

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN K. CEASARIO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35427

**FILED**

DEC 28 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rehak*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree arson, burglary, and burning property with intent to defraud insurer. The district court sentenced appellant, John Ceasario, to three years each for first-degree arson and burglary and two years for burning with intent to defraud, with each sentence suspended and running concurrently with the others. Ceasario was placed on probation for an indeterminate period not to exceed five years.

Ceasario contends that his convictions are not supported by sufficient evidence and that the State failed to preserve potentially exculpatory evidence.

Whether the State adduced sufficient evidence to support Ceasario's convictions for first-degree arson, burglary, and burning property with intent to defraud insurer.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979))). It is the duty of the fact-finder, and not this court, to assess the

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weight of the evidence and credibility of the witnesses. Id.  
A verdict supported by substantial evidence will not be  
disturbed on appeal. See McNair v. State, 108 Nev. 53, 56,  
825 P.2d 571, 573 (1992). Circumstantial evidence alone is  
sufficient to support a jury's verdict; "to conclude otherwise  
would mean that a criminal could commit a secret murder,  
destroy the body of the victim, and escape punishment despite  
convincing circumstantial evidence against him or her."  
Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 314 (1980)  
(citing People v. Scott, 1 Cal. Rptr. 600 (Ct. App. 1959)).

Our review of the record reveals sufficient evidence  
to establish guilt beyond a reasonable doubt as determined by  
a rational trier of fact as to first-degree arson and burning  
property with intent to defraud insurer. The jury could  
reasonably infer from the evidence presented that Ceasario  
intentionally and maliciously set fire to the mobile home in  
order to defraud the insurer of the home, thereby satisfying  
NRS 205.010 and 205.030. However, under the unique  
circumstances of this case, we conclude that there is  
insufficient evidence to convict Ceasario of burglary.

Whether the district court erred in denying Ceasario's motion  
to dismiss based upon the State's alleged failure to gather or  
preserve evidence.

Ceasario contends that he was denied due process  
because of the State's failure to preserve the mobile home.<sup>1</sup>  
We conclude that this contention is without merit. There is  
no indication in the record that the State had possession or  
control of the scorched mobile home, therefore this issue is

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<sup>1</sup>Although Ceasario does not mention it in his brief, this  
issue was the subject of a pretrial motion to dismiss. The  
district court denied Ceasario's motion determining the motion  
lacked (1) factual representations regarding who was in  
custody of the mobile home and who demolished it, and (2) any  
showing of prejudice.

more appropriately addressed as a failure to gather evidence. See Steese v. State, 114 Nev. 479, 491, 960 P.2d 321, 329 (1998); Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

In order to establish a due process violation based upon the State's failure to gather evidence, a defendant must show: (1) the State failed to gather constitutionally material evidence (evidence that if available to the defense, would have resulted in a different outcome); and (2) the State acted in bad faith or committed gross negligence. See Steese, 114 Nev. at 491, 960 P.2d at 329 (citing Daniels, 114 Nev. at 267 P.2d at 115 and State v. Ware, 881 P.2d 679, 685 (N.M. 1994)).

We conclude that Ceasario has failed to demonstrate that he was denied due process by the State's failure to gather evidence. Ceasario offers no more than bare assertions that an independent expert may have found another cause for the fire. "[N]aked speculation is insufficient to show that a different result was likely at trial." Steese, 114 Nev. at 492, 960 P.2d at 329; see also Daniels, 114 Nev. at 268, 956 P.2d at 115. In addition, we note that Ceasario has made no attempt to demonstrate that the State acted in bad faith or with gross negligence.<sup>2</sup> Accordingly, we conclude that the district court did not err in denying Ceasario's pretrial motion to dismiss for the State's alleged failure to preserve or gather evidence.

Having reviewed all of the contentions raised in this appeal, we hereby affirm the judgment of conviction as to first-degree arson and burning property with intent to defraud insurer and reverse the judgment of conviction as to burglary.

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<sup>2</sup>On the contrary, we note that there are references in the record that Ceasario remained in possession of the mobile home after the fire, and eventually had it demolished.

Accordingly, we remand the case to the district court for a modification of the judgment of conviction consistent with this order.

It is so ORDERED.

Rose, C. J.  
Rose  
Young, J.  
Young  
Becker, J.  
Becker

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk