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Automatism – A case of reality testing

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ABSTRACT

Automatism represents automatic behaviour, thereby eliminating concepts of *actus rea* and *mens rea*, as the perpetrator is not in voluntary control of his/her actions nor intent. There are 'sane' automatisms (due to external factors) or 'insane' automatisms (due to internal factors). The present case represents a situation in which both 'sane' and 'insane' automatism could be evoked but neither were applicable when the facts were critically evaluated. Having pleaded guilty to the charge of manslaughter, the accused then tried to evoke automatism at the sentence hearing, which would, if proven, have resulted in an acquittal, thereby pleading both guilt and innocence in the same trial, something dismissed by the judge.

1. Introduction

Unlike forensic medicine, legal medicine deals with the interface between medicine and civil or tort law (Beran, 2008, 2010). It deals with issues such as: consent to treatment; negligence; regulation of health professionals; confidentiality, privacy and medical records; assisted reproduction; withholding and withdrawing life-sustaining measures; and the doctrine of double effect (Australasian College of Legal Medicine, 2019). Legal medicine has less to do with the area of criminal law where forensic medicine plays the dominant role (Beran, 2010).

Legal and forensic medicine are not the same (Beran, 2010) with forensic medicine responsible for the evaluation of victims of crime, wounds and the consequences of criminal activity and hence focuses upon the role of medicine within the consideration and outcome of criminal proceedings (Beran, 2010). An area in which legal medicine does play a role within the criminal law is the area of automatism (Beran, 1992, 1993, 2002).

"Automatism" provides a valid defence within criminal proceedings, as it is impossible to attach criminal responsibility to an act, which was undertaken during such automatism (Criminal Trial Court Bench Book, 2019). An automatism implies that the act was not performed while the person was conscious of either the nature of the act nor in control of the volitional choice to perform such an act (Criminal Trial Court Bench Book, 2019; Falconer, 1990; Ryan, 1967, p. 121). In other words, criminality implies both *actus rea* (a criminal act) and *mens rea* (criminal mind/intent). Presumption of *mens rea*, implies presumption of voluntariness and wilfulness, accompanied by sufficient level of consciousness to have the capacity to appreciate the nature and content of the act *(Falconer, 1990, p. 40)*. Should automatism be raised as a defence, the Crown must prove, beyond reasonable doubt, that the relevant act " … was a willed and voluntary one … " (Criminal Trial Court Bench Book, 2019). Failure to rebut a claim of automatism entitles the accused to an acquittal.

Automatisms can be divided into "sane" and "insane", a distinction that is based on a fairly arbitrary consideration, when viewed from a medical perspective. If the automatism was as a consequence of "mental infirmity", which has the capacity to recur and would deny the accused the facility to control his/her behaviour or appreciate the nature/quality of the act, this would be classed as an 'insane automatism' (Criminal Trial Court Bench Book, 2019). A transient, so called "non-recurrent mental malfunction", provoked by external factors, either physical (Ryan, 1967, p. 121) or psychological factors (Falconer, 1990), which could theoretically impact on any ordinary person to provoke automatism is classed as a "sane automatism" (Criminal Trial Court Bench Book, 2019).

Examples of sane automatisms include: somnambulism (sleepwalking) (Parks, 1992; Tolson, 1889); post-traumatic brain injury causing loss of control (Bratty v Attorney-General, 1963; Cooper, 1960); and severe emotional trauma (Falconer, 1990 at 56–57).

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It is acknowledged that the area of automatism, " … remains confused and imprecise in the medical and legal literature … " (McCrory, 2001). Blair (Blair, 1997) defined automatism as " … the existence in any person of behaviour of which he is unaware and over which he has no conscious control … ". Fenwick (Fenwick, 1990) defined it as " … an involuntary piece of behaviour over which the individual has no control. The behaviour is usually inappropriate to the circumstances and may be out of character for the individual. Afterward the individual may have no recollection … of his actions … ".

Epilepsy-provoked automatism is considered to be an insane automatism, as it is thought that epilepsy is an intrinsic condition of the patient (Beran, 1992, 1993, 2002): Conversely, diabetes is classified as causing sane automatism, as it relates to diet and glucose metabolism, despite the fact that it is also reflective of an intrinsic problem relating to insulin metabolism (Beran, 1992). This arbitrary differentiation into "sane" and "insane" automatism provides a very confusing backdrop for doctors involved in the interpretation of automatism, while it is accepted as logical interpretation within the legal profession (Beran, 1993, 2002).

These definitions and differentiating factors have great relevance to a recent case, heard in the Victorian Supreme Court, in Australia (DPP v AWAD, 2019), dealing with a man who had fatally stabbed another, pleaded guilty to the charge of manslaughter (rather than murder, which was the initial charge) and in his sentencing hearing claimed automatism by way of an attempt to influence the sentence he received.

2. Facts of the case

The accused was being prosecuted in the Victorian Supreme Court for murder. Prior to the hearing of the matter, the accused, who had pleaded innocent to the charge of murder, changed his plea to that of guilty of the lesser charge of manslaughter.

The evidence indicated that the deceased, together with another person, had been dealing in drugs since 2016. Initially the activity was limited to dealing with marijuana but from 2018 the activities included the sale of methamphetamine "Ice". It was suggested that the accused had stolen "a quantity of Ice" from the deceased and the other person involved.

The accused had previously been diagnosed with epilepsy and was at the property, belonging to a third party, where the drugs were being sold and from where it was alleged he had stolen the Ice. He had been previously warned not to return to the property and did so despite the warning. On the night in question, 16th March 2018, the accused went to the bathroom and it is not clear whether this was simply to take drugs or that he was aware of a seizure about to happen (the evidence being conflicted).

The deceased and the other person, from whom the accused had allegedly stolen drugs, were made aware of the presence of the accused following which the deceased armed himself with the metal tubing of a vacuum cleaner and the other person involved collected a baseball bat. Both men went to the bathroom where it was claimed that the accused produced a syringe (to be used as a weapon) as well as a knife. There was evidence that the accused had an epileptic seizure but was also assaulted by the two men, using the metal tubing and the baseball bat.

Both attackers ran from the bathroom after the accused produced the knife and the evidence indicated that the accused chased them from the flat and had a further altercation with them on the balcony of the building. The accused got hold of the deceased and stabbed him with the knife. Following this, he continued to chase the other man, screaming threats at him, including that he would kill him and that the deceased should die.

After the stabbing, the accused returned to the apartment, collected a cap and jacket, which concealed the blood on his singlet and hair and he used his mobile (cell) phone to cover the damage to his ear (presumed to have been caused by being hit with the baseball bat). Various testimonies confirmed that he stated that he was going to punish those who had attacked him (both the other man involved and the deceased).

The evidence from various witnesses confirmed that, after the stabbing, he had physically changed his appearance with the jacket and black cap and was observed by a security guard to be moving off in the opposite directions to where the police were present.

The police were advised of the direction in which the accused had gone and the police evidence was that, at the time of the arrest, the accused was questioned and answered in the affirmative that he knew why he was being arrested. It was also found that the accused had concealed the knife, used in the stabbing, in his pants, prior to going in the opposite direction to the police. Forensic evidence confirmed that the accused had bruises and defensive wounds, presumably from the assault, and had damage to his left ear.

3. Discussion

This particular case raises some conflicting issues, not the least being that the accused had already pleaded guilty to manslaughter prior to the sentencing hearing when question of automatism was raised for consideration. It is presumed that a plea of guilt would confirm the accused's acceptance of both *actus rea* and *mens rea,* which, of themselves, would exclude the claim of automatism that refutes such phenomena.

Automatism, by definition, should remove guilt and hence nullify the guilty plea, which the accused had already made and was the basis of the sentencing hearing. It is to be assumed, based on such plea, that the accused had made this plea voluntarily in consultation with his legal counsel. Such plea should categorically rejects a lack of awareness of his violent act, thereby confirming the conscious nature thereof.

One of the expert witnesses, called by the accused, supported the accused's claim of automatism, based on previously diagnosed epilepsy and the fact that the accused had experienced a seizure prior to the stabbing. This expert endorsed the presumption, based on "insane automatism", being attached to an automatism related to an epileptic seizure. The same expert did not consider the potential for a presumption of "sane automatism", as a consequence to the accused having been beaten around the head with a baseball bat and metal tubing. His testimony rested, almost exclusively, on a past history of epileptic seizures, something that the Crown had already accepted as fact.

Where problems arise is the fact that the accused had pleaded guilty to manslaughter, thereby acknowledging responsibility for both the *actus rea*and *mens rea*, which should thereby exclude the subsequent claim of automatism. If proven, automatism would exonerate the accused of guilt. The accused had admitted guilt, presumably to garner a lesser sentence with discount, while concurrently claiming innocence on the basis of automatism.

The evidence, proffered by the Crown Expert, rebutted the claim of automatism, based on the fact that the accused stabbed the deceased and chased both men who had attacked him, indicating his desire to kill both of them. Following this behaviour, and having fatally stabbed the deceased, the accused then returned to the place where he had experienced both the seizure and had been beaten. There he purposefully changed his appearance and clothing, putting on a jacket and cap, concealed the lethal weapon in his pants and used his mobile (cell) phone to hide the damage to his ear. He purposefully left the scene, travelling in the opposite direction to where, it would seem, he was aware of the police presence and when arrested confirmed that he understood the nature and purpose of the arrest. The Crown Expert testified that these purposeful acts, namely to conceal the weapon and disguise his appearance, together with his attempt to avoid arrest, leaving the scene in the opposite direction of the police and acknowledging the grounds for the arrest, contradicted that definition

of automatism made by Fenwick (Fenwick, 1990), namely with an automatism "… afterward the individual may have no recollection of his actions …. ".

It is argued that the proof of his knowledge is enshrined in his plea of guilt that was already present at the time of the sentencing hearing and was not withdrawn at that time. It might be argued that the guilty plea was only designed to garner an automatic discount on the imposed sentence. While this may have currency, it is difficult to conceive that an accused could plead both guilt and innocence in the same case, which is exactly what the introduction of automatism, irrespective of whether it is 'sane' or 'insane', would achieve.

It is argued that the purposeful behaviour of the accused, following the fatal stabbing, provides testimony to the accused being fully aware of that which had occurred. This situation is amplified by the plea of guilt for manslaughter and it seems incongruous and disingenuous to entertain both the plea of guilt and that of innocence at the time of sentencing. The judge appeared to accept this argument, sentencing the accused to 7 years gaol with 5 years non-parole (DPP v AWAD, 2019).

Declaration of competing interest

There is no conflict of interest.

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