

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,465
	:
	:
vs.	: CRIMINAL DIVISION
	:
BRIAN YASIPOUR, SR.,	: Motion to Preclude
Defendant	: Diminished Capacity Defense

OPINION AND ORDER

Before the Court is the Commonwealth’s oral Motion to Preclude the Defense of Diminished Capacity, made just prior to resuming testimony on March 6, 2006. Argument on the motion was heard immediately following the making of the motion.

Defendant has been charged with homicide in connection with the killing of his five-year-old daughter on August 24, 2001. Trial began February 21, 2006. Defendant filed a Notice of Insanity Defense on February 20, 2002, and recently amended such to include the defense of diminished capacity. In the instant motion, the Commonwealth claims that Defendant cannot raise both an insanity defense and a defense of diminished capacity, arguing that the defense of diminished capacity can be raised only where a defendant admits culpability and that the defense of insanity seeks to negate culpability. The Court believes, however, that the Commonwealth is interpreting culpability in an erroneous manner, and that both defenses can be presented simultaneously.

It is true that the defense of diminished capacity, which claims the lack of the ability to form the specific intent to kill, applies only when the defendant admits his culpability, but contests his degree of guilt.¹ Commonwealth v. Williams, 846 A.2d 105 (Pa. 2004). By culpability, however, the Court is referring not to the *mens rea*, but to “the commission of the act” which led to the death of the victim. See Commonwealth v. Legg, 711 A.2d 430, 435 (Pa. 1998). Indeed, in Legg, in distinguishing cases relied upon by the Commonwealth, the Court referred to its previous holdings that in those cases trial counsel had not been “ineffective for failing to advance a *diminished capacity and/or insanity defense*”, and explained its reasoning

that “an insanity or diminished capacity defense, which would have admitted the commission of the act, would have directly conflicted with each defendant’s claim of innocence.” Commonwealth v. Legg, supra, 711 A.2d at 434-435 (emphasis added). The Court went on to find that in the case before it, the defendant did not deny shooting her husband, and thus a diminished capacity defense, “which suggests general culpability for the shooting” would not have directly conflicted with defendant’s position that the shooting was accidental, or alternatively, that defendant shot her husband in the heat of passion. Id. at 435.

In the instant case, Defendant admits he committed the act which led to the death of his daughter. Therefore, the defense of diminished capacity is not precluded by Defendant’s claim of insanity.

ORDER

AND NOW, this 7th day of March 2006, for the foregoing reasons, the Commonwealth’s motion to preclude the defense of diminished capacity is hereby DENIED.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson

1 The defense reduces culpability for first degree murder to third degree murder.