

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

KELLY SCOTT RUNDELL,

Defendant-Appellee.

UNPUBLISHED

November 20, 2001

No. 232459

Oakland Circuit Court

LC No. 99-166960-FC

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM

The prosecution appeals as of right from the trial court's order determining defendant to be incompetent to stand trial and dismissing the charges against him. Defendant was charged with assault with intent to murder, MCL 750.83, three counts of possession of a firearm during the commission of a felony, MCL 750.227b, possession of a short-barreled shotgun/rifle, MCL 750.224b, carrying a concealed weapon, MCL 750.227, felonious assault, MCL 750.82, and resisting and obstructing a police officer, MCL 750.479. We affirm.

The charges arose from an incident in September 1998 when defendant allegedly drove past two individuals in his grandmother's car while pointing a sawed-off shotgun at them. Minutes later, defendant allegedly walked past a woman and shot her in the abdomen. When the woman fell to the ground, defendant kicked her and laughed. The woman had no prior acquaintance with defendant.

Defendant was originally determined to be incompetent to stand trial on September 17, 1999, and was intermittently incompetent between that time and October 2000. In October 2000, the prosecution's expert determined defendant to be competent which led to an evidentiary hearing on defendant's competency to stand trial. At the conclusion of the hearing, the trial court found defendant incompetent to stand trial and dismissed the charges without prejudice.

The prosecution argues that the trial court abused its discretion in ruling that defendant was incompetent to stand trial and made clearly erroneous findings of fact in that regard. We disagree. The determination of a defendant's competence is within the trial court's discretion. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990). An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). The determination of a factual issue by the trial

court is reviewed on appeal for clear error. MCR 2.613(C); *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1999). A finding is clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake was made. *People v Williams*, 244 Mich App 533, 537; 624 NW2d 575 (2001).

MCL 330.2020(1) sets forth the standard for determining whether a criminal defendant is incompetent to stand trial:

A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because 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. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in preparation of his defense and during his trial.

See also *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000).

The prosecution argues that the trial court erred in not taking into account the difference in training between the prosecution's expert witness, Charles R. Clark, Ph.D., and defendant's expert witness, Janet McCrea Mathews. Specifically, the prosecution cites Clark's numerous professional accomplishments, including a doctorate degree in clinical psychology, and argues that Mathews did not receive a degree in psychology, but instead, a master's degree in social work.¹ However, the prosecution did not object to the qualification of Mathews as an expert in "the area of Certified Forensic Examiner as it relates to the competency issue of Defendant[.]" Accordingly, the prosecution may not now argue that Mathews was not qualified to render an opinion. See *People v Aldrich*, 246 Mich App 101, 111; 631 NW2d 67 (2001).

"Further, if resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters." *People v Sexton*, 461 Mich 746, 752; 609 NW2d 822 (2000). Moreover, the trial court clearly articulated its reason for relying more heavily on Mathews' testimony:

[Mathews] provided the most beneficial testimony, in, in the sense of a genuine authentic clinician who worked in the field and who could say that Defendant's demeanor was one of being guarded, ego-gentonic [sic][.] . . . Anxious, he could not articulate or facilitate a defense. And her testimony was vivid. It was exact and it was the most precise in comparison to the other two experts on that second prong. It wasn't artificial in any way. It was the genuine clinician who works in

¹ The cases that the prosecution cites, *People v Parney* 74 Mich App 173; 253 NW2d 698 (1977), and *People v Skowronski*, 61 Mich App 71; 232 NW2d 306 (1975), do not support the prosecution's argument because they address situations in which the trial court permitted a social worker to testify on the defendant's competency despite the social worker's lack of qualifications to administer competency examinations.

the field regularly. The Court does believe that Defendant is, was and is incompetent for the second, the, the reason, the second reason, that is, unable to assist his, in his defense in a rational manner at the time of Trial.

The prosecution also argues that implicit in the trial court's ruling is the erroneous conclusion that defendant's failure to confess his involvement in the offense "automatically barred defendant from facilitating a defense." We disagree. Mathews' testimony about defendant's condition was more complex than simply asserting that his failure to confess rendered him incompetent. Mathews described defendant's symptoms as "guardedness" with "emotional elements that prevent him from talking about [the incident] because of this offensiveness to his own emotional life." Mathews also diagnosed defendant as ego-dystonic which is where one cannot mentally and emotionally agree with anything that is different from his sense of himself. Mathews testified that based on her experience and on defendant's history, defendant did not appear to be malingering. Additionally, the prosecution's own expert, Clark, testified that defendant exhibited negative symptoms of schizophrenia such as emotional flatness, alogia (lack of interest in talking), and avolition (lack of motivation). On cross-examination, Clark indicated that if defendant insisted that he did not remember the events, that it would bear on his ability to assist counsel in his defense.

Based upon our review of the record, we do not conclude that the trial court's findings were clearly erroneous. The trial court did not abuse its discretion in ruling that defendant is incompetent to stand trial.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot