FILED
JAN 25 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed January 25, 1979
vs.)
GLENN JOHN HONN,) 714/60990
Appellant.)

Appeal from Decatur District Court - Van Wifvat, Judge.

Defendant appeals conviction of arson alleging insufficiency of evidence, erroneous admission of evidence, and prosecutorial suppression of exculpatory evidence. - Affirmed.

Charles L. Elson, Leon, for Appellant.

Thomas J. Miller, Attorney General of Iowa, Faison Sessoms, Assistant Attorney General, and Robert L. Fulton, Decatur County Attorney, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Defendant Glenn Honn appeals conviction of arson in violation of § 707.2, The Code 1977. We affirm.

Defendant first contends trial court should have granted him a directed verdict due to the insufficiency of evidence to convict. In considering this argument we view the evidence in a light most favorable to the State regardless of whether it is contradicted. State v. Veverka, 271 N.W.2d 744, 746 (Iowa 1978). There was evidence from which the jury could find that defendant was at the scene shortly before the barn burned down; that the fire was deliberately set through the use of a flammable liquid; and that defendant removed valuable articles from the barn a short time before the fire. There was further evidence of defendant's knowledge that the premises were insured. Although the barn was owned by defendant's two stepchildren, it appears that there was a comingling of assets between these children and defendant. There was some evidence that defendant was in a poor financial condition. It also appears that fires occurred on at least four previous occasions at various residences of defendant and his family. We hold there was substantial evidence in the record that defendant committed arson. See State v. Bazoukas, 226 Iowa 1385, 286 N.W. 458 (1939).

Prior to trial, defendant sought production of the contents of tape recordings of testimony before the grand jury. His requests were denied. After verdict was rendered, defendant moved for an investigation of the tapes, and trial court conducted an in camera inspection. Finding nothing exculpatory therein, trial court overruled motions for new trial and in arrest of judgment. We have examined the bill of exceptions filed by defendant containing excerpts from the grand jury testimony of two witnesses. One of these witnesses testified that he saw heavy smoke coming from the direction of defendant's barn and observed a pile of burning corn cobs in the northwest corner of the barn. Defendant contends this testimony was necessary in order to impeach the State's expert witness, Fire Marshal Madsen. The other witness was a bank officer who had made a loan to defendant of $2840 and who stated before the grand jury that he assumed the purpose of the loan was

for living and moving expenses. At trial, this witness testified that defendant told him the purpose of the loan was to replace and repair farm buildings and that defendant misrepresented the purpose for which he sought the loan. Although the disclosure of this grand jury testimony might have helped the defense, it was not likely to have changed the verdict. On cross examination, defendant asked the fire marshal if his opinion would change if he knew there were corn cobs in the corner of the barn and the witness responded negatively. Similarly, on cross examination, the bank officer stated he did not care how defendant used the money as long as he repaid it on time. After considering the record as a whole, we cannot find that the undisclosed information in defendant's bill of exceptions would have affected the outcome of the trial. See State v. Hall, 249 N.W.2d 843, 847 (Iowa 1977).

Next, defendant complains of the admission of the fire marshal's testimony concerning the use of ignition delay devices. The marshal testified that a cigarette placed in a matchbook is a common example of such a device. Although there was no evidence that this mechanism had been used in the instant case, it is unlikely that any trace of same would survive the fire. Since the time difference between defendant's departure from the scene and witnesses' observation of the fire was critical to the case and since there was evidence that defendant had cigarettes in his possession when he left the area, we think the challenged testimony was properly admitted. See Grings v. Great Plains Gas Co., 260 Iowa 1309, 1316-17, 152 N.W.2d 540, 544 (1967).

Defendant claims he was denied due process by the State's concealment of a potential witness, Clifford Parmer. Mr. Parmer, a Missouri resident, was requested by the State to come to Iowa in case he was needed as a rebuttal witness. Upon the advice of a deputy, Mr. Parmer did not appear in the courtroom but remained in the sheriff's office during the trial. Defendant charges the prosecution was hiding the witness to prevent disclosure of evidence favorable to the defense. While we do not condone the State's conduct, we find no merit in this argument. After the trial, defendant was permitted to question Mr. Parmer at length. We have examined his testimony and find no material evidence therein.

Finally, defendant urges reversible error occurred when a witness referred to

a lie detector test that had been administered to Mr. Parmer. Defendant, however, failed to object to the admission of this testimony. Thus, the error, if any, was not preserved for our review. See State v. Wellington, 264 N.W.2d 739, 741 (Iowa 1978). We affirm defendant's conviction.

AFFIRMED.