Supreme Bench
of
Baltimore City

EUGENE O'DUNNE, JUDGE
CRIMINAL COURT

November 24, 1937.

MEMORANDUM

Memorandum inserted in case No. 125, Criminal Court, State vs. Goodrich, opinion of the Supreme Bench, and dissenting opinion, filed October 17, 1872. The majority opinion was written by Judge Henry F. Garey, whose term of service was from 1867 to 1882.

Now almost obliterated, but still found in faint trace of pencil marks is, "I assent to this opinion", initialed "[redacted] G. W. D.", "T. P. S.", "C. W. P." These initials stand for the following:

George W. Dobbin, whose term of service was 1867 to 1882,

T. Parker Scott, who was Chief Judge, and whose term of service was 1867 to 1873,

Campbell W. Pinkney, whose term of service was 1867 to 1882.

The dissenting opinion was written by Judge Robert Gilmor, Jr. whose term of service was 1867 to 1882.

This memorandum prepared by Eugene O'Dunne, Judge, sitting in the Criminal Court, and inserted with the papers November 24, 1937.

Eugene O'Dunne

State of Maryland } Supreme Bench
vs } of
Thomas Goodrich } Baltimore City.

This is a motion for a new trial duly certified from the Criminal Court. The prisoner was indicted for Murder and the verdict of the jury was "guilty of Murder in the second degree". It was argued by the counsel for the prisoner that this finding was not warranted by the facts given in evidence at the trial; and, admitting that a homicide had been committed, they claimed that the evidence relied upon by the State for a conviction of the crime of Murder was wholly insufficient for that purpose. The proof was conclusive that the prisoner was a hard drinker; he had been under the influence of liquor continuously for several weeks and was in a state of intense mental irritation for days before the commission of the act. In addition to this effect of his debauch, he was, in the opinion of the State's witnesses, in a condition of intoxication when the deed was done. The jury in finding the prisoner guilty

of

of Murder must have found from the evidence that he was actuated by malice in the use of the fatal weapon. We confess that all the facts of the case lead us to the conclusion that the killing of Troutfelter was wholly unintentional as to him, and there is no sufficient evidence of such a malicious intent as to the prisoner's brother as would impress a higher degree of criminality upon the killing of Troutfelter and thus make that killing, though unintentional in fact, the crime of Murder in law.

We do not say that a crime has not been committed, but that the jury has failed to designate its true name and nature, they having acted in the case as judges both of the law and the ~~evidence~~ fact.

The older English rule which excludes the fact of intoxication from the consideration of the jury, in passing upon cases of homicide, has gradually undergone much modification, even in the English courts, as is shown by Mr Ray in his brief review of the decisions (Med Jurisp 504)

Indeed the reason on which it

professes to be founded would often be quite as applicable to the defence of insanity itself, for the latter is the result of a voluntary act on the part of the victim, in a large number of cases, and if the consideration justifies the exclusion of the one defence, it must logically demand the exclusion of the other. This is particularly obvious when the insanity springs from habitual intemperance alone, for it is idle, in that case, to contend that the voluntary act is not equally the cause of both effects, and if it does not render the one unavoidable, as a defence (which is conceded) there can be no reason why it should prevent the other from being available *pro tanto* in the same direction. The difficulty which many of the Courts have had upon this question, has grown out of the mode in which it is frequently and incorrectly stated. They have supposed the doubt to be whether intoxication will excuse or palliate crime, whereas the real enquiry is, whether, in view of the mental condition produced by intoxication, there has been a certain

over

[degree

degree of crime committed. If a drunken man kills with deliberate malice, it is quite clear that his intoxication can in no wise modify his guilt, but it is equally clear that his condition may be such, from drink, as to exclude all idea of deliberation and design (Wharton Crim L. 3d Edition pp 92, 93). What in a sober man would be only malice aforethought, in a drunken man might be but aggravated or frenzied passion. It is impossible to shut one's eyes to these distinctions, and unless it be the purpose and policy of the law to disregard intent in all cases where drunkenness intervenes, and to punish the act alone apart from the question of intelligence and responsibility in the actor, such considerations cannot be overlooked by enlightened tribunals

The American courts, for the most part have yielded to them, and such is conceded to be the general tendency in this country in the opinion of the Supreme Court of Kentucky (cited from a newspaper report by the States Attorney) which modifies the rulings of the same court in 1 Duvall 227 (Smith vs Commonwealth). This last

mentioned case is supposed by the States officer, to be extreme in its doctrines and to stand almost alone in the announciation of the principle, that "If sensual gratification or social hilarity, without some premeditated crime induced the drinking, the condition of the accused may be such, as to reduce even an unprovoked homicide from Murder to Manslaughter"

But such is far from being the fact. From the moment it was finally established in the case of the United States Vs. Drew (5 Mason 63.) that insanity from drink, differs in no respect, as a defence, from insanity produced by other causes, the logical necessity became obvious to the best legal minds, of making the English doctrine conform throughout, to the reasoning on which Judge Story's opinion was based, and which is now universally adopted. As far back as 1845 this necessity was recognized by the great and independent mind of the late Mr. Chief Justice Taney, who did not hesitate to make the Criminal Code consistent, in this regard, by following out

the reason of the law in its legit=
imate consequences. His ruling in the
case of the United States Vs. Iverson, indicte
for murder in the Circuit Court of
this district, cannot be excelled in
the clearness and completeness with
which it condenses into a single
sentence the whole rationale of the
subject. "If," says the instruction of
the Court, "the State of mind in which
the prisoner committed the homicide
was produced by drinking intoxicating
drinks, his drunkenness is no excuse
for the act. But his state of mind
may be considered by the jury, in
determining whether there was malice
or not, and whether the killing was
manslaughter or Murder" From that
day to the present, the doctrine thus
announced has been the law of the
federal Courts of this Circuit, and has
been repeatedly, and without question
applied. With this sanction from
the highest authority known to the
jurisprudence of the country, it is
unnecessary for the defence to rely upon
the decisions in Kentucky or elsewhere.
So far as learning and judicial

eminence can establish a principle, that which is contended for may be regarded as established. But it rests upon reason which is higher than authority and which must ultimately give it universal recognition. If intoxication can reduce the grade of homicide from Murder in the first degree to Murder in the second (as is now everywhere conceded) by excluding the idea of premeditation, in the existing mental condition it is impossible to deny, without closing the mind to reason, that it may, in the same way still further reduce the grade to Manslaughter by excluding the idea of Malice. Any other conclusion simply confounds the question of criminality in the act, with the grade of offence in the party who commits it.

Believing that the jury, upon the evidence, should not have gone beyond a verdict of Manslaughter we will grant a new trial in the case

State of Maryland, Baltimore City, Set:

I, George R Robinson, Clerk of the Supreme Bench of Baltimore City, do hereby certify that the above and foregoing is the original opinion in the case of the State of Maryland v Goodrich filed by said Court.

Witness my hand and the seal of said Court, this Eighteenth day of January A. D. 1873

George R Robinson

Clerk.

THE SUPREME BENCH OF BALTIMORE CITY 1867

On file amongst the records of said Court

State of Maryland
versus
Thomas Goodrich

Opinion

By Garey J.

Fd 17. Oct. 1872

State of Maryland
vs
Thomas Goodrich

In the Supreme Bench

Ordered this 28th day of March 1893 that the opinion by Gorey J. in the above case be delivered to William S Bryan to be returned by him within five days to the clerk of the custody of the clerk of the Supreme Bench

Alan Pitcairn

Received the above opinion to be returned in accordance with the above order of Court within 5 days from this date
March 28th 1893 William S Bryan

Dissenting Opinion

State
v. s.
Goodrich } In the Supreme Bench

This Case was brought, upon a motion for a new Trial, from the Criminal Court of Baltimore.

The Prisoner was tried in that Court on an Indictment charging him with the murder of one Christian Dronfelter, and by the Jury before whom on the Trial, he was convicted, found guilty of murder in the second degree.

I am of opinion that the finding was well warranted by the Evidence, and that the Verdict ought not to be disturbed; but, as by the opinion of a majority of this Court, whose voice is to determine in the matter, it has been considered otherwise, it is only with

great deference that I venture my own views as to the propriety of this Judgment.

The Verdict is assailed because it is alleged to be against the evidence; against the weight of the evidence; and against the Law; and these grounds are sustained by the action of this Court.

It seems to me of leading importance to remark that during the progress of the Cause, on the trial below, there was no adverse ruling to the prisoner upon any point whatever, and that of the Testimony offered on his behalf nothing was excluded; so that all the Testimony adduced in his favor, including that respecting drunkenness, and its supposed effect upon his condition of mind at the time of the Killing of the deceased, was fully before the Jury. And before looking at the features of the Case upon the evidence, or discussing any question of law arising thereon, it is proper to refer to that Constitutional provision of the Law of our State by which

an extended power and control has been given to Juries, namely:- the 5th Section of the 15th Article (Constitution of 1867.) which declares that "in the trial of all criminal "cases the Jury shall be Judges of Law, as "well as of fact."

Independently of this clause of the Constitution the principles of the Law of New trial are strongly indicative of the leaning of Courts towards upholding verdicts when not impeached for misconduct, or fraud, and their great hesitation to interpose unless the case be one where it is apparent that there is a total failure or defect of testimony in some essential particular; or that the Jury have drawn a palpably wrong conclusion upon some point of vital consequence; or the law has been manifestly perverted by them in the verdict.

Fraud, or corruption, or the misbehaviour, or undue influencing of jurors; irregularity, or prejudice discovered, and the like, are well known and familiar grounds for setting aside Verdicts. But in the absence of these, Courts will act with great reluctance against verdicts.

It is perfectly well established practice not to allow a new trial where there is any evidence direct, or inferential to sustain the verdict. (Graham and Waterman on new Trials Vol. 3rd p. 1277.*

Our own Court of Appeals has repeatedly decided that a case cannot be withdrawn from the Jury, where there is any Evidence tending to prove the issue. Be the evidence ever so slight, the Jury are to pass upon it, as Judges of its sufficiency. And good authority may be cited as deciding that where a variety of Testimony is submitted to the Jury and no instruction from the Court is asked or question of Law raised, a new trial will not be granted unless the preponderance of evidence against the verdict be very great.

Graham & Waterman on New trials Vol 3rd p. 1297

In another Case it was held, that where presumptions are to be raised and inferences

drawn, and evidence to be weighed the Verdict will not be set aside, altho' the Court might have decided the other way upon the facts

Wendell v Safford 12. New Hamp: Reports page 171

Bishop in his work on Criminal Law states the presumption is, in the absence of proof to the contrary, that the Jury acted fairly, and it is a necessary result of this presumption that, if the testimony was conflicting, or intricate, and involved nice discrimination, the Jury are to be credited with having given additional care, and increased attention to it.—So that, by force of the terms of that requirement of the Constitution referred to, and from the tenor of the authorities in a uniform series of decisions, the Verdict ought to be held as final, and decisive of the matter, where it is one like this, unless it be a departure from every reasonable conclusion capable of

Gr & W. 111. 1260

being drawn from the testimony or involve a plain denial of a legal principle.

Now as I understand it, the judgment of this Court in granting a new trial is formed upon the view that the testimony in the case disclosed no evidence of that Malice which in law is necessary to the commission of the crime of Murder.

Undoubtedly Malice is a necessary constituent of this crime, but most frequently is a deduction — or what is termed a presumption of fact; not provable as one of the original or primary facts of the transaction, but to be collected from all the circumstances.

And, thus, tho' it must be shewn by the evidence, the course of, and method by which, proof of it is made, is "presumptive" and "inferential", as contra-distinguished from the sort of evidence which is designated as "direct".

If then the prosecution puts in evidence the principal act with its

concomitant circumstances, but has no evidence to offer of malice in the utterances of the party, the Jury must be considered as having in the conduct of the party (the best means) for construing the motive, and if their conception of the motive is not fundamentally at variance with the nature of the act, to them alone it must be left to determine its criminal character.

But malice in its legal sense tho' the pole criterion by which murder is distinguished from other homicides, is not say the authorities, confined to an intention to take away the life of the deceased; it includes an intent to do any unlawful Act, which may probably result in depriving the party of his life." "If it be in the prosecution of a felonious intent, or in its consequences, naturally tended to bloodshed, it will be murder"

4. Black. Com: 192.

According to Blackstone it is not so properly spite, or malevolence against the individual in particular, as an evil design in general, — the dictate of a wicked or malignant heart —; and there cannot be the least doubt but that it may just as well be implied in Law as express, and, as I have said most frequently is.

Vid: Black: Com: 199. 201

"So also if an action, unlawful in itself" be done deliberately and with intention" of mischief, or great bodily harm to" a particular person, or, of mischief indiscriminately to fall where it may, and death ensue against, or beside the intention of the party it will be murder, at Common Law."

Fosters' Crown Law

Disc. on Homicide. p. 261.

This Author says that a merely heedless, or incautious Act may not be

more than manslaughter. But the performance itself speaks as to the intent; and as to whether it was merely casual, or purposed; and if the latter, the law treats it as malicious, for, If a party strike with a deadly weapon intending to inflict the stroke, as a matter of Law which he cannot dispute he shall be held to intend the consequences, and if death ensue, it is murder and nothing less.

Whether, therefore, the precise purpose of the prisoner was to kill Washington Goodrich his brother; or the deceased; or, he fired his pistol by voluntary act into the group standing around him as described by the Witnesses, if the Jury thought this action of his to have proceeded from any cause springing from his voluntary agency and not a merely "heedless," or "incautious" thing on his part — an inquiry in

the solution of which in my judgment the proof admitted of abundant grounds for the ~~former~~ belief either of the first specified conditions and which it is apparent the Jury did find - it must follow that they also by their verdict correctly enunciated the Law, stated in the foregoing propositions.

Are we upon such a state of case, as is presented in this testimony to overlook the finding of the Jury and declare that they had no right to consider it except as a mere "heedless" or "incautious" act; and that the facts preclude any other view than this. Whilst forbearing now to express any impressions on my own mind I cannot but think that there were several circumstances in the conduct of the accused which rendered it highly susceptible of the construction which by their verdict they placed upon it.

From the proof, with which they

had in their high, and solemn vocation, to deal, it appeared that the first encounter on the occasion of the homicide was between the prisoner and his brother Washington Goodrich, when the latter was standing with some friends near Guy's Hotel in Fayette Street. A serious altercation had previously occurred between these two. The prisoner first loosing and taking off his neck tie and collar goes straight to his brother seeming to be under great excitement with the deadly challenge that they should face death together to try "which was the gamest man?" Upon the interference of the bystanders, his brother retires around the corner in front of the hotel, but is followed up by the prisoner, and the others present among whom was the deceased, the only object of those latter being to prevent

a collision between the brothers.

At this moment the whole party having passed around to the front of Lamps were grouped together in an exceedingly small space. The distance as they are located in the testimony is about a couple of paces (7. feet) [page 5. Paper book] between the two brothers, They probably were nearest but three others with the deceased immediately along side. The language of the prisoner, "You are a Coward" to his brother, and to the deceased who called him to come away, "I don't want to have anything to do with you" is testified to, as spoken by the prisoner and instantly he draws a pistol from his pantaloons and fires, the ball taking effect in the belly of the deceased. So the police Officer who immediately ran over from the opposite side of the Street after he had fired his expression was

"You son of —— I'll give you some too."
This is merely an outline of some of the facts — not all — but enough to allow us to perceive what opportunity was afforded to the Jury for perusing the emotions of the heart when the deed was committed. There was the dying declaration of the deceased as set forth in the Record strengthening as I apprehend this view, besides considerable proof upon other points not necessary to recapitulate.

In such an aspect of the testimony where is the error of the Verdict?

But now it is to be ascertained how for the legal accountability is affected by the condition of intoxication, or its supposed effects — and I think whatever influence the proof of this fact might have had on the result on the trial below that it can exert none

before this Court.

And my reasons for this opinion do not require lengthy discussion, for;

1st. The theory of Mania has been put entirely out of the case by the view of this Court.

Beyond all doubt mania-a-potu in our jurisprudence is now regarded as upon just the same footing as any other insanity, and will afford a complete shield against punishment for any act that would otherwise expose a party to criminal responsibility. If the Jury had believed that the proof amounted to this, they not only could not by any possibility have found malice, but would have been bound to acquit.

But this Court has held that the prisoner was guilty of the crime of manslaughter, and therefore, could not have been properly acquitted, and it must

incontestably follow that the idea of Mania was negatived; and the verdict is unexceptional on this score.

2nd But it was argued for the prisoner that intoxication is admissable in evidence to reduce the grade of the crime of homicide. There can be no difference of opinion about this proposition in its correct limitations.

An array of modern adjudications sufficiently establish the doctrine that evidence of intoxication may be given in evidence to the Jury without impairing in any degree the tenor of the Law, which declares, that drunkenness is no excuse for, or even mitigation of, crime.

Swans' case (4. Tennessee Sup C. & R.) may be ~~quoted~~ Quoted as a clear & comprehensive statement of the extent to which it will be allowed to go. The Court below in that case in which the prisoner

had been convicted of murder had been asked by his Counsel to state that if the defendant was drunk at the time he inflicted the wound it would reduce the crime from murder in the first degree to murder in the second degree – which was refused. The evidence of the prisoner's intoxication was before the Jury. On appeal the Court said, "but altho' drunkenness in point of law "constitutes no excuse or justification for "crime, still, when the nature and essence "of the offence is made by law to depend "on the peculiar state, and condition "of the Criminals' mind at the time and "with reference to the act done, drunkenness "as a matter of fact affecting such state "and condition of the mind is a proper "subject for consideration and enquiry "by the Jury. The question is what "is the mental status? ********** "To regard the fact of intoxication

"as meriting consideration in such a
"case, is not to hold that drunkenness
"will excuse crime, but to enquire
"whether the very crime which the law
"defines and punishes has been committed."

xxxxxxxxxxxx Even in England where the crime of murder in the first degree has not been created and defined by Law, it has been held that tho' voluntary drunkenness cannot excuse from the commission of crime, Yet when upon a charge for murder where the material question is whether the act was premeditated or done only with sudden heat or impulse, the fact of the party being intoxicated has been held to be a circumstance proper to be taken into consideration" Yet! the charge of the lower Court in that case was considered in all respects unexceptionable, and its judgment was affirmed.

The Court said that no evidence of drunkenness would reduce the grade as

(p 22)

a matter of Law.

A case has been referred to, which was tried in this Circuit before the late distinguished Chief Justice of the United States in which that great Judge is reported as having decided that the Jury might take the fact of drunkenness in consideration, to reduce the grade of the crime to manslaughter.

In this instance, however, the facts were peculiar and deserve special attention, as the accused had in early life sustained an injury to his brain which rendered him liable to great excitement after drinking.

But if the broad proposition that such evidence may be received to bring down the offense to the grade of manslaughter, were allowed, I cannot perceive how the prisoner can avail himself of it in this instance, for the reason that no evidence of this fact works the reduction as a matter

of law as was explicitely decided in Swans case just cited.

The prisoner was entitled to have it go to the Jury to be weighed by them with all the other facts – no more, he has a right to have it left to them, just as any other circumstance but they are not coerced by its presence no matter what its stage to any particular finding attributable as a legal consequence. It is only one of a number of circumstances which jointly furnish their means of information and knowledge.

As it cannot be gainsaid or questioned, that a drunken man may commit a deliberate, wilful, and premeditated murder, and tho' in legal estimation would be just as guilty as if he were sober, so a fortiori might he a less with the same effect. It having already been shewn, as I think, that in the other concomitant circumstances of violence

with which the act was perpetrated there was room for reasonably presuming a mischievious intent upon a fair construction all that could be required by the prisoner, was that the fact of his intoxication should be thrown into the scale along with the other circumstances, when this was done his right in this respect was exhausted, Its existence, intensity; and effect in so far as it inebriated his understanding clouded his judgment & constitute a matter as purely beyond review, on a motion like this as the credibility of a Witness would be. And, as he has exhibited to the Jury his drunkenness, conceding it to have been shown, pleaded it, as it were in his defence without any denial, and without the infringement of any Law, that he was entitled to invoke, it has in my judgment been fully submitted to the appropriate tribunal and

whether its influence in their determination was great or small he cannot now complain of the estimate they have seen fit to accord to it.

Robt. Gibbes Jr.

Buck. Pk. 17th 1872

No. 125

State

v.s.

Goodrich

In the Supreme Bench

Dissenting Opinion

Fd. 17 October 1872