University of Miami Law Review

Volume 6 | Number 4 Article 16

6-1-1952

Evidence -- Burden of Proof -- Burden of Going Forward

by holding them liable for a failure to provide necessaries[12] and for the infliction of unreasonable punishment.[13]

The court in the instant case recognized that radical social and economic changes justify a departure from the general rule when the parent is acting in a business or vocational capacity.[14] The rationale underlying the general rule was criticized on the ground that the aforementioned objections are applicable to property actions between parent and child which have always been allowed.[15] It was also expressly stated that the presence of liability insurance should be disregarded since it has no effect upon the merits of the case.[16]

With this decision another inroad has been made into the general rule. Heretofore the parent has been held liable in his dual capacity only when protected by liability insurance. While the case furthers the present trend and reaches an equitable result the court seems to apply an artificial rule that may be difficult to administer since no standards are specified for determining when a parent is acting in a business or vocational capacity. The decision also leaves undecided the question whether the rule is to be exclusive in its application and thus bar redress for willful and malicious torts. It is unfortunate that the court did not differentiate between duties growing out of the parental relation and those owed to the world in general and base their recovery upon such fact rather than on the nebulous concept of dual capacity. A more workable rule would be to grant immunity only when the parent is reasonably discharging a parental duty.

EVIDENCE — BURDEN OF PROOF — BURDEN OF GOING FORWARD

Defendant, driving an automobile while under the influence of intoxicating liquor, struck deceased who died immediately. Defendant was charged with involuntary manslaughter.[1] *Held,* that when a wound from which death might ensue has been inflicted and thereafter death occurs, the *burden of proof* is upon accused to make it appear that death did not result from the wound but from some other cause. *Hopper v. State,* 54 So.2d 165 (Fla. 1951).

The general rule is that the state, in a criminal case, must prove by competent evidence every essential element of the crime beyond and to

12. Foley v. Foley, 61 Ill. App. 577 (1895) (medical care); Clasen v. Pruhs, 69 Neb. 278, 95 N.W. 640 (1903) (food and clothing).
13. Steber v. Norris, 188 Wis. 366, 206 N.W. 173 (1925).
14. Signs v. Signs, 103 N.E.2d 743, 748 (Ohio 1952).
15. Alston v. Alston, 34 Ala. 15 (1859); Preston v. Preston, 102 Conn. 96, 128 Atl. 29 (1925); Crowley v. Crowley, 72 N.H. 241, 56 Atl. 190 (1903); Lamb v. Lamb, 146 N.Y. 317, 41 N.E. 26 (1895).
16. Signs v. Signs, 103 N.E.2d 743, 747 (Ohio 1952).

1. FLA. STAT. § 860.01 (1951).

the exclusion of a reasonable doubt.[2] In a homicide case the prosecution must prove the *corpus delicti* and that the accused is the perpetrator.[3] The *corpus delicti* consists of the fact of death, criminal agency of another person[4] and the identification of the deceased person.[5] The presumption is that a person is innocent until proven guilty and it is for the state to remove and overcome this presumption by proof.[6] In a civil case presumptions may sometimes fix the burden of proof. In a criminal case, generally neither the burden of proof[7] nor the burden of proceeding with any evidence[8] can be imposed upon the accused.

A person is held to intend the ordinary and natural consequences of his wrongful acts;[9] therefore, when a person has maliciously inflicted a wound resulting in death the crime is murder even though another agency, such as ill treatment or neglect, has contributed to the death.[10] The accused, in order to mitigate the crime, must show that the person died solely from the other cause.[11] However, this rule does not relieve the state from its burden of proving that death resulted from the wound.[12] When the state has shown existence through the act of the accused of a sufficient cause of death, death is presumed to have resulted from such act, unless the defendant can reasonably show another cause of death.[13] Death may be presumed to have been caused by apparent wounds, especially where there is no suggestion that deceased dies from any cause other than that relied on by the state.[14] If in a murder case the prosecution proves the killing, or the defendant admits it, the burden of proving circumstances of mitigation or justification rests upon the accused,[15] unless such appears from the evidence introduced by the state.[16]

Reasonably construed, the rule should be applied only to a charge of

---

2. Gorden v. State, 86 Fla. 255, 97 So. 428 (1923).
3. Logue v. State, 198 Ga. 672, 32 S.E.2d 397 (1945); Jones v. State, 220 Ind. 384, 43 N.E.2d 1017 (1942).
4. Gacket v. State, 23 Ala. App. 313, 124 So. 670 (1929); State v. Johnson, 193 N.C. 701, 138 S.E. 19 (1927).
5. Lee v. State, 96 Fla. 59, 117 So. 699 (1928).
6. 2 WARREN, HOMICIDE § 183 (Perm. ed. 1938).
7. Ezzard v. United States, 7 F.2d 808 (10th Cir. 1925).
8. State v. Lapointe, 81 N.H. 227, 123 Atl. 692 (1924).
9. 3 GREENLEAF, EVIDENCE § 139 (16th ed. 1899).
10. State v. Scott, 12 La. An. 274 (1875); WHARTON, HOMICIDE 241 (1855).
11. *Ibid.*
12. State v. Scott, 12 La. An. 274 (1875) (before jury can convict defendant it must believe from the evidence that the deceased died of the wounds inflicted by the accused and from no other cause).
13. United States v. Wiltberger, 28 Fed. Cas. 727, No. 16,738 (E.D. Pa. 1819); People v. Meyers, 392 Ill. 355, 64 N.E.2d. 531 (1946); State v. Briscoe, 30 La. An. 433 (1878). *Contra:* State v. Redman, 217 N.C. 483, 8 S.E.2d 623 (1940).
14. Franklin v. State, 180 Tenn. 41, 171 S.W.2d 281 (1943).
15. Bellamy v. State, 56 Fla. 43, 47 So. 868 (1908); Bass v. Commonwealth, 296 Ky. 426, 177 S.W.2d 386 (1944); State v. Briscoe, 30 La. An. 433 (1878). *Contra:* State v. Johnson, 223 Ind. 962, 274 N.W. 41 (1937).
16. Parker v. State, 197 Ga. 340, 29 S.E.2d 61 (1944).

murder[17] to which the defendant has interposed the defense that an act other than his own caused the death.[18] This rule has no application until the state has proven a sufficient cause of death.[19] The rule of law that once the state has shown a sufficient cause of death, a rebuttable presumption arises,[20] should mean only that the defendant has the *burden of going forward with the evidence.*

In the instant case, defendant was charged with involuntary manslaughter and did not contend that death was due to any cause other than that alleged by the state. Therefore, it is submitted that the rule, since it is applicable for mitigating purposes only, was wrongfully applied to the instant case. If the court meant to imply that the state had sufficiently proven the cause of death to raise a presumption, the words "burden of proof" should not have been used. Since from the record it appears that the state sufficiently proved the death by competent evidence, the use of the rule was superfluous.

EVIDENCE—REFUSAL OF FEDERAL COURT TO ENJOIN ADMISSION OF ILLEGALLY OBTAINED EVIDENCE IN STATE COURT

Plaintiff was indicted for bookmaking in violation of a New Jersey statute.[1] He sought an injunction[2] in a United States district court to restrain the prosecutor from using illegally obtained evidence in the state criminal proceeding. *Held,* on certiorari, that federal courts should refuse to intervene in state proceedings to suppress the use of evidence, even when claimed to have been secured by unlawful search and seizure. *Stefanelli v. Minard,* 72 Sup. Ct. 118 (1951).

Prior to 1914, it was generally recognized that in a criminal proceeding any court would receive evidence, whether legally or illegally obtained,[3] if otherwise competent. The courts rationalized that to hold otherwise would involve the raising of collateral issues.[4] In *Weeks v. United States,*[5] however, the Supreme Court reversed a conviction which was based on evidence obtained by an unreasonable search by a United States marshal. The Court

17. Until the instant case, the words "with murderous intent" were included in the rule. E.g., Bellamy v. State, 56 Fla. 43, 57 So. 868 (1908); State v. Briscoe, 30 La. An. 433 (1878).
18. State v. Briscoe, 30 La. An. 433 (1878).
19. *Ibid.*
20. United States v. Wiltberger, 28 Fed. Cas. 727, No. 16,738 (E.D. Pa. 1819).

1. N.J. REV. STAT. § 2:135-3 (1939).
2. REV. STAT. § 1979 (1875), 8 U.S.C. § 43 (1946); 28 U.S.C. § 1343(3) (1946).
3. Adams v. New York, 192 U.S. 585 (1904); Commonwealth v. Dana, 2 Met. 329, 337 (Mass. 1841); People v. Adams, 176 N.Y. 351 (1903); Bishop Atterbury's Case, 16 How. St. Tr. 323, 495 (1723); 3 WIGMORE, EVIDENCE §§ 2183, 2264 (3d ed. 1940).
4. See, e.g., Cobbledick v. United States, 309 U.S. 323 (appeals from "final decisions of the district courts").
5. 232 U.S. 383 (1914).