

IN THE COURT OF APPEALS OF IOWA

No. 8-066 / 96-2202

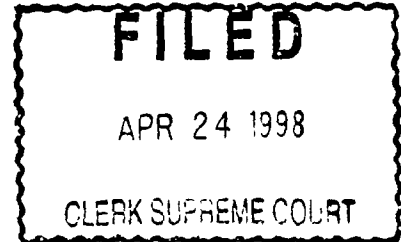
STATE OF IOWA,

Plaintiff-Appellee,

vs.

MICHAEL ALLEN BUSCH,

Defendant-Appellant.



Appeal from the Iowa District Court for Muscatine County, J. Hobart Darbyshire, Judge.

Defendant appeals from judgment and sentences entered following jury verdicts for second-degree arson and first-degree fraudulent practices. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Richard R. Phillips, County Attorney, for appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

SACKETT, J.

Defendant-appellant Michael Allen Busch appeals his conviction following a jury trial of Arson in the Second Degree and Fraudulent Practice in the First Degree. Defendant was charged after a drive-in restaurant he owned and operated burned on April 23, 1996, and he made a claim for the loss with his insurer, State Farm Insurance. Defendant contends we should reverse because the evidence introduced at trial, even when considered in the light most favorable to the State, does not support his conviction. We affirm.

The standard of review is for errors at law. *State v. Phams*, 342 N.W.2d 792, 795 (Iowa 1983). A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994). A verdict is binding unless the finding is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981).

There is no direct evidence defendant started the fire. The State sought to prove its case through the introduction of circumstantial evidence. Circumstantial evidence is just as probative as direct evidence. *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993); *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990).

Defendant testified he was told by the assistant fire chief the fire may have been gang-related, though the assistant fire chief did not remember making this statement. There had been an earlier break-in at the Cheri-Top on April 21, 1996. On the night of the fire, a hitchhiker was reported eight to nine blocks away at 11:52 p.m.

The fire was first discovered about 11:45 p.m. by David Kilburn and William Kemper. Kilburn got off work at 11:30 and was on his way home when he noticed smoke and a small fire at the Cheri-Top on the wall near the gas meter. He stopped and tried to extinguish the fire. Kemper, who also got off work at 11:30, was on his way home when he noticed smoke and flames at the Cheri-Top. He stopped to help Kilburn extinguish the fire. Gabriel Taylor and his girlfriend were also driving by at that time. Kilburn told them to call the fire department. They drove a few blocks to another business and had the clerk call the fire department. The call to 911 was logged at 11:52 p.m. and the fire department was notified at 11:58 p.m. The fire department arrived and extinguished the fire.

The building was not locked when the fire department arrived. Defendant testified he left the building between 11:30 and 11:45 p.m. Kathy Kelly and her

ex-husband Joseph Kelly were driving by the restaurant after work, between 11:44 and 11:49 p.m. They saw a white minivan preparing to leave the restaurant. Defendant owned a white minivan.

The building was insured for fire loss by State Farm Insurance. John Woodland, a fire investigator, was retained by State Farm to investigate the fire. Woodland testified he was at the site on April 25 and April 29. It was his opinion one fire started on the inside of the wall near the gas meter and took about twenty minutes to burn through to the outside of the wall. He found melted plastic at that point from a plastic bucket, along with wood, paper, and cloth. He was of the opinion the fire was intentionally set. There was no evidence of any source of heat from equipment or appliances at the point of the fire's origin.

The initial investigation did not result in the arson charge. Dana Wipperman, special agent with the State Fire Marshall's Office, investigated the fire. He did not determine the fire to be the result of arson until about May 1. He determined a fire was set on the inside of the wall near the gas meter. He also believed a second fire was set. A clock inside the restaurant stopped at 11:51 p.m.

Daniel Beenen, an electrical inspector for the City of Muscatine, investigated the fire. He was of the opinion the fire was not caused by the electrical system in the building.

Assistant Fire Chief Ryder investigated the fire. His opinion was the fire was set in two locations at nearly the same time. He also was of the opinion the fire did not originate in the gas system or from a gas leak.

The State called two experts to testify concerning the financial condition of the Cheri-Top. One of the State's witnesses had been hired by State Farm. Defendant had one financial expert testify on his behalf. The experts provided conflicting evidence about the financial condition of the business. The State's experts tended to show the business was distressed. Defendant's expert gave the opinion defendant was financially sound and had a good business.

The State introduced substantial evidence that would allow a jury to find beyond a reasonable doubt defendant was suffering financially. While this may prove defendant had a reason to burn the building down, this evidence is relevant only if there is substantial evidence the cause of the fire was arson and this evidence, combined with other evidence, is sufficient to support a finding beyond a reasonable doubt that defendant started the fire.

The State has shown evidence from which a jury could find beyond a reasonable doubt the fire was arson. The State has shown defendant was at the Cheri-Top near the time the fire started. There is evidence from which a fact finder could determine defendant's business was in financial trouble. There is substantial evidence to support the verdict.

AFFIRMED.