STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAMES MACKLINE ELLIOT, JR., Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MACKLINE ELLIOT, JR.,

Defendant-Appellant.

UNPUBLISHED
December 3, 2002

No. 233507
Ingham Circuit Court
Juvenile Division
LC No. 00-437541-DL

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

James Mackline Elliot, Jr., appeals as of right the trial court's decision to take jurisdiction over him after a bench trial in which the trial court concluded that the evidence proved beyond a reasonable doubt[1] that he had committed arson of personal property.[2] The trial court placed Elliot on probation. The trial court also ordered Elliot to stay with his mother, pay restitution in the total amount of $775, write letters of apology, interview a firefighter about the dangers of fire, make three fire safety posters, refrain from possessing any matches or other fire-related paraphernalia, and comply with a number of other requirements related to his probation. We affirm.

I. Basic Facts And Procedural History

This is a juvenile delinquency case. The prosecutor petitioned the trial court to take jurisdiction over Elliot after he and a friend set fire to an uninhabited mobile home owned by James England, claiming that Elliot committed arson of personal property. Elliot admitted setting the fire with another minor, Fred Billings, by holding a lighter while Billings squirted

[1] The order of disposition indicates that Elliot entered a plea of admission to this offense, but the transcript of the adjudication suggests that the trial court found that he had committed the offense as if Elliot had disputed the allegations in the petition.

[2] MCL 750.74.

WD-40, a lubricant, through the flame, setting a rag or cloth on fire. One of the boys threw the rag on a pile of insulation and threw the can of WD-40 on top of the burning rag. Elliot claimed that he never wanted to set the mobile home on fire, that he believed that the fire had been extinguished before he left the mobile home, that he did not know that WD-40 was flammable, and that he had only done what Billings had told him to do. The defense also asserted that Elliot has developmental or learning problems that prevented him from having the requisite state of mind to commit the offense. However, the trial court found the elements of the offense proved beyond a reasonable doubt and, therefore, took jurisdiction over Elliot.

II. Sufficiency Of The Evidence

A. Standard Of Review

Elliot argues that the trial court erred in convicting him of arson of real property because it is a specific intent crime requiring proof of malice and willfulness, while the evidence merely showed negligence. He effectively contends that the evidence was insufficient for the trial court to take jurisdiction over him. We apply review de novo to this issue.[3]

B. State Of Mind

Though delinquency proceedings are not identical to criminal prosecutions against adults, juveniles are nevertheless entitled to the important due process right of having the petitioner prove the allegations in the complaint – the charges – beyond a reasonable doubt.[4] To determine whether the evidence was sufficient, we view the record in the "light most favorable" to the petitioner to determine whether a " rational trier of fact" could find "beyond a reasonable doubt" that the respondent juvenile committed every element of the alleged crime.[5]

Among other elements, MCL 750.74(1) requires proof that the respondent burned the personal property "willfully and maliciously." Elliot argues that this required the petitioner to prove beyond a reasonable doubt that he specifically intended to burn the personal property. However, recently, in discussing the elements of common-law arson, the Michigan Supreme Court explained that

> [c]ommon-law arson is a general intent crime. "[T]he enduring common law definition of the mental element of" arson is that the burning be done "maliciously and voluntarily." Poulos, *The metamorphosis of the law of arson*, 51 Mo L R 295, 319 (1986). A malicious burning occurs when the defendant "either intentionally or wantonly burns property without justification or excuse." *Id*., p 403. Wanton arson "required an intentional act which created a very high risk of burning a dwelling house, which risk was known by the actor and disregarded

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[3] See *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

[4] See *In re Carey*, 241 Mich App 222, 227; 615 NW2d 742 (2000).

[5] *People v Gray*, 252 Mich App 349, 355; 651 NW2d 818 (2002); see also *In re Gillis*, 203 Mich App 320, 322; 512 NW2d 79 (1994) (applying standard in juvenile delinquency case).

> when the actor performed the risk taking act." *Id*., p 408. "[T]he word 'willfully' adds nothing to the common law concept of malice . . . ." *Id*., p 404.[6]

The Court went on to explain that

> [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 dwelling house, and that, while committing the act, the defendant knew of the risk and disregarded it (wanton arson).[7]

Clearly, the petitioner did not allege that Elliot committed common-law arson. However, we think the Supreme Court's explanation of the two ways in which common-law arson may be proved also fit the "willful and malicious" requirement under MCL 750.74. In drawing this conclusion, we note that in cases concerning a variety of other statutory offenses, Michigan courts have applied similar definitions to determine whether the criminal act was done "willfully and maliciously."[8] Thus, the petitioner in this case had to prove that Elliot either set the fire intentionally or that he committed an act that had a very high risk of burning personal property, and that while committing that act Elliot knew of the risk and disregarded it. In fact, in responding to the defense motion for a directed verdict, the petitioner cited this standard when she argued that it was her burden to prove that Elliot set the fire "intentionally or with a conscious disregard of known risk[s] to [the] property of another."

The crux of Elliott's factual argument is that some of the witnesses and the trial court described him as admitting to "playing" with the lighter. This, he claims, did not demonstrate an intent to set the fire. However, read in context, the word "playing" meant that he was using the lighter for his own amusement, not that the fire was an accidental product of his otherwise innocent conduct. More importantly, the evidence, viewed in the light most favorable to the petitioner, supported the trial court's decision to take jurisdiction over him. Though Elliot claimed not to have known that WD-40 was flammable, a reasonable person could infer from the evidence that he knew the substance was flammable and that he hoped to set it on fire with the lighter because he was working with Billings to ignite the lubricant and he had experimented previously with igniting hairspray. Elliot also admitted that he tried three times to ignite the lighter before he was successful, which implies that setting a fire was his intention and an intention he pursued until he was successful. Minimally, even if Elliot did not intend to burn the mobile home and cause damage to neighboring mobile homes, this evidence was sufficient to

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[6] *People v Nowack*, 462 Mich 392, 406; 614 NW2d 78 (2000).

[7] *Id*. at 409.

[8] See *People v Tessmer*, 171 Mich 522; 137 NW 214 (1912) and cases cited therein; see also *People v Iehl*, 100 Mich App 277, 280; ("The element of malice in this statute [MCL 750.377, repealed 1994 PA 126, § 2] requires only that the jury find that defendant 1) committed the act, 2) while knowing it to be wrong, 3) without just cause or excuse, and 4) did it intentionally or 5) with a conscious disregard of known risks to the property of another.").

suggest that he knew that his behavior posed a high risk of burning the property but that he ignored this risk. Further, though the defense claimed that Elliot's learning disability or other problems prevented him from having the intent necessary to commit this crime, there was no specific evidence that Elliot was unaware of what he was doing or that his actions were involuntary.

III. Evidentiary Issues

A. Standard Of Review

Elliot argues that the trial court committed error requiring reversal when it allowed the petitioner to question his mother, Tina Arthur, about his character and history of truancy. We review this issue to determine whether the trial court abused its discretion in admitting this evidence. [9]

B. Admissibility

Elliot claims that MRE 404(b) barred this evidence. However, this is not necessarily a prior bad acts evidence issue. Defense counsel asked Arthur to describe her son, and she said that he was a good boy. The prosecutor was entitled to impeach Arthur's credibility with evidence that she knew that her son was not as good as she suggested.[10] In *People v VanderVliet*,[11] the Supreme Court recognized that evidence that may be excluded on one basis may, nevertheless, be admissible for another purpose. Thus, even if the evidence had the effect of revealing Elliot's prior bad acts, it was still admissible to impeach Arthur. In any event, these questions were brief, the trial court is presumed to know the law,[12] and the trial court's factual findings do not indicate that the questions or answers influenced the trial court's substantive decision to take jurisdiction over Elliot. Thus, even if the trial court erred in admitting this evidence, the error was harmless.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Henry William Saad

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[9] See *People v Schutte*, 240 Mich App 713, 715; 613 NW2d 370 (2000).

[10] See MRE 607.

[11] *People v VanderVliet*, 444 Mich 52, 73; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

[12] See *People v Sherman-Huffman*, 466 Mich 39, 43; 642 NW2d 339 (2002).