

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SIEDAH KAMILAH CHANDLER,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 218905

Wayne Circuit Court

Criminal Division

LC No. 98-011306

Before: Zahra, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to commit murder, MCL 750.83; MSA 28.278, and sentenced to a term of six to twelve years' imprisonment. Defendant was accused of assaulting an elderly woman from her neighborhood after using the woman's telephone. Defendant unsuccessfully raised an insanity defense at trial. She now appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion by considering a statement that she made to a forensic psychologist during a court-ordered evaluation for criminal responsibility. Defendant relies on MCL 768.20a(5); MSA 28.1043(1)(5), which provides as follows:

Statements made by the defendant to personnel of the center for forensic psychiatry, to other qualified personnel, or to any independent examiner during an examination shall not be admissible or have probative value in court at the trial of the case on any issues other than his or her mental illness or insanity at the time of the alleged offense.

Here, defendant told the psychologist that she had taken her medication on the day of the assault. The defense psychologist testified that the medication had a stabilizing effect on defendant. Thus, whether defendant was taking medication at the time of the assault was relevant to her mental capacity. The trial court was within its discretion, and within the permissible boundaries of subsection (5), when it considered defendant's statement to the forensic psychologist.

Defendant also argues that the prosecution did not satisfy its burden of proving beyond a reasonable doubt that she was sane at the time of the assault. Defendant claims that once she

presented minimal evidence of her insanity, she rebutted a presumption of sanity, and the prosecutor was then required to prove beyond a reasonable doubt that she was sane at the time of the offense. Defendant's argument is consistent with the previously applied common-law approach to insanity in Michigan. See *In re Certified Question*, 425 Mich 457, 459; 390 NW2d 620 (1986). However, "[c]oncerned that the imposition of this burden on the prosecutor created an opportunity for defendants to abuse the insanity defense, the Legislature amended the insanity defense statute effective October 1, 1994." *People v Stephan*, 241 Mich App 482, 489; 616 NW2d 188 (2000). The insanity statute, MCL 768.21a; MSA 28.1044(1), now provides in pertinent part as follows:

(1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness . . . or as a result of being mentally retarded . . . that person lacks substantial capacity either to 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. Mental illness or being mentally retarded does not otherwise constitute a defense of legal insanity.

* * *

(3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

This amendment to the insanity statute applies to the present case.¹ We reject defendant's contention, advanced at oral argument, that the amendment to the insanity statute merely places upon defendant the burden of production of evidence of defendant's insanity. The amended statute clearly provides that insanity is an affirmative defense that the defendant must prove by a preponderance of the evidence. *People v McRunels*, 237 Mich App 168, 173; 603 NW2d 95 (1999).

Affirmed.

/s/ Brian K. Zahra
/s/ Michael R. Smolenski
/s/ Hilda R. Gage

¹ Because the amendment is a substantive change to the prosecutor's burden of proof, it applies prospectively. *McRunels*, *supra* at 180. In the instant case, the assault occurred on July 27, 1998, almost four years after the amended version of MCL 768.21a; MSA 28.1044(1) took effect. Thus, defendant bore the burden of proving her insanity by a preponderance of the evidence. The prosecutor did not have to prove that defendant was sane at the time of the offense.