

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180328
Burleigh County No.: 08-2017-CR-03555

State of North Dakota,)
)
Plaintiff-Appellee,)
)
vs.)
)
Spencer Brent Norton,)
)
Defendant-Appellant.)

APPEAL FROM THE MAY 22, 2018 & OCTOBER 15, 2018
VERDICT OF GUILTY AND SUBSEQUENT
SECOND AMENDED CRIMINAL JUDGMENT

SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE JOHN GRINSTEINER, PRESIDING

**BRIEF OF PLAINTIFF – APPELLEE
STATE OF NORTH DAKOTA**

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TABLE OF CONTENTS

Paragraph No.

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
ISSUES PRESENTED FOR REVIEW.....	iii
STATEMENT OF THE CASE.....	¶ 2
STATEMENT OF THE FACTS.....	¶¶ 3 - 22
ARGUMENT.....	¶¶ 23 - 34
CONCLUSION.....	¶ 35

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph No.</u>
<u>State v. Dahl</u> , 2009 ND 204, 776 N.W.2d 37	¶ 24
<u>State v. Wanner</u> , 2010 ND 121, 784 N.W.2d 143	¶ 24

ISSUES PRESENTED FOR REVIEW

- [¶1] I. WHETHER THERE WAS SUFFICIENT EVIDENCE PRESENTED AT TRIAL FOR THE JURY TO CONVICT DEFENDANT ON THE CHARGE OF ARSON?**

STATEMENT OF THE CASE

[¶2] The State is essentially in agreement with the Statement of the Case as contained in Defendant's Brief.

STATEMENT OF THE FACTS

[¶3] A Jury Trial was held in this matter on May 17-18, 2018 on the charge of Arson. The State presented testimony from Rauscha Butler. Ms. Butler lived in the residence directly across the intersection from 1448 South Third Street, the residence in question at this trial. (Tr. p. 30, lines 3-18). Ms. Butler testified that she was awoken around 4:30 on the morning of November 7, 2017 to the sound of some noise that sounded like bubble wrap popping. (Tr. p. 29, lines 9-17). Ms. Butler looked out her window and saw heavy smoke coming from the house at 1448 South Third Street and saw a glow in the garage window. (Tr. p. 29, line 22- p. 31, line 1; p. 38, lines 17-21; p. 39, lines 6-7). She noted that the light from the garage was flickering, going from bright to dim. (Tr. p. 39, lines 19-20; p. 44, lines 21-24). Ms. Butler called 911. (Tr. p. 30, lines 22-24). Later, Ms. Butler observed dogs from the residence in question running around and she collected the dogs and put them in her backyard. (Tr. p. 31, line 24- p. 32, line 6). She did not observe anyone at the residence during this time until police arrived. (Tr. p. 40, lines 2-6).

[¶4] Ms. Butler testified that she has surveillance cameras on the outside of her residence. (Tr. p. 33, lines 5-13). She had contacted Detective Jon Lahr, who was the primary investigator for the Bismarck Police Department in this case, regarding the cameras and their viewing of the residence at 1448 South Third Street. (Tr. p. 34, lines 20-22). The video obtained from Ms. Butler's surveillance system was received into evidence. (Tr. p. 37, line 9).

[¶5] Randy Remmick, and employee at Taxi 9000, testified regarding the calls for taxi service on the night of November 7, 2017. Mr. Remmick testified that a call for taxi service came from 1448 South Third Street at 4:22 a.m. (Tr. p. 47, lines 6-13). A later

call to return to that address occurred at 5:27 a.m. from the B. J. Standard location. (Tr. p. 48, lines 1-4).

[¶6] Elizabeth Ayoutt was the taxi driver involved in the events in question. Ms. Ayoutt arrived at 1448 South Third Street and observed a lady standing outside the residence waving at her. (Tr. p. 53, lines 13-16). Ms. Ayoutt observed a man with the woman, who came out of the house shortly after Ms. Ayoutt arrived. (Tr. p. 54, lines 1-7). She testified the man came out once and then had to go back in because he forgot something and that the man closed the door, having made a couple of trips back to the house. (Tr. p. 54, lines 11-17; p. 58, lines 2-25). Ms. Ayoutt took the two individuals to Sanford ER. (Tr. p. 55, lines 3-12).

[¶7] Zachary Kraft testified as the first Bismarck police officer to arrive on the scene of the fire. As Officer Kraft approached the scene, he observed a large amount of smoke over the trees. (Tr. p. 63, lines 20-22). Upon his arrival, he observed smoke coming out of the roof and black soot on all of the windows. (Tr. p. 64, lines 5-8). Officer Kraft did not observe any people around the house. (Tr. p. 64, lines 11-12). Later, Officer Kraft came into contact with the homeowner, Yvette Howell, along with Defendant Spencer Norton. (Tr. p. 65, lines 18-20). Officer Kraft observed that Ms. Howell was hysterical, crying and upset, while the Defendant was angry and stated that possibly his daughter saw the fire because he had kicked her out. (Tr. p. 65, line 21- p. 66, line 4).

[¶8] Robert Mehlhoff, a captain with the Bismarck Fire Department, testified regarding the night in question. Upon his arrival at 1448 South Third Street, Captain Mehlhoff observed heavy smoke and fire at the residence. (Tr. p. 75, lines 18-22). Captain Mehlhoff described the fire as substantial, with the main area of fire in the area

of where the garage meets the house. (Tr. p. 76, lines 7-21; p. 83, lines 22-25). Captain Mehlhoff did not observe any individuals around the house. (Tr. p. 79, line 1).

[¶9] Firefighter Rick Dahley also testified regarding the fire of November 7, 2017. Upon his arrival, Firefighter Dahley observed heavy smoke coming from most of the garage. (Tr. p. 91, lines 22-24). He observed that most of the fire was coming from the garage area. (Tr. p. 92, lines 12-25).

[¶10] Another firefighter on scene was Thomas Hardmeyer. Firefighter Hardmeyer observed heavy smoke and some flames from the roof upon his arrival. (Tr. p. 101, lines 5-10). Firefighter Hardmeyer testified that the front door to the house opened right up for them and that it wasn't locked. (Tr. p. 103, lines 9-14).

[¶11] Another individual on scene was Battalion Chief Jeff Holte. Upon his arrival, there was mostly smoke on scene. (Tr. p. 111, line 24- p. 112, line 2). Battalion Chief Holte did not enter the residence in question. (Tr. p. 113, lines 14-22). He also did not determine how the fire started. (Tr. p. 113, line 25- p. 114, line 3).

[¶12] Darin Laber testified as one of the owners of the residence at 1448 South Third Street. Mr. Laber did not reside at the location at the time of the fire. (Tr. p. 118, lines 4-8). Mr. Laber testified that he was aware the house was in foreclosure around the time of the fire. (Tr. p. 119, lines 15-21).

[¶13] Another owner of the residence and individual who was residing at the residence on November 7, 2017 was Yvette Howell. Ms. Howell was living at the residence with Defendant, along with Ms. Howell's daughter Ashly off and on with others. (Tr. p. 123, lines 20-25). On the night in question, Ms. Howell testified that Defendant was in the garage working on the pickup when she had health issues that required them to go to the

ER. (Tr. p. 124, line 20- p. 125, line 9). Ms. Howell called for a taxi around 4:20 a.m. (Tr. p. 125, lines 17-18). Ms. Howell testified that the doors were closed when they left. (Tr. p. 130, line 16- p. 131, line 9; p. 137, line 22- p. 138, line 5). Ms. Howell stated Defendant did not go back into the house, but turned around to yell at the dogs. (Tr. p. 137, lines 15-23).

[¶14] Ms. Howell acknowledged that the house was in the name of her and Darin Laber and the house was in foreclosure at the time of the fire, with no payments being made on the house. (Tr. p. 128, lines 9-19). Ms. Howell did have insurance on the house, and made a claim regarding the fire. (Tr. p. 129, lines 8-13). A check for around \$136,000 was issued on this. (Tr. p. 140, lines 23-25). Ms. Howell received \$5,200 from this for personal belongings. (Tr. p. 141, lines 3-7). There was virtually no property within the residence. (Tr. p. 129, lines 14-24).

[¶15] Testimony was received from Ron Kunda, the Fire Marshal with the Bismarck Fire Department. Fire Marshal Kunda was contacted regarding the fire at 1448 South Third Street on November 7, 2017. (Tr. p. 154, lines 15-20). He received information that most of the fire was in the northwest corner of the garage. (Tr. p. 156, line 22- p. 157, line 4).

[¶16] Fire Marshal Kunda began his investigation of the fire and presented extensive testimony on this. Based upon this investigation, it was determined that the walk-in door to the garage had been closed during the fire. (Tr. p. 164, lines 14-24). The sliding glass door in the dining room area of the kitchen was determined to have been probably open at some point during the fire. (Tr. p. 165, lines 19-23). The front door to the residence was determined to have been probably open during the fire. (Tr. p. 167, lines 7-15; p. 224,

lines 20-21; p. 229, lines 7-10). Three breakers had been determined to have been tripped, in the area of the kitchen and garage. (Tr. p. 170, lines 1-5). The heaviest damage was observed in the northwest corner of the garage. (Tr. p. 170, lines 14-15). The garage was determined to be the likely origin point of the fire. (Tr. p. 171, lines 9-16). The specific area of origin of the fire was determined to be the top of a sofa in the garage. (Tr. p. 210, lines 15-22; p. 213, lines 17-23). No smoking materials or other ignition sources were located in that area. (Tr. p. 211, lines 11-15; p. 223, 18-21). The source of the fire was not determined, although an open flame being introduced to the couch would have caused the fire. (Tr. p. 213, line 24- p. 214, line 2).

[¶17] Thomas Neudahl testified regarding his investigation of the fire. Mr. Neudahl is a private fire investigator with Investigative & Loss Control Services. (Tr. p. 236, lines 22-24). Mr. Neudahl was contacted by Nationwide Insurance to investigate the fire at 1448 South Third Street. (Tr. p. 239, lines 8-14). It was determined that the patio door likely was open during the fire. (Tr. p. 246, lines 17-22). The front door was also determined to be possibly open during the fire. (Tr. p. 249, lines 1-11; p. 269, lines 12-16). Mr. Neudahl's investigation also noted the electrical breakers tripping for the garage and kitchen/dining room areas. (Tr. p. 251, lines 12-25). Mr. Neudahl's investigation determined the same source of origin of the fire, near the sofa in the garage. (Tr. p. 257, lines 4-8; p. 259, lines 12-13; p. 262, lines 19-23). The investigation determined that the fire starting at the couch would have had to been intentionally set. (Tr. p. 261, lines 13-16; p. 262, line 19- p. 263, line 3).

[¶18] Matthew Dubbin, a forensic electrical engineer, testified regarding the fire in question. Mr. Dubbin conducted an investigation in this matter. He also noted the

tripped circuit breakers for the garage, kitchen and dining room. (Tr. p. 280, lines 6-8- p. 281, lines 1-7). Mr. Dubbin's investigation eliminated electrical as the cause of the fire. (Tr. p. 288, lines 15-25).

[¶19] Detective Jon Lahr testified in this matter. Detective Lahr assisted in the fire investigation, which determined that the fire was incendiary. (Tr. p. 298, lines 21-24). Detective Lahr provided a summary of the video obtained from Ms. Butler. Included in this is the Taxi 9000 arriving at the residence and Ms. Howell being seen in the video, while Defendant is inside the residence for sixty-two seconds by himself. (Tr. p. 305, lines 8-17). A burst of light that begins to flicker is observed in the south window. (Tr. p. 305, lines 21-23). Defendant is observed exiting the residence. (Tr. p. 306, lines 1-5). The video is played for the jury. (Tr. p. 308, line 1). Detective Lahr had the chance to interview the Defendant regarding the incident. (Tr. p. 316, lines 8-13). During this interview, Defendant stated that it wasn't his house and he didn't care about it because he didn't want to be there anyway. (Tr. p. 320, line 24- p. 321, line 1).

[¶20] The Defendant testified on his own behalf. Defendant testified that he & Yvette Howell moved into the residence in question in January of 2017. (Tr. p. 365, lines 10-13). Defendant agreed that the foreclosure on the home had begun. (Tr. p. 365, lines 20-24). Defendant intended on leaving North Dakota as he had obtained employment in Wyoming. (Tr. p. 366, lines 11-20).

[¶21] On the night in question, Defendant was working on the truck in the garage. (Tr. p. 367, lines 9-21). Yvette Howell was having health issues and needed medical attention. (Tr. p. 368, line 18- p. 369, line 15). A taxi was called and showed up at the house around 4:20. (Tr. p. 370, lines 9-10). Defendant testified he then left the garage,

went downstairs and then outside. (Tr. p. 370, line 14- p. 371, line 22). Defendant testified that all doors leading into the house were closed when he & Ms. Howell left for the ER. (Tr. p. 372, line 19- p. 374, line 16). Defendant and Yvette Howell went to Sanford ER and returned to the residence in a taxi. (Tr. p. 376, lines 7-21). Defendant reiterated his statement from the interview with Detective Lahr, in that it wasn't his house and had no interest in the house, not wanting to be there anyway. (Tr. p. 388, lines 1-6; p. 389, lines 1-2).

[¶22] The case was given to the jury for its determination. The jury requested on two occasions to review the video of the fire. (Tr. p. 412, line 7; p. 416, lines 3-5; p. 419, lines 23-25). The jury was given the opportunity to view portions of the video two more times. The jury returned a verdict of guilty. (Tr. p. 422, lines 18-22).

ARGUMENT

[¶23] II. WHETHER THERE WAS SUFFICIENT EVIDENCE PRESENTED AT THE JURY TRIAL FOR THE JURY TO CONVICT DEFENDANT ON THE CHARGE OF ARSON?

[¶24] Defendant raises the issue of sufficiency of the evidence to support the jury conviction. The North Dakota Supreme Court has set forth the standard for review when the Defendant raises the issue of sufficiency of the evidence. The Court has stated that review is limited to whether there is competent evidence allowing the jury to draw a reasonable inference proving guilt and fairly allowing a conviction. See State v. Wanner, 2010 ND 121 at ¶9 (784 N.W.2d 143) (citing State v. Dahl, 2009 ND 204 at ¶6 (776 N.W.2d 37)). The defendant has the burden to show there is no reasonable inference of guilt when the evidence is viewed in a light most favorable to the verdict. See Id. The

Court went on to note in Wanner that a jury could find a defendant guilty even if there was evidence which, if believed, could lead to a not guilty verdict. See Id.

[¶25] Overwhelming evidence exists for the verdict of guilty in this matter. Expert testimony from two independent experts came to the same conclusion. That conclusion was that the fire started in the area of the couch in the northwest corner of the garage. The fire was determined to be incendiary, or having been started intentionally, with an open flame. The jury had the opportunity to listen to extensive testimony from two expert witnesses, Ron Kunda and Thomas Neudahl, regarding their fire investigation. Each was able to describe the scientific method to investigating fires. Each gave details as to how that investigation occurred in this matter and all the evidence that led to their conclusions as to where and how the fire started in this case.

[¶26] These findings were consistent with other testimony as to where the fire started. This would include the law enforcement and fire personnel who arrived at the scene and observed the fire being most intense in the garage area near the wall connecting the garage to the home. Additionally, this was consistent with the video obtained from Ms. Butler, which showed the fire starting in the garage. The electrical expert that investigated the fire also determined this same location for the origination of the fire.

[¶27] The investigations looked into other causes of the fire, but ruled out any other causes other than incendiary. This included an electrical expert who determined that the cause was not electrical. Various other theories were eliminated, such as the vehicle in the garage causing the fire or the fire being caused by a cigarette, based upon the evidence at the scene, or lack thereof, and the nature of the fire itself.

[¶28] As to the question of who caused the fire, there was ample evidence presented to support the charge that it was Defendant. Defendant had been present in the garage throughout the time leading up to the fire. Defendant was in the residence alone at the time the fire started. No other individuals were observed around the home at the time of the fire, either on the video or by police and fire personnel that arrived on scene.

[¶29] Defendant's fiancé obtained financial gain from the insurance claim related to the fire. This included Ms. Howell obtaining \$5,200 from the insurance company. Very few possessions existed in the residence. Defendant and Ms. Howell testified on their intent to leave the house as soon as possible. Defendant's indifference toward the house and living there was apparent from the evidence and testimony at trial.

[¶30] The jury was able to view the video, which showed the Defendant coming out of the residence around the time the fire started. The video showed the fire starting at the time the Defendant was alone in the residence, occurring in the garage where Defendant had been working on the vehicle. The video showed the rapid progression of the fire, consistent with the fire investigations' conclusions that doors to the residence were left open. No one is observed coming or going from the residence after Defendant and Ms. Howell left and prior to law enforcement's arrival at the fire.

[¶31] Defendant discusses the issue of the couch, the location of the origin of the fire, having been treated with fire-retardant material. Defendant continues on with a discussion of these fire-retardant materials, citing a 2017 article on the issue. However, most of this discussion goes beyond what is contained in the record in this case. There was limited testimony regarding the material at trial. There was no discussion of the issues raised by Defendant.

[¶32] Defendant additionally argues that the investigators could not determine the source of the fire's ignition. However, as testified to at trial, the open flame source could have been a number of different varieties, including a lighter. Also such could have been a match that could have been consumed by the fire and not able to be located after the incident.

[¶33] Defendant also asserts the possibility that a cigarette ash with a rush of oxygen could have caused the fire. Again, this argument goes beyond what was contained in the record. Mere showing of some other plausible possibility for the cause of the fire does not rise to the level of showing that there was insufficient evidence for the jury's verdict of guilty.

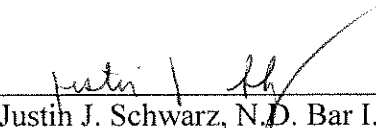
[¶34] Defendant concludes by arguing he had no motive to burn down the house. Motive is not an element of the offense of Arson and any lack of motive does not go to the issue of whether sufficient evidence existed for the guilty verdict. Defendant asserts he had no financial interest or insurance on the home. However, Defendant's fiancé Yvette Howell's testimony was that she did have insurance and obtained \$5,200 on the claim on the house.

CONCLUSION

[¶35] The Jury's determination that Defendant had committed the offense of Arson was supported by the evidence presented at Trial. Extensive expert testimony determined the fire to have been intentionally started in the area of a couch in the garage of the residence. Evidence was presented that the fire started while Defendant was the only person inside of the residence, including video evidence. The Court should affirm the verdict of guilty.

RESPECTFULLY SUBMITTED:

Dated this 9th day of January, 2019.


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CERTIFICATE OF SERVICE

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

[¶1] I, Stacey Baskerville, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 9th day of January, 2019, I served the following:

1. Brief of Plaintiff-Appellee

and that said email was served on the addresses of:

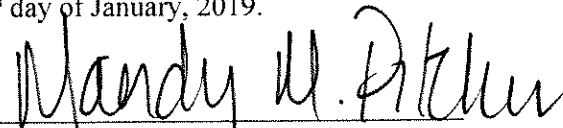
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which addresses are the last known addresses of the addressees.


Stacey Baskerville

Subscribed and sworn to before me this 9th day of January, 2019.


Mandy Pitcher, Notary Public,
Burleigh County, North Dakota.

