Was there enough evidence in the following case to require the trial judge to give a voluntary act instruction?

CASE Was the Shooting Accidental?

Brown v. State
955 S.W.2d 276 (Tex. 1997)

HISTORY

Alfred Brown, the defendant, was convicted in the 268th Judicial District Court, Fort Bend County, of murder. The defendant appealed. The Houston Court of Appeals reversed and remanded. State petitioned for discretionary review. The Court of Criminal Appeals, Overstreet, J., held that the defendant was entitled to jury charge on voluntariness of his acts. Decision of Court of Appeals affirmed.

OVERSTREET, J.

FACTS

On the evening of July 17, 1992, Alfred Brown (appellant) was drinking beer and talking with friends in the parking lot of an apartment complex. Brown was involved in an altercation with James McLean, an individual with whom he had an encounter the week before in which McLean and some other individuals had beaten Brown. Brown testified that following the altercation on the day in question, he obtained a .25-caliber handgun in order to protect himself and his friends from McLean and his associates, who were known to possess and discharge firearms in the vicinity of the apartment complex.

Brown, who is right-handed, testified that he held the handgun in his left hand because of a debilitating injury to his right hand. Brown testified that during the course of the events in question, the handgun accidentally fired when he was bumped from behind by another person, Coleman, while raising the handgun.

Coleman testified that he bumped Brown and the handgun fired. Brown testified that the shot that fatally wounded the victim, Joseph Caraballo, an acquaintance and associate of Brown, was fired accidentally. The victim was not one of the persons Brown was at odds with, but a person aligned with Brown.

OPINION

Jury Instruction: Evidentiary Sufficiency

Appellant testified at trial that the handgun in his possession accidentally discharged after he was bumped from behind by Ryan Coleman. Coleman also testified at trial that his bumping appellant precipitated the discharge of the gun and that idiosyncrasies of the handgun may have also allowed its discharge.

Section 6.01(a) of the Texas Penal Code states that a person commits an offense only if he engages in voluntary conduct, including an act, an omission, or possession. Only if the evidence raises reasonable doubt that the defendant voluntarily engaged in the conduct charged should the jury be instructed to acquit. "Voluntariness," within the meaning of section 6.01(a), refers only to one's physical bodily movements. While the defense of accident is no longer present in the penal code, this Court has long held that homicide that is not the result of voluntary conduct is not to be criminally punished.

We hold that if the admitted evidence raises the issue of the conduct of the actor not being voluntary, then the jury shall be charged, when requested, on the issue of voluntariness. The trial court did not grant appellant's request and the court of appeals correctly reversed the trial court. We hereby affirm the decision of the court of appeals.

DISSENT

PRICE, J.
For conduct to support criminal responsibility, the conduct must "include a voluntary act so that, for example, a drunk driver charged with involuntary manslaughter may not successfully defend with the argument he fell asleep before the collision since his conduct included the voluntary act of starting up and driving the car." Interestingly, these comments suggest that one voluntary act—regardless of subsequent acts—may form a basis for criminal responsibility.

Although a voluntary act is an absolute requirement for criminal liability, it does not follow that every act up to the moment that the harm is caused must be voluntary. This concept is best demonstrated by an example: *A* who is subject to frequent fainting spells voluntarily drives a car; while driving he faints, loses control of the vehicle, and injures a pedestrian; *A* would be criminally responsible. Here, *A*'s voluntary act consists of driving the car, and if the necessary mental state can be established as of the time he entered the car, it is enough to find *A* guilty of a crime.

Section 6.01(a) functions as a statutory failsafe. Due process guarantees that criminal liability be predicated

on at least one voluntary act. In all criminal prosecutions the State must prove that the defendant committed at least one voluntary act—voluntary conduct is an implied element of every crime. Because it is an implied element, the State is not required to allege it in the charging instrument. For most offenses, proof of a voluntary act, although a separate component, is achieved by proving the other elements of the offense.

I believe the trial court properly denied appellant's request for an affirmative submission on voluntary conduct. I would reverse the court of appeals and affirm the trial court. Because the majority does not, I must dissent.

QUESTIONS

1. **State the facts relevant to deciding whether Aaron Brown "voluntarily" shot Joseph Caraballo.**
2. **State the majority's definition of "voluntary act."**
3. **Summarize the majority's reasons for holding that the trial judge was required to instruct the jury on voluntary act.**
4. **Summarize the dissent's reasons for dissenting.**
5. **Which decision do you agree with? Back up your answer.**

EXPLORING FURTHER

Voluntary Acts

1. Was Killing Her Daughter a Voluntary Act?

King v. Cogdon (Morris 1951, 29)

FACTS Mrs. Cogdon worried unduly about her daughter Pat. She told how, on the night before her daughter's death, she had dreamed that their house was full of spiders and that these spiders were crawling all over Pat. In her sleep, Mrs. Cogdon left the bed she shared with her husband, went into Pat's room, and awakened to find herself violently brushing at Pat's face, presumably to remove the spiders. This woke Pat. Mrs. Cogdon told her she was just tucking her in. At the trial, she testified that she still believed, as she had been told, that the occupants of a nearby house bred spiders as a hobby, preparing nests for them behind the pictures on their walls. It was these spiders which in her dreams had invaded their home and attacked Pat.

There had also been a previous dream in which ghosts had sat at the end of Mrs. Cogdon's bed and she had said to them, "Well, you have come to take Pattie." It does not seem fanciful to accept the psychological explanation of these spiders and ghosts as the projections of Mrs. Cogdon's subconscious hostility toward her daughter; a hostility which was itself rooted in Mrs. Cogdon's own early life and marital relationship.

The morning after the spider dream, she told her doctor of it. He gave her a sedative and, because of the dream and certain previous difficulties she had reported, discussed the possibility of psychiatric treatment.

That evening, while Pat was having a bath before going to bed, Mrs. Cogdon went into her room, put a hot water bottle in the bed, turned back the bedclothes, and placed a glass of hot milk beside the bed ready for Pat. She then went to bed herself. There was some desultory conversation between them about the war in Korea, and just before she put out her light, Pat called out to her mother, "Mum, don't be so silly worrying there about the war, it's not on our front doorstep yet."

Mrs. Cogdon went to sleep. She dreamed that "the war was all around the house," that soldiers were in Pat's room, and that one soldier was on the bed attacking Pat. This was all of the dream she could later recapture. Her first "waking" memory was of running from Pat's room, out of the house, to the home of her sister who lived next door. When her sister opened the front door, Mrs. Cogdon fell into her arms, crying "I think I've hurt Pattie." In fact, Mrs. Cogdon had, in her somnambulistic state, left her bed, fetched an ax from the woodheap, entered Pat's room, and struck her with two accurate, forceful blows on the head with the blade of the ax, thus killing her.

At Mrs. Cogdon's trial for murder, Mr. Cogdon testified, "I don't think a mother could have thought any more of her daughter. I think she absolutely adored her." On the conscious level, at least, there was no reason to doubt Mrs. Cogdon's deep attachment to her daughter. Mrs. Cogdon pleaded not guilty.

Was she guilty? No, said the appeals court.

DECISION Mrs. Cogdon's story was supported by the evidence of her physician, a psychiatrist, and a psychologist. The jury believed Mrs. Cogdon. The jury concluded that Mrs. Cogdon's account of her mental state at the time of the killing, and the unanimous support given to it by the medical and psychological evidence, completely rebutted the presumption that Mrs. Cogdon intended the natural consequences of her acts. [She didn't plead the insanity defense "because the experts agreed that Mrs. Cogdon was not psychotic.] (See the Insanity section in Chapter 6.) The jury acquitted her because "the act of killing itself was not, in law, regarded as her act at all."

2. Were His Acts Committed During an Epileptic Seizure Voluntary?

People v. Decina, 138 N.E.2d 799 (N.Y. 1956)

FACTS Emil Decina suffered an epileptic seizure while driving his car. During the seizure, his car ran up over the curb and killed four children walking on the sidewalk. Was the killing an "involuntary act" because it occurred during the seizure?

Were his acts during the seizure voluntary. No, said the appeals court.

DECISION This defendant knew he was subject to epileptic attacks at any time. He also knew that a moving vehicle uncontrolled on a public highway is a highly dangerous instrumentality capable of unrestrained destruction. With this knowledge, and without anyone accompanying him, he deliberately took a chance by making a conscious choice of a course of action, in disregard of the consequences which he knew might follow from his conscious act, which in this case did ensue.

3. Were His Acts Following Exposure to Agent Orange Voluntary?

State v. Jerrett, 307 S.E.2d 339 (1983)

FACTS Bruce Jerrett terrorized Dallas and Edith Parsons—he robbed them, killed Dallas, and kidnapped Edith. At trial, Jerrett testified that he could remember nothing of what happened until he was arrested and that he had suffered previous blackouts following exposure to Agent Orange during military service in Vietnam. The trial judge refused to instruct the jury on the defense of automatism.

Did he act voluntarily? It's up to the jury said the appeals court.

DECISION The North Carolina Supreme Court reversed and ordered a new trial.

> Where a person commits an act without being conscious thereof, the act is not a criminal act even though it would be a crime if it had been committed by a person who was conscious.
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> In this case, there was corroborating evidence tending to support the defense of unconsciousness. Defendant's very peculiar actions in permitting the kidnapped victim to repeatedly ignore his commands and finally lead him docilely into the presence and custody of a police officer lends credence to his defense of unconsciousness. We therefore hold that the trial judge should have instructed the jury on the defense of unconsciousness.

4. Are Any of the Following Voluntary Acts?

a. Drowsy drivers who fall asleep while they're driving and hit and kill someone while they're asleep.
b. Drunk drivers who are so intoxicated they're not in control when they hit and kill someone.
c. Drivers with dangerously high blood pressure who suffer strokes while they're driving and kill someone while the stroke has incapacitated them.

Examples 4a–c are examples of what we might call voluntarily induced involuntary acts. In all three examples, the drivers voluntarily drove their cars, creating a risk they could injure or kill someone. In all three examples, involuntary acts followed that killed someone. Should we stretch the meaning of "voluntary" to include them within the grasp of the voluntary act requirement using the MPC's "conduct including a voluntary act" definition? Why should we punish them? Because they deserve it? Because it might deter people with these risky conditions from driving? Because it will incapacitate them?

Status as a Criminal Act

LO 4

"Action" refers to what we *do*; **status** (or condition) denotes who we *are*. Most statuses or conditions don't qualify as *actus reus*. Status can arise in two ways. Sometimes, it results from prior voluntary acts—methamphetamine addicts voluntarily used methamphetamine the first time and alcoholics voluntarily took their first drink. Other conditions result from no act at all. The most obvious examples are the characteristics we're born with: sex, age, sexual orientation, race, and ethnicity.

Actus Reus and the U.S. Constitution

LO 5

It's clear that, according to the general principle of *actus reus*, every crime has to include at least one voluntary act, but is the principle of *actus reus* a constitutional command? Twice during the 1960s, the U.S. Supreme Court considered this question. In the first case, *Robinson v. California* (1962), Lawrence Robinson was convicted and sentenced to a mandatory 90 days in jail for violating a California statute making it a misdemeanor "to be addicted to" narcotics. Five justices agreed that punishing Robinson solely for his addiction to heroin was cruel and unusual punishment (Chapter 2). The Court expressed