STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 31, 2008
v	No. 277067 Newaygo Circuit Court
PAMELA MALAKINIAN WEDDELL, Defendant-Appellant.	LC No. 06-008767-FH

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right her convictions, following a jury trial, of one count of fleeing and eluding a police officer resulting in a collision, MCL 257.602a(3)(a), and malicious or willful destruction of police property, MCL 750.377b. We reverse and remand for a new trial.

Defendant suffers from Bipolar I Disorder, having had a psychotic manic episode for which she was hospitalized in 1995. After that hospitalization, defendant's symptoms were adequately controlled by medication. However, over the Christmas holidays in 2005, defendant was under stress and her sleep patterns became altered. Defendant's stress level remained high into the new year. Then, on or about February 8, 2006, defendant woke up in the early morning hours screaming. She explained to her husband that she had experienced an "in and out" feeling, similar to that which she experienced before her episode in 1995. The next day, defendant indicated that she was suffering from a high level of anxiety, and her husband observed that she was having difficulty thinking clearly, was frequently repeating herself and generally seemed to be confused. Defendant's husband contacted her treating physician, who adjusted her medication and scheduled an appointment to see defendant for two days later.

On February 10, 2006, the day of her scheduled appointment with her physician, defendant got into her car and, rather than putting it into reverse to back out of the garage pulled forward, striking the front wall of the garage with enough force to crack the paneling on the other side of the wall. As a result of this collision, a large duffel bag holding hockey equipment that had been sitting on shelving at the front of the garage became hooked on the hood ornament of defendant's car. Apparently oblivious to the presence of the bag on the front of the car, defendant drove into Fremont.

Later, defendant was observed by an off-duty police officer as she sat stopped in the far right lane of Main Street. The officer circled behind defendant to investigate the bag hanging on

the front of her vehicle, turning on his overhead lights. As the officer began to follow defendant's vehicle, she began to accelerate slowly away from him; defendant did not respond to the officer's lights and he eventually turned on his siren. Defendant stopped at an intersection for a red traffic light; when the light turned green, defendant swerved around traffic and accelerated away from the officer. Then, defendant came to a sudden stop, causing the officer to hit the rear of her vehicle. After the collision, defendant continued on, and another officer joined the pursuit, with lights and siren activated. Defendant slammed on her brakes a second time, causing the officers to swerve to avoid a collision, and then, continued driving. The two officers were able to box defendant's car in along side the road, and they approached with their weapons drawn, yelling at defendant to exit the vehicle. Defendant looked at the officers blankly, then stared straight ahead and again drove away. Four times, officers attempted to stop defendant's vehicle by blocking it in. Eventually, after two additional officers joined the pursuit, police were able to surround defendant's vehicle, bringing her to a stop. The officers repeatedly commanded that defendant exit her vehicle, but instead she pulled forward, striking one of the police vehicles. Unable to move her vehicle any farther, defendant was forcibly removed from it.

At the time of her apprehension, defendant was non-responsive, staring straight ahead or "looking through" the officers. She told one officer she would "see [him] in a million years" and, as he pulled on her arms to get her out of her vehicle, she told him in a high-pitched voice that he would "regret this in a million years." She repeated the phrase "billions and billions and billions of years ago." While seated in the back of the patrol car, defendant exhibited a "blank stare" and was babbling; she spontaneously asked if she could "wake up now," and stated that she was "awake" and "alive." Defendant appeared to be speaking to someone who was not present and did not seem to recognize her husband, looking past him vacantly as he attempted to speak to her. It being clear that defendant was suffering from "some sort of medical problem," the ranking officer at the scene determined that defendant should be taken to the hospital for psychiatric evaluation; the off-duty officer involved in the pursuit from its onset agreed that this was appropriate.

Upon her arrival at the hospital, defendant was very agitated and delusional. She kept repeating certain disjointed, fragmented phrases including, "it's a nuclear disaster," "It's a million years ago, isn't it?," "billions and billions of years ago," "[c]an I wake up yet?," "I'm in the womb," "[t]his is a test," "[i]s the test over yet?," and "[t]his is a disaster. Nuclear disaster. Nuclear disaster." Noting that the emergency room physician's first name was Julie, defendant kept repeating that she had a daughter named Julie; she also kept repeating that her husband's name was Ken. Defendant was in a manic state and was "overtly actively psychotic"; her behavior was disjointed, she was disconnected from reality and she displayed paranoid tendencies. Defendant was not oriented to time, date or place, alluding to events that happened centuries earlier; she was confused and delusional and exhibited nonsensical, pressured and tangential speech. Organic, physical causes for defendant's behavior were ruled out and defendant was admitted to a psychiatric facility, where she remained for six days. Defendant would later explain to her treating physician that, to the extent she remembered the incident, she recalled that when she first got into the car in the garage, she did not know whether she should drive forward or backward and that during the incident she thought that she was dead and was engaged in some type of time travel.

There was no rational reason for defendant to flee the officers; she was not committing any offense at the time the pursuit began and the presence of the bag on the front of her vehicle was the sole basis for initial police interest in stopping her vehicle. Officers acknowledged that defendant stayed in the proper lane, for the most part, and obeyed traffic signs and signals throughout the police pursuit, and that it was uncommon for someone attempting to flee apprehension to behave in this manner. Even if her driving might be characterized as "flight," her stopping abruptly would make no sense for that purpose. There were no drugs, alcohol or weapons found in defendant's car or on her person at the time of her arrest and she was not under the influence of alcohol or illegal substances.

Defendant moved for a new trial on the basis that the verdicts were against the great weight of the evidence. Defendant argues that the trial court abused its discretion in denying that motion. We agree.

This Court reviews for an abuse of discretion a trial court's grant or denial of a new trial on the ground that the verdict was against the great weight of the evidence. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). An abuse of discretion occurs when a trial court chooses an outcome falling outside the range of principled and reasonable outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A trial court abuses its discretion when its denial of the motion is manifestly against the clear weight of the evidence. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

A verdict is against the great weight of the evidence where the evidence presented at trial preponderates heavily against the verdict and a serious miscarriage of justice would result from allowing the verdict to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Stated differently, a jury's verdict may be vacated only when it lacks reasonable support in the evidence, and is more likely attributable to causes outside the record, such as passion, prejudice, sympathy or some extraneous influence. *DeLisle*, *supra* at 661.

As our Supreme Court explained in *People v Carpenter*, 464 Mich 223, 230-231; 627 NW2d 276 (2001):

> Legal insanity is an affirmative defense requiring proof that, as a result of mental illness . . . the defendant lacked "substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law." MCL 768.21a(1). Importantly, the statute provides that "[t]he *defendant* has the burden of proving the defense of insanity by a preponderance of the evidence." MCL 768.21a(3) (emphasis added).

See also, *People v Shahideh*, 277 Mich App 111, 119-120; 743 NW2d 233 (2007) lv granted on other grounds, 480 Mich 1195 (2008) ("An individual may be found legally insane only if, as a result of mental illness . . . that person 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."). By contrast, a verdict of guilty but mentally ill is warranted where the evidence establishes that, while mentally ill at the time of the commission of the offense, 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. MCL 768.36(1).

As noted above, defendant was charged with fleeing and eluding causing a collision and malicious destruction of property. At trial, there was no dispute that defendant committed the offenses with which she was charged, or that she was mentally ill at the time she did so. Rather, the sole question was whether defendant lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of her conduct or to conform her conduct to the requirements of the law, thus, rendering her legally insane at the time of the offenses. Each of the mental health experts who testified, including defendant's treating physician, the director of the psychiatric unit to which defendant was admitted following the incident, and the state's forensic psychiatrist ordered to evaluate her, opined that, at the time defendant committed the instant offenses, as a result of her mental illness, defendant was unable to understand the nature and quality or the wrongfulness of her behavior, or to conform her behavior to the requirements of the law; that is, that she was legally insane. And, lay testimony from defendant's husband and the officers present during the offenses supported the experts' opinions. Testimony also established that defendant was not faking her symptoms.

Defendant thus clearly established, by a preponderance of the evidence that she was legally insane at the time of the instant offenses. Not a single witness opined otherwise. Certainly, there was evidence that defendant conformed her behavior to the requirements of the law to a minor extent, by obeying traffic signals while police pursued her. However, expert testimony indicated that it was not unusual for someone suffering from legal insanity to continue to act in keeping with mundane, routine behaviors, such as obeying traffic signals, and that obeying basic traffic laws was not inconsistent with, and did not contradict, the conclusion that defendant was legally insane at the time she attempted to flee and elude police.

We conclude that the evidence adduced at trial – particularly the unanimous testimony from the mental health experts – preponderates heavily against the verdict.[1] Therefore, the trial court abused its discretion by denying defendant's motion for a new trial.

The prosecutor notes that, because defendant was in her car alone at the time of the offenses, there is no direct evidence that defendant was insane at the precise moment that she first began to flee and elude the off-duty police officer that commenced the pursuit. While that is true, testimony regarding defendant's behavior both leading up to and immediately following that moment is sufficient to establish, circumstantially, her state of mind during the incident. See, e.g., *People v Cutchall*, 200 Mich App 396, 401; 504 NW2d 666 (1993) ("There is no real distinction between circumstantial and direct evidence; sometimes circumstantial evidence can be more compelling than direct evidence. It is not a less worthy class of evidence; intrinsically, it is not different from testimonial evidence," citing *Holland v United States*, 348 US 121, 75 S

[1] We note that, through the questions they asked at trial, it is clear that the jury was concerned about whether defendant might suffer a future episode, such that she might pose a danger to others while driving or otherwise, and whether she ought to continue to enjoy driving privileges. These questions suggest that the jury's verdict might be attributable to a cause outside the record.

Ct 127, 99 L Ed 150 (1954)); *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2006) ("Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required.").

Considering the absence of evidence in the record contradicting the conclusion that defendant was legally insane at the time she committed the instant offenses, the jury's verdict unquestionably was against the great weight of the evidence. Therefore, the trial court's decision to deny defendant's motion for a new trial constituted an abuse of discretion. *Babcock, supra* at 269.

That said, however, defendant's argument that the prosecutor harbored a personal grudge against her and should have been disqualified lacks merit. See *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). Contrary to defendant's assertions, there is no indication in the record that the instant prosecution occurred for improper reasons.

We reverse and remand for a new trial. *Tibbs v Florida*, 457 US 31, 102 S Ct 221, 72 L Ed 2d 652 (1982). We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering