

Two plain clothed armed policemen law general essay

Law



It is now of interest to discuss the criminal liabilities that may appear for each party and also considering certain defences that could come into play.

Criminal Liabilities

Starsky and Hutch A prominent authority to highlight the consequences of Starsky and Hutch's actions would be to refer to the legislation of the Offences Against the Person Act 1861. The sections of the act that can be said to be most relevant to the scenario are s 20 and 18 of the act. s 20 of the 1861 Act states ' Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude'.[1] This statement shows that Hutch can be held liable for his actions taken in trying to frighten Ali to drop the gun, consequently causing a bullet wound into the arm of Ali. s 20 of the 1861 Act can be further supported by the case of Moriarty v Brookes 1834, where the case was held on grounds of excessive force and a definition by Lord Lyndhurst CB on what a wound is seen as in a criminal case. 'Where skin is broken and there is bleeding'[2]. To apply this offence it must be shown that the defendant (in this matter Hutch) portrayed recklessness with respect to some harm resulting. Therefore the prosecution would have to prove that lack of forethought was used by Hutch, even though he was aiming to miss he still should have taken any by-products into more consideration. An example of being held liable by not taking by-products into consideration is shown in the case of R v Savage 1991; in this case mens rea was disregarded as the assault was an easily foreseeable consequence that potential harm could result[3]. This was established under

the law of s 47 of the Offences Against the Person Act 1861. However s 18 of the 1861 Act states ' Shooting or attempting to shoot, or wounding with intent to do grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life'.[4]This section of the act raises a question regarding Hutch to whether he unlawfully intended to cause grievous bodily harm, as it is already established that it was in his intention to fire the gun.

Defence of Starsky and Hutch

In order to ensure adequate prevention of crime, police officers are given more freedom to a certain extent over the general public. Some of these liberal rights are in the form of legislations, which have been put into place such as the Police and Criminal Evidence Act 1984. s 24 of this act gives a police man the right to arrest without a warrant a person who he believes has committed a crime or is about to commit a crime. Additionally it is also shown in s 3 of the Criminal Law Act 1967 ' a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting the lawful arrest of offenders or suspected offenders or of persons unlawfully at large'. Likewise in common law the application of a defence ' private defence' allows the use of reasonable defence that is for one's self or another person.[5]This presents a defence for Starsky and Hutch to rely on self-defence, support for this arises from the case of Finch and Jardine 1983. [6]The judge agreed that their actions even though excessive were done in order to effect an arrest and were cleared of all charges. The question of whether reasonable force had been implemented is objective, as in the scenario Hutch mistakenly believed that the force used was required to

effect the arrest, or as a form of protection from an imminent attack. In this scenario the crimes committed would be described as indictable, meaning the officers would undergo a court hearing where a Jury had to be present. [7]The Jury would have to decide whether the force taken by the police men was reasonable in the context that that the situation presented. This is supported by the Criminal Justice and Immigration Act 2008 s 76(3)-(8). The law states that force may be used in this scenario if it is a genuine attempt to try and defend oneself or another from potential harm.[8]In the defence to the mistake, when a person does not convey a guilty mind (mens rea) and instead genuine fears of imminent danger, they need not present reasonable excuse for the mistake. The case of *Beckford v The Queen* 1988[9]shows an appeal allowed on basis of genuine belief of self-defence. If the jury choose to believe that the actions of Starsky and Hutch were done out of necessity in a genuine attempt to bring justice, this would be regarded as the prominent evidence in defence of the policemen *Palmer v R* 1971[10]. Another factor that could be presented is the duty to retreat and the reasonableness in not doing so; however policemen that choose to advance are not penalised for using defensive measures that are presumed to be necessary[11].

Criminal liabilities

AliAlthough Ali was originally an innocent man who was a victim of mistake, his actions towards the policemen have also made him liable for criminal offences. He may be charged with assault and with intent to resist arrest, as his actions conflict with the Offences Against the Person Act 1861. As s 38 of the act states " Whosoever shall assault any person with intent to resist or

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prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years".[12] Secondly causing of grievous bodily harm with intent to resist arrest is a further charge Ali could be prosecuted for, the conflict of his actions is seen in s 18 of the 1861 Act. This ruled that whoever shall with intent cause grievous bodily harm to a person or resist lawful apprehension will be guilty of felony and therefore may become liable for his actions.[13] In reference to this statement it is also to be taken into consideration that the question of the arrest being lawful or not is up for debate, however it should be presumed that the attempted arrest was lawful as Starsky and Hutch had reasonable grounds for suspicion. A final offence which Ali may be charged is for his assault on the police officer during the performance of doing his duty of arrest. This offence is supported by the Police Act 1996, in s 89 of this act which states that ' Any person who assaults a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both'.

Defence of Ali

The use of s 38 and s 18 of the Offences Against the Person Act 1861 can also come to the defence on Ali, based on the fact that it states that there must be an intent to resist arrest. However Ali was unaware that they were in fact police officers due to their plain clothes, so therefore his mens rea was based on the potential of his life being threatened and therefore forced

to react, based on this Ali should be acquitted from the first and second charge. The case of R v Brightling 1991 conveys that the judge had fairly and accurately left the issue to the jury as one of intent to resist or prevent arrest, and that a genuine mistake was relevant to the question of intent[14]. In defence to the final offence, it is noted that the officers were achieving their duties as supported by s 89 of the Police Act 1996. Forbes and Webb 1865 put forward the viewpoint that the only mens rea required for the offence committed by Ali in the scenario is that of a common assault. However in defence to Ali as previously mentioned it is able for a person to rely on a mistaken belief in circumstances, if this claim is found to be genuine then the use of force will become lawful as shown in the case of R v Gladstone Williams 1984. Since his attack was driven by mistake and genuine belief that his life was in danger and provided that the jury agrees that his use of force was reasonable then all of his offences would have to be acquitted.

Contrasting Factors

In contrast Ali may have realised that Starsky and Hutch were police officers, maybe by their mannerisms at the time. Nonetheless Ali may have mistakenly felt their approach taken to perform the arrest was unlawful. In this situation, the defence against his mistake would not be valid. The case of R v Lee 2000 gives us further insight as to why, the appellant in this case believed he was unlawfully being put under arrest after failing a breathalyser test and reacted by punching the officer. The case was held on the fact that the mistake made by the appellant was one of law and therefore was of no defence[15]. Causation in criminal liability will always enquire the

defendant's conduct or negligence in regards to causing harm or damage. Causation in criminal liability is divided into Factual causation and Legal causation. Factual causation is established by applying the 'but for' test, which basically asks if not for the defendant's actions would the situation have manifested in the way it did? If yes the defendant would not be seen as liable, but if the answer was no then the defendant could be seen to be liable as their actions were the factual cause of the result R v White 1910. In Ali's situation a jury could decide that his arms should have risen instead of reaching for his driving license which allowed the situation to escalate. This action could suggest that it was the factual cause of result. Legal causation however requires that harm must result from a culpable act, such as the gun shot by Hutch as long as the offence is not seen as strict liability and there should be no novus actus interveniens for the legal causation he could stand to be liable for this offence.[16] On the other hand in a situation where he knew the actions of the police officers were being carried out lawfully, a question could be raised based on his entitlement to be able rely on the claim of self-defence. It begs the question if a person can use force lawfully against a lawful attack? If Ali did perceive the arrest to be lawful it wouldn't be possible to use the argument of s 3 of the Criminal Law Act 1967 as it only penalises unlawful arrests. R v Browne 1973 showed that if a lawful arrest is attempted, then self-defence will be of no justification for an attack. A conflict rises based on the obiter of the R v Fennell 1971 case as Lord Widgery implied that if a person genuinely believes their life is being threatened then reasonable force can be used in self-defence whether or not the arrest was lawful. Professor Smith supported this view and rejected the

dicta of the Browne case, furthering his point he stated that yes an innocent man should submit to arrest but when reasonableness comes into effect it is unreasonable to expect a man that is genuinely scared for his life not to react. So feels that an innocent man should not be charged based on those facts, even if the policeman had a valid suspicion of the person being a felon and undertook the arrest in a lawful manner[17]. The view that seems to be favoured is that of Fennel and Professor Smith, that if force was indeed used and the jury believes the force to be of a reasonable manner due to the circumstances, there is no reason why Ali should not be required of his offences. As seen in the Finch and Jardine case the officers were made to stand trial but cleared of all charges due to mistake and of self-defence. In this case Stephen Waldorf the innocent driver that had been shot and gun whipped to the head received £150, 000 compensation by the police. This is a similar outcome that I would expect to manifest once this scenario goes to court.

Table of cases

Moriarty v Brookes 1834 EWHC Exch J79R v Savage 1991 94 Cr App R
193 Finch and Jardine 1983 Beckford v The Queen [1988] AC 130 Privy
Council Palmer (1971) AC 814R v Brightling [1991] Crim LR 364R v Gladstone
Williams (1984) 78 Cr. App. R. 276R v Lee [2000] EWCA Crim 53R v White
[1910] 2 KB 124 Regina v Fennell [1971] 1 QB 428

Table of Legislation

Offences Against the Person Act 1861 Criminal Evidence Act 1984 Criminal
Law Act 1967 Criminal Justice and Immigration Act 2008 Police Act 1996

Other Sources

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