STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL FERRELL,

Defendant-Appellant.

UNPUBLISHED
November 10, 2005

No. 254411
Wayne Circuit Court
LC No. 03-011180-01

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to unlawfully use an explosive device, MCL 750.211a. This case involves two unexploded Molotov cocktails found near a vehicle owned by an acquaintance of defendant's ex-girlfriend. One was placed under the vehicle and the other had been smashed against it.[1] Defendant was sentenced to serve a prison term of two to fifteen years. Defendant appeals as of right, and we affirm.

Defendant argues that the trial judge should have granted his motion for a directed verdict because the prosecution provided insufficient evidence to sustain a conviction under MCL 750.211a.[2] We disagree. When reviewing a defendant's motion for a directed verdict, "we review the record de novo and consider the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999).

At the time of the offense and conviction, MCL 750.211a (1) read as follows:

> A person shall not manufacture, buy, sell, furnish, or have in his or her possession any device that is designed to explode or that will explode upon

[1] Defendant's argument on appeal involves only the unbroken Molotov cocktail found underneath the victim's car.

[2] The trial court granted defendant's motion for directed verdict on a count of preparation to burn property valued at more than $1,000 but less than $20,000, MCL 750.77(1)(c)(*i*), because the evidence in this case did not support a finding that the car had a market value of at least $1,000.

> impact or with the application of heat or a flame, or that is highly incendiary, with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property without the permission of the property owner or, if the property is public property, without the permission of the governmental agency having authority over that property.[3]

Relying on the testimony of a fire department official that the gasoline mixture in the device was too rich to ignite, defendant argues that the device was not "designed to explode" and thus cannot serve as the basis of his conviction. We disagree. "Criminal statutes must be strictly construed, with each word interpreted according to its ordinary usage and common meaning." *People v Noble*, 238 Mich App 647, 659; 608 NW2d 123 (1999).

Gasoline is "a volatile, flammable liquid mixture of hydrocarbons obtained from petroleum and used chiefly as fuel for internal-combustion engines." *Random House Webster's College Dictionary* (1992). When used in a Molotov cocktail, gasoline has been found to constitute an "explosive substance" under other criminal statutes. See *People v Stanton*, 190 Mich App 558, 561-562; 476 NW2d 477 (1991).[4] The word "design" is defined, in part, as follows: "To create or contrive for a particular purpose or effect . . . ." *The American Heritage Dictionary of the English Language* (1996). Thus, a device "designed to explode" would be a device "create[d] or contrive[d]" to explode. This definition does not imply that the device actually explode, or even be capable of exploding. Rather, it only indicates that the device was made with the intention of exploding.

A container that is filled with gasoline and stuffed with a cloth that acts as a wick fits the ordinary definition of a device "designed to explode." Accordingly, sufficient evidence was adduced for a rational trier of fact to conclude that defendant possessed a device that was designed to explode and that he therefore violated the statute.

Defendant additionally argues that he was highly prejudiced by the prosecution's inability to produce the unbroken Molotov cocktail for testing or trial. In instances where a defendant claimed prejudice because police failed to collect evidence at the scene using certain scientific means, Michigan appellate courts have held that the police do not have to exhaust all scientific means to collect evidence at a crime scene. See *People v Allen*, 351 Mich 535; 88 NW2d 433 (1958); *People v Baber*, 31 Mich App 106, 108-109; 187 NW2d 508 (1971). In other cases where evidence is collected but subsequently lost or destroyed, this Court has observed that "[a]bsent the intentional suppression of evidence or a showing of bad faith, a loss of evidence that occurs before a defense request for its production does not require reversal." *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). Moreover, "[d]efendant bears the burden of showing that the evidence was exculpatory or that the police acted in bad faith." *Id.*

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[3] MCL 750.211a was amended by 2004 PA 523, which took effect April 1, 2005.

[4] The statutory language analyzed in *Stanton* came from MCL 750.206, which prohibited the placing of explosive substances with the intent to destroy property. *Stanton*, *supra* at 559-560. MCL 750.206 was later repealed by 1998 PA 208.

There is no evidence in this case that the unbroken Molotov cocktail was intentionally suppressed, and defendant can only speculate as to its exculpatory value. In fact, given the fire department officer's testimony that the object was filled with gasoline, it likely would have been inculpatory. Accordingly, we conclude that the failure of the police to collect this evidence does not warrant the reversal of defendant's conviction.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter