

Administering a Stupefying or Overpowering Drug or Thing with Intent: s 316

Legislation

316 Stupefying in order to commit indictable offence

Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer, any stupefying or overpowering drug or thing to any person, is guilty of a crime, and is liable to imprisonment for life.

Commentary

Administer or attempt to administer

The word “administer” includes conduct which, not being the application of direct physical force to the complainant, nevertheless brings the noxious thing into contact with the complainant’s body. Thus it would be apt in law to encompass the spraying of ZS gas from a canister into the face of the complainant. See *R v Gillard* (1988) 87 Cr App R 189. In *R v Murphy* [1996] QCA 256 the majority of the court held that for the purpose of “administering”, it is insufficient if no more is done than to give, supply or provide a stupefying drug to a person who, knowing its effects, voluntarily inhales it.

Stupefying or overpowering drug

Whether a drug or thing is stupefying or overpowering is a question of fact and will often depend on expert opinion evidence based on given facts. A thing which stupefies by intoxicating is a stupefying thing.

Intention

See the direction on intention at **Benchbook No 59 – Intention**.

Suggested Direction

The prosecution must prove beyond reasonable doubt that:

- 1. The defendant administered, that is, gave, supplied or provided the stupefying or overpowering drug or thing to the complainant;**
- 2. The defendant knew it was a stupefying or overpowering drug or thing;**
- 3. The defendant intended the complainant to take it;**
- 4. The defendant did so with intent:**

(a) to commit or to facilitate the commission of an indictable offence; or

(b) to facilitate the flight of an offender after the commission or attempted commission of an indictable offence.

The offence alleged is an indictable offence.