The Defence of Insanity: An Escape Route for Jack the Ripper?

There are several ways in which you could have completed this activity. Whichever approach you took, the following paragraphs may provide some useful information to supplement your own research.

It is suspected by many that Jack the Ripper committed the first of five gruesome murders on 31 August 1888. Since then, a wealth of literature and other forms of media have been produced which attempt to document his crimes. Most recently, the popular actor Johnny Depp was cast as Detective Inspector Frederick George Abberline – one of the chief investigators on the Ripper case - in the Hollywood blockbuster “From Hell”. The film depicts the Ripper as the Queen’s chief physician, who is ordered to kill a ring of prostitutes after it is discovered that the future king has fathered the child of one of their number. From what is known of the Ripper case, this is a significant deviation from the ‘truth’. Indeed, accounts like this – of which there have been hundreds over the past century – have completely distorted the information that was compiled by the officers who originally investigated the case. The fact remains that, despite their valiant efforts at the time, there is still speculation as to how many victims Jack the Ripper actually mutilated on the streets of Whitechapel and Spitalfields. Likewise, although there were several key suspects, the true culprit evaded capture and nobody was ever charged with the murders.

The question remains, however, as to how the Ripper case would have proceeded had he been caught? It would certainly be easier to believe that a person capable of removing the organs of another after brutally killing them, was suffering from some form of mental abnormality. Of course, having no definite culprit, it is impossible to ascertain the precise mental state of Jack the Ripper. However, as the activity required, it is possible to ascertain what exactly he would have needed to prove to rely on the defence of insanity.

The defence of insanity can only be used if, at the time of the offence, the defendant was within the legal definition of insanity, and is fit to stand trial. Although you were not required to research this for the activity in question, there is a special procedure to be followed if the accused is considered ‘unfit’ to plead and go through the usually trial process. The case of *Pritchard* (1836) suggested that the question to be asked is whether the defendant is ‘of sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defence’. Depending on his state of mind, Jack the Ripper may well have chosen to rely on the authority of *Pritchard*, in which case the judge may have placed him in an ‘insane asylum’ (what would now be known as a psychiatric hospital). If you have time after considering this response, you may want to do some further research on the procedure adopted for defendants who are classed as unfit to plead, and how this differs from the normal process.

As you will have established from your reading, M’Naughten’s case established the requirements for the defence of insanity. Three factors must be clearly proved, namely that:
• At the time of the offence, the defendant was labouring under a defect of reason;
• That the defect of reason was caused by a disease of the mind; and,
• This disease made the defendant unaware of the nature and quality of the act, or he did not realise what he was doing was wrong.

1. **At the time of the offence, the defendant was labouring under a defect of reason**

As held in the case of *R v Clarke* [1972], to successfully rely on insanity, the defendant must show that he had some deprivation of reasoning power, rather than mere temporary absentmindedness. Mrs Clarke was charged with shoplifting after several items were found in her bag which had not been paid for. At trial she argued that she had no recollection of putting the groceries into her bag, and that she had been feeling unwell for some days as a result of suffering from sugar diabetes. After listening to evidence from her GP, the trial judge decided that the defendant’s plea of not guilty should be classed as ‘not guilty by reason of insanity’; primarily because at the time of the offence she was labouring under a defect of reason. To avoid hospitalisation, the defendant changed her plea to one of guilty and was convicted by the jury. At appeal, the Court of Appeal disagreed with the decision of the trial judge and decided that Mrs Clarke had been wrongly forced to plead guilty. Her conviction was quashed.

2. **The defect of reason was caused by a disease of the mind**

The defect of reason described above must have emanated from a disease of the mind. Case law has shown that any disease which affects the functioning of the mind can amount to a ‘disease’ in the legal sense, providing it results from internal rather than external causes. Various conditions have been held to spring from internal disorders, such as sleepwalking, epilepsy, and even hyperglycaemia, caused by low blood-sugar level. Thus, in *R v Hennessy* [1989], the defendant was found guilty of taking a conveyance and driving whilst disqualified, by reason of insanity. The defendant had neglected to take his insulin due to stress, anxiety and depression, which subsequently spurred a hyperglycaemic episode. Yet despite arguing that these factors were *external* causes, and that he should be allowed to rely on the defence of automatism, the court of appeal disagreed. This can be contrasted with the case of *Quick and Paddison* [1973], where the court held that a hypoglycaemic attack (too much sugar in the bloodstream) was caused by external factors – i.e. from eating too little food and drinking too much alcohol after taken insulin – and the defendant was acquitted of assault, albeit on a technicality.

The result of these decisions is that we are now left with a law under which diabetics experiencing a hyperglycaemic episode, from lack of insulin or sugar, will be classed as insane: the diabetes is categorised as an internal factor, and therefore a disease of the mind. Alternately, somebody who commits a crime whilst suffering from the effects of too much sugar in the bloodstream, will be able to rely on the complete defence of automatism, as such a condition has been classed as an external factor impacting upon behaviour. This has been severely criticised by practitioners and academics alike, as has the idea that somebody who commits a crime whilst sleepwalking, or suffering from the effects of epilepsy, should be labelled as legally insane. Many of these problems originate from the fact that the M’Naughten rules, which outline the legal meaning of insanity, were developed in the 1800s, and are
therefore arguably outdated. Since the establishment of the rules, the defence of diminished responsibility has also been introduced by section 2 of the Homicide Act 1957. This provides a partial defence to murder, namely diminished responsibility. To rely on this defence, the accused must show that he is suffering from an ‘abnormality of mind’ which ‘substantially impaired his mental responsibility’ for the act. The effect of this is that there are now two separate defences (insanity and diminished responsibility), which deal with different types of mental condition. It has therefore been contended that the law in this area is in need of significant reform.

3. The disease made the defendant unaware of the nature and quality of the act, or he did not realise what he was doing was wrong

Finally, the defendant must show that he was unaware of the ‘nature and quality’ of the act in question. In simple terms, this covers situations where a person is unaware of what they are physically doing. For example, in the case of R v Kemp [1957], the defendant suffered from arteriosclerosis. This induced a state of unconsciousness during which he attacked his wife with a hammer. The court decided that he was unaware of his actions which resulted from the symptoms of his condition.

If the defendant cannot show that he was unaware of the nature and quality of his act, he must show that he did not realise what he was doing was wrong. In R v Windle, the defendant killed his wife by administering to her a fatal overdose of aspirin. The court heard that the victim was herself mentally unstable and had regularly spoken of committing suicide. A medical expert for the defendant gave evidence to the effect that he too was suffering from a disease of the mind, brought on by being in constant contact with his wife. Despite this, he was convicted of murder. At his appeal, counsel argued that the word ‘wrong’, as used in the M’Naughten rules, did not mean contrary to law, but contrary to common morals. Therefore, if someone suffering from a defect of reason could show that he believed what he was doing, although illegal, was morally right, he should be acquitted. The justices of appeal disagreed and held that the relevant test must be that the defendant did not realise that what he was doing was contrary to law.

When relying on the defence of insanity, the defendant bears the burden of proof. Therefore, it would have been up to Jack the Ripper to show that he fell within the legal definition of insanity outlined above. If insanity is established then, according to section 2 of the Trial of Lunatics Act 1883, the jury must find the defendant ‘not guilty by reason of insanity’. Before 1991, such a finding would have resulting in mandatory commitment to a psychiatric hospital, without any limitation of time. The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 altered this position, and the court can now choose from a range of disposals. Where the sentence for the offence in question is fixed by law – for example, murder – the court must continue to make a hospital order. In any other case, however, the court can make a hospital order for a fixed or unfixed period, make a guardianship order, a supervision and treatment order, or discharge the defendant absolutely.

In spite of significant advances in forensic technology, the true identity of Jack the Ripper will probably never be known. That said, his crimes continue to appear in the mass media. In 2006, under the instruction of Scotland Yard, a team of professionals
revisited the evidence originally gathered in the late 1800s. As a result, a photo-fit was produced of what it is thought the Ripper looked like: a man of stocky build, aged between 25 and 35, and between 5ft 5ins and 5ft 7ins tall. Nevertheless, what we can be certain of, is that if the Ripper had been caught, and found 'not guilty by reason of insanity', he would undoubtedly have died in what was then called an insane asylum, after being given the maximum penalty for his terrible crimes.