STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARC JOEL LAUCKE,

Defendant-Appellant.

UNPUBLISHED
April 11, 1997

No. 183821
Oakland Circuit Court
LC No. 94-130884-FC

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316; MSA 28.548. After a jury trial, defendant was found guilty but mentally ill of second-degree murder, MCL 750.317; MSA 28.549. Defendant was sentenced to twenty to thirty years' imprisonment and ordered to receive mental health treatment. Defendant appeals as of right. We affirm.

I

Defendant first argues that the trial court should have granted his motion for a directed verdict because there was insufficient evidence from which the jury could reasonably conclude beyond a reasonable doubt that he was sane at the time of his mother's death. We disagree.[1]

A

A person is legally insane if, as a result of mental illness or mental retardation, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. MCL 768.21a; MSA 28.1044(1). "Mental illness" is defined as a "substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." MCL 330.1400a; MSA 14.800(400a); *People v Ross*, 145 Mich App 483, 492-493; 378 NW2d 517 (1985).

By comparison, the guilty but mentally ill verdict requires that a trier of fact find all of the following beyond a reasonable doubt:

(a) That the defendant is guilty of an offense.

(b) That the defendant was mentally ill at the time of the commission of that offense.

(c) That the defendant was not legally insane at the time of the commission of that offense.

MCL 768.36(1); MSA 28.1059(1).

B

A defendant in a criminal proceeding is presumed sane. *People v Murphy*, 416 Mich 453, 463; 331 NW2d 152 (1982). Once any evidence of insanity is introduced, however, the prosecution bears the burden of establishing defendant's sanity beyond a reasonable doubt. *Id.* at 463-464.

> The nature and quantum of rebuttal evidence of sanity sufficient to present an issue for a jury is to some extent determined by the strength of the case for insanity. Necessarily, the sufficiency of evidence needed to put the question of sanity before a jury will vary from case to case. Merely some evidence of sanity may be sufficient to meet some evidence of insanity and yet wholly insufficient to meet substantial evidence of insanity. [*Id*. (citations omitted).]

The appropriate remedy for the prosecution's failure to present sufficient evidence to rebut a defendant's claim of insanity is a directed verdict of not guilty by reason of insanity. *Id*. at 467.

C

In the present case, defendant introduced some evidence that he was insane at the time he killed his mother. However, we believe that the prosecution produced sufficient evidence to overcome defendant's claim that he was insane. Therefore, the trial court properly denied defendant's motion for a directed verdict and sent the case to the jury.

Dr. Barbara McIntyre testified that defendant suffered from a personality disorder that was likely a result of growing up in a violent and dysfunctional family, and from an organic personality syndrome, which was likely caused by his epilepsy. She opined that defendant knew that hitting his mother was wrong, but at the time he killed her, "his mental illnesses left him without the ability to not do what he knew was wrong, [and] that he acted . . . without having the ability to control his actions at that point, and that that lack of ability was a function of the mental illnesses that he suffers from." Dr. James Dillon likewise opined that when defendant killed his mother defendant could neither conform his conduct to the requirements of the law nor appreciate the wrongfulness of his conduct.

The prosecution presented the testimony of Dr. Stephen Cook, who testified that epilepsy was a substantial thought disorder and that defendant would be not guilty by reason of insanity only if he were having a seizure at the time he killed his mother or if he was in a post seizure state. Dr. Cook

further stated that aggression during a seizure is "extremely rare" and that there would not be sequential, goal-directed aggressive behavior during a seizure.

Defendant's neurosurgeon, Dr. Donald Ross, testified that defendant's seizures diminished after undergoing surgery for epilepsy. Dr. Ross also testified that the definitive study of violent seizures concluded that there was no evidence of any goal-directed violent behavior during epileptic seizures. Further, defendant did not claim that he had a seizure at the time his mother was killed, but told Detective Pousak, Dr. Dillon and Dr. McIntyre that he did not recall having one.

The jury was entitled to weigh the witnesses' credibility and was not bound to accept the testimony of Drs. McIntyre and Dillon that defendant was legally insane when he killed his mother. The jury was entitled to believe the opinion of Dr. Cook that defendant would only be insane if he was having a seizure and to further believe that defendant did not have a seizure when he killed his mother. *People v Arroyo*, 138 Mich App 246, 259; 360 NW2d 190 (1985). Accordingly, we find no error in the trial court's denial of defendant's motion for a directed verdict on this ground.

II

Defendant also argues that his motion for a directed verdict should have been granted because there was insufficient evidence of premeditation and deliberation to allow the jury to consider a charge of first-degree murder. We disagree.

Where a jury is permitted to consider a charge unwarranted by the proofs, there is always prejudice because a defendant's chances of acquittal on any valid charge are substantially decreased by the possibility of a compromise verdict. *People v Malach*, 202 Mich App 266, 274-275 (1993).

To establish first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the killing was premeditated and deliberate. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing itself, the prior relationship between the defendant and the victim, and defendant's actions before and after the killing. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995).

After a careful review of the record, we find that sufficient evidence was presented at trial to establish beyond a reasonable doubt that defendant intentionally killed his mother and that the killing was premeditated and deliberate. There was substantial evidence that defendant was extremely resentful and angry with his mother and that, shortly before her death, he threatened to slit her throat. Although defendant claimed that he only shoved or hit his mother once, she had apparently been punched and/or kicked numerous times in the face and body, to the extent that her liver was ruptured and her nasal cavity was fractured. The hair clumps that were found in the bedroom and bathroom indicate that there may have been a struggle between defendant and his mother. Furthermore, the victim was wearing her coat, boots and gloves, from which it could be inferred that she was preparing to leave at defendant's request and he nonetheless beat her to death.

Presented with this evidence, the jury could have properly inferred that defendant had sufficient time to take a "second look" before killing his mother. Because there was sufficient evidence from which the jury could determine beyond a reasonable doubt that defendant committed first-degree murder, the trial court properly denied defendant's motion for a directed verdict.

Affirmed.

/s/ Henry William Saad
/s/ Janet T. Neff
/s/ Kathleen Jansen

[1] Effective October 1, 1994, our Legislature placed on criminal defendants the burden of proving the defense of insanity by a preponderance of the evidence. MCL 768.21a(3); MSA 28.1044(1)(3). However, because defendant committed the instant offense before the effective date of that statute, we limit our discussion to the law as it existed at that time.