

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GRETA DALE HALL,

Defendant-Appellant.

UNPUBLISHED

October 24, 2006

No. 264830

Wayne Circuit Court

LC No. 05-001975-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of voluntary manslaughter, MCL 750.321a. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with second-degree murder. The jury was instructed on that offense and the lesser offense of voluntary manslaughter. When the trial court asked the jury foreperson to announce the jury's verdict on count one, second-degree murder, the foreperson stated that the jury found defendant not guilty. The trial court then thanked the jurors for their service and informed them that it would meet with them shortly. Moments later, after the trial court received the jury verdict form, the jurors were reassembled and it was discovered that the jury had actually found defendant guilty of the lesser offense of manslaughter. The jury was polled and each of the jurors agreed that this was the proper verdict. Defendant subsequently brought a post-trial motion to reinstate the original "not guilty" verdict on double jeopardy grounds. At a hearing on defendant's motion, the trial court stated that the jurors had not actually exited the courtroom when they were summoned back and the corrected verdict was received. Defense counsel did not dispute this statement. The trial court determined that, under these circumstances, it could properly receive the corrected verdict and, therefore, denied defendant's motion.

Relying on *People v Henry*, 248 Mich App 313; 639 NW2d 285 (2001), defendant claims that reconvening the jury to change its verdict violated his double jeopardy rights. We disagree. Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. *Id.* at 318. In a jury trial, jeopardy generally attaches at the time the jury is selected and sworn. *Id.* Once jeopardy attaches, the defendant has a constitutional right to have his case completed and decided by that tribunal. *Id.* The underlying principle of such protection is to prevent the state from making repeated attempts to convict an individual for

an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. *Id.*

In *People v Rushin*, 37 Mich App 391, 398-399; 194 NW2d 718 (1971), this Court discussed the double jeopardy implications of a discharged jury being recalled to render an amended verdict:

Once the jury has been officially discharged and left the courtroom, we hold that it is error to recall it in order to alter, amend or impeach a verdict in a criminal case. As soon as it departs from the courtroom, the jury's legal duties cease to exist; it no longer functions as a unit charged to perform a solemn task but rather as 12 unsworn members of the community; its relationship to the case has terminated. . . .

To rule that a jury could be recalled after being discharged and leaving the courtroom would not only offend the policies underlying the double jeopardy clause, but would also serve as an invitation to tamper with the jury after it had completed its deliberations.

In this case, while the trial court thanked the jury and informed the jurors that their services were complete, the jury had not yet left the presence and control of the court when it was reassembled, and there is no suggestion that the jury was exposed to unauthorized or outside influences. Under these circumstances, the jury was not discharged and it could properly be recalled to correct a verdict that did not accurately reflect the result of its deliberations. *Id.*; see also *State v Rodriguez*, 134 P3d 737 (NM, 2006); *State v Green*, 995 SW2d 591 (Tenn App, 1998). Defendant's reliance on *Henry* is misplaced. In *Henry*, there was no dispute that the jury had been discharged, and this Court rejected the prosecutor's argument that the jury could be reconvened at a later date to "complete" its verdict. In this case, the jury never left the presence or control of the trial court before being recalled.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens