

CRIMINAL COSTS:
ACQUITTAL:
INSANE DEFENDANT:

State is liable for costs in capital cases and those in which imprisonment in penitentiary is sole punishment, if the defendant is acquitted, even though the defendant is acquitted on the sole ground of insanity.

June 4, 1962

FILED
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OPINION NO. 213

Honorable Charles D. Trigg
Comptroller and Budget Director
State Capitol
Jefferson City, Missouri

Dear Mr. Trigg:

We have your request for an opinion of this office as follows:

"We respectfully request your official opinion in regard to payment of costs by the State in a criminal case when the defendant is acquitted by reason of insanity.

"Section 550.040 states that in all capital cases and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the State. Section 546.510 through 546.540 refers to disposal of costs when a person has been adjudged insane.

"Our question is: Does the State pay the costs of the trial as provided in Section 550.040 or is the cost of the trial to be included in costs paid by the defendant or the County, as provided under Sections 546.510 through 546.540 inclusive?"

Section 550.040, RSMo 1959, referred to in your letter provides as follows:

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"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

It is to be noted that the foregoing section provides for the liability for costs "if the defendant is acquitted." Other sections of Chapter 550 provide for the payment of costs in cases in which the defendant is convicted. If a defendant is placed on trial and a verdict reached, he is either convicted or acquitted. The mere fact that he may be acquitted on the ground that he was insane at the time of the commission of the offense charged does not in any way affect the ultimate result of acquittal. An insane person who commits an act which would otherwise be a crime is not guilty because of the absence of the requisite criminal intent, an essential ingredient of the crime. If he is found to have been insane at the time of the commission of the offense, the jury thereby finds that he lacked a criminal intent, and therefore must, of necessity, be acquitted.

Section 550.040, in our judgment, is plain and unambiguous and means exactly what it says. If the defendant is acquitted, irrespective of the reason therefor, then in those cases in which the State is liable (capital cases and those in which imprisonment in the penitentiary is the sole punishment for the offense), the costs must, of necessity, be paid by the State. In the situation presented by your letter, there can be no doubt that the defendant has been acquitted. In a case in which the word "acquitted" was for construction, State ex rel. Tudor v. The Platte County Court, 40 Mo. App. 503, it was held that where a defendant had been charged with seduction and prior to trial married the prosecutrix, with the result that a nolle prosequi was entered, such "nolle prosequi

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amounted to an acquittal in the sense of the statute" here in question. That being so, it is all the more obvious that an acquittal on the ground of insanity is "an acquittal in the sense of the statute".

The provisions of Sections 546.510 through 546.540, RSMo 1959, in no way affect the liability of the State for the costs of the prosecution, as provided in Section 550.040. Section 546.510 provides, in substance, that when a person is acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in their verdict, and by their verdict the jury shall further find whether such person has or has not recovered from such insanity; and in case it is found that such person has so recovered, he shall be discharged from custody; but in case he is found not to have recovered from such insanity, "an order shall be entered of record by the Court that he be sent to a state hospital, designating it, and further requiring the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital."

It is to be noted that if the jury finds that the accused has recovered from the insanity, on the basis of which he was found not guilty, then such person shall be discharged from custody, and the case is concluded. It is only where the jury finds that the accused has not entirely recovered that further proceedings are required, namely, an order of the Court and proceedings carrying out such an order.

Section 546.520, RSMo 1959, provides that if the prisoner is not a poor person, then the Court shall enter an order of record "directing that the cost which may accrue in carrying into effect the order made under Section 546.510, and all expenses for the support and maintenance of such person while in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person." The section further provides that the Court in each succeeding term shall tax up, as long as it may be necessary, "such cost and expenses as may have accrued since the preceding term."

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Section 546.530, RSMo 1959, provides that if the prisoner be a poor person, then "the cost of carrying out the order made under Section 546.510 shall be paid for by the county court out of the county treasury and all expense for the support and maintenance of such prisoner while at the state hospital shall be paid as is provided in the case of insane poor persons."

Section 546.540, RSMo 1959, provides for the payment of the expense of confining the insane person pending his removal to a state hospital.

We find no provision in any of the foregoing sections of Chapter 546 which have any reference to the costs of prosecution. The only costs provided for are costs incurred in carrying out the order of the Court requiring that the accused be sent to a state hospital and for the expenses in connection with such confinement. All of the foregoing costs and expenses accrue subsequent to the acquittal of the defendant, and in no way affect the liability of the State in situations in which it is otherwise liable for payment of costs by reason of the acquittal of the defendant.

We note that Section 550.040 in substantially its present form was enacted by the Laws of 1843, page 28, as Section 3 of "An Act concerning costs in criminal cases." At that time there was no provision in the statutes comparable to Section 546.510 through 546.540. This would indicate quite clearly that the purpose in enacting what is now Section 550.040 was to provide for the payment of costs in the event of acquittal in all cases, irrespective of the basis upon which the verdict of acquittal was arrived at.

The first statute providing for the consequences of an acquittal by reason of insanity was enacted in 1847 as part of "An Act to establish an Asylum for the Insane." Section 16 of that act, appearing on page 62 of the Laws of 1847, provided that in the event of an acquittal on the ground of insanity, if the jury should find that the person is still insane, "the Court before which the trial is had, if in the opinion of the Court it will be beneficial to such person or the public safety require it, shall cause such person to be sent to the Asylum at the cost of the county...."

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Subsequently, in 1855, as part of "An Act for the government of the State Lunatic Asylum and the care of the Insane" (Laws 1855, page 142) more detailed provisions were made with respect to the disposition of a prisoner who was acquitted on the ground of insanity. These provisions are very similar to those in our present statutes, but still left to the Court's discretion as to whether the defendant should be committed to the asylum. We find nothing in these statutes which would indicate any legislative intent to eliminate the liability of the State for the costs of prosecution. The only provisions for the payment of costs relate to the costs of committing the defendant to the asylum and the expenses of such confinement.

CONCLUSION

It is the opinion of this office that in all capital cases and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the State even though such defendant is acquitted on the sole ground of insanity.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JN:mc:jh