

CHAPTER FOUR: *ACTUS REUS*

INTRODUCTION

A crime comprises an *actus reus*, or a criminal act or omission, and a *mens rea*, or a criminal intent. *Actus reus* generally involves three elements or components: (1) a voluntary act or failure to perform an act, (2) that causes, (3) a social harm condemned under a criminal statute. Illinois does not punish individuals on the basis of mere thoughts. Thus, under the Illinois statute, an individual is punished for criminal acts or a failure to act, as well as a criminal intent. Criminal intent will be discussed in the next chapter.

CRIMINAL ACT

The Illinois Criminal Law Manual defines an act as a failure or omission to take action. According to (720) Criminal Code 1961, Article 4, Section 4.1, “a material of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing.”

POSSESSION

Possession is a preparatory offense. The thinking is that punishing possession deters and prevents the next step—a burglary, sale of narcotics, or the use of a weapon in a robbery. The possession of contraband such as drugs and guns may also provoke conflict and violence. According to (720) Criminal Code 1961, Article 4, Section 4.2, “possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his possession.”

CASE STUDY

Involuntary Act?

People of the State of Illinois v. Seth Grant (377 N.E.2d 4) After a jury trial in the circuit court of Logan County, the defendant, Seth Grant, was convicted of aggravated battery and obstructing a police officer. The court entered judgment on both verdicts, but sentenced the defendant to 3 to 9 years of imprisonment only for the offense of aggravated battery. A divided appellate court reversed the convictions and remanded the cause for a new trial so that the jury could be instructed on both an insanity defense and on the defense of involuntary conduct. (46 Ill. App. 3d 125, 131.) We granted the State leave to appeal.

The evidence adduced at trial indicated that the defendant is an epileptic who is susceptible to both grand mal and psychomotor seizures. It was also established that during the 2 1/2 hours prior to the incident which precipitated defendant's arrest, defendant had four mixed drinks at a tavern. A fight erupted at the tavern, and the police officer who arrived to quell the fight was struck by the defendant.

The defendant was arrested and transported to the city jail. There, within the hour, he was discovered lying on a cell cot, gasping for breath and convulsing in a manner symptomatic of a grand mal seizure. He was immediately rushed to a Lincoln hospital, and, later that night, was taken to a Springfield hospital. The following morning, defendant was examined and interviewed by a physician specializing in psychiatry. The physician's diagnosis at that time was that the defendant suffers from acute alcoholism and epilepsy. The physician, called by defendant, testified that, in his opinion, the defendant was experiencing a psychomotor seizure at the time he

struck the police officer, and that defendant lacked the substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Illinois does not have a Good Samaritan Statute. However, an individual must intervene if he/she has a status relationship, a contract, or assumes a duty. Given that, does the defendant have a duty to intervene?

People of the State of Illinois v. Violetta Burgos (606 N.E.2d 1201) Concerning the case of Violetta Burgos, Elijah Staniel and Burgos were charged by indictment with murder, aggravated criminal sexual assault, and criminal sexual assault. In a bench trial, they were convicted of the murder of Burgos' child, Electicia Asbury. Burgos had lost custody of the child in 1984 after Electicia had suffered a broken leg in a child abuse case involving Staniel. One of the conditions of her regaining the custody of the child was that she refrain from having any contact with Staniel. Burgos, however, admitted that she continued her relationship with Staniel, concealing that fact by living in separate residences. Burgos stated that she had let Staniel assume the role of disciplinarian over the victim in March 1986.

On April 19, 1986, Electicia Asbury died as a result of multiple blunt force injuries. According to statements made by both Staniel and Burgos, in the morning hours of that day, Staniel had spanked the girl because she had urinated on the floor. Later that day, after lunch, Electicia spit up on the floor. Staniel then punched the three-year-old girl twice in the stomach because her buttocks were too raw. Later that afternoon, Electicia lost consciousness. Staniel admitted biting the victim.

Burgos took the victim home, carrying the limp body, as the child could not walk. As Burgos carried Electicia up the stairs to their apartment, they fell. After Burgos' attempts to revive the little girl were unsuccessful, she contacted the paramedics. Electicia was taken to St. Francis Hospital, where she was pronounced dead that same day.

Detective Gildea testified for the State and related comments made to him by Staniel. On many occasions, Staniel administered punishment, including beatings with a belt, exercises and striking in various manners. Detective Gildea also testified to comments made to him by Burgos. Burgos stated that since March, Staniel had taken over the disciplining of the child, and the punishment sometimes involved spanking (sometimes with a strap) and sometimes exercises, such as headstands.

A post-mortem examination conducted by forensic dentist Dr. John P. Kenney revealed that Burgos had also participated in abusing the victim. Dr. Kenney concluded that five bite marks found on the right cheek, right arm, right buttock and back of the victim were inflicted by Burgos. According to Dr. Kenney, these marks showed that the victim had been abused over a long period of time. Of the approximately 21 remaining bite marks, five others were inflicted by Staniel.

Dr. Mitra Kalekar testified that she was deputy medical examiner for Cook County and that her field of expertise was forensic pathology. She stated the victim died as a result of multiple repeated blunt force injuries to her body, which had been sustained over a period of time. At the time of her death, Electicia had a ruptured viscus and intestine, as well as injuries to her bowel and liver. She also had numerous blunt trauma injuries of lacerations, bruises, abrasions and scars about her head, face, body and limbs. These included lacerations to her left ear and chin, injuries in the vaginal area, a cluster of bruises on the right side of her forehead, and other multiple bruises throughout both arms, both legs, chest and abdominal areas, back and buttocks. She also had an area of a scalding burn on her lower leg. Dr. Kalekar noted that these wounds were in various stages of healing.

When questioned by the police concerning the numerous injuries to her daughter, Burgos related the account of the fall that had occurred on the stairs, but did not offer any other explanation. Burgos did not initially tell the police of her contact with Staniel because of the Department of Children and Family Services prohibition on such contact. She later informed the police of her living arrangements with Staniel and his role as disciplinarian.

QUESTIONS FOR REVIEW

1. Which of the following is an element of *actus reus*?
 - A. A voluntary act
 - B. A failure to perform an act
 - C. An intent
 - D. Both A and B, but not C

Answer: C

2. What type of offense is possession?
 - A. Inchoate
 - B. Preparatory
 - C. Intentional
 - D. Purposeful

Answer: B

3. True or False? The Illinois Criminal Law Manual defines an act as a failure or omission to take action.

Answer: True

4. True or False? Possession is a involuntary act if the offender knowingly procured or received the thing possessed.

Answer: False

5. True or False? Under the Illinois statute, an individual may be punished for thoughts alone.

Answer: False

WEB RESOURCES

- <http://web.lexis-nexis.com> Court cases with opinions
- <http://wings.buffalo.edu/law/bclc/web/illgrant.htm> *People v. Grant*
- <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1876&ChapAct=720 ILCS 5/&ChapterID=53&ChapterName=CRIMINAL%20OFFENSES&ActName=Criminal%20Code%20of%201961> Illinois Criminal Codes and Statutes
- Illinois Criminal and Traffic Law Manual- 2004 Edition