

## CRIMINAL LAW MOOT PROBLEM

### Facts

Mr. Braddock is roaming the streets of East London in a state of agitation and distress. On Scarborough Street, he is approached by Mrs. Robinson (a stranger) who enquires to see if he is alright. Mr. Braddock is witnessed screaming at Mrs. Robinson, saying “You did it, didn’t you?! You work for THEM, you put the microchip in my brain! You’ve been following me, you want to experiment on me”. Mr. Braddock takes out a knife and stabs Mrs. Robinson in the neck and torso. An eyewitness calls an ambulance, but Mrs. Robinson is pronounced dead on arrival of the paramedics. Upon arrest, it becomes clear to police that Mr. Braddock has ingested a huge amount of alcohol, and cocaine. The police also find evidence that Mr. Braddock has recently taken LSD. Mr. Braddock says that he had been ingesting these substances, “to calm me down” and “to confuse the microchip so they couldn’t track me”. Mr. Braddock also however mentions that he has been a recreational drug user for years, since leaving university, and that he first “realised” that the government had placed a microchip in his brain after ingesting LSD and having a “bad trip” about a month before the incident on Scarborough Street. Mr. Braddock is charged with murder. He pleads not guilty at first appearance and proceeds to trial at the Old Bailey.

At trial, Mr. Braddock’s defence team raise the defence of diminished responsibility through a combination of intoxication and mental health condition. The defence rely upon an expert report by psychiatric consultant Dr. Gladstone, who gives the opinion that at the time of the attack, Mr. Braddock was suffering from an acute onset of paranoid schizophrenia, which may have been triggered by Mr. Braddock’s “bad trip” (and his use of LSD generally). Dr. Gladstone gave the opinion that although Mr. Braddock’s intoxication contributed to his mental state at the time of the act, his mind was substantially impaired by the schizophrenic episode.

At trial, HHJ Smith instructs the jury as follows:

- 1) In order to find that diminished responsibility is available to the Defendant, the abnormality of mind (mental condition) must be the sole cause of the Defendant’s act. In cases involving voluntary intoxication, this usually means that diminished responsibility is not available (*Dowds [2012] EWCA Crim 281 [2012] 1 Cr. App. R 34; Lindo [2016] EWCA Crim 1940*).
- 2) In any event, in order to rely upon the defence of diminished responsibility, the jury must find that the Defendant was “substantially impaired” – meaning “the impairment of his mind must be very serious, more than a passing confusion”.

Mr. Braddock is accordingly convicted of murder.

On appeal, the Court of Appeal rule that the judge at first instance was incorrect in his direction to the jury in the following ways:

- 1) An abnormality of mind did not need to be the sole cause of a Defendant’s action for diminished responsibility to be available (*Dietschmann [2003] UKHL 10*). However, applying *Dowds [2012]* and *Lindo [2016]* – where voluntary intoxication results in a psychotic episode, there is no recognised medical condition available to found a defence of diminished responsibility.
- 2) The judge at first instance should not have offered a definition of “substantially impaired” in his jury direction (*Golds [2016] UKSC 61*) However, given the Court of Appeal’s opinion on (1), this does not challenge the safety of Mr. Braddock’s conviction.

Mr. Braddock now appeals to the Supreme Court, arguing:

- 1) Mr. Braddock's mental condition, although possibly triggered by previous drug use, was separately present at the time of the incident, unconnected to his voluntary intoxication on that day. Therefore *Dowds* [2012] and *Lindo* [2016] should be distinguished and *Foy* [2020] **EWCA Crim 270** applied.
- 2) The judge at first instance should not have offered a definition of "substantially impaired" in his jury direction (*Golds* [2016] **UKSC 61**) and this *does* challenge the safety of D's conviction, given that i) this is a matter which should be left to the jury, especially ii) in cases such as this one where the extent of Mr. Braddock's impairment was "clearly substantial".