STATE v. DORTCH

139 Conn. 317 (1952) | Cited 19 times | Supreme Court of Connecticut | December 9, 1952

These two appeals were arguedtogether. In the first Dortch appeals from hisconviction of first degree murder. He assigns error inthe denial of his motion to set aside the verdict, inthe charge and in rulings made upon the trial. In thesecond he appeals from a judgment entered for thestate on the sustaining of a demurrer to his petitionfor a new trial. The denial of the motion to set asidethe verdict will be considered first.

The statement of facts in the state's brief is a fairrecital of the facts which the jury reasonably couldhave found. It is, in substance, as follows: Dortchhad known the deceased, Dorothy Sebastian, casuallyfor about ten years, but beginning in November,1947, he began to see her more frequently. She wasmarried and lived with her husband and three minorchildren on the third floor of a tenement house on

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the north side of the Stonington-Westerly Road inStonington. Dortch himself was divorced. Commencingin February, 1948, he and Mrs. Sebastian adoptedan adulterous relationship which resulted in herhusband's leaving his home in April, 1948. Dortchthen moved into the Sebastian apartment, where helived until August 26, 1949. Mrs. Sebastian on thatdate compelled him to move because of his drinkinghabits and his quarrelsome and argumentative nature.He resented this very much particularly in view ofthe fact that Mrs. Sebastian continued to permita sailor named Porter, who was going around withMrs. Sebastian's daughter Laura, and another sailor,Jones, who was a friend of both Porter and Dortch,to visit her home.

Dortch lived at the New Park Hotel in Westerly,Rhode Island. At about 4:20 p.m. on September 3,1949, after listening to the radio broadcast of aball game, he went into a room across from his andthere drank some whiskey and beer with a Mrs. Holmesand a Mrs. Taylor. Together they did not consumeover one and one-eighth pints of whiskey from thetime he went there until shortly after 7 p.m., whenhe returned to his own room. He claims that Mrs.Sebastian was to have met him there, and he wasangry because she had not come. During thepreceding two weeks, he had threatened to do harmto her and to kill her. About 7:10 p.m., September 3,he took his hunting knife and a sheath and placed itin his right-hand trouser-pocket. He went to Fiore'staxicab stand but found no taxi. He then went back tohis room, fortified himself with a drink of whiskey,took the knife and sheath from his pocket and put themin his trousers in back of his belt, and went down toPickering's taxicab stand, where he procured a taxidriven by the witness Shea.

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Dortch, although he had shouted loudly for ataxi, was quiet and sober and acted normally duringthe one-and-one-tenth-mile drive to the Sebastianhome. He turned on the radio and appeared to belistening to music from the local station until thetaxi reached a point about 270 feet east of theSebastian place, where he told the driver to turnout the headlights, drive past the Sebastian homeand turn around about 1200 feet west of the house.As they drove past the house he looked up at it.After turning the taxi around as instructed byDortch, the driver, on further instructions, letDortch out about 100 feet west of the driveway intothe house. Dortch gave the driver a dollar out ofa handful of bills and took fifty cents in change.

Dortch crossed the street and went up to theSebastian apartment, where he asked Jones andPorter, who were there, either sleeping or preparingto sleep, where Mrs. Sebastian was. Neither of themcould tell him. He told Jones he was going to killher, but Jones did not take it seriously. Dortchappeared normal and sober. He then ran down twoflights of stairs and met Mrs. Sebastian in the backyard. He fell upon her with the hunting knife andstabbed her twenty-three times in the chest, abdomenand back. Jones heard her screams for help, sawDortch stabbing her and ran to her rescue. In anattempt to pull Dortch away from her, Jones wasbadly cut in his left arm. Jones ran up the streetand Dortch ran after him but discontinued the pursuit.

The stabbing of Mrs. Sebastian by Dortch gaveher a large number of mortal wounds. Porter wentto her and she said: "Help me, Porter! Junior [thedefendant] has cut me." She died as a result of thewounds just after saying this, while Porter was still

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with her. Dortch tried to commit suicide. Heconcealed himself behind a wall on the south side ofthe highway for a little over an hour and then wentto the house of one Szymanski, where he gave himselfup to the police.

When Dortch entered Szymanski's house he said:"I tried to kill someone and I want to give myselfup." Szymanski further testified: "Well, he talkedvery clearly, and he seemed to know what he wastalking about, I would say. He seemed sober to me."Two of the police officers who took him to the policestation testified to the same effect. Shortly after hisarrival at the station, he gave a circumstantialaccount of his movements during the day to theseofficers. In telling about taking his knife beforegoing to the house of the victim, he said that he "hadit on his mind to kill Dot."

An analysis of Dortch's brief narrows the issue.He not only admits, he insists that he is guilty ofsecond degree murder. He claims, however, that heis not guilty of first degree murder. He bases thison the fact, claimed by him to have been proved,that there is no evidence from which the juryreasonably could have found deliberation, one ofthe essentials of first degree murder. The

motive,the threats, the preparation in arming himself andthe execution of his design all supply evidence ofthis element. In answer to the further claim of thedefendant that the crime was committed in full sightof witnesses it might be pointed out that he thereafterattempted to commit suicide, a not unusual situation.Whether he was, as he claims, so intoxicated that hewas incapable of deliberation or premeditation was aquestion of fact which the jury have decided againsthim. The appeal from the denial of the motion to setaside the verdict is without merit.

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The statement of facts sufficiently describes thestate's claims of proof. The claims of Dortch wereessentially that he made no threats against the victim,that he suspected her of having an affair with asailor who was present at the time of the killing, andthat he suffered complete amnesia from the time heleft the hotel until he started for Szymanski's house.He also claimed that he had consumed much more liquorthan was testified to by the state's witnesses andwas intoxicated both before and after the killing.

Three written requests to charge were duly filedand one oral exception was taken. The exceptionattacked the following charge: "That, I think, bringsus to the vital question, the really controllingquestion that you will have to decide. It was not washe drunk. It was not was he intoxicated. It is notwhether he was insane to a lesser degree than thestandard which I read to you. It is on that day andat the time in question, did he have the legal degreeof understanding? On all the evidence, on the wholecase, if there is reasonable doubt of the sanity ofthe accused, he should be given the benefit of it byyour verdict."

It is apparent on the whole record that the defensewas making two overlapping claims, first, that Dortchhad produced upon himself, over a period of time, analcoholic psychosis resulting in a condition ofpathological intoxication and amnesia; second, that hewas intoxicated at the time to the extent that he wasincapable of committing a "deliberate" murder. For thefirst he depended on the testimony of the medical experts,for the second on his own testimony, corroborated tosome extent by his drinking companions on the afternoonin question. When the trial court delivered the chargequoted above, it was discussing primarily the claim

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based on alcoholic psychosis. It was apt to thatissue. The objection under discussion is justanother case of taking a sentence out of context.Considering the charge as a whole, as we must(Cackowski v. Jack A. Halprin, Inc., 132 Conn. 67,71, 42 A.2d 838), Dortch was not harmed by thequoted passage.

The only written request to charge the claimedrefusal of which is assigned as error was as follows:"One who commits murder when he is in such a conditionof intoxication that his mind and will are incapableof forming a wilful, deliberate, premeditated purposeof taking life, is not guilty of

murder in the firstdegree, and the same is true when a condition ofincapacity to will, to deliberate and to premeditatearises from any other cause." The charge as deliveredclearly stated that the elements of willfulness, i.e.,a specific intent to kill, deliberation and premeditationwere all essential to the crime of murder in thefirst degree, that they all had to be proved beyond areasonable doubt and that if any of the elements waslacking the killing at most would be murder in thesecond degree. It discussed at length the effect ofintoxication as to these element's. In that connectionthe court said: "So, too, a killing by one who for anycause at the time the act was committed was incapableof conceiving and carrying into execution a deliberateplan to kill or was mentally incapable of intent orpremeditation or who was beyond the power of self-controlat the time, lacks the necessary elements of murder inthe first degree."

This was followed very closely by these words:"To be of any significance in this connection, thisdrunkenness or intoxicated condition must haveproceeded as far as to affect, and must have reachedthat state where it did so affect, the operation of the

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mind as to make the man incapable for the timebeing of forming a rational intent or controlling hiswill, and where this drunken condition is present tothat degree or extent, its presence negatives theessential characteristics of murder in the firstdegree. A man incapable of this reasoning and formingand carrying out an intent cannot be guilty of thatdegree of crime, but its presence to such a degreeamong the circumstances of a killing, disclosing beyondany reasonable doubt malice aforethought in otherrespects, would still leave the killing murder in thesecond degree. For, voluntary drunkenness, I caution youagain is no excuse for crime, that is to say, thiscondition which arises from the use of intoxicatingliquor, this immediate and temporary condition, is, asall men know, a condition that varies in degree accordingto the amount and character of the liquor taken and thetemperament of the man who takes it. A man may showplainly by the manner of his speech, gait, the present[e]ffect of alcohol, and yet retain his faculties fullyenough to reason, to know what he is about, and to formand carry out a rational, specific intent. He may, on theother hand, be so under the influence of liquor as to befor the time being unable to rationally consider anymatter or to intelligently harbor a specific intent. Itis clear, when intoxication is present to this latterdegree, that it cannot fail to reduce the degree of thecrime. If in any case where such a condition as I havelast outlined is urged, the evidence raises a reasonabledoubt of the existence of a specific intent to kill, theaccused is entitled to the benefit of it."

Taken in its context and in connection with thecharge as a whole, the quoted portion of the chargewas sufficient to instruct the jury properly and to

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comply with the request. The contention of thedefendant, made in connection with another of

hisassignments of error, that the jury was notinstructed that the crucial question was whetherthe defendant was incapable of deliberation at thevery time of the killing is also completelyanswered by the above quotations.

None of the other assignments of error directed tothe charge were called to the attention of the trialcourt either by written request to charge or by oralexception. Practice Book 153. We are therefore notobliged to consider them. Since this is a capitalcase, however, we have studied them with care. Themost important of them relate to the charge consideredabove or are elaborations of the written requests.None of them require a finding of error. A charge ina murder case is necessarily long, particularly whena defense of insanity is interposed. The charge in thecase at bar was clear and fair, both to Dortch and tothe state. It was "correct in law, adapted to theissues and sufficient for the guidance of the jury."Bullard v. de Cordova, 119 Conn. 262, 267, 175 A. 673.

The rulings on evidence do not require extensivecomment. Two of them relate to the limitationplaced by the court on cross-examination of state'switnesses. The court has a reasonable discretion tocontrol the extent of such cross-examination whenit is aimed at attacking credibility. Robinson v.Atterbury, 135 Conn. 517, 521, 66 A.2d 593; Shailerv. Bullock, 78 Conn. 65, 70, 61 A. 65. The recordshows that had the questions been allowed theywould have introduced issues foreign to the case atbar and of no substantial importance. Furthermore,the entire testimony of these witnesses shows thatDortch was deprived of nothing essential to his case.

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One of Dortch's experts had testified that Dortchwas suffering from pathological intoxication. Hewas then asked whether or not crimes of violence arefrequently committed by a person in that condition.An objection to the question was sustained. Anexamination of this expert's further testimony showsthat the information sought was testified to insubstance. There is no error in the case of State v.Dortch.

The proposed evidence in connection with the petitionfor a new trial consisted of statements by two taxicabdrivers, neither of whom was the one who drove Dortchon the night of the killing. If admitted, the evidencewould have tended to establish that Dortch's approachto the Sebastian house was usually stealthy, as it wason the night in question, in that he ordered the taxito stop some distance away. In the first place, thisevidence was not newly discovered, because it relatedto actions of Dortch himself, of which he must haveknown. In the second place, in view of the practicallyundisputed facts surrounding the killing, it wouldprobably not have changed the result. The petition alsoalleged that the testimony, if admitted, would strengthenthe opinion of one of the experts that Dortch "did nothave the mental capacity for perpetrating the killingdeliberately, premeditatedly and wilfully." The opinion ofthe expert as already testified to by him could not havebeen more positive than it was. It needed no strengthening.As the trial court said in its memorandum, "It is obviousthat the jury wholly rejected Dr. Cohen's opinion, sincehis testimony is

utterly inconsistent with a verdict offirst degree, if indeed it is consistent with any verdictother than one of acquittal. As previously pointed out,there is nothing in the new testimony which would be at

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all likely to inspire in the jury any additionalconfidence in the accuracy of Dr. Cohen's opinion."

The legal principles underlying petitions for a newtrial have been too recently examined to justifyrepetition here. Krooner v. State, 137 Conn. 58,75 A.2d 51; Smith v. State, 139 Conn. 249, 88 A.2d 117. Sufficeit to say that the trial court did not abuse itsdiscretion in sustaining the demurrer to the petition.

There is no error on either appeal.

In this opinion the other judges concurred.