

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LORRI ELIZABETH NICHLOW-BRUBAKER,

Defendant-Appellant.

UNPUBLISHED

September 18, 2007

No. 270464

Macomb Circuit Court

LC No. 05-005048-AR

Before: Borrello, P.J., and Jansen and Murray, JJ.

MURRAY, J., (*concurring*).

I concur in the majority's opinion affirming defendant's convictions and vacating the order of restitution. However, I disagree with the majority's statement – which is unnecessary to the resolution of this appeal – that the jury “most likely” decided to acquit defendant on four of the six charges as a compromise for leniency. Although it is true that juries in criminal cases have the power to dispense mercy by returning verdicts less than that warranted by the evidence, *People v St Cyr*, 129 Mich App 471, 474; 341 NW2d 533 (1983), they unquestionably do not have the *right* to do so. *Id.* I am not willing to speculate as to why the jury acquitted defendant on four of the six charges, other than to assume it properly dispensed its function of reviewing the evidence and determining whether defendant was guilty beyond a reasonable doubt.

Additionally, the prosecutor's argument that MCL 780.766(2) allows for the restitution order in this case is without merit. Since the Legislature provided a specific remedy for this specific crime within MCL 750.50(5), it is that statutory provision that controls over the more general enactment. *Glisson v Gerrity*, 274 Mich App 525, 536; 734 NW2d 614 (2007).

/s/ Christopher M. Murray