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Drugs and Alcohol - Their Effect on Criminal Intent and Responsibility

William J. Corbett

DRUGS AND ALCOHOL--THEIR EFFECT ON CRIMINAL INTENT AND RESPONSIBILITY

The purpose of this article is to review the history and the present standing of criminal intent and responsibility as affected by intoxication from the use of alcohol and drugs.

Courts have generally treated alcohol and drugs in the same way and then looked to the effect on the individual to determine the importance of the state of intoxication.[1] Early authorities suggested that drunkenness should be an aggravation of any criminal act.[2] During this period, courts considered that to allow such conduct to be a defense would be to promote an immoral activity, and that to allow such activity as defense to any crime would be unthinkable.[3] From these harsh early rules, the courts have moved in the direction of allowing intoxication, by both drugs and alcohol, to be a complete defense in some instances, and to rebut a specific intent in other situations.

Intoxication and Its Effect on Intent

Judicial development and statutes have viewed drunkenness in different lights depending on whether the crime charged required a specific intent or a general intent, and whether the intoxication is voluntary or involuntary.[4]

Voluntary Intoxication

The general rule, as expressed by the Wyoming court, seems to be that if the party charged "was so intoxicated as not to know what he was doing, and was incapable, for that reason of forming an intent he is not guilty of a crime requiring a specific intent."[5] When the crime being charged only requires a general intent, courts have unanimously stated that voluntary intoxication is no defense.[6]

Courts have stated, in most cases, when the individual is found to be voluntarily intoxicated and the crime charged

1. 21 Am. Jur.2d *Criminal Law* § 109 (1965); State v. Bower, 440 P.2d 167 (Wash. 1968).
2. *See generally*, Annot., 8 A.L.R.3d 1236 (1966).
3. Shannahan v. Commonwealth, 8 Bush (Ky) 463 (1871).
4. Wyo. Stat. § 6-16 (1957) 21 Am. Jur.2d *Criminal Law* § 107 (1965).
5. Gustavenson v. State, 10 Wyo. 300, 68 P. 1006, 1011 (1902); People v. Wilson, 67 Cal. Rptr. 678 (1968).
6. 21 Am. Jur.2d, *supra* note 4.

requires a specific intent, that it is a jury question as to whether the individual's state of intoxication was so great as to prevent him from forming the required intent.[7] Thus, the defendant must show not only that he was intoxicated, but that the degree of intoxication was to such extent that he could not form the specific intent.

In those cases where the jury finds the defendant unable to form the intent required, the prosecution usually charges another crime in which no specific intent is required.[8] This type of situation arises when the prosecution asks for first degree murder, and the jury finds that the defendant lacked the specific intent; the prosecution then charges some lesser offense, which requires a general intent, *i.e.,* manslaughter, second degree murder.

Even if the defendant can prove to the jury's satisfaction that the state of his intoxication was so great as not to enable him to form the specific intent required, the court might still find him liable if the prosecution can show that the defendant "deliberately resorted to the use of intoxicants with the object of dulling any compunctions he thought might otherwise hamper him in effecting his purpose."[9] In such a situation, the intent was formed prior to the commission of the act; thus, the consumption of the intoxicant had no effect as to the formation of that intent. However, if the party charged with the commission had formed a lesser intent, *i.e.,* battery, prior to consumption, then later in a condition of intoxication formed a greater intent, *i.e.* murder, it would seem that the court would instruct the jury that if they found the intoxication of the defendant was such that he was unable to form the required intent for murder, the defendant would be found not guilty. The courts might, on the other hand, feel that if any intent, general or specific, was formed prior to deliberate use of intoxicants with the object of dulling any compunctions, the defendant might be rightfully charged and convicted of murder. Such a holding would not seem logically sound in view of the necessary requirement of proving the

7. People v. Costillo, 65 Cal. Rptr. 202 (1968).
8. State v. Tramtino, 44 N.J. 358, 209 A.2d 117 (1965); State v. Painter, 135 W.Va. 106, 63 S.E.2d 86 (1950).
9. People v. Tuthill, 31 Cal. App. 2d 92, 187 P.2d 16, 22 (1947).

formation of the required intent, but the courts may feel that such a rule would be sound in light of public policy.

The public policy viewpoint would be particularly strong if the earlier intent and the later intent were both concerning crimes against the person, as opposed to crimes directed against property. Consider an individual who intends to strike another, *i.e.* a battery, then deliberately becomes intoxicated with the motive of reducing any subsequent compunction, and while intoxicated, kills the victim. A court might not require the finding of any specific intent which otherwise might be required for murder, because the defendant had formed an intent to commit *a* crime against a person prior to becoming deliberately intoxicated.

Another consideration along the same lines might also be worth noting. Assume that the defendant intends to commit a battery and subsequently becomes intoxicated, but not deliberately with the motive of dulling any compunctions that might arise. The defendant, in such an intoxicated state, commits a murder, and the prosecution asks for first degree murder, which requires a specific intent.

Even if the specific intent to kill cannot be established, the court might reach the same decision that it did on the previous example, *i.e.* that a specific intent is not required if a general intent to commit an act against a person was formed prior to voluntary intoxication, even though the crime ultimately charged required a specific intent.

This was true in the previous example because the motive for the intoxication was to reduce any compunction which might arise prior to the commission. However, in this latter example, there was no such motive. If the motive of the intervening intoxication is the important element (not merely the intoxication), then without a wrongful motive the court should require the finding of a specific intent. However, the court could conclude that the motive of the intoxication is not the important element. In effect, the court would be holding that all that is required is the finding of a general intent to commit a crime against a person, and any subsequent voluntary intoxication cannot be used to show that the defendant could not have formed a specific intent required for the crime charged.

INVOLUNTARY INTOXICATION

The Wyoming statute on drunkenness is a typical example of the effect of involuntary intoxication as related to the formulation of intent.[10] The Wyoming statute states that if the drunkenness is "occasioned by the fraud, contrivance or force of some other person or persons for the purpose of causing the perpetration of an offense," the party charged is not held whether the crime required a general or specific intent. This same reasoning is used in jurisdictions where there is no statute to this effect.[11]

The only question upon which there is not universal agreement in this area is the definition of involuntary intoxication, when the statute or judicial decisions have not defined that term. Courts have, for the most part, adopted a definition similar to the Wyoming statute. The question has been brought into sharp focus by several recent cases in which courts have looked at the chronic alcoholic or addict, and questioned whether he becomes intoxicated voluntarily or involuntarily.

The United States Supreme Court in *Robertson v. California*[12] held that a California statute which made the addiction to drugs a criminal offense was violation of the eighth amendment of the United States Constitution as cruel and unusual punishment. In 1966, the United States Court of Appeals for the District of Columbia in *Easter v. District of Columbia*[13] held that the same reasoning applies to alcoholism.

The dicta in *Robertson* and *Easter* to the effect that chronic alcoholism and drug addiction are involuntary have brought into question the more limited definition used by most courts and statutes. Also, these two cases have led several writers to conclude that the courts were saying that chronic alcoholism and drug addiction are to be treated as involuntary forms of intoxication, thus relieving the addict from all criminal responsibility. However, the court in *Easter* went on to say that it in no way meant that voluntary intoxi-

10. WYO. STAT. § 6-16 (1957).
11. Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966).
12. Robertson v. State, 370 U.S. 660 (1962).
13. Easter v. District of Columbia, *supra* note 11.

cation, even by the chronic alcoholic or addict, would be a defense to a crime requiring a general intent.[14]

In *Powell v. Texas*,[15] the Supreme Court held that even though the *status* of addiction or alcoholism is not criminally punishable under *Robertson v. California*, a statute which provides criminal liability for a person who is drunk or intoxicated in a public place can be constitutionally applied to an addict or alcoholic, because the status of such condition is not being labeled as criminal. The Texas statute "imposed upon the appellant a criminal sanction for public behavior which may create substantial health and safety hazard, for both the appellant and for the member of the general public."[16] Thus, an alcoholic or addict is said to consume voluntarily and to be held to the same responsibility as the non-addict or non-alcoholic.

Courts have been unwilling to hold that the addict or alcoholic consumed intoxicants involuntarily, because to do so would be to hold him not liable for any criminal activity; this would be contrary to public policy.[17] Thus, at present it is safe to say that the alcoholic or addict will not escape criminal responsibility except where his status as such is made the basis of a criminal charge.

RELATIONSHIP OF INTOXICATION TO INSANITY

The fact that a criminal act was committed while the actor was under the influence of alcohol or drugs is generally no defense to the charge, under an insanity plea.[18] This idea was expressed as the universal rule in early decisions concerning intoxication from alcohol and drugs.[19]

Today some courts have taken a second look at the effects of intoxicants, and in some cases have been willing to allow a defendant relying on intoxication to show insanity. The courts which have allowed such a defense have always required the defendant to show extreme intoxication induced by either drugs or alcohol, and generally required the defendant to be an addict or an alcoholic.

14. *Id.* at 53.
15. Powell v. Texas, 36 U.S.L.W. 4619 (U.S. June 18, 1968).
16. *Id.* at 4620.
17. Gustavenson v. State, *supra* note 5; State v. Tramtino, *supra* note 8.
18. 21 AM. JUR.2d, *supra* note 4.
19. Shannahan v. Commonwealth, *supra* note 3.

Requirement of Addiction and Alcoholism

In *State v. Kidwell*,[20] the court held the defendants could support a valid insanity plea only if the insanity was caused through long continued indulgence in intemperance or intoxication, causing delirium tremens. Thus, if there was no long-term use which amounted to alcoholism, the fact that the defendant suffered from delusions and hallucinations is no defense, because the defendant was not laboring under a mental disease or affliction.[21] In effect, the court in *Kidwell* was holding that delusions and hallucinations caused by severe intoxication, in the absence of a long and continued use, is not a disease and could not qualify as insanity.

This distinction was and still is used in those jurisdictions which require the person being charged to suffer under some actual physical disease which can be identified, *i.e.*, an organic deterioration of the mind or an extreme functional psychosis.

A 1963 Alaska case[22] held that "a state of mind created by voluntary intoxication is not a major disorder or disease or mental derangement which amounts to legal insanity. The majority of courts have drawn a distinction between (1) the mental effect of intoxication which is the immediate result of a particular alcoholic bout, and (2) an alcoholic psychosis, such as delirium tremens, resulting from long continued habits of excessive drinking."[23] The Alaska court stated that the former does not amount to legal insanity whereas the latter may.

Those jurisdictions which follow the rule expressed in the Alaska case are those that generally follow the *M'Naghten* test and require a defect of reason from a disease of the mind. In those jurisdictions, the fact that an individual has delusions and hallucinations which are equally as severe as the delirium tremens suffered by the chronic alcoholic makes little difference, because in the first instance the individual was not suffering from a long-term or identifiable mental disease. Thus, in those jurisdictions, it is not the mental state of the

20. State v. Kidwell, 62 W.Va. 466, 59 S.E. 494 (1907).
21. *Id.* at 495.
22. McIntyre v. State, 379 P.2d 615, 8 A.L.R.3d 1231 (Alaska 1961).
23. *Id.* at 616, 617.

defendant at the time of committing the act that is important, but what actually led up to that state.

Courts which have considered the sanity of a drug addict have generally reached the same conclusion, and require that the individual show a long-term use of the drugs to constitute an illness or disease.[25] Thus, if the individual who uses drugs as intoxicants only occasionally and is in no way addicted to them commits a crime while under the influence of the drugs, he cannot escape criminal liability. This is true even if the effect of the drug causes severe delusions and hallucinations, and but for the hallucinations and delusions, the criminal act would have not been committed.

The courts do not require the individual to continue to be in a state of insanity. All that is required is that the effect of long and continued use of intoxicants is sufficient to produce and does produce "a fixed and settled frenzy or insanity either permanent or intermittent."[26]

Assuming the addiction is of such character as to qualify as "insanity," the courts allow an individual who can show a long-term use amounting to either addiction or alcoholism to escape liability, even though his mental condition at the time of commission was not permanent or longlasting. Thus, once the individual proves alcoholism or addiction of a proper character, he need only show that while under the influence of the substance, he experienced delusions and hallucinations which caused him to commit the crime. The party charged does not need to show that the delusions or hallucinations lasted after the commission of the crime, only that they existed at the commission.

The attempt to show temporary insanity as a result of intoxication, except from long and continued use, is of no avail either, because of the lack of a mental disease.[27]

Hallucinogens and the Model Penal Code

If the Model Penal Code[28] standards of criminal responsibility are considered in terms of a defense based on intoxica-

24. PERKINS, CRIMINAL LAW 747 (1957).
25. Brown v. United States, 331 F.2d 822 (D.C. Cir. 1964).
26. Cirack v. State, 210 So. 2d 706 (Fla. 1967).
27. State v. Cameron, 137 So. C. 371, 135 S.E. 364 (1926).
28. MODEL PENAL CODE § 4.01 (1962).

tion without long-term use, then we may get a different result. The Model Penal Code provisions, as adopted by *United States v. Freeman,*[29] require that "a person is not responsible for his criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of Law."[30] If under the requirement of a mental disease or defect we can fit a situation of severe intoxication which results in delusions and hallucinations, then the requirement of long-term use may not be needed.

A mental disease or defect as used by the Model Penal Code has been defined as meaning an abnormal condition of the mind which substantially impairs the capacity to control behavior; it does not depend upon psychiatric labels or medical classifications and terms.[31] It is fairly easy to see that an individual who is experiencing extreme delusions and hallucinations may in fact be said to be suffering from a mental disease or defect.

The effect of alcohol, in the absence of chronic alcoholism, is probably never great enough to cause delusions and hallucinations. This can be said to be at least the general situation. True enough, for a defendant to contend that he was so affected by alcohol as to constitute a disease or defect under the Model Penal Code definition would probably require some extreme situation. For this reason, let us turn our attention exclusively to the effects of drugs.

The effect of certain drugs on the individual can cause an experience which can be classified under the definition of mental disease or defect. This can even be more easily acceptable if the individual was under the influence of one of the relatively new high-power hallucinogens. Early researchers noted similarities between the effects of the hallucinogenic drugs and those of mental illness . . . especially schizophrenia, a mental disease widely recognized.[32]

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29. United States v. Freeman, 357 F.2d 606 (2d Cir. 1966).
30. *Id.* at 625.
31. Heard v. United States, 348 F.2d 43, 44 (D.C. Cir. 1965).
32. Note, *Hallucinogens,* 68 COLUM. L. REV. 521 (1968).

The effect of the drug on the individual depends on the psychological state of the individual and the drug used.[33] Hallucinogens are legally defined as drugs which affect the central nervous system "in such a fashion as to cause the user to have a distorted sense of reality."[34] But all drugs that are classified hallucinogenics do not have the same effect on the central nervous system. L.S.D. can produce a variety of intense and unusual psychic effects. These effects may range from a loss of time and space perception and mild apprehension to panic, severe elation, and deep depression.[35] Amphetamines and cocaine both are likely to induce a state of excitability and propensity to violence.[36] These are but a few of the many drugs which can produce conditions similar to conventional definitions of insanity.

If the courts will look at the effects of the drug on the individual, rather than first looking to see if the individual is an addict, there will be a movement to allow a non-addict to defend the charge on an insanity plea when his mental state, at the time of the commission, is within the definition of a mental defect or disease.

An important factor which has been considered by some courts in considering criminal responsibility of an individual under the influence of a drug is whether the individual could forsee the possible consequences of taking the drug. One court has relied more on this factor than on whether the taking was voluntary.[37]

It appears that the actual knowledge of the probable or even improbable effects of a drug would be enough for a court to find the lack of a "mental defect." This could be justified on public policy alone,[38] for to allow one who knows a probable consequence of a voluntary act to rely on those consequences to eliminate his criminal responsibility would be extremely detrimental to society. Here, the liquor comparison is apt.

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33. *Id.*
34. H.R. REP. No. 130, 89th Cong., 1st Sess. 6 (1965).
35. Rosenthal, *Persisent Hallucinosis Following Repeated Administration of Hallucinogenic Drugs*, 121 AM. J. PSYCHIATRY 238 (1964-1965).
36. Bieser, *Drugs and the Law or Who Pays for the "Trip"?*, 36 U. CIN. L. REV. 39, 48 (Winter 1967).
37. DeBerry v. Commonwealth, 289 S.W.2d 495 (Ky. 1956).
38. Gustavenson v. State, *supra* note 5; State v. Tramtino, *supra* note 8.

If, on the other hand, the individual did not realize the consequences of taking the drug, then the public policy argument would not be nearly as strong, and he could not be held to appreciate the danger.

A second factor that courts could consider before allowing a non-addict to show insanity would be whether the criminal act was against property, or the person. The courts could adopt a standard which would allow the showing of insanity in relation to crimes against property, but not to crimes against the person. This would result in a double standard and require the court to consider not only the defendant's mental state but also the act committed. The courts are currently using a double standard by considering the defendant's mental state, and then looking to see if he is an alcoholic or an addict. Thus, the proposed double standard is in reality not that significant, and would in effect only replace the double standard currently used. The courts need only look for the effect of the drug on the defendant, (not also considering whether he is an addict) and whether the crime committed was against the person or property.

Such a standard, especially if the courts also consider whether the defendant knew or appreciated the effect of the drug, would be a compromise between the public policy approach and a true standard concerning the defendant's mental condition at the time of commission.

CONCLUSION

It appears that the courts are beginning to recognize the effects of intoxicants in relation not only to criminal intent but also to criminal responsibility viewed from the insanity standpoint. Courts are allowing expert testimony to be used to show the mental state of the individual at the commission of the crime. Courts are becoming more aware of the effect of drugs on the mind and fully realize that long and continued use of intoxicants is not needed to put the individual's mind in a state very similar to a chronic mental diseases of very long duration.

The only factor that yet remains static is the courts' reluctance to allow an individual who is voluntarily intoxi-

cated to escape total liability for an act committed in such a state, even though the mental condition of the individual falls within the boundaries of the typical definitions of a mental defect or disease. This reluctance to recognize insanity in this area is probably best explained by public policy considerations. There is an understandable hesitancy to allow an individual to murder his mother while under the influence of L.S.D., and then escape total liability.[39]

In these types of situations, courts cannot justify a decision of acquital, as did Justices Fortas and Douglas in their dissenting opinions in *Bud v. California,*[40] when they stated that it is time to stop criminally punishing the person suffering from an illness. Their argument was that such individuals should be treated in hospitals. This argument is not applicable to the voluntarily intoxicated individual who does not have an illness or is only deranged for a short period of time and then completely recovers. However, if the courts would adopt a standard which would consider whether the individual knew or appreciated the effect of the intoxicant, and whether the criminal act was against the person or property, the public policy objections would be reduced.

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39. Cotnam, *Accidents Caused by Drug Abuse,* INT'L NARCOTIC ENFORCEMENT OFFICERS ASS'N SEVENTH ANNUAL CONFERENCE REPORT 54 (1966).
40. Bud v. California, 385 U.S. 909, 910-911 (1966).