

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER K. BAGNICK,

Defendant-Appellant.

UNPUBLISHED

October 4, 1996

No. 185784

LC No. 94-007744

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of burning insured property, MCL 750.75; MSA 28.270. The trial court denied defendant's motion for a directed verdict and his motion for a new trial. Defendant was sentenced to three years' probation, the last ninety days of which are to be spent in the William Dickerson Facility, for his burning insured property conviction. We affirm.

First, defendant argues that, although the evidence was sufficient to show that the fire at defendant's bar and restaurant was intentionally set, there was insufficient evidence to establish that defendant caused the fire to be set, or that it was set with intent to defraud the insurer. We disagree. The essential elements of the offense of burning real property are: 1) that the defendant burned a building, or the contents thereof; 2) that the building was not a dwelling; and, 3) that the defendant burned the building, or its contents, with the intent to set a fire and knowing that it would cause injury or damage. MCL 750.73; MSA 28.268; CJI2d 31.3. The offense of burning insured property requires: 1) the burning, 2) of real or personal property, 3) which is insured against loss or damage caused by fire, and 4) that the perpetrator acted with an intent to defraud the insurer. MCL 750.75; MSA 28.270; *People v Ayers*, 213 Mich App 708, 721; 540 NW2d 791 (1995). Due to the surreptitious nature of arson, eyewitnesses are rarely available; therefore, proofs will normally be circumstantial. *People v Horowitz*, 37 Mich App 151, 154; 194 NW2d 375 (1971). Contrary to defendant's assertions, circumstantial evidence, and reasonable inferences drawn from it, may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

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

Considering all of the evidence presented by the prosecution up to the time of the motion and viewing it in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of burning insured property were proven beyond a reasonable doubt. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1991). Although, moments after the fire, defendant did not have either the appearance, odor or demeanor of someone who had just started a fire with a large amount of gasoline, there was enough circumstantial evidence to conclude that defendant was guilty of setting fire to his bar and restaurant, which was known as Frankie's Place. For example: five days prior to the fire, defendant received notice that the insurance policy that covered Frankie's Place was due to expire less than a month after the fire and was not going to be renewed; a total loss of the building would have resulted in an insurance payout in excess of \$200,000; defendant's operating expenses were more than his profits from Frankie's Place; defendant had been offered a buy-out, which did not include the bar, by his employer at his full-time job; defendant and his sister were the only ones who had keys to the upstairs; and, at the time of the fire, defendant was just minutes from Frankie's Place. Thus, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant also asserts that his conviction was against the great weight of the evidence, and that the trial court abused its discretion in not setting aside the verdict and in denying defendant's motion for a new trial. We disagree.

Reviewing the record as a whole, we conclude that the verdict was not against the great weight of the evidence. The trial court's denial of defendant's motion for a new trial was not "manifestly against the clear weight of the evidence." Therefore, the trial court did not abuse its discretion. *People v Simon*, 174 Mich App 649, 653; 436 NW2d 695 (1989).

Affirmed.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello