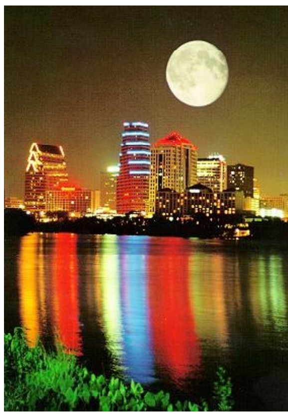
One Fabulous Skyline

TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282

Web Site: www.texindbar.org

Vol. 20, No. 16 - April 23, 2012

Case Name: Ryan Rashad Merritt v. The State of Texas

- OFFENSE: Arson (Motor Vehicle)
- COUNTY: Fort Bend
- COURT OF APPEALS: Houston [1st] 2011
- C/A CITATION: Not Designated for Publication
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-0916-11 DATE OF OPINION: April 18, 2012
- DISPOSITION: Court of Appeals Reversed
- OPINION: Hervey, J. VOTE: 8-0
- TRIAL COURT: 400th D/C; Hon. Clifford Vacek
- LAWYERS: Lawrence Newman (Defense); John Messinger (SPA)

Ed Note: (Background Facts) On December 17, 2006, Appellant's SUV, a 2006 GMC Yukon Denali, was found abandoned in a field with fire damage to its interior. The vehicle's exterior looked to be in good condition. The only indication of a fire was that the windows were darker than normal. There was damage to the driver's side door, which Fire Marshall Investigator Matt Cornell testified seemed to be "attempted forcible entry." However, "[i]t appeared to actually be more hammered in than pried on," and the opening was not large enough to allow a tool to get in to lift the lock. Cornell also noted that, although the vehicle's wheels were in place, some lug nuts were missing. He saw no markings where something had been laid underneath the vehicle; nor did he see any tire tracks in front of or behind the SUV or other evidence suggesting a wrecker may have been used to place the vehicle there. He did find three unburned, wooden matches on the ground near the SUV, however. Inside the vehicle, Cornell discovered three separate burned areas that were not contiguous, thus indicating three separate points of origin. At each point, he found remnants of fine, newspaper-like paper, and he explained that the fire did not spread more because the windows were rolled up, causing the fire to run out of oxygen. Cornell found no damage to the steering column, and the ignition was intact. He also noted that the seats, door panels, glove box, radios, and electronics had been removed. However, there was a "lot of value" remaining with the vehicle, including the tires, headlights, lights, dash, hood, and doors. Cornell explained that this is not common on "burned stolens" —"[i]t would be very common to find to [sic] this deal either on cinder blocks or on the spare-tire doughnuts." Cornell opined that the fire was incendiary in nature because he was able to exclude other causes (i.e., accidental or mechanical causes), there were three points of origin (a "red flag"), and the wheels' lug nuts were missing. Although he was unable to determine what was used to ignite the paper, Cornell believed that the fire was started by someone who had ignited the paper products found in the SUV.

541 Sufficiency of the Evidence (Theft/Fraud): David Thornsen, a member of the Special Investigations Unit of Allstate Insurance, requested that Appellant complete an "Affidavit of Vehicle Theft. He explained that the affidavit is compared with the recorded statement, the examination under oath, and the physical evidence to determine if there are any inconsistencies. Comparing, Thornsen found several such

inconsistencies. For example, Appellant indicated that he had not experienced a vehicle theft before. However, he had filed four previous claims. These included two prior Allstate claims (one for the January 1999 theft of a 1994 Acura Legend and one for the October 1999 theft of a 1999 Jeep Grand Cherokee), a State Farm claim for the March 2003 theft of a 2002 GMC Yukon, and a Great American Insurance claim for the May 2005 theft of a 1997 Freightliner. Other inconsistencies noted by Thornsen included the time when Appellant had last seen the SUV, the price of the rims and tires and manner of payment, the events surrounding the missing keys at the carwash, Appellant's statement that he had made a $6,000 down payment when he had made no down payment, his statement that the receipts for the rims and tires were in the SUV when they were found in his garage, and his explanation of how he knew David Ross (the second person on the SUV's registration). Thornsen also opined that Appellant's actions were not "typical" because he did not call OnStar, nor did he tell his wife about the theft. The First Court of Appeals reversed in an unpublished opinion, determining that the evidence was insufficient to support a conviction. The Court granted the SPA's petition for discretionary review to determine the validity of that decision.

Holding: The jury was able to assess the credibility and demeanor of the witnesses who testified at trial. * * * We are not the fact finder, and neither was the Court of Appeals. * * * The verdict reflects that the jury inferred from the circumstantial evidence that Appellant was guilty of arson for the burning of his SUV. "This was not a determination so outrageous that no rational trier of fact could agree." Id. The Court of Appeals incorrectly applied the Jackson standard when considering the circumstantial evidence supporting Appellant's conviction, and improperly employed a "divide-and-conquer" approach. * * * Further, it improperly acted as a thirteenth juror when it speculated and focused on the existence of a reasonable hypothesis inconsistent with the guilt of the accused, thereby repudiating the jury's prerogative to weigh the evidence, to judge the credibility of the witnesses, and to choose between conflicting theories of the case. * * * Therefore, we defer to the jury's determination and hold that the evidence presented is sufficient to support Appellant's conviction.

Concurring / Dissenting Opinions: Judge Alcala did not participate.