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Recent Decisions - State and Federal: D.C. Adopts New Test for Insanity Defense

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Recent Decisions

MARYLAND, DISTRICT OF COLUMBIA, PENNSYLVANIA, AND VIRGINIA

D.C. Adopts New Test For Insanity Defense

by John Jeffrey Ross

On June 29, 1971, Eddie Bethea ended his marriage in a straightforward manner by shooting his wife five times. He was brought to trial before the Superior Court of the District of Columbia and convicted of first degree murder after an unsuccessful insanity defense.

A panel of the District of Columbia Court of Appeals affirmed the conviction, *Bethea v. United States,* 365 A.2d 64 (D.C. App. 1976), in one of the more significant decisions handed down by that court within the past year. While refusing to hold that the trial court should have instructed the jury on the American Law Institute's standard for the insanity defense as adopted by the United States Court of Appeals for the District of Columbia Circuit in *United States v. Brawner,* 153 U.S.App.D.C. 1, 471 F.2d 969 (1972) (*See* MODEL PENAL CODE §4.01), the District of Columbia Court of Appeals adopted prospectively the ALI standard for trials in the District of Columbia Superior Court from the date of the *Bethea* decision. However, the Court of Appeals refused to approve the "diminished capacity" theory expressed in *Brawner.* In addition, the court rejected Bethea's contention that the lower court erred in refusing to instruct the jury that the government had the burden of proving the defendant's sanity beyond a reasonable doubt.

THE JUDICIAL SYSTEM IN THE DISTRICT OF COLUMBIA

Crucial to understanding the disposition of the first issue (involving the Court of Appeals' treatment of the federal circuit ruling in *Brawner)* is an appreciation of the unique judicial environment of the District of Columbia and of the District of Columbia Court Reform and Criminal Procedure Act of 1970, 83 Stat. 473 ("Court Reorganization Act.")

There are two separate court systems in the District of Columbia. The first is the familiar federal trial and appellate court structure with a United States District Court and the United States Court of Appeals for the District of Columbia Circuit. Parallel to this is the local District of Columbia system with the Superior Court and Court of Appeals. Judges in the latter courts exercise general jurisdiction over local matters and are equivalent to the judiciary in state courts. The confusion between the two systems can be exaggerated because the United States articulates its concern for law and order in the District of Columbia through the District of Columbia Code, and the United States Attorney has the responsibility for the prosecution of all major local criminal cases in the Superior Court. As in all federal districts, violations of federal law are prosecuted in the United States District Court.

Before the Court Reorganization Act took effect on February 1, 1971, there were numerous trial courts of limited jurisdiction which administered District of Columbia law, generally misdemeanors, while felonies were the province of the U.S. District Court. These "municipal" courts were subject to review by the District of Columbia Court of Appeals, which in turn acted as an intermediate appellate court for the U.S. Court of Appeals for this circuit. Decisions of the federal court of appeals were thus the case law for the District of Columbia and binding on the trial courts of both systems. The Court Reorganization Act then consolidated the various municipal trial courts into one District of Columbia Superior Court, and the D.C. Court of Appeals was elevated to the status of "court of last resort" for Washington, D.C. and became equal to the highest court of a state. After the Act's effective date of February 1, 1971, decisions of the United States Circuit Court no longer constitute the case law of the District of Columbia although they will be treated "with great respect." *M.A.P. v. Ryan,* 285 A.2d 310, 312 (D.C. App. 1971). *See generally, Swain v. Pressley,* 97 S.Ct. 1224, 1226 (1977).

In the appeal of his murder conviction, Bethea argued that the trial court was incorrect in charging the jury on the insanity formulation enunciated by the United States Court of Appeals in *Durham v. United States,* 94 U.S.App.D.C. 228, 214 F.2d 862 (1954) when that standard had been abandoned by the same circuit court in *United States v. Brawner,* 153 U.S. App.D.C. 1, 471 F.2d 969 (1972). In rejecting this argument, the Court of Appeals noted that because *Brawner* was decided after the effective date of the

Court Reorganization Act, *Durham* remained the law in the District of Columbia at the time of Bethea's trial. The court stated that the Act granted jurisprudential independence to the District of Columbia courts and that the United States Court of Appeals should not have the authority "to control the development of [D.C.] law indirectly by altering the roots from which it has evolved." *Bethea v. United States,* 365 A.2d at 71.

INSANITY STANDARDS

The disease-product insanity standard announced in *Durham* was succinctly stated by Judge Bazelon: "[A]n accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." 94 U.S.App.D.C. 228, 240-241, 214 F.2d 862, 874-875.

An advance over the "knowledge of right from wrong" test *(M'Naghten's Case,* 8 Eng.Rep. 718 [1843]) and "irresistable impulse" standard (*see Smith v. United States,* 59 U.S.App.D.C. 144, 36 F.2d 548 [1929]), the *Durham* rule was more consonant with the modern level of psychological theory. This standard was nonetheless criticized in *Bethea* as "subject to a misinterpretation as prescribing a diagnostic, rather than a moral or societal test." 365 A.2d at 74. The linear, direct relationship between disease and product in the *Durham* paradigm could well be interpreted to include the criminal act within the mental disease rather than characterizing the mental state as the phenomenon affecting moral and legal responsibility for that act. The court in *Bethea* joined other authorities in recognizing that the disease-product doctrine "had the ultimate practical effect of *shifting resolution of the ultimate issue from the jury to the expert witnesses.*" 365 A.2d at 74 (emphasis supplied). Evidence on the behaviorial dysfunction could well be mistaken by the jury (under a disease-product instruction) as conclusive testimony on the product—the criminal act. In this regard, the medical testimony of an expert witness would constitute a *fait accompli,* effectively settling the issue of criminal responsibility and displacing the jury from its consideration of the ultimate issue.

The following standard has thus been adopted for the courts in the District of Columbia:

> [1] A person is not responsible for criminal conduct if at the at the time of such conduct as a result of a mental disease or defect she lacked substantial capacity either to recognize the wrongfulness of her conduct or to conform her conduct to the requirements of law.
>
> [2] As used in this standard, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

365A.2d at 79.

Despite the abandonment of the *Durham* disease-product standard, the court found that Bethea had not been prejudiced by its application at trial, noting that the accused-appellant had been examined under both the *Durham* and ALI *(Brawner)* criteria in pretrial tests and that the trial court provided the jury with "guidance as to *Durham's* troublesome productivity construction." 365 A.2d at 97.

DIMINISHED CAPACITY REJECTED

The court also rejected the appellant's argument that evidence bearing on the question of insanity should also be used by the jury to consider the issues of "premeditation, deliberation, and malice." 365 A.2d at 83. The use of psychiatric testimony to indicate a defendant's mental capacity sufficiently diminished to preclude the necessary guilty mind or intent was sanctioned by the circuit court in *United States v. Brawner,* 153 U.S. App. D.C., at 30-34, 371 F.2d at 998-1002.

The *Bethea* court concluded that although psychiatric testimony is logically relevant to the issue of mens rea, the traditional legal conception that all persons are capable of forming the same level of criminal intent does not permit a graduated scale of that intent as might be demonstrated, in theory, by psychiatric evidence. In following this traditional policy, the court stated:

> Within the range of individuals who are not 'insane', the law does not recognize the readily demonstrable fact that as between individual criminal defendants the nature and development of their mental capabilities may vary greatly.

365 A.2d at 87-88.

The law will allow admission of objectively demonstrable evidence such as that of intoxication to indicate a diminished intent, as such criminal intent is inferred from factual circumstances, and the lay jury need not consider any but objective facts in making this decision. On the other hand, psychiatric evidence deals with the "subjective" nature of the criminal mind, and this esoteric testimony has been held to lack the sufficient probative value necessary for the jury to reach a conclusion free of prejudice or undue technical persuasion.

A further concern of the court was that while the consequence of a successful insanity defense is therapeutic confinement *(see* 24 D.C.Code §§301[d] and [e]), an acquittal by a jury impressed by technical evidence admitted to explain criminal intent in subjective terms results in freedom for an accused who would otherwise be found guilty by traditional standards.

INSANITY: BURDEN OF PROOF

The third major issue facing the court was whether the requirement that the accused must establish his insanity defense by a preponderance of the evidence, pursuant to 24 D.C.Code §301 (j), was constitutionally offensive.

By resolving this issue in favor of the government, the court stated that this burden of proof continues to be acceptable in the face of *Mullany v. Wilbur,* 421 U.S. 684 (1975) because the issue of insanity is to be considered by the trier of fact after the government proves all of the elements of the offense beyond a reasonable doubt. 365 A.2d at 94. As authority, the court relied on *Leland v. Oregon,* 343 U.S. 790 (1952) where an Oregon statute requiring the accused to establish his insanity *beyond a reasonable doubt* withstood a constitutional challenge. *See Mullany v. Wilbur,* 421 U.S. 684, 705 (concurring opinion by Justice Rehnquist); *see also, Patterson v. New York,* 97 S.Ct. 2319 (1977).