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Holbrook v. State:

Arson and Reckless Endangerment Do Not Have to be Merged at Sentencing Because They are Considered Separate Crimes

By Toni Boettcher

In a case of first impression, the Court of Appeals of Maryland held reckless endangerment and arson are separate crimes for double jeopardy purposes and, therefore, do not have to be merged at sentencing. *Holbrook v. State*, 364 Md. 354, 772 A.2d 1240 (2001). The court further held Legislative intent was clear that persons convicted of arson might also be convicted of reckless endangerment.

Holbrook, the defendant, lived with his girlfriend and several of her family members at the residence that is the subject of this case. Following a physical altercation with his girlfriend, Holbrook was told to leave the home and not return. Holbrook returned to the home several times. When his girlfriend refused to talk to him, he threatened to “get all of them” or to “burn the house down.” On the day of the fire, Holbrook went to the home to talk to his girlfriend. After being told she was not home, Holbrook loitered outside the residence for about 45 minutes. Later that night, the house was set on fire. Holbrook was seen across the street from the home about ten minutes after the fire was discovered. The eight people inside the house escaped without injury.

Holbrook was tried in a bench trial in the Circuit Court for Wicomico County and was found guilty of one count of first-degree arson and eight counts of reckless endangerment. At

sentencing, Holbrook received thirty years for the arson conviction, of which seven and one-half years were suspended. He was sentenced to five years for the first reckless endangerment conviction, to run consecutive with the arson sentence. Holbrook received five years for each of the seven remaining reckless endangerment convictions, to run consecutive to the arson sentence, but concurrent to the first reckless endangerment sentence and to each other. The Court of Special Appeals of Maryland affirmed the trial court, and the Court of Appeals of Maryland granted certiorari and affirmed.

In reaching its decision, the court of appeals first examined legislative history to determine the Legislature’s intent when drafting the reckless endangerment statute. *Id.* at 362, 772 A.2d 1246. The court found the statute was constructed for the purpose of “detering the commission of potentially harmful conduct before an injury or death occurs.” *Id.* at 366, 772 A.2d 1247 (citing *State v. Pagotto*, 361 Md. 528, 762 A.2d 97 (2000)). Because the intent of the statute was to prevent the commission of potentially harmful conduct, a defendant could be found guilty even if no actual injury occurred. *Id.* The court determined it did not matter whether the accused intended his conduct to create a substantial risk of injury or death. *Id.* at 367, 772 A.2d 1247. Reckless endangerment can be

found if the act would have been seen as a gross departure from the standard of conduct that a law-abiding person would observe. *Id.* (citing *Minor v. State*, 326 Md. 436, 605 A.2d 138 (1992)).

Next, the court examined the history of arson. *Id.* at 367, 772 A.2d 1248. The statute evolved from the common law, which defined arson as the “malicious burning of the dwelling of another.” *Id.* (citing *Brown v. State*, 285 Md. 469, 403 A.2d 788 (1968)). Today, the statute defines arson as “willfully or maliciously setting fire to or burning a dwelling or occupied structure, whether the property of the person or another.” *Id.* (citing Md. Code (1957, 1996 Repl. Vol.), Art. 27, § 6(a)). “Willfully” is defined as an act that is done intentionally, knowingly, and purposefully. *Id.* at 369, 772 A.2d 1248. “Maliciously” is defined as an act done with the intent to harm a person or property. *Id.* To consider a structure a “dwelling,” it must be set up for overnight accommodations, although it is not necessary that the building actually be occupied at the time of the arson. *Id.*

The court then looked at the required evidence test, which determines for double jeopardy purposes whether the different offenses, growing out of the same occurrence, should be merged and treated as the same offense. *Id.* at 370, 772 A.2d

Recent Developments

1249. Under this test, if each offense contains at least one element necessary to secure a conviction that the other does not, the offenses are not considered the same and merger need not occur to prevent double jeopardy. *Id.* (citing *Williams v. State*, 323 Md. 312, 593 A.2d 671 (1991)).

In the instant case, arson and reckless endangerment each have one differing element; arson requires a defendant to act "willfully and maliciously," while reckless endangerment requires a defendant to act "recklessly." Therefore, the two offenses do not merge. *Id.* at 371, 772 A.2d 1249. In discussing the difference between the elements of arson and reckless endangerment, the court reasoned the Legislature was clear in its definition of "malicious" and "willful" in the arson statute and it intended arson to be a specific intent crime. *Id.* at 371, 772 A.2d 1250. On the other hand, in view of the fact that reckless endangerment requires a person to consciously disregard any risk of harm to other people, the Legislature intended reckless endangerment to be a general intent crime. *Id.* Furthermore, arson is a crime against habitation, whereas reckless endangerment is a crime against people. *Id.* at 372, 772 A.2d 1250. As Holbrook was convicted and sentenced on two separate crimes, the court determined there was no double jeopardy violation. *Id.* 373, 772 A.2d 1251.

Finally, the court considered the rule of lenity, which requires that when there is doubt or ambiguity as to the legislative intent regarding multiple punishments for the same act, the conflict will be resolved against "turning a single transaction into

multiple offenses." *Id.* (citing *Williams v. State*, 323 Md. 312, 593 A.2d 671 (1991)). The purpose of this rule is to prevent courts from increasing the statutory penalty when it is not certain how much punishment the Legislature intended. *Id.* The court determined the Legislature worded the reckless endangerment statute to remove the ambiguity. *Id.* at 374, 772 A.2d 1251.

In *Holbrook v. State*, the Court of Appeals of Maryland held reckless endangerment and arson do not have to be merged for sentencing purposes because they are separate crimes. In the past, the general intent of reckless disregard for consequences was substituted for the specific intent required to establish the *mens rea* element of arson. This is no longer the case. This ruling makes clear the importance of the protection of human life in our society. It also attempts to deter potentially harmful conduct by allowing for separate punishments for a single act, even if there are no injuries.

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