IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01079 COA

CARRIE WHITFIELD A/K/A CARRIE B. WHITFIELD APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DARNELL FELTON

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: BILLY L. GORE

DISTRICT ATTORNEY: LAWRENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: ARSON

TRIAL COURT DISPOSITION: ARSON FIRST DEGREE: SENTENCED TO SERVE A TERM OF 7 YRS; SENTENCE IMPOSED IN THIS CAUSE SHALL RUN CONSECUTIVE TO ANY PREVIOUSLY IMPOSED; DEFENDANT SHALL MAKE FULL RESTITUTION TO CRIME VICTIMS, STATE FARM INSURANCE AND MR. & MRS. EDWARD SEALS

MANDATE ISSUED: 8/19/97

BEFORE THOMAS, P.J., HERRING, AND SOUTHWICK, JJ.

THOMAS, P.J., FOR THE COURT:

Carrie Whitfield appeals her conviction of arson, raising the following issue as error:

I. WHETHER THE GUILTY VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE WHEN THE EVIDENCE WAS CIRCUMSTANTIAL ON THE IDENTITY OF THE ARSONIST AND THE EVIDENCE FAILED TO EXCLUDE ALL REASONABLE HYPOTHESIS OF INNOCENCE.

Finding no error, we affirm.

FACTS

On September 27, 1993, a home owned by Edward Seals and Patricia Seals located at 417 Garfield in Clarksdale, Mississippi burned. Carrie Whitfield was renting the premises. Whitfield was indicted for first degree arson.

Twelve witnesses testified for the State. First, Patricia Seals testified that she received a phone call on September 27, 1993 from an unidentified source that let her know that her house was going to be burned that day. She immediately called her husband who told her to call Chief Vick.

Next to testify was Marco Sykes, a member of the Clarksdale Police Department. Sykes went to 417 Garfield at approximately 2:00 p.m. on September 27, 1993, where he and another officer, Officer Bell, observed thick smoke coming from the house. Firefighters arrived shortly thereafter and extinguished the fire.

Later in the afternoon, Sykes questioned Whitfield. He asked if anything was missing from the premises. She stated that two televisions and a breathing machine were gone. Sykes testified that no windows were broken, but the back door was unlocked. He stated that Whitfield told him that she had gone to the store when the fire broke out.

Ed Seals, owner of the house, was next to testify. When he arrived home from work on September 27, 1993 at approximately 2:15 p.m., he received a phone call from the fire department telling him that his house at 417 Garfield was on fire. Seals stated that there were no electrical system defects in the house of which he was aware. Seals testified that he did carry approximately $20,000 in insurance on the premises. He testified that this amount barely covered the amount of repairs he had to do; in

fact, towards the end of the restoration the money got short, and he had to pay for some of the repairs himself.

Next to testify for the State was Bill Olsen, an agent for State Farm Insurance Company. Olsen testified that Carrie Whitfield signed an application for $24,000 worth of casualty coverage on the contents of the house on September 24, 1993. The house burned three days later. Whitfield telephoned Olsen around 4:00 p.m. the day of the fire and reported that she had a loss. Olsen stated that Whitfield told him that someone had taken some television sets and electronic equipment from her house. State Farm paid Whitfield $8,000 on her claim.

Robert Birdsong, a Clarksdale fire fighter, was next to testify for the State. Birdsong responded to the call. He testified that there were several hot spots of separate and independent origin, and he observed a pile of clothes on fire in a closet, not far from a backdoor entrance, and by the hot water heater. Birdsong stated that the burn patterns were not caused by fire fighting operations.

Next to testify for the State was Levella Meyers, a neighbor who lived across the street from 417 Garfield. Meyers testified that while she was sitting on her porch she saw Whitfield leave her house and soon thereafter saw smoke coming from the house. She testified that while she saw the house burning she saw Whitfield walking away from the house.

Mary Griffin, another neighbor of Whitfield, testified next. She testified that on the day before the fire, she saw Whitfield, Whitfield's daughter, and a lady named Tiny leaving the house at 417 Garfield prior to the fire. She saw Whitfield put a clothes basket and other things inside the trunk of Tiny's car. She did not see exactly what was put in the car besides the clothes basket.

Denise Holmes, a neighbor living directly across the street from Whitfield, was next to testify for the State. She testified that on the day of the fire she saw Whitfield go to another neighbor's house, Carolyn Hunter, and drop off her granddaughter. Whitfield then went back inside her house, left and came by Holmes's house. Then Whitfield left to go to the store. Two to three minutes later, Holmes saw that Whitfield's house was on fire. Holmes testified that she did not see anyone taking television sets out of the home.

Carolyn Hunter, a neighbor of Whitfield, testified next. Hunter testified that a week or two before the fire Whitfield had a conversation with her where Whitfield had told her that she was thinking about making arrangements for setting her house on fire. Hunter testified that she was the person who telephoned Mrs. Seals that there was going to be a fire. The day of the fire, Kim Burnett, Carrie Whitfield's daughter, came by Hunter's house. Hunter testified that Burnett told one of her children that there was going to be a fire at 417 Garfield. Before Whitfield went to the store, she dropped her granddaughter off at Hunter's house. Whitfield then went back inside her house for three to five minutes. Ten minutes later Whitfield's house was on fire. Hunter stated that she did not see anyone taking television sets out of the house. She stated that she did not report Whitfield's plan to set the house on fire earlier because she and Carrie Whitfield were friends, and she did not want her to get in trouble.

Next to testify for the State was Sergeant Danny Hill, a police officer and certified fire investigator. He testified that the fire was incendiary, deliberately set, in origin. He stated that there were four points of origin of the fire. These four points of origin were a closet, the top of a cedar chest, an area

to the right of a bed headboard, and a clothes pile near the hot water heater. He testified that "each fire was an individually set fire. There was nothing there at any of the fires to accidentally ignite or set the fire. And none of the fires had what we call a connecting path or connecting pattern."

Charles Neal, a deputy state fire marshal, was next to testify. Neal testified that the fire was incendiary in nature and that he found three points of origin of the fire. He stated that there was nothing to indicate that the fires were electrical in nature.

Last to testify for the State was James Vickers, a fire investigator and expert witness. He was asked by State Farm Insurance to go to the scene of the fire and determine its origin and cause. He testified that there were multiple points of origin, which indicated that the fire was intentionally set. He testified that something had been poured against a wall, something that was flammable or combustible, most likely a flammable hydrocarbon material such as kerosene, diesel, gasoline, or alcohol.

After the State rested, the defense put on three witnesses. First to testify for the defense was Kim Burnett, Carrie Whitfield's daughter. Burnett testified that on September 26, 1993, the day prior to the fire, her Aunt Tiny came by in her car, and she and her mother, Carrie Whitfield, put two baskets full of clothing in her Aunt Tiny's trunk. Burnett stated that an oxygen machine was brought out to the residence for her grandmother. She stated that there were electrical problems in the living room, bathroom, and middle bedroom. She denied that she had told any of Carolyn Hunter's children that the house was going to burn.

The defense next called Tiny Walker. Walker testified that on September 26, 1993, the day before the fire, she went over to Whitfield's house where they loaded clothing into Walker's car trunk and took it to her house to wash.

Carrie Whitfield testified in her own behalf. Whitfield denied setting fire to the dwelling. She testified that the house was having electrical problems. She stated that an officer came to her house on September 27, 1993, the day of the fire, and told her that the police had received a telephone call "that my house was going to burn that day." Whitfield then testified that she went to visit her mother in the hospital. Whitfield remained at the hospital until after lunch at which time Carolyn Hunter picked her up and took her to Hunter's house. Whitfield then went to her house to get some money, returned to Hunter's house where she made two telephone calls, and then went to the store to get something to eat. While she was at the store she learned her house was burning. Whitfield denied any involvement in the burning of the dwelling.

The jury returned a verdict of guilty of first degree arson against Whitfield.

ANALYSIS

I.

WHETHER THE GUILTY VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE WHEN THE EVIDENCE WAS CIRCUMSTANTIAL ON THE IDENTITY OF THE ARSONIST AND THE EVIDENCE FAILED TO EXCLUDE ALL REASONABLE HYPOTHESIS OF INNOCENCE.

Whitfield argues that because the prosecution failed to exclude her reasonable hypothesis, that the fire was initiated by an electrical surge and the spread of the fire was caused by the extinguishing of the fire by the firemen, the verdict of guilty is against the overwhelming weight of the evidence. Specifically, she argues that the circumstantial evidence offered at trial was consistent with a rational hypotheses other than guilt. On appeal, this Court does not retry the facts, but must take the view of the evidence most favorable to the State and must assume that the fact-finder believed the State's witnesses and disbelieved any contradictory evidence. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *Griffin v. State*, 607 So. 2d 1197, 1201 (Miss. 1992). On review, we accept as true all evidence favorable to the State, and the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin*, 607 So. 2d at 1201 (citations omitted). The Court will reverse such a ruling only for an abuse of discretion. *McClain*, 625 So. 2d at 781.

In her brief, Whitfield requests that she be discharged, thus blurring the distinction between overwhelming weight of the evidence and the sufficiency of the evidence. To test the sufficiency of the evidence of a crime:

[W]e must, with respect to each element of the offense, consider all of the evidence - not just the evidence which supports the case for the prosecution - in the light most favorable to the verdict. The credible evidence which is consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair minded jurors could only find the accused not guilty.

Wetz v. State, 503 So. 2d 803, 808 (Miss. 1987) (citations omitted).

Arson is almost always subject to proof solely by circumstantial evidence. The State's case was based on circumstantial evidence to establish Whitfield's link to the arson crime. In circumstantial evidence cases, "the state is required to 'prove the accused's guilt not only beyond a reasonable doubt, but to the exclusion of every other hypothesis consistent with innocence.'" *Leflore v. State*, 535 So. 2d 68, 70 (Miss. 1988) (quoting *Guilbeau v. State*, 502 So. 2d 639, 641 (Miss. 1987)). Circumstantial evidence in a criminal case is entitled to as much weight as any other kind of evidence, so long as the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any reasonable hypothesis except that of her guilt. *Tolbert v. State*, 407 So. 2d 815, 820 (Miss. 1981). The evidence as a whole need not exclude all possibility that the defendant is innocent, it must only make such theory seem unreasonable. *Id.* A fact-finder is in the best position to evaluate circumstantial evidence surrounding the crime, and its verdict is entitled to due deference. *Id.* (quoting *Johnson v. State*, 23 So. 2d 499, 500 (Miss. 1945)).

In this case, the evidence focused on several circumstantial elements of guilt-- conduct before the fire, proof that the fire was intentionally set, and motive. Carolyn Hunter testified that a week or two prior to the fire she had a conversation with Whitfield at her house in which "[t]here were plans where she was thinking about making arrangements for setting her house afire." Expert testimony revealed that an accelerant had been poured against one wall in the house. There was testimony of neighbors who saw Whitfield leave the house, and a short time thereafter the house was on fire.

Whitfield's daughter told a neighbor's child that they would be setting fire to the premises. Also, Whitfield had signed an application for a $24,000 insurance policy only three days before the house was burned. Although standing alone, evidence of motive, presence, or opportunity is insufficient to prove guilt, here the evidence, taken together, was sufficient to connect Whitfield with the eruption of the blaze. This Court will neither reweigh the evidence nor assess the credibility of the witnesses, but will consider only the evidence and reasonable inferences supporting the verdict.

We will not order a new trial unless convinced that the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. Any less stringent rule would denigrate the constitutional power and responsibility of the jury in our criminal justice system.

Groseclose v. State, 440 So. 2d 297, 300 (Miss. 1983) (citation omitted).

This Court has analyzed Whitfield's motive, means, and opportunity and in reviewing the circumstantial evidence, we find that by allowing the verdict to stand we have not sanctioned an unconscionable injustice. Accordingly, this issue has no merit.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF FIRST DEGREE ARSON AND SENTENCE OF SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH SENTENCE TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED AND TO PAY RESTITUTION TO ALL CRIME VICTIMS AND STATE FARM INSURANCE IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO COAHOMA COUNTY.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.