

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-136 (Calhoun County CC-07-2022-F-27)

Danny Burrows,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Danny Burrows appeals the Circuit Court of Calhoun County’s February 15, 2023, order sentencing him to forty years of imprisonment upon his convictions for two counts of first-degree arson.¹ On appeal, the petitioner raises one assignment of error, arguing that there was insufficient evidence presented at trial to sustain his convictions. Upon our review, finding no substantial question of law and no prejudicial error, we determine oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21(c).

In 2022, the petitioner was indicted by a grand jury for three counts of first-degree arson. The indictment alleged that the petitioner burned dwelling houses at three separate locations in Calhoun County, i.e., a house owned by Christopher Ferrell (“Ferrell house”) in December 2018, an unoccupied house on West Little Kanawha Highway (“Little Kanawha house”) in February 2019, and an unoccupied house on Lavada Road (“Lavada house”) in June 2021.

The State presented evidence from Jason Baltic, the chief investigator for the West Virginia State Fire Marshal’s Office (“Investigator Baltic”), who was qualified as an expert in fire investigations. Inspector Baltic testified that the cause of the Little Kanawha house fire was arson. Inspector Baltic’s investigation further revealed that the petitioner had previously lived in the Little Kanawha house and had “an issue with the former owner, Dick Ullum,” who evicted him from the house. West Virginia State Police Trooper E.E. Taylor testified that the Little Kanawha house fire occurred “a few weeks after” the petitioner was evicted. Inspector Baltic also testified that “there was evidence that the rear door [of the Little Kanawha house] had been tampered with and damaged,” and he determined that this damage was not caused when the fire department extinguished the fire. Ronald Sampson, who was the petitioner’s cellmate at Central Regional Jail, testified that the petitioner admitted to burning down the Little Kanawha house to “[c]over up his tracks from where he broke in” by prying open the back door.

¹ The petitioner appears by counsel Mark Plants; the State appears by counsel Patrick Morrissey, Attorney General; and Andrea Nease Proper, Deputy Attorney General.

Inspector Baltic also testified that the cause of the Lavada house fire was undetermined. Although the petitioner claimed that the Lavada house burned after it was struck by lightning, Inspector Baltic's investigation found no evidence of this, and he also ruled out a faulty electrical system as a cause of the fire. Mr. Sampson testified that the petitioner first told him that the Lavada house burned after it was struck by lightning, but then the petitioner admitted "[h]e went in the back of the house, and that's where the fire started." Inspector Baltic noted that, prior to the Lavada house fire, the petitioner "had a falling out" with the owners of the Lavada house: Johnny Bell and Sunshine Bell. Trooper Taylor testified that, a week before the Lavada house fire, he served a petition for a domestic violence protective order ("DVPO") filed by Ms. Bell upon the petitioner, who was living in a camper next to the Lavada house. The State also presented evidence from Larry McCormick, who was acquainted with the petitioner. Mr. McCormick testified the petitioner left him a voicemail threatening to burn down the Lavada house, "[a]nd about 30 minutes later, the house was on fire." After the Lavada house fire, Mr. McCormick relayed the content of this voicemail message to police, but an inspection of his phone revealed no evidence of a voicemail or a call from the petitioner to Mr. McCormick.

Finally, Trooper Taylor testified that the Ferrell house was burned over three years after Mr. Ferrell sought a DVPO against the petitioner. Trooper Taylor pointed out that a common thread in his investigation was the petitioner had "disputes with the landowners prior to the fires." Mr. Sampson testified that the petitioner admitted that he burned the Ferrell house after an argument with Mr. Ferrell. Inspector Baltic did not investigate the Ferrell house fire.

At the conclusion of the trial, the circuit court denied the petitioner's motion for a judgment of acquittal on all three counts of first-degree arson. The case was then submitted to the jury, which found the petitioner not guilty of first-degree arson of the Ferrell house, and guilty of first-degree arson of the Little Kanawha house and the Lavada house.

On appeal, the petitioner asserts a single assignment of error, arguing the court erred when it denied his motion for judgment of acquittal because there was insufficient evidence to sustain his convictions. "The Court applies a de novo standard of review to the denial of a motion for judgment of acquittal based upon the sufficiency of the evidence. *State v. LaRock*, 196 W. Va. 294, 304, 470 S.E.2d 613, 623 (1996)." *State v. Juntilla*, 227 W. Va. 492, 497, 711 S.E.2d 562, 567 (2011). We have further explained that "the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt." Syl. Pt. 1, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

In support of his argument that the evidence adduced at trial was insufficient to support his two convictions, the petitioner argues that there was "no direct evidence" linking him to the fires at the Little Kanawha house and Lavada house, and the State's evidence "was completely circumstantial." This argument affords the petitioner no relief, because "there is no qualitative difference between direct and circumstantial evidence." *Id.* at 669, 461 S.E.2d at 175. Regarding the Little Kanawha house, the State introduced evidence that the petitioner used to live there and had a dispute with the former owner after being evicted. Further, the petitioner admitted to Mr. Sampson that he burned the Little Kanawha house after he pried open the back door and burglarized it. Mr. Sampson's testimony was corroborated by Inspector Baltic's investigation,

which found that the door to the Little Kanawha house had been tampered with and damaged. Regarding the Lavada house, the State introduced evidence that the petitioner called Mr. McCormick thirty minutes before the fire and threatened to burn it down. And the week prior to the fire, Ms. Bell obtained a DVPO against the petitioner. Further, despite the petitioner's claim that this residence burned after being struck by lightning, Inspector Baltic testified that his investigation revealed no evidence of a lightning strike. Accordingly, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *See* W. Va. Code § 61-3-1(a) (setting forth the crime of arson).

Further in support of his claim, the petitioner argues that the State's witnesses "lacked credibility because their testimony was inconsistent, self-serving, and not supported by any physical evidence." But the jury heard the petitioner questioning the witnesses' credibility, and this Court "must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution." *Guthrie*, 194 W. Va. at 663, 461 S.E.2d at 169, Syl. Pt. 3, in part; *see* Syl. Pt. 2, *State v. Smith*, 225 W. Va. 706, 696 S.E.2d 8 (2010) ("In the trial of a criminal prosecution, where guilt or innocence depends on conflicting evidence, the weight and credibility of the testimony of any witness is for jury determination." Sylabus Point 1, *State v. Harlow*, 137 W. Va. 251, 71 S.E.2d 330 (1952).").

The petitioner also argues the jury's verdicts were inconsistent because "the [S]tate's evidence was that the same person committed all three fires and therefore, the three (3) alleged arsons involved a common plan, scheme, and motive." But we decline the petitioner's invitation to reverse his convictions on the grounds of inconsistent verdicts because "[a]ppellate review of a claim of inconsistent verdicts is not generally available." *State v. Hall*, 174 W. Va. 599, 328 S.E.2d 206 (1985)." Syl. Pt. 5, *State v. Bartlett*, 177 W. Va. 663, 355 S.E.2d 913 (1987). Consequently, after viewing the evidence in the light most favorable to the State, the Court concludes that the jury was presented with sufficient evidence to find the petitioner guilty beyond a reasonable doubt of the crimes for which he was convicted.

For the foregoing reasons, we affirm.

Affirmed.

DATE: July 31, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn