STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 11, 2010
v	No. 290899 Wayne Circuit Court
COURTNEY SEEGARS, Defendant-Appellant.	LC No. 08-003225-FH

Before: TALBOT, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of arson of a dwelling house, MCL 750.72, and burning real property, MCL 750.73. He was sentenced to concurrent prison terms of 7 to 20 years for the arson of a dwelling house conviction, and three to ten years for the burning real property conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the evidence was insufficient to support his conviction for arson of a dwelling house. In reviewing a verdict reached in a bench trial, this Court reviews the trial court's factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

It is a felony to "wilfully or maliciously" burn an occupied or unoccupied dwelling house or the contents thereof. MCL 750.72. The elements of the offense are (1) the defendant burned a structure, (2) the structure was a dwelling house, and (3) when the defendant burned the dwelling house, he (a) intended to burn the house or any of its contents, or (b) intentionally committed an act that created a very high risk of burning the house or its contents and that, while committing the act, the defendant knew of the risk and disregarded it. CJI2d 31.2. Arson does not require a specific intent to cause damage to particular property. *Nowack*, 462 Mich at 409. The requisite mental state is either "1) an intent to burn the dwelling house of another, or 2) doing an act in circumstances where a plain and strong likelihood of such a burning exists." *Id.* at 408-409. Stated differently, "[t]o establish that a defendant acted wilfully or maliciously and

voluntarily, the prosecution must prove one of the following: 1) that the defendant intended to do the physical act constituting the actus reus of arson, i.e., starting a fire or doing an act that results in the starting of a fire (intentional arson); or 2) that the defendant intentionally committed an act that created a very high risk of burning a dwelling house, and that, while committing the act, the defendant knew of the risk and disregarded it (wanton arson)." *Id.* at 409.

The evidence, viewed in a light most favorable to the prosecution, established that defendant intentionally set fire to a vacant house, which resulted in the burning of the dwelling house next door occupied by his friends, Kasandra Strawser and Christopher Hawkins. Although defendant did not intentionally set fire to the dwelling house, that house was no more than five feet away from the vacant house. Setting fire to a structure located in such close proximity to a dwelling house creates a very high risk of burning that dwelling house because fire is not static; it spreads as it consumes fuel, and sparks can be blown to nearby sources of fuel. Further, Strawser testified that she twice expressed concern to defendant that her house could catch on fire if defendant were to set the vacant house on fire. Hawkins similarly testified that he warned defendant against starting a fire at the vacant house because "the house was so close if he set it on fire my house would catch on fire also." From such evidence, a rational trier of fact could find beyond a reasonable doubt that defendant was aware of the risk that the fire could spread to the dwelling house and disregarded that risk.

Defendant's alleged mental illness or mental deficiency is irrelevant. Defendant was not found incompetent to stand trial and he did not assert an insanity defense. See MCL 768.21a(3) ("[t]he defendant has the burden of proving the defense of insanity by a preponderance of the evidence"). Further, "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation." *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001). Diminished capacity short of legal insanity is not a viable defense. *People v Tierney*, 266 Mich App 687, 712-713; 703 NW2d 204 (2005).

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly