IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES V. MATOS,	§	
	§	No. 50, 2011
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1003000386
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: June 29, 2011
Decided: July 13, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

O R D E R

This 13th day of July 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. James V. Matos ("Matos"), the defendant-below, appeals from the Superior Court's denial of his Motion for Judgment of Acquittal on the charge of Reckless Endangering in the First-Degree,[1] and from his subsequent conviction of, and sentence for, that offense.[2] On appeal, Matos claims that the trial court erroneously denied his acquittal motion by not applying the statutory definition of

[1] 11 *Del. C.* § 604.

[2] Matos was also convicted of, and sentenced for, several other offenses, which have not been appealed.

the term "building," as set forth in 11 *Del. C.* § 222(1).[3] We find no error and affirm.

2. In September 2009, defendant Matos began living with Joy Breen, her two children, and the family dog at Breen's apartment, located at 47 Norway Avenue in Wilmington, Delaware. At the time, the 47 Norway Avenue building was approximately 100 years old. Over the years, it had been converted into an apartment building that contained three apartment units, one on each floor. Breen's apartment was located on the first floor.

3. About a year and a half after Matos moved in with Breen, Breen and Matos had a falling out, and Breen asked Matos to move elsewhere. Matos moved to his sister's house for the next few days, but then returned to Breen's apartment the following weekend, where he spent Sunday night, February 28, 2010.

4. On March 1, 2010, the next day, Matos left Breen's apartment in the early morning without explanation. Immediately thereafter, Breen asked her landlord to have the locks on her apartment changed. After asking her landlord to do that, Breen then left her apartment to go to work. Her two children left to go to school, in accordance with their daily routine, and the family dog remained in the apartment in a dog crate.

[3] 11 *Del. C.* § 222(1) ("When used in this Criminal Code . . . 'Building,' in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.").

5. At about 9:00 a.m. that same day, Matos returned and let himself into Breen's apartment. Aware of the dog's presence in the crate, Matos went into Breen's bedroom and, using his lighter, set Breen's bedding on fire. He then stood there watching the flames grow before leaving the building. The fire and smoke destroyed Breen's apartment and killed the family dog.

6. Shortly after 9:00 a.m., Harold Howell, who lived on the third floor, noticed smoke coming into his apartment. Howell went downstairs to investigate, and saw smoke coming out of the rear of Breen's apartment. Howell immediately called the fire department and the building's owner, and reported that the building was on fire. Although the fire department responded quickly, Breen's apartment had already been destroyed by the excessive heat and smoke damage. The second and third-floor apartments also suffered fire-related damage.

7. Thereafter, Matos was arrested. He was indicted by a grand jury on charges of first-degree arson,[4] second-degree burglary,[5] first-degree reckless

[4] 11 *Del. C.* § 803.

[5] 11 *Del. C.* § 825.

endangering,[6] cruelty to animals,[7] three counts of breach of bond conditions,[8] and harassment.[9] Of particular relevance is the indictment charge for first-degree reckless endangering, which read:

> **RECKLESS ENDANGERING FIRST DEGREE**, in violation of Title 11, Section 604 of the Delaware Code of 1974, as amended.
>
> **JAMES V. MATOS**, on or about the 1st day of March, 2010, in the County of New Castle, State of Delaware, did recklessly engage in conduct which created a substantial risk of death to Harold Howell, by starting a fire or causing an explosion in an occupied building.[10]

8. The Superior Court conducted a three-day trial on November 3-5, 2010. At a November 5 prayer conference, the trial judge reduced the arson charge from first-degree arson to second-degree arson, because the parties (and the judge) agreed that Matos could not be charged with first-degree arson based on the statutory definition of the term "building." The statute, 11 *Del. C.* § 803, defines first-degree arson as follows:

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[6] 11 *Del. C.* § 604.

[7] 11 *Del. C.* § 1325.

[8] 11 *Del. C.* § 2109. In setting bail, the Justice of the Peace Court issued a "no contact" order that prohibited Matos from contacting Breen or her children. Despite that order, Matos continued attempting to contact Breen through numerous phone calls and letters. For example, on the day he was arrested, March 1, 2010, Matos called Breen 21 times in a span of an hour and a half while he was in prison.

[9] 11 *Del. C.* § 1311.

[10] Indictment (emphasis in original).

> A person is guilty of arson in the first degree when the person intentionally damages a building by starting a fire or causing an explosion and when:
>
> (1) The person knows that another person not an accomplice is present in the building at the time; or
>
> (2) The person knows of circumstances which render the presence of another person not an accomplice therein a reasonable possibility.[11]

9. Under 11 *Del. C.* § 222(1), the term "building" is defined thusly:

> "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.[12]

10. Under that statutory definition, Howell resided in a separate "building" (*i.e.*, apartment). The trial judge therefore found, as a matter of law, that Matos could not have reasonably known of Mr. Howell's presence within the "building" that he set fire to, *i.e.*, Breen's apartment.

11. But, with respect to the reckless endangering charge, the trial judge concluded that the ordinary definition—and not the statutory definition—applied to the term "building" as used in that section of the indictment. The judge reasoned that the term "building" was not an element of the reckless endangering charge, because the statute defines reckless endangering in the first-degree as "recklessly

[11] 11 *Del. C.* § 803.

[12] 11 *Del. C.* § 222(1).

engage[ing] in conduct which creates a substantial risk of death to another person."[13] Because the Section 222 statutory definitions apply only where the specific defined term is "used in [the] Criminal Code,"[14] the statutory definition of "building" was inapplicable to the reckless endangering charge.[15]

12. Based on that ruling, the trial judge instructed the jury to use the ordinary and customary meaning of the term "building" in considering whether Matos was guilty of reckless endangering in the first degree. Specifically, the jury was instructed that "[f]or purposes of [the reckless endangering] charge, the term 'building' is not defined and, therefore, you may interpret the term in accordance with its usual and customary meaning."

13. The jury found Matos guilty of second-degree arson, first-degree reckless endangering, cruelty to animals, three counts of breach of bond conditions, first-degree criminal trespass (a lesser-included offense of second-degree burglary), and harassment. At his sentencing hearing, Matos was declared an habitual offender and sentenced as follows: (i) for arson, 15 years at Level V incarceration; (ii) for reckless endangering, 5 years at Level V incarceration; (iii)

[13] 11 *Del. C.* § 604.

[14] 11 *Del. C.* § 222 (noting that the definitions apply only "[w]hen used in this Criminal Code").

[15] Specifically, the trial judge stated, "I am satisfied, in the scenario where the term is not set forth in the statute, that 11 [*Del. C.* §] 222 does not apply, and that conclusion is based on the express terms of that statute."

for each of the breach of bond conditions, 2 years at Level V incarceration; (iv) for criminal trespass, 1 year at Level V incarceration, suspended for 1 year at Level 3 probation; (v) for harassment, 1 year at Level V incarceration, suspended for 1 year at Level 3 probation; and (vi) for animal cruelty, 1 year at Level V incarceration, suspended after 6 months for 6 months at Level 3 probation. This is Matos' direct appeal.

14. The sole issue on this appeal is whether the trial court erred by denying Matos' motion for acquittal on the first-degree reckless endangering charge. Matos claims that because the phrase "by starting a fire or causing an explosion in an occupied building" was used in the indictment, the term "building" became an element of the reckless endangering offense under the Delaware Criminal Code. Because that term is defined in Section 222(1) of the Criminal Code, he argues, the statutory definition of "building" was applicable. Therefore, as a matter of law, his conduct did not constitute reckless endangering in the first degree.[16]

15. We review a trial court's denial of a motion for judgment of acquittal *de novo* "to determine whether any rational finder of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a

[16] The parties agree that if the customary meaning of the term "building" applies, the State has adduced sufficient evidence to support the first-degree reckless endangering conviction.

reasonable doubt."[17] Where the claim of error rests on an issue of statutory interpretation, we review that claim *de novo.*[18]

16. Section 232 of the Delaware Criminal Code relevantly provides that:

> "Elements of an offense" are those physical acts, attendant circumstances, results and states of mind which are *specifically included within the definition of the offense* or, if the definition is incomplete, those states of mind which are supplied by the general provisions of this Criminal Code.[19]

17. Under the Criminal Code, "[a] person is guilty of reckless endangering in the first degree when the person recklessly engages in conduct which creates a substantial risk of death to another person."[20] The Superior Court held that because the term "building" is not specifically included within the definition of first-degree reckless endangering, that term is not a statutory element of that offense. The only function served by using "building" in the indictment was ". . . to provide [the] factual context in which the alleged reckless conduct occurred." We agree.

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[17] *Hoennicke v. State*, 13 A.3d 744, 748 (Del. 2010).

[18] *Dambro v. Meyer*, 974 A.2d 121, 129 (Del. 2009).

[19] 11 *Del. C.* § 232 (emphasis added).

[20] 11 *Del. C.* § 604.

18. The definitions contained in Section 222 are limited to instances where those defined terms are explicitly used in the Criminal Code.[21] Because "building" is not specifically included within the statutory definition of reckless endangering in the first degree, the Section 222(1) statutory definition of "building" does not apply. Accordingly, the trial court correctly interpreted "building" in accordance with its customary meaning.[22]

19. The rationale of *Harley v. State*[23] is instructive. In *Harley*, the defendant was convicted of second-degree assault and possession of a deadly weapon during the commission of a felony.[24] As to the assault charge, we held that "the exact nature and description of the instrument used during the altercation is not an essential element of the crime," and that "[t]he indictment fairly informed the [defendant] of the basic charge of assault."[25] Therefore, it was irrelevant that

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[21] 11 *Del. C.* § 222 (noting that the definitions apply only "[w]hen used in this Criminal Code.").

[22] *See Duncan v. State*, 791 A.2d 750 (Table), 2002 WL 243377, at *1 (Del. 2002) (holding that "the State has an obligation to prove not only that a defendant committed each element of [reckless endangering in the first degree] as listed in the Code, but also that the defendant violated those elements in a manner consistent with the facts set forth in the indictment or information. To this end, it is similarly appropriate for a jury to apply the commonly accepted meaning to an undefined term appearing in the factual discussion of the information."); *see also* 42 C.J.S. *Indictments* § 126 (2011) ("[W]ords of common use within an indictment will be construed according to their common acceptation . . . unless the context is such as to show that the technical use was intended.").

[23] 534 A.2d 255 (Del. 1987).

[24] *Id.* at 256.

[25] *Id.* at 257.

the indictment for assault charged the defendant with hitting the victim using a tire iron, even though the evidence showed that the defendant had struck the victim with a tire jack.[26]

20. Similarly here, Matos was fairly informed of the charge of reckless endangering in the first degree. The indictment clearly informed him that he would be required to defend against the charge that he put Harold Howell in substantial risk of death by his reckless conduct on March 1, 2010. The additional fact—that the charged conduct consisted of starting a fire in an occupied building—merely provided Matos with additional information that enabled him to prepare a more specific defense. That additional factual context did not transform the term "building" into an essential element of reckless endangering in the first degree. Therefore, the trial judge properly denied Matos' motion for acquittal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[26] *Id.*