

## **MENS REA, CONCURRENCE, CAUSATION**

### **Specific Intent**

Chapter 5 of the text discusses mens rea – intent, culpability, etc. The Ohio Revised Code establishes the requirements for intent and culpability in Section 2901.21 (A)(2):

...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.

Generally, culpability for each offense is found in each statute. There are exceptions to this, however, and these will be discussed shortly. As stated in the previous chapter regarding actus reus, voluntary intoxication is specifically indicated in this statute. With regard to intent, the statute states that,

...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).

Some defendants have argued that, when one is intoxicated, their mental state is such that they cannot form the requisite intent to commit a crime. According to the statute, however, if a person has become intoxicated voluntarily, that person may not use intoxication as a defense to criminal liability. Despite the seemingly straightforward wording of the statute, in rare instances, courts have ruled that voluntary intoxication may be used as a defense to liability for offenses that require a specific intent element:

where specific intent is a necessary element...intoxication, although voluntary, may be considered in determining whether an act was done intentionally or with deliberation or premeditation (*State v. Fox*, 68 Ohio St. 2d 53, 1981).

Although voluntary intoxication may be used as a defense to liability, it is difficult to prove. In *State v. Otte*, 74 Ohio St. 3d 555 (1996), the Ohio Supreme Court ruled that voluntary intoxication could be used as a defense only if the defendant was, “so intoxicated as to be mentally unable to intend anything” (p. 564).

The text discusses the various levels of culpability – purpose, knowledge, recklessness, and negligence. These are also defined in the Ohio Revised Code (§ 2901.22, 1974). Each of these is seen in an example from the Ohio Revised Code – the crime of homicide. Although the ultimate result is “causing the death of another,” the level of culpability that a defendant faces depends on the intent behind the homicide. Also, each level of culpability carries a different punishment.

- Aggravated murder – the most severe form of homicide in Ohio. *Purpose* is the level of culpability for this offense. The punishment for this offense is life imprisonment or the death penalty (Ohio Revised Code, § 2903.01, 2002)
- Voluntary manslaughter – *Knowing* is the level of culpability for this offense. This is a first-degree felony and the punishment is three to ten years imprisonment (Ohio Revised Code, § 2903.03, 1996).

- Reckless homicide – *Reckless* is the level of culpability for this offense. This is considered a third-degree felony with a punishment of one to five years imprisonment (Ohio Revised Code, § 2903.041(A), 1999).
- Negligent homicide – *Negligence* is the level of culpability for this offense. 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).

As noted, each of these results in the death of a victim, but the level of culpability and punishments are different depending on the intent of the offender.

### **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 (or had been told incorrectly or purposely) that the victim was above the age of consent when in fact she was not. The offenders did not intend to have sexual intercourse with a minor, but they are liable anyway because they committed the act.

In Ohio, strict liability is found in Section 2901.21 (B) of the Ohio Revised Code. It states,

When 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.

Not all statutes contain a level of culpability; thus, this statute indicates that, when this is the case, the statute must be examined for implied purpose. If culpability is not specified, but is implied, then strict liability is in place. If culpability is neither specified nor implied, then recklessness becomes the level of culpability for the offense. Despite this, the Ohio Supreme Court has ruled that, if strict liability is imposed, it must be clearly specified in the statute ; otherwise, recklessness is the level utilized: “...the General Assembly must plainly indicate that intention in the language of the statute” (*State v. Collins* 89 Ohio St. 3d 524, 2000, p. 530). The court further stated that it should not draw inferences when something is explicitly omitted and cannot insert language that is not included already.

### **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, is the offender responsible for the death if the victim did not receive the medical attention that would have saved his life? This is where the law become murky; the following example from Ohio examines causation in the form of 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 his condition deteriorated and he died on September 10. The coroner indicated that the victim died of his brain injury, that the paintbrush created the injury that ultimately killed him.

The defendant 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 doctor who did not order a CT scan. In effect, this doctor's decision not to order a CT scan was crucial – if it had been ordered at that time, the victim would have been treated for his injuries early 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.

The Ohio Supreme Court quoted precedent, ruling 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 that the hospital doctor was either of these. In fact, doctors representing the state argued that, although the hospital doctor may not have applied enough of a standard of care, he did not willfully do so. In effect, the hospital doctor was simply 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 man's death, not the doctor's negligence.

### REFERENCES

Ohio Revised Code, [www.ohio.gov/ohio/ohiolaws.html](http://www.ohio.gov/ohio/ohiolaws.html)

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

*State v. Fox* 68 Ohio St. 2d 53 (1981)

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

*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 can be used as a defense, but it is extremely difficult to prove
  - 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 crime; in effect, intent is irrelevant when committing certain types of crimes. How do you feel about strict liability crimes? Do you feel intent should be present in order for a crime to be committed? Can you think of any strict liability crimes that you feel should not be criminalized? Why or why not?

### WEB RESOURCES

- [www.law.upenn.edu/fac/phrobins/intromodpencode.pdf](http://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf) - a website that provides information about the Model Penal Code
  
- [www.lewin.com/NR/rdonlyres/ee6c4ee7ynpckrtikzxdngpdfb2gwmiw6twdlzfdy2blv7eqnt2an4yuzgiv5evzclbaiq3lobnr6e/3068overview.pdf](http://www.lewin.com/NR/rdonlyres/ee6c4ee7ynpckrtikzxdngpdfb2gwmiw6twdlzfdy2blv7eqnt2an4yuzgiv5evzclbaiq3lobnr6e/3068overview.pdf) - a website from the Lewin Group that provides extensive information about statutory rape laws throughout the country