Affirmed and Memorandum Opinion filed May 20, 2010

In The

Fourteenth Court of Appeals

NO. 14-09-00329-CR

ALAN TERENCE SCRUGGS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 18th District Court
Johnson County, Texas
Trial Court Cause No. F37681

M E M O R A N D U M   O P I N I O N

A jury found appellant, Alan Terence Scruggs, guilty of arson. *See* Tex. Penal Code Ann. § 28.02 (Vernon Supp. 2009). The jury assessed punishment at 13 years' confinement in the Institutional Division of the Texas Department of Criminal Justice. In a single issue, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. We affirm.

Factual and Procedural Background

In 2003, Penny Thompson rented a farmhouse near Grandview, Texas where she

met appellant who was working as a handyman on the house. Thompson's relationship with appellant soured and she made plans to move out of the house.

On the day of the fire, Thompson, along with several friends and relatives, began moving Thompson's possessions out of the house. Appellant arrived at the house and told Thompson to remove all of her belongings because he was "going to torch the place." According to several witnesses, when Thompson began packing her things, appellant became agitated and began hitting his head against the walls of the house. Two of Thompson's sons attempted to calm appellant by escorting him outside. Appellant, however, failed to calm down and returned to the house. He walked into the kitchen, grabbed a piece of paper, walked into the dining room, lit the paper, and threw it onto a folded roll-a-way mattress positioned next to an interior wall. As he threw the paper onto the mattress, appellant said, "See, Penny, I told you I'd do it."

When the mattress caught fire, appellant walked into a nearby bathroom and picked up a plastic bucket used to catch water draining from the sink. Appellant returned to the dining room, said, "Here, I'll help," and threw the contents of the bucket onto the mattress. When the liquid reached the fire, the flames immediately engulfed the mattress and spread to the nearby wall. Thompson's sons attempted to roll the mattress out of the house, but were unable to move it past the living room. Thompson remembered that a propane tank was being stored in the living room and warned everyone to evacuate the house. After everyone was safely outside, an explosion occurred and the house was engulfed in flames. Appellant turned to Thompson as they watched the house burn and said, "You're next."

Appellant was subsequently arrested and convicted of arson.

Legal and Factual Sufficiency of the Evidence

In a single issue, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. When reviewing legal sufficiency, we view all the evidence in the light most favorable to the verdict and then determine whether a rational jury could have found the essential elements of the crime beyond a reasonable doubt.

Hooper v. State, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). The jury, as the trier-of-fact, is the sole judge of the credibility of witnesses. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). The jury chooses whether to believe all or part of a witness's testimony. *See id.* We do not engage in a second evaluation of the weight and credibility of the evidence, but only ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993).

In a factual sufficiency review, we consider all the evidence in a neutral light. *Prible v. State*, 175 S.W.3d 724, 730–31 (Tex. Crim. App. 2005). The evidence may be factually insufficient in two ways. *Id.* at 731. First, when considered by itself, the evidence supporting the verdict may be so weak that the verdict is clearly wrong and manifestly unjust. *Id.* Second, where the evidence both supports and contradicts the verdict, the contrary evidence may be strong enough that the beyond-a-reasonable-doubt standard could not have been met. *Id.* In conducting a factual sufficiency review, we must employ appropriate deference so we do not substitute our judgment for that of the fact finder. *Jones v. State*, 944 S.W.2d 642, 648 (Tex. Crim. App. 1996). Our analysis must consider the evidence appellant claims is most important in allegedly undermining the jury's verdict. *Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

Appellant argues that the evidence is legally and factually insufficient to support his conviction because the evidence only proves that appellant caused a fire to the mattress, but that he did not intend to destroy the house.

A person commits arson if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage any building, habitation, or vehicle. Tex. Penal Code Ann. art. 28.02(a)(2) (Vernon Supp. 2009). A person commits arson with specific intent to damage or destroy a building, habitation, or vehicle if it is the person's conscious objective or desire to engage in the conduct or cause the result. *Beltran v. State*, 593 S.W.2d 688, 689 (Tex. Crim. App. 1980); *Prejean v. State*, 704 S.W.2d 119, 121 (Tex. App.—Houston [1st Dist.] 1986, no pet.). While intent may not be inferred from the mere act of burning, it may be inferred

from the defendant's acts, words, and conduct. *Beltran*, 593 S.W.2d at 689.

In this case, the jury may have inferred that appellant intended to damage or destroy the house based on the following evidence:

- Appellant was agitated and told Thompson to remove all her possessions because he was "going to torch the place."
- After lighting the mattress on fire, appellant said, "See, Penny, I told you I'd do it."
- Appellant threatened Thompson after the house was engulfed in flames.
- Appellant made no attempt to stop the fire other than pouring the unknown liquid, which accelerated the fire.

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier-of-fact could have found beyond a reasonable doubt that appellant had the specific intent to damage or destroy the house when he started the fire.

In arguing that the evidence is factually insufficient, appellant argues that when he poured the unknown liquid he was attempting to douse the fire. He further contends that he helped Thompson's sons attempt to remove the burning mattress from the house. With regard to the unknown liquid, each of the witnesses at trial testified that the water pressure in the house was so low there would have been no time to fill a bucket with water. They also testified that the bucket appellant took from the bathroom was used to collect waste from the bathroom sink. The waste included water and any other chemical used in the sink. Further, each of the witnesses testified that appellant did not aid Thompson's sons in their attempt to remove the mattress from the house.

Viewing the evidence in a neutral light, we conclude that the evidence is not so weak that the jury's verdict is clearly wrong and manifestly unjust or that the verdict is against the great weight and preponderance of the evidence. *See Watson v. State*, 204 S.W.3d 404, 414–15 (Tex. Crim. App. 2006). Appellant's issue is overruled.

The judgment of the trial court is affirmed.

/s/ John S. Anderson
Justice

Panel consists of Justices Anderson, Frost, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.2(b).