STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN KERLEY,

Defendant-Appellant.

UNPUBLISHED
January 17, 2006

No. 257661
Wayne Circuit Court
LC No. 03-008249-01

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant was convicted of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life in prison for the first-degree murder conviction, and two years in prison for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion by refusing to allow Dr. Donna Seeley, a psychologist who observed defendant at the Wayne County Jail, to testify. We disagree.

We generally review a trial court's decision whether to admit evidence for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 288-289; 531 NW2d 659 (1995). "Evidence is relevant if it has any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence." *People v Houston*, 261 Mich App 463, 466-467; 683 NW2d 192 (2004); MRE 401. Irrelevant evidence is not admissible. MRE 402. Relevant evidence may be excluded if it is needlessly cumulative, causes undue delay or wastes time. *Houston, supra* at 467; MRE 403.

Defendant attempted to call Seeley to testify regarding defendant's changed diagnosis and her daily jailhouse observations of defendant in an effort to impeach Dr. Charles Clark's testimony that defendant was not legally sane. The trial court refused to allow Seeley to testify because it had already benefited from her observations, views, and conclusions. Dr. Arthur Marroquin, who was stipulated as an expert in forensic psychiatry, testified that Seeley provided him with her observations and conclusion that she believed defendant was mentally ill. Marroquin testified that he relied on Seeley's observations and conclusion when making his own independent diagnosis of defendant. Defendant argued that Seeley could testify that the new treatment team recently changed its diagnosis, but the parties stipulated that the new treatment

team changed defendant's psychiatric diagnosis to rule out schizophrenia. Marroquin testified that Seeley advised him that she saw defendant every day, observed him stare into space from his bed, and believed defendant was mentally ill. Marroquin testified that he put a lot of "stock" into Seeley's observations and "incorporated" Seeley's findings into his own diagnosis that defendant was legally insane. The trial court did not abuse its discretion when it ruled that Seeley's proposed testimony would have been needlessly cumulative. *Houston, supra* at 467.

Defendant also argues that the trial court abused its discretion when it denied defendant's motion for a new trial. Defendant argues that his first-degree murder conviction was against the great weight of the evidence because he had established by a preponderance of the evidence that he was legally insane. We disagree.

We review a denial of a motion for a new trial for an abuse of discretion. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). "The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998).

Insanity is an affirmative defense which requires proof that, as a result of mental illness or mental retardation, the defendant lacked substantial capacity either to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. *People v Carpenter*, 464 Mich 223, 230-231; 627 NW2d 276 (2001); MCL 768.21a(1). A defendant is presumed to be sane. *People v Jones*, 151 Mich App 1, 5; 390 NW2d 189 (1986). "[A] defendant has the burden of proving the defense of insanity by a preponderance of the evidence." *People v Mette*, 243 Mich App 318, 325; 621 NW2d 713 (2000); MCL 768.21a(3). The trier of fact may consider evidence of a defendant's conduct and mental condition before and after the offense. *People v Woody*, 380 Mich 332, 335-338; 157 NW2d 201 (1968). However, the issue to be determined is whether the defendant was insane at the time of the offense. *People v Murphy*, 416 Mich 453, 462; 331 NW2d 152 (1982).

Here, the trial court's finding that defendant appreciated the wrongfulness of his conduct was supported by the evidence. Dr. Charles Clark testified that defendant was not legally insane at the time he shot the victim. Defendant immediately turned himself in after he shot the victim, admittedly lied to Sergeant Tyrone Kemp that the shooting was an accident in an attempt to limit culpability, and looked in the mirror on more than one occasion debating in his mind whether he should shoot the victim. These facts support the trial court's conclusion that defendant appreciated the wrongfulness of his actions. Even though Marroquin testified that he believed defendant was mentally ill and did not appreciate the wrongfulness of his actions at the time he shot the victim, the evidence did not preponderate heavily against the verdict. Defendant's first-degree murder conviction is not against the great weight of the evidence. *Carpenter, supra* at 230-231; *McCray, supra* at 637. Thus, the trial court did not abuse its discretion when it denied defendant's motion for a new trial. *Abraham, supra* at 269.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis