officers where he could purchase rifles and when he showed them his stash of weapons, the exaggerated portion of Peot's testimony was only that Betterly was generally present on the days of those meetings with the officers. At no point did Peot testify that Betterly took part in the discussion regarding the purchase of rifles or the showcasing of the weapons. Accordingly, we disagree that Peot attributed these statements or acts to Betterly. Second, it is true that Betterly was not arrested at the apartment like Peot testified he was. We hardly think, however, that the location of Betterly's arrest caused the grand jury to indict him when it otherwise would not have.

¶ 175 Ultimately, Betterly's contention fails because he has not demonstrated that the grand jury would not have indicted him absent the complained of evidence. Peot specifically testified that on May 16, 2012, during the construction of the Molotov cocktails, Betterly instructed the other defendants and the undercover officers on how to make Molotov cocktails. Specifically, Betterly directed that rags should be used as the wicks, the gasoline should not be poured onto

the wicks, and the wicks should soak up the gasoline from inside the bottles. While Chase filled the beer bottles with gasoline, Church asked the officers if they were ready to see a police officer on fire and indicated that there was a police station nearby where they could burn police cars. Certainly, this provided "some evidence" of Betterly's connection to the charged offenses of which Betterly was convicted, and thus supported a finding of probable cause by the grand jury. See *People v. Rodgers*, 92 Ill. 2d 283, 292 (1982) (concluding trial court erred in dismissing count where there was "some evidence" presented to the grand jury in support); *People v. Williams*, 383 Ill. App. 3d 596, 631 (2008) (stating that the State need only present "some evidence" to the grand jury "from which an inference of criminal conduct can be derived"); *People v. White*, 180 Ill. App. 3d 781, 786 (1989) (concluding that "other evidence before the grand jury here was clearly more than sufficient to meet the 'some evidence relative to the charge' standard of *Rodgers* which we deem to be sufficient to cure any alleged knowing use of perjury in obtaining the indictment"). For this reason, Betterly's attempt to rely on *Oliver* is misplaced. See *Oliver*, 368 Ill. App. 3d at 697 (finding that false testimony was prejudicial because it "establish[ed] probable cause where none existed").

¶ 176 Betterly attempts to argue that the State did not present sufficient evidence to support the indictment against him, because there was no evidence that his purpose in traveling to Chicago was illegal, that he intended to commit arson, or that he participated in the majority of the meetings with the undercover officers. It is well-established, however, that "[a]n accused may not challenge an indictment on the ground that it is not supported by sufficient evidence where there is any evidence to support the indictment. [Citation] Guilt or innocence is to be determined at a fair trial." *Fassler*, 153 Ill. 2d at 61; see also *DiVincenzo*, 183 Ill. 2d at 255; *People v. Melson*, 49 Ill. App. 3d 50, 54 (1977) ("[W]here there is some evidence before the

grand jury tending to connect the accused with the offense charged, the lack of evidence upon some essential element of the offense is not a ground for quashing the indictment.").

¶ 177 Because Betterly has failed to demonstrate that the grand jury would not have indicted him absent the allegedly false testimony, so too must his claim that he was improperly indicted fail.

¶ 178 Admission of Other Crimes Evidence

¶ 179 Betterly next argues that the trial court erred in admitting evidence that, on May 16, 2012, during a conversation with Church, Chase, and the undercover officers, he made the following statement: "Me, and my friend, me and my friend, and my brother threw a bunch of acid bombs in Broward sheriff's office, police stations, and their cars." According to Betterly, this statement constituted inadmissible other-crimes evidence that contributed to his conviction by suggesting to the jury that he was a bad person prone to criminal conduct. We disagree.

¶ 180 Generally, evidence of other crimes for which the defendant is not on trial is inadmissible for the purpose of demonstrating a propensity on the part of the defendant to commit crimes. *People v. Thingvold*, 145 Ill. 2d 441, 452 (1991). Such evidence is admissible, however, to establish any material issue other than propensity, such as *modus operandi*, intent, identity, motive, or absence of mistake. *Id.* In addition, such evidence may be used to demonstrate absence of mistake or accident, defendant's state of mind, absence of innocent state of mind, a defendant's dislike or attitude toward the victim, and to disprove an entrapment defense. *People v. Millighan*, 265 Ill. App. 3d 967, 972-73 (1994). Before other crimes evidence may be admitted, the State must prove that the crime took place and that the defendant participated in its commission. *Thingvold*, 145 Ill. 2d at 455. Although the State need not prove that the defendant participated in the commission of the crime beyond a reasonable doubt, such proof must be more than a mere suspicion. *Id.* at 456.

¶ 181 We review the trial court's decision to admit other crimes evidence for an abuse of discretion, meaning that that we will not disturb that decision unless it is "arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Nash*, 2013 IL App (1st) 113366.

¶ 182 Betterly first contends that the trial court erred in admitting his statement that he had previously thrown acid bombs at police, because the State failed to prove that Betterly had actually done so. According to Betterly, the State failed to prove anything beyond a mere suspicion when it did not present any evidence of the acid bomb throwing other than Betterly's statement. This contention is without merit, however, because a defendant's admission of his commission of other crimes is sufficient proof for purposes of admitting such evidence. *In re L.F.*, 119 Ill. App. 3d 406, 411 (1983) ("Here, the only evidence of the other crime is the minor's own statement; however, although there is no corroborating evidence ***, the minor's admission of the prior burglary is sufficient evidence of the occurrence of the crime and the minor's participation in it to allow use of the otherwise admissible statement.").

¶ 183 Betterly urges us to disregard the holding in *L.F.*, because the defendant in *L.F.* waived the argument that the State was required to prove his participation in the other crime, the holding in *L.F.* is over 30 years old, and *L.F.* has not been cited for the proposition that the defendant's admission of other crimes is sufficient. Each of these contentions share a common problem: Betterly fails to explain how any of them affects the validity of *L.F.*'s holding. Although it is true that the defendant in *L.F.* waived this contention, the court nevertheless went on to conclude that, in any case, no error had occurred. There is nothing in the court's opinion to suggest that its ultimate decision was somehow influenced by the fact that the defendant had waived the contention. As for the age of the *L.F.* decision, we think that the fact that the holding has remained undisturbed for over 30 years cuts more in favor of following it than ignoring it.

Finally, the fact that *L.F.* has not been cited for this proposition seems to have little relevance to anything. Certainly, Betterly has not explained how this fact somehow makes the reasoning faulty, nor has he cited any authority for the proposition that a court's holding only becomes good law once it has been cited by an unknown number of other cases. In light of this, we see no valid reason to depart from the holding in *L.F.*, and we conclude that Betterly's admission that he threw acid bombs at a sheriff's office, police stations, and police cars was sufficient to prove that he did so, for purposes of admitting that statement.

¶ 184 Betterly also argues that, in any case, the acid bomb statement was inadmissible because it was not relevant to any material issue at trial and did nothing but paint him as a bad person likely to engage in criminal conduct. Again, we disagree. We conclude that Betterly's statement regarding throwing acid bombs at Florida police was relevant to the issue of intent in several respects: it indicated criminal intent on Betterly's part in connection with the Chicago protests, demonstrated his dislike for police (as discussed by the defendants, a potential target for the Molotov cocktails), and negated his contentions that any participation by him in constructing the Molotov cocktails was induced by his alcohol consumption and encouragement of the undercover officers. See *Nash*, 2013 IL App (1st) 113366, ¶ 18 ("The principle that prior assaults against a victim of a crime that defendant is charged with committing is probative of intent or motive is well established."); *People v. Young*, 381 Ill. App. 3d 595, 602 (2008) ("[T]he other-crimes evidence was relevant in that it tended to negate defendant's contention that he lacked intent. While an innocent state of mind might be present in one instance, the more often it occurs with similar results, the less likely that it was without criminal intent."); *Millighan*, 265 Ill. App. 3d at 972-73 (other crimes evidence admissible to demonstrate absence of mistake or accident, defendant's state of mind, absence of innocent state of mind, a defendant's dislike or attitude toward the victim, and to disprove an entrapment defense).

¶ 185 Because Betterly's statement that he threw acid bombs at Florida police stations and cars was sufficient to establish that he did so and because the evidence of those actions were relevant to his intent in the present case, the trial court did not abuse its discretion in admitting this evidence.

¶ 186 Admission of Facebook Messages

¶ 187 Betterly also contends that the trial court erred in admitting the Facebook messages exchanged between him and Love. According to Betterly, those messages were too remote in time to be relevant because they occurred over three weeks prior to Betterly's arrest. "A trial court may reject offered evidence on grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty or its possibly unfair prejudicial nature." *People v. Ward*, 101 Ill. 2d 443, 455 (1984). As always, the decision whether to admit evidence is within the trial court's discretion, and we will not disturb that decision absent an abuse of discretion. *Id.* at 455-56.

¶ 188 Betterly specifically argues that his statements to Love that he was going to Chicago for a riot, he would maybe "catch some charges" in Chicago and probably end up a fugitive, and a person could not apologize after throwing a Molotov cocktail during a riot were joking, flirtatious, bragging statements that did not shed any light on whether, three weeks later, Betterly had any criminal intent. We disagree. First, Betterly's repeated labeling of these comments as joking, flirtatious, and bragging does not make them such, where there is nothing in the record to suggest that he was not serious about going to Chicago, participating in a riot, and potentially being arrested. Second, we fail to see how specific statements that Betterly intended to travel to Chicago to participate in a riot and that he would possibly "catch some charges" and would probably end up a fugitive is not relevant to his intent to engage in criminal activity once he arrived in Chicago. The fact that he made those statements three weeks before he got caught does not diminish their relevance; after all, if three weeks was close enough in time for him to be

making plans to travel to Chicago to participate in riots, it was certainly close enough in time to formulate an intent to engage in criminal activity there.

¶ 189 As the State points out in its brief, Betterly's reliance on *People v. Morgan*, 142 Ill. 2d 410 (1991), is misplaced. In *Morgan*, the defendant sought to introduce evidence that a third party had threatened the victim one week prior to the victim's murder with which the defendant was charged. Our supreme court held that the trial court did not err in excluding the evidence as irrelevant, because the evidence connecting the third party to the victim's murder was speculative at best. *Id.* at 440-42. Despite Betterly's attempt to analogize between *Morgan* and the present case, there exists no connection between the two. Betterly argues that his messages to Love were irrelevant not because the evidence connecting him to those messages was speculative, but because too much time elapsed between the time he sent them and the time that he was arrested. In *Morgan*, on the other hand, the court held that the evidence of the third-party's threat to the victim was irrelevant because the evidence connecting the third party to the victim's murder was speculative, not because too much time had elapsed between the threat and the murder. Accordingly, *Morgan* is inapplicable to the present case, and for the reasons stated above, we conclude that the trial court did not abuse its discretion in admitting the Facebook messages exchanged between Betterly and Love.

¶ 190 CONCLUSION

¶ 191 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 192 Appeal no. 1-14-1607 affirmed.

¶ 193 Appeal no. 1-14-1608 affirmed.

¶ 194 Appeal no. 1-14-2138 affirmed.