

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN

COA#_340328
LCT# 17-000304

Plaintiff-Appellee

v.

SCT#159709

CHRISTOPHER LOUIS SINDONE

Defendant-Appellant. /

KRISTINA LARSON DUNNE P45490

Attorney for Defendant-Appellant

P.O. Box 97

Northville MI 48167

248 895 5709

kldunne@comcast.net

**DEFENDANT-APPELLANT'S APPENDICES IN SUPPORT OF HIS SUPPLEMENTAL
BRIEF**

Respectfully submitted,

BY: *-s-Kristina L. Dunne -s-*
KRISTINA LARSON DUNNE (P45490)
P.O. Box 97
Northville MI 48167
248 895-5709

DATED: May 26, 2020

TABLE OF CONTENTS

Register of Actions from the Circuit Court	3a
Register of Actions, Appellate Courts.....	4a
Judgment of Sentence.....	5a
Opinion of the Court of Appeals below.....	6a
Order of this Court, April 15, 2020.....	7a
Michigan Arson and Preparation to Burn Statutes MCL 750.73(1) MCL 750.79(1)(d)(vi) Public Act 328 1931	8a
Michigan Torture and AWIM Statutes MCL 750.84, MCL 750.85	9a
West Virginia Arson Statute.....	10a

Register of Actions from the Circuit Court

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Case Search](#) [Refine Search](#)

Location : Criminal Cases [Images](#) [Web Access Instruction](#)
[Manual](#)

REGISTER OF ACTIONS

CASE No. 17-000304-01-FH

PARTY INFORMATION

Appellate Attorney	Dunne, Kristina Larson	Lead Attorneys
Defendant	Sindone, Christopher Louis	Patricia S. Slomski Court Appointed (989) 577-5008(W)
Plaintiff	State of Michigan	Barbara Kyle Lanning (313) 226-9103(W)

CHARGE INFORMATION

Charges: Sindone, Christopher Louis	Statute	Level	Date
1. SECOND DEGREE ARSON	750/731	.	12/24/2016
2. ARSON PREPARATION TO BURN A DWELLING	750/791D6	.	12/24/2016
3. Arson Preparation To Burn Property \$1000 Or More But Less Than \$20000	750/791C1	.	12/24/2016

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
12/27/2016	Plea (Judicial Officer: McNally, Michael K) 1. SECOND DEGREE ARSON Defendant Stand Mute: Plea of Not Guilty Entered by Court 2. ARSON PREPARATION TO BURN A DWELLING Defendant Stand Mute: Plea of Not Guilty Entered by Court 3. Arson Preparation To Burn Property \$1000 Or More But Less Than \$20000 Defendant Stand Mute: Plea of Not Guilty Entered by Court
07/03/2017	Disposition (Judicial Officer: Ramsey, Kelly) 1. SECOND DEGREE ARSON Found Guilty by Bench 2. ARSON PREPARATION TO BURN A DWELLING Found Guilty by Bench 3. Arson Preparation To Burn Property \$1000 Or More But Less Than \$20000 Not Guilty by Bench
08/01/2017	Sentence (Judicial Officer: Ramsey, Kelly) 1. SECOND DEGREE ARSON Fee Totals: - Standard FEL Fees \$1,966.00 (SMCF, JCVF) Fee Totals \$ \$1,966.00 Concurrent, Count CT 2 State Confinement: Agency: Michigan Department of Corrections Effective 08/01/2017 Term: 12 Yr to 40 Yr Credit for Time Served: 218 Days
08/01/2017	Sentence (Judicial Officer: Ramsey, Kelly) 2. ARSON PREPARATION TO BURN A DWELLING State Confinement: Agency: Michigan Department of Corrections Effective 08/01/2017 Term: 5 Yr to 10 Yr Credit for Time Served: 218 Days

OTHER EVENTS AND HEARINGS

12/27/2016	Recommendation for Warrant
12/27/2016	Warrant Signed

12/27/2016 **Arraignment on Warrant** (9:00 AM) (Judicial Officer McNally, Michael K)
Parties Present
 Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court

12/27/2016 **Interim Condition for Sindone, Christopher Louls**
 - 10%
 \$150,000.00

01/10/2017 **Bound Over**

01/10/2017 **Preliminary Examination** (9:00 AM) (Judicial Officer McNally, Michael K)
Parties Present
 Result: Waived/Bound Over

01/10/2017 **Interim Condition for Sindone, Christopher Louls**
 - 10%
 \$300,000.00

01/10/2017 **Interim Condition for Sindone, Christopher Louls**
 - Cash or Surety
 \$150,000.00

01/11/2017 **Bindover Packet**

01/12/2017 **Refer To Pre-Trial Services For a Bond Review**

01/17/2017 **Arraignment On Information** (9:00 AM) (Judicial Officer Chylinski, James R.)
Parties Present
 Result: Held

01/17/2017 **Disposition Conference** (9:00 AM) (Judicial Officer Chylinski, James R.)
Parties Present
 Result: Held

01/17/2017 **AOI Plea**

01/20/2017 **Calendar Conference** (9:00 AM) (Judicial Officer Callahan, Michael J.)
Parties Present
 Result: Held

01/20/2017 **Heard And Denied - Order Signed and Filed** (Judicial Officer: Ramsey, Kelly)

02/10/2017 **Pre-Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 02/03/2017 *Reset by Court to 02/09/2017*
 02/09/2017 *Reset by Court to 02/10/2017*
 Result: Continued

02/10/2017 **Order For Criminal Responsibility, Signed and Filed**

02/10/2017 **Order For A Competency Evaluation, Signed and Filed**

02/27/2017 **Pre-Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 02/24/2017 *Reset by Court to 02/27/2017*
 Result: Held

04/05/2017 **Pre-Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 03/23/2017 *Reset by Court to 04/05/2017*
 Result: Held

04/06/2017 **Competency Report Received**

04/07/2017 **Pre-Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 Result: Found Competent

04/07/2017 **Defendant Competent To Stand Trial - Order Signed and Filed**

04/07/2017 **Attorney Appointed Order, S/F**

04/07/2017 **Competency Hearing** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 Result: Held

04/12/2017 **CANCELED Final Conference** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Adjourned:At The Request Of The Court
 03/10/2017 *Reset by Court to 04/12/2017*

04/12/2017 **Report Received**

04/12/2017 **Pre-Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 Result: Held

04/13/2017 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Adjourned:At The Request Of The Court

04/18/2017 **Report Received**

05/04/2017 **Final Conference** (9:00 AM) (Judicial Officer Ramsey, Kelly)
Parties Present
 Result: Adjourned at the Request of the Court

05/18/2017 **Final Conference (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Parties Present
 Result: Adjourned at the Request of the Court

06/06/2017 **Final Conference (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Parties Present
 Result: Held

06/06/2017 **Waiver of Trial By Jury - Order Signed and Filed (Judicial Officer: Ramsey, Kelly)**

06/09/2017 Witness List, Filed

06/12/2017 **Order (Judicial Officer: Ramsey, Kelly)**

06/29/2017 **Bench Trial (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Parties Present
 Result: In Progress

07/03/2017 **Bench Trial In Progress (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Parties Present
 Result: Held

07/03/2017 **Found Guilty by Bench Trial**

07/03/2017 **Refer to Probation For Pre-Sentence Report**

07/31/2017 **CANCELED Jury Trial (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Adjourned: At The Request Of The Court

07/31/2017 Sentencing Memorandum

08/01/2017 **Sentencing (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Parties Present
 Result: Held

08/01/2017 **Sentenced to Prison Order Signed and Filed**

09/12/2017 **Order For Production Of Trial And Sentence Transcript**

09/12/2017 **Stenographer Certificate Required**

09/12/2017 **Order For Production Of Transcript**

09/12/2017 **Stenographer Certificate Required**

09/12/2017 **Order For Production Of Transcript**

09/12/2017 **Stenographer Certificate Required**

09/12/2017 **Order For Production Of Transcript**

09/12/2017 **Stenographer Certificate Required**

09/12/2017 **Order For Production Of Transcript**

09/12/2017 **Stenographer Certificate Required**

09/12/2017 **Appointment for Claim of Appeal (Circuit)**

09/13/2017 **Stenographers Certificate Filed**

09/13/2017 **Stenographers Certificate Filed**

09/13/2017 **Order For Production Of Transcript**

09/13/2017 **Stenographer Certificate Required**

09/14/2017 **Stenographers Certificate Filed**

09/14/2017 **Stenographers Certificate Filed**

09/15/2017 **Stenographers Certificate Filed**

09/18/2017 **Stenographers Certificate Filed**

09/28/2017 Notice of Transcript Filed
 Vol./Book 1 5 pages

10/02/2017 Notice of Transcript Filed
 Vol./Book 1 8 pages

10/12/2017 Notice of Transcript Filed
 Vol./Book 2 19 pages

10/17/2017 **Stenographers Certificate Filed**

12/06/2017 **Stenographers Certificate Filed**

12/18/2017 Notice of Transcript Filed
 Vol./Book 5 254 pages

01/10/2018 Notice of Transcript Filed
 Vol./Book 1 14 pages

04/17/2018 Motion

04/17/2018 Proof of Service, Filed

04/18/2018 Praecipe, Filed (Judicial Officer: Ramsey, Kelly)

05/04/2018 **CANCELED Motion Hearing (9:00 AM) (Judicial Officer Ramsey, Kelly)**
Adjourned: At The Request Of The Prosecution

03/14/2019 **Order (Judicial Officer: Ramsey, Kelly)**

04/15/2019 Miscellaneous, Filed

04/15/2019 Miscellaneous, Filed

04/15/2019 Proof of Service, Filed

04/15/2019 Proof of Service, Filed

04/18/2019 Miscellaneous, Filed

04/18/2019 Miscellaneous, Filed

04/18/2019 Proof of Service, Filed

04/18/2019 Proof of Service, Filed

 FINANCIAL INFORMATION

Defendant Sindone, Christopher Louis		
Total Financial Assessment		1,966.00
Total Payments and Credits		0.00
Balance Due as of 05/26/2020		1,966.00
08/01/2017	Transaction Assessment	1,966.00
09/27/2017	Transaction Assessment	340.00

Register of Actions, Appellate Courts

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Case Search

Case Docket Number Search Results - 340328

Appellate Docket Sheet

COA Case Number: 340328**MSC Case Number: 159709****PEOPLE OF MI V CHRISTOPHER LOUIS SINDONE**

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AE	PRS	(72485) CRETU MARY
2	SINDONE CHRISTOPHER LOUIS Oral Argument: Y Timely: Y	DF-AT	APP	(45490) DUNNE KRISTINA LARSON

COA Status: Case Concluded; File Open**MSC Status:** Pending on Application

- 09/25/2017 1 Claim of Appeal - Criminal
 Proof of Service Date: 09/12/2017
 Register of Actions: Y
 Fee Code: PI
 Attorney: 45490 - DUNNE KRISTINA LARSON
- 08/01/2017 2 Order Appealed From
 From: WAYNE CIRCUIT COURT
 Case Number: 17-000304-01-FH
 Trial Court Judge: 39321 RAMSEY KELLY
 Nature of Case:
 Arson 2nd Degree
 Arson PrepBurnBuilding
- 09/13/2017 13 Transcript Not Taken By Steno
 Date: 09/13/2017
 Reporter: 1374 - KAHN AUDREY R
 Hearings:
 04/05/2017 Pretrial
- 09/13/2017 14 Steno Certificate - Tr Request Received
 Date: 09/12/2017
 Timely: Y
 Reporter: 4477 - KINSEY SUZANNE L
 Hearings:
 01/17/2017 Arraignment
- 09/14/2017 8 Steno Certificate - Tr Request Received
 Date: 09/12/2017
 Timely: Y
 Reporter: 6472 - SMITH JACQUETTA M
 Hearings:
 01/20/2017 Cal Conf
 02/10/2017 Pretrial
- 09/15/2017 9 Steno Certificate - Tr Request Received
 Date: 09/12/2017
 Timely: Y
 Reporter: 6695 - PICKETT-BELL DOREEN P

Hearings:
05/04/2017
05/18/2017
06/06/2017
06/29/2017
07/03/2017
08/01/2017

09/20/2017 10 Steno Certificate - Tr Request Received
Date: 09/12/2017
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
04/05/2017 Pretrial

09/20/2017 11 Transcript Not Taken By Steno
Date: 09/18/2017
Reporter: 1374 - KAHN AUDREY R
Hearings:
04/05/2017 Pretrial
Comments: Rptr Changed to Pickett (6695)

09/25/2017 3 Transcript Ordered By Trial Court
Date: 09/12/2017
Timely: Y
Reporter: 4477 - KINSEY SUZANNE L
Hearings:
01/17/2017 Arraignment
Comments: Elec Copy in Evt#1

09/25/2017 4 Transcript Ordered By Trial Court
Date: 09/12/2017
Timely: Y
Reporter: 1374 - KAHN AUDREY R
Hearings:
04/05/2017 Pretrial
Comments: Elec Copy in Evt#1

09/25/2017 5 Transcript Ordered By Trial Court
Date: 09/12/2017
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
04/07/2017 Pretrial
Comments: Elec Copy in Evt#1

09/25/2017 6 Transcript Ordered By Trial Court
Date: 09/12/2017
Timely: Y
Reporter: 6472 - SMITH JACQUETTA M
Hearings:
01/20/2017 Cal Conf
02/10/2017 Pretrial
Comments: Elec Copy in Evt#1

09/25/2017 7 Transcript Ordered By Trial Court
Date: 09/12/2017
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
05/04/2017 Final Conf

05/18/2017 Final Conf
06/06/2017 Final Conf
06/29/2017 Bench or Waiver Trial
07/03/2017 Bench or Waiver Trial
08/01/2017 Sentence
Comments: Elec Copy in Evt#1

09/25/2017 12 Transcript Ordered By Trial Court
Date: 09/13/2017
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
04/05/2017 Pretrial
Comments: Additional Trns Req

09/29/2017 15 Notice Of Filing Transcript
Date: 09/28/2017
Timely: Y
Reporter: 4477 - KINSEY SUZANNE L
Hearings:
01/17/2017 Arraignment

10/03/2017 16 Notice Of Filing Transcript
Date: 10/02/2017
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
04/05/2017 Pretrial

10/04/2017 17 Invol Dismissal Warning - No Steno Cert
Attorney: 45490 - DUNNE KRISTINA LARSON
Due Date: 10/25/2017
Comments: No Steno Cert for Trans in Ev5

10/12/2017 18 Steno Certificate - Tr Request Received
Date: 09/12/2017
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
04/07/2017 Pretrial

10/13/2017 19 Notice Of Filing Transcript
Date: 10/12/2017
Timely: Y
Reporter: 6472 - SMITH JACQUETTA M
Hearings:
01/20/2017 Cal Conf
02/10/2017 Pretrial

12/06/2017 20 Steno Affidavit - No Notes
Date: 12/05/2017
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
05/04/2017
Comments: There is No Record to be Transcribed for 5/4/17

12/19/2017 21 Transcript Overdue - Notice to Reporter
Mail Date: 12/19/2017
Reporter: 38 - CORY BRION D
Comments: Hearing Date 4/7/17

12/19/2017 22 Transcript Overdue - Notice to Reporter

Mail Date: 12/19/2017
Reporter: 6695 - PICKETT-BELL DOREEN P
Comments: 6 Hearing Dates

01/04/2018 23 Notice Of Filing Transcript
Date: 12/18/2018
Timely: Y
Reporter: 6695 - PICKETT-BELL DOREEN P
Hearings:
05/18/2017 Final Conf
06/06/2017 Final Conf
06/29/2017 Bench or Waiver Trial
07/03/2017 Bench or Waiver Trial
08/01/2017 Sentence

01/04/2018 24 Invol Dismissal Warning - No Transcript
Attorney: 45490 - DUNNE KRISTINA LARSON
Due Date: 01/25/2018
Comments: No NFT for Transcript in Event #18

01/12/2018 25 Notice Of Filing Transcript
Date: 01/10/2018
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
04/07/2017 Pretrial
Comments: Transcribed by Rptr Anderson R2334

03/03/2018 26 Motion: Extend Time - Appellant
Proof of Service Date: 03/03/2018
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Fee Code: PI
Requested Extension: 05/02/2018
Answer Due: 03/10/2018

03/06/2018 27 Submitted on Administrative Motion Docket
Event: 26 Extend Time - Appellant
District: D

03/08/2018 28 Order: Extend Time - Appellant Brief - Grant
View document in PDF format
Event: 26 Extend Time - Appellant
Panel: MJT
Attorney: 45490 - DUNNE KRISTINA LARSON
Extension Date: 05/02/2018

04/17/2018 29 LCt Pleading
Date: 04/17/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Attorney: 45490 - DUNNE KRISTINA LARSON
Comments: Cpy of mtn to compel production of trl cnsl's case file

04/28/2018 30 Brief: Appellant
Proof of Service Date: 04/28/2018
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT

04/28/2018 31 Presentence Investigation Report - Confidential
Date: 04/28/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT

Attorney: 45490 - DUNNE KRISTINA LARSON

04/28/2018 32 Motion: Remand
Proof of Service Date: 04/28/2018
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Fee Code: PI
Answer Due: 05/19/2018

05/09/2018 34 Answer - Motion
Proof of Service Date: 05/09/2018
Event No: 32 Remand
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 72485 - CRETU MARY

05/09/2018 35 Stips: Extend Time - AE Brief
Extend Until: 06/30/2018
Filed By Attorney: 72485 - CRETU MARY
For Party: 1 PEOPLE OF MI PL-AE
Comments: Saturday

05/14/2018 37 Pleadings Rejected
Date: 05/14/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Attorney: 45490 - DUNNE KRISTINA LARSON
Comments: Efiled Discovery Materials

05/17/2018 38 Correspondence Sent
Date: 05/17/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Attorney: 45490 - DUNNE KRISTINA LARSON
Comments: Ltr re Rejctd Plead in Evt#37

06/05/2018 40 Submitted on Motion Docket
Event: 32 Remand
District: D
Item #: 6

06/19/2018 41 Order: Remand - Motion - Deny
View document in PDF format
Event: 32 Remand
Panel: MJR,CMM,CDS
Attorney: 45490 - DUNNE KRISTINA LARSON

07/01/2018 42 Noticed
Record: REQST
Mall Date: 07/02/2018

07/02/2018 45 Brief: Appellee
Proof of Service Date: 07/02/2018
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 72485 - CRETU MARY
For Party: 1 PEOPLE OF MI PL-AE
Comments: Brf due 6/30-Saturday-Brf timely filed 7/2

07/09/2018 43 Record Filed
File Location:
Comments: File; Trs(10)

07/09/2018 46 Motion: Remand
Proof of Service Date: 07/09/2018
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT

Fee Code: PI
Answer Due: 07/30/2018
Comments: 2nd Mtn for Remand w/ Brf in Support

07/18/2018 48 Answer - Motion
Proof of Service Date: 07/18/2018
Event No: 46 Remand
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 72485 - CRETU MARY

08/14/2018 50 Submitted on Motion Docket
Event: 46 Remand
District: D
Item #: 5

08/17/2018 51 Order: Remand - Motion - Deny
View document in PDF format
Event: 46 Remand
Panel: KFK,CDS,TCC
Attorney: 45490 - DUNNE KRISTINA LARSON

08/23/2018 55 Pleadings Rejected
Date: 10/10/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Attorney: 45490 - DUNNE KRISTINA LARSON
Comments: Pro per mtn to remand w/ brf in support

10/10/2018 56 Correspondence Sent
Date: 10/10/2018
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Attorney: 45490 - DUNNE KRISTINA LARSON
Comments: Ltr re rejected pro per mtn in evt#55

11/15/2018 57 Motion: Extend Time - Standard 4 - Appointed Attorney
Proof of Service Date: 11/15/2018
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Fee Code: PI
Requested Extension: 11/15/2018
Answer Due: 11/22/2018
Comments: Proposed Stnd 4 filed w/ brf

11/15/2018 60 Brief: Standard 4
Proof of Service Date: 11/15/2018
Oral Argument Requested:
Timely Filed: Y
Filed By Attorney: 45490 - DUNNE KRISTINA LARSON
For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT
Comments: Accptd & Timely per ord in evt#59

11/20/2018 58 Submitted on Administrative Motion Docket
Event: 57 Extend Time - Standard 4 - Appointed Attorney
District: D
Item #: 1

11/20/2018 59 Order: Extend Time - Standard 4 - Grant
View document in PDF format
Event: 57 Extend Time - Standard 4 - Appointed Attorney
Panel: CMM
Attorney: 45490 - DUNNE KRISTINA LARSON
Extension Date: 11/15/2018

03/12/2019 66 Submitted on Case Call

District: D
Item #: 7
Panel: DBS,JMB,MJK

03/12/2019 73 Oral Argument Audio

04/11/2019 78 Opinion - Per Curiam - Unpublished

View document in PDF format

Pages: 12

Panel: DBS,JMB,MJK

Result: Reversed and Remanded

04/11/2019 79 Opinion - Partial Concurrence/Dissent

View document in PDF format

Pages: 2

Author: DBS

06/05/2019 80 SCT: Application for Leave to SCT

Supreme Court No: 159709

Answer Due: 07/03/2019

Fee: Indigent Person

For Party: 2

Attorney: 45490 - DUNNE KRISTINA LARSON

Comments: Fees waived this case only.

06/05/2019 81 SCT Motion: Housekeeping

Party: 2

Filed by Attorney: 45490 - DUNNE KRISTINA LARSON

Comments: Motion to accept Std 4 brf. Std 4 brf included.

06/18/2019 82 Supreme Court - Record Sent To

File Location:

Comments: sc#159709 lcf;10 tr

06/19/2019 83 SCT: Trial Court Record Received

10 tr; 1 files

06/25/2019 84 SCT: Answer - SCT Application/Complaint

Filing Date: 06/25/2019

For Party: 1 PEOPLE OF MI PL-AE

Filed By Attorney: 72485 - CRETU MARY

Timely: Y

Comments: Answer incorporates COA brf by reference.

04/15/2020 87 SCT Order: MOAA -Oral Argument on Lv Appl

View document in PDF format

Comments: Invited AC=PAAM, CDAM. Grant motion to file pro per supplement to the application.

05/15/2020 88 SCT: Miscellaneous Filing

Filing Date: 05/15/2020

For Party: 2 SINDONE CHRISTOPHER LOUIS DF-AT

Filed By Attorney: 45490 - DUNNE KRISTINA LARSON

Comments: Pro Per Supplement

Case Listing Complete

Judgment of Sentence

RECEIVED by MSC 5/26/2020 2:54:18 PM

Original Court
Copy- Corrections
Copy- Corrections (for return)

3rd copy - Michigan State Police CJIC
4th copy - Defendant
5th copy - Prosecutor

Approved, SCAO Original - Court

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS <input type="checkbox"/> Amended	CASE NO. 17-000304-01-FH
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ORI MI - 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom Court Telephone No.
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	
Prosecuting attorney name Barbara Kyle Lanning	Bar no. 79186

Defendant name, address, and telephone no. Christopher Louis Sindone Alias(es) - Christopher L Sindone 1975 N Outer Dr Monroe, MI 48161		
CTN/TCN 16725107-01	SID MI-1841569E	DOB 12/02/1976
Defendant attorney name Patricia S. Slomski		Bar no. 29001

THE COURT FINDS:

1. The defendant was found guilty on 07/03/2017

of the crime(s) stated below:

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
	Pleas*	Court	Jury			
1		G			SECOND DEGREE ARSON	750.731
2		G			ARSON PREP TO BURN DWELLING	750.791D6
					HABITUAL 3	769.11

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b). MI-S535115549919
- ☐ 3. HIV testing and sex offender registration are completed. Defendant's driver license number
- ☐ 4. The defendant has been fingerprinted according to MCL 28.243.
- ☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- ☐ 6. Probation is revoked.
7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

8. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	08-01-2017	12			40			08-01-2017		218	
2	08-01-2017	5			10			08-01-2017		218	

- ☐ 9. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
- ☐ each other. ☐ case numbers

10. The Defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$ 68.00 x 2	\$ 130	\$	\$ 60	\$ 1,300	\$ 400	\$	\$	\$ 2,026

The due date for payment is . Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for ☐ days ☐ permanently revoke the concealed weapon license, permit number issued by County.
- ☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.
13. Court recommendation: FOUND NOT GUILTY ON COUNT 3. COUNTS TO RUN CONCURRENT WITH EACH OTHER

AUGUST 1, 2017

Date

Judge

Kelly Ramsey

39321

Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

Opinion of the Court of Appeals below

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LOUIS SINDONE,

Defendant-Appellant.

UNPUBLISHED

April 11, 2019

No. 340328

Wayne Circuit Court

LC No. 17-000304-01-FH

Before: SHAPIRO, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Christopher Sindone, appeals as of right his bench trial convictions of second-degree arson, MCL 750.73(1), and preparation to burn a dwelling, MCL 750.79(1)(d)(vi). Defendant's convictions arise out of a dispute during the holidays between defendant and his estranged wife, Jennifer Sindone (Sindone), which led to defendant setting fire to Sindone's trailer on December 24, 2016. The trial court sentenced defendant, as a third habitual offender, MCL 769.11, to 12 to 40 years' imprisonment for second-degree arson and 5 to 10 years' imprisonment for preparation to burn a dwelling. We affirm defendant's convictions but reverse and remand for resentencing.

I. SUFFICIENCY OF THE EVIDENCE

Defendant challenges his convictions on grounds that the prosecution failed to prove beyond a reasonable doubt that the trailer¹ at issue is a "dwelling"; therefore, the prosecution

¹ Sindone described her home as a "mobile home," however the prosecutor and others repeatedly refer to it as a trailer. We deem the distinction irrelevant under the circumstances. We also note that defendant contradicted Sindone's testimony and claimed that he and Sindone purchased the trailer together; however, we view the evidence for a sufficiency of the evidence argument in the light most favorable to the prosecution. And in any event, ownership of the trailer is not relevant for purposes of the statutes under which defendant was convicted.

failed to prove each and every element of second-degree arson and preparation to burn a dwelling pursuant to MCL 750.73(1) and MCL 750.79(1)(d)(vi), respectively. Defendant contends that the trailer was dilapidated and uninhabitable. We disagree.

This Court reviews de novo a challenge to the sufficiency of the evidence. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). “When reviewing a claim of insufficient evidence following a bench trial, this Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). It is the role of the fact-finder, rather than this Court, to determine the weight of the evidence and the credibility of witnesses. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). “Circumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of the crime.” *People v Henderson*, 306 Mich App 1, 9; 854 NW2d 234 (2014). This Court resolves any evidentiary conflicts in favor of the prosecution. *Id.*

To be guilty of second-degree arson, the prosecution must prove beyond a reasonable doubt that the defendant “willfully or maliciously burne[d], damage[d], or destroye[d] by fire or explosive a dwelling, regardless of whether it [was] occupied, unoccupied, or vacant at the time of the fire or explosion, or its contents.” MCL 750.73(1). With respect to preparation to burn a dwelling, MCL 750.79 provides in pertinent part:

(1) A person who uses, arranges, places, devises, or distributes an inflammable, combustible, or explosive material, liquid, or substance or any device in or near a building, structure, other real property, or personal property with the intent to commit arson in any degree or who aids, counsels, induces, persuades, or procures another to do so is guilty of a crime as follows:

* * *

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

* * *

(vi) The property is a dwelling. This subparagraph applies regardless of whether the person owns the dwelling.

MCL 750.71(d), which is applicable to the offenses at issue, defines a “dwelling” as including, but not limited to “any building, structure, vehicle, watercraft, or trailer adapted for human habitation that was actually lived in or reasonably could have been lived in at the time of the fire or explosion and any building or structure that is within the curtilage of that dwelling or that is appurtenant to or connected to that dwelling.”

Sufficient evidence supports a finding that Sindone’s trailer constitutes a dwelling within the meaning of MCL 750.71(d). The prosecution presented ample evidence that Sindone had

been living in the trailer for approximately one month when the fire occurred. Sindone testified that she purchased the trailer on November 29, 2016 in order to move out of the family home and remove herself from the marriage with defendant. She spent the night in the trailer between the time of its purchase and the night of the fire. She ate meals in the trailer. She kept her clothing, her children's clothing², Christmas decorations, shovels, and bedding at the trailer. There was a couch in the living room, a working bathroom, and three bedrooms. She also had water and electricity hooked up to the residence, both of which were working on the night of the fire.

Laurie Stasa, defendant's mother, testified that Sindone lived in the trailer. Woodhaven Police Sergeant Nick Grunwald testified that he observed an air mattress and bedding inside the trailer. Defendant also testified that he slept on an air mattress in Sindone's bedroom inside the trailer on December 24, 2016. While there was evidence that the trailer needed repairs and lacked a functioning kitchen, the prosecution presented sufficient evidence that it was "adapted for human habitation" and that Sindone "actually lived in or reasonably could have" lived in the trailer at the time of the fire. See MCL 750.71(d). Accordingly, the prosecution presented sufficient evidence that Sindone's trailer constituted a dwelling for purposes of second-degree arson and preparation to burn a dwelling.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that he was denied the effective assistance of counsel because his trial counsel failed to argue that Sindone's trailer did not qualify as a dwelling, failed to utilize an arson investigator, and did not object to the prosecution's use of evidence that was obtained illegally. We disagree.

To preserve a claim of ineffective assistance of counsel, a defendant must make a motion in the trial court for a new trial or an evidentiary hearing. *People v Sabin*, 242 Mich App 656, 658; 620 NW2d 19 (2000). Because defendant raised his claims of ineffective assistance of counsel for the first time on appeal, they are unpreserved. When no *Ginther*³ hearing is held, this Court reviews claims of ineffective assistance of counsel based on the facts contained in the existing record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). Whether effective assistance of counsel has been denied is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). This Court reviews questions of constitutional law de novo, and factual findings, if any, are reviewed for clear error. *Jordan*, 275 Mich App at 667.

"Both the Michigan and the United States Constitutions require that a criminal defendant enjoy the assistance of counsel for his or her defense." *People v Trakhtenberg*, 493 Mich 38, 51; 826 N.W.2d 136, 143 (2012). "In order to obtain a new trial, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have

² Defendant and Sindone have twin children together.

³ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

been different.” *Id.* Counsel’s performance is presumed to be effective, and the defendant bears a heavy burden of demonstrating otherwise. *People v Dixon*, 263 Mich App 393, 396; 688 NW2d 308 (2004). There is also a strong presumption that defense counsel’s decisions constitute sound trial strategy. *People v Foster*, 319 Mich App 365, 391; 901 NW2d 127 (2017).

Defendant first claims that his counsel was deficient in failing to argue that Sindone’s trailer was not a dwelling within the meaning of MCL 750.79(1) and MCL 750.79(1)(d)(vi). For the reasons we have already addressed with respect to the sufficiency of the evidence, defendant’s argument lacks merit. The prosecution presented ample evidence to establish that Sindone’s trailer was a dwelling for purposes of second-degree arson and preparation to burn a dwelling. Had defense counsel raised the issue, she would have been unsuccessful. Trial counsel’s failure to raise a meritless argument or a futile objection does not constitute ineffective assistance of counsel. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Moreover, it is apparent from the record that defense counsel was aware of the trailer’s condition and made the strategic decision to pursue a defense that defendant accidentally started the fire, rather than one that focused on the condition or state of the trailer. This Court does not second-guess counsel on matters of trial strategy, *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012), and it does not substitute its own judgment for that of trial counsel regarding strategy, “even if that strategy backfired.” *People v Rodgers*, 248 Mich App 702, 715; 645 NW2d 294 (2001). Accordingly, defendant fails to demonstrate that he was denied the effective assistance of counsel on this ground.

Defendant also argues that defense counsel was ineffective because she failed to utilize an arson investigator to present evidence that defendant did not intentionally start the fire, despite the trial court’s appointment of an arson investigator on behalf of defendant. However, defendant fails to meet his burden of establishing a factual predicate to support his claim. See *People v Douglas*, 496 Mich 557, 593; 852 NW2d 587 (2014), citing *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Defendant does not provide an affidavit indicating what an arson investigator’s testimony would have been. Nor does he explain how an arson investigator would have shown definitively that the fire was accidental. Chief Clark testified that samples taken from Sindone’s trailer did not indicate that accelerant was used to start the fire and that the cause of ignition was undetermined. Sergeant Grunwald also testified that he did not know what was used to start the fire. Presumably, defense counsel made the strategic decision not to use an arson investigator because the prosecution’s evidence was consistent with the defense theory that defendant accidentally started the fire. Accordingly, defendant fails to demonstrate that defense counsel was ineffective on this ground.

Finally, defendant contends that defense counsel was ineffective because she failed to argue at trial that the police seized certain evidence in violation of his Fourth Amendment rights.⁴ Defense counsel was clearly aware of this potential argument because the trial court addressed defendant’s pro se motion before trial. Presumably, defense counsel made the

⁴ Defendant raised this issue in a Standard 4 brief. A “Standard 4” brief refers to the brief a defendant may file in propria persona pursuant to Standard 4 of Michigan Supreme Court Administrative Order No. 2004-6, 471 Mich c, cii (2004).

strategic decision not to raise the issue at trial because defendant did not have a possessory right to the trailer or to the items taken from it, and therefore, he did not have standing to challenge the constitutional validity of the search. See *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999) (noting that an individual's rights against unreasonable search and seizures is personal and can only be invoked by the person whose protections were infringed by the search or seizure), citing *People v Smith*, 420 Mich 1, 17-19; 360 NW2d 841 (1984). A defendant has standing "to challenge a search or seizure if, under the totality of the circumstances, he has a subjective expectation of privacy in the object of the search or seizure and the expectation of privacy is one that society is prepared to recognize as reasonable." *Zahn*, 234 Mich App at 446.

Sindone testified that she purchased the trailer herself and defendant's name was not on the deed, the contract, the landlord tenant agreement, or anything associated with the property. She also testified that defendant was not allowed inside the trailer, but at some point, without her permission, he had made a copy of her key. Defendant admitted that he was not personally involved in the purchase of the trailer, did not live at the trailer, and his name was not on any of the utility bills. Because defendant did not own the trailer or have any legal right to enter the property, he did not have a reasonable expectation of privacy in the trailer and therefore, he does not have standing to challenge the search and seizure of items from the trailer. Accordingly, defense counsel was not ineffective by failing to raise a meritless argument. See *Ericksen*, 288 Mich App at 201.

III. DOUBLE JEOPARDY

Defendant argues that his convictions of second-degree arson and preparation to burn a dwelling must be vacated as a violation of double jeopardy because his convictions arise from the same conduct and involve multiple punishments. We disagree.

Defendant failed to preserve this claim of error by raising it in the trial court. See *People v Barber*, 255 Mich App 288, 291; 659 NW2d 674 (2003) (concluding that the defendant failed to preserve his argument on appeal that his convictions for burning real property and burning a dwelling home violated double jeopardy because the defendant raised the issue for the first time on appeal). Our review of unpreserved constitutional error is for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 597 NW2d 130 (1999). To avoid forfeiture under the plain-error rule, the defendant must meet three requirements: "1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* at 763, citing *United States v Olano*, 507 US 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993). The third element generally requires the defendant to demonstrate "prejudice, i.e., that the error affected the outcome of the lower court proceeding." *Carines*, 460 Mich at 763. Even if the defendant can show all three elements, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Carines*, 460 Mich at 763-764.

Both the United States and the Michigan Constitutions protect a criminal defendant from being twice put in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *Barber*, 255 Mich App at 291-292. This prohibition against double jeopardy protects individuals in three ways:

(1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense. The first two protections comprise the “successive prosecutions” strand of double jeopardy, while the third protection is known as the “multiple punishments” strand. [*People v Miller*, 498 Mich 13, 17; 869 NW2d 204 (2015) (quotation marks and citation omitted).]

This case involves the multiple punishments strand of double jeopardy because defendant’s convictions and sentences for second-degree arson and preparation to burn a dwelling concern the same conduct and the same trial. See *id.* at 17

The purpose of the multiple punishments strand of double jeopardy is “to ensure that courts confine their sentences to the limits established by the Legislature” and therefore acts as a “restraint on the prosecutor and the Courts.” *Id.* at 17-18 (quotation marks and citation omitted). A double jeopardy violation does not occur when the Legislature “specifically authorizes cumulative punishments under” two separate statutes. *Id.* (citations and internal quotation marks omitted). However, when a statute’s plain language clearly expresses the Legislature’s intent to prohibit multiple punishments, a trial court violates the multiple punishments strand by cumulatively punishing “a defendant for both offenses in a single trial.” *Id.* Accordingly, the Legislature’s intent is a decisive factor in determining whether multiple punishments for the same offense violate double jeopardy. *Barber*, 255 Mich App at 292.

The proper test to determine whether multiple punishments are barred by Const. 1963, art 1, § 15 is the test set forth in *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). *People v Smith*, 478 Mich 292, 315; 733 NW2d 351 (2007); see also *People v Ream*, 481 Mich 223, 238; 750 NW2d 536 (2008) (“[T]he *Blockburger* test is a tool to be used to ascertain legislative intent.”) The *Blockburger* test “ ‘focuses on statutory elements of the offense. If each requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.’ ” *People v Nutt*, 469 Mich 565, 576; 677 NW2d 1 (2004), quoting *Iannelli v United States*, 420 US 772, 785 n 17; 95 S Ct 1284; 43 L Ed 2d 616 (1975). In addition, to reiterate, “[b]ecause the statutory elements, not the particular facts of the case, are indicative of legislative intent, the focus must be on these statutory elements.”⁵ *Ream*, 481 Mich at 238 (also referring to the *Blockburger* test as an “abstract legal elements” test).

In the instant case, the trial court convicted defendant of second-degree arson, MCL 750.73, and preparation to burn a dwelling, MCL 750.79(1)(d)(vi). A person is guilty of second-degree arson if he or she: 1) willfully or maliciously 2) burns, damages, or destroys by fire or explosive; 3) a dwelling or its contents. MCL 750.73(1). A person is guilty of preparation to burn a dwelling if he or she: 1) uses, arranges, places, devises, or distributes, 2) an inflammable, combustible, or explosive material, liquid, or substance or any device, 3) in or near a dwelling, 4)

⁵ The *Ream* Court also refers to the *Blockburger* test as an “abstract legal elements test.” *Reams*, 481 Mich at 239.

with the intent to commit arson in any degree. MCL 750.79(1)(d)(vi). Each crime “requires proof of a fact that the other does not.” *Nutt*, 469 Mich at 576, quoting *Iannelli*, 420 US at 785 n 17. Second-degree arson requires the prosecution to prove that the defendant actually burned, damaged, or destroyed a dwelling by fire or explosive, whereas preparation to burn a building has no such element. Preparation to burn a dwelling only requires that the defendant used, arranged, placed, devised, or distributed something that could have caused arson near a dwelling with the intent to cause arson. MCL 750.79(1)(d)(vi). Nothing in the plain language of MCL 750.79(1)(d)(vi) requires the defendant to burn, damage, or destroy the dwelling, and nothing in the plain language of MCL 750.74(1) requires the defendant to undertake any specific preparations for burning the dwelling. Because each statute requires proof of an element that the other does not, the *Blockburger* test is satisfied, thus revealing the Legislature’s intent that multiple punishments for the same criminal transaction do not violate the prohibition against double jeopardy. In short, defendant’s convictions of second-degree arson and preparation to burn a dwelling do not violate double jeopardy.

IV. SENTENCING

Defendant argues that the trial court erred when assessing points for offense variables (OVs) 1, 2, 4, 9, and 12, and that he is entitled to resentencing based on a resulting change in the guidelines. We agree that the trial court erred when assessing 20 points for OV 1 and 10 points for OV 9, which changes the guidelines and entitles defendant to resentencing.

This Court reviews a sentencing court’s factual findings regarding scoring variables for clear error; the court’s factual findings must be supported by a preponderance of the evidence. *People v Gloster*, 499 Mich 199, 204; 880 NW2d 776 (2016). “Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation,” which this Court reviews de novo. *Id.* (quotation marks and citation omitted). Clear error exists if this Court is “left with a definite and firm conviction that a mistake has been made.” *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). Further, the “trial court may consider all evidence in the record, including but not limited to” the presentencing investigation report (PSIR) as well as any “admissions made by a defendant during a plea proceeding.” *People v Jackson*, 320 Mich App 514, 519; 907 NW2d 865 (2017).

A. MCL 777.31 (OV 1) AND MCL 777.32 (OV 2)

OV 1 considers the aggravated use of a weapon. MCL 777.31(1). The trial court assessed 20 points for OV 1, which is appropriate if, “[t]he victim was subjected or exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device.” MCL 777.31(1)(b). When “[n]o aggravated use of a weapon” has occurred, a zero-point assessment is appropriate. MCL 777.31(1)(f). OV 2 concerns the lethal potential of a weapon possessed or used. MCL 777.32(1). Under 777.32(1)(b), the trial court may assess 15 points for OV 2 when “[t]he offender possessed or used an incendiary device, an explosive

device, or a fully automatic weapon.”⁶ MCL 777.32(1)(b). OV 1 and OV 2 both define an incendiary device as including “gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.” MCL 777.31(3)(b); MCL 777.32(3)(d).

A candle constitutes an incendiary device because it falls within the category of “other similar device.” MCL 777.31(3)(b); MCL 777.32(3)(d). Defendant admitted that he started a fire—accidental or not—by lighting a candle and placing it near Sindone’s air mattress in her bedroom. Although the prosecution did not establish at trial what defendant used to light the candle that started the fire, a candle falls within the category of “other similar device” because it is similar to a Molotov cocktail and fire bomb—both of which require an individual to set them on fire before being used to start a fire elsewhere. Even if a candle is not an incendiary device, there is sufficient evidence that defendant lit the candle with an incendiary device such as matches or a lighter.

Unlike OV 1, OV 2 does not require the trial court to find that a victim was involved. MCL 777.32(1)(b). Therefore, the trial court did not clearly err in assessing 15 points for OV 2 because there is a preponderance of the evidence that defendant possessed and used an incendiary device on December 24, 2016. However, the trial court clearly erred in assessing 20 points for OV 1 because a preponderance of the evidence does not support the trial court’s finding that victims were exposed or subject to an incendiary device. See MCL 777.31(1)(b).

OV 1 requires that a victim be exposed to an incendiary device. MCL 777.31(1)(b). MCL 777.31(2)(a) defines a victim as a “person who was placed in danger of injury or loss of life.” Although a first responder can be a victim, *People v Fawaz*, 299 Mich App 55, 62; 829 NW2d 259 (2012), the first responders in this case were not placed in danger of physical injury or loss of life. The fire was extinguished by the time the first responders entered Sindone’s trailer. In fact, Sergeant Grunwald testified that the trailer was already secured when he arrived at the scene. Contrary to the prosecution’s assertions, there was no evidence that the fire caused damage that compromised the structural integrity of the trailer. There was also no evidence that any neighbors were actually placed in danger. Accordingly, there was no evidence that anyone was placed in danger of injury or loss of life to warrant 20 points for OV 1.

⁶ The trial court may also assess 15 points if “[t]he offender possessed or used a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, or harmful radioactive device.” MCL 777.32(1)(a).

B. MCL 777.34 (OV 4)⁷

OV 4 contemplates the psychological injury to a victim. MCL 777.34(1). The trial court assessed 10 points for OV 4, which is appropriate if “[s]erious psychological injury requiring professional treatment occurred to a victim.” MCL 777.34(1)(a). The trial court may assign 10 points for OV 4 if the victim suffered “personality changes, anger, fright, or feelings of being hurt, unsafe, or violated.” *People v Armstrong*, 305 Mich App 230, 247; 851 NW2d 856 (2014). The fact that the victim did not seek treatment is not conclusive, MCL 777.34(2), and a trial court’s observations of the victim’s demeanor at trial can support a finding of psychological injury, *People v Schrauben*, 314 Mich App 181, 197; 886 NW2d 173 (2016). A trial court may not assign points “solely on the basis . . . that a ‘serious psychological injury’ would normally occur as a result of the crime perpetrated against the victim.” *People v White*, 501 Mich 160, 162; 905 NW2d 228 (2017).

Because OV 4 concerns the “psychological injury to a victim,” a victim is required in all cases in which OV 4 is scored. However, MCL 777.34 does not define “victim.” This Court has not yet addressed whether an individual who suffered property loss as a result of the defendant’s criminal offense but who was not physically present during the offense constitutes a victim within the meaning of MCL 777.34.⁸ In *People v Laidler*, 491 Mich 339, 347; 817 NW2d 517 (2012), our Supreme Court defined a “victim” for the purposes of scoring OV 3, because MCL 777.33 does not define a “victim.”⁹ Turning to common dictionary definitions, our Supreme Court determined that “ ‘a victim’ is any person who is harmed by the defendant’s criminal actions” for the purposes of scoring OV 3. *Id.* at 348-349.¹⁰

The trial court determined that Sindone and the children were victims for purposes of scoring OV 4. When considering the definition of “victim” as adopted in *Laidler*, there is a preponderance of the evidence that Sindone suffered serious psychological injury requiring professional treatment. At trial, Laurie Stasa, defendant’s mother, testified that defendant came to her house before 8:00 a.m. on December 24, 2016, the date of the offense. He was hurried and agitated, and he insisted that the kids leave with him immediately even though they were not wearing shoes. Stasa insisted that they dress due to the cold. Defendant told Stasa that he had

⁷ MCL 777.34 has been amended, effective March 28, 2019. See 2018 PA 652. Under the new version of the statute, the trial court may assess five points for OV 4 if defendant was convicted under section 50b of the Michigan penal code and “serious psychological injury requiring professional treatment occurred to the owner of a companion animal.” MCL 777.34(b) as amended by 2018 PA 652.

⁸ We do note, however, that MCL 777.39 (OV 9) includes among its description of victims those who were placed in danger of property loss.

⁹ OV 3 contemplates physical injury to a victim. MCL 777.33(1).

¹⁰ *Laidler* limited its definition of a victim to MCL 777.31, acknowledging that the specific individual in that case may constitute a victim for purposes of scoring OV 3, but may not constitute a victim for the purposes of any other statute. *Laidler*, 491 Mich at 347 n 3.

“lit a candle to burn the place down so she won’t no [sic] where to live.” She asked him to repeat what he had just said, and he did. He told her that he had done so at 4:00 a.m. It was clear to Stasa that defendant was talking about Sindone’s trailer. At sentencing, Sindone stated that she had been thinking about the event for months, that she and the children remained “very scared,” that her daughter was having “nightmares” and that it “is very hard to calm her down.” She expressed ongoing fear of defendant by herself and defendant’s children.¹¹ This Court has previously held that a victim’s statements of fear and anger support a score of 10 points for OV 4. See *People v Williams*, 298 Mich App 121, 124; 825 NW2d 671 (2012) (concluding that the victim’s statements that he felt angry, hurt, and fearful were sufficient to support an assessment of 10 points for OV 4). Therefore, the trial court did not clearly err in finding that Sindone suffered a psychological injury to warrant an assessment of 10 points for OV 4.

C. MCL 777.39 (OV 9)

OV 9 considers the number of victims. MCL 777.39. In pertinent part, MCL 777.39(1) provides:

(1) offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

* * *

(b) there were ten or more victims who were placed in danger of physical injury or death, or twenty or more victims who were placed in danger of property loss..... 25

(c) there were two to nine victims who were placed in danger of physical injury or death, or four to nineteen victims who were placed in danger of property loss..... 10

(d) there were fewer than two victims who were placed in danger of physical injury or death, or fewer than four victims who were placed in danger of

¹¹ In a letter written to the Court for purposes of sentencing, Stasa wrote that defendant’s son asked if they could still keep the knives hidden so that defendant’s older son, who was 14 years old, could protect them from defendant if he ever came home. She noted that defendant’s daughter expressed similar fear of defendant. It is not clear from the record whether the children spent time at the trailer, so we decline to consider whether the children were victims, but we can review the entire record to examine the psychological impact of the incident on Sindone.

While defendant points out that the victim’s impact statement in the presentence investigation report (PSIR) indicates that Sindone said counseling was not necessary, she also said she would be at the sentencing and may want to address the court; in light of the statements Sindone and Stasa made at the sentencing hearing, as described above, a preponderance of the evidence supports the trial court’s finding.

property loss..... 0

Under MCL 777.39(2)(a), a “person who was placed in danger of physical injury or loss of life or property” constitutes a victim for the purposes of scoring OV 9. A person may be considered a victim “even if he or she did not suffer actual harm; a close proximity to a physically threatening situation may suffice.” *People v Gratsch*, 299 Mich App 604, 624; 831 NW2d 462 (2013), vacated in part on other grounds 495 Mich 876 (2013). However, a victim must be a direct victim of the crime, rather than a member of the community that was indirectly affected by the commission of the crime. *People v Carrigan*, 297 Mich App 513, 515-516; 824 NW2d 283 (2012).

Sindone constitutes a victim for the purposes of scoring OV 9 because she suffered a loss of property when defendant lit her bedroom on fire. MCL 777.39(2)(a). The prosecution presented ample evidence that there was significant damage to Sindone’s trailer, including smoke damage, burned walls and ceilings, a melted air mattress, and damage to other personal property.

Beyond Sindone, a preponderance of the evidence does not support the trial court’s finding that there were “2 to 9 victims placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss.” See MCL 777.39(1)(c). As discussed, a first responder can be a victim for the purposes of scoring OV 9. *Fawaz*, 299 Mich App 55, 62; 829 NW2d 259 (2012). In *Fawaz*, two firefighters responded to a fire at the defendant’s home and suffered actual physical injuries as a result of entering the house. *Id.* at 58, 63. The defendant’s elderly neighbor, who lived only four feet away from the defendant’s house, was escorted from her home to ensure her personal safety. *Id.* This Court held that all three individuals were “ ‘placed in danger of physical injury or loss of life’ because of the fire that [the] defendant started” and therefore, were victims for the purposes of scoring OV 9. *Id.*, citing MCL 777.39(1)(c).

The trial court clearly erred in assessing 10 points for OV 9 because the first responders were not placed in danger of physical injury or loss of life. By the time anyone stepped inside Sindone’s trailer, the fire had been extinguished. The prosecution did not present any evidence that the fire was ongoing or that anyone who entered the house was injured or at risk of injury. Nor did the prosecution present any evidence that the structural integrity of the trailer was compromised such that it placed the first responders in danger. Moreover, a neighbor’s concern for their safety does not mean that he or she is a victim. See *Fawaz*, 299 Mich App at 58, 63. A neighbor must be within a close proximity to a physically threatening situation. *Gratsch*, 299 Mich App at 624. There was no evidence that any of Sindone’s neighbors were actually placed in danger of physical injury or loss of life. Therefore, the trial court clearly erred in assessing 10 points for OV 9. The trial court should have assessed zero points because Sindone was the only victim of defendant’s conduct.

Defendant contends that the trial court clearly erred in assessing five points for OV 12. OV 12 considers contemporaneous felonious acts. MCL 777.42(1). However, the trial court actually assessed zero points for OV 12, and therefore, it is unnecessary to address this issue.

D. RESENTENCING

“A defendant is entitled to be sentenced according to accurately scored guidelines and on the basis of accurate information.” *People v McGraw*, 484 Mich 120, 131; 771 NW2d 655 (2009). When a sentencing court relies on an incorrectly scored guidelines range, the sentence imposed is invalid. *Id.* The trial court improperly assessed 20 points for OV 1 and 10 points for OV 9 when no points were warranted. Lowering the total OV points from 65 to 35, the corrected guidelines range would be 72 to 180 months. See MCL 777.63. Consequently, this matter must be remanded for resentencing.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering

/s/ Michael J. Kelly

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

**STATE OF MICHIGAN
COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LOUIS SINDONE,

Defendant-Appellant.

UNPUBLISHED

April 11, 2019

No. 340328

Wayne Circuit Court

LC No. 17-000304-01-FH

Before: SHAPIRO, P.J., and BECKERING and M. J. KELLY, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I concur with the majority in all respects except the double-jeopardy issue. I conclude that one cannot commit second-degree arson, MCL 750.73(1), without also committing preparation to burn a dwelling, MCL 750.79(1)(d)(vi). Accordingly, I would hold that defendant's conviction for both of these offenses violates the Double Jeopardy Clause's protection against multiple punishments for the same offense.

"Both the United States and the Michigan constitutions protect a defendant from being placed twice in jeopardy, or subject to multiple punishments, for the same offense." *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008), citing US Const, Am V; Const 1963, art 1, § 15. "The prohibition against double jeopardy provides three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense." *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). Because defendant's convictions arose "from the same conduct . . . , this case involves the multiple punishments strand of double jeopardy." *People v Miller*, 498 Mich 13, 17; 869 NW2d 204 (2015). "When legislative intent is not clear, Michigan courts apply the 'abstract legal elements' test articulated in [*People v Ream*, 481 Mich 223; 750 NW2d 536 (2008)] to ascertain whether the Legislature intended to classify two offenses as the 'same offense' for double jeopardy purposes." *Id.* at 19.

Under the abstract legal elements test, it is not a violation of double jeopardy to convict a defendant of multiple offenses if "each of the offenses for which

defendant was convicted has an element that the other does not” This means that, under the *Ream* test, two offenses will only be considered the “same offense” where it is impossible to commit the greater offense without also committing the lesser offense. [*Id.* (citation footnotes omitted).]

As provided in MCL 750.73(1), to convict a person of second-degree arson, the prosecution must prove that the defendant “willfully or maliciously burns, damages or destroys by fire or explosive a dwelling” To convict a person of preparation to burn a dwelling, it must be proven that the defendant 1) uses, arranges, places, devises, or distributes, 2) an inflammable, combustible, or explosive material, liquid, or substance or any device, 3) in or near a dwelling, 4) with the intent to commit arson in any degree. MCL 750.79(1)(d)(vi).

I agree with the majority that second-degree arson contains an element that preparation to burn a dwelling does not, i.e., that the defendant actually burned or damaged a dwelling by fire. However, preparation to burn a dwelling does not contain an element that second-degree arson lacks. My colleagues reason that second-degree arson, unlike preparation to burn a dwelling, does not “require[] the defendant to undertake any specific preparations for burning the dwelling.” However, neither the prosecution nor the majority explain how it is possible to burn a building without taking some action to start the fire. Indeed, the word “burn” is defined in relevant part as “setting fire to, or doing any act that results in the [intentional] starting of a fire” MCL 750.71(b). One cannot set fire to a dwelling absent action constituting the offense of preparation to burn a dwelling. Because the elements of preparation to burn a dwelling are fully incorporated in the elements of second-degree arson, conviction for both offenses violates the double jeopardy protection against multiple punishments. Accordingly, I would vacate defendant’s conviction for preparation to burn a dwelling as it is the lesser offense. See *People v Meshell*, 265 Mich App 616, 633-634; 696 NW2d 754 (2005).

/s/ Douglas B. Shapiro

Order of this Court, April 15, 2020

Order

Michigan Supreme Court
Lansing, Michigan

April 15, 2020

Bridget M. McCormack,
Chief Justice

159709 & (81)

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 159709
COA: 340328
Wayne CC: 17-000304-FH

CHRISTOPHER LOUIS SINDONE,
Defendant-Appellant.

On order of the Court, the motion to file a pro per supplement is GRANTED. The application for leave to appeal the April 11, 2019 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the defendant's convictions under MCL 750.73 and MCL 750.79(1)(d)(vi) violate double jeopardy. Specifically, the appellant shall address: (1) whether the Legislature expressed a clear intent to allow or disallow dual convictions for both crimes based on the same conduct, and (2) if not, whether the same-elements test requires vacating the lesser conviction. See *People v Miller*, 498 Mich 13, 19 (2015). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

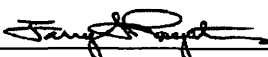
The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



10408

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 15, 2020


Clerk

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**Michigan Arson and Preparation to Burn Statutes
MCL 750.73(1) MCL 750.79(1)(d)(vi) Public Act 328 1931**

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.73 Second degree arson.

Sec. 73. (1) Except as provided in section 72, a person who willfully or maliciously burns, damages, or destroys by fire or explosive a dwelling, regardless of whether it is occupied, unoccupied, or vacant at the time of the fire or explosion, or its contents, is guilty of second degree arson.

(2) Subsection (1) applies regardless of whether the person owns the dwelling or its contents.

(3) Second degree arson is a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00 or 3 times the value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1945, Act 260, Eff. Sept. 6, 1945;—CL 1948, 750.73;—Am. 2012, Act 531, Eff. Apr. 3, 2013.

Former law: See section 3 of Act 38 of 1927, being CL 1929, § 16935; and Act 272 of 1929.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.79 Using inflammable, combustible, or explosive material, liquid, or substance near building or personal property with intent to commit arson of any degree; aiding or abetting; total value of property; enhanced sentence; prior convictions.

Sec. 79. (1) A person who uses, arranges, places, devises, or distributes an inflammable, combustible, or explosive material, liquid, or substance or any device in or near a building, structure, other real property, or personal property with the intent to commit arson in any degree or who aids, counsels, induces, persuades, or procures another to do so is guilty of a crime as follows:

(a) If the property has a combined value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(ii).

(iii) Except as provided in subdivisions (d) and (e), the property is a building, structure, or real property. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the combined value of the property damaged or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property has a combined value of \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for committing or attempting to commit an offense for a violation or attempted violation of subdivision (a) or (b)(ii).

(iii) The property has a value of more than \$2,000.00 and is insured against loss by fire or explosion and the person intended to defraud the insurer.

(iv) Except as provided in subdivisions (c)(iii) and (e) and subparagraphs (v) and (vi), the property is a building, structure, or other real property, and the fire or explosion results in injury to any individual. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(v) Except as provided in subdivisions (c)(iii) and (e) and subparagraph (vi), the property is a building, structure, or other real property and insured against loss from fire or explosion, and the person intended to defraud the insurer. This subparagraph applies regardless of whether the person owns the building, structure, or other real property.

(vi) The property is a dwelling. This subparagraph applies regardless of whether the person owns the dwelling.

(e) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$20,000.00 or 3 times the combined value of the property intended to be burned or destroyed, whichever is greater, or both imprisonment and a fine:

(i) The property is a dwelling and is insured against loss by fire or explosion and the person intended to defraud the insurer. This subparagraph applies regardless of whether the person owns the property.

(ii) The property is a dwelling and the fire or explosion results in physical injury to any individual.

(2) The combined value of property intended to be burned in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property damaged or destroyed.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or

more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) The total value of property damaged or destroyed.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.79;—Am. 2012, Act 533, Eff. Apr. 3, 2013;—Am. 2014, Act 111, Eff. July 9, 2014.

Former law: See section 5 of Ch. 45 of R.S. 1846, being CL 1897, § 11657; CL 1915, § 15428; CL 1929, § 16946; and Act 189 of 1897.

Michigan Torture and AWIM Statutes MCL 750.84, MCL 750.85

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.85 Torture; felony; penalty; definitions; element of crime; other laws.

Sec. 85. (1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

(a) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

(c) "Great bodily injury" means either of the following:

(i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:

(i) The intentional infliction or threatened infliction of great bodily injury.

(ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.

(iii) The threat of imminent death.

(iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.

(3) Proof that a victim suffered pain is not an element of the crime under this section.

(4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

History: Add. 2005, Act 335, Eff. Mar. 1, 2006.

Compiler's note: Former MCL 750.85, which pertained to assault with intent to commit rape, sodomy, or gross indecency, was repealed by Act 266 of 1974, Eff. Apr. 1, 1975.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.84 Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation; "strangulation or suffocation" defined; other violation out of same conduct.

Sec. 84. (1) A person who does either of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both:

- (a) Assaults another person with intent to do great bodily harm, less than the crime of murder.
- (b) Assaults another person by strangulation or suffocation.

(2) As used in this section, "strangulation or suffocation" means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.84;—Am. 2012, Act 367, Eff. Apr. 1, 2013.

Former law: See section 1 of Act 71 of 1883, being How., § 9122a; CL 1897, § 11505; CL 1915, § 15227; and CL 1929, § 16746.

West Virginia Arson Statute



WEST VIRGINIA CODE

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CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-4. Attempt to commit arson; fourth degree arson; penalty.

(a) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any person to burn, any of the buildings, structures, or personal property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than two years, or fined not to exceed \$2,500, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

(b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, willfully and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt to burn that building, structure or personal property.