STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NANCY ANN SEAMAN,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 260816
Oakland Circuit Court
LC No. 2004-196916-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NANCY ANN SEAMAN,

Defendant-Appellee.

No. 265572
Oakland Circuit Court
LC No. 2004-196916-FC

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

I. Introduction

We agree with our dissenting colleague's rationale and conclusions with respect to defendant's appeal in docket no. 260816. For those reasons, which we adopt as our own, we affirm the trial court's decisions that were challenged by defendant in docket no. 260816.

In the prosecutor's appeal, docket no. 265572, we respectfully disagree with our dissenting colleague. Instead, we hold that the trial court abused its discretion when it reduced defendant's first-degree premeditated murder conviction to second-degree murder. Accordingly, and for the reasons set forth below, we reverse the trial court's decision and order. Because the trial court stayed it's decision, our opinion leaves intact the judgment confirming the jury's verdict of first degree premeditated murder, and defendant's sentence of life in prison without the possibility of parole. MCL 750.316(1)(a).

II. Analysis

The trial court decision reducing the conviction to second-degree murder came in the context of reviewing defendant's request for a new trial and/or evidentiary hearing. That decision is reviewed for an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998). In reviewing for an abuse of discretion, courts must recognize that there will be issues on which there will be no single correct outcome, but rather there can be more than one reasonable and principled outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment. An abuse of discretion occurs, however, when the trial court chooses an outcome falling outside this principled range of outcomes." *Id*.

Defendant's sentencing occurred on January 24, 2005, at which time the trial court indicated that (1) it could not act as a "thirteenth juror", and (2) as a result it could not order a new trial based on it's own assessment of witness credibility:

> Mrs. Seaman, this case is undoubtedly the most tragic, troubling and saddest case I've ever had in twelve years as a Judge.
>
> * * * *
>
> Now the jury who tried your case, they were conscientious and they were attentive. And I don't think that they were swayed in any way by any pretrial publicity because we took careful pains when we interviewed them to make sure that they didn't know much about this case. Or if they did, they would put those things aside. And I honestly believe they did so. *They took their responsibilities and their obligations as jurors very seriously*.
>
> And while many people, including yourself and your family and your friends, they may disagree with the verdict, *the jury did have sufficient evidence presented to them, which would have justified their returning a verdict of guilty in the first degree. Now whether or not I agree or disagree with that verdict, I guess is really irrelevant. I can't be a thirteenth juror. But it makes no sense in attacking the jury, because they were conscientious*.
>
> Now had you only stopped after striking the first blow; because I'm sure that first blow probably rendered your husband unconscious, you could have escaped and we wouldn't be here today. Or had you called the police immediately after the deadly assault, or not tried to cover up the crime scene by destroying evidence in the garage, or had you not attempted to hide your husband's body for two days – *these are all things that the jurors took into consideration when they concluded that you did deliberate and premeditate the killing of your husband*.
>
> If you would have done any one of those things I just suggested, they may have come to a different conclusion.

Now, whatever caused you to continue to strike your husband in the head with the hatchet, whether it was truly fear and I'm sure there was, -- *I can't believe* for instance that you went out to Home Depot to buy and [sic] axe or hatchet to kill your husband. *It just doesn't make any sense*.

But the jury can still find premeditation and deliberation from what you did afterwards. [Emphasis added.]

On August 31, 2005, some seven months after sentencing, the trial court did an about face when it reduced defendant's conviction to second-degree murder when deciding her motion for new trial. Because the colloquy between the trial court and the prosecutor seemed to serve as the basis for the trial court's decision, we quote much of it:

The Court: Your theory of the premeditation is what?

* * *

Prosecutor: All right. Let's – let's talk about the hatchet first. *** And I understand Your Honor, based on the comments that you made at sentencing, may disagree with some of this. *** But here's the evidence that was presented at trial concerning premeditation. First of all, the hatchet, this is a Sunday evening. Most stores are closed. It's Mother's Day. It's raining out. The Defendant decides abruptly that she is going to be doing supposedly yard work sometime during the week.

* * *

The Court: (Interposing) So what you're saying, and I don't mean to cut you off, is what you're saying is she went to that store specifically to buy a hatchet to kill her husband with it.

Prosecutor: Yes. That is our position.

The Court: Now, here's a 140-pound woman at best. What is she – five foot two? And she's going to go get a hatchet. And then she's going to come back and lure her husband into a garage and somehow or other sneak up on him and hit him over the head with a hatchet. The husband is about 180 pounds, 175 pounds.

The record is very, very clear he's a very athletic guy, very strong guy, very physical guy. The record is also clear that he has a reputation for being a brawler. I don't think you doubt that.

Prosecutor: Well, there's – there's – that's disputed.

The Court: That's what the record said. You had three fraternity brothers from college that came in and said he's a brawler, and he has a quick – and he has a hair temper.

Now, here's this little woman and she's going to go out and get a hatchet. And then she's going to kill him in the garage.

Prosecutor: Well, do you know what?

The Court: No, wait. That's your – that's your theory of premeditation. *** Well, let me finish. *** She doesn't wait until he falls asleep and kills him in bed, where it might be a lot easier. She's going to get him somehow – some way or another she's going to get him into the garage. *** Now, here's a woman who has finally decided that she's going to divorce this guy. She has a condo that she's purchased. She's going to be moving into that condo in the fall of that year.

Her youngest son is going to be graduating from Purdue that Friday. She's going to go down and pick him up, and it's Mother's Day. And she has everything to live for, and her life is just about to turn around. And she makes this decision to go to Home Depot to buy this hatchet and kill him. That's the premeditation?

Prosecutor: Well, premeditation doesn't have to be something –

The Court: (Interposing) No, I know. Your other theory of premeditation, I guess, is after she strikes him one time, she has – she has an opportunity to think about it and then keep hitting him.

Prosecutor: Well, not only an opportunity to think about it. But Dr. Drakovic's [sic] testimony was that the killer, the Defendant had to put the hatchet down, pick up a knife and then continue stabbing him; that there had to be –

The Court: (Interposing) And he was already dead by then.

Prosecutor: Well, we don't know that for sure.

The Court: Well, *I'm pretty sure he was*.

Prosecutor: We don't know that for sure. And besides, maybe she didn't know that. In fact, that doesn't matter. I know that brother counsel brings that up several times during the course of his pleading.

The Court: But that's the premeditation. It's one of two theories. *** One is that she went out to get the hatchet, to bring it back, as I said, to lure him into the garage and to kill him. *** If she misses one time with that hatchet, then she's dead.

Prosecutor: Do you know that, Judge? I think – you've been a judge long enough, and I've been a prosecutor long enough to know –

The Court: (Interposing) Yes, and I've watched everybody, and I'm not a thirteenth juror but I – *I think I have an opportunity to observe people and judge their demeanor, and listen to* –

Prosecutor: Defendants don't always think the way you and I and brother counsel and other people would think concerning matters.

The Court: I know that.

Prosecutor: Something obviously happened during that time that Jeff and Rebecca left the marital home.

The Court: There was a fight. There was an argument. That's why they left. *** That's why – what is it, Jeff, the oldest boy? *** That's why he never answered the phone. *** He didn't even – he didn't want to talk to his dad. He left the house because the dad started in again over whether or not she could borrow his –

Prosecutor: (Interposing) And it was also raining very heavily, and he didn't want to fumble with the cell phone in the car.

The Court: Oh come on.

Prosecutor: That was his testimony.

The Court: *Yeah, sure*.

Prosecutor: Well, I mean, that was his testimony.

The Court: I know what his testimony was. His testimony also was that she was [a] klutz, and she had all these black and blue marks all over her body because she was always tripping and falling.

Prosecutor: Well, that was his testimony.

The Court: I know that was his testimony.*** And he didn't know anything about any arguments. And yet, he knew about the condo in Wood Haven and wouldn't tell his dad because, why?

Prosecutor: He was doing that at the request of his mother, the Defendant.

The Court: Why?

Prosecutor: She claimed that he would get angry over that.

The Court: But he wouldn't? *** And then he had the brother coming in from Arizona who says that this – Robert is on a high note. Everything is going well for him. And he's a lot of credibility. He's the guy who is going to buy all

the cars at a discounted rate so that [they] wouldn't be part of the divorce case, and then sell them back to him later on. *Now, he has a lot of credibility*.

Prosecutor: Well, look. I mean, the credibility of all these witnesses –

The Court: (Interposing) I know. I don't want to get into it. I'm just saying. You brought it up a little bit, so I'm just responding. *** But that's your theory of premeditation, that --- *** this woman goes out, buys this – this hatchet to come back for the specific purpose of killing him?

Prosecutor: Yes. That is – that's just the start of it though. *** And the case law in Michigan is very clear. And LaFave can say all he wants in his treatises but what matters ---

The Court: (Interposing) How about People versus Morrin? Did you read that case?

Prosecutor: Yes, I did. In fact, I cite it in my brief.

The Court: Okay.

Prosecutor: And, in fact I was going to quote from it, and I'll quote from it in my brief. *** "While the minimum time necessary to exercise this process, that being premeditation and deliberation, is incapable of exact determination, the interval between initial thought and ultimate action should be long enough to afford a reasonable person in this instance time to subject the nature of their response to a – quote/unquote, second look." Basic –

The Court: (Interposing) Okay. Now, look at all the facts in this case. How many times did she strike him with the -- with the hatchet?

Prosecutor: Multiple times, at least sixteen times.

The Court: And how many times did she stab him in the back?

Prosecutor: At least as many, if not more than that.

The Court: In about a circle that big. (Indicating). *** What does that indicate?

Prosecutor: That indicates premeditation. The type –

The Court: (Interposing) Or does it indicate complete out of control rage and/or fear? *** And you're saying that – that amounts to premeditation? *** Deliberation?

Prosecutor: Yes. As well as everything that the Defendant did afterwards. I mean, the case law is clear; that a defendant's attempts to conceal the –

> The Court: (Interposing) I think the – well, I think a jury can consider what she did afterwards. I don't question that at all. *But Morin even talks about the fact that you can't use the actions afterwards to establish premeditation. Premeditation has to be beforehand.*
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> Prosecutor: Well, that's – the more recent case law that has come out, Morin is an older case. The more recent –
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> The Court: (Interposing) Counsel, I've read everything. I wasn't going to rule today, but I think I am.
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> There are two problems that I see with this case. One is the lack of premeditation, and the other one is lack of deliberation.
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> And I have to sentence a woman to life in prison when I'm not sure that the prosecution has established either one of those.
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> Now, the jury could disregard the self-defense, and they obviously did. But they can't use that to establish the elements of the offense. *And this Court feels that premeditation and deliberation was not established. And I'm going to reduce the case to second-degree murder,* and I'm going to have her back here for resentencing. [Emphasis added.]

The foundation for the trial court's ruling had two parts: (1) the court found the testimony supporting premeditation and deliberation to be unbelievable, and (2) the trial court concluded that actions taken after the killing could not establish premeditation. The first proposition, even if true, was not a legally sufficient basis upon which to overturn the jury's verdict, and the second proposition was simply incorrect as a matter of law.

We first address the trial court's decision to overturn the verdict because of insufficient credible evidence. *Lemmon, supra,* controls this issue. In that case, the defendant was convicted of five counts of criminal sexual conduct following a jury trial. The trial court granted a new trial, holding that the verdict was against the great weight of the evidence, particularly in light of the contradictory testimony and demeanor of the complainants. *Id*. at 629-631.

This Court remanded the case to the trial court for specific findings of fact and conclusions of law. The trial court held that the witnesses lacked credibility because they had giggled at inappropriate times and were not embarrassed or hesitant despite the sensitive subject matter. The trial court also noted that the only testimony supporting guilt was the complainants' testimony, and there was no supporting medical records, counseling records, or corroborating testimony. This Court denied the application for leave to appeal from the trial court's decision on remand, but expressed its disagreement with the "thirteenth juror" principle cited by the trial court from *People v Herbert*, 444 Mich 466, 476; 511 NW2d 654 (1993). *Lemmon, supra* at 632-633.

On subsequent appeal, the Supreme Court examined the validity of the "thirteenth juror" principle set forth in *Herbert*. The *Herbert* decision held that, when reviewing a motion for new trial, the judge acts as the thirteenth juror. That is, the trial judge is entitled to evaluate the

credibility and demeanor of the witnesses in determining whether a new trial is warranted. However, the *Lemmon* Court overruled that standard and stated that "we clarify that a judge may not repudiate a jury verdict on the ground that 'he disbelieves the testimony of witnesses for the prevailing party.'" *Id*. at 636.

After examining the history of the thirteenth juror rule and the holding that it should be applied only in exceptional cases, the Supreme Court articulated a new standard when examining a motion for new trial:

> Thus, 'a new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result.'
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> We align ourselves with those appellate courts holding that, absent exceptional circumstances, *issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally guaranteed jury determination thereof*.' We reiterate the observation … that, when testimony is in direct conflict and testimony supporting the verdict has been impeached, if 'it cannot be said as a matter of law that the testimony thus impeached was deprived of all probative value or that the jury could not believe it," *the credibility of witnesses is for the jury*.
>
> Adding flesh to what is a more refined articulation of the formula that '[I]n general, conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial, 'federal circuit courts have carved out a very narrow exception to the rule that the trial court may not take the testimony away from the jury. Defining the exception, the federal courts have developed several tests that would allow application of the exception; for example, if the 'testimony contradicts indisputable physical facts or laws,' … '[w]here testimony is patently incredible or defies physical realities,' '[w]here a witness's testimony is material and is so inherently implausible that it could not be believed by a reasonable juror,' or where the witness' testimony has been seriously 'impeached' and the case marked by 'uncertainties and discrepancies.'
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> This does not mean that '[a] judge's disagreement with the jury's verdict,' or a 'trial judge's rejection of all or part of the testimony of a witness or witnesses' entitles a defendant to a new trial. Rather, a trial judge must determine if one of the tests applies so that it would seriously undermine the credibility of a witness' testimony and, if so, is there 'a real concern that an innocent person may have been convicted' or that 'it would be a manifest injustice' to allow the guilty verdict to stand. If the 'evidence is nearly balanced, or is such that different minds would naturally and fairly come to different conclusions,' the judge may not disturb the jury findings although his judgment might incline him the other way. Any 'real concern' that an innocent person has been convicted would arise 'only if the credible trial evidence weighs more heavily in [the defendant's] favor than against it.' [(Citations omitted. Emphasis added.)]

Against this factual and legal background, the trial court's decision was outside the range of principled outcomes, and was therefore an abuse of discretion. *Babcock, supra*. [1]

Contrary to the trial court, we conclude that there was more than ample evidence supporting the jury's finding of first-degree, premeditated murder. Case law provides that premeditation may be established by the time frame that it takes for a "second look." *People v Gonzales*, 468 Mich 636, 641; 664 NW2d 159 (2003). There is no magic minimum time period for reflection or a "second look", and depending on the circumstances, only a few seconds can be sufficient time. *People v Glover*, 154 Mich App 22, 29; 397 NW2d 1999 (1986) overruled on other grounds *People v Hawthorne*, 474 Mich 174 (2006); *People v Meier*, 47 Mich App 179, 191; 209 NW2d 311 (1973). Here, evidence was presented showing that defendant inflicted 16 blows with a hatchet and 22 stab wounds with a knife. The time between defendant dropping the hatchet, and then picking up the knife and repeatedly stabbing her husband, was more than sufficient time for defendant to have taken a "second look."

An additional valid legal theory of premeditation was that there was marital discord, that defendant went to the store and bought the hatchet (at a strange day and time), came home and killed Mr. Seaman. *People v Fisher*, 449 Mich 441, 452-453; 537 NW2d 577 (1995). This was certainly a plausible theory, as that is in fact what occurred. The only dispute was whether defendant purchased the hatchet for landscaping or to murder her husband. The jury believed it was for the latter, which had support in the evidence.

Michigan law also establishes that subsequent evidence of concealment may be used as a factor when determining premeditation and deliberation. *Gonzales, supra* at 641. Here, there was ample evidence presented to the jury to conclude defendant covered up the crime by hiding the body, cleaning up the murder scene, and lying about his whereabouts. Hence, there were at least three legal grounds supported by evidence that justified the jury's finding of first-degree premeditated murder.

The trial court impermissibly acted as a thirteenth juror when it vacated the first degree murder conviction based on it's assessment of the reasonableness of the prosecution's theories. Unless the evidence supporting premeditation and deliberation "contradicts indisputable physical facts or laws", or is "patently incredible or defies physical realities", or is otherwise "so inherently implausible that it could not be believed by a reasonable juror", *Lemmon, supra*, the verdict must stand. There was no such finding here, and nor could there have been given the overwhelming evidence of premeditation and deliberation, as noted above. The trial court was

[1] Although we recognize that at the sentencing stage the trial court expressly stated that, despite its misgivings about some of the testimony, there was sufficient evidence to support the verdict. Moreover, the trial court noted the factors that support premeditation and deliberation, including the law indicating that subsequent acts can prove premeditation, and the evidence supporting these elements. Specifically, the trial court stated that if defendant had stopped after the first blow, if she had immediately called police to the scene, if she had not destroyed evidence in the garage, and if she had not attempted to hide her husband's body in the garage, a different conclusion may have been reached. We do not rely upon these conclusions, however, because the decision at issue is the order granting the motion for new trial.

simply not empowered to overturn the jury's finding of guilt based on its own assessment of the reasonableness of the theories presented. *Lemmon, supra*. As we quoted in great length above, the trial court's decision was chock-full of impermissible findings and conclusions[2], and was legally erroneous under *Lemmon*. Consequently, the new trial standard was not met[3] as the evidence did not preponderate so heavily against the verdict that a serious miscarriage of justice would otherwise result. The trial court's order is reversed.

Affirmed in part and reversed in part.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio

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[2] For example, the trial court stated that it had "an opportunity to observe people and judge their demeanor", that defendant's son Jeff had no "credibility," and that it simply did not believe the theories presented by the prosecution.

[3] We also note that the remedy for a new trial is, well, a new trial, not the reduction of a conviction.