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Self-defence: Insane Delusions and Reasonable Force

R v Oye [2013] EWCA Crim 1725

Keywords: Insanity; Self-defence; Psychotic delusion

On 30th June 2011, the police were called to the Cappucino Café in the Westfields Shopping Centre in Shepherd's Bush. A 29-year-old man, Seun Oye, had been found in the café's staff area. As he was not a member of staff, the manager was summoned. He later described Oye as "twitching in a strange manner". The manager locked Oye in the room and called the police. When they arrived, Oye hid in a void in the ceiling. He refused to come down and gave bizarre reasons for his refusal to do so: firstly "because I'm selfish" and later because he was reading a book. He also threw crockery at the police officers. Eventually he was persuaded to come down whereupon he was arrested and taken to Hammersmith police station.

No medical issues were identified, and tests for alcohol or drug consumption came back negative. However, a history of cannabis use was recorded. He was detained in a cell overnight. The next day, he was seen in his cell by a specialist drugs worker, but this was terminated by the worker who felt uncomfortable being alone in the cell with Oye. As the worker left, and when the cell door was temporarily open, Oye tried to escape from the custody suite. He punched a male police officer (Sergeant Watts) in the face, knocking him to the ground, and then punched a female officer (PC Thompson), displacing some of her teeth and fracturing her jaw. As other officers arrived, he fought violently, lashing out and "shouting or shrieking or wailing". He was eventually overpowered and returned to his cell.

On 2nd July, Oye was charged with one count of inflicting GBH (for breaking PC Thompson's jaw) and two counts of affray (the first relating to the incident in the café and the second to the violent struggle in the custody suite). He was also sectioned under the Mental Health Act 1983 and detained in hospital, where he continued to act "strangely". However, he recovered sufficiently to be released three weeks' later, on 22nd July.

In a pre-trial statement, Oye said that he had woken up on 30th June feeling "paranoid" and with the feeling that "evil spirits" were watching him. He had then been guided to the café by "good spirits". In the café, he believed that the police officers were the agents of the evil spirits and that they would harm him if he came down from his hiding place in the ceiling. The next day when he woke up in the police station cell, he believed that he had "acquired supernatural powers", apparently by drinking water from the toilet cistern. He took his opportunity to escape but had to defend himself by throwing punches when the police in the custody suite "rushed him".

Two psychiatrists, Dr Adegoke and Dr Walsh, interviewed Oye. They agreed that Oye had experienced a psychotic episode on 30th June, but that he had recovered with the use of medication and was fit to stand trial. They also agreed that, on the days when the alleged offences had taken place, he had been suffering such a defect of reason that he had not known what he was doing, and/or had not appreciated that what he was doing was wrong;

in short, that he was entitled to be given the special verdict of not guilty by reason of insanity.

At Oye's trial at Isleworth Crown Court in March 2013, the recorder directed the jury on both insanity and self-defence. He emphasised that the agreed psychiatric evidence (which was unchallenged by the Crown) was that Oye had been insane at the time of the alleged offences. Nevertheless, the jury rejected both defences and returned guilty verdicts on all three counts. Oye appealed. A number of issues were raised on appeal but the key issue was whether, if a person purported to act in self-defence in response to a genuine, but insanely deluded, belief that he was being attacked or threatened, and used force that was reasonable in the circumstances as he believed them to be, he was entitled to an acquittal on that basis.

HELD, ALLOWING THE APPEAL BUT SUBSTITUTING A VERDICT OF NOT GUILTY BY REASON OF INSANITY, that although the second limb of the defence of self-defence is not "solely objective" it nevertheless "unquestionably incorporates (by its requirement of reasonableness) objective considerations" [at 39].

Hence, notwithstanding the fact that Oye genuinely believed that "evil spirits" were attacking him, he could not rely on this belief to support his claim that he had used no more than reasonable force in self-defence. To accede to the defence argument would have "most disconcerting" implications. Davis LJ stated [at 45 – 47]:

"It could mean that the more insanely deluded a person may be in using violence in purported self-defence the more likely that an entire acquittal may result. It could mean that such an individual who for his own benefit and protection may require hospital treatment or supervision gets none. It could mean that the public is exposed to possible further violence from an individual with a propensity for suffering insane delusions, without any intervening preventative remedies being available to the courts in the form of hospital or supervision orders. Thus, whatever the purist force in the argument, there are strong policy objections to the approach advocated on behalf of the appellant. In our view it is not right... An insane person cannot set the standards of reasonableness as to the degree of force used by reference to his own insanity."

The Court of Appeal therefore rejected Oye's appeal in relation to self-defence but allowed his appeal on the ground of insanity. During the trial, the recorder had "repeatedly" reminded the jury about the "unchallenged psychiatric evidence", but the jury had nevertheless rejected it. The appeal court could not see a "safe or rational basis for departing" from that evidence [at 63]. The court therefore utilised its power under s.6 of the Criminal Appeal Act 1968 to substitute a special verdict of not guilty by reason of insanity on all three counts. Finally, in terms of the disposal option, the Court imposed an absolute discharge, on the basis that Oye had gone on to make "an entire recovery" from the psychotic incident. It followed that neither a hospital order nor a supervision order would serve any purpose [at 64].

COMMENTARY

In reaching its conclusion the Court of Appeal in *Oye* relied on the earlier Court of Appeal decisions in *R v Martin* [2001] EWCA Crim 2245, [2003] QB 1 and *R v Canns* [2005] EWCA Crim 2264. In the former case, the Court of Appeal rejected an argument that the appellant's murder conviction was unsafe on the basis that fresh medical evidence of paranoid personality disorder was relevant to his (failed) plea of self-defence (although the appeal was allowed on the alternative ground of diminished responsibility). Lord Woolf CJ stated [*Martin*, at 67]:

"We would accept that the jury are entitled to take into account in relation to self-defence the physical characteristics of the defendant. However, we would not agree that it is appropriate, except in exceptional circumstances which would make the evidence especially probative, in deciding whether excessive force has been used to take into account whether the defendant is suffering from some psychiatric condition."

In *Canns*, the Court of Appeal followed *Martin* in dismissing an appeal against a manslaughter conviction. The appellant, who suffered from paranoid schizophrenia, had pleaded self-defence at his trial, but that had failed on the basis that his belief that he was being attacked by the victim was caused by his own delusions. Rose LJ approved the trial judge's directions to the jury thus [*Canns*, at 19]:

"It cannot be right that the more psychotic a defendant may be the greater his chances of acquittal, because of his genuine delusions. Do you follow? If the test was a purely subjective one through and through, psychotic and dangerous defendants are likely always to be acquitted because their reaction was reasonable by their own standards. The law is that defendants do not set their own standards of reasonableness. It is not for a defendant in his own mind to set the standard of reasonableness, it is for the jury, considering all the circumstances but not the psychiatric condition, to set the standards of reasonableness in considering the individual case."

In *Oye*, the appellant sought to distinguish *Martin* and *Canns* on the basis that his case involved "exceptional circumstances". This was rejected. The Court acknowledged that what exactly Lord Woolf in *Martin* had meant by "exceptional circumstances" was "unexplained", but Davis LJ said that "at all events if *Martin* was not considered an exceptional case then we do not see how or why the present case should be" [*at 53*].

Finally it was contended that *Martin* and *Canns* had been "overtaken" by the enactment of s.76 of the Criminal Justice & Immigration Act 2008. *This was rejected on the basis that s.76(9) made it clear that the section was intended to "clarify the operation of the existing defences", including self-defence, not to change them [at 56]. Oye's appeal on the basis of self-defence therefore failed [at 57].*

In one sense, the case of *Oye* merely complements the earlier Court of Appeal decisions, in *Martins* and *Canns*, that a plea of self-defence will not be accepted where the defendant's

own psychotic or otherwise insane delusions may have genuinely caused him to believe that he was under attack. This is because the second limb of the defence, that the amount of force used be reasonable, includes “objective considerations”. However, *Oye* is a useful development of the law in another sense in that it confirms that the pre-existing common law principles on this issue have not been “overtaken” by the enactment of s.76 of the Criminal Justice & Immigration Act 2008. As Davis LJ pointed out, the statute merely clarifies the common law but does not seek to change it.

This much is both clear and understandable; after all, if a defendant cannot invoke his own self-induced intoxication to support a plea of self-defence (s.76(5) of the 2008 Act; *R v O’Grady* [1987] QB 995, [1987] 3 WLR 321; *R v O’Connor* [1991] Crim LR 135; *R v Hatton* [2005] EWCA Crim 2951, [2006] 1 Cr App R 16) then it logically follows that he cannot invoke his own insane delusions to do so either.

It should not be forgotten that *Martin* establishes the intriguing possibility that evidence pertaining to the defendant’s “psychiatric condition” might nevertheless be taken into account for the purposes of a self-defence plea “in exceptional circumstances which would make the evidence especially probative”. *Martin* itself was deemed not to be sufficiently “exceptional” and neither was *Canns* nor *Oye*. If those two cases fall short of the “exceptional” threshold it is submitted that we may have to wait a very long time before such a case does arise.

Perhaps Parliament may deem it appropriate to add another subsection to s.76 to further “clarify” the law. The section has been amended twice already, by s.148 of the Legal Aid, Sentencing & Punishment of Offenders Act 2012 and by s.43 of the Crime & Courts Act 2013, so a further amendment along the following lines might not be inappropriate:

‘Subsection (4)(b) does not enable D to rely on any mistaken belief induced by psychosis or any other psychiatric disorder, unless there are exceptional circumstances which would make the evidence especially probative.’