

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH TINSLEY,

Defendant-Appellant.

UNPUBLISHED
September 18, 2003

No. 240366
Wayne Circuit Court
LC No. 98-009094

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Defendant Ralph Tinsley appeals as of right his convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

On appeal, defendant raises two issues. First, defendant alleges that it was error requiring reversal “for the trial court to determine if Mr. Tinsley could represent himself prior to ruling on Mr. Tinsley’s competency to stand trial.” We disagree. At a hearing held February 21, 2001, the trial judge addressed *both* the issue of defendant’s competency and defendant’s request for self-representation. While the court’s ruling on defendant’s request for self-representation occurred first, it is clear that all the information regarding both issues was available to the judge during this joint proceeding. When the Honorable Gregory D. Bill granted defendant’s request for self-representation, he had before him the report of psychologist Marilyn Gruenwald, which included her recommendation that defendant be found competent but observed for symptoms that may occur due to his diabetic condition. In allowing defendant to represent himself, while assisted by stand-by counsel in an advisory capacity, the trial judge ruled as follows regarding defendant’s competency:

The Court: I have a report from Marilyn Gruenwald, Ph.D., February 21st, 2001, senior clinical psychologist, consulting forensic examiner. And in her report, it’s indicated that: At present, it appears the Defendant is able to appropriately participate in a trial situation. It’s my recommendation he be found competent to stand trial. There’s one caveat, under comments: Mr. Tinsley is a known diabetic. An alteration in blood glucose levels can cause confusion, irritability and agitation. Should Mr. Tinsley exhibit significant symptomatology of this type, he should be referred for appropriate medical treatment.

Mr. Cook, in this regard I'd like you to keep in touch with Mr. Tinsley. Make sure of his medication –

Mr. Cook (attorney for defense): Yes, your Honor, I will –

The Court: -- situation.

Mr. Cook: -- contact the jail specifically about that issue.

The Court: All right. So I find Mr. Tinsley to be competent.

Ms. Nessel (attorney for prosecution): And, your Honor, I'm sure the Defendant would agree that he's not contesting that issue, that he believes he is competent to stand trial, since he's representing himself?

The Court: Mr. Tinsley, you feel you're competent to stand trial here?

Defendant Tinsley: Yes, your Honor.

The Court: And in fact, you feel you're not only competent but you can represent yourself?

Defendant Tinsley: Yes, sir.

Following the court's ruling from the bench, an order was entered February 21, 2001, finding defendant competent to stand trial. On appeal, defendant does not challenge the trial court's factual finding regarding his competency. Rather, defendant alleges that the trial court erred by allowing defendant to represent himself without first determining his competency. Defendant's argument is without merit for the reason that the February 21, 2001, hearing regarded both issues. Error, if any, in the trial court's ruling on the issues in reverse order was harmless. *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999); MCL 769.26.

Next, defendant alleges that the trial court committed clear error by allowing defendant to represent himself without making express findings that defendant knowingly and voluntarily waived his right to counsel. Again, we find defendant's argument to be without merit. The record indicates that prior to granting defendant's request for self-representation, the judge extensively advised defendant regarding the dangers and disadvantages of self-representation. In addition, defendant executed a written form that further explained the dangers and disadvantages of self-representation. From our review of the record, it is clear that defendant's request was made unequivocally, knowingly, and voluntarily. *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976). Further, any harm caused by defendant's self-representation during voir dire was substantially cured when the trial court directed stand-by counsel to proceed with defendant's defense when it became clear that defendant's attempt at self-representation was ineffective.

Affirmed.

/s/ Donald S. Owens
/s/ Richard Allen Griffin
/s/ Bill Schuette