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## CRIMINAL LAW CASE NOTES AND COMMENTS

Prepared by students of Northwestern University School of Law, under the direction of student members of the Law School's Legal Publication Board

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### PROVING INSANITY BEYOND A REASONABLE DOUBT: LELAND V. STATE OF OREGON

One of the more perplexing problems in the administration of criminal justice is the determination of mental capacity.<sup>1</sup> The basis of the problem is simple: a fundamental notion of Anglo-Saxon jurisprudence is that a harm committed as a result of a serious mental disease is not a crime.<sup>2</sup> The traditional method for determining whether the criminally accused was mentally responsible at the time the harm was committed has been to submit the question to the jury. Unhappily, this procedure has been criticized in that it transforms an essentially non-legal inquiry into a partisan battle of wits between medical "experts" and lawyers, with substantial fees rather than scientific truth as their object.<sup>3</sup> The notion has developed that hardened criminals can escape criminal sanctions through the use of the insanity plea, aided and abetted by ingenious alienists willing to perjure themselves.<sup>4</sup> Regardless of the validity of this sentiment, the result has been legislation and judicial holdings designed to prevent such abuses by restricting the insanity plea.<sup>5</sup>

Easily the most popular procedure adopted to prevent abuses of the insanity plea is the rule that irresponsibility arising from insanity is an affirmative defense, which the defendant has the burden of proving. Twenty-two states have adopted this view by legislation or case holdings.<sup>6</sup> These states disagree, however, on the quantum of proof which the defendant must produce to satisfy the burden of proving insanity; twenty-one states require the defendant to prove his insanity by a preponderance of the evidence or to the satisfaction of the jury.<sup>7</sup> Oregon stands alone in requiring a criminal

1. "The devil himself knoweth not the minds of men. . . ." Brian C. J. as quoted by Mr. Justice Frankfurter in *Leland v. State of Oregon*, 343 U.S. 790, 803 (1952) (dissenting opinion).

2. HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* 477 (1947).

3. GLUECK, *MENTAL DISORDER AND THE CRIMINAL LAW* 31 (1925).

4. A good example of public reaction to a plea of insanity in a famous criminal trial is given in GLUECK, *op. cit. supra*, note 3, at 34n.

5. See *State v. Strasburg*, 60 Wash. 106 (1910) (statute giving court authority to commit defendant at its discretion to state hospital for insane held unconstitutional); *State v. Lange*, 168 La. 958, 123 So. 639 (1929) (statute taking away the right to plead insanity at trial held unconstitutional). This sentiment is well expressed by Agnew C. J. in *Ortwein v. Commonwealth*, 76 Pa. 414 (1874): "The moment a great crime would be committed, in the same instant, indeed often before, would preparation begin to lay ground to doubt the sanity of the perpetrator. The more enormous and horrible the crime, the less credible, by reason of its enormity, would be the evidence in support of it; and proportionately weak would be the required proof of insanity to acquit it. Even now the humanity of the criminal law opens wide the doors of escape to the criminal . . . the danger to society from acquittals on the ground of a doubtful insanity demands a strict rule."

6. ALABAMA, ARKANSAS, CALIFORNIA, DELAWARE, IOWA, KENTUCKY, LOUISIANA, MAINE, MINNESOTA, MISSOURI, MONTANA, NEVADA, NEW JERSEY, NORTH CAROLINA, OHIO, OREGON, PENNSYLVANIA, RHODE ISLAND, TEXAS, VIRGINIA, WASHINGTON, WEST VIRGINIA. See WEIHOFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 172 *et seq.* (1948).

7. WEIHOFEN *op. cit. supra*, note 6, at 148.

defendant pleading insanity to prove his insanity beyond a reasonable doubt.<sup>8</sup> The scope of this paper will be limited a consideration of the Oregon procedure as outlined by the United States Supreme Court.

In the recent case of *Leland v. State of Oregon*,<sup>9</sup> the defendant either forced or induced a fifteen year old girl to spend the night with him in the Oregon countryside. When she attempted to scream and attract passersby, Leland brutally killed her with a knife and a club. Leland, arrested five days later for an automobile theft, took police officers to the scene of the homicide and confessed the act, later signing a confession to the same effect. He was indicted for murder in the first degree. Leland pleaded irresponsibility on the grounds that he was not sane at the time the act was committed and some evidence was adduced tending to prove a lack of will-power and a failure to know the difference between right and wrong.<sup>10</sup> In accordance with the statute on point, the trial court instructed the jury that the defendant had the burden of proving his insanity beyond a reasonable doubt. The jury returned a verdict of murder in the first degree. The failure of the jury to recommend life imprisonment made the crime automatically punishable by death.<sup>11</sup> The case was appealed to the Oregon Supreme Court on the grounds that the defendant's rights of due process as guaranteed by the fourteenth amendment of the United States Constitution was contravened by the instruction placing the burden of proving insanity beyond a reasonable doubt on the defendant.<sup>12</sup> The Oregon court held the instruction proper under the statute and the statute constitutional.<sup>13</sup> On appeal to the United States Supreme Court, the Oregon statute was held not to be a denial of due process.<sup>14</sup>

The majority opinion of Mr. Justice Clark takes the position that the instructions given to the jury under the statute must be viewed in the light of all relevant jury instructions; that the entire complex of instructions placed the burden of proving guilt squarely on the state. In addition to the instruction relating to the defendant's burden of proving insanity beyond a reasonable doubt, the jury was instructed on the elements of malice, deliberation and premeditation.<sup>15</sup> They were told that the state had the burden of proving

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8. ORE. COMP. LAWS ANN. §26-929 (1940).

Logically, the Oregon position would seem to be the correct one. The source of the rules on burden of proof is the leading case of *The Opinion of the Lords on M'Naghton's Case*, 10 Cl. and F. 200, 8 Eng. Rep. 718 (1843), where it was said the alleged insanity of the accused must be clearly proved. If there is any reasonable doubt on the insanity of the accused it cannot be "clearly" proved. Most of the courts were unwilling to go that far and reduced the quantum of proof needed. See *People v. Wells*, 145 Cal. 138, 78 Pac. 470 (1904).

9. 343 U.S. 790 (1952).

10. Brief for Appellant, p. 148, *Leland v. State of Oregon*, 190 Ore. 598, 227 P.2d 785 (1951).

11. ORE. COMP. LAWS ANN. §23-411 (1940).

12. *Leland v. State of Oregon*, 190 Ore. 598, 227 P.2d 785 (1951). Under the Oregon State Constitution there seems to be no analogous guaranty of due process of law. The most fertile avenue of attack on insanity plea procedures has been through state constitutional provisions. See the cases collected in 67 A.L.R. 1447.

13. *Leland v. State of Oregon*, *op. cit. supra*, note 12, at 638.

14. *Leland v. State of Oregon*, 343 U.S. 790 (1952).

15. The jury had five verdicts they could have brought in: (1), if they found the defendant had killed purposely and with deliberation and premeditated malice, beyond a reasonable doubt, they were to return a verdict of murder in the first degree; (2), if they found the defendant had killed purposely and maliciously, but without deliberation and premeditation they were to return a verdict of murder in the second degree; (3), if the defendant had killed without malice or deliberation but upon a sudden heat of passion, they were to return a verdict of manslaughter; (4), they were to return a verdict of not

these elements of the crime beyond a reasonable doubt. If they found the defendant had committed the homicide without malice, or deliberation and premeditation, they were to bring in a verdict of some lesser degree of homicide.<sup>16</sup> The jury was instructed that they should take into consideration the defendant's *mental condition* in determining these elements.

Thus, the position of the Supreme Court majority seems to be that if the instructions placed the burden of proof on the defendant for all the elements of the crime the instructions would be constitutionally doubtful. But the burden of proof had been placed on the defendant in the special plea of insanity only. When this group of instructions is considered as a whole, the majority concludes, there can be no denial of due process. The Oregon Supreme Court affirmed the conviction without considering the other instructions.<sup>17</sup>

The usual reasoning by commentators in this field is illustrated by Mr. Justice Frankfurter.<sup>18</sup> In his dissent he argues that a criminal act, which the state has the burden of proving, consists of two essential elements, the muscular act itself and intent. If evidence of insanity is introduced, the essential element of intent is put in issue, because the accused cannot be said to have *intended* his act if he lacked the *ability* to intend by reason of an insane mind. Mr. Justice Frankfurter argues that the burden of proving that the accused had the ability to intend his actions is a part of the burden of proving intent to commit the specific act. The instructions under the Oregon statute in effect required an accused pleading insanity to disprove beyond a reasonable doubt the element of intent. Mr. Justice Frankfurter points out that any procedure which places the burden of proof on the accused to disprove an essential element of the crime is a violation of due process. However, the dissenting opinion is careful in pointing out that this does not mean the state is precluded from using wide techniques in dealing with the problem, but that ultimately, the burden must always rest on the state to prove guilt.<sup>19</sup>

Apart from the constitutional problem, the jury was asked to consider the same evidence of insanity in two ways: (1), whether the accused was irresponsible for his acts and, therefore, totally excused from culpability; and (2), whether it deprived the defendant of his ability to premeditate, deliberate, or act maliciously and, therefore, partially excused him for his act. Taken by itself there is nothing illogical about considering evidence of insanity in this

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guilty if a reasonable doubt remained in their minds as to the existence of any of the necessary elements; and (5), not guilty by reason of insanity if they found beyond a reasonable doubt that the defendant was insane at the time of the offense charged.

16. Leland v. State of Oregon, *op. cit. supra*, note 14, at 795.

17. Leland v. State of Oregon, 190 Ore. 598, 638 (1951). The state did not even argue before the state court that the other instructions mitigated the effect of the statute. The failure to do so may have been caused by a concern over the legality of these instructions. In about half the states mental deficiency cannot be considered by the jury in determining whether a homicide was done with malice, premeditation, and deliberation. A search has failed to reveal a consideration of the question in an Oregon court. See generally, Weihofen, Overholser, *Mental Disorder Affecting the Degree of a Crime*, 56 YALE L. J. 959 (1947).

18. BLACKSTONE, COMMENTARIES 764 (Gavit ed. 1941); HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 478 (1947); WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 14 (1933).

19. *E.g.*, appointment of independent psychiatrists by the court; submission of the question of insanity to a board of psychiatrists rather than the jury; recognition of the irresistible impulse test or irresponsibility as a defense. See WEIHOFEN, *op. cit. supra*, note 18, at 398 *et seq.*, for a valuable summary of suggested reforms.