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Distinction Between Expert and Non-Expert Witness in Insanity Cases

The Supreme Court of Alabama in *George* v. *State,* 200 Southern 602 (1941) reviewed the record of the trial court where the defendant was convicted for the murder of his wife.

The defendant's counsel called three non-expert witnesses to support the plea of insanity made by the defendant in the lower court. These witnesses were asked in substance for their opinion as to the sanity or insanity of the defendant. The State's objection to this line of testimony was sustained. The Supreme Court stated: "A non-expert witness cannot say in substance that a man is insane, but must base his opinion solely upon his personal knowledge, observation, acquaintance, experience, etc., of the individual inquired of." The court said the prerequisite was not met in this case, and so it was not an error on the part of the trial court to sustain the State's objection.

The Supreme Court also cited the rule governing expert witnesses on this point of insanity, although no expert testimony was taken in this trial. Of this the court said: "An expert witness may give an opinion as to the sanity or insanity of an individual based solely on a hypothetical question, without personal acquaintance with the individual inquired of."

Physician's Interpretation of X-Ray Pictures As to the Caliber of a Fatal Bullet

The evidence in the recent case of *State v. Sullivan,* 298 N.W. 884 (Iowa, 1941), indicated that the defendant and two other inmates had effected an escape from the Fort Madison, Iowa, Penitentiary in 1935, and that thereafter they had participated in several years of lawlessness, including burglaries, larcenies, and robberies. On June 30, 1940, two of these fugitives went to Kentucky when details were worked out to complete a preconceived plan to release another inmate in the Fort Madison Penitentiary. They arranged with a girl friend of theirs to deliver a message to this inmate, through the medium of another convict. The message was delivered, and on the afternoon of July 8th, an attempt was made to deliver the inmate in whom the defendant and his friends were interested. The defendant, from a bank or bluff overlooking the Penitentiary yard, opened fire with a .22 caliber rifle. Another fugitive approached the gate of the Penitentiary yard to cut the padlock. He was unsuccessful, but he threw a sawed-off shotgun to the inmate friend. Considerable gun fire occurred, during which one of the prison guards was fatally wounded. The inmate shot himself, and the defendant and one of his confederates were both captured. The third member of the party was fatally wounded.

At the defendant's trial a physician testified that the prison guard's wound was inflicted by a .22 caliber bullet. The physician did not see the bullet, but he testified that he was able to determine its caliber from X-rays which were taken. The appellate court upheld the admissibility of the physician's testimony.