Buffalo Law Review

Volume 13 | Number 1 Article 28

10-1-1963

Criminal Law and Procedure—Legal Insanity Not Established By Showing Defendant Operates Under Own Standard Of Morality

Thomas C. Mack

release because he may have feared that his wife would be charged with the revolver violation again, if he didn't give the testimony after he gave the false information. In regard to the difference between a promise for testimony and a promise for information, the Appellate Division majority in the instant case said that they were the same in substance.[20] It seems impractical that the prosecutor would not use the informant after information is given. In fact, the prosecutor received testimony from Gramando at the trial. It seems that the jury should know about the promise for information so that it can consider whether the witness was deceptive when he gave the information and continued telling falsehoods at the trial. Jurors rather than appellate courts should evaluate the witness' credibility.[21] The physical benefit of the promise to the witness may run to the witness' wife, but this does not mean that the husband will not fabricate for his wife. In this case the witness wanted his wife free for his baby's sake. He said "my baby means more to me than anybody."[22] Even though these considerations exist, it is apparent that the jurors were sufficiently informed of the facts surrounding the promise for the information. But, a case with a weaker indication of the witness' interest in testifying should warrant a new trial.

Anthony S. Kowalski

LEGAL INSANITY NOT ESTABLISHED BY SHOWING DEFENDANT OPERATES UNDER OWN STANDARD OF MORALITY

Defendant was convicted of murder in the first degree and sentenced to death. On appeal to the Court of Appeals, the defense urged that defendant was insane in that he believed his acts to be pursuant to the command of God. Defendant's statement to an Assistant District Attorney revealed that while panhandling on Broadway, he obtained an invitation from one Rescigno to spend the night at the latter's apartment; that defendant intended to rob Rescigno; that following extensive drinking at the apartment, defendant learned that Rescigno was degenerate; that defendant thereafter killed both Rescigno and one Sess, Rescigno's roommate, who was asleep in another room; that defendant hated degenerates and believed himself to be commissioned by God to kill them; that he was able to deceive psychiatrists into believing that he was insane, and that he had perpetrated such deception while in prison for a prior conviction in order that he could thereby obtain privileges not allowed in prison. At trial, expert testimony on the issue of legal insanity clashed, although it appeared that defendant was not able to control his impulses, had a pathological personality, and had an undeveloped moral judgment. *Held*, conviction affirmed, three judges dissenting. Legal insanity is not established where one operates under a standard

20. People v. Romeo, 16 A.D. 2d 240, 242, 226 N.Y.S.2d 957, 959 (1st Dep't 1962).
21. People v. Mleczko, 298 N.Y. 153, 163, 81 N.E.2d 65, 70 (1948).
22. People v. Romeo, 16 A.D.2d 240, 241, 226 N.Y.S.2d, 957, 958 (1st Dep't 1962).

of right and wrong set by himself, and is unable to control his impulses, where he does have the intellectual capacity to know an act is wrong according to the commonly accepted standards of morality and contrary to the laws of God and man. *People v. Wood*, 12 N.Y.2d 69, 187 N.E.2d 116, 236 N.Y.S.2d 44 (1962).

In 1843, the historic M'Naghten Rule[1] was formulated and to the present day has governed almost exclusively the determination of criminal responsibility in Anglo-American jurisprudence. The M'Naghten Rule is generally accepted in most United States jurisdictions, but noteworthy attempts have been made for change and modernization. In 1870, New Hampshire adopted the rule of non-criminal responsibility where the unlawful act is the product of mental disease or defect.[2] In New Hampshire no set, defined rule exists to determine the issue of insanity; the question is one of fact to be determined by the circumstances of the particular case. The New Hampshire rule in essence was in 1954 made the law of the District of Columbia in the now famous *Durham* case.[3] The court in *Durham* referred to the Gowers Report[4] where, in the M'Naghten jurisdiction, the disparity between the M'Naghten concept of insanity and that of modern medical science had been deplored.[5] In that report, the embodiment of the modern theory of insanity as affecting as a whole the action of an integral mind composed of intellect, emotions and will into the legal concept of insanity was urged. The New Mexico court, refusing to abolish the M'Naghten Rule, expanded it by adding thereto the additional test of the deprivation or loss of the power of will as constituting non-criminal responsibility.[6] In all instances of reform of the M'Naghten Rule, the stress is upon the failure of the M'Naghten test to account for the elements of will and emotions in the human psyche.

The one hundred twenty year old M'Naghten language has been consistently and rigidly followed in New York in spite of the psychological and psychopathological advances since 1843. One obvious explanation is the judicially declared separation of the concept of legal insanity from that of the concept of medical insanity,[7] which naturally tends to the strait-jacketing of the expert medical witness, creates a double terminology confusing to both lawyer and psychiatrist, and renders the legal concept static, depriving it of the nurture of the advances and insights of modern medical science. Other explanations can be found in limiting precedents ruling out as bases for relief from criminal responsibility low mentality or epilepsy,[8] weak or disordered mind,[9] irresistible im-

1. Daniel M'Naghten's Case, 10 C. & F. 200, 8 Eng. Rep. 718 (H.L. 1843).
2. State v. Pike, 49 N.H. 399 (1870).
3. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).
4. Gowers, Report of the Royal Commission on Capital Punishment 1949-1953 (1954).
5. Gowers, *op. cit. supra* note 4, at 73-129, as discussed in Durham v. United States, 214 F.2d 862, 870-71 nn.26 & 28 (D.C. Cir. 1954).
6. State v. White, 58 N.M. 324, 270 P.2d 727 (1954).
7. People v. Nyhan, 37 N.Y. Crim. Rep. 74, 171 N.Y. Supp. 466 (Sup. Ct. 1918).
8. People v. Moran, 249 N.Y. 179, 163 N.E. 553 (1928).
9. People v. Farmer, 194 N.Y. 251, 87 N.E. 457 (1909).

pulse,[10] morbid propensity,[11] alcoholic mania,[12] psychopathic personality,[13] and low moral perceptions.[14]

In the instant case, evidence was uncontroverted that defendant had brutally beaten and killed the two old men. Paroled one month before from a sentence for murder in the second degree, a history of three other killings and an attempted suicide followed by a period of confinement at Dannemora State Hospital was presented. Four psychiatrists were called by the defense and two by the People. One prosecution psychiatrist testified that while no signs of a psychotic condition were noted by him in his examination of defendant, "inability to control his impulses" was noted and described as a "pathological sign but not legal insanity." The majority opinion, seemingly relying heavily upon the testimony of the People's psychiatrists, refused to upset the verdict, holding that the evidence showed that defendant knew "not only the nature and quality of his acts, but also that they were wrong," even though the evidence was clear that "Wood was not well balanced mentally," and thus that legal insanity was not established according to the standard of the Penal Law.[15] Judge Fuld, while agreeing with the majority that the People proved its case on the insanity question "under the law of this State as it now stands," expressed disfavor with the present "right-wrong" test as being unreal if not invalid, and dissented on other grounds.[16] In a separate dissenting opinion, Chief Judge Desmond and Judge Van Voorhis reached the opposite conclusion that by the clear weight of the evidence defendant was legally insane according to section 1120 of the Penal Law.[17] The instant case pointedly poses the question of the desirability and the justice of retaining the test of section 1120 of the Penal Law as it now stands. The dicta in the dissent registered by Judge Fuld in the instant case questions the validity of its application; the dissent of Chief Judge Desmond and Judge Van Voorhis raises serious questions as to its workability and precision as a test of criminal responsibility.

The basic need is to formulate and have an accurate legal standard to measure criminal responsibility. In all jurisdictions questioning the adequacy of M'Naghten, the major inadequacy is seen as the limitation of the test to the functioning of the intellect alone, in view of an enlightened medical science

10. Flanagan v. People, 52 N.Y. 467 (1873).
11. N.Y. Penal Law § 34.
12. People v. Pekarz, 185 N.Y. 470, 78 N.E. 294 (1906).
13. See People v. Papa, 297 N.Y. 974, 80 N.E.2d 359 (1948) (conviction affirmed without opinion).
14. People v. Farmer, 194 N.Y. 251, 87 N.E. 457 (1909).
15. N.Y. Penal Law § 1120. The New York statutory embodiment of the M'Naghten Rules, the second paragraph of which reads:

> A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:
>
> 1. Not to know the nature and quality of the act he was doing; or,
> 2. Not to know that the act was wrong.

16. Instant case at 78, 187 N.E.2d at 122, 236 N.Y.S.2d at 52.
17. *Ibid.*

that envisions insanity as affecting the volitional and emotional aspects of the human mind as well as the intellectual. If criminal responsibility is to continue to be prerequisite to a criminal act; and if, as has been suggested, true insanity is more than the M'Naghten Rule admits with its standards phrased in terms of intellect alone; then the conclusion is inescapable that in New York, where intellectual capacity alone controls the determination of legal insanity, truly insane persons have been and are being found guilty of and punished for "criminal acts" for which they are not responsible. Modernization of section 1120 of the Penal Law to include volitional and emotional impairments which bear upon mens rea would seem well in order.

Thomas C. Mack

CONSECUTIVE CITATIONS FOR CRIMINAL CONTEMPT ALLOWED

On November 1, 1961 petitioner was initially jailed for contempt by giving "don't remember" answers at a grand jury hearing.[1] After serving 30 days in jail the defendant was subsequently asked similar questions before the same grand jury, and was sentenced to an additional 30 days by again replying "don't remember." The Appellate Division affirmed. On appeal, *held*, affirmed, one judge dissenting. The New York Court of Appeals, applied lower court law and persuasive law from other jurisdictions to affirm the lower courts in holding that a witness could be adjudged in contempt of a grand jury on two consecutive occasions even though the interrogatories were nearly identical at both hearings. *Second Additional Grand Jury v. Cirillo*, 12 N.Y.2d 206, 188 N.E.2d 138, 237 N.Y.S.2d 709 (1963).

Contempts are neither wholly civil nor entirely criminal, and this characteristically legal entanglement often results in a fundamental misunderstanding of the concepts. Punishment per se does not aid in distinguishing the terms, however the purpose to be served often separates the particular proceedings.[2] In civil contempt the punishment is remedial, and for the purpose of benefiting the complainant and/or the court.[3] But in criminal contempt the sentence is punitive, to vindicate the authority of the court.[4] The problem of discerning criminal from civil contempt is further alleviated by statutes which enunciate the specific contempt to be utilized for certain proceedings and hearings. In the instant case Cirillo was cited for criminal contempt under the provisions of a specific state statute.[5]

Even though immunity from state prosecution will not immunize a witness from prosecution in other jurisdictions, the witness may nevertheless be charged with contempt, in the state court granting protection, for refusing

1. People *ex rel.* Cirillo v. Warden of City Prison, 11 N.Y.2d 51, 181 N.E.2d 424, 226 N.Y.S.2d 398 (1962).
2. Bessette v. Conkey Co., 194 U.S. 324 (1904).
3. Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911).
4. *Ibid.*
5. N.Y. Judiciary Law § 750. Compare N.Y. Civ. Prac. Act § 406(3) for an example of a civil contempt statute.