STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 23, 2008
v	No. 278897 Kalamazoo Circuit Court
LONNIE MICHAEL WARREN, Defendant-Appellant.	LC No. 06-002461-FC

Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felony murder, MCL 750.316(1)(b); conspiracy to commit arson of a dwelling, MCL 750.157a, MCL 750.72; and perjury, MCL 767A.9(1)(b). On June 5, 2007, defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent sentences of life in prison without parole for the felony murder conviction, 320 months to 60 years' imprisonment for the conspiracy conviction, and 280 months to 50 years' imprisonment for the perjury conviction. We affirm.

On appeal, defendant argues there is insufficient evidence to support his convictions, and alternatively that the motion for directed verdict of acquittal should have been granted. When reviewing for sufficiency of the evidence, the Court must review the evidence de novo in a light most favorable to the prosecution to determine whether sufficient evidence has been presented that would warrant a reasonable trier of fact in finding that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The same standard is used when reviewing a denial of a motion for a directed verdict of acquittal, except the Court reviews only the evidence presented by the prosecution. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). Because only the prosecution presented evidence, we review both issues as one.

In reviewing whether the evidence was sufficient to sustain the convictions, we adhere to the rule that the elements of a crime can be proven beyond a reasonable doubt with circumstantial evidence and rational inferences arising from that evidence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Deference is given to the jury's superior opportunity to evaluate witness testimony, and jury assessments of weight and credibility of trial testimony will not be determined anew on appeal. *People v Johnson*, 460 Mich 720, 731 n 7; 597 NW2d 73 (1999). "[A]bsent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally

guaranteed jury determination thereof.'" *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). It is also an issue for the trier of fact, rather than this Court, to "determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The evidence presented at trial, viewed in a light most favorable to the prosecution, was sufficient to justify a reasonable trier of fact in concluding, beyond a reasonable doubt, that defendant conspired to commit arson, set fire to a dwelling resulting in the death of George McCormack, and later lied under oath about his knowledge of the crime.

A long-standing dispute between Teresa Snell's family and neighbor Deb Jarchow escalated the week before the fire at issue in this case. On the night of June 16, 2006, defendant and Snell's grandson, Ritchie "Duke" Edmonds, met at a party and later went to meet Orlando "Bear" Edwards, a friend of the Snell family. Edwards asked, and defendant agreed, to burn a house across the street from the Snells, which Edmonds was to point out. The home belonged to Jarchow and was located on Cameron Street. Defendant and Edmonds thereafter borrowed a bike and went to Cameron Street, where defendant told Snell's daughter, Latoyia Dunigan, that Edwards sent him to do a favor. Defendant talked with Teresa while her son, Marcel Dunigan, retrieved a can of lighter fluid. Teresa gave the lighter fluid to defendant. While Edmonds acted as a lookout, defendant set fire to the front porch of Jarchow's house. The fire resulted in the death of Jarchow's boyfriend, McCormack, from smoke inhalation. Defendant and Edmonds returned to meet with Edwards, who paid them with drugs and money. Defendant's brother, Charles Warren, later overheard defendant arguing with Edwards because defendant wanted more money for setting the fire. Latoyia overheard her mother, Teresa, admit to arranging the fire because no one "messes" with her "kids." During an interview pursuant to an investigative subpoena on October 18, 2006, defendant provided false information regarding who set the fire. During a police interview December 1, 2006, defendant made statements implicating himself and Edmonds in the fire, contrary to information given on October 18, 2006.

A conspiracy is an express or implied mutual agreement or understanding between two or more persons to commit a criminal act or to accomplish a legal act by unlawful means. *People v Cotton*, 191 Mich App 377, 392-393; 478 NW2d 681 (1991). Once the agreement is made, the crime of conspiracy is complete. *Id.* Defendant's own December 1, 2006 statements regarding his involvement supported that defendant agreed to burn a house with Edwards and Edmonds. Further, Charles overheard defendant and Edwards arguing about payment for setting the fire. In addition to this independent evidence of a conspiracy between two or more persons to commit the crime, there was testimony of a co-conspirator implicating defendant in the conspiracy. This testimony was properly admitted because later corroborating witness testimony provided a sufficient independent evidentiary basis. See *People v Till*, 115 Mich App 788, 794; 323 NW2d 14 (1982). On the record, viewing the evidence in a light most favorable to the prosecution, there was ample evidence from which the jury could find beyond a reasonable doubt that defendant had an express or implied agreement with Edmonds and Edwards to commit arson.

There was also sufficient evidence to convict defendant of first-degree murder. The elements of first-degree felony murder are (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with

knowledge that death or great bodily harm was the probable result, i.e., malice, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in the statute, including arson of a dwelling. See *Nowack, supra* at 401, quoting *People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999). It is undisputed that McCormack died in the fire, satisfying the first element. The evidence further showed defendant set the fire with the intent to create a high risk of death with knowledge that death or great bodily harm was the probable result. The fire began at about midnight, a time when most people are asleep and are less able to escape a fire. Moreover, there were two cars parked in Jarchow's driveway, further indicating the house was occupied at the time. Defendant knew the intent was to set fire to an occupied house, and a reasonable inference can be drawn from the record that setting fire to an occupied house creates a high risk of death or great bodily harm to the occupants, thereby satisfying the second element of felony murder. The third element is satisfied by proving the underlying predicate felony, in this case arson. To prove arson, the prosecution had to prove that defendant willfully and maliciously burned a dwelling house, its contents, or any building within its curtilage. *People v Barber*, 255 Mich App 288, 294-295; 659 NW2d 674 (2003); MCL 750.72. Viewed in a light most favorable to the prosecution, the evidence showed that defendant willfully and maliciously set the fire, or according to his own statements, at a minimum, aided Edmonds in doing so. Defendant participated in the crime for money.

Finally, perjury is the giving of a willfully false statement or testimony regarding any matter or thing, for which an oath is authorized or required. *People v Lively*, 470 Mich 248, 253-254; 680 NW2d 878 (2004); MCL 750.423. Defendant provided statements, under oath, on October 18, 2006 pursuant to an investigative subpoena, implicating a person named "Porter." Defendant's December 1, 2006 statements to police implicating himself directly contradicted those statements and were corroborated by Edmonds' testimony. In addition to defendant's own statements, witness testimony provided corroborating evidence that defendant's October 18, 2006, statements were false. Charles' testimony about the argument between Edwards and defendant, for example, corroborated Edmond's testimony regarding who was involved. The evidence and reasonable inferences were sufficient to enable a rational trier of fact to determine beyond a reasonable doubt that defendant knew at the time of their making that his October 18, 2006, statements under oath implicating Porter were false, and that he willfully made these false statements regarding who set the fire while under an authorized oath.

In reaching our conclusions, we note that defendant also requests a new trial on appeal. A new trial is appropriate where defendant successfully argues that his convictions were against the great weight of the evidence. Defendant fails to cite any supporting legal authority or provide any rationale for this argument, and thus, the issue is deemed abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Furthermore, although defendant argues to the contrary, deference is to be given to the jury's determination and credibility assessments are not an issue for appeal. *Johnson, supra* at 731. "[U]nless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that the jury could not believe it, or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Lemmon, supra* at 645-646. In the instant case, the witness testimony was not deprived of all credibility and probative value, nor did it contradict indisputable physical facts, therefore, the jury findings may not be disturbed.

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto