

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAX GERALD MEAD,

Defendant-Appellant.

UNPUBLISHED

November 2, 2004

No. 238754

Muskegon Circuit Court

LC No. 01-045774-FH

ON REMAND

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

This case is again before us on remand by order of the Supreme Court. Following a bench trial, defendant was convicted of assault with intent to murder, MCL 750.83, and animal torturing, MCL 750.50b, for the stabbing of his 83-year-old neighbor and her dog. He was sentenced to 12 to 25 years' imprisonment and 1 to 4 years' imprisonment, respectively. In our original opinion, we concluded that the trial court committed error requiring reversal in admitting certain hearsay evidence and remanded for a new trial. *People v Mead*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2004 (Docket No. 238754). Our Supreme Court reversed our decision, holding that defendant did not meet his burden of proving that the trial court's error was outcome determinative, and remanded the case for consideration of defendant's remaining appeal issue which we did not address in our original opinion. *People v Mead*, ___ Mich ___, ___ NW2d ___ (Docket No. 126410, entered September 16, 2004). After proper review of this issue, we affirm defendant's convictions and sentences.

Defendant's remaining appellate issue is whether the trial court erred in finding that defendant did not prove his insanity defense by a preponderance of the evidence. In rejecting his defense, the trial court cited defendant's expert witness' failure to consider a significant number of reports prepared by other medical professionals regarding defendant's mental state and defendant's behavior immediately after the stabbing incidents. A trial court's factual findings are reviewed for clear error. *People v Swirles* (After Remand), 218 Mich App 133, 136; 553 NW2d 357 (1996). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

Having raised a legal insanity defense, defendant had the burden of proving by a preponderance of the evidence that he was legally insane at the time the offenses were committed. *People v Carpenter*, 464 Mich 223, 231; 627 NW2d 276 (2001). A person is legally insane, if as the result of mental illness, he lacks "substantial capacity to either appreciate the

nature and quality or the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law.” *Id.*, quoting MCL 768.21a(1).

In regards to the first prong, there was considerable evidence that defendant knew right from wrong at the time he stabbed his neighbor and her dog. When Satan first told defendant to kill the victims, defendant refused to do it. And immediately after the attacks, defendant punched out a window with his hand because he was angry with himself for what he had done. Dr. Lewis conceded that this was a remorseful act and showed that defendant understood what he had done was wrong. In addition, directly after the attacks, defendant asked a neighbor to call 911, asked the first officer on the scene to check on his neighbor, and refused to speak to police about the incident. Dr. Lewis admitted that these events demonstrated that defendant appreciated the wrongfulness of his conduct both immediately before and after the stabbings. We find that the trial court did not clearly err in finding that defendant appreciated the nature and quality of his actions, as well as their wrongfulness.

We next review the court’s findings as to defendant’s ability to control his actions. The trial court noted that when Satan first instructed defendant to kill his neighbor and her dog, defendant said, “No, I won’t do it.” While not conclusive, this fact was indicative of defendant’s ability to resist the command. Dr. Lewis stated, however, that defendant suffered from “command hallucinations” and that there came a point where defendant was no longer able to conform his conduct to the requirements of the law. But Dr. Lewis was unable to identify by concept a particular period when defendant lacked control over his actions.

Defendant argues that the trial court clearly erred in rejecting the conclusions of his expert witness Dr. Lewis. The trial court faulted Dr. Lewis for not reviewing certain medical reports and notes regarding defendant’s mental state, material that the court believed was very relevant to the question of defendant’s insanity. Importantly, Dr. Lewis admitted that defendant’s records from his stay at the Kalamazoo Psychiatric Center were available to him, but he did not read them because he did not believe it was necessary. Also, Dr. Lewis did not explore the possibility that defendant was malingering as was suggested in several reports. These factors, in the court’s opinion, detracted from the credibility of Dr. Lewis’ testimony, and, accordingly, the trial court gave less weight to his opinions. We defer to the trier of fact’s determination regarding a witness’ credibility and the weight given to the evidence. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is a difficult determination to make as to whether a defendant lacked the ability to conduct himself in a lawful manner at the precise moment he went afoul of the law. Considering the evidence and giving the trial court’s determinations due deference where appropriate, we are not left with a definite and firm conviction that a mistake was made. Thus, we will not disturb the trial court’s finding that defendant was able to conform his conduct to the requirements of the law. Accordingly, the trial court did not clearly err in concluding that defendant failed to sustain his burden of proof as to his insanity defense.

Affirmed.

/s/ Michael R. Smolenski
/s/ David H. Sawyer
/s/ Stephen L. Borrello