Journal of Criminal Law and Criminology

Volume 44 | Issue 3 Article 6

1953

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In a former issue (September-October 1952, Vol. 43, No. 3) reference was made to the proceedings in People v. Wolfe, 1950, 102 N. Y. S. 2nd, 12. The article ended with the action by the County Court in 1950 which vacated a judgment convicting Wolfe of Murder in the First Degree and sentencing him to death. Following that proceeding, however, the case had a further history of such interest and legal importance that it is deemed useful to set forth its course from the time of indictment to its conclusion.

On the night of December 30, 1943, Wolfe and his wife, Paula, were registered at the St. George Hotel in Brooklyn. Outraged by his belief in her marital infidelity, he beat her about the head with a shoe containing a heavy shoe tree until she died. Then, calmly and in apparent full possession of his mental faculties, he notified the police of his act and made full confession to the district attorney. When arraigned upon an indictment for murder in the first degree, he pleaded not guilty, without however specification of insanity. No application preliminary to trial was made in his behalf for commitment for observation pursuant to Section 658 *et seq.* of the Code of Criminal Procedure. Nevertheless, on his trial, which lasted two weeks, insanity at the time of the commission of the crime was the sole issue litigated. Psychiatric testimony pro and con was heard by the jury, which rejected the defense of insanity and found a verdit of murder in the first degree.

Wolfe's insanity was claimed to lie in the fact that he believed himself to be the Messiah and in the further delusion that he was commanded by God to kill his wife in order to "destroy the devil in her before she destroys the little of good that is left in you."

Very shortly after the return of the verdict, application was made on Wolfe's behalf for his commitment for observation as to his *then* mental condition, it being claimed that he was not able to comprehend the proceedings involved upon sentence or to confer with counsel with respect thereto. He was then committed and examined by the Division of Psychiatry. A report was rendered that Wolfe was presently insane and suffering from schizophrenia—dementia praecox of the paranoid type. No finding was made or could have been made in these proceed-

ings concerning the defendant's mental state either at the time of the commission of the crime or during the trial. The report recommended his commitment to Matteawan State Hospital and, following a hearing, an order was made committing him.

During the next six years, Wolfe remained an inmate of Matteawan. In February 1950, the Superintendent of that Institution certified his recovery to the point where he might now be sentenced. Wolfe was, therefore, brought before the Kings County Court for that purpose and personally heard by the court. His demeanor and utterances were such that the district attorney concluded that the authorities of Matteawan had been mistaken in their diagnosis of his present sanity. A further hearing was thereupon had at which the Matteawan authorities withdrew their certification of his present sanity and testified to the continuance of his former *legal* disability and consequent inability to understand the proceedings involved in a sentence. Nevertheless the county judge found as a fact that Wolfe was legally competent and sane, and sentenced him to death in the electric chair.

This occurred on March 20, 1950. On the very next day, however, the district attorney was served with an order to show cause why the judgment, and the verdict of the jury upon which it was rendered, should not be set aside. The motion was based on Code of Criminal Procedure, Section 465 (7) (newly discovered evidence), and upon the claim that such evidence would demonstrate that at the time Wolfe was tried in October 1944, he was then in such a state of idiocy, imbecility or insanity as not to comprehend the nature of the proceedings, confer with counsel and make a defense (Penal Law, Section 1120). That motion was opposed by the district attorney upon the ground that although the People conceded Wolfe's mental aberration to the point of *medical* insanity, there was insufficient proof of his legal disability within the contemplation of Penal Law, Section 1120, and the governing cases. The same county judge who had sentenced Wolfe to death (despite the obvious reluctance of the district attorney to insist upon such sentence because of Wolfe's *medical* insanity), nevertheless vacated the judgment and set aside the verdict of the jury which had found Wolfe *legally* sane.

The district attorney appealed from the order vacating the judgment and verdict. The Appellate Division (278 App. Div. 967) reversed the order and reinstated the judgment, writing in part:

> The order sets aside a verdict six years after its rendition. Unless and until the reversal of the judgment, the finding of the jury, on a disputed issue of fact, is conclusive that he was sane when he killed his wife on December 30, 1943. The court

observed nothing in his demeanor throughout the trial during which he testified at length, to suggest that he was incapable of understanding the proceedings or making his defense. Nor was there any claim, prior to the trial, at the trial or even now, that the attorneys for defendant were unable to confer with him. A psychiatrist called as a witness of the court, who observed defendant throughout the trial, was of opinion that he was sane. A psychiatrist engaged by defendant and who testified on his behalf at the trial was of opinion that he was sane at or shortly prior to the time of trial. It was subsequent to the trial that the witnesses upon whom the court primarily relies saw the defendant for the first time. His mental condition at that time may be attributable, at least in part, to the impact of the adverse verdict. These witnesses did not attempt to testify as to the sanity of defendant at the time of trial. The proof fails to show that defendant was insane at the time of trial within the contemplation of section 1120 of the Penal Law and section 658 of the Code of Criminal Procedure. The basic error of the County Court, apart from its evaluation of the proferred evidentiary facts, is that it has allocated bodies of evidence to the time of the trial, although they were given in respect of later or subsequent dates after the adverse verdict.

There then followed the appeal from the judgment to the Court of Appeals. The issue was, of course, the sufficiency of the evidence at the trial as to Wolfe's *legal* sanity as against his *medical* insanity. The position of the district attorney may be summarized by the following quotation from his brief in the Court of Appeals:

> We have personal as well as official interest in the statement (Brief of Appellant's Counsel, p. 3), that "near the close of the hearing, the District Attorney withdraw his motion to confirm the said report." Implicit in this statement is the argument that the District Attorney did so because of a personal doubt as to appellant's mental normalcy. We state without equivocation that such doubt then existed in our minds, as, indeed, it exists at the present time. We thought then, as we think now, that a man who believes himself to be the Messiah is not completely mentally normal, according to the norms of conduct applicable to most people. It is, however, a far cry from such aberrations to the conditions specified by Section 1120 of the Penal Law as the *sole* bar to the trial of a defendant: to wit, that he be in "a state of idiocy, imbecility, lunacy, or insanity so as to be incapable of understanding the proceedings and of making his defense". Our attempt to withdraw the motion for confirmation of the original Matteawan report reflected our belief in the superior accuracy of the testimony given by Doctors A, B and C as against the evidence of Doctors D and E. It reflected also our reluctance, both personal and official, to insist upon the death penalty where such conflict of medical opinion existed. And, finally, it reflected our conviction that with such a conflict present, the interests of the State, of which this appellant is a member, would be best subserved by resolving this doubt in favor of his continued treatment at Matteawan and against his sentence and execution. Appellant's death would be too simple a solution for these complex problems fully to subserve the interests of justice.
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The question may be asked: If the district attorney and his assistant were personally and officially reluctant to have appellant sentenced to death in February of 1950, why were they insistent in that same year that the judgment remain in full force and effect—insistent to the point of an appeal? In answer we quote from our brief, submitted to this Court on the appeal by appellant from the order

of the Appellate Division (upon which appeal this Court, without opinion, affirmed (303 N.Y. 752):

"At that time, the point of inquiry was appellant's mental capacity to be sentenced to death. Strictly, of course, that question involved a determination of his *legal* sanity. Nevertheless, it would be closing one's eyes to reality to forget that the People would not, under such circumstances and for that purpose, urge with the same strictness the distinction between *legal* and *mental* insanity as it was their right, and indeed their duty, to do on the motion to set aside the verdict and judgment, once these were a *fait accompli*. The law seeks, not vengeance, but justice. In 1944, justice was completely served by appellant's commitment. In 1950, after the making of the judgment, justice could have been served only by safeguarding the judgment and by reliance for all proceedings subsequent thereto either upon the Court of Appeals or upon those provisions of the law dealing with the non-criminal treatment of insane persons after judgment."

We rest confident in the moral propriety of our decision and feel now, as we did when the question arose before the trial court, that nothing in our official duty foreclosed us from the application of these principles.

The Court of Appeals affirmed the judgment of conviction (303 N.Y. 832). Thereafter the district attorney recommended to the Governor that the judgment of death be commuted to life imprisonment. The recommendation rested upon the district attorney's belief that although Wolfe's *legal* sanity had been amply demonstrated, both with respect to his fitness to be put to trial and his responsibility for the commission of the crime itself, nevertheless, his complete *medical* sanity was at least open to the possibility that he suffered from an active religious mania, expressed in the belief that he is the Messiah. This possibility, the district attorney felt, was sufficient to justify a recommendation of clemency and commutation to life imprisonment.

The district attorney's recommendation was followed by the Governor and Wolfe's sentence was commuted.

It is believed that this extraordinary case furnishes a rich mine of information for any study in the field of possible amendment of New York Penal Law, Section 1120, in order to bring our present law of insanity in criminal justice, usually denominated the rule in McNaughten's Case (100 Clark, & P., 200), into closer consonance with present day psychiatric knowledge.