

# Criminalising the Dangerous and Delusional

John J. Child, Birmingham Law

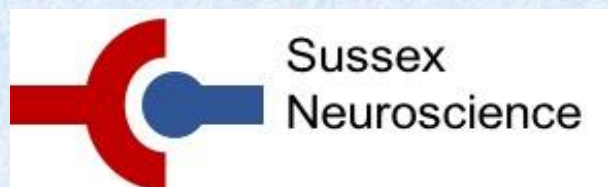
Hans S. Crombag, Sussex Psychology & Neuroscience

G.R. Sullivan, UCL Laws

Sussex Crime Research Centre (CRC)

Sussex Addiction Research and Intervention Centre (SARIC)

Birmingham Centre for Crime, Justice and Policing (CCJP)



# **Taj v The Crown [2018] EWCA Crim 1743 (24 July 2018)**

Simon Taj began drinking heavily on Friday 29 January 2016 and continued into the early hours of Saturday 30 January. At roughly 2 pm on Sunday 31st January 2016, Taj came across the broken-down vehicle of Mohammed Awain. The vehicle was smoking, and Awain was standing beside it. Unfortunately, Taj mistook the wires and equipment he saw in the open boot of Awain's car (Mr Awain is an electrician) as the components of a terrorist bomb which he was on the point of assembling to explode. Taj called the police, who attended the scene, to find that Awain was entirely innocent. Taj initially drove away following police assurances as to Awain's innocence, but soon returned, still convinced that Awain was indeed a terrorist. Taj felt that he must do something to stop him. At 2.46 pm, Taj launched a ferocious attack on Awain with a metal tyre lever, almost killing him. When police arrived and restrained Taj, he expressed surprise – 'why are you arresting me he's the terrorist'. Taj was so calm and lucid at interview, the police officers present did not arrange for blood samples to be taken. He was charged with attempted murder, but claimed to have acted in self-defence on the basis of his mistaken belief.

# The legal 'quagmire'

## 1. Intoxication –

- External cause; Dangerous Drug
- Taj cannot rely on an intoxicated mistake for SD

## 2. Insanity –

- Internal cause; D does not understand nature or quality of action *or* does not know it is wrong
- Taj cannot rely on SD, but may be 'Not Guilty by reason of insanity'

## 3. Non-insane delusion –

- Internal cause; not meeting the definition of insanity
- Taj cannot rely on a delusional belief for SD



# Taj - Outcome

- **Crown Court:** guilty of attempted murder. D could not rely on his mistaken belief because it was induced by voluntary intoxication.
- **Court of Appeal:** conviction upheld on appeal. Five Member - The President of the Queen's Bench Division (Sir Brian Leveson); Lord Justice Gross; Lord Justice Davis; Mr Justice Haddon-Cave; and Sir Peter Openshaw. Unanimous, delivered by Leveson.
  - Taj was intoxicated, and so the intoxication rules apply; and/or
  - Taj was suffering from a delusion that may not be taken into account when applying self-defence

# 1. Was Taj Intoxicated?

- Rule that intoxicated beliefs cannot be relied upon for self-defence. We could challenge this...
- But even more concerning – what is intoxication?

*[Para 60] 'In our view, the words "attributable to intoxication" in s76(5) are broad enough to encompass both (a) a mistaken state of mind as a result of being drunk or intoxicated at the time and (b) a mistaken state of mind immediately and proximately consequent upon earlier drink or drug-taking, so that even though the person concerned is not drunk or intoxicated at the time, the short-term effects [earlier drink and drug-taking in the previous days and weeks] can be shown to have triggered subsequent episodes of e.g. paranoia.'*

# 1. Was Taj Intoxicated?

[Para 57] *The fact is that medical science has advanced such that, in the modern age, the longer term sequelae of abusing alcohol or drugs are better known and understood; and, as in the present case, it was agreed that Taj's episode of paranoia which led him to mistake the innocent Mr Awain as a terrorist was a direct result of his earlier drink and drug-taking in the previous days and weeks.*

- Drug induced psychosis, NOT psychosis related to withdrawal or addiction/mental illness
- Is this distinction desirable or sustainable? No...



## 2. Was Taj Legally Insane?

- The Court and experts say a simple 'no'. But why?
- **Internal cause:** Late diagnosis of bipolar disorder (manic depression)
- **Causing D not to understand the nature or quality of his action (?)**

*OR*

- **Not to understand that it was wrong (?)**

### **3. Was Taj experiencing a non-insane delusion?**

[Para 62] *'In the alternative, if we are wrong about either of the foregoing conclusions...'*

[Para 63] *'This case... was not normal.'*

Applying Oye, which is [Para 64] *'equally apposite in this case'*

[Para 63] *'An insane person cannot set the standards of reasonableness as to the degree of force used by reference to his own insanity.'*



# 3. Was Taj experiencing a non-insane delusion?

- NOT the same as *Oye*
  - And if it was, then insanity verdict should have been substituted
- SIMILAR to *Martin*
  - But no option for diminished responsibility with attempted murder
- **Perverse result:**
  - **D has capacity but unreasonably fails to use it = Defence Applies**
  - **Mistake due to lack of capacity (but not insane) = Defence Blocked**

## After *Taj*

- *Taj* is not being appealed to the Supreme Court. However, concerns have been raised, and a new case likely....
- What should they do?
  - **Intoxication**: Narrow definition to ‘drugs on board’
  - **Insanity**: Expand through more natural interpretation
  - **Non-insane delusions**: Abolish bespoke common law rules

Thanks!

