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Commonwealth v. Robinson

COMMONWEALTH OF PENNSYLVANIA
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Criminal Action No. 120 of 2008

Criminal Law; Capacity to Commit and Responsibility; Insanity Defense; M'Naghten Rule; Claim of Innocence; Criminal Law, Capacity to Commit and Responsibility, Voluntary and Involuntary Intoxication Defenses, Fixed or Settled Insanity Defense; Courts, Establishment/Organization/Procedure, Rules of Decision, Issues of First Impression

1. In Pennsylvania, the legal test for insanity is a statutory enactment of the M'Naghten Rule, 18 Pa. C.S.A. §315 (2009). Under the rule, a defendant is relieved of criminal responsibility if at the time of committing the act, she was laboring under such a defect of reason, resulting from a disease of the mind, as to not know the nature and quality of her act, or so as not to know the act was wrong.

2. 18 Pa. C.S.A. §308 provides that "neither voluntary intoxication nor voluntary drugged condition" may be a defense to a criminal charge, nor may it negate an element of a charged offense, except in cases of murder.

3. An affirmative defense is allowed in cases of involuntary intoxication, measured by the legal test for insanity, based on the rationale that a person should not be punished for committing a criminal act due to a condition for which she was not responsible.

4. Pennsylvania jurisprudence makes clear that the focus of the M'Naghten inquiry should be on the disorder argued to excuse a criminal act, regardless of etiology.

5. "Fixed" or "settled" insanity has been defined by courts and legal commentators as a permanent mental disorder caused by habitual or long term abuse of drugs or alcohol. It is referred to as fixed because the habitual alcohol or drug use results in permanent brain damage such that a substance induced mental disorder persists even when the actor is not intoxicated.

6. In states that allow such a defense, to claim settled insanity a defendant must show long term, chronic use of a substance has resulted in a separable, permanent and stable mental defect or disease of the mind as defined by the jurisdiction's test for insanity. The defense requires a condition that is created and persists over a significant period of time that has perverted or destroyed the mental faculties of the accused.

7. Proponents of the defense urge legal liability is improper for fixed insanity defendants because earlier voluntary decisions become too temporally and morally remote to bar a defense on the basis such infirmity is self inflicted.

8. Considering the emphasis placed by Pennsylvania law on the presence or absence of culpability on the part of the defendant in causing a mental infirmity, the case law leads to the conclusion that the doctrine of settled insanity is incompatible with our principles of jurisprudence.

9. The law has developed in Pennsylvania that a defendant cannot, as a matter of law, be insulated from criminal liability for his actions by claiming a mental state resulting from alcohol which was voluntarily ingested.

10. Commonwealth v. Hicks, 369 A.2d 1183 (Pa. 1979), makes clear Pennsylvania will not recognize a defense of insanity based upon an acute episode caused by voluntary consumption of alcohol.

11. Pennsylvania case law rejects an involuntary intoxication defense based upon the irresistible impulse to drink. While the punishment function of the criminal justice system may not be fulfilled imposing liability on the chronic alcoholic who commits a crime due to an ungovernable urge to drink, the rehabilitative, preventative and restitutionary functions are

served.

12. While a comprehensive definition of the involuntary intoxication defense is difficult due to the wide variety of circumstances in which it is employed, a key component is lack of culpability in causing the intoxication.

13. Pennsylvania appellate courts have rejected the proposition that in today's society a mental illness resulting from long term drug abuse can exonerate someone from criminal responsibility. The fact that a defendant voluntarily ingested alcohol has been dubbed determinative in depriving him of an insanity defense.

14. In Pennsylvania, where there is no clear precedent, a legal issue should be resolved by predicting how the Supreme Court would likely decide.

15. There is no principled basis to distinguish between the short term and long term effects of voluntary intoxication by punishing the first and excusing the second. If anything, the moral blameworthiness would seem to be even greater with respect to the long term effects of many, repeated instances of voluntary intoxication occurring over an extended period of time.

16. A defense of diminished capacity or insanity applies only when the defendant admits his culpability, but contests his degree of guilt.

17. A defendant's actions during and after a crime may be admitted to show she knew the nature of her act, and that the act was wrong.

18. The expert report makes clear the Defendant understood the nature and quality of the act he is alleged to have committed. The insistence by the Defendant that the allegations are untrue, and that he neither sold nor bought alcohol for the teens, that he had no money on the day in question, and that he has no idea where the children obtained the alcohol, demonstrate this knowledge.

19. Contrary to the expert's supplementary report, neither low to average scores on the administered psychological tests, nor head injuries, nor chronic alcoholism, are sufficient to demonstrate the Defendant did not understand the quality of his act, or that the act was wrong. The supplemental report is full of bare conclusions, unsupported by the facts set forth in the expert's previously submitted report.

Appearances:

Travis L. Kendall, Esquire, *Fulton County District Attorney*

Dwight C. Harvey, Esquire, *Attorney for Defendant*

OPINION

Van Horn, J., October 19, 2009

Statement of the Case

Defendant Ronald Lee Robinson faces charges of corruption of minors, reckless endangerment, and selling or furnishing liquor or malt or brewed beverages to minors. See 18 Pa. C.S.A. § 6301(2009); 18 Pa. C.S.A. §2705 (2009); 18 Pa. C.S.A. § 6310.1 (2009). On January 16, 2009, the Defendant gave notice of his intent to offer a defense of legal insanity or mental infirmity against the charges. In support of this defense, Robinson intends to offer the testimony of Dr. Larry A. Rotenburg, who completed a psychiatric evaluation of the Defendant on October 2, 2008. Subsequently, on March 12, 2009, the doctor filed a supplementary report.

The first report concludes that the Defendant understands the nature and object of the charges against him, is able to assist in his own defense, and is competent to stand trial. See Rotenburg Report, at 11. The second supplemental report opines that the Defendant "does suffer from a mental disease or defect" and as a result understood the nature and quality of his act, but did not understand the conduct was wrong. See Rotenburg Supplemental Report, at 1. The supplemental report attributes Robinson's mental defect to a "significant history of head injury," as well as "his constant use of alcohol," which according to Rotenburg have both contributed to "the damage to his brain." See Rotenburg, Supplemental Report, at 1, 2.

On July 23, 2009, the Commonwealth filed a motion in limine, seeking to exclude the doctor's testimony and both reports. Defendant timely answered the motion on July 24, 2009. To aid the Court in determining the admissibility of the doctor's opinions, the parties submitted briefs in support of their positions, as well as a stipulation of record for the purpose of the motion in limine. The Commonwealth asserts that the report and testimony of Dr. Rotenburg should be excluded because it has no factual basis, and is grounded in an irresistible impulse analysis of insanity rather than the M'Naghten rule used in Pennsylvania. Further, the Commonwealth argues that even if the reports are admissible for the purpose of a M'Naghten evaluation of sanity, they are nonetheless inadmissible because the mental defect involved was self inflicted, the result of voluntary intoxication that precludes such a defense. The Defendant maintains the reports are admissible. Rather than a voluntary intoxication defense, the Defendant argues the reports do qualify under M'Naghten because they refer to a mental defect that is long term and permanent. Arguing the issue is one of first impression, the defense maintains Robinson possesses a mental defect created by chronic alcoholism precluding him from understanding his conduct was wrongful. Defendant argues the permanent nature of the defect allows an insanity defense under the M'Naghten Rule.

Discussion

I. Insanity, Intoxication, and Criminal Liability Generally

Courts in almost every state recognize that insanity provides a means of defense to criminal liability.[1] The rationale for such defense is the requirement in criminal law that liability be imposed only upon those with a mental state demonstrating a degree of criminal responsibility appropriate to the crime and punishment. See Commonwealth v. Plank, 478 A.2d 872, 875 (Pa. Super. 1984). In Pennsylvania, the legal test for insanity is a statutory enactment of the M'Naghten Rule. See 18 Pa. C.S.A. §315 (2009). Under the rule, a defendant is relieved of criminal responsibility if at the time of committing the act, she was laboring under such a defect of reason, resulting from a disease of the mind, as to not know the nature and quality of her act, or so as not to know the act was wrong. See id; Commonwealth v. Hicks, 396 A.2d 1183, 1185 (Pa. 1979).

The legislature has also addressed the effect of intoxication or drug use on culpability, generally determining that while involuntary intoxication may be a defense to criminal liability, voluntary intoxication generally may not. See 18 Pa. C.S.A. §308. The relevant statutory text provides that "neither voluntary intoxication nor voluntary drugged condition" may be a defense to a criminal charge, nor may it negate an element of a charged offense, except in cases of murder. See id. In the case of involuntary intoxication, an affirmative defense is allowed based on the rationale that "a person should not be punished for committing a criminal act due to a condition for which he was not responsible." See Commonwealth v. Kuhn, 475 A.2d 103, 107 (Pa. Super. 1984). See also Commonwealth v. Smith, 831 A.2d 636, 639 (Pa. Super. 2003). The mental state of such a defendant is measured by the legal test for insanity. See Smith, 831 A.2d at 639 n. 2.

Conversely, if a defendant is voluntary intoxicated, he is responsible for producing the condition of intoxication, and therefore is legally responsible for the results that follow from his decision. See Kuhn, 475 A.2d at 107. Thus, acute or singular periods of insanity resulting from voluntary ingestion of alcohol or drugs cannot be the basis of an insanity defense. See Plank, 478 A.2d at 875. Mental states which are the result of voluntary intoxication do not qualify because the defendant has in effect induced his own infirmity. Id.

Pennsylvania jurisprudence makes clear that the focus of the M'Naghten inquiry should be on the disorder argued to excuse a criminal act, regardless of etiology. See Plank, 478 A.2d at 875. However, the Pennsylvania Supreme Court has emphasized the necessity under the M'Naghten rule that the defect of reason impelling a defendant to act arise from a "disease of the mind." See *Hicks*, 396 A.2d at 1185. Pennsylvania, as most other states, recognizes that although a mental state resulting from extreme intoxication may be similar to that which occurs from a naturally occurring mental disease, it is distinguishable based upon its origin as self induced. See Plank, 478 A.2d at 875.

However, as the Defendant correctly points out, some states have recognized an exception to this general rule, known as the doctrine of "fixed" or "settled" insanity. See State v. Sexton, 904 A.2d 1092, 1101 (Vt. 2006). Fixed insanity has been defined by courts and legal commentators as a permanent mental disorder caused by habitual or long term abuse of drugs or alcohol. See id. See also Andrew M. Levine, Note, Denying the Settled Insanity Defense: Another Necessary Step in Dealing with Drug and Alcohol Abuse, 78 B.U. L. REV. 75, 78 (1998). It is referred to as fixed because the habitual alcohol or drug use results in permanent brain damage such that a substance induced mental disorder persists even when the actor is not intoxicated. People v. Whitehead, 525 N.E.2d 1084, 1087 (Ill. 1998). In states which recognize this defense, the doctrine is characterized by "'long continued,' 'habitual,' 'prolonged,' or 'chronic' alcohol and drug abuse" which creates a permanent state of insanity. See Sexton, 904 A.2d at 1102; Morgan v. Commonwealth, 646 S.E.2d 899, 902-03 (Va. App. 2007) (distinguishing between voluntary intoxication that does not constitute a defense and insanity

arising from long term use of intoxicants that is separate from immediate intoxication).

To claim a defense of settled insanity, a defendant must show long term, chronic use of a substance has resulted in a separable, permanent and stable mental defect or disease of the mind as defined by the jurisdiction's test for insanity. See Morgan, 646 S.E.2d at 903; Levine, supra, at 88. The defense requires a condition that is created and persists "over a significant period of time" that has "perverted or destroyed the mental faculties of the accused." See White v. Commonwealth, 636 S.E.2d 353, 357 (Va. 2006) (citations omitted). In jurisdictions which allow such a defense, a defendant must demonstrate extensive abuse of alcohol or drugs that has damaged the brain, thereby resulting in a state of insanity that is similar to insanity arising from any other cause. See State v. Collins, 305 N.W.2d 434, 438 (Iowa 1981). The rationale for allowing such a defense is the futility of punishing a defendant whose mental condition is permanent. Id. As acknowledged by the Supreme Court of Vermont in Sexton, proponents of the defense urge that "earlier voluntary decisions" become "too temporally and morally remote" to bar a defense on that basis. Id.

II. Settled Insanity Is Incompatible with Pennsylvania's Emphasis on Volition in Cases Involving Intoxication

While the doctrine of fixed insanity has not been explicitly addressed in Pennsylvania courts, several cases have addressed insanity claims based upon drug and alcohol use. See, e.g., Commonwealth v. Hicks, 369 A.2d 1183, 1184-86 (Pa. 1979); Commonwealth v. Kuhn, 475 A.2d 103, 107-08 (Pa. Super. 1984); Commonwealth v. Plank, 478 A2d 872, 875-76 (Pa. Super. 1984). Considering the emphasis placed in Pennsylvania law on the presence or absence of culpability on the part of the defendant in causing a mental infirmity, these cases lead to the conclusion that the doctrine of settled insanity is incompatible with our principles of jurisprudence. Further, as the Court will address in Part III, even if the doctrine was determined to be viable under Pennsylvania law, it is inapplicable to the instant case. Here, the Defendant maintains his innocence, making the insanity defense inapplicable and improper. In addition, even if the Defendant did not disclaim guilt on the charged offenses, the Reports at issue do not put forth sufficient evidence for a jury to find the defendant was insane within the definition of M'Naghten at the time he committed the charged offenses.

The Superior Court has stated that while a comprehensive definition of the involuntary intoxication defense is difficult due to the wide variety of circumstances in which it is employed, "a key component is lack of culpability…in causing the intoxication." Smith, 831 A.2d at 639. Clearly, "the law has developed in Pennsylvania that a defendant cannot, as a matter of law, be insulated from criminal liability for his actions by claiming a mental state resulting from alcohol which was voluntarily ingested." Commonwealth v. Henry, 569 A.2d 929, 935 (Pa. 1990).

The emphasis on personal responsibility and voluntary action pervades Pennsylvania jurisprudence addressing insanity and intoxication defenses. For example, in Hicks, a defendant with a blood alcohol content more than twice the legal limit, who also voluntarily ingested an amphetamine based diet pill, assaulted and killed a neighbor. See Hicks, 369 A.2d at 1184-85. Although the defense argued the level of intoxication should excuse culpability, the Supreme Court found Hick's behavior was a result of his voluntary alcohol ingestion. See id. at 1186. The "remote possibility" of a pathological disorder could not allow the defendant to escape culpability because "it was at best a passive condition triggered by the ingestion of alcohol." Id. Noting the case involved an "acute episode" rather than a "mental disease…traceable to the habitual long term use of drugs," the Court found "ample basis" to support a guilty determination. Id. at 1186 n.5. Thus, Hicks makes clear that Pennsylvania will not recognize a defense of insanity based upon an acute episode caused by voluntary consumption of alcohol.

Intoxication as a component of the insanity defense was further developed in Commonwealth v. Kuhn. In Kuhn, the Defendant argued his chronic alcoholism rendered him incapable of refraining from consuming alcohol, such that the "ungovernable compulsion" to drink created the legal state of involuntary intoxication. See Commonwealth v. Kuhn, 475 A.2d 103, 107 (Pa. Super. 1984). The Superior Court recognized that if punishment were the sole reason for imposing criminal liability, chronic alcoholism could fit the definition of involuntary intoxication because the defendant could not control the urge to drink. See id. However, the court pointed out that other functions of the criminal justice system supported its decision to deny such a defense. See id.

Unlike the defendant who becomes involuntarily intoxicated, a defendant who committed a crime as a result of chronic alcoholism would be very likely to repeat the offense. See id. The purpose of prevention is thereby served by imposing criminal liability. See id. at 107. The rehabilitative purpose of the justice system is also served by imposing liability. See id. An involuntarily intoxicated person would not require rehabilitation after committing a crime as a result of their intoxicated state. See id. In contrast, the chronic alcoholic would be "in drastic need" of such assistance. Id. The Superior Court concluded by stating that as a matter of law, involuntary intoxication could not be established by evidence that chronic alcoholism created an irresistible urge to drink. Id. at 108. Such intoxication is considered voluntary under Pennsylvania law.

After its decision in Kuhn, the Superior Court addressed a defendant charged with rape who claimed to have an "adjustment disorder" traceable to "chronic abuse of alcohol." See Commonwealth v. Plank, 478 A.2d 872, 874 (Pa. Super. 1984). The defense expert claimed the disease manifested itself in alcoholic blackouts, during which the defendant appeared in control but later could not recall his actions. See id. The expert argued that during the rape, the defendant did not appreciate the harmfulness or wrongfulness of his conduct. See id. The Plank court recognized that liability must be predicated on "some degree of criminal responsibility." Id. at 875. However, the court reasoned that the defendant had produced evidence that "but for" his drinking, the rape would not have occurred. Id. The court then determined that because the defendant took alcohol "by his own hand," the insanity defense would be barred because he "induced the infirmity." Id.

The Plank court properly distinguished Hicks, in which there was no allegation of a defect of reason resulting from a disease of the mind, because the trial court did hear uncontroverted testimony that the defendant possessed a mental disorder. See id. at n.6. Citing Kuhn, the Court discussed the "practical problems" that would arise from allowing a defense based on an "ungovernable impulse to drink," including inconsistency of results, increased spurious claims, and safety concerns. Id. at 876. The Superior Court noted that "if we cannot excuse the antecedent act, [defendant's] proposed defense dissolves." Id. at 876.

It is not the province of this Court to make new law or endorse new policy which has not been examined or adopted by our Appellate courts. Rather, the Court must align its decisions with the dictates of precedent. While some of our sister states may allow a defense of fixed insanity, a review of the policies adopted and cases decided by the high courts of this state leads to the conclusion settled insanity is incompatible with Pennsylvania jurisprudence. The Superior Court has stated that while a comprehensive definition of the involuntary intoxication defense is difficult due to the wide variety of circumstances in which it is employed, "a key component is lack of culpability…in causing the intoxication." Smith, 831 A.2d at 639. In each case addressing the issue, our courts emphasize that "an actor should not be insulated from criminal liability for acts which result from a mental state that is voluntarily self induced." Commonwealth v. Scott, 578 A.2d 933, 936 (Pa. Super. 1990). In Henry, the Supreme Court stated that "the fact [defendant] voluntarily ingested the alcohol" was "determinative" in depriving him of an insanity defense. See Commonwealth v. Henry, 569 A.2d 929, 935 (Pa. 1990). Similarly, the Superior Court has explicitly stated it rejects "the proposition that in today's society a mental illness resulting from long term drug abuse can exonerate someone from criminal responsibility." Id.

As the Supreme Court of Colorado pointed out when addressing the settled insanity doctrine, self induced intoxication requires a defendant be aware that the substances they ingest may alter their mental faculties. See Bieber v. People, 856 P.2d 811, 817 (Colo. 1993). As the Bieber court states, it is commonly known that excessive use of alcohol or drugs impairs the mental faculties of the user, so self induced intoxication "by its very nature involves a degree of moral culpability." Id. In Sexton, the high Court in Vermont points out that with one exception, the states which have explicitly considered the doctrine of settled insanity have recognized and allowed its use. See Sexton, 904 A.2d at 1103. However, it is well settled in Pennsylvania that where there is no clear precedent, the issue should be resolved by predicting how the Supreme Court would likely decide. See Ridgeway ex. Rel. Estate of Ridgeway v. U.S. Life Credit Life Ins. Co., 793 A.2d 972, 975 (Pa. Super. 2002). While other states may have accepted the doctrine of settled insanity, the emphasis on volition in Pennsylvania decisions addressing long term drug abuse and claims of insanity lead the Court to conclude the doctrine will not be endorsed by our courts. As the Colorado Supreme Court stated:

> As a matter of public policy, therefore, we cannot excuse a defendant's actions, which endanger others in his or her community, based upon a mental disturbance or illness that he or she actively and voluntarily contracted. There is no principled basis to distinguish between the short term and long term effects of voluntary intoxication by punishing the first and excusing the second. If anything, the moral blameworthiness would seem to be even greater with respect to the long term effects of many, repeated instances of voluntary intoxication occurring over an extended period of time.

Bieber, 856 P.2d at 817.

III. Even if the Settled Insanity Defense Were Accepted in Pennsylvania, It Is Inapplicable to the Instant Case

Finally, the Court notes that the instant case is a poor candidate for deciding this issue of first impression for two reasons. First, even if the Court were inclined to allow a settled insanity defense, the defense is incompatible with this Defendant's consistent averment of innocence. The Pennsylvania Supreme Court has held repeatedly that a defense of diminished capacity or insanity "applies only when the defendant admits his culpability, but contests his degree of guilt." Commonwealth v. Williams, 846 A.2d 105, 112 (Pa. 2004). A defense of insanity acknowledges commission of an act, but

asserts a lack of legal culpability. See Commonwealth v. Hughes, 865 A.2d 761, 788 (Pa. 2004). A defense of diminished capacity similarly admits liability, but contests the degree of guilt due to the lack of the requisite mental state. See id. Thus, if a defendant claims innocence, he cannot assert a claim of diminished capacity or insanity. See Williams, 846 A.2d at 112. In Commonwealth v. Cross, the defendant maintained innocence throughout the guilt phase and sentencing phase of his trial. See Commonwealth v. Cross, 634 A.2d 173, 175 (Pa. 1993). The Court refused to find trial counsel ineffective since because the defendant claimed he did not commit the murders, "it would have been improper for his attorneys to introduce any evidence of insanity." See id.

In the instant case, Robinson has consistently maintained he did not purchase alcohol for any minors on the date in question, stating he had neither the money nor the inclination to do so. See Rotenburg Report, at 6. Thus, this is not a case where the defendant admits liability but seeks to excuse his act on the basis of insanity. Instead, the defendant has denied committing the criminal act of which he is accused. A settled insanity defense, therefore, even if allowed under our law, would be inappropriate here because the Defendant maintains his innocence.

In addition, even if the doctrine of settled insanity were adopted and allowed by our appellate courts, the Defendant has not put forth sufficient factual evidence to allow a jury to consider whether or not it applies. A defense of insanity requires not only a defect of the mind, but also that the Defendant either not understand the nature and quality of his acts, or that he did not understand his acts were wrongful. See Commonwealth v. Hicks, 396 A.2d 1183, 1185 (1979). Further, a defendant's actions during and after a crime may be admitted to show she knew the nature of her act, and that the act was wrong. See Commonwealth v. Green, 426 A.2d 614, 616 (Pa. 1981). Dr. Rotenburg's report makes clear the Robinson understood the nature and quality of the act he is alleged to have committed. See Rotenburg Report, at 6, 7 (Defendant insists the allegations are untrue, and that he neither sold nor bought alcohol for the teens); Rotenburg Supplemental Report, at 1 ("I believe that he understood the nature and quality of his act."). Defendant states he had no money on the day in question, and that he has no idea where the children obtained the alcohol. See Rotenburg Report, at 6. This clearly demonstrates he understands the nature and quality of the alleged act.

Further, it is clear from his strenuous and consistent denials that the Defendant does understand his act was wrong. Robinson repeatedly insists to the doctor the allegations against him are untrue. Id. Even when the doctor offers the possibility Defendant was too intoxicated to recall his actions, Robinson denies he committed the charged offenses. Id at 7. During the psychiatric evaluation, Robinson supplied the doctor with reasons why the charges are incorrect, and strenuously maintained he did not purchase alcohol for minors. See id. at 6-7. As the Commonwealth points out, if the Defendant did not understand his conduct was wrongful, he would not deny the acts so strenuously.

Further, the Supplemental Report does not state any facts in support of Dr. Rotenburg's assertion Defendant did not understand his act was wrongful. Neither low to average scores on the administered psychological tests, nor head injuries, nor chronic alcoholism, are sufficient to demonstrate the Defendant did not understand the quality of his act, or that the act was wrong. See Rotenburg Supplemental Report, at 2. Rather, the supplement is full of bare conclusions, unsupported by the facts set forth in his previously submitted report. Cf. Commonwealth v. Sasse, 921 A.2d 1229, 1236 (Pa. Super. 2007). As such, even if the Court were inclined to allow the settled insanity defense, in the instant case, the expert report simply does not provide the facts necessary to allow the question of the Defendant's sanity to go to the jury.

Conclusion

It is the duty of a trial court to apply the settled law to the facts of the cases that come before it, not to create law or implement new policy. While our sister states may allow a defense of settled or fixed insanity, Pennsylvania appellate courts have not endorsed the doctrine. As such, given the emphasis in our jurisprudence on volition when dealing with intoxication and insanity, the Court concludes the doctrine will be adjudged incompatible with our settled principles of law and policy. Further, even if our appellate courts adopt this doctrine, because the Defendant maintains his innocence, the Court finds a settled insanity defense would be inapplicable to the instant case. In addition, because the expert reports do not set forth sufficient facts upon which a determination of insanity could be based, even if settled insanity was an accepted defense regardless of a claim of innocence, the question could not properly be put before a jury. Thus, for the reasons set forth in the above Opinion, the Commonwealth's Motion in Limine will be granted.

ORDER OF COURT

October 19, 2009, upon review of the Commonwealth's Motion in Limine, the Defendants Answer, the Commonwealth's and Defendant's legal memoranda submitted to the court, and after conducting a review of the applicable law, it it hereby ordered that the Commonwealth's Motion is granted and the Report and Supplemental Report submitted by Dr. Rotenburg as to the Defendant's sanity is suppressed.

[1] In Pennsylvania, a determination of a defendant's competency to stand trial and the determination as to whether an insanity defense is permissible are two distinct inquiries, such that a defendant may be competent to stand trial, but also found legally insane. See Commonwealth v. Bruno, 352 A.2d 40, 44 n. 3 (Pa. 1976). Competency determinations assess whether a defendant is able at the time of trial to consult with an attorney, participate in her own defense, and understand the proceedings against her. See 50 Pa. C.S.A. §7402(a) (2009). On the other hand, the insanity defense, according to the Hicks court, is a "societal judgment as to the minimal mental capacity" an actor must possess to be held criminally responsible for her acts. Id. at 1186. The insanity defense acknowledges commission of the act, but maintains there is an absence of legal culpability. See Commonwealth v. Hughes, 865 A.2d 761, 788 (Pa. 2004).