

'Foresight of consequences is not the same as intent. Discuss'

Introduction

In Criminal Law, the definition of a crime is '*a wrongdoing against the State either by commission or omission classified by the State as criminal and on to which a punishment has been attached*¹, and the burden of proof must be established as '*beyond all reasonable doubt*' to which the person accused of an offence is guilty. Furthermore, there are also two elements that must be proven in order to be guilty of an offence, the '*mens rea*' whereby the defendant had the correct 'guilty mind' and the '*actus reus*' where the 'guilty act' was carried out.

In this essay, I intend to discuss the differences between foresight of consequences and intent to show that they are not the same, by looking at previous cases and their outcomes, which state the trial judge's comments to help me when proving foresight of consequences is not the same as intent.

Intention

For this essay, I will be looking at the intention for murder, and as the actus reus for murder is pretty self-explanatory, I will be concentrating on the mens rea of murder and the foresight of consequences for murder. For murder, the mens rea is the '*intention (also known as malice aforethought) to kill or cause grievous bodily harm*' as per s18 Offences Against the Person Act [1861].² As there is no statutory definition of the word 'intention', the jury in this case must determine whether or not they think the intentional mind to cause serious harm or to kill exists. In order to determine whether the intention was there, there are previous cases we can look back on to see what the outcome from the Courts were, and any judgements given by the judge to explain their decision.

In the case of Cunliffe v Goodman [1950], it was stated that intention was a 'state of affairs, whereby a person does more than merely contemplate'³ and that intention is not the same as a motive or desire. There are two main types of intention; direct intention and oblique intention. In cases of 'direct intention', the intention that the accused intended to commit a crime is clear, and that the consequences of his actions were what they had desired. For example, a man tells someone he intends to kill his wife, he then takes a kitchen knife, stabs her, killing her, it is clear that the outcome was desired, and therefore the man had direct intent.

¹ 'Criminal Law Third Edition' Chapter 2, Page 14 – Diana Roe

² 'Criminal Law Third Edition' Chapter 2, Page 22 – Diana Roe

³ 'Criminal Law Third Edition' Chapter 2, Page 23 – Diana Roe

Furthermore, the second type of intention as already mentioned, is 'oblique intention'. In cases where oblique intention is involved, the defendant intends for his desired outcome to occur, however the result is different to the one intended.⁴ Furthermore, the defendant could have also been aware of the consequences of his actions, but still went ahead, which resulted in further consequences.⁵ In cases where there is oblique intent, the jury should be further directed that they do not have to find the necessary intent as the mens rea unless they feel that 'death or serious bodily harm was a virtual certainty as a result of the defendant's actions, and that this was foreseen by the defendant'.

Foresight of Consequences

There are numerous cases concerning oblique intent, where the defendants have argued that it was not their purpose to commit the crime different to the one intended. There are 6 levels of consequences, the lowest being a possible consequence, and the highest being virtually certain consequence. Section 8 of the Criminal Justice Act [1967] states that '*A court or jury in determining whether a person has committed an offence shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural or probable consequence of those actions, but instead, shall decide whether he did intend or foresee that a result by reference to all evidence, drawing such inferences from the evidence.*'⁶ In the case of murder, the defendant must have foreseen that death or very serious injury was a virtual certainty.

The first case demonstrating foresight of consequences was that of Moloney [1985] where by the defendant and his stepfather were drunk at a family party and had been holding a contest to see who was the fastest at loading a shotgun. The defendant beat his stepfather at loading the gun, and claimed that his stepfather had dared him to pull the trigger, stating that the defendant hadn't 'got the guts' to do it. The stepson pulled the trigger and in doing so, killed his stepfather. The defendant was later convicted of murder. The conviction was later quashed and a new one given for manslaughter after the House of Lords held that foresight of consequences is not intention, only evidence as the defendant had not meant to kill his stepfather, therefore didn't have the necessary mens rea for murder. In the case, Lord Bridge told the jury that they should consider '*a.) Was death or serious injury a natural consequence of the defendant's actions? And b.) Did the defendant foresee that consequence as being a natural result of his act?*'⁷ If the jury were to answer yes for both questions, then only then can they draw as a conclusion, that the defendant had intended the end consequence.⁸ This statement from Lord Bridge then became known as the 'Moloney guidelines' however were later deemed

⁴ <http://www.e-lawresources.co.uk/Mens-rea-intention.php>

⁵ <http://www.e-lawresources.co.uk/Mens-rea-intention.php>

⁶ 'Criminal Law for A2' Chapter 3, Page 24 – Jacqueline Martin

⁷ 'Criminal Law for A2' Chapter 3, Page 25 – Jacqueline Martin

⁸ 'Criminal Law Third Edition' Chapter 2, Page 25 – Diana Roe

unreliable in the law, as Lord Bridge in the case of Moloney, only referred to the word 'natural consequence' and not 'probable consequence' which is clearly stated under s8 Criminal Justice Act [1967].

Furthermore, in 1986, the case of Hancock and Shankland pointed out this fault in the Moloney guidelines. The facts of the case are as follows; the defendants were miners and were on strike. They became angry when another miner decided to go back to work, and so the defendants pushed a concrete block from a bridge onto the road below where the miner was being driven to work by a taxi. The concrete block hit the taxi, killing the driver but not the worker. The defendants were originally convicted of murder, however this decision was upheld on appeal to the House of Lords as Lord Scarman stated that the Moloney guidelines, as originally used to give the conviction of murder were '*unsafe and misleading*'. Furthermore, in his judgement given, he also stated that '*The Moloney guidelines require a reference to probability, and also require an explanation as to the greater the probability of a consequence, the more likely it is that the consequence was foreseen. Therefore, if the consequence was recognised by the defendant, the greater the probability that the consequence was intended*'.⁹ This case saw the Moloney guidelines become abolished.

Also during 1986, was the case of Nedrick where the defendant poured petrol through a letterbox, setting it alight and resulting in the death of an innocent child. The defendant was convicted of murder, however was replaced with the conviction of manslaughter.¹⁰ The Court of Appeal decided that the Moloney and Hancock guidelines were not clear enough, and that the word 'natural result' should be replaced by the term probable, in order to make the guidelines clearer for future judges and juries to use. The Court of Appeal then made two questions that should be asked by the jury themselves when sitting on murder trials. Firstly, '*how probable was the consequence which resulted from the defendant's act?*' And secondly, '*did the defendant foresee that consequence?*'¹¹ To add, Lord Lane of the Court of Appeal then stated that '*the jury should be directed that they are not entitled to infer the necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty as a result of the defendant's actions and the defendant appreciated that such was the case*'.¹² This statement therefore meant that the jury is not entitled to infer the intention, unless death was a virtual certainty and was appreciated by the defendant himself. Additionally, this also suggests that foresight of consequences is different from intent, and that the two cannot be linked, unless proven.

The later case of Woollin [1998] once again felt that the guidelines left by the judge in the previous case of Nedrick were unhelpful, and new law was formed following the

⁹ 'Criminal Law for A2' Chapter 3, Page 25 – Jacqueline Martin

¹⁰ 'Criminal Law for A2' Chapter 3, Page 25 – Jacqueline Martin

¹¹ 'Criminal Law for A2' Chapter 3, Page 25 – Jacqueline Martin

¹² 'Criminal Law Third Edition' Chapter 2, Page 26 – Jacqueline Martin

outcome of Woollin. In the case, the defendant allegedly violently shook his three-month year old baby before throwing him across the room towards the pram next to the wall, some distance away. The baby suffered serious head injuries and later died. Woollin admitted during interviews that the baby had hit the floor, but argued he did not mean to kill him, or think the harm would, even though he accepted the fact that injury was almost certain.¹³ The courts then ruled that the consequence of the defendants actions were a virtual certainty and that this was recognised by the defendant, therefore the jury felt that there was therefore enough evidence to find intention. However, Lord Steyn felt the Nedrick questions were unhelpful, as the word 'infer' caused confusion, and should have been replaced by the word 'find'. They then changed the guidelines from Nedrick which corrected the wording, stating '*the jury should be directed that they are not entitled to find the necessary intention unless they feel that death or serious bodily harm was a virtual certainty.*'¹⁴ Lord Steyn also went on to state, that the effect of the direction therefore means that '*a result foreseen as virtually certain is an intended result*'.¹⁵ Therefore, the conviction of murder was quashed, and instead replaced with one of manslaughter.

However, this new statement caused confusion in the civil case of Re A [2000] where doctors asked the courts whether they would be allowed to operate on conjoined twins allowing them to be separated, however they foresaw that the weaker of the twins would die. The Civil division of the Court of Appeal believed that the case of Woollin made it law, meaning that foresight of consequences is the same as intention.

This mistake made by the Court of Appeal's Civil division, meaning foresight of consequences was the same as intention, was then corrected in the case of Matthews and Alleyne [2003]. The case involved the defendants dropping the victim, who they knew couldn't swim, off a bridge into the middle of a deep river. They then watched the victim attempting to 'doggy paddle' towards the bank, however did not ensure he made it to safety. The victim then drowned.¹⁶ It was held that the law formed by Woollin stated that foresight or consequences is not the same as intention, but a rule of evidence for the jury to determine whether or not the defendant foresaw death or serious bodily harm as a virtual certainty, and are able to find the intention, if they wish to do so.

Conclusion

It is clear to see, that from previous cases such as Nedrick, Woollin and Matthews and Alleyne, the jury can only be directed to find the intention, if the consequence of the defendants actions in the case were a virtual certainty, and that the defendant was

¹³ 'Criminal Law Third Edition' Chapter 2, Page 26 & 27 – Diana Roe

¹⁴ 'Criminal Law for A2' Chapter 3, Page 26 – Jacqueline Martin

¹⁵ 'Criminal Law for A2' Chapter 3, Page 26 – Jacqueline Martin

¹⁶ 'Criminal Law for A2' Chapter 3, Page 26 & 27 – Jacqueline Martin

aware of this and not in any other circumstances. In cases of murder, if the defendant did not foresee the consequence, the jury is unable to infer or now known as find intent, and must therefore settle for a lower conviction, however, where there is little or no evidence, and the defendant foresaw the consequence of his actions, the jury are able to find the intention and find the defendant guilty. All in all, foresight of consequences is not the same as intent, it is merely evidence from which the jury may find or infer intention.

Bibliography

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<http://www.e-lawresources.co.uk/Mens-rea-intention.php>

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