

Culpable Mental States

Ryan Kellus Turner

General Counsel & Director of Education

TMCEC

AY 2009

Criminal Responsibility: What is a Crime?

Formulation of a Crime

Mens Rea + Actus Reus = Crime

A.K.A.

MR + AR = C

Formulation of a Crime

Mens Rea + ~~Actus Reus~~ = Crime

A.K.A.

MR + ~~AR~~ = C

This Presentation is About

- Culpable Mental States
- The Role that Culpable Mental States Play in the Formulation of Crimes
- Issues Relating to Alleging and Proving Culpable Mental States

Issues Relating to “Culpability”

Include:

- Culpable Mental States
- Capacity
- Sanity
- Competency

Related Issue: “Capacity”



- Common Law Defense of “Infancy”
- Sec. 8.07, Penal Code “Age Affecting Criminal Responsibility”
- Child (At least age 10 and younger than 17)
 - Art. 45.058(h)(1), CCP

Related Issue: “Competency



- CCP 46B.002 specifically states that the legal standards for determining competency to stand trial apply to “a defendant charged with a felony or with a misdemeanor punishable by confinement.”
- Not applicable to fine only offenses

Related “Sanity” (e.g. The Insanity Defense – Sec. 8.01, Penal Code)



§ 6.01(a). Requirement of Voluntary Act or Omission

- An offense only occurs if either:
 - (S)he did it (But Wasn't Allowed To) (i.e. “Commission”)
 - (S)he was suppose to do it (But Didn't) (i.e. “Omission”)
 - (S)he had it (But Wasn't Authorized To) (i.e. “Possession”)
- “Voluntary conduct is simply the absence of an accidental act, omission, or possession. It embraces no element of will or thought.”

§ 6.01(b). Requirement of Voluntary Act or Omission

- Possession is akin to



§ 6.01(c). Requirement of Voluntary Act or Omission

“Law” =

- Constitution or Statute
- Written Opinion of a Court of Record
- Municipal Ordinance
- Order of Commissioners Court
- Rule Authorized and Lawfully Adopted under Statute

“Omission” =

- Failure to Act

§ 6.02(a). Requirement of Culpability

- General Rule = No Proof of Culpable Mental State, No Crime Committed
 - Proof of AR alone is Insufficient. (Directed Verdict or Acquittal)
- General Rule = Definition of the Crime Requires one of Four Culpable Mental States
- Complaint for Ordinance Violation Alleging “Negligent Collision” Deemed Fundamentally Defective (Honeycutt v. State 627 SW2d 417 (CCA 1981))

§ 6.02(b). Requirement of Culpability

- Just Because the Definition of the Offense does not Contain a Culpable Mental State DOES NOT mean that one is not “required.”
- “Required”?
 - Required to be alleged?
 - Required to be proved?
 - Required to be alleged and proved?
- Exception: “...unless the definition plainly dispenses with any mental element.” 6.02(b)
(Strict Liability Offenses)

Are Most Criminal Offenses Strict Liability? **NO!!!**

- “We must presume that a culpable mental state is required unless a contrary intent ‘is manifested by other features of the statute.’” *See Aguirre v. State*, 22 S.W.3d 463, 471-472(Tex. Crim. App. 1999)
- In other words, criminal offenses are generally presumed to **NOT** be Strict Liability.

- The most important factor in the more recent cases is the subject of the statute.
- Strict liability is traditionally associated with the protection of public health, safety, or welfare.

Aguirre v. State, 22 S.W.3d 463, 473 (Tex. Crim. App. 1999)

- However, in determining whether an offense is strict liability, Aguirre requires examination of various “factors.”

Aguirre: “The Conclusive Feature”

“The conclusive feature would be an affirmative statement in the statute that the conduct is a crime though done without fault.

A legislature could make such a statement, but it rarely if ever does so. The typical strict liability statute is ‘empty’ -- it simply says nothing about a mental state.”

Aguirre at 472

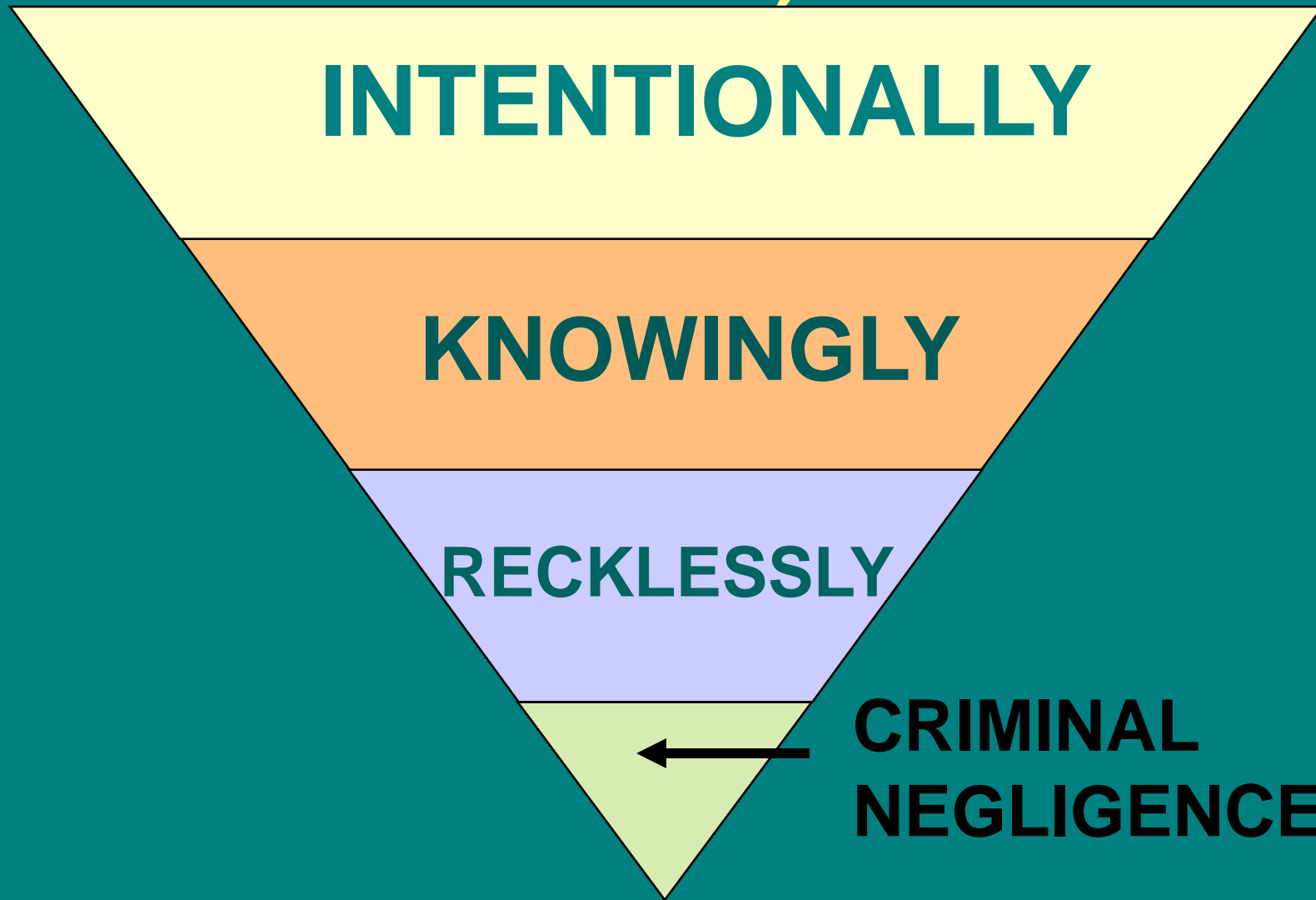
Other *Aguirre* Factors

1. The Legislative History of the Statute Containing the Offense
2. The Severity of the Punishment for the Offense
3. The Serious of Harm to the Public
4. The Defendant's Opportunity to Ascertain Facts
5. Proof of Mental State
6. The Number of Prosecutions

§ 6.02(c). Requirement of Culpability

- If the definition DOES NOT plainly dispenses with a mental element, three of the four will suffice.
- Criminal Negligence WILL not suffice.

**§ 6.02(d). Requirement of
Culpability (From Highest to
Lowest)**



§ 6.02(e). Requirement of Culpability

“Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.”

Practically, What Does Sec. 6.02(e) Mean?

- Proof of “intentional” ALSO constitutes proof of “knowing,” “reckless” or “criminal negligence”
- Proof of “knowing” ALSO constitutes proof of “reckless” or “criminal negligence”
- Proof of “reckless” ALSO constitutes proof of “criminal negligence”

Sec. 6.02(e) also Provides a Corollary

- Proof of “criminal negligence” DOES NOT constitute proof of “reckless,” “knowing” or “intentional”
- Proof of “reckless” DOES NOT constitute proof of “knowing” or “intentional”
- Proof of “knowing” DOES NOT constitute proof of “intentional”

§ 6.02(f). Requirement of Culpability

- Added in 2005
- An offense defined by municipal ordinance or by order of a county commissioners court may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23 (i.e., \$500).

Which
Brings Us
to Five
Burning
Questions



Q1: What kind of offense carry fines that can potentially exceed \$500?

A: Article 4.14(a)(2), C.C.P. and Section 29.003(2)(A), Government Code authorize cities to adopt ordinances punishable by a fine not to exceed \$2,000 for offenses involving:

- Fire Safety,
- Zoning,
- Public Health, and
- Sanitation offenses (including dumping of refuse)

Q2: Does this mean that all other ordinance violations that carry a fine less than \$500 are strict liability offenses?

A: No. See *Aguirre*. In fact, without an express waiver it is presumed that a mental state is required subject to the analysis of factors set out in *Aguirre*.

Q3: Does Sec. 6.02(f) mean that local government must revise certain penal ordinances?

A: Not necessarily. It means that prosecutors have to be mindful that culpable mental state may need to be alleged and proven even if the ordinance is silent.

Q4: What if the ordinance relates to fire safety, health or zoning but by the letter of the ordinance the maximum fine is \$500, would the prosecution still have to prove a culpable mental state?

A: It depends. Probably, yes, but not because of Section 6.02(f). Rather, see Section 6.02(b) and the analysis described in *Aguirre*.

See also, *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 538 (5th Cir. Tex. 2008).

Q5: Isn't it inconvenient to have to use the *Aguirre* factors for determining whether an ordinance violations and other Class C offenses are strict liability?

A. Yes, it is! It is, of course, it's easier to for cities to expressly waive a culpable mental state for all eligible ordinance violations than would be for the Texas Legislature to review the more than 900 fine-only offenses in state law.



Until Next Time, Thanks for Your
Attention!

