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Varying Tests for Insanity - Salinger v. Superintendent of Spring Grove State Hospital

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VARYING TESTS FOR INSANITY

Salinger v. Superintendent of Spring Grove State Hospital[1]

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In 1950, appellant was found insane at the time of committing alleged criminal offenses and insane at the time of trial, by a jury in the Criminal Court of Baltimore City.[2] The Court committed him to Spring Grove State Hospital as authorized by statute.[3] In 1954, Salinger filed a petition in Baltimore City requesting a jury to pass upon his sanity pursuant to Article 59, Section 20.[4]

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[1] 112 A. 2d 907 (Md., 1955).

[2] For an account of the circumstances surrounding Salinger's trial, see DeVito, *Insanity as a Defense — McNaghten Rule Repudiated by District of Columbia*, 15 Md. L. Rev. 44, 50 (1955).

[3] Md. Code (1951), Art. 59, Sec. 7, provides:

"If the jury find by their verdict that such person was at the time of committing the offense and then is insane or lunatic, the court before which trial was had shall cause such person to be sent to the almshouse of the county or city in which such person resided at the time of the commission of such act, or to a hospital, or some other place better suited in the judgment of the court to the condition of such prisoner, there to be confined until he shall have recovered his reason and be discharged by due course of law. . . ."

[4] Md. Code (1955 Supp.), Art. 59, Sec. 20, provides:

"Any person confined in any State or licensed private institution for the care, custody or treatment of insane persons, . . . may file a petition in the law courts of any county or Baltimore City, . . ., requesting that the person so confined be brought before said Court for the purpose of having the sanity of such person determined, and the Court shall forthwith proceed to hear and determine the matter; . . . If the Court or jury, as the case may be, shall determine that such person is insane or is suffering from a mental disease, the Court shall order said person committed to the institution from which he immediately came, or to some other suitable institution, otherwise he shall be discharged, . . ."

(This section was amended by the Laws of 1955, Ch. 352, to provide that after a hearing has been held as outlined above, any further petition within a year of the last hearing must be accompanied by affidavits of persons other than himself showing the mental condition of the petitioner at the time as compared with such condition at the time of the previous hearing.

At the hearing, five psychiatrists testified that Salinger knew the difference between right and wrong and understood the nature and consequences of his acts as applied to himself, but maintained that he was considered a dangerous psychopath who had made no progress since his original commitment and further, expressed no hope for future improvement in his illness. The petitioner's request that the Court instruct the jury as to his eligibility for release solely upon the basis of the "right-wrong" test,[5] was refused. The Court instructed the jury to apply the "right-wrong" test but, in addition, if they found that appellant did have the ability to distinguish between right and wrong, they must further ask themselves:

> " 'If he becomes a free agent will he be a danger to himself, to his own safety, or will he be a menace to the safety of the person and/or the property of other people? If you answer that question in the negative, having answered the first question positively, then you should find that he is sane'."[6]

The Court then added that if they answered the second question in the affirmative, they would have to find that the petitioner was insane. The jury found the petitioner was insane.

The Court on the basis of the affidavits can hear the case or dismiss the petition.)

See also Md. Code (1951), Art. 59, Sec. 7, where apparently habeas corpus is made available for release from a mental institution after a committal from a criminal charge. It provides:

> ". . . any judge of the Circuit Court for any county where such person is detained or of the supreme bench of Baltimore City, as the case may be, may, upon habeas corpus proceedings, make any order, absolute or conditional, for the permanent or temporary discharge of the person upon satisfactory proof of permanent or temporary recovery."

Apparently, a requirement under either of the aforementioned procedures is outlined in Md. Code (1951), Art. 59, Sec. 13, which provides:

> "No person committed to any almshouse or mental institution under the provisions of this sub-title shall be released therefrom without the approval of a judge of the court in which said person's case was pending at the time of the commitment, or in which said person was acquitted by reason of insanity. Such approval shall be in addition to any other conditions imposed by law on the discharge of persons committed to an almshouse or mental institution."

[5] The "right-wrong" test as outlined in Spencer v. State, 69 Md. 28, 13 A. 809 (1888), is Maryland's equivalent of the famous McNaghten rule. For a discussion of the "right-wrong" test in Maryland, see *Insanity as a Defense — McNaghten Rule Repudiated by District of Columbia, supra*, n. 2, 46, and Sobeloff, *From McNaghten to Durham, and Beyond — A Discussion of Insanity and the Criminal Law*, 15 Md. L. Rev. 93, 95 (1955). For a discussion of the burden of proof where insanity is used as a defense see *Burden of Proof of Insanity in Criminal Cases*, 15 Md. L. Rev. 157 (1955).

[6] *Supra*, n. 1, 909.

On appeal, the appellant's main contention was that the Court erred in instructing the jury beyond the "right-wrong" test. He maintained that since the *Spencer case's* "right-wrong" test was used to determine appellant's criminal responsibility at the criminal trial which resulted in appellant's committal to a mental institution, it alone should be used as the criterion for release therefrom. In other words, if the accused is committed because he did not know the difference between right and wrong and the nature and consequences of his acts as applied to himself, he should likewise be released when a jury finds that he does. The Court of Appeals rejected this contention and affirmed the trial Court's charge.

In rejecting the appellant's contention, the Court first pointed out that the use of the Spencer "right-wrong" test was limited to the question of criminal responsibility, stressing that the subsequent committal to a mental institution after an acquittal had no bearing upon the acts for which defendant was tried, but instead, defendant's commitment was a result of a determination that it would not be safe for defendant to remain at large. In the Court's language:

> "One found to have been and to be insane in a criminal proceeding, is committed not because he did the act which caused him to be brought into court, but because it is not safe for him or the community for him to be at large. The confinement is not punishment, it is custodial. The acts which preceeded it merely served to bring about a judicial determination in a particular form of the need for custodial confinement. This essential fact is not changed because, to avoid the consequences of his act, the accused, under Maryland Law, must be suffering from a mental illness or a disease of a kind and to a degree which brings him within the Spencer rule. Other kinds and degrees of mental illness and disease are, of course, well recognized by medicine and the law and some of them make the victim a menace to society and himself if he is at liberty."[7]

The Court then affirmed the trial court's charge as the test generally used to measure the right to confine or keep confined one mentally ill, *i.e.*, the "danger to himself and society" test, and concluded reasoning:

> "We hold that one who has been found not guilty of a charge of crime, because of due determination of in-

[7] *Ibid.*

> sanity in a criminal court, has the same status as one confined as insane by virtue of some other procedure established by law and, in order to obtain release, must satisfy a judge or jury of his sanity, not only under the Spencer rule but under the tests generally applied as justifying confinement. This being so, the basis of appellant's original commitment did not alone control the answer to the question of whether he should be released."[8]

There has been some understandable confusion,[9] concerning this problem, *i.e.*, the use of different tests to determine insanity at a criminal trial on the issue of criminal responsibility and at a sanity hearing on a petition for release by a person committed after an acquittal at a criminal trial. Understandable, because at first glance, appellant's contention that there should be a single standard for insanity both at the criminal trial and at the sanity hearing seems reasonable. If the "right-wrong" test is used to determine defendant's sanity at the criminal trial, why then should it not be used to determine defendant's sanity at defendant's hearing for release? If the term "insanity" were meant to describe a clear objective mental state in both these instances, there could be no logical grounds upon which appellant's contention could be rejected. But the term "insanity" has no such single objective meaning in the law today.[10] Instead it has become a word that has been used loosely by the courts and legislatures alike to describe various mental states and whose true meaning may be determined only by its use in a specific situation. In short, a given mental state can be classed as insanity in one situation, and as sanity in another situation, according to the standard of mental conduct or acuity required to accomplish "normal results" in the respective situation considered.[11] As a result, distinct tests to measure this standard

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[8] *Ibid*, 910.

[9] Judge Niles, at the time of the first sanity hearing for release, in 1944, (Ex parte in the Matter of Walter Debinski, Daily Record, May 2, 1944), felt that the "right-wrong" test was the only one to be applied, but later, in 1953, in an unpublished memorandum, indicated that he felt this was in error, and that a test similar to the one in the instant case should also be used — a prophecy confirmed by the result in the instant case.

[10] See Weihofen, *Mental Disorder as a Criminal Defense* (1954) 5; Glueck, *Mental Disorder and the Criminal Law* (1925) 12.

[11] In Snyder v. Snyder, 142 Ill. 60, 31 N. E. 303, 305 (1892), the Illinois Court said:

> "What might be regarded as insanity or mental incapacity in the one case would not necessarily be insanity in another. No definite rule can be laid down which will apply to all cases alike."

of conduct have arisen in each situation though they may have been labeled in each instance "insanity tests". Thus, the test to determine criminal responsibility, the test to determine eligibility for release from a mental institution, the tests to determine contractual and testamentary capacity[12] have all at times been called "insanity tests", yet in each instance the law prescribes a different standard of mental acuity or conduct. It becomes clear then, in view of the different uses of the word "insanity" and the different insanity tests, that, in order to evaluate any one insanity test, it cannot be examined in relation to insanity tests in other situations, but must be considered in relation to the purpose for which it alone is being used. Therefore, appellant's contention that there should be a single standard for insanity both at a criminal trial where the issue is criminal responsibility and at a sanity hearing where the question is release, only has merit if it can be found that the nature, purposes and public policy underlying both proceedings are so similar that a single standard of mental conduct will accomplish the desired results in both instances. An investigation into each of these proceedings, therefore, with an aim toward considering the applicability of a single insanity test to cover both cases, seems warranted.

The "right-wrong" test employed at a criminal trial, while popularly called an insanity test can be better phrased a test for criminal responsibility,[13] since it is not used to determine whether a person is normal or abnormal in a medical sense, but rather to determine whether the accused is suffering from the particular degree or type of mental disorder which the law considers sufficient to render one criminally irresponsible. The states employing the "right-wrong" test do not maintain that knowing right from wrong is the only criterion for measuring insanity, but do contend that it is a valid criterion for ascertaining that type or degree of insanity, as a result of the existence of which the public policy of the state would deem it just or proper to permit the acquittal of a person accused of a crime.[14]

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[12] For a discussion of insanity tests relating to testamentary capacity see ATKINSON, HANDBOOK OF THE LAW OF WILLS (2d ed. 1953), 232 *et seq.*; as to contracts, see 1 WILLISTON ON CONTRACTS (Rev. ed. 1936), Sec. 256.

[13] See *supra*, n. 10.

[14] In Spencer v. State, 69 Md. 28, 38, 13 A. 809 (1888). The Court in approving the "right-wrong" rule said:

> ". . . notwithstanding a party may do an act, being in itself criminal, under the influence of an insane delusion, with a view of redressing or revenging some supposed grievance, or injury, or of promoting some public good, he is nevertheless punishable, if he had the capacity to distinguish between right and wrong and knew at the time that he

Thus, any defendant suffering a different type of mental disorder, the law will hold as criminally responsible, while perhaps still recognizing that the defendant may be mentally disordered.[15] When the issue is criminal responsibility, the main concern of the court is to establish defendant's guilt or innocence, and in so doing to use a test which embodies that jurisdiction's philosophy as to the degree or type of insanity that, in the interest of justice, should relieve the actor from responsibility for his actions.[16]

When the determination has been made that the defendant did not know the difference between right and wrong at the time of the crime, the defendant is acquitted, but if this condition is found to exist at the time of the trial he is committed to a mental hospital, not as a sentence, for defendant has been acquitted of his crime, but because a person found irresponsible by reason of insanity under the "right-wrong" test is also suffering from a mental disease the nature of which requires the defendant to be hospitalized for the welfare of himself and society. Thus, it is clear that the *Spencer*[17] "right-wrong" test employed at a criminal trial is not used as a criterion to gauge accused's insanity for purposes of committal, but instead the need for committal is necessarily included within a determination of criminal irresponsibility where the condition persists until the time of trial. Once committed, the accused is in the same position as any other inmate, his particular type of committal bearing no relation to his eligibility for release.[18]

As distinguished from the test for criminal responsibility, the test employed at sanity hearings for persons seeking release from mental institutions differ, both in function and purpose. A person committed to a mental institution is so confined under the state's power as *parens patria*. Essentially, he is committed because he is considered a danger to the welfare of himself and society as a whole. This applies as well to those confined as a result of determinations of criminal irresponsibility as to those com-

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was acting contrary to law. Therefore, if the party accused be conscious that the act was one that he ought not do, that act being contrary to law, he is punishable under the law."

[15] Maryland, in Code (1951), Art. 31B, Sec. 5, has provided for individuals defined as defective delinquents who, though they do not satisfy the Spencer "right-wrong" test suffer from a type of mental disorder, which makes them dangerous to society and may warrant the imposition of an indeterminate sentence for their treatment and the protection of society.

[16] See WECHSLER, A THOUGHTFUL CODE OF SUBSTANTIVE LAW (The American Law Institute Proceedings, May 20, 1954), 45 J. Cr. L., 520, 524 (1955).

[17] *Supra*, n. 5.

[18] *Supra*, n. 1, 909, 910. See also Wagner v. M. & C. C. of Balto., 134 Md. 305, 106 A. 753 (1919).

mitted under other involuntary commitment procedures.[19] Since the basis of their confinement is that they are a potential threat to society, upon petition for release it must be determined whether, if discharged, they will be able to take a place in society without becoming a menace to the welfare of themselves and the society in which they will live. Thus, the test to be applied in these cases of release, regardless of the method of confinement, is the test applied by the trial Court and adopted by the Court of Appeals in the instant case.[20]

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[19] See Wells v Attorney General of the United States, 201 F. 2d 556, 559 (10th Cir., 1953), where it is said:

"The several states in their character as parens patriae have general power and are under the general duty of caring for insane persons. The prerogative is a segment of police power. In the exercise of such power, insane persons may be restrained and confined both for the welfare of themselves and for the protection of the public. And if the exactions of due process are met, such restraint and confinement do not violate any constitutional right of the individual."

[20] Essentially the same policy underlies discharge from the Patuxent Institute under the Defective Delinquent law. Md. Code (1951), Art. 31B.