CHAPTER NINE: EXCUSES

INTRODUCTION

Excuses provide a defense based on the fact that although a defendant committed a criminal act, he or she is not considered responsible. The defendant claims that although “I broke the law and my act was wrong, I am not responsible. I am not morally blameworthy.” The Illinois criminal system recognizes the defenses of insanity, intoxication, infancy, duress, and entrapment. This chapter discusses the rules of excuses in Illinois. Also included in this chapter are case studies that allow the reader to examine the cases and determine whether or not the legal excuse applies.

INSANITITY

Probably the most controversial of all criminal defense strategies, the insanity defense is also, ironically, one of the least used. On many occasions when it has been used, particularly in the much-publicized 1984 acquittal of John W. Hinckley for an attempted assassination of a president, the insanity defense has tended to provoke public debate.
Put simply, the insanity defense asserts that the criminal defendant is not guilty by reason of insanity. The theory behind the defense is persons who are insane cannot have the intent required to perform a criminal act because they either do not know that act is wrong or cannot control their actions even when they understand the act is wrong. But this theory is controversial because insanity itself is difficult to define, and the circumstances in which insanity can be used to excuse criminal responsibility are difficult to define.

In 1924, Nathan Leopold and Robert Loeb kidnapped and killed wealthy Bobby Franks. Later, in a suburb of Chicago, they hid the body in a railroad culvert. At trial, Leopold and Loeb were advised by their attorney, Clarence Darrow, to plead “not guilty by reason of insanity.” Darrow wanted to prove was that both boys had mental illnesses. He argued their insanity because they exhibited no sensible motive for the murder and did not think that their crime was wrong. He hoped to establish that Loeb and Leopold were not responsible for the crime. Because of the Leopold and Loeb trial, the "plea of not guilty by reason of insanity" introduced a new defense for guilty criminals in the state of Illinois.

To determine whether or not defendants can establish criminal intent or understand their act as wrong, Illinois uses the ALI Model Penal Code standard. Section 4.01 (1)(2) of the Model Penal Code provides that:

> A person 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 [wrongfulness] of his conduct or to conform his conduct to the requirements of law. . . . The terms “mental disease or defect” do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Previously, an insanity defense could have been based on either failure to appreciate the criminality of one's actions, or on the basis of inability to control one's actions. The new statute, which took effect in 1995, eliminated the second ground, leaving only failure to appreciate the criminality of one's conduct as a basis for an insanity defense. Today the burden of proof is placed on the defendant to show whether or not he/she was able to appreciate the criminality of his/her conduct.

Illinois is one of the thirteen states that allow the verdict of “guilty but mentally ill” (GBMI). GBMI applies where the jury determines beyond a reasonable doubt that a defendant was mentally ill, but not legally insane, at the time of his or her criminal act. The defendant receives the standard criminal sentence of confinement and is provided with psychiatric care while interned. The intent is to provide jurors with an alternative to the insanity defense that provides greater protection to the public.

ILLINOIS INSANITY STATUTE
(720 ILCS 5/) Criminal Code of 1961.
Article 5. Responsibility

Sec. 6-2. Insanity.

(a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.

(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

(Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)

CASE STUDY

***People v. Bellmyer* 771 N.E.2d 391** On January 22, defendant was arrested for disorderly conduct and spent the night in the county jail. No charges were filed against defendant with respect to the arrest, and defendant was released the next day. When defendant returned home on January 23, he became angry because he could not find his gun, and argued with his parents. The victim returned the handgun to defendant, who calmed down, went to his room, and repeatedly cleaned the gun. Also on that day, defendant complained to his brother, Gary, of having experienced a "bad trip" from illegal narcotics he had been taking.

Between 1 a.m. and 3 a.m. on January 24, defendant had an argument with his girlfriend, Katherine McCollom, who lived with him at his parents' home. Defendant pointed a gun at McCollom and demanded that she mop the floors. She complied, while defendant paced back and forth.

Later that morning, defendant again cleaned his gun and placed it under the couch in the living room. He forgot where he had put it and became infuriated. At approximately 1:30 p.m., Gary,

who lived across the street from the house, went to his parents' home. Defendant's mother and the victim were in the living room and appeared frightened. Defendant was looking for his gun and appeared nervous and agitated. Gary returned to his home. When defendant found the handgun, he began to point it at his mother, the victim, and McCollom. He did not point the gun at his daughter, April, who was also present. He told April to go to the basement. She complied, but returned to the living room and saw what transpired.

Defendant hit the victim with the gun on the head and the leg. Defendant's mother and April escaped through a window and fled to Gary's home. They told Gary that defendant was beating the victim with a gun. Police were called.

Defendant then kicked the victim's wheelchair out from under the victim and continued to beat him with the gun. McCollom then escaped through the window as well, leaving defendant and the victim in the house alone.

The first law enforcement officials to arrive at the scene saw McCollom run from the victim's home across the street to Gary's residence. A short time later, officials heard three shots being fired from inside the victim's residence. For approximately the next hour, police attempted, via a public address system, to persuade defendant to exit the house. During this time they heard multiple shots being fired inside the home.

At approximately 5 p.m., law officers forced their way into the house through the back door. They found the victim's body on the floor inside the back porch. Defendant was siting on a couch in his bedroom with a handgun beside him.

An autopsy disclosed that the victim had died as a result of three gunshot wounds to the head. Further, it was determined that the bullets recovered during the autopsy were fired from the gun found next to defendant.

The parties agreed that the State could prove the charged offenses beyond a reasonable doubt. However, the parties disagreed as to whether defendant was sane at the time of the shooting or should be found not guilty by reason of insanity**.** Accordingly, the State and defendant stipulated as to the evidence pertaining to the issue of sanity, but not to the sufficiency of the evidence to find defendant insane.

The State contended that despite the reports of Drs. Chapman and Witherspoon, the court should find defendant either guilty or guilty but mentally ill. Pointing to the facts that defendant had argued with his parents and McCollom the day before the shooting and had been cleaning his gun, the State argued that defendant had planned the incident. The State also argued that defendant, by not pointing the gun at his daughter and ordering her to go to the basement, knew that his actions were wrong.

The defense, in its closing argument, emphasized that Drs. Chapman and Witherspoon both concluded that defendant was insane at the time of the shooting. Both found that defendant suffered from "schizoaffective disorder, bi-polar type"; both agreed that, due to this mental condition, defendant could not appreciate the criminality of his conduct. The defense contended that the trial court should find defendant not guilty by reason of insanity**.**

Not guilty by reason of insanity, guilty but mentally ill, or premeditation?

INTOXICATION

By itself, intoxication is not a defense to a crime. In rare cases, intoxication works like a defense if there is proof that the person accused of the crime was unable to form the necessary intent to commit a crime. Someone who is intoxicated may not be found guilty of a crime that requires he or she acted intentionally, but the intoxicated person may be guilty of another crime that does not require intentional actions.

ILLINOIS INTOXICATION STATUTE
(720 ILCS 5/) Criminal Code of 1961.
Article 5. Responsibility

Sec. 6-3. Intoxicated or drugged condition. A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
(Source: P.A. 92-466, eff. 1-1-02.)

CASE STUDY

People v. Hari **843 N.E.2d 349** Although the State introduced several witnesses presenting evidence of premeditation, we set out background facts and focus on the issues at hand relating to the involuntary intoxication and the testimony of the jailhouse informant, Tracy Parker. Lisa and defendant were married in 1989. They had two children, Zachary, 12 years old at the time of trial, and Kyle, six years old at the time of trial. Lisa was a daycare provider out of her house for six years. Defendant worked at a lumber yard. The family lived in a house in the central Illinois farm community of Paxton. Zack and his dad would often go hunting together, sometimes using a .22-caliber rifle. The couple had known Jeff Thomas and his wife, Julie Arnold Thomas, for approximately four years. The Thomases had two children: Jarrett, 13 at the time of trial, and Jordan, almost 11 at the time of trial. Lisa described the relationship with her husband around Christmas time of 2001 as "very distant," they "didn't spend much time together," and "were not getting along well." According to the record, Lisa became romantically involved with Jeff Thomas sometime prior to that Christmas. According to Lisa, on December 25, 2001, she told defendant of the affair. Lisa filed for a divorce from defendant on January 10, 2002.

On February 4, 2002, defendant went to see Dr. David John Hagan, a family physician. The doctor noted that defendant related that he was not sleeping and had lost weight, but was beginning to get his weight back. Dr. Hagan felt defendant "was under significant stress and was depressed because of the stress he was going through in terms of his family life and the divorce." Defendant denied any suicidal thoughts or ruminations. The doctor admonished him not to drink alcohol and prescribed defendant a "starter pack" of Zoloft, an antidepressant, at 25 milligrams a day. Dr. Hagan started defendant on a lower dosage than he normally prescribed because of defendant's alcohol use since his separation from his wife. He also told defendant to call him if there were any side effects. Dr. Hagan did not know that defendant was taking any additional medication, nor did he warn him about combining Zoloft and Tylenol PM.

At approximately 6 p.m. on February 10, 2002, Lisa was on the telephone with her brother, Scott Sherfey. Lisa heard a noise in the basement which sounded like someone cocking a rifle. According to Scott, Lisa walked down to the basement and said, "Oh, my God, he is here." Defendant was coming out of the laundry room with the .22- caliber rifle. Defendant started firing as Lisa turned toward the staircase and tried to get away. Defendant shot Lisa three times in the

left flank, upper right arm, and the right side of her head. Thomas arrived, and he stopped his truck in the driveway with the engine still running. Thomas was approximately 70 feet from defendant in the middle of the street in his naval reserve uniform. Defendant shot him four times from behind: in the left forearm, above the right buttock, in the back, and in the upper shoulder or neck area. The police apprehended defendant approximately three or four hours later in Roberts, Illinois. Defendant did not seem physically impaired to the police officers. Lisa was admitted to intensive care, underwent surgery, and was later released. Thomas died days later as the result of a severed carotid artery.

The State's information charged defendant with the offense of first degree murder (720 ILCS 5/9-1(a)(1) (West 2000)), alleging that he, without lawful justification and with the intent to kill or do great bodily harm to Jeff Thomas, shot Thomas causing his death. The State also charged defendant with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2000)), alleging that he, with the intent to commit first degree murder, performed a substantial step toward the commission of that offense by shooting Lisa Hari with a .22-caliber weapon without lawful justification and with the intent to kill.

Among the State's witnesses was Tracy Parker, an in-custody witness who shared a jail cell with defendant at the Ford County jail. Tracy Parker had a "long criminal record." He was convicted in 1992 of aggravated battery and in 1994 he was convicted of burglary and arson. In 2000, he was convicted of three counts of burglary. One of those 2000 counts involved a gun store, which led to the federal offense of possession of firearms by a felon. While serving the sentence on the federal charge, he was charged with the offense of conspiracy to escape. He was convicted in federal court of conspiracy to escape and was awaiting sentencing at the time of trial. Parker testified that defendant was his cellmate in Ford County jail for seven weeks, commencing on September 13, 2002. He testified that defendant was asking him to help him escape from prison. After a few weeks, defendant started talking about his case. Parker testified that defendant told him that he used to watch the house and his wife and Thomas enter and exit. Defendant stated the weekend he was moving out of the house he was angry because he had found pictures of Lisa in lingerie, wrapped in a towel, a picture of her blowing a kiss and pictures Thomas took of her. Defendant told him that he took a .22- caliber rifle out of a gun cabinet and hid it in a utility room in the basement, "so he could have it for later."

Defendant told him about the weekend of the shooting. According to Parker, defendant went to the house, retrieved the rifle, and waited in the basement for Lisa and Thomas to come home. Defendant told him that he shot Thomas and then he shot his wife. Defendant told him he accessed the house by borrowing some keys from an older religious lady that lived next door, and that he copied her key for his own use.

On cross-examination, Parker testified that he had pleaded guilty to the federal conspiracy to escape charge on October 30, 2002. On November 1, 2002, he approached corrections officers about defendant's case. Parker admitted that he was aware of discovery materials that defendant kept in the cell. At times, Parker was in the cell while defendant was not, and Parker admitted that he had the ability to look at the materials when defendant was away because there were no lockers. Parker acknowledged that his attorney discussed sentencing possibilities with him, but Parker claimed that cooperation in a state case could not help him receive a downward sentencing departure in the federal case. Parker testified, "It can't help me either way." Parker testified that he did not expect anything in exchange for his testimony against defendant, nor was he promised anything. Parker denied that he wanted anything the day after his federal conviction when he contacted a correctional officer, Sargeant Sherfey, the sister of Lisa Hari.

Dr. Robert Mitrione testified on behalf of the defendant. In November 2002, defense counsel hired Dr. Mitrione to evaluate defendant's mental health. He testified that defendant's depression began with the knowledge that his wife was having an extramarital affair with Thomas. Defendant was not sleeping and was using alcohol regularly. He noted that Dr. Hagan diagnosed defendant with "depression" and that defendant's description of his symptoms conformed to "major depression" in the Diagnostic and Statistical Manual IV (DSM-IV).

He explained that Zoloft is a selective serotonin reuptake inhibitor (SSRI), designed to increase serotonin in the brain. It is "not unusual" for these medications to cause paradoxical or adverse reactions, depending on the patient. Dr. Mitrione also explained that the Zoloft package insert contained a listing of side effects which was an exact copy of the listing in the Physicians' Desk Reference (PDR). Dr. Mitrione testified that the stage at which adverse reactions most frequently occur is when medication is first taken or there is a change in dosage. Dr. Mitrione cited conflicting medical literature, some of which reports violent and suicidal adverse reactions at the beginning stage of taking Zoloft or SSRIs. Dr. Mitrione stated that the PDR contains a caution to mixing Zoloft with alcohol and other drugs that are metabolized in the liver. He testified that liver enzyme reduction or enzyme depletion can cause a toxic reaction.

Dr. Mitrione testified at length about his interview with defendant concerning the shootings. Defendant told him that on February 10, defendant had been on Zoloft for six days and had also been taking Tylenol PM. Tylenol PM has an active ingredient called diphenhydramine, which is an antihistamine commonly found in medications such as Benadryl. Dr. Mitrione testified that the PDR does not specifically warn of the combination of Zoloft and diphenhydramine. Dr. Mitrione explained, however, that diphenhydramine is officially used for allergies, but it is also a psychoactive that can be used for sedation. The PDR warns of the use of Zoloft with some drugs that are metabolized in the liver, or use if the liver is otherwise impaired. The combination of Zoloft and diphenhydramine is problematic, therefore, because of this liver metabolism.

Dr. Mitrione testified that defendant told him that after he began taking Zoloft, he became more anxious, more intense, and his thinking became less clear. Dr. Mitrione testified that defendant's symptoms in those six days corresponded to the reactions listed on Zoloft's package insert and in the PDR. He stated that defendant suffered a litany of side effects including "agitation, trimmer [*sic*], abdominal discomfort, fatigue, tiredness, somnolence, and some confusion." He also experienced malaise, depression, "teeth grinding, chinning the jaw, emotional ability, abnormal dreams, paranoia reaction," and insomnia. Defendant also displayed some symptoms of akathisia-which is a kind of agitation "like an itch that can't be scratched"-which is indicated by tremulousness, restlessness, jaw clenching, pacing, or general nervousness. Akathisia has a mental component which intensifies worry and is very distracting to an individual. In the week before the shooting, defendant had "high depression, increased fatigue, increased malaise, increased agitation and then new symptoms were the jaw clinching, the nightmares, abdominal discomfort, tremulousness and some intensified ruminations and thought processes." Some of these symptoms, particularly the sleeplessness, were confirmed by some of defendant's family and coworkers at trial. Mitrione testified that defendant told him he developed a sense of things seeming strange and not being real, "like watching himself go through" things but not being part of it-"like it wasn't him."

Dr. Mitrione related what defendant told him about the events on February 10. Defendant told him he had been sleeping only one or two hours a night the week prior to the incident. On that day, he went back to the house to retrieve the .22-caliber weapon so he could later go hunting with his son. He had forgotten to take it with him when he packed because of the fight with his wife. "So he decided and somewhat illogically" that he had to get it without his wife knowing

about it, because if his wife found out about it, she would use it against him in a custody dispute. The .22-caliber rifle was behind the water heater in the basement. Defendant said he put it there because there is a "crazy guy in the neighborhood that he didn't trust." Defendant also said there was a rottweiler in the neighborhood. In Dr. Mitrione's words, defendant described the shootings like a "fuzzy dream." Dr. Mitrione testified that defendant told him:

"She you know, made some unpleasant remarks to him and somewhat threatening remarks, and he said the gun just started going off, and that at the time it didn't seem like it was-it's my word neutral. He didn't describe it that way, but at the time it didn't seem right. It didn't seem wrong. It just was, and that it was, it was like he was watching himself go through the motions; that he went on. *** [He left] and Jeff Thomas happened to be pulling in the driveway at the same time, and the same sort of event occurred. Thomas started complaining at him, and, again, the firearm just started going off. He didn't recall leaving the scene, didn't recall too much except that he was out driving around the country."

Dr. Mitrione opined that defendant's impaired memory was not unusual.

Dr. Mitrione diagnosed defendant with "major depression, alcohol dependence," and a "probable paranoid personality disorder." Mitrione explained that people with a paranoid personality disorder are very suspicious, rigid thinkers and more susceptible to adverse drug reactions. Dr. Mitrione opined that, to a reasonable degree of medical and psychiatric certainty, defendant suffered from involuntary intoxication from the adverse effects of the combination of Zoloft and diphenhydramine, with the lack of sleep, major depression, and alcohol dependency as contributing factors. Dr. Mitrione further opined, to a reasonable degree of medical and psychiatric certainty, that the involuntary intoxication deprived him of the substantial capacity to appreciate the criminality of his acts or conform his conduct to the requirements of the law at the time of the shooting. Defendant's intoxication was involuntary because:
"Mr. Hari went through things that were fairly reasonable that most any person would do in terms of addressing his problem, at least, from kind of a medical basis. He looked for some sleeping medication that would be helpful to aid his sleeping and Tylenol PM is promoted as a sleep aid. He tried that. *** He still didn't experience any relief. He followed up with a visit to his physician who prescribed him some medicine, you know, with the encouragement. It may not work right away, but after a little while, you are going to feel better. Certainly, he had every expectation to think that he would feel better."

Dr. Mitrione testified that his diagnosis of "involuntary Zoloft intoxication" was a recognized disease, defect, or derangement within DSM-IV. However, the word "intoxication" is misleading because it does not have to do with alcohol, but rather is a toxic reaction. Dr. Mitrione explained that an adverse drug reaction would affect an individual's perception of events, but, in contrast to alcohol intoxication, it would not result in slurred speech or the inability to drive or walk in a straight line.

Involuntary intoxication or premeditation?

INFANCY

Illinois has a juvenile court system for minors that operates separately from other courts. The purpose of this separate system is to help serve the best interests of juveniles, rather than simply punish them. Generally, minors under age 17 who run afoul of the law are said to commit delinquent acts rather than crimes. The distinction is one of words only. Delinquent acts

committed by a minor are called crimes if committed by an adult. Minors between the ages of 15 and 17 who commit certain crimes, such as first degree murder, are prosecuted as if they are adults. Children under the age of thirteen are not considered legally responsible for their actions, and therefore, no legal action is sought.

Illinois has strict laws that seek to address juvenile gang violence. When the state seeks to try a violent juvenile delinquent on criminal charges, it may include in its petition evidence that the criminal activity was gang-related, and the judge may consider this evidence and order the minor tried as an adult. For example, if a 16-year-old minor allegedly committed a forcible felony that was part of criminal gang activity, and the minor already was declared a juvenile delinquent, the judge will order the case to be heard in criminal court.

ILLINOIS INFANCY STATUTE
(720 ILCS 5/) Criminal Code of 1961.
Article 5. Responsibility

Sec. 6-1. Infancy.
No person shall be convicted of any offense unless he had attained his 13th birthday at the time the offense was committed.
(Source: Laws 1961, p. 1983.)

CASE STUDY

People v. Allen **Docket No. 99756** On the evening of December 23, 1998, defendant was a 16-year-old juvenile incarcerated at the Audy Home, a juvenile temporary detention center located in Cook County. On that night, Terrance Willis, who was also a juvenile incarcerated at the facility, escaped from his cell and cut the throat of a detention center counselor. Defendant was locked in his cell during the attack, but Willis took the jail keys from the stricken counselor and opened defendant's cell. According to eyewitness testimony, defendant then aided Willis in shoving the counselor into a cell and locking it. Defendant and Willis were apprehended a short time later after they had fled in separate directions.

Pursuant to the Juvenile Court Act, the juvenile division of the circuit court of Cook County held a discretionary-transfer hearing in connection with the December 23, 1998, incident. The court transferred defendant to the jurisdiction of the criminal division on December 20, 1999, on charges of attempted first degree murder, attempted escape, aggravated battery and aggravated unlawful restraint. The cause then proceeded to a jury trial on these charges.

To prove one of the elements of the attempted escape charge-*i.e.*, that defendant was a "person convicted of a felony" at the time of the attempted escape-the State introduced a certified copy of a finding of delinquency entered by the juvenile court on August 7, 1998, that was based on an allegation that defendant had committed a robbery. The record shows that following a dispositional hearing on this delinquency adjudication for robbery, the juvenile court committed defendant to the Department of Corrections, Juvenile Division. Consequently, defendant was incarcerated at the Audy Home on December 23, 1998, awaiting transport to the Department of Corrections, Juvenile Division, when the events that formed the present criminal charges took place.

Defendant testified at his criminal trial that he was asleep at the time Willis broke out of his cell on December 23, 1998, that defendant had no plan to escape, and that he was ordered out of his cell. He denied participating in putting the counselor in the cell, but instead claimed that he ran to

the bathroom first and then to summon help for the counselor.

At the completion of his jury trial, defendant was convicted of the offenses of attempted escape, aggravated battery and unlawful restraint, but was acquitted of the attempted first degree murder count. The trial court sentenced him to five years in prison on the attempted escape charge to run concurrently with sentences of five years' and three years' imprisonment on the other two charges.

DURESS

In Illinois, the defense of duress is called compulsion. It is a defense to a crime, other than murder, that you committed the crime under a threat of death or great bodily harm.

(720 ILCS 5/7-11) Sec. 7-11. provides that:
(a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct.
(b) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion, or to any defense of compulsion except that stated in Subsection (a). (Source: Laws 1961, p. 1983.)

CASE STUDY

People v. Pegram **529 N.E.2d 506** The defendant, Clyde Cornell Pegram, was convicted of armed robbery following a jury trial in the circuit court of Cook County and was sentenced to 12 years' imprisonment. On appeal, the appellate court reversed the conviction and remanded for a new trial. The appellate court held that the defendant did not receive a fair trial because the jury was instructed neither on the defense of compulsion nor on the State's burden of proof when a defense of compulsion was raised. (152 Ill. App. 3d 656, 661.) The appellate court also held that the defendant had received ineffective assistance of counsel. The State filed a petition for leave to appeal to this court, which we allowed. 107 Ill. 2d R. 315.

Pegram was charged with the January 9, 1982, armed robbery of John Mackin, the owner of Erin's Glen Pub, a restaurant and bar on West Montrose Avenue in Chicago. Mackin testified that he arrived at the Pub shortly after 5 a.m. and parked his car near the tavern's front door. He went to the basement office to count the previous night's receipts and shortly thereafter he heard a knock on the front door. Mackin recognized the defendant, who had previously come to the Pub about 20 times to help Mackin's porter, Bob Tatum, with his chores. Prior to this, Pegram had never come to the Pub without Tatum. When Mackin asked Pegram why he had come so early (Tatum and the defendant usually arrived between 6 and 7 a.m.), the defendant explained that Tatum would arrive later as his car had broken down, but he had sent Pegram to the Pub to begin work. Mackin let the defendant into the Pub and returned to his basement office, while the defendant began cleaning chores by taking the trash to the rear of the building.

The defendant testified that when he unlocked the back gate, two men holding guns and wearing masks over their faces entered through the gate. One of the men told Pegram to back up, pointed a gun at his head, and said he would blow out his brains if he did not do what he said. The men asked who else was in the Pub, and Pegram told them his boss was there. Pegram testified they then put a gun to his head and told him to lead them to his boss. He led them to Mackin's office.

At the office, one of the masked men entered and put a gun to Mackin's head, ordering him to lie on the floor and empty his pockets. The defendant stood at the entrance to the small office and the robbers entered it. Mackin testified that after he emptied his pockets of between $ 900 and $ 1,000, the defendant opened the door to the freezer across from his office door and all three men pushed Mackin into the freezer and locked the door. The defendant, however, testified that one robber pointed to the freezer and asked what it was. The defendant told him it was the freezer, and the robber ordered him to open the door. The robbers, Pegram testified, then ordered Mackin into the freezer. Pegram testified [*170] that Mackin was not pushed into the freezer but that once Mackin was inside, the robbers ordered Pegram to close the door. The defendant said nothing during the time the other men were in the office nor did Mackin hear the others say anything to the defendant.

Once Mackin was inside the freezer, Pegram said the robbers ordered him to lie, face down, on the floor, while one robber stood over him with a gun and the other one ransacked the office. The robbers then asked the defendant if Mackin had a car and, when told he had, ordered Pegram to take them to it. While walking to the car, the defendant testified that the robbers had a gun pointed at him. He was told to get into the back of Mackin's station wagon and lie on the floor, which he did. They drove off and the robbers let him out of the car on an expressway about 40 minutes later, but Pegram did not recall which expressway. The robbers told him that they knew who he was and they would be able to kill him.

Mackin waited about 15 minutes and then smashed open the freezer door with an empty beer barrel. He said he got a gun and ran upstairs, but no one was in the building. The money on his desk and his car were gone. He did not see which man took the money from the floor or the desk, as it was taken while he was locked inside the freezer. The defendant did not return to the Pub nor did he telephone or contact Mackin. Mackin notified the police of the robbery and later identified Pegram from a police photograph.

Pegram testified that he knew neither of the men and he was not able to see the men's faces because they wore masks. The defendant testified he did not notify the police because, he said, he had had a bad experience with the police on a 1974 felony conviction and was afraid that, as he was black and the two robbers were black, the police might believe he was involved in the crime. He testified, "And I was frightened that I was going to be convicted for something or prosecuted for something I had nothing to do with. * * * Not only for that, but the two men threatened my life. They were talking about they knew about me. I didn't know how much they knew about me." He denied arranging the robbery or receiving any of the proceeds from it. He said he was not a willing participant in the crime and said yes on direct examination when asked, "at all times during the robbery were you acting under duress and in fear of your life?"

A detective who investigated the robbery testified that he learned through Tatum where Pegram lived in Chicago. Mackin's car was recovered by the police a short distance from Pegram's home. The investigator obtained a photograph of Pegram from the Chicago police department, which Mackin identified as a photo of Pegram. After unsuccessfully trying to locate the defendant in Chicago, a warrant was issued for his arrest and placed with the National Crime Information Center so that if Pegram were to be held by the police anywhere in the United States, they would know of the outstanding warrant. After the robbery in January 1982, Pegram testified, he remained in Chicago, living with friends until December 1983, when he went to Youngstown, Ohio, to visit his family. He and his brother went to Buffalo, New York, to visit relatives for New Year's Eve and later set out for Detroit by way of Canada to visit other relatives. His identification card was checked at the Canadian border, and he was arrested on the outstanding

warrant for armed robbery on April 10, 1984, at the Canadian border. Chicago police returned him to Chicago.

May Pegram rely on the defense of compulsion?

ENTRAPMENT

The requirements of the entrapment defense were clarified by the United States Supreme Court in Jacobson v. United States. The Court requires that the police show that the person who is the focus of their undercover sting operation was one who was predisposed to commit the crime. (720 ILCS 5/7-12)Sec. 7-12. provides that:

A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense.
(Source: P.A. 89-332, eff. 1-1-96.)

CASE STUDY

***People v. Weilgos* 568 N.E.2d 861** Defendant, Stephen Wielgos, was convicted in the circuit court of Cook County of delivering more than 30 grams of a controlled substance (Ill. Rev. Stat. 1985, ch. 56 1/2, par. 1401(a)(2)), and was sentenced to six years' imprisonment. The appellate court reversed his conviction (190 Ill. App. 3d 63). We allowed the State's petition for leave to appeal (107 Ill. 2d R. 315(a)).

On June 12, 1985, while working on an undercover drug investigation, Officer Eric Bjankini of the Northeast Metropolitan Enforcement Group met Edward Ruschinski and discussed the purchase of multiple ounces of cocaine. Over the next several weeks, the two negotiated for the purchase of four ounces of cocaine. During the entire relevant period, Bjankini operated under an assumed name, and Ruschinski was unaware that Bjankini was a police officer.

While the negotiations between Ruschinski and Bjankini were taking place, Ruschinski contacted defendant, Stephen Wielgos, to request his help in procuring cocaine from a mutual acquaintance. Between June 12 and July 3, Ruschinski telephoned defendant 25 times and visited his home seven times. During each of these conversations, Ruschinski requested help in obtaining cocaine, but each time defendant refused.

Ruschinski and Bjankini eventually agreed that the sale would take place on July 3. Although Bjankini expected to buy cocaine on July 3, he did not know the identity of Ruschinski's alleged source for the cocaine. On that day the two met and, at Ruschinski's direction, Bjankini drove to defendant's home. Up to this point, Bjankini and defendant had never met. Defendant did not have cocaine to sell, so Bjankini left without making a purchase.

On July 5, Bjankini and Ruschinski again went to defendant's home, where defendant delivered four ounces of cocaine to Bjankini. Defendant and Ruschinski were arrested and indicted for delivery of a controlled substance in excess of 30 grams. (Ill. Rev. Stat. 1985, ch. 56 1/2, par. 1401(a)(2).) Defendant and Ruschinski were tried separately, and only defendant's case is before this court on appeal.

At his trial, defendant submitted the following instruction, based on the Illinois Pattern Jury

Instruction on entrapment (Illinois Pattern Jury Instructions, Criminal, No. 24 -- 25.04 (2d ed. 1981)):

"It is a defense to the charge made against defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant he was incited or induced by a public officer and/or an agent of a public officer to commit an offense."

Without explaining its reasons, the trial court omitted the words "and/or an agent of a public officer" from the tendered entrapment instruction. The jury convicted defendant, and he was sentenced to six years in the Illinois Department of Corrections.

Defendant appealed his conviction, claiming, *inter alia*, that by omitting the agency language from the entrapment instruction the trial court deprived him of his defense theory of vicarious entrapment. (190 Ill. App. 3d 63, 68.) In considering this argument, the appellate court focused on the existence or nonexistence of an agency relationship between Ruschinski and Bjankini. The court stated:

"[The entrapment statute] provides, *inter alia*, that '[a] person is not guilty of an offense if his conduct is incited or induced by a public officer or employee, or agent of either.' (Ill. Rev. Stat. 1983, ch. 38, par. 7 -- 12.) The statute does not require that the agent * * * know the true identity of the public officer or employee." 190 Ill. App. 3d at 70.

Based on its reading of the entrapment statute, the court held that it was possible for Ruschinski to be an agent of the government for entrapment purposes, even though he did not know he was acting on behalf of a police officer. (190 Ill. App. 3d at 70.) The court then found that there was enough evidence of an agency relationship to warrant an instruction on the defense of entrapment by an agent. Thus, the court reversed defendant's conviction. (190 Ill. App. 3d at 72.) We granted the State's petition for leave to appeal (107 Ill. 2d R. 315).

The issue presented in this case is whether, based on the inducements made by Ruschinski, defendant is entitled to a jury instruction on entrapment by an agent of a government officer

QUESTIONS FOR REVIEW

1. In Illinois, what famous case introduced the defense of “not guilty by reason of insanity?”
A. John Hinckley
B. Leopold and Loeb
C. Charles Manson
D. Son of Sam

Answer: B

2. What insanity test does Illinois use?
A. ALI Model Penal Code
B. M’Naghten
C. Irresistible impulse
D. Durham product test

Answer: A

3. What is the age of responsibility in Illinois?
A. 14
B. 11
C. 13
D. 18

Answer: C

4. True or False? A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person.

Answer: True

5. What is the defense of duress referred to in Illinois?
A. Necessity
B. Justification
C. Compulsion
D. Entrapment

Answer: C

6. True or False? Minors between the ages of 15 and 17 who commit certain crimes, such as first degree murder, are prosecuted as juveniles.

Answer: False

WEB RESOURCES

- http://www.lib.niu.edu/ipo/2001/ihy010226.html
- http://law.enotes.com/everyday-law-encyclopedia/insanity-defense
- http://www.state.il.us/court/OPINIONS/SupremeCourt/2002/April/Summaries/Html/91417s.htm
- http://faculty.icc.edu/jwyant/crj_chp4.htm
- http://faculty.icc.edu/jwyant/crj_chp4.htm