

Actions Considered Insane Often Don't Meet the Standards of New York's Legal System

Anemona Hartocollis

Feb. 20, 2008

A diagnosis of schizophrenia and repeated commitments to mental institutions might seem like obvious qualifications for an insanity defense ☒ or maybe not.

Experts say the legal standard for insanity is very different from what most laymen and even psychiatrists would consider crazy behavior.

The case of David Tarloff, 39, who is charged with second-degree murder in the slashing death of Kathryn Faughey, an Upper East Side therapist, is the latest to raise questions about when a defendant is too mentally ill to be responsible for his behavior.

Mr. Tarloff's family has said he has a history of schizophrenia, going back to young adulthood. Others with similar histories, like Andrew Goldstein, who pushed a woman in front of a subway, and Kevin McKiever, who stabbed a former Rockette in the back, have been convicted of the crimes.

"The truth is in the State of New York, you can be extremely crazy without being legally insane," Ronald L. Kuby, a criminal defense lawyer who has handled cases of mentally ill defendants, said Tuesday. "You can hear voices, you can operate under intermittent delusions, you can see rabbits in the road that aren't there and still be legally sane."

What matters to the justice system is whether the defendant is capable of telling the difference between right and wrong, and of understanding the consequences of acts, in spite of mental illness.

With those legal standards in mind, investigators were looking for signs that Mr. Tarloff was acting rationally before Dr. Faughey's death, law enforcement officials said Tuesday.

Investigators said they were considering, for instance, whether Mr. Tarloff had looked for an escape route or had consciously concealed the weapons that he used.

A textbook example of such behavior, said Robert Gottlieb, a defense lawyer, would be, "If you buy a ticket under a false name, so you're already planning to flee using an alias."

Mr. Gottlieb represented Peter Braunstein, a former magazine writer who was convicted in May of dressing as a firefighter in a ruse to get into a former colleague's apartment, where he sexually abused her.

Mr. Braunstein's writings, his orders from eBay and his rental of a storage locker became focuses of the trial, as the prosecutor tried to show that Mr. Braunstein knew what he was doing because he had planned every step of the crime.

The first step in a case like Mr. Tarloff's is to determine whether he is fit to stand trial, which requires an evaluation of his mental state. Prosecution experts may find that even though he is competent to stand trial, he was insane when police say he committed the crime. And then the district attorney could work out a plea that would send him to a psychiatric institution.

Such a plea can often mean that a defendant will spend more time in a psychiatric facility than if he were found guilty at trial, N. G. Berrill, a psychologist and the executive director of the New York Center for Neuropsychology and Forensic Behavioral Science, said Tuesday.

“It’s not the cakewalk that people fantasize,” Dr. Berrill said.

If Mr. Tarloff went to trial and a jury found him not responsible for his behavior because of mental illness, he would be sent to a mental institution where he would be re-evaluated at least every two years, Dr. Berrill said Tuesday. But, he said, doctors tend to be very conservative about ending treatment.

Daniel Rakowitz, who killed a girlfriend in 1989, was found not guilty by reason of insanity and remains in a maximum-security psychiatric center.

But insanity defenses rarely work during trials, Dr. Berrill said, because juries are wary of being tricked by a defendant who is faking insanity, and because they are afraid of letting a violent person back out on the streets.

He cited the case of Mr. Goldstein, a schizophrenic accused of pushing Kendra Webdale, 32, in front of a subway train in 1999. He was tried twice for murder and convicted in the second trial. After that conviction was overturned because of hearsay evidence, Mr. Goldstein pleaded guilty to manslaughter.

Mr. Goldstein might have seemed a perfect candidate for an insanity defense, Dr. Berrill said. “He’s got the history, he’s off his meds, he’s hearing voices, and why in the world would you push a complete stranger onto the subway tracks?” he said.

Mr. Kuby recalled one of his clients, Mr. McKiever, a schizophrenic who had bounced in and out of mental institutions. He was accused of killing a former Rockette, Alexis Ficks Welsh, in 1991 by stabbing her as she walked her dogs near Central Park.

Mr. McKiever was twice declared incompetent to stand trial. But after being medicated, he was able to stand trial; he was convicted and sentenced to 25 years to life.

The Ted K Archive

Anemona Hartocollis
Actions Considered Insane Often Don't Meet the Standards of New York's Legal
System
Feb. 20, 2008

nytimes.com

www.thetedkarchive.com