

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JANET MARIE RIDDLE,

Defendant-Appellant.

UNPUBLISHED

December 13, 1996

No. 169862

Clinton County

LC No. 93-5464-FH

Before: Jansen, P. J., and Reilly and E. Sosnick,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of false pretenses over \$100, MCL 750.218; MSA 28.415. She was sentenced to three to ten years of imprisonment. Defendant appeals as of right. We affirm.

Over a period of several months, the complainant gave defendant several thousand dollars in order to help defendant pay obligations that ostensibly arose from defendant's personal problems. The complainant believed that defendant would repay the money. She did not do so.

Defendant first contends that there was insufficient evidence presented to properly convict her of the crime of false pretenses. We disagree. Defendant maintains that one element of the crime, "pretense," could not properly be proved by means of her illusory promise to repay the complainant. Defendant correctly points out that a "pretense" must concern an existing fact, and not a future promise. See *People v Covington*, 132 Mich App 79, 89; 346 NW2d 903 (1984). However, defendant ignores the other evidence presented at trial, as documented by the trial court in denying her motion for a directed verdict of acquittal, that indicated that she deceived the complainant by representations concerning existing facts. Testimony at trial indicated that defendant told the complainant several things that were not true, including that she was not married, that she needed money for pending lawsuits, that she needed money for property taxes in Kentucky, etc. Viewed in the light most favorable to the prosecution, a rational jury could have found this evidence sufficient to prove beyond a reasonable

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

doubt that defendant used a false pretense with intent to defraud. *People v Wolfe*, 440 Mich 508, 525; 489 NW2d 748 (1992).

Defendant argues that the proper charge, if any, was larceny (by trick). Defendant asserts that the complainant did not intend to voluntarily part with title to the money that he gave to her. A necessary element of false pretenses is that the victim intended to part with title. *People v Malach*, 202 Mich App 266, 271; 507 NW2d 834 (1993). If this element was not present, a charge for larceny by trick would have been the proper charge. *Id.* However, defendant confuses the concept of a right to repayment of a loan with that of title in the money loaned. The complainant's right to repayment had nothing to do with title to the money -- in point of fact the title was intentionally surrendered when the victim gave defendant money. See *People v Long*, 409 Mich 346, 351-352; 294 NW2d 197 (1980); *Warren v State*, 93 Okla Crim 166; 226 P2d 320 (1950).

Defendant next contends that the trial court erred when it denied her motion for new trial based on newly discovered evidence. She argues that unrebutted post-trial evidence that she was suffering from multiple personality disorder (MPD) proved that she was incompetent to stand trial. We disagree. Although the state is prohibited from proceeding against an incompetent criminal defendant, a criminal defendant is presumed to be competent. MCL 330.2020(1); MSA 14.800(1020)(1). The ultimate determination of competence is made by the trial court on a case-by-case basis, as measured by a defendant's ability to assist in her defense and understand the nature and object of the proceedings. *Id.* In denying defendant's motion for reconsideration of the denial of her original motion for new trial, the trial court noted that defendant had presented a rational defense at trial and had demonstrated the ability to assist her counsel therein. The court's order also stated the diagnosis of MPD "does not rebut the earlier competency determination." The trial court did not abuse its discretion when it denied the motion for reconsideration or when it denied defendant's motion for new trial. *People v Miller (After Remand)*, 211 Mich App 30, 46-47; 535 NW2d 518 (1995).

Finally, defendant contends that the trial court erred when it denied her post-trial motion to reopen the proofs to support her allegations that she was incompetent to stand trial, so that she could present videotaped evidence of her MPD. We disagree. As noted above, the trial court found that defendant had presented a rational defense at trial and had demonstrated the ability to assist her counsel therein; in so doing, the trial court did not dispute defendant's claim that she was suffering from MPD. It follows that the trial court did not abuse its discretion when it refused to reopen proofs when the proffered evidence in question consisted only of cumulative proof of defendant's MPD. MRE 403.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick