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Drug Induced Insanity and Unconsciousness - A Clarification of California Law

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Drug Induced Insanity and Unconsciousness—A Clarification of California Law

In *People v. Kelly*,[1] defendant Valerie Dawn Kelly appealed from a lower court conviction on the charge of assault with a deadly weapon and by means of force likely to produce great bodily injury.[2] The appeal produced an excellently reasoned clearly presented opinion by the California Supreme Court providing much needed clarification of California law in the areas of unconsciousness and drug induced insanity and settled and/or permanent insanity as defenses to criminal charges. The case is virtually an encyclopedia of California law on the subjects mentioned above.

Defendant Kelly had been on drugs since she was fifteen years old. In the fall of 1970, at age eighteen, she began using mescaline and LSD, using them copiously up to December sixth. On that day she was picked up by the police while she was under the influence of drugs. While still in that state, she was turned over to her parents who drove her to her apartment where she spent the night.

The next day, at her request, the defendant was taken to her parents' home by her mother. The latter later testified that defendant was acting strangely at that time.[3] She made defendant lie down and went into the kitchen to make breakfast for her. While she was doing this, defendant came into the kitchen and stabbed her mother with some kitchen knives while the latter's back was turned. Defendant was arrested, charged, and convicted of the charge, as stated above, over her plea of not guilty and not guilty by reason of insanity.

The lower court found that defendant was psychotic before and after the attack on her mother and was not capable of understanding that her act was wrong, but that her insanity was not a defense because, said the court, it "was not of a settled and permanent

1. 10 Cal. 3d 565, 516 P.2d 875, 111 Cal. Rptr. 171 (1973).
2. CAL. PEN. CODE § 245(a) (West 1970).
3. People v. Kelly, 10 Cal. 3d 565, 568, 516 P.2d 875, 111 Cal. Rptr. 171, 173 (1973).

nature, and, in addition, was produced by the voluntary ingestion of hallucinating drugs."

The issues raised by the appeal and encompassed in the Court's opinion were the following:

(1) The status, under the law, of the defense of unconsciousness in the circumstances.

(2) The status, under California law, of the defense of drug or other intoxication induced insanity and, more particularly, of the defense of settled but not permanent insanity.

The second issue is of particular significance because the lower court did find the defendant insane at the time of the attack, and also before and after the attack, but it still rejected the defense of insanity because the insanity was not *settled and permanent* (emphasis added).[4]

The lower court's holding is not without precedent in California case law with regard to its *settled and permanent* requirement in the defense of intoxication induced insanity. The defendant's contention that unconsciousness is a complete defense to a criminal charge is also not without precedent in California case law. It is the clear resolution of these two questions that makes the Court's opinion particularly noteworthy.

Penal Code section 26, subdivision 5, says, "All persons are capable of committing crimes except those belonging to the following classes: . . . Five. Persons who committed the act charged without being conscious therof." However, section 22 excludes voluntary intoxication as a defense to a crime. What happens, then, if a crime is committed by a person while unconscious, the unconsciousness having been caused by voluntary intoxication? Citing its prior holdings in *People v. Baker*,[5] *People v. Conley*,[6] and *People v. Graham*,[7] the Court said that unconsciousness caused

4. *Id.*, n. 11. The lower court, having found defendant insane at the time of the attack, nevertheless says, "[D]espite those facts, I hold that the law does not admit of a defense to the crime charged by reason of legal insanity, because the schizophrenia is not of a settled, permanent nature, and was produced in the first place by the ingestion of hallucinating drugs and other drugs. . . ."

5. 42 Cal. 2d 550, 268 P.2d 705 (1954).

6. 64 Cal. 2d 319, 323, 411 P.2d 911, 49 Cal. Rptr. 815 (1966).

7. 71 Cal. 2d 303, 316, 455 P.2d 153, 78 Cal. Rptr. 504 (1969).

by voluntary intoxication is not a complete defense to a criminal charge. Unconsciousness caused by voluntary intoxication goes only to the question of intent and can have the effect of negating specific intent. Therefore, if the crime charged is one of general intent, the defense of unconciousness brought about by voluntary intoxication is ineffectual. The fact that this may not have clearly been the law previously is now unimportant. It is clearly the law now. This Court has seen to that.

The next question has elements similar to those in the question raised above. Again, Penal Code section 26, subdivision 3, this time, provides that insanity is a complete defense to a criminal charge. As pointed out above, however, section 22 excludes voluntary intoxication as a defense to a criminal charge. The parallel question then is, what happens if a crime is committed by a person while insane, the insanity having been caused by voluntary intoxication? This would seem to be a question so much like the one involving unconsciousness caused by voluntary intoxication that its answer should be predicated on the answer given by the Court to the first question.

Obviously, the first question was resolved on the basis of balancing the two key factors involved, *i.e.*, the policy concerning unconsciousness, on the one hand, versus the policy concerning voluntary intoxication, on the other. In the Court's view, the second policy factor more than counterbalanced the first. Viewed from the vantage point of a weighing of computing policies, it is possible to envision that the Court's resolution of the second question could go either way without being in conflict with its resolution of the first question.

A clue to the Court's direction appears from its reference to its opinion in *People v. Nash*.[8] It reiterates its position in that case when it makes the rather strong statement, "It is fundamental to our system of jurisprudence that a person cannot be convicted for acts performed while insane."[9] Nowhere does the Court ever say that the defense of unconsciousness is "fundamental" to our system of jurisprudence.

Historical precedents help to explain the difference in weight accorded the two defenses. The test for insanity has sensational implications rooted in the so called M'Naughten rule set out in

8. 52 Cal. 2d 36, 338 P.2d 416 (1959).

9. People v. Kelly, 10 Cal. 3d 565, 574, 516 P.2d 875, 111 Cal. Rptr. 171, 177 (1973).

1843.[10] Though modified in California,[11] it still retains the essential quality of the rule as originally formulated.[12] Not surprisingly, therefore, insanity has acquired an almost sacrosanct quality as a defense to a criminal charge. Unconsciousness has not.

Endorsing this premise, the Court almost gets to the point of maintaining that, no matter what its origin, insanity is insanity and is, therefore, a complete defense against a criminal charge.[13] Consequently, even insanity induced by voluntary intoxication is a complete defense to a criminal charge; unconsciousness induced in the same way is not.

Having dispensed with the question of drug induced insanity, the Court then tackled the question of whether such insanity must be "settled," and if so whether it must be settled *and* permanent. The resolution of this question was necessitated by the fact that the trial court was confused on the question. That court held that the defense of drug induced insanity was not available to the defendant because the insanity was not settled and permanent.[14]

The Court, to begin with, requires that the insanity must be what it calls, "settled insanity."[15] Basically, settled insanity is that

10. Daniel M'Naughtens Case, 8 Eng. Rep. 718, 722 (h.S. 1845).

11. *See* People v. Wolff, 61 Cal. 2d 795, 394 P.2d 959, 40 Cal. Rptr. 271 (1964).

12. The original M'Naughten rule states:

> "To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know it was wrong."

In People v. Wolff, 61 Cal. 2d 795, 801, 394 P.2d 959, 962, 40 Cal. Rptr. 271, 274 (1964), the rule was stated as follows:

> "The test of sanity is this: First, did the defendant have sufficient mental capacity to know *and understand* what he was doing, and second, did he know *and understand* that it was wrong *and a violation of the rights of another?*"

13. In People v. Kelly, 10 Cal. 3d 565, 575, 516 P.2d 875, 882, 111 Cal. Rptr. 171, 178 (1973), the Court says, ". . . we have repeatedly held that 'when insanity is the result of long continued intoxication, it affects responsibility in the same way as insanity which has been produced by any other cause.' (People v. Griggs (1941) 17 Cal. 2d 621, 625 . . .)"

Also, "Policy considerations support this distinction in treatment between voluntary intoxication resulting in unconsciousness and voluntary intoxication which causes insanity."

14. *See supra* note 4.

15. People v. Kelley, 10 Cal. 3d 565, 576, 516 P.2d 875, 111 Cal. Rptr. 171, 178, (1973).

insanity produced by long-continued intoxication as opposed to that temporary mental condition resulting from recent use of the intoxicant.[16] Essentially, the difference between settled insanity and temporary mental impairment is a function of how long after the intoxicant, itself, leaves the body its effects remain. If its effects disappear when the intoxicant leaves the body or shortly thereafter, the impairment of mental function may be deemed a temporary mental condition. If the effects remain for a considerable period and do not wear off quickly, so to speak, the condition is a settled one and qualifies as legal insanity.

The Court firmly and categorically rejected the notion that, to qualify as a defense against a criminal charge, the insanity has to be permanent as well as settled. If the insanity is found to be settled, it is immaterial whether it is permanent or not.[17] The Court pointed out that temporary insanity, as a defense to a crime, has long been recognized as the law in California.[18] As a matter of fact temporary insanity is as fully recognized as permanent insanity as a defense to a crime.[19] To suddenly impose the requirement of permanence would be to violate that long-standing rule.

In summation, the Supreme Court has clearly established what the law is in California with regard to the issues of unconsciousness caused by voluntary intoxication, insanity produced by voluntary intoxication, and the quality of insanity necessary to qualify as a defense to a criminal charge. That law is as follows:

(1) Unconsciousness induced by voluntary intoxication, whether by alochol, drugs, or other intoxicants, is not a defense to a general intent crime. It may be a defense to a specific intent crime, but it would go only to negativing the intent.

(2) Insanity induced by intoxication, whether by alcohol, drugs, or other intoxicants, is a defense to a criminal charge. This is so regardless of whether the insanity so induced is permanent or not, providing only that the insanity so induced is settled and not merely a temporary mental condition produced by recent use of intoxicants.

That this is the law in California is further emphasized by the fact that there were no dissenting opinions in the case.

As a by-product of this well reasoned and written opinion, there appears a concurring opinion by Justice Mosk. This concurring

16. *Id.*
17. *Id.*
18. People v. Ford, 138 Cal. 140, 70 P. 1075 (1902).
19. *Id.*

opinion, lending its voice to many others, attacks the M'Naughten test for insanity and importunes the Court to adopt, instead, the American Law Institute Model Penal Code test.[20] That opinion says that the M'Naughten test, to begin with, was judicially legislated in California. Hence it can be replaced by the Model Penal Code test, judicially. At the very least, suggests Mosk, the Court should have invited the Legislature to adopt a substitute for M'Naughten and, in the meantime, directed trial courts to employ the ALI standard.

With the disaffection M'Naughten has so widely generated, it would not be surprising to see it superseded by a standard closer to the one proposed by ALI.

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20. ALI Model Penal Code § 4.01:
"(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 criminality of his conduct or to conform his conduct to the requirements of law.
(2) As used in his article, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."