

R. v. Hewer Criminal Defences FACT PATTERN

Use the [Criminal Defences GRID](#) (the shared DOC) constructed by the class and the facts below to name and explain all of the possible criminal defences you could raise as Mr. Hewer's defence counsel. Rank the possible defences in order of strength and explain your order using the law of defences and the "air of reality" legal standard.

Mr. Hewer was addicted to heroin and trafficked in cocaine. Mr. Mondsech was his drug dealer and supplier. Mr. Hewer testified that when he went to Mr. Mondsech's house to purchase drugs, Mr. Mondsech would often inject him with heroin. At the time of the incident, Mr. Hewer was injecting heroin three or four times a day.

Mr. Hewer testified that when he took heroin he would become subdued or fall asleep. His evidence was confirmed by a Crown witness, J.S., who testified that when Mr. Hewer would inject heroin he would be normal and then nod off and fall asleep. She never saw him act aggressively.

Mr. Hewer said that before the incident he had on a few occasions taken cocaine intravenously. He described the effects of intravenous cocaine as being vastly different than heroin. When he took cocaine intravenously he would see shadows and become very frightened.

Mr. Hewer drove to the deceased's house (Mr. Mondsech) with two women, T.J. and K.S., to purchase crack or cocaine. When Mr. Hewer went into the house, the women stayed in the car.

There were no witnesses to the start of the altercation between Mr. Hewer and Mr. Mondsech. Mr. Hewer testified that Mr. Mondsech asked him if he was stealing from him and then injected him with a substance. Mr. Hewer had often received an injection of heroin when he went to Mr. Mondsech's house to pick up drugs to sell or use.

Mr. Hewer expected the substance to be heroin but upon receiving the injection, realized it was cocaine. He testified he became "very afraid" and felt that he "was dying". He said that he strongly disliked intravenous cocaine and he believed the deceased had given him a "hot dose"¹. Mr. Hewer claims that the injection of what he alleged to be intravenous cocaine served as a blow to his state of mind.

Mr. Hewer said that as a result of the injection, he felt like "everything went south", he was drowning and he saw visions of shadows. Mr. Hewer testified that the next thing he remembers was a firearm pointed at his face by a police officer at the time of his arrest. He has no memory of attacking Mr. Mondsech.

Crown witnesses, J.A. and J.S., resided on the floor above Mr. Mondsech. They heard noises and came downstairs to see Mr. Hewer in the midst of assaulting Mr. Mondsech. They tried to stop him and called the

¹ a mixture of battery acid and drug of choice prepared for injection intravenously by an unsuspecting victim junkie. Also could be a mixture of cocaine and heroin for intravenous injection.

police. Mr. Hewer stated words to the effect of, *"I am killing him because he killed me first"*. Mr. Hewer left the residence shortly after the police were called, taking among other items a bag of heroin.

Mr. Hewer got back into the vehicle and T.J. drove the vehicle away from the residence. The vehicle was chased by police cars. T.J. stopped the vehicle and Mr. Hewer fled on foot. Police officers followed Mr. Hewer and arrested him without incident. The officers noted that Mr. Hewer appeared agitated. While in the back of the police vehicle Mr. Hewer managed to ingest a large amount of the heroin he had taken from Mr. Mondsech's home.

Mr. Hewer was taken to the hospital where he was treated for a possible overdose. Photographs of Mr. Hewer taken in the hospital show marks on his arm consistent with a fresh injection. A sample of Mr. Hewer's urine taken shortly after his arrest contained compounds associated with cocaine, heroin and cannabis.

The autopsy on Mr. Mondsech revealed several stab wounds to his chest, abdomen, hands and arms. He had blunt force injuries to his head, scalp lacerations, puncture wounds and fractured fingers. The cause of death was determined to be the high number of stab wounds to his chest.

A forensic toxicologist and pharmacist, with expertise in the absorption, metabolism, excretion and pharmacological effects of pharmaceutical and illicit drugs testified that heroin is a depressant. The effects of intravenous heroin begin in 17 seconds with major euphoric effects for the next 15 to 20 minutes, subsiding over the next six to eight hours when the addicted heroin user would have another injection. A typical heroin addict will inject two or three times a day, depending on the person's habit. A person injecting every four to six hours has a heavy addiction such that they are tolerant to the effects of heroin and have to use more of the drug.

The expert further testified that the effects of intravenous cocaine begin in 17 seconds with a very euphoric, hyper and excited effect which lasts five to ten minutes with a little crash. They testified that cocaine is a stimulant with a range of effects from euphoria to paranoia to hallucinations to violent behaviour. Violent behaviour depends on the dose, mode of consumption, the concentration of cocaine, tolerance, and usually occurs with long-term heavy use of cocaine but can occur from a single-use.

Mr. Hewer lacks a violent history. There appears to be a lack of clear motive.