

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

Reply Brief for Appellant
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Argument

I. Juvenile T. defers to the State’s clarification of procedural history.

The State provided clarification of procedural history events in its brief. See Red Brief at 8. Juvenile T. based his procedural history on the information contained in the docket records, found in the Appendix, and defers to the clarification of the history provided by the State in their brief. See Appendix at 3-59; Red Brief at 8.

II. References to guilt and conviction in Juvenile T.’s brief should be viewed in terms of the Juvenile Code.

The State has taken issue with Juvenile T’s use of the terms “‘guilty’ or imposed a ‘conviction’” as “inaccurate” when referencing the Juvenile Court’s findings in Juvenile T.’s cases. See Red Brief at 7. Juvenile T.’s references to the terms were intended to convey the Juvenile Court’s findings in terms of the Juvenile Code. No attempt was intended to suggest findings outside the Juvenile Code and the adjudicative rulings of the Court.

III. Juvenile T. included mandatory Appendix items.

The State appears to take issue with the inclusion of Juvenile T.’s closing argument from PORDC-JV-2023-115 in the Appendix. See Red Brief 8-9. Maine Rule of Appellate Procedure 8(d) list the mandatory appendix documents for inclusion in the Appendix. Rule 8(d)(5) states that the Appendix must include

[a]ny pre-judgment or post-judgment motion or petition that was subject to an order or other action or inaction by the trial court that

is at issue in the appeal. If the motion or other request to the trial court was made orally, a transcript of the on-the-record discussion of the motion or other request to the trial court, including the court's ruling, shall be included.

The Juvenile Court in its Judgement and Order in PORDC-JV-23-115 stated that

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* offenses charged pursuant to 17- A. M.R.S. § 12. See Appendix at 73.

Juvenile T. included the his closing argument from PORDC-JV-2023-115 in the Appendix because the Juvenile Court addressed his de minimus motion raised in the filing in its Order and denial of that motion is a subject of the appeal. As such, Juvenile T. viewed the filing as a mandatory item that must be included in the Appendix under the Appellate Rules. Juvenile T. only included the mandatory items in the Appendix set out in Appellate Rule 8(d) and would not have included the filing if it was not required by the Rule.

IV. The State's Statement of the Facts includes information related to charges that Juvenile T. was acquitted of and are not relevant to the issues on appeal.

The State has outlined testimony and evidence that is only relevant to the charge of Solicitation of Murder in its statement of facts as it pertains to PORDC-JV-32-115. See Red Brief at 10-11. Juvenile T. was acquitted of this charge by Juvenile Court and the information has no bearing on the charge of Arson that

Juvenile T. was adjudicated of. See App. at 74. The facts should be considered as irrelevant to the issue on appeal. Additionally, in PORDC-JV-23-46 Juvenile T. was acquitted of Arson, one charge of Criminal Mischief, and Interferences with Constitutional Rights. See App. at 66. Juvenile T. was adjudicated of one count of Criminal Mischief and Theft by Unauthorized Taking in relation to the taking of a pride flag. See App. at 66. The State has stated in its brief that

Regarding Juvenile T.'s homophobic beliefs, during the trial on PORDC-JV- 2023-046, the Trial Court noted, '[t]here was a damaged pride flag found in defendant's possession at the time his residence was searched, but there was no testimony or evidence presented that established conclusively whether *this* recovered pride flag was (or was not) the flag belonging to Noelle Cooper or any other specific person.; (June 11, 2024 Order at 3, footnote 4, emphasis added). See Red Brief at 11.

Other than making a plan to steal pride flags, the Juvenile Court did not make extensive findings of homophobic beliefs in its ruling. See App. at 63-64. This is highlighted by the Juvenile Court's comments in acquitting Juvenile T. of the charge of Interferences with Constitutional Rights:

There was generalized testimony and evidence presented that the juvenile defendant harbored beliefs at the time of the offense described as 'Neo-Nazi', 'Right-wing', anti-minority' and 'homophobic'. The testimony of [REDACTED] was that he was 'bored' and just 'wanted to hang out'. But that it was [Juvenile T.'s] idea' to take 'gay pride' flags. They then took several flags that evening, including a 'Ukrainian flag' from several porches. The testimony and evidence was inconclusive as to the specific motive or intention in taking these flags. If motivated by a generalized animus or dislike by the defendant or the principal actor against individuals displaying these flags, that does not necessarily support the conclusion that the intent was to interfere with the exercise

of their constitutional rights.
See App. at 65 (fn 9 omitted).

V. 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).

Juvenile T. asserts that under the facts of his case Title 17-A M.R.S. § 12 forestalls conviction for arson. The State has summarized Juvenile T.'s argument as claiming that "the Legislature could not have envisioned application of Title 17-A M.R.S. § 802(1) to situations wherein only the arsonist themselves is endangered by their conduct." Red Brief at 18. This over simplifies Juvenile's T.'s argument. Juvenile T. made a fact specific analysis of his case, asserting that under the circumstances presented in his case that his de minimus argument should

prevail. See Blue Brief at 28.¹ “Each *de minimis* analysis will therefore always be case-specific.”² State v. Kargar, 679 A.2d 81, 83 (Me. 1996).

The State has also asserted in its brief that:

It is by no means unreasonable that the State might want to prohibit people from recklessly lighting themselves on fire. Certainly, the preservation of life and property are entirely proper State interests and 17-A M.R.S. § 802(1)(B)(2)’s prohibitions have a rational basis connecting them to the prevention of harm to life and property. To that end, Juvenile T.’s characterization of his actions as ‘trivial’, as well as his argument that the crime of Arson should be negated as *de minimis*, downplay any appreciation for the true seriousness of the crime and the gravity for which it was afforded by the Legislature. See Red Brief at 21-22.

Juvenile T. has asserted that under the facts of his case that the crime of arson should be considered trivial as termed in Title 17-A M.R.S. § 12(1)(B). See Blue

¹ “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.” See Blue Brief at 28.

² 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).

Brief at 28. His argument is that the circumstances of his case fits into conduct covered by the de minimus statute and, as such, defined as trivial.

The de minimus statute, Title 17-A M.R.S. § 12, provides that

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:

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.³
Title 17-A M.R.S. § 12.

Additionally, the Letter to Criminal Law Advisory Commission Members and Consultants from Stephen Diamond, Assistant Attorney General, which Juvenile T. has cited in his primary brief, shows that the de minimus statute was

³ “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).

envisioned by the State to protect against the broad application of arson charges.⁴ See Blue Brief at 27-28. This application should apply equally to the overextension of the arson statute, regardless of whether the alleged conduct involves harm done is to person or property or both.

Lastly, the State has asserted that Juvenile T.'s de minimus motion should be time barred. In part the State has stated that "Title 17-A M.R.S. § 12 provides that the de minimis analysis is only implicated 'upon notice to or motion of the prosecutor and opportunity to be heard'." Red Brief at 22. Juvenile T. points out that the lower court noted the lateness of the de minimum motion but did chose to summarily address the issue also noting that "[t]he court acknowledges that the facts as established at trial would ordinarily not justify the filing of a charge or a Class A felony." App. at 73. Juvenile T. should be entitled to raise the de minimus claim, if as the juvenile court noted, the evidence at trial would not ordinarily justify the filing of the charge. Additionally, Title 17-A M.R.S. § 12, as noted by the State in their brief and cited above, states that "[t]he court may dismiss a

⁴ The citation was deemed to provide insight into what is viewed as de minimus. Juvenile T. does not believe that the statute has to be viewed as ambiguous in order to look at the guidance in the cited letter. As the characterization of something as de minimus would not make the statute ambiguous, just in certain circumstances prevent conviction or adjudication. Additionally, in State v. McLaughlin, 2018 ME 97, ¶ 17, 189 A.3d 262, 268 (Me. 2018), this Court did look to the legislative history when there was a tinge of ambiguity (stating "Although the plain language review discussed above leaves little room for a claim of ambiguity, to the extent that sections 1102(1)(F) and 1105-A(1)(D) could be deemed ambiguous, the applicable legislative history and other indicia of legislative intent support our interpretation.")

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. . .” The State was put on notice of the argument and was able to respond to the argument in their written closing argument. See State’s Response to Legal Issues Raised During Trial & Closing Arguments (July 9, 2024) at 2. The evidence at that point was set and Juvenile T. should be able to now raise the argument based on the evidence that was presented at trial. The State had notice and opportunity to respond, which it did, and the juvenile court had the ability to respond to the motion in its final adjudicative order.

VI. The evidence provided by [REDACTED] was highly relevant to the State’s cases.

Juvenile T. stated in his primary brief that

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. Blue Brief at 35.

Juvenile T. has argued and does so again that the evidence upon which Juvenile T. has been adjudicated is highly dependent on the testimony of [REDACTED]. Without

his testimony, there is no linking evidence to reach the threshold necessary for adjudication. There is a car, burned flag remnants, a flag pole but no evidence to affirmatively link the charges to Juvenile T. (Adj. Hearing (Jan. 31, 2024) at 13-16, 30-39, 84-85, 171-172). Juvenile T. argues that [REDACTED] [REDACTED]'s testimony alone was the linking evidence to support adjudication. Without the evidence there is not enough evidence to support the adjudications. No other evidence alone will support the adjudications.

Conclusion

For the above-reasons, the Appellant again requests that this Court vacate Juvenile T.'s adjudications.

Dated: January 22, 2025

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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 one printed copy, via the U. S. Postal service, to Abigail Couture, Esq., Cumberland County District Attorney's Office, Street, Portland, ME 04101.

Dated: January 22, 2025

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