

COMMONWEALTH v. GORDON, C.P. Cr.D. Franklin County
Branch, No. 274 of 1978

*Criminal Law - Murder - Degree of Guilt Hearing - Province of Court after
Guilty Plea - Burden of Proof - Elements of Proof*

1. Responsibility for fixing the degree of guilt is for the Court alone, after entry of a guilty plea to murder.
2. The distinguishing feature of murder of the first degree is the presence of a specific intent to kill.
3. In determining whether the evidence presented sustains a murder conviction, the test is whether accepting as true all evidence of the Commonwealth and all reasonable inferences arriving therefrom, it is sufficient to prove the elements of the crime beyond a reasonable doubt.

John R. Walker, District Attorney, Attorney for the Commonwealth

Blake E. Martin, Public Defender, Attorney for the Defendant

OPINION

EPPINGER, P.J., June 25, 1979:

Richard Luther Gordon entered a plea of guilty to murder after killing his wife. Upon the entry of the plea, the defendant was presumptively guilty of murder in the third degree. It was the burden of the Commonwealth to raise it to murder in the first degree and the burden of the defendant to reduce it to voluntary manslaughter. *Commonwealth v. Geiger*, 475 Pa. 249, 380 A.2d 338 (1977); *Commonwealth v. Moore*, 473 Pa. 169, 373 A.2d 1101 (1977); *Commonwealth v. Robinson*, 452 Pa. 316, 305 A.2d 354 (1973). A hearing was held before the Court to determine the degree of guilt, and the Court's finding was that the defendant was guilty of murder in the first degree. He was sentenced to life imprisonment. The defendant appealed from the judgment of sentence.

The defendant's stated reasons for the appeal may be summarized as follows: That the evidence was insufficient to sustain a verdict of murder in the first degree, particularly as to the intent to kill, because (1) the defendant was intoxicated; (2) it was not shown precisely when the fatal blow was struck and therefore, apparently, it was impossible to determine whether he had the necessary intent when the fatal blow was struck; (3) even though the defendant stated many times he intended to kill his wife, his intoxicated condition would prohibit him from

having the necessary intention at the time the fatal blow was struck; and (4) the manner of the death by beating was not consistent with a stated intention to kill, it being argued it is more logical that defendant would have obtained a gun or by some other method done the act quickly.

In a prosecution for murder in the first degree, the defendant's guilt is for the jury. *Commonwealth v. Whiting*, 409 Pa. 492, 187 A.2d 291 (1963). When a plea of guilty is entered, the court has the sole responsibility for fixing the degree of guilt. *Commonwealth v. Finnie*, 89 Dauph. 100 (1968). Any wilful, deliberate, or premeditated murder is murder of the first degree. *Commonwealth v. Bowden*, 456 Pa. 278, 309 A.2d 714 (1973). The presence of the specific intent to kill is a distinguishing feature of murder in the first degree under the Crimes Code as well as at Common Law. 18 Pa.C.S.A. Sect. 2502; *Commonwealth v. Fairell*, 476 Pa. 128, 381 A.2d 1258 (1977). In determining whether evidence presented is sufficient to sustain a murder conviction, the test is whether, accepting as true all evidence of the Commonwealth and all reasonable inferences arising therefrom, upon which if believed, the finder of fact could properly have based its verdict, it is sufficient in law to prove the elements of the crime in question beyond a reasonable doubt. *Commonwealth v. Bradley*, 481 Pa. 223, 392 A.2d 688 (1978). In reviewing the case, the appellate court will view all of the evidence in the light most favorable to the Commonwealth and draw all reasonable inferences favorable to the Commonwealth. *Commonwealth v. Kichline*, 468 Pa. 265, 361 A.2d 282 (1976).

Mainly the defendant contends that he was intoxicated so that he could not form the specific intent to kill.

Neither voluntary intoxication nor voluntary drugged condition is a defense to a criminal charge, nor may evidence of such conditions be introduced to negative the element of intent of the offense, except that evidence of such intoxication or drugged condition of the defendant may be offered by the defendant whenever it is relevant to reduce murder from a higher degree to a lower degree of murder. The Crimes Code, Act of 1972, Dec. 6, P.L. , No. 334, Sect. 308, as amended 1976, Apr. 7, P.L. 72, No. 32, Sect. 1; 18 Pa.C.S.A. Sect. 308.

Voluntary intoxication, therefore, neither exonerates nor excuses criminal conduct. Its only effect in a murder case would be to negate the specific intent to kill required for finding murder of the first degree. *Commonwealth v. England*, 474 Pa. 1, 375 A.2d 1292 (1977); *Kichline*, supra.

The day before the morning of defendant's wife's death he had been drinking. He says he was drinking throughout the day. He went into the Mansion House about 7:30 in the evening and stayed until about 12:00. The lady who was with him while he was there said he was drinking Kessler's and coke and that when they left he had had more than he could handle and was drunk, though the bartender testified he was not under the influence at that time.

While he was at the Manison house he spoke of killing himself and his wife, the first time about 11:00, because she "all the time ran her mouth and that she was running him down because he lost his job and was drinking."

When the defendant left the Mansion House, he and the lady went to McConnellsburg, returning to Mercersburg about 2:45. Enroute he had some beer, something less than a six-pack. But when they returned to Mercersburg, he was pretty well sobered up and drove his van home, a distance of about three miles.

About 3:30 the defendant's sons were awakened and one saw his father hitting his mother while the two were in the bedroom. He was sent away and then went back to the bedroom and saw his mother's mouth bleeding. When sent away a second time, he jumped out the window about 3:30 to summon help. During the intervening time he heard his mother yelling and protesting to his father: "Your're going to kill me." His father replied, "That's what I mean to do."

While the other son did not see the actual fighting, he heard it, heard his mother fall a couple of times, heard her say that she liked his dad and heard his dad saying it was a lie. He saw his mother in the bathroom wiping off her bleeding mouth with a rag and heard her trying to say something in the bedroom, but couldn't understand what it was because his dad had something over her mouth.

About 5:00 in the morning the fight was continuing as neighbors heard it. One heard the mother say, "I can't stand the pain anymore," and again, "Pete, don't, it hurts, I can't stand the pain." The fight continued for another half hour and then this neighbor saw the defendant go out to a shed, later get into his car and drive down a lane to his brother's house and return. While defendant was both walking and driving, the witness observed nothing unusual about the defendant's conduct.

Another neighbor heard a woman "hollering" sometime between 5:30 and 6:00 in the morning and looked out his front

window. He saw the victim coming down the road with the defendant and then saw the victim fall to the road. The witness couldn't say whether the defendant pushed her or knocked her down because she was behind a tree but the defendant was right behind her. After she fell, he didn't hear much.

That morning this neighbor found Mrs. Gordon's body obscured in some bushes when his dog was barking and jumping back and forth like he'd found a snake or something. It is a reasonable inference that after the defendant's wife died, he attempted to hide her body. She was clad in underpants and "something on the top". Her forehead was all bruised and swollen. The Pathologist's post mortem report showed she died of "Cardio-respiratory failure due to subdural hematoma and brain stem hemorrhage due to blunt trauma to the head."

Mrs. Gordon was bruised throughout most of her body. There were lacerations of the lower limbs and the left side and multiple small lacerations on the back of both legs and the back of the body. She had multiple rib fractures and her lung was fully lacerated, producing hemorrhages, caused by a broken rib hitting the lung.

She had multiple hemorrhages within the tissue beneath the scalp compressing the brain and herniating part of the brain substance. This subdural hematoma and brain swelling, leading to herniating brain substance and hemorrhaging of the vital tissue due to a blunt external trauma was the cause of death. The trauma could have been caused by some kind of blunt, not sharp, instrument. It could be fists or any kind of pressure.

We think this scenario answers all of the defendant's objections to the conclusion of the Court that he was guilty of murder of the first degree. There was a stated intention to kill his wife; he apparently beat her unmercifully over a prolonged period of time. Although he had been drinking, we conclude that his drinking did not deprive him of the ability to form the intent to kill, that this intent to kill—started before the episode began, repeated during it, and manifested by the degree of brutality and the ignoring of his wife's pleas to desist—continued throughout the episode. There is nothing to suggest that to kill her, if he intended to, he would have sought out a gun or some other weapon. He chose to beat her to death.

This opinion is filed in support of the Court's earlier determination that the defendant was guilty of murder in the first degree.