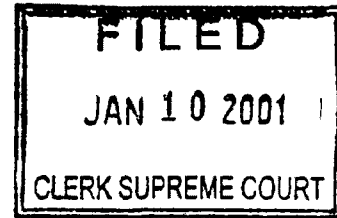


IN THE COURT OF APPEALS OF IOWA

No. 0-593 / 99-1335
Filed January 10, 2001



IN THE INTEREST OF

J.J.L., A Child,

J.J.L., A Child,
Appellant.

Appeal from the Iowa District Court for Worth County, Gerald W. Magee,
Associate Juvenile Judge.

J.J.L. appeals from a juvenile court order adjudicating him a delinquent for
committing arson in the first degree. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, O'Connor & Stochl, Charles
City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Chad Belville, County Attorney, for appellee-State.

Heard by Streit, P.J., and Vogel and Hecht, JJ.

STREIT, P.J.

A teenager placed a gift-wrapped package containing fireworks, BBs, gun powder, fuses, and a light petroleum distillate¹ in an elementary school classroom. We affirm the juvenile court's finding he committed first-degree arson.

1. Background Facts and Proceedings.

John L. was a thirteen-year-old seventh grader in December 1998 when he placed the above-described package into the recycling bin in his former music teacher's classroom. The package was wrapped in tissue paper, had at least one fuse protruding out of it, and had a cigarette lighter and a note attached to it. The note stated, in part, "In order to work this gift just light the green string on the side of the gift with an 'X' on it." After the music teacher discovered John's package, law enforcement officials destroyed it with a water cannon.

John was initially charged with attempted murder and first-degree arson. The county attorney and John's attorney stipulated the elements of the latter charge were as follows:

1. On or about December 7, 1998,
2. The Defendant placed a combustible material
3. In the vocal education room of the . . . elementary building
4. With knowledge that said building will probably be destroyed or damaged
5. And that the building is one in which the presence of one or more people can reasonably be anticipated.

¹ Examples of a light petroleum distillate like that found in the package include camping-type fuels, rubber cement thinners, pocket lighter fuels, and naphtha.

Although the attempted murder charge was eventually dismissed, the juvenile court found John had committed first-degree arson and adjudicated him a delinquent child. John appeals.

II. The Merits.

John claims section 712.1, the statute defining arson, is unconstitutional on its face and as applied to him. He also claims the juvenile court's finding of first-degree arson was based on methods of committing the offense that went beyond the elements to which the parties had stipulated. Finally, he claims the State did not prove the all of the stipulated elements beyond a reasonable doubt. We review all of John's claims de novo. See *State v. Hunter*, 550 N.W.2d 460, 462 (Iowa 1996) ("We review constitutional claims de novo) *overruled in part by State v. Robinson*, 618 N.W.2d 306, 312 (Iowa 2000) ("[W]e disavow *Hunter* to the extent that it stands for the proposition that a guilty plea does not waive an as-applied vagueness challenge."); *In re C.T.*, 521 N.W.2d 754, 756 (Iowa 1994) ("Our review of the juvenile court's findings is de novo.").

A. Constitutionality.

John argues section 712.1 violates due process because it is vague and overbroad. A penal statute is vague if it does not "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Hunter*, 550 N.W.2d at 463 (citing *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903, 909 (1983)). Section 712.1 states the following:

Causing a fire or explosion, or placing any burning or combustible material, or any incendiary or explosive device or material, in or near any property with the intent to destroy or damage such property, or with the knowledge that such property will probably be destroyed or damaged, is arson, whether or not any such property is actually destroyed or damaged.

Iowa Code § 712.1 (1999). Given the parties' stipulation, John focuses particularly on the purported vagueness of the phrase "combustible material."

"Combustible material" is not expressly defined in section 712.1 or any other provision of the Iowa Code. "[A] statute is not unconstitutionally vague if the meaning of the words used can be fairly ascertained by reference to their ordinary and usual meaning, the dictionary, similar statutes, the common law, or previous judicial determinations." *State v. Osmundson*, 546 N.W.2d 907, 909 (Iowa 1996). A "combustible" is defined as "a flammable substance" or something "that catches fire and burns easily." *Webster's New World Dictionary* 283 (2d ed. 1974). These definitions are specific enough to provide guidance and fair notice to ordinary citizens of what conduct section 712.1 prohibits.

This conclusion is buttressed by the fact section 712.1 prohibits "placing . . . combustible material . . . in or near any property with the intent to destroy or damage such property, or with the knowledge that such property will probably be destroyed or damaged"—not just "placing . . . combustible material . . . in or near any property." "[A] scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Osmundson*, 546 N.W.2d at 910 (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499, 102 S. Ct.

1186, 1193, 71 L. Ed. 2d 362, 372 (1982)). Here, section 712.1's scienter requirement clarifies and narrows the reach of the statute.

John thus had fair warning that placing a package containing fireworks, Pyrodex gunpowder, fuses, and a petroleum distillate in an elementary school classroom was prohibited. Because section 712.1 applies to John's conduct, he does not have standing to assert the statute is vague on its face. See *State v. Price*, 237 N.W.2d 813, 816 (Iowa 1976). He also does not have standing to assert the statute is overbroad. See *City of Maquoketa v. Russell*, 484 N.W.2d 179, 181 (Iowa 1992) ("Overbreadth analysis is further confined to the alleged denial of First Amendment rights.").

John also argues section 712.1 provides for unequal protection of the law because "it has the effect of classifying conduct which is not arson with conduct which is arson." John's argument begs the question. In any event, this court has previously held section 712.1 is "reasonably related to its legitimate goal of protecting the citizens of the State from the extreme dangers to life and property threatened by arson." *Fowler v. State*, 382 N.W.2d 476, 479 (Iowa App. 1985). None of the circumstances in this case warrant a departure from that conclusion. Section 712.1 is constitutional.

B. Proof Beyond a Reasonable Doubt.

John argues the State has not proven beyond a reasonable doubt he committed arson. Specifically, he argues the State has not proven he placed a combustible material in the elementary school. John admits he placed the package at issue in his former music teacher's classroom. It is also readily

apparent the package contained one or more combustible materials. Law enforcement officials—including a police chief, fire chief, and an investigator with the state fire marshal's office—characterized the package as a bomb, an explosive device, and an incendiary device. These characterizations do not make fireworks, Pyrodex gunpowder, fuses, and petroleum distillate any less combustible. Nor is it particularly significant the package, as constructed, may have been an ineffective means of damaging or destroying property. The State has proven beyond a reasonable doubt John placed a combustible material in the school.

John also argues the State has not proven he placed a combustible material in the school with the knowledge the school would probably be destroyed or damaged. John told other students the package was a bomb and he wanted to hurt the music teacher. On cross-examination, he testified he knew someone might light the fuses on the package. He also said he wet the package's fuses with water before he placed it in the classroom. We give deference to the juvenile court's finding John's testimony "reveals some knowledge there was a danger of fire or explosion and a risk that if lit that the device would burn or explode causing damage." *See C.T.*, 521 N.W.2d at 756 (stating that although appellate courts review juvenile cases de novo, weight is given to the juvenile court's findings of fact). The fact John took steps (wetting the fuses), albeit ineffectual, to lessen the likelihood of damage does not lessen his knowledge the school would probably be damaged. There was sufficient evidence in the record for a reasonable person to conclude beyond a reasonable

doubt John placed a combustible material in the school with the knowledge the school would probably be destroyed or damaged.

Because we find the State has proven John committed first-degree arson based on the elements to which the parties' stipulated, we do not address John's argument the juvenile court's finding of culpability was based on methods of committing the offense that went beyond those particular elements. We have considered all the other issues and arguments John has presented, whether discussed in detail or not. Having done so, we affirm the juvenile court.

AFFIRMED.