STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JILES A. BERRY,

Defendant-Appellant.

UNPUBLISHED
August 6, 1996

No. 174275
LC No. 93-7937-FH

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, and arson of a dwelling house, MCL 750.72; MSA 28.266. He was subsequently sentenced to three to fifteen years' imprisonment for the breaking and entering conviction and three to twenty years' imprisonment for the arson conviction. Defendant appeals as of right. We affirm.

This case arises from a breaking and entering and a fire at a rental property in Saginaw on January 22, 1993. Tenant Mena Goss was in the process of moving into the home at the time. Goss testified that as she and her friends were carrying in her possessions, she noticed that the occupants of a house across the street were watching. That house was occupied by several individuals, including defendant, Patrick Calbert, Patrick's 13-year-old brother Orlander, and Michael Nash. Goss eventually went to buy groceries, and when she returned, she found firefighters at the house putting out a fire. A window had been broken, and Goss's microwave, VCR, television, radio, and a chest were missing, as were her camera, dishes, pots and pans, and a blanket belonging to her son. A fire inspector testified that the fire was intentionally set with multiple points of origin.

Orlander Calbert testified that on the afternoon of January 22, 1993, he heard defendant and Nash talk about breaking into the house Goss was moving into. Later, he saw Nash kicking out a window at the back of the house, with defendant standing at the side. About fifteen to twenty minutes

* Circuit judge, sitting on the Court of Appeals by assignment.

later, he saw smoke coming from the house. After the fire had been extinguished, Orlander saw Nash and defendant bringing several items into their house. A couple of days later, he overheard Nash say that he "had to burn the house because [defendant] was touching too much stuff." In a subsequent search, police found Goss's camera and her son's blanket in defendant's room, and packaging materials for pots and pans were discovered in the trash.

On appeal, defendant first contends that there was insufficient evidence to support his breaking and entering conviction. We disagree. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence, and reasonable inferences arising from it, can constitute satisfactory proof of the elements of a crime. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991).

Here, there was evidence that defendant was overheard planning the break-in with Nash on the day the burglary occurred. There was also evidence that Nash broke a window in Goss's house while defendant stood nearby. Similarly, there was evidence that defendant was in possession of items stolen from the home within a short time after the break-in occurred. Compare, *People v Edgar*, 75 Mich App 467; 255 NW2d 648 (1977); *People v Hutton*, 50 Mich App 351; 213 NW2d 320 (1973). Finally, Nash's statement overheard by Orlander Calbert, that the fire was set because defendant had touched too many items in Goss's house, placed defendant in the house at the time of the burglary. Contrary to what defendant argues, this statement was not a confession and its admission therefore did not violate the corpus delicti rule. See *People v McMahan*, 451 Mich 543, 548-549; ___ NW2d ___ (1996). Viewed in a light most favorable to the prosecution, this was sufficient to sustain defendant's conviction.

Defendant next contends that there was insufficient evidence to support his arson conviction. Again, we disagree. There was substantial evidence that defendant participated in the burglary. As noted by the prosecution, the conclusion that he was also involved in the arson is reasonable in that the fire was obviously set in connection with the break-in. Coupled with Michael Nash's statement that the fire was set to cover defendant's fingerprints, and viewed in a light most favorable to the prosecution, this evidence was sufficient to support defendant's arson conviction.

Defendant also claims that the trial court erred in failing to instruct the jury sua sponte on the theory of alibi. The claim is without merit. Failure to give an unrequested alibi instruction is not error requiring reversal where, as in this case, the court gives a proper instruction on the elements of the offenses charged and on the requirement that the prosecution prove each element of the offense beyond a reasonable doubt. See *People v Burden*, 395 Mich 462; 236 NW2d 505 (1975). Finally, counsel was not ineffective for failing to request an alibi instruction. A defendant's general denial of the charges against him does not constitute an alibi defense. *People v Watkins*, 54 Mich App 576, 580; 221 NW2d 437 (1974). Because defendant was not entitled to an alibi instruction, he has failed to show that counsel's performance was below an objective standard of reasonableness under prevailing

professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo