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Criminal Law: Temporary Insanity Produced by Voluntary Intoxication

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individual's constitutional rights by the Federal Government, but no action for money damages exists for a violation per se of the Bill of Rights by the Federal Government, its agents, or private individuals. These rights not being created by the Bill of Rights, the people must seek other relief. A violation of many of the freedoms guaranteed by the Bill of Rights would constitute an actionable tort, for which a remedy may be found in the state court or in the federal court if some ground of federal jurisdiction exists.

ELBERT B. GRIFFIS, JR.

CRIMINAL LAW: TEMPORARY INSANITY PRODUCED BY VOLUNTARY INTOXICATION

Britts v. State, 30 So.2d 363 (Fla. 1947)

The uncontradicted evidence was that the defendant had been on a prolonged drunken spree. As an aftermath thereof he became obsessed with a fear that someone was going to kill him or do him great bodily harm. He was taken into custody by two policemen. Apparently believing that the police officers were part of an imaginary gang which was after him, defendant attempted to escape. In the ensuing attempt by one of the policemen to recapture him, the defendant seized the police officer's pistol and shot him. While there was no evidence that the defendant was intoxicated at the time of this act, it was established that he was suffering from alcoholic hallucinosis. He was convicted of assault with intent to commit manslaughter. On appeal, held, judgment reversed.

If the appellate court reverses a conviction of assault with intent to commit manslaughter on the ground that the evidence does not justify conviction as to the assault, then the conviction should be reversed.

22United States v. Cruikshank, 92 U. S. 542, 552 (1875).
without remanding the case, for there is no crime of which the accused could be convicted.\textsuperscript{1} However, where the appellate court reverses a decision because the \textit{intent} is not sustained,\textsuperscript{2} the court is required by statute\textsuperscript{3} to remand the case for a new trial or for sentence on a lesser included offense. Since the court in the principal case did not remand for a new trial, nor sentence on the lesser included offense, it appears that the court held that temporary insanity produced by voluntary intoxication not only negatives specific intent but relieves the accused from criminal responsibility. If this conclusion, which is substantiated by the language of the major portion of the opinion,\textsuperscript{4} is the decision of the court, it is a departure from the almost unanimous holding in the United States that temporary insanity produced immediately by intoxication does not destroy responsibility where the accused, when sane and responsible, made himself voluntarily drunk.\textsuperscript{5} Previous Florida cases, including those cited by the court in support of its opinion, have been consistent with the majority rule.\textsuperscript{6} The cases, without exception, up to the present time have held that temporary insanity, as distinguished from a fixed or settled frenzy or insanity either permanent or intermittent resulting from intoxication, does not excuse a homicide or any other act which, in the absence of such temporary insanity produced by voluntary intoxication, would be criminal.\textsuperscript{7}

There is one paragraph of the opinion,\textsuperscript{8} however, which seems to indicate, despite the strong language elsewhere to the contrary, that the court did not hold that the defendant was relieved from responsibility

\textsuperscript{1}Bailey v. State, 76 Fla. 230, 234, 79 So. 639, 640 (1918).
\textsuperscript{2}Davis v. State, 25 Fla. 272, 278, 5 So. 803, 804 (1889).
\textsuperscript{3}Fla. STAT. 1941, §924.34.
\textsuperscript{4}Britts v. State, 30 So.2d 365, 365-366 (Fla. 1947) (see paragraphs numbered 1, 2, 3 and 5).
\textsuperscript{5}Cary v. State, 135 Ark. 169, 204 S. W. 207 (1918); People v. Keyes, 178 Cal. 794, 175 Pac. 6 (1918); People v. Cochran, 313 Ill. 508, 145 N. E. 207 (1924); Patterson v. Commonwealth, 165 Va. 799, 18 S. E. 251 (1936).
\textsuperscript{7}Crews v. State, 143 Fla. 263, 196 So. 590 (1940); Folks v. State, 85 Fla. 238, 95 So. 619 (1923); Thompson v. State, 78 Fla. 400, 83 So. 291 (1919); Cochran v. State, 65 Fla. 91, 69 So. 187 (1913); Thomas v. State, 47 Fla. 99, 36 So. 161 (1904); Armstrong v. State, 30 Fla. 170, 11 So. 618 (1892); Garner v. State, 28 Fla. 113, 9 So. 835 (1891).
\textsuperscript{8}Britts v. State, 30 So.2d 365, 366 (Fla. 1947) (see paragraph numbered 4).
for his acts. The language of this portion of the opinion, taken with
an earlier decision that intent is the gist of the offense of assault with
intent to commit manslaughter, would indicate that the court felt that
in a case where specific intent is an essential element of the crime,
temporary insanity, whether an immediate effect or a deferred consequence
of voluntary intoxication, would, as a matter of law, negative the ability
of the accused to entertain such an intent. This position is consistent
with that generally taken by other jurisdictions.10

An unfortunate failure in the opinion to distinguish between lack of
intent and lack of responsibility has obscured a meticulously drawn dis-
tinction between temporary insanity and an insanity either permanent
or intermittent, and has reduced to a state of uncertainty a settled con-
cept of criminal liability. The distinction between lack of intent and
lack of responsibility is of relatively little significance under the factual
situation of the present case; for if temporary insanity merely negatives
specific intent, the defendant could, at most, have been convicted of
simple assault,11 the maximum penalty for which is a fine of one
hundred dollars.12 Yet the distinction, as a principle of law, is of
great importance. In the present case, had the policeman died from the
wounds inflicted by the defendant, under the holding that temporary
insanity produced by voluntary intoxication relieves one of all criminal
responsibility, the defendant could not have been convicted of any crime.
Under the holding that such temporary insanity merely negatives spe-
cific intent, defendant could not have been convicted of first degree
murder,13 but he might have been convicted of manslaughter.14

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9Fortner v. State, 119 Fla. 150, 161 So. 84 (1935).
10People v. Odell, 1 Dak. Terr. 97, 46 N. W. 601 (1875); McIntyre v. People, 38
Ill. 514 (1865); Commonwealth v. Crozier, 1 Brewst. 349 (Pa. 1867).
11See Warrock v. State, 9 Fla. 404, 408 (1861).
12Fla. Stat. 1941, §784.02.
13Fla. Stat. 1941, §782.04, see Hall v. State, 28 Fla. 113, 9 So. 835 (1891).