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COMMONWEALTH v. SCHULZE

In *Commonwealth v. Schulze*,¹ the Supreme Judicial Court of Massachusetts overruled the lower court's decision and adjudged that testimony by a general practitioner concerning a defendant's mental condition was admissible.² Prior to this decision, Massachusetts case law prohibited opinion testimony regarding a defendant's lack of criminal responsibility from a person who was not specialized in the treatment of mental diseases.³ The court in *Schulze*, however, addressed the issue of whether a general practitioner, who had examined a defendant a few days prior to a crime, could testify as to his observation and diagnosis of the defendant's mental condition at the time of treatment.⁴ Based on the facts in *Schulze*, the court concluded that exclusion of a general practitioner's testimony constituted reversible error.⁵ The court's holding on this issue broadens the scope of admissible evidence allowed in a criminal trial where insanity is raised as a defense.⁶

In 1982, Mark Schulze appealed his conviction of armed robbery on the ground that the trial judge's exclusion of the testimony by a general practitioner, Dr. Chin, amounted to prejudicial error.⁷ Defendant Schulze claimed that he was in a state of acute toxic psychosis, caused by a heroin overdose, when he attempted an armed robbery of a Somerville pharmacy.⁸ Thus, his sole defense was that he lacked criminal responsibility.⁹

1. 389 Mass. 735, 452 N.E.2d 216 (1983).

2. *Id.*

3. *Id.* at 738-39, 452 N.E.2d at 219-20. See *Commonwealth v. Boyd*, 367 Mass. 169, 182, 326 N.E.2d 320, 328-29 (1975) (defines the longstanding rule on expert testimony in Massachusetts).

4. *Schulze*, 389 Mass. at 739-40, 452 N.E.2d at 220.

5. *Id.* at 742, 452 N.E.2d at 221.

6. *Id.*

7. *Id.* at 736, 452 N.E.2d at 218. The defendant also contended that if the offer of proof was deficient then he was thereby denied effective assistance of counsel. *Id.* at 738, 452 N.E.2d at 219.

8. *Id.* at 736, 452 N.E.2d at 218.

9. *Id.* See *Commonwealth v. McHoul*, 352 Mass. 544, 549-53, 226 N.E.2d 556, 559-62 (1967). In *McHoul*, the court applied the Model Penal Code approach to the definition of criminal responsibility:

Section 4.01 Mental Disease or Defect Excluding Responsibility (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of

The defense presented a qualified psychiatrist who confirmed that the defendant suffered chronic characterological depression and, that at the time of the robbery, the defendant was in an acute toxic psychosis.¹⁰ In addition to the psychiatrist's testimony, the defense attempted to introduce evidence from Dr. Stanley Chin, a licensed general practitioner who had examined the defendant during the week before the robbery attempt.¹¹ It was this testimony which the trial court found inadmissible.¹² Chin examined Schulze on September 7th and 13th, 1979 and concluded that he was depressed and had manic tendencies. Schulze was advised to seek a psychiatric consultation.¹³ Although this evidence was relevant, the major issue addressed was whether such testimony was admissible.¹⁴

The Massachusetts appellate court adhered to the established Commonwealth rule that a non-specialist witness was prohibited from giving an opinion, based on either hypothetical circumstances or personal observation, regarding a defendant's mental condition at a time, prior to, or during a crime.¹⁵ The court stated that "while most other jurisdictions permit lay witnesses to state his or her opinions as to a person's mental condition, 'such opinion is severely circumscribed in Massachusetts.' Thus, the general rule in Massachusetts is that persons who do not qualify as experts in mental illness may testify only as to facts observed and may not testify as to their opinions with respect to the mental condition of another."¹⁶

The justification for this rule was thoroughly analyzed in the

mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

MODEL PENAL CODE § 4.01 (Proposed Official Draft 1962).

10. *Schulze*, 389 Mass. at 736, 452 N.E.2d at 218.

11. *Id.* at 736, 452 N.E.2d at 219.

12. *Id.* at 737, 452 N.E.2d at 219. The final offer of proof at trial was that Dr. Chin had prescribed Valium on two occasions. The supreme judicial court, however, found such a limited view of the offer of proof unwarranted because the defense counsel had indicated earlier that Dr. Chin would testify as to the defendant's "state those four or five days before." *Id.*

13. *Id.* at 738, 452 N.E.2d at 219.

14. *Id.* at 742, 452 N.E.2d at 221.

15. *Commonwealth v. Schulze*, 14 Mass. App. Ct. 343, 346-47, 439 N.E.2d 826, 829 (1982). *Cf.* *Commonwealth v. Spencer*, 212 Mass. 438, 99 N.E. 266 (1912). In *Spencer* the court called for a relaxation of the settled rule and allowed a family physician to give an opinion of a testator's sanity. The case involved the execution of a will by a person whose mental capacity was in question. *Id.*

16. *Schulze*, 14 Mass. App. Ct. at 346-47, 439 N.E.2d at 829 (quoting P. LIACOS, HANDBOOK OF MASSACHUSETTS EVIDENCE 102 (5th ed. 1981)).

Massachusetts case, *Commonwealth v. Boyd*.¹⁷ In *Boyd*, the court stated that a trial judge should determine whether a witness is qualified to offer an expert opinion on mental illness by assessing whether he or she has sufficient knowledge, special skills and expertise in this area.¹⁸ A review of the trial transcript by the supreme judicial court in *Schulze* confirmed that the judge had disallowed testimony of the defendant's mental condition because the doctor/witness was a general practitioner and consequently, under the Massachusetts rule, unqualified to express an opinion on the issue.¹⁹ The supreme judicial court reversed the lower courts' strict adherence to the long-standing general principle and formulated a new approach. When insanity is raised as a defense, a general practitioner who has examined a defendant, may now testify about the defendant's mental condition.²⁰

The new rule reflects the prevailing view in other jurisdictions where a similar standard of criminal responsibility is applied.²¹ This view is founded upon the conclusion that when criminal responsibility is at issue, evidence of a defendant's conduct and appearance, before or after the crime, are matters for the jury to decide. Additionally, if a physician is qualified to diagnose and prescribe treatment for a defendant, then the physician should be allowed to testify concerning these conditions.²²

After applying the newly adopted rule and concluding that Dr. Chin's testimony was admissible, the court was required to determine whether the exclusion of the evidence constituted reversible error.²³ Under Massachusetts' law, if the consumption of drugs causes a mental disease or defect apart from an addiction itself, a defendant may rely upon that mental disease or defect to support an assertion

17. 367 Mass. 169, 326 N.E.2d 320 (1975).

18. *Id.* at 182, 326 N.E.2d at 328.

19. *Schulze*, 389 Mass. at 737, 452 N.E.2d at 219.

20. *Id.* at 738, 452 N.E.2d at 219-20. The supreme judicial court, however, noted in a footnote that the appeals court should not be faulted for adhering to the old rule on the subject. *Id.* at 740 n.4, 452 N.E.2d at 220 n.4.

21. *Id.* at 740, 452 N.E.2d at 220. Other jurisdictions mentioned by the court in *Schulze* apply substantially the same standard of criminal responsibility as Massachusetts does, i.e., Model Penal Code approach. *See, e.g.*, *United States v. Hartfield*, 513 F.2d 254 (9th Cir. 1975); *United States v. Smith*, 507 F.2d 710 (4th Cir. 1974).

22. *Schulze*, 389 Mass. at 740, 452 N.E.2d at 220. This "new" approach adopted by the supreme judicial court only relates to a general practitioner as a witness. The expansion of the rule does not allow a general practitioner to offer an opinion on a defendant's criminal responsibility at the time of the crime. *Id.*

23. *Id.* at 741, 452 N.E.2d at 221.

of lack of criminal responsibility.²⁴ The court reasoned that Dr. Chin's testimony may have had a tendency to support the psychiatrist's testimony regarding the issue of the defendant's chronic depression.²⁵ Although the psychiatrist's opinion as to the defendant's criminal responsibility was based upon the acute toxic psychosis caused by the heroin overdose, the jury potentially could have considered an alternate theory, i.e., severe chronic depression.²⁶ Therefore, exclusion of Dr. Chin's testimony, which if admitted might have substantially affected the jury's evaluation of the defendant's culpability, significantly weakened the defendant's case.²⁷ Thus, the judgments against Schulze were reversed, and a new trial ordered.²⁸

The supreme judicial court's decision in *Schulze* significantly expands the scope of testimony admissible when criminal responsibility is at issue. The court now allows opinion testimony on a defendant's mental condition by a non-specialist/general practitioner who has examined a defendant within a reasonable time prior to or after the happening of a crime.²⁹ A defendant's conduct and appearance prior to a crime are factors for the jury to consider. Based on this premise, the new rule applied in *Schulze* allows a more thorough and complete assessment of a criminal defendant's mental condition.

Robin L. Oaks

24. See *Commonwealth v. Sheehan*, 376 Mass. 765, 769, 383 N.E.2d 1115, 1118 (1978) (established the rules which relate to drug use and criminal responsibility).

25. *Schulze*, 389 Mass. at 742, 452 N.E.2d at 221-22.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 740, 452 N.E.2d at 220. The new rule, however, does not go as far as other jurisdictions in which opinions as to a person's mental condition may be received from a lay witness who has had adequate opportunity to observe the defendant. See *Underwood v. State*, 553 S.W.2d 869 (Mo. App. 1977); *Smith v. State*, 502 S.W.2d 814 (Tex. Crim. 1973).