CUMULATIVE TABLE OF CASES

revisions, if necessary, but such revisions shall be made only if the proposed order does not follow the decision of the Court.

COMMONWEALTH V. MILLER, C.P., Franklin County Branch, No. 240 of 1982

Criminal Law - Murder - Defense of Insanity - Nolle Prosequi

1. When the defense of insanity is raised, the Commonwealth is required to prove the defendant sane beyond a reasonable doubt.

2. Evidence of lay witnesses can establish the sanity of a defendant who has offered expert testimony as to insanity.

3. Where there is no evidence of defendant's conduct at or about the time of the crime, the Commonwealth cannot prove the defendant's sanity beyond a reasonable doubt.

District Attorney

Public Defender

OPINION

EPPINGER, P.J., December 8, 1982:

The District Attorney has filed an Application to Nolle Prosequi the charge of Murder pending against the defendant, Tammy R. Miller. When the application was filed the Court scheduled a hearing and at that hearing it was stipulated that reports of Dr. Paul David Mozley, Psychiatrist and Gynecologist, Dr. Joseph O. Strite, Psychiatrist, Dr. D. K. Chang, Pathologist, Dr. Robert F. Hall, Radiologist and the police report should be admitted in evidence. No testimony was taken.

Before the hearing the defendant entered her own plea of not guilty by reason of insanity in substitution of the plea of not guilty entered earlier for her by the Court when she stood mute at arraignment. When the defense of insanity is raised, the Commonwealth is required to prove the defendant sane beyond a reasonable doubt. *Commonwealth v. Demmitt,* 456 Pa. 475, 321 A 2d 627 (1974). Evidence of lay witnesses can establish the sanity of a defendant who has offered expert testimony as to insanity. *Demmitt,* supra.

In filing his application to Nolle Prosequi, the District Attorney states that there is no evidence of the defendant's conduct at or about the time of the events that is immediately before, during or immediately after them; that the Commonwealth engaged the services of Dr. Paul D. Mozley, one of five specialists in the country board certified in gynecology and psychiatry and that after an extensive inquiry into the matter of the defendant's sanity at the time of the events, he concluded that at the time she killed her child she did not know right from wrong.

The insanity defense in Pennsylvania continues to abide by the M'Naughten Rule, restated in *Commonwealth v. Scarborough,* 491 Pa. 300, 305, 421 A 2d 147 (1980) footnote 1, as follows:

> ". . . an accused is legally insane if at the time he committed the act he 'was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he didn't know he was doing what was wrong.'" (citation omitted).

The facts are not complicated. The defendant, who is 21 years old was the mother of a girl born ten days before she dropped the crying child onto the floor. When that happened the baby became quiet. Then she picked the girl up and dashed the child's head to the floor several times causing crush wounds of the skull causing death. Then she placed the baby in a bassinet, sure the child would go to heaven, but became afraid the baby was suffering. So she got a carving knife, and stabbed the baby nine times.

Next she thought she couldn't live without the child she wanted and loved so much and stabbed herself in the chest. Observing the knife handle protruding from her chest and realizing she was not dead, she became furious, blamed the knife for not killing her, withdrew it and broke it into three pieces, cutting her hands.

The defendant laid on the sofa, waiting to die and was discovered by her mother and aunt who had come from work and stopped by at her house. Ultimately she was taken to the hospital where she received medical and psychiatric care. Twice in the hospital, still wanting to die, she removed a tube, thinking that would bring on death.

Dr. Joseph O. Strite, her psychiatrist, saw her within two hours of admittance and has followed up the case.

The defendant's mental illness, as diagnosed at the time of the death of the child was stated by both physicians as post partum depression. Dr. Mozley stated the condition was due to the psycho-physiologic cessation of the production of gonadal hormones, epinephrine, cortisol, thyroxin and other psycho active compounds. He spoke of evidence of an obsessive-compulsive personality and an incompletely formed gender identity, all of this combined during the post partum period with a pre-existing obsessive-compulsive personality and poor gender identity, led to a severe agitated psychotic depression. This depression led to a flat affect psychomator retardation and impaired cerebration. The doctor said that her intrapsychic turmoil was so painful that drastic, frantic action was her last resort, leading to his conclusion that at the time of the infanticide she did not know right from wrong.

Dr. Strite found her to be a 21 year-old perfectionist woman with strong super ego, well prepared for pregnancy but not caring for a new born infant. The gradual build up of frustration, anxiety, tension, and hostility culminated in a violent homicidal and suicidal outburst with complete loss of inhibitions, reason and judgment.

Despite the psychiatric evidence, if any evidence was available to the Commonwealth from any source indicating that at the time of these events, which generally is conduct immediately after the events, that the defendant was sane, the District Attorney would present such evidence. Here the only evidences is of her being found on a couch having inflicted herself with knife wounds, transportation to and a stay in the hospital. None of this evidence the District Attorney states, would be sufficient to go to a jury to establish her sanity at the time of the events.

It is the District Attorney's contention, and we agree, that given the facts in this case, the Commonwealth would not be able to prove the defendant's sanity beyond a reasonable doubt. It is the proper thing to do to grant the District Attorney's application for leave to Nolle Prosequi the case, and we will do so.

GROVE V. GROVE, C.P., Franklin County Branch, No. F.R. 1979 330 S

Support - Joint Custody - Use of Chart

1. The proper use of a support chart where the parties share custody is to calculate what the husband would have to pay the wife if she had custody of all of the children, then calculate what the wife would pay if husband had custody of all the children with the difference between these two figures divided in proportion to the time each parent has shared custody.

William C. Cramer, Esquire

Barbara Townsend, Esquire

Domestic Relations

OPINION AND ORDER

EPPINGER, P.J., December 9, 1982:

Deborah and John Grove are the parents of three children. Each parent has custody of one child and the custody of the third is shared jointly with the two parents. Deborah brought this action for support against John. In Franklin County, for many years in calculating support obligations, the Court has employed a chart which has generally been accepted by all parties in these proceedings.

This matter was first heard by the Support Hearing Officer. He awarded the plaintiff $160 bi-weekly to be paid by the defendant. He found that the average weekly income was $375 and his weekly expenses were $355.23. He found that plaintiff's weekly income was $170. The defendant asked for a hearing before the Court.

There was no serious argument made by either side that the chart should not be employed in reaching the decision in this case. The problem arose in the application thereof. We have determined that the proper use of the chart in situations where the parents share custody is to calculate what the husband would have to pay the wife if she had custody of all the children and then calculate what the wife would have to pay to the husband if he had all of the children. The difference in these figures is then to be divided in proportion to the time each parent has shared custody. In this case, that is exactly one-half. The mother has custody of one child full-time and another one-half time. The father has custody of one child full-time and the other, one-half time. That is exactly the same as though each of them had all three children one-half of the time.