

FILED.

IN THE COURT OF APPEALS OF IOWA

JUN 4 1986

STATE OF IOWA,

)

337 CLERK SUPREME COURT

Plaintiff-Appellee,

)

vs.

)

FILED JUNE 4, 1986

CURTIS CURIEL,

)

6-58
85-131

Defendant-Appellant.

)

Appeal from the Iowa District Court for Dubuque County (15299) - T.
H. Nelson, Judge.

Defendant appeals from his conviction, after a bench trial, of second-degree
arson, in violation of Iowa Code sections 712.1 and 712.3. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Michael J. Laughlin,
Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Ann DiDonato, Assistant
Attorney General; and Timothy Gallagher, Assistant Dubuque County Attorney,
for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Hayden, JJ.

HAYDEN, J.

Defendant appeals his conviction of second-degree arson in violation of Iowa Code sections 712.1 and 712.3. On appeal, defendant asserts that there was not sufficient evidence to support his conviction.

Defendant Curtis Curiel was accused of setting fire to Vi's Nutrition Center in downtown Dubuque during the early morning hours of December 30, 1982. After a bench trial, the district court found defendant guilty. Defendant was later sentenced to a prison term of up to ten years. On appeal, he challenges the sufficiency of the evidence to support his conviction. We affirm.

In considering defendant's claim, we view the evidence in a light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Nunn, 356 N.W.2d 601, 603 (Iowa Ct. App. 1984). We accord the trial court's findings of fact the effect of a jury's special verdict and consider its order binding, State v. Knupp, 310 N.W.2d 179, 182-83 (Iowa 1981), if it is supported by substantial evidence. Substantial evidence has been defined as "such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

Curiel argues that evidence does not support a finding that he had sufficient time to commit the crime charged. Tom McArdle, a witness for the defense, stated that defendant was at his apartment the evening of December 29, 1982, and the early morning hours of December 30th. McArdle testified that Curiel left his apartment at 5:00 a.m. to get cigarettes, and returned 15 to 20 minutes later. Officer Brian Jobgen discovered the fire at Vi's Nutrition Center at 5:23 a.m. He estimated that the fire had been going for more than five or ten minutes.

Defendant argues that this evidence taken together creates a reasonable doubt as to whether he could have committed the crime. We are unpersuaded

by this argument. The testimony relied upon by defendant cannot be viewed in isolation. In reviewing the record, we find credible evidence indicating that Curiel had sufficient time to start the fire.

The testimony conflicts concerning when defendant left the McArdle residence. One witness, however, indicated that he left once at 4:00 a.m. and returned a half hour later. Curiel then left a second time sometime between 5:00 a.m. and 5:30 a.m. The trial court found that defendant started the fire around 4:00 a.m. and then returned to the scene after 5:00 a.m. We find this determination is supported by the record.

Viewing the evidence in a light most favorable to the State, we conclude that the conviction should be affirmed.

AFFIRMED.