

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND W. PONKE,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 180310

Oakland Circuit Court

LC No. 94-130824

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of first-degree murder, MCL 750.316; MSA 28.548. Defendant was sentenced to life in prison without parole. We affirm.

Defendant argues that the prosecutor failed to prove beyond a reasonable doubt that defendant was sane at the time that he killed his wife. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980).

To prove insanity in Michigan, the defendant must show: (1) that he or she is either mentally ill or mentally retarded, and (2) because of the mental illness or retardation, the defendant lacks substantial capacity to either 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; MSA 28.1044(1); CJI2d 7.11; *People v Ross*, 145 Mich App 483; 378 NW2d 517 (1985). A defendant is presumed sane. *Ross, supra*. Once the issue is raised and evidence of insanity is presented by the defendant, the prosecutor must then go forward and produce evidence beyond a reasonable doubt that the defendant

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

was sane at the time the crime was committed. *In Re Certified Question (Duffy v Foltz)*, 425 Mich 457; 390 NW2d 620 (1986).

Viewing the evidence in the light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence of defendant's sanity at the time that he killed his wife. The prosecution presented three rebuttal experts who examined defendant after the killing. The first expert, Albin, testified that although he found some definite evidence of neurologic abnormalities in defendant, he was unable to conclude that defendant had a definitive diagnosis of Huntington's disease because Albin did not find unequivocal evidence of chorea movements. Furthermore, Albin testified that out of the 150 to 200 patients that he has treated for Huntington's disease, none have committed murder. Albin has never seen a premeditated, violent event in a Huntington's patient.

The second expert, Jackson, found that defendant experienced a significant period of depression prior to killing his wife. However, Jackson concluded that he could not find evidence that defendant suffered any degree of either mental retardation or mental illness which would have caused him, at the time of the killing, to have lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of the law. Therefore, defendant did not meet the criteria of legal insanity at the time of the killing. Defendant did not lose contact with reality at any time, and his communications were lucid and clear at the time of the killing.

The final rebuttal expert, Clark, opined that defendant did have the capacity to conform his conduct to the requirements of the law, and that defendant was not mentally ill at the time of the incident. Clark based his opinion in part on defendant's comment to him that if his daughter had been present, he would not have killed his wife. This was significant because it indicated that defendant could have stopped himself or would have stopped himself under the circumstance that his daughter was present.

When experts offer conflicting opinions as to a defendant's sanity, the decision as to which expert was more credible is left to the jury. *Ross, supra*. In the instant case, the jury was able to evaluate the testimony of four experts all skilled in neurology/psychiatry/psychology: Folstein, who was the defense expert, and the three rebuttal experts. Viewing the experts' testimony in a light most favorable to the prosecution, a rational trier of fact could have determined, beyond a reasonable doubt, that the defendant was sane at the time that he killed his wife.

In addition, the testimony of Officer Matigan, a lay witness, helped to establish defendant's sanity at the time of the killing and his ability to conform his conduct to the requirements of the law. Lay persons are competent to testify regarding a person's insanity and the observations on which such an opinion is based. *People v Borgetto*, 99 Mich 336, 340-341; 58 NW 328 (1893). Defendant was able to respond to Officer Matigan's demands only seconds after the killing by putting his hands in the air, laying on the ground, and putting his hands behind his back in order to be handcuffed. Defendant responded to Officer Matigan that he understood his constitutional rights and that he would answer any questions.

Based upon the above testimony, we hold that, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded that defendant was sane at the time of the killing.

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ Michael F. Sapala