

Guilty or Not?

A Descriptive Psychology Analysis

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Abstract

Descriptive Psychology offers powerful conceptual resources to make the forensic evaluation of persons more responsive to questions of essential concern to the court and the human community. As an example of the effectiveness of Descriptive Psychology in forensic assessment, the basic facts of a problematic case are presented, followed by possible verdicts and questions that need to be addressed. A set of relevant concepts from Descriptive Psychology is introduced, and an analysis of the case is given using these concepts. The analysis shows the importance of focusing on *what* Deliberate Action the person engaged in, and demonstrates the power and effectiveness of a systematic, comprehensive approach to forensic evaluation using Descriptive Psychology resources.

Descriptive Psychology, a conceptual system developed by Peter G. Ossorio at the University of Colorado, is being used successfully by a growing body of forensic psychologists. Judges, lawyers, and the members of the law enforcement community who have been exposed to the concepts of Descriptive Psychology respect the power and clarity that the system provides for the assessment and evaluation of persons.

This paper provides an introduction to a few of the distinctive resources that Descriptive Psychology has to offer the legal

community. In order to illustrate the practical applicability of these concepts, the basic facts of a problematic case are presented, followed by the possible verdicts and essential questions that need to be addressed in the case. A set of relevant concepts from Descriptive Psychology is presented, and an analysis of the case is given using these concepts. The larger significance of the case formulation is discussed.

Basic Facts of the Case

The basic facts of the case are presented, as they were provided (cf., McKee, 1994), in the summary below. The reader is advised that these are the only facts that are known, and there are no other facts known that would grossly invalidate what is presented here. What is presented here was deemed valid and veridical to the extent known.

Ms. D, a 24 year old divorced mother of two children, was charged with the gunshot murder of her ex-husband. At 6:00 AM on the day of the shooting, Ms. D was preparing breakfast when Mr. D came to her house and threatened to kill her if she did not let him enter. In response to a neighbor's complaint of the noise, police arrived to find Mr. D shot three times in the chest and Ms. D holding a gun while sobbing silently. There were no witnesses to the event other than the defendant (Ms. D) and the victim (Mr. D). Ms. D was arrested, incarcerated, and charged with murder.

The D's five-year marriage ended last year as a consequence of his dependence on alcohol and drugs that led to frequent well documented physical beatings of Ms. D before and after the divorce. In the months preceding the shooting, Mr. D had told family and friends that he would beat, burn, and kill Ms. D. On one occasion, he broke into the house, stripped Ms. D naked, and hung her out of a second story window by her feet.

Subsequent investigations document that: (1) Ms. D had purchased the gun one week prior to the shooting; (2) had kept the gun and bullets in separate rooms; (3) had sex with Mr. D two nights before the shooting; (4) had filed a restraining order against Mr. D

the day prior to the shooting; and (5) her right hand was covered with a residue consistent with the discharge from the pistol she held at arrest. Autopsy revealed that Mr. D had been shot 3 times at close range, all wounds within a 2 inch circle. Ms. D was hospitalized for evaluation of her competency to stand trial and criminal responsibility (insanity) for the crime of murder. When interviewed, she initially spoke in the first person and then switched to a third-person account. She stated:

“I feared for my life. I ran from the back porch to go to the closet to get my gun. I was scared. Then, it seemed like I wasn’t there anymore, it was like... there was just my eyes, my nose, and my mouth floating up there in the air looking down at this little girl holding a gun. I felt so sorry for the little girl. I really wanted to help her but I couldn’t do anything; all I had was eyes and mouth, no body or arms.”

She then reported that something moved around the side of the house and:

“the little girl pulled the trigger and the gun went off. There was a loud noise. The sound of the gun woke me up. It was me standing there with the gun.”

Police and medical records indicated that Ms. D had a similar dissociative episode at age 14 when beaten and raped by a neighbor. Current mental status examination revealed a bright, articulate woman with an emotional and dramatic presentation. There was no evidence of severe mental illness (e.g., psychosis, organic mental disorder, bipolar disorder). Ms. D did report numerous somatic complaints including headaches and fainting spells, however, neurological and neuropsychological workups were within normal limits.

Possible Verdicts

Ms. D faces four possible verdicts: (1) Guilty of murder; (2) Guilty of manslaughter; (3) Not Guilty by reason of self-defense; and (4) Not Guilty by Reason of Insanity. To obtain a guilty verdict of either murder or manslaughter, the prosecution must prove beyond a reasonable doubt that Ms. D did in fact shoot Mr. D *and* had sufficient capacity to form the intent to commit the shooting. To obtain a verdict of Not Guilty by Reason of Self-Defense or Not Guilty by Reason of Insanity, the defense would concede that Ms. D shot Mr. D, but then must prove by a preponderance of evidence that Ms. D was in fear of her life (self-defense) or did not have adequate *mens rea* capacity (insanity).

Because the shooting occurred in a state that has adopted the Model Penal Code of the American Law Institute (cf., McKee, 1994), the following legal definitions are applicable to this case.

1. Murder is the unlawful killing of another human being in a purposeful and knowing manner.
2. Manslaughter is the unlawful killing of a human being either: (a) recklessly; or (b) under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse as determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.
3. Self-defense is defined as the right of protection of one's person or property against some injury attempted by another and generally is considered to comprise four elements: (a) the defendant is not the initiator of the altercation; (b) the defendant believes himself to be in immediate danger of unlawful bodily harm from his adversary; (c) the defendant's use of deadly force is necessary to avoid this danger; and (d) the defendant was unable to otherwise retreat from his adversary's deadly attack.

4. The defense of insanity is defined as follows: "... as a result of a mental disease or defect [s]he lacked substantial capacity either to appreciate the criminality (wrongfulness) of [her] conduct or to conform [her] conduct to the requirements of the law" (Grisso, 1988, p. 159, quoting the ALI (1962) Model Penal Code, Sect. 4.01).

Essential Questions

In light of the preceding definitions, a psychologist called upon to assist the court in understanding the case needs to address the following questions:

1. Did Ms. D act "purposely and/or knowingly," i.e., "purposely" in that she consciously desired her conduct to cause a particular result; and/or "knowingly" in that she was aware her conduct was practically certain to cause a particular result?
2. Did Ms. D act "recklessly" in that she was aware of a risk that her conduct might cause a particular result; *or* was she acting "under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse as determined from the viewpoint of a person in the actor's situation under the circumstances as (s)he believes them to be"?
3. Did Ms. D act in self-defense? Did she "(a) initiate the altercation; (b) believe herself to be in immediate danger of unlawful bodily harm from Mr. D; (c) use deadly force necessary to avoid this danger; *and* (d) was she unable to otherwise retreat from Mr. D's deadly attack"?
4. Were the acts of Ms. D insane: "as a result of a mental disease or defect she lacked substantial capacity either to appreciate the criminality (wrongfulness) of her conduct or to conform her conduct to the requirements of the law"?

Concepts from Descriptive Psychology

Several concepts from Descriptive Psychology are particularly helpful in understanding the behavior and basic facts of the case described above. Relevant concepts include Maxims 1 and 5; Person; Deliberate Action; Emotional Behavior; Emotional States; and The Face in the Wall. Each is presented below. The value of these concepts in illuminating this particular case including the possible verdicts and essential questions is subsequently discussed, while a fuller exposition of these concepts (available in Ossorio, 1985, 1997, & 2006) is beyond the scope of this paper.

Maxims 1 and 5

Descriptive Psychology provides a set of nearly one hundred Status Dynamic Maxims. These are warnings and reminders that might appropriately be given by one person to another in regard to describing persons and their behavior. The term “status” reflects that they are about a person’s “place” in the world; the term “dynamic” reflects their relevance to giving accounts of why people do what they do and don’t do what they don’t do; and their codification as “maxims” characterizes their form as warnings and reminders, particularly when some important failure or possible failure regarding the Person concept is at stake.

Maxim 1: “A person takes it that things are as they seem, unless he has reason enough to think otherwise.” This reminds us that there would be a logical infinite regress if we tried instead to adopt the skeptical alternative that “A person doesn’t take it that things are as they seem unless it can be shown that they are.” Of course as the maxim reminds us, if there were reason enough to think otherwise, then that’s how it would seem. This maxim in no way precludes a prosecutor, psychological examiner, or the reader from raising questions pertaining to the case and behavior in question. Rather, it reminds us that, both in reviewing and evaluating the facts of this case and in understanding the behavior in question, it is crucial to

stick to the facts and neither disregard the facts nor make anything up.

Maxim 5: “If a situation calls for a person to do something he can’t do, he will do something he can do.” This principle is relevant for understanding persons and behavior and especially, for explaining why a person doesn’t do what he might have been expected to do (or behave as he might have been expected to behave). Possible behavioral alternatives that are available to one person may not be possible options for another.

Person

As defined in Descriptive Psychology, “A person is an individual whose history is, paradigmatically, a history of Deliberate Action.” This contrasts with psychological theories and orientations that treat behavior as irrational or as if it merely consisted of observable or motoric movements. Descriptive Psychology, like the law, reminds us that fundamental to our concept of Person is the capability for deliberate action. It is not merely an expectation of behavior, but a social and legal requirement. Few people would argue with the principle that a person who either doesn’t know what he is doing or can’t control what he does is a danger to himself and others and needs some form of custody (Ossorio, 1985).

Deliberate Action

Ossorio (1985) writes:

In deliberate action a person engages in a given behavior, B; further, he knows that he is doing B rather than other behaviors which he distinguishes and he has chosen B *as* B from among a set of distinguished behavioral alternatives as being the thing to do. In the vernacular, we might say, “He knows what he’s doing and is doing it on purpose.” (p. 154)

Descriptive Psychology reminds us that if persons did not normally have the ability to distinguish what they were doing and to do it on purpose, we would not have the concept of person that we in fact do. However, it is important to clarify that Deliberate Action does *not* imply deliberation or prior thought about what to do, and, in fact, almost all deliberate action is spontaneous, unrehearsed, and unreflective.

Engaging in deliberate action is a special case of Intentional Action (IA). Descriptive Psychology provides a parametric analysis that enables us to articulate these concepts of behavior, and elucidate many important legal concepts including *actus reus*, *mens rea*, motive, etc. These were discussed in a related paper (Littman, 2010, pp. 409-430) and are summarized below.

The concept of intentional action is articulated not by means of a definition, but rather by means of a parametric analysis:

$$\langle B \rangle = \langle IA \rangle = \langle I, W, K, KH, P, A, PC, S \rangle$$

The parameters of intentional action are the ways in which one particular behavior can be the same as or different from another behavior as such. In this formula,

- B Behavior (Instances of behavior are identified directly by locutions in ordinary language)
- IA Intentional Action (The technical designation for Behavior under the present parametric analysis)
- I Identity (The identity of the individual whose behavior it is)
- W Want = The “motivation” aspect of behavior (what state of affairs is wanted)

Ossorio (1972, p. 16) has noted that the motivational parameter is what conceptually defines the unit of behavior. When the state of affairs that is wanted becomes the state of affairs that is achieved, that behavior is ended.

It is also important that in situations with unintended consequences, the unit of behavior that the individual is engaged in,

as established by what he or she wanted, is probably different from that identified by a different Observer-Describer who is concerned with the (unintended) consequences. These distinctions will be discussed further in the case analysis and conclusion.

- K Know; the cognitive aspect of behavior, i.e., for a given behavior, what distinctions (concepts) are being acted on. This includes whatever relevant circumstances are distinguished. Anything that is wanted (W parameter above) will also show up under K since for something to be wanted, it is also distinguished.
- KH Know How; the competence parameter (This reflects the relevant learning history of the person whose behavior this is.) Ossorio (1972, p. 16) points out that “The function of the Know How parameter is precisely to exclude accidental happenings from the range of instances of intentional action.”
- P Performance; the process, or procedural parameter (Values are given by specifying a process, e.g., he pulled the trigger, or, he shot the arrow.)
- A Achievement; the result, or outcome (Values are given by specifying events and states of affairs.) This parameter “refers to whatever is different in the world by virtue of the occurrence of the behavior in question” (Ossorio, 2006, p. 46).
- PC Person Characteristics (Values are given by specifying characteristics of the person whose behavior it is and which the behavior is an expression of.) For example, his application to law school reflects his commitment to social justice, interest in law, adversarial style, ability to fill out the forms, etc.
- S Significance; this parameter codifies the “meaningful” and/or the “ulterior” aspects of behavior (Ossorio, 2006, p. 47). A person may be “doing X by doing Y”

where X is the significance of doing Y, and the doing or performance of Y implements X. This parameter may be used to represent a person's motive. For example, for two people playing golf with friends (Y), one's motive might be trying to improve his golf skills (X), whereas the other's motive may be to expand his insurance business (X).

The above parametric formulation provides a framework and resources for giving, and distinguishing among, various forms of behavior descriptions and enables us to elucidate various legal concepts.

For example, returning to the concept of Deliberate Action, it was noted above that this form of behavior description reflects that a person not merely distinguishes among behaviors but also chooses among them. The special case of Deliberate Action is represented as:

$$\langle B \rangle = \langle I, \langle B \rangle, \langle B \rangle, KH, P, A, PC, S \rangle$$

Deliberate Action Description

where the Behavior engaged in is also the behavior that was distinguished (K) and chosen (W) (hence the B also appears in the K and W parameters). The choice of behavior also reflects one's Person Characteristics (PCs).

Additional forms of behavior description are resources for elucidating other concepts. Several are mentioned in a related paper in this volume (Littmann, 2010) and in the case analysis.

For purposes of the Law, it appears that persons are viewed at a minimum under an Agency Description. The parametric formulation of behavior enables us to articulate that in an Agency Description, the parameters of behavior specified are W, K, KH, P, and A.

$$\langle B \rangle = \langle \Theta, W, K, KH, P, A, \Theta, \Theta \rangle$$

Agency Description

An Agency Description enables us to talk about someone engaging purposely in instrumental behavior, i.e., wanting, distinguishing, having the competence, and engaging in a process to

bring about some (desired) outcome. What is left out of an Agency Description is the Identity, Person Characteristics, and Significance parameters; that is, who did it, what person characteristics the behavior is an expression of, and what the person's motive was. As examples, consider a driver accelerating away from a police car that has just turned on its siren and blue light, or someone robbing an abortion clinic of \$500. An Agency Description of Behavior does not imply that these are the only parameters there are, but rather these are the ones, at a minimum, that I'm talking about. An Agency Description portrays the sense in which behavior is instrumental and the person is the agent of what he does. Descriptive Psychology provides resources for systematically distinguishing among different forms of behavior description via the various parameters of behavior, and may also help us elucidate various concepts.

Mens rea (the "guilty mind") is the actor's intent (or, in a broader sense as discussed below, his state of mind, and hence associated culpability) with respect to the particular act in question. Intent is given by the W parameter, and hence also appears in the K parameter, since one cannot want or try to do/get something if he or she cannot distinguish it.

$$\begin{aligned} \langle B \rangle &= \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Mens rea:} & \quad W, K \end{aligned}$$

(*Mens rea* is sometimes also used in a broader sense which will be presented as *Mens rea 2* below.)

A person's underlying motive is given by the S parameter.

$$\begin{aligned} \langle B \rangle &= \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Motive:} & \quad S \end{aligned}$$

Actus reus (the criminal act) is generally defined by overt, publicly observable variables: the activity engaged in (P), the outcome or result of P (A), and the presence of additional circumstances (K), which presumably the perpetrator also distinguishes.

$$\begin{aligned} \langle B \rangle &= \langle IA \rangle = \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Actus reus:} & \quad K, \quad P, A \end{aligned}$$

According to the law, a person is presumed to be legally responsible for his or her behavior if, at the time of the offense, the person was capable of voluntarily performing the act, *actus reus*, and capable of forming the intent to act, *mens rea*. Whether someone is “capable of forming the intent to act” appears to be a way of *ruling out* that a person was *impaired/ incapable* of making distinctions required under parameters W and K including the connection between P and A. A person charged with a crime might be considered impaired or mentally ill if (s)he were unable to understand that doing P brings about A.

It was also noted above that there is a second, broader notion of *mens rea*. This includes not merely the person’s intent to commit a specific crime (the W and K parameters), but also “a state of mind of general culpability or liability, an awareness of right from wrong” (Loewy, 1975). This seems to incorporate the parameter of the actor’s Person Characteristics (PC), and corresponds to his behavior under a broader Deliberate Action description. To establish the presence of a “guilty mind,” one needs to know what behavior the actor was engaging in. From the Actor’s perspective, what was he really doing?

 = <I, W, K, KH, P, A, PC, S>

Mens rea 2: I, W, K, KH, P, A, PC, S

Mens rea in the broader sense, corresponds to , according to the Observer’s description of the Actor’s behavior. It is more in this broader sense of *mens rea* that what is going on in my mind at the time of the crime may be relevant. (It may be noted that for some crimes known as “specific intent crimes” [murder being the most commonly known, but rape, arson, and any attempt crime also fall into this category], *mens rea* requires both the intent to perform the act and the intent to achieve a specific result. Crimes are defined differently in different states.)

Society has an important stake in persons being capable of deliberate action (distinguishing among behavior alternatives and choosing one as the thing to do). What someone wanted, what distinctions a person is making (including about the circumstances),

the person's relevant competence/learning history, a person's performance, the outcome, his/her person characteristics, and motives are all relevant in describing a person's behavior. In a related paper (Littmann, 2010) elucidating *actus reus*, *mens rea*, and legal issues related to exculpability, it was noted that to a large extent, the question of "Was the person guilty?" translates to the question of "What deliberate action was it?"

Emotional Behavior

An important contribution of Descriptive Psychology to our understanding of persons is its illumination of emotional behavior and emotional states. To specify a particular emotion (e.g., fear) is to identify a corresponding relation (e.g., X in danger of Y) and thereby to help illuminate the sort of reason a person has to engage in a corresponding behavior (escape or avoidance behavior) which reflects that relationship.

Contrary to some psychological theories, the Descriptive Psychology framework highlights the sense in which emotional behavior is fundamentally rational and that each emotion has a reality basis. To characterize a particular instance of behavior as "emotional" is to say that (a) an individual has made some particular discrimination, which (b) tautologically carries with it motivational significance (a and b amount to saying that an appraisal is made and appraisals are grounds for corresponding action); (c) the person possesses a learning history (competence) relevant to acting on that particular discrimination/appraisal; and (d) the person has a learned tendency to act on that discrimination/appraisal *without deliberation*. For example, as noted above, specifying the emotion *fear* identifies the relationship:

Danger → Avoidance/Escape Behavior
(elicits)

The appraisal of something as dangerous tautologically involves having reasons/motivation for escape or avoidance behavior (Littmann, 1979, pp. 28-32; Littmann, 1983, pp. 193-194).

The paradigm case for emotional behavior familiar to Descriptive Psychologists is the “Lion in the Room” (Ossorio, 1997). In this example, we imagine that I’m alone in a small room that has a door and either another door or a window. All of a sudden, a lion pushes open the door, sticks its head in the room, and makes growling noises. I either run out the other door or if there isn’t one, jump out the window. Another person watching from the distance asks, “Why did you run out?” And I say, “Because I was afraid of the lion.” The fear behavior is a paradigm case of emotional behavior.

What this example conveys is (1) that emotional behavior has a reality basis and (2) that being afraid of the lion and trying to escape the danger by getting away from it is quite rational. (It might be considered irrational if I did not attempt to escape from a danger I know to be life-threatening.)

Emotional States

What characterizes an emotional state is the discrimination of the reality basis for emotional behavior (e.g., danger), and the absence of successful emotional behavior (no means of escape) (Ossorio, 1997, p. 106). For example, I’m in a state of fear or panic if I appraise the danger (lion) but don’t successfully escape (there’s no door or window) or otherwise eliminate the danger.

The Face in the Wall

This heuristic from Descriptive Psychology illuminates the concept of psychological trauma and how being faced with an unthinkable situation changes our view of the world and our place in it. It is presented by asking you to suppose the following: We are meeting in my office and talking, when you notice out of the corner of your eye some movement in the wall behind me. As you look,

what you now see fully and directly is a huge, Easter-Island type face that emerges from the wall, looks around, glares at you, and then fades back into the wall. At this point, you have a dilemma. On the one hand, you could reject reality and think, “I just had the most interesting hallucination,” and you could dismiss what you saw by wondering if someone tampered with your lunch. But on the other hand, given what occurred, you can walk out of there knowing that the world you are in is a vastly different place and has no relation to the world you thought it was, and your place in it is totally unknown. This scenario of the unthinkable occurring conveys the nature of psychological trauma and the nature of a traumatic event (an unthinkable situation) in altering a person’s world and his place in it.

Case Analysis

In analyzing the case of Ms. D, it is presumed that the primary facts are those laid out in the summary and that there are no other facts that would grossly invalidate what is presented in the summary. We can of course entertain some hypothetical possibilities in regard to what is not stated or what is not known. The interviewer in this case has the task of evaluating how valid the information obtained is, but we presume that what is presented here was deemed valid and veridical to the extent known.

Thus, we assume that Ms. D is competent to stand trial, understands the proceedings, and we are told that she is bright and articulate with no evidence of severe mental illness. We are left to puzzle a bit over her emotional and dramatic self presentation and numerous somatic complaints including headaches and (mysterious) fainting spells. Though hospitalized for evaluation, findings are within normal limits.

When interviewed, Ms. D actually gives the entire account speaking in the first person. She does not dissociate during the interview, but does report a dissociative-like event or altered state of consciousness in the course of the confrontation with her ex-husband. There seems to be little doubt that she pulled the trigger

and the gun went off, though from her perspective at the moment of the shooting, it was the little girl who pulled the trigger. She does not attempt to conceal her own identity in this account as the person who “awoke” to find herself holding the gun. As the adult, she reports fearing for her life, running to get the gun, and being scared. She also reports being present in a helpless, sympathetic, seemingly disembodied Observer-Describer mode rather than as an actor or agent in charge of her own behavior during the confrontation with her ex-husband. The only similar dissociative episode we have knowledge or documentation of is at age 14 when she was beaten and raped by a neighbor.

The background information is crucial to understanding what behavior Ms. D was engaging in. She has two children and divorced Mr. D last year after a 5 year marriage. We know that his dependence on alcohol and drugs led to frequent, well-documented beatings, threats, and other abuse both before and after the divorce. He has recently and repeatedly continued to publicly threaten and humiliate her, and he has broken into the house recently and subjected her to clearly traumatic abuse (hanging her naked from a second story window by her feet).

On the day of the shooting, he is violating a restraining order issued the day before (which we presume he knows about). He appears at *her* house at 6:00 AM while she is preparing breakfast and again threatens to kill her if she refuses him entry. Given the seeming escalation and ongoing credible threats to harm her, it seems quite prudent of Ms. D to have purchased the gun for protection. Moreover, it appears prudent to keep the gun and bullets separate perhaps to avoid the chance of accidental injury.

Somewhat less clear are the circumstances of Ms. D having sex with Mr. D two nights before the shooting (was it forced, was the relationship on-again-off-again, or was there some other circumstance or explanation?). We may speculate that Ms. D may feel some ambivalence toward Mr. D whom she married when 18, was married to for five years, and who we presume is the father of the two children. We know she filed a restraining order against Mr.

D the day after they had sex (the day prior to the shooting). The facts of the case do not provide information about Mr. D's notification of the restraining order.

For him to have been shot in the chest at close range three times in a two inch circle, taking the facts as they seem (Maxim 1), he did not attempt to flee, and may have continued to approach her or attempt to enter as he had threatened. Although we do not know how rapidly the shots were fired or how quickly it became apparent that Mr. D was fatally wounded, in regard to the question of what degree of force was needed to defend herself, had Mr. D turned away or dropped immediately, it is probable that the shots would not have landed in a two inch circle. We know the police arrived in response to the neighbor's complaint of noise, but we do not know whether this was from commotion of Mr. D threatening to kill Ms. D and demanding to enter or from the gunshots. We know that after he demanded entry, Ms. D reports she ran to get the gun, and by the time the police arrived, Ms. D was (still) holding the gun and sobbing silently. The facts indicate that Mr. D was shot at close range, suggesting that her options were limited at that point to defend herself from his threats to kill her. We do not know how he got so close. For example, we do not know whether he saw the gun but was not deterred (perhaps he didn't think she would actually fire or thought she might miss) or he was too angry, intoxicated, or otherwise drug impaired to stop and desist. Or, she may have hesitated to shoot until he was close. The issue of her good marksmanship is somewhat irrelevant, in that all hits were at close range. If a prosecutor were to contend hypothetically that Ms. D approached (rather than retreated) from Mr. D, the facts remain that she did not initiate the altercation since he came to her home demanding entry and threatening to kill her. Moreover, she knows from repeated experience that attempts to retreat are futile. Regardless of whether she is experienced or inexperienced in using a gun, we might expect her fear and anxiety to increase as the threat escalated. Yet, based on the two-inch circle, it also appears that her action is under control. She is not firing wildly.

Under the law, Ms. D has the right to protect herself and her property against injury; she did not initiate the altercation; she most reasonably believes herself to be in immediate, life-threatening danger from Mr. D (he has made threats of harm and acted on them); and past attempts to retreat or flee from the attacks have been futile (he has broken in and subjected her to harm). It may be argued whether the force used to defend herself was proportionate to the danger, e.g., whether one shot versus three were required. However, there appears to be sufficient evidence that Mr. D's actions and threats to harm and kill Ms. D were escalating and that use of deadly force was necessary to avoid this immediate life-threatening danger. It appears that Ms. D has legal justification for self-defense. In regard to the essential questions, the grounds for self-defense have been met.

Above and beyond confirming her grounds for self-defense (which would make her behavior not a crime and excuses her under the law), what might Descriptive Psychology offer to our understanding of various issues raised by this case and Ms. D's unusual behavior? Is there potentially a case formulation that demystifies her behavior and provides a coherent explanation that's not only consistent with the facts that are presented, but sensibly ties them together? Such case formulations particularly might help expert witnesses present illuminating consultations and testimony, and might help prosecutors better decide indictments, defense attorneys articulate defenses, and help juries and judges get a clearer picture of the behavior(s) in question in order to decide the matters at issue.

For example, how do we understand the account Ms. D gives when interviewed about the incident? Is she malingering a dissociated state, and what would be her purpose for doing so given that she is entitled to defend herself from Mr. D's threat on her life while he is violating a restraining order? Alternatively, if we take it that she is not malingering, what accounts for the unusual state Ms. D describes, as opposed to someone simply killing an attacker in self-defense?

As noted above, Ms. D most reasonably believes herself to be in immediate, life-threatening danger from Mr. D who has previously made threats to harm her and acted on them. Past attempts to retreat or flee have been futile, and he has subjected her to harm. Ms. D lacks viable alternatives much as the person who is faced by the lion would jump out the window to escape the lion, only here, there is no “window” for escape. This indeed generates a *state* of fear. (Recall: “The main thing that causes an emotional state is the discrimination of the reality basis for emotional behavior, and the absence of the successful emotional behavior.”)

Thus, there is no escape, nowhere to retreat. Her dissociation is an indication that she is unable to simply shoot the lion, or in this case, the polysubstance-dependent, abusive attacker-ex-husband father-of-her-children. To Ms. D, this is apparently an impossible position where she is faced with two nonviable choices: either be killed or kill him.

The situation corresponds to the description of “psychological trauma.” A person who is faced with an unthinkable situation which *is* actually occurring (cf., *The Face in the Wall*) finds himself in a vastly different world than he thought it was. If this is how the world is, your place in it is totally unknown, and you don’t have your usual basis for acting in any way, yet immediate action is called for here. This appears to be a clear case of Self-defense in a most literal sense! Ms. D was both acting in her own defense by shooting the gun, and the dissociative episode evidently was essential to enabling her to implement her self-defense which she was otherwise unable to do, being who she is (cf., the sort of dilemma where, “I couldn’t do that and still be me”).

Being who she was, Ms. D was able to formulate a defense plan by purchasing a gun, so presumably, shooting Mr. D was not unthinkable for her. However, at the time of the incident, it appears that it was unthinkable to actually pull the trigger and shoot Mr. D; yet neither could she risk being killed or suffering the abuse she had been subjected to previously. As Maxim 5 states, “When a situation calls for a person to do something he can’t do, he will do something

he can do.” The only way she could pull the trigger/defend herself was by virtue of the dissociated state. (Recall: Ms. D states, “I felt so sorry for the little girl. I really wanted [W] to help her but I couldn’t do anything.”) In the dissociated state, Ms. D was able to successfully defend herself; “the little girl” had the status/eligibility to pull the trigger. (Quite possibly, in light of Ms. D’s history of being beaten and raped when she was 14, “the little girl” had the right to defend herself whereas Ms. D could not justify herself killing her ex-husband and children’s father.)

(An alternative description of this altered state is also presented in the section below.)

Further Analysis and Discussion of Alternative Verdicts

Regarding the verdict of Murder: It appears that Ms. D did shoot Mr. D in a purposeful and knowing manner, but it was not “unlawful” because the Law allows for self-defense.

Her *purpose* (what she wanted) was ‘to defend herself’ and ‘to stop the threat on her life’, *not* ‘to murder her ex-husband.’ Additional evidence for this is that the consequence of ‘killing her ex-husband/father of her children’ apparently was sufficiently unthinkable at the time of the required action that her dissociation was the only way she could implement the behavior of self-protection. She could not, within her self-concept as Ms. D, pull the trigger. She *could* form the intent to protect herself (W and K). Consistent with this analysis is that the “police arrived to find...Ms. D holding a gun while sobbing silently.” She is certainly not jubilant or defiant; she appears to understand the outcome that has occurred (Mr. D shot and possibly dead), and in her account, she states, “It was me standing there with the gun”; nothing in the information given suggests that Ms. D was eager to act in a way that harms Mr. D, but rather was reluctant and only willing if there were no alternative to save her life. Shooting/killing him does not appear to be what she wanted. (This does not

alter the legal grounds for self defense, but it may help illuminate what she was up to.)

What further clarification might Descriptive Psychology offer to illuminate various issues that pertain to the other possible verdicts?

With respect to the verdict of manslaughter, we can note that: Only under a non-Deliberate Action description, Ms. D has killed Mr. D, and thus, that is not the *deliberate action* she was engaged in.

Deliberate Action Description: <I, , , KH, P, A, PC, S>

Again, self-defense or to stop him from killing or harming her (her motivation/W) is permitted by law (provided the belief that he will kill her is reasonable, the use of force is proportionate, etc.). An unintended consequence of defending herself is that she killed Mr. D. While unintended, it is not a violation of a community standard. Given the circumstances, her behavior is not “the unlawful killing of a human being.” (It may be noted that even had she intended to shoot and kill him and had the dissociative-like episode not occurred, her behavior, as self-defense, under the circumstances given, would be justified, albeit the defense attorney might approach this slightly differently, and the case formulation would be somewhat different. But those are not the facts of this particular case.)

Moreover, her behavior is not “reckless” in that she intends the consequences of stopping the threat. (Mr. D’s behavior may be reckless in ignoring the restraining order, but this is a separate matter.) Although it may be of interest to explore Ms. D’s state of mind, it is superfluous to this verdict. She may indeed be acting “under the influence of extreme mental or emotional disturbance [or at least distress] for which there is reasonable explanation or excuse as determined from the viewpoint of a person in the actor’s situation under the circumstances as (s)he believes them to be,” but her state of mind is irrelevant since self-defense is lawful, and a verdict of manslaughter has to do with “unlawful killing of a human being.”

Regarding the verdict of insanity: Ms. D’s acts were not insane; they were *highly* rational. To *not* defend herself would have been a reflection of impairment. Facts of the case indicate there

was no evidence of severe mental illness, and neurological and neuropsychological workups were within normal limits. There is no evidence that she does not know right from wrong. There is no evidence that the welfare of anyone in the community was at risk, other than her ex-husband who was violating a restraining order and threatening to kill her. She is not impaired to an extent of being unable to protect herself. It appears that the altered state *enables* her to act to defend herself. Is she out of control? Autopsy revealed that Mr. D had been shot 3 times at close range, all wounds within a 2 inch circle. She is not firing wildly. Based on the facts, she does not appear to have been out-of-control; she appears to be *in-control* of her behavior at the level of escaping the danger. She is doing that *by pulling the trigger*. Ms. D does not have a record of dissociations which impair her functioning; there is only one known previous episode of dissociation ten years ago when she was beaten and raped by a neighbor.

The current episode might alternatively be assimilated to the type of altered state people describe in a car accident or other traumatic disaster where one's sense of time is altered and one has the sense of being an observer rather than actor in the moment. This also parallels the experience that athletes have when playing "in the zone" with complete focus and seemingly effortless execution of performance—as if watching their body perform from the Observer's role, rather than exercising control over it from an Observer-Critic perspective. Control is exercised by Ms. D at the *Significance* level of protecting herself, and the dissociated-like state frees her to implement her self defense by pulling the trigger.

Conclusion

The appropriate Deliberate Action description of what Ms. D was doing is "She defended herself by pulling the trigger and shooting him" rather than "She murdered him by shooting him." This is a case of unintended consequences in that what she wanted was to defend herself, not to kill Mr. D. Self-defense is not unlawful. The reason

her emotional state does not suggest a mental illness, mental defect, or mental impairment is that her action is the obviously appropriate thing to do. She is not out of control from the larger perspective of managing her life in a prudent, reasonable manner. She took what action appears to have been the only way to save her life. Mr. D's record of violence and lack of restraint gave credence to his threat of killing her, and she had good reason to fear for her life.

Several concepts from Descriptive Psychology have been presented that help illuminate the behavior described in this case and several of the legal concepts and distinctions that are relevant. A psychologist providing expert testimony to the court need not explain each technical aspect presented here, but the distinctions and framework are nonetheless valuable for analyzing, understanding, and describing the relevant points to be made. In particular, it can help us avoid popular mis-steps, such as, presuming that emotional behavior is irrational or out-of-control. Many of the distinctions from Descriptive Psychology seem to resonate with Judges, attorneys, and law enforcement officials owing to the clarity it brings to understanding a variety of complex cases.

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Author's Note

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Jane R. Littmann, Clinical Professor and Teaching Psychologist, retired from the Department of Neuropsychiatry and Behavioral Science, University of South Carolina School of Medicine and the William S. Hall Psychiatric Institute in 2006.

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