Criminal Behaviour Following Drug Treatment for Psychiatric Disorders: Medicolegal and Ethical Issues

Marie Berry
Healthcare Consultant, Winnipeg, Manitoba, Canada

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Summary

The intake of drugs used to treat psychiatric disorders has been used as a defence for individuals who have committed crimes. This defence has developed from the involuntary intoxication defence. Just as an individual drinking a 'spiked' beverage could not be held responsible for their actions while intoxicated, neither can the accused who is under the influence of prescription drugs. Because the effects of the drugs are largely unknown by the general public, their use affords such a defence.

Use of drugs such as triazolam and fluoxetine has been raised as a successful defence to criminal acts, but scientific evidence appears unable to link either drug to actually causing crime. However, the use of the drug is able to negate the intent (or *mens rea*). With no criminal intent the accused may be able to raise a successful defence and reduce the charge and/or punishment. The Ilo Grundberg case is illustrative. Mrs Grundberg, under the influence of the benzodiazepine triazolam, murdered her mother. The defence of triazolam use succeeded, and Mrs Grundberg went on to sue the manufacturer of the drug for damages. The case was settled out of court for an undisclosed amount.
A successful defence is complex and depends on many parameters, including the agent used, concomitant use of other medications, pre-existing medical conditions and the dosage of the drug(s) involved. For the accused and their legal counsel, drug-induced crime means a successful conclusion to a criminal charge. For drug manufacturers and prescribers, the relationship can lead to litigation.

Instances of crimes induced by drugs used to treat psychiatric disorders occur when an individual is charged with a crime and invokes drug use or, more correctly, drug intoxication as a defence. In essence, the accused is saying that they did not commit the crime, the drug did. The drug diminished their capacity and so the drug was responsible for their actions. Such instances receive much publicity and create the impression that taking certain drugs is a defence. This type of defence builds on the traditional defence of intoxication, i.e. that an individual drinking a 'spiked' beverage cannot be held responsible for their actions while intoxicated. The suggestion that drugs can cause crime follows from the use of drug consumption as a defence.

Throughout this review the term ‘drug’ will be used to describe prescription drugs that are used to treat psychiatric disorders.

There are many examples of the consumption of drugs being used as a successful defence:

- A driver taking lorazepam is charged with careless driving and uses his lorazepam consumption as a defence. The court decides that the lorazepam use is not a defence to the road traffic charge, but is a mitigating factor in sentencing.[1]
- A woman is acquitted of murdering her husband by stabbing because she was under the influence of an excessive dose of diazepam at the time.[1]
- The use of fluoxetine is considered by a court to have caused nymphomania and subsequent prostitution in a woman. As a result, the charges of prostitution are dismissed.[2]
- Another recently publicised case is that of Mrs Ilo Grundberg. On 19 June 1988, Mrs Grundberg fatally shot her 82-year-old mother 8 times in the head and neck. Mrs Grundberg was arrested and charged with murder; however, she never stood trial.[3] Her defence was temporary insanity due to a severe case of triazolam intoxication.

1. Intent – The Mens Rea

To understand how the defence works it is essential to understand the elements of a crime such as murder. The terminology involved in the crime of murder varies from jurisdiction to jurisdiction, but there are in general 2 classifications of murder; (i) premeditated (or first degree murder) and (ii) manslaughter (or second degree murder). The former implies some degree of planning, while the latter is devoid of such planning.

Murder and manslaughter are acts against society, and the state, through laws, has made both crimes. The conduct against the law has been defined as ‘any event which is subject to the control of the human will.’[4] It is a voluntary act of commission or omission.[5]

To commit a crime both the act itself and the intent to commit the act are needed. The first element is straightforward, e.g. the shooting of a gun. The act is known legally as the actus reus. With drug-induced crime it is not the actus reus that is in question. The accused, as did Mrs Grundberg, readily admits the act. However, it is the second element to the criminal act, the intent or mens rea, that is in question. To be guilty of a crime there must have been an intent to commit it. Intent is defined as a blameworthy state of mine, culpability, responsibility or fault. Criminal intent is knowing that the act is unlawful, but still acting. Ignorance of the law is not an excuse; however, it may reduce the punishment.

It is rational that criminal sanctions should not be applied to those individuals that innocently caused harm. As US Justice Oliver Wendall Holmes