

SUPREME COURT OF WISCONSIN

Blitstein v. State

218 Wis. 356 (1935) · Decided June 4, 1935

SUMMARY

The Wisconsin Supreme Court affirmed the judgment against the defendant, holding that counsel's inexperience and alleged trial errors did not deprive the defendant of a substantial right or warrant a new trial. The court concluded that the insanity plea was properly withdrawn, the evidence supported the homicide conviction, and the identified omissions by counsel did not prejudice the defense.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Fairchild; Feitz; Nelson
JURISDICTION	Wisconsin
DECIDED	June 4, 1935
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant sought a new trial, arguing that the inexperience and alleged failures of court-appointed defense counsel cumulatively deprived him of a fair trial and substantial rights. The trial court denied the motion, and the defendant sought review in the Wisconsin Supreme Court.
STANDARD OF REVIEW	The court reviewed whether the alleged deficiencies of appointed counsel deprived the defendant of a substantial right warranting a new trial, while considering whether the evidence supported the verdict and whether the claimed errors prejudiced the defense.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion
PARTIES	Blitstein v. State

TOPICS

- ineffective assistance
- criminal procedure
- mens rea

PRACTICE AREAS

- criminal procedure
- criminal defense
- ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the inexperience and alleged mistakes of court-appointed defense counsel, considered cumulatively, deprived the defendant of a substantial right and required a new trial.
2. Whether withdrawal of the insanity plea constituted prejudicial incompetence when the evidence convincingly established the defendant's sanity and legal responsibility.
3. Whether counsel's failure to examine character witnesses, introduce evidence of insanity among the defendant's relatives, challenge the waiver of a preliminary examination, or spend more time selecting the jury prejudiced the defendant's case.

HOLDINGS

1. Inexperience of court-appointed counsel, standing alone, is not grounds for a new trial. A new trial requires a convincing showing that counsel's acts or omissions deprived the defendant of a substantial right.
2. Withdrawal of the insanity plea did not deprive the defendant of a substantial right because convincing medical evidence established his sanity and legal responsibility, leaving no substantial factual controversy on that issue.
3. Failure to examine character witnesses, introduce evidence concerning insanity among the defendant's relatives, contest the waiver of a preliminary examination, or devote more time to jury selection did not constitute reversible error because none of the omissions, individually or cumulatively, prejudiced the defendant's case.

KEY QUOTATIONS

"Inexperience in a relation of this character is of itself no ground for a new trial." (218 Wis. at 359)

"There must be a resulting deprivation of a substantial right." (218 Wis. at 359)

"A poor defense of a person charged with a crime will not justify a reversal of the judgment." (218 Wis. at 361)

"The possibility that had greater skill been employed it might have induced a finding of a lesser degree of crime than an exact measure of the evidence warranted, or the probability that by some art of persuasion there might have been secured an advantage to which the defendant was not legally strictly entitled, as a matter of law, cannot be varied or transformed into a lost substantial right." (218 Wis. at 361)

FACTUAL BACKGROUND

Blitstein quarreled with his wife for several hours, then seized an iron bar while she was apparently fleeing, struck her, and inflicted additional wounds after she fell. He surrendered at the police station. An insanity plea was entered and later withdrawn after court-appointed physicians testified that he was sane, not feeble-minded, and legally responsible for his conduct. The record also reflected that counsel did not examine certain character witnesses, did not introduce evidence that close relatives were insane, waived a preliminary examination, and used limited time selecting the jury.

PROCEDURAL HISTORY

After a criminal trial resulting in a judgment against Blitstein, defense counsel moved for a new trial based on alleged deficiencies by appointed counsel, including withdrawal of an insanity plea, waiver of a preliminary examination, failure to present certain character and family-history evidence, and abbreviated jury selection. The trial court denied the motion, finding that the insanity issue had been adequately presented, that the defendant was legally responsible, and that no material right had been impaired. The Wisconsin Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Schulman, 299 Ill. 125, 132 N.E. 530
- State v. Barr, 123 Iowa 139, 98 N.W. 595
- People v. Gardiner, 303 Ill. 204, 135 N.E. 422
- State v. Jukich, 49 Nev. 217, 242 P. 590

OPINION

FAIRCHIRD, J.

The following opinion was filed April 2, 1935: Fairchird, J. Defendant's counsel in a lawyerlike manner frankly admit that, in the matters pointed out showing a lack of experience on the part of those representing defendant at the trial, no one thing complained of affects the defendant's, right to an extent entitling him to a new trial. But they do claim that the accused was not fairly, represented or his rights safeguarded because of the accumulated effect of the mistakes and failures on the part of counsel. *359The right to a new trial is based on the inexperience of counsel appointed by the court.

We are leaving aside in our consideration of the case the petition by the defendant for the appointment of the particular attorney. Inexperience in a relation of this character is of itself no ground for a new trial. People v. Schulman, 299 Ill. 125, 132 N. E. 530. There must be a resulting deprivation of a substantial right. State v. Barr, 123 Iowa, 139, 98 N. W. 595.

If the record discloses that the defendant has suffered in this respect, a new trial should follow. The consideration in this matter is thus limited to a determination as to the existence of acts or failures on the part of the defense during the trial which deprived the accused of rights belonging to him. It is therefore not necessary to analyze the evidence as it may relate to each of the items set out in the contention of the defendant, for a review of the evidence properly presented shows the verdict to be amply sustained.

A plea of insanity was entered and later withdrawn. This withdrawal occurred after convincing proof had been offered of the defendant's mental soundness. The fact that some contest might still have been waged over the issue does not make the act of withdrawing the plea one of negligence on the part of counsel. While some controversy over the question, had the plea not been withdrawn, might have created an atmosphere of doubt which in turn might have affected some or all of the jurors, still, when the fact of sanity is established and stands as a fact, the defendant cannot be said to have been deprived of any right.

The defendant has not been injured by reason of the recognition by the court and counsel of the truth. There must be a convincing showing that defendant has been deprived of a substantial right. *People v. Gardiner*, 303 Ill. 204, 135 N. E. 422; *State v. Jukich*, 49 Nev. 217, 242 Pac. 590; *People v. Schulman*, supra; *State v. Barr*, supra. Had defendant been insane and a failure of proof going to that issue had resulted through the ignorance or incompetence of counsel appointed *360 by the court, we would have a condition such as is treated in cases relied on by defendant.

It appears that, after an examination by the commission of physicians appointed by the court, no substantial ground existed for controversy over the fact of sanity or over the fact that defendant was responsible for his acts. Dr. Lorenz, who was corroborated by the other members of the commission, testified that: "We looked very thoroughly into the whole situation, his previous interests, — in fact as he carried on throughout his life as he could relate it.

We first — at least I first satisfied myself concerning his present mental condition and came to the conclusion he was sane at the present time. He could have nothing in his prior life or anything surrounding that particular homicide that suggested any form of insanity. I couldn't find anything insane in his act or behavior just prior or during or after the homicide.

It is my impression and belief he is illiterate but he has shown a remarkable ability to get along in spite of these handicaps. I think he evidenced considerable mental capacity and I decided he was not feeble-minded." In the prosecution of criminal cases as well as of civil cases, the purpose which the court must have in mind is that the truth shall be developed so that a proper judgment may be granted.

As a practical matter, it may sometimes happen that because of the skill of a lawyer advantages may be gained by a defendant to which, judged by a strict standard, he is not entitled. Cases have occurred, and practicing lawyers appreciate that defendants guilty of murder in the first degree have been found guilty of murder in the second degree or even lesser degrees of homicide.

Where that has happened and the evidence sustains the lower verdict of the jury, the sentence is fixed accordingly. But where the evidence clearly shows the existence of a degree of homicide as found by the jury, and where it appears that no different verdict would be found, except for the

possibility of a more persuasive management of the defense gaining some advantage, there is no foundation for the granting of a new trial.

The inexperience charged against the first counsel for the defense does exist in the particulars pointed out by the present counsel, but they do not change the controlling facts nor militate against the righteousness of the judgment entered. A poor defense of a person charged with a crime will not justify a reversal of the judgment.

The occasion for granting a new trial does not exist where the evidence shows the commission of the acts and supports the finding of intention. The evidence in this case establishes an unlawful killing by the defendant and a motive on his part. This evidence is of such a nature that no degree of skill on the part of counsel could have kept the truth from the jury.

The possibility that had greater skill been employed it might have induced a finding of a lesser degree of crime than an exact measure of the evidence warranted, or the probability that by some art of persuasion there might have been secured an advantage to which the defendant was not legally strictly entitled, as a matter of law, cannot be varied or transformed into a lost substantial right.

Defendant's more or less unhappy existence extending over a period of thirteen years ended in a quarrel with his wife which lasted for several hours, and at the end of which defendant, while his wife was evidently fleeing from him, seized an iron bar, struck her, and, when she fell, inflicted further wounds, and then proceeded to the police station and surrendered to the authorities.

A careful study of the record in this case compels the adoption of the ruling of the court below. The defendant is entitled only to be judged according to the act of which he is guilty, and we agree with the trial court in his ruling upon the motion for a new trial, and quote the following from his opinion: "Undoubtedly the special plea of insanity could have been more extensively elaborated and technically presented by experienced and resourceful counsel, but I am satisfied that the issue was presented by defendant's counsel upon the trial so as to lay before the court and jury all the salient facts concerning the defendant and his act in question and so as to enable a jury of ordinary, common-sense laymen to arrive at a proper and just conclusion concerning the defendant's legal responsibility for the homicidal act.

The special plea of insanity was properly withdrawn. I am satisfied the defendant was not insane or so feeble-minded at the time in question that he should not be held legally responsible for his act. "... Much of the matter submitted in connection with the motion for a new trial is incompetent, irrelevant and immaterial. Notwithstanding that I have considered everything presented.

If I thought the result of the trial unjust, wrong, a miscarriage of justice, or that the defendant had through any cause been deprived of material rights or that he did not have a fair trial, I would not hesitate to grant a new trial, but convinced as I am to the contrary and entertaining no doubt that a

just conclusion was pronounced by the jury, even though the defendant was nagged, irritated, provoked to anger as he testified, by the wife he killed, the motion for a new trial is denied.

Judgment of the court will be effective forthwith.” Our attention is called to apparent failure on the part of counsel acting for defendant to examine character witnesses, and the failure to secure the introduction into evidence of the fact that the close relatives of defendant were insane; that a preliminary examination was waived; and that but a brief space of time was used in the matter of selecting the jury.

These do not constitute error, and we consider that, when taken in connection with all that did transpire, neither one nor all together prejudiced the defendant’s case in any particular. *State v. Jukich*, supra. By the Court. — Judgment affirmed. Feitz and Nelson, JJ., dissent. A motion for a rehearing was denied, without costs, on June 4, 1935.