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EDITORIAL COMMENT

Guilty or Not Guilty?

A very interesting case has been brought to the attention of the editorial staff of the REVIEW, namely, Manna vs. State, 179 Wis. 384; 192 N. W. 160.

On November 19th, 1920, Dominic Manna was found guilty of murder in the first degree for having feloniously and with malice aforethought shot and killed August Folcinelli on the sixth day of February, 1920, at the Lake Shore Stone Quarry in Ozaukee County.

Persons who have interested themselves in this case are desirous of presenting the salient facts in it for the consideration of those men and women in the State of Wisconsin who are concerned with justice and are students of the law, that they may form an intelligent opinion as to whether or not the whole record in the case proved Dominic Manna guilty or innocent. It has been eleven years now since Manna was committed to the State Penitentiary at Waupun, Wisconsin, for murder in the first degree, and throughout all that time he has constantly protested his innocence.

This case has been referred to the class in Criminal Law at Marquette Law School for investigation under the leadership of Professor F. X. Swietlik. I do not desire to submit to you a lengthy legal argument based upon the facts in the case, for the case is already res adjudicata, and Manna was represented by able counsel. It is clearly understood that the only remedy now, if there is or should be one, is executive clemency.

At the very outset, the REVIEW wishes it understood that it desires to avoid any appearance of disrespect of the Supreme Court, in presenting this case for the attention of its readers, so that a well considered opinion may be determined as to whether or not Manna was guilty of the murder of Folcinelli. In such a presentation we are free to go outside of the record of the trial. If Manna is innocent, it means that his incarceration in the State prison has been a mistake; but, on the other hand, if his sentence was just, then the question is settled, even on any request for pardon.

Testimony revealed the fact that Manna, hereinafter called the defendant, was a single man of Italian birth who came to this country in 1906. He was a workman at the Lake Shore Quarry near Port Washington, Wisconsin, since 1906, and had established a good reputation. At the Quarry he met Folcinelli, also Italian by birth, who was then unmarried, but shortly after their meeting, in 1909, Folcinelli married. Evidence showed that the two men had been close friends throughout the years, until the day before the shooting, when the defendant helped Folcinelli kill a pig.
At noon on the day of the shooting, defendant left the engine room of the Quarry following ten or fifteen feet behind Folcinelli on the road leading from the Quarry. The only words spoken by the men were when Folcinelli looked back at the defendant and said, "if I see any crows". At this point defendant was about two feet from the Railroad tracks which crosses the road both men were traversing. Defendant stepped over the first rail of the track, slipped and fell, according to his testimony, and the gun struck the ground in such a way as to discharge both barrels. Bear in mind that the gun which defendant had been carrying had been for a long time in his possession, and the shells in the gun had been in it for several weeks or more, and the further fact that Manna had been walking through deep snow. As to whether or not the gun barrels were dampened and wet as a consequence of their exposure to moisture, no one knows. It is certain that all these facts must influence the spread of the shot, which testimony showed to be erratic.

After the fall and the discharge of the gun defendant got up and immediately saw Folcinelli to the South on the Railroad at its junction with a side path. At this time Folcinelli was facing the defendant and staggered backward until he fell. Defendant then left his gun where it lay and hurried back to the machine shop to inform authorities there that he had fallen on the Railroad tracks and accidently shot Folcinelli. He then left for Port Washington to surrender to the authorities. The body of Folcinelli was left in the same position as it fell, until the coroner and sheriff came about two o'clock in the afternoon.

After defendant reported the occurrence to the authorities he was permitted to go free for three or four days without bail, when a warrant was sworn out for his arrest.

There were certain irregularities which were brought out during the conduct of the trial which raise a serious doubt as to whether or not they should be treated as reversible error. The Supreme Court solemnly found that the rights of the defendant were not prejudiced by these irregularities, which were deemed immaterial. The Supreme Court then went into a consideration of these irregularities as forming grounds for a new trial, which defendant's counsel contended, as based upon Stats., 1923, Sec. 3072m, now Sec. 274.37, Stats., 1929, which reads as follows:

"No judgment shall be reversed or set aside or new trial granted in any action or proceeding, civil or criminal, on the ground of misdirection of jury, or the improper admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained
of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure the new trial.”

The trial court at the bottom of page 4 of his instructions to the jury said as follows:

“The defendant comes into court and enters upon his trial with the presumption of innocence in his favor and this presumption of innocence attends the defendant from the beginning of the trial to the end thereof and prevails and must prevail unless overcome by evidence sufficiently strong and convincing to satisfy you of his guilt beyond a reasonable doubt”.

Counsel for defendant contended that the presumption of innocence attends the defendant from the beginning of the trial to the end thereof and until all the evidence is in and the arguments of counsel have been made and instructions given to the jury, citing numerous cases.

It was further contended that the instructions as given to the jury were fatal to the verdict. The Supreme Court however submitted that this charge was not erroneous, because the jury were elsewhere repeatedly warned that they could not find a verdict of guilty unless convinced of the truth of the charge beyond a reasonable doubt, which was defined.

The evidence relating to improper conduct between defendant and decedent’s wife some time before the shooting as related by one witness was admitted against defendant’s objection. This witness was drunk while conversing with defendant about his relations with Mrs. Folcinnelli. He stated that defendant did not reply to his question, but nowhere during the argument of the prosecution was it shown why the defendant should answer the intoxicated witness.

By consent of counsel for defendant the jurors were allowed to separate over Sunday, but only in charge of an officer. On such an occasion one of the jurors, while cranking his automobile broke his wrist. For a few minutes he became separated from the officers in procuring and submitting to surgical treatment. The Surgeon who treated him was a witness for the State. Counsel for defendant submitted that the separation of this juror without the presence of an officer was reversible error; but it was held by the court that this fact was inconsequential and that there was no prejudicial error on this account. Defense counsel declared that no motive for the killing was proved, and in fact a motive if any was doubtful; yet the court held that it was unnecessary to establish a motive for a homicide when the facts of the shooting are fully proven, since the jury can presume motive if they conclude from those facts that the shooting was not accidental. It was asserted by the defense that the defendant did not
have a fair trial because of prejudice against his race, but there seemed to have been no difficulty in the procuring of a jury, and furthermore, the district attorney and sheriff, who were friendly to the defendant, permitted him to go free on hearing his own version of the killing, and did not arrest him until further facts had been disclosed. It is, however, strongly urged that the conviction in this case was largely the result of racial prejudice against the defendant, which was existent at the time of trial.

The LAW REVIEW upon request opens its columns to a consideration of the facts and circumstances surrounding this case, and urges that the case be examined once more by the "Court of Pardons" to determine the innocence or guilt of Dominic Manna. If Manna is guilty as was found, then the matter is closed once and for all. But, if he did not receive a fair and impartial trial, if the court erred in refusing to direct a verdict of not guilty, if the court erred in its instructions to the jury, if there was no motive, since the testimony is circumstantial and weak, then the matter should be gone into thoroughly and a petition filed with the governor to finally determine whether Manna's incarceration in State's prison is for a crime which he did not commit. It is hoped that clubs or organizations looking for something to do will decide to investigate the facts surrounding this occurrence, which is still claimed to be accidental.

CARL F. ZEIDLER.

Practicing Lawyers as Teachers.

One of the most important problems confronting the newly admitted member of the bar is bridging the gap from theory to practice. Too often the young attorney finds himself unable to make practical application of the vast store of legal principles, the knowledge of which he has so laboriously acquired. The logical remedy for this difficulty would seem to lie in the method of teaching the law; yet we find that during the past twenty years a powerful group of theorists on the faculties of some of the oldest law schools have developed a policy of banishing from the faculties of these schools men actively engaged in the practice of law and substituting in their places those who are trained in legal theory only: men, who have never practiced.

With the view of combating this situation, a resolution was presented at the meeting of the Section of Legal Education of the American Bar Association held last August in Chicago, which read as follows: "Resolved that every approved law school shall have among its teachers a sufficient number of practicing lawyers, or lawyers who have had at least ten years experience at the bar, to insure actual personal acquaintance and influence with the whole student body, in