

# SUPREME COURT COPY

In the Supreme Court of the State of California

**SUPREME COURT  
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Case No. ~~S177654~~ Deputy

In re V.V.,

a Person Coming Under the Juvenile Court Law.

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent.**

v.

V.V.,

**Defendant and Appellant.**

Second Appellate  
District, Division One,  
Case No. B212416;  
Los Angeles Superior  
Superior Ct. No. GJ25585  
Hon. Robert Leventer,  
Referee

In re J.H.,

a Person Coming Under the Juvenile Court Law.

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent.**

v.

J.H.,

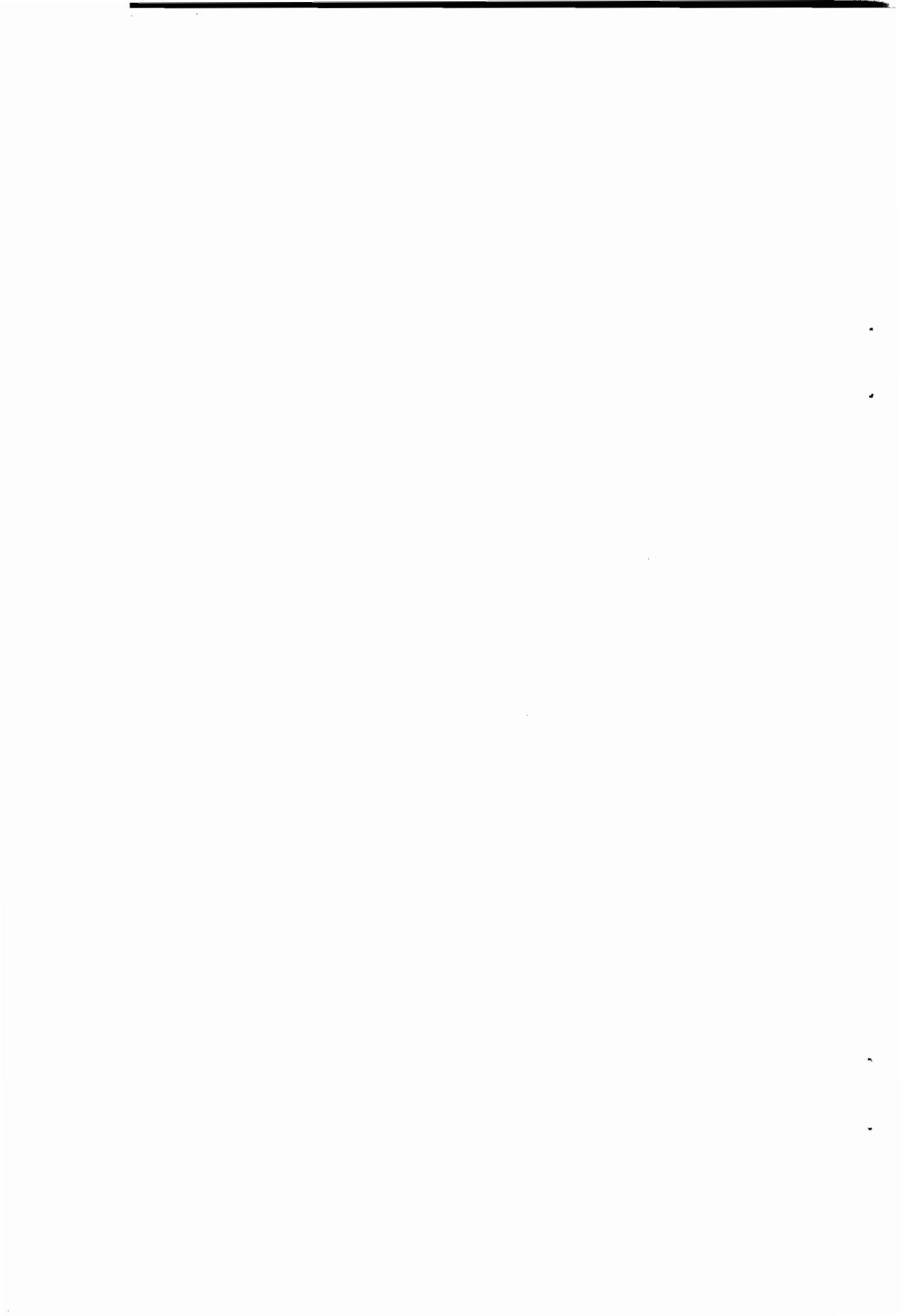
**Defendant and Appellant.**

Case No. S179579

Second Appellate  
District, Division Eight,  
Case No. B212635;  
Los Angeles County  
Superior Ct. No. GJ25585  
Hon. Robert Leventer,  
Referee

## **RESPONDENT'S CONSOLIDATED BRIEF ON THE MERITS**

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### **ISSUE PRESENTED**

Under Penal Code section 451, a person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned – or aids, counsels, or procures the burning of – any structure, forest land, or property. Does the term “maliciously” require that the person intend to do harm? In the case of appellants V.V. and J.H., was there sufficient evidence of malice?

### **SHORT ANSWER**

The term “maliciously” does not require that the person intend to do harm, but it does require that the person have an awareness of the direct, natural, and highly probable consequences of his conduct. Appellants J.H. and V.V., who may not have specifically intended to start the blaze that came to be known as the Hastings Fire, nevertheless acted with malice when they lit with a disposable lighter, and immediately threw into a brush-covered hillside, one of the six firecrackers they brought to the location.

### **STATEMENT OF THE CASE**

On July 18, 2008, not long after the Fourth of July, appellants were laughing, yelling, screaming, and generally having a good time in the area of a mountain ridge in Pasadena. (RT 5, 16-17.) The area was isolated and little used by the general public. (RT 7; ACT 1 [Peo. Exh. 16 at 1].) Around 3:00 p.m., a very loud “boom” sounded, followed almost immediately by smoke from a field on the hillside. (RT 5-8, 12, 15, 17.) Not more than three minutes later, flames appeared. (RT 6-8, 12.)

One of the neighbors, Ara Moujoukian, heard voices calling, “Wow,” “Look,” “Did you see that?” and, eventually, “Fire.” (RT 16-17.) Another neighbor, Abel Ramirez, saw three minors coming down the slope, partially sliding down because of its steepness. (RT 5, 7.) Two of the three minors

were appellants J.H. and V.V.<sup>1</sup> (RT 8.) The mountain had caught fire – and the fire was rapidly spreading downhill, coming within 60 to 75 feet of a residence. (RT 8, 12-13, 59.) Mr. Ramirez called 911. (RT 8.)

Appellants ran from the fire and walked quickly in front of Mr. Moujoukian’s house. (RT 7-8, 18; 59.) “What are you kids doing?” he yelled. (RT 19, 59.) Appellants ran from Mr. Moujoukian down the sidewalk and out of sight. (RT 19, 59.) One of the three minors smacked Mr. Moujoukian’s car on the way down. (RT 19.) None of them stopped to report the fire.

About a quarter-mile from the blaze, Pasadena police officers detained appellants, who matched the suspects who had been described. (RT 30, 32.) In his front trouser pocket, V.V. had a disposable lighter and a “cherry bomb” firecracker about the size of a golf ball. (RT 32-33.) “That’s what caused the fire,” V.V. volunteered. (RT 33.) “What, the firecracker?” an officer asked. V.V. replied that he “blew one up on the hill,” which caused a bush to catch on fire. (RT 33.) On his fingertips, J.H. had a gray substance that resembled gunpowder. (RT 34-35.)

Fire trucks arrived and climbed three-fourths of the way up the hill. (RT 11.) The Hastings Fire, as it came to be known, consumed approximately five acres of brush on a hillside behind a housing development. (ACT 1 [Peo. Exh. 16 at 1].) One of the firefighters on the scene sustained injuries from the heat or smoke. (Peo. Exh. 14 at 9.)

Transported to the Pasadena Police Department, appellants were read their *Miranda* rights and were separately interviewed on tape. (RT 40-41; Peo. Exh. 14 at 2-3, 9; Peo. Exh. 15 at 4.) They indicated they had gone to the mountain in order to climb it, as V.V. had done before, and were

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<sup>1</sup> The third minor, here identified as I.P. (see JCT 7; VCT 7), was not before the Court of Appeal and is not a party in this case.

planning to go to Chinatown later for Vietnamese food. (RT 46-48; Exh. 14 at 3-4; Exh. 15 at 4.) Appellants reached the top of the mountain. (Exh. 14 at 6; Exh. 15 at 5, 10.) J.H. admitted he had brought six firecrackers “because we wanted to blow them up.” (Exh. 15 at 8-9.) The other minors knew J.H. had the fireworks with him. (Exh. 14 at 5; Exh. 15 at 9.)

V.V. said that J.H. brought the firecrackers to the mountain, but that both had the idea of lighting one. (RT 54-55; Exh. 14 at 4, 6.) The third minor, according to V.V., “didn’t want to because he said what if someone gets injured.” (Exh. 14 at 6.) That individual, I.P., stayed back and watched. (Exh. 14 at 8; Exh. 15 at 6-7.) Appellants persuaded him to acquiesce by saying, “If you light some we’ll go to the beach.” (Exh. 14 at 8.)

Then V.V. and J.H. said, “Let’s do it.” (Exh. 14 at 7.) J.H. threw one of the firecrackers after V.V. lit it with J.H.’s lighter. (Exh. 14 at 7; Exh. 15 at 6.) They discarded the remaining fireworks in a sewer area. (Exh. 15 at 9.)

V.V. said he did not think the hillside would catch fire because there was a lot of greenery where his throw was being aimed. (RT 43, 45; Exh. 14 at 7-9.) V.V. claimed the firecracker was of a “popper” type and was lit “just to make a lot of noise.” (RT 45, 48.) The sound that emerged was louder than the minors expected. V.V. stated, “We got kind of scared because, you know, the fire could have reached us, too.” (RT 45; Exh. 14 at 8.)

J.H. said he intended to throw the firecracker into a concrete drainage area west of where the fire occurred. (RT 49, 51-52; Exh. 15 at 7, 10.) That area, however, was 150 yards west of the fire, and J.H. denied that his throwing ability was poor. (RT 53; Exh. 15 at 11.) J.H. characterized lighting and throwing the cherry bomb as “something very stupid.” (Exh. 15 at 5.) One of the minors said, “[O]h my god dude, what if somebody

gets hurt.” J.H. replied, “[D]ude I know.” (Exh. 15 at 8.) Appellants raced down this hill without stopping to report the fire to anyone. (Exh. 15 at 7-9.)

A few days later, on July 22, 2008, the Los Angeles County District Attorney filed petitions against J.H. and V.V. in the Los Angeles County Superior Court under Welfare and Institutions Code section 602. The petitions alleged in count 1 that each appellant willfully, unlawfully, and maliciously set fire to, burned, or caused to be burned five acres of wildland and mountain ridge adjacent to an address in Pasadena in violation of Penal Code section 451, subdivision (c). A second count against each appellant alleged, at the same location, the crime of recklessly causing a fire in violation of Penal Code section 452, subdivision (c). (JCT 1-2; VCT 1-2.)<sup>2</sup>

At a combined adjudication on November 5, 2008, the juvenile court found count 1 of the petition true, declared the offense to be a felony, and dismissed count 2. Deeming this Court’s opinion in *People v. Atkins* (2001) 25 Cal.4th 76 to be controlling (RT 61), the juvenile court found the arson to be “the natural and probable consequence or highly probable consequence of lighting a firecracker on a hillside and throwing it some distance away[,]” notwithstanding appellants’ effort to “hit a patch of green or a patch of cement” (RT 69). The juvenile court concluded, “All they had to do is intend to light the firecracker or do so in such a way that is likely to produce the kind of injury that occurred.” (RT 71.)

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<sup>2</sup> “JCT” and “VCT” denote, respectively, the Clerk’s Transcripts in J.H.’s and V.V.’s appeals.

Appellants were placed home on probation for six months and given a six-year limit on any future physical confinement. (JCT 38; VCT 41.)<sup>3</sup> Upon successful completion of probation and upon motion of the minors, the court offered to reduce the count 1 finding to a finding of the lesser included offense of count 2. (CT 1; RT 71.)

The minors appealed from the judgment, each alleging the evidence was insufficient to sustain the arson finding in count 1. (JCT 40; VCT 43.) On September 24, 2009, in case number B212416, Division One of the Second Appellate District affirmed the judgment as to V.V. The court reasoned:

Undisputed evidence established that V.V. intentionally ignited the firecracker with the knowledge and intent that his companion would throw the firecracker onto the hillside and it would explode amidst dry brush. This was not an accidental ignition, but a deliberate and intentional act of igniting and exploding the firecracker “under such circumstances that the direct, natural, and highly probable consequences would be the burning of” dry brush on the hill when the firecracker exploded. (*People v. Atkins, supra*, 25 Cal.4th at p. 89.) This was sufficient to establish malice, even if V.V. did not subjectively want the brush to burn.

(*In re V.V.* (Sept. 24, 2009, B212416), Slip Op. pp. 4-5.) On November 3, 2009, V.V. petitioned for this Court’s review.

Meanwhile, on December 3, 2009, in case number B212635, Division Eight of the Second Appellate District struck the count 1 finding of arson as to J.H. and modified the judgment to reflect a finding on count 2, recklessly causing a fire. The court concluded that the prosecution had failed to prove J.H. acted maliciously, with a design to do an intentional wrongful act, as

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<sup>3</sup> The Court of Appeal in each case struck the maximum confinement term as unauthorized, because the minor was not removed from his parent’s or guardian’s physical custody.

required by *People v. Atkins, supra*, 25 Cal.4th at p. 88. (*In re J.H.* (2009), previously published at 179 Cal.App.4th 1337, 1343, 1345.)

On January 21, 2010, this Court granted review of both cases, J.H.'s on its own motion. On July 14, 2010, the cases were consolidated for responsive briefing and argument.

### SUMMARY OF ARGUMENT

The juvenile court's findings that J.H. and V.V. committed arson should be upheld. For purposes of the arson statute, acting "maliciously" does not require an intent to do harm but only an intentional, wrongful act. *People v. Atkins, supra*, 25 Cal.4th 76 reaffirmed that arson is a crime requiring only general intent and malice. In the arson context, malice means no more than the intent to commit a wrongful act. The lesser offense of unlawfully causing a fire, on the other hand, requires not a wrongful act but reckless conduct and conscious disregard of the risk of a fire starting. Because throwing a lit firecracker in proximity to highly combustible chaparral was an inherently wrongful act, and because there was substantial evidence that J.H. and V.V. understood its wrongfulness, the arson counts against them should be sustained.

### ARGUMENT

#### **I. FOR PURPOSES OF THE ARSON STATUTE, ACTING "MALICIOUSLY" DOES NOT REQUIRE AN INTENT TO DO HARM BUT ONLY AN INTENTIONAL, WRONGFUL ACT.**

##### **A. Arson Requires Only a General Intent.**

Respondent's analysis begins with the settled rule that arson requires only a general intent, as this Court affirmed in *People v. Atkins, supra*, 25 Cal.4th 76 ("*Atkins*"). *Atkins* held that evidence of voluntary intoxication is inadmissible on the issue whether defendant formed the required mental state for arson, because arson is a general intent crime. (*Id.* at p. 79.) The Court of Appeal decision that *Atkins* overturned had held that the mens rea

for arson was a specific mental state, the intent to set fire to or burn or cause to be burned forest land. (*Id.* at p. 81.) This Court rejected that conclusion, holding that arson requires only a general criminal intent, and that the specific intent to set fire to or burn or cause to be burned the relevant structure or forest land is *not* an element of the offense. (*Id.* at p. 84.)<sup>4</sup>

Stated another way, “[t]he general arson statute does not require an intention to destroy property”; it “requires only an intent to do the act that causes the harm.” (*People v. Morse* (2004) 116 Cal.App.4th 1160, 1163.) And as this Court has noted, “[c]onviction under a statute proscribing conduct done ‘willfully and maliciously’ does not require proof of a specific intent.” (*People v. Licas* (2007) 41 Cal.4th 362, 366.)

In finding general criminal intent sufficient for arson, the Court, while acknowledging that the offense also includes an element of malice (*Atkins, supra*, at p. 85), did not limit its understanding to *express* malice. To be sure, those arsonists who expressly and overtly set destructive fires are acting with an intent sufficient for conviction under the statute. Nevertheless, *implied* malice also can sustain a conviction for the general intent crime of arson. The Court of Appeal in V.V.’s case recognized this when it concluded:

V.V. intentionally ignited the firecracker with the knowledge and intent that his companion would throw the firecracker onto the hillside and it would explode amidst dry brush. This was not an accidental ignition, but a deliberate and intentional act of igniting and exploding the firecracker “under such circumstances that the direct, natural, and highly probable

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<sup>4</sup> Citing *People v. Atkins, supra*, 25 Cal.4th at page 85, appellant J.H. maintains that the “arson statute[ ] uses ‘willful’ to mean the defendant intentionally caused a fire . . . .” (JHOB 11.) Respondent does not read that page or the *Atkins* decision in whole to require anything more than a general intent to do an unlawful act, *not* the intent to “cause a fire.”

consequences would be the burning of' dry brush on the hill when the firecracker exploded. (*People v. Atkins, supra*, 25 Cal.4th at p. 89.) This was sufficient to establish malice, even if V.V. did not subjectively want the brush to burn.

(*In re V.V.* (Sept. 24, 2009, B212416), Slip Op. pp. 4-5.)

At common law, the mens rea of arson consisted of conduct engaged in willfully and maliciously (*In re Bramble* (1947) 31 Cal.2d 43, 48-49); because arson is a general-intent statutory offense in California, malice can be inferred from the act itself. All that is necessary is proof that the person started the fire, as the juvenile court correctly found ("All [appellants] had to do is intend to light the firecracker or do so in such a way that is likely to produce the kind of injury that occurred"). (RT 71.) Indeed, "the requirement of malice functions to ensure that the proscribed conduct was 'a deliberate and intentional act, as distinguished from an accidental or unintentional' one." (*People v. Hayes* (2004) 120 Cal.App.4th 796, 805, quoting *Atkins, supra*, at p. 88; see also *People v. Morse, supra*, 116 Cal.App.4th at p. 1156.)

**B. In the Arson Context, Malice Requires Only an Intent to Do a Wrongful Act**

At their adjudication, appellants were found to have violated Penal Code section 451 by committing arson. Penal Code section 451 states: "A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property." Appellants do not dispute that they acted willfully. The definition of "maliciously," for purposes of the Penal Code's arson chapter, is set forth in section 450, subdivision (e): "'Maliciously' imports a wish to vex, defraud, annoy, or injure another person, *or an intent to do a wrongful act*, established either by proof or presumption of law." (Italics added; see also Pen. Code, § 7.4

[same definition, but without the term “defraud”].) In *Atkins, supra*, 25 Cal.4th 76, the Court addressed the meaning of the term:

As with “willfully,” the statutory definition of “maliciously,” in the context of arson, requires no specific intent. Section 450, subdivision (e) defines “maliciously” in terms of the arson statutes as “a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act . . . .” This is the same definition found in section 7, subdivision 4, except for the addition of “defraud.” Outside the context of arson, the term “malicious,” as used in section 7, subdivision 4, does not transform an offense into a specific intent crime. (Citations.)

(*Id.* at p. 85.)

Notably, Penal Code section 7, subdivision 4, defines malice in the disjunctive. “The second definition – intent to do a *wrongful* act – has never been construed, so far as we can determine, to require knowledge by the defendant that his or her conduct violated social norms.” (*People v. Hayes, supra*, 120 Cal.App.4th at p. 803, fn. 3, original italics.) In other words, it would be no defense for appellants to disclaim knowledge of their actions’ wrongfulness, so long as their conduct was both wrongful and intentional.

To establish malice, then, no higher standard need be met than any of the alternatives set forth in Penal Code section 450, subdivision (e), which include the intent to do a wrongful act. An analogous statute invoking the concept of malice illustrates the point. In *People v. Waite* (2002) 100 Cal.App.4th 866, the defendant was convicted of shooting at an inhabited dwelling under Penal Code section 246. (*Id.* at p. 870.) On appeal, the defendant argued that because the statute requires the “malicious” and “willful” discharge of a firearm, the prosecution should have been obliged to prove, and the jury should have been instructed, that he “shot into the house without justification or excuse or with conscious indifference to or reckless disregard for the consequences.” (*Id.* at p. 879.)

The Court of Appeal rejected that contention. Penal Code section 246 is a general intent crime, the court observed, and under section 7, subdivision 4, the term “maliciously” entails no more than “a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law,” as the jury was instructed. (*People v. Waite, supra*, 100 Cal.App.4th at p. 879.)

The definition of “maliciously” in Penal Code section 450, subdivision (e), is almost identical to the one appearing in section 7, subdivision 4. (*People v. Glover* (1991) 233 Cal.App.3d 1476, 1483; see also *People v. Lee* (1994) 28 Cal.App.4th 659, 664.) It follows that neither “conscious indifference” nor “reckless disregard” is an aspect of the malice necessary to sustain an arson count. Rather, all that was required to show malice in appellants’ case – in the seeming absence of any wish on their part to vex, defraud, annoy, or injure – was their intent to do a wrongful act. That appellants’ willful and malicious conduct may *also* have been reckless does not suggest that the arson charge cannot be upheld. (*See People v. Fry* (1993) 19 Cal.App.4th 1334, 1339.)

**C. Penal Code Section 452 Requires Reckless Conduct and Conscious Disregard.**

Appellant J.H., but not appellant V.V., had his arson finding modified by the Court of Appeal to the lesser offense of unlawfully causing a fire as set forth in Penal Code section 452. In contrast to Penal Code section 451, section 452 provides: “A person is guilty of unlawfully causing a fire when he *recklessly* sets fire to or burns or causes to be burned, any structure, forest land, or property.” (Italics added.) Penal Code section 450, subdivision (f) explains that someone acts “recklessly” when he “is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn . . . forest land.” The statute continues, “The risk shall be of such nature and degree that disregard

thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” (Pen. Code, § 450, subd. (f).)

Hence, the distinction can be readily drawn between the *reckless conduct* required for unlawfully causing a fire and the *intent to do a wrongful act* required for arson. Indeed, Penal Code section 452 is a lesser offense of section 451 (*People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324);<sup>5</sup> something more than “reckless” conduct is required for arson.

But in answer to the Court’s question, an intent to do “harm” is not required; the intent required is simply that of doing a wrongful act. Throwing a firecracker in proximity to highly combustible material, with or without the intent of causing a brush fire, is inherently a wrongful act. Furthermore, arson is inherently dangerous to human life. Indeed, this Court has held even the limited arson of a motor vehicle to be inherently dangerous. (*People v. Nichols* (1970) 3 Cal.3d 150, 163.)

Appellants maintain, however, that their acts violated only Penal Code section 452, unlawfully causing a fire. To the example cited in *Atkins*, lighting a match near incendiary materials (*Atkins, supra*, 26 Cal.4th at p. 89), appellants each compare their conduct in lighting the cherry bomb. They posit that their acts suggest violations of section 452, recklessly causing a fire, not the commission of arson under section 451. (JHOB 20-21; V VOB 15.) In J.H.’s case, the Court of Appeal agreed, stating, “we can see no distinction between lighting a firecracker in a heavily wooded area and ‘recklessly light[ing] a match near highly combustible materials.’”

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<sup>5</sup> Whether Penal Code section 452 is a lesser offense *included* in section 451 has not been resolved by this Court. (See *People v. Cole* (2004) 33 Cal.4th 1158, 1218.)

(*In re J.H.*, *supra*, previously published at 179 Cal.App.4th at p. 1346, quoting *Atkins*, *supra*, at p. 89.)

Yet the comparison overlooks a key fact. Appellants did not merely light a firecracker; they threw it into a brush-covered hillside. The acts of lighting and throwing were indisputably willful; they also were malicious, in the sense of being intentional, wrongful deeds. In the context of the instant facts, this fire would have been “recklessly” caused if appellants had lit, then fumbled and dropped the cherry bomb in the dry grass; or if they had knowingly left it in a place of heat so intense, such as near a magnifying lens, that the sun ignited it and a fire ensued; or if they had carved open the firecracker to check it for gunpowder next to a lit cigarette and it exploded. Those acts would be reckless, owing to the substantial and needless risks in bringing a cherry bomb to a location of obvious fire danger and allowing it to be detonated there. Appellant’s real acts, on the other hand, were malicious: They ignited a firecracker with a disposable lighter *and* threw it into some brush that almost immediately caught fire, ultimately burning about five acres. (RT 6-8, 12, 15; ACT 1.)

Moreover, because every fire caused by a wrongful act is “malicious” as defined in Penal Code section 450, subdivision (e), *non-wrongful* acts are exempt from the arson statute. Thus, the farmhand who intentionally burns a landowner’s fallow field to create space for new crops has acted with legitimate intent; he has not committed a wrongful act under Penal Code section 451, and no arson is involved. But if the day is palpably windy and dry and the fire courses out of control, burning down the farmhouse, the farmhand has acted with reckless conduct and has unlawfully caused a fire under Penal Code section 452. The same reasoning applies to the partying teenagers or the homeless individuals who build a fire to cook or to keep warm, and the climatic conditions bring about a disastrous firestorm. Their acts would not be wrongful, but their

conduct was reckless and their disregard of the substantial risks was or should have been conscious.

Appellants' situation is entirely different from the farmhand's or the temporary campers'. Appellants committed an inherently wrongful act when they lit and threw the cherry bomb. That was certainly reckless conduct, but it was also more. It was a willful and malicious deed that could only have resulted in a brush fire, and it did. The arson findings as to both appellants should therefore be affirmed.

## **II. SUBSTANTIAL EVIDENCE OF MALICE EXISTS TO SUSTAIN THE PETITIONS AGAINST V.V. AND J.H. FOR ARSON.**

The Court additionally poses the question whether the facts of appellants' case demonstrated sufficient evidence of malice – that is, “whether from the evidence, including all reasonable inferences therefrom, there is any substantial evidence of the existence of [that] element of the offense charged.” (*People v. Lynch* (2010) 50 Cal.4th \_\_\_, \_\_\_; *People v. Stevens* (2007) 41 Cal.4th 182, 200.) Here, the evidence of malice was more than sufficient. At age 17 (JCT 7; VCT 7), appellants should have known that throwing a firecracker in proximity to highly combustible material is an inherently wrongful act, and there is ample evidence they did know.

First, fireworks are a tightly controlled product in California. “Dangerous” fireworks (Health & Saf. Code, § 12505) cannot be bought or possessed without a valid permit (*id.*, §§ 12676, 12677); they cannot be sold to minors at all (*id.*, § 12689, subd. (a)). So-called “safe and sane” fireworks (Health & Saf. Code, § 12529) can be sold only between June 28 and July 6 of each year (*id.*, § 12599), and only to persons 16 and older (*id.*,

§ 12689, subd. (b)).<sup>6</sup> Throwing a lit firecracker is a qualitatively different act than throwing, for example, a rock or a beer bottle.

Second, rather than explode the cherry bombs in a street or park closer to their homes in Compton and Downey (Exh. 14 at 1; Exh. 15 at 2), appellants traveled for 90 minutes to an isolated area above Pasadena, an area little used by the general public. (RT 7; ACT 1; Exh. 15 at 5.) The furtiveness involved suggests appellants' knowledge of an inherently wrongful act.

Third, J.H.'s statement that he intended to throw the firecracker into a concrete drainage area, instead of the brushy chaparral (RT 49, 51-52), defies belief. He denied being a "bad thrower," yet he missed that target by 150 yards – half-again the length of a football field. (RT 53; Exh. 15 at 11.) V.V. himself contradicted J.H., stating: "We try to throw it where it is mostly green." (Exh. 14 at 8.) Whichever area was the intended target, "a fire set on a 'spur of the moment impulse' is no less wil[l]ful and malicious under statutory definition than one set with motive, and burns as well and does as much damage." (*In re Stephen P.* (1983) 145 Cal.App.3d 123, 133.)

Fourth, the remaining minor, I.P., knew not to light the firecracker because of the risk involved. According to V.V., I.P. "didn't want to because he said what if someone gets injured." (Exh. 14 at 6.) I.P. just stood back and watched. (*Id.* at 8; Exh. 15 at 7.) In his warning and his refusal to participate, I.P. unmistakably put appellants on notice that they were committing not just a reckless but a wrongful act. Nonetheless,

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<sup>6</sup> J.H. bought the cherry bombs "in July, 4th of July." (Exh. 15 at 6.) The record does not illuminate whether they would be classified by the State Fire Marshal as "safe and sane." (See Health & Saf. Code, § 12562.)

appellants decided, "Let's do it." V.V. lit the firecracker; J.H. threw it. (Exh. 14 at 7; Exh. 15 at 6.)

Fifth, appellants plainly enjoyed the thrill of the dangerous act. Calling out "Wow," "Look," and "Did you see that?" they were laughing, yelling, screaming, and generally having a good time. (RT 16-17.) V.V.'s suggestion that the juvenile court "implicitly rejected [witness] Moujoukian's characterization of [appellants'] conduct" (VOB 3, fn. 4) is not well taken. The juvenile court accepted the parties' stipulation to an officer's proposed testimony that did not include those details in the officer's account of Moujoukian's statement (RT 59), but the court made no finding expressing or implying any doubt about Moujoukian's live testimony.

Sixth, in their subsequent interviews, appellants tacitly acknowledged that that they had committed wrongful acts. When I.P. said, "[O]h my god dude, what if somebody gets hurt," J.H. replied, "[D]ude I know." (Exh. 15 at 8.) J.H. later characterized lighting and throwing the cherry bomb as "something very stupid." (*Id.* at 5.)

Seventh, appellants discarded into a sewer several of the other five cherry bombs they had brought to the location,<sup>7</sup> a final act which also indicated consciousness of wrongfulness. Though the abandonment of the firecrackers may be indirect evidence of appellants' wrongful act, the very nature of arson ordinarily dictates that the evidence will be circumstantial. (*People v. Beagle* (1972) 6 Cal.3d 441, 449; *People v. Solis* (2001) 90 Cal.App.4th 1002, 1010.)

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<sup>7</sup> J.H. brought six cherry bombs to the dry hillside. (Exh. 15 at 8.) One of them was detonated. Another, presumably the next one ready to go, was recovered from V.V.'s front trouser pocket along with the disposable lighter. (RT 32.)

Last, appellants ran down the mountain and fled through the adjacent neighborhood without bothering to stop and report the fire. That conduct demonstrates appellant's knowledge that they had committed a wrongful act, the direct, natural, and highly probable consequences of which came to pass catastrophically.

Appellants both rely on the juvenile court's remark that "these are basically good kids." (JHOB 6; VVOB 1.) The court's comment, however, was made in the context of its justifying probation and inviting a defense motion to reduce the charges thereafter. (RT 71.) The statement was *not* a determination whether appellants possessed the state of mind requisite to the offense of arson. Furthermore, the court's comments that appellants did not specifically intend for the hillside to burn (RT 64, 66, 69) are of no legal import on the issue of their guilt. (See *People v. Fry*, *supra*, 19 Cal.App.4th at p. 1339.)

To summarize, substantial evidence of malice exists to sustain the arson counts against V.V. and J.H. Appellants brought dangerous fireworks to a remote, combustible place far from home. Their companion pointed out that someone could get hurt. Nevertheless, appellants threw one of the cherry bombs directly into dry brush that quickly ignited a five-acre blaze, injuring a firefighter. Then appellants fled, failing to report the fire and discarding the contraband before they were apprehended – whereupon they acknowledged the wrongfulness of their act. In short, appellants did much more than unlawfully cause a fire. Arson, a general intent crime, was and is the appropriate finding.

## CONCLUSION

For the foregoing reasons, respondent respectfully requests that the judgment sustaining the arson count against appellant V.V. be affirmed, and that the judgment deleting that count as to appellant J.H. be reversed.

Dated: September 10, 2010

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S CONSOLIDATED BRIEF ON THE MERITS uses a 13-point Times New Roman font and contains 4,808 words.

Dated: September 10, 2010

EDMUND G. BROWN JR.  
Attorney General of California

A handwritten signature in black ink, appearing to read "Robert M. Snider". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

ROBERT M. SNIDER  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. V.V., a Minor No.:S177654; People v. J.H., a Minor No. S179579**

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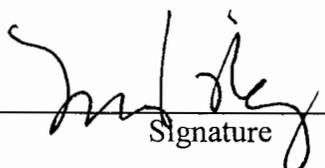
**The Honorable Robert Leventer**  
**Los Angeles County Superior Court,**  
**Referee**  
**Northeast Division**  
**Pasadena Courthouse**  
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 10, 2010, at Los Angeles, California.

\_\_\_\_\_  
Lisa P. Ng  
Declarant

\_\_\_\_\_  
  
Signature

