Criminal Law: An Overview Of The Different Charges

Criminal Law

Introduction

This essay will provide an overview of the different charges that these four individuals will most likely face; John, Paul, George, and Ringo. This essay will unpack each of the crimes these individuals have committed, an overview of the facts, alongside an in-depth definition of their crimes whilst using reference to case law and legislation. This essay will specifically focus on the crimes of assault, false imprisonment, kidnapping, and causing injury recklessly.

John

Facts

John decided to assault Ronnie with a pool stick. He was angry that Ronnie had made a pass at Yoko. He picked up the pool stick and stated to Ronnie “I’m going to hospitalise you'. After doing so he hit Ronnie multiple times with the pool stick. As a result of John's actions Ronnie suffered from several broken ribs, a concussion, multiple bruises, and needed 15 stitches in his skull, Ronnie also had to stay in the hospital overnight.

Assault

Under section 31 of the Crimes Act 1958 John has committed assault (both physical and non-physical). Assault according to this act under section 31 1(a) is defined as 'A person who assaults or threatens to assault another person with the intent to commit an indictable offence'[footnoteRef:1]. [1: The Crimes Act 1958 (Vic) s 1.]

Non-physical assault is any form of act that causes another individual to apprehend instant and unlawful personal violence. The most common form of non-physical assault is threats such as the defendant in R v Wilson 1955[footnoteRef:2] shouting “get out the knives” he was charged with assault. John also committed non-physical assault as he specifically threatened Ronnie articulating, “I’m going to hospitalise you”. [2: R v Wilson [1955] 1 WLR 493.]

To establish a non-physical assault the victim must have a reasonable fear that immediate violence will occur such as in Knight v R 1998[footnoteRef:3], where the appellant made threatening phone calls. [3: Knight (1998) 35 A Crim R 314.]

John would also be charged with aggravated assault found under section 24 (2) of the Summary Offences Act 1966 which states ‘Any person who in company with any other person or persons assaults another person shall be liable to imprisonment for twelve months and any person who by kicking or with any weapon or instrument whatsoever assaults another person shall be liable to imprisonment for two years’[footnoteRef:4]. As we know from the facts John's weapon in this circumstance is the pool stick in which he hit Ronnie several times. [4: The Summary Offences Act 1996 (Vic) s 24.]

Section 16 of the Crimes Act 1958 deals with intent to cause grievous bodily harm it is defined as ‘A person who, without lawful excuse, intentionally causes serious injury to another person is guilty of an indictable offence’[footnoteRef:5]. The penalty for this unlawful act is level 3 imprisonment which can be anywhere up to 20 years maximum. John had clear intention to cause bodily harm to Ronnie, he firstly made a direct threat to him and after beating him several times with the pool stick resulted in several broken ribs, a concussion, multiple bruises and 15 stitches to his skull. [5: The Crimes Act 1958 (Vic) s 16.]

Mens Rea and Actus Reus of Assault

‘To constitute criminal behaviour, the Actus Reus and the Mens Rea must occur simultaneously’[footnoteRef:6]. Mens Rea also known as 'guilty mind' refers to the defendant's mental state and the intention the defendant had whilst committing the crime. It allows our justice system to differentiate between an individual who had the intention to commit a crime and those who did not. In John's case, the Mens Rea of his assault would be he had the intention to cause immediate violence to his victim (Ronnie). [6: ‘Criminal Law, Elements of a Crime: Mens Rea and Actus Reus’, (Web Page) .]

Actus Reus on the other hand means 'guilty act' which means that society decides to punish offenders based on their actions and not their bad thoughts. In John's case, the Actus Reus would be when he caused immediate fear to Ronnie that some sort of force would be used resulting in possible injury. The Actus Reus of assault occasioning actual bodily harm according to Jaqueline Martin is ‘any hurt or injury calculated to interfere with the health or comfort of the victim’[footnoteRef:7]. [7: Jaqueline Martin, Criminal Law (Routledge, 1st edition, 2013) 182.]

Paul

Facts

Paul had observed the situation between John and Ronnie. Paul decided to scare Ronnie to help John who was a co-writing friend. Paul picked up a pool ball and tried to throw it 2 metres over Ronnie's head. The ball hit Ronnie in the nose which caused his nose to break, however, this was not Paul’s intention.

Causing Injury Recklessly

Under section 18 of the Crimes Act 1958, it is most likely that Paul would be charged with causing injury recklessly. This is defined as ‘A person who, without lawful excuse, intentionally or recklessly causes injury to another person is guilty of an indictable offence’[footnoteRef:8]. The punishment for this crime is up to 5 years imprisonment. [8: The Crimes Act 1958 (Vic) s 18.]

To prove Paul guilty of this charge it must be proven that the accused caused serious injury to another person and that this action was reckless as the accused had no lawful excuse to cause injury. We know from the situational factors surrounding Paul’s case that he did not mean to cause injury to Ronnie and he only meant to scare him. However, his reckless behaviour despite having no intention resulted in serious injury and left Ronnie with a broken nose. Additionally, Paul could likely have foreseen the probability of harming Ronnie as also held in R v Campbell 1997[footnoteRef:9]. ‘For recklessness other than murder the accused need only

foresee the possibility that harm might occur’[footnoteRef:10]. [9: R. v. Campbell, [1999] 1 S.C.R. 565.] [10: ‘Recklessness’, Judicial College (Web Page, 27 August 2013) .]

Mens Rea and Actus Reus

It is evident that the Mens Rea in Paul’s case is not evident as he had no intention to commit a crime or cause injury. However, it may be argued that the Actus Reus is present. Despite having no intention of causing bodily harm a serious injury was still sustained and therefore the Actus Reus may be present.

George

Facts

George suspects Keith has been dating his daughter and is upset by this. Therefore, he wishes to interrogate Keith. However, Keith decides to ignore all contact from George. He then waits for Keith to leave a place called ‘Whisky a go-go’. George also brought his friends Gilmour and Waters to assist him. They approach Keith from behind and George lifts Keith and moves him 2 metres onto a park bench.

Kidnapping

George may have committed kidnapping in accordance with R v D 1984[footnoteRef:11] which defines kidnapping as ‘The taking or carrying away of one person by another, either by force or by fraud, without the consent of the person taken or carried away and without lawful excuse’[footnoteRef:12]. In order to prove kidnapping the time or distance that involved does not play a factor as held in Davis v R 2006[footnoteRef:13]. Therefore, the only elements that need to be proven are the taking of the victim from one spot to another and are not necessary to prove the kidnapper took the victim to the place they intended. The second element is the accused moved an individual with the intention of gaining an advantage. [11: REGINA V D: HL [1984] AC 778.] [12: ‘REGINA V D: HL 1984’, Swarb (Web Page, 13 March 2019) .] [13: R v Davis [2008] UKHL 36.]

Mens Rea and Actus Reus

The Mens Rea of kidnapping is the intent to confine or move an individual without their consent or lawful reasoning. The Actus Reus of this case would involve ‘or detaining and hiding for an amount of time with the improper and unlawful use of force or threat of force’[footnoteRef:14]. Therefore, George is likely to be charged with kidnapping as we know he moved Keith 2 meters on to the place he intended (the park bench) in order to gain an advantage (demanding the truth about him and his daughter). Despite George only moving Keith 2 metres as mentioned above the time or distance travelled does not impact the charges. The maximum penalty faced for this crime is up to 25 years imprisonment. [14: ‘Forgery, Kidnapping, and Robbery', Law Teacher (Web Page, 2 February 2018) .]

Ringo

Facts

Ringo suspects his wife Barbara has been stealing money from him. He normally keeps his money in his bass drum and has recently noticed it has been disappearing. Barbara is the only person who knows where Ringo stores his money. She has also been purchasing extra items and acting suspiciously. Ringo comes home to find Barbara around his drum kit and Ringo confronts his wife however, Barbara is angered by this and does not wish to speak about it. Ringo closes the door and locks it and tells his wife she is unable to leave until she admits to taking his money. In the end, Ringo was right about his suspicions of Barbara.

False Imprisonment

After reviewing the facts of Ringo's case, it is most likely that he has committed false imprisonment. False imprisonment is defined as 'The illegal confinement of one individual against his or her will by another individual in such a manner as to violate the confined individuals right to be free from restraint or movement'[footnoteRef:15]. [15: 'False Imprisonment', The Free Dictionary, (Web Page) .]

It is a crime to purposely and unlawfully hold a person against their will or consent as held in Emmett v Lyne 1805[footnoteRef:16]. This offence includes the total deprivation of a person's liberty. In Ringo's situation, he closed and locked the door and states his wife is unable to leave until she admits to taking his money. This would mean he has taken his wife's liberty away however; Barbara may also not understand the severity of the situation and may underestimate the extent to being held against her will. The punishment for false imprisonment can result in up to 10 years maximum imprisonment. [16: Emmett v Lyne (1805) 866.]

Elements to Prove False Imprisonment

In order to prove false imprisonment, several elements need to be present, these include; the individual did not consent to the detainment, there was not legal reasoning behind detaining the individual, the accused had the intent to restrain the individual's freedom, the individual was under some form of duress and the victim knew about their detainment. In Ringo's case, it is evident that all of these factors are present.

Conclusion

In summary, this essay has recognised the charges and the punishments that best suit the facts regarding each case. After reviewing multiple legislation such as the Crimes Act 1958 and the Summary Offences Act 1966, it is clear to see the charges against each individual. Alongside this, this essay has also identified each element that must be proven to charge each offender. To recap, John is most likely to be charged with assault with the intent to cause grievous bodily harm and will, therefore, serve up to 20 years maximum in prison. Paul may be charged with causing injury recklessly where he will serve anywhere up to 5 years imprisonment. George will be charged with kidnapping and can face up to 25 years imprisonment. Finally, Ringo may be charged with false imprisonment and may be punished with up to 10 years imprisonment.

Bibliography

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4. REGINA V D: HL [1984] AC 778
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5. ‘Recklessness’, Judicial College (Web Page, 27 August 2013)
6. ‘REGINA V D: HL 1984’, Swarb (Web Page, 13 March 2019)
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