

SUPREME COURT COPY

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

In re J.H.

A Person Coming Under
the Juvenile Court Law,

Supreme Court
No. S179579



PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

v.

J.H.,

Minor-Appellant.

SUPREME COURT
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Second Appellate District, Division Eight, No. B21635
Juvenile Court No. GJ25587
Honorable R. Leventer, Referee

APPELLANT'S OPENING BRIEF ON THE MERITS

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INTRODUCTION

This case presents the issue of whether Penal Code section 451 permits a conviction for arson, where the defendant did not mean to start a fire but a fire was a foreseeable consequence of his actions. The pivotal determination in answering this question is whether the Legislature intended the phrase “willfully and maliciously” to encompass conduct that is completely devoid of malice. The plain meaning of the relevant statutes and this Court’s reasoning in *People v. Atkins* (2001) 25 Cal.4th 76 define “willful” and “malicious” in the context of arson as the act of purposely

causing a fire with the intent to do a criminal act.

The juvenile court in the present matter expressly found that appellant did not mean to cause a fire and had no intention of burning the hillside. According to the court, he and his friends were youngsters playing with firecrackers so that they could hear a loud noise. The court's finding that appellant did not willfully cause a fire, nor did he intent to cause harm failed to meet the requisite mental state for arson. Accordingly, the decision of the Court of Appeal should be affirmed. To hold otherwise would broaden the meaning of "willfully and maliciously" for purposes of arson to include accidental fires that resulted from reckless conduct.

ISSUE FOR REVIEW

Whether the crime of arson pursuant to Penal Code section 451 criminalizes lighting a firecracker without intending to do harm, but that causes a forest fire meets the statutory requirement that the defendant acted willfully and maliciously.¹

SHORT ANSWER

No. Arson requires that the defendant purposefully caused a fire with the intent to do harm. In the present case, appellant intended the lighting of a firecracker, but did not intend to start a fire that would result in a criminal act. His sole intent was to hear the firecracker make a loud noise. Without question, his act was reckless but not willfully malicious. He did not have the mental state for arson.

¹ All statutory references are to the Penal Code unless otherwise stated.

STATEMENT OF THE CASE

On July 22, 2008, the Los Angeles County District Attorney filed a two-count petition alleging that appellant came within the provisions of section 602 of the Welfare and Institutions Code, in that he committed the crime of arson of forest land (§ 451, subd. (c); count 1), and the crime of recklessly causing a fire of a structure or forest land (§ 452, subd. (c); count 2). Appellant was 17-years-of-age at the time of the petition's filing. (I CT 1-2.)

The juvenile court sustained count 1 of the petition (arson; § 451) and dismissed count 2 (recklessly causing a fire; § 452, subd. (c)) as a lesser included offense of count 1. (I RT 71-72.) The court placed appellant home on probation, with six years as the maximum term of confinement. (I RT 72.)

Appellant appealed the conviction. Division Eight of the Second Appellate District reversed the adjudication against appellant. The appellate court concluded that the juvenile court misapplied the principles announced by this Court in *People v. Atkins* (2001) 25 Cal.4th 76 because there was no evidence that the act causing the fire was done maliciously. The reviewing court held that the trial court should have found appellant guilty of the lesser included offense of unlawfully causing a fire, and modified the judgment accordingly. (*In re J.H.* (2009) [previously published at 179 Cal.App.4th 1337].)

This Court granted review on January 21, 2010.

STATEMENT OF THE FACTS

In the mid-afternoon of July 18, 2008, Abel Ramirez was sitting on the front patio of his home in Pasadena when he heard a “very loud boom.” (I RT 6.) Almost immediately after hearing the boom, Mr. Ramirez saw smoke coming from a field on the side of a hill behind his house. Three minutes later he saw the smoke turn to fire. (I RT 6.)

Mr. Ramirez observed three young people sliding down the hillside from the location of the fire. (I RT 7.) Appellant was subsequently identified as one of the young people. (I RT 8.) The fire grew bigger and Mr. Ramirez called 911. (I RT 8.)

Ara Moujoukian lived near Mr. Ramirez in the same Pasadena neighborhood. At approximately 3:00 p.m. on July 18, 2008, Mr. Moujoukian was in his backyard when he heard the voices of young people laughing and having a good time. (I RT 17.) It sounded to him like the young people were exhibiting “erratic behavior” and “yelling ‘wow, look. Look.’ ” Mr. Moujoukian went to the front of his house to see who was causing the noise. He saw three young men, one of whom was appellant. (I RT 18-19.) He asked the young men what they were doing and they ran away. When Mr. Moujoukian turned back toward his house, he saw a fire on the hillside and called 911. (I RT 19.) Mr. Moujoukain admitted on cross-examination that he had seen some cement-lined storm drains in the area of the hillside where he first saw the fire. (I RT 25.)

Officer Brian Bozarth and Sergeant Bugh responded to the 911 calls. When they arrived at the scene, they saw three young men walking in the street about one-quarter of a mile from the fire. (I RT 29.) Sergeant Bugh detained the young men. (I RT 29.) Officer Bozarth conducted a patdown search of co-defendant V.V. The officer found a disposable

lighter and a golf ball sized cherry bomb in V.V.'s pockets. (I RT 32-33.) V.V. told the officer the cherry bomb caused the fire and that "he blew one up on the hill which caused the bush to catch on fire." (I RT 33-34.)

Officer Bozarth noticed that appellant had a gray substance on his fingertips that resembled gunpowder from fireworks. (I RT 34.)

On the day of the fire, Detective Jesse Carrillo interviewed appellant and V.V. at the police station. (I RT 40-42.) V.V. told the detective that he and the other two boys planned to climb the hillside then go to Chinatown to eat. (I RT 46-47.) Appellant brought cherry bombs with him on the hike. (I RT 54.) The boys never intended to cause a fire. They lit a single firecracker "[j]ust to make a lot of noise." (I RT 44-45.) They did not believe lighting a firecracker posed a fire hazard because there was a lot of green vegetation in the area. (I RT 45.) The boys did not light any shrubbery, grass, or bushes on fire. (I RT 44.) The fire was accidentally caused by igniting the cherry bomb. (Augmented CT 1-2.)

V.V. said he lit the firecracker, then appellant grabbed it away and threw it toward a area of cement. (I RT 52, 54; see I RT 51.) When the boys saw the fire, they became frightened and ran. (I RT 45.)

The court, in considering the evidence, asked the prosecutor why this was not a case of reckless conduct, "If these kids didn't want to set the hill on fire, we all know that." (I RT 66.) The court, in finding the minors knew the natural consequence of igniting the cherry bomb could be a fire, accepted the evidence that they tried to throw the cherry bomb on the cement area or patch of green vegetation to prevent a fire. The court additionally stated "I know they had no intention to set the hill on fire, . . ." (I RT 64.)

Notwithstanding these findings, the court ultimately concluded that

the intent to light the firecracker was sufficient for the crime of felony arson because the minors consciously disregarded a “substantial and unjustifiable risk” that their conduct would start a fire and burn property. (I RT 70.) The court granted appellant probation because “I think these are basically good kids and there's no reason to believe they would cause any more fires or anything.” (I RT 71.) The court characterized appellant’s conduct as merely playing with firecrackers as “[a]nd many of us did,” including Officer Bozarth. (I RT 74.)

ARGUMENT

THE COURT OF APPEAL'S CONCLUSION THAT THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE ARSON COUNT SHOULD BE AFFIRMED, BECAUSE THE ACT OF LIGHTING A FIRECRACKER WITHOUT ANY INTENT OF STARTING A FIRE, OR OTHERWISE DOING HARM IS NOT ARSON.

A. Basis of the Juvenile Court's Error.

Appellant brought firecrackers with him on the excursion with his friends to climb the hillside. Co-appellant V.V. lit a firecracker and appellant threw it toward a concrete area. Their intent in lighting the firecracker was to hear a loud noise. It is undisputed that they did not intend to light a fire. Hence, there was no evidence that appellant willfully set a for a malicious purpose. Without a showing of malice, the most appellant could have been guilty of was the lesser crime of unlawfully setting a fire.

B. The Statutory Law Governing the Crime of Arson.

Section 451 of the Penal Code defines the arson. It states in relevant part:

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.

(§ 451 [emphasis added].) “Maliciously” for purposes of the arson statute is defined as follows:

“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.

(§ 450, subd. (e); see § 7, subd. 4.)

“Willfully” is defined as,

The word “willfully,” when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

(§ 7, subd. (1).) The arson statute’s use of the phrase “willfully and maliciously” in the conjunctive means both requirements must be proven.

Notwithstanding that arson requires willful and malicious conduct, it is a general intent crime. (*People v. Atkins, supra*, 25 Cal.4th 76 [provision of arson statute that act be done “maliciously” does not require that it be done with specific intent].) General criminal intent applies to crimes describing a particular act without making reference to an intent to do a further act or achieve a future consequence. In these types of crimes, the trier of fact need only decide if the defendant intended generally to do the prohibited act. By contrast, when the definition of a crime refers to the defendant's intent to do some further act or achieve some additional consequence, the crime is one of specific intent. (*Id.*, at p. 82.)

Arson is a general intent crime because the language of section 451 describing the proscribed act lacks reference to a specific intent, such as “with the intent” to achieve, or “for the purpose of” achieving some further act. (*People v. Atkins, supra*, 25 Cal.4th at p. 86.) The arson statute

applies when a person willfully causes a fire for a criminal purpose, without the additional requirement that the defendant personally ignite the fire or ignite a specific object. (*Ibid.*)

The crime of arson thus requires proof that the defendant had the general intent to “willfully commit the act of setting on fire under such circumstances that the direct, natural, and highly probable consequences would be the burning of the relevant structure or property. (*Id.*, at p. 89.) The requirement that the defendant purposefully cause the fire for a criminal purpose distinguishes arson from the lesser crime of unlawfully causing a fire, which covers reckless accidents or unintentional fires, where the defendant “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 a structure, forest land, or property.” (*Id.*, at pp. 89, 104.)

The issue in this case thus becomes whether the intentional lighting of a firecracker to hear a loud noise, but without the intention of starting a fire or causing any harm, meets the statutory definition of willful and malicious conduct. As proven below, it does not.

C. The Legislature’s Inclusion of the Terms “Willfully” and “Maliciously” in the Arson Statute Requires Proof that the Defendant Intended to Ignite a Harmful Fire.

Appellant’s adjudication of arson under section 451 went beyond what was intended by the Legislature in enacting this statute. Generally, expanding the scope of a statute’s intended reach involves a policy judgment properly left to the Legislature. (See *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 270.) Consequently, the juvenile court committed reversible error by finding appellant guilty of arson.

The touchstone of statutory interpretation is legislative intent.

(*People v. Johnson* (2002) 28 Cal.4th 240, 244; *California Teachers Assn. v. Governing Bd. of Rialto Unified Sch. Dist.* (1997) 14 Cal.4th 627, 632; see generally Civ. Proc. Code, § 1859.) Hence, the first step in statutory construction is to look at the plain meaning of the statute's words to ascertain its overall purpose. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.) Words that are clearly understood within the context of a statute's intent obviate a court's need to engage in further statutory construction. (*People v. Overstreet* (1986) 42 Cal.3d 891, 895.)

Statutory language is the most reliable indicator of legislative intent; therefore, courts look to the plain meaning of a statute's words in determining its intent. (*People v. Trevino, supra*, 26 Cal.4th at p. 241; *People v. Lawrence* (2000) 24 Cal.4th 219, 230-231; *Romano v. Rockwell Int'l, Inc.* (1996) 14 Cal.4th 479, 493.) If there is no ambiguity in the meaning of a statute and the words unequivocally express a definite intent, then "[t]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson, supra*, 28 Cal.4th at p. 244; *Morse v. Municipal Court* (1974) 13 Cal.3d 149, 156 [in the absence of "ambiguity, uncertainty, or doubt about the meaning of a statute, the provision "is to be applied according to its terms without further judicial construction"].) If, on the other hand, a statutory term is ambiguous, courts must consider the Legislature's intent.

The test for ambiguity is whether the words are "capable of being understood by reasonably well-informed people in two or more different senses." (2 A Singer, *Sutherland Statutory Construction* (6th ed. 2000) § 45.02, pp. 11-12, § 46.04, pp. 145-146, 153-154; see also *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33,

39-41 [if statutory language is reasonably susceptible of two disputed meanings, it is ambiguous].)

The statutory definitions of “willful” and “malicious” for purposes of arson are discernable from the plain meaning of the statutory language. “Willful” is defined as intending to commit a given act. In the context of criminal law, “willful” means intending to commit an illegal act or omission. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 396.) It requires proof that the defendant intended to do what he did. (*People v. Atkins, supra*, 25 Cal.4th at p. 85.) The arson statute, uses “willful” to mean the defendant intentionally caused a fire, but does not include proof of an evil intent. (*Ibid.*) Because the term willfully does not require an evil intent, the Legislature included the word “maliciously” in the arson statute to add the requirement that the defendant intended to commit a harmful act. This is the only conclusion that can be derived from the plain meaning of Section 450, subdivision (e) which defines “maliciously” as “a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act.” Taken together, the terms “willfully” and “maliciously” for purposes of arson requires proof that the defendant purposefully caused a fire with the intent to do a criminal act. The resulting harm does not have to be the actual harm intended by the defendant, but the defendant had to act maliciously. (See *People v. Atkins, supra*, 25 Cal.4th at pp. 88-89.) To hold otherwise would render meaningless the Legislature’s addition of the term “maliciously” to the requirement that the defendant act “willfully.”

The requirement of section 451 that arson be a willful fire caused with a malicious intent following the historic meaning of arson. The common law crime of arson required the “wilful” and “malicious” burning of a house. (*In re Bramble* (1947) 31 Cal.2d 43, 48.) The common law

viewed arson as one of the most serious crimes, because it criminalized the act of trying to burn someone in his or her home. (*Ibid.*)

Arson was first codified in 1850. It retained the requirements that the burning be both “willful” and “malicious.” (*Id.*, at pp. 48-49.) Hence, the language of the early arson statutes required that the defendant intended to cause a fire to effect a criminal act. Modern arson statutes have broadened the crime beyond fires endangering people, but continue to require that the defendant act willfully and with malice. (§ 451.)

Defining the mental state of arson as purposefully causing a fire to achieve a harmful result furthers the legislative intent of distinguishing intended and unintended fires. Section 452 defines the crime of recklessly causing a fire as follows:

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.

....

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(§ 452.) For purposes of section 452, the term “recklessly” means

[A] person 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 a structure, forest land, or property. 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. A person who creates

such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

(§ 450, subd. (f).)

Given that both arson (§ 451) and unlawfully starting a fire (§ 452) are general intent crime, in order for there to be a difference between the mental states of these crimes the terms “willfully” and “maliciously” must mean something more than knowing one’s conduct could start a fire, and consciously disregarding this substantial and unjustifiable risk. (See § 452.) The Legislature’s inclusion of the terms “willfully” and “maliciously” in the arson statute distinguishes arson from unintentional fires by requiring that the defendant purposefully engage in criminal conduct. (See *People v. Atkins, supra*, 25 Cal.4th at pp. 88-89.) The lesser crime only requires recklessness, albeit that the recklessness must be extreme. (§§ 450, subd. (f), 452.)

Thus, a person who recklessly lights a match with no intention of causing a fire for a criminal purpose is not be guilty of arson. Following this same reasoning, a person who lights a cherry bomb to hear a loud noise and tosses it toward a cement area to *prevent* a fire is not guilty of arson because he did not intend to cause a fire or a criminal act. The defendant would have to light the cherry bomb as a means of igniting a fire, and intend that the fire result in harm to be guilty of arson.

D. This Court's Decision in *People v. Atkins* Clarifies That the Terms "Willfully" and "Maliciously" for Purposes of Arson Require a Showing That the Defendant Intended to Cause a Harmful Fire.

This Court in *People v. Atkins* addressed the issue of whether arson was a general or specific intent crime for purposes of determining if the defendant's intoxication could negate malice. In doing so, the Court undertook an exhaustive analysis of the meaning of the terms "willfully" and "maliciously" for purposes of arson. That same analysis applies to the question presented here.

In *Atkins*, the defendant told friends he hated a man named Orville Figs and was going to burn down Mr. Figs's house. The next day, the defendant and his brother David drove by Mr. Figs's home and defendant made a vulgar hand gesture at Mr. Figs. In the early evening of that same day, a neighbor saw David drive toward Mr. Figs' house. It was unclear if David had a passenger. Four hours later, the same neighbor saw David's car speed away from the direction of Mr. Figs' house around the same time. (*People v. Atkins, supra*, 25 Cal.4th at pp. 78-80.)

The fire Marshall determined the fire was deliberately set with gasoline. In inspecting the site, the Marshall found circumstantial evidence linking the defendant to the fire, including his wallet, a disposable lighter, and truck tire tracks. The Marshall also found newly opened beer cans. (*Id.*, at p. 80.)

The defendant told the fire Marshall that on the day of the fire, he and David spent the day drinking alcohol in the canyon near Mr. Figs' house. Defendant saw that the area needed weeding. He pulled out the weeds and placed them in a pile to burn. The defendant poured a mixture of gasoline and oil on the weeds and lighted them on fire. The fire quickly

grew out of control. The men panicked and ran away. The defendant contended the fire was an accident, but admitted his ill feelings toward Mr. Figs. (*Ibid.*)

The defendant was convicted of arson of forest land after the trial court instructed the jury that voluntary intoxication was not a defense to this general intent crime. (*Id.*, at p. 81; see § 451, subd. (c).) The defendant appealed his conviction. On appeal, he argued that arson is a specific intent crime and voluntary intoxication is admissible to negate the element of intent.

This Court concluded that arson is a general intent crime and affirmed the conviction. In arriving at this conclusion, this Court carefully analyzed the mental state required for arson (§ 451) and the lesser crime of unlawfully causing a fire (§ 452.) Though the issue in *Atkins* was whether arson constituted a specific intent crime such that voluntary intoxication could negate the defendant's criminal intent, the Court's analysis in answering this issue bears directly on the present issue of whether purposely lighting a firecracker without intending to do harm, where the firecracker causes a forest fire, meets the statutory requirement that the defendant's action be willful and malicious.

This Court made several significant findings in *Atkins* that apply to the present matter. The Court found arson to be a general intent crime because it does not require that the defendant intend "to set fire to or burn or cause to be burned the relevant structure or forest land." Even so, the Court found that the inclusion of the terms "willfully" and "maliciously" in the arson statute require that the defendant purposefully cause a fire that results in harm. (*People v. Atkins, supra*, 25 Cal.4th at pp. 85-86.) The requirement of malice limits arson to deliberate acts intended to commit a

wrong. (See *People v. Green* (1983) 146 Cal.App.3d 369, 379.)

Next, the Court recognized that the Legislative history of arson has required a showing of malice since the statute's first enactment in 1850. (*People v. Atkins, supra*, 25 Cal.4th at pp. 85-86.) The origins of arson required that the defendant purposely set a fire with the intent to harm a person. Though the statute was broadened to encompass intentional harm to property, the arson statutes have never been based on accidental fires. (See *Ibid.*)

This Court went on to reason that the requirement of malice distinguishes arson from the lesser offense of unlawfully starting a fire, which requires mere recklessness. "[A]rson requires the general intent to perform the criminal act." The requirement of both willful and malicious conduct "ensures that the setting of the fire must be a deliberate and intentional act, as distinguished from an accidental or unintentional ignition or act of setting a fire." (*Id.*, at pp. 88-89.) It is the "offensive or dangerous character" of intentionally causing a "fire of incendiary origin" that establishes the mental state for arson. (*Ibid.*)

The Court painstakingly distinguished the mental state for arson from that of unlawfully causing a fire. Arson, according to the Court, requires "the general intent to willfully commit the act of setting on fire under such circumstances that the direct, natural, and highly probable consequences would be the burning of the relevant structure or property." (*Id.*, at p. 89.) The lesser crime of unlawfully causing a fire covers reckless accidents or unintentional fires, where the defendant knew his actions carried a substantial and unjustifiable risk that his conduct would result in an illegal fire, but consciously disregarded the risk. (§§ 450, subd. (f), 452.) The example given by this Court of a reckless fire is one "caused

by a person who recklessly lights a match near highly combustible materials.” (*People v. Atkins, supra*, 25 Cal.4th at p. 89.)

The definition of malice and recklessness in *Atkins* finds support in other areas of the law. For example, the law of murder and the lesser crime of involuntary manslaughter used the terms malice and recklessness in the same way as arson and the lesser crime of unlawfully starting a fire.

Murder is statutorily defined as the unlawful killing of a human being with malice aforethought. (§ 187, subd. (a).) “Malice aforethought” is either express or implied. A defendant acts with express malice when he manifests “a deliberate intention unlawfully to take away the life of a fellow creature.” (§ 188.) Malice is implied “when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.” (*Ibid.*) Implied malice is, “a killing resulting from an intentional act, the natural consequences of which are dangerous to human life, which act was deliberately performed with knowledge of the danger to, and conscious disregard for, human life.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1221-1222.)

Manslaughter is a lesser included offense to murder. Like murder, manslaughter is the unlawful killing of a human being, but, unlike murder, the killing is without malice. (§ 192.) Manslaughter can be voluntary or involuntary and is a lesser included offense to murder. Involuntary manslaughter is statutorily defined as a killing (1) during the “commission of an unlawful act, not amounting to felony”; or (2) “in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.” (§ 192, subd. (b).) I

This Court has construed the phrase “in the commission of a lawful act which might produce death, in an unlawful manner, or without due

caution and circumspection” as synonymous with criminal negligence. (*People v. Penny* (1955) 44 Cal.2d 861, 879.) Criminal negligence is conduct that is,

[a]ggravated, culpable, gross, or *reckless*, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to the consequences.

(*People v. Penny, supra*, 44 Cal.2d at p. 879 [emphasis added].) In other words, involuntary manslaughter requires proof that the defendant exhibited “the exercise of so slight a degree of care as to raise a presumption of conscious indifference to the consequences.” (*People v. Bennett* (1991) 54 Cal.3d 1032, 1036.)

In some respects the mental state for criminal negligence, which is analogous to unlawfully starting a fire, overlaps the mental state for second degree implied malice murder, which can be analogized to arson. The distinction between implied malice murder and involuntary manslaughter is a matter of intent. Under a theory of implied malice murder, the prosecution must prove the defendant knew his conduct endangered the life of another, yet acted with “*conscious disregard*” for that life. (*People v. Hansen* (1994) 9 Cal.4th 300, 308.) Involuntary manslaughter does not require that the defendant subjectively knows his conduct was life-threatening. (*People v. Watson* (1981) 30 Cal.3d 290, 296.)

The malice element of murder mirrors that of arson in that both require an intent to do harm. The intent element of involuntary manslaughter mirrors unlawfully setting a fire, as both involve reckless

conduct with an indifference to the consequences, yet with no intent to commit a criminal act.

E. The Plain Meaning of the Arson Statutes and the Reasoning of *People v. Atkins* Proves Appellant's Reckless Conduct Failed to Establish the Mental State for Arson.

Applying the reasoning of *People v. Atkins* to this case compels a conclusion that appellant did not have the necessary intent for arson. The present matter is factually distinguishable from *Atkins* in several significant respects. The defendant in *Atkins* hated Mr. Figs and wanted to burn down Mr. Figs' house. The defendant purposefully started a brush fire near Mr. Figs' home with the malicious intent that the fire spread to Mr. Figs' property. (*People v. Atkins, supra*, 25 Cal.4th at pp. 80-81.) Though the defendant did not intend to cause the resulting forest fire, he did intend to ignite a fire for an illegal purpose. This met the willful requirement of arson because the defendant intentionally started the fire. It met the "malicious" requirement of arson because the defendant started the fire to burn down a home.

Unlike the facts in *Atkins*, the juvenile court in the present matter found that appellant intended nothing more than to play with firecrackers. According to the court, appellant did not intend to cause a fire, and did not intend to burn forest land or otherwise cause harm. (I RT 66.) Indeed, the court recognized that appellant threw the cherry bomb on a cement area to prevent a fire from starting. (I RT 64.)

Despite the juvenile court's recognition that appellant did not intend to cause a fire, the court found appellant guilty of arson because he intended to ignite a firecracker. This, the juvenile court reasoned, proved appellant consciously disregarded a "substantial and unjustifiable risk" that

his conduct would start a fire and burn property. (I RT 70.) Ironically, the juvenile court used the statutory language of recklessness in finding appellant guilty of arson. The court also misinterpreted the mental state for arson.

The plain meaning of the statutory language defining the terms “willfully” and “maliciously” requires, at the very least, an intent to cause the resulting harm. (*People v. Atkins, supra*, 25 Cal.4th at pp. 85, 86.) It is not enough that the defendant merely intended to commit the act that put into motion a set of circumstances resulting in unintended harm. (See *Ibid.*) Though it is true the crime of arson is not limited to instances of directly setting a “structure, forest land, or property” on fire, the defendant must have intended that the fire he caused serve a malicious purpose. (§ 451.)

This Court has held that the term “willfully” means an act is committed intentionally. (*People v. Atkins, supra*, 25 Cal.4th at p. 85.) The requirement that the defendant act “maliciously” means the defendant’s willful act is intended to do cause harm. (§ 450, subd. (e); *People v. Atkins, supra*, 25 Cal.4th at p. 85.) Because arson is a general intent crime, it is not necessary that appellant intended to burn the hillside, but he must have intended cause the ignition of a fire that would result in some type of harmful end. Thus, the juvenile court was incorrect when it concluded appellant was guilty of arson because he purposefully caused a firecracker to be lit. A conviction of arson required proof that appellant intended to cause a fire by lighting the firecracker, and further intended that the fire would result in harm.

Appellant’s act of causing a firecracker to be lit in a forested area is the same as this Court’s example of the lesser crime of illegally setting a

fire. According to this Court, lighting a match near combustible material with no intent to start a fire burn is not arson. (*Id.*, at p. 89.) Similarly, lighting a firecracker then tossing it on concrete to prevent a fire is not arson. The findings of the juvenile court precluded finding appellant guilty of arson under this standard, as there was no proof appellant intended to cause a fire, let alone a fire that would result in harm.

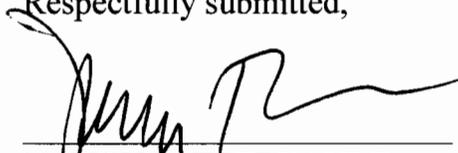
Appellant, along with two other boys, intended to play with firecrackers to hear a loud noise. They were aware of, and consciously disregard the substantial and unjustifiable risk that lighting a firecracker on a hillside would cause the hillside to burn. (§§ 450, subd. (f), 452.) Based on the plain meaning of the arson statute and this Court's interpretation of that statutory language, appellant's conduct was reckless and resulted in an accidental fire. He did not commit arson because the fire was neither willful nor malicious. (*People v. Atkins, supra*, 25 Cal.4th at p. 89.) The absence of malice in this case precluded the juvenile court from finding appellant guilty of arson. The Court of Appeal's decision was correct and should be affirmed.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that the Court affirm the Court of Appeal's decision's as the correct interpretation of terms "willfully" and "maliciously," as used in section 451. The evidence here was insufficient to meet the intent requirement of arson.

Dated: June 14, 2010

Respectfully submitted,



NANCY L. TETREULT
Attorney for Appellant

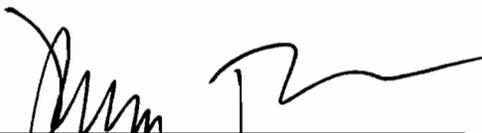
CERTIFICATE OF WORD COUNT

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The text of this brief consists of 5,999 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: June 14, 2010

By



Nancy L. Tetreault, Esq.
Attorney for Appellant

DECLARATION OF SERVICE BY MAIL

Re: **In re J.H.**

Case No. **S179579**

I, Nancy L. Tetreault, am employed in the County of Los Angeles, State of California. I am over 18 years of age, a member of the State Bar and not a party to the within action. My business address is 346 No. Larchmont Boulevard, Los Angeles, California.

I served a copy of the attached **Appellant's Opening Brief on the Merits** on the parties listed below by placing a true copy thereof in an envelope addressed as follows:

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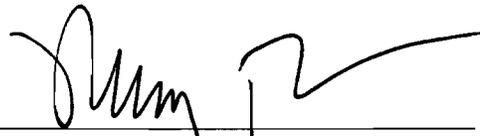
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Each envelope was then sealed, fully prepaid postage was affixed, and each envelope was deposited in the United States mail at Los Angeles, California, on **June 14, 2010**.

I declare under penalty of perjury that the foregoing is true and correct. Executed on **June 14, 2010**, at Los Angeles, California.



NANCY L. TETREAUULT

