**[Cite as *State v. Williams*, 2010-Ohio-1430.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 93200**

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## STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

## LATASHA WILLIAMS

DEFENDANT-APPELLANT

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**JUDGMENT:**
AFFIRMED

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Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516285

**BEFORE:** Sweeney, J., McMonagle, P.J., and Cooney, J.

**RELEASED:** April 1, 2010

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

JAMES J. SWEENEY, J.:

**{¶ 1}** Defendant-appellant, Latasha Williams ("defendant"), appeals her attempted aggravated arson conviction. After reviewing the facts of the case and pertinent law, we affirm.

**{¶ 2}** On September 29, 2008, Bernita Williams ("Bernita") was in her apartment at 1718 East 68th Place, in Cleveland, when she and her boyfriend, Kholon Scott ("Scott"), smelled something burning. They looked out the bathroom window and saw defendant on the back porch, with bags over her shoes and on her hands. Defendant had a lighter in one hand and lighter fluid in the other hand. On the porch floor near defendant was a half-burnt sock. Bernita and her boyfriend watched defendant squirt lighter fluid all over the back porch and then light a small piece of paper on fire.

**{¶ 3}** Defendant then went into her apartment. Scott went out to the porch and stomped out the flames. Bernita called her landlord, David Collier, who told Bernita to call the fire department, which she did. Moments later, firefighters and Collier arrived on the scene.

**{¶ 4}** On October 9, 2008, defendant was charged with one count of aggravated arson in violation of R.C. 2909.02(A)(2). On March 11, 2009, a jury found her guilty of the lesser included offense of attempted aggravated arson. On April 6, 2009, the court sentenced defendant to one year of community control sanctions.

**{¶ 5}** Defendant appeals and raises two assignments of error for our review, which we will address together.

**{¶ 6}** "I. The evidence was insufficient to sustain a finding of guilt as to attempted aggravated arson.

**{¶ 7}** "II. The verdict was against the manifest weight of the evidence."

**{¶ 8}** When reviewing sufficiency of the evidence, an appellate court must determine, "after viewing the evidence in a light most favorable to the prosecution, whether any reasonable 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, 273, 574 N.E.2d 492.

**{¶ 9}** The proper test for an appellate court reviewing a manifest weight of the evidence claim is as follows:

**{¶ 10}** "The appellate court sits as the 'thirteenth juror' and, reviewing the entire record, weighs all the reasonable inferences, considers the credibility of witnesses and determines whether, in resolving conflicts in evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. Determinations of witness credibility are primarily left to the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 541.

**{¶ 11}** Aggravated arson is governed by R.C. 2909.02, and subsection (A)(2) states in pertinent part, "No person, by means of fire * * * shall * * * [c]ause physical harm to any occupied structure * * *." Pursuant to R.C. 2923.02(A), criminal

attempt is defined as, “No person, purposely or knowingly, * * * shall engage in conduct that, if successful, would constitute or result in the offense.”

**{¶ 12}** In the instant case, the following evidence was presented at trial:

**{¶ 13}** Bernita testified that Scott called her into the bathroom after they smelled something burning. She looked out the window and saw defendant with bags on her hands and feet. She had a lighter and lighter fluid in her hands. Bernita “could see where [defendant] had tried to light the sock but it didn’t catch fire, so [it was] just laying there like burnt. You could still see where she had lit at it. * * * I seen her directly with the bottle — with the can in her hand putting it on the wall * * *. She had the lighter fluid doing like that, it was all on the porch. * * * But I had seen her lighting it, putting it on the thing, she had a piece of paper that she had, that little piece of paper with the lighter. * * * I mean, like I said, she lit it, the sock, but it didn’t catch fire. But you could see where she had — like I said, the smell when you burn something, burn something, you could smell it and it was all in my kitchen, the smell.”

**{¶ 14}** Scott testified that when he looked out of the bathroom window, he saw defendant on the rear porch with plastic bags on her hands and feet, squirting lighter fluid all over the back porch. “Now I’m sitting here watching her eyesight, I could see her eyes right here. She squirts down right here by the door, squirts by where the window was at, goes back upstairs, she squirted some more because it was leaking from upstairs, she came back down from the stairs with the paper in her hand trying to light the flame.”

**{¶ 15}** Scott further testified that he told Bernita to call the fire department as he went outside and put out the flame. "The sock was ablaze too, right in the puddle where she was squirting it and I went down and stomped it out with my foot."

**{¶ 16}** Collier testified that when he arrived at 1718 East 68th Place, he smelled lighter fluid. He further testified that the building "provides housing to low-income families with children," and at the time of the alleged fire, all 12 units were occupied. Collier stated that there were burn marks on the porch floor as a result of defendant's conduct.

**{¶ 17}** Cleveland firefighter and arson detective Jeffrey Yancey testified that when he arrived at the scene, he saw scorch marks on the rear wooden porch area. He also saw a partially burnt sock and partially burnt piece of paper. Det. Yancey further stated that he used a photoionization detector on the porch area, which is a device that detects ignitable liquids. The results of his tests indicated that some type of ignitable liquid, such as lighter fluid or gasoline, was used in that area. Det. Yancey testified that after his investigation, he determined "there's no other way the fire could have started other than being intentional. There was no other causes, nothing electrical around that could have started it. The only way that fire could have started was somebody had purposely set it."

**{¶ 18}** Cleveland firefighter and arson investigator Nurrudin Jinna testified that he was the follow-up officer assigned to this case, and when he went to the scene, he saw the scorch marks on the rear porch. He determined that there was

an unobstructed view of the burnt porch area from Bernita's bathroom window. After reviewing the file, talking to the witnesses, and getting a written statement from Bernita, he "determined that the fire was intentionally set by [defendant]."

**{¶ 19}** Viewing this evidence in a light most favorable to the State, we find that it is sufficient to support a conviction for attempted aggravated arson. We also find that defendant's conviction is not against the manifest weight of the evidence.

**{¶ 20}** The State presented evidence that defendant intentionally poured lighter fluid on the back porch of her apartment and attempted to set it on fire, while there were people in the building. Two eyewitnesses observed defendant pouring lighter fluid on her porch, while wearing bags over her hands and feet. The witnesses saw a half-burnt sock on the porch. They then watched as defendant attempted to light a piece of paper on fire. One of the witnesses stomped out the flames. Two firefighters testified that there were burn marks on the porch and tests indicated the presence of an ignitable fluid. The building's owner testified that there was damage to the wooden floor of the porch due to burn marks and that the apartments were occupied at the time defendant attempted to start the fire.

**{¶ 21}** The instant case is similar to *State v. Taylor*, Lorain App. No. 06CA009000, 2008-Ohio-1462. In *Taylor*, two eyewitnesses testified that the defendant walked up the stairs leading to the porch of his ex-girlfriend's second story apartment with a can of gasoline in his hand. The defendant "began pouring

it on the porch in front of her unit and sloshing it inside her screen door." The defendant then went back down the stairs, tore off part of his shirt, and stuffed it into the opening of the gas can. He then lit the shirt on fire and tried to throw the can onto the second story porch, but was unsuccessful after another tenant from the building knocked the flaming gas can out of the defendant's hands. Id. at ¶4-7.

**{¶ 22}** The *Taylor* court found that this evidence was sufficient to support convictions for attempted aggravated arson. Id. at ¶69. The court also found the convictions "not contrary to the manifest weight of the evidence." Id. at ¶72. See, also, *State v. Martin*, Stark App. No. 2007CA00230, 2009-Ohio-947 (holding that a defendant's conviction for attempted aggravated arson was not against the manifest weight of the evidence when a witness testified that the defendant lit a lighter and moved close to a gasoline tank and hose); *State v. Johnson*, Cuyahoga App. No. 81814, 2003-Ohio-4180 (holding that there was sufficient evidence to support convictions for aggravated arson when witnesses testified that the defendant drove the car from which a firebomb, which never properly ignited, was thrown in the direction of another person) (reversed on other grounds).

**{¶ 23}** Accordingly, Assignments of Error I and II are overruled.

**{¶ 24}** Judgment affirmed.

It is ordered that appellee recover from 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 Court of Common Pleas to carry this judgment into execution. 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.

JAMES J. SWEENEY, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR