STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 8, 2002
V	No. 227199 Oakland Circuit Court
FRANK ISSA GARMO, Defendant-Appellant.	LC No. 98-163432-FH

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of burning insured property, MCL 750.75, and fraudulent insurance acts, MCL 500.4503. Defendant was sentenced as a second habitual offender, MCL 769.10, to 183 days in jail and eighteen months' probation for each conviction. Defendant also was ordered to pay costs, fees, and $1,600 restitution. We affirm in part, reverse in part, and remand.

Defendant argues that insufficient evidence was presented to support his convictions. In reviewing a claim challenging the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In doing so, this Court must not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and reasonable inferences arising from the evidence can constitute sufficient proof of the elements of a crime. *Nowak, supra*. The prosecution is not required to negate every reasonable theory consistent with innocence, but instead must prove the elements of the crime beyond a reasonable doubt. *Id*.

MCL 750.75 defines the crime of burning of insured property as follows:

> Any person who shall willfully burn any building or personal property which shall be at the time insured against loss or damage by fire with intent to injure and defraud the insurer, whether such person be the owner of the property or not, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.

Defendant asserts that, even if the prosecution proved the insured personal property was willfully burned, the prosecution offered insufficient evidence to prove that *defendant* committed the crime. We agree.

Prosecution witness Heather Boji testified at trial that she lived across the street from defendant. On the evening of the incident, Boji heard a "bang" and looked outside to see defendant's minivan on fire. Boji claimed to have seen the shadows of at least two people running away from the fire. Boji thought the individuals could have been running toward the backyards across the street.

An Oak Park police officer testified that he spoke with defendant on the evening of the fire. According to the officer, defendant claimed to have been sleeping in his home when the fire began. Defendant stated that his son woke him and told him the minivan was on fire. Another police officer testified that four of defendant's neighbors called 911 on the evening of the fire. A fifth 911 call was placed from defendant's home approximately two minutes after the initial call.

Inspectors hired by the insurance company testified that the minivan was inoperable prior to the fire and that an accelerant was used to start the fire. Insurance company representatives testified that defendant admitted he filed for bankruptcy a few years prior and had incurred gambling and other debts. The parties stipulated at trial that defendant owed a balance of $10,178 on the minivan loan, which required monthly payments of $483.

Viewing the evidence in a light most favorable to the prosecution, there was insufficient evidence from which the jury could reasonably infer that it was defendant who burned the minivan. *Johnson, supra*. Although the prosecution presented evidence suggesting defendant had a motive and opportunity to set the fire, neither of those factors are elements of the crime of burning of insured property. We recognize that in an arson case, direct evidence of the lighting of a fire seldom exists. *Nowak, supra* at 402. Instead, the evidence is generally circumstantial and often of a negative character, showing the absence of circumstances and conditions indicating an accidental cause. *Id*. at 402-403. However, circumstantial evidence must be based on more than mere speculation. There must be evidence tending to show that defendant committed the crime. In this case, there is no evidence of defendant's involvement in the burning of the vehicle. Nothing supports the conclusion that defendant was one of the individuals seen fleeing the scene. No one was seen entering defendant's house after the fire was set and there is nothing to suggest that defendant resembled one of the perpetrators. In sum, the only evidence of defendant's whereabouts was defendant's claim that he was home and asleep at the time the fire was set and nothing contradicts that claim.

Next, defendant argues that there was insufficient evidence to support his conviction of insurance fraud. We disagree. MCL 500.4503 describes the offense of fraudulent insurance acts, in part, as follows:

> A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:
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> * * *

> (c) Presents or causes to be presented to or by an insurer, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim.

The prosecution asserted two bases of insurance fraud. First, defendant submitted a notice of loss with the insurance company, claiming the minivan was in "good condition" at the time of the fire. However, the prosecution produced evidence indicating the van's engine had seized and was inoperable prior to the fire, two windows were broken out and a mirror broken off, and the van had been spray-painted with graffiti. Second, defendant stated the minivan had approximately 40,000 miles at the time of the fire, but the prosecution presented evidence that the mileage could have been much higher.

While defendant denied knowledge that the minivan's engine was seized at the time of the fire, and there was testimony that defendant's son drove the van the day of the fire, we must not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Nowack*, *supra*. Where the prosecution introduced evidence from which reasonable jurors could conclude that defendant made statements in support of his insurance claim with knowledge of their falsity, there was sufficient evidence to support defendant's conviction for insurance fraud.

Affirmed in part and reversed in part. Defendant's sentences are vacated and this case is remanded for resentencing. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Patrick M. Meter