CHAPTER FIVE: *MENS REA*, CONCURRENCE, AND CAUSATION

INTRODUCTION

The bedrock principle of criminal law is that a crime requires an act or omission and a criminal intent. The appropriate punishment of an act depends to a large extent on whether the act was intentional or accidental. Law texts traditionally have repeated that *Actus non facit rum nisi mens sit rea:* "there can be no crime, large or small, without an evil mind." The "mental part" of crimes is commonly termed *mens rea* ("guilty mind") or *scienter* ("guilty knowledge") or criminal intent. The criminal intent must occur at the same time as the criminal act. This is known as concurrence.

CRIMINAL INTENT

The Illinois Criminal Code separates the type of criminal intent into four categories: Purpose, knowledge, reckless, and negligence. According to (720) Criminal Code 1961, Article 4, Section 4.4-4.7:

> (720 ILCS 5/4-4) (from Ch. 38, par. 4-4)
> Sec. 4-4. Intent.
> A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.
> (Source: Laws 1961, p. 1983.)
>
> (720 ILCS 5/4-5) (from Ch. 38, par. 4-5)
> Sec. 4-5. Knowledge.
> A person knows, or acts knowingly or with knowledge of:
> (a) The nature or attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.
> (b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct.
> Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.
> (Source: Laws 1961, p. 1983.)
>
> (720 ILCS 5/4-6) (from Ch. 38, par. 4-6)
> Sec. 4-6. Recklessness.
> A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.
> (Source: Laws 1961, p. 1983.)
>
> (720 ILCS 5/4-7) (from Ch. 38, par. 4-7)

> Sec. 4-7. Negligence.
> A person is negligent, or acts negligently, when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, described by the statute defining the offense; and such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.
> (Source: Laws 1961, p. 1983.)

CAUSATION

Causation is central to criminal law and must be proven beyond a reasonable doubt. The requirement of causality is based on two considerations:

- *Individual Responsibility.* The criminal law is based on individual responsibility. Causality connects a person's acts to the resulting social harm and permits the imposition of the appropriate punishment.
- *Fairness.* Causality limits liability to individuals whose conduct produces a prohibited social harm. A law that declares that all individuals in close proximity to a crime are liable regardless of their involvement would be unfair and penalize people for "being in the wrong place at the wrong time." Individuals might hesitate to gather in crowds or bars or to attend concerts and sporting events.

It is important to note that Illinois law does not require unequivocal or unqualified evidence of causation.

CASE STUDY

People v. Herman **No. 1-02-3383** Defendant provided a statement to police which was stipulated to by the parties and read into the record. According to defendant's statement, beginning in late March 2002, defendant observed drug activity in the parking lot of 6132 South Kedzie. He subsequently provided Chicago police officer Andrew Costello with information regarding the sale of drugs in the area. On April 11, 2002, defendant climbed through one of the back windows of the building at 6132 South Kedzie and observed a container marked "biohazard." There were a number of needles in the container which he spread out onto the floor. Defendant saw a couple of people on the second floor who told him not to touch "their stuff." Defendant proceeded to go back downstairs and placed a T-shirt on top of a cardboard box. He lit the T-shirt on fire, climbed back outside the building, and walked to the front. Defendant made sure that the people he had previously seen inside the building exited safely. Defendant acknowledged that he had made a mistake in starting the fire and apologized. At trial, Reverend Luis Ruiz testified that in 1998, he purchased the brick building at 6132 South Kedzie for use as a church. Services had been held in the building for a period of months before the building was boarded up for remodeling. Ruiz inspected the building on April 12, 2002, and it was completely burned out.

Charles Swan, a 19-year veteran of the Chicago fire department, testified that on the morning of April 11, 2002, he responded to a report of fire at 6132 South Kedzie. There were approximately 10 other firefighters at the scene when he arrived, some of whom were already in the burning building, while others were on the roof. Swan was assigned to climb a 20-foot wooden ladder in order to knock a hole in the roof to allow smoke to escape. Swan and another firefighter took a ladder from the truck, placed it against the back of the building, and rested the ladder on the gravel ground. While climbing the ladder, Swan carried an ax, which weighed approximately 15 pounds, and a pipe pole that was approximately 6 feet long.

After Swan climbed to the top of the building, the ladder started to "kick *** out from the building." The bottom was sliding away from the building and the top was sliding back. Swan "was holding on and [he] knew [he] was getting ready to come off the building the wrong way." Swan fell off the ladder approximately 18 feet from the ground, broke his right leg and seriously injured his knee. At the time of trial, he was unable to return to work as a result of the injuries he sustained on April 11, 2002. Swan denied that smoke or fire caused him to fall off of the ladder.

On cross-examination, the following colloquy, relied upon by defendant, transpired between defense counsel and Swan:

"Q. Isn't there supposed to be somebody down there steadying that ladder?

A. Yes.

Q. Who was that?

A. The lieutenant.

Q. And he didn't or couldn't or what was it?

A. He didn't.

Q. Did he walk away from that ladder?

A. Yes."

The trial court then posed the following questions:

"[THE COURT]: You say that your lieutenant was at the bottom of the ladder at the time you climbed up?

A. At the time that I climbed up.

Q. Was he supposed to stay there and stabilize that ladder while you climbed up or what is normal procedure?

A. Yes, sir. That's the normal procedure.

Q. Do you know why he did not remain there?

A. No I don't."

Chicago police officer Joseph Nemcovic testified that on April 11, 2002, he responded to a fire on South Kedzie. The building was engulfed in flames by the time he arrived. He observed defendant standing in the alley behind the building. Defendant was arrested after Officer Nemcovic interviewed an eyewitness who identified defendant as the individual who set the fire.

The trial court found defendant guilty of aggravated arson, reasoning:

"Well, I agree that the firemen [sic] was injured acting in the line of duty and as a result of the arson. The fact that the sergeant walked away, I don't know the facts and circumstances surrounding it. I don't believe this fact alone would be an intervening or superceding circumstances that would exempt the defendant under the statute. And based on that and my interpretation of the statute I find that the State has proven their case beyond a reasonable doubt."

Defendant filed a posttrial motion challenging his indictment. The trial court denied defendant's motion for a new trial and motion in arrest of judgment, reasoning that the indictment "incorporates the statute with the specific wording therein right in the indictment. So there should be no confusion." Defendant was sentenced to six years' imprisonment.

Who should be held liable? (This is a civil rather than a criminal case, but the reader should be able to apply the principles of causality discussed in the text)

Abrams v. City of Chicago (811 N.E.2d 670)The relevant facts are not in dispute. In the early morning hours of November 18, 1997, plaintiff called the City's 911 service, requesting an ambulance to take her to the hospital because she had gone into labor with her seventh child. Her labor pains were 10 minutes apart, and she did not have a vehicle of her own to drive to the hospital. The 911 dispatcher, later identified as Vicki Hernandez, told plaintiff that the situation was not an emergency and then hung up the phone.

A few minutes later, plaintiff's sister, Dorothy Brown, placed another 911 call on behalf of plaintiff. The dispatcher for this second call, later identified as Antoinette Cacioppo, explained to Brown that labor pains at 10-minute intervals did not constitute a medical emergency. She then gave Brown the number of a private ambulance service.

Vicki Hernandez, the dispatcher who handled the first call, testified in her deposition that the City's Office of Emergency Communications (OEC) uses a system of flip cards to determine whether to send an ambulance. When pains are less than five minutes apart in a second pregnancy, birth is considered imminent. If a woman called without a way to get to the hospital and her contractions were more than five minutes apart, an ambulance would not be sent. Hernandez acknowledged that the phrase "when in doubt, send" appears on all the cards.

OEC flip card No. 26 lists the dispatch priorities for pregnancy-related matters. Priority I calls for an ambulance to be sent under the following conditions: bleeding in the third trimester; fainting; more than four months pregnant [***3] with pains less than five minutes apart; pregnant and hemorrhaging; and delivery or postpartum. Priority III provides that an ambulance will not be sent under the following conditions: pains greater than five minutes apart if private transport is immediately available; or if pregnant but no hemorrhage or pain.

Daniel Bull, a third dispatcher on duty at the time 911 calls were handled, testified that, although it was not covered by the rules, if a woman called for an ambulance with pains 10 minutes apart on a successive pregnancy and private transport was not available, he personally would have sent an ambulance in that situation. He based his opinion on the "when in doubt, send" policy and on the fact that labor pains at 10-minute intervals for a second or later child means that the baby is closer to being born than a first child would be.

After the second 911 call, Brown called a private ambulance service and was told that they did

not have an ambulance available. Plaintiff apparently did not call back the 911 dispatcher and inform her that private transport was not available. Instead, plaintiff telephoned her friend, Henrietta Young, who agreed to leave work to take her to the hospital. Young arrived at plaintiff's residence five minutes later. As they drove to the hospital, Young generally observed the speed limit and obeyed traffic signals. However, when Young came to the intersection at King Drive and Pershing, she held down her horn and went through a red light. According to Young's deposition, she looked both ways before proceeding, but did not see any traffic coming. In the intersection, Young's car collided with a vehicle driven by Gregory Jones. Jones was speeding at the time, traveling between 75 and 80 miles per hour. In a handwritten statement to police, Jones admitted that he had a beer, two double shots of rum, and crack cocaine, before getting behind the wheel of his car. He also admitted that he was driving on a suspended licence. Plaintiff was seriously injured in the collision. She spent two weeks in a coma, and her baby, Georgia Sabrina White, died after delivery.

Plaintiff sued the City, alleging willful and wanton misconduct in the failure to provide ambulance service.

QUESTIONS FOR REVIEW

1. What does a crime require?
A. An act
B. A failure to act
C. A criminal intent
D. All of the above

Answer: D

2. True or False? It is important to note that Illinois law requires unequivocal or unqualified evidence of causation.

Answer: False

3. Which of the following is not a type of criminal intent?
A. Purpose
B. Deliberate
C. Knowledge
D. Reckless

Answer: B

4. What two considerations is the requirement of causality based on?
A. Individual responsibility and fairness
B. Social responsibility and legal guidelines
C. Social responsibility and fairness
D. Individual responsibility and legal guidelines

Answer: A

5. True or False? A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.

Answer: True

WEB RESOURCES

- http://www.dcba.org/legal/case_law0402.htm
- http://web.lexis-nexis.com.
- http://www.isp.state.il.us/docs/cii/cii02/cii02execsumm.pdf