STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 15, 2011
V	No. 299302 Berrien Circuit Court
JASON ALAN ARNDT, Defendant-Appellant.	LC No. 2009-001443-FH

Before: SAWYER, P.J., and JANSEN and DONOFRIO,J.J.

PER CURIAM.

Defendant appeals as of right his conviction, following a bench trial, of arson – burning of insured property, MCL 750.75. The trial court sentenced defendant to one day in jail, 60 months of probation, fines, costs, and restitution. Because sufficient evidence supports defendant's conviction, we affirm.

Defendant argues that there was insufficient evidence to support his conviction. "This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial." *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). In performing this review, this Court reviews the evidence "in a light most favorable to the prosecution" in determining if "the essential elements of the crime were proven beyond a reasonable doubt." *Id*. at 474. "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

This case stems from an intentional tow truck fire for which defendant was convicted of violating MCL 750.75. MCL 750.75 provides that:

> Any person who shall wilfully burn any building or personal property which shall be at the time insured against loss or damage by fire with intent to injure and defraud the insurer, whether such person be the owner of the property or not, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.

This Court in *People v Ayers*, 213 Mich App 708, 721; 540 NW2d 791 (1995), and CJ2d 31.5, both suggest that several elements are required to establish the crime of arson – burning of

insured property: (1) a burning of a building or personal property took place; (2) the property was insured at the time of the loss or damage caused by the fire; (3) knowledge by the defendant that the property was insured; (4) the defendant intended to set the fire; and (5) the defendant intended to defraud the insurer. Additionally, identity is always an essential element in a criminal case. See also *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976).

Defendant owned a company that provided towing services. Sometime before the night of the fire, William Inman, a former employee of defendant discovered that one of the tow truck's engines was "going bad." When Inman informed defendant that the tow truck was having engine problems, defendant suggested that they burn the truck to collect the insurance proceeds. Defendant and Inman discussed various methods for burning the truck and experimented by burning flares in a garage at night. Later, defendant threatened to terminate Inman's employment if he did not cooperate with defendant's plan to burn the tow truck.

On the night of April 11, 2006, defendant called Inman and told him to drive out and "burn the truck." Defendant and Inman planned to meet in the "middle of nowhere." When Inman arrived in the tow truck at the specified location, defendant was already there. Defendant approached the truck and placed approximately ten flares underneath the passenger side of the vehicle, just below where defendant had recently placed a new booster pack.[1] Defendant then placed a lit flare under the seat. Defendant told Inman to leave the windows open to provide more oxygen for the fire. Defendant instructed Inman to wait before calling 911 so that defendant could "[b]e long gone" before authorities arrived. After defendant left the scene, Inman waited approximately three to five minutes and then called 911.

Defendant's vehicle was insured by Progressive Insurance Company. Scott Brooks, a fire and theft investigator for Progressive Insurance, was assigned defendant's insurance claim on April 12, 2006. Brooks took statements from both defendant and Inman over the telephone. Both defendant and Inman told Brooks that the fire was believed to have been caused by a faulty booster pack. Subsequently, Progressive paid the claim. In total, $16,374 was paid out on the claim.

Donna Weberg, another of defendant's former employees, testified that sometime between March 2008 and July 2008 defendant and Inman approached her about the tow truck fire. Defendant told Weberg that he had set the fire using a street flare and put the lit flare underneath the seat "to make it look like an electrical fire." Defendant admitted to Weberg that he started the fire to collect the insurance proceeds.

The evidence presented supports the conclusion, beyond a reasonable doubt, that defendant burned his tow truck for the insurance proceeds after he discovered that it had engine problems. Viewed in a light most favorable to the prosecution, the evidence shows that defendant suggested burning the truck for insurance proceeds, took steps to plan a fire, and then executed those steps. He also attempted to make the fire look like an accident by purchasing a booster pack on the day of the fire, placing the flares under the booster pack, and then blaming

[1] A booster pack is a small battery used to jump start a vehicle.

the booster pack for the fire. An eyewitness, Inman, saw defendant light the fire. Defendant later confessed to Weberg that he started the fire to collect insurance proceeds. It is undisputed that defendant did in fact benefit from receipt of those proceeds. While a fire investigation expert who testified at trial could not conclude what caused the fire, he did conclude that the fire started near the passenger side door and that it was unlikely that the booster pack caused the fire. This conclusion is consistent with the prosecutor's theory of the case, and we must point out that the weight given to an expert's testimony is a decision for the trier of fact that this Court will not disturb on appeal. *People v Horowitz*, 37 Mich App 151, 158; 194 NW2d 375 (1971). A reasonable trier of fact could and did find beyond a reasonable doubt that defendant set the fire for the express purpose of collecting the insurance proceeds and that defendant was guilty of the crime charged.

Defendant also asserts that the witnesses who testified against him all had motive to do so and, therefore, should not be believed. Defendant further contends that his own testimony and that of his wife, who testified that defendant was home on the night of the fire, should be believed. This Court will not interfere with the trier of fact's role in assessing witness credibility. *Kanaan*, 278 Mich App at 619. Further, in reviewing sufficiency of the evidence claims, "[a]ll conflicts in the evidence must be resolved in favor of the prosecution." *Id*. Therefore, defendant's argument fails.

Defendant also maintains that there is a reasonable doubt about whether he intentionally set the fire since there was no physical evidence of causation. Defendant presents no law that precludes a conviction in the absence of physical evidence of causation for arson. A party may not merely announce a position and leave it to this Court to rationalize that position. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Defendant has not shown error.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio