



North Carolina v. Sargent

22 N.C. App. 148 (1974) | Cited 0 times | Court of Appeals of North Carolina | June 19, 1974

During the trial of this case, the State introduced considerable evidence concerning the preparation and use of Molotov cocktails, the damage caused by the fire at Pate's Store, and the discovery of a glass jar and gasoline-soaked soil near the store. Defendant contends that this evidence should not have been admitted, since he was charged only with procuring felonious burning and not with the actual burning of the store. This contention is not correct and must be rejected. When an individual is prosecuted for procuring felonious burning under G.S. 14-62, he is being charged with complicity in the burning and not with mere solicitation. To establish defendant's guilt, it was necessary for the State to prove not only that defendant instructed someone to burn Pate's Store, but also that the store was in fact burned. *State v. Cuthrell*, 233 N.C. 274, 63 S.E.2d 549; 5 Am. Jur. 2d, Arson and Related Offenses, § 26; see *State v. Benton*, 275 N.C. 378, 167 S.E.2d 775; *State v. Bass*, 255 N.C. 42, 120 S.E.2d 580. Evidence of the fire and the events leading up to it, therefore, was as fully admissible as it would have been if one of the principals had been on trial for the actual burning of Pate's Store.

Defendant particularly objects to the admission of Blacksmith's testimony concerning the reasons why he and his group did not burn Pate's Store in the southeastern part of Pembroke. This testimony was relevant and admissible to explain why defendant changed his plans and told Deese to burn Pate's Store west of town after telling Blacksmith to burn the store in southeastern Pembroke. Blacksmith's testimony about defendant's change of plans was more likely to be true if there were a

good reason for the change of plans than if there were no such reason.

The court did not err in admitting Blacksmith's testimony that he and defendant were members of AIM and came to Robeson County to help the Tuscarora faction establish a tribal identity. When considered together with the evidence that Old Main burned down on 18 March 1973, this testimony tends to establish a motive for the crime. The jury could reasonably infer that defendant ordered Blacksmith and his group to burn Pate's Store as a means of retaliation for the destruction of one of the historic buildings of the Indian community. See *State v. Jennings*, 16 N.C. App. 205, 192 S.E.2d 46, cert. denied, 282 N.C. 428, 192 S.E.2d 838; cf. *State v. Hairston*, 280 N.C. 220, 185 S.E.2d 633, cert. denied, 409 U.S. 888.

The testimony of Deputy Sheriff Hubert Stone, which corroborated Blacksmith's testimony, was properly admitted into evidence. When a witness is contradicted by other witnesses, or when he is cross-examined in such a way as to cast doubt upon his credibility, evidence of his prior consistent statements is admissible for corroborative purposes. *State v. Cook*, 280 N.C. 642, 187 S.E.2d 104; *State v. Doss*, 279 N.C. 413, 183 S.E.2d 671, vacated and remanded on other grounds, 408 U.S. 939; *State v.*



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Netcliff, 14 N.C. App. 100, 187 S.E.2d 450; 1 Stansbury, N.C. Evidence (Brandis rev.), §§ 50, 51.

Defendant asserts that the court should have granted his motion for nonsuit, since the only substantive evidence linking him to the fire at Pate's Store was the testimony of the accomplice Blacksmith. This assertion is without merit. "It is well settled in this jurisdiction that although the jury should receive and act upon such testimony with caution, the unsupported testimony of an accomplice is sufficient to sustain a conviction if it satisfies the jury beyond a reasonable doubt of the guilt of the accused." State v. McNair, 272 N.C. 130, 132, 157 S.E.2d 660, 662; State v. Tilley, 239 N.C. 245, 249, 79 S.E.2d 473, 476; State v. Wood, 20 N.C. App. 267, 269, 201 S.E.2d 231, 232. It is true, as defendant points out, that Blacksmith had pleaded guilty to a charge of felonious burning and was awaiting sentence at the time of defendant's trial. This fact, however, does not affect the admissibility of his testimony or its sufficiency to withstand a motion for nonsuit. It was merely a factor to be considered by the jury in determining whether his testimony should be believed.

Defendant has brought forward a number of other assignments of error concerning the admission or exclusion of evidence. In no case, however, do we find any error of sufficient significance to be considered prejudicial. The jury chose to believe the State's evidence. Defendant has received a fair trial and must abide by the verdict.

No error.

Disposition

No error.

