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## Directed Verdicts for the Prosecution in Criminal Cases

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## NOTES

### DIRECTED VERDICTS FOR THE PROSECUTION IN CRIMINAL CASES

Directed verdicts for the defendant in criminal cases are commonplace and cause no surprise. Perhaps less well known is the fact that some jurisdictions allow directed verdicts for the prosecution in criminal cases. Jurisdictions following this minority rule allow it only under limited conditions. When the requirements are complied with, these courts have held that it does not violate the constitutional guarantee of a jury trial. Since the prosecution cannot invoke this rule except where the facts are undisputed, the defendant is not deprived of his right to have the jury decide disputed questions of fact. In all the cases discussed herein, whether the privilege is allowed or denied, there is no conflict in the facts and the testimony stands uncontradicted.

Deprivation of the defendant's constitutional right to a jury trial is the theory upon which a directed verdict for the prosecution is denied in a majority of American jurisdictions.<sup>1</sup> This majority view is typified by the Federal rule,<sup>2</sup> which reasons that all questions of fact must be tried by the jury, and that a question of fact is raised merely by a plea of not guilty. Once raised, the jury alone has the right to deliberate upon it and to determine the guilt or innocence of the defendant.<sup>3</sup> The court decides the competency of the evidence, but the privilege of deciding questions of fact rests solely with the jury. Except for this stumbling block of logic, the amount and condition of the evidence would alone determine whether a directed verdict could be given.

The power to direct a verdict is merely a more efficient use of the right to order a new trial in a civil case when the court disagrees with the verdict of the jury. By this means the court prevents the giving of useless verdicts which it would not accept. But, say the majority, since criminal courts do not have this right to review the jury's verdict, this reasoning cannot be applied and they will not be allowed to do indirectly what they cannot do directly.<sup>4</sup> However, a judgment rendered upon such a directed verdict is not void but merely erroneous.<sup>5</sup>

Under the orthodox rule it is immaterial how conclusive the evidence is against the defendant and, indeed, whether he makes any defense whatsoever. The defendant is presumed to be innocent, and this presumption challenges the truth of all the evidence that is offered against him. Thus all of the evidence that is offered by the prosecution automatically raises a question of fact, whether the defendant makes any defense or not. The jury must be given an opportunity to consider all the evidence entered, since it may perhaps conclude that one of the evidence is worthy of belief. Once a plea of not guilty has been formally made, admissions made by either the defendant<sup>6</sup> or his counsel<sup>7</sup> cannot be construed as a plea of guilty, since the plea must come from the defendant and not from the court.

Although holding that a directed verdict cannot be given in a criminal case, the Federal<sup>8</sup> and the New Jersey<sup>9</sup> courts feel that the jury can be given some hint of what they should do. In a Federal case the judge, when commenting upon the evidence, told the jurors that it was their moral but not their legal duty to return a verdict of guilty, while in New Jersey the judge was able to tell them, as being within his judicial privilege and duty, what he himself would do.

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1. 23 C.J.S. 674, Sec. 1146.

2. *United Brotherhood, Etc. v. U.S.* 330 U.S. 395, 67, S. Ct. 775, 91 L. Ed. 973 (1947).

3. *Bardin v. Commonwealth*, 191 Ky. 651, 231 S.W. 208 (1921).

4. *U.S. v. Taylor*, 11 Fed. 470 (C.C.D. Kan. 1882).

5. *Williams v. Pierson*, 301 Ky. 302, 191 S.W.2d 574 (1945).

6. *People v. Pyttenberg*, 278 N.Y.S. 31 (1935).

7. *Carter v. State*, 204 Ga. 242, 49 S.E.2d 492 (1948).

8. *Morgan et al. v. U.S.*, 98 F.2d 473 (8th Cir. 1938).

9. *State v. Seifert*, 86 N.J.L. 706, 92 A. 345 (1914).

The more liberal minority rule allows directed verdicts for the prosecution where the facts are undisputed, on the theory that then there is no question of fact for the jury to determine.<sup>10</sup> Under this approach all that must be done is apply the law to the uncontested facts.

In order to prevent misuse of this doctrine the courts allowing it have surrounded it with numerous safeguards of various kinds. The basic purpose of these safeguards is twofold: First, that all *actual* questions of fact must be decided by the jury so that none of the defendant's constitutional protection is eliminated. Second, that the criminal procedure shall not be burdened by requiring useless acts by the jury where they serve no useful function. When there is no true question of fact, the facts being undisputed, a jury's verdict would constitute such a useless act.

The presence of intent or its lack presents a question of fact. Thus when intent is a material element in the crime, it must be submitted to the jury for their determination.<sup>11</sup> Admission by the defendant in court of his intent provides an exception; under such circumstances the question of his intent need not be submitted to the jury.<sup>12</sup>

As we have already observed, the giving of a directed verdict is merely a more efficient use of the power to order a new trial. The court cannot order a second trial in criminal cases in jurisdictions which forbid double jeopardy of life or limb.<sup>13</sup> Therefore, in at least one jurisdiction,<sup>14</sup> it has been held that verdicts for the prosecution in criminal cases can be directed only when the crime is punishable solely by a fine—for under the "life or limb" provision, jeopardy does not attach where a fine is the only penalty.<sup>15</sup>

Indicative of the extreme caution of the courts in allowing the prosecution a directed verdict is the attitude taken by the Supreme Court of Arkansas. Adding even further assurance that the privilege will not result in abuse, the directed verdict for the prosecution will be allowed only ". . . when the evidence is reasonable and consistent and the witnesses stand unimpeached on account of either bias or prejudice, and nothing is shown in the evidence which would raise any question as to their veracity, and the evidence offered is of such a nature that it would be arbitrary and capricious for a jury to refuse to believe the witnesses, and the proof is such that reasonable minds could draw only one conclusion from the evidence, that conclusion being the guilt of the party."<sup>16</sup>

Although research has discovered no Wyoming cases exactly in point, it is possible that Article 1, Section 10 of the Wyoming Constitution which provides that, "In all criminal prosecutions the accused shall have the

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10. *People v. Elmer*, 109 Mich. 493, 67 N.W. 550 (1896).
  11. *People v. Neumann*, 85 Mich. 98, 48 N.W. 290 (1891).
  12. *People v. Neal*, 143 Mich. 271, 106 N.W. 857 (1906).
  13. *Roberts v. State*, 84 Ark. 564, 106 S.W. 952 (1907).
  14. *Collins v. State*, 183 Ark. 425, 36 S.W.2d 75 (1931).
  15. 1 Bish. Cr. L. 990.
  16. *Paxton v. State*, 114 Ark. 393, 170 S.W. 80 (1914).

right . . . to a speedy trial by an impartial jury . . ." would compel adherence to the majority orthodox rule.

In evaluating the worth of the two conflicting judicial points of view involved in this problem, it may be observed that under the majority, or orthodox view, when the defendant pleads not guilty, the jury must deliberate whether there is a true question of fact or not. The purpose of the rule is to have the jury determine all actual questions of fact, but under it the jury must often deliberate when there is no such real question of fact. It is submitted that the fundamental principle upon which the orthodox rule rests is recognized by the minority rule, which sends all *actual* factual disputes to the jury. The advantage of the minority rule is that *only* such disputed questions of fact are sent to the jury, with consequent saving of time, effort and expense. When surrounded by the safeguards imposed by the Arkansas view, it would seem hypertechnical to say that the right to trial by jury has been violated.

Historically, the preoccupation of courts with the form of the law rather than its substance has rendered them less sensitive to the needs of society. As between two rules fulfilling the same substantive function the one less concerned with mere form is the better rule. To allow a directed verdict for the prosecution in criminal cases where the facts are undisputed tends to prevent incrustation of the law with useless form and meaningless fiction.

JOHN LAWRENCE HENDERSON, JR.