

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

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Filed September 21, 1982 147

vs

)

CHARLES WALTER MOODY,

)

2-227

Defendant-Appellant.

)

67305

Appeal from Appanoose District Court - Phillip R. Collett, Judge.

Defendant Charles Walter Moody appeals from his conviction for arson in the second degree in violation of Iowa Code §§ 712.1 and 712.2 (1981). He asserts that there was insufficient evidence to support the jury's verdict of guilty. **AFFIRMED.**

Douglas F. Staskal, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mary Jane Blink, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

DONIELSON, J.

Defendant, Charles Walter Moody, appeals from his conviction for arson in the second degree in violation of Iowa Code §§ 712.1 and 712.2 (1981). He asserts that there was insufficient evidence to support the jury's verdict of guilty. We affirm the conviction.

Our scope of review is on assigned errors at law. Iowa R. App. P. 4.

I.

In February, 1981, a fire was discovered and extinguished at a Centerville furniture store. Various items were missing from the warehouse but were found in defendant's possession the day after the fire. Footprints and marks in the snow led from the warehouse to defendant's residence. The defendant was subsequently charged in a three count trial information with First Degree Burglary, Second Degree Arson, and Third Degree Theft in violation of Iowa Code §§ 713.1 & .2, 712.1 & .2, and 714.1 & .2(3) (1981), respectively. The case proceeded to trial and the jury returned verdicts upon which judgment was entered, finding defendant guilty of Burglary in the Second Degree, Arson in the Second Degree, and Theft in the Third Degree. In this appeal, defendant challenges only the arson conviction.

II.

Defendant's only argument is that there is insufficient evidence to support the conviction. When reviewing this type of challenge, we view all the evidence in the light most favorable to the state, assisted by all reasonable inferences. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). When there is "substantial evidence" such that a reasonable mind would accept it as adequate to reach the conclusion that the defendant is guilty beyond a reasonable doubt, the jury verdict is conclusive. Id. The court instructed the jurors that they were required to find defendant not guilty of arson unless the state proved, among other elements:

1. That on or about February 13, 1981, the defendant did cause a fire or place a burning,

combustible, or incendiary material in or near Klum's Furniture Store.

2. That ethyl alcohol was a combustible or incendiary material, as defined in instruction number 15.

The term "incendiary device" means any flammable liquid or material whose ignition by fire, friction, concussion, detonation or other method, is intended to produce destructive effects primarily through combustion.

The term "combustible material or device" means a material or container which contains chemicals, liquids or material which are capable of being burned or ignited.

Defendant contends that there was no evidence offered to show that ethyl alcohol is a combustible or incendiary material or that the ethyl alcohol found in the sample liquid taken from the scene of the fire was combustible or incendiary. We find the contrary to be true.

There was evidence that the pattern of the fire was characteristic of one involving some type of liquid. Samples of liquid taken from the remains of the fire were tested to determine whether they contained any "flammable liquid." The laboratory report showed that it was tested for "the presence of alcohols" and that ethyl alcohol was found in the sample. We believe the inference that ethyl alcohol is a flammable liquid flows logically from this evidence.

Circumstantial evidence alone is sufficient to prove an arson charge. State v. Veverka, 271 N.W.2d 744, 747 (Iowa 1978). In testing evidentiary sufficiency, direct and circumstantial evidence are equally probative. State v. Schrier, 300 N.W.2d 305, 308 (Iowa 1981). Having found that there is substantial evidence from which the jury could conclude that ethyl alcohol is a combustible or incendiary material, we affirm the judgment entered on its verdict.

AFFIRMED.