S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

YANCEY AARON ROE,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 250031
Shiawassee Circuit Court
LC No. 02-008540-FH

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of burning of other real property, MCL 750.73. Defendant was sentenced to eighteen months to ten years' imprisonment, and ordered to pay restitution of $4,373. We affirm.

I

Defendant's conviction arose from his role in setting a fire to a Goodwill Industries drop-box (drop-box) located in a Wal-Mart parking lot in the evening hours on June 26, 2001. The drop-box was of "ordinary construction," i.e. made of wood, and designed to accept donations of clothing, household items and furniture. The drop-box was accessible twenty-four hours a day and emptied each day. The drop-box measured approximately ten feet wide by twenty feet long. It had a wooden floor and an angled roof with asphalt shingles. There were two access doors that were kept locked. Two windows, measuring between twenty or twenty-four square inches, were on either side of the doors. Patrons dropped their donations into the drop-box through the two windows. The drop-box was not serviced by gas or electric lines. A sign outside the drop-box read, "Items Left Inside or Outside Become the Property of Goodwill Industries and Their Removal is Illegal."

Testimony at trial established that between 10:00 p.m. and midnight, defendant and his nephew by marriage, Michael Martin, were joyriding in defendant's Dodge minivan. Martin testified that defendant drove to the drop-box because he wanted to take a couch that was sitting outside. Defendant became frustrated after his attempts to fit the couch inside the vehicle were unsuccessful. Before leaving the parking lot, defendant requested Martin's lighter and he set fire to the couch. Defendant also set fire to a magazine, which he threw inside the drop-box. Defendant and Martin quickly left the parking lot, but they eventually returned to the area to observe the fire.

When firefighters arrived, three-quarters of the drop-box was engulfed by the fire. The fire department chief suspected the fire originated near the windows because that area suffered the most extensive damage. The drop-box, valued at $2,500, was a total loss and not replaced after the fire. The contents inside were unsalvageable and could not be valued.

Defendant's wife testified that she was immediately informed by defendant that he had set the fire. Martin's wife also testified that she later heard defendant bragging about setting the fire. However, neither defendant's wife, Martin nor Martin's wife immediately reported the fire to law enforcement authorities. Subsequently, defendant moved to Arkansas and he and his wife separated in March 2002. Defendant filed a complaint for divorce on March 18, 2002. In July 2002, defendant's wife informed her brother-in-law, Scott Ardelean, a reserve officer for the Traverse City Police Department, about defendant's involvement in setting the fire. Ardelean informed his staff sergeant, who contacted the Michigan State Police. The state police interviewed defendant's wife, Martin and his wife, and a warrant was issued for defendant's arrest. At trial, defendant denied any involvement in setting the fire and submitted evidence to suggest the minivan was inoperable on the day the fire occurred. Defendant also challenged Martin's credibility and that of his estranged wife, asserting that the charges were fabricated and a means for his estranged wife to obtain custody of the couple's four children. Following the two-day jury trial, defendant was convicted as charged. In this appeal, defendant challenges the sufficiency of the evidence and the trial court's instructions to the jury.

II

A

Defendant first contends the evidence was insufficient to support his conviction on the basis that the prosecution failed to establish that he burned a "building" or "real property." Specifically, defendant contends that, because the drop-box was not permanently affixed to land, the drop-box does not constitute a building or real property within the meaning of MCL 750.73, and that instead the drop box should be characterized as personal property that was the functional equivalent of a "large garbage dumpster" situated temporarily in a parking lot. We disagree.

This Court's review of a challenge to the sufficiency of the evidence is de novo. *People v Lueth,* 253 Mich App 670, 680; 660 NW2d 322 (2002). We consider the direct and circumstantial evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269, 275; 380 NW2d 11 (1985); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). We also review issues of statutory interpretation de novo. *People v Hill*, 257 Mich App 126, 144; 667 NW2d 78 (2003).[1]

[1] We note that another panel of this Court has questioned whether a defendant actually raises a sufficiency of the evidence claim entitled to de novo review when the claim on appeal principally involves an issue of statutory construction that was not argued below. See *People v Hill*, 257 Mich App 126, 144; 667 NW2d 78 (2003) (a sufficiency of the evidence claim (continued…)

In construing a statute, the primary goal is "to ascertain and give effect to the intent of the Legislature." *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). When a statutory term is not defined, we give the term its plain and ordinary meaning. *Stanton v City of Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002), citing MCL 8.3a; *People v McIntire,* 461 Mich 147, 153; 599 NW2d 102 (1999).

If the plain meaning of the statute's language is clear, judicial construction is not required or permitted. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). The Legislature is presumed to have intended the meaning it plainly expressed, and the statute is enforced as written. *Id.*

MCL 750.73 states:

> Any person who willfully or maliciously burns any building or other real property, or the contents thereof, *other than those specified in the next preceding section of this chapter*, the property of himself or another, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 10 years. [Emphasis added.]

The next proceeding section, MCL 750.72, provides as follows:

> Any person who willfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or another, or any building within the curtilage of such dwelling house, or the contents thereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years.

In order to convict the defendant of the crime of burning of other real property, the prosecution was required to establish: (1) that defendant burned a building, or the contents thereof; (2) that the building was not a dwelling within the meaning of MCL 750.72; and, (3) that defendant burned the building, or its contents, with the intent to set a fire and knowing that it would cause injury or damage. MCL 750.73; see, e.g., *People v Nowack*, 462 Mich 392, 404-410; 614 NW2d 78 (2000) (distinguishing between common law arson and statutory arson); *People v Greenwood*, 87 Mich App 509, 514 n 1; 274 NW2d 832 (1978).

We reject defendant's claim that the prosecution presented insufficient evidence to satisfy the statutory requirement that defendant burned a "building." Our Supreme Court, in defining the term "building" in relation to the offense of larceny in a building under MCL 750.360, stated:

(…continued)

requiring review of an unpreserved claim of statutory construction is not a true sufficiency of the evidence claim, and is reviewed for plain error affecting a defendant's substantial rights). In this case, nevertheless, following defendant's motion for a directed verdict asserting that the evidence was insufficient for conviction, the trial court denied the motion in part on the basis that there was evidence that property constituting a building or structure was burned down intentionally by the defendant. Thus, because the trial court appeared to construe the statute in deciding the directed verdict motion, we will assume that the statutory construction issue has been preserved.

> "The word 'building' cannot be held to include every species of erection on land, such as fences, gates or other structures. Taken in the broadest sense, it can mean only an erection intended for use and occupation as a habitation *or for some purpose of trade, manufacture, ornament or use, constituting a fabric or edifice*, such as a house, a store, a church or *shed*." [*People v Williams*, 368 Mich 494, 497-498; 118 NW2d 391 (1962) (emphasis added).]

We find that application of this definition of "building" to that term as used in MCL 750.73 is appropriate and, contrary to defendant's assertion, does not require that a "building" must be a permanent fixture. Accordingly, we conclude that the drop-box at issue in this case was properly construed as a building.

Moreover, viewed in a light most favorable to the prosecution, the evidence was more than sufficient to establish that defendant intentionally burned the drop-box. At trial, defendant could not account for his whereabouts on the evening of June 26, 2001. Martin testified that defendant requested Martin's lighter to set fire to the couch and drop-box. Defendant's wife and Martin's wife heard defendant admit to setting fire to the drop-box. Significantly, the fire chief testified that the charred remains of the couch were found adjacent to the drop-box. In sum, there was sufficient evidence to support defendant's conviction of burning of other real property beyond a reasonable doubt.

B.

Defendant next contends the trial court erred in the manner in which it defined the term "building" when it instructed the jury. We disagree. Defendant expressed satisfaction with the jury instructions as given by the trial court, and by expressly approving the jury instructions has waived review of any error on appeal. *People v Carter*, 462 Mich 206, 214-216, 219; 612 NW2d 144 (2000); *Lueth, supra* at 688.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens