STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CYNTHIA LEE STONE,

Defendant-Appellant.

UNPUBLISHED
June 18, 1996

No. 171834
LC No. 93-000328-FC

Before: White, P.J., and Sawyer and R.M. Pajtas,* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). She was sentenced to consecutive prison terms of two years for the felony-firearm conviction and eighteen to thirty years for the second-degree murder conviction. She appeals and we affirm.

Defendant first argues that the prosecution failed to satisfy its burden of proof that she was sane at the time of the offenses. We disagree. Defendant introduced the expert testimony of Dr. Andrew Watson, who testified that, under Michigan law, defendant was mentally ill and insane at the time she committed the crimes charged. On rebuttal, the prosecution introduced the testimony of Dr. Carol Holden, who testified that in her opinion, defendant was indeed mentally ill, but not legally insane, at the time of the murder.

The jury was also presented with evidence regarding defendant's actions prior to and at the time of the murder from which the jury could have concluded that defendant was sane. Specifically, that prior to the shooting of her son, she obtained a towel to muffle the sound of the gunshot so that the neighbors would not hear the shot and call the police. From this evidence, one could conclude that because defendant was concerned that the neighbors would call the police if they heard a gunshot, she knew that her conduct was wrong.

* Circuit judge, sitting on the Court of Appeals by assignment.

There was also testimony that although defendant stated that she was not able to control her actions, she did abort her first attempt to shoot her son, and from this a rational trier of fact could conclude that she was able to control her actions and conform to the requirements of the laws of the State of Michigan. This trial was a battle of the experts on the issue of insanity and defendant's argument is essentially one of challenging the reliability and credibility of the experts at trial. When the evidence is viewed in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of this crime proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287; 519 NW2d 108 (1994).

Defendant next argues that she was denied a fair trial by the presentation of evidence regarding her future prognosis. We note, however, that defendant failed to object to the admission of this evidence, thus precluding appellate review. *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993). In fact, the testimony was in direct response to written questions by the jury, and the trial court conferred with counsel for both sides to determine if these written jury questions, among others, should be asked, and neither side objected to the trial court's reading these questions. Defendant may not acquiesce to an issue and then claim error on appeal. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

Defendant's next argument is that plaintiffs' expert, Dr. Holden, phrased the law of insanity in such a manner that it in effect placed the burden of proof on defendant to show that she was insane at the time she shot her son. We disagree. Dr. Holden's statement of the law of insanity was consistent with the law in this state. We further note that both prior to and after the expert testimony, the trial court instructed the jury as to the correct definitions of mental illness and legal insanity and told the jury that it is those definitions that are to be considered. The jury was instructed as to the correct burden of proof by the trial court and given the admonition that it "is important for you to remember that the Defendant does not have to prove that she was legally insane." We, therefore, conclude that there was no error.

Defendant's final argument is that her sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. Defendant's sentence is within the minimum guideline range and is therefore presumably proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). We conclude that the sentence in this case is proportionate to the seriousness of, and the circumstances surrounding, this offense. Therefore, the sentencing court did not violate or abuse its discretion.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard M. Pajtas