Louisiana Law Review

Volume 42 | Number 3
Student Symposium: Sentence Review in Louisiana
Spring 1982

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Repository Citation
Harry J. Philips Jr., *The Insanity Defense in Louisiana: Presumptions, Burden of Proof and Appellate Review*, 42 La. L. Rev. (1982)
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THE INSANITY DEFENSE IN LOUISIANA: PRESUMPTIONS, BURDEN OF PROOF AND APPELLATE REVIEW

Insanity is a highly complex concept which often poses serious questions for the legal community. When incompetence is proven in a civil action,[1] contracts may be declared null[2] or curators may be appointed to administer the affairs of the mentally deficient person.[3] In a criminal proceeding, a finding of insanity either will stay the proceedings indefinitely[4] or will result in exoneration of the defendant from criminal culpability on the grounds that he could not determine whether his conduct was right or wrong.[5] Significant consequences for the criminal defendant attach in either result.

Historically, the application of insanity to various civil actions has presented little difficulty. By contrast, the insanity defense in a criminal matter is frequently the subject of controversy. Whether the attention paid it is deserving has been questioned;[6] nevertheless, insanity remains a real issue in the courts today and is likely to retain some prominence in the criminal jurisprudence of the future. This note will examine the aspects of the insanity defense most closely related to the actual trial of the issue—the presumption of sanity, the burden of proof of insanity, and appellate review.[7]

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1. LA. CIV. CODE art. 31 provides: "Persons of insane mind are those who do not enjoy the exercise and use of reason, after they have arrived at the age at which they ought, according to nature, to possess it, whether the defect results from nature or accident."

2. LA. CIV. CODE art. 1788 states: "The contract, entered into by a person of insane mind, is void as to him for the want of that consent, which none but persons in possession of their mental faculties can give."

3. LA. CIV. CODE art. 32 provides: "Persons who, by reason of infirmities are incapable of managing their own affairs, have their persons and estates placed under the direction of curators."

4. Louisiana Code of Criminal Procedure articles 642 and 648 provide that the proceedings shall be stayed when the issue of the defendant's sanity is raised and that the stay will continue until the defendant has sufficient capacity to proceed. To possess capacity, the defendant must be able to understand the proceedings against him and assist in his defense, as provided by Louisiana Code of Criminal Procedure article 641.

5. In Louisiana, a defendant in a criminal proceeding is exempt from criminal responsibility if at the time of the alleged offense he was incapable of distinguishing between right and wrong as a result of a mental disease or defect. CRIMINAL CODE: LA. R.S. 14:14 (1950). This standard has been traced to *M'Naughten's Case*, 1 Car. & K. 130 (1843) and is commonly referred to as the *M'Naughten Rule*.

6. *See* A. GOLDSTEIN, THE INSANITY DEFENSE (1967).

7. The subject of insanity most assuredly contains relevant issues not directly related to the trial. Three such issues present substantial questions which merit some

Presumption of Sanity

Presumptions, in a general sense, are devices which relieve one of the parties in litigation from the necessity of having to prove a particular fact.[8] One of the most common presumptions in the area of criminal law is that of "sanity." In several states, including Louisiana, a defendant is presumed "sane and responsible for his actions."[9] The presumption of sanity is rebuttable and can be destroyed by evidence to the contrary.[10] But until evidence to the contrary is produced, the presumption of sanity relieves the state of

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attention, although a detailed discussion of them is beyond the scope of this note.

The first of these issues is the validity of the test for insanity presently in use in Louisiana. The so-called *M'Naughten Rule*, CRIMINAL CODE: LA. R.S. 14:14 (1950), was adopted by the legislature in 1942, but the courts recognized its historical application in decisions reported before then. *See, e.g.*, State v. Tapie, 173 La. 780, 138 So. 665 (1931). Other tests have been suggested to the court as being less "archaic," State v. Berry, 324 So. 2d 822 (La. 1975), *cert. denied*, 425 U.S. 954 (1976), and more appropriate to the current state of the medical art than the "right from wrong" test. The supreme court has refused jurisprudentially to change the rule, deferring to the expressed will of the legislature. *See, e.g.*, State v. Andrews, 369 So. 2d 1049 (La. 1979); State v. Weber, 364 So. 2d 952 (La. 1978).

Another question, of continuing interest in insanity defense cases, concerns the determination of capacity to proceed. Great discretion is allowed the trial judge in deciding whether the defendant "presently lacks the capacity to understand the proceedings against him or to assist in his defense." LA. CODE CRIM. P. art. 641. Capacity, in this context, has been given a broad interpretation. For example, a defendant suffering from mental retardation and speech handicaps has been found incapable of proceeding. State v. Williams, 381 So. 2d 439 (La. 1980). Consistent with the wide discretion vested in the trial judge, findings of capacity or incapacity are reversed on appeal only when the supreme court finds manifest abuse of discretion. State v. Hamilton, 373 So. 2d 179 (La. 1979).

A third issue associated with insanity cases concerns the disposition of the criminally insane. The defendant found not guilty by reason of insanity does not obtain the release normally associated with acquittal in a criminal trial. LA. CODE CRIM. P. art. 654. The defendant may be committed to a private or state mental institution until such time as he can be released without endangering himself or others.

The defendant who has been found capable of proceeding properly asserts the defense of insanity when he pleads "not guilty and not guilty by reason of insanity." LA. CODE CRIM. P. art. 552. See also note 60, *infra*. The issue of his sanity becomes one for the trier of fact, who must apply the *M'Naughten* test and, from all the evidence presented, reach a factual determination as to whether the defendant could distinguish right from wrong at the time the offense was committed. *See* State v. Sonnier, 379 So. 2d 1336 (La. 1979); State v. Daigle, 344 So. 2d 1380 (La. 1977). As the trial begins, the defendant is presumed by law to be sane. See text at note 9, *infra*.

8. LA. R.S. 15:432 (1950).
9. *Id.*
10. *Id. Cf.* LA. R.S. 15:433 (1950) (defining *conclusive* presumptions).

any affirmative duty to prove that the defendant was in fact sane and responsible for his actions.

Obviously, the sanity presumption is of tremendous benefit to the prosecution since the sanity of the defendant may be as difficult to prove as his insanity. The presumption has not been left unchallenged, however, and its validity has been attacked on federal due process grounds. *Patterson v. New York*[11] addressed the issue of whether the affirmative defense of insanity violated the due process clause.

Gordon Patterson was charged with the second degree murder of his wife's alleged paramour. According to New York's statutory scheme, Patterson could reduce the degree of his culpability—from second degree murder to manslaughter—by proving that his conduct was the result of "extreme emotional disturbance."[12] In order to reduce his culpability to a lesser degree of homicide this defendant must overcome a presumption of sanity. In deciding that this procedure did not violate the due process clause, the United States Supreme Court concluded that states constitutionally could determine procedures for enforcing their laws, including making policy decisions on the burdens of proof, *unless the determination offended some traditional notion of justice.*[13]

Within this framework, states can establish certain affirmative defenses in criminal cases, create presumptions which operate in favor of the state, and require the defendant to meet a certain burden of proof in order to exonerate himself. If the traditional notions of justice alluded to by the Court are not offended, the scheme selected by the state does not violate the due process clause.

Proof of guilt beyond a reasonable doubt as to each element of the offense is the kind of traditional notion of justice which concerned the Court. This particular issue had been dealt with previously in *In re Winship*.[14] A trial court found a juvenile defendant guilty by a *preponderance of the evidence*. This standard of proof in a criminal proceeding was rejected by the Supreme Court. The Court held that proof beyond a reasonable doubt was mandated by

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11. 432 U.S. 197 (1977).

12. N.Y. PENAL LAW § 125.20(2) (McKinney): "The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subsection. . . ."

13. Patterson v. New York, 432 U.S. at 202 (emphasis added).

14. 397 U.S. 358 (1970).

the due process clause; to allow a state to convict a defendant by any lesser burden of proof would violate due process and offend this traditional notion of justice.[15] The Court later determined that the same result—violation of the defendant's due process guarantees—is reached when a legislatively established presumption serves to *relieve* the state of its burden of proof as to any essential element of the crime charged.

Precisely this issue was presented in *Mullaney v. Wilbur*.[16] The state of Maine had established and utilized a presumption that all homicides were committed with malice aforethought.[17] This presumption was rebuttable, however, for the defendant could reduce his culpability by proving affirmatively that he acted in the heat of passion on sudden provocation. Since malice aforethought was determined to be an essential element of the crime of murder, the presumption relieved the state of its burden to prove the guilt of the defendant as to each element of the crime.[18] The United States Supreme Court found that the presumption of malice violated due process.

Louisiana has adopted a scheme similar to that sanctioned in *Patterson v. New York*. A defendant may exonerate himself from criminal responsibility upon proof of the affirmative defense of insanity.[19] The Louisiana Supreme Court has recognized the applicability of the *Patterson*[20] analysis to Louisiana's insanity defense statues and, in *State v. Lee*, adopted that holding:

> [T]he United States Supreme Court had held that it was not an unconstitutional denial of due process to place the burden on [the] defendant to prove insanity as an affirmative defense . . . .
>
> We consider *Patterson v. New York* . . . to be the latest definitive holding by the United States Supreme Court on the presumption of sanity and thus is controlling . . . . We, therefore, hold that it is not a denial of due process to provide in this state's statutory law that insanity shall be an affirmative defense . . . .[21]

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15. *Id.*
16. 421 U.S. 684 (1975).
17. ME. REV. STAT. ANN. 17 § 2651 (repealed 1975). State v. Wilbur, 278 A.2d 139 (Me. 1971).
18. Mullaney v. Wilbur, 421 U.S. at 701.
19. LA. CODE CRIM. P. art. 652. See text at notes 25-27, *infra*.
20. 432 U.S. 197 (1977).
21. 395 So. 2d 700, 703 (La. 1981). *See also* State v. Willie, 360 So. 2d 813 (La. 1978).

Sanity is *not* considered an essential element of the various criminal offenses defined by the legislature; therefore, the presumption of sanity does not suffer the same constitutional infirmities at issue in *Mullaney*.[22]

Some argue, however, that the mental state of the defendant is critical to proof of his guilt beyond a reasonable doubt since, at least in theory, evidence of his legal sanity also may be relevant to the question of intent. This argument perhaps has some merit if one is willing to remove the distinction between intent and sanity. However, neither the Louisiana Supreme Court nor the United States Supreme Court has been so inclined.[23] As long as Louisiana continues to apply the presumption of sanity in a manner sanctioned by *Patterson*—to provide a rebuttable presumption which does not relieve the state of proving each essential element of the offense—no violation of the defendant's due process rights occurs.[24]

Burden of Proof

Under Louisiana law, as shown, the presumption that a person is sane and responsible for his actions is rebuttable rather than conclusive;[25] in other words, the presumption of sanity can be overcome by the defendant.[26] Allowing a defendant to produce evidence designed to defeat the presumption of sanity (indeed, *requiring* him to do so if he is to be relieved of culpability) makes insanity an affirmative defense. The defendant must offer positive proof of his inability to distinguish between right and wrong at the time of the offense.[27]

Although the defendant bears the burdens of both production and persuasion,[28] the burden of proof placed upon the defendant is

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22. 421 U.S. 684 (1975). The validity of Louisiana's presumption of sanity has been attacked on similar grounds in the state courts and has passed constitutional muster. *See* State v. Berry, 324 So. 2d 822 (La. 1975), *cert. denied*, 425 U.S. 954 (1976). Both the legislature and the courts recognize insanity as an *affirmative defense*, not an essential element of the offenses contained in the criminal code. *See* LA. CODE CRIM. P. art. 652; State v. Lee, 395 So. 2d 700, discussed at note 21, *supra*.

23. *See* Patterson v. New York, 432 U.S. 197 (1977); State v. Berry, 324 So. 2d 822 (La. 1975), *cert. denied*, 425 U.S. 954 (1976). See note 32, *infra*.

24. See text at notes 14 & 15, *supra*.

25. LA. R.S. 15:432 (1950).

26. See notes 8, 9, & 10, *supra*.

27. LA. CODE CRIM. P. art. 652 provides that "[t]he defendant has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence."

28. *Id.*

not as stringent as that required of the state to convict. While the state must prove the defendant's guilt beyond a reasonable doubt, the Louisiana legislature has determined that a defendant must prove his insanity only by a "preponderance of the evidence."[29] At least one jurisdiction, Oregon, requires the defendant to prove insanity beyond a reasonable doubt.[30] Challenges to Oregon's scheme have, to date, been unsuccessful. In fact, the United States Supreme Court in *Leland v. Oregon*[31] found specifically that the states constitutionally could hold the defendant to this strict burden of proof.[32]

If a state is permitted to compel proof of the defendant's insanity beyond a reasonable doubt, *a fortiori*, a lesser burden of proof, such as a preponderance of the evidence, is acceptable. Such a conclusion is not only a logical extension of these cases, but also is consistent with the traditional notions of justice advanced by the *Winship* doctrine.[33] Certainly, then, the Louisiana requirement that the defendant prove his insanity by a preponderance of the evidence stands on solid constitutional ground.

Practical application of Louisiana's requirements of the presumption of sanity and burden of proof to a criminal prosecution should produce the following results: (1) When the state meets its burden of

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29. *Id.*

30. OR. REV. STAT. § 26-929.

31. 343 U.S. 790 (1952).

32. *Id.* at 799-800. Closely analogous to Louisiana's rule is one in operation in Delaware. DEL. CODE ANN. 11 § 401. The defendant in Delaware is held to proof of his insanity by a preponderance of evidence. DEL. CODE ANN. 11 § 304(a). In considering the consitutional validity of placing this burden of proof on the defendant, the Delaware Supreme Court, in *Rivera v. Delaware*, 351 A.2d 561 (Del. 1976), applied *Leland v. Oregon* and found that the *Mullaney* decision (holding that a presumption could not relieve the state of its burden of proving guilt as to each element of the crime) was not applicable because the presumption of sanity and the burden of proof on the defendant were not directed to an essential element of the offense. The distinction between intent and insanity was inherent in distinguishing these cases. The United States Supreme Court dismissed the appeal of *Rivera* for lack of a substantial federal question. 429 U.S. 877 (1976). In dissent, Justice Brennan argued that sanity cannot be considered separately from criminal intent. 429 U.S. at 879-80 (Brennan, J., dissenting from dismissal of appeal). See text at notes 22-23, *supra*, and note 82, *infra*.

Requiring a defendant to overcome the presumption of sanity does not violate due process because sanity has not been determined to be an essential element of an offense (as was malice aforethought in the Maine statutes at issue in *Mullaney*). When and if the distinction between intent and sanity is removed, the presumption of sanity probably will be rendered invalid—at least for certain offenses such as specific intent crimes.

33. See text at notes 14 & 15, *supra*.

proof of the defendant's guilt beyond a reasonable doubt as to every essential element of the offense *and* the defendant proves his insanity by a preponderance of the evidence, the defendant should be found not guilty and not guilty by reason of insanity;[34] (2) When the state meets its burden of proof and the defendant fails to prove his insanity by a preponderance of the evidence, the defendant should be found guilty.[35]

Louisiana's approach, however, is not universal; the federal courts[36] and the laws of several other states[37] take a drastically different view of the burden of proof. In these jurisdictions, once the defendant has produced *some* evidence of his insanity (according to whatever legal test of insanity used), the presumption of sanity is overcome or rebutted and the prosecution then bears the burden of proving *the defendant's sanity beyond a resaonable doubt.*[38] Unlike the federal procedure, the Louisiana prosecutor is not required to prove the sanity of the defendant once some evidence of his insanity is offered. The test is whether the trier of fact can determine from *all* the evidence, whether lay or expert or offered in chief or on rebuttal, that the defendant was capable of distinguishing between right and wrong at the time of the offense.[39] To date, the Louisiana Supreme Court has not required specific rebuttal evidence by the state, but has been willing to look to the entire record in its review

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34. The conditions for return of such a verdict are *conjunctive*. For this verdict to be proper, the trier of fact must find the defendant "guilty" of the charge beyond a reasonable doubt, *and* then find him "legally insane" so as to excuse his conduct.

35. Louisiana has not provided for a verdict of "guilty but mentally ill" when the defendant's guilt is proved beyond a reasonable doubt yet there is *some* evidence of a mental disease or defect, though not enough to prove legal insanity.

36. The requirement that the government prove the defendant's sanity beyond a reasonable doubt is rooted in the federal jurisprudence. FED. R. CRIM. P. 12.2(a) requires the defendant to give notice that he intends to assert the insanity defense. This rule serves the same purpose as Louisiana's "dual plea." See notes 38 & 54, *infra*.

37. A compilation of the laws in force regarding insanity in every state is contained in G. MORRIS, THE INSANITY DEFENSE: A BLUEPRINT FOR LEGISLATIVE REFORM (1975).

38. *See, e.g., United States v. Phillips*, 519 F.2d 48 (5th Cir. 1975), for a brief discussion of the burdens of proof of sanity in a federal prosecution. The reference to *Mims v. United States*, 375 F.2d 135 (5th Cir. 1967), 519 F.2d at 140-41 n.2, contains an extensive citation to the federal jurisprudence enunciating this rule. In *Patterson v. New York*, 432 U.S. 197, 202-03 (1977), Justice White noted that the trend in insanity cases has been for the prosecution to "shoulder the burden of proving the sanity of the accused." *See also* Davis v. United States, 160 U.S. 469 (1895).

39. *See* State v. Daigle, 344 So. 2d 1380 (La. 1977). See note 7, *supra*.

of convictions in cases when insanity was raised as an affirmative defense.[40]

Appellate Review

The defendant who prevails in his claim of insanity does not win automatic release,[41] but neither does he suffer all the consequences of a conviction: a verdict of not guilty and not guilty by reason of insanity results in a "qualified" acquittal from which the state is not entitled to appeal.[42] When the defendant is *not* successful in his defense, he will likely seek appellate review, claiming that he was erroneously found guilty.

The decision of the United States Supreme Court in *Jackson v. Virginia*[43] has expanded the appellate review to which a defendant is entitled and has provided the allegedly insane defendant with a method for having the validity of his conviction examined. The Supreme Court in *Jackson* set out the proper approach for a court when reviewing the sufficiency of the evidence upon which a conviction is based. Since due process requires that a defendant be convicted only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged,"[44] the proper inquiry for a court is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[45] This decision produced a drastic change in the scope of appellate review of criminal convictions in Louisiana.[46]

Constitutionally, the Louisiana Supreme Court's jurisdiction in a criminal matter extends only to a review of law.[47] For many years,

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40. *See, e.g.* State v. Liner, 397 So. 2d 506, 509-11 (La. 1981). Ad hoc Justice Garrison held that the court's previous decision in *State v. Poree*, 386 So. 2d 1331 (La. 1980), did not intend to require specific rebuttal by the state of evidence tending to show the defendant's insanity.

41. LA. CODE CRIM. P. art. 654.

42. LA. CODE CRIM. P. arts. 816 & 912.

43. 443 U.S. 307 (1979).

44. *Id.* at 315.

45. *Id.* at 319.

46. Insanity is not the only area of the criminal law receiving the expanded attention and protection of the supreme court. Appellate review of sentences has recently become an interesting, if somewhat controversial, function of the court. *See* Note *Appellate Review of Excessive Sentences in Non-Capital Cases*, 42 LA. L. REV. 1080; Note, *Capital Sentencing Review under Supreme Court Rule 28*, 42 LA. L. REV. 1100.

47. LA. CONST. art. V, § 5(c): "Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law."

the court held that attacks upon convictions based on claims of insufficient evidence or evidence contrary to the verdict, did not present questions of law.[48] Instead, such pleadings were left to the discretion of the trial judge when properly raised in a motion for a new trial.[49] Only when the defendant urged that his conviction was based on "no evidence" did the supreme court undertake judicial review as a matter of law.[50] *Jackson* did away with the "no evidence" standard because the test was not adequate to protect the due process guarantees announced in *In re Winship*.[51] Thus, in Louisiana sufficiency of evidence questions have become questions of law which the state supreme court constitutionally is empowered to review. After a short period of uncertainty over the proper application of *Jackson v. Virginia*,[52] its principles and test have been fully implemented by the Louisiana Supreme Court.

An example of the court's initial indecision about the *Jackson* rule's compatibility with the Louisiana Constitution is found in *State v. Poree*.[53] On November 7, 1977, Carlos Poree shot ten people, killing one of them. Among his victims were individuals Poree found at random on the streets of New Orleans and in the offices of a stock brokerage firm. Poree was indicted for first degree murder and entered the dual pleas of not guilty and not guilty by reason of insanity.[54] His first trial ended in a mistrial; upon re-trial, the fact that Poree had indeed shot the victims was stipulated. The sole issue before the jury was Poree's sanity at the time of the incident.

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48. *See, e.g.*, State v. Banks, 362 So. 2d 540 (La. 1978); State v. Arnold, 351 So. 2d 442 (La. 1977); State v. Hatter, 350 So. 2d 149 (La. 1977); State v. Finley, 341 So. 2d 381 (La. 1976).

49. Louisiana Code of Criminal Procedure article 851(1) permits the court to grant a new trial when the verdict is contrary to the law and evidence. Absent a manifest abuse of discretion, the supreme court will not disturb the trial court's denial of a motion for a new trial. State v. Turner, 365 So. 2d 1352 (La. 1978).

50. *See* State v. Main Motors, Inc., 383 So. 2d 327 (La. 1979); State v. Williams, 383 So. 2d 369 (La. 1980), *stay granted*, 387 So. 2d 598 (1980), *cert. denied*, 450 U.S. 971, (1981).

51. 397 U.S. 358 (1970). See text at note 15, *supra*. The *Jackson* Court said "[t]hat the . . . 'no evidence rule' is simply inadequate to protect against misapplications of the constitutional standard of reasonable doubt is readily apparent." 443 U.S. at 320.

52. 443 U.S. 307 (1979).

53. 386 So. 2d 1331, 1336 (La. 1980) (on rehearing). Coincidentally, this case marks the beginning of the application of *Jackson's* "rational trier of fact" standard to insanity defense cases.

54. *Id.* at 1331. The plea was "dual" because it asserted both the innocence of the defendant and his claim that he was legally insane at the time of the offense. See note 7, *supra*.

Poree benefitted from the testimony of two psychiatrists who opined that he was unable to distinguish between right and wrong at the time of the incident.[55] Poree's estranged wife and his father-in-law, both victims of the shootings, testified to drastic changes in his behavior during the weeks prior to the incident.

The state's evidence on the issue of sanity consisted of testimony that Poree shot only men in the stock brokerage office, apparently deliberately avoiding serious injury to the women; that he offered no resistance to the arresting officers; and that he immediately told the police he would not make any statements until he had consulted with an attorney. Although one of the psychiatric experts explained that these actions were not necessarily inconsistent with his opinion that Poree was legally insane, the jury found the defendant guilty of first degree murder and sentenced him to life imprisonment.

Two questions faced the supreme court at the outset of its review of Poree's conviction: "(1) Does the constitutional prohibition against review of facts in a criminal case preclude action by the court in this (and similar) cases?, and (2) what standard should be applied in testing the validity of the conviction?"[56]

The threshold question was whether a review of the sufficiency of the evidence presents a matter of law or of fact. The court held that "due process requires that a defendant in this posture (asserting an insanity defense) also must have access to review when he claims that he was found guilty of an offense despite the fact that the evidence of his insanity was uncontroverted."[57] As a matter of law, the defendant was denied due process and was entitled to a new trial. No clear standard was announced, but the court apparently felt that the defendant successfully proved his insanity by a preponderance of the evidence. *Jackson v. Virginia*[58] was found to compel judicial review of sufficiency of evidence claims—at least in cases when the defendant pleads insanity.[59]

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55. *Id.* at 1332-33. According to these expert witnesses, Poree satisfied the *M'Naughten Rule. Id.* at 1338.

56. *Id.* at 1338, 1339.

57. *Id.* at 1334.

58. 443 U.S. 713 (1979). Shortly after this decision was rendered, the standard of review enunciated was applied to an insanity defense case. Moore v. Duckworth, 433 U.S. 713 (1979). See note 85, *infra*.

59. 386 So. 2d at 1334-35.

On the rehearing of *Poree* the supreme court reversed itself.[60] The application of *Jackson* and its effect of compelling review of insanity cases on due process grounds was rejected. The majority reverted to many prior holdings that claims of sufficiency of evidence were questions of fact which the court could not constitutionally review;[61] only contentions that there is "no evidence" upon which to base a conviction posed questions of law.[62] Since the court found that "the record contained some evidence which indicated a capability of distinguishing between right and wrong,"[63] the judgment of the trial court was sustained.

Following *Poree*, the court was faced with other attacks upon the "no evidence" rule. Sufficiency of evidence questions were raised along with contentions that *Jackson* should be invoked to provide review of such questions in order to preserve the due process guarantees of the defendant.[64] But the court did not readily accept these contentions; instead, the court chose to apply two standards—*Jackson's* "rational trier of fact" standard *and* the "no evidence" rule. Applications of these standards may be found in three post-*Poree* cases raising the sufficiency issue.[65] Chief Justice Dixon criticized the court's reluctance to adopt the *Jackson* rule, later referring to the three cases as evidence of the court's period of "vacillation" regarding *Jackson*.[66] By 1980, the court discarded the "no evidence" standard and fully embraced the "rational trier of fact" rule.[67] Within a few months, the opportunity to apply the test to an insanity case arose.

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60. *Id.* at 1340 (La. 1980) (on rehearing). The narrow majority for reversal of the conviction shifted to an equally narrow majority for affirmance.

61. The court relied upon the constitutional prohibition against review of facts in criminal matters, citing *State v. Fletcher*, 341 So. 2d 340 (La. 1976), as authority for the proper scope of review in insanity cases. 386 So. 2d at 1337.

62. This is the traditional application of the "no evidence" rule which was rejected in the court's original *Poree* decision. 386 So. 2d 1331, 1333-34 (La. 1979).

63. *Id.* at 1339.

64. *See* State v. Custard, 384 So. 2d 428 (La. 1980); State v. Boutte, 384 So. 2d 773 (La. 1980); State v. Mathews, 375 So. 2d 1165 (La. 1979).

65. *See* cases cited in note 64, *supra*. None of these decisions involved the insanity of the defendant. In one case, *State v. Mathews*, the court found reversible error, holding that there was a total lack of evidence (the "no evidence" rule) from which a rational trier of fact could reasonably find beyond a reasonable doubt the existence of every essential element of the offense (the *Jackson* rule).

66. *See* State v. Roy, 395 So. 2d 664, 667 (La. 1981).

67. *See, e.g.*, State v. Harveston, 389 So. 2d 63 (La. 1980); State v. Guillot, 389 So. 2d 68 (La. 1980); State v. Morgan, 389 So. 2d 364 (La. 1980). These decisions were rendered on October 6, 1980.

The facts presented to the court for review in *State v. Roy*[68] were strikingly similar to those in *Poree*. William Glen Roy shot four people in Winnfield, Louisiana, within a short period of time. Willie Sean Davis died as a result of a wound inflicted by Roy. Following an indictment for first degree murder, Roy pleaded not guilty and not guilty by reason of insanity. He was convicted and sentenced to life imprisonment. On appeal, Roy did not deny shooting Davis, but instead argued that he had proved his insanity by a preponderance of the evidence, and, therefore, the jury's verdict was contrary to the law and evidence.[69]

The evidence of Roy's insanity consisted exclusively of testimony from three physicians—two psychiatrists and the Winn Parish coroner. Each doctor testified that the defendant could not distinguish between right and wrong at the time of the offense.[70] The state argued that such actions as fleeing from the scene and peaceful submission to arrest were evidence of the defendant's sanity.[71] Neither Roy nor the state produced any other evidence of Roy's mental condition.

In reviewing Roy's conviction, the court held that the *Jackson* "rational trier of fact" test was the proper standard of review in sufficiency of evidence cases.[72] In addition, the court continued, this test is the proper one to apply in those cases in which the defendant pleads insanity, an affirmative defense, and alleges insufficient evidence to convict: "Due process now appears to require extension of the [*Jackson*] test to situations where the defendant pleads the affirmative defense of insanity, and claims the record evidence does not support a finding of guilt beyond a reasonable doubt."[73] Roy's conviction was reversed because the court found that the defendant had met his burden of proof. Applying *Jackson* to these facts, "a rationale [sic] fact finder, viewing the evidence in the light most favorable to the prosecution, could not have concluded that the defendant had failed to prove by a preponderance of the evidence that he was insane at the time of the offense."[74] The case was remanded for "proceedings not inconsistent with . . . [the] opinion."[75]

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68. 395 So. 2d 664 (La. 1981).
69. *Id.* at 669.
70. *Id.* at 668.
71. *Id.* at 669.
72. *Id.*
73. *Id.* at 667.
74. *Id.* at 669 (on application for rehearing).
75. *Id.* Since the appeal in *Roy* was taken from the trial court's denial of the motion to grant a new trial, the court reversed the decision of the trial judge on this

In later decisions,[76] the supreme court again reviewed the sufficiency of the defendant's insanity evidence but rejected in each case his claims that the verdict was contrary to the evidence. This line of decisions results in a grant of appellate review to all defendants who are convicted despite their pleas of insanity; the issue of sufficiency of evidence poses a question of law reviewable by the Louisiana Supreme Court.

Summary and Conclusion

The presumption in Louisiana law that every man is sane and responsible for his actions has withstood constitutional attack at the federal and state levels. The basis for its continued validity relies on one of two propositions: (1) criminal intent and mental condition at the time of the offense are not necessarily the same; or (2) essential elements of an offense can be established by a state, as can affirmative defenses, but traditional notions of justice cannot be violated. State decisions seem to rely on the first proposition,[77] while federal cases appear to be based on the second.[78]

Because sanity is not the same as intent,[79] it does not become an essential element of the offense as defined by the Criminal Code and, consequently, the state bears no compulsory burden of proof on that issue. As long as the distinction between the two concepts can be drawn validly, the presumption of sanity will continue to operate in favor of the state without violating the due process guarantees of the defendant. Similarly, the state can adopt a scheme allowing a

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issue, and, presumably, a new trial is in order. Perhaps the posture of the second trial will be similar to that in *Poree*, and the only issue for the trier of fact will be the sanity of the accused. See text at notes 53-55, *supra*, and note 83, *infra*.

76. *See* State v. Liner, 397 So. 2d 506 (La. 1981); State v. Price, 403 So. 2d 660 (La. 1981); State v. Claibon, 395 So. 2d 770 (La. 1981); State v. Hathorn, 395 So. 2d 783 (La. 1981).

77. *See, e.g.*, State v. Berry, 324 So. 2d 822, 826 (La. 1975), *cert. denied*, 425 U.S. 954 (1976).

78. *See* Patterson v. New York, 432 U.S. 197 (1977). See text at notes 11-14, *supra*, and note 79, *infra*.

79. *See* State v. Abercrombie, 375 So. 2d 1170 (La. 1979), *cert. denied*, 446 U.S. 935 (1980). The facts in *Abercrombie* were such that a rational trier of fact could have found that the defendant acted with specific intent to kill or inflict great bodily harm. The issue of the defendant's sanity thus clearly could be separated from the acts tending to show his specific intent. *See also*, H. FINGARETTE & A. HASSE, MENTAL DISABILITIES AND CRIMINAL RESPONSIBILITY (1979). (The *Jackson* test was not applied to the question of insanity, although the court did apply *Jackson* to test the sufficiency of the evidence upon which Abercombie's conviction was based).

defendant to produce evidence in an attempt to exonerate himself from criminal culpability, and the procedure will be valid as long as it does not offend a traditional notion of justice. Presuming that a man is sane and requiring him to prove otherwise is not constitutionally offensive.

Once the validity of the presumption is affirmed, the choice of the burden of proof to be placed upon the defendant to overcome such a presumption is largely a policy issue. Choices of burdens of proof range from a burden on the defendant to prove his insanity beyond a reasonable doubt to the same burden on the prosecution to prove the defendant's sanity. Louisiana's choice is virtually the median. Proof by a preponderance of the evidence requires the trier of fact to weigh all that is presented and to find in favor of the party producing the greater weight of the evidence.[80]

The initial question for the supreme court in its review of a conviction when insanity is raised as a defense directly concerns the burden of proof. If the defendant alleges that he met his burden of proof, but was convicted nonetheless, the court must examine the record and determine from all the evidence, lay and expert, whether a rational trier of fact, in viewing the evidence in the light most favorable to the prosecution, could conclude that the defendant failed to prove his insanity by a preponderance of the evidence.[81] If the court finds that the trier of fact could reach this conclusion, the defendant should stand convicted;[82] when the evidence supports the defendant's position, the case should be remanded for further proceedings.[83]

The application of the *Jackson* standard has transformed allega-

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80. The Louisiana definition of "preponderance of evidence" is that level of proof where the evidence as a whole shows that an event sought to be proved is more probable than not. This standard also is used in deciding civil cases. *See, e.g.*, Walker v. Saint Paul Ins. Co., 339 So. 2d 441, 444 (La. App. 1st Cir. 1976). There is no reason to differentiate between criminal and civil matters for purposes of this definition.

81. *See* Jackson v. Virginia, 443 U.S. 307 (1979).

82. This result presupposes, of course, that the state met its burden of proof beyond a reasonable doubt as to every essential element of the offense. See note 35, *supra*, and note 83, *infra*.

83. The nature of what these proceedings should be is not clear. If the court concludes that the elements of the offense were properly proved beyond a reasonable doubt, but that a rational trier of fact could not have found the defendant sane, it will then have to determine whether the case should be retried *de novo*, or whether only the issue of the defendant's sanity at the time of the offense should be tried again. Language in *State v. Byrd*, 385 So. 2d 248, 252 (La. 1980), suggests that the latter procedure might be permitted.

tions of insufficient evidence from questions of fact to questions of law for purposes of appellate review under the Louisiana Constitution.[84] Appellate review of insanity cases by this standard provides a convicted defendant with protection not before available. The "no evidence" rule required affirming a conviction when the record contained *some* evidence to support such a conclusion; the "rational trier of fact" test is broader than the "no evidence" rule and, although the *Jackson* decision (and the state court decisions following it) seems to require application of the standard to test the sufficiency of the evidence as to *essential elements* of the offense, Louisiana has chosen to apply the analysis to proof of the affirmative defense of insanity.[85] Since the sanity of the defendant is not an essential element of any offense in Louisiana, the safeguards required by *Jackson* certainly have been expanded. Serious problems in the application of insanity to the criminal law remain,[86] but the status of the presumption of sanity, the burden of proof, and the nature of appellate review of insanity cases in Louisiana appear firmly resolved.

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84. The holding in *Jackson* makes sufficiency of evidence questions due process issues. These are matters of law which the supreme court constitutionally can review.

85. See note 58, *supra*. The decision in *Moore v. Duckworth*, 443 U.S. 713 (1979), applied *Jackson* in a context different from that encountered in Louisiana. Indiana required the state to prove beyond a reasonable doubt that the defendant was sane. Sanity was an essential element of the offense, *not* an affirmative defense. Therefore, the *Jackson* test would be applicable to this issue under Indiana, but not Louisiana, law.

86. Among these problems are: whether insanity should be allowed as a defense at all; what standard should be used for determining legal insanity that fits the needs of both the medical and legal communities and whether such compatibility is even desirable; who can best determine the issue of sanity—judge or jury; and whether the so-called "synthetic sanity" (drug induced) which renders a defendant capable of standing trial is valid. New theories of insanity such as the "Vietnam Stress Syndrome" must be addressed by the courts. Sensitive problems involving competence to abandon appeals in death penalty cases must receive the courts' attention, often on extremely short notice with a minimum of expert assistance. Insanity is an issue in which complexity is as unavoidable as the emotion which surrounds it. As a result, it seems certain that answers to these questions will be neither easy nor universally popular.