STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 17, 2000
v	No. 221261 Cass Circuit Court
GEORGIA ANN BUTLER, Defendant-Appellant.	LC No. 97-009063-FH

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of arson of a dwelling house, her mobile home, pursuant to MCL 750.72; MSA 28.267, and was sentenced to two years' probation with the first 270 days served in jail. Defendant appeals as of right. We affirm.

Defendant first contends that the evidence presented at trial was insufficient to support her conviction. Specifically, defendant argues that the motive evidence concerning her financial situation was weak, and that combined with the circumstantial and inconclusive causation testimony, including the fact that no accelerant was discovered by fire investigators, the evidence did not establish her guilt beyond a reasonable doubt. We disagree.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This Court should not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court must resolve all conflicts in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

In order to establish the corpus delicti of arson of a dwelling house, the prosecutor must prove both the burning of a dwelling house and that the burning resulted from an intentional criminal act. *People v Williams*, 114 Mich App 186, 193; 318 NW2d 671 (1982). If the prosecution only shows a burning, a presumption arises that it was accidentally caused. *Id*. However, most arson cases are based upon circumstantial evidence. *People v Orsie*, 83 Mich App 42, 49; 268 NW2d 278 (1978).

In *People v Wolford*, 189 Mich App 478; 473 NW2d 767 (1991), the defendant similarly challenged the sufficiency of the evidence in an arson case. Specifically, the defendant argued that the prosecution failed to negate the possibility that the fire was caused by an accident and failed to prove that the defendant was responsible for the fire. *Id*. at 479. This Court stated that the prosecution is not required to introduce direct evidence linking a defendant to a crime, rather, circumstantial evidence and reasonable inferences arising from it may constitute satisfactory proof of arson. *Id*. In affirming the jury's verdict of conviction, this Court referenced circumstantial evidence including, in part, testimony that the defendant was seen outside the trailer he was accused of burning about ten minutes before flames were seen coming from the trailer. *Id*. at 481. Additionally, in *People v Simon*, 174 Mich App 649, 654; 436 NW2d 695 (1989), this Court declined to hold that where no residue of an accelerant was found, the proof of arson was insufficient as a matter of law. This Court reasoned that to do so would allow arsonists to escape punishment where the fire successfully destroys detectable amounts of residue. *Id*. Fire investigators should not be responsible to investigate all remotely possible causes of a fire for which no evidence exists. *Id*.

In the present case, two experts in fire origins and causes testified that there were two separate points of origin for the fire. Both were located in the bedroom of one of defendant's children, one point on the mattress of a bunk bed next to a wall, the other inside a drawer of a wooden dresser in a closet. The experts testified that there were no electrical problems, and that they could not find any accidental or natural cause for the fire. In the opinion of the experts, the fire was set by human hand. Neither expert had ever seen an accidental fire set by children in two separate locations. Viewing this testimony in a light most favorable to the prosecutor, a rational trier of fact could find that the fire was not the result of an accident or natural cause, but that the fire was intentionally set. Based on *Simon*, the failure of the fire investigators to find an accelerant does not require reversal of the jury's verdict. *Id*.

A rational trier of fact could also find that defendant started the fire. According to one of the experts, this was a quick-burning fire that probably started ten to fifteen minutes before it was reported. Defendant's own testimony indicated that she and her two youngest children were the only ones in the home anywhere close to the time of the fire. Defendant left the home with the two children, putting one on a school bus and driving off in the family van with the other. Defendant was last to leave the home. One witness testified that he saw smoke pouring out of the home five to ten minutes after defendant drove away in her van. Another, a next door neighbor, saw a wisp of smoke coming out the top of the door to the home as defendant closed it to leave. Within fifteen minutes the neighbor heard someone yelling to call the fire department. Although defendant suggested that one of her children playing with matches possibly started the fire, her own testimony indicated that none of the children could reach her matches on the refrigerator, and that she did not recall leaving any cigarettes or matches in her purse, which the children had dumped out shortly before they left the home.

Defendant's claim that the prosecution's case was premised mainly on motive evidence, disregards the expert and eyewitness testimony. In fact, the evidence regarding defendant's insurance coverage, finances, and pending eviction simply complimented this testimony. Furthermore, the motive evidence was similar in nature to that presented in *People v Horowitz*, 37 Mich App 151, 157; 194 NW2d 375 (1971), an arson case, in which this Court affirmed the

defendants' convictions citing, amongst other evidence, testimony concerning the defendants' debts and fire insurance. Viewing the evidence in a light most favorable to the prosecutor, there was sufficient evidence for the jury to conclude that defendant intentionally burned her home.

Defendant next contends that she was denied a fair trial by the admission of evidence regarding her financial status and the denial of her insurance claim following the fire. Related to this claim, defendant argues that it was error for the prosecutor to reference the evidence during his closing statement, that it was error for the trial court not to provide a cautionary instruction regarding the evidence, and that her counsel was ineffective in addressing the evidence.

Defendant did not object to the admission of this evidence. Pursuant to *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999), the plain error rule applies to unpreserved constitutional and nonconstitutional error. The defendant must show: (1) that an error occurred; (2) that the error was plain; and, (3) that the plain error affected substantial rights. *Id.* at 763. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome in the trial court. *Id.* Reversal is warranted only when the plain, forfeited error results in a conviction of an innocent defendant or when the error seriously affects the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. *Id.*

We must first determine whether the evidence was properly admitted. The decision to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion exists when the trial court's decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). An abuse of discretion also exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *Id.*

Defendant primarily argues that evidence regarding her general financial status should have been excluded.[1] In *People v Henderson*, 408 Mich 56, 66; 289 NW2d 376 (1980), our Supreme Court stated:

> Evidence of poverty, dependence on public welfare, unemployment, underemployment, low paying or marginal employment, is not admissible to show motive. The probative value of such evidence is diminished because it applies to too large a segment of the total population. Its prejudicial impact, though, is high. There is a risk that it will cause jurors to view a defendant as a "bad man" -- a poor provider, a worthless individual.

[1] Defendant also appears to argue that evidence regarding the denial of her insurance claim should have been barred. However, the argument is vague and lacks any supporting authority. Issues insufficiently briefed are deemed abandoned on appeal. *Dresden v Detroit Macomb Hospital Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996). Nevertheless, we note that to the extent evidence of the denial of the claim may have been error, such error was harmless. Any reasonable juror would likely infer the denial of an insurance claim where an individual is charged with arson.

> Other evidence of financial condition may, however, be admissible in the circumstance of a particular case. [Footnotes omitted.]

The Court distinguished between evidence of poverty, or a chronic shortage of funds, and evidence that a person is experiencing a shortage of funds that appears to be novel or contrary to what one would expect is typically felt by such person. *Id.;* see also *Smith v Michigan Basic Property Ins Ass'n*, 441 Mich 181, 194; 490 NW2d 864 (1992)(an insurance arson case, in which the Court further recognized the distinction). Evidence of temporary or unusual financial conditions which might lead a person to engage in an economic crime can be admissible based on the circumstances of a particular case. *People v Jensen*, 162 Mich App 171, 179; 412 NW2d 681 (1987).

Here, evidence regarding defendant's financial status was introduced by the prosecutor through an attorney investigating the fire for the insurance company. The investigator's testimony included reference to defendant's statements concerning her income, bank accounts, and monthly bills. This evidence concerned defendant's financial situation at the time of the fire, and did not suggest that defendant was chronically short of funds. The prosecutor was not attempting to show that defendant was generally poor, and therefore she burned her home, but that at the time of the fire defendant was in a financial crisis and was motivated to collect insurance money. Accordingly, the *Henderson* exception is applicable. The defense also relied on financial evidence to suggest, contrary to the prosecution, that there was no crisis and that arson was not a logical action for defendant. The defense itself had mentioned defendant's financial situation during opening statements, when counsel noted that evidence would be introduced showing that defendant had nearly paid off her home, that she had been remodeling the home, and that she was in the process of obtaining a loan to move the home. Defendant later testified extensively regarding her efforts to those ends and about her income, bills, and debts. The defense theory was that although defendant was not living under ideal circumstances, she had improved her financial status during the preceding twelve months and had no motive to burn the home she almost owned free and clear.

Evidence of a motive is generally admissible in a criminal trial. *People v Jackson*, 77 Mich App 392, 400; 258 NW2d 89 (1977). The theories about motive were central to this case, and in large part they turned on the question of defendant's financial well being at the time of the fire. Accordingly, the trial court did not abuse its discretion in allowing the introduction of highly relevant evidence regarding defendant's financial status.

Finding no error in the admission of this evidence, we accordingly conclude that defendant's related claims lack merit. Defendant never requested a cautionary instruction at trial, see MCL 768.29; MSA 28.1052, and even now does not suggest what instruction ought to have been provided. Furthermore, it cannot be said that the prosecutor's brief reference to the disputed evidence in his closing statement denied defendant a fair and impartial trial. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Lastly, defense counsel was not ineffective in failing to object to the admission of the evidence where that same evidence provided the basis of the defense theory that defendant had no motive to commit the offense.

Finally, defendant contends that she was denied her right to a fair trial because of improper comments, other than those regarding defendant's financial status and the insurance claim, made by the prosecutor during his closing statement. We again disagree.

The plain error rule is again applicable, because defense counsel did not object to the now contested statements during trial. *Carines, supra* at 763-764. Finding no error that seriously affected the fairness of defendant's trial, reversal is unwarranted. *Id.* at 763. When viewed in context, *Noble, supra*, the prosecutor's comments were related to the evidence presented during trial and represent legitimate inferences from that evidence. Contrary to defendant's main arguments, the prosecutor neither impermissibly stated a personal belief in defendant's guilt nor improperly vouched for the credibility of the expert witnesses. See *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v McCoy*, 392 Mich 231, 240; 220 NW2d 456 (1974).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin