D. Concurrence of Act and Intent

State v. Hopple
Supreme Court of Idaho
357 P.2d 656 (1960)

KNUDSON, Justice.

Appellant was charged by information filed May 4, 1959, with the crime of grand larceny committed in Twin Falls County on or about November 19, 1958, by willfully, unlawfully and feloniously stealing and taking away 15 head of ewe sheep belonging to one Shelby Williams, [which appellant subsequently attempted to sell to another.]

Appellant assigns as error the action of the trial court in sustaining objections to questions propounded to appellant upon direct examination regarding his intentions as to the sheep involved at the time he locked them in his corral. The record discloses that the court sustained objections to at least four of such questions upon the ground that the answers would be immaterial or that the questions called for a self-serving statement. The four questions are as follows:

1. "Q. When you locked the sheep in the corral on the morning of the 24th, what were you going to do with them?"
2. "Q. What did you intend to do with those sheep then?"
3. "Q. Well, when you locked them up in the corral on the 24th did you intend to keep them away from Mr. Williams entirely?"
4. "Q. Let me ask you this now: When did you conceive the idea of selling those to anybody?"

Appellant testified that for a short time prior to and during the time it is alleged that appellant committed the offense charged, some sheep belonging to Mr. Williams were being pastured on land adjacent to appellant's; that on the morning of November 23rd appellant drove approximately 75 or 80 head of said sheep off his pasture land; that on the morning of November 24th there were approximately 100 sheep on his premises and while he was in the process of driving them from his field 15 of them ran up a lane and into appellant's corral and he closed the corral gate on them. The foregoing mentioned testimony of appellant is uncontradicted. Appellant further testified as follows:

Q. When you locked those sheep up did you think you had a right to lock them up?
A. I did.
Q. Why do you say that?
A. Anytime that something is on your property you can lock it up and

put it in your corral, like these sheep were tromping on my cattle feed. I have a right to get them off the feed.

It is apparent from the record that appellant was denied repeated attempts to explain to the court and jury what his intention was when he came into possession of the sheep involved.

Our penal code provides that "In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence." . . .

In the instant case if the jury believed from the evidence that the defendant had no felonious intent to steal the sheep at the time they came into his possession he would not be guilty of larceny even if he subsequently conceived the intent to appropriate them. The principle is well settled that the felonious intent must exist at the time of the taking. . . . [W]e therefore conclude that [there was] reversible error. . . .

The judgment is set aside and the cause remanded with directions to the trial court to grant a new trial.

Thabo Meli and Others v. The Queen
Judicial Committee of the Privy Council
[1954] 1 W.L.R. 228, 1 All E.R. 373

The judgment of their Lordships was delivered by Lord Reid. The four appellants in this case were convicted of murder after a trial before Harragin J. in the High Court of Basutoland, In March, 1953. . . .

. . . It is established by evidence, which was believed and which is apparently credible, that there was a preconceived plot on the part of the four accused to bring the deceased man to a hut and there to kill him; and then to fake an accident, so that the accused should escape the penalty for their act. The deceased man was brought to the hut. He was there treated to beer and was at least partially intoxicated; and he was then struck over the head in accordance with the plan of the accused.

There is at least doubt whether the weapon which was produced as being like the weapon which was used would have produced the injuries which were found, but it may be that this weapon is not exactly similar to the one which was used, or it may be that the blow was a glancing blow and produced less severe injuries than those which one might expect; but, in any event, the man was unconscious after receiving the blow.

There is no evidence that the accused then believed that he was dead, but their Lordships are prepared to assume that they did; and it is only on that assumption that any statable case can be made for this appeal. The accused took out the body, rolled it over a low krantz or cliff, and dressed up the scene to make it look like an accident. Obviously

they believed at that time that the man was dead, but it appears from the medical evidence that the injuries which he received in the hut were not sufficient to cause the death and that the final cause of his death was exposure where he was left at the foot of the krantz.

The point of law which was raised in this case can be simply stated. It is said that two acts were necessary and were separable: first, the attack in the hut; and, secondly, the placing of the body outside afterwards. It is said that, while the first act was accompanied by *mens rea*, it was not the cause of death; but that the second act, while it was the cause of death, was not accompanied by *mens rea*; and on that ground it is said that the accused are not guilty of any crime except perhaps culpable homicide.

It appears to their Lordships impossible to divide up what was really one transaction in this way. There is no doubt that the accused set out to do all these acts in order to achieve their plan and as parts of their plan; and it is much too refined a ground of judgment to say that, because they were under a misapprehension at one stage and thought that their guilty purpose had been achieved before in fact it was achieved, therefore they are to escape the penalties of the law. Their Lordships do not think that this is a matter which is susceptible of elaboration. There appears to be no case either in South Africa or England, or for that matter elsewhere, which resembles the present. Their Lordships can find no difference relevant to the present case between the law of South Africa and the law of England, and they are of opinion that by both laws there could be no separation such as that for which the accused contend, so as to reduce the crime from murder to a lesser crime, merely because the accused were under some misapprehension for a time during the completion of their criminal plot.

Their Lordships must, therefore, humbly advise Her Majesty that this appeal should be dismissed.

E. Determining the Culpability Requirements of an Offense Definition

1. The Model Penal Code Innovation

Model Penal Code §2.02(3)
Culpability Required Unless Otherwise Provided

When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.

"energy crisis," Congress authorized states to increase their speed limits on rural interstate roads. In a study of 22 states in which speed limits on such roads had been raised to 65 MPH, the National Highway Traffic Safety Administration found that traffic fatalities soared by more than 50 percent, from 296 in the 3-month period May-July, 1986, to 450 in the same 3-month period of 1987. See N.Y. Times, Dec. 18, 1987, at A1. More recent data suggests that raising the speed limit from 55 MPH to 65 MPH increased deaths on rural interstate roads by 20 to 30 percent. See Washington Post, June 29, 1993, at z12. Nationally, there were over 6 million automobile crashes in 1991; 357,000 of these involved severe injuries, including over 39,000 fatalities.[3] By comparison murder and nonnegligent manslaughter took 24,700 lives in the same year.[4] At what point does the saving in driving time justify the additional cost of increased foreign oil consumption? At what point does the saving in driving time justify the additional loss of life?

b. Objective versus Subjective Standards of Liability

STATE v. WILLIAMS

Washington Court of Appeals
4 Wash. App. 908, 484 P.2d 1167 (1971)

HOROWITZ, C.J. Defendants, husband and wife, were charged by information filed October 3, 1968, with the crime of manslaughter for negligently failing to supply their 17-month child with necessary medical attention, as a result of which he died on September 12, 1968. Upon entry of findings, conclusions and judgment of guilty, sentences were imposed on April 22, 1969. Defendants appeal.

The defendant husband, Walter Williams, is a 24-year-old full-blooded Shoshon[e] Indian with a sixth-grade education. His sole occupation is that of laborer. The defendant wife, Bernice Williams, is a 20-year-old part Indian with an 11th grade education. At the time of the marriage, the wife had two children, the younger of whom was a 14-month-old son. Both parents worked and the children were cared for by the 85-year-old mother of the defendant husband. The defendant husband assumed parental responsibility with the defendant wife to provide clothing, care and medical attention for the child. Both defendants possessed a great deal of love and affection for the defendant wife's young son.

The court expressly found:

> That both defendants were aware that William Joseph Tabafunda was ill during the period September 1, 1968 to September 12, 1968. The defendants were ignorant. They did not realize how sick the baby was. They thought that the baby had a toothache and no layman regards a toothache as dangerous to life. They loved the

3. Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics — 1992 (U.S. Dept. of Justice 1993), p. 356.
4. Id. at 357.

baby and gave it aspirin in hopes of improving its condition. They did not take the baby to a doctor because of fear that the Welfare Department would take the baby away from them. They knew that medical help was available because of previous experience. They had no excuse that the law will recognize for not taking the baby to a doctor.

The defendants Walter L. Williams and Bernice J. Williams were negligent in not seeking medical attention for William Joseph Tabafunda.

That as a proximate result of this negligence, William Joseph Tabafunda died.

Findings 5, 6, and 7. From these and other findings, the [trial] court concluded that the defendants were each guilty of the crime of manslaughter as charged. . . .

[The court of appeals held that both defendants were under a legal duty to obtain medical assistance for the child.[a]] On the question of the quality or seriousness of breach of the duty, at common law, in the case of involuntary manslaughter, the breach had to amount to more than mere ordinary or simple negligence — gross negligence was essential. . . . In Washington, however, R.C.W. 9.48.060[2] (since amended by Laws of 1970, ch. 49, §2) and R.C.W. 9.48.150[3] supersede both voluntary and involuntary manslaughter as those crimes were defined at common law. Under these statutes the crime is deemed committed even though the death of the victim is the proximate result of only simple or ordinary negligence. . . .

The concept of simple or ordinary negligence describes a failure to exercise the "ordinary caution" necessary to make out the defense of excusable homicide. R.C.W. 9.48.150. Ordinary caution is the kind of caution that a man of reasonable prudence would exercise under the same or similar conditions. If, therefore, the conduct of a defendant, regardless of his ignorance, good intentions and good faith, fails to measure up to the conduct required of a man of reasonable prudence, he is guilty of ordinary negligence because of his failure to use "ordinary caution." . . . If such negligence proximately causes the death of the victim, the defendant, as pointed out above, is guilty of statutory manslaughter. . . .

The remaining issue of proximate cause requires consideration of the question of when the duty to furnish medical care became activated. If the duty to furnish such care was not activated until after it was too late to save the life of the child, failure to furnish medical care could not be said to have proximately caused the child's death. Timeliness in the furnishing of medical care also must

a. In footnote 1, the court observed that the information, in charging the violation of the duty owed, alleged:

"[T]hey, the said defendants, then and there being the father, mother, guardian and custodian of one William Joseph Tabafunda, and being then and there under the legal duty of providing necessary food, clothing, care and medical attention to said William Joseph Tabafunds [sic], a minor child under the age of sixteen years, to-wit: of the age of seventeen (17) months, did then and there unlawfully and feloniously fail and neglect, without lawful excuse, to provide said . . . child . . . with necessary food, clothing, care and medical attention. . . ." — Eds.

2. R.C.W. 9.48.060 provided in part:

"In any case other than those specified in R.C.W. 9.48.030, 9.48.040, and 9.48.050, homicide, not being excusable or justifiable, is manslaughter."

3. R.C.W. 9.48.150 provides:

"Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent."

be considered in terms of "ordinary caution." . . . In our opinion, the duty as formulated in People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903) . . . properly defines the duty contemplated by our manslaughter statutes. . . . The court there said: "We quite agree that the Code does not contemplate the necessity of calling a physician for every trifling complaint with which the child may be afflicted, which in most instances may be overcome by the ordinary household nursing by members of the family; that a reasonable amount of discretion is vested in parents, charged with the duty of maintaining and bringing up infant children; and that the standard is at what time would an ordinarily prudent person, solicitous for the welfare of his child and anxious to promote its recovery, deem it necessary to call in the services of a physician."

It remains to apply the law discussed to the facts of the instant case.

Defendants have not assigned error to the findings either on the ground that the evidence is insufficient to prove negligence or proximate cause, or that the state has failed to prove the facts found by failing to apply the required standard of proof beyond a reasonable doubt. . . . They contended below and on appeal that they are not guilty of the crime charged. Because of the serious nature of the charge against the parent and step-parent of a well-loved child, and out of our concern for the protection of the constitutional rights of the defendants, we have made an independent examination of the evidence to determine whether it substantially supports the court's express finding on proximate cause and its implied finding that the duty to furnish medical care became activated in time to prevent death of the child. . . .

Dr. Gale Wilson, the autopsy surgeon and chief pathologist for the King County Coroner, testified that the child died because an abscessed tooth had been allowed to develop into an infection of the mouth and cheeks, eventually becoming gangrenous. This condition, accompanied by the child's inability to eat, brought about malnutrition, lowering the child's resistance and eventually producing pneumonia, causing the death. Dr. Wilson testified that in his opinion the infection had lasted for approximately 2 weeks, and that the odor generally associated with gangrene would have been present for approximately 10 days before death. He also expressed the opinion that had medical care been first obtained in the last week before the baby's death, such care would have been obtained too late to have saved the baby's life. Accordingly, the baby's apparent condition between September 1 and September 5, 1968 became the critical period for the purpose of determining whether in the exercise of ordinary caution defendants should have provided medical care for the minor child.

The testimony concerning the child's apparent condition during the critical period is not crystal clear, but is sufficient to warrant the following statement of the matter. The defendant husband testified that he noticed the baby was sick about 2 weeks before the baby died. The defendant wife testified that she noticed the baby was ill about a week and a half or 2 weeks before the baby died. The evidence showed that in the critical period the baby was fussy; that he could not keep his food down; and that a cheek started swelling up. The swelling went up and down, but did not disappear. In that same period, the cheek turned "a bluish color like." The defendants, not realizing that the baby was as ill as it was or that the baby was in danger of dying, attempted to provide some relief to the baby by giving the baby aspirin during the critical period and continued to do so until the night before the baby died. The defendants thought the swelling

would go down and were waiting for it to do so; and defendant husband testified that from what he had heard, neither doctors nor dentists pull out a tooth "when it's all swollen up like that." There was an additional explanation for not calling a doctor given by each defendant. Defendant husband testified that "the way the cheek looked, . . . and that stuff on his hair, they would think we were neglecting him and take him away from us and not give him back." Defendant wife testified that the defendants were "waiting for the swelling to go down," and also that they were afraid to take the child to a doctor for fear that the doctor would report them to the welfare department, who, in turn, would take the child away. "It's just that I was so scared of losing him." They testified that they had heard that the defendant husband's cousin lost a child that way. The evidence showed that the defendants did not understand the significance or seriousness of the baby's symptoms. However, there is no evidence that the defendants were physically or financially unable to obtain a doctor, or that they did not know an available doctor, or that the symptoms did not continue to be a matter of concern during the critical period. Indeed, the evidence shows that in April 1968 defendant husband had taken the child to a doctor for medical attention.

In our opinion, there is sufficient evidence from which the court could find, as it necessarily did, that applying the standard of ordinary caution, i.e., the caution exercisable by a man of reasonable prudence under the same or similar conditions, defendants were sufficiently put on notice concerning the symptoms of the baby's illness and lack of improvement in the baby's apparent condition in the period from September 1 to September 5, 1968 to have required them to have obtained medical care for the child. The failure so to do in this case is ordinary or simple negligence, and such negligence is sufficient to support a conviction of statutory manslaughter.

The judgment is affirmed.

NOTES AND QUESTIONS

1. The manslaughter statutes involved in *Williams* were repealed in 1975. The current statutes create two degrees of manslaughter: recklessly causing death and causing death by criminal negligence. See Wash. Rev. Code §9A.32.060; Wash. Rev. Code §9A.32.070 (1992). In accord with generally prevailing law, Washington no longer imposes manslaughter liability in cases involving ordinary negligence. See State v. Norman, 61 Wash. App. 16, 808 P.2d 1159, 1162 (1991).

Questions: Would the *Williams* court have reached a different result under the statute in effect today? On the court's view of the facts, wouldn't the behavior of the Williams couple also involve "criminal" negligence?

2. Many will find the conviction of the Williams couple unjust and, perhaps, pointless. Why were the defendants punished?

(a) Note that the court calls attention to the race of the defendants. In what respect, if any, did their race have a bearing on the issues in the case? Was it relevant at all?

(b) Were the defendants punished only because of their ignorance? If the conviction seems unjust, is this because they were unaware of the danger to their child? If so, does it follow that punishment for negligence (where there is no