

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 183425
Recorder's Court
LC No. 93-014267

GERALD JOSEPH RODRIGUEZ,

Defendant-Appellant.

Before: Bandstra, P.J., and Neff and M.E. Dodge,* JJ.

BANDSTRA, P.J. (concurring in part and dissenting in part).

I respectfully dissent from Part I of the majority opinion. The report submitted by the expert was clearly deficient. As the trial court noted in its lengthy consideration of this issue, the statute specifically requires that the expert's report state conclusions regarding legal insanity and "whether the defendant was mentally ill or mentally retarded." MCL 768.20a(6)(c); MSA 28.1043(1)(6)(c). The court considered that statutory section in the context of the statutory section relating to what is required to show legal insanity, the defense that was being proffered on behalf of defendant. MCL 768.21a(1); MSA 28.1044(1)(1). The court analyzed the report and concluded that, in contrast to what these statutes required, the report indicated that defendant did "[know] right from wrong." See *id.* (a defendant is legally insane if the defendant lacks substantial capacity "to appreciate the wrongfulness of [his] conduct or to conform [his] conduct to the requirements of [the] law") The court reasoned that the only available remedy for the report's failure to comply with the statute would be to prevent the testimony of the expert, to disallow a form of "trial by ambush" to the detriment of the prosecutor. The court reasoned that a prosecutor receiving a report insufficient under the statute could reasonably conclude that the expert authoring the report would not present sufficient evidence to allow the insanity defense to go to a jury. Although the majority implicitly complains that the prosecutor failed to challenge the report earlier, it identifies no authority under which the prosecutor was so obliged.

As the majority notes, the scope of voir dire is within the discretion of the trial court and, considering the circumstances of this case summarized above, I do not conclude that there was any

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

abuse of discretion. Further, even if the decision not to allow voir dire on this issue was erroneous, it would not be error justifying reversal; defendant was later allowed to amend the expert's report and fully present the legal insanity defense to the jury. See MCR 2.613(A); MCL 769.26; MSA 28.1096. I would affirm.

/s/ Richard A. Bandstra