

sition for prosecutors, judges, and the community at large. The vexing question is, should these individuals, by virtue of their being not restorable to competency, be absolved of all their charges and released into the community, or should there be another mechanism to hold them accountable? This case illustrates that struggle.

The supreme court resolved the conundrum by ruling unequivocally that the trial court retains jurisdiction over defendants found sub(m) until the state enters a *nolle prosequi* or the statute of limitations expires. The state, therefore, retains the right to reinstate charges until the statute of limitations expires.

The American Bar Association recommends a hearing to determine factual guilt for those deemed permanently incompetent of crimes that “threaten serious bodily harm.” If found guilty during this hearing, which provides all the same rights as a trial (aside from the right to a trial while competent), then the defendant is “subject to the special commitment procedures set forth” for insanity acquittees. It also provides for the possibility of civil commitment for those who committed less severe crimes (American Bar Association Criminal Justice Mental Health Standards, Part IV. Competence to Stand Trial, Standard 7-4.13 Disposition of Permanently Incompetent Defendants, 1984. Available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_mentalhealth_blk.html#7-4.13. Accessed September 29, 2013).

In Connecticut, charges involving death or serious injury have a statutory provision for judges to require periodic competency evaluation of defendants found unrestorable until the statute of limitations for the offense(s) expires. Should defendants be found to have regained competency at any of these assessments, their charges could be reinstated and the trial recommenced. However, the statute is silent with regard to individuals found unrestorable on less severe charges. In such situations, the judges may order the Department of Mental Health and Addiction Services to apply for civil commitment in a psychiatric hospital. Some courts have elected to retain the charges and impose a bond on the defendant and potentially to order reappearances in court, even though the sub(m) statute states that such persons must be treated like any other civilly committed patient. Under these circumstances, discharge planning for an inpatient may be made quite difficult, and the

defendant-patient may be charged with failure to appear for court appearances during a time in which no prosecution is pending.

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Heat-of-Passion Manslaughter and the Mentally Ill Defendant

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Mentally Ill Defendant Convicted of Heat-of-Passion Manslaughter After Court Finds That He Did Not Meet the M’Naughten Standard for an Insanity Defense

In *Nolan v. State*, 61 So.3d 887 (Miss. 2011), the Supreme Court of Mississippi considered the appeal of a mentally ill man convicted of manslaughter in the death of his father. The court overturned the judgment of the court of appeals and upheld the trial court’s conviction of heat-of-passion manslaughter, reasoning that the defendant had acted in response to provocation by his father’s statements. The court also found that the passage of time from the provocation to the killing did not preclude a heat-of-passion defense.

Facts of the Case

On the morning of May 26, 2006, Clinton Nolan took a gun from beneath his bed and went to his father’s room and shot him in the chest as he lay sleeping. Mr. Nolan then called 911 and told the dispatcher, “I got a GSW to the body” (*Nolan*, p 895). When asked who had shot the man, Mr. Nolan replied, “I did.” He added, “I can’t believe I did that” (*Nolan*, p 895). He told the dispatcher that he had “acted out of emotion.” His father, Donald Nolan, was alive at the time of the call, but died shortly thereafter. He told the 911 dispatcher that his son was “having an episode because his medicine is messed up” (*Nolan*, p 896).

Mr. Nolan had a history of Asperger's disorder, depression, and anxiety. In the weeks preceding the shooting, his family reported to his psychiatrist that he was agitated, not sleeping well, and behaving bizarrely. His antidepressant medication was changed in the weeks preceding the homicide, and clonazepam was added less than 24 hours before the shooting.

In November 2006, Mr. Nolan was indicted by a grand jury for heat-of-passion manslaughter in the killing of his father. Mr. Nolan pleaded insanity and underwent psychiatric evaluations by defense and prosecution experts. All of the experts agreed that Mr. Nolan had a psychotic disorder at the time of the offense and was preoccupied with the idea that his father hated him and thought he was a sexual deviant. The experts disagreed about whether Mr. Nolan's symptoms were so severe that he met the legal standard of insanity in Mississippi, the *M'Naughten* rule.

During the bench trial before the DeSoto County Circuit Court, Mr. Nolan called witnesses, including his treating psychiatrist, Dr. Robert Hoehn, who testified about Mr. Nolan's psychiatric history and recent instability. Dr. Hoehn had also examined Mr. Nolan in the county jail six days after the homicide, when he noted Mr. Nolan to be "very psychotic" and "unable to distinguish what was real and what wasn't" (*Nolan*, p 890). Dr. Joseph Angelillo, an expert in forensic psychiatry, also testified for the defense. Dr. Angelillo concluded that "[Mr.] Nolan had not understood the nature and quality of his actions on the night of the shooting" (*Nolan*, p 890). Several other witnesses, including family friends and a nurse at the county jail, testified about Mr. Nolan's hallucinations, incoherence, and agitation around the time of the crime.

The state called Commander Mark Blackson of the DeSoto County Sheriff's Department, who testified that Mr. Nolan acknowledged shooting his father and expressed remorse for doing so. The state's psychiatric expert, Dr. W. Criss Lott, found that Mr. Nolan had been mentally ill but did not meet the *M'Naughten* standard for insanity. Dr. Lott relied primarily on evidence contained in the 911 call, where Mr. Nolan used forensic terminology and told the dispatcher what type of gun he had used in the killing, "a .357 Sig" (*Nolan*, p 895). Dr. Lott reasoned that Mr. Nolan understood that he had used a deadly weapon to cause his father's death and demonstrated an adequate knowledge of his actions.

The circuit court judge found Mr. Nolan sane at the time of the shooting and guilty of heat-of-passion manslaughter. He was sentenced to 7 years in the custody of the Mississippi Department of Corrections and 13 years of postrelease supervision.

Mr. Nolan appealed the verdict to the Mississippi Court of Appeals and asserted that the trial court had erred in finding him sane at the time of the shooting. He argued that the *M'Naughten* rule should be replaced and that he should be found insane under a less stringent test of insanity. The appellate court rejected Mr. Nolan's claims regarding the appropriate test for insanity and affirmed that there was sufficient evidence to conclude he was sane at the time of the offense. However, the court also found that there was insufficient evidence for the trial court's conviction of heat-of-passion manslaughter, but that the facts supported a conviction of manslaughter. Mr. Nolan then appealed to the supreme court.

Ruling and Reasoning

The Supreme Court of Mississippi found that there was sufficient evidence to support a finding that Mr. Nolan shot his father in the heat of passion. This reversed the judgment of the court of appeals and affirmed the conviction and sentence imposed by the trial court.

Mississippi's manslaughter statute defines heat of passion as:

[A] state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce homicide from murder to manslaughter. Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror [*Nolan*, p 893].

The court concluded that Mr. Nolan's father had made statements that provoked his actions. It also noted that Mr. Nolan was particularly vulnerable to accusations about his sexuality, because he had been sexually molested earlier in life.

The issue of immediacy in heat-of-passion manslaughter was also considered. Citing *Haley v. State*, 85 So. 129 (Miss. 1920), the court reasoned that there is no fixed period for cooling off; it depends on circumstances and sometimes the temperament of the defendant. The court found that Mr. Nolan was "in a constant state of agitation predicated upon his father's comments regarding his sexuality" (*Nolan*, p 895).

The court declined to consider Mr. Nolan's argument that the *M'Naughten* standard for insanity should be abandoned in Mississippi, citing several previous cases in which it had similarly decided not to address the question. The court acknowledged, "M'Naughten is not perfect; nevertheless [it is] the safest means of testing criminal responsibility" (*Nolan*, p 897, citing *Hill v. State*, 339 So.2d 1382 (Miss. 1976)).

Dissent

The dissenting justices asserted that demonstrating that Mr. Nolan "acted out of emotion" and was "angry with his father" was insufficient for a heat-of-passion manslaughter conviction (*Nolan*, p 899). The dissent argued that a heat-of-passion defense requires that a reasonable person would have acted as the defendant did. The dissenters were unconvinced that Mr. Nolan's actions were objectively reasonable. They concluded that general manslaughter was a more appropriate fit.

The dissenting opinion also questioned whether general manslaughter is a lesser included offense of heat-of-passion manslaughter. The dissenters opined that heat-of-passion and general manslaughter are distinct offenses, because the former requires intent to kill, whereas the latter can include accidental or negligent killing. The dissent concluded that the court of appeals erred in converting the trial court's verdict of heat-of-passion manslaughter to general manslaughter.

Discussion

Despite extensive evidence of Mr. Nolan's developing psychosis, courts at all three levels in Mississippi concluded that he did not meet the *M'Naughten* standard for an insanity defense. This outcome exemplifies the difficulty often discussed by forensic psychiatrists that psychiatric observations about a defendant's mental state do not coincide perfectly with legal ideas about culpability, creating a square-peg-and-round-hole problem. In *M'Naughten* jurisdictions, defendants with uncontested and severe mental illness may still not meet the legal test of insanity. Perhaps the court's heat-of-passion manslaughter conviction in this case can be seen as a compromise position, an acknowledgment that Mr. Nolan was less blameworthy for his actions, but a refusal to tackle the larger need for changing the standard for insanity in the state.

Heat-of-passion manslaughter seems like an awkward fit for Mr. Nolan's crime. In *Dabney v. State*, 772 So.2d 1065 (Miss. Ct. App. 2000), the court clarified that heat-of-passion manslaughter "presupposes an individual without serious mental and emotional defects" (*Dabney*, p 1069), implying that a heat-of-passion defense should not apply to defendants with mental illness. Other case law has indicated that the test for heat of passion is an objective one, whether a reasonable person would have acted as the defendant did. In this case, it does not seem likely that a reasonable person without mental illness would have reacted to statements about his sexuality by killing his father.

One is left to wonder how Mr. Nolan's mental illness, which altered his perception of his circumstances and the reasonableness of his behavior, could best be taken into account. One solution would be to use the American Law Institute (ALI) standard for insanity. In this case, Mr. Nolan would have had to prove that he "lack[ed] substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law" (Model Penal Code and Commentaries, American Law Institute, 1980). The language of this standard is more permissive than the *M'Naughten* test, which would have allowed the court to consider the delusional motivation behind Mr. Nolan's actions and whether his mental illness had an impact on his volitional control. Although the Mississippi Supreme Court declined to consider changing the test of insanity, one can see how doing so could create a wider range of dispositions for mentally ill defendants.

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Closed Commitment Proceedings Versus Open Administration of Justice

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