

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 24, 2012

v

DERMAINE ANTONIO RIOS,

Defendant-Appellant.

No. 296158
Chippewa Circuit Court
LC No. 08-008674-FH

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his conviction of arson of real property, MCL 750.73, following a jury trial. This prosecution stems from a fire that occurred inside defendant's cell at the Chippewa Regional Correctional Facility. We affirm.

This Court reviews a challenge to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). The elements of a crime may be proved with circumstantial evidence and the reasonable inferences that arise from the evidence. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To secure a conviction under MCL 750.73, the prosecution must prove (1) the burning of any building or other real property or its contents, and (2) that defendant willfully or maliciously set the fire. MCL 750.73; *People v Lindsey*, 83 Mich App 354, 355; 268 NW2d 41 (1978).

Here, it is undisputed that there was a fire in defendant's cell. Papers and clothing were damaged by the fire, desktops in the cell were burned black, and the walls were scorched. What is at issue is whether defendant willfully or maliciously set the fire. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

Because MCL 750.73 only prohibits a person from "willfully or maliciously" burning the specified property, arson of real property is, like common-law arson, a general intent crime. *People v Nowack*, 462 Mich 392, 406-409; 614 NW2d 78 (2000). To establish that defendant acted willfully or maliciously in setting the fire, the prosecution must prove either (1) that the defendant intended to do the physical act of starting the fire or the act that resulted in the starting

of a fire, or (2) that the defendant intentionally committed an act that created a very high risk of starting a fire, and that, while committing the act, the defendant knew of the risk and disregarded it. *Id.* at 409. When only a burning is shown, a presumption arises that it was accidentally caused. *People v Williams*, 114 Mich App 186, 193; 318 NW2d 671 (1982).

Arson cases are usually proved with circumstantial evidence. “Such evidence is often of a negative character; that is, the criminal agency is shown by the absence of circumstances, conditions, and surroundings indicating that the fire resulted from an accidental cause.” *Nowack*, 462 Mich at 402-403 (citation omitted); see also *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991). Further, a “prosecutor need not negate every reasonable theory consistent with innocence,” *Nowack*, 462 Mich at 400, and an arson investigator is not required to rule out all “remotely possible causes of a fire for which no evidence exists.” *People v Simon*, 174 Mich 649, 654; 436 NW2d 695 (1989).

The prosecution presented evidence that defendant was seen alone in his cell shortly before the fire started. Officers responding to the scene testified that the fire appeared to be in two or three locations in the cell. One officer testified that he did not believe the fire was an electrical or grease fire, although he was not a fire investigator and did not investigate further after the fire was put out. Another officer testified that there were no open flames, burners, heat sources, or anything that would cause an accidental ignition in the cells of the unit in which defendant’s cell was located. He too admitted that he was not a fire investigator and did not investigate for the purpose of determining the cause of the fire. A state police officer testified that he had no reason to believe accelerants or flammable liquids were used. A nurse who attended to defendant testified that he said he lit his mattress on fire. Although a state police officer testified that the mattress was not damaged, defendant was the only one with an opportunity to deliberately set a fire because he was alone in his cell.

This evidence is sufficient, when viewed in a light most favorable to the prosecution, for a rational jury to conclude beyond a reasonable doubt that the prosecution proved all essential elements of the crime. *Ericksen*, 288 Mich App 192, 195-196. The evidence showed multiple points of origin, no apparent accidental causes for the multiple fires, and that defendant possessed both the means and opportunity to start the fires. In meeting its burden of proof, the prosecution need not negate every theory consistent with innocence. *Nowack*, 462 Mich at 400.

Defendant next argues that the trial court abused its discretion by declining to grant him a new trial because the prosecution presented irrelevant and prejudicial evidence at trial—that defendant was in the highest-security segregation unit in the prison—and that this evidence should have been excluded because it was used for the purpose of proving defendant’s propensity to commit the crime charged. We disagree.

We review a trial court’s decision to deny a motion for a new trial for an abuse of discretion. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). The trial court abuses its discretion only when it chooses an outcome falling outside the range of principled outcomes. *Id.* Because defendant did not object at trial to the evidence he now asserts should not have been admitted, we review the underlying claim of evidentiary error for plain error affecting defendant’s substantial rights. *Carines*, 460 Mich at 763.

MRE 404(b)(1) prohibits the introduction of “[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith.” But evidence of other bad acts may be admitted for another relevant purpose, such as motive, intent, or the absence of mistake. *Id.* To be admissible under MRE 404(b), other acts evidence (1) must be offered for a proper purpose, (2) must be relevant, and (3) must not have a probative value substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

Contrary to defendant’s assertion, evidence of the fact that defendant was in a secure segregation unit is not evidence of a prior bad act. The specific reason defendant was housed in the secure unit was not offered at trial. Rather, the evidence was introduced for the relevant, proper purpose of establishing that no one other than defendant had access to set the fires in the cell. See MRE 401; *Wolford*, 189 Mich App at 481. Thus, the evidence of defendant’s status as a prisoner in a segregation unit was admissible unless the danger of unfair prejudice from its admission substantially outweighs the probative value of the evidence. MRE 402; MRE 403; *People v Feezel*, 486 Mich 184, 198; 783 NW2d 67 (2010). Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury. *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

As the trial court noted, the jury was already aware that defendant was a prisoner. While the jury might have inferred that defendant was segregated from other prison population for disciplinary reasons, it might also have inferred that defendant was segregated from other prisoners for his own protection. Because the evidence was highly relevant and the danger of unfair prejudice minimal, we conclude that defendant did not establish plain evidentiary error. *Carines*, 460 Mich at 763. It follows that the trial court’s denial of defendant’s motion for new trial was within the range of principled outcomes. *Miller*, 482 Mich at 544.

Finally, defendant argues that the trial court erred by admitting evidence of his statement to a nurse that he lit his mattress on fire. Defendant asserts various reasons the evidence should have been excluded, including that it was not trustworthy, not made for purposes of medical treatment, was inaccurate, and that he never made the statement. Defendant’s statement was not hearsay. MRE 801(d)(2). It was also relevant and, therefore, admissible. MRE 401; MRE 402. Defendant was provided full opportunity to impeach the nurse’s credibility and otherwise cross-examine her. Because the trial’s court decision to admit the evidence was not outside the range of principled outcomes, *Feezel*, 486 Mich at 192 (citation omitted), it was not an abuse of discretion.

We affirm.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly