FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,)
vs.)
CHARLES L. MILLER,)
Appellant.)

Filed February 28, 1978

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Appeal from Muscatine District Court - R. K. Stohr, Judge.

Defendant appeals conviction of crime of arson asserting trial court should have directed a verdict of acquittal based on lack of substantial evidence to support the charge. - Reversed.

John G. Linn, of Eckhardt, Goedken, Hintermeister & Ryan, Muscatine, for Appellant.

Richard C. Turner, Attorney General of Iowa, and David W. Newell, Muscatine County Attorney, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Charles L. Miller appeals his conviction for arson in violation of § 707.1, The Code. As a result of a fire which destroyed defendant's mobile home, defendant was charged by county attorney's information with arson of a dwelling house. Miller entered a plea of not guilty and was convicted by a jury. On appeal, defendant alleges the trial court erred in overruling his motion for directed verdict made at the close of the State's evidence. Defendant also argues the trial court erred in overruling his motion for new trial where the jury verdict was based on the presumption someone else set the fire with defendant's knowledge which was contrary to the law as given to the jury in the instructions.

In making a determination as to the propriety of the court's ruling on a motion for directed verdict in a criminal case, the reviewing court views the evidence in the light most favorable to the State regardless of whether it is contradicted and every legitimate inference that may fairly and reasonably deducted therefrom must be carried to the aid of the evidence. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976); State v. Lewis, 242 N.W.2d 711, 724 (Iowa 1976); State v. Dahlstrom, 224 N.W.2d 443, 448 (Iowa 1974). Therefore, in a criminal action the cause should be submitted to the jury and the court should not direct a verdict of acquittal if there is any substantial evidence reasonably tending to support the charge. **Overstreet,** supra. Because defendant's motion for directed verdict was renewed at the close of all of the evidence, it is preserved for appeal. **Dahlstrom,** supra at 446; State v. Tokatlian, 203 N.W.2d 116, 119 (Iowa 1972).

Either direct or circumstantial evidence may be sufficient to warrant a verdict of guilty. However, where circumstantial evidence alone is relied on as to an essential element, the circumstances must be entirely consistent with defendant's guilt, wholly inconsistent with any rational hypothesis of his innocence, and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged. Like direct evidence it must raise a fair inference of guilt and generate something more than suspicion, speculation or conjecture. State v. Overstreet, 243 N.W.2d at 883-884; State v. Williams, 179 N.W.2d 756, 758 (Iowa 1970).

Taking the evidence in the light most favorable to the State and in support of the jury verdict, we find the record supports the State's contention that the fire in defendant's mobile home was most likely the result of arson. The witnesses who visited the mobile home subsequent to the fire testified the burn patterns were consistent with arson and generally inconsistent with an accidental fire. The State's expert witness testified that because the fire appeared to have at least three points of origin, it was his opinion arson was the cause.

However, the same evidence does not establish defendant's participation in the crime. The State failed to prove by direct evidence that defendant willfully and maliciously set fire to, burned or caused to be burned or aided, counseled or procured the burning of his mobile home. See § 707.1, The Code. Neither did the State prove the same by circumstantial evidence.

Taking the evidence of defendant's participation in the light most favorable to the State, we find defendant was at work and had been at work for approximately five hours, when the fire started. Prior to the fire, a neighbor observed defendant's wife leave the trailer with the children and several baskets of laundry. After the fire the Millers reported several items of personal property missing or stolen. These items were subsequently recovered at the home of defendant's sister-in-law. Defendant purchased an insurance policy on the mobile home approximately two months before the fire. Finally, defendant signed an offer to purchase a home three days after the fire stating he would use the money from an insurance check as the down payment.

The State argues defendant's subsequent conduct supports the inference that defendant either set, caused to be burned or aided, counseled or procurred the burning of his mobile home. Its argument is based on the fact the Millers reported certain personal property--expensive stereo equipment, a typewriter, clothing and children's toys, missing and later stolen when it was actually at the home of defendant's sister-in-law. Further, the State claims their subsequent acts of filing insurance claims support a finding of arson.

Whatever inferences can be drawn from the foregoing facts, evidence is lacking of defendant's guilt of the crime of arson. There is no evidence that Miller

actually set the fire, nor is there any evidence he aided counseled or procurred anyone else to set the fire. The circumstancial evidence relied on by the State is not entirely consistent with Miller's guilt; neither is it wholly inconsistent with any rational hypothesis of his innocence. **Overstreet**, supra. Nor does it exclude a reasonable doubt that defendant was guilty of the offense charged. The State's circumstancial evidence at best raises suspicion, speculation and conjecture. More is required. **Williams**, supra. The motion for directed verdict made at the close of all the evidence should have been sustained.

REVERSED.