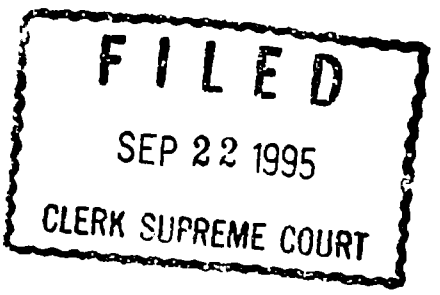
IN THE COURT OF APPEALS OF IOWA



No. 5-376 / 94-0934

STATE OF IOWA,

Appellee,

vs.

CRAIG WILLIAM REUTER,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, L. D. Lybbert, Judge.

The defendant appeals his conviction, following a jury trial, for first-degree arson pursuant to Iowa Code sections 712.1 and 712.2 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Thomas S. Tauber, Assistant Attorney General; Thomas J. Ferguson, County Attorney; and Shawn Wehde, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

The defendant, Craig Reuter, appeals his conviction and sentence for first-degree arson. He contends: 1) the record contains insufficient evidence to support his conviction; 2) the trial court erred in denying his motion for a mistrial; and 3) the trial court erred in admitting evidence over his chain of custody objection. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

When reviewing criminal convictions for sufficiency of the evidence, we review the evidence in a light most favorable to the State. *State v. McGrew*, 515 N.W.2d 36, 37 (Iowa 1994). A conviction is reversed only if there is no substantial evidence in the record supporting the verdict or the verdict is clearly against the weight of the evidence. *Id.* at 37-38. Substantial evidence is evidence that could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* at 38. A fair inference of guilt with respect to each element of the crime charged is sufficient to uphold a verdict. *Id.* We consider all of the evidence, not merely that supportive of the conviction, in determining the sufficiency of the evidence to support a guilty verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

The defendant argues there was insufficient evidence to establish he caused the fire and that the property in question was property in which the presence of a person could have been reasonably anticipated. A review of the record establishes the defendant had the motive and opportunity to set the fire. On November 1, 1993, Mary Ann Mangrich broke off her relationship with the defendant. On the day this occurred, the defendant was present at Mangrich's home and was aware a pickup load of wood was being unloaded next to Mangrich's attached garage.

For the next two days following the breakup of their relationship, the defendant attempted to communicate with Mangrich and was rebuffed. The defendant was hostile to Mangrich at a bar during the early morning hours of November 4, and later twice tried to talk to her while she was eating at a truck stop. When Mangrich arrived home from the truck stop, she found her woodpile and garage had been on fire.

When questioned by the police, the defendant initially lied and said he had gone home and slept after seeing Mangrich at the bar. He later admitted having gone to Mangrich's house during the early morning hours. He also admitted having thrown a cigarette into the woodpile with the intent to start it on fire because he was mad at Mangrich. The fire was ignited by a road hazard flare (fusee), an item which the defendant could have been familiar with due to his previous employment doing construction work.

Numerous pieces of evidence identify the defendant as the arsonist. First, the defendant had motive. He was angry with Mangrich and admitted he intended to set her woodpile on fire. The defendant had the opportunity to set the fire as he lived close by and admitted being at Mangrich's home during the early morning hours when the fire was set. The defendant had worked in construction and a rational fact finder could have believed he had access to flares and understood their incendiary properties. Finally, the defendant initially lied to police about his conduct on the night in question and such fabrications are indicative of guilt. *See State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) ("Admissions may be implied by the conduct of the defendant subsequent to a crime, including fabrication, when such conduct indicates a consciousness of guilt.").

There was sufficient evidence to establish the defendant could have reasonably anticipated the presence of persons at the property in question. The defendant's own statement to Detective Dolleslager indicates he knocked on the doors of the home because he believed someone was home. He told the detective Mangrich always left her children at home.

The defendant argues there was no evidence of any attempt to directly start the garage or house on fire. However, the woodpile was located next to the garage which was attached to the home. Arson directed at any part of an occupied structure is deemed to be directed against the entire structure. *State v. Bartnick*, 478 N.W.2d 878, 880 (Iowa App. 1991). The proximity of the woodpile to the garage and home

was such that a rational fact finder could find the defendant knew the property would probably be destroyed or damaged and the presence of one or more persons in the home could have been reasonably anticipated.

II. MOTION FOR MISTRIAL

The defendant argues the trial court erred in denying his motion for a mistrial. He contends a mistrial was warranted when, during closing arguments, the prosecutor allegedly made an impermissible reference to his failure to testify. The parties agree our review is de novo since the defendant asserts the violation of a constitutional right.

As a general rule, a prosecutor's comment on a defendant's failure to testify violates a defendant's due process rights. *Brewer v. State*, 444 N.W.2d 77, 84 (Iowa 1989) We view the issue as being whether the language used by the prosecution, viewed in context, would naturally and necessarily be understood by a jury to be a comment on the failure to of the accused to testify. *Id.*

At issue in this case is the prosecutor's reference to the "uncontroverted physical evidence" against the defendant. A prosecutor may properly comment upon a defendant's failure to present exculpatory evidence so long as it is not phrased to call attention to the defendant's own failure to testify. *State v. Craig*, 490 N.W.2d 795, 797 (Iowa 1992); *State v. Bishop*, 387 N.W.2d 554, 563 (Iowa 1986). The prosecutor's reference in this case did not rise to the level of being a comment on the

defendant's decision not to testify, and the district court did not err in refusing to grant the defendant's motion for a mistrial.

III. CHAIN OF CUSTODY

The defendant claims the trial court erred in admitting evidence over his chain of custody objection. A trial court has considerable discretion in determining whether the State has shown the chain of custody necessary for admission. *State v. Barger*, 511 N.W.2d 632, 636 (Iowa App. 1993). We review only for an abuse of discretion. *Id.* at 637.

The defendant challenged the admissibility of the flare residue, the metal flare bottle cap and the outer wrapper and pull tape from a flare. These items were found at the site of the fire. The defendant argues "[t]here was no testimony from Sergeant Peterson to prove he received the material from Officer Dolleslager and forwarded it to Officer Kramer who delivered the material to the DCI."

The trial court must determine whether the identification of physical evidence is sufficient in light of the article's nature, the circumstances surrounding its custody, and the likelihood an intermeddler has tampered with it. *State v. Ramirez*, 485 N.W.2d 857, 858-59 (Iowa App. 1992). In reaching its decision, the court may presume state agents or officials did not tamper with evidence in their custody. *Id.* at 859.

We find no abuse of discretion in the trial court's admission of this evidence and the related DCI report. The record reveals Fire Marshal Lanigan testified he found the items in the debris of the woodpile on November 4, 1993. Detective Dolleslager photographed the items and placed them in separate containers. He took them to the sheriff's office where Deputy Peterson sealed the containers. Officer Kramer testified he contacted Deputy Peterson on November 10, 1993, and informed him he was taking evidence to the DCI laboratory in Des Moines the next day. He offered to transport any evidence Deputy Peterson had that needed to be taken to the lab. Kramer testified he received the evidence and delivered it to the DCI laboratory in Des Moines on November 11. The parties stipulated DCI Criminalist Chapman would testify he received the evidence in a sealed condition from Officer Kramer.

The State has the burden to establish it is reasonably probable tampering or substitution did not occur. *State v. Mehner*, 480 N.W.2d 872, 877 (Iowa 1992). This burden is heavier when the exhibit offered is an item that is very susceptible to tampering, such as drugs. *Id.* These were not objects particularly susceptible to undetected tampering. Furthermore, Detective Dolleslager and Officer Kramer's testimony confirmed the sealed nature of the evidence.

That Sergeant Peterson did not testify did not disrupt the foundation for admission of the evidence. Nothing about the nature of this evidence suggests it was tampered with during the period between its delivery to Peterson and its receipt by Kramer. Sufficient evidence existed to establish the chain of custody and there was

no abuse of discretion in the trial court's denial of the defendant's objection to the evidence.

AFFIRMED.