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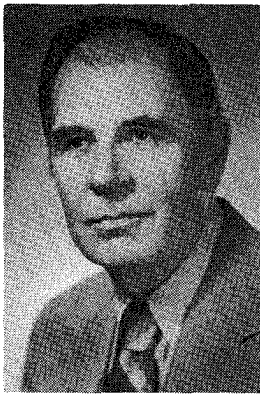
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legal lore

People v. Kief: A Sharp Quillet of the Law *



W. DAVID CURTISS**
ITHACA

*People v. Kief*¹ is not a landmark case in the law. Although it does involve an important legal principle concerning the criminal responsibility of one person for the acts of another, this is not my principal reason for publishing these comments. Rather, *People v. Kief* is the embodiment of a “truth is stranger than fiction” story which I find intriguing and which, hopefully, my readers will also enjoy.

The events took place in the late 1800’s in upstate New York. They involved the historic triangle of a farmer, the farmer’s wife and the hired man. The farmer was Albert Howard; his wife was Carrie Howard; and John Kief was the hired man. Carrie and John were jointly indicted for premeditated, first degree murder for having poisoned Albert to death by arsenic in December 1884.

* For the title of these comments, I am indebted to Charles S. Desmond and William Shakespeare, and in that order. See C. Desmond, *Sharp Quillets of the Law* (1949). “But in these nice sharp quillets of the law, Good faith, I am no wiser than a daw.” W. Shakespeare, *King Henry VI*, Part I, act II, sc. 4.

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I acknowledge with appreciation the generous assistance of John W. Grow, Esq., of Rome, New York, in developing local information about *People v. Kief*.

¹58 Hun 337, 11 N.Y.S. 926 (concurring opinion at 12 N.Y.S. 896) (Sup. Ct., 4th Dep’t 1890), *aff’d* 126 N.Y. 661 (1891).

The defendants demanded separate trials. Carrie, who was tried first, was acquitted in February 1886 by a Madison County jury. This verdict, however, was a controversial one. Under the headline “Carrie Howard Acquitted,” *The Roman Citizen*, one of Rome, New York’s newspapers, reported:

There is no doubt that many people in Madison County still believe in Mrs. Howard’s guilt, notwithstanding the verdict of acquittal. The judge before whom she was tried undoubtedly believed her guilty, and such was his feeling on the subject that he made no attempt to disguise it. In discharging her he used this significant language: “The jury has found you not guilty, but don’t do it again.”²

John Kief’s trial began in the Court of Oyer and Terminer of Madison County on September 23, 1886. The theory of the prosecution was that after John went to work on the Howard farm in Peterboro, New York, in October 1884, he and Carrie fell in love and decided to do away with Albert as an obstacle to their own future happiness. Carrie and Albert, who were wed in 1878, had a stormy marriage. They separated in 1882, and Carrie returned to live with her husband only when induced to do so by his transferring to her all of his property. Her bitterness toward Albert, however, not only continued but increased, as indicated by the testimony of Nellie Laird. Called as a witness for the prosecution in John Kief’s trial, Nellie related a conversation she had with Carrie Howard on April 17, 1884. Carrie complained that Albert visited houses of prostitution in Syracuse and came home with venereal disease. Nellie continued: “[S]he [Carrie] said how mean he was. She said she had a mind to give him poison some times, she said she would if her courage hadn’t failed her. I told her she wouldn’t do any such thing, and she said she would.”³

David Jones, who worked for the Howards from December 1883 until October 1884, gave further evidence of the low level to which Carrie’s and Albert’s marriage had sunk. Jones testified on direct examination by the District Attorney:

²*The Roman Citizen*, Feb. 12, 1886, at 2.

³Record at 169, *People v. Kief*, 126 N.Y. 661 (1891).

Q. You may state what you saw or heard of ill feeling between Howard and his wife in the summer of 1884?

A. Heard her calling Howard names. A God damn son of a bitch, a whore house pauper and a damned whore master. I presume I heard her call him a poor house pauper one hundred times.

Q. You may state whether upon one occasion you saw him take a butcher knife from her.

A. I did.⁴

This was the state of affairs when John Kief joined the Howard household, and thereafter John and Carrie were constant companions. They travelled together to Oneida, Cazenovia, Canastota and Morrisville, stopping for refreshments at local hotels and saloons. And their relationship appeared not to be purely Platonic. The testimony of David Jones was persuasive on this point. Jones had become proprietor of a saloon in Oneida and lived in rooms above it. On October 20, 1884, Kief and Mrs. Howard appeared at Jones' saloon and drank together for a time, after which Kief asked Jones for a key to his room:

I let Kief take the key. He and Mrs. Howard wanted the key to go up stairs, she was tired walking on the streets. It was eight or half past eight, the night of the Republican parade. Later in the evening I saw them coming out of my room together, coming down stairs, he then gave me the key, that was about half past eleven o'clock at night. . . . He returned and got the key after that but at what time I can't say. I next saw him about half past two or three o'clock in the morning. They were in the rooms above when I shut up. . . . Found him and Mrs. Howard there. They were standing up coming out of the bed room.⁵

The District Attorney undertook to show that Carrie Howard and John Kief were again in Oneida on December 3, 1884 and that on this

⁴*Id.* at 157-58.

⁵*Id.* at 156.

occasion they purchased a quantity of arsenic at the drug store of John Rogers. In describing this incident, Rogers testified:

Q. Go on state what there was about it?

A. I sold one ounce of arsenic about noon, as I remember, to a woman.

Q. One ounce of what kind of arsenic?

A. White arsenic, the ordinary white arsenic. The only way I remember it at all is I never heard the name of Kief before.

Q. You may state what direction you gave the person or said to them and what they said to you?

A. I asked the woman for her name.

Q. You sold it to a woman?

A. I did, she said it was for John Kief and he lived in Smithville, he wanted to use it for killing rats, and I then asked her to spell Kief, for I never heard the name before that I know of.

Q. Did she spell it for you?

A. She did.

Q. How?

A. K-i-e-f.⁶

Four days later, on December 7th, Dr. Frank Dewey was summoned to the Howard Farm. Albert was ill. Then, and during the days that followed, he suffered from pain in his stomach and bowels, vomiting, great thirst, and early in the morning of December 17, 1884, he died. The symptoms indicated arsenical poisoning as the cause of death, and this conclusion was confirmed by Dr. William Smith, a Syracuse chemist to whom various parts of Albert Howard's body were delivered for chemical analysis. Dr. Smith testified that his examination revealed the presence in Albert's stomach and other organs of varying quantities of white arsenic sufficient to have caused his death.

But what was the source of the fatal arsenic? The People, of course, contended that it was John Kief and Carrie Howard who had administered the poison to Carrie's husband.

John Kief, however, had another explanation. He contended that the arsenic was an ingredient of an embalming fluid used by Joseph

⁶*Id.* at 102-03.

Marsh, the undertaker who had prepared Howard's body for burial. Marsh testified on cross examination:

The fluid was administered to kind of keep the body from decaying and smelling bad. Principally to keep the body from decaying. I have used it six or eight years. I used it on a great many persons. It keeps and preserves them in a state so they look natural and don't decay. I injected it into Howard's nostrils, not any in his mouth. And I saturated the clothes and wound around the body so they would drip and laid them on. I injected six or seven spoonfuls in his nostrils [sic]. What I injected remained in his body. It is what is called the Egyptian fluid that I got in the casket factory, manufactured at Grand Rapids, Mich.⁷

If the defendant Kief hoped by this and other evidence to raise in the minds of the jurors a reasonable doubt as to his guilt, he failed to do so. On October 6, 1886, the jury returned a verdict of guilty as charged, and Justice Tappan pronounced sentence that on November 26, 1886 in the Madison County jail "or in some yard adjoining the same, between the hours of ten in the forenoon and two in the afternoon, you be hanged by the neck until you are dead, and may God have mercy on your soul."⁸

John Kief appealed his conviction to the General Term of the Supreme Court in the Fourth Judicial Department, and that court reversed the conviction and ordered a new trial.⁹ The People thereupon appealed to the Court of Appeals, which affirmed the decision of the General Term.¹⁰

John Kief's conviction of murdering Albert Howard was reversed because of errors of law committed in the course of his trial. Illustrative of such errors was the admission of the testimony of Nellie Laird and David Jones, as outlined earlier in this narrative. It will be remem-

bered that Laird and Jones testified about the embittered relationship between Carrie Howard and her husband Albert with reference to specific incidents that occurred during the spring and summer of 1884, well before John Kief came to work and live on the Howard farm in October 1884. The Court of Appeals recognized the general rule that in the case of a conspiracy between two persons to kill a third party, the acts and statements of one conspirator are binding on the other conspirator as long as they are made in furtherance of the common plan. In this context, the court found that it was reversible error to have admitted in John Kief's trial the pre-October 1884 statements of Carrie Howard, "all of which may have tended, perhaps, to incriminate her, but which certainly could not be made use of in order to inculcate this defendant,"¹¹ since October 1884 was the earliest time when evidence indicated a conspiracy between the two to kill Albert Howard.

Having noted the Court of Appeals rationale for reversing Kief's conviction and ordering a new trial, it is interesting to consider another possible ground for reversal which was urged by the defense but rejected by the court. This related to the impact on John Kief's guilt or innocence of the prior acquittal of Carrie Howard, who had been jointly indicted with him.

Immediately after the People had rested their case, the defense offered in evidence proof of the fact that Carrie, in her prior trial, had already been found not guilty of having caused her husband's death. The trial judge ruled that this evidence was incompetent, immaterial and irrelevant to the defendant John Kief's guilt or innocence, and he therefore excluded it.

The question, then, was whether John's jury was entitled to know that Carrie's jury had previously acquitted her of the crime which they were charged with having jointly committed. This brought into play Section 29 of the New York Penal Code, which then provided as follows:

A person concerned in the commission of a crime, whether he directly commits the act

⁷*Id.* at 59.

⁸*Id.* at 42.

⁹*People v. Kief*, 58 Hun 337, 11 N.Y.S. 926 (concurring opinion at 12 N.Y.S. 896) (Sup. Ct., 4th Dep't 1890).

¹⁰*People v. Kief*, 126 N.Y. 661 (1891).

¹¹*Id.* at 662.

constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal.¹²

Justice Parker, one of the three judges of the General Term of the Supreme Court who reviewed — and reversed — John Kief's conviction on appeal, concluded that it was reversible error for the trial judge to have excluded the evidence of Carrie Howard's prior acquittal. He wrote:

I concede that the acquittal of Carrie C. Howard was utterly immaterial on the question of whether defendant Kief, either alone or jointly with her, murdered the deceased by administering poison to him. So, also, I concede that such acquittal is no bar to the conviction of Kief on this indictment. But when it is sought to hold Kief on the ground that even though he were absent and took no part in administering the poison, he is guilty if he aided and abetted her in such act, an issue is put into the case that makes the question of her guilt a material and important one, and upon such issue the record of her acquittal is *prima facie* evidence in his favor.¹³

The Court of Appeals, however, was not moved by this argument. Said the court:

The indictment charged the defendant with the killing of the deceased. The evidence tended to establish that there were opportunities for administering the arsenic to the deceased by this defendant, as well as that he may have counselled and abetted Carrie Howard in administering it. If he administered it himself then the record of Carrie's acquittal was, obviously, immaterial. If he abetted her in poisoning her husband, then the Penal Code makes him as guilty as though he directly did the poisoning. Now the fact that Carrie Howard had been acquit-

ted, or convicted, could not legally prove anything for or against this defendant, for he was not a party to that record. . . . Carrie's acquittal would not prove this defendant's innocence of the charge in the indictment. At most it would only prove that being tried first, for some reason, she escaped conviction at the jury's hands.¹⁴

John Kief, then, was convicted; "for some reason," Carrie Howard was not!¹⁵

As indicated earlier, John's conviction was reversed and a new trial was ordered. This was in May 1891. Approximately one year later, in April 1892, because of the apparent impossibility of Kief's obtaining a fair and impartial trial in Madison County, a change of venue to Chenango County was granted. And at the same time, Kief was released on his own recognizance. *The Rome Daily Sentinel* of April 27, 1892, reported these developments and included an interesting commentary on prison administration in that day:

Kief's eight years' term in jail has not been at all irksome. For a man convicted of murder and awaiting another trial it has been

¹⁴126 N.Y. at 664. For further and more recent recognition of this principle, see *N.Y. Penal Law* § 20.05(2) (McKinney 1975); *People v. O'Dell*, 34 App. Div. 2d 856, 310 N.Y.S. 2d 645 (3d Dep't 1970); *People ex rel. Guido v. Calkins*, 9 N.Y.2d 77, 211 N.Y.S.2d 116 (1961).

¹⁵In *People v. Cohen*, 223 N.Y. 406, 429-30 (1918), the Court of Appeals, presumably comparing the defendant Cohen's situation with that of John Kief, stated:

Complaint is made that the verdict of the jury is illogical, in that while it convicted the defendant of murder in the first degree, it convicted Graff, a co-defendant, who if guilty at all, was equally guilty with Cohen, only of manslaughter in the first degree. That the jury failed to do their duty towards Graff is no reason for reversing the verdict which they found against Cohen. Why they made the distinction in favor of Graff we do not know. It cannot be explained upon the record. The jury saw the two men, however, and it is possible that something in Graff's attitude or condition may have inclined it to mercy in his case. Juries do forget, at times, that the question of mercy is something with which they should have no concern. (*People v. Kief*, 126 N.Y. 661.)

¹²Law of July 26, 1881, ch. 676, § 29, [1881] N.Y. Laws 913.

¹³58 Hun at 346-47, 12 N.Y.S. at 898.

more like a summer holiday. For a large part of the time he has had the liberty of the public buildings and has lived on the fat of the land. He has played croquet and lawn tennis in a striped blazer on the green in front of the jail, and he has whiled away his idle hours by painting and decorating the court house. He has drank wine and smoked good cigars provided by admiring friends. He has had visitors to see him who were allowed to remain all day in the cell, or wherever he chose to conduct them about the county buildings. . . .

. . . When Sheriff C.E. Remick was elected and qualified to the position, Kief, who, it is said, was carrying the keys of the jail, approached him and said:

“I do not suppose we’ll have any trouble, sheriff?”

“Not if I know it, you won’t. You’ll be on one side of the cell door and I on the other, and I shall be on the outside,” said the sheriff, tersely. And he has kept his word.¹⁶

John Kief was never brought to trial a second time for the murder of Albert Howard. He

¹⁶ *The Rome Daily Sentinel*, April 27, 1892, at 2.

died on August 23, 1893 under the rather dramatic circumstances described on the front page of *The Rome Semi-Weekly Citizen*:

FATE OF JOHN KIEF.

He Escaped the Gallows to Meet
Death on the Railroad.

As express No. 4 on the West Shore road was nearing Canastota about 3 o’clock Wednesday morning, the engineer noticed a man lying on the track with his head across the south track. It was impossible to stop the train before striking the prostrate man. When the train was stopped the body was taken to Canastota in a horribly mangled condition, and was, from letters found in the pockets, identified as that of John Kief of the Howard murder fame. . . . Among the letters found on him were some from Carrie Howard, who is now in Utica. One dated June 17, pleads with him to come and see her. It is thought that he decided to visit his old friend and walked up the track to take the express, which slows up at the E.C. & N. junction, and while waiting fell asleep across the tracks and thus met his fate.¹⁷

¹⁷ *The Rome Semi-Weekly Citizen*, Aug. 26, 1893, at 1.

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