

The Slayer Statute and Insanity

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It is common law that persons cannot benefit from their crimes. For this reason, most states have enacted slayer rules that prevent a killer from sharing in the victim's estate. However, terms in the slayer rules, such as willful and unlawful, can be difficult to apply, as illustrated by the situation in which a slayer is found not guilty by reason of insanity. The Washington Supreme Court has recently addressed whether a man who killed his mother and was then found not guilty by reason of insanity in criminal court can inherit a portion of his mother's estate.

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There is a dictum in our society that one shall not benefit from his wrongdoing. In particular, no killer shall be allowed to benefit from having committed a wrongful killing. This principle, carried through the common law, is the rationale behind the slayer rules statutorily codified in many states, including Washington.¹ A slayer rule is a law that prohibits a killer from benefiting from the victim's death. In a case of first impression in Washington State, the Washington Supreme Court recently considered whether a man who killed his mother and was found not guilty by reason of insanity could inherit a portion of a wrongful death settlement obtained by his mother's estate.² In *In re Estate of Kissinger*,² the question before the court was whether an insane man was a slayer, as defined by the state's slayer statute, and was therefore barred from benefiting from his mother's death. In contrast to several other jurisdictions, the Washington Supreme Court ruled that a person held not guilty by reason of insanity can be characterized as a slayer. The *Kissinger* case illustrates some of the difficulties in applying the slayer statutes outside the context of basic homicide cases.

Facts of the Case

The case of *In re Estate of Kissinger*^{2,3} concerned Joshua Hoge, who was found not guilty by reason of insanity in the killing of his mother, Pamela Kissinger, in a criminal case. Mr. Hoge had a long history of mental illness with multiple inpatient psychiatric

admissions. He had diagnoses of paranoid schizophrenia and Capgras syndrome. In Capgras syndrome, the affected individual harbors the delusion that others, frequently a relative, have been replaced by impostors. Mr. Hoge had a long-standing delusion that his mother was not in fact his mother but an impostor. Consistent with his diagnoses, Mr. Hoge also experienced chronic auditory hallucinations and paranoia.

In June 1999, Mr. Hoge entered his mother's house and stabbed her and his stepbrother, causing their deaths. He also attempted to kill his mother's boyfriend. At the time, he was not taking antipsychotic medication.

Mr. Hoge was criminally charged with the killings. In the criminal case, both the state and defense experts agreed that he was legally insane at the time of the killings. After a joint motion by both the state and defense, the trial court found Mr. Hoge not guilty by reason of insanity, specifically finding that he met both prongs of the state's *M'Naughten*-type insanity statute.^{4,5} As part of the plea agreement, Mr. Hoge stipulated that he had committed the acts as charged. He was committed to the state hospital for inpatient psychiatric treatment.

Subsequently, the estate of Ms. Kissinger filed a lawsuit against her son's outpatient mental health agency, claiming that the agency was liable for her death as a result of their mismanagement of her son's illness. After settling the lawsuit, the representative of the estate then filed a petition to bar Mr. Hoge from sharing in the proceeds of the settlement, arguing that he was prohibited from collecting under the slayer statute. Mr. Hoge argued that because he was found not guilty by reason of insanity, he could not

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have “willfully and unlawfully” killed his mother, in accordance with the Washington slayer statute.

Origins of the Slayer Rule

The common law dictum that no person shall be allowed to benefit from his wrongdoing has a long history in our judicial system. The first American case to articulate a slayer rule was *Mutual Life Insurance Company v. Armstrong*.⁶ In that case, a man was issued a life insurance policy that he assigned to a third party. The third party was convicted of killing the man, and the insurance company refused to pay the proceeds to the administrator of the man’s estate, prompting the administrator to sue on behalf of the estate. The administrator lost the case, and the case was subsequently appealed to the U.S. Supreme Court. The Court reasoned as follows:

[I]ndependently of any proof of the motives of [the slayer] in obtaining the policy, and even assuming that they were just and proper, [the slayer] forfeited all rights under it when, to secure its immediate payment, he murdered the assured. It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken [Ref. 6, p 600].

The first noninsurance case was decided three years after *Mutual Life Insurance Company v. Armstrong* in *Riggs v. Palmer*.⁷ The *Riggs* case, decided by the New York Court of Appeals, addressed whether a man could be a beneficiary of his grandfather’s estate when the man had killed his grandfather. The court ruled that the grandson could not. However, the dissenting opinion presented the argument that the grandson should benefit under a strict reading of the statute of wills, as the grandfather had properly executed the will, and the grandson did not fall within one of the legislated exceptions to being a beneficiary. The dissent further articulated that it was the role of the legislature, not the court, to define those who cannot benefit, though named in a will. Since this ruling, most states have passed legislation relating to slayer rules.⁸

In the 1960s, Professor John Wade attempted to create a uniform slayer statute.⁹ The rule proposed by Professor Wade required that a killing be willful and unlawful. The Uniform Probate Code (UPC) includes a slayer rule, and most states have adopted some version of the UPC rule.¹⁰ In most states that have enacted slayer statutes, the killing must be felonious and intentional, which is the language used in the current UPC. The slayer rule, as written in the

UPC, limits the applicable actions to murder and voluntary manslaughter.

The Current Washington Slayer Statute

In Washington, Wash. Rev. Code § 11.84 (1955) governs the distribution of the property when a person is killed by a potential beneficiary. The statute states: “No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but shall pass as provided in the sections following.”¹¹ The statute defines “slayer” as follows: “Slayer” shall mean any person who participates, either as a principal or an accessory before the fact, in the *willful* and *unlawful* killing of any other person (emphasis added).¹¹ Accordingly, at issue in *Kissinger* was whether the killing was willful and unlawful. No Washington case had decided this question in the context of a defendant found not guilty by reason of insanity.

The first application of the slayer rule in Washington was in *In re Tyler’s Estate*.¹² In that case, the court held that a man who had murdered his spouse was not eligible for an award in lieu of homestead from the spouse’s property. Subsequent to this decision, the legislature codified the court’s holding in the following year, preventing a slayer from obtaining an award in lieu of a homestead, but not extending the slayer legislation to other applications.¹³

The application of a slayer rule next occurred in *In re Duncan’s Estates*,¹⁴ wherein the court ruled on a son who murdered his father and then sought to inherit from his father’s estate. In that case, the court refused to extend the boundaries of the 1927 slayer legislation beyond awards in lieu of homestead, but suggested that the “legislature. . .take prompt action so the result. . .in the instant case may be avoided in the future” (Ref. 14, p 447). The legislature responded and adopted Washington’s current slayer statute in 1955.¹⁵

Washington’s Supreme Court in *New York Life Insurance Company v. Jones* discussed the definition of willful under the current slayer statute.¹⁶ In that case, a woman pleaded guilty to second-degree murder in the killing of her husband. Second-degree murder is a homicide in which the defendant lacks the premeditation and deliberation necessary for a conviction for first-degree murder. At issue was whether the killing was willful, thus precluding the woman from being a beneficiary of her husband’s life insurance policy. The court interpreted willfully (for

purposes of the slayer statute) to mean intentionally and designedly. In precluding summary judgment for the petitioner's (husband's estate), the court held that conviction for second-degree murder does not necessitate application of the slayer rule. "Since a charge of second-degree felony murder. . . can be sustained without proof that the killing was intentionally done, it follows that a plea of guilty to such a charge does not admit that the killing was willful" (Ref. 16, p 991).

Interpretation of Slayer Rule Terms in *Kissinger*

Washington's slayer statute prohibits an individual who has engaged in the willful and unlawful killing of another person from receiving any benefit as a result of the act. Can one who lacks the mental capacity to conform his behavior to the law commit a willful and unlawful act in killing another? In *Kissinger*, Mr. Hoge argued that a person who has been found not guilty by reason of insanity cannot be a slayer under Washington's slayer statute because his acts cannot be characterized as willful and unlawful.

The court first addressed the meaning of unlawful as used in the slayer statute. Mr. Hoge argued that legal insanity is a complete defense to his crime, absolving him of all criminal responsibility. The court stated:

The affirmative defense of insanity precludes criminal punishment, but it does not legally authorize a person to kill another human being. Nor does it negate a necessary element of the crime. We hold that a finding of not guilty by reason of insanity does not make an otherwise unlawful act lawful for application of the slayer statute [Ref. 2, p 670].

Since Mr. Hoge had stipulated that he caused the death of another person, the act was deemed unlawful.

Next, the court addressed whether Mr. Hoge had acted willfully, according to the slayer statute. The estate argued that the definition of willful should derive from the state's criminal code and was satisfied when the defendant acts "knowingly with respect to the material elements of the crime."² In contrast, Mr. Hoge argued that the definition of willful should stem from civil law, a stricter standard of intentionally and designedly, which had been used in *New York Life Insurance Company v. Jones*.¹⁶ The court determined that the standard to define willful should stem from civil, not criminal, law, as the slayer rule is

a civil statute. Nevertheless, the court found that Mr. Hoge met the requisite for willfulness:

Certainly, Hoge could have been so delusional that he did not intend or even know that he was killing a human being. Not every homicide committed by the criminally insane is willful and deliberate. But the trial court made very specific findings of fact and conclusions of law and determined that Hoge acted with premeditated intent when he killed his mother [Ref. 2, p 671].

Slayer Statutes in Other Jurisdictions

Although consideration of insanity with respect to the slayer rule in *Kissinger* was a case of first impression in Washington, several other jurisdictions have ruled on the question. Despite similar language in most slayer statutes, the results of these decisions have been varied. Some states conclusively hold that the slayer statute applies only to sane killers.¹⁷ Other states have determined that an individual found not guilty by reason of insanity may not receive property as a result of the victim's death.¹⁸ Many states determine on a case-by-case basis whether a killer meets the intent requirement of their slayer statute. Further, most states have not addressed the specific question. A few cases in other jurisdictions illustrate the variability between jurisdictions.

In the case of *Turner v. Estate of Turner*,¹⁹ the Indiana Court of Appeals addressed whether a son who had killed his parents could benefit from their estate. The criminal court had found that the son committed the murders, but was not responsible by reason of insanity. The court of appeals held for the son regarding the inheritance, articulating that, given that he was found to be insane, his situation did not satisfy the slayer rule's requirement that the killing be intentional. In response to the holding, the Indiana legislature amended their slayer statute to prevent killers found not guilty by reason of insanity from benefiting from their victims' estates.¹⁸

In contrast to Indiana, South Dakota applies the slayer statute only to sane killers. In *De Zotell v. Mutual Life Insurance Company*, a man sought to collect on an insurance policy after killing the insured individual.¹⁷ In *De Zotell*, the court stated: "a sane felonious killer cannot recover insurance money on the life of his victim" (Ref. 17, p 59).

To compound the complexity, some states assess whether a killer has met the requisite level of intent as required by their particular slayer statute. In Maryland, for example, a criminal intent standard is required. In the Maryland case of *Ford v. Ford*,²⁰ a

woman killed her mother and subsequently sought to benefit from her mother's estate. At the criminal trial, she was found not responsible by reason of insanity. The appellate court held that because the woman was criminally insane when she killed her mother, she did not have the requisite intent necessary for murder and was not prohibited from benefiting from her mother's estate. Several other states and also the Restatement of Restitution²¹ allow insane killers to benefit.²²⁻²⁴

Other states similarly apply a case-by-case intent standard, but make it more difficult for the criminally insane killer to benefit under the slayer statute, using a civil court-derived standard of intent. In a case in Michigan, a man sought to collect military benefits that his victim wife had been collecting.²⁵ At his criminal trial, the man had been found not guilty by reason of temporary insanity. The civil court handling the estate found that, despite the finding of not guilty by reason of insanity, the man did intend to kill his wife. The court held that the intent requirement was therefore met for the slayer statute to apply, and the husband was not able to collect benefits.

Discussion

Criminal law in the United States presumes that individuals know the law and have free will. The abilities to know and to choose (a person's cognitive and volitional capacities) are historic premises of criminal responsibility. Central to these assumptions is the idea that the threat of punishment will influence behavior. If people know they will be punished for breaking the law, they will decide not to break the law. In turn, retributivists believe that individuals elect to commit crimes and therefore deserve to be penalized. There are very few instances in which criminal law doctrine condones cognitive or volitional failure as an excuse for the crime. Such instances include duress and legal insanity, both of which require demanding demonstrations.

Legally defined insanity is considered an excuse for the commission of the crime. In the United States, there are two primary standards for the insanity defense used by various jurisdictions: the *M'Naughten* test and the American Law Institute (ALI) test.²⁶ These tests presume that the individual has a mental illness that is beyond his control; that the illness interferes with important psychological functions; and that such impaired functioning affects the individual's understanding and conduct. With either test, a

legally insane person is not responsible for the crime committed.

The insanity defense serves to protect individuals who, due to a mental illness, are unable to comprehend the illegality of their conduct or to obey the law. Supporters of the defense suggest that it is cruel and pointless to punish such individuals. However, the defense remains controversial. Insanity defense cases are commonly raised to high-profile status in the media. Insanity acquittals have been known to incite public outrage and movement for reform, as the insanity defense leaves crimes without accountable perpetrators.

It is against this backdrop that the application of the slayer rule to individuals found not guilty by reason of insanity forces difficult policy choices. If one argues that the main purpose of the slayer statute is to deter killing for financial benefit, it might follow that a slayer statute should require the motivation of economic gain from the killing, which no slayer statute currently does.

If an individual is incapable of realizing that he could benefit from his victim's estate, how will the slayer statute prevent the killing? A person who kills while legally insane is not able to make rational assessment of the results, if any, that his acts will have on any benefits that may result from the killing. This is the rationale for the person's not being convicted criminally, as punishment will not deter or correct the behavior. Strikingly, in *Kissinger*, the initial motion for the insanity acquittal was a joint motion by both the defense and the state, and the court made specific findings that Mr. Hoge could neither appreciate the nature and quality of his act nor perceive the difference between right and wrong with respect to his actions. Mr. Hoge had Capgras syndrome and did not believe that the person he was killing was his mother. Of clinical-legal significance, the association of Capgras syndrome with physically violent behavior directed toward others—especially geographically proximate family members—suggests that Mr. Hoge's situation may not be rare.²⁷⁻³¹

It is also interesting to recall that financial benefits became an issue in *Kissinger* only because his mother's estate filed a lawsuit against Mr. Hoge's treatment facility, arguing at that time that he had not been treated properly for his severe mental illness. The lawsuit laid the responsibility on the mental health agency that should have been supervising Mr. Hoge. He had not killed to benefit financially. Also,

his mother was familiar with his chronic mental illness. It is not unreasonable to conclude that she would have wanted him to have the benefits to facilitate his treatment and care.

Yet, there are competing policies for limiting any financial recovery to insane killers as the result of their acts. Estate law has been devised to honor the intent of the decedent. The law is likely to assume that in most cases a victim of a homicide would not intend his or her killer to benefit from the killing. In civil legal suits, private parties litigate over the same interests. Should an insane killer be granted benefits under his or her victim's estate, it prevents another (most likely innocent) party from collecting that share of the estate. Some might also argue as a matter of public policy that the state should establish regulations for transfer of assets to individuals who may lack the mental ability to manage them.

The complexity of these cases and competing policy influences have resulted in jurisdictions formulating and applying differing standards to those individuals who are found not guilty by reason of insanity in the setting of slayer statutes. Not only are there variations by state, but those states that have case-by-case intent analyses, such as the willful analysis in *Kissinger*,² are bound to have differing results, depending on the discretion of the court. The ruling in *Kissinger* notes that "not every homicide committed by the criminally insane is willful and deliberate" (Ref. 2, p 671). In holding that Mr. Hoge willfully killed his victims, the court relied heavily on his prior stipulation in the criminal proceeding that his actions were intentional and premeditated. This fact underlies the importance of the specific trial court proceedings, as defendants could make stipulations of fact without knowledge of future legal proceedings, or even the possibility of collecting as a beneficiary, as exemplified by Mr. Hoge.

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