A Double Homicide Trial Results in Two Verdicts and Two Dispositions: Punishment Then Treatment

Hebert Georges, MD
Fellow in Forensic Psychiatry

Michael Blue, MD
Assistant Professor of Psychiatry

Department of Psychiatry and Behavioral Sciences
Tulane University School of Medicine
New Orleans, LA

The Mississippi Supreme Court Affirmed the Conviction and Sentence of a Defendant Adjudicated Not Guilty by Reason of Insanity on Count I and Guilty on Count II of a Double Homicide with a Judgment That His Confinement to the State Hospital Be Suspended Until Completion of a Mandatory Life Sentence

In *Sanders v. State*, 63 So.3d 497 (Miss. 2011), the Mississippi Supreme Court agreed with the decision of the appellate court and affirmed the conviction and sentence of Mr. Sanders. The court rejected each claim made by Mr. Sanders and affirmed the circuit court's judgment in suspending his confinement to the psychiatric state hospital on Count I until completion of his life sentence for his conviction on Count II. With regard to his claim that the verdict was against the overwhelming weight of the evidence, the court cited the United States Supreme Court's precedent in *United States v. Powell* (469 U.S. 57 (1984)) for the proposition that "consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate indictment" (*Powell*, p 62). The court ruled that the trial court properly exercised its discretion in requiring Mr. Sanders first to serve his mandatory life sentence before his term of an indefinite confinement in a mental institution.

Facts of the Case

On December 29, 1985, 21-year-old Keir D. Sanders attacked his grandparents, W. D. and Elma Crawford, in their Tishomingo County home. Mr. Sanders entered the house and shot his grandfather, W. D., in the back with a shotgun and then bludgeoned him to death with a hammer. Mr. Sanders then proceeded upstairs and shot his grandmother, Elma, in the breast and abdomen while she was lying in bed. He then took the couple's car and fled. Later that day, authorities were dispatched to the residence after notification that a family member had been unable to contact them. The responding officer found Elma still alive. She had made her way down from the bedroom to the couch. She told the officer that Mr. Sanders had shot both of them and that she did not know where he was. The officer also noted that the phone had been pulled from the wall. The hammer used to bludgeon W. D. was found in a trashcan in the house, but the shotgun was not found at the scene. Elma was taken to a hospital, where she remained until she expired in March of 1986.

Mr. Sanders was not apprehended until 2005. He was arrested in Texas, where he had lived since 1990. He was transported back to Mississippi where he was indicted by a grand jury in Tishomingo County on two counts of murder: Count I for the murder of W. D. and Count II for the murder of Elma. At trial, his mother testified that Mr. Sanders had been diagnosed with schizophrenia at age nine. She related that he had experienced a progressive decline as a teenager: he refused to look in mirrors, often hallucinated, would spin around in his room, and sometimes beat his head against the wall. He was admitted for treatment at an adolescent facility in Tennessee; however, he later ran away and was expelled. In 1982, Mr. Sanders was admitted to Mid-South Hospital in Memphis. Mid-South discharged him to a halfway house, which he was later asked to leave. In 1984, Mr. Sanders was admitted to the Mississippi State Hospital at Whitfield. He stayed for only a few weeks before eloping and moving back in with his grandparents.

Mr. Sanders was evaluated in May of 2008 by Dr. McCoy, a psychologist who also treated him while he was at Mid-South. Dr. Webb, a psychiatrist, evaluated Mr. Sanders in December of 2007, and Dr. Lott, a clinical psychologist conducted a court-ordered evaluation in March of 2007. Drs. McCoy and Webb opined that Mr. Sanders understood the nature and quality of his actions but did not know that his actions were wrong. Dr. Lott opined that Mr. Sanders knew the nature and quality of his actions, and knew that his actions were wrong. He pointed out that Mr. Sanders's behavior during the murders was not random or psychotic. The fact that he unplugged the phone, took W. D.'s car, fled to Mem-

phis then to Texas, and managed to evade capture for 20 years by using six aliases indicated that he knew what he did was wrong.

During final deliberation, the jury sent out the following note to the circuit court:

> What is the minimum sentence for someone that is found to be insane and a danger to the public? If the defendant is found "not guilty" by reason of insanity BUT is a danger to the public . . . will the defendant be allowed to ever walk as a free man on the street? [*Sanders*, p 499].

The judge declined to answer the questions. The jury returned a verdict of not guilty by reason of insanity on Count I and found that Mr. Sanders had not been restored to his sanity and was dangerous to the community. On Count II, the jury found Mr. Sanders guilty. The circuit court sentenced Mr. Sanders to life in prison as a habitual offender on Count II. On Count I, the court ordered Mr. Sanders to be confined to the state psychiatric hospital until such time as he would be restored to sanity, with his confinement to be suspended until completion of his life sentence on Count II. Mr. Sanders filed a motion for a judgment notwithstanding the verdict or, in the alternative, for a new trial, which the circuit court denied. He appealed, and a state court of appeals affirmed the judgment of the circuit court (*Sanders v. State*, 63 So.3d 554 (Miss. Ct. App. 2010)). Mr. Sanders appealed to the Mississippi Supreme Court.

Ruling and Reasoning

Mr. Sanders claimed that his conviction on Count II, the murder of his grandmother, was against the overwhelming weight of the evidence. The Mississippi Supreme Court reviewed the evidence in the light most favorable to the verdict (*Sanders*, p 500). The court reviewed the unusual circumstances of these seemingly inconsistent verdicts and the jury's query as to whether Mr. Sanders could "walk as a free man" if he were acquitted on the basis of insanity. The court opined that the jury had enough evidence to convict Mr. Sanders for the murder of his grandmother, given the expert testimony proffered by the prosecution. As to the consistency of the verdicts, the court agreed with the appellate court view that when analyzing the weight of the evidence that supports a jury's verdict, a court is prohibited from considering in any way the jury's decision on another count, as it is irrelevant and immaterial.

Mr. Sanders argued that the trial court erred in suspending his mandatory commitment to a state asylum for the insane under the state code (Miss. Code Ann. § 99-13-7 (2003)) until completion of his sentence on Count II. The Mississippi Supreme Court noted that this mandatory commitment was mutually exclusive to Mr. Sanders's mandatory life sentence under the habitual offender statute (Miss. Code Ann. § 99-19-81 (2003)). The court opined that since the intent of the state's habitual offender statute was to prevent the suspension or reduction of a criminal sentence, the trial court's disposition was the only reasonable option. In addition, the court pointed out that since the state code required a finding of "dangerous to the community" before an insanity acquittee could be committed to the asylum (Miss. Code Ann. § 99-13-7 (2003)), the purpose of confinement appears to be "more for the protection of society than as a service to the perpetrator" (*Sanders*, p 503).

Discussion

Although the appellate court made a compelling legal argument to explain the decision to let this verdict stand despite its inconsistency, one has to wonder about the court's understanding of the nature of insanity. The majority argued that what happened on one count of a multi-count indictment was immaterial to the other counts. However, as the dissent argued, a verdict suggesting that a defendant who committed two murders in rapid succession could be legally insane at the time of the first murder, and then moments later, legally sane, and therefore culpable, at the time of the second murder is not plausible. In fact, the reverse would be more logical. In other words, finding the defendant guilty of the first murder and insane on the second. Given that this was not two separate trials with two different juries looking at the same evidence and coming to different conclusions, one can look at the verdict as indicative of either the jury's lack of understanding of insanity, or a deliberate attempt to influence the disposition of the defendant. As the dissent pointed out, there was no evidence or psychiatric testimony to support that the defendant's mental state had changed during the course of committing the two acts. Thus, the verdict appears arbitrary and not grounded in the evidence adduced at trial. The appellate court's affirmation ensured that this mentally ill offender's psychiatric

treatment would most likely occur in the correctional system.

Psychotherapist-Patient Privilege Exception Overruled

Nicolas Vergara, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor of Psychiatry

Department of Psychiatry and Behavioral Sciences
Tulane University School of Medicine
New Orleans, LA

The Alabama Supreme Court Ruled That, in a Negligence Action Against a Residential Facility, the Psychotherapist-Patient Privilege Protected From Disclosure the Records of an Inpatient at a Mental Health Facility Who Assaulted Another Patient, Declining to Find a Public Safety Exception

In the case *Ex parte Nw. Ala. Mental Health Ctr.*, 68 So.3d 792 (Ala. 2011), the Alabama Supreme Court reversed the mandate of the trial court, declining to find a public safety exception to the psychotherapist-patient privilege. The court vacated the trial court's order authorizing the release of privileged psychiatric records in a civil liability case. The Alabama Supreme Court reviewed the statutory exceptions to the psychotherapist-patient privilege and held that the trial court erred in ordering the release of the records on the ground of relevancy.

Facts of the Case

In the fall of 2007, Lawrence Neil Broadhead was admitted for treatment of depression and drug abuse to Bryce Hospital, a state-operated mental health facility. On February 19, 2008, Mr. Broadhead was discharged to the Hope Residential Facility (HRF), a mental-health facility operated by Northwest, a public corporation. He remained at HRF until February 29, 2008. During that time, Dimoris Johnson, who was also a patient at the Northwest facility, allegedly assaulted Mr. Broadhead. Mr. Broadhead was severely injured and, at the time of the appeal, remained in a semicomatose state.

In October 2008, Mr. Broadhead, through his mother, Ms. Yaw, sued Northwest and several of its administrative staff. Ms. Yaw asserted that the defendants had negligently or wantonly breached certain duties allegedly owed Mr. Broadhead, including, among other things, the duty to take proper security measures to ensure Mr. Broadhead's safety; the duty to supervise Mr. Johnson properly; and the duty to train, monitor, and supervise Northwest's employees sufficiently. Mr. Johnson was not named as a party to the action.

During discovery, Ms. Yaw filed a request for the production of Northwest's records relating to Mr. Johnson. Northwest objected to the request, asserting that the records were subject to psychotherapist-patient privilege. Ms. Yaw responded with a motion seeking to compel production of the requested materials. The trial court requested a memorandum from Ms. Yaw detailing why she believed the records were discoverable. Ms. Yaw's response brief asserted, among other things, "Mr. Johnson's right to have his mental health records concealed" must yield to "the public interest in safety" (*Ex Parte Nw. Ala. Mental Health Ctr.*, p 794).

In September 2009, the trial court responded with a protective order requiring Northwest to submit the records at issue to the court for an *in camera* inspection. The trial court related that "they would designate which portions, if any, of said records are material and relevant to the issues of this cause, and are not otherwise available to [Ms. Yaw]" (*Ex Parte Nw. Ala. Mental Health Ctr.*, p 794). Then, in January 2010, after reviewing the records, the trial court stated that "all records are materially relevant to the issues pending herein" and required that Mr. Johnson's records be provided to Ms. Yaw (*Ex Parte Nw. Ala. Mental Health Ctr.*, p 794). Northwest then petitioned the Alabama Supreme Court for a writ of mandamus ordering a reversal of the trial court's January 2010 order.

Ruling and Reasoning

The Alabama Supreme Court focused its opinion on whether state statutory law recognizes the contended exceptions to the psychotherapy-patient privilege. The court's review first delineated the rationale for, and contours of, the privilege. The court then reviewed the Alabama statutory code as to exceptions to the privilege and related exceptions to the psychotherapist-patient privilege, such as proceedings for hospitalization, examination by order of a court, and