[Cite as *State v. Patterson*, 2015-Ohio-5456.]

STATE OF OHIO, NOBLE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO, PLAINTIFF-APPELLEE, V. ALLEN L. PATTERSON, DEFENDANT-APPELLANT.	)))))))))	CASE NO. 15 NO 426 OPINION

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Noble County, Ohio Case No. 214-2066
JUDGMENT:	Affirmed
APPEARANCES: For Plaintiff-Appellee	Kelly Riddle Noble County Prosecuting Attorney 406 North Street Caldwell, Ohio 43724
For Defendant-Appellant	Attorney Peter N. Cultice 58 North Fifth Street Zanesville, Ohio 43701

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: December 18, 2015

[Cite as *State v. Patterson*, 2015-Ohio-5456.]
DONOFRIO, P.J.

{¶1} Defendant-appellant, Allen Patterson, appeals from a Noble County Common Pleas Court judgment convicting him of aggravated arson.

{¶2} On September 1, 2014, appellant had an argument with his girlfriend, Brandi Everly, at Everly's trailer. Everly accused appellant of threatening her with a knife and holding a pillow over her face. Appellant left the trailer and went to a nearby bar. Everly left the trailer with her sister, Misty Siddle, to get some coffee. Shortly thereafter, Everly and Siddle returned to Siddle's trailer, which was located next to Everly's trailer. A few minutes later, appellant began banging on Siddle's door alerting Everly that her trailer was on fire. Everly called 911.

{¶3} A state fire marshal investigated the scene and was unable to determine the cause of the fire. He could not rule out that an electrical fire had occurred but also could not rule out that the fire was set intentionally.

{¶4} A gasoline can was located near the scene. According to Siddle, she had filled up the gas can a few days prior and no one had used it. A deputy at the scene stated that when he found the gas can it was only one-half to three-quarters full. Four of appellant's clothing items were tested by the state fire marshal's lab. His tee-shirt was found to have gasoline on it.

{¶5} A Noble County Grand Jury indicted appellant on one count of felonious assault, a second-degree felony in violation of R.C. 2903.11(A)(2), and one count of aggravated arson, a second-degree felony in violation of R.C. 2909.02(A)(2).

{¶6} The matter proceeded to a jury trial. The jury found appellant not guilty of felonious assault but guilty of aggravated arson.

{¶7} At a subsequent sentencing hearing, the trial court sentenced appellant to two years in prison. Appellant filed a timely notice of appeal on May 1, 2015. He now raises two assignments of error.

{¶8} Appellant's first assignment of error states:

> DEFENDANT-APPELLANT'S STATE AND FEDERAL RIGHTS TO DUE PROCESS WERE VIOLATED BECAUSE HIS CONVICTION WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶9} Appellant argues that his conviction was not supported by legally sufficient evidence. In support, he points to testimony by the fire investigator who testified that he could not determine the cause of the fire. He also points out that no witness testified that they saw him start the fire. And he asserts no physical evidence placed him at the scene.

{¶10} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In essence, sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id*. In reviewing the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Smith*, 80 Ohio St.3d at 113.

{¶11} The jury convicted appellant of aggravated arson in violation of R.C. 2909.02(A)(2), which provides: "No person, by means of fire or explosion, shall knowingly * * * [c]ause physical harm to any occupied structure."

{¶12} The state presented the following evidence regarding the aggravated arson.

{¶13} Everly testified that at the time, she was living in a trailer in Caldwell. (Tr. 99-100). Her sister owned the property on which Everly's trailer was located and she resided in another trailer behind Everly's on the same property. (Tr. 100).

{¶14} Everly stated that in the early evening of September 1, 2014, after appellant drank "a few" beers, they got into an argument. (Tr. 102-103). She stated appellant threw her on the bed, held a knife to her, and put a pillow over her face. (Tr. 103-104). At that time, Siddle and Everly's teenage son came to the trailer. (Tr. 106). She stated that when appellant saw her son coming, he jumped off of her and left. (Tr. 106).

{¶15} Everly then left the trailer with Siddle to get some coffee. (Tr. 106-107). On their way to get coffee, they passed by Ramages Bar and saw appellant sitting inside by the window. (Tr. 109). On their way back home, Everly noticed appellant was no longer at the bar. (Tr. 109). And when they turned into the driveway, Everly and Siddle noticed a brown bag sitting on a car that was not there when they had left. (Tr. 109-110).

{¶16} The two then went into Siddle's trailer. (Tr. 110). Everly testified that they had no sooner put their purses down when appellant appeared at the door saying that Everly's trailer was on fire. (Tr. 110).

{¶17} On cross-examination, Everly testified that in the past she had some electrical problems resulting from a storm. (Tr. 134-135). But she stated she had the problems fixed and there had not been any electrical problems afterwards. (Tr. 137-138).

{¶18} Everly's son testified next. He stated that when he arrived home, he saw appellant holding Everly down. (Tr. 141). He further testified that he told appellant to get out of his house and appellant left. (Tr. 141).

{¶19} Siddle was the next witness. She stated that on the day in question, Everly called her and seemed upset. (Tr. 148). Siddle stated that she went over to Everly's trailer with Everly's son and heard Everly yell that appellant had a knife. (Tr. 149). Siddle testified that appellant then came out of the trailer and walked away. (Tr. 150). Siddle and Everly then went to get coffee. (Tr. 150). On their way to get coffee, they saw appellant sitting inside Ramages Bar. (Tr. 151). When the two returned home, Siddle stated she noticed a brown paper bag sitting on a car. (Tr. 151). She testified that she and Everly went into her trailer and within two to five minutes, appellant was at her door telling them Everly's trailer was on fire. (Tr. 152). Siddle stated that just minutes earlier when they pulled into the driveway there were no lights on in Everly's trailer and there was no fire. (Tr. 152).

{¶20} Siddle also testified that she had filled a gasoline can located on the property just a few days prior. (Tr. 157). She stated that she had not used any of

that gas nor had she seen anyone else use any of the gas since the time she had filled the can. (Tr. 157-158).

{¶21} Noble County Sheriff Sergeant Derek Norman testified that when he responded to the scene of the fire, Everly told him that appellant had assaulted her. (Tr. 171). When Sgt. Norman questioned appellant about Everly's accusations, appellant told him that he had not been at Everly's home but had been at a bar down the road. (Tr. 171). Sgt. Norman also testified that he noticed a brown paper bag under a truck on the property. (Tr. 181). He stated there were beer cans in the bag and the beer was still cold. (Tr. 182).

{¶22} Deputy Andrew Myers also responded to the scene. He stated that when he arrived, Everly told him that she and appellant had been in a dispute earlier that evening. (Tr. 209-210). He also testified that he recovered a gas can from the scene. (Tr. 223). Deputy Norman stated that when he picked up the gas can, it was not completely full. (Tr. 224). He described it as being one-half to three-quarters full. (Tr. 225).

{¶23} Mike Stellfox is an investigator with the Ohio State Fire Marshal's Office who investigated the fire at Everly's trailer. He stated that the fire consumed the entire left-hand corner of the trailer. (Tr. 236). He was able to determine that the fire started in a back bedroom. (Tr. 238). But he was unable to determine the cause of the fire. (Tr. 240). Stellfox stated he could not rule out electrical problems nor could he rule out "the possibility of a human act." (Tr. 240).

{¶24} As part of his investigation, Stellfox talked with appellant. (Tr. 241). He asked appellant if he had anything to do with the fire and appellant said he did not. (Tr. 243). He asked appellant if he could test his clothing for ignitable liquid and appellant agreed. (Tr. 243). Appellant told Stellfox that there was no reason why any ignitable liquid, such as gasoline, would be found on his clothing. (Tr. 243-244). Stellfox specifically asked appellant if he had been around fuel such as whether he had been using the weed-eater, mowing the yard, working on a vehicle, or filling up at a gas station. (Tr. 244). Appellant stated that he had not been doing any of those

things. (Tr. 244).

{¶25} Christa Rajendram is a forensic lab supervisor at the State Fire Marshal Forensic Lab. Rajendram tested four of appellant's clothing items for ignitable liquid. (Tr. 264). She stated the testing revealed that appellant's jeans, athletic shorts, and shoes did not have any ignitable liquid on them. (Tr. 264-265). But appellant's tee-shirt contained gasoline. (Tr. 265).

{¶26} This evidence is sufficient to support appellant's conviction for aggravated arson. The state had to present evidence that (1) appellant (2) by means of fire or explosion (3) knowingly (4) caused physical harm (5) to an occupied structure.

{¶27} The evidence was clear that there was physical harm to an occupied structure caused by a fire. Stellfox testified that a fire consumed an entire portion of the trailer. And even though no one was inside the trailer at the time of the fire, the trailer was "occupied" within the meaning of the statute. An "occupied structure" includes any trailer that is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present. R.C. 2909.01(C). Everly testified that the trailer was her home at the time of the fire.

{¶28} There was no direct evidence that appellant started the fire, such as a witness who saw him do it. But proof of arson often relies heavily on circumstantial evidence because of the nature of the crime. *State v. Hoak*, 9th Dist. No. 94CA005917, 1995 WL 471383 (Aug. 9, 1995), quoting *State v. Shaver*, 9th Dist. No. 89CA0004505, 1989 WL 154782 (Dec. 20, 1989). Consequently, motive and opportunity can weigh heavily in establishing arson. *Id*.

{¶29} The state presented evidence that on the day of the fire, appellant and Everly were involved in an argument that turned physical where appellant held a pillow over Everly's face. Appellant then left Everly's trailer and went to a local bar. Later that evening, Everly and Siddle returned to the trailer property and saw that Everly's trailer was dark and was not on fire. They also noticed a brown paper bag,

which was not there earlier, sitting on a vehicle parked at the property. The two women then went into Siddle's trailer next door. Within five minutes of the two women entering Siddle's trailer, appellant appeared at the door telling them that Everly's trailer was on fire. Investigators reported that there was beer in the bag that was still cold. Investigators also found a gasoline can on the scene that was one-half to three-quarters full. According to Siddle's testimony, the gasoline can should have been full. Appellant's tee-shirt was found to have gasoline on it.

{¶30} The evidence here is circumstantial that appellant knowingly set the fire at Everly's trailer. But circumstantial evidence is sufficient evidence on which to base a conviction. *State v. Trimacco*, 7th Dist. No. 12CO7, 2013-Ohio-1114, ¶37. A jury may convict a defendant based solely on circumstantial evidence. *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1988). Thus, there was sufficient evidence in this case to convict appellant of arson.

{¶31} Accordingly, appellant's first assignment of error is without merit.

{¶32} Appellant's second assignment of error states:

> DEFENDANT-APPELLANT'S CONVICTION WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶33} Appellant contends here that his conviction was against the manifest weight of the evidence. But he does not raise any arguments or point to any evidence other than the arguments he raised and evidence he pointed to in his first assignment of error.

{¶34} In determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences and determine whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387. "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather

than the other.'" *Id*. (Emphasis sic.) In making its determination, a reviewing court is not required to view the evidence in a light most favorable to the prosecution but may consider and weigh all of the evidence produced at trial. *Id*. at 390.

{¶35} Yet granting a new trial is only appropriate in extraordinary cases where the evidence weighs heavily against the conviction. *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). This is because determinations of witness credibility, conflicting testimony, and evidence weight are primarily for the trier of the facts who sits in the best position to judge the weight of the evidence and the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *State v. Rouse*, 7th Dist. No. 04-BE-53, 2005-Ohio-6328, ¶49, citing *State v. Hill*, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Thus, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. No. 99-CA-149, 2002-Ohio-1152.

{¶36} In determining whether the jury's verdict was against the manifest weight of the evidence, we must again consider the testimony set forth in appellant's first assignment of error and this time weigh the evidence.

{¶37} As addressed above, the question in this case was whether appellant knowingly set fire to Everly's trailer. And while the evidence establishing appellant's guilt was circumstantial, we cannot conclude that the jury lost its way in reaching their verdict.

{¶38} The evidence established that early in the evening appellant and Everly were involved in an argument that turned physical. Appellant then left Everly's trailer and went to a nearby bar. Everly left her trailer with Siddle to get coffee. When Everly and Siddle returned to the property on which both of their trailers were located, they noticed that Everly's trailer was dark and not on fire. They went into Siddle's trailer and within five minutes appellant was knocking on the door stating that Everly's trailer was on fire. Thus, the fire must have just started.

{¶39} Investigator Stellfox was unable to determine the cause of the fire. He specifically could not rule out the possibilities that it was an electrical fire or that a "human act" caused it.

{¶40} Appellant denied setting the fire to investigator Stellfox. Yet gasoline was found on his tee-shirt. And he told the investigator there was no reason for gasoline to be on his clothing.

{¶41} Finally, there was a gasoline can located on the property that Siddle testified she had recently filled and had not yet used. Yet investigators found the can to be only one-half to three-quarters full.

{¶42} Given the above evidence, we cannot conclude that the jury lost its way in finding appellant guilty of aggravated arson. There was an abundance of circumstantial evidence leading to the conclusion that appellant set the fire at Everly's trailer. Accordingly, appellant's second assignment of error is without merit.

{¶43} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

Robb, J., concurs.