

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JAMES HOLCOMB,

Defendant-Appellant.

UNPUBLISHED

March 9, 2010

No. 289825

Wayne Circuit Court

LC No. 08-009459-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of arson of a building within the curtilage of a dwelling house, MCL 750.72, and arson of personal property with a value of at least \$1,000 but less than \$20,000, MCL 750.74(1)(c)(i). He was sentenced to concurrent prison terms of 68 months to 20 years for the arson of a building conviction and 12 to 60 months for the arson of personal property conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was insufficient to support his conviction of arson of a building. In reviewing a verdict reached in a bench trial, this Court reviews the trial court's factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). This Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom can be sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

It is a felony to “wilfully or maliciously” burn “any building within the curtilage of [a] dwelling house, or the contents thereof[.]” MCL 750.72. The evidence, viewed in the light most favorable to the prosecution, was sufficient to establish that defendant intentionally set a fire that resulted in the burning of the victim’s garage. There is no dispute that the garage, which was situated in the rear yard of the victim’s house, constituted a building within the curtilage of a dwelling house. Defendant argues, however, that the evidence was insufficient to show that he acted “wilfully or maliciously.” We disagree.

The requisite mental state is either (a) an intent to burn a building within the curtilage of a dwelling house, or (2) doing an act in circumstances where a plain and strong likelihood of such a burning exists. *Nowack*, 462 Mich at 408-409. Stated differently,

[t]o establish that a defendant acted wilfully or maliciously and voluntarily, the prosecution must prove one of the following: 1) that the defendant intended to do the physical act constituting the actus reus of arson, i.e., starting a fire or doing an act that results in the starting of a fire (intentional arson); or 2) that the defendant intentionally committed an act that created a very high risk of burning a [building within the curtilage of a] dwelling house, and that, while committing the act, the defendant knew of the risk and disregarded it (wanton arson). [*Id.* at 409.]

The evidence showed that defendant brought gasoline to the victim's house and splashed it on her car, which was parked in front of the detached garage. He then disconnected the fuel hose of the vehicle, allowing gasoline to seep onto the driveway and into the yard. He ignited the gas with a lit cigarette, burning the back lawn and the car. The fire consumed the garage as well. Defendant stated that he was mad at the victim because she would not return his engagement ring after breaking their engagement. Viewed in the light most favorable to the prosecution, the evidence was sufficient to enable a rational factfinder to infer that defendant's intentional act created a high risk that the garage, which was in close proximity to the car and the yard, would burn and that defendant both realized and disregarded that risk. Thus, there was sufficient evidence to support defendant's conviction of arson of a building within the curtilage of a dwelling house.

Defendant next argues that the trial court erred in scoring 20 points for Offense Variable (OV) 1 and ten points for OV 19 of the sentencing guidelines.

The trial court must impose a minimum sentence within the sentencing guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision "for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). This Court reviews a trial court's scoring decision to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). Questions involving the interpretation and application of the sentencing guidelines are reviewed de novo as questions of law. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008).

OV 1 concerns "aggravated use of a weapon." MCL 777.31(1). OV 1 is to be scored at 20 points if the victim was "subjected or exposed to" various things, including an incendiary device. MCL 777.31(1)(b). An incendiary device includes "gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device." MCL 777.31(3)(b). Each person placed in danger of injury or loss of life is to be counted in scoring OV 1. MCL 777.31(2)(a). At the time defendant committed the offense, the victim was sleeping inside her home, which did not catch fire. Therefore, defendant argues, the victim was not "subjected or exposed" to the gasoline. We disagree.

The rules of statutory construction require that courts give effect to the Legislature's intent. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). This Court should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses. *Id.* If the language is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Statutory language is to be given its ordinary and generally accepted meaning. *Id.* at 135-136. "When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). When terms are not expressly defined by statute, it is appropriate to consult dictionary definitions. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

The verb "subject" is defined in this context as "to cause to undergo the action of something specified; expose (usu. fol. by *to*)" or "to make liable or vulnerable; expose (usu. fol. by *to*)."
Random House Webster's College Dictionary (1997) (emphasis in original). The verb "expose" is defined as "to subject, as to the action of something." *Id.*

We conclude that the victim was indeed "subjected or exposed to" gasoline. The victim was sleeping during the early morning hours of May 2008 when defendant poured gasoline over her car and set it on fire. The car was located in the driveway of the victim's house, in front of a garage located only 25 feet from the house. The victim testified that when she awoke, she looked out her window and "saw my back yard on fire and my car and my garage on fire." She stated that the grass was on fire, as was "[t]he passenger front end of [her] vehicle and the right side of [her] garage." She testified that she was panicky because "the vehicle is so close to my window, my bedroom window, I was in fear that the vehicle would explode and maybe I would be hurt"

Given the proximity of the vehicle to the victim, she was clearly "subjected or exposed to" the gasoline that defendant poured on the vehicle, as well as to the gasoline that seeped from the disconnected fuel line. There is simply no requirement in the statute that, for the OV to be scored, there must be actual physical contact between the flammable substance and the victim. The victim in this case was affected by the gasoline and made vulnerable to injury by its use. Therefore, the trial court did not err in assessing 20 points for OV 1.

OV 19 takes into account whether the defendant presented a threat to the security of a penal institution or court or has interfered with the administration of justice. MCL 777.49. OV 19 is to be scored at ten points if the defendant "otherwise interfered with or attempted to interfere with the administration of justice." MCL 777.49(c). Defendant was assessed ten points because shortly after the crime was committed, he attempted to procure a false alibi from a friend. The Michigan Supreme Court recently held that offense variables are to be scored "giving consideration to the sentencing offense alone, unless otherwise provided in the particular variable," and thus a defendant's conduct after completion of the sentencing offense cannot be considered unless the variable so provides. *People v McGraw*, 484 Mich 120, 127, 133-134; 771 NW2d 655 (2009). Because OV 19 does not specifically instruct that the defendant's post-offense conduct is to be considered, defendant argues that attempting to procure a false alibi after the fact cannot be considered in the scoring of the variable. We disagree.

Interference with the administration of justice “involves an effort to undermine or prohibit the judicial process by which a . . . criminal charge is resolved.” *People v Deline*, 254 Mich App 595, 597; 658 NW2d 164 (2002), vacated in part 470 Mich 895 (2004). It can encompass “more than just the actual judicial process” and can even extend to “[c]onduct that occurs before criminal charges are filed.” *People v Barbee*, 470 Mich 283, 287-288; 681 NW2d 348 (2004). The administration of justice by its nature encompasses conduct affecting the judicial process, and therefore it is clearly not limited to conduct occurring during the sentencing offense alone. The trial court properly scored OV 19 at ten points.

Affirmed.

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray