

## **CONNECTICUT POST**

**Sean McElligott**

# **Juries and recent high-profile cases**

There has been a lot of hand-wringing recently over acquittals of high-profile criminal defendants such as [George Zimmerman](#) and [Casey Anthony](#). While not nearly reaching the fever-pitch of the post-O.J. Simpson aftermath, people are asking why juries would acquit such defendants who are obviously guilty (in their view). There is one possible answer: these juries took seriously the criminal evidentiary standard of "beyond a reasonable doubt."

Civil attorneys are constantly reminding jurors of the difference between the civil and criminal burdens of proof. A civil plaintiff need only prove his or her case by a "preponderance of the evidence." This means that if a fact is more likely true than not true, it is proven for purposes of a civil trial. Civil judges instruct jurors to picture the scales of justice. When all of the evidence for and against a fact is put on either side of the scale, whichever way the scale tips, even if only slightly, determines what has been proven. In short, if something is probably true, it is proven for purposes of a civil trial.

The criminal standard of proof is different, or at least it is supposed to be. In a criminal trial, the prosecution needs to prove each element of the offense "beyond a reasonable doubt." Under this standard, "probably" or "more likely than not" is simply not enough. The prosecution needs to tip the scales of justice further to the point where there is no reasonable doubt that the contested fact is true.

Think of the difficult position inhabited by the criminal juror who takes the "beyond a reasonable doubt" burden of proof seriously. The juror has heard all the evidence. He thinks the defendant probably did it. In the case of the serious criminal case, this may mean that the juror thinks the defendant is probably a murderer. But the law, and our system of justice, requires that the defendant be acquitted if there remains any reasonable doubt. This means that the criminal juror is required to acquit a person that he thinks is probably a murderer. Given how hard this would be, it is no wonder that acquittals are actually very rare.

Despite the difficulties in application, the "beyond a reasonable doubt" standard is an important constitutional protection against wrongful conviction. It is frequently all that is standing between a wrongfully accused criminal defendant and a devastating period of time behind bars. Three wrongfully convicted men have been cleared through DNA testing in Connecticut since 2006: [James Tillman](#), [Kenneth Ireland](#) and [Miguel Roman](#). Each spent 20 years in prison for crimes

they did not commit after being convicted by Connecticut juries. Did these juries take the beyond a reasonable doubt standard seriously?

High-profile acquittals should be an opportunity for us as a society to reflect on the importance of careful application of the criminal burden of proof. None of us sat in court every day alongside the high-profile juries and no casual observer would be able to put all the evidence on the scale and see which way it tipped. I, for one, have confidence that these juries did their jobs competently, as most men and women on juries do. They may even have had the courage to do what few people could do: acquit a defendant they thought was probably guilty, because the government did not prove its case beyond a reasonable doubt.

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