

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**STATE OF DELAWARE,**

**v.**

**JOHN W. STEWART, JR.,**

**Defendant.**

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**I.D. 0203021554**

**IN 02-04-0210 & 0539**

Date Submitted: March 14, 2003

Date Decided: May 8, 2003

**OPINION**

Paul R. Wallace, Esq., Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for the State of Delaware.

James A. Bayard, Jr., Esq., Assistant Public Defender, 820 N. French Street, 3<sup>rd</sup> Floor, Wilmington, DE 19801. Attorney for Defendant.

A bench trial was held from February 25, 2003 through February 27, 2003, regarding charges of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony in the death of Sherry Stewart on March 22, 2002. The victim's eldest son, John W. Stewart, Jr. ("Defendant") is charged with the murder. At the close of the evidence, the Court requested written submissions from the parties with proposed findings of fact and conclusions of law. Pursuant to Superior Court Criminal Rule 23(c) below are the Court's findings of fact.

### **I. FINDINGS OF FACT**

On Friday, March 22, 2002, Sherry Stewart was murdered in her home at 30 Hybridge Avenue, St. Georges, Delaware. At the time of her death, Sherry Stewart and her husband, John W. Stewart, Sr., had been separated for approximately six months.<sup>1</sup> Preceding the time of her death, beginning in December of 2001, the victim's sons, James and John, were living with her in the family home.<sup>2</sup> Both of her sons were unemployed.<sup>3</sup> James Stewart testified that his mother kept an external, steel lock on the door to her bedroom and carried her wallet on her person at all times because she would find money missing.<sup>4</sup>

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<sup>1</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 23.

<sup>2</sup>*Id.* at 24.

<sup>3</sup>*Id.*

<sup>4</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 33-34.

Approximately one month prior to March 22, 2002, James heard from his mother that John and his friends were taking her money.<sup>5</sup> When he confronted John about it, John stated that a “Rick” was taking the money.<sup>6</sup> John stated that “Rick” was their mother’s boyfriend and that she had met him in an area called Riverside.<sup>7</sup> According to James, Ms. Stewart provided transportation for John to Riverside two times a week for approximately three to four months.<sup>8</sup> James testified that in the past he had provided transportation for John to Riverside, until he learned that the purpose of the trips was to obtain heroin.<sup>9</sup>

On the day of the murder John asked James to pick up John’s friend, Shawne D. Bowen, from Delaware City so that Shawne could pick up and cash his paycheck. John told James that he would be paid \$20.00 for doing this favor.<sup>10</sup> James left the home between 2:00 and 2:30 p.m.<sup>11</sup> John sent James to pick up Shawne, which Shawne testified was unusual since Shawne was John’s friend and “[u]sually I was with John most of the time but I (sic),

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<sup>5</sup>*Id.* at 29.

<sup>6</sup>*Id.* at 30.

<sup>7</sup>*Id.*

<sup>8</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 29.

<sup>9</sup>*Id.* at 28.

<sup>10</sup>*Id.* at 37.

<sup>11</sup>*Id.*

occasionally Jimmy would be there. But it was never me and Jimmy...”<sup>12</sup> The plan was that upon return to the house they would drink beer, smoke pot watch television and hang out.<sup>13</sup> Prior to leaving the house James heard John ask his mother why she was not going to get her paycheck.<sup>14</sup> Ms. Stewart worked as an egg plant worker at Red Bird Farms in New Jersey.<sup>15</sup> James did not notice any problems between John and his mother before he left the house.<sup>16</sup> Before James left the house, John told him that “Rick” was supposed to come over to the house.<sup>17</sup>

At approximately 3:25 p.m. James, Shawne and Shawne’s friend, Carlie Lewis, returned to the house.<sup>18</sup> There was an old Dart in the driveway and as they began to inspect it, Shawne pointed out that an ambulance was in front of the house and James ran inside the house.<sup>19</sup> Upon entry, James saw bloody foot prints and noticed that the dogs were walking

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<sup>12</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 35 and Shawne Bowen, Feb. 26, 2003, at 167, 171-72.

<sup>13</sup>Trial Tr., Shawne Bowen, Feb. 26, 2003, at 172-73.

<sup>14</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 38 and 56.

<sup>15</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 25.

<sup>16</sup>*Id.* at 39, 51-52.

<sup>17</sup>*Id.* at 41.

<sup>18</sup>*Id.*

<sup>19</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 43.

around.<sup>20</sup> James went to put the dogs in a cage in the basement and when he opened the basement door John was at the foot of the steps.<sup>21</sup> John was pale, sweaty and was not wearing a shirt.<sup>22</sup> James walked half way down the stairs and saw his mother laying face down. John told James not to come down the stairs and exclaimed he thought that “Rick” had done this.<sup>23</sup>

The emergency personnel were unable to save Sherry Stewart’s life. She died from multiple penetrating head wounds which resulted from her being bludgeoned with a “dead blow” hammer.<sup>24</sup> Dr. Michael Caplan, a forensic pathologist with the Office of the Chief Medical Examiner, noted fourteen separate head wounds and stated that these had to be a result of at least ten different blows with the hammer.<sup>25</sup> The beating was so severe that brain matter extruded from the victim’s depressed skull fracture. Brain matter was also located on

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<sup>20</sup>*Id.* at 44.

<sup>21</sup>*Id.*

<sup>22</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 45.

<sup>23</sup>*Id.*

<sup>24</sup>Trial Tr., Dr. Michael J. Caplan, Feb. 26, 2003, at 244, 246 and 277.

<sup>25</sup>*Id.* at 268-270.

the sleeve of her shirt and on surfaces in the immediate vicinity of the basement surrounding her.<sup>26</sup>

A defensive wound was noted on the victim's left hand.<sup>27</sup> During her attempt to defend herself, Sherry Stewart suffered a fracture and an open wound to the hand caused by a hammer blow.<sup>28</sup>

Dr. Caplan also testified that at one point in the attack Sherry Stewart had been subjected to an unsuccessful attempt at strangulation, as evidenced by two linear streaks on the left side of her neck as well as the bruising of the strap muscles of her neck and the petechial hemorrhages found in the inner lining of her eyelids.<sup>29</sup> The linear streaks or impressions on her neck were consistent with the black cord with an attached crucifix that was on her neck.<sup>30</sup> Dr. Caplan could not be sure of the mechanism used in the strangulation, because the external signs were inconclusive as to the instrument, however, the signs of neck compression made it clear that an attempt to strangle the victim was made.<sup>31</sup>

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<sup>26</sup>*Id.* at 130 and 271.

<sup>27</sup>*Id.* at 272-273.

<sup>28</sup>Trial Tr., Dr. Michael J. Caplan, Feb. 26, 2003, at 272-73.

<sup>29</sup>*Id.* at 273-77.

<sup>30</sup>Trial Tr., Dr. Michael J. Caplan, Feb. 26, 2003, at 273-74.

<sup>31</sup>Trial Tr., Dr. Michael J. Caplan, Feb. 26, 2003, at 273-74.

The blood spatter evidence establishes that while Ms. Stewart lay on the floor unconscious with her head open the killer continuously struck her causing extensive splattering of her blood.<sup>32</sup> The force of the blows to her head was so great that pieces of skull were driven into the deep structures of the victim's brain and would have resulted in her immediate loss of consciousness.<sup>33</sup> The force and energy of the blows caused multiple contusions, or bruises, of the deep structures in the victim's brain.<sup>34</sup>

Initially Defendant reported to police that "Rick," his mother's boyfriend, had done this to her. Investigating officers searched for any evidence to support that "Rick" existed or had been present at the time of the murder and found none.<sup>35</sup> Throughout the house Detectives found approximately forty five bloody footprints.<sup>36</sup> Defendant had blood on his pants and socks.<sup>37</sup>

During his March 22, 2002, interview, Defendant stated that "Rick" was hiding behind the water heater in the basement and that "Rick" came out and hit Defendant when

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<sup>32</sup>Trial Tr., Paul Kish, Feb. 2, 2003, at 328-40.

<sup>33</sup>Trial Tr., Dr. Michael J. Caplan, Feb. 26, 2003, at 260-65.

<sup>34</sup>*Id.*

<sup>35</sup>Trial Tr., Detective Ruben Martinez, Feb. 25, 2003, at 79-80 and 83-85 and Detective Michael Donovan, Feb. 26, 2003, at 116-22.

<sup>36</sup>Trial Tr., Detective Anthony Dinardo, Feb. 26, 2003, at 126 and 141-42.

<sup>37</sup>Trial Tr., Corporal Domenick Gregory, Feb. 25, 2003, at 73-74.

he came downstairs and discovered his mother.<sup>38</sup> Defendant was limping intermittently during the interview and reported to detectives that he had been hit with the “deadblow” hammer in the back, left thigh and left arm.<sup>39</sup> Defendant stated that he had become “woozie” and dizzy from being pushed down by “Rick.”<sup>40</sup> Defendant also stated that he thought “Rick” may have broken his leg with the hammer.<sup>41</sup> Defendant was sent to the hospital for medical examination.<sup>42</sup> However, upon physical examination, the emergency room physician found not an iota of evidence indicating an injury.<sup>43</sup>

During the March 22, 2002, interview Defendant further reported to detectives that after finding his mother and struggling with “Rick” he went upstairs and got the telephone.<sup>44</sup> After this Defendant stated that he went into his bedroom to grab clothes in order to stop the

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<sup>38</sup>Videotape interview with Detective Ruben Martinez and Detective Michael Donovan (March 22, 2002).

<sup>39</sup>*Id.*

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*

<sup>42</sup>Trial Tr., Detective Ruben Martinez, Feb. 25, 2003, at 81.

<sup>43</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 292-93.

<sup>44</sup>Videotape interview with Detective Ruben Martinez and Detective Michael Donovan (March 22, 2002).



bleeding, then he went into the bathroom to grab towels.<sup>45</sup> At that time Defendant stated that he dropped the hammer in the toilet because he saw the blood on it and it scared him.<sup>46</sup> Defendant stated that he made several trips upstairs.<sup>47</sup> He stated that he was acting in a panic and was watching for “Rick.”<sup>48</sup> At some time during his trips upstairs, Defendant contacted 911.<sup>49</sup>

During his March 23, 2002, interview with police, Defendant stated that he knew he hit his mother, “once in the back of the head.”<sup>50</sup> Defendant also stated that he was not mad at the time.<sup>51</sup> The detectives then allowed him an opportunity to make a written statement, as Defendant was having a difficult time trying to explain what happened because he said he hurt a lot.<sup>52</sup> The first question detectives wrote to the Defendant was, did you kill your

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<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

<sup>48</sup>Videotape interview with Detective Ruben Martinez and Detective Michael Donovan (March 22, 2002).

<sup>49</sup>*Id.*

<sup>50</sup>Videotape interview with Detective Ruben Martinez and Detective Michael Donovan (March 23, 2002).

<sup>51</sup>*Id.*

<sup>52</sup>Trial Tr., Detective Ruben Martinez, Feb. 25, 2003, at 89-92.

mom?<sup>53</sup> Defendant responded by writing, “I think so.”<sup>54</sup> Detectives then asked where and how and Defendant wrote, “I thought she might be Rick, hurting my mom.”<sup>55</sup> Defendant was arrested on March 24, 2002.

When Defendant went to the hospital the day of the murder, the only drug found in his system was marijuana.<sup>56</sup> Upon questioning Defendant stated that he was a recovered heroin addict, but then admitted he had last used heroin three or four days ago.<sup>57</sup> Through Dr. John Madden, the Defense introduced a medical report dated August 20, 2002, relating to an emergency room visit when Defendant was diagnosed with “panic attacks and drug abuse.”<sup>58</sup> Dr. Madden testified that a person suffering a drug withdrawal could have overwhelming anxiety.<sup>59</sup> Dr. Madden did not testify that Defendant was undergoing drug withdrawal at the time of the murder.

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<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>Trial Tr., Detective Ruben Martinez, Feb. 25, 2003, at 101-102 and February 26, 2003, at 113.

<sup>57</sup>Trial Tr., Detective Ruben Martinez, Feb. 25, 2003, at 101 and Dr. John Madden, February 27, 2003, at 293.

<sup>58</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 294-96.

<sup>59</sup>*Id.*

On the day of the murder, Sherry Stewart's wallet was found on the clothes dryer with \$105.00 in cash inside.<sup>60</sup> Evidence was presented at trial that the victim's checking and savings accounts had been emptied.<sup>61</sup> In the month previous to the victim's death, approximately ten ATM withdrawals were made from her checking account.<sup>62</sup> On March 20, 2002, surveillance photographs revealed that Defendant, and his friend Nathan Baxter, cashed Ms. Stewart's payroll check from Red Bird Egg Farm at an ATM machine.<sup>63</sup> Also, four checks bounced from her checking account from March 15, 2002 through March 25, 2002.<sup>64</sup> Ms. Stewart had requested that her personal mail be placed in general delivery at the post office, so that only she could obtain her mail.<sup>65</sup> Additionally, although John was unemployed, his brother and friends noted that he regularly had spending money.<sup>66</sup>

Sherry Stewart had become increasingly frustrated with John in the days preceding

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<sup>60</sup>Trial Tr., Detective Anthony Dinardo, Feb. 26, 2003, at 147.

<sup>61</sup>Trial Tr., Robert Stover, Feb. 26, 2003, at 155-63.

<sup>62</sup>*Id.*

<sup>63</sup>Trial Tr., John Barczak, Feb. 26, 2003, at 149-51 and Nathan Baxter, Feb. 26, 2003, 186-88.

<sup>64</sup>Trial Tr., Robert Stover, Feb. 26, 2003, at 161.

<sup>65</sup>Trial Tr., Eileen Keen, Feb. 26, 2003, at 196-97.

<sup>66</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 27; and Shawne Bowen, Feb. 26, 2003, at 168; and Nathan Baxter at 188-89.

her death. She had given him an ultimatum, that he must leave by the end of March.<sup>67</sup> On the evening before her death, while taking a her friend home after work, she tearfully stated that she was at the end of her rope with the Defendant and that she did not know what she was going to do with him as, “he’s driving me crazy.”<sup>68</sup>

At trial, inmate James Runyon testified regarding his conversations with Defendant. Mr. Runyon and Defendant were in segregation together in Gander Hill prison from May 2002 through July 2002.<sup>69</sup> Mr. Runyon testified that Defendant asked for his assistance with his defense.<sup>70</sup> Mr. Runyon stated that Defendant admitted to him that he argued with his mother over money, tricked her into coming to the basement where he hid behind “the generator or water heater” waiting for her to come down the steps and then he tried to strangle her with a belt.<sup>71</sup> Mr. Runyon further alleges that Defendant told him that when the attempt at strangulation was unsuccessful, Defendant then hit the victim numerous times with the “dead blow” hammer, because he wanted to end her life more quickly.<sup>72</sup> Although he is

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<sup>67</sup>Trial Tr., Connie Costango, Feb. 26, 2003, at 212; and Betty Derrickson, Feb. 26, 2003 at 223.

<sup>68</sup>Trial Tr., Betty Derrickson, Feb. 26, 2003, at 222-23 and 226.

<sup>69</sup>Trial Tr., Inmate James Runyon, Feb. 27, 2003, at 365.

<sup>70</sup>*Id.* at 372-73.

<sup>71</sup>*Id.* at 374-75.

<sup>72</sup>*Id.* at 376-78.

in prison on theft charges, Mr. Runyon testified that he told his fellow inmates he was in jail for murder so that they would leave him alone.<sup>73</sup>

In order to find the Defendant guilty of Murder in the First Degree, the Court must find the following elements exist beyond a reasonable doubt: (1) the Defendant caused the death of Sherry Stewart; and (2) the Defendant acted intentionally.<sup>74</sup> In order to return a verdict of guilty as to the indicted charge of Possession of a Deadly Weapon During the Commission of a Felony, requires that the Court find the following elements exist beyond a reasonable doubt: (1) the defendant possessed a deadly weapon;<sup>75</sup> (2) the defendant committed a felony while he was in possession of a deadly weapon; and (3) The defendant acted knowingly.<sup>76</sup>

## **II. CONTENTIONS OF THE PARTIES**

### *The Contentions of Defendant*

Immediately, after the murder, Defendant blamed the attack on “Rick.” Defendant

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<sup>73</sup>Trial Tr., Inmate James Runyon, Feb. 27, 2003, at 370-71 and 378-80.

<sup>74</sup>DEL. CODE ANN. tit. 11 § 636.

<sup>75</sup>Pursuant to DEL. CODE ANN. tit. 11 §§ 222(4) & (5)(2002) “Deadly weapon” includes any dangerous instrument as defined in section (4), which is used, or attempted to be used, to cause death or serious physical injury. Here the instrument was the “dead blow” hammer.

<sup>76</sup>DEL. CODE ANN. tit. 11 § 1447.

no longer accuses “Rick,” however, Defendant contends that the murder of his mother was not intentional, but rather the result of an impassioned, recklessly caused death which manifested a cruel, wicked and depraved indifference to human life.<sup>77</sup> Defendant relies on several points raised during the trial in order to support a Murder Second Degree conviction.

First, Defendant points out that James Stewart testified that there was no argument between John and his mother the morning of the murder. This testimony, Defendant argues, helps to negate the concept of a well planned, intentional murder.

Second, Defendant argues that because John discussed with Shawne the plan for Shawne to return home after cashing his paycheck in order to “party,” suggests that there was no forethought regarding the death of the Defendant’s mother.

Third, Defendant points out that Ms. Stewart’s wallet was found on top of the clothes washer with \$105.00 inside; therefore , Defendant did not murder his mother for immediate monetary gain.

Fourth, Defendant argues that he was acting in a panic during the videotaped interview, which supports the concept of a recklessly caused death evidencing a cruel, wicked and depraved indifference to human life.<sup>78</sup> Defendant relies on the fact that he was

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<sup>77</sup>DEL. CODE ANN. tit. 11 § 635.

<sup>78</sup>Videotape interview with Detective Ruben Martinez and Detective Michael Donovan (March 23, 2002).

diagnosed as having a panic attack and heroin addiction in an August 20, 2001 emergency room report, to support the argument that he acted in a panic on the day of the murder.<sup>79</sup> Despite the fact that this diagnosis was made seven months prior to the murder it is argued that it can be inferred that Defendant was overcoming drug addiction on the day of the murder and experiencing a panic attack. Additionally, Defendant argues that the repeated hammer blows evidence an emotional frenzy and not a calculated intent.

Finally, Defendant argues that the testimony of a convicted felon, Mr. James R. Runyon as evidence that the Defendant intentionally killed his mother, is insufficient. Defendant points to the fact that Mr. Runyon is a convicted felon and therefore the Court should not find his testimony credible.

*The Contentions of the State*

The State maintains that the evidence shows that the Defendant made up “Rick” as an alibi for his actions.<sup>80</sup> As much as one month previous to the murder, Defendant began mentioning a “Rick” to others. However, John is the only person to have seen or heard

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<sup>79</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 294-96.

<sup>80</sup>*See McKinney v. State*, 466 A.2d 356, 359 (Del. 1983)(stating that any conduct undertaken by a defendant subsequent to the commission of the crime that tends to show consciousness of guilt is relevant.).

about the alleged “Rick.” Sherry Stewart never mentioned “Rick” to any of her friends.<sup>81</sup> Sherry Stewart was known to desire reconciliation with her husband and she never discussed having a boyfriend with those closest to her.<sup>82</sup> The neighbor did not notice any unusual activity at 30 Hybridge Avenue on the day of the murder.<sup>83</sup> Nor did James Stewart notice anyone fleeing the premises when he returned to the house and discovered his mother and John in the basement.<sup>84</sup> Finally, the wounds that John Stewart claimed were inflicted upon him by “Rick” were refuted by the evidence.<sup>85</sup> No injuries, such as bruises, abrasions or scratches, consistent with having been struck by a hammer were found by Dr. John Madden, the Emergency Room physician.<sup>86</sup>

The State responds to Defendant’s contentions that this murder was not well planned, and that there was no forethought to the murder, by stating that in Delaware one is guilty of Murder in the First Degree if he intentionally kills another person. This does not require premeditation or deliberation, nor any showing of malice. The sole question is whether it

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<sup>81</sup>Trial Tr., Eileen Keen, Connie Costango and Betty Derrickson, Feb. 26, 2003, at 192-227.

<sup>82</sup>*Id.*

<sup>83</sup>Trial Tr., Connie Costango, Feb. 26, 2003, at 210-11.

<sup>84</sup>Trial Tr., James Stewart, Feb. 25, 2003, at 43-44, 50-51.

<sup>85</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 292-93.

<sup>86</sup>*Id.*



was Defendant's conscious object to kill his victim.<sup>87</sup> The State contends that Defendant clearly intended to kill his mother by the very actions he took at the time of the murder.<sup>88</sup>

The State purports that Defendant first argued with his mother regarding whether she would pick up and cash her paycheck. The State points out that Defendant had been slowly removing all the money from his mother's accounts and had cashed her most recent employment check without her apparent knowledge. The State further contends that angered by her response, Defendant lured his mother downstairs with a concern about the dogs, and he lay in wait for her. The Prosecution argues that the Defendant first attempted to strangle his mother with a belt and when that was unsuccessful he used the "dead blow" hammer. Defendant struck her repeatedly and so forcefully that he literally caved in the victim's head.

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<sup>87</sup>*Duonnolo v. State*, 397 A.2d 126, 128-29 (Del. 1978).

<sup>88</sup> See *Cropper v. State*, 2000 WL 139992 (Del. Supr.)(finding intent in defendant's act of stabbing victim 20 times in the neck and upper body, leaving her permanently disabled) and *Duonnolo v. State*, 397 A.2d 126, 129 (Del. 1978)(stating with regard to proof of intention, "[e]ven the common law was faced with this problem, and dealt with it by the presumption that man is presumed to intend the natural and probable consequences of his acts. That presumption is preserved and in addition permits the State to get its case to the jury on the basis of what would have been the state of mind of a reasonable man under the circumstances known to the accused. This may be shown not only by direct proof, but also by such inference as may be reasonably drawn from the evidence adduced.")

The State maintains that the intention to kill can be inferred from this evidence.<sup>89</sup> Thus, the State argues, the physical, medical and scientific evidence and the inferences that might reasonably be drawn from this evidence lead one to the conclusion that Defendant intended to kill his mother when he attempted to strangle and then bludgeoned her.

Marijuana was found in the Defendant's system. The State points out that even if Defendant was intoxicated by the marijuana in his system, this is not enough to relieve him of the responsibility for his actions.<sup>90</sup> There is simply no law of "diminished capacity" in Delaware.<sup>91</sup> Additionally, the State argues that even if the Court were to accept the theory that Defendant was undergoing a panic attack, such an attack does not make one act out violently.<sup>92</sup> The State maintains that although Defendant exhibited great anger and passion in the manner in which he committed this murder, this does not change Defendant's intentional acts into mere recklessness. The State points out that by definition, the proof of

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<sup>89</sup>See DEL. CODE ANN. tit 11, §§ 306(c)(1), 307 (2002); and *Winborne v. State*, 455 A.2d 357, 360 (Del. 1982)(stating that in determining defendant's intention to kill, finder of fact may infer, if other circumstantial evidence justifies use of conclusion, that actor intended probable and natural consequences of his act. Evidence that defendant strangled one victim until she passed out on two different occasions, and struck both her and different victim on head, knocking victims to ground, was sufficient to sustain conviction for attempted murder in the first degree.).

<sup>90</sup>DEL. CODE ANN. tit. 11 § 421(2002).

<sup>91</sup>See *Bates v. State*, 386 A.2d 1139, 1143-44 (Del. 1978).

<sup>92</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 296.

the greater crime of Murder in the First Degree will also have proven the lesser forms of homicide.<sup>93</sup> Thus, the State argues, that it is not a surprise that the manner of the crime can be described as at least reckless, and cruel, wicked and depraved.

Finally, the State argues that regardless of his criminal past, the consistency of Mr. Runyon's testimony with the facts of the case make his testimony credible.

*Conclusions of the Court*

The Court concludes that the evidence, both direct and circumstantial, indicate that "Rick" does not exist. Defendant's assertion of "Rick" as the perpetrator of the crime tends to show premeditation, at worst, or Defendant's desire to avoid responsibility, at the very least. As discussed previously, no evidence was produced to indicate the existence of "Rick," other than the use of "Rick" as a subterfuge.

The Court finds that it is the crime itself that manifests the intention of the Defendant. Intentionally means that it must have been the Defendant's conscious object or purpose to cause the death of another person, in this case the Defendant's mother, Sherry Stewart.<sup>94</sup> Here the evidence shows that the Defendant made up "Rick" as an alibi for his actions. He told his brother that "Rick" would be coming by on the day of the murder. Defendant appears to have purposefully sent his brother out of the house in order to pick up Defendant's

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<sup>93</sup>See e.g., *Rush v. State*, 491 A.2d 439 (Del. 1985).

<sup>94</sup>See *Duonno v. State*, 397 A.2d 126, 128-29 (Del. 1978).

friend, Shawne Bowen. Mr. Bowen testified that it was unusual for James to come and get him without John being present, as John was more his friend than James. Moreover, Defendant's intent was manifest at the time that he committed the acts that caused his mother's death. The severity of the blows to the head were enough to spatter brain matter on the victim's clothes and the area surrounding her. The Defendant struck his mother at least ten times with a "deadblow" hammer. Pieces of the victim's skull were driven into her brain by the force of the blows. Blood spatter evidence supports the fact that while the victim was unconscious and laying on the basement floor the Defendant continued to strike her in the head. A rational inference can be made by the trier of fact that the Defendant intended to kill his mother.<sup>95</sup> These facts all point to an intent, that is, a conscious object or purpose to kill the victim.

No evidence was presented to show that the Defendant was suffering from a panic attack and/or heroin withdrawal on the day of the murder. No evidence revealed that the Defendant acted in a panic until he began to fully realize what he had done to his mother during an interview at the police station. Dr. Madden testified that the Defendant had reported he last used heroin three or four days ago, but Dr. Madden did not testify that he believed Defendant was experiencing drug withdrawal on the day of the murder.<sup>96</sup>

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<sup>95</sup>*See Winborne v. State*, 455 A.2d 357, 360 (Del. 1982).

<sup>96</sup>Trial Tr., Dr. John Madden, Feb. 27, 2003, at 289-96.

Additionally, with regard to Defendant's so-called "panic" on the videotape during his questioning by police, the Court finds that when the Defendant came to the realization of what he had done, he became increasingly upset. This postponed "panic," after the murder, cannot be said to negate his intent at the time of the murder.

As previously stated, the Court does not need to rely on Mr. Runyon's testimony in order to reach the conclusion that Defendant acted intentionally. However, Mr. Runyon's testimony is consistent with the facts. Mr. Runyon testified that Defendant lured his mother down to the basement, and that he hid behind a water heater. These are both facts not published in the newspaper. It is apparent that Defendant laid in wait for his mother after he sent James out on an errand.

Defendant's use of "Rick" to create an alibi as much as a month earlier than the date of the murder is evidence of premeditation. Nonetheless, the Court need not find premeditation in the instant case. The brutal slaying of Mrs. Stewart, as evidenced by the physical evidence alone is sufficient for a finding beyond a reasonable doubt that Defendant acted intentionally.

Based on the foregoing, Defendant is found guilty of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. A Pre-sentence investigation is ordered and Sentencing will be on June 13, 2003 at 1:30 p.m.

**IT IS SO ORDERED.**

*State v. Stewart*  
I.D. 0203021554  
May 8, 2003  
Page 22

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**ALFORD, J.**

Original: Prothonotary's Office - Criminal Div.