

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
December 12, 2013

v

ROSA SHARIE WATSON,  
Defendant-Appellant.

No. 307741  
Wayne Circuit Court  
LC No. 11-006082-FH

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Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent.

The majority reverses defendant's jury trial convictions on the ground that defendant was denied effective assistance of counsel when his attorney failed to challenge the admission of prior bad acts evidence and failed to call an arson expert to rebut the testimony of plaintiff's expert. Unlike the majority, I conclude that even if trial counsel made errors, those errors do not require reversal of defendant's convictions. I would uphold the jury's verdict and affirm the convictions.

Assuming *arguendo* that trial counsel's performance fell below objective standards of reasonableness regarding prior bad acts evidence<sup>1</sup> and the failure to call an arson expert, to obtain a reversal defendant must still establish that trial counsel's performance was so prejudicial that it deprived defendant of a fair trial. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

In this case, there was sufficient evidence to support defendant's convictions, independent of Pelot's [plaintiff's expert witness] testimony and all of the prior bad acts evidence. At the time of defendant's conviction, MCL 750.72, arson of a dwelling, provided:

Any person who wilfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or

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<sup>1</sup> In my opinion, the trial court properly allowed the prior bad acts information into evidence.

another, or any building within the cartilage of such dwelling house, or the contents thereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years.

And, MCL 750.75, arson of insured property, provided:

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.

It is undisputed that defendant's insured dwelling house was damaged by fire on December 8, 2010. Further, defendant's version of events acknowledges that she started the fire, albeit by accident. Thus, as to arson of a dwelling, the only element that need be proved was that defendant intentionally started the fire. There was no direct evidence linking defendant to the burning. However, "[c]ircumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of a crime." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

There was sufficient independent evidence to allow a reasonable jury to infer that defendant possessed the required intent. Defendant's version of the timeline on the day of the fire was contradicted by her neighbors, Henry and Douglas and Christina Collins, each of whom testified that defendant left her home only minutes, not hours, before the smoke was seen. Moreover, there was no evidence that defendant ever visited the auto repair shop on the day of the fire, as she claimed. Redford Police Detective Sergeant Kevin Crittenden also testified that defendant made several phone calls to her mortgage company on the morning of the fire. Further, the Collins' testified that defendant had been behind on her mortgage payments and had recently had her water service shut off. While Fire Inspector Dave Garland could not conclude that the fire was arson, he acknowledged that he did not perform a full investigation. There was also testimony that defendant's home was devoid of personal pictures and large electronics. Accordingly, the jury could have reasonably inferred that defendant intentionally started the fire, even without any of the challenged evidence. *Akins*, 259 Mich App 545, 554.

As to arson of insured property, the only additional element is that defendant started the fire for the purposes of defrauding her insurer. The aforementioned testimony regarding defendant's financial distress, combined with the Collins' testimony that defendant immediately called her insurer after the fire and claimed that she was to receive tens of thousands of dollars, supports a reasonable inference that defendant intentionally started the fire with the intent to defraud her insurer. *Id.*

Because the jury could reasonably infer that defendant intended to burn her home and intended to defraud her insurer, it is my opinion that defendant's convictions were supported by sufficient independent evidence.

I would affirm the convictions.

/s/ Peter D. O'Connell