

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR EUGENE SHELTON,

Defendant-Appellant.

UNPUBLISHED

June 21, 2007

No. 268078

Wayne Circuit Court

LC No. 05-006409-01

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Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Following a bench trial, the trial court convicted defendant Arthur Shelton of second-degree murder<sup>1</sup> and possession of a firearm during the commission of a felony (felony-firearm).<sup>2</sup> The trial court sentenced Shelton to 25 to 45 years' imprisonment for the second-degree murder conviction, and two years' imprisonment for the felony-firearm conviction. Shelton appeals as of right. We affirm.

I. Basic Facts And Procedural History

A. The Circumstances Of The Crime

Taylor Police Officer David Cowell testified that on October 18, 2004, at approximately 9:44 p.m., he was manning the phone lines at the police station when a call came in from Shelton. Shelton identified himself and his home address, and told Officer Cowell that he had just killed his roommate, Larry Hooper, with a .22 pistol and a shotgun. Shelton stated that the pistol was in his bedroom and the shotgun was at his feet. Officer Cowell testified that the call was unlike any other call he had ever received in that Shelton stated that Hooper was the devil and that he shot Hooper "hopefully enough" and "as many times as I could; I still want to keep going." Shelton indicated he wanted to make sure that Hooper was "gone." Officer Cowell instructed Shelton to come out of the house via the front door. Shelton indicated that he did not want to pass Hooper's body because "opposites attract." Shelton went on to repeat, "opposites attract," several times. Instead of leaving through the front door, Shelton indicated that he would

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<sup>1</sup> MCL 750.317.

<sup>2</sup> MCL 750.227b.

leave through the back door. The phone call was recorded and the tape was received into evidence during trial.

Officers soon arrived on the scene and arrested Shelton, who was cooperative. Shelton told the officers several times that he did not want to talk to anyone unless that person believed in God. He further stated that he trusted the officers because he believed that the officers believed in God. Shelton also stated that he shot Hooper because Hooper was “evil” and “possibly the devil.” Shelton talked to the officers about God and being an Eagle Scout. Shelton stated that he could be trusted to tell the truth because he was an Eagle Scout. Shelton also indicated that there was cocaine in his bedroom.

A search of Shelton’s house turned up a revolver and a box of ammunition from atop the bed in his bedroom and a shotgun from the hallway. The revolver contained five spent casings and one live round; the shotgun contained one live round in the chamber and three in the magazine. Spent shotgun casings were also found in the hallway. In Shelton’s bedroom, officers found one packet of cocaine and a tin of marijuana.

Hooper was found dead in a seated position on the living room couch. Most of his head was missing. According to the medical examiner’s report, Hooper, a 62-year-old, died of multiple gunshot wounds to the head and chest. The death was ruled a homicide.

Officer Stephen Schwein interviewed Shelton a few hours after his arrest and after advising him of his *Miranda*<sup>3</sup> rights. The interview, although not transcribed, was videotaped, received into evidence and played in court. Shelton did not appear to be under the influence of any substance during the interrogation. His demeanor was “very calm” and “very focused.” According to Shelton, he and Hooper were roommates. On the evening of the killing, Shelton and Hooper were having an extensive conversation concerning Hooper’s not believing in God. There was also some discussion about a Jude letter, which was referred to as a “chain letter.” Shelton indicated that, at some point during the conversation, Hooper tipped his hat, an action that Shelton believed to be an expression of Hooper’s intention to kill him. Shelton also believed that Hooper was armed with a pocketknife. Consequently, Shelton went to his bedroom and retrieved a pistol. He returned to the living room, stood behind Hooper, who was seated on the couch, and shot Hooper multiple times in the head. Shelton indicated that he thought Hooper was “still kicking,” so he went back to his bedroom, retrieved a shotgun, and shot Hooper in the head multiple times. Hooper stated that he was not sorry for shooting Hooper. At some points during the interview, Shelton became sidetracked and began talking of God, a Jude letter, and being an Eagle Scout. Officer Schwein found it necessary to refocus Shelton several times. Shelton indicated that he understood the difference between right and wrong. He further stated that he knew what he did was wrong and he would be going to prison for life. Neither a hat nor a weapon were found on or near Hooper’s body.

Shelton also testified at trial. He indicated that his psychological problems started in around 1987 when he got carbon monoxide poisoning. From that point on, he suffered from anxiety attacks and depression, and spent time in a hospital for treatment of depression. In 1999,

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<sup>3</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Shelton's children had him committed because of his severe mood swings and his belief that he had the cure for cancer. After his discharge in 1999, he did not receive any further treatment for his psychological conditions. Shelton admitted to the occasional use of marijuana and cocaine. He stated that he quit drinking in February 2004. He said that for the 12 years preceding the incident, he was taking prescribed pain medication because of problems with his right hand. Approximately eight days prior to the incident, Shelton stopped taking the pain medication because his hand started to feel better. He testified that two nights before the incident, the numbers seven and 11 popped into his head, and he became convinced that he should play those numbers in the lottery because of his idea that "opposites attract."

According to Shelton, the day before the incident, he was convinced that it was "judgment day" and the skies would open up at noon. He said that he often had sleepless nights and the night before the incident was particularly sleepless. He testified that he lay awake thinking about how opposites attract. He testified that he was not sure if he did any drugs on the day of the incident, but he may have ingested a line of cocaine earlier in the day. (In an earlier psychological evaluation, Shelton indicated that in addition to possibly ingesting cocaine, he smoked a few puffs of a marijuana cigarette on the day in question.) Shelton testified that he felt "real good" on the day in question. He said that:

I thought I was the closest man to God alive. All my prayers were being answered. I really had gotten almost total use of my hand back which they didn't expect me to get a whole lot of use of it at all and through all the therapy and that I was regaining all use of it. I felt better than I ever felt in my life, really. It was hard to explain.

Shelton also indicated that he believed he was "the firstborn king of the United States." He went on to say that on the evening of the shooting, he and Hooper, his roommate of two years, began having a discussion about religion. Hooper told Shelton that Hooper did not believe in God. Shelton testified that he himself was a firm believer in God. According to Shelton, Hooper was a violent man who had a sordid criminal past. Shelton testified that the discussion became heated, and Hooper became belligerent in a few instances. At that point, according to Shelton, he had "no intentions of hurting anybody." Shelton testified that after he retreated to his bedroom, he heard a loud noise coming from the living room. He said that he grabbed his pistol and went to investigate. He realized that the noise was only wind slamming the front door shut. Shelton testified that as he started to walk back toward his bedroom, "I looked at Larry and he looked at me and his eyes – he had fire in his eyes and he tipped his hat and he reached for his pocket knife and I thought he was going to kill me and I jumped and I started shooting him in the head." Shelton said that because Hooper was still moving, he retrieved a shotgun from his bedroom and continued shooting. Shelton testified that he was "very fearful" and afraid of Hooper because he believed Hooper "was the devil himself" and that Hooper was coming after him, trying to kill him. Shelton stated that:

A. [I]t was never my wish to kill a man in my life. I'm very sorry it happened, but I mean, at that given moment, like I said, I thought he was going to kill me.

Q. And you thought he was the devil?

A. Yes, I did.

Q. All right. And you believed he was the devil?

A. Yes, I did. At that time I believed he was the devil himself.

Shelton testified that at the time of trial, he no longer was of the belief that Hooper was the devil. He was sorry he had killed Hooper.

#### B. The Expert Testimony

All experts in this case agreed that Shelton was mentally ill at the time of the offense. However, the testimony conflicted with respect to whether Shelton met the criteria for legal insanity. While Shelton's expert, Dr. Steven Miller, opined that Shelton was legally insane at the time of the offense, the court-ordered psychologist, Dr. George Watson, Jr., opined that, although Shelton was mentally ill at the time of the offense, he did not qualify as being legally insane. Dr. Watson indicated that the fact that Shelton was calm and composed after the shooting and submitted to an interrogation in which he acknowledged that his disclosures could send him to prison for life, appears to strongly connote a capacity to appreciate wrongfulness as well as a capacity to conform his conduct to the requirements of the law.

Further, Dr. Watson found it significant that Shelton felt compelled to kill Hooper not only because he believed Hooper was the devil, but owing also to more rational reasons. Dr. Watson reasoned:

In his account to this examiner at the time of the instant clinical interview, Mr. Shelton's account sounded both themes. His grandiosity at the time and the intensity of his dispute with Mr. Hooper (in which the latter was portrayed as the devil) were stressed, but he also invoked a number of concerns about his safety from Mr. Hooper based upon the latter's reported criminal history, which Mr. Shelton may well have elaborated. Yet his account also suggested a certain serendipity, that is, that he initially armed himself because of hearing a loud sound, not because he had entered the bedroom intent upon getting the means to kill Mr. Hooper. This particular nuance does not come through as clearly in the tape of his interrogation, although Mr. Shelton does convey the immediacy of his perception that Mr. Hooper posed a mortal threat to him.

With regard to another feature of the alleged offense, which raises questions about the defendant's mental state and capacity to conform, that is, his use of multiple pistol and shotgun blasts to Mr. Hooper's head, the interrogation tape and interview are informative. Rather than being, solely, a delusionally-based idea that these extreme measures were necessary to kill "the devil," it was also Mr. Shelton's contention that Mr. Hooper had survived previous attempts on his life by gunshots and this was why he was concerned that he was dead. If he had been unsuccessful, the victim's presumed capacity for vengeance against the defendant and his family was his concern.

Additionally, Dr. Watson was concerned about the alcohol and drug abuse element that pervaded Shelton's medical history. Shelton admitted to the occasional use of cocaine and marijuana, both of which were found in his bedroom. He further indicated that earlier on the day of the shooting, he smoked a couple of puffs of a marijuana cigarette and may have ingested a

line of cocaine. With respect to the way in which voluntary drug or alcohol use affects the viability of an insanity defense, MCL 768.21a(2) provides:

An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.

No expert opined that Shelton's mental illness was due solely to drug use. Although it is not clear to what extent, if any, the drugs ingested on the day of the shooting affected Shelton's delusions, Dr. Watson did note the possibility that the drugs served to intensify Shelton's paranoid ideas and impulsivity.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

Shelton first contends that there was insufficient evidence to find him guilty but mentally ill with respect to the second-degree murder charge given that he was legally insane at the time of the offense. When reviewing a claim of insufficient evidence, this Court reviews the record de novo.<sup>4</sup> This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>5</sup>

### B. Elements Of The Offense

The elements of second-degree murder are: (1) a death, (2) caused by the defendant's act, (3) with malice, and (4) without justification.<sup>6</sup> "Malice requires an intent to kill, an intent to do great bodily harm, or an intent to create a high risk of death or great bodily harm with knowledge that such is the probable result."<sup>7</sup> Here, the elements of second-degree murder are readily established. Shelton admitted that he shot the victim, Larry Hooper, multiple times in the hopes that Hooper would die. Hooper died as a result of the shooting. The question that remains is whether the evidence establishes that Shelton was insane at the time of the offense.

### C. Legal Insanity Versus Mental Illness

The assertion that a defendant was legally insane when he committed the acts constituting the offense is an affirmative defense, and the defendant has the burden of proving the defense by a preponderance of the evidence.<sup>8</sup> An individual is legally insane if, as a result of mental illness

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<sup>4</sup> *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

<sup>5</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

<sup>6</sup> *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003).

<sup>7</sup> *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993).

<sup>8</sup> MCL 768.21a(1); MCL 768.21a(3).

or mental retardation, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law.<sup>9</sup> However, mental illness or mental retardation does not otherwise constitute legal insanity.<sup>10</sup> Mental illness is “a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.”<sup>11</sup> The guilty but mentally ill verdict requires that a trier of fact find all of the following:

- (a) The defendant is guilty beyond a reasonable doubt of an offense.
- (b) The defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of that offense.
- (c) The defendant has not established by a preponderance of the evidence that he or she lacked the 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.<sup>[12]</sup>

If a jury finds that a defendant was guilty of an offense and mentally ill but not legally insane, the trial court must impose any sentence that could be imposed on a defendant who is convicted of the same offense.<sup>13</sup> “If incarcerated, the defendant must ‘undergo further evaluation and be given such treatment as is psychiatrically indicated for his mental illness.’”<sup>14</sup>

#### D. Applying The Standards

Here, the trial court as the trier of fact was entitled to weigh the witnesses’ credibility and was not bound to accept the testimony of Dr. Miller that Shelton was legally insane when he killed Hooper. The trier of fact was entitled to believe the opinion of Dr. Watson that Shelton was mentally ill at the time of the offense, but not legally insane.<sup>15</sup> In light of the testimony and report of Dr. Watson, whose opinions and conclusions were supported by the evidence, we conclude that a rational trier of fact could find that Shelton was guilty but mentally ill with respect to the second-degree murder charge.

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<sup>9</sup> MCL 768.21a; *People v Jackson*, 245 Mich App 17, 19; 627 NW2d 11 (2001).

<sup>10</sup> MCL 768.21a(1).

<sup>11</sup> MCL 330.1400(g).

<sup>12</sup> MCL 768.36(1).

<sup>13</sup> MCL 768.36(3); *People v Carpenter*, 464 Mich 223, 232; 627 NW2d 276 (2001).

<sup>14</sup> *Carpenter, supra* at 232, quoting MCL 768.36(3).

<sup>15</sup> *People v McRunels*, 237 Mich App 168, 182; 603 NW2d 95 (1999) (although the defendant presented an expert witness who testified that the defendant was legally insane at the time of the incident, a verdict of guilty but mentally ill was appropriate where the prosecution presented two rebuttal expert witnesses who testified that the defendant could comprehend that what he was doing was wrong and could conform his conduct to the requirements of the law).

### III. Due Process

#### A. Standard Of Review

Shelton contends that the verdict of guilty but mentally ill violated his rights to due process of law. Whether a defendant's right to due process was violated is a question of law that this Court reviews de novo.<sup>16</sup>

#### B. Legal Standards

Constitutional due process requires the prosecutor to prove beyond a reasonable doubt all of the elements included in the definition of a charged offense, but does not require the prosecutor to disprove beyond a reasonable doubt every fact constituting an affirmative defense relating to the culpability of the accused.<sup>17</sup> A state may regulate the procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, and such regulations do not violate due process unless they offend some principle of justice so rooted in the traditions and conscience of the people as to be fundamental.<sup>18</sup> Due process is not offended where the state places the burden of persuasion on the defendant with respect to an affirmative defense such as insanity.<sup>19</sup> Further, a statute providing for a verdict of guilty but mentally ill is constitutional.<sup>20</sup>

#### C. Applying The Standards

Given our conclusion that that there was sufficient evidence for a rational trier of fact to find that Shelton was guilty but mentally ill with respect to second-degree murder, we also conclude that Shelton was not deprived of his right to due process.<sup>21</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

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<sup>16</sup> *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999).

<sup>17</sup> *People v Mette*, 243 Mich App 318, 326; 621 NW2d 713 (2000).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 326-328.

<sup>20</sup> *People v Deyampert*, 140 Mich App 530, 531; 364 NW2d 373 (1985).

<sup>21</sup> *Mette, supra* at 326-328 (the imposition of the burden of persuasion on the defendant with respect to the affirmative defense of insanity does not violate due process); *Deyampert, supra* at 531.