STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LUCIER III,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 183768
LC No. 94-003015-FH

Before: Taylor, P.J., and Markman and P. J. Clulo,* JJ.

PER CURIAM.

Defendant was convicted by jury of burning a dwelling house, MCL 750.72; MSA 28.267, and pleaded guilty of being a second-offense habitual offender, MCL 769.10; MSA 28.1082. He was sentenced to five to twenty-five years in prison. He appeals as of right. We affirm.

Shortly after defendant and his family left home for the day, defendant's home caught fire, burning with unnatural heat and speed. Firefighting officials determined that accelerants were involved in the blaze, and during a subsequent police interview defendant confessed to placing a lit candle on a ceiling joist in the attic of his house just before the fire started.

Defendant first claims that the trial court erred in denying his motion for a directed verdict of acquittal, maintaining that there was insufficient evidence of his identity as the criminal agent causing this fire or of any willfulness underlying this blaze citing *People v Lindsey*, 83 Mich App 354, 355; 268 NW2d 41 (1978). We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

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

There was evidence at trial that defendant told two police officers that he lit a candle in the attic of his house and placed it up on a ceiling joist before leaving his house for the day, knowing that in doing this he created a good chance that he would burn his house. Further, all of defendant's pets were moved to defendant's unattached garage building on the morning of the fire. Despite the fact that trial evidence established that the fire did not start in the attic, viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could determine that defendant's identity as the arsonist was proven beyond a reasonable doubt. *People v Horowitz*, 37 Mich App 151; 194 NW2d 375 (1972); *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

There was also evidence at trial that the fire was caused by pools of spilled accelerants in three different locations at the house, as evidenced by the fire's unnatural speed, three spilled accelerant burn patterns, petroleum distillate residue found on one material sample taken from a burn pattern, and the lack of any other explanation for the fire's origin. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could determine that the element of willfulness underlying this fire was proven beyond a reasonable doubt. *McKenzie, supra* at 428.

Defendant next claims that the trial court erred in ruling that his statements to interrogating officers, made while he was attempting to leave his interrogation, were voluntary and that defendant was not in custody at the time that he made them. We disagree.

There was evidence at defendant's *Walker*[1] hearing that defendant voluntarily went to the police station for a polygraph examination and was told that he could leave the interview at any time. Upon being told that he had failed, defendant became extremely upset and left the interview, walking out to his vehicle with two police officers following him and asking him questions. One officer stood in the way of defendant's van door, preventing him from closing it and leaving. As defendant sat in his van, speaking in a depressed and discouraged fashion about, among other things, driving his vehicle into an immovable object, he allegedly confessed to leaving a candle burning in the attic of his house.

With regard to defendant's argument that he was in custody at the time he made this statement, and that he was therefore entitled to *Miranda*[2] warnings, we find no custodial environment. To the extent the officers limited defendant's movement, it was due to their concern that he might be unable to drive given his strange behavior and suicidal statements. In *People v Jelneck*, 148 Mich App 456; 384 NW2d 801 (1986), this Court found no custodial environment where officers detained the defendant out of concern for his ability to drive due to his intoxication. Here, the detention was less than in *Jelneck*, as defendant was not threatened with arrest, and was more free to leave than a person stopped by a police officer during a routine traffic stop. Moreover, there was less of a showing that the officers intended to limit defendant's freedom of movement, because defendant had allegedly been told that he could leave his interview at any time. *People v Hayden*, 205 Mich App 412, 416; 522 NW2d 336 (1994); *People v Mayes (After Remand)*, 202 Mich App 181, 190; 508 NW2d 161 (1993); *Jelneck, supra* at 460.

Defendant further argues that his statement was involuntary because the questioning officers obtained it by badgering him while he sat in his car in a weak emotional state. *People v Spinks*, 184

Mich App 559, 563-564; 458 NW2d 899 (1990). We give deference to the trial court's findings that there was no evidence that the officers badgered or aggressively questioned defendant, although they did continue to question him in his van. *People v Crawford*, 89 Mich App 30, 34; 279 NW2d 560 (1979). Further, regarding whether the confession was involuntary because of his emotional and mental impairment, we look to this Court's handling of the analogous situation when precipitated by intoxication. In *Crawford, supra* at 33-34, this Court held that in order for a defendant's intoxication to make his confession involuntary, it must be a "substantial impairment of the will and mind," expressed as "actual mania" or rendering the defendant "unconscious of what he is saying." As there was testimony that defendant was only weeping slightly while talking to the officers, and that the officers believed that defendant spoke to them of his own free will, we conclude that the trial court was correct in concluding that defendant's mental disturbance did not rise to the level of substantial impairment of the will and mind.

Finally, defendant argues that the trial court imposed a disproportionate sentence relying on the fact that it was outside the sentencing guidelines recommendation. However, the sentencing guidelines are not to be utilized in reviewing habitual-offender sentences. *People v Gatewood (On Remand)*, 216 Mich App 559; 550 NW2d 265 (1996). Moreover, given that this was defendant's second arson conviction and that defendant had exhibited other dangerous behavior in the past, there was a sound basis for the sentence and it therefore did not constitute an abuse of discretion, *People v Cervantes*, 448 Mich 620, 626-627; 532 NW2d 831 (1995), and reflected the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Affirmed.

/s/ Clifford W. Taylor
/s/ Stephen J. Markman
/s/ Paul J. Clulo

[1] *People v Walker, (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

[2] *Miranda v Arizona*, 484 US 736; 86 S Ct 1602; 16 L Ed 2d 694 (1966).