

Standard of Proof Required in Criminal Trials

[← All Posts](#)

7 July 2025 | Criminal Law



Standard of Proof Required in Criminal Trials – Some Landmark Anglo-Saxon Case-Law

Dr Stefano Filletti B.A., LL.D., LL.M. (IMLI), M.Jur (Oxon)

"...the relevant question is whether, after viewing the evidence in the light most favourable to the prosecution, any rational tier of fact could have found the essential elements of the crime beyond a reasonable doubt ..."

Jackson v Virginia^[1].

Historical Antecedents

There are two recognised standards of proof namely: "beyond reasonable doubt" and "on the balance of probabilities". Putting it more simply, it is one thing having different

standards, but quite another trying to explain the difference between them.

By and large, a jury is under an obligation to acquit if unsatisfied with the evidence submitted. During the late 17th century England, in the course of directing juries there gradually developed the concept that a jury must decide on evidence adduced rather than on private knowledge. The jurors had to be satisfied in their conscience of the guilt or innocence of the accused. During the 18th century other new concepts were introduced, such as that the jury had to be certain 'beyond doubt'.

John Locke distinguishes three areas of knowledge: strict certainty, scientific certainty and political and moral certainty. With respect to the latter *Wilkins*[2] wrote that it is, *"that kind of Assent which doth arise from such plain and clear Evidence as doth not admit of any reasonable cause of doubting"*.

The first recorded reference to 'reasonable doubt' can be found in *Weldon's case* (1795), wherein Baron George held that *"you may not have a doubt which a reasonable man might have"*. Chamberlain held that *"you should not have any rational doubt"*.

Lambert v State (1949) held that the watering down of the standard from absolute reasonable doubt was a method of aiding the prosecution. It therefore became customary in the 19th century to direct the jury on the basis of the principle of 'beyond reasonable doubt'.

In the UK the standard of "beyond reasonable doubt" is applicable only to criminal cases. The accused is entitled to have a jury directed carefully by the judge as to the standard of proof required for a guilty verdict. However judges maintain that it is impossible to explain clearly the difference between the two standards.

In the American case of *Hopt v Utah* (1887) the approach of arriving at definitions was put in doubt in that *"the rule may be, and often is, rendered obscure by attempts at definition, which serve to create doubts instead of removing them"*. On the same wave-length *Barton J.*, quoted by *Fullager J* in *R v Thomas* (1960) we read that *"one embarks on a dangerous sea if he attempts to define with precision a term which is in ordinary use with reference to this subject matter, and which is usually stated to a jury without embellishment as a well understood expression"*

Defining "Reasonable Doubt"

In another notable American case of *Victor v Nebraska* (1994), it was held that *"jury comprehension is scarcely advanced when a court 'defines' reasonable doubt as 'doubt ... that is reasonable"*. Further per Blackmun and Souter, *"to be a meaningful safeguard, the reasonable-doubt standard must have a tangible meaning that is capable of being understood by those who are required to apply it. It must be stated accurately and with the precision owed to those whose liberty or life is at risk"*.

In *R v Kritz* (1950), Lord Goddard continued to elaborate these concepts by affirming that,

"it is right that they should be reminded in a criminal case that they must be fully satisfied of the guilt of the accused person and should not find a verdict against him unless they feel sure ... when once a judge begins to use the words 'reasonable doubt' and tries to explain

what is a reasonable doubt and what is not, he is much more likely to confuse them than if he tells them in plain language: it is the duty of the prosecution to satisfy you of the man's guilt".

In R v Summers, Lord Goddard held that,

"I have never yet heard a court give a satisfactory definition of a reasonable doubt, and it would be very much better if summings-up did not use the expression, for it seems to me that, whenever a court attempts to explain what is meant by a reasonable doubt, it gives a definition or tries to explain the term in a way which is often likely to cause more confusion than clarity".

According to R v Ching (1976) it was held that if a jury wants direction the judge must give it,

"Nevertheless, in most cases-but not in this one-judges would be well advised not to attempt any gloss upon what is meant by 'sure' or what is meant by 'reasonable doubt'. In the last two decades there have been numerous cases before this Court, some of which have been successful, some of which have come here because judges have thought it helpful to a jury to comment on what the standard of proof is. Experience in this Court has shown that such comments usually create difficulties. They are more likely to confuse than help ...As I said earlier, and I repeat, this is one of a large number of cases which have come before this Court in recent years, raising fine points about the terms in which judges have directed the jury as to the standard of proof. We point out and emphasise that if judges stopped trying to define that which is almost impossible to define there would be fewer appeals. We hope there will not be any more for some considerable time."

Impelled by the obvious desirability of defining reasonable doubt, it was determined how this should be formulated: positively, according to difference between the degree which the prosecution must achieve; and negatively as to what amount of doubt must the defendant achieve. It is wrong to import elements of the latter into the former. The position was rendered clearer in Commonwealth v Webster (1850), where it was held that

"it is that state of the case which, after, the entire comparison and consideration of the evidence leaves the minds of the jurors in that contradiction that they cannot say that they feel an abiding conviction of a moral certainty, of the truth of the charge ... the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgement, of those who are bound to act conscientiously upon it."

At the same time there seems to be no requirement for moral or scientific certainty as reflected in the American cases of Cage v Louisiana (1990) and Victor v Nebraska (1994). The latter judgment quashed a conviction on the basis that the jury had moral certainty of the guilt of the accused, a standard which is not sufficient to found a conviction, whilst the use of the standard of "sufficient and grave" is a higher requirement than that dictated by "reasonable doubt",

"it is plain to us that the words 'substantial' and 'grave' as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable-doubt standard. When those statements are then considered with the reference to "moral certainty" rather than "evidentiary certainty, it becomes clear that a reasonable juror could

have interpreted the instruction to allow a finding of guilt based on a degree of proof beyond that required by the Due Process Clause."

In Victor v Nebraska above-cited the formula adopted was restated in this way: *"if based on your considerations of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty."*

The formulation of the "beyond reasonable doubt" standard in England was again upset by Lord Goddard in Kritz (1950) who held that being reasonably satisfied is not enough. One had to be satisfied as to be sure: *"It would be a great misfortune, in criminal cases especially, if the accuracy or inaccuracy of a summing-up were to depend upon whether the Judge or the Chairman had used a particular formula of words. It is not the particular form of words that matters, it is the effect of the summing-up."*

He took it further in R v Summers where he removed and objected to the standard of "beyond reasonable doubt". *"I have never yet heard a court give a satisfactory definition of a reasonable doubt, and it would be very much better if summings-up did not use the expression, for it seems to me that, whenever a court attempts to explain what is meant by a reasonable doubt, it gives a definition or tries to explain the term in a way which is often likely to cause more confusion than clarity"*.

In R v Hepworth and Fearnley (1955), Lord Goddard questioned how there can be more than one standard and affirmed as follows,

"I thought that it was very unfortunate to talk to juries about 'reasonable doubt' because the explanation given as to what is and what is not a reasonable doubt are so very often extraordinary difficult to follow, and it is very difficult to tell a jury what is reasonable doubt. To tell a jury that it must not be a fanciful doubt is something that is without real guidance. To tell them that it is such a doubt as to cause them to hesitate in their own affairs never seems to me to convey any particular standard; one member of the jury might say he would hesitate over something and another member might say that that would not cause him to hesitate at all ... then, it is said that the jury in a civil case has to be satisfied and, therefore, one is only laying down the same standard of proof as in a civil case. I confess that I have had some difficulty in understanding how there is or there can be two standards."

Two opposing standpoints

It thus appears that in directing juries, two opposing standpoints emerged. One view imposed a standard of 'being reasonably sure' meaning certainty 'beyond reasonable doubt'. The other was to refrain from using a particular set of words or phrases whilst directing the jury but creating the same general effect.

In the West Indies it was held that the standard had to be objectively satisfied. This however was objected to in Walters v R (1969),

"in the context of 'doubt', which cannot be other than personal to the doubter, it is meaningless to talk of doubt as 'objective' and otiose to describe it as 'subjective' ... it is best left to his discretion to choose the most appropriate set of words in which to make that jury understand that they must not return a verdict against the defendant unless they are sure of his guilt ... their Lordships would deprecate any attempt to lay down some precise formula or to draw fine distinctions between one set of words and another. It is the effect of the summing-up as a whole that matters."

In R v Law (1961), the line of reasoning was in the sense that one has to be 'pretty sure' or 'certain' and also reasonably satisfied to return a guilty verdict. In R v Woods (1961), 'pretty sure' was upheld only if it meant beyond reasonable doubt. In R v Head and Warrenner (1961) the judge in first instance directed the jury in the lines that they must apply their common sense. The Court of Appeal disagreed, stating,

"it is a misdirection on a fundamental matter in any criminal trial, namely the burden of proof. It is not right to tell a jury that they must be reasonably sure. What precisely that means is not for this court to say, but it imports a standard of certainty below that which is conveyed by the now established direction that they must be satisfied so that they feel sure."

In R v Gray (1973), the trial judge told jury that a reasonable doubt is one based on good reason and not a fanciful one. This was however condemned by the Court of Appeal which maintained that *"the complaint which is made is that having told the jury that it was for the prosecution to prove the offence beyond reasonable doubt, he went on to define what was meant by 'reasonable doubt', not merely by the formula 'a doubt based upon good reason and not a fanciful doubt,' but by a further exposition in the sentence "it is the sort of doubt which might affect you in the conduct of your everyday affairs".*

Conclusion

In conclusion it may be safely stated that distinguishing the standard of proof 'on a balance of probabilities' from 'beyond reasonable doubt' is an arduous task. Still far more problematic is defining the concept of 'beyond reasonable doubt'. Indeed as was rightly affirmed in Ferguson v R (1979),

"the time-honoured formula is that the jury must be satisfied beyond reasonable doubt ... attempts to substitute other expressions have never prospered. It is generally sufficient and safe to direct a jury that they must be satisfied beyond reasonable doubt so that they feel sure of the defendant's guilt. Nevertheless other expressions will suffice, so long as the message is clear."

[1] 443 U.S. 307 (1979);

[2] *"Of the Principles and Duties of Natural Religion"* (1699);

