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Recent Developments: Case Comment: Pouncey v. State--Guilty and Insane

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CASE COMMENT: *Pouncey v. State*—Guilty and Insane

In *Pouncey v. State*, 297 Md. 264, 465 A.2d 475 (1983), the Court of Appeals held that a defendant in a criminal case could be found both guilty of a crime and insane at the time of its commission. In so holding, the Court determined that an insanity verdict does not necessarily defeat the element of criminal intent.

To reach a verdict of guilty, the demands of due process require that the prosecution prove beyond a reasonable doubt that the defendant engaged in a prohibited act (*actus reus*) and that the defendant possessed the criminal intent (*mens rea*) to commit such an act. *In re Winship*, 397 U.S. 358, 364 (1970); *see generally*, R. Perkins and R. Boyce, Criminal Law 78-81 (3rd ed. 1982). Traditionally, a finding of insanity during the commission of a crime would prevent the rendering of a guilty verdict because it was deemed that the defendant, in being insane, was incapable of forming the required criminal intent. *See Bethea v. United States*, 365 A.2d 64, 72 n.15 (D.C. App. 1976), *cert. denied*, 433 U.S. 911 (1976).

In *Pouncey*, the defendant was charged with the first degree murder of her five year old son. She pleaded not guilty and interposed the defense of insanity. The evidence disclosed that the defendant believed her son was pursued by the devil and the only way to prevent her son from going to hell was to kill him. The evidence further disclosed that the defendant had drowned her son and that she was legally insane at the time the crime was committed. The trial court found the defendant guilty of first degree murder and legally insane at the time of the offense. The defendant appealed to the Court of Special Appeals, claiming that the verdicts of guilty and insane were mutually inconsistent and that she was entitled to a verdict of not guilty. The Court of Appeals granted certiorari prior to a decision by the Court of Special Appeals.

In *Pouncey*, the Court of Appeals stated that the insanity defense in Maryland was defined by statute and court rule. *Pouncey v. State*, 297 Md. at 266, 465 A.2d at 476. The Court noted that the Health-General Code identifies the test for insanity and responsibility for criminal conduct and provides:

> A defendant is not responsible for criminal conduct if, at the time of that conduct, the defendant, because of mental retardation or a mental disorder, lacks substantial capacity:
> (1) To appreciate the criminality of that conduct; or
> (2) To conform that conduct to the requirements of law."

MD. HEALTH GEN. CODE ANN. §12-107 (1982).[1]

Having disclosed the statutory law, the Court noted that the verdict of guilty and insane was not without precedent in Maryland. Four years earlier, under a statute not different in substance from the criminal responsibility test set out above, the court in *Langworthy v. State*, 284 Md. 588, 399 A.2d 578 (1979), *cert. denied*, 450 U.S. 960 (1979), "held that a person found guilty of a crime charged, yet successful in asserting an insanity defense, could appeal from the guilty verdict." *Id., as cited in Pouncey v. State*, 297 Md. at 266-267, 465 A.2d at 477. The court in *Pouncey* then concluded that, "necessary to that determination was a finding that a guilty verdict is not inconsistent with a special verdict of insanity." *Id.*, 297 Md. at 267, 465 A.2d at 477.

Although the court in *Langworthy* was concerned with determining whether the verdict of guilty and insane was a final judgment and thus appealable, it did not miss the opportunity to interpret the insanity statute then in effect. Without pointing to any explicit legislative history directed to the statute, the court in *Langworthy* reasoned that since the Court of Special Appeals had previously determined that the demands of due process require a defendant be provided the opportunity to prove his innocence even though the prosecution has accepted the defendant's insanity plea, then the statutory scheme for insanity must contemplate that there first be a determination of guilt or innocence followed by a determination of insanity. *Langworthy v. State*, 284 Md. at 598, 399 A.2d at 584; *see also* case comment, *A Defendant Found Guilty But Insane May Appeal His Conviction:*

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III.

Concluding that Title VII would have been violated had the defendants run the entire deferred compensation plan themselves, without participation by insurance companies, the Court then focused attention on the issue of whether a Title VII violation has been committed, given the fact it was the insurance companies chosen by Arizona to participate in the plan that calculated and paid the retirement benefits.

The Court, for purposes of resolving the issue, found it necessary to define the limits of Title VII violations. In so doing, the Court again finding strength from its opinion in *Manhart*, found that Title VII "primarily govern(s) relations between employees and their employer, not between employees and third parties." *Norris*, 103 S.Ct. at 3499, quoting *Manhart*, 435 U.S. at 718, n. 33. However, the Court in *Manhart* was quick to point out that despite said "relations" such a limitation would not disallow an employer to set aside equal retirement contributions for each employee and let each, upon retirement, purchase benefits in the open market. *Manhart*, 435 U.S. at 717-18 (footnote omitted).

The defendants seized this language and argued they did not violate Title VII because the annuity plans offered by the companies participating in the Arizona plan reflect those available in the open market. Unfortunately, no relevance or substance was found in this defense by the Court; rather, it found that Arizona did not simply set aside retirement benefits and allow employees to purchase annuities in the open market, but created a plan whereby employees could obtain an annuity only if they invested in a company specifically chosen by Arizona. In essence, by requiring employees to choose from companies selected only by the state, Arizona became a party to each annuity contract entered into by one of its employees. The Court then reiterated the well established rule, that "both parties to a discriminatory contract are liable for any discriminatory provisions the contract contains, regardless of which party initially suggested inclusion of the discriminatory provisions." *Norris*, 103 S.Ct. at 3501-02, *See Williams v. New Orleans Steamship Ass'n.*, 673 F.2d 742, 750-51 (5th Cir. 1982), cert. denied, ___U.S.___ (1983).

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Langworthy v. State, 39 Md. L. Rev. 538, 540 (1980). Thus, one could first be found guilty by the evidence presented and then be found insane under the statutory scheme.

The rationale of the Langworthy court is not convincing. The demands of due process require that the prosecution prove the element of *mens rea* before one can be found guilty. *See Mullaney v. Wilbur*, 421 U.S. 684 (1975); *State v. Grady*, 276 Md. 178, 34 A.2d 436 (1975). In the Court's opinion, there is little attempt to reconcile the verdict of guilty and insanity with the prosecution's responsibility to prove guilt. Only at the very end of the *Langworthy* opinion, within a footnote, is such an attempt made.

> We do not subscribe to the theory of the Court of Special Appeals that a finding that a defendant was insane at the time of the commission of the crime means that [t]here is no crime. *Langworthy v. State*, 39 Md. App. 559, 561, 387 A.2d 634 (1978). Its reasoning was that the finding of insanity establishes a lack of *mens rea*. *Id.* We do not think that this is so in light of the conditions prescribed for a finding of insanity, namely "as a result of a mental disorder, a defendant lacks substantial capacity to either appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Code (1957, 1972 Repl. Vol.) art 59, 25). *Neither* of these tests is [sic] necessary at variance with a general intent to commit a crime....

Id., 284 Md. at 599 n.12, 399 A.2d at 584. [emphasis added]

In *Pouncey*, the Court embraced the dicta and logic of *Langworthy*. Again in a footnote the court provided that:

> Since *Langworthy*, the [statute directed to the insanity defense] has been recodified without change. We see no reason to interpret the recodified statute any differently, especially in light of the maxim that readoption of statutory language by the legislature without change is presumed to have incorporated prior judicial interpretations of that language....

Pouncey v. State, 297 Md. at 268 n.2, 465 A.2d at 478.

The court also stated, as in *Langworthy*, that the reference to "not guilty by reason of insanity" is a holdover from common law concepts, *id.*, and also provided:

> that a finding of insanity is not tantamount to an absence of *mens rea* or inconsistent with a general intent to commit a crime. In drowning her child, the appellant specifically intended to kill him, and while her successful insanity defense means that she is not criminally responsible for her conduct, that determination merely relieves her of liability for punishment under the criminal law.

Id., 297 Md. at 269, 465 A.2d at 478.

Three conclusions can be drawn from the court's opinion. The first is that the insanity statute does not necessarily address criminal intent. Secondly, the verdict of "not guilty by reason of insanity" is a mere holdover of common law concepts and probably no longer recognized within Maryland.[2] Finally, one who is found guilty and insane is relieved of liability for punishment under the criminal law.

Although the court seems content with the rationale in support of the first conclusion, the issue whether the statute addresses general criminal intent is complex. For instance, it is difficult to see how the first prong of the test—that a defendant is not responsible for criminal conduct if he lacks substantial capacity to appreciate the criminality of his conduct—is not necessarily directed to criminal intent. *See Johnson v. State*, 292 Md. 405, 425 n. 10, 439 A.2d 542, 554 (1982). Indeed the Court of Special Appeals has twice ruled that it is. *Langworthy v. State*, 39 Md. App. 559, 561, 387 A.2d 634 (1978), *rev'd.*, 284 Md. 588, 399 A.2d 578 (1979); *Gardner v. State*, 41 Md. App. 186, 195, 396 A.2d 303, *aff'd*, 286 Md. 520, 408 A.2d 1317 (1979). In *Pouncey*, the defendant was charged with murder in the first degree, a specific intent crime. In such a crime, the prosecution in Maryland must prove that the intentional killing of another was willful, deliberate and premeditated, and also without justification, excuse or mitigation. *See* Md. Opinion No. 82-844 (to be published at 67 Op. Att'y Gen. 292)(filed Dec. 23, 1982). It is hard to imagine how a finding of specific intent could be maintained even under the second prong—that a defendant is not responsible if he lacks substantial capacity to conform conduct to the requirements of law—when one is found insane. If one lacks *substantial* capacity to conform to the conduct proscribed by law and is therefore insane, then one surely is not without excuse for acts committed and should be absolved of murder in the first degree. Again, the court failed to address this issue.

The second conclusion of the court, that the insanity defense is merely a holdover from the common law and should be ignored, can be accepted if one agrees with the court's first conclusion. However, in light of the above discussion, the court's first conclusion, and thus the second, appears suspect.

The third conclusion, that a verdict of guilty and insane means that one is not criminally responsible and therefore not subject to punishment is without merit. As the defendant in *Pouncey* points out, a guilty verdict burdens the defendant with a record of criminal conviction. The defendant in such a circumstance is prohibited from voting, from serving on a jury, from acquiring various government licenses or contracts and also will be inhibited from acquiring future employment opportunities. *Id.*, 297 Md. at 269, 465 A.2d at 478. Although one does not spend time in the jail house under such a verdict, these are real sanctions and are designed to be punitive.

The verdict of guilty and insane in Maryland is not unique with *Pouncey*. However, the verdict raises questions of due process which the court has yet to address. Although the verdict is not a new one, it can hardly be considered established until such questions are considered and answered. In the interim, a verdict of not guilty by reason of insanity would appear to be a proper verdict, where the state could prove the *actus reus* but has failed to prove the defendant sane when the defendant successfully interposes the plea of insanity.

by James Poulos

Notes

[1] Title 12 of the Health-General Article has been amended in 1984. The test for insanity remains the same, but the "insanity" verdict is now called the "criminal responsibility" verdict. The test is now codified at MD. HEALTH GEN. CODE ANN. §12-108(a) (1984).

[2] This conclusion mis further supported by the legislature's change of language from "insanity" to "Criminal responsibility" in the new statute. MD. HEALTH GEN. CODE ANN. TITLE 12 (1984).