1883

Coyle v. The Commonwealth

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"would be a family scandal," clearly threatening injury to her good name, accompanied by general abusive treatment, were held to be duress so as to avoid a deed executed by her under a reasonable apprehension that they would be carried into effect.

The case of *Tapley* v. *Tapley*, above cited, and the principal case are the most satisfactory cases upon the subject under consideration that have so far come to our notice, and the principal case is especially valuable in that it meets the question fairly and squarely and states the principle that ought to govern such cases in a clear and forcible manner. We prophesy that it will become a leading case in this branch of the law.

As to the threat that influenced the action in question having been directed against the defendant's son instead of her personally, see *Harris* v. *Carmody*, 20 Am. Law Reg. (N. S.) 663, and note.

M. D. EWELL.

Supreme Court of Pennsylvania.

COYLE *v.* THE COMMONWEALTH.

Homicidal mania must be proved, not assumed, nor confounded with reckless frenzy; To instruct, however, that it must be proved by "clearly preponderating evidence" is error. All the authorities require is that the evidence proving it should "fairly" preponderate.

An attempt at suicide is not of itself evidence of insanity, and raises no legal presumption thereof.

ERROR to the court of Oyer and Terminer of York county.

MERCUR, J., delivered the opinion of the court.

It was clearly proved that Coyle killed Emily Myers. That fact is admitted. The only defence set up is that he was insane at the time.

The first specification assigned for error is that in referring to homicidal insanity the court cited approvingly a portion of the language of Mr. Chief Justice GIBSON, in *Commonwealth* v. *Moser*, 4 Barr 264, in which it is said "there may be an unseen ligament pressing on the mind, drawing it to consequences which it sees but cannot avoid, and placing it under a coercion, which, while its results are clearly perceived, is incapable of resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognised only in the clearest cases. It ought to be shown to have been habitual or at least so have evinced itself in more than a single instance."

The able argument of counsel has failed to convince us that this was not a correct declaration of the law, or that it has since been ruled otherwise by this court.

The validity of such a defence is admitted, but the existence of such a form of mania must not be assumed without satisfactory proof. Care must be taken not to confound it with acts of reckless frenzy. When interposed as a defence to the commission of high crime, its existence should be clearly manifest. Such defence is based on an unsound state or condition of the mind proved by acts and declarations of violence. It certainly is not requiring too much to hold that it shall be shown in more than a single instance. We know no later case in this state where the precise question has been ruled otherwise.

The second specification relates to the effect which shall be given to the attempt of the prisoner to take his own life. This attempt was made immediately after he had fired the shots which caused the death of his victim. The language objected to was not in answer to any point submitted, but appears in the general charge. The court said, "it appears proper to say to you, as a matter of law, that even if you believe the prisoner really intended to take his own life, this would not be of itself evidence of insanity. It would only be a circumstance in the case to be considered by you in connection with other facts and circumstances, for the purpose of enabling you to determine the mental condition of the prisoner. The fact of the attempted suicide raises no presumption of insanity."

The court was dealing with the question of attempted suicide only, and whether that alone was evidence of insanity. It adopted the very language used by the court below in *American Life Ins. Co.* v. *Assetts*, and affirmed by this court in 24 P. F. Smith 176. In *Laros* v. *Commonwealth*, 3 Norris 200, the defence was insanity. It was objected that the court below said to the jury, "you can not, however, infer insanity from the heinous, atrocious character of the crime, or to constitute it as an element in the proof of actual insanity." The answer here was, "the court did not mean to say that where proof of insanity is given, the horrid and unnatural character of the crime will lend no weight to the proof; but meant only that the terrible nature of the crime will not stand as the proof itself, or an element in the proof of the fact of insanity. There is a manifest difference between that which is actual evidence of a fact, and which merely lends weight to the evidence which constitutes the proof. This is all the court meant."

So we understand the language used in the present case to mean that the attempt to commit suicide, of itself, is not evidence of the fact of the insanity of the prisoner, and it raises no legal presumption thereof, but it may be considered by the jury with all the other facts and circumstances bearing on the question of insanity. Sometimes it may be evidence of a wicked and depraved heart, familiar with crime. At others, of despondency and discouragement; but perhaps more frequently of cowardice, of a lack of courage to face ignominy and public disgrace, or to submit to the punishment likely to be imposed on him.

The third specification presents more difficulty. In answer to a point submitted, the court charged, "the law of the state is that when the killing is admitted, and insanity or want of legal responsibility is alleged as an excuse, it is the duty of the defendant to satisfy the jury that insanity actually existed at the time of the act, and a doubt as to such insanity will not justify the jury in acquitting on that ground. The law presumes sanity when an act is done, and that presumption can only be overthrown by clearly preponderating evidence." Excluding the last sentence, this answer contains a clear and correct statement of the law. It is not sufficient cause for an acquittal of one charged with crime, and defending under the plea of insanity, that a doubt is raised as to its existence. As sanity is presumed, when the fact of insanity is alleged, it must be satisfactorily proved. *Ortwein* v. *Commonwealth*, 26 P. F. Smith 414; *Lynch* v. *Same*, 27 Id. 205. The question remains, what degree of proof is necessary to overthrow the presumption of sanity? The court said it can be "only by clearly preponderating evidence." The court also (misled it is said by the language in the brief furnished it) cited the case of *Brown* v. *Commonwealth*, 28 P. F. Smith 122, as declaring "to establish this defence (viz., insanity) it must be clearly proved by satisfactory and clearly preponderating evidence."

This is not the language of that case. It is demanding a higher degree of proof than the authorities require. It may be satisfactorily proved by evidence which fairly preponderates. To require it to "clearly preponderate" is practically saying it must be proved beyond all doubt or uncertainty. Nothing less than this will make it clear to the jury, and make them conclusively convinced. This is not required to satisfy the jury: *Heister* v. *Laird*, 1 W. & S. 215.

It is not necessary that the evidence be so conclusive as to remove

all doubt: *Ortwein* v. *Commonwealth*, *supra*; *Brown* v. *Same*, *supra*; *Myers* v. *Same*, 2 Norris 131; *Parnell* v. *Same*, 5 Id. 260. When one is on trial for his life care must be taken that he receives from the court that due protection which the law has wisely thrown around him. Evidence fairly preponderating is sufficient.

We discover no error in the fourth specification.

Judgment reversed and *venire facias de novo* awarded.

The question whether the burden of proof rests on the Commonwealth in criminal cases, where the defence of insanity is interposed, has attracted considerable attention within the last few years. The defence interposed in the trial of Guiteau called public attention to the subject, but it only served to bring more prominently to the public notice that which before had been a matter of deep concern both to bench and bar. Within the last year or two there have been a number of decisions on this important subject rendered by the courts of last resort, and the question involved is of such a nature that it may be worth while to ascertain the exact status of the matter at the present time.

Three different theories have been maintained in relation to this subject. First, it has been held that inasmuch as every man is presumed to be sane, the burden of proof will rest on the defendant to overcome the presumption by a clear preponderance of the evidence. In other words he must establish his insanity beyond a reasonable doubt. This theory, whatever may have been thought of it at one time, is now regarded almost universally as entirely unjustifiable, inhuman, and absurd. At one time it was supported by the courts of Alabama, Delaware, Missouri and New Jersey: *Brinyea* v. *State*, 5 Ala. 241; *State* v. *Danby*, 1 Houston Cr. Cas. (Del.) 175; *State* v. *Pratt*, Id. 269; *State* v. *Boice*, Id. 355; *State* v. *Draper*, Id. 531; *State* v. *Thomas*, Id. 511; *State* v. *Huting*, 21 Mo. 464; *State* v. *Spencer*, 1 Zabriskie (N. J.) 201. But this doctrine has been overruled in Alabama and Missouri, as we shall hereafter see. In Delaware the doctrine does not appear to have been abandoned. The case in New Jersey, although it has found its way into the regular reports, is not a decision of the court of last resort, but a mere charge to the jury given by Chief Justice HORNBLOWER in the Hudson County Oyer and Terminer, in 1846. The question has never been decided by either the Supreme Court or the Court of Appeals.

The second theory, and the one most generally adhered to, is that announced in the principal case. That inasmuch as every man is presumed to be sane, the presumption of sanity prevails necessarily until it is shown to be false by a preponderance of evidence. That the burden of proof rests on the prisoner to show his insanity to the satisfaction of the jury by a preponderance of the evidence. This theory is maintained in Alabama, Arkansas, California, Iowa, Kentucky, Maine, Massachusetts, Missouri, North Carolina, Ohio, Pennsylvania, Texas and Virginia—thirteen States.

Alabama: This theory was adopted in this state in a very elaborate opinion, in 1879, in *Boswell* v. *State*, 63 Ala. 307. "Insanity is a defence which must be proven to the satisfaction of the jury, by that measure of proof which is required in civil causes; and a reasonable doubt of sanity, raised by all the evidence, does not authorize an acquittal." See *McAllister* v. *State*, 17 Ala. 434; *Brinyea* v. *State*, 5 Id. 241; *State* v. *Marler*, 2 Id. 43.

Arkansas: The question as to the burden of proof in such cases was briefly

alluded to, in 1870, in *McKenzie* v. *State*, 26 Ark. 334, 341. It was said that the prisoner must produce evidence sufficient to change the presumption raised against him by the proof of the killing.

California: In *People* v. *Wreden*, 12 Rep. 682 (1881), the Supreme Court again announced its adhesion to the theory we are considering, having previously adopted it in cases cited below. In that case, as in the particular case, the court considered the effect of an instruction that the prisoner must prove his insanity by a *clear* preponderance of the evidence. It said: "Is not the expression 'clearly established by satisfactory proof,' the full equivalent of 'established by satisfactory proof beyond a reasonable doubt?' How can a fact be said to be clearly established so long as there is a reasonable doubt whether it has been established at all? There can be no reasonable doubt of a fact after it has been clearly established by satisfactory proof." And see *People* v. *Coffman*, 24 Cal. 233; *People* v. *McDonnell*, 47 Id. 134; *People* v. *Wilson*, 49 Id. 14; *People* v. *Messersmith*, 57 Id. 575.

Iowa: The court holds that the presumption of sanity cannot be avoided except by a preponderance of proof, the defence of insanity being an affirmative defence. But it need not be made out beyond a reasonable doubt. If the preponderance of the evidence shows the insanity of the defendant, it raises a reasonable doubt of his guilt; *State* v. *Felter*, 32 Iowa 49 (1871). This theory, said the court, is in accord with the weight of authority, and has the support of reason, humanity and public policy.

Kentucky: This too is the rule adopted in Kentucky. A mere doubt of sanity is insufficient to rebut the presumption of sanity. That presumption must be rebutted by a preponderance of evidence, but if the evidence preponderates, the jury are not to convict "merely because they might entertain a rational doubt" as to his insanity: *Kriel* v. *Commonwealth*, 5 Bush 362 (1869); *Graham* v. *Commonwealth*, 16 B. Mon. 587; *Smith* v. *Commonwealth*, 1 Duval 224.

Maine: In *State* v. *Lawrence*, 57 Me. 574 (1870), is to be found an able presentation of the theory that the burden rests with the prisoner to establish his insanity by a preponderance of the evidence. "Sanity is assumed and treated as an essential attribute of humanity. The indictment follows the statute, setting out all the acts deemed essential to the crime, but omitting all reference to the capacity of the accused. Of all that is set out in the indictment he is presumed innocent, and that must be proved and nothing else. When that is proved he is convicted, unless he interposes some defence other than a sane denial of the allegations against him. A simple plea of not guilty, puts in issue the allegations, and only the allegations in the indictment, and as to them the prosecution has the affirmative. * * * The plea of insanity is, and of necessity must be, a plea of confession and avoidance. * * * It does not meet any question propounded by the indictment, but raises one outside of it. It is not a mere denial, but a positive allegation."

Massachusetts: "The presumption must be rebutted by proof of the contrary, satisfactory to the jury." Such proof may come from the testimony of the state, or from testimony presented by the defence: *Commonwealth* v. *Rogers*, 7 Met. 500; *Commonwealth* v. *Eddy*, 7 Gray 583; *Commonwealth* v. *Heath*, 11 Id. 303.

Missouri: Such is now the law in this state: *State* v. *Klinger*, 43 Mo. 127; *State* v. *Smith*, 53 Id. 267; *State* v. *Redemeier*, 71 Id. 173; *State* v. *Erb*, 74 Id. 199.

North Carolina: The jury is to be "satisfied" of the prisoner's insanity: *State* v. *Payne*, 86 N. C. 609 (1882); *Morehead* v. *Brown*, 6 Jones (Law) 366.

Ohio: Such is the law of this state as determined in 1857, and since adhered to: *Loeffner* v. *State*, 10 Ohio St. 598;

Bond v. *State*, 23 Id. 349; *Bergin* v. *State*, 31 Id. 115.

Pennsylvania: The doctrine in the particular case as to the burden of proof is clearly established by a series of cases: *Ortwein* v. *Commonwealth*, 76 Penn. St. 423 (1874); *Lynch* v. *Commonwealth*, 77 Id. 205 (1874); *Meyers* v. *Commonwealth*, 83 Id. 141 (1876); *Pannell* v. *Commonwealth*, 86 Id. 268 (1878); *Sayres* v. *Commonwealth*, 88 Id. 301 (1879).

Texas: The Court of Appeals declines to say upon whom the burden of proof lies when the defence of insanity is interposed. "We do not deem it necessary or incumbent upon us to unravel or attempt to answer the misty mazes and the metaphysical disquisitions indulged by the opposing theorists about sanity being essential to criminal intent, and criminal intent being essential to punishable crime, nor their equally abstruse and obscure views as to which side has the burden of proof when the sanity of the defendant, from whatever cause, acquires a *status* in the case." The court holds that "the evidence of insanity, to warrant an acquittal, should be sufficiently clear to convince the minds and consciences of the jury:" *Webb* v. *State*, 9 Tex. Ct. of App. 490 (1880); *King* v. *State*, Id. 553; *Johnson* v. *State*, 10 Id. 577 (1881); *Clark* v. *State*, 8 Id. 350 (1880); *Carter* v. *State*, 12 Texas 500 (1854). But in a case just decided in the Court of Appeals it is laid down that the burden is on the prisoner in such cases to establish his insanity by a preponderance of the evidence: *Jones* v. *State*, 15 Reporter 27, 28 (January 3d 1883).

Virginia: The prisoner must prove his insanity to the satisfaction of the jury: *Boswell's Case*, 20 Gratt. 860; *Baccigalupo's Case*, 33 Id. 807. But he need not prove it beyond reasonable doubt: *Dijarnette* v. *Commonwealth*, 75 Va. 867.

The third and last theory is that the burden of proof rests on the State to prove the sanity of the prisoner. The presumption of sanity will be indulged in the absence of evidence to the contrary. If the defendant introduces no evidence which tends to prove insanity, the presumption stands. But if he gives evidence tending to overthrow the presumption of his sanity, casting doubt and uncertainty upon it, it is the duty of the state by affirmative evidence to prove his sanity beyond a doubt. This theory is maintained by courts of the very highest standing, and has received the emphatic approval of some of our ablest and most enlightened judges. The reasoning of the opinions in which this conclusion has been reached seems to the writer to be entirely logical, and in harmony with that humane and wise requirement of the law that every man shall be presumed innocent until his guilt has been shown beyond a reasonable doubt. The question may well be asked, "How can a jury say, 'We have no doubt of the guilt of the prisoner, but we do doubt whether he was sane?'"

This theory is maintained in Illinois, Indiana, Kansas, Michigan, Mississippi, Nebraska, New Hampshire and New York and Tennessee—nine States.

Illinois: In a case decided in 1859 it was held that the burden of proving insanity rested on the prisoner: *Fisher's Case*, 23 Ill. 293. But in 1863 that case was overruled, and was declared to have been decided under peculiar circumstances not admitting of much deliberation. The presumption of innocence was declared to be as strong as the presumption of sanity: *Hopps* v. *People*, 31 Ill. 385. Sanity is as essential an ingredient of crime as the overt act. If the evidence raises a doubt of the prisoner's sanity the burden is on the prosecution to remove that doubt: *Chase* v. *People*, 40 Ill. 352.

Indiana: If the prisoner raises a reasonable doubt as to his sanity, it is necessary for the state to prove mental

soundness beyond a reasonable doubt. This theory was adopted and has been adhered to since 1862: *Polk* v. *State*, 19 Ind. 170; *Stevens* v. *People*, 31 Id. 485; *Gueting* v. *State*, 66 Id. 94.

Kansas: The same theory was adopted in 1873 by the able court of this state in a well reasoned opinion. The sanity of the prisoner "ought to be made out" said the court, "in the same way, by the same party, and by evidence of the same kind and degree, and as conclusive in its character, as is required in making out any other essential fact, ingredient, or element of murder." *State* v. *Crawford*, 11 Kans. 32.

Michigan: One of the most satisfactory opinions maintaining this theory is that pronounced by the Supreme Court of this state in the case of the *People* v. *Garbutt*, 17 Mich. 9. The opinion was by Chief Justice COOLEY. After showing that the crime of murder is only committed when a person of sound mind and discretion unlawfully kills another with malice, express or implied, the court declares that the prosecution takes upon itself the burden of establishing not only the killing, but the malicious intent. "There is no such thing in law as a separation of the ingredients of the offence so as to leave a part to be established by the prosecution, while as to the rest the defendant takes upon himself the burden of proving a negative. The idea that the burden of proof shifts in these cases is unphilosophical, and at war with fundamental principles of criminal law. The presumption of innocence is a shield to the defendant throughout the proceedings, until the verdict of the jury establishes the fact that beyond a reasonable doubt he not only committed the act, but that he did so with malicious intent." The same doctrine was affirmed in *People* v. *Finley*, 38 Mich. 482.

Mississippi: The subject was carefully considered in this state in 1879, in *Cunningham* v. *State*, 56 Miss. 272. The opinion delivered is an able presentation of the theory we are considering. After stating that there can be no crime without mental accountability, the court declares, that it fails to see any consistency or logic in holding that the state must establish all the elements of the crime beyond a reasonable doubt, with the exception of the prisoner's sanity, "But it is said that the law presumes sanity. So the law presumes malice from the fact of killing; but if anything in the testimony, either of the state or of the defendant, suggests a reasonable doubt of its existence, nobody ever supposed that the state could stop short of removing this doubt, and of establishing his malice to a moral certainty."

Nebraska: This theory was adopted in this state in 1876: *Wright* v. *People*, 4 Neb. 408.

New Hampshire: And in this state it was maintained as early as 1861, and has since been adhered to: *State* v. *Bartlett*, 43 N. H. 224; *State* v. *Jones*, 50 Id. 369, 400.

New York: Whatever doubt was supposed to exist as to the law of this state on this question was effectually put to rest by the recent decision of the Court of Appeals, in *O'Connell* v. *People*, 87 N. Y. 380. In that case it is said that the prosecution must satisfy the jury "upon the whole evidence that the prisoner was mentally responsible; for the affirmation of the issue tendered by the indictment remained with the prosecution to the end of the trial." The presumption of sanity stands until repelled. If the prisoner gives no evidence as to his insanity, the presumption stands, but if he gives evidence tending to overthrow the presumption the prosecution must produce answering testimony. See *Moett* v. *People*, 85 N. Y. 373; *People* v. *McCann*, 16 N. Y. 58.

Tennessee: As we understand the decision in *Dove* v. *State*, 3 Heisk. 348 (1872), the theory we are considering is practically adopted in that state. The presumption of sanity is sufficient in the

absence of any evidence of insanity. If evidence of insanity is introduced and is sufficient to make an *equipoise*, then the presumption of sanity is neutralized, and the burden devolves on the state to show the sanity of the defendant.

In addition to the cases we have noted there are decisions in Connecticut and in Minnesota which announce that the burden of proving insanity is on the prisoner. But these decisions are silent as to whether he must prove his insanity by a clear preponderance, or only by a mere preponderance of the evidence: *State* v. *Hoyt*, 46 Conn. 330, 337; s. c. 47 Id. 518; *Bonfanti* v. *State*, 2 Minn. 123; *State* v. *Gut*, 13 Id. 341.

In a case in Georgia, in 1872, the Supreme Court of that state said: "*Prima facie* all persons are to be considered sane; and this is true in criminal as well as civil trials. If this be the legal presumption, it would seem to follow that unless the jury are satisfied of insanity, they must consider the prisoner sane. Perhaps the word satisfied is rather strong; and were there any evidence here of insanity, we might hesitate to sustain the judge:" *Holsenbake* v. *State*, 45 Ga. 55.

HENRY WADE ROGERS.

Supreme Court of the United States.

TURNER *v.* STATE OF MARYLAND.

In order to constitute an inspection law, within the meaning of art. 1, sect. 10, of the Constitution of the United States, it is not necessary that the statute should provide for an inspection of the quality of the article to be exported, and the fact that the inspection provided for extends only to the form and dimensions of the package does not render the statute unconstitutional.

A state may lawfully, by such inspection law, require the articles to be brought to state warehouses to be inspected.

It may also direct that a certain product, before it becomes an article of commerce between the states, shall be encased in a package of certain form or dimensions, and the imposition upon such article, when exported, of a tax to meet the expenses of inspection is not an unlawful discrimination between the state buyer and the purchaser who buys for exportation.

Whether it is not exclusively the province of Congress to decide whether a charge or duty under an inspection law is excessive, *quære*.

Certain state statutes provided that no tobacco, the growth of the state, should be passed or accounted lawful tobacco unless packed in hogsheads of a specified size; that inspectors should be appointed whose duty it should be to examine the hogsheads of tobacco brought to the warehouse to which they should be respectively assigned; to stamp on each hogshead its weight and the weight of the tobacco; to open it and take from it samples, and, if the tobacco is merchantable, to deliver it sealed to the owner, with a certificate. The statute imposed on each hogshead a charge of $2 outage, if it weighed less than 1100 pounds, and 12½ cents for every additional hundred pounds, and prohibited, under a penalty, any one from carrying out of the state tobacco raised in the state unless such tobacco should have been so inspected. The statute further provided that nothing therein contained should prohibit a grower or purchaser of tobacco, who should pack the same in the county where grown, from exporting it without having it opened for inspection, but that