

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KURT EDWARD JOHN,

Defendant-Appellant.

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UNPUBLISHED

November 12, 2002

No. 233194

Montcalm Circuit Court

LC Nos. 00-000100-FH;

00-000194-FH

Before: Murphy, P.J., and Sawyer and R. J. Danhof\*, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a jury trial, of arson of real property (other than a dwelling house), MCL 750.73, and burning insured property, MCL 750.75. Defendant was sentenced to ninety days in jail and five years' probation, along with being ordered to pay restitution and other costs. We affirm.

This case arises out of a fire at defendant's business located in the front section of a pole barn. Defendant's sole argument on appeal is that there was insufficient evidence for the case to go to the jury. We disagree. "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the prosecutor, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

With regard to arson of real property, the prosecutor must prove beyond a reasonable doubt (1) that the defendant burned a building or any of its contents, (2) that the building was not a dwelling house, (3) that the defendant burned the building, or its contents, with the intent to set a fire, knowing that it would cause injury or damage to another person or to property, and (4) that the defendant did it without just cause or excuse. MCL 750.73; CJI2d 31.3. The elements of the crime of burning insured property are (1) the burning of any building or personal property, (2) that was insured against loss or damage caused by fire, (3) with the defendant having knowledge that the property was insured, (4) where the defendant intended to set the fire without just cause or excuse, knowing that this would cause damage to property, and (5) where the

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

defendant acted with an intent to defraud or cheat the insurer. MCL 750.75; *People v Ayers*, 213 Mich App 708, 721; 540 NW2d 791 (1995); CJI2d 31.5.

Both circumstantial evidence and reasonable inferences drawn from the evidence can provide sufficient evidence to prove the elements of an offense. *People v Whitehead*, 238 Mich App 1, 14; 604 NW2d 737 (1999). In arson cases in particular, circumstantial evidence is often relied upon because there rarely is evidence that the arsonist was observed lighting the fire. *Nowack, supra* at 402-403.

Defendant's argument focuses on whether there was sufficient evidence that someone set the fire intentionally and whether defendant was the person who set the fire. We find that there was sufficient evidence to submit the case to the jury.

Neighbors, firefighters, and police officers that were on the scene initially observed the fire coming from the front section of the building housing defendant's business. More than one of the officers on the scene smelled a strong petroleum odor after digging through the debris at the location of defendant's business. Additionally, the prosecutor presented expert testimony indicating the presence of a flammable liquid. There was testimony opining, based on burn marks and patterns, that the fire started in defendant's business and was intense. There was also expert opinion testimony ruling out natural and accidental causes of the fire. The jury could infer that an accelerant was used to start the fire, thereby supporting a finding that the fire was intentionally set.

There was also sufficient evidence suggesting that defendant started the fire. The prosecutor offered evidence that defendant had a motive for committing this crime because of his desperate financial position at the time of the fire. Further, defendant admitted in a statement that he left his business approximately minutes before the fire department was alerted to the fire. This could lead a reasonable person to question whether defendant was being truthful when he said that he did not see or smell smoke especially when the fire was quite large when the officers and firefighters arrived on the scene. Moreover, all but one expert concluded that because defendant was the last person in the building before the fire, he had the only opportunity to start the fire.

Viewing the evidence in a light most favorable to the prosecutor, there was sufficient evidence to warrant a reasonable juror finding defendant's guilt beyond a reasonable doubt on both charges.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Robert J. Danhof