

CHAPTER 4: *ACTUS REUS*

Actus reus (criminal act or omission) and mens rea (criminal intent) usually go hand-in-hand when discussing criminal responsibility. The text gives each of these its own chapter; actus reus is discussed in Chapter 4, while mens rea is discussed in Chapter 5.

ACTUS REUS

Voluntary vs. Involuntary Acts

The text illustrates the Model Penal Code's definition of voluntary and involuntary acts and Ohio's definition relies heavily on this example. Section 2901.21 (A) (1) of the Ohio Revised Code provides the "requirements for criminal liability:"

The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing.

As noted in the statute, an act of omission is also subject to criminal liability. In another part of this section, voluntary intoxication is singled out as conduct that is not protected from criminal liability:

Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged (Ohio Revised Code, § 2901.21 (C), 2000).

The first part of this definition basically states that, when a person has a duty to act, but does not act due to voluntary intoxication, that person can still be held liable for failure to act. The second part of this definition refers to the defendant's ability to show his or her voluntary intoxication made it *physically* impossible for him or her to commit the crime. This was illustrated in *State v. French*, 171 Ohio St. 501 (1961). In this case, the defendant was charged with rape, but claimed that he was so drunk that he could not physically commit the act of rape. The Ohio Supreme Court ruled that a defendant has the right to try to prove this in court, but it is extremely difficult. Essentially, the court ruled that a person has to be virtually unconscious in order to prove physical inability to commit a crime. The voluntary intoxication element of the above criminal liability statute also contains a section devoted to intent; this will be addressed later in the chapter on mens rea.

This statute also contains a section dealing with involuntary acts. As stated in the text, a person is held liable for voluntary acts, the product of a conscious choice. The Model Penal Code lists the behaviors that are considered involuntary for the purposes of liability. The Ohio Revised Code mirrors the Model Penal Code:

Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts (Ohio Revised Code, § 2901.21 (D) (2)).

An Ohio case helps illustrate involuntary acts and liability. It is actually a civil case, but the assignment of liability uses the same standard as would be found in a criminal case. This case is *Roman v. Estate of Gobbo*, 99 Ohio St. 3d 260 (2003)

Roman v. Estate of Gobbo

The driver of a vehicle suffered an apparent heart attack while on the road. The car he was driving collided with two other vehicles. The driver who suffered from the heart attack and a passenger in his car died, as well as two others in the cars that were hit. Two others suffered injuries. The families of the deceased individuals in the other cars and those who suffered injuries filed a lawsuit against the estate of the driver, claiming that the driver negligently caused death and injury to others. The lawsuit claimed that the driver had a history of heart and other health-related problems and should have foreseen that this could possibly cause him to suffer a heart attack while driving; thus, he should not have been driving.

The Ohio Supreme Court was asked to rule on the viability of Ohio's "sudden medical emergency defense" or "blackout doctrine" with regard to this case. This defense is found in a previous case, *Leyman v. Haynam*, 164 Ohio St. 3d 595 (1956). Paragraphs two and three of this case illustrate the defense:

...an operator of a motor vehicle who, while driving, becomes suddenly stricken by a fainting spell or loses consciousness from an unforeseen cause, and is unable to control the vehicle, is not chargeable with negligence or gross negligence. Stated differently, fainting or momentary loss of consciousness while driving is a complete defense to an action based on negligence if such loss of consciousness was not foreseeable (p. 599-600).

An important aspect of this case was whether or not the driver's heart attack was foreseeable. The families of those who died or injured claimed that the driver's history of heart problems met this requirement. A number of doctors testified that, although the driver had health problems, the problems were not severe enough to restrict driving. Neither of the doctors indicated that they would have told the driver to stop driving. As a result, the Ohio Supreme Court ruled in favor of the driver, claiming that this case was a textbook example of the sudden medical emergency defense.

In addition to this case and others, the Ohio Jury Instructions manual offers a definition of the "blackout doctrine" that is utilized in both criminal and civil cases:

...where a person commits an act while unconscious as in a (coma) (blackout) (convulsion) due to (heart failure) (disease) (sleep) (injury), such act is not a criminal defense even though it would be a crime if such act were the product of a person's (will) (volition) (Ohio Jury Instructions Committee, 1989).

Acts of Omission

The text states that the criminal law not only imposed liability for voluntary acts, but also for acts of omission. These acts punish individuals who have a legal duty to act, but fail to do so. Typically, doctors, caretakers, lifeguards, and the like are required by law to perform certain duties; if they do not do so, they can be held criminally liable. Ordinary citizens are generally not required by law to act, but some states have attempted to enact "good Samaritan" laws that

impose criminal liability on citizens who witness criminal activity but fail to intervene. These laws have not gained momentum, specifically for the reasons addressed in the text.

Ohio law has made criminal liability possible for some individuals. Doctors, others who provide emergency care, and caretakers of children have a legal duty to provide a standard of care to their charges. An interesting case from Ohio illustrates the possible charges that a parent can face when he or she neglects a child in their care. This case comes from Ohio's Ninth District Court of Appeals and is called *State v. Davis*, 2004 Ohio App. LEXIS 2915.

State v. Davis

In this case, a mother was convicted of felonious assault and failure to provide for her son, who was functionally impaired. The mother was convicted of felonious assault because the neglect of her son resulted in serious harm to the boy. She was also convicted of neglect of a functionally impaired person again because her neglect resulted in serious harm to the boy. Felonious assault is defined as: "No person shall knowingly...cause serious physical harm to another or to another's unborn" (Ohio Revised Code, §2903.11 (A)(1), 2000), while neglect of a functionally impaired person is defined as:

No caretaker shall knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person (Ohio Revised Code, §2903.16 (A), 1996).

The defendant felt that conviction on both of these counts was prohibited because, in her view, the crimes were the same. Both felonious assault and neglect of a functionally impaired person apply to the same conduct – causing serious harm to another. The Ohio Supreme Court disagreed, stating that each crime required proof of different elements. The court ruled,

Undoubtedly, both statutes include a knowingly element and a serious physical harm element. However, felonious assault requires one to knowingly cause serious physical harm while failure to provide for a functionally impaired individual requires knowingly failing to provide alone. Failure to provide for a functionally impaired individual does not require one to knowingly cause any harm. Harm must simply result from a caretaker's failure to provide. Felonious assault, on the other hand, requires one to know that her act, or failure to act, will cause serious physical harm. Both require proof of different elements, and conviction on either will not necessarily result in a conviction on both (paragraph 7).

The key difference between the two statutes is the "knowingly" aspect. For felonious assault, the "knowingly" element applies to knowing that the act or failure to act will cause harm. For failure to provide, the "knowingly" element applies only to knowingly failing to provide care. Even though both require the outcome of serious harm, the "knowingly" aspect differentiates them, thus making them different offenses.

REFERENCES

Ohio Jury Instructions Committee (1989). *Ohio jury instructions*. Cincinnati, OH: Anderson Publishing.

Ohio Revised Code, www.ohio.gov/ohio/ohiolaws.html

Roman v. Estate of Gobbo 99 Ohio St. 3d 260 (2003)

State v. Davis Ohio App. LEXIS 2915 (2004)

State v. French 171 Ohio St. 501 (1961)

REVIEW QUESTIONS

1. Which of the following is true regarding intoxication and actus reus in Ohio?
 - a. one who becomes intoxicated voluntarily has no defense under Ohio law
 - b. one who becomes intoxicated voluntarily can use it as a defense if he or she can prove that he or she could not have physically committed the act
 - c. involuntary intoxication is met with skepticism in Ohio courts
 - d. a and c are correct

2. What was the ruling in *Roman v. Estate of Gobbo*?
 - a. the defendant could be prosecuted for the neglect of her functionally impaired son
 - b. the defendant could not be prosecuted for having an unruly child
 - c. a person cannot be held liable for damages caused as a result of a blackout caused by a heart attack
 - d. a doctor can be held liable for failure to provide adequate medical care

DISCUSSION QUESTION

Some states have tried to enact good Samaritan laws to criminalize acts of omission by ordinary citizens, those who traditionally have no legal duty to act. In effect, an ordinary citizen would be required to render some sort of assistance if he or she comes upon a crime in progress. The text discusses the Kitty Genovese case and how failure to act on the part of ordinary citizens played a role in Genovese's death. What do you think of these laws? Do you think those who ignored Genovese's screams should be prosecuted? Explain.

WEB RESOURCES

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

- www.abanet.org – the website of the American Bar Association, providing information about legal issues and links to various sites regarding the criminal law