

A man started a large fire on the back acreage of his expansive rural property, which borders a fertilizer plant. A witness told police that the man started the fire to clear brush from his property. As a result, the man was charged with violating a state statute making it a crime to "recklessly create a risk of widespread injury or damage in the employment of fire, explosives, or other dangerous means." At trial, the prosecutor called the witness who testified that she watched the man set the fire less than 50 yards from the fertilizer plant. The witness also unexpectedly testified that, while starting the fire, the man stated that he intended it to spread to the fertilizer plant because he hated the plant owner.

The jurisdiction has adopted the Model Penal Code with regard to mens rea.

If the jury believes the witness's testimony, can the man be properly convicted based upon the evidence presented at trial?

- A. No, because the testimony established a purposeful rather than reckless mental state, which is required for conviction.
- B. No, because the man started the fire on his own property.
- C. Yes, because the man acted purposely.
- D. Yes, because the witness described a reckless mental state.

Explanation:

The **Model Penal Code** utilizes the following **hierarchy** of **culpable mental states**:

purposely – acting with a conscious objective to engage in conduct or to cause a particular result

knowingly – acting with awareness that conduct is of the nature required by a crime or with practical certainty that conduct will cause a particular result

recklessly – acting with a conscious disregard of a substantial and unjustifiable risk amounting to a gross deviation from the standard of conduct a law-abiding citizen would exhibit

negligently – acting with a lack of awareness of a substantial and unjustifiable risk amounting to a gross deviation from the standard of care a reasonable person would exhibit

When an **offense requires** proof that the defendant acted with a **particular mental state** (ie, mens rea), evidence that the defendant actually possessed a **more culpable mental state** will **satisfy the mens rea requirement**. That is because a more culpable mental state naturally encompasses a lesser one.

Here, the man was charged with *recklessly* creating a risk of widespread injury or damage by starting a large fire near a fertilizer plant. The witness's testimony at trial showed that the man *purposely* created the risk of widespread injury or damage because he intended for the fire to spread to the fertilizer plant (**Choice D**). Since purposely is a more culpable mental state than recklessly, the man can be properly convicted (**Choice A**).

(Choice B) The statute provides no protection for a defendant who created the risk of widespread injury or damage from his own property. Therefore, this is not a basis to acquit the man.

Educational objective:

When an offense requires that the defendant acted with a particular mental state, evidence that the defendant actually possessed a more culpable mental state will satisfy the mens rea requirement for the offense.

References

Model Penal Code § 2.02(5) (substitutes for negligence, recklessness, and knowledge).

Substitution of culpable mental states
(higher mental state satisfies lower mental state)

