

PRINCIPLES OF CRIMINAL LIABILITY

For the most part, crime is defined by someone “intentionally” harming someone else or their property. Over time, this principle expanded and many crimes no longer require anyone to “intend” to do anything. Driving Under the Influence is the most common example. Under the “per se” portion of the crime, the government does not have to prove your state of mind at all, just that you drove a vehicle and your alcohol level. Even when they do not have an alcohol reading, they do not have to prove you “intended” to drive drunk. It can be a complete “mistake” and, it usually is.

What You Should Know When Your Are Charged With a Crime

When someone is charged with a crime, the first thing to learn is exactly what the government must prove. Jury instructions begin with the phrase, “to convict the defendant of the crime of _____, each of the following elements must be proven.”

Criminal litigation is a contest between two sides and it is crucial to know not only what the prosecutors are thinking, but what they know they must prove. Beyond specific elements of the crime, there are fundamental concepts the government must prove in every case.

The Actus Reus and The Mens Rea

Crime is divided into two parts: the Actus Reus or the criminal act itself and the Mens Rea or the criminal state of mind in the actor. Successful defense can be a challenge to both elements, proving the events did not unfold they way they claim and the reasons people acted were different than they assert.

Criminal Intent

Most crimes however require “criminal intent.” An assault or theft requires proof you acted intentionally. A person acts with criminal intent when they act “with the objective or purpose to accomplish a result which constitutes a crime.” Washington Pattern Jury Instructions (WPIC 10.01)

Confessions can be the strongest evidence of someone’s state of mind but they can also be rare. Intent is usually proven “circumstantially” by someone’s actions and the surrounding circumstances.

Transferred Intent

Legally, “criminal intent” is still different than someone’s actual state of mind. Under the doctrine of “transferred intent,” the government can still convict the defendant when they did not intend to hurt the person who was ultimately harmed. They can also prove intent when the defendant is not aware that others were in the area of the crime or could

possibly get hurt. A gunshot is the most common scenario where the bullet misses its target but hits another. This can also apply to complex property crimes where the action or theft harms a string of people.

Complicity & The Accomplice

A person can also be convicted of a crime when they do not perform the act themselves, are not at the scene, or even “intend” that any of their actions would forward the crime. The classic example is “the get away driver” but complicity is much broader.

An “accomplice” is punished the same as the main actor and includes anyone who:

Solicits, commands, encourages, or requests another to commit the crime or

Aids or agrees to aid another in planning or committing the crime

“Aid” means all assistance, whether given by words, acts, encouragement, support or presence. (WPIC 10.51)

Notice there’s a lot of verbs in that definition. Notice you do not see the word “intend” either.

You can even be convicted of a “**Deadly Weapon Enhancement**” (five additional years for a gun) when you have no idea the other person is armed. State v. Davis, 101 Wn.2d 654 (1984).

The “Mens Rea” of an accomplice remains hazy and the courts have ruled that even when someone is severely pressured to help, they do not get to present a jury instruction that the accomplice’s acts must be “voluntary” State v. Ng 110 Wn.2d 32 (1988).

Years ago, a client, nearly high school age, got into an argument at a football game and punched the other teenager twice. The victim fell down and the client walked away. The other suspect jumped on the victim and began repeatedly punching while they were down until they damaged their skull. The client was facing years in prison as an “accomplice” to Assault 1. Luckily, we were able to convince them to treat the two separately.

Criminal Recklessness

A “reckless” state of mind is the next step down in criminal “mens rea.” A person acts recklessly when they:

Disregard a known and substantial risk that a wrongful act may occur

And the disregard is a “gross deviation” from a reasonable person
In the same situation

It is also established when “intent” is established (WPIC 10.03)

Manslaughter is a classic example of a reckless mens rea. The government does not need to prove intent but only that someone “recklessly caused the death of another.”
RCW 9A.32.060

Reckless Driving is a misnamed really and many prosecutors and judges forget that the crime requires intent or a “willful” disregard for safety. RCW 46.61.500

Criminal Negligence

Absent crimes like DUI where no mental state is required, negligence is the lowest level of criminal mens rea. A person acts criminally negligent when they:

Fail to be aware of a substantial risk that a wrongful act may occur

And that failure is a gross deviation from the standard of care

That a reasonable person would exercise in that situation

It is also established when Intent or Recklessness is established. (WPIC 10.04)

Second Degree Manslaughter only requires causing death with criminal negligence. Assault Three also only requires this mental state. Kicking someone in the stomach is enough to establish it. State v. Burns, 20 Wn.App. 72 (1978).

If you have questions or need legal advice, **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION**

