

Regina v. G and another case brief

Business



**ASSIGN
BUSTER**

The appellants were charged on 22nd August 2000; without lawful excuse damaged by fire; commercial premises and being reckless as to whether such property would be damaged. The appellants stood trial before Judge Maher in March 2001. The appellants' case at trial was that they expected the fire to extinguish itself on the concrete.

It was accepted that neither of them conceived that there was any risk of the fire spreading. At the start of the trial submissions were made on the meaning of "recklessness". The judge ruled that he was bound to direct the jury in accordance with R v Caldwell. The Judge then directed the jury on the three matters he listed. The jury was unable to come to a decision on the same day but returned on another day and convicted the appellants. Upon receiving the verdict the judge adjourned the proceedings for a pre-sentence report.

The judge made a one year supervision in the case of each appellant. Facts: On the night of 21st -22nd August 2000, the appellants, then aged 11 and 12 respectively went camping without the permission of their parents', they entered the back yard of the Co-op Shop in Newport Pagnell. They lit some newspapers that they had found. Both defendants threw some lit newspaper under a large plastic wheelie-bin. The defendants left the yard before putting the fire to rest.

As a result the newspapers caught fire to the first wheelie-bin which then spread to the other wheelie-bin then spread to the eave, guttering, fascia and the roof and eventually spread to the adjoining buildings. The damages approximated to a sum of 1million Pounds Sterling. Issues:

1. Did the defendant damage by fire the building and the commercial premises?
2. Would the risk created by the defendant be obvious to an ordinary, reasonable, bystander?
3. Had the defendant given any thought to the possibility of there being a risk in doing what he did?

Judgment: The Appellants succeeded in having their conviction quashed. By the reasons given by Lord Bingham of Cornhill, with the support of Lord Browne-Wilkinson, Lord Steyn, Lord Hutton, and Lord Rodger of Earlsferry.

Rule(s) of Law:

1. Did the defendant damage by fire the building and the commercial premises? The appellant did damage the building and commercial premises by fire. During the proceedings, the judge pointed out that there was no doubt in the appellants damaging the building and premises by fire.
2. Would the risk created by the defendant have been obvious to an ordinary, reasonable, bystander? It is accepted that the reasonable bystander is an adult with no particular expertise with the common knowledge and reasoning capabilities. The jury agreed that the reasonable bystander would have been able to foresee the possibility of the fire spreading. Thus the appellants were convicted under the negligence test. The jury was inclined to accept that intention could be shown by proof of reckless disregard of an act perceived by the reasonable man as a risk.

3. Had the defendant given any thought to the possibility of there being a risk in doing what he did? It was agreed on appeal that the boys did not foresee any risk of the fire spreading in the way it eventually did. Many leading academic writers on English criminal law have believed that the criminal law should punish people only for those consequences of their acts, which they foresaw at the relevant time. Supporting Argument: *Actus non facit reum nisi mens sit rea*. *Actus non facit reum nisi mens sit rea* translates to; the act does not make a person guilty unless the mind is also guilty.

It is a constructive principle that conviction of serious crime should rely on evidence not merely that the defendant caused a detrimental effect to another but rather that his state of mind when so acting was blameworthy. Willingly disregarding an appreciated and unacceptable risk of causing a detrimental effect or a methodical and purposeful ignorant state of mind to such risk would also be considered blame worthy. In contrast it is not distinctively culpable to do something that encompasses the gamble of grievance to another in the event of one authentically not identifying the said gamble.

Did the judge's direction transgress the decision of the jury? It can be debated that since *R v Caldwell* the case at hand precisely outlines that Lord Diplock's direction is capable of persuading evident unfairness. The trial judge admitted to the regret of his direction to the jury which transgressed the decision of the jury. The jury may have inferred that persons the same age of the appellants would have understood the risk involved however this was not their decision. However the jury thought it unfair to convict them.

It is not considered moral or just to convict a defendant as a result of what another may have understood if the defendant had no such understanding himself. Was the interpretation of “recklessly” wrong? In section 1 of the Act, it was shown that the interpretation of “recklessly” to have been misleading. Had the misinterpretation not conflicted with any principle or had not intensified an injustice; the misinterpretation would not have had any impact, however it resulted in the opposite.

Thus it is vital for the correction of the misinterpretation of “recklessly”.
Losing Argument: Should the rule in R v Caldwell be modified? The modification would defy the principle that conviction depends on the mens rea of the defendant. If the principle was modified to accommodate children on the grounds of naivety it would be uncharacteristic if no modification was made to include the mentally handicapped on the grounds of their narrow ability of perception.

Implementing modifications of this classification will encourage challenging and controversial debate with regard to the qualities and characteristics plausible for comparison. The implementation of this modification will replace one misinterpretation for another. Were the appellants reckless? A person is said to be reckless if knowing that there is a risk that an event may occur as a consequence of their conduct as defined by The Merriam Webster dictionary .

A defendant is only considered to have acted recklessly by the advantage of their failure to give any thought to the risk or property damage that may have been apparent had they given any thought to the matter. Determining if a risk would have been apparent to the defendant is very unpredictable. The

tribunal of fact should not acknowledge the defendant's proclamation that it never occurred to them that there was risk of property damage providing that the conditions, prospects, and evidence point that the thought process must have crossed their mind. Obiter Dicta' The meaning of "maliciously" It is understood by the court that use of the term 'maliciously' requires proof of intention. Malice necessitates an authentic objective to do a precise kind of destruction. The court accepts that "maliciously" introduces consciousness that an act may have the consequence of causing substantial impairment to some other person despite if the impairment foreseen was reasonably minimal.