

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN ILLAYA TURNER,

Defendant-Appellant.

UNPUBLISHED

June 21, 1996

No. 175620

LC No. 93-005619

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Following a bench trial, defendant was found guilty but mentally ill of second-degree murder, MCL 750.317; MSA 28.549, and of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant pleaded guilty to being a fourth habitual offender, MCL 769.12; MSA 28.1084. The trial court sentenced defendant as an habitual offender to imprisonment for life for the second-degree murder conviction and for two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in finding defendant guilty but mentally ill of second-degree murder because the prosecution failed to establish defendant's sanity beyond a reasonable doubt. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

A defendant is legally insane if as a result of mental illness he "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." MCL 768.21a(1); 28.1044(1)(1). A defendant in a criminal proceeding is presumed sane. *People v Murphy*, 416 Mich 453, 463; 331 NW2d 152 (1982). However, once evidence of insanity is introduced, the prosecutor must establish the defendant's sanity beyond a reasonable doubt. *Id.*, 463-464.

* Circuit judge, sitting on the Court of Appeals by assignment.

Three experts testified that in their opinion, defendant lacked substantial capacity either to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. However, the prosecutor submitted the testimony of several lay witnesses which rebutted the expert testimony. The trial court considered the conflicting testimony between the expert and lay witnesses on the insanity issue and concluded that the testimony of the lay witnesses was more credible. When expert testimony is used to demonstrate insanity, its weight and credibility rests with the trier of fact. *People v Duffy*, 67 Mich App 266, 269; 240 NW2d 771 (1976). Furthermore, the testimony of lay witnesses may be competent evidence of sanity and may rebut expert testimony on the issue. *Murphy, supra*, 465. Viewing the evidence in a light most favorable to the prosecution, defendant had the capacity to appreciate the nature and quality of the wrongfulness of his conduct and to conform his conduct to the requirements of the law. Accordingly, we reject defendant's contention that the prosecution failed to establish defendant's sanity beyond a reasonable doubt.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.