

FILED

MAY 23 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

FINUS FREEMOUNT ATWOOD,)

Defendant-Appellant.)

9-95
88-67

391

Appeal from the Iowa District Court for Lee County
(CR1738(N)1087), John C. Miller, Judge.

Defendant appeals from his conviction by a jury of
first-degree arson grounded in his having set fire to the
mattress and bedding in his cell. **AFFIRMED.**

William L. Wegner, State Public Defender, and Raymond
E. Rogers, Assistant State Public Defender, for
defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Sarah
J. Coats, Assistant Attorney General, for
plaintiff-appellee.

Heard by Donielson, P.J., and Hayden and Schlegel, JJ.

HAYDEN, J.

392

An inmate at the Iowa State Penitentiary appeals from his conviction by a jury of first-degree arson grounded in his having set fire to the mattress and bedding in his cell. He contends, first, the evidence did not satisfy the elements of first-degree arson and, second, the trial court erred by overruling his motion to replace the word "property" with the phrase "Cellhouse 220" in the jury instructions to conform with the wording in the trial information. We affirm.

I.

In August of 1987, Finus Atwood, an inmate serving a life sentence at Fort Madison, set fire to the mattress and bedding in his cell after blocking off all the air ducts and openings to his cell with cardboard. The State filed a trial information charging Atwood with arson in the first degree in violation of Iowa Code sections 712.1 and 712.2. The trial information stated Atwood "did unlawfully and willingly commit arson in the first degree upon the property of the State of Iowa, to wit: Cellhouse 220 of the Iowa State Penitentiary, in which the presence of one or more persons can reasonably be anticipated" The jury found Atwood guilty of first-degree arson.

On appeal, Atwood contends the trial court erred in denying his motions for judgment of acquittal and new trial. He asserts there is insufficient evidence to find

he intended to commit arson in the first degree upon Cellhouse 220 and, further, it would have been impossible for him to destroy, damage, or knowingly endanger Cellhouse 220 because of the physical make-up of the cell. Atwood argues he intended, instead, to commit suicide by smoke inhalation or at least to injure himself seriously enough to effect his removal from administrative segregation. In addition, Atwood argues the only property he intended to destroy was his bedding. He claims a conviction of first-degree arson requires the defendant destroy, damage, or knowingly endanger an occupied structure.

Atwood further contends because the word "property" was used interchangeably throughout the trial in discussing realty (Cellhouse 220) and personalty (his mattress and bedding), the trial court erred in overruling his motion to replace the word "property" with the phrase "Cellhouse 220" in the jury instructions to bring them into conformity with the wording of the trial information.

Our review is for errors at law. Iowa R. App. P. 4.

II.

We first review defendant's assertion the trial court erred in denying defendant's motion to replace the term "property" with the phrase "Cellhouse 220." Atwood contends the change would have placed the instructions in conformity with the trial information and clarify the term "property" for the jury in the context of first-degree

arson. The district court overruled the objection, observing "there [was] no possibility of confusion on the jury's part."

Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial. State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1978). However, the trial court's ruling regarding this decision will not be disturbed absent an abuse of the trial court's discretion. State v. Christensen, 323 N.W.2d 219, 222 (Iowa 1982); State v. Lewis, 391 N.W.2d 796, 798 (Iowa App. 1986). We will not find an abuse of discretion unless "such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." Id. The burden of proving abuse of discretion lies with the defendant. Id.

Atwood argues the use of the word "property" was unclear, causing the jurors to have considered "property" to mean the mattress and pillow which burned rather than Cellhouse 220. The arson instruction (instruction 15) given to a jury read, in pertinent part:

You will first determine whether the defendant is guilty of arson in the first degree.

You must find the defendant not guilty of arson in the first degree as charged in the trial information unless the State proves by evidence beyond a reasonable doubt each of the following elements:

1. That on or about the 27th day of August, 1987, the defendant caused a fire, or placed burning or combustible material in or near any property.

2. That the defendant intended to destroy or damage the property, or knew that the property would probably be destroyed or damaged.

3. That the property was property in which the presence of one or more persons could be reasonably anticipated.

The jury was instructed the elements of first-degree arson included causing a fire or placing a burning or combustible material in or near any property (language conforming to the wording used in section 712.1). In addition, section 3 of the instruction defines property as property "in which the presence of one or more persons could be reasonably anticipated." From these two portions of the instruction alone, it is clear the jury had to consider the pillow and mattress as burning or combustible material and the "property" to be Cellhouse 220. We therefore determine the trial court did not abuse its discretion when it overruled defendant's motion to amend the instruction.

III.

Next, Atwood claims the trial court erred in denying his motions for judgment of acquittal and new trial. These motions were both based on alleged insufficiency of the evidence to support a conviction of arson. On appeal, Atwood divides this argument into two parts: first, there was insufficient evidence he intended to commit arson in the first degree upon an occupied structure, and secondly, there was insufficient evidence to support the verdict

since Atwood claims it would be impossible for him to destroy, damage, or knowingly endanger Cellhouse 220.

In reviewing motions for a directed verdict and a new trial based upon sufficiency of the evidence in criminal cases, the evidence is viewed in the light most favorable to the State. All legitimate inferences which may fairly and reasonably be deduced from the evidence are acceptable. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976). All of the evidence must be considered when determining the sufficiency of the evidence. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

The trial court's refusal to direct a verdict for Atwood will withstand challenge if there is any substantial evidence in the record tending to support the charge. State v. York, 256 N.W.2d 922, 927 (Iowa 1977). Similarly, a jury verdict of guilty is binding upon this court unless there is no substantial evidence in the record to support it, or such finding is clearly against the weight of the evidence. State v. Overstreet, 243 N.W.2d at 884. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d at 339.

As the State argues, to support Atwood's first-degree arson conviction under Iowa Code sections 712.1 and 712.2, there must be substantial evidence Atwood (1) caused a fire

or placed burning or combustible material (2) in or near Cellhouse 220 with the intent to destroy or damage Cellhouse 220, or with the knowledge that Cellhouse 220 would probably be destroyed or damaged, and (3) the presence of one or more persons in Cellhouse 220 could have been reasonably anticipated.

Atwood does not dispute he caused a fire by purposely setting his mattress and pillow on fire. Atwood argues he did not form the requisite intent because he intended to commit suicide or to injure himself seriously enough to be removed from administrative segregation.

First, we note the jury could have completely disregarded Atwood's suicide claims. Evidence showed Atwood separated his most valuable items (legal papers and a television) from the material used in the fire, placing them as far away from the fire as possible. State Fire Marshall Agent Hiles testified that adding these materials to the fire would have increased his chances for injuring himself because envelopes would fuel the fire and a television would give off toxic fumes.

In addition, the jury could have found substantial evidence existed to find Atwood deliberately set fire to his bed. Also, because Atwood had set three previous fires, he knew the fire probably would damage Cellhouse 220, which it did. The walls of the cell were blistered and suffered smoke damage. Further, the jury could have

reasonably found Atwood knew or could have anticipated the presence of one or more persons in Cellhouse 220. Atwood lived in Cellhouse 220 and would have known the cellhouse generally contained 42-45 inmates locked in their cells, as well as four prison officers on duty. Whether Atwood intended to harm these people is irrelevant; only a reasonable anticipation one of them would be present is required by the statute. Iowa Code § 712.2 (1987).

Atwood also contends it was impossible for him to destroy, damage, or knowingly endanger Cellhouse 220. Because the cellhouse is made of cement and steel, Atwood claims he could not have possessed the requisite intent necessary to commit the act. We find Atwood's claim to be without merit.

Clearly, by just starting the fire, Atwood endangered Cellhouse 220. As Agent Hiles testified, "most people do not die as a result of the fire . . . the smoke generated by the fire is by far the hazard in a fire situation." During the fire, considerable smoke escaped from Atwood's cell and effected locked-in prisoners throughout the cellhouse. Thus, we determine sufficient evidence existed from which the rational trier of fact could find Atwood guilty of first-degree arson. The trial court properly denied Atwood's motion for a new trial.

AFFIRMED.