

IN THE  
SUPREME COURT OF FLORIDA

BETTY REESE,  
Petitioner,  
v.  
STATE OF FLORIDA,  
Respondent.

CASE NO. 65,633

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REPLY BRIEF OF PETITIONER

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Counsel for Petitioner.

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PRELIMINARY STATEMENT

Petitioner relies on the Initial Brief.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the Statement of the Case and Facts as found in her Initial Brief.

ARGUMENT

POINT INVOLVED

IF THE STATE HAS THE BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT A DEFENDANT WAS SANE AT THE TIME OF THE OFFENSE AND THE DEFENSE OF INSANITY HAS BEEN RAISED IS THE GIVING OF THE PRESENT INSANITY INSTRUCTION, AS SET FORTH IN STANDARD JURY INSTRUCTION 3.04(b), ALONG WITH THE GENERAL REASONABLE DOUBT INSTRUCTION SUFFICIENT, NOTWITHSTANDING THE DEFENDANT HAVING SPECIFICALLY REQUESTED THE COURT TO INSTRUCT THE JURY THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS SANE AT THE TIME OF THE OFFENSE.

Respondent argues that the burden of persuasion/proof is on the defendant in a case where the defense of insanity is raised. Contrary to Respondent's assertion, this Court has held unequivocally to the contrary. As noted in Petitioner's initial brief, when the presumption of sanity is rebutted, the state must prove sanity beyond every reasonable doubt, just as it must other elements of the offense. Parkin v. State, 238 So.2d 817 (Fla. 1970). The presumption of sanity is rebutted or, in other words, it vanishes, when there is evidence sufficient to create a reasonable doubt in the minds of the jurors as to the defendant's sanity. Farrell v. State, 101 So.2d 130 (Fla. 1958); Byrd v. State, 297 So.2d 22 (Fla. 1974); Holmes v. State, 374 So.2d 944 (Fla. 1979), cert.den. 446 U.S. 913, 100 S.Ct. 1845, 64 L.Ed.2d 267 (1980).

Although, as Respondent argues, the Constitution permits the state to allow the burden of persuasion/proof to shift to the defendant. That is not the issue before this Honorable Court. The law of Florida is that the burden of persuasion/proof is

always on the prosecution to prove the sanity of the accused where the defense of insanity has been raised. The accused merely has the burden of raising the defense of insanity.

Since it is a jury question in Florida as to whether the defense of insanity has been raised (Jones v. State, 332 So.2d 615 (Fla. 1970), Mr. Justice Sunberg specially concurring), it is all the more crucial that the jury be specifically instructed on the state's ultimate burden to prove the defendant's sanity. Otherwise, the jury is left with the erroneous impression that the burden of persuasion/proof is on the defendant. All Petitioner sought was a correct statement of Florida law on the law of insanity and the burden of proof thereto.

Respondent asserts that "Petitioner's and Judge Anstead's references to federal practice do not establish any insufficiency in the standard instructions in Florida. Under federal practice, it is for the trial judge to determine whether insanity has been shown sufficiently to create an issue, and if so to then instruct the jury that the government bears the burden of proof." (R.B.p-17). Petitioner maintains that Respondent has erroneously focused on an issue contained in the federal standard jury instructions not germane to the issue for which said instructions were cited to the court i.e. ultimate burden of proof once the defense has created a reasonable doubt as to his or her sanity. The federal jury instructions illustrate that the ultimate burden of proof which is on the prosecution as to the defendant's sanity must be expressly, clearly and unambiguously charged to the jury.

In Yohn v. State, 450 So.2d 898 (Fla.1st DCA 1984), the Court made an analogy to the entrapment defense in its analysis of the Florida Standard Jury Instruction on insanity. (3.04(b)). It must be pointed out that any analogies to the entrapment instruction should not be drawn. Unlike the entrapment defense, the issue of sanity is an element of the State's case once the issue is raised. Parkin v. State, supra; Byrd v. State, supra; Holmes v. State, supra. Moreover, the entrapment instruction does not contain any presumption whereas the presumption of sanity is an integral part of the Standard Jury Instruction 3.04(b). That presumption distinguishes the two issues and makes it all the more important for the jury to be informed of the State's ultimate burden of proof.

Respondent's argument that the standard jury instructions taken as a whole adequately specify the state's burden of proof as to sanity was addressed in full in Petitioner's Initial Brief.



CONCLUSION

Based on the foregoing argument and authorities cited herein, Petitioner respectfully requests this Honorable Court to reverse the sentence of the trial court and remand with instructions that might be deemed appropriate.

Respectfully submitted,

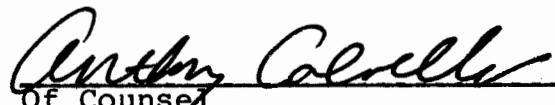
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to RUSSELL S. BOHN, Assistant Attorney General, Room 204 Elisha Newton Dimick Building, 111 Georgia Avenue, West Palm Beach, FL 33401 this 18<sup>th</sup> day of October, 1984.

  
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Of Counsel