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

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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. Brauner, 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 Brauner. 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.

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. Brauner, 153 U.S. App.D.C. 1, 471 F.2d 969 (1972). In rejecting this argument, the Court of Appeals noted that because Brauner was decided after the effective date of the
INSANITY STANDARDS

The disease-product insanity standard announced in Durham was succinctly stated by Judge Bazelon: "[A]n accused is not crimally 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 "irresistible 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 behavioral 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 afait 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 term "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

365 A.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 (Brauner) criteria in pretrial tests and that the trial court provided the jury with "guidance as to Durham's troublesome productivity construct." 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. Brauner, 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 (i), 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).