IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29053-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
CHRISTOPHER MICHAEL LUND,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Sweeney, J. — This appeal follows a conviction for first degree arson. The defendant torched a car in a residential neighborhood. The pertinent statute requires a showing of manifest danger to any human life. The defendant arsonist was the only person injured as the result of his activities. We conclude that the fire and explosion here easily satisfy the requirements of the statute. We also conclude that the trial judge's decision to excuse a juror was an appropriate exercise of discretion. We therefore affirm the conviction for first degree arson.

FACTS

Christopher Michael Lund set fire to Gloria Broschart's car during the early

morning hours of January 14, 2009. Mr. Lund was severely burned in the process. The car had been parked on a residential street outside of Ms. Broschart's home in Kennewick, Washington. Ms. Broschart shared the home and the car with John Winchester. Both Ms. Broschart and Mr. Winchester knew Mr. Lund. Mr. Lund had performed some maintenance on a truck of theirs in exchange for Mr. Winchester's help on a child custody issue.

The evening prior to the fire, Mr. Lund called Mr. Winchester on the telephone and asked Mr. Winchester to testify on his behalf to further his efforts to get full custody of his children. Mr. Winchester refused and Mr. Lund got upset. Mr. Winchester hung up the phone, took his dogs for a walk, and then went to bed. Mr. Winchester and Ms. Broschart were later awakened by a loud boom and a flash of light coming from outside their home. They immediately noticed the car on fire, called 911, and ran outside.

Police investigated. The State charged Mr. Lund with one count of second degree arson. The information was later amended to a charge of first degree arson or, alternatively, second degree arson.

The case proceeded to trial before a jury. During the second day of the trial Juror 8 advised the court that she recognized Mr. Lund from church. The court inquired further, heard from the lawyers, and ultimately dismissed the juror, over Mr. Lund's

objection.

Mr. Lund moved to dismiss the first degree arson charge at the close of the State's case. He argued that the fire was not "manifestly dangerous to human life" because he was the only one injured. The court denied the motion. The jury found Mr. Lund guilty of first degree arson.

DISCUSSION

Manifestly Dangerous to any Human Life

Mr. Lund contends here on appeal, as he did in the trial court, that the State did not show, nor could it show, the statutory requirement of "a fire . . . which is manifestly dangerous to any human life" because he was the only one injured. RCW 9A.48.020(1)(a). Mr. Lund also urges that the rule of lenity applies and so the operative statute must be construed in a light most favorably to him. Br. of Appellant at 9 (citing *State v. Harris*, 39 Wn. App. 460, 464-65, 693 P.2d 750 (1985)).

The jury found the essential facts here. They are then the operative facts for this analysis—Mr. Lund torched the car, the resulting explosion blew out the back window, all of this took place in a residential neighborhood, and Mr. Lund was severely burned. Whether those facts satisfy the necessary elements required for first degree arson then becomes a question of law. *See State v. Stubbs*, 170 Wn.2d 117, 124, 240 P.3d 143

(2010).

RCW 9A.48.020(1) states, in part:

> A person is guilty of arson in the first degree if he or she knowingly and maliciously:
> (a) Causes a fire or explosion which is manifestly dangerous to any human life . . . .

"Manifestly dangerous" includes potential harm. *See State v. Young*, 87 Wn.2d 129, 133, 550 P.2d 1 (1976). But neither the statute nor the courts say whether "any human life" includes the perpetrator. A number of cases discuss similar questions of statutory interpretation. *See State v. Westling*, 145 Wn.2d 607, 611-12, 40 P.3d 669 (2002) (use of the word "any" in second degree arson statute means "every" and "all" automobiles damaged by fire); *State v. Graham*, 153 Wn.2d 400, 406, 103 P.3d 1238 (2005) (use of "another person" in reckless endangerment statute does not mean "any" person). Mr. Lund invites us to engage in a similar analytical approach and ultimately to look at the legislative intent prompting the statute. But we need not do this because, for us, the language is clear. The language here—any—is not ambiguous. There is no need to invoke the rule of lenity. *In re Post Sentencing Review of Charles*, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998).

The explosion and fire resulting from Mr. Lund's activities occurred in a residential neighborhood. The car was parked on a street just outside of the home shared by Ms. Broschart and Mr. Winchester. Ms.

Broschart heard a "boom" and "saw flames." Report of Proceedings (RP) at 26. Mr. Winchester was awakened by "a flare like a flash in the window." RP at 43-44. The neighbor two homes down heard "a big old – a big boom like a big noise." RP at 35. Another neighbor remembered "a loud explosion . . . it just shook my house." RP at 17-18. Others described the fire as a "big old ball of flames." RP at 35. After hearing the explosion, Ms. Broschart and Mr. Winchester attempted to put out the fire with buckets of water. Several neighbors grabbed the water hoses attached to their homes to help put out the flames. One estimated that the distance from the nearest home to the flaming car was within the confines of the courtroom. Another estimated that the man she saw catch fire was running approximately 40 feet from her home. Investigating officers found broken glass from the car some distance from the car. An officer thought that the glass may have come from the back window of the car exploding out. Investigating officers also found traces of gasoline and several flares. The fire inspector concluded that the cause of the fire was the use of an accelerant in the car and then ignition with the flares. The car was totally destroyed.

The jury's finding that this fire and explosion was "manifestly dangerous to any human life" is easily supported by the evidence here. RCW 9A.48.020(1)(a). The fire created a loud explosion and considerable flames, all within a close proximity to homes.

The fire was immediately dangerous to people in the neighborhood, including those who tried to extinguish the fire.

We would also conclude that Mr. Lund falls within the meaning of "any human life," that the term is not ambiguous and, of course, that the fire and explosion were obviously dangerous to his human life.

Dismissal of Juror

Mr. Lund next contends that the trial judge abused his discretion by dismissing Juror 8 after the juror said she could decide the case despite her familiarity with Mr. Lund.

The standard of review is abuse of discretion. *State v. Elmore*, 155 Wn.2d 758, 768, 123 P.3d 72 (2005). And the guiding principle is set out in RCW 2.36.110. It provides that

> [i]t shall be the duty of a judge to excuse from further jury service any juror who in the opinion of the judge, has manifested unfitness as a juror, by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

RCW 2.36.110.

The considerations are similar to those for a challenge for cause. *State v. Jorden*, 103 Wn. App. 221, 229, 11 P.3d 866 (2000).

Here, Juror 8 recognized Mr. Lund during the course of the trial and was concerned about that. The judge then discussed the matter with her:

> THE COURT: The bailiff reported that you felt you recognized the defendant.
> Juror 8: Yes, I do.
> THE COURT: Why don't you tell me about that. How do you know him?
> Juror 8: I didn't recognize him at first, and but today when they mentioned his wife's name was Claudia I remembered that he goes to our church. I recognized him as her husband.
> THE COURT: OK, and do you have a personal connection with him at church?
> Juror 8: No, not really.
> THE COURT: OK, and at church had you learned anything about this case?
> Juror 8: Not specifically, no, although I did remember talking about the custody of the children and also that there were issues in their life that they would like us to pray for.
> THE COURT: OK.
> Juror 8: But that's all I know.
> THE COURT: So you yourself have been engaged in praying for issues in their family?
> Juror 8: Yes, our church as a body would do that.
> THE COURT: And you participated in that?
> Juror 8: Yes, I did.

RP at 112-13. Defense counsel then asked Juror 8 several questions and the State moved to strike the juror. Mr. Lund objected. The court responded:

> THE COURT: I'm going to strike the juror for the following reasons. One is – one is this was a self report during the middle of a trial, and it wasn't – what she reports is that she recognizes the defendant and his wife, that she in fact had engaged in prayers on his behalf over his family issues, and I took from that probably this case, although she didn't have any

> specifics on that. She also expressed a concern about how she would feel if she was to rule one way or the other, which is exactly what we can't have with a juror. She has to be free and neutral and unconstrained as far as how to vote. And thirdly, she – I took it as she was concerned that the defendant knows who she is and – and given the context of this case, which if convicted would illustrate a retaliatory strike, that that would be chilling on her.
>
> So I'm going to remove her as a juror at this time. I'm going to ask, Lew, just to take her from the group, and tell her thank you and send her on home, and we'll bring the other jurors back in and continue on.

RP at 115.

The juror prayed for Mr. Lund and his family in church. She suggested some bias. The judge's decision took into account his perception of the juror's responses. We conclude that the judge's decision was based on tenable grounds, or tenable reasons. And the judge did not abuse his discretion by removing Juror 8.

Statement of Additional Grounds (SAG)

Mr. Lund contends in his SAG that his due process rights were violated when Detective Mike Hamilton and Sergeant Ken Lattin made extra-judicial statements to the newspaper affirming his guilt prior to arrest and prior to trial. He argues that the comments were printed for public consumption by large numbers of readers and are, therefore, "facts per se." SAG at 1. Mr. Lund also contends that the judge violated his due process rights by ignoring the prearrest and pretrial publicity.

The newspaper article Mr. Lund references is not part of this record on appeal. Mr. Lund also fails to identify the extra-

judicial statements and how they actually prejudiced his case. We cannot then pass on his complaints. *See* RAP 10.10(c).

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____
Sweeney, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Korsmo, J.