

Criminal law - offense of murder



The most serious offence that Marion could be charged with is the murder of Spike and Toby. Murder is defined in law as causing the death of a human being within the Queen's peace with the intention to kill or cause grievous bodily harm. Therefore murder comprises of two elements, these are 1) the act (actus reus) and 2) the intention (mens rea). Since the implementation of the Law Reform (Year and a Day Rule) Act 1996 it is not necessary for the death to occur within a year and a day of the act or omission. The first element to be satisfied is the actus reus and causation. Marion clearly performed the act of setting fire to Spike and Toby's flat but did this cause the deaths of both Toby and Spike?

The accused's act does not necessarily need to be the sole or even the main cause of death, it is required that the accused act made a significant contribution to the consequences as stated in *R v Cheshire*. Toby was pronounced dead at the scene of the fire and there is no information suggesting there was an alternative cause of death. Therefore it is clear that smoke inhalation from the fire was a significant contribution to the cause of Toby's death. In the case of Spike's death it is slightly more complicated as the medical treatment he received may constitute an intervening act (novus actus interveniens) in the chain of causation.

In the authority of *R v Jordan* it was decided if medical treatment received is the sole cause of death and was grossly negligent the chain of causation will be broken. However, if the injury caused by the accused is the operative cause of the victim's death the chain of causation will not be broken as confirmed in *R v Smith*. In *Smith* the facts concerned a barrack room brawl in which the accused had stabbed the victim; the victim had been dropped

twice on the way to the medical room. The medical staff failed to recognise the extent of the victim's injuries resulting in the victim's death. The accused's conviction for murder was upheld as the wound had been the operative cause of the victim's death. In the case of *R v Cheshire* Beldam LJ stated "it will only be in the extraordinary and unusual case that such treatment can be said to be so independent of the acts of the accused that it could be regarded in law as the cause of the victim's death to the exclusion of the accused's act". Therefore in the case of Spike's death it will be considered if the fact that the life support machine was not properly connected was so independent of the injuries suffered from the fire. It is likely that the smoke inhalation from the fire will be considered as the operative cause of Spike's death and the element of causation will be satisfied. Therefore the elements of the actus reus and causation will be satisfied in case of Spike and Toby's deaths.

In order for the mens rea of murder to be satisfied the prosecution must establish that the accused intended to kill or cause grievous bodily harm as stated in *R v Moloney* and confirmed in *R v Hancock and Shankland* and *R v Woollin* in the House of Lords. In *Woollin* the House of Lords decided the intention would be satisfied if death or serious injury was a virtually certain result of the accused action. However, there is no absolute magic formula, Lord Scarman stated in *Hancock* the more probable the consequences the more probable the accused foresaw it. Marion may contend that she only intended for Spike to be re-housed by the council and she had no knowledge that Toby was in the house.

In the circumstances that an individual has the intention to commit a particular offence against a particular victim but actually commits that offence against another, the mens rea can be transferred to the actual victim. This principle is illustrated in the cases *R v Mitchell* and *Attorney-General's Reference No. 3 of 1994*. In *Mitchell* the accused had been found guilty of manslaughter when he had deliberately punched a 72 year old man who had fallen against an 82 year old woman. As a result of the fall the 82 year old woman suffered a broken femur which required surgery, during the surgery the woman died due to complication that arose. The argument that the doctrine could only apply to the intended victim and not the actual victim were the same person was rejected by the Court of Appeal. Although the decision in *Attorney-General's Reference No. 3* was reversed by the House of Lords the case illustrated that the question of mens rea is one of fact for the jury to decide. Therefore any malice towards Spike will be transferred towards Toby.

Marion may claim the defence of provocation under section 3 of the Homicide Act 1957 as her act was in response to the intimidation and harassment inflicted by Spike. The test for provocation is one of two limbs, these are; 1) the subjective condition that the accused was actually provoked to lose his self control and 2) the objective condition that the reasonable man would have done so. Devlin J stated in *Duffy* Circumstances which induce a desire for revenge are inconsistent with provocation..... a desire for revenge means that the person had time to think...that would negate a sudden temporary loss of self control". However, Lord Taylor in *R v Ahluwalia* concluded that a delay in reacting will be taken into account but

it will not necessarily negate the defence of provocation . The position currently is that killings that take place after a long period of provocation will be distinguished from cases of cumulative provocation. It can be that the last instance even if relatively minor can be a trigger as in *Humphreys* if the instance caused a loss of self control. Lord Tucker in *Bullard v The Queen* stated that the direction to the jury is that if they are not satisfied beyond a reasonable doubt that the killing is unprovoked the verdict is one of manslaughter.

The current standard of the objective element is that having regard to the actual provocation and the gravity for the defendant, would an individual of the same age having the ordinary power of self control might have done what the defendant has done as stated in *G for Jersey v Holley* and confirmed in *R v James* . It is clear that Marion suffered a loss of self control it may also be possible that Spike's last act of pretending to stab Marion will be viewed in light of the previous harassment by Spike.

In the circumstances that the Crown Prosecution Servicer or the jury are satisfied that Marion only intended for Spike to be re- housed she may be found guilty of constructive manslaughter. It will only be necessary or the prosecution to establish that Marion intended to start the fire not that she knew it was dangerous. The act will be deemed dangerous if a sober and reasonable person at the scene of the crime watching the unlawful act knowing what the defendant knows in the circumstances and seeing what the defendant sees would have foreseen the risk of some physical harm resulting there from as explained in *R v Dawson* . The court appeared to introduce a third element in to constructive manslaughter, this was that the

<https://assignbuster.com/criminal-law-offense-of-murder/>

accused act must be directed at the victim and likely to cause immediate injury. However, this was rapidly overturned for in R v Mitchell for the act must simply directed to another. In R v Goodfellow the accused had sent fire to his house with the intention of being re-housed by the council, the fire had resulted in the death of some of his family. The aimed at doctrine was rejected in favour of the act directed another test the accused was convicted of constructive and reckless manslaughter. In Andrew v DPP Lord Atkin stated “ of all crimes manslaughter appears to afford most difficulties of definition, for it concerns homicide in so many and varying conditions, it is submitted that the mens rea for the unlawful act of criminal damage should suffice. This was confirmed by the decision in R v G . As Marion clearly intended to set fire to Spike’s flat it is likely that she will be found guilty of constructive manslaughter.

In the unlikely event that Marion is found not guilty of constructive manslaughter the least serious offence that she could be liable for are under the Criminal Damage Act 1971 such as, intentionally or recklessly endangering life under section 1(3) and arson under section 1(3).

Bibliography

Elliot & Quinn Criminal Law 7th Edition Pearson Education Limited

Jonathan Herring Text, Cases and Materials on Criminal Law Third Edition
Oxford publishing

David Ormerod, Smith & Hogan Criminal Law 12th Edition Oxford

Blackstones Criminal Practice 2008 Oxford

Norrie. A “ After Woollin” [1999] Crim LR 532

‘ Legislating the Criminal Code: involuntary Manslaughter’, Law Commission
No. 237 [1996]