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Jacob Gordon
Liberty University, jgordon31@liberty.edu

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Commonly misunderstood as a mystical path to circumvent the consequences of the criminal justice system and escape punishment, the insanity defense is a controversial topic that is often debated. This erroneous idea, encouraged and propagated by popular media and television, has led many to believe that the insanity plea is a loophole in the American legal system that enables the defendant to seemingly evade all potential consequences of their actions. This perception is not an accurate summation of the insanity defense, and does not effectively represent the intricacies of pleading insanity. There is a great deal of documented research that clearly demonstrates the actualities of pleading not guilty by reason of insanity that are untainted by the spin of the media or popular culture. By examining a portion of this research, the truth behind the insanity defense can be separated from fiction.

British Common Law

In order to discuss the condition of the insanity defense in Virginia, it is vital to first understand the broader state of the insanity defense in America. Like many other criminal and civil laws, American laws regarding the insanity defense originate from British Common Law. The most significant case involving the insanity defense is from the case of Daniel M'Naghten in 1843. A simple man living in Glasgow, M'Naghten believed that several groups were conspiring to harm him. Taking matters into his own hands, he set out to assassinate the Prime Minister of England, killing the Queen's secretary in the process. When arrested and brought to trial, M'Naghten's team of lawyers attempted to prove that the defendant was insane at the time of the offense and thus should not be held responsible for his actions. By using a plethora of witnesses and a complicated, lengthy medical brief, they were able to successfully convince the court that

M'Naghten should be acquitted based upon his plea of insanity. After the trial, M'Naghten was sent to a mental institution where he later passed away.

M'Naghten's trial was a landmark case, and set the precedent for not only English common law, but also for early American law. Ultimately, the "trial developed into a battle between medical knowledge and ancient legal authority" (Gerber, 1984, p. 22). After numerous witnesses deemed M'Naghten insane, the courts found M'Naghten "not guilty, on the ground of insanity," further stating that "the whole of the medical evidence is on one side, and that there is no part of it which leaves any doubt in the mind" (Gerber, p. 22).

Using this case as a foundation, the M'Naghten test established a process by which American courts could determine whether or not a person was truly insane at the time at which they committed the crime. This rule states:

> Defendants are not legally responsible for their acts if at the time they were laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it that he did not know that what he was doing was wrong. (Gardner & Anderson, p. 114)

In an attempt to break away from the M'Naghten test, an additional test known as "irresistible impulse" was established. This test is used when the defendant knows what they have done and may even know that their actions were wrong, but they were "irresistibly driven to a criminal act by an overpowering impulse resulting from a mental condition" (1984, Gerber, p. 38). This test is most commonly used in conjunction with the M'Naghten test, and has received a great deal of criticism by legal professionals for its apparent lack of clarification. Gerber argues that because the test is so poorly defined, the "irresistible-impulse standard thus becomes an arbitrary juggling of definitions rather than an assessment of real behavior" (p. 39).

Problems with the Insanity Plea

Based upon legal precedents and established tests, the insanity defense has served as a credible and legitimate defense for many years in the American criminal justice system. In nearly all states, when defendants are found not guilty by reason of insanity, they are sent not to a prison, but to a mental institution and sometimes even released. For the accused individual who is looking for a path that leads to freedom and avoids a prison sentence, this option may initially appear attractive. However, there are many stipulations and conditions that are entailed when a defendant enters a plea of insanity.

One frequently overlooked component of the insanity defense is the fact that by pleading not guilty by reason of insanity, the defendant is required to admit that they committed the crime. The defendant must first confess they perpetrated the act of which they were charged, then attempt to prove their mental condition during the commission of the crime. This presents a dangerous dilemma for any defendant wishing to pursue an insanity plea. As stated by the Virginia State Crime Commission: "A verdict of not guilty by reason of insanity results, in part, from proof that the defendant did in fact commit the criminal offense alleged" (2002, p. 9). Therefore, if the insanity plea should prove ultimately unsuccessful, the defendant has already established their guilt in their attempt to prove their innocence.

Another challenge of successfully using the insanity defense is the burden of proof that is required by the defense. When operating under the M'Naghten rule (as Virginia and many other states do, "every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to the jury's satisfaction" (2012, Gardner & Anderson, p.114). This standard assumption made of every criminal defendant ensures that

the defense must be diligent in presenting sufficient evidence to establish a lack of reason in the defendant, therefore removing them of their criminal culpability for committing the crime.

Once defendants have plead not guilty by reason of insanity and convinced a jury that they should not be held responsible for their actions because of their mental state, they are not immediately released back into society. In Virginia, the acquitted party must pass a psychological evaluation by "one psychiatrist and one clinical psychologist," and if either one of them is not thoroughly convinced that the acquittee should be released, "the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board or behavioral health authority to jointly prepare a conditional release or discharge plan" (Virginia State Code). These evaluations are rigorous and thorough, and usually require unanimous agreement before the acquittee is released from a hospital.

These three challenges make it very difficult for defendants to be acquitted by reason of insanity and then to return to their normal lives. Out of the thousands of criminal cases that enter the Virginia court system every year, only a small percentage of those cases are taken to trial. Out of the relatively small number of cases that are heard in a courtroom, a very small percentage of the defendants will choose to plead not guilty by reason of insanity. There are even fewer that have been acquitted of their crimes and allowed to return to civilian life. According to the Rivier College Online Academic Journal, the insanity defense "is used in only about 1% of all cases with a success rate of approximately 25%" (2006, p. 9). Because of the manifold legal barriers and incredibly low success rate involved in using the insanity defense, any attempt to prove the insanity of a criminal defendant, whether legitimate or otherwise, is highly unlikely to led to the acquittal of that defendant unless their insanity of the crime can be sufficiently proven to the rigorous standards that are adhered to in legal traditions.

Present State of the Insanity Defense in Virginia

Currently, Virginia courts use "a combination of the M'Naghten and the irresistible impulse insanity tests," requiring the defendant to prove that they "did not understand the nature, character, and consequences of the act, or was unable to distinguish right from wrong, or was driven by an irresistible impulse to commit the act" (Roanoke Criminal Attorneys). By combining two well-established legal precedents, it is highly improbable that a defendant can successfully use the insanity plea. While not impossible, it is an extreme rarity in the Virginia criminal justice system. Dr. Jeffrey Fracher, a retired forensic psychologist that has "evaluated thousands of sex offenders during his 42 years working in Charlottesville" stated, "it is rare to see an insanity plea hold up in Virginia" (2014, Thomas). While unlikely, there have been a few cases in Virginia in which the defendant has plead not guilty by reason of insanity.

Lauren Bobbitt v. Commonwealth

In a highly publicized Virginia case, Lauren Bobbitt was charged with malicious wounding after she assaulted her husband with a kitchen knife while he was asleep, causing him serious bodily harm. After allegations that the couple's "four-year-long marriage had been a 'reign of terror'" for Bobbitt, and that she "had been repeatedly raped and abused by her husband," a jury found Bobbitt not guilty by reason of insanity (1994, Ross). This highly controversial case was highly public and raised awareness regarding the insanity defense in Virginia. While certainly not the only case involving the use of the insanity defense, this case provides a succinct view of how the Virginia criminal justice system responds to the use of the insanity defense.

Future of the Insanity Defense

The future of the insanity defense in Virginia courts is likely to be determined in an ongoing case involving the abduction of Hannah Graham. Jesse Matthews is the defendant in the case, facing charges of attempted murder and rape. The defendant's attorney has petitioned the court to evaluate Matthews' mental state. This strongly implies that if the results are indicative of any kind of significant mental handicap, there is a strong possibility of the defendant pleading not guilty by reason of insanity (2014, Thomas). The judge in the case denied Matthews' motion for expert funding, presumably for mental professionals to serve as expert witnesses, and ultimately Matthews plead guilty in an Alford plea and was found guilty of all charges against him (Bryan & French, 2015). The developments of this highly publicized case and its outcome demonstrate the difficulty in applying the insanity defense in Virginia and will undoubtedly impact the current state of the insanity defense in Virginia.

Conclusion

From the pivotal M'Naghten case, the insanity defense became established in American law. Though it is widely debated and highly controversial, the insanity defense has been used in America for many years. It is a complicated and intricate topic, one that the public has many misconceptions about. Those wishing to prove their insanity in a court of law have to overcome the rigorous burden of proof, thorough psychological evaluations, and mandatory confessions that are inherent in the insanity defense. These conditions make it nearly impossible to be found not guilty by reason of insanity for anyone that is not truly suffering from a severe mental condition. The Virginia criminal justice system has done an excellent job of establishing clear guidelines concerning the insanity defense, and has set a case law precedent for rightfully deciding how to appropriately conduct a trail in which the defendant pleads not guilty by reason of insanity. This efficient and accurate approach, based off of foundational British common law

and American legal tradition, will continue to serve as Virginia's guide for the insanity defense for many years to come.

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