

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALEXANDER AVDIA, Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ALEXANDER AVDIA a/k/a Aleksander Abdija,

Respondent-Appellant.

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UNPUBLISHED

October 12, 2001

No. 222877

Macomb Circuit Court

Family Division

LC No. 98-047038-DL

Before: Sawyer, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Respondent, a juvenile, was charged with one count of arson of real property, MCL 750.73. After a jury trial, respondent was found guilty as charged. At the dispositional hearing, the trial court ordered respondent to serve a term of probation and receive counseling. Respondent appeals as of right. We affirm.

Respondent was charged with setting a fire at the Italian Cultural Center in Warren. About five minutes before a cultural center employee noticed the fire, respondent was observed inside the building near the area where the fire started. Respondent and some other children were yelled at for being inside the building and they were observed running out of the building shortly before the fire was noticed by the employee.

Respondent first argues that error occurred when the prosecutor introduced evidence that he had previously set a fire at the cultural center. Respondent claims the testimony was not admissible under MRE 404(b). Although respondent objected to this evidence in the trial court, he did so only on the ground of relevance. That issue is preserved for appellate review. Respondent was required to separately object to this evidence, specifically stating that the objection was with regard to MRE 404(b), to properly preserve this issue for appellate review. MRE 103(a)(1). Because there was not a proper objection made under MRE 404(b), we review the record to determine if plain error occurred that affected respondent's substantial rights. MRE 103(d); *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999).

Initially, we believe that the trial court correctly overruled respondent's objection to the evidence based on relevance. It appears that this evidence was offered to establish respondent's identity, which was an issue of consequence at trial. MRE 401, 402.

With regard to the admission of this evidence under MRE 404(b), we do not believe respondent has shown that plain error occurred that affected his substantial rights. First, he has not shown the evidence was inadmissible under MRE 404(b). The evidence was offered to show respondent's identity, not simply his propensity to commit the crime, and as noted above, the evidence was relevant to an issue in controversy. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). The evidence was highly probative of respondent's involvement in the arson. Moreover, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *Id.*

Petitioner also satisfied the requirements of *People v Golochowicz*, 413 Mich 298; 319 NW2d 518 (1982), for admitting the evidence. *VanderVliet, supra*, 66; *People v Steven Smith*, 243 Mich App 657, 671; 625 NW2d 46 (2000); *People v Ho*, 231 Mich App 178, 186; 585 NW2d 357 (1998). There were facts in the record to show that respondent was responsible for the prior bad act, it had a special quality similar to the fire set in this incident, and the evidence was material to an issue in the case. *Ho, supra*. We likewise do not believe respondent has demonstrated that his substantial rights were affected by the lack of prior notice of petitioner's intent to introduce this evidence, MRE 404(b)(2).

Next, the trial court did not abuse its discretion by refusing to allow respondent to call an alibi witness that was not previously disclosed to petitioner. *In re Alton*, 203 Mich App 405, 407; 513 NW2d 162 (1994). Under MCR 5.922(B)(1), respondent was required to provide at least seven days' notice of his intent to rely on an alibi defense, which he failed to do. While the trial court and petitioner's attorney mistakenly thought that ten days' notice was required by the above rule, that error did not prejudice respondent since he never filed the required notice. Moreover, to the extent the trial court may have relied on MCL 768.20; and MCL 768.21, no error resulted. MCR 5.922(B)(1) is substantially based on MCL 768.20, and MCR 5.922(B)(3) incorporates the sanctions found at MCL 768.21. Furthermore, the court exercised its discretion in precluding the witness from testifying when it weighed the prejudice to petitioner.

Finally, respondent argues there was insufficient evidence presented to support the elements of the offense. We disagree.

In juvenile proceedings, the standard of proof at the adjudicative stage of delinquency proceedings, as in criminal proceedings, is proof beyond a reasonable doubt. *In re Weiss*, 224 Mich App 37, 42; 568 NW2d 336 (1997); MCR 5.942(C). An appellate court's review of the sufficiency of the evidence to sustain a conviction in a criminal case does not turn on whether there was any evidence to support the conviction, but whether there was sufficient evidence to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513; 489 NW2d 748 (1992). The evidence must be reviewed in a light most favorable to the prosecution. *Id.* at 514-515. Both circumstantial evidence and reasonable inferences drawn from the evidence can provide sufficient evidence to prove the elements of an offense. *People v Whitehead*, 238 Mich App 1, 14; 604 NW2d 737 (1999). In arson cases in particular, circumstantial evidence is often relied upon because there rarely is evidence that the

arsonist was observed lighting the fire. *People v Nowack*, 462 Mich 392, 402-403; 614 NW2d 78 (2000).

The charge against respondent was burning of real property, MCL 750.73. The elements of that offense are “(1) the burning of any building or other real property, or the contents thereof, and (2) that the fire was willfully or maliciously set.” *People v Greenwood*, 87 Mich App 509, 514 n 1; 274 NW2d 832 (1978). “Possession of any instrumentality used to set the fire is not an essential element of the charged crime.” *Id.*

Viewing the evidence in a light most favorable to petitioner, we believe there was sufficient evidence presented to prove the elements beyond a reasonable doubt. Respondent was observed near the area where the fire was set within about five minutes of when the fire was first noticed. Respondent had a motive for setting the fire when he was yelled at for being in the building a few minutes before the start of the fire. From this evidence, as well as the lack of an accidental cause for the fire, the jury could infer that the fire was maliciously or intentionally set. Moreover, respondent knew how to set fires and had previously set some papers on fire on the cultural center’s bocci court. Respondent’s actions after the fire, when he was questioned by a detective, suggested that respondent was intentionally covering up his involvement in the offense. When viewed in the light most favorable to petitioner, the evidence supported a finding that the elements of the offense were proven beyond a reasonable doubt.

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O’Connell