court.[21] And Neb. Rev. Stat. § 25-2701 (Reissue 2008) extends the rules of criminal and civil procedure to the county court. As § 25-2701 makes clear, all provisions of the criminal and civil procedure code govern *all* actions in the county court. And, if it were not already clear from the occasions in which we considered § 29-1207 in the context of municipal ordinances,[22] we conclude today that § 29-1207 applies to the prosecution of city ordinances. The State's argument is without merit.

Our conclusion that the intimate partner exception of § 29-1207(2) does not apply is dispositive of this appeal. We need not, and do not, address Lebeau's argument regarding the constitutionality of § 29-1207(2).[23]

CONCLUSION

We conclude that the State did not bring Lebeau to trial within the required time and that the county court and district court erred in finding otherwise. We reverse the lower courts' orders denying Lebeau's motion for absolute discharge and remand the matter to the district court with directions to reverse the judgment of the county court and remand the cause with directions to dismiss the complaint against Lebeau.

REVERSED AND REMANDED WITH DIRECTIONS TO DISMISS.

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[21] *Karch, supra* note 5.

[22] *State v. Long*, 206 Neb. 446, 293 N.W.2d 391 (1980); *State v. Schneider*, 10 Neb. App. 789, 638 N.W.2d 536 (2002).

[23] See *State v. VanAckeren*, 263 Neb. 222, 639 N.W.2d 112 (2002).

STATE OF NEBRASKA, APPELLEE, V. ERIC F. LEWIS, APPELLANT.

785 N.W.2d 834

Filed July 23, 2010. No. S-09-425.

1. **Courts: Trial: Mental Competency.** The question of competency to represent oneself at trial is one of fact to be determined by the court, and the means employed in resolving the question are discretionary with the court. The trial

court's determination of competency will not be disturbed unless there is insufficient evidence to support the finding.

2. **Convictions: Evidence: Appeal and Error.** Regardless of whether the evidence is direct, circumstantial, or a combination thereof, and regardless of whether the issue is labeled as a failure to direct a verdict, insufficiency of the evidence, or failure to prove a prima facie case, the standard is the same: In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence admitted at trial, viewed and construed most favorably to the State, is sufficient to support the conviction.
3. **Constitutional Law: Right to Counsel: Waiver.** Under U.S. Const. amend. VI and Neb. Const. art. I, § 11, a criminal defendant has the right to waive the assistance of counsel and conduct his or her own defense.
4. **Constitutional Law: Right to Counsel: Mental Competency.** The U.S. Constitution permits states to insist upon representation by counsel for those competent enough to stand trial but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.
5. ____: ____: ____. Under Neb. Const. art. I, § 11, a criminal defendant's right to conduct his or her own defense is not violated when the court determines that a defendant competent to stand trial nevertheless suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel.
6. **Criminal Law: Evidence: Intent.** When the sufficiency of the evidence as to criminal intent is questioned, independent evidence of specific intent is not required. Rather, the intent with which an act is committed is a mental process and may be inferred from the words and acts of the defendant and from the circumstances surrounding the incident.

Appeal from the District Court for Lancaster County: PAUL D. MERRITT, JR., Judge. Affirmed.

Stuart B. Mills for appellant.

Jon Bruning, Attorney General, and J. Kirk Brown for appellee.

WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

NATURE OF CASE

Eric F. Lewis appeals his conviction for second degree murder. Lewis claims that the district court for Lancaster County

deprived him of his constitutional right to self-representation when it found that he was not competent to represent himself at trial and appointed trial counsel. Lewis also claims that there was not sufficient evidence of the intent necessary to support his conviction for second degree murder. We affirm Lewis' conviction.

STATEMENT OF FACTS

In July 2007, Lewis had been committed to the Lincoln Regional Center (LRC) for observation in connection with criminal charges not related to the present case. Dr. Louis Martin was a forensic psychiatrist who worked at LRC. On July 16, Dr. Martin testified on behalf of the State at a hearing in Lewis' criminal case. The purpose of the hearing was to consider Dr. Martin's request for an order allowing him and his staff at LRC to force Lewis to take medication he had refused to take. Lewis appeared surprised and angry to see Dr. Martin at the hearing, and he yelled some comments at Dr. Martin to the effect that he would not have medication forced on him. Throughout Dr. Martin's testimony, Lewis interrupted and directed angry comments toward Dr. Martin. At the end of the hearing, the court stated its ruling that it would allow forced medication. Lewis became disruptive, yelled that he would not take the medication, and had to be escorted out of the courtroom.

On July 23, 2007, two doctors met with Lewis at LRC to inform him that pursuant to the court's order, they had been directed to administer medication to Lewis whether or not he was willing to take the medication. Lewis became angry, said he would not take the medication, and left the meeting room. After Lewis returned to the room, the doctors attempted to discuss the order with Lewis, and Lewis referred angrily to Dr. Martin's testimony at the July 16 hearing.

Lewis left the meeting and returned to his room. A short time later, he came out of his room with a box of his belongings. Lewis was still angry and said that they could not force medication on him and that he intended to return to prison. He sat down at a table near the main door of the area where his room was located. A few minutes later, Dr. Martin came through the

door, and Lewis walked toward him. When he got near Dr. Martin, Lewis lunged at him and said, "'I'm gonna get you, old man,'" and struck him twice in the face. Dr. Martin fell against a wall and slid to the ground; he was bleeding from the head and struggling to breathe. Security personnel restrained Lewis. Witnesses testified that after hitting Dr. Martin, Lewis said things such as, "'There. Now what you gonna do? I told you I'd get you'"; "I told him I would get him. . . . He shouldn't have testified"; and "'I hope that motherfucker dies.'"

Dr. Martin was taken to a hospital, where he died on August 2, 2007. An autopsy determined the cause of death to be severe blunt force trauma to the head with extensive cerebral cranial injuries.

The State charged Lewis with second degree murder in connection with Dr. Martin's death. These charges give rise to the present case. On November 7, 2007, the district court, on the State's motion, ordered a determination of Lewis' competency to stand trial. Lewis initially refused to participate in the evaluation, but after a psychiatric evaluation was completed, the court, on February 8, 2008, found Lewis to be competent to stand trial.

Lewis subsequently filed a waiver of his right to counsel and requested to be allowed to represent himself in this case pertaining to Dr. Martin's death. On June 2, 2008, the district court entered an order finding that Lewis was competent to waive his right to counsel, that he had exercised his right to waive counsel, and that his waiver, "although perhaps not prudent or in his best interest," was freely, voluntarily, knowingly, and intelligently made. The court therefore granted the waiver of counsel and appointed Lewis' prior counsel as standby counsel.

In its June 2, 2008, order, the court stated that in the psychiatric evaluation, the doctor had noted that Lewis had the "'potential to be disruptive, agitated and combative, including becoming assaultive.'" The court noted that its experience with Lewis during court proceedings was consistent with the doctor's notation. The record indicates that at various proceedings in this case, Lewis became disruptive, and the court ordered him removed from the courtroom.

On June 19, 2008, the U.S. Supreme Court decided the case of *Indiana v. Edwards*, 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). The district court thereafter set a hearing to consider the applicability of *Edwards* and, specifically, whether the decision affected Lewis' right to continue representing himself. Following the hearing, the court entered an order dated October 10, 2008, in which it found that although Lewis was mentally competent to stand trial, he was not mentally competent to conduct trial proceedings by himself. The court noted Lewis' "conduct during prior proceedings, his assertions in pleadings and his '. . . uncertain mental state'" and cited *Edwards* to conclude that if Lewis were allowed to represent himself a "'spectacle . . . could well result'" and would undercut "'the most basic of the Constitutional criminal law objectives, providing a fair trial.'" The court vacated and set aside its prior order allowing Lewis to waive counsel and represent himself, and the court appointed counsel over Lewis' objection.

At trial, Lewis moved to dismiss at the close of the State's case based on the State's purported failure to establish a prima facie case. The court overruled the motion to dismiss. The jury found Lewis guilty of second degree murder. The court later found Lewis to be a habitual criminal and sentenced him to imprisonment for life.

Lewis appeals his conviction.

ASSIGNMENTS OF ERROR

Lewis claims that the district court erred when it found that he was not competent to represent himself at trial and therefore denied him his constitutional right of self-representation. He also claims that there was not sufficient evidence of the intent necessary to convict him of second degree murder.

STANDARD OF REVIEW

[1] We have held that the question of competency to stand trial is one of fact to be determined by the court, that the means employed in resolving the question are discretionary with the court, and that the trial court's determination of competency will not be disturbed unless there is insufficient evidence to

support the finding. See *State v. Walker*, 272 Neb. 725, 724 N.W.2d 552 (2006). We logically extend the standard in *Walker* to the issue of competency to represent oneself and hold that the question of competency to represent oneself at trial is one of fact to be determined by the court and that the means employed in resolving the question are discretionary with the court. The trial court's determination of competency will not be disturbed unless there is insufficient evidence to support the finding.

[2] Regardless of whether the evidence is direct, circumstantial, or a combination thereof, and regardless of whether the issue is labeled as a failure to direct a verdict, insufficiency of the evidence, or failure to prove a prima facie case, the standard is the same: In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence admitted at trial, viewed and construed most favorably to the State, is sufficient to support the conviction. *State v. Banks*, 278 Neb. 342, 771 N.W.2d 75 (2009).

ANALYSIS

The Court Did Not Err When It Determined That Lewis Was Not Competent to Represent Himself at Trial.

Lewis first claims that the district court erred when it found that he was not competent to represent himself at trial, denying him his constitutional right of self-representation. Because there was sufficient evidence to support the district court's finding that although Lewis was competent to stand trial, he was not competent to represent himself, we conclude that Lewis was not denied his constitutional right to represent himself.

[3] We have recognized that under U.S. Const. amend. VI and Neb. Const. art. I, § 11, a criminal defendant has the right to waive the assistance of counsel and conduct his or her own defense. *State v. Gunther*, 271 Neb. 874, 716 N.W.2d 691 (2006). See, also, *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). In *Faretta*, the U.S. Supreme

Court recognized a constitutional right of self-representation in a criminal case and noted that it was a violation of the Sixth Amendment to "thrust counsel upon the accused, against his considered wish." 422 U.S. at 820. Because a defendant who chooses self-representation "relinquishes . . . many of the traditional benefits associated with the right to counsel," the Court held that a waiver of the right to counsel must be made "'knowingly and intelligently'" by the defendant. 422 U.S. at 835. The Court in *Faretta* recognized the right of self-representation was not absolute when it noted that a "trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct" or that a court may appoint standby counsel to aid the defendant if and when the defendant so chooses. 422 U.S. at 834 n.46.

Recognizing that under *Faretta*, a defendant's right to self-representation is not absolute, in *Indiana v. Edwards*, 554 U.S. 164, 167, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008), the Court considered whether "the Constitution prohibits a State from insisting that the defendant proceed to trial with counsel, the State thereby denying the defendant the right to represent himself" where the defendant has been "found mentally competent to stand trial if represented by counsel but not mentally competent to conduct that trial himself."

The Court noted in *Edwards* that the constitutional standard for mental competence to stand trial was set forth in *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). In *Dusky*, the Court held that the test for competency to stand trial is whether the defendant "'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" 362 U.S. at 402.

In *Edwards*, the Court further noted the case of *Godinez v. Moran*, 509 U.S. 389, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993), which "considered mental competence and self-representation together." 554 U.S. at 171. In *Godinez*, the Court held that the presence of mental illness did not necessarily preclude a defendant's ability to waive his or her right

to counsel, so long as the defendant's waiver of the right to counsel was knowing and voluntary. The Court further held in *Godinez* that the standard to be applied for determining competency to stand trial under *Dusky* was the same standard to be applied for competency to waive the right to counsel. The Court noted, however, that "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not [necessarily to be equated with] the competence to represent himself." 509 U.S. at 399 (emphasis in original). The contours of a defendant's competence to represent himself or herself left open in *Godinez* were addressed in *Edwards*.

[4] In addressing whether a different standard applied to determine whether a defendant was competent to represent himself or herself, the Court in *Edwards*, noted that the *Dusky* standard regarding competence to stand trial assumed the representation of counsel and therefore suggested that going to trial without counsel presented "a very different set of circumstances" and called for a different standard. 554 U.S. at 175. The Court rejected the use of a single mental competency standard for determining whether a defendant may stand trial when represented by counsel as distinguished from whether a defendant may represent himself or herself at trial. The Court noted in this respect that mental illness "is not a unitary concept" and may vary in degree and over time. *Id.* The Court therefore concluded in *Edwards* that

> the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

554 U.S. at 177-78.

Although urged to do so by the State of Indiana, the Court in *Indiana v. Edwards*, 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008), declined to adopt a more specific standard

to determine whether a defendant is competent to conduct trial proceedings. And although similarly urged to do so by the parties herein, because the present case falls within the standard set forth in *Edwards*, we also find it unnecessary to elaborate on the standard.

[5] Consistent with the Court's holding in *Edwards*, decided under the Sixth Amendment to the U.S. Constitution, we now hold that under Neb. Const. art. I, § 11, a criminal defendant's right to conduct his or her own defense is not violated when the court determines that a defendant competent to stand trial nevertheless suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel.

Having determined that it would not be a constitutional violation to insist on representation for a person who suffers from severe mental illness and is not competent to conduct trial proceedings without counsel, we must consider whether the district court erred in this case when it found that Lewis was not competent to conduct trial proceedings for himself. We conclude that the facts of the present case clearly fall within the standard articulated by the Court in *Edwards, supra*, and that the district court did not err when it found that Lewis was not competent to conduct trial proceedings in his own behalf.

The record shows that Lewis suffered from severe mental illness. The report resulting from a psychiatric evaluation conducted in this case to determine Lewis' mental competency to stand trial indicates that Lewis has been "diagnosed with a psychotic disorder, Schizophrenia, paranoid type." Although the psychiatrist concluded that Lewis was competent to stand trial, the psychiatrist warned that Lewis' "mood, anger and agitation may become an issue" and suggested that medication be considered to control "his disruptive behavior." The psychiatrist expressed concerns that Lewis' "agitation, periods of decreased attention and concentration will limit his ability to follow testimony reasonably well"; that Lewis "has the potential to be disruptive, agitated and combative, including becoming assaultive"; and that although Lewis could control his anger at times, it was doubtful that "he would be able to continue

this for a long time without getting very angry and agitated and perhaps disruptive." The psychiatrist further stated that "anytime [Lewis] feels like he is being forced to do something, he will retaliate with anger, agitation and disruptive behavior," and the psychiatrist expressed concern "about [Lewis'] ability to maintain his temper and anger consistently, to not become agitated whenever he is asked something he does not want to talk about."

In determining whether Lewis was competent to represent himself, the district court also considered Lewis' "conduct during prior proceedings" in this case. As the State notes, the record of proceedings in this case prior to the court's determination that Lewis was not competent to represent himself indicates that Lewis had a history of becoming disruptive during hearings to the point that the court ordered Lewis removed from the courtroom. At hearings held on December 21, 2007, and February 13, 2008, the court ordered Lewis removed from the courtroom for being disruptive by interrupting the court, refusing to follow courtroom procedure, and using abusive language. At a hearing held May 7, the court noted that Lewis was refusing to come into the courtroom and that the court had been informed by court staff that if the court required Lewis' presence in the courtroom "they would need to get another four or five officers to transport him into the courtroom."

We note with respect to such evidence of Lewis' past disruptive behavior that in *Indiana v. Edwards*, 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008), the U.S. Supreme Court stated that while the dignity and autonomy of the defendant underlies the right of self-representation, allowing a defendant who lacks the mental capacity to conduct his defense without assistance of counsel would not affirm the dignity of the defendant. Instead, the Court stated that "given [such] defendant's uncertain mental state, the spectacle that could well result from his self-representation at trial is at least as likely to prove humiliating as ennobling." 554 U.S. at 176. The Court also noted that "insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing

a fair trial." 554 U.S. at 176-77. There is sufficient evidence of Lewis' past disruptive behavior that the district court could properly have found that his self-representation would create an unacceptable risk that a spectacle would result that would endanger a fair trial.

Based on the evidence that Lewis suffered severe mental illness and the evidence of past behavior by Lewis which indicated he would be disruptive and unable to conduct trial proceedings, we determine that this is a case that is clearly within the category the U.S. Supreme Court contemplated in *Edwards* where it would not be error for the trial court to insist on representation by counsel. We conclude that the district court did not err when it found that Lewis was not competent to represent himself and therefore required him to be represented by counsel.

Lewis' Conviction Was Supported by Sufficient Evidence of the Intent Required for Second Degree Murder.

Lewis next claims that there was not sufficient evidence to support his conviction for second degree murder. In particular, he asserts that there was not sufficient evidence of the necessary intent. Because we determine that there was sufficient evidence to support Lewis' conviction, we reject this assignment of error.

Lewis was convicted under Neb. Rev. Stat. § 28-304(1) (Reissue 2008), which provides, "A person commits murder in the second degree if he causes the death of a person intentionally, but without premeditation." Lewis notes that the distinction between second degree murder and manslaughter is the presence or absence of intent to kill. See *State v. Jackson*, 258 Neb. 24, 601 N.W.2d 741 (1999). Although Lewis concedes that the evidence may have supported a conviction for manslaughter, he argues that there was not sufficient evidence of the intent necessary for a conviction for second degree murder. We find this argument to be without merit and reject this assignment of error.

[6] When the sufficiency of the evidence as to criminal intent is questioned, independent evidence of specific intent is not required. Rather, the intent with which an act is committed

is a mental process and may be inferred from the words and acts of the defendant and from the circumstances surrounding the incident. *State v. Sing*, 275 Neb. 391, 746 N.W.2d 690 (2008).

In the present case, there was sufficient evidence from which the jury could properly have inferred that Lewis had the intent to kill Dr. Martin. We note that there was evidence that on the day he attacked Dr. Martin, Lewis was agitated that he was being forced to take medication and he was angry at Dr. Martin in particular because of Dr. Martin's testimony at a hearing held a week earlier in another case regarding a court order to medicate Lewis. Lewis struck Dr. Martin twice in the face with his fist. Before Lewis struck Dr. Martin, he said, "'I'm gonna get you, old man,'" and after Lewis struck Dr. Martin, he said things such as, "'There. Now what you gonna do? I told you I'd get you'"; "I told him I would get him. . . . He shouldn't have testified"; and "'I hope that motherfucker dies.'" The jury could properly have inferred that Lewis had the intent to kill Dr. Martin.

Because we conclude that there was sufficient evidence of intent to support Lewis' conviction for second degree murder, the court did not err when it denied his motion to dismiss made on this basis. We reject this assignment of error.

CONCLUSION

We conclude that it is not a constitutional violation for a court to insist on representation for a person who suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel. We further conclude that there was sufficient evidence to support the court's finding in this case that Lewis was not competent to represent himself and that the court did not deny Lewis his right to self-representation when it required that he be represented by counsel. We finally conclude that there was sufficient evidence of intent to support a conviction for second degree murder. We therefore affirm Lewis' conviction.

AFFIRMED.

HEAVICAN, C.J., and GERRARD, J., not participating.