

## CASES ON INSANITY

### 1. DISEASE OF THE MIND

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***R v Kemp*** [1957] 1 QB 399.

The defendant during a blackout, attacked his wife with a hammer causing her grievous bodily harm. The medical evidence showed that he suffered from arterial-sclerosis, a condition which restricted the flow of blood to the brain. This caused a temporary lapse of consciousness. Devlin J ruled that for the purposes of the defence of insanity, no distinction was to be drawn between diseases of the mind, and diseases of the body affecting the operation of the mind. Also, it was irrelevant whether the condition of mind was curable or incurable, transitory or permanent. The jury returned a verdict of guilty but insane. Devlin J said:

‘The law is not concerned with the brain but with the mind, in the sense that "mind" is ordinarily used, the mental faculties of reason, memory and understanding.’

***Bratty v A-G for N. Ireland*** [1963] AC 386.

The defendant killed a girl during a mental blackout said to be due to psychomotor epilepsy, a disease of the nervous system, which might have prevented him from knowing the nature and quality of his act. The trial judge directed the jury on the defence of insanity ruling that the defence of automatism was not available to the defendant. The jury rejected the defence of insanity and the defendant was convicted. This was held not to be a misdirection. Lord Denning stated *obiter*:

“The major mental diseases, which doctors call psychosis, such as schizophrenia, are clearly diseases of the mind ... It seems to me that any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind. At any rate it is the sort of disease for which a person should be detained in hospital rather than be given an unqualified acquittal.”

***R v Sullivan*** [1984] AC 156.

The defendant kicked and injured a man during a minor epileptic fit. The trial judge ruled that he was prepared to direct the jury on the defence of insanity, but not that of automatism. The House of Lords held that epilepsy was a disease of the mind because the defendant's mental faculties were impaired to the extent of causing a defect of reason. It was irrelevant that this was an organic disease which was only intermittent. It would also be irrelevant if it were only temporary. Lord Diplock stated:

‘The purpose of the legislation relating to the defence of insanity, ever since its origin in 1800, has been to protect society against the recurrence of the dangerous conduct. The duration of a temporary suspension of the mental faculties of reason, memory and understanding, particularly if, as in the appellant's case, it is recurrent, cannot on any rational ground be relevant to the application by the Courts of the McNaghten Rules, though it may be relevant to the course adopted by the Secretary of State, to whom the responsibility

for how the defendant is to be dealt with passes after the return of the special verdict of "not guilty by reason of insanity".'

***R v Hennessy*** [1989] 1 WLR 287.

The defendant was charged with taking a motor car without authority and driving while disqualified. He claimed that he was suffering from hyper-glycaemia (high blood sugar level caused by diabetes) at the time because he had not taken any insulin to stabilise his metabolism, nor eaten properly for days, and as a result was acting unconsciously. He pleaded automatism but the trial judge indicated that he would only be prepared to direct the jury on the defence of insanity.

The Court of Appeal, in confirming the correctness of the trial judge's ruling, held that the defendant's loss of awareness had not resulted from the operation of external factors upon his body, such as the injection of insulin (as in *R v Quick* [1973]), but instead had resulted from an inherent physical defect, ie diabetes. The hyper-glycaemia suffered by diabetics, which was not corrected by insulin, was to be regarded as a disease of the body which affected the mind for the purposes of the M'Naghten Rules.

***R v Burgess*** [1991] 2 WLR 1206.

The defendant visited a woman to watch a video in her flat. During the course of the evening she fell asleep on the sofa. She was awoken by the defendant smashing a bottle over her head. Before she could stop him he had picked up the video recorder and brought it down on her head causing cuts and bruises. At his trial the defendant adduced expert medical evidence to the effect that he had been sleep-walking at the time of the attack and that the defence of automatism should be put before the jury. The trial judge ruled that the only defence the evidence revealed was that of insanity, and the jury in due course found him not guilty by reason of insanity.

The Court of Appeal dismissed the defendant's appeal. Lord Lane CJ considered this 'disease of the mind' to be due to an "internal" cause. The ordinary stresses and disappointments of life which are the common lot of mankind do not constitute an external cause constituting an explanation for a malfunctioning of the mind. He then went on to say:

"We accept that sleep is a normal condition, but the evidence in the instant case indicates that sleepwalking, and particularly violence in sleep, is not normal."

Consequently, on the evidence the judge was right to conclude that this was an abnormality or disorder, albeit transitory, due to an internal factor, which had manifested itself in violence and which might recur.

***R v Bingham*** [1991] Crim LR 43.

The defendant was a diabetic who was charged with theft, and claimed that he was hypo-glycaemic at the time of the offences. His conviction was quashed by the Court of Appeal because the trial judge did not correctly distinguish between hypo- and hyper-glycaemia.

*Note:* Hypo-glycaemia = Low blood sugar level due to an excess of insulin (an external factor). Hyper-glycaemia = High blood sugar level caused by the diabetes (an internal disorder).

## **2. DEFECT OF REASON**

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***R v Clarke*** [1972] 1 All ER 219.

The defendant, a diabetic, was charged with theft of items in a supermarket. Her defence was that she had no intent to steal. There was evidence that she had behaved absent-mindedly in the home. She said that she must have put the items in her bag in a moment of absent-mindedness. Her doctor and a consultant psychiatrist testified that she was suffering from depression, which the consultant accepted to be a minor mental illness which could produce absent-mindedness.

The trial judge was convinced that the defence was in truth a defence of insanity. However, the Court of Appeal held that the *M'Naghten Rules* do not apply to those who retain the power of reasoning but who in moments of confusion or absent-mindedness fail to use their powers to the full.

***R v Windle*** [1952] 2 QB 826.

The defendant had killed his wife by administering an overdose of aspirins to her. Medical evidence showed that although he was suffering from a mental illness he knew that he was committing a crime; hence his remark to the police, at the time of arrest, "I suppose they will hang me for this". The trial judge refused to allow the defence of insanity to go to the jury on the ground that he had known his actions were unlawful. This decision was upheld on appeal.

## **3. INSANE DELUSIONS**

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***R v Bell*** [1984] Crim LR 685.

The defendant had been charged with reckless driving, having used a van to smash through the entrance gates of a Butlins' holiday camp. When interviewed he told the police: "It was like a secret society in there, I wanted to do my bit against it". The defendant contended that he had not driven recklessly because, although he knew there was a risk of his causing criminal damage, he felt that he was able to cope with it because he was being instructed to act by God. Following the rejection of his submission of "no case" on this basis, he changed his plea to one of guilty.

The Court of Appeal held, dismissing the appeal that as the defendant had been aware of his actions he could not have been in a state of automatism, and the fact that he believed himself to be driven by God could not provide an excuse, but merely an explanation for what he had done. In other words he could not rely on the defence of insanity either because the evidence was that he had known what he was doing, or had known that what he was doing was illegal.