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Criminal Law--Defenses of Insanity and Irresistible Impulse in Relation to Murder--Burden of Proof (State v. Cordasco, 66 A.2d 27 (N.J. 1949))

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CRIMINAL LAW — DEFENSES OF INSANITY AND IRRESISTIBLE IMPULSE IN RELATION TO MURDER—BURDEN OF PROOF.—Defendant, having vainly attempted a reconciliation with his estranged wife, killed her by firing five bullets into her body at close range. He was indicted for murder in the first degree. The defenses raised were insanity and irresistible impulse. The first of the defendant's expert medical witnesses testified to the effect that defendant had been afflicted with the mental disorder of dementia praecox sixteen years prior to the killing and had been deemed a psychopathic personality with a paranoid twist five years previous to the offense.[1] The court admitted the testimony, over the objection of state's counsel who alleged remoteness, pending proof of continuance of the mental disorders to the date of the crime. The same witness testified that the defendant, one year subsequent to the killing, was still afflicted with dementia praecox. The second of the defendant's expert witnesses testified that the accused was capable of both deliberation and premeditation on the date of the crime, was able to distinguish right from wrong, and was capable of understanding the nature and quality of his acts. On the basis of this testimony the previous testimony as to the mental condition of the defendant prior and subsequent to the date of the crime was stricken from the record, which determination defendant alleged to be error. *Held,* no error. Since accused was capable of both deliberation and premeditation on the date of the crime, as determined by the testimony of defendant's second expert witness, was able to distinguish right from wrong, and had the capacity to understand the nature and quality of his acts, the testimony as to the mental condition of the defendant prior and subsequent to the date of the crime was held to be immaterial. The defense of irresistible impulse, a doctrine repudiated by the New Jersey courts,[2] was rejected as a basis upon which to seek acquittal on the ground of insanity. *State v. Cordasco,* — N. J. —, 66 A. 2d 27 (1949).

The word "insanity" as used in law very often has a varied connotation from that given to the word by the medical profession. A person may be insane as the term is ordinarily understood and yet may be criminally responsible for a particular act.[3] Today the prevalent legal insanity test is the "right and wrong" rule, first introduced as a result of *M'Naghten's Case.*[4] The majority of American juris-

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[1] Dementia praecox is precocious insanity usually beginning at puberty, while paranoia is a form of insanity characterized by systematized delusions, usually of persecution or grandeur, or tendency to form such delusions. Lee v. United States, 91 F. 2d 326 (C. C. A. 5th 1937); HERZOG, MEDICAL JURISPRUDENCE §§ 613, 614, 615, 616, 617 (1931) (discussion of dementia praecox and paranoia).

[2] State v. Carrigan, 93 N. J. L. 268, 108 Atl. 315 (1919), *aff'd,* 94 N. J. L. 566, 111 Atl. 927 (1920); Genz v. State, 59 N. J. L. 488, 37 Atl. 69 (1897).

[3] People v. Irwin, 166 Misc. 751, 4 N. Y. S. 2d 548 (Gen. Sess. 1938).

[4] 10 Cl. & F. 200, 210, 8 Eng. Rep. 718, 722 (1843). M'Naghten had been

dictions, including New York [5] and New Jersey,[6] have adhered to this test alone, while other jurisdictions, still adhering to the test, have supplemented it with what is commonly designated as the doctrine of irresistible impulse.[7] The doctrine of irresistible impulse recognizes the existence of a mental disease affecting the volitional powers of a human in such a manner that a person loses the capacity of choice of action, while simultaneously retaining the ability to distinguish right from wrong.[8] An enactment [9] of the New York Legislature has impliedly [10] repudiated the doctrine, while the New York courts have expressly rejected the doctrine.[11]

In the principal case the court was clearly correct in its rulings as to the substantive aspect of insanity and irresistible impulse, but as to the procedural aspect (the turning point of the case) the court was all too vague in that it did not clearly indicate that the testimony of defendant's first witness was stricken on the basis of the failure of the defendant to sustain a burden of proof imposed by that jurisdiction. The New Jersey courts have consistently held that the bur-

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tried on a charge of murder. The jury returned a verdict of "not guilty on the ground of insanity." Various questions were raised in the House of Lords and then addressed to the Lord Justices. Lord Chief Justice Tindal responded: ". . . to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

[5] N. Y. PENAL LAW § 1120 provides: ". . . A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as: (1) Not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong."

[6] State v. George, 108 N. J. L. 508, 158 Atl. 509 (1932); State v. Noel, 102 N. J. L. 659, 133 Atl. 274 (1926); Machin v. State, 59 N. J. L. 495, 36 Atl. 1040 (1897); State v. Spencer, 21 N. J. L. 196 (1846).

[7] See Note, 70 A. L. R. 659 (1931).

[8] Various examples of mental diseases included within the doctrine are: kleptomania (morbid propensity to steal); pyromania (uncontrollable passion for house burning); erotomania (excess of erotic desire). Neither moral insanity (that state in which a person is morally depraved to the extent "that his conscience ceases to control or influence his actions"), Bell v. State, 120 Ark. 530, 180 S. W. 186, 196 (1915); Banks v. Commonwealth, 145 Ky. 800, 141 S. W. 380 (1911), nor emotional insanity (passion or frenzy, being the direct effects of anger and other emotions, and not the results of a diseased mind), Wade v. State, 18 Ala. App. 322, 92 So. 97 (1921), *rev'd on other grounds*, 207 Ala. 241, 92 So. 104 (1922); Howard v. Commonwealth, 224 Ky. 224, 5 S. W. 2d 1056 (1928), are recognized as valid defenses within the doctrine.

[9] N. Y. PENAL LAW § 34 provides: "A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor."

[10] People v. Carpenter, 102 N. Y. 238, 250, 6 N. E. 584, 590 (1886) (construing N. Y. PENAL LAW § 34).

[11] People v. Schmidt, 216 N. Y. 324, 110 N. E. 945 (1915); People v. Taylor, 138 N. Y. 398, 34 N. E. 275 (1893); People v. Carpenter, *supra* note 10; People v. Flanagan, 52 N. Y. 467 (1873).

den of proof is on the defendant to establish his insanity by a *preponderance of evidence*.[12] With this fact in view, it should be noted that the second witness, who testified to the sanity of the defendant, was the *defendant's* expert witness and that said witness testified as to the mental condition of the accused *on the date of the crime*. Thus, taking cognizance of the rule of burden of proof of that jurisdiction and the conflicting testimony of the defendant's own witnesses, the court does not appear to have erred in holding that the defendant had not, as a matter of law, sustained the burden of proof imposed upon him. The striking of the testimony of the first witness was the equivalent of such a holding.

However, the striking of the testimony in the instant case would constitute error in New York. In this jurisdiction the people must prove the sanity of the defendant beyond a reasonable doubt once the defendant has put his sanity in issue.[13] The stricken testimony would have been sufficient to compel the prosecution to come forward and prove the sanity of the defendant beyond a reasonable doubt and would have raised an issue for the determination of the jury.

C. F. McG.

CRIMINAL LAW—VOLUNTARY CONFESSION—INTOXICATION—VALIDITY—QUESTION OF FACT FOR JURY OR COURT.—The prosecution obtained a conviction of manslaughter by using a confession made by the defendant while intoxicated. The defendant appealed on the ground that he was intoxicated to the point of mania [1] when he made the confession and that, therefore, it was not freely and voluntarily made as required by law.[2] He also pleaded that it was error for the trial judge to decide as a question of fact that the confession was admissible and to allow the jury to weigh only the *value* of the confession. *Held,* conviction sustained. Intoxication, at the time a confession is made, unless it goes to the extent of mania, does not affect its admissibility into evidence if it was otherwise voluntary. Whether the confession was free and voluntary is a question for the judge to decide. *State v. Alexander,* — La. —, 40 So. 2d 232 (1949).

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[12] State v. Molnar, 133 N. J. L. 327, 44 A. 2d 197 (1945); State v. George, *supra* note 6; State v. Overton, 85 N. J. L. 287, 88 Atl. 689 (1913); State v. Maioni, 78 N. J. L. 339, 74 Atl. 526 (1909).

[13] People v. Tobin, 176 N. Y. 278, 68 N. E. 359 (1903); People v. Egnor, 175 N. Y. 419, 67 N. E. 906 (1903); O'Connell v. People, 87 N. Y. 377 (1882) (construing N. Y. PENAL LAW § 815).

[1] "Mania a potu. Delirium tremens, or a species of temporary insanity resulting as a secondary effect produced by the excessive and protracted indulgence in intoxicating liquors." BLACK, LAW DICTIONARY (3d ed. 1933).

[2] State v. Berry, 50 La. Ann. 1309, 24 So. 329 (1898).