

Non-fatal Offence – Structuring s18 Lowering to s20 GBH Problem Question

Ramon and his girlfriend Alia had a serious argument, during which Alia, in her rage, picked up the nearest thing to her, a kitchen knife and threw it at Ramon. It struck him in the shoulder and caused a deep cut that bled and damaged tendons. With respect to the injuries suffered by Ramon, Alia may be charged with a non-fatal offence.

Advise Alia as to her criminal liability for Ramon's injuries.

In advising Alia as to the bad cut to the shoulder and the damaged tendons, under the Joint Charging Standard, Alia most likely to be charged with either s.18 or s.20 of the Offences Against the Person Act 1861. Both of these offences deal with unlawful wounding and grievous bodily harm (GBH). However, s.18 is a specific intent crime, where only intention suffices for the mens rea. Consequently, s.18 is the more serious offence of the two, and if found criminally liable, s.18 carries the punishment of up to life imprisonment whereas for s.20 is up to 5 years imprisonment.

For both s.18 and s.20, it must be proven for the Actus Reus (AR) that Alia's conduct amounted to a voluntary act (**Hill v Baxter, Woolmington**) of unlawful wounding or causing/inflicting GBH. When Alia picked up a kitchen knife and threw it at Ramon, striking him in the shoulder and causing a bad cut and damaged tendons, the bad cut bled which certainly constitute unlawful wounding involving the breaking of the entire two skin, epidermis and dermis (**JCC v Eisenhower**). Regarding the damaged tendons amounting to causing / inflicting GBH, where 'grievous' was described in **DPP v Smith** as 'really serious harm', this include broken bones, permanent disability and dislocated joints (**Janjua and Chowdhury**). This can be either physical harm, as in **Martin** where theatregoers were physically injured in a stampede, or psychological, as in **Burstow**. The damage tendons constitute physical harm, which is sufficiently serious injury and amounts to causing/inflicting GBH. Thus, satisfying AR for s.18 and s.20.

As previously mentioned, the mens rea requirement differ between s.18 and s.20, where s.18 necessitates only intention. Thus, the prosecution must prove that the defendant intended to cause serious harm for GBH rather than just some harm as required for s.20 (**Parmenter**). Alia's use of a weapon, a kitchen knife might support as evidence to her intention. Prosecution needs to establish that when Alia threw the knife at Ramon, she either had direct intention, that is Alia had the desire, aim, and purpose to bring about serious harm (**Mohan**). On the other hand, for indirect intention, the jury could find that it was virtual certainty that Alia's conduct would result in Ramon's suffering serious harm when she threw the knife at Ramon and Alia must have appreciated this (**Woollin** reaffirmed in **Mathew and Alleyne**).

It could be argued that prosecution may struggle to establish that Alia intended to cause serious harm with a single throw of the knife at Ramon, she may have intended to wound. However, in **Taylor** 2009 it was stated that intention to wound is not sufficient for the s.18. In such scenario, the prosecution could consider the lesser offence of s.20 where the MR requirement is the defendant had either intention or was reckless as to causing some harm, and not serious harm (**Parmenter**). The jury could potentially find, at the very least under subjective recklessness (**Cunningham**) that Alia foresaw the risk of some harm by throwing the knife but she took the unjustified risk anyway. The harm foreseen by Alia does not need to be serious as a bad cut or damage tendons, just as long as it is some harm, which is subjective.

Thus, while Alia may deny intending to cause such serious injuries and the prosecution may struggle to establish MR for s18, they may find it find it easier to establish that Alia could foresee some harm by throwing a weapon like a knife, thus satisfying the MR for s.20.

Therefore, in advising Alia as to Ramon's injury she would be most likely will be found criminally liable under s.20 for unlawful wounding for the bad cut, and inflicting GBH for the damaged tendon.