STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANDERSON,

Defendant-Appellant.

UNPUBLISHED
April 28, 2000

No. 214638
Washtenaw Circuit Court
LC No. 97-008547-FC

Before: McDonald, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Defendant was convicted by jury of arson of a dwelling house, MCL 750.72; MSA 28.267, and second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and was sentenced to serve concurrent terms of seven to twenty-five years' imprisonment. Defendant appeals as of right. We affirm.

I

This case arises out of an apartment fire which occurred on July 6, 1997, in the city of Ypsilanti. On appeal, defendant challenges the trial court's decision to admit a hair spray bottle seen in his possession just after discovery of the fire as that seen by the apartment lessee inside her apartment before leaving for work that morning. In doing so, defendant argues that because the apartment lessee was unable to state with certainty that the bottle found outside the apartment following the fire was the same as that seen by her inside the apartment before leaving that morning, the trial court erred in admitting the item as such. We disagree.

This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). The rule governing the admission of physical evidence does not require that identification of the item be absolute, positive, certain, or wholly unqualified to justify admission. MRE 901; see also *People v Hence*, 110 Mich App 154, 161; 312 NW2d 191 (1981). Rather, to lay a proper foundation for the admission of such evidence, the article must merely be identified as what it is purported to be and shown to be connected with the crime or with the accused. *People v O'Brien*, 113 Mich App 183, 204; 317 NW2d 570 (1982). Where there

is "some evidence" presented to establish that foundation, a defendant's objection to its sufficiency is properly directed to the weight of the evidence rather than to its admissibility. *People v Burrell*, 21 Mich App 451, 456-457; 175 NW2d 513 (1970).

In this case, contrary to defendant's assertions on appeal, the apartment lessee categorically identified the hair spray bottle as that seen by her on her dresser shortly before leaving for work, and further identified that bottle as the one seen by her on the stairway outside the apartment following her return. In addition, following admission of the bottle into evidence, both the apartment's lessee's son and his girlfriend identified this item as hair spray left by the girlfriend in the apartment. The son, who stayed in the apartment the night before the fire, further testified to seeing the item inside the apartment before leaving with his mother the following morning. Therefore, there was at least "some evidence" presented to establish a proper foundation for the admission of this evidence. See MRE 901(b)(1); *Burrell*, *supra* at 456-457.

Defendant also argues, without explanation, that because the hair spray bottle was admitted under MRE 105, the trial court erred in failing to instruct the jury on the limited use to be made of that evidence. This argument is wholly without merit.

Pursuant to MRE 105, if evidence is admissible for one purpose, but not others, the trial court must give a limiting instruction upon request. Here, there is nothing in the record to support defendant's contention that the disputed evidence was admitted for a limited purpose. Moreover, even assuming that jury consideration of that evidence should have been limited to a specific purpose, MRE 105 clearly provides that once evidence is admitted, the burden is on the party desiring a limiting instruction to request it. No such instruction was requested by defense counsel nor did counsel object to the instructions given by the court. On these facts, we find no error. See *People v Bahoda*, 448 Mich 261, 291 n 61; 531 NW2d 659 (1995).

II

Defendant next contends that the evidence was insufficient to sustain his convictions. Specifically, defendant argues that the prosecution failed to establish that defendant entered the burned apartment on the day of the fire and thus failed to establish that it was he who committed the charged crimes. We disagree.

When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). "The prosecutor is not required to present direct evidence linking the defendant to the crime." *People v Saunders*, 189 Mich App 494, 495; 473 NW2d 755 (1991). Rather, circumstantial evidence and the reasonable inferences arising therefrom may be sufficient. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Expert testimony offered at trial indicated that the fire which burned the apartment was intentionally set and began in the kitchen after a pile of clothing placed atop the stove ignited. Both the apartment lessee and another witness testified that defendant, only days before the fire, had threatened

to "blow up" the apartment. Moreover, on the day of the fire defendant sought permission to enter the apartment while the apartment lessee was working. The apartment lessee refused to allow defendant access to her apartment while she was not at home. She characterized her conversation with defendant on the subject as an argument that resulted in her hanging up on him. Approximately one-half hour after denying defendant permission to enter her apartment she learned that the apartment was on fire. The timing of the fire in relation to the argument between defendant and the lessee, combined with defendant's previous threats to destroy the apartment, provided a significant link between defendant and the fire.

This link was strengthened by the testimony of several residents of the apartment complex who placed defendant outside the apartment at the time the fire was discovered. These residents each testified that they saw defendant seated on the stairway outside the apartment while they were attempting to evacuate the building. Two of these witnesses described defendant's demeanor after being told of the fire as strangely calm, and each recalled defendant to have been seated next to a bottle of beer and a bottle of hair spray which the apartment lessee claimed had been inside the apartment when she and defendant left earlier that day. On this testimony, the jury could have reasonably inferred defendant's presence inside the apartment after the lessee had left for work, but before the fire began.

Defendant argues that because the beer and hair spray were items readily available at any local retail store, the mere fact that he had such items in his possession was insufficient to establish that these were items from inside the apartment. However, the weight to be afforded the evidence is for the jury, and when reviewing the sufficiency of the evidence supporting a conviction, this Court will not interfere with its determination in that regard. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant further argues that inasmuch as there was no evidence of forced entry and he was not found to have a key in his possession at the time of his arrest, there was no evidence upon which to base a finding that he entered the apartment while the lessee was at work. This argument lacks merit. As already noted, defendant was seen outside the apartment with items claimed to have been inside the apartment when defendant left with the lessee earlier that morning. Moreover, "it is unnecessary for the prosecutor to negate every reasonable theory consistent with the defendant's innocence." *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991). On the basis of the lessee's testimony regarding the bottles, a rational trier of fact could find that defendant was present inside the apartment after she had left for work, but before the fire began.

Moreover, shortly after the fire was extinguished, defendant was spotted across the street from the scene, at which time he attempted to flee the area. Upon his apprehension by police, jewelry identified by the lessee as belonging to her son and thought to have been inside the apartment at the time she left for work was found in his possession. Defendant claimed that he had been paged to the apartment complex and was being set up. However, when asked by the officers where his pager was, defendant claimed that it had been stolen a week before the fire.

Viewing this evidence in a light most favorable to the prosecutor, a rational trier of fact

could find that defendant was present in the apartment before the fire and that it was he who committed the charged crimes.

Affirmed.

/s/ Gary R. McDonald
/s/ Martin M. Doctoroff
/s/ Donald S. Owens