

CHAPTER FIVE: MENS REA, CONCURRENCE, CAUSATION

Specific Intent

Chapter 5 of the text discusses mens rea – intent, culpability, etc. The Ohio Revised Code establishes that a person cannot be criminally liable unless:

...the person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

(Ohio Revised Code, § 2901.21 (C), 2000, available at <http://codes.ohio.gov/orc/2901.21>).

Generally, the degree of culpability for an offense is found in the statute that defines the offense. There are exceptions to this, however, and they will be discussed shortly.

In Ohio, prior to October 2000, evidence of voluntary intoxication was available as an affirmative defense when a defendant who was charged with a specific intent crime could demonstrate that he was "so intoxicated as to be mentally unable to intend anything." (see *State v. Otte*, 74 Ohio St. 3d 555 (1996)) But pursuant to [R.C. 2901.21\(C\)](#), which was discussed in the previous chapter and which became effective in October 2000:

...voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense (Ohio Revised Code, § 2901.21 (C), 2000, available at <http://codes.ohio.gov/orc/2901.21>).

Thus, involuntary intoxication is no longer available as a defense to specific intent crimes in Ohio.

The text discusses the types of intent described in the Model Code – purposely, knowingly, recklessly, and negligently, violating a law. These same categories can be found in the Ohio Revised Code (§ 2901.22, 1974, available at <http://codes.ohio.gov/orc/2901.22>). Each of these types of intent impacts how an offender's behavior will be defined and punished.

For example, the crime of homicide generally consists of causing the death of another. But the intent behind that behavior determines how it is more specifically defined, and what sanctions will attach. For example:

Aggravated murder – is purposely causing the death of another. It is the most serious form of homicide in Ohio. The punishment for this offense is life imprisonment or the death penalty (Ohio Revised Code, § 2903.01, 2002, available at <http://codes.ohio.gov/orc/2903.01>)

Voluntary manslaughter – is knowingly causing the death of another while under the influence of a sudden fit of passion or rage. This is a first-degree felony and the punishment is three to ten years imprisonment (Ohio Revised Code, § 2903.03, 1996, available at <http://codes.ohio.gov/orc/2903.03>).

Involuntary manslaughter – is causing the death of another as a result of committing, or attempting to commit, a felony. This is also a first-degree felony and the punishment is three to ten years imprisonment (Ohio Revised Code, § 2903.04, 1996, available at <http://codes.ohio.gov/orc/2903.04>)

Reckless homicide – is recklessly causing the death of another. This is considered a third-degree felony with a punishment of one to five years imprisonment (Ohio Revised Code, § 2903.041(A), 1999, available at <http://codes.ohio.gov/orc/2903.041>).

Negligent homicide – is negligently causing the death of another This is considered a first-degree misdemeanor with a punishment of no more than 180 days in jail (Ohio Revised Code, § 2903.05(A), 1996, available at <http://codes.ohio.gov/orc/2903.05>).

This is not an exhaustive list of all homicide crimes in Ohio (a more complete discussion is include in Chapter 11). However, it demonstrates how culpability and punishments differ for the same crime of homicide depending on an offender’s intent.

Strict liability

As stated in the text, strict liability refers to liability based on the act only – intent is not required. A common example of a strict liability crime is statutory rape. This criminalizes sexual conduct with a minor regardless of whether the defendant knew that the victim was a minor. A number of offenders have been convicted of statutory rape when they believed that the victim was above the age of consent when in fact the victim was not. The offenders did not intend to have sexual intercourse with a minor, but they are liable anyway because they committed an act for which they are strictly liable.

Most, but not all statutes in Ohio specify a level of culpability. When a statute does not specify a level, it becomes subject to the following “catch-all” provision:

[w]hen the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for the person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense (Ohio Revised Code, § 2901.21 (B), 1996, available at <http://codes.ohio.gov/orc/2901.21>).

This catch-all provision indicates that when a statute does not contain a level of culpability, it must be closely examined. If it appears that the legislature intended that the statute impose strict liability, then defendants can be found liable for violating the statute regardless of their intent. But if it does not appear that the legislature intended strict liability, defendants will be liable if they violate the statute recklessly.

When interpreting the catch-all provision, the Ohio Supreme Court has explained that a statute must truly indicate that the legislature intended strict liability because the Ohio Supreme Court is unwilling to draw inferences when something is merely omitted and insert language into a statute for the legislature. *State v. Collins*, 89 Ohio St. 3d 524, (2000).

Causation

One of the tenets of criminal law is that an act causes a particular harm. This seems straightforward, but it is not quite so simple. As the text notes, if an offender shoots a victim, should the offender be responsible for the death if the victim did not receive the medical attention that would have saved his life? This is where the law can become murky; the following example from Ohio examines a case that involved an intervening cause. The case is *State v. Hanna*, 95 Ohio St. 3d 285 (2002).

State v. Hanna

At Lebanon Correctional Institution, the defendant attacked his cellmate. While his cellmate was asleep, the defendant jabbed a paintbrush into his victim's eye socket, into which it broke off, and hit him over the head with a padlock wrapped in a sock. The victim awoke suddenly, but did not realize exactly how the defendant had hit him. The victim was taken to a nearby hospital; he was lucid, conscious, and talking to the doctor. Since the victim did not know how the defendant had injured his eye, he and the doctor did not realize that part of a paintbrush handle was lodged in the victim's brain. The doctor examined the victim and conducted an X-ray, which was negative. The victim was sent back to the prison to be treated at the prison medical center.

The next day at the prison, the prison medical director examined the patient and, although there were no outward signs of brain trauma, he ordered a CT scan anyway. The scan found the paintbrush lodged in the brain and, on August 27, surgery was performed to remove it. The victim was given antibiotics, seemingly recovered, but then his condition deteriorated and he died. The coroner indicated that the victim died of his brain injury, and that the paintbrush created the injury that ultimately killed him.

The defendant was charged with the victim's murder. At trial, he called doctors to the stand to testify that the victim's death was not caused by the defendant, but by the performance of the hospital doctor who failed to order a CT scan. According to these experts, the doctor's decision was crucial – if a CT scan had been ordered when the victim first arrived at the hospital, he would have been treated for his injuries earlier and would not have developed the trauma and infection that ultimately killed him. The defendant argued that the doctor's inaction was an intervening cause of the victim's death.

Relying on prior precedent, the Ohio Supreme Court held that:

one who inflicts injury upon another is criminally responsible for that person's death, regardless of whether different or more skilled medical treatment may have saved his life *State v. Johnson*, 56 Ohio St. 2d (1978, p. 40).

Additionally, the court ruled that simple negligence on the part of the doctor was not enough to absolve the defendant of responsibility; gross negligence or willful maltreatment must occur. In this case, there was no evidence of either of these. In fact, doctors representing the state argued that, although the hospital doctor may not have applied enough care, he did not willfully fail to do so. The hospital doctor was at most negligent, not grossly negligent, and did not willfully mistreat the victim. The court concluded by referring to the coroner's report; the paintbrush lodged in the brain was responsible for the victim's death, not the hospital doctor.

REFERENCES

Ohio Revised Code, <http://codes.ohio.gov/>

State v. Collins, 89 Ohio St. 3d 524 (2000)

State v. Hanna, 95 Ohio St. 3d 285 (2002)

Chapter 5: Mens Rea, Concurrence, Causation *State v. Otte*, 74 Ohio St. 3d 555 (1996)

REVIEW QUESTIONS

1. Which of the following is NOT considered a culpability level in Ohio?
 - a. purposely
 - b. knowingly
 - c. negligently
 - d. mistakenly

2. Which of the following is true regarding voluntary intoxication and culpability in Ohio?
 - a. voluntary intoxication is never a defense to liability in Ohio
 - b. voluntary intoxication is no longer a defense to specific intent crimes in Ohio
 - c. voluntary intoxication has been used extensively as a defense in Ohio
 - d. b and c are true

DISCUSSION QUESTION

This chapter discusses strict liability. Intent is irrelevant for strict liability crimes, such as statutory rape. What are the advantages and disadvantages to strict liability crimes? Can you think of any strict liability crimes that would be better if they had an intent requirement? Can you think of any crimes that have an intent requirement that might be better if they were strict liability crimes?

WEB RESOURCES

- www.law.upenn.edu/fac/phrobins/intromodpencode.pdf - a website that provides information about the Model Penal Code

- <http://aspe.hhs.gov/hsp/08/SR/StateLaws/> - a website from the Lewin Group that provides extensive information about statutory rape laws throughout the country