**IN THE COURT OF APPEALS OF IOWA**

No. 7-495 / 06-1679
Filed August 8, 2007

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**MELISSA ANN STUMP,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

Melissa Ann Stump appeals her convictions, following jury trial, for arson in the first degree and fraudulent submission of an insurance claim. **AFFIRMED.**

William F. McGinn, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Jon Jacobmeier and Amy Zacharias, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Melissa Ann Stump appeals her convictions, following jury trial, for arson in the first degree and fraudulent submission of an insurance claim. She contends the trial court erred in denying her motions for judgment of acquittal,[1] in arrest of judgment, and for new trial because there was not sufficient evidence to support her convictions and the verdicts were contrary to the weight of the evidence. We affirm.

From the evidence presented at trial the jury could find the following facts. In the summer of 2004, Melissa Stump (Stump), her husband Travis Stump (Travis), and her four children moved into a house owned by Michael Feinhold. The Stumps agreed to initially clean and perform repairs in lieu of rent. The property included a detached garage used for storage. Around the beginning of 2005, Feinhold asked Stump to start paying rent but she stated they could not pay. A few weeks later Feinhold spoke to Travis about paying some rent. Shortly thereafter he received a check for one month's rent. This was the only rent the Stumps ever paid on the rental property.

The Stumps had additional money problems, beyond their inability to pay rent, around the time of the fire, including overdue medical bills and several bills which had been turned over to collection agencies. They also had not carried car insurance for some time because they could not afford it. Despite these money

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[1] At times in the record and in her brief Stump interchangeably refers to the same motions as motions for judgment of acquittal, motions to dismiss, or motions for directed verdict. For purposes of this appeal we simply will refer to and treat these motions as motions for judgment of acquittal. *See State v. Deets*, 195 N.W.2d 118, 123 (Iowa 1972) (holding that grant of motion for directed verdict is tantamount to a judgment of acquittal in a criminal action), *overruled on other grounds by State v. Walker,* 574 N.W.2d 280, 283 (Iowa 1998).

issues, Stump took out a renters' insurance policy on their home's contents in early March which became effective March 4, 2005. It provided $150,000 in coverage. Testimony at trial established that the standard coverage for such rental insurance is generally $20,000.

Lori Zimmerman, a friend of Stump's, worked at the convenience store across the street from the Stump residence. She testified at trial that in late February Stump told her she was afraid there was a short circuit in their home's electrical system. However, Stump did not complain to Feinhold or call an electrician at that time. Zimmerman further testified that in early March, Stump told her she was moving her "precious mementoes" such as photographs of her children and other irreplaceable items to the detached garage "so that when there was a fire . . . she wouldn't lose them." At the same time the renters' insurance became effective Stump finally wrote a letter to Feinhold complaining for the first time about the electrical problems they suspected in the house. Shortly thereafter Feinhold told the Stumps they were going to be evicted.

Approximately a week after Stump purchased the rental insurance, in the early morning hours of March 12, 2005, a fire broke out in the basement of the Stumps' house. The Stumps were the only persons who had been in the home in the hours preceding the fire. At the time of the fire the children were asleep. Melissa had been in the basement in the hours before the fire, and there is no evidence that any other person had been. The Stump family and their dog were all able to get out of the house safely. They proceeded to the convenience store across the street where Zimmerman worked.

The Stumps' vehicles were not damaged in the fire because they had been moved from their normal location close to the house. Zimmerman testified she did not see either Travis or Stump move the vehicles. She stated she saw the entire family come across the street to the convenience store together, she called 911, and at that time their vehicles were already gone from their driveway. She did not see Stump go back across the street to move the vehicles.

The Council Bluffs fire department was dispatched to the scene around 3:00 a.m. on March 12 and put out the fire. Fire Captain Jeffrey Johnson and Fire Investigator Robert Caughey felt something was not right about the fire because, among other things, both Stump and Travis were fully dressed at 3:00 a.m., there was no damage to their vehicles, and their dog that escaped safely was on a leash. Thus, investigations into the cause of the fire were initiated. Investigations were conducted by investigators from the Iowa Department of Public Safety Fire Marshall's Office, Feinhold's insurance carrier, and the Stumps' renters' insurance carrier. All but one of the investigations determined the fire more likely than not was intentionally set. The investigator for Stump's insurance provider could not completely rule out a possible electrical cause for the fire and thus the provider paid the Stumps $63,000 on the claimed loss.

The State charged Stump, by trial information, with arson in the first degree, in violation of Iowa Code sections 712.1 and 712.2 (2005), and fraudulent submission of an insurance claim, in violation of section 507A.3(2)(a). Stump moved for judgment of acquittal at the end of the State's case-in-chief and again at the close of all of the evidence, arguing there was insufficient evidence

to show Stump intentionally set the fire. The court denied both motions. The jury found Stump guilty as charged. On September 15, 2006, Stump filed a combined motion in arrest of judgment and motion for new trial arguing the verdict was not supported by the evidence because "the jury picked and chose what parts of the victim's testimony was credible and ignored . . . exculpatory evidence," and the verdict was contrary to the evidence. The district court denied the motions and sentenced Stump to a term of incarceration of no more than five years on the fraudulent submission charge and a term of no more than twenty-five years on the arson charge.

Stump appeals, contending the district court erred in denying her motions for judgment of acquittal, in arrest of judgment, and for new trial because there was insufficient evidence to support her convictions and the verdicts were contrary to the weight of the evidence. More specifically, she contends the State failed to prove she intentionally set the fire and that the jury ignored all of the exculpatory evidence presented at trial.

Our scope of review of sufficiency-of-evidence challenges is for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). In reviewing such challenges we give consideration to all the evidence, not just that supporting the verdict, and view such evidence in the light most favorable to the State. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). We will uphold a trial court's denial of a motion for judgment of acquittal if there is substantial evidence to support the defendant;s conviction. *State v. Kirchner*, 600 N.W.2d 330, 333 (Iowa Ct. App. 1999). Substantial evidence is such evidence as could

convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id*. at 334.

As set forth above, Stump faced serious financial problems at the time of the fire. Yet despite these problems she took out a renters' insurance policy only a few days before the fire, a policy that provided coverage several times greater than the standard policy amount. There was evidence that shortly before the fire Stump told Zimmerman she was moving irreplaceable items out of the house to the detached garage. Reasonable jurors could see both of these actions as being in preparation for a planned fire. In addition, although Stump asserted the house had experienced electrical problems for months, she made no complaints until shortly before the fire when she began complaining to Zimmerman and eventually to Feinhold. This is conduct that a rational fact finder could reasonably view as an attempt to create an innocent explanation for an intentional fire.

Further evidence in the record from which a rational jury could conclude Stump planned for the fire, and thus supports her convictions, includes: the fact the Stumps' vehicles suffered no damage because they had been moved from their normal location very near the basement window out of which flames from the fire poured; both Stump and Travis seemed fully dressed at 3:00 a.m.; and Stump had clothes for her children in her van and asserted she had forgotten and left them there after doing laundry, despite the fact she had a working washer and dryer at home and thus had no need to do laundry elsewhere. The Stumps' cat, which may or may not have been in the house at the time of the fire, was not

found after the fire. There was expert testimony that it was unusual for a cat to escape a fire unaided because a cat will usually hide under furniture. There was also expert testimony that it is unusual for a dog that has been in a home at the time of a fire to be on a leash after the fire.

In addition, fire investigators determined the fire was started with a heavy petroleum distillate, a class of flammables which includes kerosene, diesel fuel, and some charcoal starters. Travis testified there was lamp oil in the basement but no petroleum products. Stump initially told investigators there were no flammable liquids in the basement but then later said there was some lamp oil.

The investigators did find several flaws in the electrical circuitry in the basement of the home. However, they determined these flaws were not close to the origin of the fire. Three highly trained fire investigators testified at trial that the faulty electrical circuitry did not cause the fire, but instead the fire was incendiary in nature. One investigator specifically testified that in his expert opinion the fire was intentionally set.

Although the investigator for Stump's renters' insurance carrier could not completely rule out an electrical cause for the fire, that investigator did not testify at trial and the record does not show what sort of training the investigator had or the type of investigation he or she actually conducted. Accordingly, it was clearly reasonable for the jury to give more weight to the findings of the investigators who did testify and described their training and investigations in detail, and their conclusions that the fire was not electrical in origin and most likely had been intentionally set.

Finally, reasonable jurors could find that after intentionally setting the fire Stump falsely told the insurance company she had nothing to do with the fire and proceeded to collect insurance proceeds under this false pretense.

Stump argues the jury "pick and chose" what evidence to believe and chose to ignore the exculpatory evidence. However, deciding what evidence to believe and rely on and what evidence not to believe is precisely the function of a jury. Inherent in our standard of review of a jury verdict in a criminal case is the recognition that the jury was free to reject certain evidence, and credit other evidence. *State v. Arne,* 579 N.W.2d 326, 328 (Iowa 1998). A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The very function of the jury is to sort out the evidence and place credibility where it belongs. *Id.*

For the reasons set forth above, we conclude there was sufficient evidence in the record for a rational jury to find, beyond a reasonable doubt, that Stump intentionally set the fire in her house and then falsely claimed to her insurance company that she had nothing to do with the fire. Accordingly, there was substantial evidence to support her convictions and the district court did not err in denying her motions for judgment of acquittal.

Stump further contends the district court erred in denying her combined motion in arrest of judgment and motion for new trial because the verdicts were contrary to the weight of the evidence. When a defendant argues the trial court erred in denying a motion for new trial based on a claim the verdict is contrary to

the weight of the evidence our standard of review is for abuse of discretion. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

The power of the trial court is much broader in a motion for new trial than a motion for judgment of acquittal. *Id*. at 658. In applying the weight of the evidence standard,

> If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside and a new trial granted.
> ". . . The motion [for new trial] is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict."

*Id*. at 658-59 (quoting 3 Charles A. Wright, *Federal Practice and Procedure* § 553, at 245-48 (2d ed. 1982)).

This is not a case in which the testimony of a witness or witnesses which otherwise supports conviction is so lacking in credibility that the testimony cannot support a guilty verdict. Neither is it a case in which the evidence supporting a guilty verdict is so scanty, or the evidence opposed to a guilty verdict so compelling, that the verdict can be seen as contrary to the evidence. The evidence is this case simply does not preponderate heavily against the verdict. The district court did not err in overruling Stump's combined motion in arrest of judgment and for new trial.

**AFFIRMED.**