Legal

Inchoate Offenses: The Forget-Me-Not Charges

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Let's talk about inchoate offenses. You may be asking, incho-what offenses? The word inchoate literally means in an initial or early stage.[1] Essentially, an inchoate offense is one that has begun but remains, for whatever reason, unfinished or incomplete. That is, the underlying offense never quite makes it to the result sought or intended by the offender. These crimes are often forgotten charges because they easily can be overlooked. This may happen in a variety of situations and for various reasons.

In Kentucky, inchoate offenses include solicitation, conspiracy, attempt and facilitation and are located in Chapter 506 of the Kentucky Revised Statutes. Although facilitation is lumped in as an inchoate offense, it actually requires a completed crime and therefore is not a true inchoate offense.

Why even bother charging someone with an offense when the offense has not been completed? Would that not be charging someone for a crime that never happened? Actually, sanction(s) or punishment is imposed for inchoate offenses because the defendant has the culpable mental state to commit a crime and has essentially performed every required act. He is simply unsuccessful. In other words, the defendant's failure was not for a lack of trying.

It may help in understanding the inchoate offenses if you think of them generally in the following ways:

solicitation as asking
conspiracy as agreeing
attempt as trying
facilitation as helping

Criminal solicitation (asking)

What comes to mind when you hear the word, solicitation? Many people think of prostitution or some other kind of sex offense. This can help in understanding criminal solicitation because generally, when soliciting for purposes of prostitution, one person is asking another person to engage in sexual conduct in exchange for money. According to KRS 506.030 "a person is guilty of criminal solicitation when, with the intent of promoting or facilitating the commission of a crime, he commands or encourages another person to engage in specific conduct, which would constitute that crime or an attempt to commit that crime or which would establish the other's complicity in its commission or attempted commission." So basically, criminal solicitation in the inchoate sense is one person asking, requesting, encouraging or commanding another person to engage in conduct that would constitute a crime or an attempt to commit a crime.

Criminal conspiracy (agreeing)

According to KRS 506.040, in order to be guilty of conspiracy, "a person having the intention of promoting or facilitating the commission of a crime agrees with one or more persons that at least one of them will engage in conduct constituting that crime or an attempt or solicitation to commit such a crime or agrees to aid one or more persons in the planning or commission of that crime or an attempt or solicitation to commit such a crime." The statute makes it appear that once the agreement is reached, the offense has been committed. However, KRS 506.050(1) adds the requirement that "no person may be convicted of conspiracy to commit a crime unless an overt act in furtherance of the conspiracy is alleged and proved to have been committed by one of the conspirators." This means that any act done to help or advance the conspiracy will be sufficient to establish the overt act. Therefore, the linchpins of conspiracy are an agreement between two or more people and an overt act committed by one of them in furtherance of the conspiracy.

Criminal attempt (trying)

An attempt to commit a crime is just that, a failed or unsuccessful effort. Attempt is the closest a person can come to completing a crime without actually succeeding. Think of attempt as trying to do something but coming up just short of your goal.

There are three ways for someone to commit an attempt. First, is by intentionally engaging in conduct, which would constitute the crime if the attendant circumstances were as the defendant believes them to be.[2] One example of this is a defendant trying to steal a person's wallet from that person's coat pocket but the pocket is empty. Another example is a defendant thinking a person is a government official and trying to bribe them when the person is not an official at all.

Second, by intentionally doing or omitting to do something which, under the circumstances as he believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime.[3] The substantial step element ensures that persons are not punished for equivocal or innocent conduct. The substantial step element requires that there be no reasonable doubt as to the defendant's intentions.[4]

Finally, a person is guilty of a criminal attempt when he engages in conduct intended to aid another person to commit a crime, even though the crime is not committed or attempted by that other person, as long as his conduct would establish complicity under KRS 502.020 if the crime were committed by the other person.[5]

Criminal facilitation (helping)

Criminal facilitation involves providing the means or opportunity for another person to commit a crime with knowledge that the person is going to commit a crime.[6] The individual providing the means or opportunity does not necessarily intend for the crime to be committed, he simply provides the means or opportunity with the knowledge that the recipient will commit a crime with what he has provided. A good example of this is that of a gun dealer who sells a shotgun to a customer whom he knows is going to use it to hunt illegally. The customer uses the shotgun to hunt illegally but also uses the shotgun to murder his wife. The gun dealer would be guilty of facilitating the illegal hunting because he knew the customer was going to hunt illegally and provided him with the means to accomplish it, but the gun dealer would not be guilty of facilitating the murder because he had no knowledge of the customer's intent to kill his wife.

Defenses

The defense of renunciation is available for the offenses of solicitation, conspiracy and attempt as long as it is a voluntary and complete renunciation of criminal purpose and the defendant abandoned his effort to commit the crime.[7] It is not a renunciation if the defendant abandons his attempt only because of a risk of being caught or detected. Abandoning the crime due to the risk of being caught or detected is more akin to a rescheduling than a renunciation.

Conclusion

It is possible to forget about inchoate offenses when a completed offense has happened right in front of you. However, inchoate offenses should be kept in mind since it is also possible that one of them may be applicable. Inchoate offenses should be considered in circumstances when a suspect has taken all the actions necessary to commit a crime but has been unsuccessful (attempt), or when it is apparent that the suspect intended that a crime be committed and he encouraged another to complete it (solicitation), or entered into an agreement with at least one other person that one of them would commit or attempt to commit a crime (conspiracy).

The inchoate statutes are a valuable charging tool for law enforcement and prosecutors. Without them, suspects would only be accountable for crimes actually completed. Unsuccessful offenders would go unpunished even though they had actively pursued the commission of a criminal offense and demonstrated the dangerousness of mind needed to commit a crime. Inchoate statutes help protect society by punishing offenders who have manifested all the actions and thought processes needed to complete a crime, but due to circumstances, failed. Make their failure your success by using the inchoate offenses to bring them to justice.

[1] *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 23 Jan. 2008. <Dictionary.com http://dictionary.reference.com/browse/inchoate>.
[2] Kentucky Revised Statutes 506.010(1)(a).
[3] Kentucky Revised Statutes 506.010(1)(b).
[4] Kentucky Revised Statutes 506.010(2).
[5] Kentucky Revised Statutes 506.010(3).
[6] Kentucky Revised Statutes 506.080.
[7] See Kentucky Revised Statutes 506.020 and 506.060.