STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 26, 2019
v	No. 346241 Wayne Circuit Court
JAQUETTA ANN COOPWOOD, Defendant-Appellant.	LC No. 17-010699-01-FC

Before: MURRAY, C.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right her bench trial conviction of guilty but mentally ill, MCL 768.36, of second-degree murder, MCL 750.317. Defendant was sentenced to 9½ to 18 years' imprisonment for her conviction of guilty but mentally ill of second-degree murder. We affirm.

I. FACTUAL BACKGROUND

This matter arises from the August 13, 2017 fatal stabbing of defendant's mother, Pandora Amelia Hassan Cameron. Defendant has a long history of mental illness and suffers from bipolar schizophrenia.[1] Testimony from defendant's sister, Carla Hassan, indicated that defendant had been refusing to take her medication for several months leading up to the stabbing. As a result, defendant was unable to sleep and exhibiting erratic behavior.

At the time of the stabbing, defendant was living with Pandora and her stepfather, Terrell Cameron, in Detroit, Michigan. According to Terrell, he was sitting on his front porch around

[1] We note that, prior to trial, Dr. Steven R. Miller, an independent forensic psychologist, was appointed to determine defendant's competency to stand trial and waive her rights under *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), and to determine her criminal responsibility. Dr. Brian Schostak, with the Center for Forensic Psychiatry, performed a separate evaluation. Both Dr. Miller and Dr. Schostak determined that defendant was capable of criminal responsibility, and competent to waive her *Miranda* rights and stand for trial.

11:30 p.m. on August 13, 2017, when he heard Pandora and defendant talking inside the house. Terrell was unable to discern what Pandora and defendant were saying so he called into the house to ask if everything was alright. Pandora responded that everything was okay. Minutes later, Terrell heard more commotion inside the house and asked a second time whether everything was okay. Terrell walked into the house and heard Pandora and defendant talking loudly in the basement. Terrell heard Pandora say, "Jacquetta[,] you're gonna stab your mama." By the time Terrell ran to the bottom of the basement stairs, Pandora was leaning against the wall with a "little red dot on her chest." Pandora had been stabbed and was unable to hold herself up. Pandora died around 1:00 a.m. on August 14, 2017, from a 2 to 2½ inch stab wound her to the base of her right interior neck.

Defendant did not help Terrell carry Pandora up the basement stairs, but also did not flee the scene. She remained inside the house until she was arrested by police officers. Police officers interviewed defendant twice. Defendant did not deny that she stabbed defendant. During one police interview, defendant claimed that she accidentally stabbed Pandora when Pandora lunged at her and she reacted without thinking. Over the course of several weeks, police officers recovered four knives and several other sharp objects from defendant's house as the possible weapon used to stab Pandora. However, the police were unable to conclusively determine which object was the weapon used by defendant.

The trial court found that the prosecution proved beyond a reasonable doubt that defendant committed second-degree murder and that defendant met her burden of proving by a preponderance of the evidence that she was mentally ill on August 13, 2017. However, the trial court concluded that defendant did not meet her burden of proving that she lacked criminal responsibility on August 13, 2017, and therefore, found defendant guilty but mentally ill of second-degree murder.

At sentencing, defendant requested the trial court to commit her to a mental health facility within the custody of the Department of Community Health (DOCH) where she could receive medical treatment. The trial court denied defendant's request, stating that, under MCL 768.36, it could only commit defendant to the DOCH if it sentenced defendant to probation, which would be inappropriate for a conviction of second-degree murder. The trial court deviated downward from the minimum recommended guidelines range of 162 to 270 months and sentenced defendant to 9½ to 18 years' imprisonment. The trial court imposed court costs of $400, attorney fees of $400, crime-victims assessment of $130, a state minimum fee of $68, and a DNA assessment of $60, which totaled $1,058. Defendant appealed her conviction.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence to support her conviction of guilty but mentally ill of second-degree murder. Defendant also asserts that, at most, she is guilty of voluntary manslaughter. We disagree.

We review de novo a challenge to the sufficiency of the evidence in a bench trial and view the evidence in the light most favorable to the prosecution to determine whether the trial court could have found the essential elements proven beyond a reasonable doubt. *People v Ventura*, 316 Mich App 671, 678; 894 NW2d 108 (2016). "Circumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the

elements of the crime." *People v Henderson*, 306 Mich App 1, 9; 854 NW2d 234 (2014). This Court resolves any evidentiary conflicts in the prosecution's favor. *Id*.

To be guilty of second-degree murder, the prosecution must prove beyond a reasonable doubt the following elements: "(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death." *People v Smith*, 478 Mich 64, 71; 731 NW2d 411 (2007). " 'Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.' " *People v Bergman*, 312 Mich App 471, 487; 879 NW2d 278 (2015), quoting *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). In a second-degree murder case, the prosecution need only prove that the defendant possessed the intent to act in obvious disregard of life-endangering consequences; proof that the defendant intended to kill is not required. *Bergman*, 312 Mich App at 487.

The only difference between voluntary manslaughter and murder is the presence of malice, which "is negated by the presence of provocation and heat of passion." *People v Mendoza*, 468 Mich 527, 540; 664 NW2d 685 (2003). Lack of malice is shown when the defendant killed another "in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Id*. at 535. "The degree of provocation required to mitigate a killing from murder to manslaughter is that which causes the defendant to act out of passion rather than reason." *People v Tierney*, 266 Mich App 687, 714-715; 703 NW2d 204 (2005).

Viewing the evidence in a light most favorable to the prosecution, there is sufficient evidence of defendant's malice and no evidence that defendant acted in a heat of passion. At trial, Terrell testified that, for several minutes, he could hear Pandora and defendant talking in the basement. Although Terrell was unable to discern what Pandora and defendant were discussing, Terrell was concerned enough to ask if everything was okay. Pandora responded that everything was fine, but Terrell heard further commotion inside the house. When Terrell walked into the house, he heard Pandora and defendant talking loudly in the basement. Terrell heard Pandora say, "Jacquetta[,] you're gonna stab your mama." By the time Terrell quickly got to the bottom of the basement stairs, defendant had stabbed Pandora. Terrell's testimony, that he heard Pandora ask defendant if defendant was going to stab her, demonstrates that defendant was threatening Pandora with a knife or some other sharp object moments before she stabbed Pandora. At the very least, Terrell's testimony is evidence that defendant intended to act in obvious disregard of life-endangering consequences. *Bergman*, 312 Mich App at 487. Terrell's testimony also rebuts defendant's claim that she acted in a heat of passion and without a lapse of time during which she could control her passions because it shows that defendant had time to control her passions before stabbing Pandora.

The location and depth of Pandora's fatal wound is further evidence of defendant's malice. Dr. Schmidt testified that Pandora was stabbed in the base of her right interior neck. The wound path was downward toward Pandora's chest. According to Dr. Schmidt, whatever object was used to stab Pandora had to go at least 2 to 2½ inches into Pandora's neck. The amount of force required to stab an object 2 inches into someone's skin is persuasive evidence

that defendant intended to kill Pandora or act in obvious disregard of life-endangering consequences.

Defendant's mental illness is not in dispute and there is ample evidence that defendant was not taking her medication when she stabbed Pandora. The trial court considered defendant's statement to the police that Pandora lunged at her, but ultimately did not find defendant's narrative credible. The trial court also considered defendant's mental illness and Hassan's testimony regarding defendant's erratic behavior at the time of the stabbing, but concluded that Terrell's testimony and the manner in which defendant killed Pandora carried more weight. The evidence, when viewed in a light most favorable to the prosecution, demonstrates that defendant intended to kill Pandora or cause Pandora great bodily harm, or that defendant acted in obvious disregard of life-endangering consequences. Accordingly, there is sufficient evidence to support defendant's conviction of guilty but mentally ill of second-degree murder.

III. MCL 768.36

Defendant argues that the trial court erred when it committed her to the custody of the Michigan Department of Corrections (DOC), rather than the DOCH, because it was based on a misinterpretation of MCL 768.36. Defendant contends that, although MCL 768.36(3) permits a trial court to sentence a defendant to treatment within the custody of the DOCH, the trial court mistakenly believed that it was obligated to sentence defendant to the custody of the DOC. We disagree. This Court reviews de novo the trial court's interpretation and application of relevant statutes. *People v Kennedy*, 502 Mich 206, 213; 917 NW2d 355 (2018).

At the outset, defendant's position is unclear. Defendant contends that the trial court should have "sentenced" her "for treatment" at the DOCH. It is unclear whether defendant is arguing that the trial court should have sentenced her to probation and received treatment through the DOCH, or whether the trial court should have sentenced her to the custody of the DOCH where she would serve her minimum sentence of 9½ years' imprisonment. Both arguments are unavailing.

This case requires this Court to construe MCL 768.36(3) and (4), which concern sentencing for a defendant who has been found guilty but mentally ill. When interpreting a statute, our primary goal is to ascertain and give effect to the Legislature's intent. *People v Zujko*, 282 Mich App 520, 522; 765 NW2d 897 (2008). The words used in a statute are "the most reliable evidence of its intent." *People v Gillis*, 474 Mich 105, 115; 712 NW2d 419 (2006) (citations and quotation marks omitted). If the statutory language is clear and unambiguous, we presume that the Legislature intended that particular meaning, and we must enforce the language as written. *Zujko*, 282 Mich App at 522.

MCL 768.36 states, in relevant part:

> (3) If a defendant is found guilty but mentally ill or enters a plea to that effect which is accepted by the court, the court shall impose any sentence that could be imposed by law upon a defendant who is convicted of the same offense. If the defendant is committed to the custody of the department of corrections, the defendant shall undergo further evaluation and be given such treatment as is psychiatrically indicated for his or her mental illness or intellectual disability.

> Treatment may be provided by the department of corrections or by the department of community health as provided by law. Sections 1004 and 1006 of the mental health code, 1974 PA 258, MCL 330.2004 and 330.2006, apply to the discharge of the defendant from a facility of the department of community health to which the defendant has been admitted and to the return of the defendant to the department of corrections for the balance of the defendant's sentence. When a treating facility designated by either the department of corrections or the department of community health discharges the defendant before the expiration of the defendant's sentence, that treating facility shall transmit to the parole board a report on the condition of the defendant that contains the clinical facts, the diagnosis, the course of treatment, the prognosis for the remission of symptoms, the potential for recidivism, the danger of the defendant to himself or herself or to the public, and recommendations for future treatment. If the parole board considers the defendant for parole, the board shall consult with the treating facility at which the defendant is being treated or from which the defendant has been discharged and a comparable report on the condition of the defendant shall be filed with the board. If the defendant is placed on parole, the defendant's treatment shall, upon recommendation of the treating facility, be made a condition of parole. Failure to continue treatment except by agreement with the designated facility and parole board is grounds for revocation of parole.
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> (4) If a defendant who is found guilty but mentally ill is placed on probation under the jurisdiction of the sentencing court as provided by law, the trial judge, upon recommendation of the center for forensic psychiatry, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment, except by agreement with the treating agency and the sentencing court, is grounds for revocation of probation. The period of probation shall not be for less than 5 years and shall not be shortened without receipt and consideration of a forensic psychiatric report by the sentencing court. Treatment shall be provided by an agency of the department of community health or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians, or other mental health personnel. A psychiatric report shall be filed with the probation officer and the sentencing court every 3 months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the center for forensic psychiatry or any other facility certified by department of community health for the performance of forensic psychiatric evaluation.

MCL 768.36(3) requires a trial court to impose any sentence that could have been imposed upon a defendant convicted of the same offense. There is no option other than the DOC if the trial court determines that probation is inappropriate and incarceration is appropriate. Simply, there is no statutory language that permits a trial court to commit a defendant to the custody of the DOCH if she has been sentenced to serve a prison term. The DOCH only becomes relevant after the trial court determines that a defendant must serve her sentence in prison. See *People v Carpenter*, 464 Mich 223, 232; 627 NW2d 276 (2001) (noting that, under MCL 768.36(3), a defendant must undergo an evaluation and be given treatment if the defendant

is "incarcerated."). Once a defendant is incarcerated—and therefore, within the custody of the DOC—she must undergo a psychiatric evaluation and receive medical treatment, which the DOC or the DOCH may provide. MCL 768.36(3). Thus, if the trial court sentences a defendant to prison, it does not have the discretion to determine whether the DOC or the DOCH is more appropriate. The DOC, not the trial court, is tasked with determining whether the DOC or the DOCH should provide a defendant convicted of guilty but mentally ill with the psychiatric treatment she requires. MCL 768.36(3). However, if the trial court sentences a defendant to probation, it "shall make treatment as a condition of probation," which "shall be provided by an agency of the department of community health," or a private agency approved by the trial court. MCL 768.36(4). A reading of MCL 768.36(3) and (4) together makes clear that the trial court could only order defendant to receive treatment with the DOCH if it sentenced defendant to probation.

At sentencing, the trial court reviewed MCL 768.36(3) and (4) and concluded that, if it decided to sentence defendant to prison, it is up to the DOC "to make a determination as to whether and what type of treatment she should receive." The trial court also concluded that it could not sentence defendant to the DOCH unless it sentenced defendant to probation. Defendant's recommended guidelines minimum range for her conviction of guilty but mentally ill of second-degree murder was 162 to 270 months' imprisonment. The trial court properly determined that probation was inappropriate given the severity of the conviction, but decided to depart downward from the guidelines range and impose a minimum sentence of 9½ years' imprisonment. As a result of the trial court's prison sentence, only the DOC could determine whether defendant should receive medical treatment from it or the DOCH. MCL 768.36(3). Accordingly, the trial court properly interpreted and applied MCL 768.36(3) and (4) when it sentenced defendant to the DOC to serve her minimum prison sentence of 9½ years.

IV. COURT COSTS

Defendant next argues that the trial court erred when it ordered her to pay $400 in court costs without articulating a reason for the specific dollar amount, which defendant claims is excessive and unrelated to the circumstances of the case. We disagree.

To preserve a challenge regarding a trial court's imposition of court costs, a defendant must object when the trial court orders him to pay the contested court costs. *People v Johnson*, 315 Mich App 163, 197; 889 NW2d 513 (2016). Defendant failed to object when the trial court ordered her to pay $400 in court costs, and therefore, the issue is unpreserved for appellate review.

This Court reviews unpreserved issues regarding the trial court's decision to order a defendant to pay court costs for plain error affecting substantial rights. *Id*., citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain-error standard, the defendant must satisfy three elements: "1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Carines*, 460 Mich at 763. Generally, the third element requires the defendant to demonstrate prejudice, "i.e., that the error affected the outcome of the lower court proceedings." *Id*. Even if the defendant has demonstrated all three elements, reversal is appropriate "only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected

the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (citation and quotation marks omitted).

As a preliminary matter, defendant incorrectly contends that the trial court ordered her to pay $1,302 in court costs. The trial court actually ordered defendant to pay $400 in court costs.

MCL 769.1k(1)(b)(*iii*) empowers a trial court to order a criminal defendant to pay court costs so long as those costs are "reasonably related to the actual costs incurred by the trial court." "[T]rial courts must 'establish a factual basis' from which this Court can 'determine whether the costs imposed were reasonably related to the actual costs incurred by the trial court.' " *People v Stevens*, 318 Mich App 115, 121; 896 NW2d 815 (2016), quoting *People v Konopka (On Remand)*, 309 Mich App 345, 359-360; 869 NW2d 651 (2015).

At sentencing, the trial court ordered defendant to pay $400 in court costs and stated the following:

> Court costs are assessed to fund the operation of the courts. The Court of Appeals has ordered that the trial court state on the record a factual basis for the imposition of court costs. The average court costs for a 3rd Circuit Court case is thirteen hundred and two dollars.
>
> I recognize that the Michigan Department of Corrections has recommended I impose court costs of thirteen hundred dollars, but based on my review of the court file and . . . [defendant's] ability to pay I'm going to reduce that to four hundred dollars, okay. All right.

While the trial court did not explicitly articulate why it believed that $400—rather than $500 or $200—was reasonably related to the actual costs incurred by the trial court, the trial court adequately established a factual basis for imposing $400 in court costs. The trial court recognized that the DOC recommended court costs of $1,302, which is the average cost for a case in the 3rd Circuit Court. Despite the recommendation, the trial court reduced defendant's court costs by $902 based on its review of the record and defendant's ability to pay. Regardless of the dollar amount, the $400 in court costs was directly related to the average cost of a case in the court where defendant's trial took place and was, in fact, a fraction of the average cost. The trial court may impose court costs for expenses incurred for the salaries and benefits of court personnel, "[g]oods and services necessary for the operation of the court," and "[n]ecessary expenses for the operation and maintenance of court buildings and facilities." MCL 769.1k(1)(b)(*iii*)(A) through (C). Accordingly, the trial court did not err when it imposed $400 in court costs.

V. ATTORNEY FEES

Defendant argues that the trial court failed to assess her ability to pay before ordering her to pay $400 in attorney fees; and therefore, this matter should be remanded for an evaluation regarding defendant's indigency. We disagree.

A defendant must object to the trial court's order to pay attorney fees in order to preserve the issue for appellate review. *People v Dunbar*, 264 Mich App 240, 251; 690 NW2d 476

(2004), overruled on other grounds *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009). Defendant did not object to the trial court's imposition of $400 in attorney fees, and therefore, the issue is unpreserved for appellate review. We review unpreserved issues regarding the trial court's order to pay attorney fees for plain error affecting substantial rights. *Id*., citing *Carines*, 460 Mich at 763.

MCL 769.1k and MCL 769.1l authorize trial courts "to impose a fee for a court-appointed attorney as part of a defendant's sentence and to enforce that imposition against an imprisoned defendant." *People v Jackson*, 483 Mich 271, 283; 769 NW2d 630 (2009). A defendant's ability to pay does not limit the trial court's power to impose a fee for the expense of providing the defendant with legal assistance. *Id*., citing MCL 769.1k(1)(b)(*iii*). Nor does a defendant's ability to pay limit the trial court's authority under MCL 769.1l, which permits trial courts to recoup costs imposed under MCL 769.1k by authorizing the DOC "to take funds from a prisoner's prison account." *Jackson*, 483 Mich at 284, citing MCL 769.1l. A defendant is only entitled to an "ability-to-pay assessment . . . [when] the imposition of the fee is enforced." *Jackson*, 483 Mich at 292. When the trial court enforces the "imposition of a fee for a court-appointed attorney under MCL 769.1k, the defendant must be advised of the enforcement action and be given an opportunity to contest the enforcement on the basis of . . . indigency." *Id*.

On October 5, 2018, which was the date defendant was sentenced, the trial court ordered the DOC to enforce collection of fees and costs, including the $400 fee for defendant's court-appointed attorney. There is no evidence that defendant did not receive a copy of the trial court's order, and therefore, presumably received notice that collection of the fee would be enforced. Nor is there any evidence that defendant contested her ability to pay the $400 fee prior to this appeal. A defendant who believes that her financial circumstances render her unable to pay "may petition the court to reduce or eliminate the amount" in the remittance order. *Id*. at 296. Thus, defendant is entitled to an opportunity to contest the trial court's imposition of a $400 fee for her court-appointed attorney, but only after she makes "a timely challenge in the trial court." *Id*. at 292-293. Defendant has not petitioned the trial court to reduce or eliminate the $400 fee; and therefore, the issue regarding defendant's indigency is not yet ripe for appeal. *Id*. at 296. Accordingly, the trial court properly imposed and enforced collection of the $400 fee for defendant's court-appointed attorney without first assessing her ability to pay.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher