

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY P. GRAY,

Defendant-Appellant.

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UNPUBLISHED

June 9, 2000

No. 207317

Oakland Circuit Court

LC No. 94-132120-FC

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant, a juvenile, was found guilty but mentally ill<sup>1</sup> of assault with intent to commit murder, MCL 750.83; MSA 28.278. He was sentenced as an adult to twelve to fifty years' imprisonment. A panel of this Court determined that the prosecution failed to present sufficient evidence to prove that defendant was sane at the time of the commission of the offense and, accordingly, reversed defendant's conviction and remanded for entry of a judgment of not guilty by reason of insanity and an order committing defendant for psychiatric treatment pursuant to MCL 330.2050; MSA 14.800(1050). *People v Gray*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 1996 (Docket No. 180801). Our Supreme Court vacated this earlier judgment and reinstated the jury's verdict of guilty but mentally ill of assault with intent to commit murder, but directed that the case be remanded to the trial court "for consideration of whether the verdict is against the great weight of the evidence." *People v Gray*, 454 Mich 887; 562 NW2d 783 (1997). On remand, the trial court issued an opinion and order finding that the jury verdict of guilty but mentally ill was not against the great weight of the evidence. This Court then granted defendant's delayed application for leave to appeal the issues that are now before us. *People v Gray*, unpublished order of the Court of Appeals, entered April 29, 1998 (Docket No. 207317). We affirm.

Defendant lived with his grandmother, the three-year-old victim, and the victim's mother. Approximately three to five days before the assault, defendant's grandmother and the victim's mother noted that defendant began acting strangely. He stopped eating, bathing, and sleeping. Defendant also made it known that he desperately wanted to return to Missouri, where he had lived prior to moving to Michigan approximately one month before the assault.

On the evening of the assault, defendant apparently lured the victim from the victim's mother's bed, took him into a closet, and slit his throat. Defendant then took the victim into the bathroom, locked the door, and held the injured victim underwater in the bathtub. Defendant explained to two examining psychiatrists who testified at trial that he had begun hearing voices during the week preceding the assault and had come to believe that he was God and that the victim had the devil in him. Defendant thought that he could save the victim from satanic possession by cutting his throat and baptizing him in the "holy water" of the bathtub. These expert psychiatric witnesses, who testified for each party, opined that defendant was mentally ill and legally insane at the time of the assault

Defendant first argues that the trial court abused its discretion by denying his motion for new trial because the jury's verdict of guilty but mentally ill was against the great weight of the evidence. We disagree.

MCR 2.611(A)(1) provides, *inter alia*, that a court may grant a new trial when the substantial rights of a party were materially affected and the verdict was against the great weight of the evidence. A trial court may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); *People v Gadowski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). When reviewing a trial court's decision on this issue, this Court may not attempt to resolve credibility questions anew. *Id.*

A trial court's decision on a motion for a new trial is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision was so violative of fact and logic that it evidenced a perversity of will, a defiance of judgment, or an exercise of passion or bias. *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997).

After hearing the evidence, the jury rendered a verdict of guilty but mentally ill of assault with intent to commit murder, MCL 750.83; MSA 28.278. To find defendant guilty but mentally ill, the jury was required to find beyond a reasonable doubt (1) that defendant was guilty of the offense of assault with intent to commit murder, (2) that he was mentally ill at the time of the offense, and (3) that defendant was not legally insane at the time of the commission of the offense. MCL 768.36; MSA 28.1059. At the time of the offense, legal insanity meant that the person, as a result of mental illness or mental retardation, lacked "substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law." MCL 768.21a(1); MSA 28.1044(1).<sup>2</sup> The statute incorporated by reference the Mental Health Code's definition of mental illness, which, at the time of the offense, was "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with ordinary demands of life." MCL 330.1400a; MSA 14.800(4001); *People v Ross*, 145 Mich App 483, 492-493; 378 NW2d 517 (1985).

A defendant is presumed sane. *Ross, supra* at 493. At the time of the offense, once any evidence of insanity was introduced, the prosecution bore the burden of proving defendant's sanity beyond a reasonable doubt.<sup>3</sup> *Id.* Although the nature and quantum of the evidence needed to put the

question of sanity to the jury varies from case to case, it is to some extent determined by the strength of the case for insanity. *People v Murphy*, 416 Mich 453, 464; 331 NW2d 152 (1982).

Much of defendant's argument that the jury's verdict was against the great weight of the evidence rests on the strength of the expert witnesses' opinions that he was legally insane at the time of the attack. It is true that both parties' expert witnesses testified that defendant suffered from psychotic delusions when he attacked Zachary and that, because of his mental illness, defendant met the definition of legal insanity at the time of his offense. However, the jury was not required to accept the entirety of the experts' testimony. *People v Clark*, 172 Mich App 1, 8-9; 432 NW2d 173 (1988). Dr. Thomas Shazer, defendant's expert, testified that defendant had displayed violent and assaultive behavior in the past. Evidence of prior anti-social conduct was both material and admissible on the issue of defendant's insanity. *People v Woody*, 380 Mich 332, 338; 157 NW2d 201 (1968). The evidence of defendant's prior violent acts, particularly an episode where he choked another child until the child lost consciousness, could have cast doubt on whether defendant was actually insane at the time of his offense, rather than simply exhibiting violent tendencies which the jury could have believed were symptoms of underlying mental illness. Dr. Shazer acknowledged that it was rare for a person as young as defendant to experience a psychotic episode. Further, neither of the experts could explain exactly how defendant, who did not have a documented history of mental illness, could undergo a dramatic psychotic shift in a short period of time and then get better in as short a period. Thus, the expert testimony was not as unassailable as defendant contends.

Further, the jury could have concluded that testimony of lay witnesses cast doubt on the experts' opinions. Lay testimony may be competent evidence of sanity and may also rebut expert testimony on the issue. *Murphy*, *supra* at 465. Several witnesses, including the Turners, upstairs neighbors who saw defendant just prior to the assault, testified that defendant did not act strangely just prior to the assault.

Next, circumstantial evidence supported the prosecutor's version of the facts, i.e., that defendant was not legally insane when he assaulted the victim because (1) he appreciated the wrongfulness of his conduct and (2) had the capacity to conform his conduct to the requirements of the law. Defendant waited until he could steal the victim away from his sleeping mother before he attacked him. Evidence indicated that the assault began in a closet and was continued behind the locked door of a bathroom, from which one could infer that defendant was aware of the necessity to hide his conduct because of its wrongfulness. Defendant's grandmother heard defendant tell the victim to be quiet during the attack, defendant shot a guilty look at the victim's mother when she caught him in the middle of the attack, and defendant asked the victim's mother immediately after the assault what she intended to do in light of the attack. The jury could infer from this evidence that defendant appreciated the wrongfulness of his conduct. Further, defendant attempted to flee the crime scene and used subterfuge to conceal his identity, evidence that suggests he was aware of the wrongful nature of his conduct and the consequences that would befall him if he were apprehended by the police. See *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Based on this evidence, the jury could conclude that defendant was aware of the wrongful nature of his acts.

Second, the jury could have concluded that defendant was able to control his conduct at the time of the offense. Expert witness Dr. Shazer acknowledged that he was unable to determine whether defendant's mental illness rendered him unable to resist the urge to cut the victim's throat. Further, there was testimony that when the victim's mother came into the bathroom, defendant was holding the victim underwater, as he explained, to get the devil out of him, but he voluntarily ended the assault when he was caught. The victim's mother physically intervened only after defendant voluntarily took his hands off the victim and backed away from the bathtub, upon being caught by the mother.

Because the evidence presented in this case was such that different minds could naturally and fairly come to different conclusions regarding the issue of defendant's legal insanity, the trial court did not abuse its discretion by refusing to grant defendant's new trial motion premised on the great weight of the evidence. See *Lemmon, supra* at 644.

Next, defendant contends that the trial court abused its discretion by admitting two photographs of the cut on the victim's neck. We disagree. The photographs were admissible because they illustrated the nature and extent of the victim's injury and thus were relevant to the issue whether defendant intended to kill the victim, which the prosecutor was required to prove beyond a reasonable doubt. See MRE 402; *People v Mills*, 450 Mich 61, 68-71; 537 NW2d 909, modified 450 Mich 1212 (1995). After viewing the photographs, we disagree that they were substantially more prejudicial than probative. See MRE 403. Although defendant contends that the photographs were misleading because the victim's wound appeared larger than it really was, the doctor who took the pictures explained to the jury that the victim had been positioned in a manner that exaggerated the size of the victim's cut.

Next, defendant argues that the trial court abused its discretion by sentencing him as an adult, rather than a juvenile. See *People v Dilling*, 222 Mich App 44, 52; 564 NW2d 56 (1997). However, in light of the trial court's careful weighing of the juvenile sentencing factors set forth in MCR 6.931(E)(3), and the testimony of two qualified witnesses who testified with respect to the sentencing factors, concluding *inter alia*, that defendant would more likely receive necessary psychiatric help in an adult prison facility, we find no abuse of discretion. See *People v Black*, 203 Mich App 428, 430-431; 513 NW2d 152 (1994).

Finally, defendant contends that the trial court's decision to sentence him to twelve to fifty years' imprisonment constituted an abuse of discretion. We disagree. Defendant's sentence fell within the guidelines range for the offense of assault with intent to commit murder, so it is presumptively proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Defendant failed to show the existence of unusual circumstances that might serve to rebut this presumption. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Moreover, we note that defendant committed an extremely heinous crime and had a marked history of assaultive, violent behavior. Thus, we cannot conclude that his sentence was

disproportionate to the circumstances surrounding defendant and his offense. See *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

<sup>1</sup> See MCL 768.36; MSA 28.1059.

<sup>2</sup> Presently, legal insanity means that the person, as a result of mental illness or mental retardation, “lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.” MCL 768.a(1); MSA 28.1044(1)(1).

<sup>3</sup> Effective October 1, 1994, the Legislature shifted the burden of proof from the prosecutor to the defendant. Now, the defendant has the burden to establish his insanity by a preponderance of the evidence. MCL 768.21a(3); MSA 28.1044a(3).