

64647-8

64647-8

NO. 64647-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

STEVEN SANFORD,

Appellant.



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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIA GARRATT

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**BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

	Page
A. ISSUES PRESENTED .....	1
1. SANFORD REPEATEDLY AND INTENTIONALLY IGNITED FIRES TO THE PROPERTY OF ANOTHER. WAS THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE, SUFFICIENT TO CONVICT THE APPELLANT OF ARSON IN THE SECOND DEGREE?.....	1
2. SANFORD WAS CONVICTED FOLLOWING A BENCH TRIAL, WHEREIN HE WAS TRIED WITH HIS CO-RESPONDENT. JUDGES ARE PRESUMED TO BE ABLE TO DISREGARD INADMISSIBLE EVIDENCE. DO THE CONSTITUTIONAL PROTECTIONS OF <u>BRUTON</u> REQUIRE REVERSAL? .....	1
B. STATEMENT OF THE CASE.....	1
1. PROCEDURAL FACTS .....	1
2. SUBSTANTIVE FACTS .....	2
C. ARGUMENT .....	7
1. SANFORD REPEATEDLY AND INTENTIONALLY IGNITED FIRES TO THE PROPERTY OF ANOTHER. THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE, WAS SUFFICIENT TO CONVICT THE APPELLANT OF ARSON IN THE SECOND DEGREE.....	7
2. SANFORD WAS CONVICTED FOLLOWING A BENCH TRIAL, WHEREIN HE WAS TRIED WITH HIS CO-RESPONDENT. JUDGES ARE PRESUMED TO BE ABLE TO DISREGARD INADMISSIBLE EVIDENCE. THE CONSTITUTIONAL PROTECTIONS OF <u>BRUTON</u> DO NOT APPLY AND DO NOT REQUIRE REVERSAL? .....	9
D. CONCLUSION .....	14

## TABLE OF AUTHORITIES

Page

### **FEDERAL CASES**

<u>Bruton v. United States</u> , 391 U.S. 123 (1968) .....	10
<u>Cruz v. New York</u> , 481 U.S. 186 (1987) .....	10
<u>Gray v. Maryland</u> , 523 U.S. 185 (1998) .....	11
<u>Richardson v. Marsh</u> , 481 U.S. 200 (1987) .....	11

### **WASHINGTON CASES**

<u>Bender v. City of Seattle</u> , 99 Wn.2d 582, 664 P.2d 492 (1983) .....	7
<u>State v. Gentry</u> , 125 Wash. 2d 570, 888 P.2d 1105 (1995) .....	7
<u>State v. Gerber</u> , 28 Wash.App. 214, 622 P.2d 888 (1981) .....	8
<u>State v. Jenkins</u> , 53 Wash.App. 228, 766 P.2d 499, (1989) .....	13
<u>State v. Medina</u> , 112 Wn. App. 40, 48 P.3d 1005 (2002) .....	11
<u>State v. Melton</u> , 63 Wash.App. 63, 817 P.2d 413 (1991) .....	12
<u>State v. Miles</u> , 77 Wash.2d 593, 464 P.2d 723 (1970) .....	13
<u>State v. Nelson</u> , 17 Wn.App. 66, 561 P.2d 1093 (1977) .....	9
<u>State v. Ong</u> , 88 Wash.App. 572, 945 P.2d 749 (1997) .....	8
<u>State v. Turner</u> , 58 Wash.2d 159, 361 P.2d 581 (1961) .....	8
<u>State v. Vasquez</u> , 66 Wash.App. 573, 832 P.2d 883 (1992) .....	12
<u>State v. Vincent</u> , 131 Wn. App. 147, 120 P.3d 120 (2005) .....	11, 12
<u>State v. Young</u> , 87 Wash.2d 129, 550 P.2d 1 (1976) .....	9

### **WASHINGTON STATUTES & RULES**

9A.01.110(12) .....	8
9A.48.030 .....	1
WPIC 1.02 .....	7

**A. ISSUES PRESENTED**

1. **SANFORD REPEATEDLY AND INTENTIONALLY IGNITED FIRES TO THE PROPERTY OF ANOTHER. WAS THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE, SUFFICIENT TO CONVICT THE APPELLANT OF ARSON IN THE SECOND DEGREE?**
2. **SANFORD WAS CONVICTED FOLLOWING A BENCH TRIAL, WHEREIN HE WAS TRIED WITH HIS CO-RESPONDENT. JUDGES ARE PRESUMED TO BE ABLE TO DISREGARD INADMISSIBLE EVIDENCE. DO THE CONSTITUTIONAL PROTECTIONS OF BRUTON REQUIRE REVERSAL?**

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On February 18, 2009 the State charged appellant Sanford with one count of Arson in the Second Degree, pursuant to RCW 9A.48.030.<sup>1</sup> On July 16, 2009 and July 22, 2009 the court held a pretrial proceedings and adjudication proceedings, respectively. See, 7/16/09 and 7/22/09 RP. On July 22, 2009 the court found the

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<sup>1</sup> RCW 9A.48.030 reads: A person is guilty of arson in the second degree if he knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

juvenile appellant Steven Sanford guilty of Arson in the Second Degree. 7/16/09 RP 231-36.<sup>2</sup>

On August 3, 2009 Sanford filed a Motion for Revision Hearing, asking the court to reconsider its denial of Sanford's motion to sever and its finding of guilt as to Sanford's adjudication hearing. CP 8-9. On September 23, 2009 the court entered an Order on Revision, finding that Sanford's motion for revision was denied. CP 10. On January 8, 2010 the court entered written Findings of Fact and Conclusions of Law. CP 19-24.

## **2. SUBSTANTIVE FACTS**

On February 12, 2009, a fire did occur at 15733 Ambaum Boulevard Southwest, Burien, King County, Washington that consumed property within a storage enclosure owned by Wizards Casino. FFCL Finding 3, 7/16/09 RP 43-44.<sup>3</sup> On that day, co-respondent Keith Wade and appellant Sanford did not go to school. Instead, they entered the wooden storage enclosure at the above location. They each then consumed alcohol and prescription

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<sup>2</sup> The Verbatim Report of Proceedings for 7/16/09 and 7/22/09 are contained in one volume and will be referred to as 7/16/09 RP.

<sup>3</sup> The Findings of Fact and Conclusions of Law, entered on January 8, 2010 will be referred to as FFCL.

medication while smoking cigarette butts on a Cushman golf cart owned by Wizards Casino. FFCL Finding 4.

Sanford and Wade then left the enclosure and went to a nearby Albertson's grocery store and obtained more alcohol, Orajel tooth desensitizer and Nyquil. FFCL Finding 5. Both respondents returned to the wooden enclosure, sat on the Cushman golf cart and consumed the additional alcohol and over-the-counter medications. FFCL Finding 6.

Wade and Sanford each applied tooth desensitizing Orajel product to their mouth and lit multiple fires using the plastic Orajel swabs. They then dripped the melting and burning plastic onto the Cushman golf cart that they were seated upon. FFCL Finding 7.

Wade told investigators that, "we, uh, lit the, uh, paper on fire and used the and uh, used the orajel and then lit the plastic tubes that were on the cotton swab that it came on and uh, on fire. And we were just letting it like drip on the seats and stuff and it caught and we, uh, uh, I stomped out the fire out on the paper and, uh, I set another uh, orajel, uh and we popped all the Nyquil pills. And I popped another orajel out, I, uh, lit another orajel thing on fire and put it on the steering wheel." "We were like dripping, uh the plastic that was like melting and falling off, we were, like just moving it

around dripping it on the seats and then it caught and we let it burned for a little bit, but we put it out. And then we would do it again and put it out, and do it again.” The court found Wade’s statement to be credible and truthful. FFCL Finding 8.

Sanford told investigators that, “we started playing with the, then I w-, I lit an Orajel on fire and see if it would like explode or something. And then it didn’t, and then it started melting and dripping fire and stuff, so then I played with it a little bit more. And then I lit the cartridge on fire, and then I...And the, ha, and then that lit it on fire, and it started dripping fire, so then I put it on the seat and then it burned a hole through it or in it.” “The hole that, it was about that big, the hole that the plastic burned but then once I lit the cartridge on fire it, uh, it got like that big.” The court found Stanford’s statement to be credible and truthful. FFCL 11.

The court further found that Sanford burned a hole through the seat and into the foam padding and lit the Orajel cartridge on fire, which increased the size of the first hole. Sanford lit four plastic Orajel swabs on fire in the golf cart. FFCL Finding 12.

The court concluded that Sanford repeatedly and intentionally lit fire and then he knowingly, maliciously, and intentionally allowed the fire to drip onto the property of another, specifically a golf cart,

and he also knowingly and maliciously caused damage to the golf cart with the fire. FFCL Finding 13.

Wade and Sanford exited the enclosure, at which time they were observed by Wizards Casino manager Tia Reed as well as recorded via Wizards Casino surveillance. Tia Reed took notice of their suspicious behavior because she had seen them in the same location the day before. FFCL Finding 14. The golf cart soon ignited into a large fire that consumed the golf cart, the north side fence of the wooden enclosure, extra kitchen equipment and caused radiant heat that damaged a metal storage container and its contents. FFCL Finding 15. The fire produced flames and smoke that were reported by a Wizards Casino customer to Wizards Casino security guard Nick Reed, who radioed for the casino surveillance team to call 911 dispatch to report the fire. FFCL Finding 16.

Tia Reed and Fire Investigator Tom Devine proceeded to the surveillance booth. As they were watching the recorded footage from the morning, a customer reported to Nick Reed that the respondents had returned to the Wizards Casino parking lot. FFCL Finding 20. Wade and Sanford were arrested, advised of their Miranda warnings and juvenile warnings and agreed to speak with police and investigators. FFCL Findings 21, 22.

In finding Sanford guilty of Arson in the Second Degree, the court reiterated that it did not consider each of the respondent's statements as evidence against the other: "I would note in reading through these statements, I looked at each individual individually with their statement and did not consider statements that were impugned by the other to each respondent." 7/16/09 RP 233. The court reiterated this in its written findings:

The court relied upon Keith Wade's transcribed statement only to the extent that it implicated Keith Wade. Any references to Steven Sanford within Keith Wade's statement were not considered in determining the innocence or guilt of Steven Sanford. FFCL Finding 1. The court relied upon Steven Sanford's transcribed statement only to the extent that it implicated Steven Sanford. Any references to Keith Wade within Steven Sanford's statement were not considered in determining the innocence or guilt of Keith Wade. FFCL Finding 2.

The court then concluded that Sanford had acted with the requisite intent to knowingly and maliciously cause a fire, highlighting that based on the court's review of the testimony, "Quite frankly, I can't think of anything that would describe malicious behavior more than somebody over and over again lighting something on fire and damaging somebody's property that did not belong to them."

7/16/09 RP 235-36.

C. **ARGUMENT**

1. **SANFORD REPEATEDLY AND INTENTIONALLY IGNITED FIRES TO THE PROPERTY OF ANOTHER. THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE, WAS SUFFICIENT TO CONVICT THE APPELLANT OF ARSON IN THE SECOND DEGREE.**

Evidence is sufficient in a criminal case when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. State v. Gentry, 125 Wash. 2d 570, 596, 888 P.2d 1105 (1995). When a defendant challenges the sufficiency of the evidence, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the accused. Id. at 597, 888 P.2d 1105. The reviewing court need not be convinced beyond a reasonable doubt of the defendant's guilt. Id.

Additionally, the credibility of witnesses and the weight to be given the evidence are matters for the finder of fact. Bender v. City of Seattle, 99 Wn.2d 582, 594-95, 664 P.2d 492 (1983); See also WPIC 1.02. Appellate courts must defer to the trier of fact to resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the evidence. State v. Gerber, 28

Wash.App. 214, 216, 622 P.2d 888 (1981); State v. Ong, 88

Wash.App. 572, 576, 945 P.2d 749 (1997).

Here, as the arguments of counsel show and as the court noted, many facts were not in dispute: "It is not in dispute that there was a fire in King County, Washington on February 12, 2009. It is not in dispute that it occurred at Wizard's Casino. It is not in dispute that the two respondents before the court today, Steven Sanford and Mr. Wade, were present at the scene." 7/16/09 RP 232. The central issue at argument before the trial court and on appeal herein is the sufficiency of the evidence necessary to prove malice, as appellant contends that "there was no proof of malice." Brief of Appellant, 7. However, Sanford admitted to "lighting four separate Orajels on fire and dripping them onto the seat." 7/16/09 RP 234. He also described watching the damage of his actions and watching each one burn. 7/16/09 234-35. As the court concluded, there was "ample information" for the court to find Sanford guilty of Arson in the Second Degree. 7/16/09 RP 236.

Motive is not an element of the crime of Arson in the Second Degree. State. Turner, 58 Wash.2d 159, 361 P.2d 581 (1961). The State must prove, however, that the fire was maliciously caused. Pursuant to RCW 9A.01.110(12):

"Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

However, a personal ill will towards the owner of the property is not required. State v. Nelson, 17 Wn.App. 66, 69-72, 561 P.2d 1093 (1977). Malice may also be proven by circumstantial evidence. As one court recognized:

Arson is a crime most often proven by circumstantial evidence. It is a crime of particularly secret preparation and commission, and the State can seldom produce witnesses to the actual setting of such a fire. Nevertheless, a "well-connected train of circumstantial evidence may be as satisfactory as an array of direct evidence" in proving the crime of arson.

State v. Young, 87 Wash.2d 129, 137, 550 P.2d 1 (1976).

Here, when viewing the evidence in a light most favorable to the state, any rational trier of fact could have found Sanford guilty beyond a reasonable doubt. The evidence shows that Sanford repeatedly and intentionally set fire to the property of another. The evidence was sufficient to prove that Sanford did knowingly and maliciously cause a fire that damaged the property of another.

**2. SANFORD WAS CONVICTED FOLLOWING A BENCH TRIAL, WHEREIN HE WAS TRIED WITH HIS CO-RESPONDENT. JUDGES ARE PRESUMED TO BE ABLE**

**TO DISREGARD INADMISSIBLE EVIDENCE. THE CONSTITUTIONAL PROTECTIONS OF BRUTON DO NOT APPLY AND DO NOT REQUIRE REVERSAL.**

The Confrontation Clause provides that all criminal defendants have a right to confront witnesses who testify against them. U.S. Const. Amend. VI. When two or more defendants are on trial together, the defendants' right to confrontation may be jeopardized by the admission of a non-testifying codefendant's confession against the other defendant. E.g., Bruton v. United States, 391 U.S. 123 (1968). Admitting a non-testifying codefendant's confession that names the defendant as a participant in the crime violates the defendant's right to confrontation, even if the jury is properly instructed to consider the confession only against the codefendant. Id. at 137. This principle applies even if all of the defendants have confessed and their statements "interlock." Cruz v. New York, 481 U.S. 186, 191-92 (1987). If the defendant who confesses testifies, then no redaction or severance is necessary because the codefendants can cross examine the defendant. Id., at 189-90.

Nonetheless, courts may admit a non-testifying codefendant's confession (with a limiting instruction) if the confession is *properly redacted* to eliminate the defendant's name

and any reference to his existence. Richardson v. Marsh, 481 U.S. 200, 211 (1987) (redacted confession contained no indication that defendant or any other person were in the car). Both state and federal courts have grappled with how to properly redact non-testifying codefendant's confessions without violating a defendant's right to confrontation. E.g., Gray v. Maryland, 523 U.S. 185, 192 (1998) (disapproving redactions "that simply replace a name with an obvious blank space or a word such as 'deleted' or a symbol or other similarly obvious indications of alteration"); State v. Vincent, 131 Wn. App. 147, 154, 120 P.3d 120 (2005) (disapproving redaction that replaced the defendant's name with "other guy" where there were only two participants in the crime and only two defendants); State v. Medina, 112 Wn. App. 40, 51, 48 P.3d 1005 (2002) (approving redaction that replaced the defendant's name with "other guys," "the guy," "a guy," "one guy," and "they" where there six participants in the crime and three defendants charged).

The Washington Court of Appeals Division One has instructed:

The question is not the precise words used in a redaction, but whether the redaction is sufficient to protect the codefendant from the prejudice of a statement he cannot cross examine -- that is, to prevent the jury from concluding the redacted reference is obviously to the codefendant, making it impossible for the jury to comply with the court's

instruction to consider the evidence only against the defendant who made the statements.

Vincent, 131 Wn. App. at 154. Thus, the key inquiry for the trial court is whether the redacted statement precludes the jury from determining that the codefendant's statement is referencing the defendant.

Here, Sanford and his co-respondent were both tried before a judge, rather than a jury. Thus, the constitutional issues that Bruton focuses on are not at issue here. See, State v. Vasquez, 66 Wash.App. 573, 578, 832 P.2d 883 (1992) (severance properly denied where trier of fact is the trial judge and is deemed able to "reject from his consideration on the issue of [one defendant's] guilt or innocence, any evidence that was admissible against [one defendant] and not admissible against [the other defendant]") Trial judges are presumed to be able to disregard inadmissible evidence, thus avoiding any prejudice to the defendant. State v. Melton, 63 Wash.App. 63, 68, 817 P.2d 413 (1991). "In a bench trial, there is even a more 'liberal practice in the admission of evidence' on the theory that the court will disregard inadmissible matters." State v. Jenkins, 53 Wash.App. 228, 231, 766 P.2d 499, *review denied*, 112

Wash.2d 1016 (1989), (citing State v. Miles, 77 Wash.2d 593, 601, 464 P.2d 723 (1970)).

Thus, the court did not err in refusing to sever Sanford's trial from that of his co-respondent because Bruton does not apply in this case. The trial court correctly found that it could review the evidence against each respondent independently of the other. The court reiterated this in its oral rulings and written findings:

I would note in reading through these statements, I looked at each individual individually with their statement and did not consider statements that were impugned by the other to each respondent. 7/16/09 RP 233. The court relied upon Keith Wade's transcribed statement only to the extent that it implicated Keith Wade. Any references to Steven Sanford within Keith Wade's statement were not considered in determining the innocence or guilt of Steven Sanford. FFCL Finding 1. The court relied upon Steven Sanford's transcribed statement only to the extent that it implicated Steven Sanford. Any references to Keith Wade within Steven Sanford's statement were not considered in determining the innocence or guilt of Keith Wade. FFCL Finding 2.

Sanford was not denied a fair trial and his conviction should be affirmed.

**D. CONCLUSION**

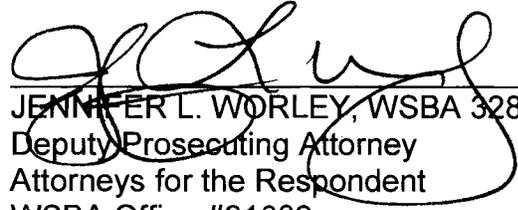
For the foregoing reasons the State requests that this court deny Sanford's request for a new trial and affirm the trial court's findings.

DATED this 29th day of November 2010.

RESPECTFULLY submitted,

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Prosecuting Attorney

By:

  
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to OLIVER DAVIS, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. STEVEN SANFORD, Cause No. 64647-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name



Done in Seattle, Washington

Date

11-29-10

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