

Court of Appeals, State of Michigan

ORDER

People of MI v Wilbert Dunn

Docket No. 330466

LC No. 2015-253395-FH

Elizabeth L. Gleicher
Presiding Judge

Mark J. Cavanagh

Colleen A. O'Brien
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The delayed application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

The motion to waive the requirements of MCR 7.209 is GRANTED.

The motion for stay pending appeal is DENIED.


Presiding Judge

Gleicher, P.J. states as follows:

I respectfully dissent from the majority's decision to deny leave to appeal in this case. In my view, the trial court clearly erred by refusing to permit defendant to pursue an insanity defense. By so ruling, the trial court violated MCL 768.20a and denied defendant his constitutional right to present a defense.

The prosecution charged defendant with operating while intoxicated, third offense, pursuant to MCL 257.625. Defendant filed a notice of intent to assert an insanity defense and listed Dr. John Colombo as a defense witness. Dr. Colombo intended to testify regarding the relationship between defendant's diabetes and his "mental state on the day in question." The trial court ruled Dr. Colombo's testimony inadmissible after conducting a hearing pursuant to *Daubert v Merrill Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993). On the day scheduled for trial, the trial court announced that it would not instruct the jury regarding insanity, stating: "You don't have an expert. I will not give the instructions that you proffered, because you do not have an expert witness to support said instructions." The trial court continued: "The Court of Appeals will decide whether or not you can advance an insanity defense without an expert that meets Daubert's standards."

Defendant has sought leave to appeal, challenging this ruling. In my view, the issue presented is one that deserves plenary consideration by this Court.

The rules of procedure governing an insanity defense are set forth in MCL 768.20a. Defendant complied with those rules. Notably, the statute provides that a defendant “may” secure an independent psychiatric expert and evaluation. Neither a court rule nor the statute *requires* expert testimony as a prerequisite to a defendant’s pursuit of an insanity defense. Michigan caselaw does not speak to this question.¹ Thus, the trial court likely erred in ruling otherwise; the issue presented is one that deserves fuller evaluation.

Here, defense counsel stated that he intended to present an insanity defense through the cross-examination of the prosecution’s listed witnesses. Furthermore, the defendant himself would be entitled to testify that at the relevant time, he “lacked substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct . . .” MCL 768.21a(1). In my view, the trial court’s decision to deny defendant the opportunity to present an insanity defense premised solely on defendant’s lack of an expert merits full review. I would grant the application for leave to appeal.

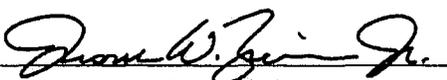
¹ Other states’ caselaw is clearer on this point. See *Motes v State*, 256 Ga 831, 382; 353 SE2d 348 (1987) (“An insanity defense after all, unlike a medical malpractice claim, does not require expert testimony as a prerequisite for presentation to a jury.”); *Commonwealth v Guadalupe*, 23 Mass App Ct 97, 100; 499 NE2d 314 (1986) (“Although the insanity defense classically pitches opposing batteries of experts into battle, it is settled that a defense of lack of criminal responsibility does not require psychiatric testimony.”).



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 08 2015

Date


Chief Clerk