

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMIR AZIZ SHAHIDEH,

Defendant-Appellant.

FOR PUBLICATION

October 25, 2007

9:05 a.m.

No. 267961

Oakland Circuit Court

LC No. 2005-203450-FC

Official Reported Version

Before: Servitto, P.J., and Jansen and Schuette, JJ.

SCHUETTE, J. (*dissenting*)

I do not believe that the trial court erred in denying defendant's pretrial request for an independent psychological examination. Therefore, I respectfully dissent from the opinion of my distinguished colleagues in the majority.

The primary goal of statutory interpretation is to give effect to the Legislature's intent. *People v Gillis*, 474 Mich 105, 114; 712 NW2d 419 (2006). To determine the Legislature's intent, we must first look to the specific language of the statute. *People v Lively*, 470 Mich 248, 253; 680 NW2d 878 (2004). We consider both the plain meaning of the words or phrases and their "placement and purpose in the statutory scheme." *Gillis, supra* at 114, quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999), quoting *Bailey v United States*, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995).

MCL 768.20a governs the use of an insanity defense in felony cases, providing, in pertinent part, as follows:

(1) If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs.

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or

by other qualified personnel, as applicable, for a period not to exceed 60 days from the date of the order. When the defendant is to be held in jail pending trial, the center or the other qualified personnel may perform the examination in the jail, or may notify the sheriff to transport the defendant to the center or facility used by the qualified personnel for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination. When the defendant is at liberty pending trial, on bail or otherwise, the defendant shall make himself or herself available for the examination at the place and time established by the center or the other qualified personnel. If the defendant, after being notified of the place and time of the examination, fails to make himself or herself available for the examination, the court may, without a hearing, order his or her commitment to the center.

(3) The defendant may, at his or her own expense, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed. If the defendant is indigent, the court may, upon showing of good cause, order that the county pay for an independent psychiatric evaluation. The defendant shall notify the prosecuting attorney at least 5 days before the day scheduled for the independent evaluation that he or she intends to secure such an evaluation. The prosecuting attorney may similarly obtain independent psychiatric evaluation. A clinician secured by an indigent defendant is entitled to receive a reasonable fee as approved by the court.

In enacting MCL 768.20a and MCL 768.21a, the Legislature created a comprehensive statutory scheme governing the use of the insanity defense. A defendant may not raise the affirmative defense of insanity if he or she refuses to comply with MCL 768.20a. *People v Hayes*, 421 Mich 271, 279-283; 364 NW2d 635 (1984). Although a defendant has a constitutional right to present a defense, US Const, Am VI; Const 1963, art 1, § 20, that right is not absolute. *Hayes, supra* at 279. Rather, a defendant must still comply with the "established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id.* (citation omitted). Indeed, our Supreme Court has recognized that limitations placed on the insanity defense under the procedures set forth in MCL 768.20a do "not unconstitutionally infringe on a defendant's right to present a defense." *People v Toma*, 462 Mich 281, 294; 613 NW2d 694 (2000), quoting *Hayes, supra* at 283. Therefore, our Supreme Court has held that it is appropriate to preclude evidence of insanity when a defendant fails to follow the procedures set forth in MCL 768.20a. *Hayes, supra* at 283 (noting that it is "an appropriate means of protecting the integrity, accuracy, and credibility of evidence of insanity").

I disagree with the majority's conclusion that defendant's request for an independent psychological examination was not governed by MCL 768.20a. I agree with the trial court that the statute should be read in chronological order, i.e., a defendant cannot seek an independent psychological examination under MCL 768.20a(3) before complying with MCL 768.20a(1) and (2). Looking to the language of the statute, its ordering, and its purpose, this is the most logical interpretation. Therefore, in this case, defendant did not have the right to an independent

psychological examination before meeting the first two conditions—giving notice of an insanity defense and being evaluated by the center for forensic psychiatry.

Finally, even if the majority is correct that MCL 768.20a does not govern defendant's request for an independent psychological examination, defendant's constitutional rights were not violated by the trial court's decision in this case. Defendant was not deprived of the right to pursue a defense or to have his own expert evaluate his mental condition. Rather, he was merely required to follow the procedures set forth MCL 768.20a, and, because of this, he chose to forgo his insanity defense.

For all of these reasons, I would affirm the trial court's decision.

/s/ Bill Schuette