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THE CASE OF THE TRANQUILIZED DEFENDANT*

Is a mentally ill accused who is able to understand the proceedings and to assist in his defense, due only to tranquilizing medication, legally competent to stand trial? The Louisiana Supreme Court has not yet answered this question. Should it be decided that such persons are not to be tried because their capacity is due to the effect of drugs, many defendants who may be totally innocent of the charges against them are faced with the possibility of spending the rest of their lives in an institution for the criminally insane. The purpose of this Note is to review the Louisiana statutory authority in the light of cases from other jurisdictions in an attempt to clarify the legal issues presented by the plight of the tranquilized defendant.

The Louisiana Code of Criminal Procedure provides that incapacity to proceed exists when "as a result of a mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense."¹ The defendant's incapacity to proceed may be raised at any time by the defense, the district attorney, or the court itself.² When raised, the prosecution is halted until the defendant is found mentally competent to proceed.³ If the defendant is found to be incompetent, the proceedings are suspended and the defendant is committed to a state mental institution for care and treatment as long as the mental incapacity continues.⁴ If the court subsequently determines that the defendant has regained mental capacity, the prosecution is resumed.⁵

* This Note is condensed from the writer's research report submitted for the LSU Law School's fieldwork in modern social legislation project. In this program, law students worked with social agencies during the summer of 1967 to observe their activities and to assess the impact of social and welfare laws. The project was financed by the American Bar Association through the Ford Foundation, and was directed by Mrs. Leila Cutshaw. Appreciation is expressed to the administrators of the East Louisiana State Hospital, particularly to Dr. E. H. Metz, Clinical Director of the Forensic Division and Dr. C. B. Scignar, Consultant to the Hospital for their assistance and cooperation.

1. LA. CODE OF CRIMINAL PROCEDURE art. 641 (1966). See generally *id.* arts. 641-649. The issue of competency to stand trial should be distinguished from the defense of insanity. The latter is concerned with the mental state of the defendant at the time of the commission of the offense, not at the time of the trial. See *id.* arts. 650-658.

2. *Id.* art. 642.

3. *Id.*

4. *Id.* art. 648.

5. *Id.*

Both the federal and state constitutions assure the accused the right to a speedy trial.⁶ Certainly the delay of a trial because of the defendant's mental incapacity to proceed would not be a denial of his constitutional rights.⁷ But is it a denial of the accused's constitutional rights to refuse to try him on the ground that his sanity is synthetically induced?

Psychotropic drugs were introduced little more than a decade ago with an explosive suddenness unprecedented in psychiatric therapy.⁸ Many patients suffering from protracted psychosis—formerly unresponsive to psychiatric treatment—are now being effectively treated and returned to society.⁹ The anti-psychotic drugs belong to a group called phenothiazines, of which "Thorazine" and "Compazine" are the most common. These drugs, known as the major tranquilizers several years ago, can reduce hallucinations, delusions, and other abnormalities in the mentally ill. However, they do not otherwise affect the cortex—the "thinking" part of the brain. The mental clarity or consciousness of the person remains unchanged.¹⁰ In effect, they cause a remission of the psychosis; if the drugs are discontinued, this latent psychosis will return. Therefore, after-care clinics, providing psychotherapy and tranquilizing medication for released patients, have been established.¹¹

No case has been found which squarely rules whether a defendant who is "synthetically sane"—whose functional sanity is sustained solely by continued medication—is legally competent to stand trial. The Supreme Court of Iowa was faced with an analogous situation, however, in *Sewell v. Lainson*.¹² The defendant, a narcotics addict, appealed his conviction on the ground that at the time of his guilty plea he had been under the influence of a 3½ grain dose of morphine provided by the sheriff. The court took judicial notice of the fact that a narcotics addict is nervous and ill when denied the drug, and approaches a nor-

6. U.S. CONST., amend. IV; LA. CONST. art. I, § 9.

7. See *State v. Bradford*, 219 La. 489, 53 So.2d 244 (1951); *State v. Theard*, 203 La. 1026, 14 So.2d 824 (1943).

8. Odegard, *Pattern of Discharge for Norwegian Psychiatric Hospitals Before and After the Introduction of the Psychotropic Drugs*, 120 AM. J. PSYCH. 772 (1964).

9. See Scignar, *Tranquilizers and the Psychotic Defendant*, 53 A.B.A.J. 43 (1967).

10. POPULAR SCIENCE, Feb. 1963, at 72-73.

11. Interview with C. B. Scignar, M.D., Medical Consultant, East Louisiana State Hospital, Forensic Division, August 15, 1967.

12. 244 Iowa 555, 57 N.W.2d 556 (1953).

mal state only when he has access to it. The court found that the defendant had failed to show that the effects of the drug had had an adverse effect on his ability to participate in his defense and refused to assume prejudice on speculation. The court reasoned that had the drug not been furnished to the petitioner he might well have argued that his guilty plea had been entered while he was not mentally competent because of physical and nervous sufferings occasioned by the deprivation of his habitual narcotics.¹³

While there are obvious differences between an addict who uses drugs to maintain his "normal" toxic condition and a psychotic who must use medication to sustain his functional sanity, the legal issue is the same: regardless of whether the accused has taken drugs or medication, is he able to understand the proceedings against him and to assist counsel in his defense? In *United States v. Tom*, defendant claimed that due to the influence of drugs he had been unable to understand the nature of the charges against him or to assist in his defense. The Second Circuit held that there was no reason why the use of narcotics *per se* rendered a defendant incompetent to proceed. Whether or not the defendant was competent was a matter of fact as to which the petitioner had the burden of proof. After noting that there was no showing that the petitioner acted abnormally or appeared affected during the trial, the court held that the petitioner had failed to sustain the burden.

A recent Louisiana case, *State v. Burrows*,¹⁵ deals with, but does not decide, the question here discussed. Shortly after the defendant's indictment, a lunacy commission reported that he

13. The cases here discussed should be distinguished from those situations in which the accused is prejudiced because he is on drugs or medication at the time of the trial. For example, in *State v. Murphy*, 56 Wash. 2d 761, 355 P.2d 323 (1960), the defendant (not psychotic) was tense and nervous prior to trial. On the morning of the trial the trustee gave the accused three cold pills which contained tranquilizers. At his trial the defendant appeared casual, cool, and totally unconcerned with the gravity of his candidly admitted offense. His conviction was reversed and remanded for retrial. See also *Lobaugh v. State*, 226 Ind. 548, 82 N.E.2d 247 (1948); *Carter v. State*, 198 Miss. 503, 21 So.2d 404 (1945). It is certainly agreed that, presuming the defendants were actually affected by medication, these decisions are just. But such decisions should not be broadened, due to a misunderstanding of the effect of psychotropic medication, to all situations where the defendant is on drugs at the time of the trial. According to Dr. C. B. Scignar a user of psychotropic medication would suffer the prejudicial effects of the defendant in the *Murphy* case in only the rarest of instances.

14. 340 F.2d 127 (2d Cir. 1965).

15. 250 La. 658, 198 So.2d 393 (1967).

was insane and lacked capacity to stand trial. The court found that the defendant was incompetent and he was committed to the East Louisiana State Hospital, where he remained under treatment until, following repeated requests from the hospital administration, he was returned for a re-evaluation. Upon re-hearing, the court found the defendant sane. Defendant excepted to this ruling. The trial judge, recognizing the question of synthetic sanity to be a novel one, certified it as follows: "Is sanity induced by drugs legal sanity sufficient to enable a defendant to stand trial, or should a defendant who is presently sane, with the administration of drugs, be compelled to remain in a mental institution for the rest of his life . . .?"¹⁶ The Supreme Court did not decide the issue whether the defendant should stand trial. It held that a sanity determination is merely an interlocutory decree, and thus not appealable.

Whether it is the state or the defendant who seeks to avoid trial the legal issue is the same. It is submitted that the position that synthetic sanity is not sufficient legal sanity is due to a basic misunderstanding of the nature of chemotherapy. Dr. F. H. Metz, Clinical Director of the Forensic Division at the East Louisiana State Hospital, describes the effect of tranquilizing drugs as follows:

" . . . I believe it is highly significant that the courts and the district attorney and all concerned should recognize that tranquilizers or anti-psychotic or anti-anxiety medication . . . are not drugs in the sense that they 'drug' or cloud the consciousness or senses of an individual, and that they are not habit-forming or addicting and are not classed as sedatives like the barbituates, and they are not classed as narcotics. Certainly the district attorney will want to note this and thus may prevent the possibility of an accused or convicted defendant seeking relief . . . on the grounds that he was drugged or 'doped' or sedated at the time of his earlier hearing or trial."¹⁷

Defense counsel argued in *Burrows* that the experts have developed a new type of individual who is actually insane but

16. 198 So.2d 393, 394 (La. 1967).

17. Letter of July 18, 1966, to Judge John A. Dixon of the First Judicial District Court, Parish of Caddo.

seems sane while under medication. They argued that this synthetic sanity was not legally sufficient to warrant trying a man for his life. Counsel claimed that to try the defendant would be tantamount to construing the code article on competency to read "able to understand the proceedings against him and to assist in his own defense, *while under the influence of drugs.*" Such a conclusion does not logically follow. To argue that one who must take medication is not *really* sane seems equivalent to asserting that one who wears corrective glasses cannot *really* see. The statute, furthermore, does not require that the accused shall have never been insane, or that he must be sane independent of medication. It demands an effective condition; how that condition is brought about should properly be left to the accomplishments of the medical and psychiatric professions.

In *State v. Genna*¹⁸ the Louisiana Supreme Court approved the following test for competence:

"The test of present insanity which will prevent a trial in a criminal action is whether the person is mentally competent to make a rational defense. . . . A person arraigned for a crime, who is capable understanding the nature and object of the proceedings against him, and who comprehends his own condition in reference to it, and can conduct his defense in a rational manner, is to be deemed sane for the purposes of being tried, although on some other subjects his mind be unsound."¹⁹

The question, then, is, does the defendant's mental condition and capacity meet this test. If it does, the fact that the defendant is taking medication should not preclude his trial.²⁰ The objective application of this standard will enable the state to proceed against a defendant who is seeking to avoid or postpone trial and will not prevent the defendant who wants to stand trial from becoming the "forgotten man" of the law.

Madison Callaway Moseley

18. 163 La. 701, 112 So. 655 (1927).

19. *Id.* at 718, 112 So. at 661, citing 1 WHARTON & STILLÉ, MEDICAL JURISPRUDENCE § 206, at 210 (5th ed. 1905).

20. Were the courts to approve the trial of the tranquilized defendant, the question might arise whether an accused could avoid trial simply by refusing to take the medication. Analogous situations indicate that he could not. See, e.g., *People v. Rogers*, 150 Cal. App. 2d 403, 309 P.2d 949 (1957).