

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
**VS.** : **No. 02-10,992**  
**HEATH GRAY** :

**OPINION IN SUPPORT OF ORDER  
IN COMPLIANCE WITH RULE 1925 (A)  
OF THE RULES OF APPELLATE PROCEDURE**

Defendant, Heath Gray, appeals from the sentence imposed by this Court on October 31, 2003. This Court found him guilty after a non-jury trial of Second Degree Murder, Conspiracy, Burglary and Arson, Endangering Persons and Recklessly Endangering Another Person. The Defendant was sentenced to undergo incarceration in a state correctional institution for life without the possibility of parole as provided for by statute.<sup>1</sup> On the charges of conspiracy, burglary, and arson Defendant was sentenced to serve a concurrent period of state confinement of one to two years. The Court imposed no additional sentence on the charge of recklessly endangering another person.

On appeal, the Defendant asserts three areas for review. With regard to the trial, Defendant asserts that the verdict was against the weight and sufficiency of the evidence. Second, Defendant alleges that this Court should have recused itself as one of the responding firefighters, an immediate family member of the victim, is a member of the same fire company as the Court. Finally, Defendant challenges this Court's prior ruling denying the Motion to Suppress evidence in the form of statements taken by the

---

<sup>1</sup> 18 Pa. C. S. § 1102.

Williamsport Bureau of Police. The following is a summary of the evidence presented at trial.

Dianna Blase, the mother of the victim Kaleb Blase, was the first witness to testify. Ms. Blase testified that she and her son, Kaleb lived with Heath Brink at his father's house at 1486 Mt. Carmel Street, City of Williamsport. She would have been watching TV with Kaleb until about 8:30 PM when Brink returned home. Brink took Kaleb to his bed in the next room and they would have gone to bed at about 9 PM. She further testified that the stove had not been used that evening. She woke up to the sound of "dinging" and was told that the house was on fire. She further testified to the layout of the home, and specifically that the doorway between the kitchen and the middle room, or "TV room" was a regular doorframe and that just opposite the frame was a swivel chair and loveseat. Ms. Blase testified that she had never met the Defendant. Heath Brink testified similarly to Ms. Blase with regard to the layout of the house. He also testified that his father lived in the house with them, but had left for work by about 10:40 PM, and that his grandfather lived on the 1488 side of the double house. That evening, Brink came home from work in his Chevy S10 pickup truck about 8:30 PM and had secured the back door leading directly into the kitchen area. However, the door directly into the back porch from the backyard was open. He awoke to the sound of glass breaking and the smell of smoke inside the residence. Brink attempted to go to the room next door to rouse Kaleb. Instead he burnt his hand on the doorknob and encountered thick black smoke. He and Ms. Blase left the residence through the back window of the bedroom and were helped from the house by someone from the Williamsport Bureau of Fire. At that time, he was able to see the east side of the house

and observed flames coming from the middle room, first floor of the house with the fire coming out and going up to Kaleb's room. Later that morning, he returned to the scene to take his truck, and discovered that 2 tires on the driver's side were flattened. Brink also testified that he too had never met the Defendant. Neighbor Harold Thomas, Jr. testified that he tried to assist Brink and Blase that evening after discovering the fire. When he initially saw the fire, it was in the window area of the center of the downstairs at 1486 Mt. Carmel. By the time he was able to dress and get outside, he observed that the flames were breaking through the window downstairs. After grabbing his garden hose, Thomas attempted to extinguish the fire but to no avail. He then went to the 1488 side and helped evacuate the lone occupant. By the time Thomas came back around to the 1486 side, he observed flames going out the side window and into the upstairs window directly above. It was at that time the police and fire department arrived on scene.

One of the first firefighters to arrive on scene was Matthew Oldt of the Old Lycoming Township Volunteer Fire Department. He testified that as he pulled up on scene near 1486 Mt. Carmel Street he observed his sister-in-law, Dianna Blase. When he saw her he assumed that his nephew was still inside the house. Oldt offered to participate in an interior search and ultimately found Kaleb upstairs, lying on the floor behind the door to his room, unresponsive. Oldt brought him downstairs where he was taken to EMS personnel on scene. Medical personnel started CPR, and Kaleb was transported to The Williamsport Hospital and Medical Center. Kaleb was pronounced dead on arrival. The parties stipulated that if called to testify next, Samuel Land, M.D. would have testified that he performed the autopsy on the child. His opinion, within a

reasonable degree of medical certainty would be that the child died from carbon monoxide toxicity or carbon monoxide poisoning.

Next to testify was the codefendant, Keith Young. Presently housed at SCI Cresson serving a life sentence, Young had previously pled guilty to second degree murder, arson and conspiracy. Young testified that that night he had started drinking with some friends who included Defendant, Katie Boell and Bryson Hall. Young also acknowledged that Dianna Blase had a PFA against him. Essentially, the group decided that they wanted to go “raise some hell” and set out for Williamsport. At this time only Boell, Young and Defendant traveled from Picture Rocks westward. The original plan was to “place some obscene pictures” that Young had of Blase on her boyfriend Brink’s car. Prior to going to Brink’s house, the group stopped at the Sheetz in Loyalsock Township for gas and cigarettes and Bowman Field to meet up with an employee of a carnival operating there. Once they arrived on the scene, Young testified that there were no pictures with him to use. All three parked about a block away and walked to the Mt. Carmel Street location. Once the 3 arrived at 1486 Mt. Carmel Street, Defendant and Young cut the tires on Brink’s truck as well as cut the TV cables. Young then testified that he and the Defendant entered the residence. Once inside, Young asked Defendant for his lighter. Defendant watched Young ignite a piece of furniture. Young further testified that Defendant asked for his lighter back and ignited another chair. Once the fires were started, the two exited the residence and left the scene with Boell. As they drove away, Young remembered they could see the fire and police vehicles arriving on scene.

Officer Trent Peacock testified that he was called to the scene to assist the fire department with the investigation. He observed the drivers side front and rear tires were slashed on Brink's truck, as well as the TV cables cut. Dean Heimbach, a Deputy Fire Chief of the Williamsport Bureau of Fire also testified that he responded as a command officer that evening to assist with extinguishing the fire. Once the fire was suppressed, Chief Heimbach was charged with determining the cause and origin of the fire. After examining the scene both the evening of the fire and later the next day, he determined the wall and ceiling above the love seat in the middle room was the point of origin of the fire. Based upon an examination of the possible causes for the fire, and since there were no accidental or natural causes for the fire, he determined that the fire that evening was intentionally set. Finally, Agent Sorage of the Williamsport Bureau of Police testified that he was the lead investigator in this case. Sorage arrested and interviewed both the Defendant and Keith Young individually as well as together. He also had the benefit of a written statement from Katie Boell concerning the events of that evening. Sorage taped the interviews of Defendant and Young which were played at trial. Defendant and Young both implicated themselves in the burglary and arson of 1486 Mt. Carmel Street.

The parties stipulated that if called to testify Kevin DeParlos, Deputy Warden of the Lycoming County Prison would testify to the phone system at the County Prison. In addition, he would verify that a conversation was recorded between the Defendant and his Mother, Brenda Emerick. They discussed the possibility of Defendant offering something for his cooperation with the police. Defendant also discussed the possibility that he could be sentenced to death or spend the rest of his life in jail, without the

possibility of parole. Defendant's mother said she never thought that Defendant " had it in him" to do this. Defendant said that he went there just to "give them a hard time" not intending to harm someone. He claimed that he did not light anything on fire, but did give Young his lighter.

As a defense witness, Rhonda McDonald a caseworker from Lycoming County Children and Youth Services testified that she was assigned to investigate the death of the child in this case. She interviewed Keith Young, the co-defendant who said that it was his idea to set the house on fire that night. When asked what role this Defendant took in the fire, he stated, "he [the defendant] didn't stop me." Edna Riddell also testified that she knew Defendant between the ages of 15 and 17 through his volunteer work with a therapeutic horseback riding program. She stated that his reputation at the time for truthfulness and veracity, good moral character and peacefulness or non-violence was good.

### ***Weight of the Evidence***

The Defendant first alleges that the verdict was against the weight of the evidence as to the charges of Arson, Burglary, Conspiracy to commit Arson/Burglary and Murder of the Second Degree. The test for determining whether the verdict is against the weight of the evidence is not whether the Court would have decided the case in the same way, but whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail. Commonwealth v. Whiteman. 336 Pa. Super. 120, 485 A.2d 459 (1984).

In this case the testimony presented showed that the Defendant and Keith Young drove to Williamsport with Katie Boell. Defendant and Young entered 1486 Mt. Carmel

Street without permission and while inside, lit a love seat and chair on fire in the middle room directly beneath Kaleb Blase's bedroom. Due to the location of the fire, and the speed with which it traveled, five year old Kaleb Blase was overcome by smoke before he could be rescued. The Court would find, based on the evidence presented, that a verdict of guilty on the charges of second degree murder, arson, burglary and conspiracy does not shock one's sense of justice so that the award of a new trial is imperative so that right may be given another opportunity to prevail.

### ***Sufficiency of the Evidence***

Defendant next challenges the sufficiency of the evidence for the offenses charged. The test for sufficiency of the evidence is "whether, viewing all the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth, the trier of fact could have found that each element of the offenses charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt." [Commonwealth v. Jones, 431 Pa. Super. 475, 636 A.2d 1184 \(1994\)](#), quoting [Commonwealth v. Jackson, 506 Pa. 469, 485 A.2d 1102 \(1984\)](#). In reviewing a sufficiency of the evidence claim, the test we apply is whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth as verdict-winner, was sufficient to establish all the elements of the offense beyond a reasonable doubt. [Commonwealth v. Williams, 554 Pa. 1, 720 A.2d 679, 682 \(Pa. 1998\)](#) (citation omitted).

### ***Conspiracy***

To sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant (1) entered an agreement to commit or aid in an unlawful

act with another person or persons, (2) with a shared criminal intent and, (3) an overt act was done in furtherance of the conspiracy. [18 Pa.C.S. § 903](#); [Commonwealth v. Brachbill](#), 363 Pa. Super. 615, 527 A.2d 113, 119 (Pa. Super. 1987). A defendant may be convicted of both conspiracy and the offense that was the object of the conspiracy. [Commonwealth v. Rios](#), 546 Pa. 271, 684 A.2d 1025, 1030 (Pa. 1996). In addition, this Court has stated that a conspiracy may be proven by relevant circumstances, which include the following: "(1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations participation in the object of the conspiracy." [Commonwealth v. McKeever](#), 455 Pa. Super. 604, 689 A.2d 272, 274 (Pa. Super. 1997). Defendant and Keith Young shared the plan to "raise hell" at Dianna Blase's house at 1486 Mount Carmel Street. Defendant was with Keith Young when he slashed tires with a knife and cut wires outside the house with a knife. Defendant had his own knife to assist Young. Defendant went inside the residence with Young, gave Young his lighter and watched him light the blanket on the back of a chair or loveseat. Defendant then pointed to another piece of furniture in the same room and Young lit that one as well. Defendant and Young left the scene together. Deputy Chief Heimbach testified, and it is clearly shown by the photographs of the fire scene, that the point of origin of the fire was the loveseat, as the area behind and above it appeared to be the most heavily damaged section of the house. And because of its location, the fire entered the upstairs room where Kaleb was sleeping. It is clear that Defendant and Young were acting together that evening in not only going inside the house but causing the fire inside.



Based upon this analysis, the Court finds the evidence is sufficient to support beyond a reasonable doubt that the Defendant and Young engaged in a criminal conspiracy to commit both arson and burglary. This Court is satisfied beyond a reasonable doubt that Young and Defendant shared a common understanding that they would commit the offense of burglary and once the lighter was requested by Young, the offense of arson.

### ***Burglary***

The Court is further satisfied beyond a reasonable doubt that the Defendant committed the offense of burglary. A person is guilty of burglary if he enters an occupied structure with the intent to commit a crime inside and had no permission to enter. An intent to commit a crime may be inferred from the circumstances surrounding the incident. Due to the time of night and manner of entry it is clear they did not have permission to enter the structure. Under the law, once a person has entered a private residence by criminal means this Court may infer that the person intended a criminal purpose based upon the totality of the circumstances.

The Court finds that the Defendant's entry of the residence ahead of Young along with the comments at Young's house about "raising hell" and their actions of slicing tires and cutting cables at the scene permit this Court to infer that both Defendant and Young intended to enter 1486 Mount Carmel for a criminal purpose, that being criminal mischief damaging the tangible property of another person.

### ***Arson***

A conviction for arson requires that the Commonwealth establish: (1) that there was a fire; (2) that it was of incendiary origin; and (3) that appellant set the

fire. [Commonwealth v. Galloway](#), 302 Pa.Super. 145, 151, 448 A.2d 568, 571 (1982). Here the first two elements are uncontested. Defendant's only argument is that the evidence was insufficient to prove that he was the person who set the fire. This Court disagrees. The evidence presented which showed Defendant's entry into the residence, supplying Young with a lighter, and admitting to setting a piece of furniture on fire was sufficient to support Defendant's conviction.

### ***Second Degree Murder***

Defendant argues that the evidence fails to establish beyond a reasonable doubt the offense of second-degree murder in that there is no evidence that the killing was in furtherance of the commission of the felony. The law establishes malice, or the intent to commit the underlying crime is imputed to the killing to make it murder of the second degree regardless of whether a defendant actually intended to harm a victim.

The specific elements of accomplice liability for felony murder are:

- proof of a conspiratorial design by the slayer and others to commit the underlying felony;
- act by slayer causing death, which was in furtherance of the felony.<sup>2</sup>

In addition, the law also provides that when an actor engages in one of the statutorily enumerated felonies and a killing occurs, the law – through the felony murder rule – allows the finder of fact to infer the killing was malicious from the fact the actor was engaged in a felony of such a dangerous nature to human life because the actor, as held to the standard of a reasonable man, knew or should have known that death might result from the felony. The law does not require the homicide to be foreseeable –

---

<sup>2</sup>. See e.g. [Commonwealth v. Allen](#) [475 Pa. 165, 379 A.2d 1335], *supra*; [Commonwealth v. Banks](#), 454 Pa. 401, 311 A.2d 576 (1973); [Commonwealth v. Williams](#), 443 Pa. 85, 277 A.2d 781 (1971); [Commonwealth v. Redline](#), 391 Pa. 486, 137 A.2d 472 (1958). Cf. [Commonwealth v. Schwartz](#), 445 Pa. 515, 285 A.2d 154 (1971). (Footnote omitted).

only that an accused be a principal or accomplice in the perpetration of the felony. It is for this court to determine whether the Defendant knew or should have known that the possibility of death accompanied this dangerous undertaking.

"Perpetration of a felony" by statute is defined as an "act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping<sup>3</sup>. Defendant argues that he is neither a principal nor an accomplice in the arson; therefore he cannot be convicted of the charge of felony murder. Defense Counsel further asserts that **by law** the Commonwealth must show that the Defendant must have shared the same intent or state of mind to be Young's accomplice. In other words, Defendant must have known that Young was going to commit the offense of arson and that he did something to aid, attempt to aid or agree to aid in with the planning or commission of the offense.

Here, the Court is satisfied beyond a reasonable doubt that the Defendant was involved in the commission of a burglary as well as arson – both enumerated offenses under the murder of the second-degree statute. Defendant served as an accomplice or co-conspirator to both offenses. Defendant went with Young to 1486 Mt. Carmel Street, facilitated Young's entry into the structure, and aided Young in igniting room contents to start the structure fire. The malice from the burglary and/or the arson is imputed to the killing regardless of whether Defendant actually intended to harm Kaleb Blase. The law establishes that the Defendant knew or should have known the possibility of death to one of the occupants of the house accompanied the dangerous offense of burglary (or for that matter arson). However, coupled with the time of night (near midnight) and the

---

<sup>3</sup> 18 Pa. C.S. Section 2502 (d)

slashing of tires and cutting or wires to prohibit “anyone from calling for help” the Defendant knew someone was present in the house. Therefore, since the Court is satisfied Defendant and Young entered the structure without permission with the intent to commit burglary or arson by the employment of fire, and the death of Kaleb Blase occurred as a result, the Commonwealth has proven this Defendant’s guilt beyond a reasonable doubt for the offense of second degree murder.

***Motion to Recuse***

Next, Defendant alleges the Court failed to recuse itself, as one of the witnesses is a member of the same volunteer fire company as the Court. Matthew Oldt and this Court are members of the Old Lycoming Township Volunteer Fire Company. In general, a motion for recusal is properly directed to and decided by the jurist whose participation the moving party is challenging. [Commonwealth v. Travaglia, 541 Pa. 108, 661 A.2d 352, 370](#). The party who asserts that a trial judge must be disqualified bears the burden of producing evidence establishing bias, prejudice, or unfairness necessitating recusal." [Commonwealth v. Darush, 501 Pa. 15, 21, 459 A.2d 727, 731 \(1983\)](#); [Commonwealth v. Council, 491 Pa. 434, 421 A.2d 623 \(1980\)](#). The rule is simply that "disqualification of a judge is mandated whenever 'a significant minority of the lay community could reasonably question the court's impartiality.'" [Commonwealth v. Bryant, 328 Pa. Super. 1, 476 A.2d 422, 425 \(Pa.Super. 1984\)](#)

Prior to trial, Defendant alleged that the mere fact that the Court and a witness knew one another from their fire company association required automatic recusal. The Court disagrees. In the absence of facts to show bias, prejudice or unfairness no recusal is warranted. The Court is acutely aware that while no facts may be alleged,

disqualification is warranted when impartiality might reasonably be questioned. [Code of Judicial Conduct Canon 3\(C\)](#) As the Court has had no contact with any witnesses in this case, this issue has no merit.

***Motion to Suppress***

Defendant challenges this Court's prior ruling on the Motion to Suppress statements made to the Williamsport Bureau of Police. This Court relies on its previously issued opinion filed April 21, 2003 in support of its order dismissing Defendant's Motion to Suppress.

Dated:

By The Court,

---

Nancy L. Butts, Judge

DA  
Kyle Rude, Esquire  
Mathew Ziegler, Esquire  
Gary Weber  
Law Clerk  
Honorable Nancy L. Butts  
Judges