**Asif Tufal**

# CASES ON AUTOMATISM

## A) TOTAL LOSS OF VOLUNTARY CONTROL

***Broome v Perkins*** [1987] Crim LR 271.

The defendant had driven eratically while suffering from hypo-glycaemia (low blood sugar level caused by an excess of insulin in the bloodstream), but was convicted of driving without due care and attention because of evidence that from time to time he had exercised conscious control over his car, veering away from other vehicles so as to avoid a collision, braking violently, and so on.

***Attorney-General's Reference (No 2 of 1992)*** [1993] 3 WLR 982.

The defendant had driven his heavy goods vehicle into cars parked on the hard shoulder of a motorway, killing two people. He contended that he had not noticed the flashing lights of the parked vehicles because he had been in a state of automatism, referred to as "driving without awareness", induced by "repetitive visual stimulus experienced on long journeys on straight flat roads". The defence of automatism was left to the jury and the defendant was acquitted.

The Court of Appeal held that the defence of automatism should not have been left to the jury and that the state described as "driving without awareness" was not capable of founding a defence of automatism. Lord Taylor CJ said:

“As the authorities … show, the defence of automatism requires that there was a total destruction of voluntary control on the defendant's part. Impaired, reduced or partial control is not enough. Professor Brown [who gave expert evidence for the respondent] accepted that someone "driving without awareness" within his description, retains some control. He would be able to steer the vehicle and usually to react and return to full awareness when confronted by significant stimuli.”

## B) EXTERNAL FACTORS

***R v Quick*** [1973] QB 910.

The defendant, a diabetic, was in a state of hypo-glycaemia. During a blackout he injured a person. Quick collapsed after the assault and could not recall it. He had taken his insulin in the morning, but had eaten very little afterwards and had been drinking. His doctor testified that on a dozen occasions, Quick had been admitted to hospital in a semi-conscious or unconscious state, due to hypoglycaemia.

The trial judge ruled that this evidence raised the defence of insanity. The Court of Appeal quashed the defendant’s conviction and conceded that there was a defence known to the law of non-insane automatism, involuntary conduct which is not brought about by a disease of the mind but through other factors. Lawton LJ considered it an affront to common sense to regard a person as mad whose symptoms can be rectified by a lump of sugar:

"A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease."

***R v T*** [1990] Crim LR 256.

A few days after having been raped, the defendant was involved in an incident which led to charges of robbery and causing actual bodily harm. The defendant claimed that she was in a dream-like state. Medical evidence showed that she was suffering from Post Traumatic Stress Disorder as a result of the rape, with the consequence that she was in a Disociative State at the time of the alleged offences, not acting with a conscious mind or will.

Southan J (at Snaresbrook Crown Court) ruled that a proper foundation had been laid for the defence of automatism to go before the jury. It was his view that an incident such as rape could have an appalling effect on a young woman, however stable, and that could satisfy the requirement laid down in *Quick* that there had to be evidence of "an external factor" causing a malfunctioning of the mind. Post Traumatic Stress, involving as the evidence in the present case suggested, a defendant acting as though in a "dream", could therefore amount to automatism. The jury nevertheless convicted her.

***R v Antoniuk*** (1995) The Times, 28 March.

The defendant was drowsy with drink and her lover found her unconscious on her living-room floor. The victim then hauled her to bed, her head banging on the stairs, and raped her. The defendant went to the kitchen and returned with a knife and stabbed her lover. The defendant argued that she was not responsible for her actions as she had been suffering from automatism from the shock of being raped. At Kingston Crown Court the trial judge said "If her amnesia is real, because of automatism, then she is not to be convicted". The jury found her not guilty of wounding charges.

## C) SELF-INDUCED AUTOMATISM

***R v Bailey*** [1983] 1 WLR 760.

The defendant was diabetic. He visited his ex-girlfriend's new boyfriend and whilst there felt unwell. He took a mixture of sugar and water, but ate nothing. Ten minutes later the defendant struck the victim on the head with an iron bar. The defendant later claimed to have been unable to control his actions because he had been in a hypo-glycaemic state. The defendant was charged under ss18 and 20 of the Offences Against the Person Act 1861. The trial judge directed the jury that the defence of automatism was not available to the defendant because his automatism had been self-induced, and the defendant was convicted under s18.

On appeal, the Court of Appeal held that as s18 created a specific intent crime, even self-induced automatism could be relied upon as evidence that the defendant did not have the necessary mens rea for the offence (this is consistent with the availability of self-induced intoxication). In relation to the s20 offence however, the court held

that self-induced automatism would not provide a defence, where there was evidence that the defendant had been reckless in failing to eat after taking the insulin. The recklessness here would involve proof that the defendant had known that his failure to eat might make his actions more aggressive or uncontrollable. As Griffith LJ stated:

"In our judgment, self-induced automatism, other than due to intoxication from alcohol or drugs, may provide a defence to crimes of basic intent. The question in each case will be whether the prosecution have proved the necessary element of recklessness. In cases of assault, if the accused knows that his actions or inactions are likely to make him aggressive, unpredictable or uncontrolled with the result that he may cause some injury to others, and he persists in the action or takes no remedial action when he knows it is required, it will be open to the jury to find that he was reckless."

However, applying the proviso to s2(1) of the Criminal Appeals Act 1968, the appeal was dismissed: there was evidence that the defendant had taken an iron bar to the victim's house and medical evidence that such a state could not follow some five minutes after taking sugar and water. For these reasons no miscarriage of justice occurred.

## E) EFFECT

***R v Sandie Smith*** [1982] Crim LR 531.

The defendant, who had been charged with making threats to kill, sought to raise the defence of automatism based on the effects of her pre-menstrual tension. The Court of Appeal refused to recognise this as the basis for automatism because, if successful, it would result in the defendant being released into society without the courts being able to exercise any effective control over her. The evidence indicated that the defendant needed to have some medical supervision, and the court would only have the power to ensure this if she was convicted.