North Dakota Law Review

Volume 34 | Number 1 Article 7

1958

Criminal Law - Capacity to Commit and Responsibility for Crime - Expert Testimony Drinking by Alcoholic Was Due to Diseased Mind Admitted as Evidence

Mervin A. Tuntland

CRIMINAL LAW — CAPACITY TO COMMIT AND RESPONSIBILITY FOR CRIME — EXPERT TESTIMONY DRINKING BY ALCOHOLIC WAS DUE TO DISEASED MIND ADMITTED AS EVIDENCE. — The accused had been charged with driving an automobile while under the influence of intoxicating liquor, and had been freed on a surety bond. He did not appear in court at the time scheduled for his trial, due to his being held in jail in another town because he had again become intoxicated. The Supreme Court of Oklahoma *held* that evidence of an expert witness that chronic alcoholism is a mental disease which causes an unnatural craving for alcohol could not be disregarded in determining whether or not an appearance bond should be forfeited. *Wilder v. Oklahoma,* 310 P.2d 765 (Okla. 1957).

The instant case is significant as the decision turns on the fact that the court recognized medical testimony that an unnatural craving for alcohol could be due to a diseased mind. In effect the court recognized that the drinking of intoxicating liquor by an alcoholic may under some circumstances be an act which he cannot control, and the resulting intoxication may be considered as involuntary. In 1883 Baron Park formulated the rule that "voluntary drunkenness is no excuse for crime."[1] In the dictum of the same case he discussed the possibility of involuntary intoxication as a defense for crime. Subsequently courts have recognized the theory of this defense,[2] but involuntary intoxication has rarely if ever been successfully used in defense of a crime.[3] The courts have strictly adhered to the rule that drunkenness is primarily a vice[4] and defenses that liquor may have been taken due to an unnatural craving induced by a disease or injury of the brain have been rejected.[5]

The courts have recognized the incompetence of the chronic alcoholic by upholding statutes providing for the commitment of a drunkard without a trial by jury.[6] These commitments are of a paternal rather than a penal nature.[7] A North Dakota statute provides for the voluntary admission of alcoholics to the State Hospital for the Insane.[8]

---

1. Pearson's Case, 2 Lew. CC. 144, 168 Eng. Rep. 1108 (N.P. 1835).

2. Proctor v. United States, 177 F.2d 656 (D.C. Cir. 1949); Long v. Commonwealth, 262 S.W.2d 809 (Ky. 1953); Johnson v. Commonwealth, 135 Va. 524, 115 S.E. 673 (1923).

3. Note, 11 Ark. L. Rev. 160 (1950); Hall, *Intoxication and Criminal Responsibility,* 57 Harv. L. Rev. 1045 (1944).

4. Johnson v. Commonwealth, 135 Va. 524, 115 S.E. 673 (1923). "Drunkenness has always been recognized as a vice, and the reason most usually assigned for the rule that it does not excuse crimes is that no one may be allowed to expose the public to the danger of harm or violence caused by his own misconduct in voluntarily rendering himself dangerous."

5. Burrows v. Arizona, 38 Ariz. 99, 297 Pac. 1029 (1931); Choice v. Georgia, 31 Ga. 424 (1860); Uptone v. Illinois, 109 Ill. 169 (1883).

6. *Ex parte* Ligget, 187 Cal. 428, 202 Pac. 660 (1921); *Ex parte* Noble, 53 Idaho 211, 22 P.2d 873 (1933).

7. *Ex parte* Hinkle, 33 Idaho 605, 196 Pac. 1035 (1921); Leavitt v. City of Morris, 105 Minn. 170, 117 N.W. 393, 395 (1908). "The trend, however, of legislation is to treat habitual drunkenness as a disease of mind and body, analogous to insanity, and to put in motion the power of the state, as the guardian of all its citizens to save the inebriate, his family and society from the dire consequences of his pernicious habit. The statute here under consideration is of such character. It is not a penal, but a paternal statute, seeking not the punishment of the inebriate, but the safeguarding of his interests and the safety of the public by treating him as what he is in fact, a man of unsound mind, and placing him under the guardianship of the state to the end that he may be healed of his infirmity."

8. N.D. Rev. Code § § 25-0301 to 25-0304 (1943) as amended by N.D. Sess. Laws 1957, c. 196, § 3.

Science has long recognized individual differences in the propensity to develop a craving for alcohol because of physiological and psychological factors.[9] Inheritance is believed by some researchers to be a major factor, and in recent years nutrition has been found to have a decided effect.[10]

Subsequent to the discussion in the instant case, Dr. Roger Williams reported that his research indicates alcoholism is primarily caused by malnourishment of the hypothalamus, part of the mass of gray matter at the base of the brain, which regulates human appetites and cravings.[11] He also states that research indicates a test which will determine the propensity of a child to become an alcoholic as an adult. If the results of this test indicate the child will later in life be highly susceptible to a craving for alcohol, this condition may be remedied by supplying the growing child with the proper nutrients.

Much knowledge of alcoholism is available today that was not known at the time the rules governing intoxication were formulated. If the courts consider all available information on the problem when making their decisions, it is likely that in the future there will be a trend in the courts to recognize alcoholism as a disease for which the afflicted person should receive treatment, rather than as a vice for which he should be punished.

MERVIN A. TUNTLAND

DAMAGES — LOSS OF FUTURE EARNING POWER — DUTY OF COURT TO INSTRUCT JURY TO REDUCE LOSS OF FUTURE EARNINGS TO PRESENT WORTH. — Plaintiff brought action for injuries sustained in an automobile collision in Nebraska. The trial court instructed if the jury found for the plantiff the loss of future earning power might be included in the items to be listed as damages.[1] The trial court did not instruct the jury that the loss of future earning power should be reduced to its present value; this instruction was not requested. A verdict of $8,000.00 was rendered for the plaintiff. The Nebraska Supreme Court, two justices dissenting, *held* that it was not reversible error for the trial court to fail to instruct that damages due to the loss of future earnings should be reduced to their present worth when no instruction to that effect had been requested. *Wolfe v. Mendel*, 84 N.W.2d 109 (Neb. 1957).

It is generally agreed that some instruction should be given regarding the reduction of damages for loss of future earning power to its present worth.[2] Many of the courts feel that the absence of such instruction is not reversible

---

9. The Craving for Alcohol, A Symposium of World Health Expert Committees on Mental Health and Alcohol, Quarterly Journal of Studies on Alcohol, March 1955, p. 34.

10. Williams, *The Genetrophic Concept, Nutritional Deficiencies and Alcoholism*, Vol. 57 Annals of New York Academy of Science, (1953-1954) p. 794.

11. *Fiddler's Dreams*, Presidential Address of Dr. Roger Williams, 132nd Meeting of the American Chemical Society, Chemical Engineering News, Sept. 16, 1957, p. 116. Dr. Williams is director of the Biochemical Institute of Texas and president of the American Chemical Society.

1. The jury was instructed to award an amount that would reasonably compensate for damages sustained as a proximate cause of the accident.

2. See, *e.g.*, Chicago & N.W. Ry. Co. v. Ott, 33 Wyo. 200, 237 Pac. 238 (1925). See Miller, *Assessment of Damages in Personal Injury Actions*, 14 Minn. L. Rev. 216 (1930). See also Restatement, Torts § 924 comment d (1939).