

ANALIZATION OF A DIRECTED VERDICT
OF GUILT...

First we must find; what is a "CONCLUSIVE PRESUMPTION", from there we will demonstrate how a conclusive presumption becomes a directed verdict of guilt.

A conclusive presumption is a "NON-REBUTTABLE PRESUMPTION", which is an order, instruction, ruling, or other action taken by the court during trial which forces the jury to only presume to be true an element of the criminal charge that has not been conclusively proved to be true beyond a reasonable doubt. A conclusive presumption is the functional equivalent of a "DIRECTED VERDICT OF GUILT" because it removes the decision making function from the jury on the question of guilt or innocence.

"The error in such a case is that the wrong entity judged the Defendant guilty." CARELLA V CALIFORNIA, 491 U.S. 263, 272, 109 S. Ct. 2419, 105 L. Ed. 218 (1989) (Scalia J., Concurring).

A directed verdict occur when the court's instructions or failure to properly instruct the jury forces the jury to return a verdict without finding every fact essential to conclusively find a conviction has been proved beyond a reasonable doubt. IN RE WINSHIP, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

[MOORES FEDERAL CRIMINAL LAW VOL. 26 CHPTR. 630 §630.03--(1)] "Instructions that directs verdict is improper. In a criminal case, the role of the trial judge is to instruct the jury on the law applicable to the issue raised." UNITED STATES V MENTZ, 840 F. 2d 315, 319 (6th Cir. 1988) (citing Moores).

"A jury instruction that usurps the fact-finding function of the jury and decides a factual issue as a matter of law is prohibited." UNITED STATES V GAUDIN, 515 U.S. 506, 508, 115 S. Ct. 2310, 2313, 132 L. Ed. 2d 444 (1995).

[MOORES §630.20--INSTRUCTIONS ON BURDEN OF PROOF (3) PRESUMPTIVE INSTRUCTIONS SUBJECT TO HARMLESS ERROR REVIEW] "Although presumptions, even if rebuttable violate the Constitution, they are subject to Harmless Error Review" ROSE V CLARK, 478 U.S. 510, 524 (1986).

HOW THE COURTS REVIEW CONCLUSIVE PRESUMPTIONS...

The review process is applied differently to "NON-REBUTTABLE PRESUMPTION", than standard that has been discussed regarding "REBUTTABLE PRESUMPTION".

The United States Supreme Court reasoned that, A CONCLUSIVE PRESUMPTION IS ALWAYS REVERSIBLE ERROR UNLESS IT COULD BE DETERMINED BEYOND A REASONABLE THAT THE ERROR COULD NOT HAVE CONTRIBUTED TO THE CONVICTION.

[630.13(4)(d)]... A verdict may not be subject to a review for an improper jury instruction when the error was harmless. Review by the harmless error standard extends to jury instructions that violate the constitution, as long as the error is found to be "Harmless Beyond A Reasonable Doubt."

In determining whether an error in a jury charge was harmless, courts have applied two tests. **MARDER V UNITED STATES**, 48 F. 3d 564, 573 (1st Cir. 1995) under the first test, The Court consider whether the jury must have made findings so nearly equivalent to the missing finding that the error is harmless...

And the second test concerns whether the evidence presented at trial established the missing element beyond a reasonable doubt. **LANNIELLO V UNITED STATES**, 10 F. 3d 59, 63 (2d Cir. 1993).

Under the first test the failure to give a proper instruction must result in a reversal unless it is clear that the jury's findings did resolve 'IN THE GOVERNMENT'S FAVOR THE ISSUE THAT INCORPERATED THE NEW ELEMENT.' **PECK V UNITED STATES** 73 F. 3d 1220, 1227 (2d Cir. 1995).

Under the second test, the court may affirm a conviction despite an erroneous instruction when it is convinced that a properly instructed jury would necessarily have found the Defendant guilty beyond a reasonable doubt. **LANNIELLO V UNITED STATES**, 10 F. 3d 59, 63-64 (2d Cir. 1993)

HOWEVER, The harmless error review that is applied to conclusive presumptions contained in jury instructions is different from the traditional harmless error review. As explained by JUSTICE SCALIA in a concurring opinion... "A conclusive presumption is improper for the same reason that a directed verdict is improper" -"The error in such a case is that the wrong entity judged the Defendant guilty." **CARELLA V CALIFORNIA**, 491 U.S. 263, 272, 109 S. Ct. 2419, 105 L. Ed. 2d 218 (1989).

"When a court delivers a conclusive presumption to the jury, the defendant is entitled to review under a narrower standard. The proper focus of the review would consider whether the underlying facts relied on in the instructions are so closely related to presumed fact, that no jury could find the predicate facts without also finding the ultimate fact. This alternative standard does not turn on consideration of the evidence of the defendant's guilt, which would not be relevant to the origins of the constitutional violation. **ROSE V CLARK**, 478 U.S. 570, 578, 106 S. Ct 3101 92 L. Ed. 2d 460 (1986)-"HARMLESS ERROR ANALYSIS NOT APPLICABLE WHEN INSTRUCTION DECIDES ISSUE."

TRADITIONAL HARMLESS ERROR ANALYSIS, which require the appellate court to examine the error in the context of the record as a whole, and to consider whether the error could have had an impact on the jury's verdict, does not rationally apply to this sort of error, which does not turn on the admissible evidence of a defendant's guilt. Rather, the harmless of a jury instruction that takes an issue from the jury should be reviewed under different guidelines, **AS EXPLAINED BY JUSTICE SCALIA**, "When the predicate facts relied upon in the instruction, or other facts necessarily found by the jury, are so closely related to the ultimate fact to be presumed that no rational jury could find those facts without also finding that ultimate fact, making those findings is functionally equivalent to finding the element required to be presumed, the error is harmless because it is harmless **"BEYOND A REASONABLE DOUBT."**

In **ROY V GOMEZ**, 55 F. 3d 1483, 1485-1486 (9th Cir. 1995), "The 9th Circuit look to what the jury actually decided, not what [we] [as] judges, believe the jury would have decided if they had been properly instructed."

**SYNOPSIS OF A DIRECTED VERDICT VIA
A CONCLUSIVE PRESUMPTION...**

In Michael Bell case the trial court failed to conclusively prove beyond a reasonable doubt that, Michael Bell was present with the killer of the decedent in the charged crime [Mr. Darnell 'Ricki' Pryor].

The trial court acquiesced to the proffer on Petition for Writ of Habeas Corpus, which conclusively proved beyond a doubt that Michael Bell was not present at the scene of the Homicide of Mr. Pryor at the crucial moment of the killer entering the location and performing the criminal elements of the crime...

The admitted killer Kendall Mosely swore that he was the sole principal in the killing of Mr. Pryor. As such, the State failed to conclusively prove that Michael Bell directly aided and abetted Kendall Mosely in murdering Mr. Pryor.

The trial court then attempted to prove Michael Bell's criminal culpability pursuant **CALCRIM §3.02** to inform the jury to find that Michael Bell's liability for Mr. Pryor's Murder was vicarious under the **NATURAL AND PROBABLE CONSEQUENCE RULE**. This rule required the jury to only find beyond a reasonable doubt that, Michael Bell aided and abetted Kendall Mosely in a criminal **ASSAULT** on Mr. Pryor; And that, said assault was the predicate criminal offense that Michael Bell probably or should have known would naturally result in Kendall Mosely killing Mr. Pryor.

The trial record adduced that Michael Bell would have had to be exonerated for any **ASSAULT** on Mr. Pryor, thereby showing that the State failed to conclusively prove beyond a reasonable doubt that Michael Bell was vicariously liable for Mr. Pryor's death.

Against the evidence of exoneration, the trial court maliciously instructed the jury with the CALCRIM §3.02 instruction, and, omitted the **STATUTORY DEFINITIVE** instruction for the criminal offense **ASSAULT**... Therefore the jury was never instructed with the substantive law for the criminal offense of **ASSAULT**.

In addition, the trial court failed to provide a proper unanimity instruction, when it was clear that the State's case relied upon allegations that Michael Bell committed a criminal offense upon a person other than the victim of the charged crime [Mr. Pryor]...

The trial court's failure to properly instruct forced the jury to presume that the acts Michael Bell allegedly committed against **MR. KERRY BELL** could supplant the burden of proving beyond a reasonable doubt that Michael Bell had committed an undefined criminal assault on Mr. Pryor.

Under the afore circumstances wherein the jury was improperly charged to determine Michael Bell's guilt upon an undefined crime, alleged against an unspecified victim, wherein the Court's improper instruction forced the jury to conclude on an un rebuttable presumption [alone] that, Michael Bell was guilty of **ASSAULT**, **"THE COURT DIRECTED A VERDICT OF GUILT FOR MURDER UNDER THE VICARIOUS LIABILITY THEORY OF AIDING AND ABETTING.**

The technical malice of this directed verdict is evidenced by the fact that the trial court had made an evidentiary finding that the jury could not be instructed to consider that Michael Bell could be [only] guilty for the lesser crime of [some?] **ASSAULT**, -on either Kerry Bell or the Decedent Mr. Pryor.

The court's charge on the theory of Assault **PROHIBITED** the jury from weighing the elements of the crime against the proper facts of the allegations to consider that Michael Bell was not guilty of **ASSAULT**, -or that Michael Bell was only guilty of an **ASSAULT** against Kerry Bell, that was sperate from any acts involving the Killer of Mr. Pryor, and away from the scene of Mr. Pryor's murder.

The malicious charge to the jury forced the jury with the un rebuttable presumption, that, Michael Bell Assaulted Mr. Pryor without performing the acts that would satisfy the elements for the criminal offense [**ASSAULT**], And was thereby, vicariously liable for the crime that Kendall Mosely committed without any ostensible support from Michael Bell. As such, the element of Michael's Bell intent to commit any crime was removed from the purview of the jury, and directed by the court...

The United States Supreme Court has firmly held that this is always a reversible error.

This is particularly true in the case of "Presumption of Natural and Probable Consequences [rule]"-The presumption that Mens Rea [intended mental state] may be derived from the Defendant's conduct. -Thereby the element of conduct Actus Reus cannot be presumed, this material element must be proved beyond a reasonable doubt.