

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD ALLEN BROWN,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 181190

LC No. 94-000472

Before: Reilly, P.J., and Cavanagh and R.C. Anderson,* JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of first-degree felony murder, MCL 750.316; MSA 28.548, and one count of unlawfully removing a human body from the place where it was deposited, MCL 750.160; MSA 28.357. Defendant was sentenced to life in prison without parole on each of the murder convictions and ten years' imprisonment on the count of unlawfully removing a human body. We affirm defendant's convictions but remand for resentencing.

In his first issue, defendant argues that the trial court erred in denying his motion to quash because there was evidence that defendant may have been incompetent at the time of the preliminary examination. We disagree.

A criminal defendant is presumed competent to stand trial unless there is a showing that he is "incapable because of the nature of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner." MCL 330.2020(1); MSA 14.800(1020)(1). An incompetent defendant "shall not be proceeded against while he is incompetent." MCL 330.2022(1); MSA 14.800(1022)(1). The issue of a defendant's competence to stand trial may be raised by either party or by the court. MCL 330.2024; MSA 14.800(1024). A trial court has the duty of raising the issue of incompetence where facts are brought to its attention which raise a "bona fide doubt" as to the defendant's competence. The trial court's decision regarding the existence of a

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

“bona fide doubt” will only be reversed where there is an abuse of discretion. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

In *Harris, supra*, this Court concluded that the trial court’s refusal to have the defendant evaluated for competency constituted an abuse of discretion where the defendant had a history of severe mental illness, made bizarre statements and exhibited unusual behavior during trial, and was found to be delusional after trial even when her medication was effective. *Id.* at 102-103. Similarly, in *People v Whyte*, 165 Mich App 409, 413; 418 NW2d 484 (1988), this Court found an abuse of discretion where a presentence report indicated that the defendant had previously been diagnosed as a paranoid schizophrenic, showed signs of depression, delusions, and hallucinations, and had previously been declared mentally disabled under the Social Security Income program.

In the present case, defense counsel told the court that defendant had headaches, angry outbursts, difficulty sleeping, and visions of spots. Defense counsel presented no evidence of a history of mental disorders or delusional behavior. Moreover, defense counsel did not claim that defendant could not communicate effectively with him. We do not find that defense counsel’s statements raised a bona fide doubt as to defendant’s competence, and therefore the trial court did not abuse its discretion in denying defendant’s motion to quash.

Defendant next argues that the prosecutor’s reference to *Anatomy of a Murder* during his cross-examination of a defense expert witness constituted prosecutorial misconduct. The propriety of a prosecutor’s conduct depends on all the facts and circumstances of a case and must be evaluated in context. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Minor*, 213 Mich App 682, 689; 541 NW2d 576 (1995).

After carefully reviewing the record, we find no evidence of prosecutorial misconduct. The comment to which defendant refers occurred immediately after the defense expert testified that he explained to defendant the definitions of criminal responsibility and diminished capacity. The prosecutor then asked the witness if she were familiar with the scene in *Anatomy of a Murder* where the defense attorney explains to his client the requirements for each possible defense to a murder charge. In context, it is clear that the remark was intended, and likely to be construed, as an attack on the credibility of the witness, not defense counsel. In fact, when defense counsel objected, the prosecutor immediately responded that he believed the former to be an honorable man, and he was not in any way suggesting any impropriety on the part of defense counsel. Considering the trial as a whole, defendant was not denied a fair trial by the prosecutor’s remark. *Minor, supra*.

Defendant also contends that the trial court erred in refusing to read verbatim the standard jury instructions on premeditation and deliberation. However, the trial court is not required to give requested instructions verbatim if its own instructions are adequate. *People v Lester*, 406 Mich 253, 254-255; 277 NW2d 633 (1979). The trial court’s instructions on premeditation and deliberation provided a clear statement of the law on those issues. See *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 886 (1993). Accordingly, we find no error.

Finally, defendant argues, and the prosecution concedes, that the flat ten-year sentence imposed for defendant's conviction of unlawfully defacing or removing a body violates the indeterminate sentence act, MCL 769.8 *et seq.*; MSA 28.1080 *et seq.* We agree and remand to the trial court for resentencing on this conviction. See *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972).

We affirm defendant's convictions, but remand for resentencing on the unlawfully defacing or removing a body conviction in conformance with the indeterminate sentence act. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Mark J. Cavanagh

/s/ Robert C. Anderson