

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC FRENCH,

Defendant-Appellant.

UNPUBLISHED

March 12, 1999

No. 176703

Recorder's Court

LC No. 93-011714

AFTER REMAND

Before: Griffin, P.J., and Bandstra and M. Warshawsky*, JJ.

PER CURIAM.

Defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MSA 750.227b; MSA 28.424(2). He was sentenced to forty to eighty years' imprisonment on the second-degree murder conviction and two years on the felony-firearm conviction. Defendant subsequently appealed his convictions, and this Court remanded this case to the trial court for an independent psychiatric evaluation of defendant regarding his criminal responsibility, and to entertain a motion for new trial if the evaluation led defendant to so move. *People v French*, unpublished per curiam opinion of the Court of Appeals, issued August 30, 1996 (Docket No. 176703). Rehearing was denied by this Court on November 14, 1996, and the Supreme Court denied leave on November 7, 1997. On remand to the trial court, a psychiatric report was completed, and defendant moved for a new trial. On August 28, 1998, defendant's motion was denied by the trial court. Defendant now appeals. We reverse and remand for a new trial.

Defendant asserts that the trial court abused its discretion in denying his motion for a new trial. We agree. The independent psychiatric examiner concluded that defendant was legally insane because his mental illness rendered him "substantially incapacitated to reasonably exercise adequate control over his behavior." Although the trial court stated at the motion hearing that the independent psychiatric examiner's conclusion would have not changed the verdict in this case, we agree with defendant that the analysis and conclusion of the independent examiner raises a factual question for the jury. Criminal insanity is a factual question for the jury, *People v Martin*, 386 Mich 407, 422; 192 NW2d 215 (1971), and the trial court invaded the province of the jury in determining this factual question.

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

Defendant was denied his constitutional right to present a defense, *People v Pullins*, 145 Mich App 414, 417; 378 NW2d 502 (1985), and the trial court abused its discretion in denying a new trial, *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997).

We reverse defendant's convictions and remand for a new trial. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky