

FILED 138

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 24, 1981
vs.	)	
CLIFFORD EUGENE BURK,	)	<u>1-294</u>
Defendant-Appellant.	)	65691

Appeal from Polk District Court - John N. Hughes.

Defendant appeals from his conviction for arson in the first degree in violation of sections 712.1 and 712.2, The Code 1979, asserting that the evidence was insufficient to support a verdict of guilty when the state failed to prove ownership of the property as alleged in the trial information. AFFIRMED.

Scott D. Rosenberg, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Richard L. Cleland, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONELSON, J.

Defendant appeals from his conviction for arson in the first degree in violation of sections 712.1 and 712.2, The Code 1979, asserting that the evidence was insufficient to support a verdict of guilty when the state failed to prove ownership of the property as alleged in the trial information. Our review is limited to correction of errors at law. Iowa R. App. P. 4. We affirm.

I.

On May 15, 1980, defendant was charged by trial information with having committed arson in the first degree "upon 1116 21st Street, the property of Kelly Van Meter, where the presence of one or more persons was reasonably anticipated." Evidence was introduced at trial showing that defendant committed arson upon 1116 21st Street, but there was no evidence that the property was owned by Kelly Van Meter. The jury returned a verdict of guilty and defendant was sentenced to prison for a term not to exceed twenty-five years.

II.

Defendant argues that the evidence was insufficient to support the jury's verdict of guilty on a charge of first degree arson when the trial information alleged that the crime was committed upon property owned by Kelly Van Meter, but no proof of such ownership was introduced at trial. We disagree.

The burden on the state at trial was to prove each and every element of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. King, 256 N.W.2d 1 (Iowa 1977); § 701.3, The Code 1979. Sections 712.1 and 712.2, The Code 1979, define the elements that the state was required to prove beyond a reasonable doubt. Ownership is not one of the elements. The state is not obligated to prove surplus allegations in an indictment or information. They are immaterial to the offense. State v. Murray, 222 Iowa 925, 270 N.W. 355 (1936). We find the reference to "Kelly Van Meter" is a surplus allegation, and not necessary of proof beyond a reasonable doubt. This allegation is immaterial because it does not go to an element of the crime charged or to the manner in which the alleged crime was committed.

AFFIRMED.