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Psychiatric Testimony And The Doctrine Of Diminished Responsibility - State v. Sikora

Psychiatric Testimony And The Doctrine Of Diminished Responsibility

State v. Sikora[1]

Defendant Sikora was the product of an unhappy and unfortunate childhood, having lived in various foster homes and institutions until he reached the age of nineteen years. On January 15, 1962, some two weeks after he had been rejected by the woman with whom he had been living, defendant was involved in a barroom fight with one Hooey and was beaten and thrown out of the tavern by Hooey and two or three of his friends. Defendant later returned to the tavern armed with an automatic pistol with which he shot and killed Hooey. Sikora was apprehended, tried before a jury, convicted of first degree murder, and sentenced to life imprisonment. At the trial defendant interposed no defense of insanity[2] but sought to introduce evidence that "circumstances to which Sikora had been subjected imposed on his personality a stress that impaired or removed his ability consciously to premeditate or weigh a design to kill."[3] Defendant sought to confine the crime to second degree murder on the ground that he was incapable of premeditation and deliberation[4] because his decisions and conduct were

1. 44 N.J. 453, 210 A.2d 193 (1965).

2. New Jersey applies the basic *M'Naghten* test of criminal insanity, which states that the defendant is not legally responsible for his act if at the time of committing the act he was laboring under such a defect of reason from disease of the mind as to not know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. See State v. Lucas, 30 N.J. 37, 152 A.2d 50 (1959).

3. 210 A.2d at 201.

4. "Murder which is perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which is committed in perpetrating or attempting to perpetrate arson, burglary, kidnapping, rape, robbery or sodomy, is murder in the first degree. Any other kind of murder is murder in the second degree." 2A:113-2 N.J.S.A. (1953). See PERKINS, CRIMINAL LAW 72 (1957), for a general pattern used by many states in the definition of first degree murder. "All murder which shall be perpetrated by means of poison, or lying in wait, or any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery or burglary, shall be murder in the first degree. . . ." See, *e.g.*, MICH. STAT. ANN. § 28.548 (1954).

mechanically directed by unconscious influences which necessarily resulted from tensions to which he was subjected at the time.

The trial court refused to admit psychiatric evidence on that issue, and on appeal the New Jersey Supreme Court affirmed by 4–3 decision, reasoning that criminal responsibility must be judged at the level of the conscious, and where a defendant plans and executes a crime consciously, criminal responsibility cannot be denied, wholly or partially. The court did not specifically reject the theory of partial or diminished responsibility based on mental illness or deficiency, which it had previously accepted,[5] but felt here that the proffered evidence was "unreliable or too speculative or incompetent when tested by concepts established in law for the determination of criminal responsibility"[6] and hence inadmissible. The court indicated that such evidence was admissible only on the issue of punishment. However, exclusion in this case was held not to be prejudicial error, since defendant had been sentenced to the lesser punishment of life imprisonment without recourse to such evidence.

The rule which holds that voluntary intoxication may negate the specific intent required as an element of the crime is accepted in a majority of states either by judicial opinion[7] or by statute.[8] Where a specific intent is an essential ingredient of the crime charged, it must be alleged and proven by the prosecution.[9] If voluntary intoxication is to be accepted as a valid factor negating specific intent, it follows that evidence of any condition, including mental or emotional state, should be admissible for the purpose of establishing incapacity to entertain the requisite intent. To date, at least twelve states have allowed evidence of mental condition, not amounting to legal insanity, to be considered in determining whether premeditation and deliberation required for first degree murder in fact existed.[10] The Supreme Court

5. See State v. DiPaolo, 34 N.J. 279, 168 A.2d 401, 409 (1961), *cert. denied*, 368 U.S. 880 (1961), in which the court stated the rule: "Hence evidence of any defect, deficiency, trait, condition, or illness which rationally bears upon the question whether those mental operations did in fact occur must be accepted."

6. State v. Sikora, 44 N.J. 453, 210 A.2d 193, 202 (1965). These concepts referred to by the court probably are the basic *M'Naghten* insanity tests set out in note 2 *supra*.

7. See, *e.g.*, Ray v. State, 257 Ala. 418, 59 So. 2d 582 (1952); People v. Burkhart, 211 Cal. 726, 297 Pac. 11 (1931); Teer v. Commonwealth, 307 Ky. 602, 212 S.W.2d 106 (1948); State v. Tansimore, 3 N.J. 516, 71 A.2d 169 (1950); State v. Reposa, 206 A.2d 213 (R.I. 1965). *Cf.* Commonwealth v. Simmons, 361 Pa. 391, 65 A.2d 353 (1949), which held that where the murder occurs in the commission of a crime which does not require specific intent (*e.g.*, robbery) intent is immaterial and the defendant cannot invoke the doctrine of diminished responsibility. State v. Jordan, 285 Mo. 62, 225 S.W. 905 (1920); Clinton v. State, 132 Tex. Crim. App. 303, 104 S.W.2d 39 (1937); State v. Tatro, 50 Vt. 483 (1878).

8. See, *e.g.*, ARIZ. CODE § 43–112 (1939); CAL. PENAL CODE § 22 (1949); IDAHO CODE § 18–116 (1948).

9. PERKINS, CRIMINAL LAW 674 (1957).

10. See People v. Henderson, 60 Cal. 2d 482, 386 P.2d 677 (1963); People v. Wells, 33 Cal. 2d 330, 202 P.2d 53 (1949); Battalino v. People, 118 Colo. 587, 199 P.2d 897 (1948); Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933); State v. Saxon, 87 Conn. 5, 86 Atl. 590 (1913); Andersen v. State, 43 Conn. 514 (1876); State v. Johnson, 40 Conn. 136 (1873); Everett v. State, 208 Ind. 145, 196 N.E. 77 (1935); Hopkins v. State, 180 Ind. 293, 102 N.E. 851 (1913); Donahue v. State, 165 Ind. 148, 74 N.E. 996 (1905); Aszman v. State, 123 Ind. 347, 24 N.E. 123 (1890); Robinson v. State, 113 Ind. 510, 16 N.E. 184 (1888); State v. Padilla, 66 N. Mex. 289, 347 P.2d 312 (1959), noted in 20 MD. L. REV. 376 (1960); State v. DiPaolo,

of the United States long ago stated the intoxication rule broadly enough to include mental disorder.[11] Similarly, courts in several jurisdictions have expressed a diminished responsibility rule broadly enough so that they might later hold emotion or mental disorder to be included in the rule, although not actually applying it to such a case.[12] Several states have expressly rejected the rule as applied to mental condition.[13]

Maryland follows the general view that the state has the burden of showing premeditation in a trial for first degree murder.[14] The Court of Appeals has consistently followed the majority rule allowing evidence of intoxication to go to the jury on the issue of premeditation.[15] This rule was first clearly announced in *Chisley v. State*.[16] In that case, the Court of Appeals seemed to base the rule on *Hopt v. Utah*,[17] citing *Hopt's* broad language which was not limited to the

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34 N.J. 279, 168 A.2d 401 (1961); State v. Fenik, 45 R.I. 309, 121 Atl. 218 (1923); Drye v. State, 181 Tenn. 637, 184 S.W.2d 10 (1944); State v. Green, 78 Utah 580, 6 P.2d 177 (1931); State v. Anselmo, 46 Utah 137, 148 Pac. 1071 (1915); Dejarnette v. Commonwealth, 75 Va. 867 (1881); Oborn v. State, 143 Wis. 249, 126 N.W. 737 (1910); Hempton v. State, 111 Wis. 127, 86 N.W. 596 (1901). Compare Foster v. State, 222 Ind. 133, 52 N.E.2d 358 (1944). The rule has been accepted in dicta in New York. See People v. Moran, 249 N.Y. 179, 163 N.E. 553 (1928), commented on, Weihofen, *Partial Insanity and Criminal Intent*, 24 ILL. L. REV. 505 (1930). And it has perhaps been accepted in Kentucky, Montana, and Oregon. See Rogers v. Commonwealth, 96 Ky. 24, 27 S.W. 813 (1894); Mangum v. State, 19 Ky. L. Rep. 94 (1897); Horn v. Commonwealth, 292 Ky. 587, 167 S.W.2d 58 (1943); State v. Leakey, 44 Mont. 354, 120 Pac. 234 (1911); State v. Leland, 190 Ore. 598, 227 P.2d 785 (1951). *But see* Perciful v. Commonwealth, 212 Ky. 673, 279 S.W. 1062 (1925).

11. "But when a statute establishing different degrees of murder requires deliberate premeditation in order to constitute murder in the first degree, the question whether the accused is in such a condition of mind, by reason of drunkenness or otherwise, as to be capable of deliberate premeditation, necessarily becomes a material subject of consideration by the jury." Hopt v. Utah, 104 U.S. 631, 634 (1881). *But see* Fisher v. United States, 328 U.S. 463 (1946), in which the Court refused to extend the *Hopt* doctrine, affirming the District of Columbia trial court's refusal to allow the jury to consider evidence of defendant's psychopathic aggressive tendencies, low emotional response, and borderline mental deficiency on the issue of premeditation and deliberation. The Court felt that a Utah statute specifically establishing a partial insanity rule in intoxication cases influenced the *Hopt* decision and that the "or otherwise" dictum in *Hopt* could only refer to various stages of intoxication. *Id.* at 475.

12. *E.g.*, McAffee v. United States, 111 F.2d 199, 204 (1940); People v. Brislane, 295 Ill. 241, 129 N.E. 185 (1920); People v. Walker, 38 Mich. 156 (1878); Jones v. Commonwealth, 75 Pa. 403 (1874). *But see* note 13 *infra*.

13. See Foster v. State, 37 Ariz. 281, 294 Pac. 268 (1930); State v. Van Vlack, 57 Idaho 316, 65 P.2d 736 (1937); State v. Holloway, 156 Mo. 222, 56 S.W. 734 (1900); State v. Paulsgrove, 203 Mo. 193, 101 S.W. 27 (1907). The rule has perhaps been rejected in four other jurisdictions. See Fisher v. United States, 328 U.S. 463 (1946) (District of Columbia); Commonwealth v. Cooper, 219 Mass. 1, 106 N.E. 545 (1914); State v. Skaug, 63 Nev. 59, 161 P.2d 708 (1945); State v. Fisko, 58 Nev. 65, 70 P.2d 1113 (1937); Jacobs v. Commonwealth, 121 Pa. 586, 15 Atl. 465 (1888); Commonwealth v. Wireback, 190 Pa. 138, 42 Atl. 542 (1899); Commonwealth v. Szachewicz, 303 Pa. 410, 154 Atl. 483 (1931). *But see* Commonwealth v. Stabinsky, 313 Pa. 231, 169 Atl. 439 (1933), in which the court allowed evidence of partial responsibility in mitigation of penalty.

14. "All murder which shall be perpetrated by means of poison, or lying in wait, or by any kind of willful, deliberate and premeditated killing shall be murder in the first degree." MD. CODE ANN. art. 27, § 407 (1957).

15. See Martin v. State, 228 Md. 311, 179 A.2d 865 (1961); Lipscomb v. State, 223 Md. 599, 165 A.2d 918 (1960); Breeding v. State, 220 Md. 193, 151 A.2d 743 (1959); Stansbury v. State, 218 Md. 255, 146 A.2d 17 (1958); Soldiveri v. State, 217 Md. 412, 143 A.2d 70 (1958); Chisley v. State, 202 Md. 87, 95 A.2d 577 (1952).

16. 202 Md. 87, 95 A.2d 577 (1952).

17. See note 11 *supra* and accompanying text.

effect of intoxication on the issue of deliberation and premeditation.[18] So on the basis of Maryland's voluntary intoxication decisions, a defense of diminished responsibility based on mental illness or deficiency seems at least logically arguable. In *Spencer v. State*,[19] the landmark decision establishing the *M'Naghten* right and wrong test of legal insanity in Maryland,[20] the Court of Appeals was also confronted with an argument that the defendant's mental state precluded a finding of first degree murder. The trial court had excluded proffered evidence of mental condition, and the Court of Appeals affirmed the conviction. The court said that the principle of *Hopt* may be conceded but refused to apply it to the facts before it.[21] Since the defendant admitted that he had consciously planned and executed the murder, while arguing that his thoughts and actions were involuntary because of his obsession with the wrongs he thought the deceased had done to his (defendant's) wife, this decision does not specifically preclude recognition of the doctrine of diminished responsibility in the usual case. In *Armstead v. State*,[22] the argument of diminished responsibility was offered in the case of an epileptic defendant accused of first degree murder. The Court of Appeals upheld a conviction for that offense. Although the decision is justifiable in that the evidence of diminished responsibility, which had been heard by the judge sitting without a jury, was not strong, the opinion tended to confuse two separate and distinct concepts: legal insanity, which is sufficient to exculpate a defendant of any crime, and mental disorder which prevented the defendant from forming the specific criminal intent required for first degree murder.[23] The Maryland court after accepting the basic doctrine with limitations in *Spencer v. State* appears to have considered the diminished responsibility argument as an attempt to modify the firmly established criminal insanity rules, when in reality it is a distinct formal argument based on specific intent or lack thereof. Thus the Maryland court may have rejected the doctrine without fairly considering it.[24] The 1967 statutory amendment, modifying the *M'Naghten* insanity test in Maryland, would seemingly permit a wider range of psychiatric testimony to be admitted on the issue of insanity; however, this statute

18. See Chisley v. State, 202 Md. at 107, 95 A.2d at 586 (1952).

19. 69 Md. 28, 13 Atl. 809 (1888).

20. "And according to the law, as we find it settled by the great preponderance of judicial authority, if the party accused be competent to form and execute a criminal design; or in other words, if at the time of the commission of the alleged offense, he had capacity and reason sufficient to enable him to distinguish between right and wrong, and understand the nature and consequences of his act, as applied to himself he is a responsible agent, and amenable to the criminal law of the land for the consequences of his act." *Id.* at 37, 13 Atl. at 812.

21. *Id.* at 41–42, 13 Atl. at 815.

22. 227 Md. 73, 175 A.2d 24 (1961).

23. "It is manifest that if she is to obtain relief, under the facts of this case, upon either theory, the rule laid down in *Spencer* must be broadened or modified. . . ." Armstead v. State, 227 Md. 73, 76, 175 A.2d 24, 26 (1961).

24. In Allen v. State, 230 Md. 533, 188 A.2d 159 (1963), the Court of Appeals states that in *Armstead v. State*, "this court refused to adopt the so-called diminished responsibility rule." As the trial judge in both cases had heard the evidence, the court seems to mean by the phrase "refused to adopt" that there was not sufficient evidence to justify overturning the finding of fact below. In neither case did the court say that the evidence should not have been considered.

does not necessarily affect the permissible scope of psychiatric testimony on the issue of diminished responsibility.[25] Therefore, it remains to be seen whether the statute will have a liberalizing effect in the latter area.

The *Sikora* decision is similar to the *Spencer* and *Armstead* decisions in Maryland. Although accepting the basic diminished responsibility doctrine, *Sikora* emasculates it by framing it in terms of the test established for determining criminal insanity.[26] The defense is one of lack of specific intent, not insanity per se, and to require evidence of legal insanity is only to confuse two distinct issues. The question is more properly one of fact for jury determination, and no relevant evidence should be excluded. This case creates many problems of interpretation at least for New Jersey trial courts, because it requires them to decide whether evidence of mental condition is admissible on the issue of premeditation and deliberation by weighing its reliability, speculative nature, and conformity with existing insanity tests. The burden of deciding which psychiatric evidence, much of which is likely to be highly technical, is to be admitted in the case is thus placed upon the trial judge. It would seem more reasonable to allow all logically relevant evidence to be heard by the triers of fact and eliminate judicial screening of psychiatric evidence bearing on the issue of specific intent. No defendant should be convicted of a specific intent crime without a jury finding of such intent.

Two primary reasons have been advanced in support of the acceptance of the doctrine of diminished responsibility.[27] First, it is fundamental in our legal system that criminal punishment should be proportioned not only to the seriousness of the crime but also to the individual culpability of the criminal. To punish an individual for a crime of which he had not the required mental state would be inconsonant with this system. Second, the rigidity of our present law may induce a jury to acquit a mentally deficient defendant where they cannot convict him of a lesser offense. Thus, the net effect may be the release of mental defectives into society rather than institutionalization of them.

On the negative side, objections to the rule generally concern problems of application.[28] The diminished responsibility concept presents a jury with the seemingly impossible task of determining whether a legally sane defendant was so mentally disturbed as to be incapable of premeditating. In such cases there may be a tendency for juries to reach compromise second degree murder verdicts. For example, a jury faced with the task of determining a defendant's sanity in a

25. See 1967 amendment to MD. CODE ANN. art. 59, §§ 7–12 (1957), establishing a statutory test for criminal insanity based on the proposals of the American Law Institute. This amendment provides that a defendant is not responsible for criminal conduct "if, at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."

26. ". . . Evidence of 'any defect, deficiency, trait, condition, or illness which rationally bears upon the question' whether the accused did in fact premeditate is admissible in a first degree murder trial. But . . . if such evidence was unreliable or too speculative or incompetent when tested by concepts established in law for the determination of criminal responsibility, it should not be received on the issue of guilt or innocence or the degree thereof." 210 A.2d at 202.

27. See Weihofen, *Partial Insanity and Criminal Intent*, 24 ILL. L. REV. 505 (1930).

28. See WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 185–89 (1954).

prosecution for first degree murder might settle for a verdict of second degree murder by reason of mental diminished responsibility where they are unable to decide the insanity question. The effect of such a verdict is a decision neither sought by nor acceptable to the prosecution or defendant. But this practical difficulty is not much different from that presented by the issue of insanity and must be faced in order to apply existing principles in a logical and just manner. Another possible objection is that the rule may be logically extended to all specific intent crimes[29] and even to crimes requiring only general criminal intent.[30] This would have the ultimate effect of establishing an entirely new test for criminal insanity based upon mens rea alone.[31] Extension of diminished responsibility to any specific intent crime is logically possible, but the *reductio ad absurdum* argument for application to general intent crimes would surely be rejected as an attempted circumvention of existing criminal insanity rules. Finally, it may be argued that a diminished responsibility rule would permit mental defectives to be turned loose on society sooner than sane and possibly less dangerous criminals by virtue of their shorter prison terms. More specifically, it is contended that the rule would have the effect of greatly restricting convictions for first degree murder since the majority of murders are in reality committed by either mentally deficient or defective persons, or by defendants under such circumstances as intoxication or heat of passion, which could likewise render the defendant incapable of premeditation and deliberation. This is a serious objection because the individual, who, by reason of his mental condition, acts on impulse or without volitional control, is more prevalent than the rational cold-blooded or professional criminal. One possible method of minimizing this last problem might be a mandatory psychiatric examination of any defendant convicted of second degree murder by reason of diminished responsibility with possible commitment and treatment under Maryland's Defective Delinquent Statute[32] or its equivalent.

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29. The rule of voluntary intoxication negating specific intent has been applied in various other situations. People v. Neetens, 42 Cal. App. 596, 184 Pac. 27 (1919) (obtaining by false pretenses); State v. Pasnau, 118 Iowa 501, 92 N.W. 682 (1902) (assault); Hall v. Commonwealth, 310 Ky. 718, 221 S.W.2d 652 (1949) (breaking and entering with intent to steal); People v. Guillett, 342 Mich. 1, 69 N.W.2d 140 (1955) (attempt to rape); Bullock v. State, 195 Miss. 340, 15 So. 2d 285 (1943) (attempt to commit burglary); Edwards v. State, 178 Miss. 696, 174 So. 57 (1937) (larceny); Amey v. State, 53 Okla. Crim. 205, 9 P.2d 49 (1932) (forgery).

30. *But see* Commonwealth v. Simmons, 361 Pa. 391, 65 A.2d 353 (1949), *cert. denied*, 338 U.S. 862 (1949), holding that voluntary intoxication is no defense to murder committed in the perpetration of robbery or burglary (first degree murder), since no specific intent to take life is required to commit that crime.

31. "The new test would be: was the defendant, at the time of the act charged, suffering from mental disorder preventing him from entertaining the mens rea, or criminal intent, requisite to constitute the crime?" WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 188 (1954).

32. MD. CODE ANN. art. 31B (1957). Section 5 of this article defines a defective delinquent as "an individual who, by the demonstration of persistent aggravated antisocial or criminal behaviour, evidences a propensity toward criminal activity, and who is found to have either such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to society so as to require such confinement and treatment, when appropriate as may make it reasonably safe for society to terminate the confinement and treatment." Section 6 provides that "a request may be made that a person be examined for possible defective delinquency if he has been convicted and sentenced in a court of this State for a crime or offense coming under

Generally, these objections to the diminished responsibility rule are directed not so much to the logical soundness of the rule but to the practical difficulties in and consequences of its administration. The American Law Institute in its *Model Penal Code* advocates the admission of evidence of mental disease or defect when relevant to a criminal defendant's state of mind where that state of mind is an element of the offense.[33] This view is also espoused by leading authorities in the field of criminal insanity.[34] The basic premises of the rule are logically sound and consonant with our fundamental concepts of criminal justice. Although problems of application may arise, such difficulties should not preclude assertion of the defense and the evidence necessary to establish it.

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one or more of the following categories: (1) a felony; (2) a misdemeanor punishable by imprisonment in the penitentiary; (3) a crime of violence; (4) a sex crime involving: (A) physical force or violence, (B) disparity of age between an adult and a minor, or (C) a sexual act of an uncontrolled and/or repetitive nature; (5) two or more convictions for any offenses or crimes punishable by imprisonment, in a criminal court of this State."

33. "Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense." MODEL PENAL CODE § 4.02(1), comment (Tent. Draft No. 4, 1955).

34. See, *e.g.*, Weihofen and Overholser, *Mental Disorder Affecting the Degree of A Crime*, 56 YALE L.J. 959 (1947); Keedy, *Problem of First Degree Murder: Fisher v. United States*, 99 U. PA. L. REV. 267 (1950).