

Diagnosis: **GUILTY**

*Unusual Case
Leads to Two-Year Prison
Sentence
For Former Doctor*



Special prosecutors Geff Anderson (left) and Rob Freyer

Everything about this Fort Worth murder trial was unusual — from the civil lawyers on both sides who helped try it, to the former physician who was the defendant, to the days and days of medical testimony jurors heard.

So it was fitting that the conclusion of the two-week trial against Lydia Grotti packed a final wallop. The jury convicted the former doctor of criminally negligent homicide for killing a patient, the least serious offense of the three charges Grotti faced.

Yet for a defendant who was probation-eligible — many lawyers thought Grotti shouldn't serve time because she had no prior criminal record and because the jury's ruling meant she did not intentionally cause a death — her conviction on the least-serious offense she faced may have been the worst possible outcome. While she avoided the higher punishment ranges of murder or manslaughter, the other possible charges she faced, the conviction for criminally negligent homicide means Grotti cannot avoid prison time.

The Texas Penal Code prevents jurors from considering probation

in state jail felony cases, such as those involving criminally negligent homicide. And because jurors also found that Grotti used her finger as the deadly weapon in the offense, the code prevented 372nd District Judge Scott Wisch from sentencing Grotti to probation.

Before trial, prosecutors offered Grotti a deal: probation in exchange for a guilty plea, her attorneys say.

On Aug. 31, a few hours after the jury's verdict, the prosecution and Grotti's attorneys reached an agreement that Wisch approved. Grotti agreed to serve two years in prison — the minimum sentence she could pursuant to her conviction. And a few minutes after the agreement, a sheriff's deputy led the smartly dressed professional to the courtroom's holdover cell to await a transfer to state prison. As of presstime, Grotti's lawyers were pursuing a bond to have her released pending an appeal.

The jury convicted Grotti in connection with the Dec. 26, 2000, death of 64-year-old Lettie McGhee. McGhee went into full cardiac arrest after she arrived at John Peter Smith Hospital's emergency department. Grotti pronounced McGhee dead. But after the

pronouncement, McGhee still was breathing, according to various hospital staff members' testimony. Grotti testified that she occluded McGhee's endotracheal tube, an act she admitted on the witness stand was neither professional nor ethical. [See "Death Defined," *Texas Lawyer*, Feb. 16, 2004, page 1.]

But Grotti adamantly testified that McGhee already was dead when she occluded McGhee's endotracheal tube and that the breath the patient was exhibiting was not life-sustaining.

However, prosecutors argued that Grotti was the sole reason McGhee died.

Grotti's criminal trial resembled a medical-malpractice civil trial. And there's a reason for that, says Grotti's attorney Keith Ward, a partner in Tulsa, Okla.'s Richardson, Stoops, Richardson & Ward. Civil court is where the case should have been tried — if at all, he says. A wrongful-death suit filed against Grotti by McGhee's survivors was dropped earlier this year after the parties reached a confidential settlement, Ward says.

"It was a finding of negligence," Ward says of the conviction, which he plans to appeal. "And dozens of physi-

cians annually are found negligent of causing patients' deaths in this state and other states and they're not criminal matters, normally."

It's a conviction that all Texas doctors and medical associations should take note of, Ward says.

But special prosecutor Rob Freyer, the Harris County assistant district attorney who prosecuted Grotti along with special prosecutor Geff Anderson, a civil attorney and partner in Fort Worth's Anderson, Smyer & Riddle, says that by convicting Grotti the jury reached a just result in a difficult case.

"Nobody is above the law," says Freyer, who took the case three years ago after the Tarrant County District Attorney's Office recused itself because the office's civil division represents John Peter Smith Hospital.

"She is not above the law," Freyer says. "And she did something the law requires her to answer to."

Strengths and Weaknesses

Grotti's trial featured an atypical mix of lawyers for a criminal case. But considering the circumstances — doctors rarely are indicted in Texas for the care they give — the trial teams on both sides were appropriate.

Jurors heard from 20 witnesses, many of them who were staff physicians or nurses working in the emergency room when McGhee died. Four were expert witnesses whose testimony conflicted regarding whether McGhee was dead when Grotti occluded her endotracheal tube.

Freyer hired Anderson — his college friend and Kappa Sigma fraternity brother from Texas Christian University — to assist in prosecuting the case. Anderson, who usually handles aviation cases and defends assisted living centers against tort claims, was comfortable with the medical testimony and served as a smooth, calming counter-balance to Freyer's intense prosecutorial style.

Ward did the heavy lifting for Grotti's defense team, which also included Gary Richardson, a partner in Richardson, Stoops, Richardson & Ward, and Brian Esenwein, a civil lawyer and partner in Fort Worth's Cotton Schmidt.

Ward knew the case backward and forward. He'd researched the matter heavily because he also represents Grotti in a libel case she filed against Dallas' Belo Corp.-owned WFAA-TV Channel 8, which first reported about

Grotti's treatment of McGhee in 2001. Esenwein represents Grotti in her appeal to save her medical license, which was revoked last year in a final order by the Texas State Board of Medical Examiners.

The case came to a head during closing arguments, as both sides hammered at the weaknesses in opposing counsel's case.

Ward argued that the prosecution did not prove Grotti caused McGhee's death.

"Dec. 26 was the day that God Almighty chose for Lettie McGhee," Ward argued. "Every person that is born dies. And because a person who loved her children and loved her grandchildren died doesn't mean that someone is responsible for it."

What caused McGhee's death was irreversible cardiac arrest, Ward argued, not Grotti. It was discovered after her death that McGhee suffered from metastatic cancer, making her medical condition grave and almost impossible to survive after experiencing cardiac arrest, Ward argued.

To convict Grotti of any of the charges she faced, which included murder or lesser-included offenses of manslaughter and criminally negligent homicide, Ward argued the jurors would have to find "beyond a reasonable doubt that Lettie McGhee was the first person in medical history to be able to survive cardiac arrest with metastatic cancer."

But the prosecution slammed Grotti with her own actions. Grotti had no reason to occlude McGhee's endotracheal tube — other than to cover up her own mistake by pronouncing McGhee dead too soon, they argued.

"Everyone in that emergency room was distraught. And these are medical professionals, and they see death all of the time," Anderson argued. "They're torn up because they haven't watched a natural death."

"It's murder," Anderson argued. "And she did it intentionally."

Grotti's explanation for her actions made no sense, Freyer argued.

"She cannot explain, even in her best-case scenario, why she would place her finger over a tube on a person who was dead," Freyer argued.

"The reason she says she does it is because the family is too poor and unsophisticated to understand," Freyer argued, as he turned to face Grotti who was seated at the defense table. "How dare you."

Jurors deliberated for two days.

During that time they sent 13 notes to the judge — many of them asking that testimony be provided to them regarding what nurses saw after Grotti declared McGhee dead and before she occluded McGhee's endotracheal tube.

Libel Suit Continues

Besides her criminal appeal, the litigation surrounding Grotti is not over, Ward says. He notes it is unlikely Grotti can win her medical license back because of the felony conviction, but she'll still pursue her libel suit.

In *Grotti v. Belo Corp., et al.*, Grotti accuses investigative television reporter Valeri Williams of broadcasting "false, scandalous and defamatory statements" about Grotti's treatment of McGhee, including that Grotti caused McGhee's death.

Grotti's felony conviction won't damage her libel suit, which is filed in Dallas' 67th civil district court, Ward says.

The WFAA broadcast spurred the police to investigate the case, Ward says. In fact, Ward plans to argue in the libel case that if it had not been for the broadcast, Grotti likely would not have been convicted of a felony.

"To my way of thinking, this is a direct consequence of that false reporting," Grotti says.

But David Starr, assistant general counsel for Belo, says Williams and WFAA stand by the truth and accuracy of the broadcast.

"WFAA recently filed a motion for summary judgment in the case, and we certainly will bring her conviction for criminally negligent homicide to the court's attention, as we did the recent court decision affirming the revocation of her license to practice medicine in Texas," Starr says. "The jury's conviction of Dr. Grotti for causing the death of Ms. McGhee is telling."

David Berry, McGhee's grandson who watched much of Grotti's trial, takes some comfort in the jury's verdict.

Notes Berry: "I'm just glad she won't be able to practice medicine." 

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