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Commonwealth v. Ahearn: Psychiatric Testimony Ruled Inadmissible in Murder Trial to Show Lack of Deliberation and Premeditation

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NOTES

COMMONWEALTH V. AHEARN: PSYCHIATRIC TESTIMONY RULED INADMISSIBLE IN MURDER TRIAL TO SHOW LACK OF DELIBERATION AND PREMEDITATION

The Supreme Court of Pennsylvania has held in *Commonwealth v. Ahearn*[1] that psychiatric testimony is inadmissible in a murder trial to show a lack of deliberation and premeditation and thus prevent a verdict of murder in the first degree. The court's holding has disregarded modern enlightened authority and unwisely restricted the purpose for which psychiatric testimony may be admitted into evidence. This Note will explore the implications of the court's prior decisions concerning the admissibility of testimony in first degree murder trials when such testimony is offered, not to absolve the defendant of all guilt, but only for the limited purpose of diminishing responsibility.

The defendant, Richard Ahearn, met the victim for the first time in a Bellefonte, Pennsylvania, bar. After several hours of drinking they decided to find a motel room and spend the evening together. Failing in their attempt to secure a room, the victim suggested that the defendant drive to a secluded field outside of town. When they arrived at the field they both removed their clothing. Suddenly, and for some unknown reason, the defendant punched the victim several times and pushed her out of the car. He pursued her with a knife and proceeded to inflict ninety-seven stab wounds upon various areas of her body. The defendant then dressed, but he returned to the victim and proceeded to slash open her chest from throat to abdomen. He then got into his car and drove his automobile over her body several times.

The defendant pleaded guilty to an indictment charging him with murder, and a non-jury trial was held to determine the degree of guilt. At the trial, the defendant did not assert legal insanity under the M'Naughten Rule. Instead, it was argued that because of his mental condition, he could not form an intent to kill, was incapable of premeditating the murder, and consequently could not be convicted of any crime higher than murder in the second degree. Two psychiatrists and one clinical psychologist testified for

1. 421 Pa. 311, 218 A.2d 561 (1966).

the defense, and their analyses were substantially the same. It was their opinion that the defendant's actions were motivated by a deep-seated anxiety arising from repeated traumatic, pre-adolescent sexual experiences. The repetitive character of those experiences produced a conditioned reflex type of conduct which erupted when triggered by specific stimuli, resulting in a mental state which temporarily destroyed the defendant's ability to premeditate and form a specific intent to kill. The Commonwealth presented no psychiatric testimony in rebuttal. The trial judge ruled that the expert's opinions were inadmissible, found the defendant guilty of murder in the first degree, and sentenced him to life imprisonment. From this judgment and sentence the defendant appealed.

The supreme court, in a four to three decision, affirmed the determination of the lower court. The majority reasoned that the defendant was really offering evidence of an irresistible impulse. Since Pennsylvania has never accepted this doctrine as a supplement to M'Naughten,[2] it was held that such testimony is also inadmissible in cases where it is offered to reduce the degree of guilt. The dissenting opinions of Justices Cohen[3] and Roberts[4] argued that the psychiatric testimony was logically relevant and did not violate the M'Naughten Rule. It was their opinion that the testimony should have been considered, the weight and ultimate finding being left to the trier of fact.

A proper analysis of this decision and the question involved necessitates a brief review of the evolutionary history of psychiatric testimony and its use in the law. The genesis of the problem presented in *Ahearn* was Daniel M'Naughten's Case.[5] Daniel M'Naughten suffered from delusions of persecution, and he considered Robert Peel, Queen Victoria's Prime Minister, to be his major persecutor. He attempted to assassinate Peel, but killed Peel's secretary instead. M'Naughten was tried and found not guilty by reason of insanity.[6] The Queen's ire was raised by the acquittal and the opinion was taken up by the House of Lords. Fifteen judges of the common law courts were summoned into session. The opinion of the judges was written by Lord Chief Justice Tindall and it announced the now famous M'Naughten Rule, or right-wrong test.[7] This test was almost universally adopted in

2. Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Woodhouse, 401 Pa. 242, 164 A.2d 98 (1960).

3. 421 Pa. at 326, 218 A.2d at 569 (1966) (dissent).

4. *Id.* at 331, 218 A.2d at 571 (dissent).

5. L.R. 8 H.L. 200, 8 Eng. Rep. 718 (1843).

6. GUTTMACHER AND WEIHOFEN, PSYCHIATRY AND THE LAW, 403 (1952); RAY, MEDICAL JURISPRUDENCE OF INSANITY, 343 (Overholser ed. 1962).

7. Daniel M'Naughten Case, L.R. 8 H.L. 200, 8 Eng. Rep. 718 (1843).

the United States[8] and was quickly recognized in Pennsylvania.[9] The Pennsylvania courts typically define legal insanity as an "inability, from disease of the mind, to understand the nature and quality of the act and to distinguish between right and wrong . . . ."[10] This statement of the rule has been reaffirmed many times.[11] Only in New Hampshire was the rule rejected.[12] That state adopted a test which was to be the forerunner of the Durham Rule.

Shortly after the M'Naughten Rule was formulated, it was denounced by prominent psychiatrists as an absurd standard which had been discredited by medical science.[13] In an effort to enlighten M'Naughten, the rule was supplemented in some states by the irresistible impulse test.[14] This also met with medical disapproval,[15] and the supplementary rule has never been followed in Pennsylvania when the defendant's insanity is asserted as a complete defense.[16]

In 1954, the District of Columbia Circuit Court adopted a new and controversial test of insanity in *Durham v. United States*.[17] The test for legal insanity announced in *Durham* was simple: A defendant is not criminally responsible "if his unlawful act was the product of mental disease or mental defect."[18] The advantages of the Durham Rule were obvious, for now psychiatrists were permitted to provide all relevant medical information to the trier of fact. Despite this advantage, however, the Durham Rule had its deficiencies. The rule did not clearly define what standard the fact finder was to use in judging the competency of the accused.[19]

Many of the objections to the Durham standard were accommodated by the American Law Institute in formulating section 4.01

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8. See, United States v. Freeman, 357 F.2d 606 (2d Cir. 1966), where there is a thorough discussion of the history surrounding the M'Naughten decision.

9. Commonwealth v. Mosler, 4 Pa. 264 (1846).

10. Commonwealth v. Neill, 362 Pa. 507, 514, 67 A.2d 276, 279 (1949).

11. Commonwealth v. Woodhouse, 401 Pa. 242, 164 A.2d 98 (1960); Commonwealth v. Heller, 369 Pa. 457, 87 A.2d 287 (1952).

12. State v. Pike, 49 N.H. 399 (1870).

13. See RAY, *op. cit. supra* note 6; Guttmacher, *The Psychiatrist as an Expert Witness*, 22 U. CHI. L. REV. 325 (1955).

14. See Satten, *Murder Without Apparent Motive*, 117 AM. J. OF PSYCHIATRY 48 (1960).

15. RAY, *op. cit. supra* note 6, at 344; Satten, *supra* note 14.

16. Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Neill, 362 Pa. 507, 67 A.2d 276 (1949).

17. 214 F.2d 862 (D.C. Cir. 1954).

18. *Id.* at 874-75.

19. United States v. Freeman, 357 F.2d 606 (2d Cir. 1966); Hall, *Psychiatry and Criminal Responsibility*, 65 YALE L.J. 761 (1956).

of the Model Penal Code, which provides that:

> (1) 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 wrongfulness of his conduct or to conform his conduct to the requirements of law.
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> (2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.[20]

The Second Circuit of the United States Court of Appeals has recently adopted section 4.01 as the standard of criminal responsibility in that circuit.[21] On July 1, 1965, the State of New York rejected M'Naughten and adopted a test similar to the Model Penal Code.[22] Similarly, Vermont now follows essentially the same test as section 4.01,[23] as does Connecticut[24] and Wisconsin.[25] The *Ahearn* decision must be viewed in the light of these recent developments in this area of the law.

As legislation and judicial decisions proliferate, the criminal law becomes increasingly more sophisticated and complex. All through this evolutionary process, however, there remain fundamental questions which must be resolved. *Commonwealth v. Ahearn* presents such a question. For over a century now the courts have been concerned with the role of the psychiatrist in the law. Long treated with distrust, the psychiatrist only recently has found the courtroom to be a more inviting forum. Unfortunately, *Ahearn* does not reflect this modern trend. It is evident that the advances of modern psychiatry were of little significance to the majority, and their distrust of this branch of modern medicine was evident when the court stated that "the Courts of Pennsylvania believe that the opinion of a psychiatrist . . . is entitled to little weight. . . ."[26]

It cannot be disputed that former decisions have consistently shown a distrust for the opinion of the psychiatrist and have insisted that such opinions be given little weight. After reaffirming this principle, however, the court went on to hold that such testimony is not to be admitted to show a lack of premeditation and deliberation and thereby prohibit a verdict of murder in the first degree. Furthermore, after announcing these two principles, the

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20. MODEL PENAL CODE § 4.01 (final draft 1962).
21. United States v. Freeman, 357 F.2d 606 (2d Cir. 1966).
22. N.Y. PENAL LAW, § 1120.
23. VT. STAT. ANN., tit. 13, § 4801 (1957).
24. State v. Davies, 146 Conn. 137, 148 A.2d 251, *cert. denied*, 360 U.S. 921 (1959).
25. State v. Shoffner, 143 N.W.2d 458 (Wis. 1966).
26. 421 Pa. at 324, 218 A.2d at 568 (1966).

majority concluded by saying that "this has always been the law of Pennsylvania."[27] This is not a correct statement of the law as it existed prior to *Ahearn*. While prior decisions have held that neither judge nor jury is to be controlled by psychiatric testimony, and that such testimony is to be accorded little weight, no prior Pennsylvania case has ever held that such testimony is inadmissible to show a lack of the elements necessary to establish murder in the first degree. For this reason, *Ahearn* represents a new development in the law of Pennsylvania.

In several of the cases cited by the majority on the question of admissibility, the lower court *had* permitted a psychiatrist to give his expert opinion as to the defendant's state of mind.[28] In each of these cases, the Pennsylvania Supreme Court merely questioned the weight to be given such evidence and did not rule that the evidence was inadmissible.

In *Commonwealth v. Elliott*,[29] a case relied upon by the majority, the defendant pleaded guilty to killing a police officer during the course of an armed robbery. The defense introduced psychiatric testimony to show that the defendant was a mental defective. This evidence was admitted in order to aid the court in imposing sentence, and the testimony was not offered for the purpose of diminishing responsibility nor to absolve the defendant of guilt. Guilt was admitted, and, since this was a killing committed in the perpetration of a felony, the degree of guilt was already fixed by statute as first degree murder.[30] Since this case is factually distinguishable, it cannot be authority for excluding the psychiatric testimony offered in the trial of Richard Ahearn.

The majority relied heavily upon *Commonwealth v. Carroll*.[31] The facts in this case were almost identical to those in *Ahearn*. Upon appeal from a conviction of first degree murder, counsel for the defendant contended that the court must be *controlled* by the testimony of the psychiatrist and that the testimony of the defendant's psychiatrist required the lower court to fix the degree of guilt at no higher than murder in the second degree. The psychiatrist had testified that the defendant was mentally ill and incapable

27. *Ibid.*

28. See Commonwealth v. Carroll, 412 Pa. 525, 194 A.2d 911 (1963); Commonwealth v. Jorden, 407 Pa. 575, 181 A.2d 310 (1962); Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Neill, 362 Pa. 507, 67 A.2d 276 (1949); Commonwealth v. Woodhouse, 401 Pa. 242, 164 A.2d 98 (1960).

29. 371 Pa. 70, 89 A.2d 782 (1952).

30. PA. STAT. ANN., tit. 18, § 4701 (1963) provides as follows: "[A]ll murder . . . which shall be committed in the perpetration of . . . robbery . . . shall be murder in the first degree."

31. 412 Pa. 525, 194 A.2d 911 (1963).

of deliberation and could not form a specific intent to kill. The trial court admitted the testimony but chose to disregard it in reaching a verdict. Affirming the trial court, the supreme court said:

> The rule regarding the weight of expert testimony in this class of case is well settled. "[E]xpert testimony is entitled to little weight as against positive facts. Expert medical opinions are especially entitled to little or no weight when based upon insufficient or (partly) erroneous facts or a feigned state of mind or an inaccurate past history, or upon unreasonable deductions. . . ."[32]

This decision also is not precedent for the ruling in *Ahearn*. At the trial, defendant's psychiatrist *was* permitted to testify that the defendant was incapable of premeditating. The admissibility of this evidence was not questioned by the appellate court. The question resolved in *Carroll* concerned the weight, not the admissibility of psychiatric testimony.

It was also held by the majority that the statute popularly known as the Split Verdict Act[33] compelled the exclusion of the psychiatric testimony offered in the *Ahearn* trial[34] It is hard to imagine how this statute could require such a result. The statute merely provides that the court may hear additional testimony in order to aid the finder of fact in fixing the penalty. Nowhere in the act is it implied that psychiatric testimony may be admissible only to show insanity under the M'Naughten Rule and for the purpose of fixing the penalty, as was held by the court. The statute provides that:

> Whenever the jury shall agree upon a verdict of murder of the first degree, they shall . . . render the same. . . . After such verdict is recorded and before the jury is permitted to separate, the court shall proceed to receive such additional evidence not previously received in the trial as may be relevant and admissible upon the question of the penalty to be imposed. . . .[35]

No mention is made in the statute of the admissibility of evidence to determine the degree of guilt. The statute speaks only of evidence to be admitted after the degree of guilt is established, and then only for the purpose of determining the penalty to be imposed. It is submitted that the "additional evidence" which the legislature contemplated when formulating this statute was evidence such as convictions of prior crimes. The statute is not authority for excluding psychiatric testimony to determine the degree of guilt.

32. *Id* at 535, 194 A.2d at 916.
33. PA. STAT. ANN., tit. 18, § 4701 (1963).
34. 421 Pa. at 324, 218 A.2d at 568 (1966).
35. PA. STAT. ANN., tit. 18, § 4701 (1963).

Indeed, in a first degree murder charge, the question to be resolved is whether or not the defendant deliberated and premeditated his act. Since this is the inquiry that the jury must make, the opinion of a qualified expert concerning the condition of the defendant's mind is most relevant. Certainly the legislature did not intend to exclude such testimony and deprive the jury of this valuable expert assistance. If the statute had so intended, then it would have clearly said so.

Richard Ahearn's defense was that of diminished responsibility. It was the defendant's contention that his mental illness, while not amounting to insanity under the M'Naughten Rule, nevertheless prevented him from possessing a mind capable of premeditating and forming a specific intent to kill. The majority characterized this defense as "irresistible impulse" and flatly rejected it. It appears that this is the major reason why the court ruled that the defendant's psychiatric testimony was inadmissible. Under the M'Naughten Rule Pennsylvania has consistently ruled that a psychiatrist may not testify as to the defendant's irresistible impulses.[36] These holdings, however, have been in cases where the defendant sought to assert insanity as a complete defense and thus avoid all criminal responsibility. While irresistible impulse will not absolve one of all guilt in Pennsylvania, it has been held that evidence of defective mental condition is admissible for the purpose of reducing the grade of the offense to second degree murder.[37]

Prior to *Ahearn* it has never been held that all psychiatric testimony is inadmissible, except to show insanity as a complete defense under M'Naughten or to aid the court in fixing the penalty. The case of *Commonwealth v. Woodhouse*[38] is illustrative. In this murder trial three psychiatrists testified that the defendant was insane according to M'Naughten, and that the murder was the result of an irresistible impulse. The jury disregarded the testimony of the psychiatrists and returned a verdict of murder in the first degree. Upon appeal, the defendant contended that M'Naughten should be abandoned and replaced by the irresistible impulse test. The decision was affirmed, and the court ruled that the irresistible impulse test would not be accepted to supplement or supplant M'Naughten. The court did not rule, however, that this test

36. Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Neill, 362 Pa. 507, 67 A.2d 276 (1949).

37. Jones v. Commonwealth, 75 Pa. 403 (1874). *Accord,* Commonwealth v. Werling, 164 Pa. 559, 30 Atl. 406 (1894) (dictum); Commonwealth v. Hillman, 189 Pa. 548, 42 Atl. 196 (1899). *Contra,* Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961), where there is a dictum to the contrary which is unsupported by authority.

38. 401 Pa. 242, 164 A.2d 98 (1960).

could not reduce a verdict from murder in the first to murder in the second degree. In fact, the court did not question the admissibility of the psychiatric testimony, for it approved the following portion of the trial judge's charge: "In addition thereto, you will consider the opinions of the psychiatrists. You must consider their training, qualifications and experience, and the date or dates when they examined the defendant."[39] The evidence which the trial court was commenting upon in this charge was that presented by the defendant which tended to show that his actions were the result of an irresistible impulse. Only the weight and use of this testimony was questioned by the supreme court, not its admissibility.

There is general agreement in both the medical and legal professions that irresistible impulse is not a satisfactory supplement to the M'Naughten Rule.[40] Nevertheless, when the Commonwealth must prove beyond a reasonable doubt that the defendant's state of mind was such that he had a specific intent to take life and that the murder was deliberate and premeditated, it would seem that if the defendant's actions were the result of an irresistible impulse, the Commonwealth has not proved its case. Therefore, the psychiatrist's testimony is very relevant on this issue, for the defendant's state of mind is an indispensible element in establishing first degree murder. Evidence which shows that, at the time of the killing, the defendant was incapable of premeditating should be admissible.

Even if it were the well settled law of Pennsylvania that an irresistible impulse will not reduce the degree of guilt in homicide cases, it is submitted that *Ahearn* is too broad. The court has not merely restricted testimony of an irresistible impulse when it is offered to diminish responsibility; the decision holds that *all* psychiatric testimony is inadmissible in determining guilt except under the M'Naughten Rule. In effect, the psychiatrist is now permitted to make but one statement: Either the defendant did or did not know the difference between right and wrong. All other psychiatric testimony is excluded. Only after both guilt and degree have been established will additional psychiatric testimony be heard, and then only to aid the court in fixing the penalty.

It is possible that in some cases the defendant's actions will not be the result of what the medical profession terms an irresistible impulse. Yet, the defendant's act may be the result of a mental dis-

39. *Id.* at 259, 164 A.2d at 107.

40. Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Barner, 199 Pa. 335, 49 Atl. 60 (1901); RAY, *op. cit. supra*, note 6, at 344.

order of such nature as to prevent him from premeditating and forming a specific intent to kill. In this situation the requirements of the statute defining first degree murder are not present, but the *Ahearn* decision prevents the defendant from raising this legitimate defense. If the testimony of the medical expert is inadmissible, it will be difficult, if not impossible, for the defense to meet the Commonwealth's burden of proof and establish second degree murder as the proper statutory degree of guilt.

It is also interesting to observe that the majority has apparently decided that they, not the psychiatrist, are better qualified to determine the mental capacity of one accused of murder. The import of the decision is that *any* defendant accused of murder either did not know the difference between right and wrong, or, did know right from wrong but had no mental impairment which prevented him from deliberating and premeditating the killing of which he is accused. It is submitted that there is no justification for this position. There is no law which presumes to tell the medical profession what is pregnancy or appendicitis. In such cases the doctor's diagnosis is accepted, and no court would challenge the doctor's conclusion by confronting him with a legal definition of appendicitis or pregnancy. Nevertheless, the majority has chosen to make its own diagnosis of a defendant of questionable sanity who is accused of murder and turn this diagnosis into a legal rule.

As early as 1846, Pennsylvania, while following M'Naughten, recognized that even though one knows the difference between right and wrong, one may yet be too insane to premeditate murder and form a specific intent to kill. In *Commonwealth v. Mosler*[41] Chief Justice Gibson stated:

> A man may be mad on all subjects; and then, though he may have glimmerings of reason, he is not a responsible agent. This is general insanity. . . . But there is *moral* or *homicidal* insanity consisting of an *irresistible inclination to kill*, or to commit some other particular offense. There may be an unseen ligament pressing on the mind, drawing it to consequences *which it sees, but cannot avoid*, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance.[42]

This statement by Chief Justice Gibson received approving comment in *Coyle v. Commonwealth*.[43] The first recognition of this form of mental disorder as a partial defense in cases of felonious homicide, however, was in *Jones v. Commonwealth*.[44] In this

41. 4 Pa. 264 (1846).
42. *Id.* at 266-67. (Emphasis added.)
43. 100 Pa. 573 (1882).
44. 75 Pa. 403 (1874).

case Justice Agnew stated:

> Want of intelligence . . . is not the only defect to moderate the degree of the offense; but with intelligence there may be an absence of power to determine properly the true nature and character of the act, its effect upon the subject, and the true responsibility of the act; a power *necessary to control the impulses of the mind* and prevent the execution of the thought which possesses it. In other words, it is the absence of that self-determining power which, in a sane mind, renders it conscious of the real nature of its own purposes, and capable of resisting wrong impulses. When this self-governing power is wanting, whether it is caused by insanity, gross intoxication or other controlling influence, it cannot be said truthfully that the mind is fully conscious of its own purposes, and deliberates or premeditates in the sense of the act describing murder in the first degree.[45]

Two years later, in *Green v. Commonwealth*[46] Chief Justice Agnew made his position absolutely clear:

> So far as impetuous rage and rashness followed by the immediate act which takes away life, tend to deprive the prisoner of deliberation and premeditation, and to reduce the homicide from murder in the first to murder in the second degree. . . . *a jury may be convinced that it was not the result of a fully formed purpose to kill, but of a rash and hasty impulse*, with scarcely a consciousness of any purpose. . . . Hence, though the absence of a legal provocation may prevent the reduction of the crime from murder to manslaughter, *the want of the deliberation and premeditation required by the law may reduce the grade of the murder from the first to the second degree.*[47]

The majority decision in *Ahearn* fails to distinguish between a trial to determine the guilt or innocence of the accused and a trial to determine the degree of guilt. Though the doctrine of irresistible impulse has never been accepted in Pennsylvania as a substitute for or supplement to the M'Naughten Rule,[48] this does not mean that evidence of an irresistible impulse is totally inadmissible in all instances. It should be admissible in murder trials for the purpose of establishing the degree of guilt. It is submitted that the correct rule to be followed in cases such as *Ahearn* was announced by the Supreme Court of California in *People v. Gorshen*,[49] where the court said:

> [O]n the trial of the issues raised by a plea of not

45. *Id.* at 408. (Emphasis added.)
46. 83 Pa. 75 (1876) (dictum).
47. *Id.* at 79. (Emphasis added.) (dictum).
48. Commonwealth v. Tyrell, 405 Pa. 210, 174 A.2d 852 (1961); Commonwealth v. Neill, 362 Pa. 507, 67 A.2d 276 (1949).
49. 51 Cal.2d 716, 336 P.2d 492 (1959).

> guilty to a charge of a crime which requires proof of a specific mental state, competent evidence that because of mental abnormality not amounting to legal insanity defendant did not possess the essential specific mental state is admissible. The admission of testimony . . . of the expert . . . for . . . consideration by the trier of fact upon issues of particular essential mental state, does *not* . . . imply acceptance (on the general issue) of the defense of irresistible impulse (which is rejected in this state as a test of the defense of legal insanity) . . . .
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> [I]rresistible impulse does not constitute the insanity which is a complete defense; i.e., which is exculpatory of all penal responsibility for any otherwise criminal act. So considered, [however, such] statements . . . do not preclude the admission and consideration, on the issue of specific intent or other particular mental state, of expert testimony which includes such concepts as the uncontrollable compulsion described by the expert here. . . .
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> Such expert evidence, like evidence of unconsciousness resulting from voluntary intoxication is received not as a 'complete defense' negating capacity to commit *any* crime but as a 'partial defense' negating specific mental state essential to a *particular* crime.[50]

Deliberation and premeditation are essential elements of a charge of first degree murder under most statutes in the United States. These elements must be affirmatively proved by the prosecution beyond a reasonable doubt. Since both these elements involve the defendant's state of mind, their existence cannot be proved by any objective test. Therefore, any evidence tending to show the absence of either element is relevant and must be considered by the trier of fact in reaching a decision. Accordingly, the rule of the *Gorshen* case is followed in many jurisdictions.[51] Thus

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50. *Id.* at 726-27, 336 P.2d at 498-99. (Emphasis added.) In a later California case, People v. Henderson, 60 Cal.2d 482, 386 P.2d 677 (1963), a similar result was reached. In this case the facts were nearly identical to *Ahearn*. The defendant had taken the victim to a motel room for the purpose of having sexual relations with her and then, for some unknown reason, strangled her and then mutilated her body. The defendant was convicted of first degree murder and the supreme court reversed the conviction because the judge failed to instruct on the defense of diminished responsibility. The court said that:

> it can no longer be doubted that a defense of mental illness not amounting to legal insanity is a 'significant issue' in any case in which it is raised by substantial evidence. [I]f he was suffering from a mental illness that prevented . . . premeditation and deliberation, he cannot be convicted of murder in the first degree.

See also, People v. Baker, 42 Cal.2d 550, 268 P.2d 705 (1954).

51. Battalino v. People, 118 Colo. 587, 199 P.2d 897 (1948); State v. Gramenz, 256 Iowa 134, 126 N.W.2d 285 (1964); State v. DiPaolo, 34 N.J. 279, 168 A.2d 401 (1961).

it has been held that evidence of feeblemindedness,[52] provocation,[53] influence of drugs,[54] and passion induced by various causes[55] should be admitted and weighed by the jury. It has also been stated that bodily disease,[56] want of sleep and rest,[57] rash impulse, headlong fury, sudden and overwhelming grief,[58] sudden and uncontrollable emotion[59] and impetuous rage[60] are proper matters to be considered by the jury in determining whether the required elements of deliberation and premeditation have been proved.

The question of voluntary intoxication and its effect on a defendant's mental state has arisen more frequently. It has been held in twenty states, including Pennsylvania,[61] that this may prevent a killing from being deliberate and premeditated.[62] If such a defense is permitted to negate the elements of deliberation and premeditation in cases where the defendant is intoxicated, which condition is always voluntary, then it logically follows that there is a more compelling reason to permit such testimony for the same purpose when, due to no fault of his own, the defendant's mental state prevents him from being capable of committing premeditated murder.

52. People v. Moran, 249 N.Y. 179, 163 N.E. 553 (1928) (Per Curiam); *accord,* State v. Schilling, 95 N.J.L. 145 (Ct. Err. and App. 1920); *contra,* Commonwealth v. Scott, 14 Pa. D. & C. 191 (Oyer & Terminer 1930).

53. People v. Thomas, 25 Cal.2d 880, 156 P.2d 7 (1945).

54. State v. Close, 106 N.J.L. 321, 148 Atl. 764 (Ct. Err. & App. 1930); State v. English, 164 N.C. 497, 80 S.E. 72 (1913).

55. Watson v. State, 82 Ala. 10, 2 So. 455 (1886); Anderson v. State, 43 Conn. 514 (1876) (passion produced by any cause); State v. Jackson, 344 Mo. 1055, 130 S.W.2d 595 (1939) (passion produced by insult); People v. Caruso, 246 N.Y. 437, 159 N.E. 390 (1927); Winton v. State, 151 Tenn. 177, 268 S.W. 633 (1924).

56. State v. Close, 106 N.J.L. 321, 148 Atl. 764 (Ct. Err. & App. 1930).

57. *Ibid.*

58. People v. Moran, 249 N.Y. 179, 163 N.E. 553 (1928) (dissent).

59. People v. Barberi, 149 N.Y. 256, 43 N.E. 635 (1896).

60. Green v. Commonwealth, 83 Pa. 75 (1876).

61. Commonwealth v. McCausland, 348 Pa. 275, 35 A.2d 70 (1944); Commonwealth v. Simmons, 361 Pa. 391, 65 A.2d 353 (1940), *cert. denied,* 338 U.S. 862 (1949); Commonwealth v. Cleary, 135 Pa. 64, 19 Atl. 1017 (1890); Jones v. Commonwealth, 75 Pa. 403 (1874).

62. People v. Belencia, 21 Cal. 544 (1863); Brennan v. People, 37 Colo. 256, 86 Pac. 79 (1906); State v. Johnson, 40 Conn. 136 (1873); State v. Kupis, 37 Del. 27, 179 Atl. 640 (1935); Garner v. State, 28 Fla. 113, 9 So. 835 (1891); Aszman v. State, 123 Ind. 347, 24 N.E. 123 (1890); State v. Wilson, 234 Iowa 60, 11 N.W.2d 737 (1943); Commonwealth v. Parsons, 195 Mass. 560, 81 N.E. 291 (1907); Maynard v. State, 81 Neb. 301, 116 N.W. 53 (1908); Wilson v. State, 60 N.J.L. 171, 37 Atl. 954 (Ct. Err. & App. 1897); State v. Cooley, 19 N.M. 91, 140 Pac. 1111 (1914); People v. Leonardi, 143 N.Y. 360, 38 N.E. 372 (1894); State v. English, 164 N.C. 497, 80 S.E. 72 (1913); Long v. State, 109 Ohio St. 77, 141 N.E. 691 (1923); State v. Weaver, 35 Ore. 415, 58 Pac. 109 (1899); Jones v. Commonwealth, 75 Pa. 403 (1874); Commonwealth v. McCausland, 348 Pa. 275, 35 A.2d 70 (1944); Pirtle v. State, 9 Humph. 663 (Tenn. 1849); Willis v. Commonwealth, 32 Gratt 929

Furthermore, it is the law in Pennsylvania that testimony concerning the mental incapacity of a defendant charged with murder, even though short of insanity, is admissible as relevant to the determination of the penalty.[63] Since the penalty is to fit the crime, it would be indeed anomalous to refuse the same type of testimony concerning the crime itself, particularly in murder trials where the degree is determined before the penalty.

In still another situation Pennsylvania, as well as other states, accepts evidence of an irresistible impulse and permits such evidence to diminish criminal responsibility. In the crime of vountary manslaughter, like murder, the defendant has intentionally taken the life of another. Voluntary manslaughter is an intentional killing without malice.[64] The classic example of such a killing is the so-called "crime of passion."[65] It is submitted that in such cases the defendant was motivated to kill the victim by an irresistible impulse. The impulsive act is not that of a rational individual, yet it is not the action of one who is legally insane, temporarily or permanently, under the M'Naughten Rule.

In *Commonwealth v. Donough*[66] Mr. Chief Justice Bell, speaking for the court, described the state of mind which would reduce criminal responsibility from murder to manslaughter. He said:

> Voluntary manslaughter is a homicide intentionally committed under the influence of passion. . . . The term 'passion' as here used includes both anger and terror provided they reach a degree of intensity *sufficient to obscure temporarily the reason of the person affected.* . . . Passion, as used in a charge defining manslaughter . . . means any of the emotions of the mind known as *anger, rage, sudden resentment or terror, rendering the mind incapable of cool reflection.* . . . Although 'anger' is the passion usually existing in cases of this class, *yet any other passion, as sudden resentment, . . . rendering the mind incapable of cool reflection, may reduce the grade of the crime.* . . .[67]

The import of this description, though not synonomous, is like the actions of one who is motivated by an irresistible impulse. If,

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(Va. 1879); State v. Hertzog, 55 W. Va. 74, 46 S.E. 792 (1904); Sabens v. United States, 40 D.C. App. 440 (1913). *Contra,* State v. Dearing, 65 Mo. 530 (1877); State v. Tatro, 50 Vt. 483 (1877).

63. PA. STAT. ANN. tit. 18, § 4701 (1963); Commonwealth v. Ahearn, 421 Pa. 311, 218 A.2d 561 (1966).

64. Commonwealth v. Santos, 275 Pa. 515, 119 Atl. 596 (1923); Commonwealth v. Palermo, 368 Pa. 28, 81 A.2d 540 (1951); Commonwealth v. Cargill, 357 Pa. 510, 55 A.2d 373 (1947).

65. Commonwealth v. Colandro, 231 Pa. 343, 80 Atl. 571 (1911); Commonwealth v. Cargill, *supra* note 64.

66. 377 Pa. 46, 103 A.2d 694 (1954).

67. *Id.* at 52-53, 103 A.2d at 698 (Emphasis added.).

in the opinion of the psychiatrist, Richard Ahearn's actions were not coldblooded, but were the result of anger, rage, and sudden resentment sufficient to obscure temporarily his reason and render his mind incapable of cool reflection, so as to reduce the grade of the crime,[68] it should not matter whether such conduct is termed "passion" or "irresistible impulse." The testimony is relevant and should be considered by the trier of fact. Since such a mental state is sufficient to reduce the degree of guilt from murder to manslaughter,[69] likewise, this same state of mind should be sufficient to reduce the degree of guilt from murder in the first to murder in the second degree. In both instances the essential fact to be determined is the condition of the defendant's mind at the time of the killing. It is inconsistent that testimony concerning the state of the defendant's mind should be admitted in the one instance and not in the other. This is especially true when it is considered that in the crime of passion the testimony offered by the defendant to show such passion is often the testimony of the defendant himself and lay witnesses, and not that of disinterested experts in the field of psychiatry.

The defendant's psychiatric testimony cannot be rejected because it is unreliable, for such testimony is universally accepted to determine whether legal insanity, which would completely negate all criminal responsibility, exists.[70] Such evidence is also admitted to aid the court in determining the penalty to be imposed.[71]

The majority questioned the weight to be given the psychiatrist's opinion because such opinions are "based to a large extent *upon self-serving unsworn statements given . . . by the defendant as to his prior life and prior thoughts, actions and reactions, as to which there is no proof, no opportunity of cross-examination and usually no corroboration.*"[72]

It is not altogether clear whether this was a reason for ruling that the testimony was inadmissible. If it was, it is completely inconsistent with the M'Naughten Rule. When insanity is asserted as a complete defense, the psychiatrist's opinion is admissible and, if believed, relieves the defendant of all criminal responsibility. This opinion is based upon an analysis of unsworn self-serving and uncorroborated statements of the accused, just like those which Richard Ahearn made to his psychiatrist.[73]

68. *Ibid.*
69. Commonwealth v. Palermo, 368 Pa. 28, 81 A.2d 540 (1951).
70. Commonwealth v. Mosler, 4 Pa. 264 (1846).
71. PA. STAT. ANN. tit. 18, § 4701 (1963).
72. 421 Pa. at 323, 218 A.2d at 567.
73. The majority emphasized that the defendant's statements to the psychiatrist were unsworn and not subject to cross-examination. It is

To hold that psychiatric testimony is competent for the purpose of entirely relieving one of criminal responsibility but not competent for the lesser purpose of negating the existence of willfulness, deliberation and premeditation is inconsistent and unjustified. While reasonable men may differ as to the weight accorded to psychiatric testimony, it cannot reasonably be said that such testimony is legally incompetent or legally irrelevant: the evidence should be admitted and considered by the finder of fact.[74] Furthermore, a recognition of the principle of diminished responsibility does not do violence to the M'Naughten Rule, nor does it modify the rule concerning the inadmissibility of an irresistible impulse when it is asserted as a complete defense.

Conclusion

The genius of the common law lies in its ability to respond to its surroundings; it adapts itself to changing times and reflects

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submitted that this is not a sound reason for excluding the offered testimony. In the first instance, the defendant has the right not to testify. He has the privilege of not having any of his statements subjected to cross-examination. Secondly, if he were to take the stand, he would not be permitted to reveal to the trier of fact the statements which he made to the psychiatrist, for such statements would be inadmissible. Neither judge nor jury would be permitted to use this testimony to form an opinion concerning the defendant's state of mind. This is a conclusion the law allows only the expert to make.

74. When one considers the hideous details of *Ahearn*, even a layman would doubt whether the defendant's actions were those of a mentally competent individual. Although the trial judge ruled the evidence inadmissible, he noted that:

> The acts of the defendant were so unusual—so bizzare—so senseless—so completely devoid of motive—that the explanation of the psychiatrists furnishes the only logical explanation. The court, who is the fact finding body in this instance, has chosen to believe the psychiatric explanation. We are therefore dealing with the situation where the testimony of the psychiatrists is accepted at face value and not where their testimony is swept under the rug as unworthy of belief.

Opinion of Judge Campbell, Record, pp. 328-29, Commonwealth v. Ahearn, 421 Pa. 311, 218 A2.d 561 (1966). See also, Commonwealth v. Woodhouse, 401 Pa. 242, 164 A.2d 98 (1960), a case involving a bizzare murder, where Mr. Justice Musmanno said of the psychiatric testimony offered:

> The evidence of doctors in a case of this kind is not 'low grade.' They have studied and they have been trained to analyze mental disorders. They have had many years of experience, they have seen and analyzed hundreds of cases. They are certainly in a far better position to diagnose a mental illness than a casual observer. . . . [The facts of this case] should be enough to convince anyone that the defendant was not in his right mind when he committed the horrible deeds. . . . The jury had the right to be assisted in the discharge of their awesome duties by listening to doctors who have dedicated their lives to determining the why and the wherefore of the inexplicable. 401 Pa. 261-62, 164 A.2d at 108-09 (dissent).

modern thinking. At the time of M'Naughten's trial, psychiatry was hardly a profession, let alone a science, and it was natural that the common law should look upon psychiatric testimony with distrust. In the twentieth century, however, psychiatry has evolved from a tentative, hesitant groping in the dark of human ignorance to a recognized and important branch of modern medicine. The fact that psychiatry has advanced from Bedlam to modern mental institutions, with a rising rate of cured and curable patients, is dramatic proof that it is neither mesmerism nor guess work. Psychiatric knowledge and techniques have found wide use in industry, education, social work, and family counseling. If such institutions can make use of this modern science, why cannot the law?

In *Ahearn*, the Pennsylvania Supreme Court has decided to deprive the trier of fact of information which is both relevant and vital to the decision it must make. In reaching this decision, the court has disclosed its undeniable distrust of psychiatry's ability to contribute anything meaningful to the determination of the degree of the offense when a defendant pleads guilty to murder. Whether or not this distrust is medically defensible is beyond the scope of this article. It is, however, strikingly inconsistent with the logical implications of several of the court's own prior decisions on related questions of diminished responsibility. It is submitted that a careful reappraisal of these cases would dictate a different result.

Regardless of what rules a court chooses to adopt when the sanity of a defendant is in issue, difficulties will always exist. No exact and flawless measurements of human behavior are obtainable. Psychiatrists will continue to have differences of opinion, and reasonable men will differ about the weight to be accorded psychiatric testimony. Nevertheless, neither reason nor logic compels the conclusion that such testimony should be inadmissible when it is offered to show a lack of deliberation and premeditation. It is hoped that subsequent Pennsylvania decisions will repudiate *Ahearn* and re-examine the policy and procedure involved in determining the responsibility of wrongdoers.

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