

## Would murder charge be double jeopardy?

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### *Prosecutors ponder options after woman dies from '02 shooting*

A man shoots a woman in a drug deal gone bad. The woman is left paralyzed, and her assailant pleads guilty to shooting her.

Then the woman dies.

Now authorities are considering charging the man with murder — while he's in prison for shooting the woman.

That's the situation that has arisen recently after the death of Anna Hall-Davies, 39, of Nashville.

The man who shot her, John L. Sullivan, 22, is in a state prison in Nashville. Davidson County's top public defender says charging Sullivan with Hall-Davies' murder might be a case of unconstitutional "double jeopardy."

"I think it's an unsettled question and will require litigation if they (the district attorneys) decide to prosecute," said Public Defender Ross Alderman, who represented Sullivan in his plea. "It's an interesting legal question, and I don't know how the courts would decide.

"There are arguments on both sides. I wish they were only for my side."

Double jeopardy is when a person is prosecuted more than once for the same crime. It is prohibited by the Fifth Amendment to the U.S. Constitution.

Sullivan pleaded guilty Sept. 16 to attempted first-degree murder and was sentenced to 18 years. Police said he shot Hall-Davies in the neck after she bought crack cocaine from him; then he took the drugs and the woman's \$20.

Metro detective Joe Williams said Sullivan admitted that he shot Hall-Davies but told police it was an accident.

The 2002 shooting severed her spine and left her paralyzed from the neck down. Hall-Davies died last week in an Ohio nursing home.

Prosecutors are examining laws to see whether they could charge Sullivan with murder because an Ohio coroner's preliminary results say Hall-Davies died from the shooting.

"We want to make sure this person is punished for what he has done," said Assistant District Attorney Rob McGuire last week in a telephone interview.

Tennessee case law and Supreme Court rulings suggest that Nashville prosecutors legally could pursue a murder case against Sullivan, said David Raybin, a Nashville legal expert and defense attorney.

Raybin pointed to a state Supreme Court decision from 1903, in which Shelby County defendant Charles McNulty pleaded guilty to assault and battery, was fined \$50 and sent to a workhouse. About a month after the plea, McNulty's victim died. McNulty was then indicted on a murder charge and later found guilty at trial of voluntary manslaughter and was sent to prison for two years. The high court upheld his conviction.

The indictment in the murder case was a "greater offense, containing other and materially different elements from the former one, and requiring different proof to convict, and which had not been committed and was not in existence" when McNulty pleaded guilty to assault, the court ruled.

However, the 1903 case involves an initial offense that was a misdemeanor, and Alderman wondered whether the state Supreme Court would rule differently in the case of Sullivan, who pleaded guilty to a serious felony.

Prosecutors see the possibility of what they call "inequity" in Sullivan's sentence vs. the outcome of the crime, and prosecutors want to make sure the punishment is just, McGuire said. District Attorney Torry Johnson and Deputy District Attorney Tom Thurman are assisting McGuire in reviewing the case.

First-degree murder convictions carry sentences such as life terms or execution.

Raybin says he doesn't think double jeopardy prohibitions would come into play. Hall-Davies' death is a new crime, according to the law.

"Every crime has elements," he said. "And one element to homicide is that the victim is dead."

"There are a few exceptions to the double jeopardy clause," Raybin said. "One of them is that double jeopardy does not prohibit for a crime that has not yet happened."

If Sullivan is charged with murder, a judge would determine whether Alderman's office would again represent Sullivan, Alderman said.

Dr. James Pritchard, the Stark County, Ohio, coroner, last week issued a preliminary ruling of homicide based on an autopsy and an investigation into Hall-Davies' death. It appears that Hall-Davies "died from complications due to injuries to the neck from the shooting," Pritchard said in a telephone interview.

Pritchard will issue an official ruling on the cause of death when results of toxicology and microscopic tests are complete, he said. It could take several weeks to get the results, Pritchard said.

McGuire said that once Pritchard's final autopsy is complete, prosecutors will review the results. Also, they will discuss the case with Hall-Davies' family and will review all the legal issues to determine whether a murder case is possible.