

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CALVIN DERRICK GLAZE,

Defendant-Appellee.

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UNPUBLISHED

May 22, 2001

No. 226703

Wayne Circuit Court

LC No. 00-002798

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to dismiss charges of resisting and obstructing, MCL 750.479; MSA 28.747, and fleeing and eluding, MCL 257.602a; MSA 9.2302(1), based on competency. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was found incompetent to stand trial due to mental illness. He was ordered to undergo treatment. The court later redetermined that defendant was competent to stand trial and the preliminary examination was conducted. After defendant was bound over for trial, he moved to dismiss, successfully arguing that if his mental illness had previously rendered him incompetent to stand trial, it likewise rendered him legally insane.

The test for insanity as a defense and the test for competency to stand trial are different and focus on separate points in time; however, the fact that a defendant has been found incompetent to stand trial strongly suggests the possibility of an insanity defense. *People v Tumpkin*, 49 Mich App 262, 265; 212 NW2d 38 (1973). Before a defendant can assert a defense of insanity, he must file notice of an intent to assert the defense, and the court must then order him to undergo an evaluation to determine if he was mentally ill or mentally retarded at the time he committed the offense. MCL 768.20a; MSA 28.1043(1). However, a finding that the defendant was mentally ill or mentally retarded does not automatically render him legally insane and thus not legally responsible for his crime. He is only insane if, as a result of his mental illness or mental retardation, he lacked substantial capacity either to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. MCL 768.21a(1); MSA 28.1044(1)(1).

Defendant never filed a notice of intent to assert an insanity defense and was never evaluated for criminal responsibility. All he showed was that at one time he was not competent to stand trial due to mental illness. Therefore, the trial court erred when it dismissed the charges based on defendant having once been found incompetent to stand trial.

Reversed.

/s/ Gary R. McDonald

/s/ Michael R. Smolenski

/s/ Kirsten Frank Kelly