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CRIMINAL LAW

Felony-Manslaughter

Under the felony-murder doctrine an unintended homicide is murder if the offender is engaged in the perpetration or attempted perpetration of certain dangerous felonies.[1] Similarly, the homicide is manslaughter when the offender is engaged in any other felony or any "intentional misdemeanor directly affecting the person."[2] These doctrines clearly come into play, imposing automatic liability, where the fatal shot is fired or blow is struck by the defendant or by one of his confederates in the felony. In this situation the offender cannot urge the defenses that he did not intend to kill or seriously injure the victim, or that the homicide was committed by a confederate without his approval. *State v. Garner*[3] refused to extend the felony-manslaughter doctrine to a situation where the fatal bullet was fired in self-defense by the victim of a knife attack (attempted murder). The limitation would similarly exclude application of the felony-murder doctrine in cases where the fatal injury is inflicted by a person who is defending against or seeking to prevent one of the felonies which are enumerated in clause (2) of the murder article.[4] In sustaining the trial court's refusal to apply the felony-manslaughter doctrine to the accidental killing by a victim who fired in self-defense, the Louisiana Supreme Court stressed the language of controlling Article 31(2)(a) of the Criminal Code. This provision imposes felony-manslaughter liability for an unintended killing "when the *offender* is engaged in" a felony not enumerated in the felony-murder provision of Article 30(2). The term "offender," according to the Supreme Court, means "actual killer"; and the actual killer in *Garner* was resisting, rather than perpetrating or assisting in the perpetration of, the attempted murder. Another basis for the holding, suggested by a student note in this

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1. LA. R.S. 14:30(2) (1950).
2. LA. R.S. 14:31(2)(a) (1950).
3. 238 La. 563, 115 So.2d 855 (1959), noted in 20 LOUISIANA LAW REVIEW 752 (1960).
4. LA. R.S. 14:30(2) (1950).

Review, is by adoption of the "act or constructive act" doctrine. According to this rule, which purports to avoid a too-embracive application of the felony-murder rule, "one cannot be held responsible for a homicide attending a felony unless the fatal act was actually or constructively his own and it cannot be constructively his unless done by someone acting in concert with him or in furtherance of a common purpose. From this it follows that a felon could not be held for a homicide accompanying his crime if the fatal injury was inflicted by a weapon in the hands of someone resisting the felony."[5] While the accidental homicide may have been proximately caused by the defendant's felony, it is not the sort of situation where murder or manslaughter liability should attach.

Insanity

The Louisiana Criminal Code continued the "right and wrong" test of insanity at the time of the crime.[6] This test, which has been severely criticized by the psychiatrists, is still the law in a majority of states because it provides a simple, workable formula which the average jury can better understand than such nebulous concepts as the recently announced "product" test or the so-called "irresistible impulse" test which has been approved by a number of states.[7] Thus the trial court's refusal, in *State v. Bickham*,[8] to instruct the jury to apply the "irresistible impulse" test, was found to be in complete conformity with the Louisiana statutory law.

State v. Stewart,[9] noted in a prior issue of this Review, continued the sound Louisiana rule that where the defense of insanity at the time of the commission of the crime is urged, the defendant has the burden of proving his alleged insanity — but only by a preponderance of the evidence. This rule is analytically and practically sound. "Inasmuch as sanity is the normal condition of man and insanity an abnormal state, the presumption is in the absence of anything to the contrary that

5. Note, 20 LOUISIANA LAW REVIEW 752, 754 (1960), relying principally on Commissioner v. Moore, 121 Ky. 97, 88 S.W. 1085 (1905) (robbers not held for felony-murder where the victim, shooting in self-defense, accidentally killed an innocent bystander).

6. LA. R.S. 14:14 (1950).

7. For a full discussion of this problem see, Bennett, *The Insanity Defense — A Perplexing Problem of Criminal Justice*, 16 LOUISIANA LAW REVIEW 484 (1956).

8. 239 La. 1094, 1122, 121 So.2d 207, 217 (1960).

9. 238 La. 1036, 117 So.2d 583 (1960); noted in 20 LOUISIANA LAW REVIEW 749 (1960).

all persons are sane and criminally responsible for their acts."[10] The "preponderance of the evidence" rule has been elaborated upon in *State v. Scott* as follows: "The preponderance of proof is recognized as that of a character to satisfy the mind, though it be not free from reasonable doubt. This preponderating proof is enough in civil cases to authorize a finding in favor of the party. The terms are constant in the administration of criminal law."[11] The defense of insanity is one which, as a practical matter, cannot be established beyond a reasonable doubt since insanity "is not usually susceptible of such conclusive proof, especially where the insanity is not continuing."[12]

Constitutionality of Criminal Statutes — Sufficient Certainty

The alleged unconstitutionality of the criminal statute, that dernier resort of defense counsel in cases where the fact of the violation has been established, was the principal ground of appeal in three 1960 cases. These decisions serve further to indicate the pattern of Supreme Court thinking as to how specific and detailed a criminal statute must be. In *State v. Christine*[13] a nightclub dancer was charged with obscenity in having allegedly committed "an act of lewd and indecent dancing." The Supreme Court affirmed the trial court's ruling that clause (3) of the obscenity article[14] was unconstitutional in that its prohibition of the intentional performance in public "of any act of lewdness or indecency, grossly scandalous and tending to debauch the morals and manners of the people" was too vague and indefinite. The statute must provide, according to the Supreme Court, an understandable rule and uniform standard to guide the individual in his conduct. Compare, however, *State v. Hightower*[15] where the Supreme Court upheld the constitutionality of the drunken driving article of the Criminal Code,[16] which had generally defined the offense as "operating any motor vehicle . . . while under the influence of alcoholic beverages. . . ." In affirming the sufficiency of that definition Chief Justice Fournet pointed out that similar drunken driving statutes have been universally adopted and stated "where the constitu-

10. 8 R.C.L. 175 (1915).
11. 49 La. Ann. 253, 254, 21 So. 271, 272 (1897).
12. Note, 20 LOUISIANA LAW REVIEW 749, 751 (1960).
13. 239 La. 259, 118 So.2d 403 (1960), noted 21 LOUISIANA LAW REVIEW 264 (1960).
14. LA. R.S. 14:106(3) (1950).
15. 238 La. 876, 116 So.2d 699 (1960).
16. LA. R.S. 14:98 (1950).

tionality of such statutes has ever been challenged because of indefiniteness or lack of intelligibility, the courts have upheld them, reasoning that the terms . . . are commonly used terms with a well-recognized meaning."[17] Continuing further, the Chief Justice declared, "The terms 'intoxicated' or 'under the influence of alcoholic beverages' have a certain and well-understood meaning, i.e., a person is intoxicated within the provisions of the statute when he does not have the normal use of his physical and mental facilities by reason of the use of alcoholic beverages (or narcotics), thus rendering such person incapable of operating an automobile in a manner in which an ordinarily prudent and cautious man in full possession of his facilities, using reasonable care, would operate a motor vehicle under like conditions."[18] The difference between the *Christine* and *Hightower* decisions does not lie in the fact that the drunken driving article provides clearer specification of the proscribed criminal conduct than clause (3) of the obscenity article. Rather, it lies in the fact that greater preciseness of definition is required in morality crimes — an area where the same standard of conduct may vary greatly when interpreted by different individuals and even between communities or groups of individuals. In *City of Shreveport v. Wilson*[19] the court stated that the term "lewd or indecent act" was too vague and indefinite. In *State v. Truby*[20] the court held that the word "immoral," as used in the crime of keeping a disorderly place, was unconstitutionally vague and indefinite. In *State v. Kraft*[21] the phrase "indecent print" was held so vague as to invalidate clause (2) of the obscenity article. The 1950 legislature revised this clause so as to read "sexually indecent print,"[22] and this language has been held to be sufficiently meaningful and definite.[23] Similarly, a 1960 statute has amended clause (3) — going into great detail in particularizing the proscribed criminal conduct — all of which must be directed toward "arousing sexual desires" or toward primarily appealing to "the prurient interest of the average person."[24]

17. 238 La. 876, 882, 116 So.2d 699, 701 (1960).
18. *Id.* at 885, 116 So.2d at 703.
19. 145 La. 906, 83 So. 186 (1919) (dictum).
20. 211 La. 178, 29 So.2d 758 (1947).
21. 214 La. 351, 37 So.2d 815 (1948).
22. La. Acts 1950, No. 314.
23. State v. Roth, 226 La. 1, 74 So.2d 392 (1954).
24. La. Acts 1960, No. 199. In the ALI MODEL PENAL CODE § 207.10(2) (Tentative Draft No. 6, 1957) the phrase "prurient interest" is further defined as "a shameful or morbid interest in nudity, sex or excretion."

State v. Vanicor,[25] holding that the fish shocking prohibition of the wild life and fisheries law which regulated the methods of taking commercial fish was unconstitutional as being too broad, vague, and uncertain, is more difficult to fully understand and explain. Insofar as the *Vanicor* decision would require a specification of the circumstances indicating that the electric device is possessed for the purpose of taking commercial fish, it appears to set an almost impossible standard, especially in an area of general criminal legislation where such specification is not generally practical or required. The court's conclusion that the statute was too broad in using the general phrase "or electric device" is well taken, for as the court pointed out, this would embrace many innocuous and useful devices such as electric shavers, electric clocks, and radios. However, this objection should be limited to the unconstitutionally broad phrase, and need not have been construed so as to invalidate the entire statute. The possession of "any electric shocking machine" fully met the test of definiteness and certainty.

Imprisonment in State Penitentiary Equivalent To "Hard Labor"

Under the Louisiana Constitution[26] and the definition article of the Criminal Code[27] the controlling consideration in determining the type of tribunal to try the case, or whether the offense is a felony or a misdemeanor, is whether a convicted defendant may be sentenced to "hard labor" for the crime. In *State v. Morgan*[28] the Supreme Court followed the well-established pattern of the Louisiana practice and jurisprudence in holding that a penalty clause calling for imprisonment in the state penitentiary for not more than three years was "in fact, though not in precise words, 'imprisonment at hard labor'." Thus the violator of the statute was entitled to be tried by a jury of twelve, which is required when the crime charged is "necessarily punishable with imprisonment at hard labor."[29]

CRIMINAL PROCEDURE

Double Jeopardy

An interesting double jeopardy problem was nicely disposed

25. 239 La. 357, 118 So.2d 438 (1960).
26. LA. Const. art. I, § 9, art. VII, § 41.
27. LA. R.S. 14:2 (1950).
28. 238 La. 829, 846, 116 So.2d 682, 688 (1960).
29. LA. R.S. 15:338 (1950); LA CONST. art. I, § 9, art. VII, § 41.

of in *State v. Calvo*[30] where the court held that a prior prosecution for felony (robbery)-murder did not bar a subsequent trial for simple robbery. The murder prosecution had been predicated upon the theory that the homicide had occurred in perpetration of the same robbery which was charged in the second trial. In overruling the defendant's double jeopardy plea the Louisiana Supreme Court stressed the facts that proof of robbery was not essential to a murder conviction, and that a verdict of guilty of simple robbery would not have been responsive to the murder indictment. The *Calvo* decision also meets the "substantial identity" test of *State v. Foster*.[31] Equally important is the practical consideration that the robbery and the homicide, while they were incidental to one criminal transaction, were essentially *two criminal acts*, i.e., the robbery and the killing of a human being. The existence of some overlapping of the elements or evidence does not necessarily result in singleness of criminal liability. For example, the burglar who breaks into a house and steals the owner's silver is guilty of two separate offenses. He commits burglary when he enters the house with intent to steal, and commits theft when he steals the silver.[32]

Extradition

The official papers which accompany the request for extradition by the Governor of the demanding state must meet the requirements of Article 160 of the Louisiana Code of Criminal Procedure.[33] These include a certified copy of "a sworn statement of facts by the prosecuting attorney" of the demanding state. This statement of facts assures the Louisiana Governor of information which will assist him in determining the propriety of the extradition. *In re Cecil Chelette, Extradition Proceedings*[34] held that it was not necessary for the prosecuting attorney of the state seeking extradition to repeat in his sworn statement facts already set out in other official documents which accompanied the demand for extradition.[35] In holding that the sworn statement of facts requirement had been substantially

30. 240 La. 75, 121 So.2d 244 (1960).
31. 156 La. 891, 101 So. 255 (1924).
32. State v. Montcrieffe, 165 La. 296, 115 So. 493 (1928).
33. State *ex rel.* Covington v. Hughes, Sheriff, 157 La. 652, 102 So. 824 (1925).
34. 238 La. 683, 116 So.2d 293 (1959).
35. The accompanying documents containing these essential facts were the prosecuting attorney's petition to the foreign Governor, his affidavit filed in the foreign state and a copy of the information charging the offense.

complied with Justice Hamlin pointed out that "An examination of the documents of record manifests that they were properly certified. They set forth all facts necessary for an understanding of the matter involved. They were attached to the requisition for extradition and were again properly certified therein. There was certainly no necessity for the prosecuting attorney of Clark County, Arkansas, to repeat in a sworn statement the facts set out in (1) his petition to the Governor of Arkansas, (2) his affidavit filed in the Circuit Court, Clark County, Arkansas, and (3) the bill of information. Such would have been reiteration and repetition."[36] The documents required by Article 160 are to assure the Louisiana Governor that a proper basis for extradition exists and to provide him with the necessary information to exercise his discretion in the matter. Those objectives were clearly and fully accomplished, and a slight variation in the nature of the papers furnished was not permitted to serve as a technical bar to an otherwise adequate requisition for extradition. *In re Chelette* achieved a very sound and practical result.

Indictments

The statement of Article 227 of the Code of Criminal Procedure that "it is immaterial whether the language of the statute creating the offense or words unequivocally conveying the meaning of the statute be used" has generally been held to authorize the charging of a crime in the language of the statute.[37] Applying this general principle the court upheld, in *State v. Howard*,[38] an information which tracked the language of the public bribery article,[39] and adapted it to "the specific facts on which the charge was based — that the accused accepted a specific sum of money from certain named persons on a specific date, and that this money was given him to influence his conduct in relation to his position, employment, and duty as a police officer."[40] However, care must be employed in stating the crime, and there are some crimes where the statute is so general in its nature that tracking the language of the statute has been held insufficient. In *State v. Blanchard*[41] the Supreme Court held that an information charging that the defendants had "unlawfully

36. *Id.* at 689, 116 So.2d at 296.
37. State v. Scheuering, 226 La. 660, 76 So.2d 921, 924 (1954).
38. 238 La. 595, 116 So.2d 43 (1959).
39. LA. R.S. 14:118 (1950).
40. 238 La. 595, 600, 116 So.2d 43, 44 (1959).
41. 226 La. 1082, 78 So.2d 181 (1955).

possessed a mechanically and/or manually operated device . . . for the purpose of illegally taking commercial fish" was insufficient although it tracked the language of the statute. The court reasoned that since illegal fishing devices may take any of a great variety of forms it was necessary that the indictment state the facts on which the charge was based. To charge the crime by simply tracing the language of the statute in such a case did no more than state a conclusion of law and could not truly be said to inform the accused of the "nature and cause of the accusation." Similarly, a charge of gambling has been held inadequate when it followed the broad language of the multiple-offense gambling article without specifying which of the many forms of gambling had been committed.[42]

Bills of Exceptions

State v. May[43] again stresses the importance of the defendant's making sure that his bills of exceptions have been perfected by the signature of the trial judge before taking an appeal. Even though the bills of exceptions had been ordered filed by the trial court, the actual affixing of the judge's signature was still necessary to validate the bills. With the taking of the appeal the trial court had lost jurisdiction in the case, and Article 545 of the Code of Criminal Procedure "provides that after an appeal has been granted '. . . no further action in the case can be taken by the trial judge; . . .' except that the Court may render interlocutory orders and definitive judgments as to matters of a ministerial nature and not in controversy on appeal. . . . the signing of bills of exceptions is not the rendering of an interlocutory order or a definitive judgment."[44] The Supreme Court pointed out that Article 542 of the Code of Criminal Procedure, which grants additional time for appeal when the trial judge delays in signing the bills of exceptions tendered him, provides relief from the dilatory conduct of the trial judge.

The rule that the trial judge loses jurisdiction over the case upon the taking of an appeal has been inflexibly applied to deny his authority to sign bills of exceptions in a case where the trial judge had purported to grant an extension of time for the completion and presentation of the bills of exceptions. Even then,

42. State v. Varnado, 208 La. 319, 23 So.2d 106 (1945).
43. 239 La. 1069, 121 So.2d 82 (1960).
44. *Id.* at 1073, 121 So.2d at 84.

the signing of the bills was rendered impossible by the taking of the appeal.[45]

Appeal — Total Lack of Evidence

While the Louisiana Supreme Court's appellate jurisdiction in criminal cases is limited to "questions of law alone,"[46] the court will review the facts of a case to determine if there was *no evidence* in support of an essential element of the crime.[47] As one writer recently pointed out, "the determination of whether there is some evidence or none has caused vigorous disagreement among the Justices."[48] *State v. Linkletter*[49] was just such a case, and the majority determination, on rehearing, of "a total lack of evidence to prove the guilt of Soldani" evidences a rather liberal attitude toward review and reversal on this ground. There was no evidence that he had actually participated in or helped plan the burglary committed by Linkletter, Lacaze, and Morrison. Three facts might have been considered as tieing Soldani in with the crime, but these were explained away in Justice Hamlin's majority opinion. Soldani was a partner with Linkletter and Morrison in a novelty shop business, but there had been no showing of any connection between that business and the perpetration of the burglary. Soldani's automobile was used by Linkletter and Lacaze to convey burglary equipment from a rendezvous housing the equipment to the place of the crime, but there was no evidence associating Soldani with the car at the time of its illicit use. A separate abortive attempted robbery of the Elks Club by Soldani had been his own independent venture. Use of Soldani's car was the factor principally relied upon in Justice McCaleb's dissent[50] — as *some evidence* to support Soldani's conviction. The line between no evidence and some evidence is a very fine one in *State v. Linkletter,* and the decision appears to follow the liberal trend evidenced by the recent holding in *State v. Laborde.*[51] At any event the lack of evidence was not as complete as in *State v. Giangosso*[52] where the facts

45. State v. Dartez, 222 La. 9, 62 So.2d 83 (1952).
46. LA. CONST. art. VII, § 10.
47. For a comprehensive study of the scope of this limited appellate review of the facts, see Comment, *Appellate Review on the Facts in a Criminal Case — How Much Evidence is Some Evidence,* 19 LOUISIANA LAW REVIEW 843 (1959).
48. *Id.* at 846.
49. 239 La. 1000, 120 So.2d 835 (1960).
50. Justices McCaleb and Hawthorne dissented.
51. 234 La. 28, 99 So.2d 11 (1958).
52. 157 La. 360, 102 So. 429 (1924).

certified by the trial judge showed that the defendant, convicted of receiving stolen things, really owned them.

Effect of Plea Bargain Resulting in an Illegal Sentence

A perplexing problem was presented to the Supreme Court in *State v. Braud.*[53] The defendant was charged by two bills of information with the sale and possession of narcotics. He pleaded not guilty at arraignment. Subsequently, pursuant to a plea bargain with the district attorney, he was allowed to withdraw his not guilty plea and enter pleas of guilty of addiction. The defendant was sentenced upon these pleas, with execution suspended upon the condition of his entering a government hospital for treatment, with which condition the defendant had complied. Some months later the district attorney, upon being informed by the court that the defendant had been sentenced for a crime (addiction) with which he had never been charged, filed a motion to set aside the judgment and sentences. The motion was granted by the lower court which restored the status quo ante. Defendant appealed to the Supreme Court which, with two concurring and two dissenting opinions, reversed the holding of the district court and reinstated the judgment and sentences originally imposed.

The majority opinion was based upon a theory that the state was either attempting to (1) arrest the judgment of the lower court or (2) move for a new trial. Having characterized the state's motion in this manner the majority adverted to Article 506[54] of the Code of Criminal Procedure which prohibits the state from moving for a new trial after the sentence, and to Article 519[55] which states that the motion in arrest of judgment must be filed between conviction and the imposition of sentence. Thus the motions for a new trial and in arrest of judgment had not been appropriately filed by the state. Chief Justice Fournet's concurring opinion was based upon the assumption that the state's proper remedy was through appeal,[56] and that

53. 238 La. 811, 116 So.2d 676 (1959).

54. "A new trial can not be ordered by the court on its own motion or upon the application of the state, but may be granted with the consent of the district attorney, whether the motion of defendant set out a valid reason for a new trial or not." LA. R.S. 15:506 (1950).

55. "The motion in arrest of judgment can be filed only after verdict, but must be disposed of before sentence." LA. R.S. 15:519 (1950).

56. The Chief Justice cited Article 527 of the Louisiana Code of Criminal Procedure which states, "When the sentence imposed is illegal, it may be reviewed either at the instance of the state or the defendant, in an appealable case

the time for taking an appeal had lapsed. Justice Hawthorne, in another concurring opinion, stated that the law was with the lower court, but that since the "equity" was with the defendant he joined with the majority.[57] Justice Hawthorne appeared to find a sort of equitable estoppel,[58] i.e., that the defendant, who had surrendered "substantial rights" and complied with the conditions of the plea bargain, should not be deprived of the anticipated benefits because of the neglect of the district attorney. The district attorney had failed to nolle prosequi the original bills of information charging sale and possession of narcotics and to file bills charging addiction.[59]

Dissenting Justices McCaleb and Hamlin both stressed the fact that a plea of guilty to addiction is not responsive to a charge of sale and possession of narcotics,[60] rendering the plea invalid. Article 522 of the Code of Criminal Procedure plainly states that "A valid sentence must rest upon a valid verdict, indictment and statute, and everything essential to punishment must be found by the verdict and alleged in the indictment." Thus it logically follows that a valid sentence cannot be based upon a plea that is not responsive to the crime charged in the indictment. The lower court has the power to annul an illegal conviction and sentence even when the defendant is actually serving the sentence.[61]

State v. Mockosher,[62] where the Supreme Court had recognized the enforceability of a plea bargain, was not controlling — for in *Mockosher* the plea of guilty had been validly entered. *Braud* presented a situation where the defendant had been charged with one crime and sentenced upon an invalid plea of guilty of another distinct offense. Since the plea and sentence were invalid, and could have been vacated on motion of the defendant,[63] it would seem that the plea bargain had failed, and that the trial court was correct in setting aside the judgment and sentences and restoring the status quo. A questionable

by appeal, in an unappealable case by certiorari and prohibition; provided that nothing in this article contained shall be so construed as to deprive any person of his right, in proper cases, to the writ of habeas corpus."

57. State v. Braud, 238 La. 811, 822, 116 So.2d 676, 680 (1960).

58. For the general nature and effect of a "plea bargain" see State v. Mockosher, 205 La. 434, 438, 17 So.2d 575, 576 (1944).

59. 116 So.2d at 679.

60. State v. Robinson, 221 La. 19, 58 So.2d 408 (1952).

61. State *ex rel.* Cutrer v. Pitcher, 164 La. 1051, 115 So. 187 (1927).

62. 205 La. 434, 17 So.2d 575 (1944).

63. State v. Robinson, 221 La. 19, 58 So.2d 408 (1952).

aspect of the analysis is, however, raised by the fact, stressed by Justice Hawthorne, that the cause of the invalidity of the plea entered by the defendant was the neglect of the district attorney to take the proper steps to render the plea invalid, i.e., by withdrawing the bills of information charging sale and possession of narcotics and filing an information charging addiction. Thus the state may be estopped to set aside the sentence and deprive the defendant of the sentence that would have been validly imposed but for the district attorney's failure to file the proper charge of addiction.

Reprieve

State ex rel. *Melerine v. Trist*[64] dealt with a confusing series of reprieves granted in connection with the conviction of the defendant in two cases. The facts are not as significant as the rules announced. First, the court held that the original ninety-day reprieve had not begun to run, according to its terms, until the day on which the defendant was scheduled to begin his term of imprisonment. It did not begin running upon the date that the defendant's conviction and sentence became final and executory. Second, it was held that the defendant, who had already begun to serve his sentence, could still be reprieved. The latter holding was based on what the court termed the Governor's "plenary power to grant reprieves," which is provided for in Section 10 of Article V of the Louisiana Constitution of 1921, and was in accord with *Waggoner v. Cozard*,[65] decided in 1953. Dissenting Justice Hamlin maintained that the pardon, which requires a recommendation of the pardon board,[66] was the only proper method of executive clemency, once the defendant has begun to serve his sentence. In support of the majority opinion, however, it should be noted that the reprieve is a temporary relief from execution of sentence, and serves a different purpose than the pardon which completely relieves the defendant from the penalty imposed. Even when the defendant has begun to serve his sentence, there may still be appropriate occasions for the Governor to grant a reprieve.

Justice Hamlin's dissent, on the first point as to when the reprieve begins to run, has substantial merit. His argument was

64. 238 La. 853, 116 So.2d 691 (1959).
65. 222 La. 1039, 64 So.2d 424 (1953).
66. LA. R.S. 15:572 (1950).

that once the case had been affirmed on appeal and the time for a rehearing had elapsed, it became the duty of the sheriff to imprison the defendant.[67] When, as a result of the reprieve, no attempt was made to arrest and incarcerate the defendant, such non-action should not prevent the running of the reprieve. Arrest and incarceration would not be justified after a reprieve is granted, and it is illogical to hold that an attempt to do so is essential in order to start the running of the time of the reprieve.

67. LA. R.S. 15:656 (1950).