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The Temporaty Insanity Defense in California

By: Aaron Malo, Matthew P. Barach, Joseph A. Levin

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Public Law Research Institute: 200 McAllister Str. San Francisco, CA 94102-4978

Email: PLRI@uchastings.edu

SUMMARY

Currently, California criminal law does not distinguish between temporary and permanent insanity. The only relevant issue, under California law, is the defendant's sanity (or insanity) at the time of the crime's commission.

California Penal Code Section 25(b) ("Section 25(b)") creates a two prong test for sanity: The first prong requires a defendant to understand the nature and quality of his act. The second prong requires the defendant to be able to distinguish between right and wrong. A defendant who cannot satisfy both of these prongs is statutorily insane.

In 1994, the California State Senate amended Section 25(b). On the face of it, the 1994 amendment seems to be little more than a codification of existing case law; it prevents California courts from finding a defendant insane solely on the basis of a personality or adjustment disorder, a seizure disorder, or addiction to, or abuse of intoxicating substances.

While most American jurisdictions currently use two prong insanity tests similar to California's Section 25(b), there are exceptions. A significant number of states find defendants insane if they lack the substantial capacity either to appreciate the criminality of their conduct or to conform their conduct to the requirements of law. Several jurisdictions find defendants not guilty by reason of insanity if their conduct is the result of an irresistible impulse. Finally, at least one state finds defendants insane if their criminal conduct is found to be the product of a mental disease or defect.

DISCUSSION

1.Temporary v. Permanent Insanity:

In law, the term "insanity" is used to denote that degree of mental illness which negates the individual's legal responsibility or capacity. [No. 1] In California, if the test of legal insanity is satisfied, temporary insanity is as good a defense as permanent insanity. [No. 2] Although the insanity must be of a "settled nature," (in other words, it must be fixed and stable for a reasonable duration,) it need not be permanent. [No. 3] Thus, under California law, so long as a defendant is adjudged insane at the time of the offense, it makes no difference whether the period of insanity lasted several months or merely a number of hours. [No. 4] In this jurisdiction the insanity and temporary insanity defenses are logical equivalents; the relevant question is whether the defendant was "insane" at the time the offense was committed. [No. 5]

2.Current California Law:

A.Section 25(b) & the M'Naghten Rule:

Passed in June of 1982, Proposition 8 created California's "first statutory definition of insanity." [No. 6] That statutory definition took the form of Section 25(b) of the California Penal Code ("Section 25(b)"); it is still good law today. [No. 7] Section 25(b) states:

In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense. [No. 8]

While Section 25(b) seems fairly straight-forward, portions of it are worthy of clarification.

". . . in which a plea of not guilty by reason of insanity is entered . . ." A plea of insanity must be raised by pleading not guilty by reason of insanity. [No. 9] Under Section 25(b), if a defendant fails to plead not guilty by reason of insanity, a reviewing court need not allow the defendant to enter a new plea. [No. 10]

" . . . this defense shall be found by the trier of fact . . . " The determination of sanity is made by the trier of fact: a jury, in most criminal cases. While California evidence law allows expert witnesses to testify about a defendant's sanity, it explicitly prevents such experts from testifying in the form of legal conclusions. Experts may only give their opinions as to the defendant's medical condition. [No. 11]

". . . only when the accused person proves by a preponderance of the evidence that . . ." Under California case law there is a well-established presumption of sanity. [No. 12] Section 25(b) does nothing to change this. Instead, Section 25(b) articulates a standard of proof that the defendant must meet: a preponderance of the evidence. [No. 13]

The preponderance of the evidence standard is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more provable than not." [No. 14] Basically, under this standard, the defendant must prove that it was more likely than not that he was insane.

". . . that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." This language constitutes the real substance of Section 25(b).

Undoubtedly, Section 25(b) creates a two pronged test for sanity; this was also the case with the traditional M'Naghten test (described below). Prong One requires a defendant to understand the nature and quality of his act. Prong Two requires the defendant to be able to distinguish between right and wrong. Prior to 1985, it was not clear whether a defendant had to satisfy both of these criteria to be found insane under Section 25(b), or whether a defendant who satisfied either criteria was insane. That question was resolved in People v. Skinner. [No. 15] There, the California Supreme Court held:

We . . . conclude that under [Section 25(b)] there exist two distinct and independent bases upon which a verdict of not guilty by reason of insanity might be returned. [No. 16]

Thus, a defendant satisfying either Prong One or Prong Two is legally

insane under Section 25(b). The Court also concluded that the drafters of Section 25(b) intended to articulate the M'Naghten rule. [No. 17]

The M'Naghten rule has its origins in an 1843 opinion of the English House of Lords. [No. 18] This rule was first adopted by the California Supreme Court in People v. Coffman. [No. 19] The California court summarized the rule as:

To establish a defence [sic] on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring [sic] 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, that he did not know what he was doing was wrong. [No. 20]

Thus, for a person to be found insane, she must meet either of the two prongs: At the time of the commission of the offense, she must have been "laboring under such a defect of reason from a disease of the mind that she: (1) did not know the nature and quality of the act she was doing; or, (2) did not know that what she was doing was wrong." [No. 21] As recognized by the California Supreme Court in Skinner and Kelly, this is the substance of Section 25(b) and this is the law in California. [No. 22]

B.Section 25.5

On August 30, 1994, the California legislature created Section 25.5 of the California Penal Code ("Section 25.5"). Section 25.5 reads:

In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of a personality or adjustment disorder, a seizure disorder, or addiction to, or abuse of, intoxicating substances. This section shall apply only to persons who utilize this defense on or after the operative date of the section. [No. 23]

This legislation really does very little other than codify preexisting case law. [No. 24] The California Supreme Court had, prior to 1994, already held that a history of antisocial behavior alone is insufficient to justify a finding of insanity. [No. 25] Similarly, as early as 1882, the California Supreme Court held that volitional disorders (of which seizure disorders are a subset) do not, by themselves, justify a finding of insanity under the M'Naghten standard. [No. 26] Finally, the California Supreme Court holds that the addiction to or abuse of intoxicating substances does not, without more, warrant a finding of insanity. [No. 27] In short, Section 25.5 seems to do nothing new. [No. 28] The fact that a LEXIS and Westlaw search of California cases revealed no reported cases citing Section 25.5 tends to support that notion.

3.Alternatives to the M'Naghten/Section 25(b) Test:

In addition to the M'Naghten/Section 25(b) test, there are three other historically significant tests of insanity: the irresistible impulse test; the Durham test; and the ALI test. While the irresistible impulse and Durham tests are not widely accepted, the ALI test has, historically at least, a strong following among the states.

A.Irresistible Impulse Test:

The irresistible impulse test constitutes little more than adding a third prong to the M'Naghten/Section 25(b) test. The additional prong allows courts to find a defendant insane because of a volitional disorder, a disorder that undermines a her ability to control her conduct. [No. 29] This additional defense is available if the defendant is "unable to adhere to the right as a result of irresistible impulse." [No. 30] As the test's name suggests, this additional prong has come to be known as the irresistible impulse test. [No. 31] The idea is that in order to be found insane, the defendant needs to have experienced an "irresistible impulse" to engage in the criminal conduct.

Since the precise language of the irresistible impulse test varies from jurisdiction to jurisdiction, the exact terminology of the test is hard to define and discuss. Dressler sums up the three most popular forms of the test as follows: (1) D[efendant] 'acted from an irresistible and uncontrollable impulse'; (2) D[efendant] 'lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed'; (3) D[efendant]'s 'will . . . has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control.' [No. 32]

This test is usually construed in stringent terms; the defendant must be completely deprived of his power of choice or volitional capacity to be adjudged insane. [No. 33] The irresistible impulse test has been adopted in such jurisdictions as: Colorado; [No. 34] Georgia; [No. 35] Iowa; [No. 36] New Mexico; [No. 37] Oklahoma; [No. 38] and Virginia. [No. 39]

B.The Durham Test:

The Durham test of insanity allows the defendant to be excused from her criminal conduct "if her unlawful act was the product of a mental disease or defect." [No. 40] Under this test, "Mental disease or defect" is defined as "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." [No. 41] A "disease" implies a condition that is capable of change, either improving or deteriorating. [No. 42] A "defect" involves a condition not capable of changing, but, instead, which may be "congenital . . . the result of the brain, or the residual effect of a physical or mental illness." [No. 43]

Under the Durham test, in order to determine if the defendant was legally insane at the time of the commission of the offense, the jury must decide whether the criminal conduct would have occurred but for the mental condition. [No. 44] There must be a causal link between the criminal act and the mental illness; not only must the defendant show that he was mentally ill, but he must also show that if it were not for his mental condition, he would not have committed the crime. [No. 45]

While the Durham test was initially well-received, and was even adopted by several federal jurisdictions, it later fell from grace. Even the case that lent its name to the test, [No. 46] was overruled in 1972. [No. 47] Currently, no jurisdiction except the Virgin Islands uses the Durham test, though New Hampshire still uses a modified version. Today the Durham test is more a historical footnote than an actual legal practice.

C.The ALI Test

The American Law Institute ("ALI") test is presented in Section 4.01 of the Model Penal Code. It reads:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. [No. 48]

The Model Penal Code establishes a two pronged test. Satisfying either prong will establish the insanity defense. Under the ALI test a defendant is not responsible for her conduct if, at the time of the commission of the offense, she lacked the substantial capacity to: (1) appreciate the criminality (or wrongfulness) [No. 49] of her conduct; or, (2) conform her conduct to the requirements of law. [No. 50]

There are several important differences between the ALI test and other tests examined above. First, the ALI test uses the word "appreciate" instead of the word "know" (as in the M'Naghten test). This can allow a comparatively broader class of defendants to qualify as insane. Second, the ALI test does not use the term "impulse." Again, this can allow the test to be satisfied by a larger class of defendants who cannot conform their conduct to the requirements of law. "Most significantly, however, both prongs of the test are modified by the words 'lacks substantial capacity.' This avoids the criticism often made against the earlier tests: that they were unrealistic by requiring total incapacity." [No. 51]

The ALI test was initially adopted in many jurisdictions (including, as noted in footnote 3 above, California). But following the acquittal of John Hinckley, (who had attempted to assassinate then-President Ronald Reagan,) the ALI test fell out of favor as states attempted to make their insanity defenses more stringent. Despite the post-Hinckley "falling out" many jurisdictions still use the ALI test or some modification thereof.

They include: Alabama; [No. 52] Alaska; [No. 53] Arkansas; [No. 54] Connecticut; [No. 55] District of Columbia; [No. 56] Hawaii; [No. 57] Idaho; [No. 58] Illinois; [No. 59] Indiana; [No. 60] Kansas; [No. 61] Kentucky; [No. 62] Maine; [No. 63] Maryland; [No. 64] Massachusetts; [No. 65] Michigan; [No. 66] Missouri; [No. 67] New York; [No. 68] North Dakota; [No. 69] Oregon; [No. 70] Rhode Island; [No. 71] Tennessee; [No. 72] Utah; [No. 73] West Virginia; [No. 74] Wisconsin; [No. 75] and Wyoming. [No. 76]

CONCLUSION

There is no functional difference between temporary and permanent insanity under California law. Since 1982, California has used the two prong M'Naghten test as enacted by Section 25(b) of the California Penal Code. While the California legislature added Section 25.5 to the Penal Code last summer, those changes seem to codify, rather than change, existing law. Many American jurisdictions use insanity tests other than the M'Naghten test; they include the irresistible impulse test, the Durham test, and the ALI test.

NOTES

[No. 1] Black's Law Dictionary 794 (6th ed. 1990).

[No. 2] See People v. Kelly, 10 Cal. 3d 565, 576 (1973); People v. Ford, 138 Cal. 140, 141 (1902).

[No. 3] Id.

[No. 4] Id.

[No. 5] This is not to suggest that even the judiciary does not occasionally forget that temporary and permanent insanity are treated similarly under California law. As recently as 1995, at least one California court discussed the defense of "temporary insanity." People v. Aguirre, 31 Cal. App. 4th 391 (1995).

[No. 6] People v. Kelly, 1 Cal. 4th 495 (1992); People v. Skinner, 39 Cal. 3d 765, 768 (1985).

[No. 7] Section 25(a) of the California Penal Code ("the Code") abolishes the defense of diminished capacity. Section 25(c) of the Code allows evidence of diminished capacity to be considered by the court "only at the time of sentencing or other disposition or commitment." Cal. Penal Code 25(b) (Deering 1995). Section 25(d) of the Code creates a procedure by which the California legislature may amend the provisions of Section 25.

[No. 8] Cal. Penal Code 25(b) (Deering 1995). In California, the standard jury instructions for the defense of insanity state:

The defendant has been found guilty of the crime of _____. You must now determine whether [he] [she] was legally sane or legally insane at the time of the commission of the crime. This is the only issue for you to determine in this proceeding.

You may consider evidence of [his] [her] mental condition before, during and after the time of the commission of the crime, as tending to show the defendant's mental condition at the time the crime was committed.

[Mental illness and mental abnormality, in whatever form they may appear, are not necessarily the same as legal insanity. A person may be mentally ill or mentally abnormal and yet not be legally insane].

A person is legally insane when by reason of mental disease or defect [he] [she] was incapable of knowing or understanding the nature and quality of [his] [her] act or incapable of distinguishing right from wrong at the time of the commission of the crime.

The defendant has the burden of proving [his] [her] legal insanity at the time of the commission of the crime by a preponderance of the evidence.

California Jury Instructions, Criminal, Instruction No. 4.0, at 141-42 (5th ed. West 1994).

[No. 9] Cal. Penal Code 25(b), 1016, 1026 (Deering 1995).

[No. 10] See People v. Mayfield, 5 Cal. 4th 142 (1993); People v. Foster, 102 Cal. App. 3d 882, 895 (1980).

[No. 11] See Cal. Evid. Code 800-05 (Deering 1995); People v. Rangel, 11 Cal. App. 4th 291 (1992) (it was error for the psychiatrist to testify that defendant could not form the specific intent to kill).

[No. 12] See People v. O'Brien, 122 Cal. App. 147 (1932); People v. Chamberlain, 7 Cal. 2d 257 (1936).

[No. 13] Cal. Penal Code 25(b) (Deering 1995).

[No. 14] Black's Law Dictionary at 1182 (6th ed. 1990); and see Witkin, California Evidence 208 (1994); cf. People v. Williams, 184 Cal. 590, 594 (1920) ("The term 'preponderance of the evidence' so clearly expresses its meaning" that a jury need not have it defined for them).

[No. 15] 39 Cal. 3d 765 (1985).

[No. 16] Id. at 687.

[No. 17] People v. Skinner, 39 Cal. 3d 765, 768 (1985).

[No. 18] M'Naghten's Case, 10 Cl. & F. 200 (1843).

[No. 19] 24 Cal. 230, 235 (1864). California later abandoned the M'Naghten rule in People v. Drew, 22 Cal. 3d 333 (1978), in favor of the American Law Institute's ("ALI") test. The substance of the ALI test is described in a later section of this paper.

[No. 20] People v. Coffman, 24 Cal. at 235.

[No. 21] Joshua Dressler, Understanding Criminal Law 299 (1987).

[No. 22] A good example of how the M'Naghten/Section 25(b) rule operates is a situation in which a defendant bites a person because he believes the person to be a piece of chicken. See Dressler, Understanding Criminal Law at 299. Under California law, this action constitutes a battery. Such a defendant could prove insanity under Prong One: he was incapable of knowing or understanding the nature and quality of his act. If, however, the defendant bites the person with full awareness that the victim is a person, but unaware that the act of biting causes the victim any pain, then the defendant is aware of the nature and quality of his act. The defendant can no longer find help from Prong One. Prong Two can help him, though, as he did not know that his act was wrong.

[No. 23] Cal. Penal Code 25.5 (West 1995).

[No. 24] Under the ALI test for sanity (see Section C(3) infra) personality disorders and substance dependence are generally treated as they are under California law. See, e.g., People v. Johnson, 146 Ill. 2d 109, 121 & 128 (1991) (antisocial behavior is not insanity); Commonwealth v. Brode, 564 A.2d 1254, 1256 (Pa. 1989) ("compulsive personality disorder, adjustment disorder, and alcohol dependence" cannot support for a finding of insanity).

Conversely, state laws split (even without regard to the type of insanity test employed) over the recognition of seizure disorders as a valid ground for finding a defendant insane. Compare Cal. Penal Code 25.5 (Deering 1995) with Loven v. State, 831 S.W.2d 387, 391 (1992) (in dicta stating: "[A] defendant's claim that he or she acted unconsciously during the throes of an epileptic seizure is a valid defense. Texas courts have held that states of unconsciousness or automatism, including epileptic states, are includable [sic] in the defense of insanity.").

Additionally, multiple states have recently adopted statutory provisions similar to California's Section 25.5. See, e.g., Or. Rev. Stat. 161.295 (1994); 13 Vt. Stat. Ann. 4801 (1994) (contrary to California and Oregon,

the Vermont statute extends the definition of mental disease to include seizures).

At least one California Supreme Court decision allows a defendant to argue that suffering from a "psycho-motor epileptic seizure" constitutes insanity. People v. Modesto, 62 Cal. 2d 436 (1965) (en banc). Similarly, California Appellate Courts state that a defendant "suffering a psychomotor epileptic seizure would . . . [be] legally insane." People v. Williams, 22 Cal. App. 3d 34, 38 (1971); and see People v. Kitt, 83 Cal. App. 3d 834, 846-47 (1978). These cases, however, construe pre-Section 25(b) law.

[No. 25] People v. Fields, 35 Cal. 3d 329, 368-69 (1983) (in a pre-Section 25(b) opinion, but stating in dicta that the same result would occur under Section 25(b)).

[No. 26] People v. Hoin, 62 Cal. 120, 123 (1882); and see People v. Sloper, 198 Cal. 238, 245 (1926); People v. Brown, 43 Cal. App. 2d 430, 433 (1941) (epileptic seizure).

[No. 27] People v. Kelly, 10 Cal. 3d 565 (1973) (voluntary ingestion of hallucinatory drugs does not justify a finding of insanity; long term drug usage may have long term effects that constitute a settled and permanent insanity); People v. Travers, 88 Cal. 233 (1891) (same).

[No. 28] Can a defendant who can satisfy Section 25(b) based on a Section 25.5 disorder still be found insane? Does Section 25.5 preclude a defendant from arguing that she, (due to a personality disorder, seizure disorder, or addiction to intoxicating substances,) lacked the mens rea required for a given crime? This author speculates that the answers to these questions are yes and no, respectively. It must be noted, though, that until California courts begin interpreting Section 25.5, these issues will remain, at least technically, unresolved.

[No. 29] See Sanford H. Kadish and Stephen J. Schulhofer, The Criminal Law and Its Processes: Cases and Materials, 981 (5th ed. 1989) [hereinafter The Criminal Law and Its Processes]; Joshua Dressler, Understanding Criminal Law at 301.

[No. 30] See United States v. Kunak, 17 C.M.R. 346 (Ct. Mil. App. 1954).

[No. 31] Joshua Dressler, Understanding Criminal Law at 301.

[No. 32] Id. (citing Commonwealth v. Rogers, 48 Mass. 500, 502 (1844); Johnson v. State, 233 Miss. 56, 67, 76 So. 2d 841, 844 (1955); Parsons v. State, 81 Ala. 577, 597, 2 So. 854, 866 (1877); Davis v. United States, 165 U.S. 373, 378 (1897)).

[No. 33] Sanford H. Kadish and Stephen J. Schulhofer, The Criminal

Law and Its Processes: Cases and Materials at 981.

[No. 34] People v. Wright, 648 P.2d 665 (Colo. 1982).

[No. 35] Caldwell v. State, 257 Ga. 10 (1987).

[No. 36] State v. Hamann, 285 N.W.2d. 180 (1979).

[No. 37] State v. Hartley, 90 N.M. 488 (1977).

[No. 38] Burrows v. State, 640 P.2d 533, cert. denied, 460 U.S. 1011 (1982)

[No. 39] Rollins v. Commonwealth, 207 Va. 575, cert. denied, 386 U.S. 1026 (1966)

[No. 40] Joshua Dressler, Understanding Criminal Law at 302.

[No. 41] McDonald v. United States, 312 F.2d 847, 851 (D.C. Cir. 1962).

[No. 42] Joshua Dressler, Understanding Criminal Law at 302.

[No. 43] Durham v. United States, 214 F.2d 862, 875 (D.C. Cir. 1954).

[No. 44] See Id.

[No. 45] Id.

[No. 46] Durham v. United States, 214 F.2d at 862.

[No. 47] United States v. Brawner, 471 F.2d 969, 973 (D.C. Cir. 1972) (overruling the Durham test).

[No. 48] Model Penal Code 4.01(1).

[No. 49] Some jurisdictions have used "wrongfulness" instead of "criminality" when enacting the ALI test for insanity. See Dressler, Understanding Criminal Law at 302. Presumably, the term "wrongfulness" encompasses a wider range of conduct than "criminality." Whereas "criminality" seems limited to appreciation that the conduct was legally wrong, "wrongfulness" seems to allow some latitude for moral transgressions. Of course, if the statute is limited to criminality (solely legal wrongfulness), as opposed to wrongfulness (both moral and legal wrongfulness), fewer defendants will be able to use the insanity defense and more convictions will ensue.

[No. 50] Model Penal Code 4.01(1).

[No. 51] Joshua Dressler, Understanding Criminal Law at 302.

[No. 52] Ware v. State, 584 So. 2d 939 (1991 Ala. App.), aff'd 377 So. 2d 159, vacated on other grounds, 100 S. Ct. 3044.

[No. 53] Smith v. State, 614 P.2d 300 (Alaska 1980).

[No. 54] Franks v. State, 306 Ark. 75 (1991).

[No. 55] State v. Rossier, 175 Conn. 204 (1978).

[No. 56] Wilkes v. United States, 631 A.2d 880 (Dist. Col. App. Ct. 1993).

[No. 57] State v. Nuetzel, 606 P.2d 920 (Haw. 1980).

[No. 58] State v. White, 93 Idaho 153 (1969).

[No. 59] People v. Tylkowski, 171 Ill. App. 3d 93 (1988).

[No. 60] Law v. State, 406 N.E.2d 429 (Ind. 1980).

[No. 61] William v. State, 248 Kan. 389 (1991).

[No. 62] Edwards v. Commonwealth, 554 S.W.2d 380 (Ky. 1977).

[No. 63] State v. Page, 145 A.2d 574 (Me. 1980).

[No. 64] Robey v. State, 54 Md. App. 60 (1983).

[No. 65] Commonwealth v. Hildreth, 30 Mass. App. 963 (1991).

[No. 66] People v. Mazzie, 1429 Mich. 29 (1984).

[No. 67] State v. Carr, 687 S.W.2d 606 (Mo. App. 1985).

[No. 68] People v. Kohl, 72 N.Y.2d 191 (1988).

[No. 69] State v. Jensen, 251 N.W.2d 182 (N.D. 1977).

[No. 70] State v. Herrera, 286 Or. App. 255 (1974).

[No. 71] State v. Johnson, 399 A.2d 469 (R.I. 1979).

[No. 72] State v. Clayton, 656 S.W.2d 344 (Tenn. 1983).

[No. 73] State v. Dominguez, 564 P.2d 768 (Utah 1977).

[No. 74] State v. Samples, 328 S.E.2d 191 (W. Va. 1985)

[No. 75] State v. Kolisnitschenko, 84 Wis. 2d 492 (1978).

[No. 76] Dean v. State, 668 P.2d 639 (Wyo. 1983).

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