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# Criminal Law--M'Naghten Test Rejected

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### **Criminal Law—Defendant's Physical Appearance**

Defendant was found guilty of robbery. He appealed on grounds that he was denied a fair and impartial trial because the lower court allowed the trial to proceed while he was dressed in prison attire. The court, before the trial started, carefully instructed the jury that the defendant's clothing was merely that issued to a jail inmate being held for trial, and in no way indicated that defendant had ever been convicted of any offense or was guilty of any offense. *Held*, affirmed. The trial judge's announcement to the jury respecting defendant's attire in this case had the effect of preventing the jury from being prejudiced. *Atkins v. State*, 210 So. 2d 9 (Fla. 1968).

The dissent in the *Atkins* case states that a defendant being clothed in prison garb strongly infringes upon the fundamental right of presumption of innocence. 21 AM. JUR. 2d *Criminal Law* § 239 (1965). For information concerning the right of accused to have his witnesses free from handcuffs, manacles and shackles, see Annot., 75 A.L.R.2d 762 (1961).

### **Criminal Law—M'Naghten Test Rejected**

Mrs. Chandler was convicted of voluntary manslaughter for the stabbing death of her husband. She pleaded insanity and the Eastern District Court of Virginia used a combination of the M'Naghten and the irresistible impulse tests to determine insanity. Psychiatric examination revealed that she could readily distinguish between right and wrong and could conduct herself accordingly, but at the time of the killing, she was not considering these matters. In a similar case, an individual was convicted of armed robbery by the United States District Court for the District of Maryland at Baltimore. This court used substantially the same test for insanity as that employed by the Virginia court. Psychiatric examination revealed that this defendant was a neurotic but not a psychotic, and he was found to be fully aware of his acts and the wrongfulness of his criminal conduct. *Held*, convictions affirmed, but the M'Naghten test was rejected because it is too restrictive and is phrased in language which is not only unenlightening to jurors but which might be positively misleading. *United States v. Chandler*, 393 F.2d 920 (4th Cir. 1968).

The court employed the American Law Institute's test of insanity. Briefly the test is this: a person is not responsible for his criminal conduct if, as a result of a mental disease or defect, at the time of such conduct he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. The court interpreted "mental disease or defect" as excluding an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

While the United States Court of Appeals for the Fourth Circuit has now rejected the M'Naghten test, this is the only test recognized in West Virginia state courts. *State v. Flint*, 142 W. Va. 518, 96 S.E.2d 677 (1957); *State v. Painter*, 135 W. Va. 106, 63 S.E.2d 86 (1950).

#### **Evidence—Blood Test for Intoxication—Admissibility of Refusal to Submit**

Defendant was charged with negligent homicide in connection with an automobile accident. Defendant refused to submit to a chemical test for intoxication. At the trial, the prosecuting attorney introduced evidence of defendant's refusal. On appeal defendant claimed the admission of such evidence constituted a violation of his privilege against self-incrimination under the fifth and fourteenth amendments to the United States Constitution. *Held*, conviction affirmed. Such evidence is admissible and does not violate defendant's constitutional rights. *State v. Dugas*, 211 So. 2d 285 (La. 1968).

It has generally been held that the admission of evidence of a defendant's refusal to submit to a chemical test for intoxication is not a violation of his constitutional rights in that such evidence is merely physical in nature. *See* Annot., 87 A.L.R.2d 370 (1963). This classification may be questioned, however, in that defendant's intoxication may be a substantive element of the crime charged. For example, defendant would not have been driving negligently but for the fact that he was intoxicated. If this is the case, perhaps the admission into evidence of a refusal to submit to the intoxication test may be likened to commenting on the accused's failure to testify in his own behalf. Since the prosecutor is specifically prohibited from making such a comment, he should also be prohibited from introducing the evidence of a refusal to submit to the intoxication test.