STATE OF MICHIGAN

COURT OF APPEALS

IN THE MATTER OF JAMES NATHAN EVANS

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

JAMES NATHAN EVANS, a minor,

Respondent-Appellant.

UNPUBLISHED
February 27, 1998

No. 203019
Monroe Probate Court
LC No. 96-012134-DL

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Respondent appeals as of right from a delinquency proceeding order of disposition for burning real property, MCL 750.73; MSA 28.268. Respondent was placed on probation for one year. We reverse.

Respondent first argues on appeal that the petitioner failed to present sufficient evidence to support his conviction. In reviewing defendant's claim of insufficient evidence, we view the evidence in a light most favorable to the prosecution, and conclude that a rational trier of fact could not have found guilt beyond a reasonable doubt. *People v Kozyra*, 219 Mich App 422, 428; 556 NW2d 512 (1996).

Respondent argues that the prosecution did not prove beyond a reasonable doubt that he intended to set a fire causing damage to property. To establish a violation, the prosecutor must overcome a presumption that the fire was caused by natural or accidental causes with proof that the building burned because of an intentional criminal act. *People v Lee*, 231 Mich 607, 612; 204 NW 742 (1925); *People v Williams*, 114 Mich App 186, 193; 318 NW2d 671 (1982). In order to violate the burning of real property statute, which is a specific intent crime, an offender would have to

subjectively desire or know that the prohibited result would occur. *People v McCarty*, 303 Mich 629; 6 NW2d 919 (1942); *People v Gould*, 225 Mich App 79, 85; 570 NW2d 140 (1997).

Respondent's conviction must be reversed because even viewing the evidence in a light most favorable to the prosecution, a reasonable trier of fact could not have found the elements of the crime proved beyond a reasonable doubt. Although, respondent admitted that he had thrown matches in the barn filled with dry hay, he denied any intent to burn the barn down. Respondent and his friend both testified that when a small fire actually did start after respondent threw the third match, they stomped it out, spread the hay around, and observed the area for a minute or two to make sure the fire was out. When the boys thought they had completely extinguished the fire, they continued to play around the barn until they saw the flames in the barn. As defense counsel admitted in his closing statement, respondent may have been negligent or stupid when he threw the matches in the barn. However, in order to constitute the crime charged, mere carelessness or accident is not enough. *McCarty, supra,* 303 Mich 632-633. If the fire was started by respondent carelessly throwing lighted matches on the floor, a finding that respondent willfully set the fire was not justified. *McCarty, supra,* 303 Mich 632.

Respondent next argues that the jury was not properly instructed on his theory of accident which was the central issue. In light of the insufficiency of the evidence to convict respondent, we agree with respondent that the trial court's failure to instruct on accident resulted in manifest injustice.

The only issue before the jury was whether respondent intended to burn complainant's barn. The instructions touched directly on the theory of accident only when the trial court instructed that when there is a fire it is presumed to have started from natural or accidental causes. The trial court did not instruct the jury that if the jury found the fire was accidentally started, it should find the respondent not guilty. *People v Ora Jones*, 395 Mich 379, 394; 236 NW2d 461 (1975). Whether the fire was intentionally or accidentally set was the central issue in the case and read as a whole these instructions did not direct the jury's attention to this issue. *Ora Jones, supra,* 395 Mich 394.

Reversed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Roman S. Gribbs