

2011 IL App (1st) 091728-U
No. 1-09-1728

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FIFTH DIVISION
June 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 06 CR 3231
)	
LUIS MARTINEZ,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

HELD: The trial court did not err in finding defendant fit for trial with medication, where two stipulated fitness hearings were held and where the reports of two psychiatrists and the opinion of an independent psychologist concurred that defendant was fit with medication. There was no *bona fide* doubt of defendant's fitness at the time of his guilty plea hearing, as his conduct during the hearing did not create such a doubt and it was reasonable to conclude that defendant was taking the requisite medication. The court did not err by not holding a

post-plea fitness hearing where there was no *bona fide* doubt of his post-plea fitness.

¶ 1 Pursuant to a negotiated guilty plea in May 2008, defendant Luis Martinez was convicted of criminal sexual assault and sentenced to 10 years' imprisonment. Defendant appeals from the denial of his motion to withdraw his plea. On appeal, he contends that the trial court erred in finding him fit to stand trial with medication without an independent basis for such a finding and because such conditional fitness orders are improper. He also contends that there was a *bona fide* doubt of his fitness at the time of his guilty plea hearing because he was not taking the requisite medication. Lastly, he contends that the court erred in not holding a fitness hearing during the post-plea proceedings.¹ For the reasons stated below, we affirm.

¶ 2 Defendant was arrested and charged in January 2006 with offenses allegedly committed on April 19, 2005, and counsel was appointed for defendant. On March 31, 2006, defense counsel asked the court for a behavioral clinical examination (BCX) of defendant because he was taking psychotropic medications. The

¹Defendant initially raised an additional contention: that the trial court erred in not investigating his pre-plea *pro se* claims of ineffective assistance of counsel. However, our supreme court has held that the circuit court is not required to inquire before trial into a defendant's *pro se* allegations of ineffective assistance. *People v. Jocko*, 239 Ill. 2d 87 (2010). In his reply brief, defendant acknowledges *Jocko* and no longer seeks relief on this contention.

court ordered a BCX to evaluate defendant's fitness to stand trial with or without medication, sanity, and ability to understand *Miranda* warnings.

¶ 3 Psychiatrist Dr. Nishad Nadkarni of the court's Forensic Clinical Services (FCS) reported to the court in May 2006 that he had conducted the BCX and determined that defendant was fit to stand trial with medication, was sane at the time of the alleged offense, and would have understood *Miranda* warnings. Defendant "demonstrates a good understanding of the charge against him, strong comprehension of the nature of courtroom proceedings, correctly identified the roles of various courtroom personnel, and displays the capacity to assist counsel in his defense." At the time of the BCX, he was receiving daily 100 milligrams each of antidepressants Zoloft and Trazodone, and 2 milligrams of antipsychotic Risperdal, with no reported side effects. Dr. Nadkarni opined that defendant should continue on his medication to remain fit for trial. As to sanity, Dr. Nadkarni found that defendant did not have any mental illness or defect that would have substantially impaired his capacity to appreciate the criminality of his alleged acts.

¶ 4 On May 10, 2006, defense counsel told the court that he would prefer not to hold a fitness hearing at that time, though he would raise the issue again "if I have continued doubts when I go to talk to him." The court decided to hold a fitness

hearing as defense counsel had "raised the issue of the *bona fide* doubt *** even though you are abandoning your position now." The parties stipulated that Dr. Nadkarni would testify as set forth in his report, which was read into the record as part of the stipulation, and the court found on this uncontradicted evidence that defendant was fit to stand trial with medication.

¶ 5 The case proceeded through discovery and motions, including unsuccessful motions to quash arrest and suppress a lineup identification. Defendant filed *pro se* motions, including discovery requests, but the court would not accept them because he had counsel. When the court asked defendant on July 31, 2007, if he wanted to represent himself, he replied that he "would not like to represent myself."

¶ 6 On October 11, 2007, defense counsel asked the court for a new BCX for fitness because there was "a *bona fide* issue about his ability to cooperate with defense counsel." The court ordered a second BCX to evaluate defendant's fitness to stand trial with or without medication, sanity, ability to understand *Miranda* warnings, and ability to cooperate with counsel.

¶ 7 In December 2007, psychiatrist Dr. Jonathan Kelly of FCS reported to the court that he could not conduct the BCX because defendant was "uncooperative and would not respond to questions." On December 7, 2007, the court inquired into whether defendant cooperated with Dr. Kelly. While defendant professed

to have cooperated and answered Dr. Kelly's questions, defense counsel explained that defendant gave delusional answers to basic demographic questions such as his birth date. The court noted that a psychiatrist "understands how to incorporate [delusional] answers into a finding. He's saying he couldn't render any opinions" and admonished defendant to cooperate. The court ordered FCS to complete a new BCX by January 16, 2008, and on January 7, 2008, the court issued an order finding that defendant agreed to cooperate with FCS in a "reevaluation" by January 16th.

¶ 8 In January 2008, Dr. Kelly reported to the court that, based on his recent examination of defendant and review of records, defendant was fit for trial with medication. His medications had not changed, but his Risperdal dose had increased to 6 milligrams and his Trazodone dose to 150 milligrams, and he still reported no relevant side effects. Dr. Kelly found that he "understands the charges against him and the nature and purpose of legal proceedings" and "is able to assist in his defense." Dr. Kelly opined that he needed to continue his medication "to maintain adequate remission of his [s]chizo affective [d]isorder" and remain fit for trial. Dr. Kelly refused to opine regarding defendant's sanity or ability to understand *Miranda* warnings, as "defendant is inconsistent in his account of his past mental state" and the existing records were inadequate. FCS requested additional records, for which defendant provided a release form.

¶ 9 On January 16, 2008, the court received the BCX report and defense counsel told the court that he was deciding whether to contest defendant's sanity but had a "hunch at this time" that he would not, so that he wanted to continue the case to February 26.

¶ 10 Dr. Kelly again reported to the court in February 2008, finding defendant fit to stand trial with medication and able to understand *Miranda*. Dr. Kelly had conducted no new examination of defendant and, except for the opinion regarding *Miranda*, this report was substantially identical to Dr. Kelly's January report.

¶ 11 On February 26, 2008, the court received the new BCX and defense counsel requested that Dr. Michael Fields, an independent psychologist, examine defendant. On April 4, 2008, the court ordered FCS to release defendant's mental health records in preparation for the independent examination. Defendant then addressed the court, insisting that "I'm being held on false documents," but the court refused to accept any filings or arguments from defendant, except a request to proceed *pro se*, so long as he had counsel. While defendant repeated that he wanted his claim heard and called his counsel ineffective, and though the court told defendant that he could represent himself, he did not request to proceed *pro se*.

¶ 12 On May 7, 2008, while the case was being continued awaiting Dr. Fields' independent evaluation, defendant made a *pro se* motion for the appointment of new counsel. The court denied the motion, finding no conflict of interest between defendant and existing counsel. When defendant noted his earlier written allegations of ineffective assistance, the court found those allegations to be "outside the realm of any conflict of interest." The court noted defense counsel's concern that defendant was unable to cooperate in his defense, but defendant asserted that he was cooperating. He also insisted that he was fit for trial, that defense counsel's effort to declare him unfit was "unfair," and that a new evaluation was "unnecessary." Defendant repeated his claim that he was being held "illegally" on "fabricated" evidence, to which the court responded that "[y]ou're under indictment. You're going to have a trial." The case was continued to May 29, 2008.

¶ 13 On that day, the parties told the court that a plea agreement had been reached, for one count of criminal sexual assault with 10 years' imprisonment, and requested a stipulated fitness hearing. At the fitness hearing, the parties stipulated to the content of the BCX reports from FCS psychiatrists Drs. Nadkarni and Kelly, portions of which were read into the record as part of the stipulation. The parties also stipulated that independent psychologist Dr. Fields examined defendant in May

2008 and found him fit to stand trial with medication. Dr. Fields would also testify that defendant was receiving medication when he examined him. The court found based on the stipulated evidence that defendant was fit to stand trial with medication.

¶ 14 Defense counsel withdrew all pending motions, and when defendant was asked if he was withdrawing his *pro se* motions, he said he was. The court gave the admonishments and made the inquiries required by Supreme Court Rule 402 (eff. July 1, 1997), and defendant replied coherently to every one of the court's questions. In particular, defendant stated that he had the right to a jury of 12 members that would have to find him guilty unanimously for a conviction. When asked if he was taking his medication, he replied that he was. The factual basis for his plea included a DNA record match confirmed by a new DNA sample from defendant as well as a lineup identification by the victim. The court found defendant guilty of criminal sexual assault and sentenced him pursuant to the plea agreement to 10 years' imprisonment. After sentence was pronounced, defendant addressed the court, requesting mental health treatment while in prison and to be sent "to a place where I can be safe" from persons seeking retribution for his offense. The court told defendant that it could make recommendations but such matters were in the discretion of the Department of Corrections (Department). When told that he would have to register as a sex

offender after his prison term, defendant asked how long he would have to register, and the court told him 10 years. The mittimus included a recommendation of mental health treatment.

¶ 15 Defendant timely filed a *pro se* motion, titled a motion to reduce his sentence but challenging his guilty plea and seeking to withdraw it. In relevant part, the motion alleged that he was not being given his medication at the time of his plea. The court considered the motion as a motion to withdraw a guilty plea and appointed counsel.

¶ 16 In support of defendant's claim, counsel wanted his mental health records but defendant refused to sign a release of records so that the court had to order the release. Defendant also unsuccessfully requested the appointment of new counsel. Defendant repeatedly alleged that the transcript of the plea hearing was altered to show him answering that he was taking his medication, but the court stated that it personally recalled defendant's answer. When counsel received defendant's prison records from the Department, they indicated that he was "not fully compliant" regarding medication but "missed some doses," while he was "100 percent compliant" by late May of 2009 and took all but one dose in June 2009. His jail records from May 2008 indicated "a few" days when he refused medication but were not completely clear. Counsel certified in June 2009 pursuant to Supreme Court Rule 604(d) (eff. July 1, 2006) that she concluded

after consulting defendant and reviewing the record that no amendment to his motion was needed to adequately present his claims.

¶ 17 The court denied the motion to withdraw plea on June 23, 2009. Defense counsel argued that the plea was not voluntary because, in part, his medication may not have been working properly. Counsel noted that in "these instant proceedings there has been a definite change in [defendant]'s demeanor and his ability to cooperate with counsel." The State argued that the jail records showed that defendant was "mostly" compliant with his medication then. The court found that defendant was "cogent," "respectful," and showed comprehension during both the plea hearing and the instant hearing, with no indication that his plea decision was less than voluntary, and noted his agreement at the time that he was taking his medication. This appeal timely followed.

¶ 18 On appeal, defendant first contends that the court erred in finding him fit to stand trial with medication without an independent basis for such a finding and because such conditional fitness orders are improper.

¶ 19 A defendant is unfit to stand trial "if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2008). Fitness concerns

only a defendant's "ability to function within the context of a trial and does not refer to competence in other areas." *People v. Lucas*, 388 Ill. App. 3d 721, 726 (2009). Thus, diminished mental capacity does not by itself make a defendant unfit.

People v. Weeks, 393 Ill. App. 3d 1004, 1009-10 (2009). A defendant receiving psychotropic medication will not be presumed unfit solely on that basis. 725 ILCS 5/104-21(a) (West 2008).

¶ 20 A defendant is generally presumed to be fit to stand trial. 725 ILCS 5/104-10 (West 2008). The issue of a defendant's fitness to stand trial may be raised by the court, defense, or State at any time before, during, or after trial, and the court may order a BCX by a psychologist or psychiatrist. 725 ILCS 5/104-11(a), (b), 104-13(a) (West 2008). The factors that may create a *bona fide* doubt of a defendant's fitness include any irrational behavior, his demeanor at trial, any prior medical opinion on the defendant's competence, and any representations by defense counsel on the defendant's competence. *People v. Brown*, 236 Ill. 2d 175, 186-87 (2010). Whether a *bona fide* doubt exists regarding a defendant's fitness is a matter of the trial court's discretion. *People v. Moore*, No. 1-09-0662, slip op. at 8 (March 29, 2011).

¶ 21 When the court orders a BCX and receives the report thereof, it "shall conduct a hearing to determine the issue of defendant's fitness." 725 ILCS 5/104-16(a) (West 2008). "When a

bona fide doubt of the defendant's fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State." 725 ILCS 5/104-11(c) (West 2008). In a fitness hearing, relevant factors include the defendant's "knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process;" his "ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel;" and his "social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes." 725 ILCS 5/104-16(b) (West 2008). "On the basis of the evidence before it, the court *** shall determine whether the defendant is fit to stand trial." 725 ILCS 5/104-16(d) (West 2008). A determination of fitness will be reversed only if it is against the manifest weight of the evidence. *Lucas*, 388 Ill. App. 3d at 726. This court may consider events after the fitness hearing in reviewing the disposition of the fitness hearing. *Lucas*, 388 Ill. App. 3d at 727.

¶ 22 Where a defendant was found fit for trial with medication, the fact that he had not been given his medication raises a *bona fide* doubt as to his fitness. *Moore*, No. 1-09-

0662, slip op. at 9. Because a defendant is either fit or unfit for trial, a court that found a defendant fit for trial with medication cannot proceed to a trial or a guilty plea by ignoring evidence that the defendant was not taking his medication at the time of his trial or plea. *People v. Jones*, 349 Ill. App. 3d 255, 261-62 (2004). However, the trial court here did inquire during the plea hearing into whether defendant was taking the requisite medication, a matter we will address in greater detail below.

¶ 23 We conclude that the court's findings that defendant was fit to stand trial with medication were not against the manifest weight of the evidence. Psychiatrists Dr. Nadkarni and Kelly issued BCX reports years apart concluding that defendant was fit for trial with medication. The court held two fitness hearings over two years apart. At the first -- held at the court's insistence as defense counsel did not want an immediate fitness hearing despite having requested the BCX -- the court had Dr. Nadkarni's report. At the second, the court had reports from Drs. Nadkarni and Kelly as well as Dr. Fields' independent psychological opinion that defendant was fit with medication.

¶ 24 We find that the court's decision based on stipulated expert testimony was proper. While "the court *may* call its own witnesses and conduct its own inquiry," (emphasis added) (725 ILCS 5/104-11(c) (West 2008)), no statute or supreme

court rule requires that a court independently question a defendant or other witness and it is within the court's discretion not to do so. *People v. Goodman*, 347 Ill. App. 3d 278, 287 (2004). Thus, while a trial court should not "blindly defer" to an expert opinion, it may rely on stipulated testimony regarding a defendant's fitness so long as the parties stipulated to the expert's testimony rather than just his conclusions. *People v. Richardson*, 376 Ill. App. 3d 612, 622 (2007). "[W]hile it is within the province of the trial court to reject or give little weight to certain testimony, even expert testimony, this power is not an unbridled one" *Lucas*, 388 Ill. App. 3d at 728.

¶ 25 Here, the parties stipulated at the fitness hearings to content of the reports by Drs. Nadkarni and Kelly, not merely their conclusions. While the parties stipulated to Dr. Fields' bare opinion, that opinion was merely a more recent corroboration of the proper evidence from Drs. Nadkarni and Kelly. Moreover, Dr. Fields' independent examination had been requested by defense counsel, whose concerns regarding defendant's fitness were apparently sufficiently addressed by Dr. Fields that counsel entered into the second stipulated fitness hearing just before the guilty plea hearing. Lastly, the parties stipulated that Dr. Fields would testify that defendant was receiving medication when he examined him in May 2008, a relevant issue of fact in addition

to his expert opinion. We find no reversible error in the court's conduct of, or rulings in, the fitness hearings.

¶ 26 Defendant also contends that there was a *bona fide* doubt of his fitness at the time of his guilty plea hearing because he was not taking the medication required to maintain his fitness. However, defendant's assertion in his post-plea motion that he was not taking his medication at the time of the guilty plea hearing is directly contradicted by the hearing transcript and by the court's personal recollection (against defendant's assertion that the transcript was altered) that defendant replied that he was taking his medication. Also, while the evidence that defendant was taking his medication in the time leading up to his plea hearing was neither complete nor incontestable, it was neither against the manifest weight of the evidence nor an abuse of discretion to conclude that defendant was substantially compliant with his medication at that time.

¶ 27 Moreover, the conclusion that defendant was fit for trial at the time of his plea hearing is well-corroborated by the plea proceedings. While defense counsel had requested BCXs and the independent examination, counsel expressed no concern regarding defendant's fitness or cooperativeness at the time of the plea hearing and readily entered into the second stipulated fitness hearing. Crucially, defendant was lucid and responsive during the guilty plea hearing, not only succinctly answering the

court's questions but asking cogent questions. The trial court noted this in denying the post-plea motion, and upon reviewing the record we agree.

¶ 28 Defendant's final contention is that the court erred in not holding a fitness hearing during post-plea proceedings.

¶ 29 As noted earlier, the factors to be considered in assessing whether a *bona fide* doubt of a defendant's fitness is raised include any irrational behavior, his demeanor, prior medical opinion on his competence, and any representations by defense counsel on the defendant's competence. "No fixed or immutable sign, however, invariably indicates the need for further inquiry on a defendant's fitness," but "[r]ather, the question is often a difficult one implicating a wide range of manifestations and subtle nuances." *Brown*, 236 Ill. 2d at 186-87.

¶ 30 Here, post-plea counsel did not request a BCX, focusing her investigative efforts on whether defendant was receiving his medication at the time of his plea and since. The court properly considered the medication issue, and its conclusion is not against the manifest weight of the evidence presented: defendant was not necessarily taking his medication every time but was generally compliant. As to defendant's post-plea conduct, repeatedly interrupting the court and filing documents that demonstrated mistrust of defense counsel and

raised dubious claims, this behavior by itself does not distinguish defendant nor establish that he was unfit; that is, unable to understand the proceedings against him or cooperate in his own defense. The court expressly found that defendant had the same respectful and comprehending demeanor at the guilty plea hearing and the final hearing on the post-plea motion. Lastly, post-plea counsel certified that she consulted with defendant in concluding that his post-plea motion need not be amended, with no indication that she was unable to consult because he would not cooperate. We find that the court did not abuse its discretion by not finding *sua sponte* a *bona fide* doubt of defendant's post-plea fitness.

¶ 31 We conclude that the trial court did not err in twice finding defendant fit to stand trial with medication, in proceeding with the guilty plea hearing, or in not holding a post-plea fitness hearing. Accordingly, the judgment of the circuit court is affirmed.

¶ 32 Affirmed.