STATE v. CONTE

157 Conn. 209 (1968) | Cited 24 times | Supreme Court of Connecticut | November 26, 1968

The defendant was charged withmurder in the second degree in the fatal shootingof Pasquale Caricchio on June 14, 1966. In thisappeal from his conviction, the defendant assignserror in the refusal of the court to submit theissue of his sanity to the jury; in the court'srefusal to adopt the definition of insanityapproved in United States v. Freeman, 357 F.2d 606(2d Cir.); and in a ruling on evidence.

(1)

For convenience, we first take up the claimederror in refusing to adopt the test of insanityapproved in the Freeman case. Our common-law test

[157 Conn. 211]

or definition of insanity as a defense to crimeprovides (1) that an accused, to be the subject ofpunishment, must have had mind, capacity, reasonand understanding sufficient to have enabled himto judge of the nature, character and consequencesof the act charged against him, that the act waswrong and criminal, and that the commission of itwould justly and properly expose him to punishment;and (2) that, in committing the act, he wasnot overcome by an irresistible impulse arisingfrom mental disease. State v. Davies, 146 Conn. 137,144, 148 A.2d 251, cert. denied, 360 U.S. 921,79 S.Ct. 1441, 3 L.Ed.2d 1537; State v.Donahue, 141 Conn. 656, 664, 109 A.2d 364, cert.denied, 349 U.S. 926, 75 S.Ct. 775, 99 L.Ed. 1257;and State v. Wade, 96 Conn. 238, 242, 113 A. 458.

Some ten years ago, an attempt was made toinduce this court to adopt a definition or testof insanity which at that time had recently beenpromulgated by the United States Court of Appealsof the District of Columbia in the case of Durhamv. United States, 214 F.2d 862 (D.C. Cir.). Werejected the Durham definition, as did many othercourts>. State v. Davies, supra, 147; see alsoUnited States v. Freeman, 357 F.2d 606, 621 (2dCir.). In 1967, the United States Court of Appealsof the Second Circuit, in United States v.Freeman, supra, 622, approved, as a common-lawdefinition of insanity, a definition propoundedin 1962 in a draft of the American LawInstitute's proposed Model Penal Code.

There is inherent difficulty in formulating adefinition of insanity which is sufficientlyspecific to permit its accurate application by ajury and which is also broad enough to give effectto advancements in scientific knowledge in the area

[157 Conn. 212]

of mental illness. Probably no definition can beformulated which is above criticism in allapplications. This difficulty is recognized inUnited States v. Freeman, supra, 623, 628.

The test of insanity in the Model Penal Code,adopted as a common-law definition in the Freemancase, was enacted by our General Assembly as astatutory test to be applied in Connecticut on andafter June 13, 1967. Public Acts, 1967, No. 336(General Statutes 54-82a).

We find no error in the court's use of ourcommon-law test in the trial of the present case.Obviously, the statutory test did not becomeeffective until long after the conviction of theaccused in October of 1966.

(2)

The next question is whether, under ourcommon-law test, the court was in error innot submitting the issue of insanity to thejury. Insanity, although often referred to asa defense in a criminal case, may more properlybe referred to as a fact inconsistent with guilt.Although the state in the first instance may relyon the presumption that all persons accused of crimeare sane, as soon as substantial evidence tending toprove insanity comes into the case, the presumptionloses all operative effect, and the burden, whichrests throughout upon the state, of proving beyonda reasonable doubt each essential element of thecrime charged becomes inclusive of the essentialelements of the mental condition requisite to legalresponsibility under our governing test. State v.Joseph, 96 Conn. 637, 639, 115 A. 85; O'Dea v.Amodeo, 118 Conn. 58, 61, 170 A. 486.

Whether, as the defendant claims, there was

[157 Conn. 213]

substantial evidence of insanity so as to placethat issue in the case depends on whether therewas evidence sufficient, if credited, to raise areasonable doubt as to the sanity of the defendantat the time of the homicide.

The state's claims of proof were to the effectthat the defendant, while driving in hisautomobile, saw the car of the decedent, PasqualeCaricchio, parked across the street from a tavernknown as the Friendly Tavern; that the defendantwaited for Caricchio to come out; and that, whenCaricchio appeared, the defendant called him overto the defendant's car and told him that he (thedefendant) had a gun and wanted to talk toCaricchio, who was unarmed. Caricchio evincedcontempt for the defendant and slapped aside therevolver, which the defendant had pointed at him.The defendant then fired some eight bullets intoCaricchio, instantly killing him. The defendantdrove from the scene but was soon after overtakenby the police and captured at gunpoint. It ishardly necessary to point out that this evidencein nowise indicated insanity, nor does thedefendant make any claim that it did.

The claims of proof of the defendant were that,in October of 1965, he learned that his wife hadhad improper relations with Caricchio, that thedefendant then spoke to his wife, that thereaftershe never saw Caricchio again, and that thedefendant and his wife continued to live together.Caricchio occasionally taunted the defendant abouthis wife's prior infidelity when they met on thestreet. On at least one occasion, Caricchio drovehis car in front of the defendant's automobile, andhe drove by the defendant's house two or three timesa week, at night, blowing his horn. Since the defendant's

[157 Conn. 214]

place of work was near the Friendly Tavern, whichCaricchio frequented, they often met. At such meetings,they quarreled, and Caricchio taunted the defendantabout his wife. On the day of the shooting, Caricchiohad been sitting in his car in front of thetavern and had made insulting remarks to the defendantas he passed. Later that afternoon, Caricchiodrove by the defendant's house, shouting andblowing his horn. The defendant's claims of proof,as disclosed in the finding, did not cover theactual shooting, although the shooting does notappear to have been seriously contested.

The defendant called as witnesses his wife, hismother, and two of his sisters-in-law, whotestified that, since his difficulties withCaricchio, the defendant was uncongenial,disagreeable, preoccupied, and like a differentperson. Obviously, this testimony fell far shortof evidence of insanity under our rule. It couldnot, if credited, raise a reasonable doubt as tothe sanity of the defendant and thus warrant averdict of not guilty on the ground of insanity.

Dr. Marc A. Rubenstein, a psychiatrist called asan expert witness by the defendant, saw himprofessionally about eight hours after theshooting and at that time talked with him forabout two hours at the jail. Subsequently, thedoctor had six one-hour interviews with thedefendant. Dr. Rubenstein testified that in hisopinion, based on these interviews, thedefendant could not control his emotions and usedpoor judgment. All this may well be true.Certainly, the present homicide, like most otherhomicides, reflected poor judgment on the part ofthe killer. On the basis of the defendant's claimsof proof, hardly any normal person could havecontrolled his emotions. But Dr. Rubenstein's opinionwas not that the defendant could not control his

[157 Conn. 215]

actions or that his shooting of Caricchio was anaction which, because of mental disease, thedefendant could not refrain from doing. It is alsoclear that Dr. Rubenstein gave no opinion on thefirst branch of our definition, that of capacityto understand the wrongfulness of the commissionof the homicide. Thus, the expert testimony wasinadequate to raise a reasonable doubt, under ourrule, as to the defendant's sanity at the time ofthe homicide.

It follows that the court was not in error inrefusing to submit the issue of insanity to thejury. See State v. Buonomo, 87 Conn. 285, 288,87 A. 977.

(3)

The state offered three color photographs ofCaricchio, taken after the shooting, which showedhis shirt covered with blood. The state claimedthat the color photographs were admissible to showthe "appearance of the body . . . regarding thewounds". The finding disclosed an objection but noground upon which the objection was based.Practice Book 226; State v. Hanna, 150 Conn. 457,460, 191 A.2d 124.

The state had a right to show the jury, as bestit could, the location and direction of eachbullet wound. The photographs assisted in doingthis.

The defendant now claims that the photographswere immaterial because he had admitted the shootingand that in any event they should have beenexcluded as too gruesome. Neither claim has anymerit, even if the finding indicated that eitherclaim had been properly raised. The relevancy ofthe photographs has already been pointed out. Itnowhere appears that the defendant had formallyadmitted the location and course of the bullets.

[157 Conn. 216]

Williams v. Milner Hotels Co., 130 Conn. 507, 510,36 A.2d 20. The fact that the photographs were incolor, or gruesome, did not, under our rule,require their exclusion if they were relevant andmaterial. State v. Hanna, supra, 461. There was noerror in the admission of the three colorphotographs.

There is no error.

In this opinion the other judges concurred.