DePaul Law Review

Volume 7
Issue 1 *Fall-Winter 1957*

Article 13

Criminal Law - Refusal to Order Sanity Hearing Abuse of Judicial Discretion

DePaul College of Law

decision in the instant case squarely upon the principle enunciated in 2 Restatement Contracts, sec. 456, supra. A promisor should not be excused from responding in damages for breach of contract on the ground of impossibility of performance due to mistake in a situation, where, due to his own negligence, he had failed to discover at the time of entering into the contract the nonexistence of the fact or thing which made performance by him impossible. It is on this basis that we determine that Dr. Zellmer's estate must be held liable to the claimant.[13]

[13] In re Estate of Zellmer, 1 Wis. 2d 46, 51, 82 N.W. 2d 891, 894 (1957).

CRIMINAL LAW–REFUSAL TO ORDER SANITY HEARING ABUSE OF JUDICIAL DISCRETION

Defendant was convicted of murder. Prior to and at the time of trial, defendant rejected appointed counsel and conducted his own defense with counsel present to lend assistance. Defendant's counsel suggested, in his opening argument, that the defendant was possibly insane. The remark was objected to, and in an argument in chambers, defendant strenuously denied he was then or had ever been insane, and stated he would not plead insanity in any case. Defendant conducted his defense in a very unorthodox manner with frequent religious allusions and intimidation of his counsel. The court refused two tendered instructions on insanity by appointed counsel. The question of defendant's sanity was also raised in a motion for a new trial. In overruling the motion, the court stated that it believed the defendant to be sane. It was held on appeal that the record raised serious doubt as to defendant's sanity at the time of the trial and the trial court abused its discretion in refusing to direct a sanity hearing. The judgment was reversed and remanded for a new trial. *People v. Burson*, 11 Ill. 2d 360, 143 N.E. 2d 239 (1957).

At common law, a person, while insane, cannot be tried, sentenced or executed.[1] The test for present insanity is stated as an appraisal of the present ability of the accused to so understand the nature and purpose of the proceedings taken against him as to be able to conduct his own defense in a rational manner.[2] The common law rule has been codified in all jurisdictions with various procedural methods of determining present insanity.[3] Perhaps the most progressive statute regarding present insanity is the famed "Briggs Law" of Massachusetts which provides:

[1] People v. Maynard, 347 Ill. 422, 179 N.E. 833 (1932); 14 Am. Jur., Criminal Law, § 44 (1938); 23 C.J.S., Criminal Law, § 940 (1940).

[2] 14 Am. Jur., Criminal Law, § 45 (1938); 44 C.J.S., Insane Persons, § 127 (1940); 3 A.L.R. 94.

[3] The Illinois Statute provides, "A person that becomes lunatic or insane after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the lunacy or insanity. . . . In all of these cases, it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impaneling, insane or lunatic." Ill. Rev. Stat. (1955) c. 38, § 593.

Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court, or the trial justice as the case may be, shall give notice to the department, which shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility....[4]

Most states, however, do not provide for sanity hearings until a doubt is raised as to the present sanity of the defendant.[5] Generally, no formal motion is required to raise the issue of present insanity. In *White v. Commonwealth*[6] it was held that if it should appear to the trial judge during the trial that there is probable reason for thinking that the defendant is then insane, he should not wait until a request is made, since under the statute it becomes his duty to order an inquiry into defendant's sanity without regard to request or motion.[7] In *State v. Badders*,[8] the court said:

When during a trial it is brought out by the testimony of any witness, or is called to the attention of the court by anyone connected with the case, that the defendant then on trial is insane, or that there is serious question as to his sanity at that time, it is the duty of the court to stop the trial and make an inquiry concerning that matter.[9]

That there is a doubt as to the defendant's present sanity is a matter within the discretion of the trial court.[10] When will an appellate court review the trial judge's exercise of discretion? In Alabama, the trial court has almost unbridled discretion in determining whether a sanity hearing should be held.[11] California has repeatedly held that the "doubt" referred

[4] Laws of Mass. Ann. (1949) c. 123, § 100A.

[5] Two jurisdictions have adopted modified versions of the "Briggs Law": Ky. Rev. Stat. (1953) § 203.340; Mich. Comp. Laws (1948) § 766.15a.

[6] 197 Ky. 79, 245 S.W. 892 (1922).

[7] Cf. McCane v. Alvis, 98 Ohio App. 506, 130 N.E. 2d 372 (1954), which held that where an accused makes no suggestion of insanity to the court in accordance with the statute, but instead enters a plea of guilty and sentence is pronounced, the defendant's right to a sanity hearing is waived.

[8] 141 Kan. 683, 42 P. 2d 943 (1935).

[9] Ibid., at 686 and 945.

[10] Magneton v. State, 81 N.W. 2d 894 (S.D., 1957); State v. Kitchens, 129 Mont. 331, 286 P. 2d 1079 (1955); Kilgore v. Commonwealth, 310 Ky. 826, 222 S.W. 2d 600 (1949); People v. Barnett, 27 Cal. 2d 649, 166 P. 2d 4 (1946); Deeb v. State, 118 Fla. 88, 158 So. 880 (1935); People v. Maynard, 347 Ill. 422, 179 N.E. 833 (1932); Wilhite v. State, 158 Ark. 290, 250 S.W. 31 (1923); State v. Harrison, 36 W. Va. 729, 15 S.E. 982 (1892).

[11] In Jones v. State, 13 Ala. 153 (1848), the evidence strongly suggested that the prisoner was insane and should not be tried, but the trial judge did not order a sanity hearing. The appellate court held that the question was within the trial judge's discretion and affirmed the conviction.

to in the statute[12] means a doubt in the mind of the trial judge.[13] In *People v. Perry*[14] it was said:

> And it is only where, as a matter of law, a "doubt" may be said to appear, or where there has been an abuse of the discretion that is vested in the trial judge, in the determination of the question, that the conclusion of the latter properly may be disturbed on appeal therefrom.[15]

In *People v. West*[16] it was held that if information that the defendant is insane is disclosed to the trial judge through his personal observation and inspection, ordinarily, a doubt is or should be raised as to the defendant's present sanity and such question should be submitted to a jury. In the much cited case of *People v. Aparicio*,[17] the court said:

> The determination of a motion for a hearing upon the issue of defendant's sanity at the time of trial is one which rests within the sound discretion of the court. Necessarily, an appellate court cannot measure to a nicety the basis for the ruling, and the trial judge must always be allowed a wide latitude. . . . However, when a doubt of the defendant's sanity at the time of trial as contemplated by the statute [see note 12] appears on the face of the record as a matter of law, an abuse of discretion is shown and the failure to order a determination of the question of sanity results in a miscarriage of justice and a reversal is required.[18]

A contrary view, however, is taken by the Kansas courts. The Kansas Supreme Court has said:

> Careful analysis of the record . . . convinces us that although it would have been entirely proper to have had an inquiry we are not prepared to say the court abused sound judicial discretion in not ordering it. . . . The trial judge is in a far better position to view and evaluate the actions, demeanor and capacity of a defendant than is this court.[19]

In Oklahoma, courts have held that the existence of a doubt as to the defendant's sanity must arise from facts and circumstances of a substantial character.[20]

[12] Cal. Penal Code (1949) § 1368 which reads, "If at any time during the pendency of an action and prior to judgment a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be determined. . . ."

[13] People v. West, 25 Cal. App. 369, 143 Pac. 793 (1914).

[14] 14 Cal. 2d 387, 94 P. 2d 559 (1939).

[15] Ibid., at 399 and 565.

[16] 25 Cal. App. 369, 143 Pac. 793 (1914).

[17] 38 Cal. 2d 565, 241 P. 2d 221 (1952).

[18] Ibid., at 567 and 223.

[19] Brewer v. Hudspeth, 166 Kan. 263, 268, 200 P. 2d 312, 316 (1948). See also Jones v. State, 13 Ala. 153 (1848).

[20] Acuff v. State, 283 P. 2d 856 (Okla. Crim., 1955); Bingham v. State, 82 Okla. 5, 165 P. 2d 646 (1946). In Bingham v. State, the court also held that the fact that defendant's counsel does not request a trial of the issue of defendant's present sanity would certainly weigh heavily with the court in determining whether there is a doubt of defendant's present sanity.

Tennessee has taken the position that an appellate court, on its own motion can institute an investigation into the defendant's sanity.[21]

It is apparent that in cases involving appellate review of the trial court's denial of a sanity hearing, the trial court's decision will not be disturbed unless the record indicates an abuse of discretion.[22] In the *Burson* case, the Illinois Supreme Court based its reversal on the fact that counsel's suggestion of insanity, counsel's proposed instructions and the motion for a new trial should have raised a doubt in the trial judge's mind as to the sanity of the defendant. That a sanity hearing was not ordered constituted an abuse of discretion.

[21] In Green v. State, 88 Tenn. 634, 14 S.W. 489 (1890), there was no plea of present insanity in the trial court but the appellate court was led to believe from the record and unnatural conduct of the prisoner that the prisoner was insane, and the appellate court, on its own motion, as the only course left open to it, made a thorough investigation of the prisoner's mental condition.

[22] In People v. Wolfe, 199 N.Y. Misc. 413, 102 N.Y.S. 2d 12 (1950), on a motion for a new trial brought several months after conviction, the court granted a new trial on the basis of clinical observations made in prison. This decision was reversed, 278 App. Div. 967, 105 N.Y.S. 2d 594 (1951), the Supreme Court holding there was nothing in the record to indicate defendant was incapable of making his defense *at the time of trial.*

CRIMINAL LAW–POLICE NEED NOT SURRENDER FINGERPRINTS AND PHOTOGRAPH AFTER ACQUITTAL

Six men were arrested on various charges, acquitted, and released. Since these men had never been arrested before, an action was brought against th Police Commissioner of Chicago asking for the return of all fingerprint cards, photographs, and other identification records taken by the police at the time of arrest. The Circuit Court of Cook County ordered the return of the records. In reversing this decision, the Appellate Court of Illinois held that the statute relied upon by the plaintiffs applied only to the Department of Public Safety and did not require the city police to return records. This statute provides:

> It is hereby made the duty of the sheriffs of the several counties of this state and of the chief police officers of all cities, villages, and incorporated towns in this State to furnish to the Department, daily, copies of finger prints on standardized eight by eight inch cards, and descriptions, of all persons who are convicted of felonies. . . . All photographs, finger prints or other records of identification so taken shall, upon the acquittal of the person charged with the crime, or upon his being released, without being convicted, be returned to him.[1]

The court further stated that a retention of this data did not constitute such an invasion of privacy that would entitle plaintiffs to relief in absence of statute. *Kolb v. O'Connor,* 13 Ill. App. 2d 81, 142 N.E. 2d 818 (1957).

[1] Ill. Rev. Stat. (1953) c. 38, § 780 (e).