

Murder conviction proving actus reus and mens rea law essay



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A potential criminal liability for Mick in relation to Bob may be that of attempted murder. Murder is a common law offence and the accepted definition comes from Lord Coke that murder is the unlawful killing of a reasonable person in being and under the King's peace with malice aforethought, express or implied. It is a common law offence governed by the Homicide Act 1957 which carries a mandatory life sentence. In order for a successful prosecution in murder both actus reus and mens rea must be proved.

The mens rea for murder is stated as being ' malice aforethought, express or implied' consisting of intention on the part of the defendant: Unlawfully to kill another human being; or unlawfully to cause grievous bodily harm to another human being[1]If the defendant has either of these intentions then they may be liable for murder even if this was not their intended act. With attempted murder however mens rea is specific to the intention to kill due the fact an attempted murder will have a failed outcome, therefore unless the defendant intended to kill the victim he cannot be liable for attempted murder. If the victim does not die and the defendant only intended to cause grievous bodily harm then he will be charged with a non fatal offence.

The general rules of intention apply to murder. If the defendant was trying to cause death or grievous bodily harm then it is most likely that it will be direct intention. However if death occurred due to the achievement of the defendants' primary goal then it is more likely to be oblique intention. In the case of Mick I would argue that it was direct intention as he was trying to kill Bob.

When discussing attempted murder the actus reus will not be seen in terms of actus reus of murder but in the context of the Attempts Act 1981 as an act which is more than merely preparatory to the commission of the offence. The common law offence of attempt to commit an indictable which was created by Criminal Attempts Act 1981 section 1 (1) stating;

If with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence”

Whether or not the defendant did an act which is more than merely preparatory to commission the offence is a question of fact. The cases of Geddes[2] where the defendant was not liable yet in reach of the children and Griffen[3] where the defendant was liable and not within the reach of the children, may seem to provide inconsistencies. The cases do however show the psychological commitment to commit the act which moves away from the ‘ final act’ proximity approach.

If we apply the direction as stated above to the case of Mick it I would argue that he had formed the necessary mens rea as he intended to “ get rid of him once and for all” and this would be put to the jury to decide. It can also be argued that his acts were more than merely preparatory by using the weapon that was given to him, which satisfies the actus reus for attempted murder. Therefore it is arguable that Mick could be prosecuted for the attempted murder of Bob.

Another possible criminal liability which Mick may be accountable is Conspiracy in relation to the murder and theft. It is a statutory offence which is defined in Section 1 (1) of the Criminal Law Act 1977 which states:

” A person is guilty of a statutory conspiracy if he agrees with one or more persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of any offence or offences by one or more of them”

For an offence of conspiracy to be committed there must be more than one person involved who is not exempt by the categories set out by Section 2 (2) of the Criminal Law Act 1977. The actus reus of the offence is the agreement between the parties, the agreement only has to be general. Furthermore what the parties agree to, has to necessarily amount or involve the commission of any offence[4]by at least one of the conspirators, this was further discussed in Reed[5]. The mens rea of conspiracy is the intention to agree to commit an offence and the intention that their course of conduct will lead to the offence. Also it is not necessary for all parties to complete the offence. In the case of Saik[6]the House of Lords stated the mental element in conspiracy was distinct from the mental element in the substantive offence, and allowed the appeal on the basis that the defendant did not know that the converted money would be used for a crime therefore he did not have the necessary intention for the crime. From the above direction if we apply it to Mick in relation to conspiracy to murder he may be found liable. The actus reus is satisfied as both Mick and Ronnie agreed to kill Bob. The mens rea is the intention to commit the offence and this is satisfied. If the jury finds Mick guilty he will be convicted of conspiracy to <https://assignbuster.com/murder-conviction-proving-actus-reus-and-mens-rea-law-essay/>

commit murder. Also Mick may be liable of conspiracy to steal, as both actus reus and mens rea are satisfied. The plan was made between Mick, Keith and Ronnie satisfying the actus reus. The intention to steal to put Bob out of business is also formed.

Another possible liability that Mick may face is that of attempted burglary. Burglary is a statutory offence stated under the Theft Act 1968 Section 9 (1) (a)

“ a person is guilty of burglary if he enters any building or part of a building as a trespasser and with intent to steal, inflict grievous bodily harm or do unlawful damage to the building or anything in it.”

The mens rea of burglary has two parts; entering as a trespasser and the ulterior offence. The actus reus for attempted burglary is derived from the Attempts Act 1981 as discussed above as acts more than merely preparatory to commission the offence. The fact that Mick and Keith had begun to break in using a crow bar suggests that they had formed the necessary intention and it will be up to the jury to decide if this is the case. In *Brown*[7] it was held that an entry had to be effective instead of substantial. It is arguable that if Bob had not interrupted them the entry would have been effective. The actus reus is also satisfied by them beginning to break down the door to enter. Therefore I would argue that Mick would be found guilty.

Another crime that Mick may be found liable for is criminal damage. Criminal damage is a statutory offence which is found in the Criminal Damage Act 1971, Section 1 (1) which states;

A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property.

The actus reus of the offence is made up of 4 elements in that the defendant must destroy or damage property belonging to another without lawful excuse. The mens rea is specific intention to destroy or damage the property which will be evident by the defendant's aim. Mens rea can also be formed due to recklessness however in the case of Mick this is not a factor that needs to be considered. There is a strong case that Mick would be found guilty of criminal damage as his intention was to break down the door satisfying the mens rea. Also the actus reus is satisfied as the door did not belong to him and had no lawful excuse to break it, authority for this comes straight from the wording of the act.

A possible defence that Mick may rely on is voluntary intoxication in relation to the attempted murder charge and the attempted robbery charge, voluntary intoxication will not succeed in the criminal damage charge as this is a basic intent offence and the course of getting intoxicated is seen as being reckless and recklessness can form the necessary mens rea.

Intoxication will not be a defence where the defendant has the necessary mens rea despite his intoxicated state as shown in *A-G Reference for Northern Ireland v Gallagher*[8] because it is held that drunken intent is still intent. In the case of Mick I would argue despite the intoxication which is not stated as being too excessive that he still formed the necessary mens rea needed for the aforementioned charges.

In relation to Ronnie he may also be found guilty of conspiracy of murder and theft. If we apply the direction as stated above it is clear that the actus reus is satisfied as the plan was made 3 defendants and it is stated that the agreement must be made between at least two parties. Mens rea is formed as Ronnie had intention that a course of conduct will lead to the offence as he encouraged Mick and Keith to complete the offence, it is not necessary that he had to commit the offence. I would use the principle set in Anderson[9] where the defendant was found guilty as he intended to play a part in agreed course of conduct which would further criminal purpose and would strongly argue that Ronnie is guilty.

Ronnie may also be guilty of accessorial liability in relation to the attempted murder which comes from the Accessories and Abettors Act 1861 Section 8 which states;

“ Whoever shall aid, abet, counsel or procure the commission of any indictable offence...shall be liable to be tried, indicted and punished as a principal.”

The actus reus of this crime can have four elements to aid, abet, counsel or procure. Lord Widery stated in A-G's Reference (No 1 of 1975)[10] that each word has a different meaning otherwise Parliament would not have used them so. In Ronnie's case I think the most suitable actus reus is to procure which implies causation not consensus, which is satisfied when he gives the gun to Mick and tells him kill Bob. The mens rea for this offence is summarised in Bryce[11] as having three elements in that it is the intention to do an act with knowledge that it will assist the principal and intention to

assist the principal and knowledge of the circumstances surrounding the offence. In Bainbridge[12] it was held that the defendant need not know what the equipment was going to be used for but know that it was going to be used for criminal activity was sufficient knowledge. It is clear that Ronnie procured the offence of attempted murder and both mens rea and actus reus are satisfied when Ronnie hands Mick the gun and gives him instructions to use it on Bob, therefore I would argue it is a strong possibility that he would be found guilty.

The crimes that Keith would be liable for include conspiracy to steal, and this is proved by satisfying the actus reus and mens rea of the offence which is similar to Ronnie and Mick. The formation of the plan is the actus reus and the intention to carry it out is the mens rea. Just as Mick and Ronnie could be found guilty I would argue that Keith also would be guilty.

Keith could also potentially be guilty for attempted burglary with Mick. The actus reus is seen as acts more than merely preparatory and by using a crow bar to enter the building it is clear that this is satisfied. The mens rea is also easily proved as they entered Bob's property without permission to steal, there is a strong case that Keith would be found guilty.

Thirdly could be found guilty of criminal damage as he intentionally and unlawfully damaged property which satisfies both actus reus and mens rea for the offence.

For Keith to rely upon a defence of voluntary intoxication for attempted burglary may fail as I argued with Mick. Intent is still formed whether it was drunken intent or not.

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To conclude I would argue that Mick could be found guilty of attempted murder, conspiracy to steal and murder, attempted murder and criminal damage, furthermore I would argue a defence of voluntary intoxication would fail.

I would also argue that Ronnie could be guilty of conspiracy to murder and steal and also being an accessory to attempted murder. Finally the crimes Keith may be found guilty of include conspiracy to steal, attempted burglary and criminal damage. Again I would argue that a defence of voluntary intoxication would fail.