

Revisiting the Deific-Decree Doctrine in Washington State

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The deific-decree exception to Washington's M'Naughten insanity standard first appeared in case law a quarter century ago in *State v. Crenshaw*. A few subsequent cases have attempted to refine the contours of the deific decree; however, the deific-decree doctrine has had only limited utility as a basis for the insanity defense. After about a decade of no activity in this area, the Washington courts have recently revisited the deific-decree doctrine in a case involving two defendants.

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The modern era of the insanity defense commenced in 1843 with the *M'Naughten* case in England.¹ The M'Naughten insanity test consists of two prongs: the capacity to know the nature and quality of the act and the capacity to know the wrongfulness of the act. The inability to fulfill either prong can qualify a defendant for the insanity defense. Almost immediately imported from England, the M'Naughten insanity test became and remains the dominant standard among the states,² including Washington.³ Since the passage of the Insanity Defense Reform Act of 1984, all federal jurisdictions have been mandated to use only the M'Naughten insanity standard.⁴

The M'Naughten insanity test has been considered a cognitive test, as opposed to the volitional test of the next most prevalent insanity test in current use, the ALI (American Law Institute) insanity test, derived from the American Law Institute's Model Penal Code.⁵ The ALI insanity test contains a cognitive prong (capacity to appreciate the criminality of the act) and a volitional prong (capacity to conform one's behavior to requirements of law).

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Upon the arrival of the M'Naughten test in the United States, a potential exception to the traditional M'Naughten cognitive test appeared, leading to the development of what has been termed the "deific-decree" doctrine. A deific decree concerns an individual who acts on the command of God. If such actions culminate in criminal behavior, a defendant conceivably can be found not guilty by reason of insanity.

Although the concept of the deific decree in the United States essentially coincides with the onset of the modern era of the insanity defense, its actual operationalization in Washington dates back only about a quarter of a century.⁶ Before exploring the deific-decree doctrine in Washington, I will provide an overview of the legal landscape, as exemplified by three precursor cases.^{7–9}

Origins of the Deific Decree in Case Law

The first known case involving the use of the *M'Naughten* insanity test in the United States took place in 1844. Although the case did not involve a deific-decree defense, the underpinnings of the deific-decree doctrine appeared in *dicta* in *Commonwealth v. Rogers*.⁷

While in state prison, Abner Rogers, Jr., stabbed the warden in the neck, causing the warden's death. Rogers was described as having delusions involving the warden as his persecutor (monomania). Although a divine command was not mentioned as the

basis of his insanity, in the discussion of mental disease and insanity, Chief Justice Shaw wrote:

A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by the command of a superior power, which supersedes all human laws, and the laws of nature [Ref. 7, p 503].

The next major case in the development of the deific-decree doctrine took place in *U.S. v. Guiteau*.⁸ On July 2, 1881, Charles J. Guiteau assassinated President James A. Garfield. Guiteau entered an insanity plea. At trial, he was found guilty.

In the discussion of the insanity defense, which included the cases of *M'Naughten* and *Rogers*, Judge Cox cited Chief Justice Shaw's divine-command example of an insane delusion from *Rogers* and then contributed his own examples:

But the insane delusion according to all testimony, seems to be an unreasoning and incorrigible belief in the existence of facts which are either impossible absolutely, or, at least, impossible under the circumstances of the individual. A man, with no reason for it, believes that another is attempting his life, or that he himself is the owner of untold wealth, or that he has invented something which will revolutionize the world, or that he is president of the United States, or that he is God or Christ, or that he is dead, or that he is immortal, or that he has a glass arm, or that he is pursued by enemies, or that he is inspired by God to do something [Ref. 8, pp 170–1].

Another man, whom you know to be an affectionate father, insists that the Almighty has appeared to him and commanded him to sacrifice his child. No reasoning has convinced him of his duty to do it, but the command is as real to him as my voice is now to you. No reasoning or remonstrance can shake his conviction or deter him from his purpose. This is an insane delusion, the coinage of a diseased brain, as seems to be generally supposed, which defies reason and ridicule, which palsies the reason, blindfolds the conscience, and throws into disorder all the springs of human action [Ref. 8, p 172].

Although on the surface, the *Rogers* and *Guiteau* decisions appear to be instructive as to what constitutes an insane delusion, the influence of religion appears to be substantial in these cases. For example, in *Guiteau*, to illustrate what constitutes an insane delusion, Judge Cox borrows from the biblical story of God's commanding Abraham to kill his son Isaac. These two cases suggest that divine commands assume a special status versus those perceived to come from other sources.

Further Development of the Deific-Decree Doctrine

The concept of the deific-decree doctrine as a vehicle to qualify for an insanity defense did not become crystallized until the 1915 case of *People v. Schmidt*.⁹ Hans Schmidt was convicted on February 11, 1914, of having murdered Anna Aumuller. Mr. Schmidt had confessed to cutting her throat with a knife, saying that he had heard the voice of God commanding him to kill her as a sacrifice and atonement for his life of unspeakable excesses and hideous crimes. Defense expert witnesses opined that he was insane, while prosecution expert witnesses contended that Mr. Schmidt feigned the delusion. At trial, the jury returned a verdict of guilty. In July 1914, Mr. Schmidt filed a motion for a new trial based on new evidence. He recanted his confession and described Ms. Aumuller's death as having resulted from a failed abortion. He stated that he had thought he could successfully feign insanity, be released after a brief term in an asylum, and in this way protect the individuals performing the abortion (which those individuals denied). The New York Court of Appeals did not find grounds for a new trial and affirmed his conviction.

In his discussion of the case in *dicta*, Justice Benjamin Cardozo referenced prior insanity cases, including *M'Naughten*, *Rogers*, and *Guiteau*. He then explored which standard of wrongfulness should be used (i.e., legal or moral). Justice Cardozo wrote:

A mother kills her infant child to whom she has been devotedly attached. She knows the nature and quality of the act; she knows that the law condemns it; but she is inspired by an insane delusion that God has appeared to her and ordained the sacrifice. It seems a mockery to say that, within the meaning of the statute, she knows that the act is wrong. If the definition propounded by the trial judge is right, it would be the duty of a jury to hold her responsible for the crime. We find nothing either in the history of the rule, or in its reason and purpose, or in judicial exposition of its meaning, to justify a conclusion so abhorrent. No jury would be likely to find a defendant responsible in such a case, whatever a judge might tell them. But we cannot bring ourselves to believe that in declining to yield to such a construction of the statute, they would violate the law.

We hold, therefore, that there are times and circumstances in which the word "wrong" as used in the statutory test of responsibility ought not to be limited to legal wrong [Ref. 9, p 949].

The Onset of the Deific-Decree Doctrine in Washington

As already noted, the deific-decree doctrine had evolved outside of cases in Washington when justices grappled with psychosis and legal insanity.^{7–9} The

doctrine first appeared in Washington in *State v. Crenshaw*.⁶

Rodney Crenshaw had a history of multiple psychiatric admissions. On his honeymoon to Canada with his wife Karen, Mr. Crenshaw became involved in a brawl. As a result, Canada deported him back to the United States. He waited for his wife in a motel in Blaine, Washington, just across the border in the United States. When she arrived two days later on August 27, 1978, he sensed that she had been unfaithful. He did not mention to her his suspicion of infidelity, but instead took her to his motel room and beat her unconscious. He then went to a nearby store to steal a knife. He returned to his motel room and stabbed her 24 times, killing her. He then drove to a nearby farm where he had once worked and borrowed an ax. After returning to the motel room, he decapitated his dead wife. He wrapped the body and the head and placed them in his wife's car. He then went to a service station to borrow a bucket and sponge. He returned to the motel room to remove the blood and fingerprints. Before leaving the motel, he chatted with the motel manager for a while over a beer. He drove 25 miles and left the body parts in thick brush. He then drove 200 miles and picked up two hitchhikers. He informed the hitchhikers of the crime and enlisted their aid in disposing of his wife's car in a river. The hitchhikers contacted the police, leading to his arrest.

At trial, Mr. Crenshaw raised the insanity defense. He based his insanity claim on the presence of a delusion of infidelity coupled with his membership in the Moscovite religious faith that mandated that a Moscovite kill an adulterous wife. The jury rejected his insanity defense and convicted him of first-degree murder. He appealed his conviction. After the court of appeals affirmed the trial court's ruling, He appealed to the Washington State Supreme Court.

For the appeal, among other things, Mr. Crenshaw challenged the jury instruction, contending that the trial court erred when defining wrong as a "legal" wrong rather than a "moral" wrong. In regard to Washington's M'Naughten insanity test, the Court equated legal and moral wrongfulness. The court concluded that Mr. Crenshaw knew that his acts were morally wrong from society's viewpoint and that they were illegal, as well. However, relying on past non-Washington state cases, particularly *Schmidt*, the Court acknowledged a deific-decree exception, as it ruled:

A narrow exception to the societal standard of moral wrong has been drawn for instances wherein a party performs a criminal act, knowing it is morally and legally wrong, but believing, because of a mental defect, that the act is ordained by God: such would be the situation with a mother who kills her infant child to whom she is devotedly attached, believing that God has spoken to her and decreed the act. See *People v. Schmidt*, supra at 339. Although the woman knows that the law and society condemn the act, it would be unrealistic to hold her responsible for the crime, since her free will has been subsumed by her belief in the deific decree [Ref. 6, p 494].

The Washington State Supreme Court went on to comment that this deific-decree exception did not apply to Mr. Crenshaw himself, because he did not argue that the Moscovite God had ordered him to kill his wife, but rather that the killing arose out of his duty under the Moscovite religion. The Washington State Supreme Court affirmed his conviction.

The *Crenshaw* case established the deific-decree exception to the state's cognitive M'Naughten insanity test. However, in doing so, the Court used the concepts of moral wrongfulness and free will to craft this exception.⁶ This suggests that some combination of a cognitive reason (moral wrongfulness) and/or a volitional reason (free will) would be needed to arrive at how a deific-decree defense could qualify an individual for insanity in Washington state.

The only successful application of the *Crenshaw* deific-decree ruling appeared in *State v. Cameron*.¹⁰ On June 9, 1980, Gary Cameron stabbed his stepmother more than 70 times, leaving the knife sticking in her heart. He left her body in the bathtub with no apparent attempt to conceal it. Later that day, a police officer observed him walking downtown wearing a pair of women's stretch pants, a woman's housecoat, a shirt, and no shoes. When the officer contacted Mr. Cameron, he said that he was dressed in this manner because "I just grabbed what I could . . . My mother-in-law turned vicious." Mr. Cameron said he was headed for California. As the officer had no reason to detain him, he was permitted to continue hitchhiking. The next day, Oregon State Police detained him as he was wandering along the shoulder of the interstate wearing only the stretch pants and one shoe. The police thought he was an escapee from the nearby Oregon State Hospital, but on checking, discovered that he was a suspect in the death of his stepmother in Washington. He gave rambling, paranoid, delusional statements. From the subsequent forensic mental health evaluations, he described how he had been directed by God to kill

Satan's angel (his stepmother). In addition to his stepmother, others such as Yasser Arafat and Ayatollah Khomeini had been persecuting him. At the time of the homicide of his stepmother, he thought that he had been obeying God's directive or law and that he was the Messiah. All of the forensic examiners opined that he met Washington's statutory criteria for insanity based on the right-and-wrong prong. Some, but not all, opined that he also qualified for the insanity defense based on the nature-and-quality prong.

The jury was given the same instructions as the *Crenshaw* trial court jury—namely, that the definition of wrongfulness was legal wrongfulness. The jury found Mr. Cameron guilty of the first-degree murder of his stepmother. At the time of his trial, the *Crenshaw* case had not yet been heard by the Washington State Supreme Court. However, by the time Mr. Cameron's appeal was before the Washington State Supreme Court, that Court had already ruled on *Crenshaw*. Mr. Cameron appealed his conviction on three grounds, one of which involved the definition of "right and wrong" given in the jury instructions.

In regard to the right-and-wrong prong, the *Cameron* Court adopted the *Crenshaw* (and therefore *Schmidt*) paradigm that Mr. Cameron's free will had been subsumed by a deific decree in which God had directed him to kill his stepmother, who was Satan's angel or a sorceress. The *Cameron* Court ruled that the trial court's jury instructions ran afoul of the deific-decree exception in *Crenshaw*. The *Cameron* Court, however, commented that while the case met the *Crenshaw* deific-decree exception, this exception would have to be determined on a case-by-case basis. The Court reversed Mr. Cameron's conviction and remanded the case to the trial court.

The Next Decade in Washington

The case of *State v. Rice*¹¹ does not involve a criminal defendant raising a deific decree as his defense. However, elements of a deific-decree defense appeared during the course of the trial.

During the early evening hours of December 24, 1985, David Rice went to the home of a Seattle attorney, his wife, and their two pre-adolescent sons and killed them. Despite his behavior at and near the time of the crimes (such as using gloves to avoid leaving fingerprints and subsequently attempting to use the attorney's bank card after leaving the home) and his subsequent confession in which he acknowl-

edged that part of the motivation for the killings were financial, Mr. Rice entered a plea of not guilty by reason of insanity. He believed that he was on a mission to prevent communist and banking conspiracies from taking over the country. He also indicated that he was in a war against evil and that killing this family was the lesser of two evils. The basis for the defense claim of insanity was that in Mr. Rice's war against evil, his mental disorder prevented him from being able to distinguish right from wrong, even though in general he knew that killing was wrong. The defense proposed that the following instruction borrowed from *Cameron* be added to the general jury instruction for Washington's M'Naughten insanity criteria: "One who believes that he is acting under the direct command of God is no less insane because he nevertheless knows murder is prohibited by the laws of man" (Ref. 11, p 904).

The trial court rejected Mr. Rice's proposed instruction, stating that *Cameron* and other Washington cases make clear that a defendant following deific commands qualifies as insane only if his free will has been subsumed by his belief in the deific decree, again emphasizing the volitional aspect of the deific-decree modification to Washington's M'Naughten insanity test. The trial court gave the usual jury instruction outlining the M'Naughten insanity criteria. The jury rejected the insanity defense and found Mr. Rice guilty of four counts of aggravated first-degree murder. The Washington State Supreme Court subsequently found the trial court's jury instructions proper and affirmed the conviction.

After *Cameron*, the next case involving the deific-decree doctrine was *State v. Potter*.¹² On November 28, 1976, the Washington State Patrol responded to a one-car motor vehicle accident in which driver Dennis Potter appeared to have lost control while rounding an icy curve and then crashed into an embankment. The state police determined that Norma Potter, Dennis Potter's wife and a passenger in the car, died of trauma sustained in the car collision. The coroner did not then perform an autopsy, apparently relying on the state police accident report describing the injuries.

After the accident, the local county sheriff's office began receiving information that Mr. Potter had been having some mental problems and was depressed and that Norma had feared him. Sheriff's deputies contacted Mr. Potter on December 8, 1976, during which time he appeared extremely distraught

and nervous. He talked about hearing voices and told the deputies, "I can't change anything. . . . I tried to commit suicide with the car the other night but it didn't happen. It killed my wife and all I got was a cut on my head." Later that day, Mr. Potter's friends took him for psychiatric assistance and he was voluntarily admitted to Western State Hospital for 6 weeks. He had had a prior voluntary admission to the same hospital in May 1976, during which time had had been prescribed antidepressants.

After they were informed of Mr. Potter's statements to the deputies, the state police revised its findings to state that the accident was "intentional." In April 1977, Mr. Potter's daughter reported to the sheriff that after his release from Western State Hospital, he had told her that "it wasn't an accident, that he had murdered her." His daughter thought that this referred to the motor vehicle accident. After his release from the hospital, he also spoke to a family friend in early 1977 and told her that he had killed Norma by strangulation and that the "accident" was an attempt to kill himself. When the family friend contacted the sheriff with this information, no written report was generated, and the family friend purportedly was told that a written report would be unnecessary, because the investigation had been completed. The sheriff allegedly forwarded the additional information to the prosecuting attorney. However, the prosecuting attorney declined to proceed, based on the available written information.

On March 14, 1989, Mr. Potter walked into a local police station and confessed that he had broken Norma's jaw, strangled her to death, and placed her body in the car and then had driven the car off the road in a suicide attempt. An autopsy was now performed on Norma in which it was concluded that strangulation and not traumatic injuries was the cause of death. After the prosecutor filed a second-degree murder charge on April 3, 1989, Mr. Potter entered a plea of not guilty by reason of insanity.

One forensic evaluator opined that Mr. Potter was sane during the 1976 homicide. The other forensic evaluator opined that he had paranoid schizophrenia and that he had received a "deific command." At trial, the defense offered the following jury instruction, which the defense described as the "deific-command" instruction:

For a defendant to be found not guilty by reason of insanity, you must find, that as a result of mental disease or defect, the defendant believed he was acting under the direct com-

mand of God, and the defendant's free will was totally subsumed by the deific command.

If you find that the defendant did suffer from a mental disease or defect, and that the defendant believed that he was acting under the direct command of God, and that the defendant's free will was totally subsumed by the deific command, you need not address whether the defendant understood the nature and quality of his act, or whether or not the defendant knew what he was doing was right or wrong [Ref. 12, p 483].

The trial court rejected the defense version of the instruction and gave the jury the following instruction, which included language about moral wrongfulness:

If you find that the defendant believed, because of mental disease or defect, that he was acting under the direct command of God he may be found not guilty by the reason of insanity only if you find, by a preponderance of the evidence, that this belief prevented the defendant from comprehending the act with which he is charged was morally wrong or prevented the defendant from perceiving the nature and quality of the act with which he is charged [Ref. 12, p 483].

The trial court judge also gave the usual instruction on insanity defense that reflected Washington's *M'Naughten* insanity criteria and an instruction advising the jury that a person acting in response to an "irresistible impulse" is not legally insane. The jury rejected Mr. Potter's insanity defense and found him guilty of second-degree murder.

In regard to the insanity defense instruction, the court of appeals discussed previous Washington Supreme Court decisions, including *Crenshaw* and *Cameron*, in analyzing whether wrong referred to a moral wrong, a legal wrong, or both. The court of appeals found the conceptualization of *Crenshaw* to be an "ambiguous statement of law" on which an individual could be found insane who has cognitive ability (to know an act is wrong legally and morally), but lacks volitional control (despite the cognitive ability). The court viewed the apparent acceptance of the *Crenshaw* "deific-decree exception" in *Cameron* as specious and concluded that Mr. Cameron had qualified for insanity based on a cognitive inability to tell right from wrong. The court viewed the *Cameron* court's formulation of the deific-decree exception as only an alternative expression of the traditional insanity test's inquiry into the actor's ability to tell right from wrong. It also rejected the suggestion from the discussion in *Rice* that a defendant's cognitive ability was irrelevant in determining whether the "deific decree" overcame his "free will," and that a jury could find a defendant legally insane who knew right from

The Deific-Decree Doctrine in Washington State

Table 1 Appellate Legal Timeline of the Cases of *Turgeon* and *Applin*

October 31, 2001	California Supreme Court denies Mr. Applin's petition for review from the California Court of Appeal ¹⁶
August 28, 2002	California Court of Appeal in an unpublished opinion affirms Mr. Turgeon's conviction from the San Diego County Superior Court ¹⁷
November 13, 2002	California Supreme Court declines to hear Mr. Turgeon's appeal from the California Court of Appeal ¹⁸
May 3, 2003	Washington Court of Appeals affirms Mr. Applin's conviction from the Snohomish County Superior Court ¹⁹
January 7, 2004	Washington State Supreme Court declines to hear Mr. Applin's appeal ²⁰
March 22, 2004	Washington Court of Appeals affirms Mr. Turgeon's conviction from the Snohomish County Superior Court ²¹
March 22, 2004	Washington Court of Appeals subsequently indicates that the decision is unpublished ²²
March 26, 2007	Federal District Court denies Mr. Turgeon's writ of <i>habeas corpus</i> ²³

wrong but was unable to control his urges. The court found the *Rice* Court's interpretation to be inconsistent with the long line of Washington cases that have rejected the irresistible-impulse defense.

The *Potter* court concluded that the *Crenshaw*, *Cameron*, and *Rice* Courts' discussions of free will were not related to volitional ability to control behavior, but the cognitive ability to tell right from wrong. As such, the formulations of a deific-decree exception to the sanity definition are actually further elaborations of the inability to tell right from wrong. In other words, a trial court could use the deific-decree exception to instruct the jury that a person can be legally insane if that "person's cognitive ability has been destroyed as a result of a psychotic delusion that God has commanded the act" (Ref. 12, p 488), borrowing from Colorado's *People v. Serravo*.¹³

The court of appeals noted that the *Potter* jury could have found Mr. Potter insane if it had concluded that he had known his act was legally wrong and if it had been persuaded that he believed he was acting in accordance with God's command telling him that his act, at the time and under those particular circumstances, was not morally wrong. In this case, the court found that Mr. Potter's subjective understanding of wrong, legal or moral, had become so obscured by the deific decree that he could not actually tell right from wrong. In any case, the court upheld the trial court's jury instruction and affirmed his conviction.

The *Potter* decision did not rule on whether the trial court's use of a moral-wrongfulness standard was appropriate. Nonetheless, the trial court rejected a deific decree as possibly allowing an insanity defense unless Washington's M'Naughten insanity standard (with the moral-wrongfulness modification) could be satisfied. The *Potter* court also held that the deific decree would not invoke the use of a

volitional component to satisfy the state's cognitive M'Naughten test.

The *Turgeon* and *Applin* Cases

Two law reviews have touched on the deific decree in Washington up through the *Potter* case.^{14,15} Since *Potter*, Washington has revisited the deific-decree issue in the cases of Christopher Turgeon and Blaine Applin. These deific-decree cases are unique because not only were there two defendants attempting to assert an insanity defense concurrently, based on the deific-decree doctrine in Washington state for the same incident, they both used a similar defense strategy for their criminal cases in California. Table 1 provides the appellate legal timeline for their cases.¹⁶⁻²³

Of all these rulings, only the *Applin* decision in Washington¹⁹ has any precedential value. The history of the *Turgeon* and *Applin* cases in Table 1 was extracted from the available court decisions from Washington and California.¹⁶⁻²³

Christopher Turgeon was raised by an alcoholic mother and an abusive stepfather. He dropped out of college and held approximately 15 jobs, each of which he lost, either for preaching at work or due to friction with other employees, sometimes caused by his preaching.

In 1990 in Washington, Christopher Turgeon formed a Bible study ministry called Ahabah Asah, which he later renamed the Gatekeepers. Blaine Applin became a member of the Gatekeepers. Mr. Turgeon described himself as a prophet and the resurrected spirit of Elijah, who was ordained by God to lead his people in the last days. He reported hearing the voice of God, having visions, and having special powers. He devoted his life to teaching, prophesying, and confronting others with their sins. In 1996, Mr.

Turgeon reported receiving a message from God that it was time to declare war against the government. The Gatekeepers attempted to advance this mission by robbing and defrauding businesses that they perceived to be sinful. Mr. Turgeon and the Gatekeepers also acted according to their understanding of God's will by exacting judgment on people, particularly those who left the Gatekeepers. In 1997, Mr. Turgeon moved the Gatekeepers, consisting of the Turgeon and Applin families and two other men, to California. The Gatekeepers purchased a home in Pala, California. The other two men had paying jobs, but Mr. Turgeon and Mr. Applin did not.

Dan Jess had been a member of the Gatekeepers in Washington. After leaving the group, Mr. Jess allegedly called Mr. Turgeon a false prophet and said that he would stop him. During a March 1998 Gatekeepers meeting, God purportedly told Mr. Turgeon that Mr. Jess must be killed. Mr. Applin allegedly received a similar message. The Gatekeepers agreed that Mr. Turgeon and Mr. Applin should kill Mr. Jess. In planning the killing, the two men obtained camouflage clothing and wiped their fingerprints off the shell casings that they planned to use. They then drove from California to Mr. Jess' home in Washington. On the way to Washington, Mr. Turgeon asked God to make them take an unscheduled stop if killing Mr. Jess was not God's will. Instead, Mr. Turgeon and Mr. Applin saw seven rainbows, leading them to believe that God blessed their mission to kill. In the early morning of March 29, 1998, Mr. Applin knocked on Mr. Jess's door. When Mr. Jess answered, Mr. Applin shot him several times, causing his death. Mr. Turgeon served as a lookout and drove the getaway car.

After returning to California, Mr. Turgeon and Mr. Applin collected income from criminal acts. On May 4, 1998, during a test ride, Mr. Turgeon stole a motorcycle that had been put up for sale by a naval officer. His justification for the theft was that the Navy allows women to be in positions of authority, which he believed to be contrary to God's will. On July 1, 1998, Mr. Turgeon and Mr. Applin, wearing motorcycle helmets and brandishing handguns, robbed an adult book store. On July 2, 1998, after cutting the telephone lines to a business, the two men, wearing ski masks and brandishing firearms, robbed a machine shop and its employees of their wallets. As they left, they also took the company station wagon. On July 13, 1998, the two entered an

adult entertainment establishment. They attempted to rob the business and its employees, but one employee was able to lock his door and call 911. Mr. Turgeon and Mr. Applin fled the business. About an hour later, a police officer on patrol observed the two men in a vehicle parked outside of an adult bookstore. As the officer stopped behind the vehicle to investigate, they started to drive off slowly, and the officer began to follow them. This soon accelerated into a high-speed chase onto the freeway. Mr. Turgeon and Mr. Applin shot at the officer's patrol car, shattering the windshield, driver's side window, and car's headlights. About 20 minutes later, another police officer spotted their vehicle as it exited the freeway and gave chase, eventually trapping it on a dead-end street. The driver, Mr. Turgeon, exited the vehicle and was taken into custody. As Mr. Applin darted out of the cargo area of the vehicle, he was also taken into custody. In Mr. Turgeon's pocket was a note that read, "Hello, we have guns. This is a holdup. Don't push any buttons, your life depends on it. Do exactly what you are told and no one gets hurt." During fingerprinting, police discovered glue on Mr. Turgeon's fingertips. Mr. Turgeon nodded in agreement when a police officer said the glue showed planning to avoid leaving fingerprints. Mr. Turgeon said that Mr. Applin had not used glue because he "sweats too much."

The two men were tried separately in California. In Mr. Applin's case, which took place first, the jury in the San Diego County Superior Court found him guilty and sane. Mr. Turgeon's trial in San Diego County Superior Court began after Mr. Applin's conviction. Mr. Turgeon testified that he carried out the acts as missions to serve God and that in his opinion they did not constitute crimes. However, he understood that they were illegal acts and would be considered crimes by others. He said he was not delusional or insane at the time of the offenses. He had entered an insanity plea to communicate his message to others. He believed that the police and other governmental officials were part of an unjust state, against whom a holy war was being waged by the Gatekeepers. He said that God had allowed him to plunder possessions from unjust and wicked persons (e.g., those in the adult entertainment business) and use them to do good.

The court refused to grant Mr. Turgeon's proposed jury instruction that he should not be found to know the difference between right and wrong or to

know that his conduct was morally wrong, if he believed he was ordained or commanded by God to commit the charged offenses.

In addition to the jury instruction regarding the California version of the M'Naughten insanity standard, the trial court provided the jury with guidance regarding legal and moral wrongfulness. A legal wrong was defined as an act that violates the law. A moral wrong was defined as an act that violates society's generally accepted standards of moral obligation. Thus, a defendant is incapable of distinguishing right from wrong at the time of the crime, by reason of mental disease or defect, if he cannot understand that his act was a violation of the law, or cannot understand that his act is a violation of generally accepted standards of moral obligation. The trial court therefore allowed the prosecution to argue that Mr. Turgeon's acts were both illegal and morally wrong under society's standards. The court also allowed the defense to argue that as a result of mental illness, Mr. Turgeon believed his act did not violate generally accepted standards of moral obligation.

The jury returned a guilty verdict on all charges (including 11 counts of robbery, one count of conspiracy to commit a series of robberies, one count of conspiracy to commit murder of a police officer, one count of attempted murder of a police officer, one count of assault on a police officer with a semiautomatic weapon, and one count of unlawful taking of a vehicle). The court subsequently sentenced Mr. Turgeon to state prison for a term of 25 years to life.^{17,23}

After the California trials, the defendants were extradited to Washington to face the homicide charge, and they were tried together. The trial court declined to give the jury the deific-decree instructions that they had both requested. The jury rejected both defendants' insanity defenses and returned guilty verdicts for first-degree murder for both.

California Rulings

The California rulings in *Applin* and *Turgeon* were not published and have no value as precedent. Nonetheless, an unpublished opinion from the court of appeal in *Turgeon* was found in *LexisNexis Academic*¹⁷ and provides some insight into judicial thinking in California. Mr. Turgeon argued that the trial court had not given the proper jury instructions for the wrongfulness prong of California's M'Naughten insanity test, such that the jury was unable to give adequate consideration to his deific-command de-

fense. He contended that the correct standard would have included a component that took his delusions into consideration, in determining whether he understood his conduct to violate generally accepted standards of moral obligation.

The court of appeal rejected all of Mr. Turgeon's claims regarding a moral-wrongfulness standard. It found that the jury instructions for California's M'Naughten standard and the definitions of legal and moral wrongfulness were proper. Although the court noted that there was support for an insanity defense for Mr. Turgeon, there was also support for the position that his actions, which included the use of disguise, stolen vehicles, altered license plate, force, deception, and planning, demonstrated knowledge that his crimes were inconsistent with the moral standards of society.

Mr. Turgeon's case has continued to show activity as recently as 2007. He has continued to contest the California Court of Appeal decision regarding the use of a deific-decree defense in federal district court. The district court denied his writ of *habeas corpus*.²³

Washington Rulings

As in California, the appellate ruling in *Applin* preceded that in *Turgeon* in Washington. Mr. Applin contended that he was acting under a delusion that he had received a direct command from God.

The jury instructions used provided two opportunities for Mr. Applin to prove he was legally insane. He could meet either Washington's version of the M'Naughten insanity test or that promulgated by the deific-decree jury instruction.¹⁹ The deific-decree instruction used was as follows: A defendant is also not guilty by reason of insanity if you find that each of these elements has been proved by a preponderance of the evidence:

At the time of the acts charged the defendant had a mental disease or defect; and

As a result of that mental disease or defect, the defendant had a delusion that he had received a direct command from God to do the acts; and

The defendant did the acts because of that direct command; and

The direct command destroyed the defendant's free will and his ability to distinguish right from wrong [Ref. 19, p 1153–4].

Mr. Applin challenged the jury instructions, contending that the court had erred in refusing to define right and wrong. The *Applin* court relied on the history of the deific-decree doctrine as promulgated in *Crenshaw*, *Cameron*, *Rice*, and *Potter* in its analysis of Mr. Applin's appellate arguments. Mr. Applin argued that the instruction in *Potter* defined wrongfulness in moral terms. But since that aspect of the instruction was not at issue, the opinion in *Potter* contains no discussion of the definition of wrongfulness, and so *Potter* was of no help to Mr. Applin. From *Crenshaw* and *Cameron*, the *Applin* court concluded that no definition for wrongfulness should be given. It noted that an instruction for moral wrongfulness such as in *Potter* would not be an error, though such an instruction would not be required. In *Applin*, the trial court's instructions were neutral, allowing both parties to argue their theories of the case. The Washington State Supreme Court subsequently declined to review *Applin*.²⁰

As Mr. Applin had done, Mr. Turgeon challenged the jury instructions for insanity.²¹ Although Mr. Turgeon included arguments not raised by Mr. Applin, Mr. Turgeon's main contention, like that of Mr. Applin,¹⁹ was that the court failed to instruct on moral wrongfulness. Mr. Turgeon asked that the court of appeals reconsider its ruling in *Applin*¹⁹ and argued that the instructions should have been:

If you find that the defendant believed, because of mental disease or defect, that he was acting under the direct command of God he may be found not guilty by the reason of insanity only if you find, by a preponderance of the evidence, that his belief prevented the defendant from comprehending the act with which he is charged was morally wrong or prevented the defendant from perceiving the nature and quality of the act with which he is charged [Ref. 24, p 468].

The court referenced its decision for codefendant Mr. Applin¹⁹ and ruled that no definition of wrongfulness should ordinarily be given in jury instructions for insanity. As in *Applin*, the court considered the trial court's instruction as neutral, which allowed both parties to argue their theories of the case.

One distinguishing feature of *Turgeon* noted by the court of appeals was that applying the insanity defense to someone like Mr. Turgeon would be awkward, as he was not like the defendants in *Crenshaw*, *Cameron*, or *Rice*. The traditional insanity defense would probably have been inapplicable to him because, based on the testimony of expert witnesses at trial, he did not have a mental disease, although the

expert witnesses also opined that he did not meet Washington's M'Naughten insanity criteria.

Discussion

The deific-decree doctrine in Washington can be traced to the origins of the M'Naughten insanity defense in the United States. The idea of a deific decree as a potential rationale outside of the insanity criteria to relieve criminal responsibility appeared in *dicta* in *Rogers*, *Guiteau*, and *Schmidt*. In *Schmidt*, a deific-decree defense was offered at trial, but the defendant withdrew his insanity claim and provided a reality-based scenario for his criminal behavior.

Not until the 1983 decision in *Crenshaw* was the concept of a deific decree operationalized in Washington. The *Crenshaw* court allowed a deific decree to qualify for an insanity defense, even if it did not appear to satisfy the state's M'Naughten-type criteria. Despite the *Potter* decision's proclamation that the deific-decree mechanism utilizes a cognitive and not a volitional mechanism, it remains unclear whether the deific decree created a volitional test for Washington's cognitive M'Naughten insanity test, since the use of "free will" in the deific-decree instruction appears in *Applin* and *Turgeon*.

Of note, only the defendant in *Cameron* appeared to have directly benefited from the *Crenshaw* deific-decree exception to the insanity defense. Subsequent Washington defendants, such as those in *Potter*, *Applin*, and *Turgeon* failed to achieve the same outcome, despite the claim of adhering to a deific decree.

In the evolution of Washington case law on the deific-decree doctrine from *Crenshaw* to *Potter* and applied to *Turgeon* and *Applin*, the trial court battles between the defense and the prosecution revolved around the particular definitions used in the jury instructions. As with the precursor cases of *Rogers*, *Guiteau*, and *Schmidt*, the Washington cases of *Crenshaw*, *Cameron*, *Potter*, and *Rice* grappled with the definition of wrongfulness (i.e., whether the insanity defense involved only legal wrongfulness, or whether it additionally encompassed moral wrongfulness, thereby expanding what could be construed as wrongful). The most recent Washington scheme as promulgated by *Applin* does not define wrongfulness and permits the jury to decide based on the persuasive arguments of the attorneys. The defense position has been that the deific-decree doctrine allows for a moral wrongfulness standard to be used and the "free will" instruction can allow for the possibility that a

volitional component can be introduced into the argument for insanity in this M'Naughten state. Of course, the Washington courts also allow the prosecution to argue that the defendant has met a legal-wrongfulness standard, with the trier of fact becoming the final arbiter on a case-by-case basis as to whether a defendant qualifies for the wrongfulness prong. Of course, leaving the definition of wrongfulness undefined increases the likelihood that the trier of fact becomes confused.

The deific-decree exception does not appear to be applicable in states using the ALI insanity rule. The ALI rule explicitly mentions appreciating the "criminality" of an act and conforming one's behavior to the "requirements of law." In other words, the ALI standard explicitly uses a legal-wrongfulness standard. The restriction for the use of legal wrongfulness in the ALI formulation would trump the outright use of a deific-decree doctrine that relies on a moral-wrongfulness standard. On the other hand, in those states with the ALI insanity standard instead of the M'Naughten standard, the presence of psychotic symptoms associated with a deific decree could facilitate the argument in support of insanity via the volitional prong.

Although the deific-decree doctrine appears to have very limited utility, the driving force behind it—namely, to establish a moral wrongfulness standard—has been given some momentum in Washington. The idea of the special nature of the deific decree merits further exploration. The deific-decree doctrine suggests that divine commands differ from those perceived to have originated from other sources. Highlighting this apparent distinction are two recent Texas filicide cases in which the prosecution expert witness differentiated between the two accused mothers based on the deific versus nondeific associations in their psychotic thinking.²⁵ Clinical research, however, has not been able to determine with a high degree of probability which individuals will act on their delusions or command auditory hallucinations. Moreover, acting on delusions or following command auditory hallucinations will not be uniform, even in a single individual across time.

The deific-decree doctrine's so far brief history in Washington has been assailed in a law review analysis up through the *Potter* case as a "pseudodocctrine" based on three grounds: it lacks internal consistency, it is a culturally archaic holdover from a time when

religion dominated judicial decision-making, and it is an ineffectual and inflexible doctrine.¹⁴ Nonetheless, even in the current state of ambiguity in the application of the insanity defense with respect to the boundaries and role of religious delusions,¹⁵ there have been perhaps two important potential byproducts of Washington's deific-decree doctrine: allowing the defense to introduce moral wrongfulness for the jury to consider and being able to inject a "free will" or volitional argument to prove M'Naughten insanity. In other words, the opportunity to apply a moral-wrongfulness standard could involve many other cases besides those dealing specifically with a deific-decree situation and perhaps the M'Naughten standard is not the pure cognitive test that it has generally been considered.

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