In re Juvenile T.

Appeal from Juvenile Court Docket in
Cumberland County

Supreme Judicial Court sitting as the Law Court
Law Court Docket number CUM-24-387

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Introduction

Juvenile T. asserts that his actions in relation to the charge of arson should be considered de minimus under Title 17-A M.R.S. § 12, as the evidence at trial established that the conduct involved was trivial and not conduct that the Legislature envisioned to be covered under Title 17-A M.R.S. § 802(1)(B)(2). Additionally, Juvenile T. asserts that it would be illogical to interpret Title 17-A M.R.S. § 802(1)(B)(2) in a manner where he is charged with Class A arson because such an interpretation of the statute results in an individual being charged for harm they caused to themselves, resulting in an extremely broad reading of the statute. Lastly, there was insufficient evidence presented at trial to support Juvenile T.'s adjudications for Criminal Mischief and Theft by Unauthorized Taking due to credibility issues with the State's key trial witness.

Procedural History

Juvenile T., the appellant, has two juvenile cases pending before this Court that have been consolidated for appeal. (App. at 3, 24-25, 26, 59); Law Court Order (Sept. 3, 2024) at 1).

Juvenile T. was first charged by petition on April 20, 2023 in PORDC-JV-2023-46. (App. at 4). An amended petition was filed on September 15, 2023, which charged Juvenile T. with one count of Arson (Class A) under Title 17-A M.R.S. §802(1)(A);[1] two counts of Criminal Mischief (Class D) under Title 17-A M.R.S. §806(1)(A);[2] one count of Theft by Unauthorized Taking (Class E) under Title 17-A M.R.S. §353(1)(A)[3]; and one count of Interference with Constitutional Right (Class D) under Title 17 M.R.S. §2931[4]. (App. at 3, 11). An adjudication

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[1] Title 17-A M.R.S. § 802(1)(A) states that "[a] person is guilty of arson if he starts, causes, or maintains a fire or explosion. . . [o]n the property of another with the intent to damage or destroy property thereon."

[2] Title 17-A M.R.S. § 806(1)(A) provides that "[a] person is guilty of criminal mischief if that person intentionally, knowingly or recklessly. . . [d]amages or destroys the property of another, having no reasonable grounds to believe that the person has a right to do so; damages or destroys property to enable any person to collect insurance proceeds for the loss caused; or tampers with the property of another, having no reasonable grounds to believe that the person has the right to do so, and thereby impairs the use of that property."

[3] Title 17-A M.R.S. § 353(1)(A) states that "[a] person is guilty of theft if. . . [t]he person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property. . ."

[4] Title 17 M.R.S. § 2931 states that "[a] person may not, by force or threat of force, intentionally injure, intimidate or interfere with, or intentionally attempt to injure, intimidate or interfere with or intentionally oppress or threaten any other person in the free exercise or enjoyment of any right or privilege, secured to that person by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States."

hearing was held on January 31, 2024. (App. at 17). The lower court took the case under advisement and issued a judgement and order on June 11, 2024 that dismissed Counts 1, 3, and 5 of the Petition, finding that the State had failed to meet its burden of proof. (App. at 17, 18). As such, the lower court found Juvenile T. guilty of one count of Criminal Mischief and one count of Theft by Unauthorized Taking. (App. at 3, 18-19). The case was continued for sentencing, to allow for a resolution in PRODC-JV-2023-115 prior to sentencing. (App. at 19).

A motion to dismiss for discovery violations was filed by Juvenile T. on March 18, 2024. (App. at 17). On June 11, 2024 the motion to dismiss was denied. (App. at 19).

On August 8, 2024 Juvenile T. was sentenced by the juvenile court. (App. at 20-21). On Count 1, the charge of criminal mischief, a commitment order to the Maine Youth Center for an indeterminate period to the age of 19 was imposed, all of which was suspended, and a one year period of probation was imposed. (App. at 20). Restitution of $120 was also imposed. (App. at 20). On Count 2, Theft by Unauthorized Taking, a commitment order to the Maine Youth Center for an indeterminate period to the age of 19 was imposed, all of which was suspended, and a one year period of probation was imposed. (App. at 21-22). Restitution of $120 was also imposed. (App. at 22).

A separate juvenile petition was filed with the lower court on September 5, 2023. (App. at 26). The petition charged Juvenile T. with one count of Criminal

Solicitation (Class A), under Title 17-A M.R.S. §153(1)(A)[5]; one count of Arson (Class A), under Title 17-A M.R.S. §802(1)(B)(2)[6], and on count of Terrorizing (Class D), under Title 17-A M.R.S. §210(1)(A)[7]. (App. at 26). At this same time, a motion for a bind-over hearing was also filed. (App. at 26). A hearing on the bind-over motion took place on March 1st and 5th of 2024.[8] (App. at 46). The bind-over motion was denied on March 13, 2024. (App. at 47).

A bill of particulars was file by Juvenile T. on January 5, 2024. (App. at 39, 59). A motion to dismiss Count 3, Terrorizing, was file by Juvenile T. on January 8, 2024. (App. at 40). Count 3 of the Petition was dismissed. (App. at 79). A

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[5] Title 17-A M.R.S. §153(1)(A) provides that "[a] person is guilty of criminal solicitation if the person, with the intent to cause the commission of the crime, and under circumstances that the person believes make it probable that the crime will take place, commands or attempts to induce another person, whether as principal or accomplice, to. . . [c]ommit murder."

[6] Title 17-A M.R.S. §802(1)(B)(2) says that "[a] person is guilty of arson if he starts, causes, or maintains a fire or explosion. . . [o]n his own property or the property of another. . . which recklessly endangers any person or the property of another."

[7] Title 17-A M.R.S. §210(1)(A) states that "[a] person is guilty of terrorizing if that person intentionally, knowingly or recklessly communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, consciously disregarding a substantial risk that the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is. . . [t]o place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed. Violation of this paragraph is a Class D crime"

[8] The bind-over hearing only pertained to the charge of Criminal Solicitation. (Adj. T. (Jan 31, 2024) at 189). Additionally, a discovery violation of Rule 16(a) of the Maine Unified Rules of Criminal Procedure occurred and a large amount of digital discovery material was excluded from use by the State at the hearing. (Bind-Over H. (March 1, 2024) at 35-36, 41-42). Also, at trial, on PORDC-JV-23-115, a stipulation was entered to incorporate the testimony during the probable cause portion of the bind-over hearing into the record, preserving objections, and allowing for supplemental testimony. (Adj. T. (June 24, 2024) at 4-6).

motion to dismiss Count 2, Arson, was filed on February 14, 2024, which the lower court denied on February 23, 2024. (App. at 42-43, 48). A number of motions in limine were filed by Juvenile T. on February 16, 2024, which the lower court denied on March 1, 2024. (App. at 43-44, 47). The State filed a motion in limine pertaining to certified business records on February 28, 2024, which the lower court denied on March 1, 2024. (App. at 45, 48). Juvenile T. also filed a motion to dismiss based on discovery violations on February 29, 2024. (App. at 46). That motion was denied on March 18, 2024. (App. at 48). On June 17, 2024 the State filed an motion to admit certified business records, which the lower court denied on June 24, 2024. (App. at 53, 54).

An adjudication hearing was held on June 24th and 25th of 2024. (App. at 53-54). On July 17, 2024 the lower court entered a written judgment and order acquitting on Count 1, Criminal Solicitation. (App. at 55). On Count 2, Arson, the lower court entered an adjudication on the charge. (App. at 55).

At the August 8, 2024 dispositional hearing the lower court entered a commitment order to the Maine Youth Center for an indeterminate period to the age of 19, all of which was suspended, and a one year period of probation was imposed. (App. at 55-56). This sentence is to be served concurrently with the sentence imposed in PORDC-JV-023-46. (App. at 56).

A notice of appeal was filed in both of Juvenile T.'s cases on August 21, 2024. (App. at 23, 57).

Statement of Facts

On April 10, 2023 a student at the South Portland High School, [redacted], spoke with law enforcement to provide information about what he believed to be worrisome behavior by a fellow student, Juvenile T. (Adj. T. (Jan. 31, 2024) at 23-25, 100-102, 140). [redacted] stated that Juvenile T. had recently stolen and burned pride flags.[9] (Adj. T. (Jan. 31, 2024) at 25, 123-129).

The owner of one of the stolen pride flags had security cameras on the exterior of her property that showed someone getting out of a light colored SUV and taking both the flagpole and the flag from her house.[10] (Adj. T. (Jan. 31, 2024) at 27-28, 69-71, 124-126).

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[9] [redacted] stated that Juvenile T. had asked him to steal the flags with him and that they were taken on April 2, 2023. (Adj. T. (Jan. 31, 2024) at 25, 27, 71, 123, 127-131, 137). [redacted] stated that they had discussed the plans over SnapChat and that he went along because he was bored and wanted to hang out. (Adj. T. (Jan. 31, 2024) at 124, 137). The flags were taken to the Wainwright Field Sports Complex and burned there. (Adj. T. (Jan. 31, 2024) at 26, 127-131). Remnants of burned flags were found at the Complex. (Adj. T. (Jan. 31, 2024) at 30-33, 88-90, 172-174). [redacted] stated that when he arrived at the Complex, Juvenile T. was burning a flag and someone else was recording him. (Adj. T. (Jan. 31, 2024) at 129-130, 141, 157-158).

[10] The vehicle description from the video matched that of Juvenile T.'s vehicle. (Adj. T. (Jan. 31, 2024) at 28). The flagpole was later recovered at the Wainwright Field Sports Complex. (Adj. T. (Jan. 31, 2024) at 37, 73-74, 84-85). During his interviews with law enforcement, [redacted] first stated that Juvenile T. had taken the flag, but later admitted that he was actually the person seen on the video taking the flag. (Adj. T. (Jan. 31, 2024) at 46-47, 52, 57-63, 123-126, 133, 144-145, 153-157). He told law enforcement however that he thought better of the flag thefts, and plan to burn them, and asked to be dropped off at his house, after which he put on his running shoes, and ran over to the Wainwright Field Sports Complex to try and save the flags. (Adj. T. (Jan. 31, 2024) at 52, 63-64; 127-128; 138-139). This explanation came about after it was suggested by the officer interviewing [redacted]. (Adj. T. (Jan. 31, 2024) at 54-56). It was noted that [redacted] has an autism and ADHD diagnosis. (Adj. T. (Jan. 31, 2024) at 98). [redacted] also testified that it had been almost a year since he was interviewed by the police and that his memory was not the best and that it was hard to remember back then. (Adj. T. (Jan. 31, 2024) at 148-149).

After hearing the evidence, the lower court issued a written order on the charges in PORDC-JV-2023-46. Juvenile T. was only adjudicated on the charges of Criminal Mischief and Theft by Unauthorized Taking. (Order (June 11, 2024) at 4).

On the charge of Criminal Mischief, the lower court found:

> The juvenile petition alleges that defendant 'having no reasonable ground to believe he had a right to do so did intentionally, knowingly or recklessly damage or destroy a flag and/ or flagpole, property of N.C.', thereby committing the crime of criminal mischief as defined by 17-A M.R.S. § 806(l)(A). The evidence presented at trial consisted of the testimony of [redacted] that on 4/2/2023 he ripped the flagpole and flag fastened to the porch of the named victim, [redacted] and placed it in the vehicle driven by the defendant. [redacted] testified credibly about these events which included an admission that it was T[redacted]'s idea to steal 'gay pride' flags from certain identified residences and that T[redacted] drove the vehicle while [redacted] did the actual taking of the flags from each residence. The other supporting evidence established convincingly that the pride flag taken from [redacted] was either burned or otherwise taken and not returned to her, and the specific identified flagpole was damaged. The court finds that the evidence establishes beyond a reasonable doubt that the juvenile defendant committed the offense of criminal mischief as charged in Count Two of the petition as an accomplice of the principal actor, [redacted].
> (Order (June 11, 2024) at 4).

In adjudication of the charge of Theft by Unauthorized Taking, the lower court stated:

> The juvenile petition alleges that defendant 'did commit theft by obtaining or exercising unauthorized control over a flag and/ or flagpole, property of N.C., with the intent to deprive N.C. of the property', thereby committing the crime of theft by unauthorized taking as defined by 17-A M.R.S. § 353 (l)(A). As noted above, the

> evidence presented at trial consisted of the testimony of [redacted] that on 4/2/20223 he ripped the flagpole and flag fastened to the porch of [redacted], and placed it in the vehicle driven by the defendant. [redacted] testified credibly about these events which included an admission that it was T[redacted]'s idea to steal 'gay pride' flags from certain identified residences and that T[redacted] drove the vehicle while [redacted] did the actual taking of the flag and flagpole. The court finds the testimony of [redacted] to be credible on this issue. The other supporting evidence established convincingly that the pride flag taken from [redacted] was either burned or otherwise taken without her authorization with the intent to deprive Ms. [redacted] of the property, which was not returned to her (the flag), and that the supporting identified flagpole was damaged. The court finds that the evidence establishes beyond a reasonable doubt that the juvenile defendant committed the offense of theft by unauthorized taking as charged in Count Four of the petition as an accomplice of the principal actor, [redacted].
> (Order (June 11, 2024) at 4).

Juvenile T. was also recorded on video in a ghillie suit throwing Molotov cocktails at the Wainwright Field Sports Complex in South Portland, ME on an undetermined date and time.[11] (Adj. T. (June 24, 3024) at 22-25, 29-30, 42-44). The video was entered into evidence at trial. (Adj. T. (June 24, 3024) at 29-30, 43-44, 46-47). Law enforcement did not "look through the metadata to determine the actual. . . geolocation" of the video. (Adj. T. (June 24, 3024) at 36). Neither was Apple or Snapchat contacted to obtain that information. (Adj. T. (June 24, 3024) at 36).

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[11] The juvenile court noted in issuing its adjudication order that "[t]he video evidence shows a person lighting Molotov cocktails and throwing them to the ground to create a fire and explosion. . . The video also clearly shows the actor, identified as the juvenile defendant inadvertently lighting his own arm on fire in the act of throwing a Molotov cocktail, then putting that fire out after several frantic moments, and then tossing a portion of a Molotov cocktail in the direction of the person recording the video." (Order (July16, 2024) at 5).

[redacted] testified that he viewed the video on TikTok.[12] (Adj. T. (June 24, 3024) at 42-44, 46). The video he viewed showed Juvenile T. "coming out of the woods and with the Molotovs. He threw one and lit himself on fire. And he started running when the video cut off after he started running and freaking out." (Adj. T. (June 24, 3024) at 43). [redacted] testified that the video was the same as the video entered into evidence at trial.[13] (Adj. T. (June 24, 3024) at 43-44). [redacted] was not present when the video was filmed. (Adj. T. (June 24, 3024) at 45).

At trial, at the request of the trial court, the State clarified the video that it was putting forth to establish the arson charge. (Adj. T. (June 25, 3024) at 85). The State noted that the video was "in the bill of particulars that Your Honor mentioned before, it was the fifth video referenced in the supplemental report taken on July 25th, 2022. It is the video that Your Honor saw here and that was admitted through Det. Stearns." (Adj. T. (June 25, 3024) at 85).

In the lower court's written adjudication order, on the Arson charge, the juvenile court stated that

> The defendant argues that the reference in the statute to 'any person' as the individual who is endangered cannot be read to include the defendant actor. . . Here there is no ambiguity as the

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[12] Another witness, Jane Doe, testified that she saw around three videos online of Juvenile T. throwing molotov cocktails at pride flags, but did not specifically identify or testify about viewing the video entered into evidence at trial. (Adj. T. (June 25, 3024) at 25-26).

[13] [redacted] stated that he estimated Juvenile T.'s age from viewing the video and testified that he recognized the location of the filming to be the Wainwright Field Sports Complex in South Portland. (Adj. T. (June 24, 3024) at 46).

> use of the term ‘any person’ by its common meaning includes anyone, including the defendant actor. The defendant argues that in another, separate statute, 29-A M.R.S. 2413, defining the crime of Driving to Endanger, the use of the phrase ‘a person’ followed by the further phrase ‘including the operator or passenger’ reveals the Legislature’s intent to only include the actor in the definition of ‘a person' when further specified. This is a different statute, with a different statutory context. Defendant in essence seeks to create an ambiguity where none exists by claiming the Legislature is capable of including the actor in the definition of ‘person’ if it seeks to do so, and that the failure to do so in the arson statute reveals an intention to not include the charged defendant.
>
> To begin with, the phrase at issue in the arson statute is ‘any person,’ not ‘a person.’ In using the broader qualifier the Legislature is presumed to have chosen the desired preposition (‘any’) over the use of an article (‘a’) of language. Moreover, if the court adopted the reading of ‘any person’ in subsection § 802(l)(B)(2) of the statute as suggested by defendant, it would have to define the same term (‘any person’) used in the preceding sentence in § 802(l)(B)(l) the same to avoid illogical construction and inconsistency. This would lead to the absurd result that a person who causes a fire on his own property with the intent to collect insurance proceeds resulting from the loss could <u>not</u> be found guilty of arson if the defendant actor was the beneficiary of these insurance proceeds. This is directly contrary to the clear intent of the Legislature and the very purpose for this statutory clause. As such, the court finds no ambiguity in the statute and construes the term ‘any person’ in the arson statute to include the defendant actor. Therefore, the video evidence presented support the conclusion, beyond a reasonable doubt, that the defendant recklessly endangered <u>at least himself</u> in throwing Molotov cocktails and accidentally setting himself on fire.
> (Order (July 16, 2024) at 5-6).

The lower court continued to state that

> The remaining element of proof requires the State to establish when the event took place, so as to gauge whether it falls within the ambit of the offense as charged in the petition or the

> applicable statute of limitations. The petition states a range of time for the arson act as taking place between January 1, 2021 and April 12, 2023. The credible testimony of [redacted] at the bind-over hearing and at trial established that this video was shared with him by the defendant shortly after it purportedly took place within this time period, and he further testified that the defendant in the video looked to be '16 years old', which would fall within this same time period and the period of their actual friendship and time spent together as friends. This provides credible evidence that the arson offense took place during the time period alleged in the petition. (Order (July 16, 2024) at 5-6).

It was further reasoned by the lower court that

> In the post hearing written memorandum, defendant raises the argument that the State's failure to specify a date for the arson defense, or to fully comply with the order issued on the defendant's bill of particulars renders the evidence presented at trial insufficient to support the charge of arson. It is true that the State, in responding to the bill of particulars and the court's order dated 1/24/24, identified the arson event and the proffered video as taking place on July 25, 2022. There was no evidence presented at trial that the event took place on this date, or any specific date other than within the broader time range stated in the petition.
>
> The general rule is that once the prosecution has declared in response to a bill of particulars the time of the alleged offense, its proof to justify a conviction is restricted to such time to be established beyond a reasonable doubt. State v. Benner, 284 A.2d 91, 98 (Me. 1971). However, a variance between a declaration made in response to a bill of particulars and proof at trial is not necessarily 'fatal' to the State's case unless the defendant can demonstrate that the variance has caused prejudice to the defendant. State v. Borucki, 505 A.2d 89, 92-93 (Me. 1986); State v. Wedge, 322 A.2d 328, 330, 331 (Me. 1974). The essential function of a bill of particulars is to protect the defendant against (double) jeopardy, provide the accused with sufficient detail of the charges against him

where necessary to the preparation of the defense and to avoid prejudicial surprise at trial. Id. at 331.

In this case the pretrial rulings and disclosures narrowed the scope of the charge of arson to a singular specific event that was described as the video actually presented at trial. The defendant had the actual video in hand long before the trial date, with ample opportunity to review and prepare for its use at trial. The defendant has not alleged nor has he shown any prejudicial surprise at trial, or that his cross examination would have differed due to the variance in proof. Defendant did not seek a continuance or raise the issue at trial as a result of the variance. Therefore, despite the difference between the evidence of the time of the offense as stated in the response to the bill of particulars and the evidence presented at trial, the court finds that in the absence of a show of prejudice the variance is not fatal and does not bar the defendant's adjudication of the offense. State v. Borucki, at pp. 92-93.

Finally, in its post-trial memorandum defendant raises for the first time the argument that the charge of arson in this case is ‘contrary to the purposes of the Juvenile Code'. Essentially, the defendant seeks a dismissal of the charge of arson on the grounds that it is a de minimus offense as charged pursuant to 17-A M.R.S. § 12. This form of request should be filed by motion, and is properly addressed as a pretrial matter, especially in this case given the extensive nature of the pretrial proceedings and the knowledge of the basis of the charge of arson well in advance of the trial date.

The court acknowledges that the facts as established at trial would ordinarily not justify the filing of a charge of a Class A felony. The change to the arson statute many years ago, eliminating the different classes of arson and making all acts of arson a Class A offense, does not provide the court with an opportunity to consider a lesser class as suggested by the events. However, although it is true that no damage to property or even actual injury was suffered by any individual other than the hapless defendant in this case, the use of a Molotov cocktails was clearly reckless and had the potential to cause great harm or damage. Many of the arguments now raised

> by the defendant are clearly germane to the disposition of the adjudicated offense. The court will take into account the disproportionate nature of the offense as charged compared to the facts proven at trial in rendering an appropriate disposition. (Order (July 16, 2024) at 6-7).

[redacted]'s credibility, due to his memory issues, was raised prominently by the court during the proceedings. (Bind-Over T. (March 1, 2024 at 86); (Order (July 16, 2024) at 3). During the probable cause portion of the bind-over hearing the lower court, after hearing most of [redacted]'s testimony, stated that "[t]oday's established that he doesn't have a great memory." (Bind-Over T. (March 1, 2024 at 86). During the bind-over hearing it was also noted that [redacted] has autism and his law enforcement interviewer was not trained in interviewing people with autism. (Bind-Over T. (March 1, 2024 at 183).

Moreover, the lower court in issuing its decision in PORDC-JV-2023-115 questioned the credibility of [redacted]'s testimony, noting that: "[t]he testimony of [redacted], if credible, could establish this element of proof." (Order (July 16, 2024) at 3, fn 6). The court goes on to state that

> The court does not find his overall testimony pertaining to the charged offense of solicitation to commit murder in this case to be credible or reliable. His testimony changed and appeared to become more detailed with the passage of time, without adequate explanation. [redacted] presented as a witness easily influenced and vulnerable to the suggestions of his examiner. He frequently stated he did not remember something, and then when 'prompted' he provided a contrary or significantly more detailed answer. The timeline provided by this witness was inconsistent and confusing, and the responses provided by him were not always logical. [redacted] may

> have been well meaning and motivated by what he believed to be true in making his initial report or giving testimony, but this does not equate with being a credible witness whose testimony is sufficient to carry the weight of the evidence on a serious felony charge. (Order (July 16, 2024) at 3)

The court also stated that "[redacted]'s testimony at the bind-over hearing provided purported details that were not previously disclosed in his interviews with the police one year earlier. When confronted at trial, [redacted]'s explanation for this variance was not convincing." (Order (July 16, 2024) at fn 6).

After Juvenile T. was sentenced on August 8, 2024, he timely filed a notice of appeal. (App. at 23, 57).

Issues Presented for Review

I. Whether Title 17-A M.R.S. § 12 negates the crime of arson as de minimus.

II. Whether Title 17-A M.R.S. § 802(1)(B)(2) does not apply to acts where a person sets themselves and clothing on fire.

III. Whether there is insufficient evidence to support the convictions of Criminal Mischief and Theft by Unauthorized Taking.

Statement of Issues Presented for Review

Juvenile T. asserts that Title 17-A M.R.S. § 12(1)(B) and (C) forestall a conviction for arson under Title 17-A M.R.S. § 802(1)(B)(2). The evidence presented at trial established only that Juvenile T. accidentally set fire to himself while lighting a Molotov cocktail resulting in no significant damage or harm. Such trivial action was not envisioned, nor should it be covered, under the charge of arson in Title 17-A M.R.S. § 802(1)(B)(2). Arson is a serious Class A crime and common sense dictates that such a minor, de minimus act should not become ensnared by the arson statute.

Additionally, Juvenile T. asserts that it would be illogical to interpret Title 17-A M.R.S. § 802(1)(B)(2) in a manner where he is charged with Class A arson. The statute allows for arson to occur, as charged here, where an individual has only caused harm to themselves. To that point, the broad wording of the statute allows for trivial arson crimes, where no substantive damage or harm occurs to be charges under the serious categorization of arson as a Class A crime.

Lastly, there was insufficient evidence presented at trial to support Juvenile T.'s adjudications for Criminal Mischief and Theft by Unauthorized Taking. The testimony of [redacted] was not credible enough to support the convictions. [redacted]'s testimony was essential to link Juvenile T. to the crime of Criminal Mischief and Theft by Unauthorized Taking. With the shaky acceptance of [redacted]'s

testimony in the lower court, Juvenile T.'s convictions should not stand on that testimony alone.

Wherefore, for the reasons enumerated above, Juvenile T. requests that this Court vacate his convictions and remand his case to the Cumberland County Courts for further proceedings.

Argument

I. Title 17-A M.R.S. § 12 negates the crime of arson as de minimus.

This Court evaluates a denial of a motion to dismiss under an abuse of discretion standard. State v. Hofland, 2012 ME 129, ¶ 11, 58 A.3d 1023, 1027 (Me. 2012)("motion to dismiss a charge for failure to provide a speedy trial"); State v. Kargar, 679 A.2d 81, 83 (Me. 1996)(noting that "trial courts should be given broad discretion in determining the propriety of a de minimus motion[,] but also finding "erred as a matter of law"); State v. Park, 55 Haw. 610, 525 P.2d 586, 617-618 (N.J. 1974)(stating that "[u]nder the circumstances, we think it was an abuse of discretion to dismiss the charges as de minimus infractions, without any indicators to show that each of these offenses was in fact an innocent, technical infraction, not actually causing or threatening any harm or evil sought to be prevented by HRS § 11-193 (Supp. 1972), or that the harm or evil caused or threatened was so trivial to warrant the condemnation of conviction."); cf. State v.

Felch, 2007 ME 88, ¶ 9, 928 A.2d 1252, 1256 (Me. 2007)("legal constitutional conclusions of the trial court on a motion to dismiss [are reviewed] de novo").[14]

Juvenile T. asserts that Title 17-A M.R.S. § 12(1)(B) and (C) forestall a conviction for arson under Title 17-A M.R.S. § 802(1)(B)(2). The evidence presented at trial established only that Juvenile T. accidentally set fire to himself while lighting a Molotov cocktail. (Adj. T. (June 24, 3024) at 22-25, 29-30, 42-44); (Order (July16, 2024) at 5). There is a video of this. (Adj. T. (June 24, 3024) at 29-30, 43-44, 46-47). The trial evidence did not establish that there was any significant damage or harm done when Juvenile T. accidentally set fire to himself. Such minimal actions were not envisioned, nor should they be covered, under the arson statute located in Title 17-A M.R.S. § 802(1)(B)(2).[15] Arson is a Class A crime. Title 17-A M.R.S. § 802(3). Common sense dictate that such a minor, de minimus act should not become ensnared by the arson statute.

Title 17-A M.R.S. § 12 provides that

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[14] After the trial testimony it became apparent that a de minimus motion should be raised. Maine Rule of Unified Criminal Procedure 12(b)(3)(B) provides that "[a]ll other motions shall be filed with the court promptly after grounds for the motion arise." The nature of the evidence entered into the record at trial made apparent that there were grounds for a motion to dismiss on a de minimus ground. The State and trial court assert that the motion should have been raised prior to trial. See (State's Closing Statements (July 9, 2024) at 2); (Order (July 16, 2024) at 6). Juvenile T. asserts that the motion did not become clear until after the trial evidence had been tendered. Additionally, the lower court addressed the argument in issuing its order, noting that "the facts as established at trial would ordinarily not justify the filing of a charge of a Class A felony." (Order (July 16, 2024) at 7).

[15] Title 17-A M.R.S. § 802(1)(B)(2) says that "[a] person is guilty of arson if he starts, causes, or maintains a fire or explosion. . . [o]n his own property or the property of another. . . which recklessly endangers any person or the property of another."

> 1. The court may dismiss a prosecution if, upon notice to or motion of the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:
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> A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or
>
> B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or
>
> C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.[16] Title 17-A M.R.S. § 12.

In State v. Kargar, 679 A.2d 81, 83 (Me. 1996) this Court noted that "the [lower] court analyzed Kargar's conduct, as it should have, pursuant to each of the three provisions of section 12(1)." This Court further noted that "[t]he language of the statute itself makes it clear that if a defendant's conduct falls within any one of these provisions the court may dismiss the prosecution." State v. Kargar, 679 A.2d 81, 83 (Me. 1996). "Each *de minimis* analysis will therefore always be case-

[16] "Subsection 1(C) provides a safety valve for circumstances that could not have been envisioned by the Legislature. It is meant to be applied on a case-by-case basis to unanticipated "extenuations," when application of the criminal code would lead to an "ordered but intolerable" result. Model Penal Code § 2.12 comment (1985)." State v. Kargar, 679 A.2d 81, 83 (Me. 1996).

specific."[17] Id. at 83. This Court guided the de minimus analysis in Krager by finding that "[t]he focus [of the analysis] is on whether the admittedly criminal conduct was envisioned by the Legislature when it defined the crime." State v. Kargar, 679 A.2d 81, 83 (Me. 1996). As such, "the trial court was required to consider the possibility that the result of a Class A conviction *in this case* could not have been anticipated by the Legislature when it defined the crime. . . ". State v. Kargar, 679 A.2d 81, 84 (Me. 1996).

The current arson statute became public law in 1975 as part of the new Criminal Code. See Title 17-A M.R.S. § 802. In the legislative history there is evidence that the drafters envisioned dealing with minor cases that were ensnared by the arson statute as de minimus infractions under § 12. The legislative history of Title 17-A M.R.S. § 802(1) provides:

> The Commission may also wish to consider whether the crime of arson is defined too broadly. Given a literal interpretation, it punishes the destruction of any property, no matter how insignificant the value. It may be that § 12 (de minimus infractions) takes care of the problem. Cf. Proposed Federal Code (5,1) § 4101; Model Penal

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[17] When addressing a de minimus claim, this Court has noted the following factors should be addressed: "the background, experience and character of the defendant which may indicate whether he knew or ought to have known of the illegality; the knowledge of the defendant of the consequences to be incurred upon violation of the statute; the circumstances concerning the offense; the resulting harm or evil, if any, caused or threatened by the infraction; the probable impact of the violation upon the community; the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; mitigating circumstances as to the offender; possible improper motives of the complainant or prosecutor; and any other data which may reveal the nature and degree of the culpability in the offense committed by the defendant." State v. Kargar, 679 A.2d 81, 84 (Me. 1996).

Code § 220.1."[18]

Juvenile T. raised the de minimus claim in his written closing arguments, noting the minimal effects from the crime and the lack of harm and damage resulting from the arson event. See (Closing Argument (July 9, 2024) at 7). The lower "court acknowledge[d] that the facts as established at trial would ordinarily not justify the filing of a charge of a Class A felony[,]" but stated it was statutorily prohibited from considering a lesser class criminal offense, "as was suggested by the offense." (Order (July 16, 2024) at 7). The lower court further found that there was "no damage to property or even actual injury. . . suffered by any individual other than the hapless defendant in this case. . .". (Order (July 16, 2024) at 7). Just as in Kargar, the charge at issue here is a serious Class A felony. State v. Kargar, 679 A.2d 81, 84 (Me. 1996). The conduct by Juvenile T. was not intended to cause damage or harm, as he was accidentally set on fire. (Adj. T. (June 24, 3024) at 22-25, 29-30, 42-44); (Order (July16, 2024) at 5). What transpired was not the result of his plan or intent in throwing the Molotov cocktail, as is evident from the video and his reaction. (Adj. T. (June 24, 3024) at 22-25, 29-30, 42-44); (Order (July16, 2024) at 5). This type of conduct, with minor effect on person or property, does not add up to Class A conduct. The discussion in the legislative material

[18] See Letter to Criminal Law Advisory Commission Members and Consultants from Stephen Diamond, Assistant Attorney General (Agenda for meeting of April 21, 1977) at 44; available at http://lldc.mainelegislature.org/Open/Commissions/CriminalLaw/CLRC 107-27.pdf

would also seem to suggest that de minimus treatment of this conduct is the appropriate and correct way to treat the behavior at issue here.

As such, it was an abuse of the juvenile court's discretion to deny Juvenile T.'s motion to dismiss the arson charge as de minimus, as the circumstances surrounding Juvenile T's behavior and adjudication fit within the requirements of Title 17-A M.R.S. § 12(1)(B) and (C), warranting dismissal.

II. Title 17-A M.R.S. § 802(1)(B)(2) does not apply to acts where a person sets themselves and clothing on fire.

This Court reviews a question of statutory interpretation de novo. State v. Pinkham, 2016 ME 59, ¶ 14, 137 A.3d 203, 208 (Me. 2016); State v. Legassie, 2017 ME 202, ¶ 13 (Me. 2017); State v. Tozier, 2015 ME 57, ¶ 6, 115 A.3d 1240, 1244 (Me. 2015); State v. Shepley, 2003 ME 70 ¶ 9, 822 A.2d 1147, 1151 (Me. 2003).

Juvenile T. asserts that it would be illogical to interpret Title 17-A M.R.S. § 802(1)(B)(2) in a manner where he is charged with Class A arson. The statute allows for arson to occur, as charged here, where an individual only harms themselves. Additionally, the broad wording of the statute allows for trivial arson crimes, where no substantive damage or harm occurs, to be charged as if there was more serious, damaging arson behavior.

In interpreting statutes, statutes are given their plain meaning. State v. Bjorkaryd-Bradbury, 2002 ME 44, ¶ 9, 792 A.2d 1082, 1084 (Me. 2002); Marsella

v. Bath Iron Works Corp., 585 A.2d 802, 803 (Me. 1991); Reggep v. Lunder Shoe Products Co., 241 A.2d 802, 805 (Me. 1968); State v. Pinkham, 2016 ME 59, ¶ 14, 137 A.3d 203, 208 (Me. 2016); State v. Vainio, 466 A.2d 471, 474 (Me. 1983). Looking ti "'[t]he plain meaning of the statutory language" is an attempt "to give effect to the legislative intent, and [this Court seeks to] construe the statutory language to avoid absurd, illogical, or inconsistent results.' Nasberg v. City of Augusta, 2008 Me. 149, ¶ 15, 662 A.2d 227, 229 (Me. 1995)." Liberty Ins. Underwriters v. Estate of Faulkner, 957 A.2d 94, 99 (Me. 2008). If there is ambiguity in a statute's plain meaning, then this Court looks "beyond that language to the legislative history." State v. Bjorkaryd-Bradbury, 2002 ME 44, ¶ 9, 792 A.2d 1082, 1084 (Me. 2002)(citation omitted).

Moreover, "[w]hen interpreting a criminal statute, we are guided by two interrelated rules of statutory construction: the rule of lenity, and the rule of strict construction. Pursuant to each of these rules, any ambiguity left unresolved by a strict construction of the statute must be resolved in the defendant's favor." State v. Pinkham, 2016 ME 59, ¶ 14, 137 A.3d 203, 208 (Me. 2016)(citation omitted), quoting State v. Lowden, 2014 ME 29, ¶ 15, 87 A.3d 694, 697 (Me. 2004)(citations omitted). As a result, penal statutes are "construed whenever possible in favor of the rights of a respondent. . ." State v. Gaudin, 120 A.2d 823, 824 (Me. 1956) (internal citations omitted); see also State v. Shepley, 2003 ME 70 ¶ 15, 822 A.2d 1147, 1151 (Me. 2003)("statute must be strictly construed and ambiguities resolved

in favor of the defendant"(internal citations omitted)); State v. Blaisdell, 105 A. 359, 359-60 (Me. 1919).

Title 17-A M.R.S. § 802(1)(B)(2) provides that "[a] person is guilty of arson if he starts, causes, or maintains a fire or explosion. . . [o]n his own property or the property of another. . . which recklessly endangers **any person** or the property of another." (emphasis added).

To allow for the statute to be read so that "any person" may be guilty of arson, if they recklessly endanger themselves, is illogical. It is punishing something done to oneself. This is not seen in the other statutes contained in Title 17-A, and cannot be the intended effect of the statute.

Other charges contained in Title 17-A provide for crimes that are against other people, not oneself. The charges of murder[19], manslaughter[20], assault[21],

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[19] The statute used the term "of another human being." See Title 17-A M.R.S. § 201.

[20] The manslaughter statute uses the term "of another human being." See Title 17-A M.R.S. § 203(1)(A) & (B).

[21] The statute notes applicability "to another person." See Title 17-A M.R.S. § 207(1)(A).

criminal threatening[22], terrorizing[23], stalking[24], reckless conduct,[25] kidnapping,[26] and robbery[27] are all charges that logically would not be applied to the person committing the statutory violation.[28] The terminology varies slightly between the mentioned charges, but it is hard to imagine how someone would be charged with committing any of the crimes against themselves.

Additionally, arson is a Class A crime, akin in seriousness to murder and kidnapping (which is also a Class A crime), neither of which can be applied

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[22] The statute uses the term "another person." See Title 17-A M.R.S. § 209(1).

[23] The terrorizing statute uses the term "any person." Title 17-A M.R.S. § 210(1). This terminology is the same as the arson statute. See Title 17-A M.R.S. § 210(1); Title 17-A M.R.S. § 802(1)(B)(2). To be guilty of terrorizing a person must "intentionally, knowingly or recklessly communicates to **any person** a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, consciously disregarding a substantial risk that the natural and probable consequence of such a threat, whether or not such consequence in fact occurs. . . " Title 17-A M.R.S. § 210(1)(emphasis added)

[24] The statute is applicable to conduct "directed at or concerning a specific person." Title 17-A M.R.S. § 210-A(1)(A).

[25] The statues used the term "another person". See Title 17-A M.R.S. § 211.

[26] The statute applies to "another person." Title 17-A M.R.S. § 301(1)(A) & (B).

[27] The robbery statute uses the term "any person," in part stating "A person is guilty of robbery if the person commits or attempts to commit theft and at the time of the person's actions. . . The actor threatens to use force against any person present or otherwise intentionally or knowingly places **any person** present in fear of the imminent use of force with the intent (1) To prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking; or (2) To compel the person in control of the property to give it up or to engage in other conduct that aids in the taking or carrying away of the property." Title 17-A M.R.S. § 651(B)(emphasis added).

[28] Two of these crimes use the phrase: "any person." See Title 17-A M.R.S. § 210(1); Title 17-A M.R.S. § 651(B).

statutorily or logically against oneself. A California court has noted the illogical application of a murder charge for conduct that is against oneself: ". . . **the Supreme Court noted that it could not be seriously contended that one accidentally killing himself while engaged in the commission of a felony could be charged with murder**. . ." People v. Jennings, 243 Cal. App. 2d 324, 329, 52 Cal. Rptr. 329, 332 (Cal. 1966)(emphasis added).

Additionally, in the modern day there are daredevils performing stunts and and tricks for show that result in their bodies igniting into flames, whether intentionally or not during performances. There are also people performing stunts on social media that often come with the warning of "not to try this at home."[29] None of these people appear to be charged with serious crimes because they have inflicted harm upon themselves.

The plain meaning of the statutory language should be read to avoid the "absurd" and "illogical" results in cases where the language "recklessly endangers any person" is interpreted to include the actors themselves. Moreover, any ambiguity created by the application of the statute to the person committing the crime, should be resolved in the favor of of that person. As, "any ambiguity left unresolved by a strict construction of the statute must be resolved in the

[29] A quick search on YouTube turned up at least one video where a teen died after attempting a fire stunt he had seen performed and wanted to imitate.

defendant's favor." State v. Pinkham, 2016 ME 59, ¶ 14, 137 A.3d 203, 208 (Me. 2016).

The statutory language of "any person" should be read to exclude application of the arson statute to a person charged with arson particularly, as seen here, where the arson act causes "no damage to property or even actual injury. . . by any individual other than the hapless defendant. . .". (Order (July 16, 2024) at 7).

III. There is insufficient evidence to support the convictions of Criminal Mischief and Theft by Unauthorized Taking.

"When reviewing a judgment for sufficiency of the evidence" this Court views "'the evidence in the light most favorable to the State [to] determin[e] whether the fact-finder could rationally have found each element of the offense beyond a reasonable doubt.' State v. Reed, 2013 ME 5, ¶ 9, 58 A.3d 1130 (quotation marks omitted)." State v. Maine, 2017 ME 25, ¶ 28, 155 A.3d 871, 878 (Me. 2017). See also State v. Pelletier, 2023 ME 74, ¶20, 306 A.3d 614, 621 (Me. 2023). This Court "'will not substitute our judgment for that of the fact-finder unless it is the product of bias, prejudice, [or] improper influence, or was reached under a mistake of law or **in disregard of the facts**.' Me. Farmers Exch. v. McGillicuddy, 1997 ME 153, ¶ 12, 697 A.2d 1266." State v. Pelletier, 2023 ME 74, ¶20, 306 A.3d 614, 621 (Me. 2023)(emphasis added).

The testimony of [redacted] was not deemed credible by the lower court on numerous occasions. (Bind-Over T. (March 1, 2024 at 86, 183); (Order (July 16, 2024) at 3, fn 6). [redacted]'s testimony was essential to link Juvenile T. to the crimes of Criminal Mischief and Theft by Unauthorized Taking. (Order (July 16, 2024) at 3, fn 6). With the shaky acceptance of [redacted]'s testimony in the lower court, Juvenile T.'s convictions should not stand on that testimony alone.

[redacted] testified that Juvenile T. had stolen and burned pride flags.[30] (Adj. T. (Jan. 31, 2024) at 25, 123-129). The testimony by [redacted] was deemed credible by the lower court and used to support both convictions.[31] See Order (June 11, 2024) at 4. The lower court found simply that: "[redacted] testified credibly about these events."[32] (Order (June 11, 2024) at 4). However, the lower court repeatedly found fault and lack of credibility in [redacted]'s testimony at numerous points in the additional proceedings in Juvenile T.'s case. [redacted]'s credibility,

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[30] [redacted] stated that Juvenile T. had asked him to steal the flags with him and that they were taken on April 2, 2023. (Adj. T. (Jan. 31, 2024) at 25, 27, 71, 123, 127-131, 137). [redacted] stated they discussed the plans over SnapChat and he went along because he was bored and wanted to hang out. (Adj. T. (Jan. 31, 2024) at 124, 137). The flags were taken to the Wainwright Field Sports Complex and burned there. (Adj. T. (Jan. 31, 2024) at 26, 127-131). Remnants of burned flags were found at the Complex. (Adj. T. (Jan. 31, 2024) at 30-33, 88-90, 172-174). [redacted] stated that when he arrived at the Complex Juvenile T. was burning a flag and someone else was recording him. (Adj. T. (Jan. 31, 2024) at 129-130, 141, 157-158).

[31] The lower court based its adjudication on the finding that "[redacted] testified credibly about these events." (Order (June 11, 2024) at 4).

[32] [redacted] testified at the January 31, 2024 adjudication hearing that it had been almost a year since he was interviewed by the police and that his memory was not the best and that it was hard to remember back then. (Adj. T. (Jan. 31, 2024) at 148-149).

due to his memory issues, was raised prominently by the court during the proceedings. (Bind-Over T. (March 1, 2024 at 86). During the probable cause portion of the bind-over hearing the court, after hearing most of [redacted]'s testimony, stated that "[t]oday's established that he doesn't have a great memory." (Bind-Over T. (March 1, 2024 at 86). During the bind-over hearing, it was also noted that [redacted] has autism and the interviewer was not trained in interviewing people with autism.[33] (Bind-Over T. (March 1, 2024 at 183). Juvenile T.'s convictions for Criminal Mischief and Theft by Unauthorized Taking both involved evidence garnered from police interviews with [redacted]. (Adj. T. (Jan. 31, 2024) at 24-25, 28-29, 35, 45-63, 101-102, 131-134, 141-157).

Moreover, the lower court in issuing its decision in PORDC-JV-2023-115 questioned the credibility of [redacted]'s testimony, noting that: "[t]he testimony of [redacted], if credible, could establish this element of proof." (Order (July 16, 2024) at 3). Furthering that point, the lower court stated that "[redacted]'s testimony at the bind-over hearing provided purported details that were not previously disclosed in his interviews with the police one year earlier. When confronted at trial, [redacted]'s explanation for this variance was no convincing." (Order (July 16, 2024) at fn 6). In relation to [redacted]'s testimony during that proceedings, the lower court also stated that

[33] It was noted during the January 31, 2024 adjudication hearing that [redacted] has an autism and ADHD diagnosis. (Adj. T. (Jan. 31, 2024) at 98).

> The court does not find his overall testimony pertaining to the charged offense of solicitation to commit murder in this case to be credible or reliable. His testimony changed and appeared to become more detailed with the passage of time, without adequate explanation. [redacted] presented as a witness easily influenced and vulnerable to the suggestions of his examiner. He frequently stated he did not remember something, and then when 'prompted' he provided a contrary or significantly more detailed answer. The timeline provided by this witness was inconsistent and confusing, and the responses provided by him were not always logical. [redacted] may have been well meaning and motivated by what he believed to be true in making his initial report or giving testimony, but this does not equate with being a credible witness whose testimony is sufficient to carry the weight of the evidence on a serious felony charge. (Order (July 16, 2024) at 3)

All of these statements by the lower court shed light on how it viewed [redacted]'s testimony. As such, given the lower court's lack of confidence in the credibility of [redacted], and given the need for credible evidence from [redacted] to support the adjudications of Juvenile T., there is insufficient evidence to support the Criminal Mischief and Theft by Unauthorized Taking adjudications.

Conclusion

For the above-reasons, the Appellant asks this Court vacate his adjudications and remand his case to the Cumberland County Courts for further proceedings.

Dated: November 20, 2024

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Certificate of Service

I, Jeremy Pratt, Esquire, hereby certify that on this date I sent by electronic mail one copy of the foregoing Brief of Appellant, later to be followed by two printed copies, via the U. S. Postal service, to Abigail Couture, Esq., Cumberland County District Attorney's Office, Street, Portland, ME 04101.

Dated: November 20, 2024

_____/s/ Jeremy Pratt_____
Jeremy Pratt, Esquire