

## Assault and intoxication

Discuss the possible criminal liability of Andy and Bert.

Andy and Bert attend a rock concert at a local theatre. Bert, who is of low intelligence and easily excited, takes some of his sister's Valium tablets on the spur of the moment before going to the concert in the hope that they will keep him calm. During the course of the concert he becomes drowsy and confused as a result of having taken the tablets and pushes his half consumed soft drink can from the handrail of the balcony where he is seated. This strikes Carol, who is seated in the auditorium below, on the head, causing her bruising and swelling.

In the interval, Andy drinks several pints of beer in the theatre bar. When he returns to his seat he sees Carol standing beside Bert's seat and leaning over Bert. Carol is wagging her finger at Bert and telling him off about his behaviour. Andy thinks Carol is hitting Bert and so Andy lashes out at her with the beer glass he is carrying. She moves to one side and the glass strikes Ellen, who is in the next seat, causing her severe lacerations to the ear.

Andy may be liable for causing grievous bodily harm with intent contrary to s.18 OAPA 1861, maliciously inflicting grievous bodily harm contrary to s.20 or assault occasioning ABH contrary to s.47.

As the lacerations to Ellen's ear are described as severe, this could be a serious enough injury to constitute grievous bodily harm (defined in *DPP v Smith* as "really serious harm" and in *Saunders* as "serious harm"). A defendant is liable under s.18 OAPA if he unlawfully and maliciously causes GBH with intent to do GBH. S.20 OAPA requires that the defendant unlawfully and maliciously inflicted GBH. If the severe lacerations do amount to GBH, then the actus reus of either offence is satisfied as the harm has clearly been 'caused' or 'inflicted' on these facts. If the harm is not serious enough to amount to GBH then it must be at least the offence under s.47 OAPA, assault occasioning actual bodily harm. Actual bodily harm is defined in *Chan Fook* as "any hurt or injury which is not so trivial as to be wholly insignificant".

With s.18 the mens rea needed is intention. Intent may be direct (in the sense that it was desired) or oblique (in that it could be decided by a jury that serious harm was foreseen by the defendant as virtually certain and hence the jury could find that there was intent, see Woollin.) in this case Andy may not have had direct intention but it would be up to the jury to decide on oblique intent.

It doesn't matter that the harm was caused to Ellen rather than Carol as the law says that the defendant will be liable for an offence if he has the necessary mens rea and commits the actus reus even if the victim differs from the one intended, or the consequence occurs in a different way (Latimer 1886).

If the jury does not find intent the mens rea of s.20 requires the harm to be inflicted maliciously, which means with intent or subjective recklessness as to some physical harm. Thus Andy would have to have at least foreseen some physical harm to Carol, albeit not necessarily the more serious harm which is actually caused (Mowatt, approved in Savage and Parmenter).

If the jury do not consider the harm serious enough for GBH the mens rea for s.47 is that for assault/battery i.e. Andy would have to have intended or foreseen the apprehension/infliction of personal violence (Savage and Parmenter).

Are there any defences open to Andy?

Self-induced intoxication by alcohol may be a defence to a crime of specific intent but not basic intent. The offences such as assault which Andy may be liable for are crimes of basic intent so this is not open to him (DPP v Majewski). Crimes of basic intent are those for which the mens rea can be either intent or recklessness.

Mistake can negate liability if its effect is to negate the mens rea or if an offence requires unlawfulness as one of the circumstances of the actus reus mistake can negate this. This approach is taken with regard to self defence or defence of another. In this instance Andy could claim that he mistakenly believed that Carol was hitting Bert and he stepped in therefore to protect him. If the jury accept this argument there is no crime. Andy only needs to hold this belief honestly the belief does not need to be reasonably held (Williams v Gladstone) as long as the force used was justified to protect Bert. This would be for the jury to decide. However where

the defendant is intoxicated then this defence is denied ( O'Grady, O'Connor). Thus it would seem that Andy has no defence and faces liability for s.47 ABH at least.

Bert may be liable for ABH, assault causing actual bodily harm contrary to s.47 OAPA 1861.

The actus reus for this offence is the actus reus of assault or battery plus actual bodily harm caused by the assault or battery. As Carol has suffered bruising and swelling it is clear she has suffered actual bodily harm though it probably wouldn't be considered serious enough for GBH as considered above with Andy. The actus reus of battery is the application of force. The actus reus of assault is the apprehension by the victim of immediate violence.

The mens rea of assault or battery is satisfied by proof of intention or of Cunningham recklessness. Thus the defendant has the mens rea of assault or battery if he intends the victim to apprehend personal violence or intends to apply force to him or else foresees that this might be the case. It would be for the jury to find on the facts of the case before them whether this was the case. In the circumstances given here it seems unlikely they would find mens rea.

If they did find mens rea and Bert were in need of a defence is any open to him? Bert might claim that intoxication caused by the valium tablets made him drowsy and confused but as we have already seen voluntary intoxication is not a defence available for a crime of specific intent. It is important to notice that he is not taking the valium on the advice of the doctor.

It could be said the kind of harm suffered by Carol was suffered by consent. There is such a thing as implied consent when a victim goes to a public place where there might be jostling or to her such contact. A can accidentally being dropped on a person at a busy concert might be considered such a situation.