Circuit Court for Dorchester County
Case No. 09-K-16-016112

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 705

September Term, 2018

CHRISTOPHER HENRY WHITTLE

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 1, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Dorchester County convicted Christopher Henry Whittle, appellant, of second-degree arson, second-degree malicious burning of personal property, and malicious destruction of property, in connection with a fire that destroyed a storage shed on Mr. Whittle's neighbor's property. On appeal, Mr. Whittle contends that the evidence was insufficient to sustain his convictions. We affirm.

"When reviewing the sufficiency of evidence, we view the evidence and any reasonable inferences therefrom in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Sewell v. State*, 239 Md. App 571, 607 (2018) (citations and internal quotations omitted). "We do not reweigh the evidence but simply ask whether there was sufficient evidence - either direct or *circumstantial* - that could have possibly persuaded a rational jury to conclude that the defendant was guilty of the crime(s) charged." *Id.* "In doing so, we defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence." *Id.* (citation and internal quotation marks omitted). We do not consider evidence tending to support the defense theory of the case, as exculpatory inferences are not part of the version of the evidence most favorable to the State. *Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015).

The evidence at trial demonstrated that feral cats were "tearing up" Mr. Whittle's cat, requiring $300 worth of veterinary care. Mr. Whittle asked Donald Wrigley, who lived three houses away from him, for permission to put traps on his property to catch the feral cats, and take them away. Mr. Wrigley said he would have to talk to his wife, because she

fed the cats and was attached to them. Mr. Wrigley told Mr. Whittle that he thought that the cats "slept" or "stayed" in an old, unused shed on the property.

Several months after that conversation, one of Mr. Whittle's cats did not return home after being outside, as it usually did. At 1:00 the next morning, the shed on the Wrigley property caught fire. The fire department was called and extinguished the fire.

Later that morning, Ms. Wrigley saw Mr. Whittle near the remains of the shed, carrying a five-gallon bucket. She went outside to ask what he was doing, and he replied that he was there to put out the fire, which was still "smoldering." Ms. Wrigley told Mr. Whittle that "it wasn't his concern," and that she "wanted him off the property." Five minutes later, Mr. Whittle came to the Wrigley's front door and asked Ms. Wrigley if she had seen his cat. He said that the feral cats had "beaten up" his cat, and he told her that he had already trapped one cat on the property and taken it away. Ms. Wrigley told him to leave or she would call the police. Twenty minutes later, Ms. Wrigley saw Mr. Whittle "coming through the woods[,]" "past where the fire had been, where the shed had been standing[,]" and she called the police.

During the investigation, a loaded handgun belonging to Mr. Whittle was found on the ground near the fire scene, next to a footprint. The condition of the gun suggested that it had not been there a long time.

After Mr. Whittle was arrested, he called his wife from the detention center, on a recorded line. After asking her to contact a criminal defense attorney and discussing how to come up with money for bail, Mr. Whittle said, "I'm gonna turn over a new leaf. I'm gonna stop being bad. . . . This is the last time anything like this will happen."

Master Deputy Fire Marshal Thomas Harr, who investigated the fire, was accepted by the court as an expert in the origin and cause of fires.[1] Deputy Marshal Harr opined, without substantive objection, that the cause of the fire was arson.

To convict Mr. Whittle of second-degree arson and second-degree malicious burning of personal property, the State was required to prove that he willfully and maliciously set fire to the shed. Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article §§ 6-103, 6-105. Mr. Whittle contends that the evidence at trial was insufficient to prove that the cause of the fire was arson, or that he set the fire.[2] Viewing the evidence in the light most favorable to the State, as we must, we conclude that the evidence was sufficient.

The opinion offered by the State's expert, if believed, was sufficient to establish that the cause of the fire was arson. Moreover, there was sufficient circumstantial evidence from which the jury could have inferred that Mr. Whittle was the arsonist. As we noted in *Hughes v. State*, 6 Md. App. 389, 394 (1969), because "burning is almost invariably done in a clandestine manner, [ ] the prosecution usually must depend on circumstantial evidence." "Circumstantial evidence may support a conviction when the circumstances, taken together, do not require the trier of fact to resort to speculation or mere conjecture." *Riggins v. State*, 155 Md. App. 181, 216 (2004) (citation omitted).

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[1] Deputy Harr's last name is apparently misspelled in the record as "Hare."

[2] Mr. Whittle asserts that if the evidence was insufficient to prove that he set fire to the shed, it would also be insufficient in this case to sustain his conviction for malicious destruction of property, as the fire is the only thing that allegedly caused destruction of property.

Here, we are satisfied that the circumstantial evidence would have permitted a rational trier of fact to determine, beyond a reasonable doubt, that Mr. Whittle willfully and maliciously set fire to the shed. His concern about the feral cats in the area was evidence of motive to destroy the shed, and, as we have observed, "[s]howing that a defendant had a motive to commit a crime [ ] helps to establish that he had the requisite *intent* to commit the crime." *Sewell*, 239 Md. App. at 612 (quoting *Emory v. State*, 101 Md. App. 585, 606 (1994)). Moreover, evidence that a gun belonging to Mr. Whittle was found near the shed shortly after the fire was extinguished, and that Mr. Whittle entered the property repeatedly in the hours after the fire destroyed the shed, despite being told by Ms. Wrigley to leave, could have persuaded the jury that he set the fire. *See Hughes*, 6 Md. App. at 396 ("evidence of the presence of the accused in the vicinity of the fire, whether before or after its occurrence, is always relevant to establish guilt.") Finally, Mr. Whittle's statements in the recorded jail call could have been interpreted by the jury as an admission of guilt.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.