

CHAPTER 9: EXCUSES

Excuses and justifications are often treated similarly, but they are not necessarily the same. With excuses, one does not commit the crime out of necessity or because it is justified; rather, one claims that something beyond one's control affected his conduct. For example, an offender may claim that he heard voices commanding him to commit the offense; another offender may claim that he was drunk and did not know what he was doing. In most instances, excuses do not carry much weight in the courts and are very difficult to prove.

Insanity

The text discusses numerous tests for insanity: the right-wrong test, the irresistible impulse test, the substantial capacity test, etc. Ohio recognizes the right-wrong test, also known as the M'Naghten rule. Section 2901.01 (A)(14) of the Ohio Revised Code describes the insanity defense:

...at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts (2003).

As with other affirmative defenses in Ohio, the burden is on the defendant to prove insanity by a preponderance of the evidence (Ohio Revised Code, §2901.05 (A), 1978). If a defendant is successful in proving insanity, the verdict is "not guilty by reason of insanity."

Once a defendant has been found not guilty by reason of insanity, a hearing is conducted to determine if mental illness or mental retardation is present to warrant hospitalization. This is a civil commitment hearing and the defendant is subject to Ohio's Rules of Civil Procedure. In this proceeding, the individual has rights, including an independent evaluation of the individual's mental state, the right to subpoena and cross-examine witnesses, the right to testify (or not), the right to access medical and health records, and the right to a public trial. The state must prove by clear and convincing evidence that the individual warrants hospitalization; if this standard is not met, the individual is released. If the individual is hospitalized, he is committed to a psychiatric facility, where he will be treated for his mental illness. This treatment continues until the court and medical staff determine the individual is suitable for release.

Diminished Capacity

The text discusses diminished capacity as not legally insane, but possessing a mental state that prevents the formation of criminal intent. Ohio does not recognize diminished capacity as a defense to criminal conduct. Section 2945.391 of the Ohio Revised Code states that,

...proof that a person's reason, at the time of the commission of an offense, was so impaired that the person did not have the ability to refrain from doing the person's act or acts, does not constitute a defense (1997).

This was reinforced in *State v. Taylor*, 98 Ohio St. 3d 27 (2002), by the Ohio Supreme Court,

...defendant may not offer expert psychiatric testimony, unrelated to the insanity defense, to show that, due to mental illness, intoxication, or any other reason, he lacked the mental capacity to form the specific mental state required for a particular crime or degree of crime (paragraph 69 of the syllabus).

Despite this reinforcement, Ohio does recognize diminished capacity during the sentencing phase of a capital trial. In these trials, a defendant may not pursue a diminished capacity defense during the guilt phase of the trial (though he may try an insanity defense), but diminished capacity is considered a mitigating factor during the sentencing phase. According to Section 2929.04 (B)(3) of the Ohio Revised Code,

...whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law (2002).

Technically, this definition falls under the "substantial capacity" test outlined in the text and in the Model Penal Code, but Ohio characterizes it as diminished capacity. In these cases, a defendant can use diminished capacity to avoid a death sentence, though not a guilty verdict. This is illustrated in the case *State v. Lawrence*, 44 Ohio St. 3d 24, 1989.

State v. Lawrence

The defendant was found guilty of aggravated murder and was given a death sentence. The defendant suffered from Post-Traumatic Stress Disorder (PTSD) due to the death of his infant son. He tried to use PTSD at the trial stage as an insanity defense and it was unsuccessful. The court ruled that, under the right-wrong insanity defense in Ohio, the PTSD did not impair the defendant enough to meet the requirements of the defense. In effect, the defendant knew right from wrong and the disorder did not make him unable to refrain from his acts. During the sentencing stage, the defendant, used PTSD as a mitigating factor. The problem, however, was that the trial court indicated that the defendant would have to meet the requirements of the insanity defense in order to be successful at the sentencing stage. According to the court,

During the course of his argument the prosecutor misstated the law, asserting that there was no difference between the standards for the defense of insanity and the mitigating factor of appellant's mental state:

"And here is the big one. You know this is the deja vu. This is the one, go back and reconsider the fact whether at the time of committing the offense the offender, because of mental disease or defect, lacked substantial capacity to conform his conduct to the requirements of the law.

"Haven't you heard that before. Wasn't that the test we just went through. You already addressed this issue. You want to address it again, fine. Go back and address it again (footnote 5).

Since the defendant was not successful with the defense at the trial stage, he was not going to be successful at the sentencing stage, either. As a result, his defense failed and he was sentenced to death.

On appeal, the defendant claimed that the insanity defense was not applicable at the sentencing stage of a capital trial, as one of the mitigating factors for capital cases outlined in Ohio law reflected the lower diminished capacity test, not the right-wrong test. Therefore, the defendant argued that the trial court should have applied the lower standard at the sentencing phase of his

capital trial. The Ohio Supreme Court agreed, claiming that the right-wrong test was applicable at the guilt stage of a capital trial, while the diminished capacity test was applicable at the sentencing stage.

Intoxication

As stated in Chapters 4 and 5 about the actus reus and mens rea, voluntary intoxication is not a defense to liability in Ohio. Section 2901.21 (C) of the Ohio Revised Code indicates specifically that voluntary intoxication cannot be taken into consideration regarding one's mental state (mens rea or intent). This is why offenders may be punished for killing someone while engaging in drunken driving. An offender may not intend to kill anyone, but his decision to drink to excess set in motion a chain of events that led to criminal conduct. Despite this, voluntary intoxication can be taken into consideration if the voluntary intoxication made it physically impossible to engage in the conduct (actus reus). In effect, a person who is unconscious cannot engage in drunken driving.

Other Excuses

The text mentions age, mistake of fact, entrapment, and other excuses for criminal conduct. Duress was discussed earlier under the necessity defense, as Ohio treats necessity and duress similarly. Two other excuses must be mentioned here. The first is the "rotten social background," as the text puts it. As mentioned in Chapter 3, the Ohio Supreme Court recognized a defendant's extremely disadvantaged background as a mitigating factor in capital cases in *State v. Tenace*, (109 Ohio St.3d 255, 2006). Although not a defense to criminal liability, it can be utilized by defendants to avoid a death sentence.

The second excuse is "battered child syndrome," which may be utilized when a child kills an abusive parent. It is, like "battered woman's syndrome," a form of self-defense, but is utilized to describe the circumstances of the offense both prior to and during the commission of the offense. There is not much research or case law on battered child syndrome, but the Ohio Supreme Court, in *State v. Nemeth*, 82 Ohio St. 3d 202 (1998) explained that,

...prolonged exposure to abuse results in feelings of powerlessness, embarrassment, fear of reprisal, isolation, and low self-esteem. These effects often prevent a child from seeking help from third parties. The abusive parent also generally becomes adept at concealing the abuse from outsiders (p. 218).

The court cited research that battered child syndrome is, in effect, a form of post-traumatic stress disorder and can create feelings of immense fear and helplessness. The court indicated that children occupy a unique position, in that they may not know how to let outsiders know of their situation. As a result, there may be limited testimony from third parties about the extent of abuse, making it difficult for the defense in these cases to establish their case. Nonetheless, the Ohio Supreme Court recognized battered child syndrome as an affirmative defense, subject to the same level of proof as self-defense cases.

REFERENCES

Ohio Revised Code, www.ohio.gov/ohio/ohiolaws.html

State v. Lawrence 44 Ohio St. 3d 24 (1989)

State v. Nemeth 82 Ohio St. 3d 202 (1998)

State v. Taylor 98 Ohio St. 3d 27 (2002)

State v. Tenace (109 Ohio St.3d 255 (2006)

REVIEW QUESTIONS

1. Which insanity defense is utilized by Ohio?
 - a. irresistible impulse
 - b. substantial capacity
 - c. Durham product test
 - d. M’Naghten rule

2. Which of the following is true regarding diminished capacity and Ohio law?
 - a. it is not considered a defense to criminal liability
 - b. it can be utilized to reduce the sentence of a defendant
 - c. it is only utilized at trial if the defendant provides expert testimony
 - d. a and b are true
 - e. all of the above are true

DISCUSSION QUESTION

In *State v. Tenace*, the Ohio Supreme Court ruled that a “rotten social background” can be utilized by a defendant to avoid the death penalty. Though not a defense to criminal liability, it can be used to reduce the sentence of a defendant. To what extent do you feel a person’s social upbringing or background should be considered at trial or at sentencing? Explain.

WEB RESOURCES

- www.pbs.org/wgbh/pages/frontline/shows/crime/trial/states.html - from the website of PBS, this link provides information about the various insanity defenses utilized throughout the country

- www.law.cornell.edu/background/insane/capacity.html - a website from Cornell Law School, providing information about diminished capacity