

Gosport - Points of Law – Manslaughter - Murder

Actus reus

In order for a crime to be proved the prosecution has to prove beyond reasonable doubt that a crime according to criminal law has been committed i.e. a criminal act.

It has to be proved that the defendant has caused the criminal act.

(The external element)

Mens rea

The state of mind at the time of the event – or the mental element plays a very important part in the determination.

Specifically in a charge of murder the two elements have to be together i.e. actus reus and mens rea otherwise a different charge can be brought.

Briefly Mens rea can be represented by common expressions – intentionally, knowingly, wilfully, recklessly etc. but each of these expressions has to be dealt with in detail and will have an outcome on the charge i.e. manslaughter or murder.

Most cases will have a precedent and a previous case and the outcome will have a bearing on the present case. It is up to the judge and the Prosecution barrister to follow the pertinent route – bearing in mind that the Judge can over-rule the precedent on specific detail and consequently the case can go to appeal if the Judge has advised the jury before the verdict in an incorrect manner.

Nota Bene – I personally –(but I do not know all the details of the cases -) think that some of the Gosport cases could come under manslaughter and some under murder. A great deal depends on the mens rea. There appears to be no difference in the basic fact that they were all given overdoses of a “noxious” substance but I query whether each case came under intent, or recklessness or under another expression. i.e. the actus reus is the same in the GMC cases but is the mens rea ? (and both have to be present for murder (deliberate intent) One thing is certain – which we have in common – the patient rarely dies from a broken bone - although in the age element of my mother she could well have died from the trauma – but that was more likely within 24 hours of the surgery and not three weeks afterwards and certainly not at the stage of being pain-free , mobile etc.

Actus reus

There can be no conviction without actus reus but in some cases the mens rea can be dispensed with by the Court. There are no "thought crimes" which can make it easier for Barton to "get off". Smith & Hogan "If an offence consists of possessing or permitting that offence cannot be proved if the Defendant (Barton) cannot be shown to have possessed or permitted it. I think there is no doubt that Barton in letting the Nurses make up their own minds whether to administer diamorphine or not - she certainly permitted it. She had the responsibility and in allowing the Nurses to decide - having given them the wherewithal in prescribing in advance - and in my mother's case, totally ignoring the Haslar discharge letter - and no assessment carried out on admission to Gosport. The only concept known to the law is the crime and the crime exists only when the actus reus and the mens rea coincide.

In some RARE instances the actus reus may consist in a set of circumstances or state of affairs not including any conduct or action by the Defendant (Barton) at all. Her conduct is what is important. This quote from S&H seems to me contradictory and I have had some difficulty in getting my head around it - NOTE bear in mind this is my interpretation of Smith & Hogan. In murder however it must be shown that the accused's conduct caused the death and I think it follows that in anticipatory prescribing of inappropriate drugs, overdoses etc. Barton caused the deaths even though the Nurses were involved and they too should be charged as participatory actors. As far as I am aware none of them had received specific specialised training (including Beed) of palliative nursing.

The law is no less interested in a "result crime" than a conduct crime and I think it can be proved that Barton's conduct caused the result - a double whammy. In any case anyone dealing with the Nurses at Gosport - including the care workers etc. cannot have failed to notice that none of them (that I came across) were of the highest calibre in terms of IQ or caring - to the patient or relative. I am pretty sure with your experience of hospice nursing, you found it very different from Gosport and from my experience at the Royal Marsden and as a volunteer in a hospice the whole attitude to the patient and the relatives was very very different to the attitudes I have found in the hospice environment and I do not think it should be any different in any hospital, bearing in mind that the whole person should be "treated" both physically and psychologically. Body Mind and Spirit is important and that does not make me a Spiritualist as per Couchman's evidence - and do not believe the Daily Mail within the next few days who always put their own slant on something they do not understand.

If you want a more intelligent interpretation of Mens rea and Actus reus - i.e. better than my ramblings - you may find it in any A level revision paperback book available from Waterstones - just around the corner from Portsmouth Harbour station on the left hand side of the shopping precinct - almost next to M & S and opposite Debenhams - they cost about £10 - £12 AND WHILE THERE YOU MAY COME ACROSS ANOTHER PAPERBACK SPECIFICALLY ON MEDICAL LAW, PUBLISHED I THINK BY Pearson.