[Cite as *State v. Littlejohn*, 2010-Ohio-4862.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 25087
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 09 02 0457
LEANDRE D. LITTLEJOHN	
Appellant	

DECISION AND JOURNAL ENTRY

Dated: October 6, 2010

CARR, Judge.

{¶1} Appellant, Leandre Littlejohn, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On March 3, 2009, the Summit County Grand Jury indicted Littlejohn on one count of possession of cocaine in violation of R.C. 2925.11(A)(C)(4), a felony of the third degree; one count of trafficking in cocaine in violation of R.C. 2925.03(A)(C)(4), a felony of the third degree; two counts of arson, one count in violation of R.C. 2909.03(A)(1) and one count in violation of R.C. 2909.03(A)(2), both felonies of the fourth degree; one count of insurance fraud in violation of R.C. 2913.47(B)(1)/(2), a felony of the fourth degree; one count of driving under suspension in violation of R.C. 4510.11, a misdemeanor of the first degree; and one count of possession of marijuana in violation of R.C. 2925.11(A)(C)(3), a minor misdemeanor. The case proceeded to trial on October 13, 2009. The jury found Littlejohn guilty of possession of

cocaine, both counts of arson, insurance fraud, driving under suspension, and possession of marijuana. The jury found Littlejohn not guilty of trafficking in cocaine. Littlejohn was sentenced to a total of four years imprisonment and ordered to pay several fines. Littlejohn filed his notice of appeal on November 10, 2009.

{¶3} On appeal, Littlejohn raises two assignments of error, which this Court rearranges to facilitate review.

II.

ASSIGNMENT OF ERROR II

> "INSUFFICIENCY EVIDENCE WAS PRESENTED TO SUPPORT DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT." (sic)

{¶4} In his second assignment of error, Littlejohn argues that his convictions were not supported by sufficient evidence. This Court disagrees.

{¶5} The law pertaining to a challenge to the sufficiency of the evidence is well settled:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Galloway* (Jan. 31, 2001), 9th Dist. No. 19752, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

The test for sufficiency requires a determination of whether the State has met its burden of production at trial. *State v. Walker* (Dec. 12, 2001), 9th Dist. No. 20559; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390.

{¶6} In support of his second assignment of error, Littlejohn argues that the evidence presented at trial did not support the conclusion that he was involved with the fire that destroyed his car. While Littlejohn does not specifically identify the convictions for which he challenges

the sufficiency of the evidence, the argument set forth in his merit brief focuses solely on whether the State presented sufficient evidence to prove that he was involved with the fire that destroyed the 1998 Cadillac Catera. Littlejohn was convicted of two counts of arson, one count in violation of R.C. 2909.03(A)(1), a felony of the fourth degree, and one count in violation of R.C. 2909.03(A)(2), a felony of the fourth degree.

{¶7} Pursuant to R.C. 2929.03(A), "[n]o person, by means of fire or explosion, shall knowingly do any of the following:

> "(1) Cause, or create a substantial risk of, physical harm to any property of another without the other person's consent;
>
> "(2) Cause, or create a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud[.]"

{¶8} R.C. 2901.22(B) states:

> "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶9} At trial, Matthew D'Avello, a fire investigator for the Akron Fire Department Arson Bureau, testified on behalf of the State. Mr. D'Avello testified that in the early morning hours of December 16, 2008, he was called to investigate a possible arson at Neil Walker Motors. Mr. D'Avello testified that the fire that destroyed the Cadillac Catera was caused by an incendiary device known as a "molotov cocktail." Mr. D'Avello testified that the remnants of the molotov cocktail, which consisted of a partial beer bottle containing an ignitable liquid, were found in the rear passenger seat of a Cadillac Catera. The car that was destroyed had been purchased by Littlejohn in October 2008.

{¶10} Jeaneen Bradford, Littlejohn's longtime girlfriend, testified that Littlejohn had purchased the 1998 Cadillac Catera in October 2008. As of the time of trial, Ms. Bradford and

Littlejohn had known each other for six years and had four children together. Littlejohn had purchased the 1998 Cadillac Catera but it was titled in Ms. Bradford's name because Littlejohn did not have a license. Ms. Bradford testified that shortly after the car was purchased, it was struck by another vehicle in a hit-and-run accident. Ms. Bradford submitted an insurance claim and received $1,200. Ms. Bradford cashed the check and gave it to Littlejohn. Ms. Bradford testified that she gave Littlejohn the money because he needed to take the car to be repaired. Littlejohn then took the car to Neil Walker Motors. In the early morning hours of December 16, 2008, Ms. Bradford testified that she was home in bed. Littlejohn was not with Ms. Bradford that evening but he was using her car, a Saturn. Early in the morning, Ms. Bradford called Littlejohn's cell phone because she needed her car to take their daughter to school the next morning. According to the cell phone records which were introduced as an exhibit at trial, Ms. Bradford attempted to call Littlejohn's cell phone at 2:05 a.m., 7:30 a.m., and 8:52 a.m. Ms. Bradford testified that Littlejohn did not answer her calls.

{¶11} Ms. Bradford further testified that sometime after December 16, 2008, when she was with Littlejohn, he received a call from Neal Walker Motors. Littlejohn explained to her that the Cadillac Catera had been set on fire. Ms. Bradford then testified, "I said you (Littlejohn) probably had something to do with this, and jokingly he said yeah." Ms. Bradford testified that she submitted an insurance claim and eventually the insurance company paid her $1,400. According to Ms. Bradford, she and Littlejohn had an argument about the insurance money because he had told her that she "better basically give him the money when it comes." Ms. Bradford testified that, when the money arrived, "[Littlejohn] got a thousand of it and he let me keep 400 of it."

{¶12} Jesse Sherman also testified on behalf of the State at trial. Mr. Sherman is an employee at Neal Walker Motors. Mr. Sherman testified that in late November 2008, a man brought in the 1998 Cadillac Catera to be serviced. The man identified himself as "Dre Smith." Mr. Sherman testified that the individual who brought in the vehicle asked him to "check over the car, check and look at all the fluids, do an oil change and basically that was it." The individual did not ask for any bodywork to be done on the car. The total price for the repairs was $327.62. The same individual brought the vehicle back a second time and stated that it was losing coolant and that it was not running well. Mr. Sherman testified that a lot of work needed to be done to the vehicle, including that it needed a tune-up and that there was an issue with the coolant valve. Mr. Sherman testified that these problems were likely caused by the passage of time and not because of an accident. Mr. Sherman testified that the cost of the repairs would be between $1,000 and $1,100 dollars. In "mid December," Mr. Sherman left a voicemail message with the individual in which he stated the estimated cost of the repairs. Mr. Sherman testified that the call was made prior to December 16, 2008. The individual did not return his call. In open court, Mr. Sherman identified the individual who identified himself as "Dre Smith" as the defendant, Leandre Littlejohn.

{¶13} The Supreme Court of Ohio has held that, "[c]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. When the state relies on circumstantial evidence to prove an essential element of the offense charged, there is no need for such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction." *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. Having the necessary repairs done on the 1998 Cadillac Catera had become a financial burden for Littlejohn. On the night of the fire, Ms. Bradford attempted to

contact Littlejohn on his cell phone but was unable to reach him. Littlejohn was using Ms. Bradford's Saturn that night which would have given him a mode of transportation to travel to and from the scene of the crime. Additionally, Littlejohn had taken steps to ensure that Ms. Bradford gave him a significant portion of the insurance money from the destruction of the vehicle. Furthermore, Ms. Bradford testified that she and Littlejohn openly joked about him having something to do with the fire. Thus, the aforementioned evidence, when construed in a light most favorable to the State, was sufficient to connect Littlejohn to the fire that destroyed the 1998 Cadillac Catera. See *Galloway*, supra, quoting *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus.

{¶14} The second assignment of error is overruled.

ASSIGNMENT OF ERROR I

"THE TRIAL JUDGE ERRED BY ALLOWING TESTIMONY FROM THE GIRLFRIEND REGARDING LARGE SUMS OF MONEY DEFENDANT EXPECTED TO RECEIVE WHICH WAS COMPLETELY UNRELATED TO THE CHARGES HE FACED."

{¶15} In his first assignment of error, Littlejohn argues that the trial court erred by allowing Jeaneen Bradford to testify about a conversation she had with Littlejohn in which he indicated that he expected to receive a large sum of money. This Court disagrees.

{¶16} In support of his first assignment of error, Littlejohn argues that Jeaneen Bradford's testimony constituted an improper admission of character evidence. In support of this position, Littlejohn contends there was no probative value from the introduction of this testimony. In response to this argument, the State contends that the testimony was not used to prove character, but was instead properly offered pursuant to Evid.R. 404(B) to show proof of motive, opportunity, intent, preparation, and identity with regard to the crimes of arson, insurance fraud, driving under suspension, and possession of marijuana.

{¶17} Evid.R. 404(B) states, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶18} As discussed in our resolution of the first assignment of error, Ms. Bradford testified that she and Littlejohn had purchased a 1998 Cadillac Catera together. Ms. Bradford testified that shortly after the car was purchased, it was struck by another vehicle in a hit-and-run accident. Ms. Bradford submitted an insurance claim and received $1,200. The insurance money from the hit-and-run claim was given to Littlejohn. In the days following December 16, 2008, Littlejohn received a call from Neil Walker Motors that the car had been set on fire. As discussed above, Ms. Bradford submitted an insurance claim and received $1,400 from her insurance company. After an argument about the insurance money, Littlejohn was given $1,000 and Ms. Bradford kept $400.

{¶19} Ms. Bradford was then asked if, prior to the fire, she and Littlejohn ever discussed any other large sums of money that she was going to receive. The trial court permitted Ms. Bradford to answer this question over the objection of defense counsel. Ms Bradford testified that Littlejohn had informed her that he was "going to come across about $7,000." Ms. Bradford testified that Littlejohn did not explain how or why he anticipated receiving the money. Ms. Bradford further testified that Littlejohn asked her if she knew anyone who might have any receipts "for a TV or something like that." Ms. Bradford indicated that she was not certain if the conversation regarding the receipts took place before or after the fire.

{¶20} Contrary to the argument set forth by Littlejohn, the testimony in question was not offered as character evidence or other acts evidence pursuant to Evid.R. 404(B). Rather, the

testimony was offered as circumstantial evidence of guilt. As noted above, circumstantial evidence is of equal probative value to direct evidence. *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. Circumstantial evidence is admissible if it is relevant to prove the matter of consequence to the determination of the action. Evid.R. 401. Littlejohn was charged with two counts of arson as well as insurance fraud. Ms. Bradford's testimony that Littlejohn anticipated receiving a large sum of money was offered as circumstantial evidence tending to show that Littlejohn anticipated receiving an insurance payment for the arson that he planned to commit. It should be noted that the line of questioning regarding Littlejohn stating that he anticipated receiving large sums of money immediately followed the line of questioning in which Ms. Bradford testified that Littlejohn had joked about being responsible for the fire. Thus, the testimony did have probative value and was not unduly prejudicial pursuant to Evid.R. 403. The jury could have reasonably inferred that Littlejohn made the statement that he anticipated receiving a large sum of money because he intended to commit the arson and collect the insurance money. Because the testimony in question was offered as circumstantial evidence relevant to prove a matter of consequence to the determination of the action, the first assignment of error is overruled.

III.

{¶21} Littlejohn's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J
CONCUR

APPEARANCES:

KAREN H. BROUSE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.