[Cite as *State v. Hinson*, 2006-Ohio-3831.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87132

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
ROCHELLE HINSON	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT OF DECISION:	July 27, 2006
CHARACTER OF PROCEEDING:	Criminal appeal from Court of Common Pleas Case No. CR-451235
JUDGMENT:	AFFIRMED
DATE OF JOURNALIZATION:	_____
APPEARANCES:	
For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor BRIAN S. DECKERT, Assistant 1200 Ontario Street Cleveland, Ohio 44113
For Defendant-Appellant:	PAUL MANCINO, JR. 75 Public Square, Suite 1016 Cleveland, Ohio 44113-2098

COLLEEN CONWAY COONEY, P.J.:

{¶ 1} Defendant-appellant, Rochelle Hinson ("Hinson"), appeals her conviction. Finding no merit to the appeal, we affirm.

{¶ 2} In 2004, Hinson was charged with insurance fraud, attempted theft, falsification, and tampering with records. After a series of continuances, the matter proceeded to trial before a jury in 2005. At the close of the State's case, the trial court dismissed the attempted theft and tampering with records charges. The jury convicted Hinson of insurance fraud and falsification, and the court sentenced her to five years of community control sanctions.

{¶ 3} The following evidence was adduced at trial.

{¶ 4} On June 4, 2003, members of the Cleveland police and fire departments responded to a car fire on East 150th Street. Firefighters extinguished the fire, and the car was towed.

{¶ 5} Earlier that evening, Hinson had reported her 1999 Pontiac Grand Am stolen. She told Maple Heights police that her car had broken down about 12:30 a.m. the previous day on Warrensville Center Road. She claimed that she called a friend to pick her up, and he pushed the car to the side of the road and locked it. Hinson took the keys with her. When she returned the next day to retrieve her car, it was missing. Officers investigated Hinson's missing Pontiac and found that it was the same car involved in the fire on East 150th Street.

{¶ 6} Hinson's father had insured the Pontiac through American Family Insurance ("AFI"). Hinson filed a claim, and the insurer paid her $600 for rental car reimbursement and $9,734.55 to her lienholder.

{¶ 7} John Prexta, AFI's fraud investigator, investigated the car fire. He determined that the fire started in the front passenger area and that the fire was not accidental, but had been set with an open flame (e.g., a lighter or a match). Prexta also determined that the passenger door was open at the time of the fire. He noted that the car's battery was missing but concluded that the car had not been stolen because the ignition system was intact. He also found no other parts of the car were missing. Hinson told Prexta that she was the only person with keys to the car and she eventually gave AFI those keys.

{¶ 8} Through his investigation, Prexta discovered that Hinson had visited a car dealership the week before the fire to inquire about her car's trade-in value. Although she still owed approximately $10,000 on the car, the dealership offered her only $4,500 because the vehicle was in poor condition, and the engine needed major mechanical repairs. When Prexta asked Hinson about the car's trade-in value, she denied that the dealer told her the car was worth less than she owed or that it was in poor condition. However, she admitted that she had recently purchased the car battery and was the only person who had keys to the car.

{¶ 9} Dante Stubbs testified on behalf of Hinson. He testified that Hinson called him to pick her up on Warrensville Center Road after her car stalled. He claimed that he unsuccessfully attempted to start her car and pushed it to the side of the road before driving Hinson home.

{¶ 10} Hinson appeals her conviction, raising eleven assignments of error, which will be combined when possible for review.

Speedy Trial

{¶ 11} In her first assignment of error, Hinson argues that she was denied due process of law and the right to a speedy trial because the trial court repeatedly granted the prosecutor continuances and failed to dismiss the case.

{¶ 12} Hinson never raised her right to a speedy trial at the trial court level, and consequently, she has waived all but plain error. *State v. Chinn*, 85 Ohio St.3d 548, 554, 1999-Ohio-288, 709 N.E.2d 1166. Crim.R. 52(B) states that, "plain error or defect affecting substantial rights may be noticed although they were not brought to the attention of the court." Error is not plain error unless the outcome of an accused's trial clearly would have been otherwise, but for the error. *State v. Nicholas* (1993), 66 Ohio St.3d 431, 436, 613 N.E.2d 225. The standard for plain error is whether substantial rights of the accused are so adversely affected as to undermine the fairness of the guilt-determining process. *State v. Swanson* (1984), 16 Ohio App.3d 375, 377, 476 N.E.2d 672. Notice of plain error is to be taken with the utmost of caution, under exceptional circumstances,

under exceptional circumstances, and only to prevent a manifest miscarriage of justice. *State v. Pumpelly* (1991), 77 Ohio App.3d 470, 475, 602 N.E.2d 714.

{¶ 13} R.C. 2945.71(C)(2) provides that "a person against whom a charge of felony is pending shall be brought to trial within two hundred seventy days after the person's arrest." If the accused is in jail in lieu of bail solely on the pending charge, the statute mandates that each day count as three days for purposes of speedy trial computation. R.C. 2945.71(E). If the accused is not brought to trial within the statutory time frame, the accused must be discharged. R.C. 2945.73(B). The speedy trial time can be extended, however, for reasons set forth in R.C. 2945.72. R.C. 2945.72(H) states that the time within which an accused must be brought to trial may be extended by "the period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion." See *State v. Baker* (1993), 92 Ohio App.3d 516, 636 N.E.2d 363.

{¶ 14} Hinson was not in jail pending trial; therefore, the State had 270 days within which to bring her to trial. In January 2005, Hinson originally pled guilty to insurance fraud and falsification. She then filed a motion to withdraw her guilty plea, which the trial court granted on February 8, 2005. She also waived her right to a speedy trial from February through June 2005. The trial court granted her at least ten continuances. The State obtained three continuances,

obtained three continuances, which totaled 68 days.[1] Therefore, we find no violation of Hinson's right to a speedy trial. The first assignment of error is overruled.

Voir Dire

{¶ 15} In her second assignment of error, Hinson argues that she was denied her right to a fair and impartial jury when the court excused a prospective juror for cause.

{¶ 16} The determination of juror bias necessarily involves a judgment of credibility, the basis of which will not often be apparent from an appellate record. *Wainwright v. Witt* (1985), 469 U.S. 412, 426, 105 S.Ct. 844, 853, 83 L.Ed.2d 841, 853. Therefore, deference must be paid to the trial judge who sees and hears the juror. Id.; see, also, *State v. Williams* (1983), 6 Ohio St.3d 281, 288, 452 N.E.2d 1323. Error during voir dire constitutes reversible error only upon a showing of an abuse of discretion. *State v. Durr* (1991), 58 Ohio St.3d 86, 89, 568 N.E.2d 674; *State v. Beuke* (1988), 38 Ohio St.3d 29, 39, 526 N.E.2d 274.

{¶ 17} R.C. 2313.42(J) states that good cause exists for the removal of a prospective juror when "he discloses by his answers that he cannot be a fair and impartial juror or will not follow the law as given to him by the court." A prospective juror who has been challenged for cause should be excused if the court has any doubt as to the juror's being entirely unbiased. R.C. 2313.43; *State v.*

[1] The calculation is: 98 days minus 30 days for the month of June (due to Hinson's waiver of speedy trial through that time) equals 68 days.

State v. Allard, 75 Ohio St.3d 482, 495, 1996-Ohio-208, 663 N.E.2d 1277.

{¶ 18} Crim.R. 24(C) provides further guidance and states that a trial court may excuse a prospective juror for cause if:

> "(9) [the] juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.
>
> "* * *
>
> "(14) [the] juror is otherwise unsuitable for any other cause to serve as a juror."

{¶ 19} In the case at bar, the trial court excused Juror 10 after examining her in chambers, on the record. Juror 10 indicated that she had previously worked as a victim/witness advocate, was the victim of a sex offense, and had been robbed twice at gunpoint. She also testified that she previously worked at a re-entry program for women released from prison and expressed her opinion that poverty caused some women to commit crimes. Juror 10 stated that she was not sure if she would be able to serve on the jury and be unbiased, and that she would tend to favor the defendant. She also admitted that she was "sick" of victims and currently in bankruptcy proceedings.

{¶ 20} We cannot say that the trial court abused its discretion in excusing Juror 10 for cause. The juror indicated, before any evidence was presented, that she would be biased and would tend to side with the defendant. The court was not satisfied that the juror could render an impartial verdict. Therefore, the second assignment of error is overruled.

Missing Evidence

{¶ 21} In her third assignment of error, Hinson argues that she was denied due process when the court allowed a police officer to testify about his interview with Hinson after the tape of the conversation had been destroyed. The record shows that Detective Cook of the Maple Heights police videotaped his interview with Hinson, but the interview was inadvertently taped over.

{¶ 22} The decision whether to admit or exclude evidence rests solely with the trial court. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032. Therefore, the trial court's decision to allow the officer's testimony will be reversed only if we find that the court abused its discretion.

{¶ 23} The United States Supreme Court has stated that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *State v. Treesh*, 90 Ohio St.3d 460, 475, 2001-Ohio-4, 739 N.E.2d 749, citing *Brady v. Maryland* (1963), 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-1197, 10 L.Ed.2d 215, 218. The Ohio Supreme Court

The Ohio Supreme Court further declared that when "determining whether the prosecution improperly suppressed evidence favorable to an accused, such evidence shall be deemed material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Johnston* (1988), 39 Ohio St.3d 48, 529 N.E.2d 898, paragraph five of the syllabus, following *United States v. Bagley* (1985), 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481. A reasonable probability is one that is sufficient to undermine confidence in the outcome. Id. This standard of materiality applies regardless of whether the evidence is actually requested by the defense. Id. The burden rests with the defendant to prove that the evidence in question was materially exculpatory. See *State v. Jackson* (1991), 57 Ohio St.3d 29, 33, 565 N.E.2d 549.

{¶ 24} "Unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Arizona v. Youngblood* (1988), 488 U.S. 51, 58, 109 S.Ct. 333, 337, 102 L.Ed.2d 281, 289. The term "bad faith," as used here, implies something more than bad judgment or negligence. "It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud." *State v. Wolf*, 154 Ohio App.3d 293, 2003-Ohio-4885, at ¶14, 797 N.E.2d 109, quoting *Hoskins v. Aetna Life Ins. Co.* (1983), 6 Ohio St.3d 272, 276, 452 N.E.2d 1315.

{¶ 25} Thus, if the evidence is materially exculpatory, it is a violation of a defendant's rights not to properly preserve the evidence. If the evidence is merely potentially useful, then the defendant's rights are violated only upon a showing of bad faith.

{¶ 26} From a review of the record, it is clear that the videotape in question was not materially exculpatory, but rather only potentially useful. Therefore, we must consider whether the State acted in bad faith in failing to preserve the evidence.

{¶ 27} Hinson cites *State v. Durnwald*, 163 Ohio App.3d 361, 2005-Ohio-4867, 837 N.E.2d 1234, to support her argument that an officer's oral recitation of a previously taped interview should not be allowed when the tape itself has been destroyed. In *Durnwald*, the court found that a state trooper acted in bad faith when he failed to preserve the videotape of a DUI traffic stop. The court cited the policy of the Ohio State Highway Patrol to videotape all traffic stops and to preserve the tapes as evidence. The court found that the videotape was the only direct evidence available to show the defendant's condition at the time of arrest and, therefore, the evidence was deemed "unique and unattainable by other means." *Durnwald*, supra.

{¶ 28} In the case at bar, there is no evidence showing that the State suppressed material evidence or acted in bad faith in failing to preserve potentially useful evidence.[2] Although the detective should

[2] Hinson also made a written statement, which the trial court excluded because she had not been properly "Mirandized."

should have taken more care in securing the videotape, the taped interview of the defendant was by no means the only evidence available in the case. The record shows that the tape was inadvertently erased by another member of the police department because the municipal court case against Hinson had been dismissed. Obviously, a videotape of a DUI stop is different than a taped interview of a citizen who is not in custody. The DUI videotape serves as a vital piece of evidence tending to show the condition of the allegedly impaired driver. In the instant case, the detective simply interviewed Hinson regarding her missing car.

{¶ 29} We also note that, although Hinson objected to the officer's testimony, she never filed a motion to suppress or to exclude his testimony, nor did she object to the admission of the officer's testimony based on applicable rules of evidence. Furthermore, the record shows that the State properly provided Hinson with her oral statements in discovery. This court finds no abuse of discretion in the court's allowing the detective's testimony regarding the interview. Therefore, we overrule the third assignment of error.

Testimony and Evidence

{¶ 30} In the fourth, fifth, and sixth assignments of error, Hinson argues that she was denied due process of law when the trial court allowed improper evidence and testimony. These assigned errors will be considered together.

{¶ 31} Hinson first claims that it was error for Prexta to testify

testify about the contents of business records kept by AFI, including the claim report, notice of loss document, insurance contract, and loss investigation worksheet.

{¶ 32} Evid.R. 803(6), provides in pertinent part that the following are not excluded by the hearsay rule:

> "Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness. "* * *"

{¶ 33} Hinson does not question the authenticity or nature of the business records but, rather, she argues that because Prexta was not the records custodian, he was not qualified to testify about the contents of the documents.

{¶ 34} The phrase "qualified witness" should be broadly interpreted. *State v. Vrona* (1988), 47 Ohio App.3d 145, 547 N.E.2d 1189, citing 1 Weissenberger's Ohio Evidence (1985) 75, Section 803.79. "The witness providing the foundation need not have firsthand knowledge of the transaction. Rather, it must be demonstrated that the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation,

record's preparation, maintenance and retrieval, that he can reasonably testify on the basis of this knowledge that the record is what it purports to be, and that it was made in the ordinary course of business consistent with the elements of Rule 803(6). * * *" Id. at 76.

{¶ 35} Although Prexta was not the custodian of the records, we find that he was a qualified witness, with knowledge of the records kept by the insurance company. Prexta testified that each of the documents was kept in the ordinary course of AFI's business. Prexta's testimony showed that he was extremely familiar with the operations and procedures of AFI; therefore, as a qualified witness, his testimony was properly admitted.[3]

{¶ 36} Hinson next argues that it was error for the trial court to allow Prexta to express his opinion as to whether Hinson had committed a fraud. First, we note that Prexta was a fraud investigator employed by AFI, not a police officer. Moreover, and contrary to Hinson's assertions on appeal, Prexta never expressed his opinion that Hinson had committed fraud. He may have provided evidence as to her motives by stating that she owed more on the car than it was worth; however, he never gave an opinion as to her guilt.

[3] We also note that two of the exhibits Hinson challenges, exhibits 17 and 23, were not admitted into evidence.

{¶ 37} Hinson next claims that the trial court erred in allowing testimony by Detective Cook regarding his patrol routine. The State inquired of the detective how frequently he patrolled the area of Warrensville Center Road. Detective Cook testified that, although he no longer patrolled that area, he had driven down that road 15 to 20 times per shift when assigned to that patrol area. The State contends that this testimony was offered to refute Hinson's statements to police that she left her vehicle on the side of Warrensville Center Road.

{¶ 38} The trial court has discretion to admit or exclude evidence with marginal probative value on collateral matters. Evid.R. 403(B); *State v. Shields* (1984), 15 Ohio App.3d 112, 114, 472 N.E.2d 1110.

Hinson is unable to show that Detective Cook's testimony is irrelevant or that the prejudicial value outweighs the probative value. Instead, the testimony supported the State's theory that it was unlikely that Hinson left her vehicle on the side of Warrensville Center Road without the car being discovered by police. We find no abuse of discretion in the trial court allowing Detective Cook's testimony.

{¶ 39} Finding no error in the evidence submitted or testimony given, we overrule the fourth, fifth, and sixth assignments of error.

Prosecutorial Misconduct

{¶ 40} In her seventh assignment of error, Hinson argues that the prosecutor improperly expressed his personal opinion as to her guilt and attempted to inflame the jurors. Hinson claims that the prosecutor expressed his personal opinion that she was guilty, tried to inflame the jurors by appealing to their prejudice against those who commit insurance fraud, and improperly instructed the jury on the law.

{¶ 41} In his closing statement, the prosecutor made the following statements:

> "I represent the State of Ohio and the people whose premiums had to go up because of insurance fraud.
>
> * * *
>
> So ladies and gentlemen, I think with all the expert testimony and everything else, all the inconsistencies in her statements, it's obvious that car was not stolen and she made a [false] statement, and she's guilty.
>
> * * *
>
> She is guilty of each and every element of each and every count of this offense."

{¶ 42} A prosecuting attorney's conduct during trial does not constitute grounds for error unless the conduct deprives the defendant of a fair trial. *State v. Keenan* (1993), 66 Ohio St.3d 402, 402-405, 613 N.E.2d 203; *State v. Gest* (1995), 108 Ohio App.3d 248, 257, 670 N.E.2d 536. The touchstone of a due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor. *Smith v. Phillips* (1982), 455 U.S. 209, 71 L.Ed.2d 78, 102 S.Ct. 940. The effect of the prosecutor's

the prosecutor's misconduct must be considered in light of the whole trial. *State v. Durr* (1991), 58 Ohio St.3d 86, 94, 568 N.E.2d 674; *State v. Maurer* (1984), 15 Ohio St.3d 239, 266, 473 N.E.2d 768.

{¶ 43} The prosecution is entitled to significant latitude in its closing remarks. *State v. Hand*, 107 Ohio St.3d 378, 397, 2006-Ohio-18, 840 N.E.2d 151. The test regarding prosecutorial misconduct in closing arguments is whether the remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant. *State v. Smith* (1984), 14 Ohio St.3d 13, 15, 470 N.E.2d 883, citing *United States v. Dorr* (C.A. 5, 1981), 636 F.2d 117, 120. It must be clear beyond a reasonable doubt that, absent the prosecutor's comments, the jury would have found defendant guilty. *Smith*, supra at 15, citing, *United States v. Hasting* (1983), 76 L.Ed.2d 96, 107.

{¶ 44} A prosecutor's personal opinion of guilt is an impropriety to be avoided, but such statements are not prejudicially erroneous per se. *State v. Stephens* (1970), 24 Ohio St.2d 76, 263 N.E.2d 773. "In the tension and turmoil of a trial, both the prosecution and the defense have wide latitude in summation as to what the evidence has shown and what reasonable inferences may be drawn therefrom." Id.; *State v. Lott* (1990), 51 Ohio St.3d 160, 165, 555 N.E.2d 293.

{¶ 45} In reviewing the cumulative effect of the prosecutor's statements, we cannot say that they were so prejudicial as to warrant a new trial. In the case cited by Hinson, the prosecutor made many inappropriate statements, and the court found the cumulative effect to be prejudicial. See *State v. Van Meter* (1998), 130 Ohio App.3d 592, 720 N.E.2d 934.[4]

{¶ 46} We believe the comments of the prosecutor were within the wide latitude afforded attorneys during closing arguments. Furthermore, the trial court instructed the jury that the evidence in the case does not include closing arguments. Moreover, the trial court told the jury that they were the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence. We presume that the jury followed the court's instructions. *State v. Loza*, 71 Ohio St.3d 61, 79, 1994-Ohio-409, 641 N.E.2d 1082.

{¶ 47} It is sufficient here to caution the prosecution on the use of such tactics in closing argument. See *Smith*, supra. Therefore, the seventh assignment of error is overruled.

Jury Instructions

{¶ 48} In her eighth assignment of error, Hinson argues that the trial court improperly instructed the jury because the definition of "purpose" was somehow diluted. This court has previously dealt with

[4] The other case Hinson cites, *State v. Jones* (1996), 114 Ohio App.3d 306, 683 N.E.2d 87, was reversed for ineffective assistance of counsel. The *Jones* court found no prosecutorial misconduct.

with and rejected this claim. *State v. McClain*, Cuyahoga App. No. 77740, 2002-Ohio-2349. A review of the entire charge demonstrates that the trial court adequately conveyed to the jury that it must find that Hinson had the specific intent to commit insurance fraud.

{¶ 49} Hinson has also failed to demonstrate that the outcome of the trial would have been different if not for the disputed instruction. See *McClain*, supra; *State v. Jenkins* (Dec. 24, 1997), Cuyahoga App. No. 68961.

{¶ 50} Therefore, the eighth assignment of error is overruled.

Restitution

{¶ 51} In her ninth and tenth assignments of error, Hinson contends that the trial court erred when it ordered her to pay restitution to AFI. Hinson argues that AFI should not receive restitution because it is an insurance company and it voluntarily paid the lienholder.

{¶ 52} Former R.C. 2929.18, which was in effect at the time of the offense, provided in pertinent part that "the court shall not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance."[5] Thus, it is Hinson's position that restitution could not be ordered because the law in effect at the time of the offense precluded restitution to the insurance company and, further, that the statute's language does not require her to reimburse AFI for the funds it paid

[5] In 2004, the Ohio Legislature amended R.C. 2929.18, deleting this language.

the funds it paid to the lienholder.

{¶ 53} We cannot conclude, pursuant to former R.C. 2929.18, that an insurance company is precluded from receiving restitution from an offender when the insurance company paid a third party for damages caused by the offender. In the instant case, the insurer was not merely a third party seeking reimbursement for its payment on Hinson's behalf, but it was also a victim of the insurance fraud. Thus, it was within the bounds of former R.C. 2929.18(A)(1) for the court to order Hinson to pay restitution to AFI. For us to hold otherwise would essentially reward Hinson for her own felonious acts. See *State v. Eggeman*, Van Wert App. No. 15-04-07, 2004-Ohio-6495, ¶¶32-33.[6]

{¶ 54} We also find no merit to Hinson's argument that she should not be required to reimburse the insurer because it voluntarily paid the lienholder. Hinson argues that there was no lienholder listed on the declarations page; therefore, AFI should not have paid anyone. In her argument, Hinson cites portions of the policy that state that the lienholder must be listed on the declarations page. However, the policy was never entered into evidence and is not part of the record for our review. Moreover, there was no testimony as to the contents of the policy, other than that which is mentioned infra. We are unable to review the policy to verify that it supports Hinson's claims

[6] The former R.C. 2929.18 has also been interpreted to allow orders of restitution to the victim's insurance company. *State v. Martin*, 140 Ohio App.3d 326, 338, 2000-Ohio-1942, 747 N.E.2d 318; *State v. Call*, Marion App. No. 9-04-29, 2004-Ohio-5645.

to verify that it supports Hinson's claims and, therefore, cannot conclude that AFI had no contractual obligation to pay the claim.

{¶ 55} Contrary to Hinson's arguments, AFI's investigator testified that, under the policy, the insurer was required to pay the lienholder regardless of whether a fraud had been committed. AFI also notified Hinson that, although it was paying pursuant to the claim, it was reserving its rights until it concluded that the destroyed vehicle was either a "fortuitous loss" or an accident. Again, Hinson should not be rewarded for her crimes simply because AFI paid the lienholder.

{¶ 56} Therefore, finding no error in the court's order of restitution, the ninth and tenth assignments of error are overruled.

Sufficiency of the Evidence

{¶ 57} In her eleventh and final assignment of error, Hinson argues that she was denied due process of law when the trial court denied her Crim.R. 29 motions for acquittal.

{¶ 58} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the State has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. Id. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational

the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 59} The jury convicted Hinson of insurance fraud and falsification. The statute governing insurance fraud, R.C. 2913.47, states in pertinent part:

> "No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall * * *
>
> "(1) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive."

{¶ 60} R.C. 2921.13, which prohibits falsification, provides:

> "No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when * * * the statement is made with purpose to commit or facilitate the commission of a theft offense."

{¶ 61} Proof of guilt may be made by circumstantial evidence, real evidence, and direct or testimonial evidence, or any combination of the three, and all three have equal probative value. *State v. Nicely* (1988), 39 Ohio St.3d 147, 529 N.E.2d 1236; *Jenks*, supra. We note that "circumstantial evidence may be more certain, satisfying and

satisfying and persuasive than direct evidence." *State v. Richey*, 64 Ohio St.3d 353, 363, 1992-Ohio-44, 595 N.E.2d 915.

{¶ 62} Although there were no eyewitnesses to the car fire, there was significant circumstantial evidence linking Hinson to the crime. Moreover, Hinson was not charged with burning the car, but she was charged with and convicted of insurance fraud and falsification in relation to the reports she made about the car. Ample evidence was presented that Hinson made false statements to both the police and AFI's investigator and that she filed a false police report and insurance claim.

{¶ 63} We find that the direct and circumstantial evidence in this case, and the reasonable inferences that can be drawn therefrom, were more than sufficient to establish Hinson's guilt. Viewing the evidence in the light most favorable to the prosecution, we find that there was sufficient evidence upon which the jury could reasonably conclude that all the elements of the offenses were proven beyond a reasonable doubt. See *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132.

{¶ 64} Therefore, the eleventh assignment of error is overruled.

{¶ 65} Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, J. CONCURS

SEAN C. GALLAGHER, J. CONCURS IN JUDGMENT ONLY

PRESIDING JUDGE
COLLEEN CONWAY COONEY

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).