

## R. v. Zora, 2020 SCC 14 – *mens rea* of bail conditions

### Facts:

Chaycen Zora was charged with drug offences and granted bail in September 2015. As part of his bail conditions, he was placed under absolute curfew (house arrest), and was not allowed to leave his home except when accompanied by one of his parents or someone else approved by his bail supervisor. He was also subject to home checks by the police or his bail supervisor, and had to present himself at the door of his home within five minutes of one of these checks.

After being granted bail, police came to Zora's residence almost every evening for one month to check on him. Zora missed two checks on October 9<sup>th</sup> and 11<sup>th</sup>, when police came to his door around 10:30 p.m. He was charged with four breaches: two counts of breaching his curfew and two counts of not answering the door.

At the trial for the breaches, Zora's mother and girlfriend testified that they were with him on the days of the breaches. Zora testified that his bedroom was downstairs and across the house from the front door, and that it would have been very difficult to hear someone at the door from his room. He also had gone to bed early on these dates because he was going through withdrawal and was very tired. The judge acquitted him of the curfew breaches, but convicted him of the breaches for not answering the door, saying that these charges (found under section 145(3)\*\* of the Criminal Code) were strict liability offences, meaning the prosecution did not need to show that Zora intended to commit the offences, just that he had.

On appeal, the British Columbia Superior Court found that section 145(3) requires an objective intent, meaning Zora was guilty if he had behaved in a way that was different from what a normal person under his bail conditions would have done. They found that this was the case, and dismissed Zora's appeal. The Court of Appeal agreed with the Superior Court. Zora appealed to the Supreme Court of Canada.

### The Decision:

The Supreme Court found that section 145(3) requires a subjective intent.

Criminal offences usually require two components: *actus reus* (a guilty act) and *mens rea* (a guilty mind). This means that in order to convict a person, the prosecution must show that the person did something illegal, and also intended to do that illegal thing. (Some minor offences, like speeding, are strict liability offences, and do not require any proof of intent.)

*Mens rea* can be complicated, because some offences require subjective intent, and some require objective intent. Subjective intent means the accused person actually knew they were breaking the law, and objective intent means that even if the accused did not know they were breaking the law, they should have known, because a reasonable person would have

### Discussion Questions:

- 1) Do you agree with the Court's decision in this case? Why or why not?
- 2) Do you think the objective standard is appropriate for certain offences? If so, what offences and why?
- 3) Can you give some examples of strict liability offences?
- 4) Why is the presumption of innocence such a crucial principle of our justice system?

### Relevant Law:

*The Criminal Code*, section 145(3) (now sections 145(4) and 811)

### Resources:

You can read the entire case at:

<https://canlii.ca/t/j89v2>

You can find the *Criminal Code* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

known. Objective *mens rea* does not take into account an accused person's actual circumstances, such as lack of education or cultural upbringing; it only considers societal norms.

The Court reaffirmed its position that the presumption of innocence is a crucial principle of our justice system, and that all offences should be presumed to require subjective *mens rea* as a starting point. If legislators want offences to be objective intent offences, they must make that clear when drafting laws.

The Court looked at the text of section 145(3) and found that the language about intent was neutral. This was not enough to remove the presumption of subjective intent. The Court also looked at the legislative history of the section to see what legislators had said about the law when drafting it. The court found no indication that the legislators had meant to create an objective intent offence. Because of this, and because a conviction for breaching a bail condition could have a serious impact on an accused person's liberty, the Court found that the presumption of subjective *mens rea* should apply for this type of offence. They ordered a new trial.

### Relevant Law:

**\*\*Note:** The section 145(3) referred to in this case is now found at sections 145(4) and 811. You can see both versions below:

*145(3) [REPEALED] Every person who is at large on an undertaking or recognizance given to or entered into before a justice or judge and is bound to comply with a condition of that undertaking or recognizance, and every person who is bound to comply with a direction under subsection 515(12) or 522(2.1) or an order under subsection 516(2), and who fails, without lawful excuse, the proof of which lies on them, to comply with the condition, direction or order is guilty of*

*(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or*

*(b) an offence punishable on summary conviction.*

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**145(4)** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or an offence punishable on summary conviction who,

(a) is at large on an undertaking and who fails, without lawful excuse, to comply with a condition of that undertaking; or

(b) is at large on an undertaking that has been confirmed by a justice under section 508 and who fails, without lawful excuse, to appear at the time and place stated in the undertaking for the purposes of the Identification of Criminals Act or to attend court in accordance with the undertaking.

**811** A person bound by a recognizance under any of sections 83.3 and 810 to 810.2 who commits a breach of the recognizance is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than four years; or

(b) an offence punishable on summary conviction.