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Article 10

Criminal Law - Non-Experts - Testimony as to Physical or Mental Condition

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Criminal Law—Non-Experts—Testimony as to Physical or Mental Condition.—Upon trial before a jury the defendant was convicted of manslaughter. On appeal, error was assigned on the ground that the trial judge refused to permit a college professor who was a trained student of mental conditions and a research analyst in the field of criminal psychology to answer hypothetical questions as an expert witness to support the defense of insanity. He was not a licensed physician or a graduate of a medical college.

Held: Affirmed. There was no prejudicial error in view of the fact that the witness was given the opportunity to express an opinion regarding the sanity or insanity of the defendant based on personal observation and acquaintanceship. Three of the justices concurred in the proposition that only physicians can qualify to answer hypothetical questions as experts in the field of medical science. Five of the justices declared to the contrary by adding that if a man be in reality an expert upon any given subject in the domain of medicine, his opinion may be received by the court although he has not a license to practice medicine. There is no magic in titles or degrees, and a rule that would fix the qualification of an expert to a particular college degree might deny the courts use of the best knowledge available in our age of specialization. *People* v. *Hawthorne,* 293 Mich. 15, 291 N.W. 205 (1940).

This divided opinion of the Michigan court has brought into immediate focus the question of admissibility of a non-medic to testify as an expert regarding the physical or mental condition of a person.

Only one other decision based on facts similar to those of *People* v. *Hawthorne, supra,* has been discovered, and that is the New York case wherein dicta of the court presented the view subsequently adopted by the Michigan court as the rule. *People* v. *Rice,* 159 N.Y. 400, 54 N.E. 48 (1899).

Only persons licensed to practice medicine may answer hypothetical questions as to insanity, although a lay witness who has made a study of mental disease may state his opinion where it is based solely upon his observation of appearances of the party. *Parrish* v. *State,* 139 Ala. 16, 36 So. 1012 (1904); *Odom* v. *State,* 174 Ala. 4, 56 So. 913 (1911).

However, as to the effects of poison on the human system, a professor of chemistry, state chemist and toxicologist was held competent to testify that death was caused by morphine and that morphine hastened death from primal cause of pneumonia. *Scott* v. *State,* 141 Ala. 1, 37 So. 357 (1904). Also, a graduate chemist in the employ of a city was permitted to testify as to his findings in the stomach of the deceased and to state how much strychnine sulphate, in his opinion, would cause a man's death. *Hand* v. *State,* 77 Tex. Cr. R. 623, 179 S.W. 1155 (1915). The head of a school chemistry department who held a doctor's degree in chemistry was qualified to testify concerning the effects of wood alcohol on a human being. *People* v. *Cox,* 340 Ill. 111, 172 N.E. 64 (1930). Likewise, a professor of biological chemistry who had been trained in toxicology in the chief medical examiner's office of New York City was qualified to testify as an expert concerning the results of a post mortem examination and the probable cause of death. *State* v. *Smoak,* 213 N.C. 79, 195 S.E. 72 (1938).

In a homicide case involving the effect of bullet wounds, a witness who had performed an autopsy on the deceased in the absence of officials was permitted to testify as to matters of fact based on his observation as well as matters of speculation based on his knowledge of anatomy. He was not a practicing or licensed physician or surgeon, but he had studied and observed the practice for thirty years; experiential qualifications, no matter how they are obtained, can qualify a witness as a medical expert. *State* v. *Harkins,* 85 Mont. 585, 281 P. 551 (1929).

Non-experts may, after describing the wound, give an opinion that the wound caused death, not in answer to a hypothetical question but as a conclusion of fact based on their observations. *Tanner* v. *State,* 163 Ga. 121, 135 S.E. 917 (1926); *Fudge* v. *State,* 9 S.E. (2d) 259 (Ga. 1940); *Johnson* v. *State,* 80 Fla. 61, 85 So. 155 (1920). Where the evidence of medical experts is not accessible, a non-medic's testimony is sufficient to sustain a conviction where the witness describes the wounds he examined and gives his opinion, with reasons, that the wounds caused death. *Edwards* v. *State,* 39 Fla. 753, 23 So. 537 (1897); *Revels* v. *State,* 64 Fla. 432, 59 So. 951 (1912); *Cecil* v. *State,* 100 S.W. 390 (Tex. Cr. App. 1907). A physician licensed to practice medicine, but not being a graduate of a medical school and it appearing that he was not familiar with surgery from reading nor with gunshot wounds from experience, was not permitted to testify in answer to hypothetical questions as to the cause of death to the deceased whose body he had not examined. *Smith* v. *State,* 99 S.W. 100 (Tex. Cr. App. 1907).

While a non-medical witness was erroneously permitted to testify that there had been no cases of a particular disease in the neighborhood, since he was not shown to have had any knowledge of the sickness in question, he could testify whether or not there had been any disease at all. The court stated that since there are as many grades of knowledge in the professions as out of them, the only safe method is to permit the witness to speak within the range of his ascertained qualifications. *Evans* v. *People,* 12 Mich. 27 (1863). A medical student who was present while a doctor made a physical examination may testify that the person was afflicted with a venereal disease, where the student had studied and practiced under the doctor and had treated not less than fifty cases of the disease. *State* v. *Dixon,* 47 La. 1, 16 So. 589 (1895). In a prosecution for abortion, a witness who was a student interne in an obstetrical ward when she made an examination of the deceased prior to receiving her license to practice, was permitted to testify as an expert having received her license by the time of trial. *People* v. *Heissler,* 338 Ill. 596, 170 N.E. 685 (1930).

In Wisconsin it does not appear that there has been a decision to the effect that non-medics are not permitted to testify as experts on physical or mental conditions, but the cases indicate that all expert testimony in such matters has been presented, in criminal actions, by licensed physicians and surgeons only. *Tendrup* v. *State,* 193 Wis. 482, 214 N.W. 356 (1927); *Lowe* v. *State,* 118 Wis. 641, 96 N.W. 417 (1903).

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Insurance—Use of Automobile as "Public Conveyance for Compensation."—The defendant insurance company insured the plaintiff against damage to his automobile, but the policy was to be void if the automobile was "used as a public or livery conveyance for carrying passengers for compensation." The plaintiff used the car in going to and from school, and carried other students who voluntarily paid him 75 cents per week. *Held,* that the contributions of 75 cents per week, being voluntary, did not make the car a "public or livery conveyance for compensation" such as was described in the policy. *Wood* v. *Merchants' Insurance Co. of Providence,* 289 N.W. 259 (Mich. 1939).

To be a public conveyance the vehicle must be operated as either a private contract-carrier or as a common carrier. *Primrose* v. *Casualty Co. of America,* 232 Pa. 230, 81 Atl. 212 (1911); *Anderson* v. *Fidelity and Casualty Co.,* 170 N.Y. Supp. 431, 183 App. Div. 170 (1918). Since the plaintiff in the principal case did