INSANITY

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RSA 628:2 Insanity (Guilt Phase Waived)

Thus,, the defendant is charged with (the crime charged.) The defendant does not contest the factual allegations of the indictment and you may, therefore, take it as proven that he committed the acts alleged in the indictments. Rather, the defendant has entered a plea of not guilty by reason of insanity to this charge. Under the laws of the State of New Hampshire, a person who is insane at the time he acts is not criminally responsible for his conduct although he may be confined pursuant to another set of laws as I will explain to you later. When a defendant pleads not guilty by reason of insanity, he has the burden of proving by clear and convincing evidence that he was, in fact, insane at the time of the acts alleged in the indictments.

I will define clear and convincing evidence in the context of the three burdens of proof we use in court cases. You may refer to the chart which reflects these three burdens of proof.

There are three different burdens or standards of proof. The party having the burden of proof has the obligation of persuading you that its position on the matter in issue is correct. The degree to which the moving party must persuade is what makes the three burdens or standards of proof different.

The highest or most difficult burden of proof is that beyond a reasonable doubt. This is employed in criminal cases where the State must prove, not beyond all doubt but beyond a reasonable doubt, that a defendant is guilty of each element of the offense charged.

The lowest burden of proof, that is, the one that is easiest to meet, is employed in civil cases where one individual sues another, usually for money damages. In those types of cases, the plaintiff has the burden of proving by a preponderance of the evidence that the defendant did the acts alleged and that those acts caused certain damages. Preponderance of the evidence means more likely than not or probably. Considering the scales of justice, if the scales tip ever so slightly in favor of the plaintiff, the plaintiff has met his burden of proof and he prevails. If the scales stay the same or tip in favor of the defendant, the plaintiff has not met his burden of proof and the defendant wins.

The standard of proof which is applicable Thus, is between beyond a reasonable doubt and preponderance of the evidence. It is called clear and convincing evidence. Clear and convincing evidence is an intermediate standard of proof which calls for more proof than that based on probabilities, but less proof than that based on reasonable doubt. In order to meet his burden of proof by clear and convincing evidence, the defendant must prove that it is highly probable that he was insane at the time of the alleged acts rather than merely more probable than not. The State does not have to convince you that the defendant was sane when he committed the illegal acts because the defendant is presumed to have been sane. Rather, the defendant must convince you that he was insane at the time of the killings, that is, that it is highly probable:

He was suffering from a mental disease or defect when he committed the alleged acts; and Those acts were the product of his mental disease or defect.

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It is up to you, the jury, to determine as a questions of fact whether the defendant suffered from a mental disease or defect that caused him to act as charged. There is no legal definition of what constitutes a mental disease or defect. If at the time he committed (the crime charged) the defendant suffered from a mental disease or defect that caused him to commit that crime, he is not criminally responsible for those acts and the Court will then consider whether the defendant's mental disease or defect requires that he be confined to the Secure Psychiatric Unit at the state prison as I will explain shortly.

In deciding whether the defendant was insane, you may consider any evidence of insanity. You may consider, for example, the nature of the defendant's acts, whether at the time he acted the defendant was suffering from delusions or hallucinations, whether he knew the difference between right and wrong and whether he knew the nature of his acts. You may further consider whether the defendant acted impulsively or acted with cunning and planning in executing the crimes and in escaping or avoiding detection. You may also consider whether he had the power to choose between right and wrong and whether he could recognize acquaintances and transact business or manage his affairs.

None of these, however, is a test for insanity. You may consider all of these things, some of them or none of them or whatever else you believe pertinent to the issue of whether the defendant was sane or insane at the time he committed (the acts charged). All symptoms and all tests of mental disease or defect are purely matters of fact to be determined by the jury. Whether the defendant had a mental disease or defect are questions of fact for the jury.

Consider all the evidence in deciding the question of insanity including the testimony of lay witnesses, the testimony of expert witnesses, the exhibits and what you saw on the view. Remember that no particular type of evidence should be presumed superior to other types of evidence or are immune from your scrutiny. Thus, the testimony of psychiatric experts may be considered by you, but the testimony of lay witnesses may be considered as well. The ultimate question of insanity is for you to decide, not the psychiatric experts.

If you reject the defense of insanity ad find the defendant sane, he will receive a sentence. However, you should not be concerned about what sentence he may receive. The duty of determining and imposing sentence is for the judge and not for the jury.

If you find the defendant not guilty by reason of insanity, I will conduct a hearing on his dangerousness within 40 days of your verdict. If I find that the defendant is not dangerous to go at large, he will be discharged or released. If I find that the defendant is dangerous to go at large, he will be committed to the Secure Psychiatric Unit at the New Hampshire State Prison. This commitment could be for as long as the rest of his life. If the defendant were so committed, he would be entitled to a hearing every five years at which the State would have to prove by clear and convincing evidence that the defendant is still dangerous. You are instructed that you are not to concern yourself with the issue of the defendant's dangerousness, for this issue is, as with the issue of sentencing, a matter only for the judge. The sole issues for you to determine are whether the defendant was suffering from a mental disease or defect when he committed (the acts charged), and if so, whether these acts were a product of his mental disease or defect.