

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROCKYBA FERGUSON,

Defendant-Appellant.

UNPUBLISHED
February 19, 2002

No. 228529
Wayne Circuit Court
LC No. 99-002311

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of attempted arson, MCL 750.72, and was sentenced to five years' probation. He now appeals as of right and we affirm.

Defendant first argues that the prosecution committed error requiring reversal by allowing an expert to invade the province of the jury by testifying that defendant was guilty. No objection was made in the trial court, so this issue has not been preserved on appeal; however, because defendant is alleging a violation of his constitutional rights, this issue, although unpreserved, is reviewed for plain error. *People v Carines*, 460 Mich 750, 763-766; 597 NW2d 130 (1999). This Court reviews constitutional issues de novo. *People v Echavarria*, 233 Mich App 356, 358; 592 NW2d 737 (1999).

A criminal defendant has a right, under our federal and state constitutions, to be tried by a fair and impartial jury. US Const, Am VI; Const 1963, art 1, § 20; *People v Daoust*, 228 Mich App 1, 7; 577 NW2d 179 (1998). Defendant argues that the testimony was improper because an expert may not testify regarding the crucial issue whether an accused committed the crime. Defendant also argues that because the expert was a fireman, arson investigator, and police officer, he should be held to a higher standard of avoiding prejudicial remarks.

Defendant has failed to demonstrate any error in the expert's testimony. The prosecution's expert witness merely testified that defendant was a suspect in the case. Moreover, this testimony was not part of his "expert" testimony. Rather the disputed testimony was made while the witness explained why he arrested defendant – because he was a suspect. Defendant cannot complain that the jury was advised that defendant was considered a suspect in a case in which he was charged and for which he was on trial. The expert did not testify that defendant

was guilty. He also did not testify that, in his opinion, the material witness' testimony was credible. Further, the jury was instructed more than once that the mere fact that defendant was charged with a crime was not evidence against him. Finally, the prosecutor still had the burden to demonstrate that defendant was guilty, and the trial court instructed the jury on the elements of the crime that had to be proven.

Defendant next argues that there was insufficient evidence to sustain his attempted arson conviction. A criminal defendant need not take any special steps to preserve an issue regarding a challenge to the sufficiency of the evidence. *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999).

To determine whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution to 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 Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Because the standard of review is deferential, a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *Id.* The scope of review is the same whether the evidence is direct or circumstantial. *Id.*

Due process requires that the prosecution introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). An arson conviction under MCL 750.72 requires proof of the malicious and voluntary or willful burning of a dwelling house of another. A conviction for attempted arson requires proof that the defendant intended to commit the crime of arson and that the defendant took some action toward committing the crime but failed to complete it.

In arson cases, the trier of fact typically draws inferences from circumstantial evidence. *Nowack, supra* at 402-403. Circumstantial evidence and the reasonable inferences arising from it may constitute satisfactory proof of the elements of the crime. *Carines, supra* at 757.

Defendant contends that there was insufficient evidence to prove that *he* maliciously and voluntarily or wilfully caused the burning. However, the evidence supports a reasonable inference that defendant intentionally set the fire. The victim testified that on the night of the fire, he saw defendant with the person who was later convicted of burglarizing the victim's home that night. The victim also saw defendant in front of the field next to his house when he came running out of his burning house. The material witness testified that defendant was one of three people she overheard talking about setting a house on fire. She also stated that after she smelled smoke, she looked out on her back porch and saw defendant running from the side of the burning house into the back alley.

This Court should not interfere with the jury's role in determining the weight of evidence or the credibility of witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). A reviewing court must consider the evidentiary facts in conjunction with one another and in a light most favorable to the prosecution. *Nowack, supra* at 404. While no witness testified to

seeing defendant start the fire, the evidence supports a reasonable inference that he was guilty of attempted arson of a dwelling house.

Affirmed.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Henry William Saad