

## CHAPTER 9: EXCUSES

Excuse is another type of affirmative defense. Although excuses and justifications are similar, they are not the same. When raising the defense of excuse, one does not claim to have committed a crime out of necessity or because it is justified. Instead, a defendant admits to a criminal act, but claims that he is not responsible for his actions because something beyond his or her 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 states that:

A person is not guilty by reason of insanity if ...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 ((2007), available at <http://codes.ohio.gov/orc/2901.01>).

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, available at <http://codes.ohio.gov/orc/2901.05>).

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's condition 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 explains that diminished capacity is not the same as being as not legally insane, but instead refers to 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 provides 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), available at <http://codes.ohio.gov/orc/2945.391>).

This was reinforced in *State v. Taylor*, 98 Ohio St. 3d 27 (2002), by the Ohio Supreme Court, which held that during trial a:

...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. Nonetheless, Ohio does allow defendants to prove they had diminished capacity during the sentencing phase of a capital trial. Indeed, 2929.04 (B)(3) of the Ohio Revised Code provides that during sentencing in a capital case, the jury or the judge must consider:

...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), available at <http://codes.ohio.gov/orc/2929.04>).

Although, technically, this is more analogous to the "substantial capacity" test outlined in the text and in the Model Penal Code, Ohio characterizes it as diminished capacity. Thus, a defendant can use diminished capacity to avoid a death sentence, but not a guilty verdict.

The Ohio Supreme Court had occasion to consider the proper use of diminished capacity in *State v. Lawrence*, 44 Ohio St. 3d 24, 1989.

### **State v. Lawrence**

The defendant was found guilty of aggravated murder and was sentenced to death. The defendant suffered from Post-Traumatic Stress Disorder (PTSD) due to the death of his infant son. He unsuccessfully attempted to use evidence of his PTSD at trial to prove an insanity defense. But the court ruled that, under the right-wrong insanity defense in Ohio, PTSD did not impair the defendant enough to meet the requirements of the insanity defense. That is, the defendant's PTSD was not a severe mental defect that caused him not to know the wrongfulness of his actions. During the sentencing stage, the defendant argued that his PTSD should be considered a mitigating factor. However, the trial court mistakenly failed to instruct the jury that the defense of insanity that was presented during trial was different from and subject to a higher proof standard than diminished capacity, a mitigating factor during the penalty phase. This error was compounded when prosecutor misstated the law, and claimed that there was no difference between the two. Indeed, during the penalty phase, the prosecutor told the jury:

"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).

On appeal, the defendant argued, and the Ohio Supreme Court agreed, that because the jury was given the wrong information about which test to use at sentencing, the defendant was deprived of the opportunity to have the jury properly consider his mental condition as a mitigating factor during sentencing. s

### **Intoxication**

As stated in Chapters 4 and 5 about *actus reus* and *mens rea*, voluntary intoxication is not an excuse for inaction, nor is it a defense to specific intent crimes. This is why offenders in Ohio 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. Despite this, a defendant can attempt to show that voluntary intoxication made it physically impossible to engage in the conduct (*actus reus*). To make

the distinction clear: a defendant charged with assault cannot claim that he was so intoxicated that he could not have knowingly attempted to hurt someone during a bar fight, he can try to introduce evidence that he was so drunk, that he was unconscious, and thus could not have been the person who was fighting.

### **Other Excuses**

The text mentions age, mistake of fact, entrapment, and other excuses for criminal conduct.. Two other excuses must be mentioned here. The first is “rotten social background,” as the text puts it. As mentioned in Chapter 3, the Ohio Supreme Court considered a defendant’s extremely disadvantaged background as a mitigating factor in a capital case 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.

Similarly, the second excuse is “battered child syndrome,” (or BCS) which may become relevant in the case of parricide-- when a child kills a parent. It is similar to battered women’s syndrome in that it describes circumstances attendant to an abusive relationship. Although it is NOT an independent defense, in *State v. Nemeth*, 82 Ohio St. 3d 202 (1998) the Ohio Supreme Court 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 also 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. Accordingly, it held that evidence that a child suffered from BCS can be used to prove that a child acted in self defense when killing a parent because he or she possessed a bona fide fear of imminent danger, or to show that the jury should be given the chance to charge the child with a lesser degree of homicide, such as voluntary manslaughter.

### **REFERENCES**

Ohio Revised Code, <http://codes.ohio.gov/orc>

*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**

- <http://www.pbs.org/wgbh/pages/frontline/shows/crime/> - 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](http://www.law.cornell.edu/background/insane/capacity.html) - a website from Cornell Law School, providing information about diminished capacity