

CHAPTER 611

RIGHTS OF ACCUSED

611.01 TO KNOW GROUND OF ARREST.

HISTORY. G.S. 1866 c. 92 s. 1; G.S. 1878 c. 92 s. 1; G.S. 1894 s. 6272; R.L. 1905 s. 4783; G.S. 1913 s. 8507; G.S. 1923 s. 9951; M.S. 1927 s. 9951.

Right of arrest with or without warrant; defined; what force may be used; what right to break and enter building. OAG March 19, 1934.

Tests for determining criminal responsibility. 17 MLR 630.

Full faith and credit; conflict of laws. 20 MLR 187.

611.02 PRESUMPTION OF INNOCENCE; CONVICTION OF LOWEST DEGREE, WHEN.

HISTORY. R.S. 1851 c. 132 ss. 235, 236; P.S. 1858 c. 118 ss. 1, 2; G.S. 1866 c. 92 ss. 2, 3; G.S. 1878 c. 92 ss. 2, 3; G.S. 1894 ss. 6273, 6274; R.L. 1905 s. 4784; G.S. 1913 s. 8508; G.S. 1923 s. 9952; M.S. 1927 s. 9952.

1. Burden of proof on state
2. Reasonable doubt
3. Doubt as to degree of crime
4. To what applicable
5. Requests

1. Burden of proof on state

The state has the burden of proving beyond a reasonable doubt every essential element of the offense charged. *State v Dineen*, 10 M 407 (325); *State v Lautenschlager*, 22 M 514; *State v Bragg*, 90 M 7, 95 NW 578.

The doubt entitling to acquittal must result from a consideration of all the evidence; each evidentiary fact need not be proved beyond a reasonable doubt. *State v Smith*, 29 M 193, 12 NW 524; *State v Johnson*, 37 M 493, 35 NW 373; *State v Ames*, 90 M 183, 96 NW 330.

There is no burden on defendant to explain his possession of stolen property. Defendant was wrongfully convicted of grand larceny mainly on evidence of his recent possession of the stolen property. *State v Hutchinson*, 121 M 405, 141 NW 483.

In testing validity of statutes creating prima facie proof for use in criminal cases, the court must keep in mind, not only constitutional guarantees of due process, trial by jury, and protection against being compelled to testify, but also such fundamental rights as presumption of innocence and proof beyond a reasonable doubt, which, though not expressly enumerated in the constitution, are as much a part thereof as though expressly set out. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

2. Reasonable doubt

Various attempts to define reasonable doubt. *State v Dineen*, 10 M 407 (325); *State v Hogard*, 12 M 293 (191); *State v Staley*, 14 M 105 (75); *State v Shettleworth*, 18 M 208 (191); *State v Johnson*, 37 M 493, 35 NW 373; *State v Sauer*, 38 M 439, 38 NW 355; *State v Rue*, 72 M 296, 75 NW 235; *State v Ames*, 90 M 183, 96 NW 330; *State v Newman*, 93 M 393, 101 NW 499.

It is not desirable for the court to attempt an explanation of the term "reasonable doubt" unless requested by the jury. It is impossible to make the mean-

ing of the expression more clear by any circumlocution. *State v Staley*, 14 M 105 (75); *State v Sauer*, 38 M 438, 38 NW 355.

The court is not required to explain to the jury the reason of the rule. *State v Johnson*, 37 M 493, 35 NW 373.

The following definition, if any, should be given: "Proof beyond a reasonable doubt is such as would impress the judgment of ordinarily prudent men with a conviction upon which they would act without hesitation in their own most important affairs and concerns of life." *State v Pearce*, 56 M 226, 239, 55 NW 652, 57 NW 1065.

"A doubt for which a reasonable, sensible person could give a good reason, which reason must be based upon the evidence or want of evidence; such doubt as a sensible person would act upon or decline to act upon in his own affairs", is prejudicial, and in the instant case, ground for new trial. *State v Whitman*, 168 M 305, 210 NW 12.

Rule of reasonable doubt. 7 MLR 6.

3. Doubt as to degree of crime

If the jury has a reasonable doubt whether the accused is guilty of a higher or lower degree of crime they must find him guilty of the latter. *State v Laliyer*, 4 M 368 (277).

4. To what applicable

The rule requiring proof beyond a reasonable doubt is applicable to all grades of crime. *State v Dineen*, 10 M 407 (325).

It is not applicable to civil actions, although the issues involve a charge of crime. *Burr v Willson*, 22 M 206; *Thoreson v Northwestern Co.* 29 M 107, 12 NW 154; *State v Nichols*, 29 M 357, 13 NW 153.

It is not applicable to cases involving the parentage of an illegitimate child. *State v Nichols*, 29 M 357, 13 NW 153.

The rule applies to cases of criminal contempt. *State ex rel v District Court*, 65 M 146, 67 NW 796.

The rule that where proof of crime rests entirely upon circumstantial evidence, circumstances proved must be of such conclusive nature as to exclude to a moral certainty every rational hypothesis except that of guilt, does not require that every circumstance as to which there may be some evidence must be of such conclusive nature, but only such circumstances as the jury find proved. *State v Mueller*, 218 M 450, 16 NW(2d) 777; *State v Gorman*, 219 M 162, 17 NW(2nd) 42.

5. Requests

Defendant not having asked for an instruction upon the presumption of innocence cannot now complain that none was given. *State v Sailor*, 130 M 84, 153 NW 271.

The conviction was warranted and the evidence was sufficient to convince the jury beyond a reasonable doubt. *State v Wallen*, 123 M 128, 143 NW 119.

Evidence not sufficient to prove the defendant guilty beyond a reasonable doubt. *State v Jacobson*, 130 M 347, 153 NW 845.

Relator's hands are not shown to be unclean simply because defendants and the grand jury accuse him of crime. He is presumed to be innocent until found guilty, is entitled to a trial, and to the evidence in defendants' possession necessary to make his defense. *State ex rel v Displayograph*, 135 M 479, 160 NW 486.

611.03 CONVICTION; WHEN HAD.

HISTORY. R.S. 1851 c. 99 s. 3; P.S. 1853 c. 88 s. 3; G.S. 1866 c. 92 s. 4; G.S. 1878 c. 92 s. 4; G.S. 1894 s. 6275; R.L. 1905 s. 4785; G.S. 1913 s. 8509; G.S. 1923 s. 9953; M.S. 1927 s. 9953.

A court may not direct a verdict of guilty in a criminal trial. A verdict of not guilty may be instructed. By defendant's own admission in open court he was, as

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a matter of law, guilty beyond a reasonable doubt of robbery in the first degree, but the jury could find him guilty of a lesser degree, or even not guilty. There was no error in the judge's charge. *State v Corey*, 182 M 52, 233 NW 590.

611.04 DISMISSAL.

HISTORY. R.S. 1851 c. 132 ss. 266 to 268; P.S. 1858 c. 118 ss. 32 to 34; G.S. 1866 c. 92 ss. 7 to 9; G.S. 1878 c. 92 ss. 7 to 9; G.S. 1894 ss. 6278 to 6280; R.L. 1905 s. 4786; G.S. 1913 s. 8510; G.S. 1923 s. 9954; M.S. 1927 s. 9954.

When one accused of felony has been held by the examining magistrate to answer in the district court, a prosecution for felony is pending in said court within the meaning of Laws 1868, Chapter 71. *State ex rel v Grace*, 18 M 398 (359).

Where the state neglected for seven months during three terms of court to arraign or call for the defendant's appearance or forfeit his bail, the court properly dismissed the indictment, where the only excuse furnished by the state was that its officers heard and believed defendant to be out of the state. *State v Radoicich*, 66 M 294, 69 NW 25.

Relator was in attendance upon the district court under commitment by an examining magistrate awaiting action by the grand jury, and before the grand jury had acted a second warrant was issued, charging him with the same offense. Under habeas corpus the defendant was properly discharged from the second warrant. *State ex rel v Riley*, 109 M 437, 124 NW 13.

Notwithstanding the elapsed time the state made a showing of reasonable cause for not bringing the case to trial, and defendant was not discharged. *State v Flohic*, 127 M 505, 150 NW 171; *State v Lightheart*, 153 M 40, 189 NW 408.

Oral agreement between county attorney and the attorney for the accused that defendant need not appear for trial until after his discharge from the army, does not release the surety on his bond. *State v Cooper*, 147 M 272, 180 NW 99.

Defendant's silence, in the face of numerous continuances and long delay, waives the right to a speedy trial. The fact that a defendant is in prison for one crime is not cause for the state to delay his trial for another crime. *State v McTague*, 173 M 153, 216 NW 787.

611.05 CONTINUANCE; EFFECT; BAIL.

HISTORY. R.S. 1851 c. 132 ss. 268, 269; P.S. 1858 c. 118 ss. 34, 35; G.S. 1866 c. 92 ss. 9, 10; G.S. 1878 c. 92 ss. 9, 10; G.S. 1894 ss. 6280, 6281; R.L. 1905 s. 4787; G.S. 1913 s. 8511; G.S. 1923 s. 9955; M.S. 1927 s. 9955.

SEE: *State ex rel v Riley*, 109 M 437, 124 NW 13; *State v Cooper*, 147 M 272, 180 NW 99.

Right to a "speedy trial"; dismissal as a bar to further prosecution. 7 MLR 575.

611.06 DEFENDANT ENTITLED TO BLANK SUBPOENAS.

HISTORY. R.S. 1851 c. 132 s. 268; P.S. 1858 c. 118 s. 31; G.S. 1866 c. 92 s. 11; G.S. 1878 c. 92 s. 11; G.S. 1894 s. 6282; R.L. 1905 s. 4788; G.S. 1913 s. 8512; G.S. 1923 s. 9956; M.S. 1927 s. 9956.

611.07 COUNSEL FOR DEFENSE.

HISTORY. 1869 c. 72 s. 1; 1876 c. 56 s. 1; G.S. 1878 c. 92 s. 12; G.S. 1894 s. 6283; R.L. 1905 s. 4789; G.S. 1913 s. 8513; 1917 c. 496 s. 1; G.S. 1923 s. 9957; M.S. 1927 s. 9957.

Where a judge of the district court, upon due hearing, determines that a county attorney is disqualified from prosecuting a person accused of crime, and directs another attorney to conduct the prosecution in place of the regular official, the appointee is entitled to reasonable compensation from the county. *Matthews v Board*, 90 M 348, 97 NW 101.

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The compensation ordered in favor of an attorney defending an indigent accused of crime, is not exempt from garnishment as being fees of a state or public officer. *Curtis v Hutchinson*, 126 M 264, 148 NW 66.

Omission to inform defendant of his right to counsel does not go to the jurisdiction of the court. At most it may be an irregularity which might result in a vacation of the judgment and a right to change his plea from guilty to not guilty. In the instant case while defendant was not formally advised of his rights, the information was given him substantially, and he cannot now change his plea. *State v McDonnell*, 165 M 426, 206 NW 952.

The supreme court, in its discretion, may request a member of the bar to appear for a relator in a habeas corpus proceeding. *State ex rel v Uetcht*, 218 M 555, 16 NW(2d) 750.

Decisions of the federal court do not lay down a rule that in every case, one charged with crime, who is unable to obtain counsel, must be furnished counsel by the state. *Betts v Brady*, 316 US 470.

Public defender. 1 MLR 539.

Social aspects of Minneapolis courts. 6 MLR 261.

Right to counsel in criminal prosecutions. 17 MLR 415.

611.08 DEPOSITIONS FOR ACCUSED.

HISTORY. 1876 c. 57 s. 1; G.S. 1878 c. 92 s. 13; G.S. 1894 s. 6284; R.L. 1905 s. 4790; G.S. 1913 s. 8514; G.S. 1923 s. 9964; M.S. 1927 s. 9964.

Informations or indictments in felony cases. 8 MLR 385.

611.09 ACQUITTAL ON PART OF CHARGE.

HISTORY. R.S. 1851 c. 128 s. 209; P.S. 1858 c. 114 s. 43; G.S. 1866 c. 91 s. 11; G.S. 1878 c. 91 s. 11; G.S. 1894 s. 6269; R.L. 1905 s. 4791; G.S. 1913 s. 8515; G.S. 1923 s. 9965; M.S. 1927 s. 9965.

611.10 ACQUITTAL; WHEN A BAR.

HISTORY. Penal Code s. 33; G.S. 1894 s. 6317; R.L. 1905 s. 4792; G.S. 1913 s. 8516; G.S. 1923 s. 9966; M.S. 1927 s. 9966.

One acquitted of rape under an indictment where no age of the female is alleged may again be tried for the same act under an indictment charging carnal knowledge and abuse of a female child under age of consent. *State v Winger*, 204 M 164, 282 NW 819.

Double jeopardy; crimes consisting of several degrees. 24 MLR 543.

611.11 NO PRESUMPTION FROM FAILURE TO TESTIFY.

HISTORY. R.S. 1851 c. 95 s. 51; 1852 Amend. p. 20; P.S. 1858 c. 84 s. 51; G.S. 1866 c. 73 s. 7; 1868 c. 70 s. 1; G.S. 1878 c. 73 s. 7; G.S. 1894 s. 5658; R.L. 1905 s. 4661; G.S. 1913 s. 8376; G.S. 1923 s. 9815; M.S. 1927 s. 9815.

Though defendant elects not to take witness stand, statement by trial court, after summary of the evidence, that certain assertions of witnesses for the state were "not denied" did not violate section 611.11. *State v Yurkiewicz*, 212 M 208, 3 NW(2d) 775.

611.12 PUBLIC DEFENDER, HENNEPIN COUNTY.

HISTORY. G.S. 1869 c. 72 s. 1; 1876 c. 56 s. 1; G.S. 1878 c. 92 s. 12; G.S. 1894 s. 6283; R.L. 1905 s. 4789; G.S. 1913 s. 8513; 1917 c. 496, ss. 1 to 7; G.S. 1923 ss. 9957 to 9963; M.S. 1927 ss. 9957 to 9963.

611.13 PUBLIC DEFENDER, RAMSEY COUNTY.

HISTORY. 1925 c. 29 ss. 1 to 6; M.S. 1927 ss. 9963-1 to 9963-6.
Classification of counties for legislative purposes. 11 MLR 208.