

Criminal liability and gbh problem question



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From a brief review of the facts it seems that Aisling may be charged for criminal liability under non-fatal offences against the following; Charles, Bernadette & Dan. However, Aisling must realize that the prosecution would have to prove each and every element of the “beyond reasonable doubt”, *Woolmington v DPP*[1]; which is a very high standard to achieve. S. 39 of the Criminal Justice Act (CJA) 1988[2] defines common assault & battery as summary offences, and consequently a person proven guilty of either is liable to a fine and/or imprisonment for not more than 6 months. The prosecution, will likely assert that Aisling’s words constituted an assault to Charles. For such a charge to carry any liability, the prosecution will have to prove that Aisling’s intentional words caused Charles to apprehend impending unlawful force. The House of Lords (HOL) made it clear in *Irland*[3], that words can on their own constitute an assault; as per Lord Stern. Moreover, Aisling cannot take up the defense, that she did not intend to threaten Charles, but rather just wanted Charles to leave; consequently, her act of saying the words is enough evidence for a charge of assault, *Logdon v DPP*[4].

However, in this case, the whole conviction rests on the fact that did the victim apprehend immediate unlawful personal violence? because if Charles did not feel threatened at any moment during his conversation with Aisling, then such a conviction may not stand against the defendant. The court cleared that in situations where an assault to person is not possible, words alone could not suffice to carry any liability; *Tuberville v Savage*[5].

Conversely, it is necessary to understand that for a charge of assault, it is essential to prove that the victim had an appreciation of imminent harm

from the defendant; it is not enough to show that as the result of the defendant's actions the victim developed fear that they might be harmed on some time later in the future. Thus, it seems unlikely that such a charge would carry any liability under s. 39 CJA 1988. Lastly, the prosecution must prove that Aisling either intended or was reckless to the fact that her words could apprehend imminent unlawful violence to Charles; Venna (COA) [6] affirmed by HOL in Savage and Parmenter [7]. This seems quite self-evident given the fact, that she intended to use those words so that Charles would leave the birthday party.

As for Aisling's criminal liability towards Bernadette; she may be charged on two accounts; firstly, the injury to the foot, sustained by Bernadette; Aisling may be charged under s. 20 OAPA - for maliciously wounding or inflicting GBH. For such a charge the prosecution must prove that the defendant's actions or omissions, 'wounded' the victim; and as per the decision in C (a minor) v. Eisenhower [8], wounding entails "... a break in the continuity of both layers of the skin. Both the dermis and epidermis must be broken." However, it is noteworthy to mention that generally, minor wounds are charged under s. 47 OAPA, but considering the evidence that Bernadette lost a lot of blood and required ten stitches, it is fair to assume that this criminal charge will fall under s. 20 OAPA. As far as the Mens rea is concerned, the prosecution must establish that Aisling either intended or was reckless to the fact of causing the injury/ies. Lord Diplock in Mowatt [9] made clear the correct interpretation of "maliciously"; and later affirmed by the HOL in Savage & Parmenter [10]; that it does not matter whether the accused foresaw that their unlawful act could not cause harm to such a gravity, i. e.

serious harm. All that was essential was that the accused anticipated "... some physical harm to some person, albeit of a minor character...". And from the facts, it is palpable that Aisling noticed the broken glass and the danger it may cause to the guests who were about to play blindfolded, but neglected the danger which she created, anyways. Such recklessness is covered by the test laid down by Lord Diplock. And, in Caldwell[11] Lord Ackner affirmed that the prosecution must prove the defendants intention or foresight, of his actions causing harm.

Aisling second charge will be for the punch, which although was meant for Dan but landed on Bernadette; s. 47 OAPA - Assault occasioning actual bodily harm (ABH) provides for imprisonment for a term not exceeding 5 years. The prosecution must firstly, establish that there was a common assault, both assault and battery; DPP v. Little[12]; and this assault or battery resulted in " occasioning ABH" to the victim. Here, Aisling tried to punch Dan, but he ducked and the punch was received by Bernadette, which is battery; the actual unlawful force towards the victim, without their consent, Fagan v MPC[13]. The prosecution must establish that there was an application of force; Collins v Wilcock[14]; Goff LJ stated "... that every person's body is inviolate. Any touching of another person, however slight may amount to a battery." ABH is defined in Miller[15], as including " any hurt or injury calculated to interfere with the health or comfort of the victim." The 1994 Charging Standards guidelines provides a scale to determine ABH[16].

Secondly, the persecution must establish causation; that the application of force, occasioned the bodily harmed suffered by the victim. The test to

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establish legal causation would require the prosecution to prove that Aisling's actions; i. e. punching, was the "operating & substantial" cause of the suffering to Bernadette; Pagett & Cheshire[17]; which is evidenced by the fact of the eye bruising and discomfort which lasted for 3 days. However, it must be noted that Aisling's defense cannot rely on the fact that Aisling never had the necessary mens rea of punching Bernadette, as the doctrine of transferred malice will come into play and effectively transfer the mens rea of the offence from Dan to Bernadette; Latimer[18] where the defendant was held liable for injuries to a third party bystander, when the accused tried to hit the original victim but missed and hit another third party bystander.

Aisling intentionally hit Dan with a vase on the head, because of the remarks he passed on her; thereby causing head injuries which caused Dan to suffer a coma for several weeks. The prosecution will push for a conviction under s. 18 OAPA - GBH with intent. They will, first have to prove that Aisling inflicted or caused the injuries to Dan; Wilson[19], thus it must be proved that the defendant's actions were the "operating & substantial" cause for the injuries sustained by the victim; Cheshire[20]. Secondly, the prosecution will have to establish that the harm suffered by Dan was "really serious harm", as per the HOL in DPP v. Smith[21]. Thus, in Bollom[22], the COA held that the jury must consider the age, health and the entirety of the injuries; in deciding whether the injuries sustained were grievous or not. The 1994 Charging Standards provides guidelines to determine GBH in injuries[23]. Lastly, the prosecution must establish Aisling's necessary mens rea and must prove that she intended to cause serious harm/ GBH to Dan. As it is factually evident that she hit the vase with full force, at Dan's head, it is

presumable that she must have foreseen some really serious harm coming to Dan. But for a conviction under s. 18 OAPA, specific intent to cause grievous bodily harm or to resist arrest is required and recklessness or foresight is not sufficient. Similarly, in *Ismail*[24]; the court found the defendant liable for GBH with intent, where he threw acid on the victims face, thereby causing injuries and blinding. Ultimately, it will be up to the jury to decide the question of intention guided by these principles, finding Aisling's criminal liability towards Dan.

(1301 Words)

Bibliography

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[2] Section 39 of the Criminal Justice Act (CJA) 1988 –<http://www.legislation.gov.uk/ukpga/1988/33/section/39>

[3] *R v. Burstow, R v. Ireland* [1997] UKHL 34 [1997] 4 All ER 225, [1997] 3 WLR 534, [1998] 1 Cr App R 177, [1997] Crim LR 810.

[4] *Logdon v DPP* [1976] Crim LR 121 (DC).

[5] *Tuberville v Savage* [1669] EWHC KB J25, (1669) 1 Mod Rep 3, 86 ER 684

[6] *Venna (COA)* [1975] 3 All ER 788 (CA).

[7]Savage and Parmenter [1992] 1 AC 699, 736, per Lord Ackner.

[8]C (a minor) v. Eisenhower [1984] QB 331

[9]R v. Mowatt [1968] 1QB 421

[10]Savage and Parmenter [1992] 1 AC 699, 736,

[11]R v Caldwell [1982] AC 341

[12]DPP v. Little [1992] QB 645

[13]Fagan v MPC [1969] 1 QB 439

[14]Collins v Wilcock [1984] 3 All ER 374

[15]R v Miller [1954] 2 QB 282

[16]“...loss or breaking of teeth, temporary loss of sensory function, extensive or multiple bruising, broken nose, minor fractures or minor cuts requiring stitches.” – – The 1994 Charging Standards -http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/#a03

[17]R v Pagett (1983) 76 Cr App R 279 & R v Cheshire [1991] 3 ALL ER 670

[18]R v. Latimer (1886) 17 QBD 359

[19]R v. Wilson [1984] AC 242

[20]R v Cheshire [1991] 3 ALL ER 670.

[21]DPP v. Smith [1961] AC 290

[22]R v. Bollom [2004] 2 Cr App R 6,

[23]“...resulting in loss of sensory function, ... injuries with substantial loss of blood, injuries requiring lengthy treatment or incapacity, severe internal injuries and those resulting in significant disablement of the victim, whether temporary or permanent.” – The 1994 Charging Standards –http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/#a03

[24]R v Ismail (1991) 13 Cr App R (S) 395, CA