

approximately 3:41 a.m. on November 29, 2008. State Police Lieutenant Patrick Murphy observed the driver of the vehicle make an illegal right turn on red. Murphy stopped the car and discovered that the driver's license was suspended and that defendant, who was the passenger, had no license. Because there was no licensed driver, it was necessary for the driver and defendant to be transported from the interstate where the violation occurred back to town.

¶ 5 Murphy testified that a pat-down search was conducted prior to the driver and defendant being transported. During the pat-down, Murphy discovered a plastic bag in defendant's back pocket. Murphy thought the bag contained crack cocaine. An initial field test was inconclusive. A second field test showed that the substance contained cocaine. Defendant was arrested and charged with possession of a controlled substance.

¶ 6 Defendant declined an attorney and chose instead to represent himself *pro se*. Defendant filed 20 handwritten pretrial motions and 10 posttrial motions. The first series of motions was filed by defendant on December 16, 2008. Defendant titled the first motion "Petition." While the content is rambling, the gist of the petition alleges that defendant and others had been intimidated by the State's Attorney. Defendant's other motions were titled "Motion for Preliminary Examination," "Motion To Withdraw Public Defender," "Motion To Dismiss Charge," "Motion Within Search Without Warrant," and "Motion on Chemical And Other Test." These motions and later motions all include the language "All Legal Debt's, are Charge to. Madison Co. Il. U.S."

¶ 7 A hearing was held on February 5, 2009, on defendant's initial motions, including the motion to dismiss. Defendant declined to offer evidence, choosing instead to allow the State to present witnesses. At the end of the hearing, the trial judge told defendant it was time to argue his motion, but it was clear that defendant was unsure about how to proceed and was not even sure which motion was being debated. The judge then stated as follows:

"Well, Mr. Brown, I am going to do a couple of things. One, I am going to caution you, if you decide, sir, to persist in representing yourself and you are going to file motions and you want to represent yourself you are free to do that. But[] these are serious felony charges. You need to know what you are doing if you are going to be representing yourself [] because you may be taking actions and steps that are hurting yourself with regard to these charges. You may want to reconsider your position with regard to counsel representing you on these matters. Because the Court can't[-]I can't assist you and I can't play favorites. Simply because you don't know what you are doing, I can't guide you or direct [you]. But with regard to the Motion to Dismiss, it's obvious to the Court that you don't know how to proceed as an attorney, you don't know the rules of evidence, you don't know how to ask questions, and you don't even [know] the procedure. These matters are set today for hearing on your motions. We're not going to set them for a later date[;] they are set for today for hearing. I've asked you if you wish to call any witnesses or present any evidence. I told you that we could do these in the order that you wanted to do them. The State indicated they were going to submit their officers for testimony as to both motions. I indicated that that's what we were going to do. This is, was your opportunity to call witnesses, ask questions. If you have something else for me to consider and you are not precluded, you can file additional motions at a later time. But[] it's my position that we need to address the motions that you have on file right now today. So, I will allow you first to address the Motion with Regard to Search Without a Warrant, then I want to address the Motion to Dismiss the charge. And those are being heard today. Not on a later date, but today. So, do you wish to argue with regard to your motions that you filed?"

Defendant did not heed the judge's advice.

¶ 8 Defendant then accused the trial judge, "You are making it appear as though I don't know what I am doing[;] *** you are assassinating my character with regards to what I am doing[;] you misreading me in regard to what I do, because I have been doing this awhile." Defendant further stated: "But don't make it appear as though I don't know what I doing[;] I been doing, I been doing this awhile. I do this for real, live in Madison County. This ain't nothing I just trying to do, to do or trying to pretend that I understand."

¶ 9 Thereafter, the trial court denied the motion challenging the stop and search and the motion to dismiss. The judge explained that there was still a motion for independent testing pending, and the judge asked defendant to identify a lab that could perform the test. On February 12, 2009, defendant filed another series of motions. One motion requested a new laboratory testing of a sample of the alleged cocaine. The handwritten motion was titled, "Motion, For New Court Order. Within laboratory Testing on, laboratory case." Defendant also sought to have money sent to the circuit court to pay his bond but failed to identify who should send the bond money.

¶ 10 On February 26, 2009, a hearing was held on the newly filed motions. The trial court specifically stated that it did not understand defendant's new motion for laboratory testing. In an effort to save time, the judge asked whether the State understood defendant's motion. The prosecutor replied: "He wants a retest is my understanding, Judge. However, I don't understand the issue. I believe that's what he wanted was a retest. However, he is talking about a deputy in his motion and I don't understand that at all." A lengthy discussion ensued and finally defendant explained that he wanted Madison County to pay for the testing, "but Judge Hackett is going to be the one who sponsor that moment." Ultimately, the trial court told defendant that if he had a lab to pay for retesting and could set up a retest in a timely manner, then retesting would be allowed.

¶ 11 On March 5, 2009, defendant filed a motion accusing state troopers involved in his

arrest with perjury for allegedly making false statements about field testing of the suspected drug. On March 9, 2009, defendant filed a motion in which he requested "a Jury of He's Public Peer's." During a hearing on these new motions, the trial court noted that he talked to Judge Hackett, who is a judge in a neighboring county, and then understood that defendant was requesting Judge Hackett to do things in his official capacity, which were impossible since Judge Hackett was a judge in Madison County and had no authority over this case, which was in Montgomery County. With regard to the motion for a jury of his peers, defendant explained as follows:

"No, I don't want no impartial jury, I want a jury of my peers. There's a difference. Impartial is just a group of people they feel like they have intelligence to come up with a valid decision irregardless of the case. Jury of my peers is a group of people who basically look like Festus Brown."

The trial judge then noted, "You're African-American." Defendant replied: "I'm not. I'm Asiatic-American. I don't go by title. That's the title they go by[;] I don't go by that. I'm Asiatic-American."

¶ 12 The trial judge then tried to get defendant to concede that a person seeing defendant for the first time would assume he was African American. Defendant insisted he was "Asiatic-American." Nevertheless, the trial court thought that defendant's motion was logical in that he was seeking a jury of his peers, but he denied the motion on the basis that other courts have ruled that a defendant is not entitled to have a trial moved to a location where the potential jurors are of the same racial and ethnic composition as the defendant.

¶ 13 Later in the hearing, the trial court scolded defendant for filing motions in other defendants' court files. The trial court referenced three specific cases. The trial court told defendant to stop or he would face contempt charges.

¶ 14 Defendant filed additional motions, including a motion to substitute judge for bias and

prejudice, which was granted by Judge Roberts. In all, four different judges presided over pretrial proceedings, while a fifth judge, Judge McHaney, presided over the jury trial. On the day the trial started, April 13, 2009, defendant filed another series of motions in which he claimed, *inter alia*, that he had a paralegal license that was taken by Judge Hackett's secretary in Madison County and that she misplaced it. Defendant further claimed he was "the present leader of a law firm" located in Madison County in the new criminal justice center. He also said he had a paralegal office in the detective section of the Madison County jail, which could be entered by magnetic code.

¶ 15 During jury selection, defendant made a few challenges to the prospective jurors. After selection, but before opening statements, defendant filed a motion to discharge the panel on the basis that the potential jurors were not his "peers." The trial judge dismissed the motion as being without a legal basis.

¶ 16 Defendant made a rambling opening statement in which he mostly complained about the unfairness of the traffic stop that led to his arrest. He successfully challenged Lieutenant Murphy sitting with the State's Attorney during the trial. Defendant's closing argument mainly concentrated on Murphy not having a video of the traffic stop or a report written specifically by Murphy. The jury deliberated for 20 minutes before returning with a guilty verdict.

¶ 17 On May 5, 2009, defendant filed a motion for a new trial, which was ultimately denied. Defendant was sentenced to three years in the Department of Corrections. Defendant now appeals and is represented by the Office of the Appellate Defender.

¶ 18 The issue we are asked to address is whether the trial court erred in failing to raise the issue of defendant's fitness. Defendant insists that the trial court erred by failing to raise the issue *sua sponte*. The State replies that the trial court did not abuse its discretion in not ordering *sua sponte* a fitness evaluation of defendant. While the State concedes that "the

record perhaps shows that defendant is incompetent as his own counsel," the State insists that the record fails to show that defendant's mental faculties were so impaired that he was unfit to be tried and convicted for unlawful possession of a controlled substance. The State asserts that we should not confuse the defendant's ability to form a coherent defense, however weak, with the broader issue of whether defendant was incompetent to be tried at all. After a review of the record, we agree with defendant that there is a *bona fide* doubt regarding defendant's fitness, which requires that the judgment be reversed and the cause remanded.

¶ 19 The due process clause of the fourteenth amendment bars the prosecution of a defendant unfit to stand trial. *People v. Shum*, 207 Ill. 2d 47, 57, 797 N.E.2d 609, 615 (2003). A defendant is unfit to stand trial in a case in which he or she is "unable to understand the nature and purpose of the proceedings against him or to assist in his defense." *People v. Burton*, 184 Ill. 2d 1, 13, 703 N.E.2d 49, 55 (1998). A defendant bears the burden of proving there is a *bona fide* doubt of his or her fitness. *People v. Hanson*, 212 Ill. 2d 212, 221-22, 817 N.E.2d 472, 477 (2004). If a *bona fide* doubt is raised regarding a defendant's ability to understand the nature and purpose of the proceedings against him or her or to assist in his or her own defense, a trial court must order a fitness hearing to determine the issue before proceeding. 725 ILCS 5/104-11(a) (West 2008).

¶ 20 In order to determine whether a *bona fide* doubt exists, the trial court may consider irrational behavior, demeanor in court, and any prior medical opinion on competence to stand trial. *People v. Easley*, 192 Ill. 2d 307, 319, 736 N.E.2d 975, 986 (2000). In addition to these factors, a representation by defense counsel regarding the competence of his or her client, while not conclusive, is an important consideration. *People v. Eddmonds*, 143 Ill. 2d 501, 518, 578 N.E.2d 952, 959 (1991). The instant case is complicated by the fact that defendant waived his right to counsel. The following principle is well-settled: "Because a proper waiver of counsel requires the defendant to have use of his mental faculties, it is error

to allow a defendant to represent himself once a *bona fide* doubt regarding the defendant's competence has arisen." *People v. Mazar*, 282 Ill. App. 3d 662, 664, 669 N.E.2d 346, 347 (1996).

¶ 21 The question of defendant's fitness for trial and defendant's fitness to represent himself was called into doubt early in the proceedings and continued through the trial. Defendant's first *pro se* filings on December 16, 2008, were bizarre, and at the subsequent hearing on the filings, the trial judge assigned to the matter specifically cautioned defendant about the perils of representing himself and actually told defendant that it was clear that he did not know what he was doing. Instead of heeding the judge's advice, defendant went into a tirade about how the judge was assassinating his character. Nevertheless, defendant was allowed to proceed *pro se*.

¶ 22 Throughout the proceedings defendant was under the delusion that Madison County was going to pay for drug testing and that a Madison County judge was going to be able to enter orders, even though this case had nothing to do with Madison County and was being heard in Montgomery County. Later in the proceedings, a judge reprimanded defendant about filing motions in other defendants' cases that were completely unrelated to the case at bar but the judge continued to allow defendant to proceed *pro se*. On the day of the trial, defendant filed another series of *pro se* motions in which he claimed to be not only a paralegal but a licensed attorney with an office in a Madison County government building.

¶ 23 The problem very well might have been that the case was assigned to so many judges and none of them got a complete picture of defendant; however, based upon the record before us, we find a *bona fide* doubt regarding defendant's competence to stand trial. We agree with defendant that a fitness evaluation should have been ordered before defendant was allowed to go to trial and represent himself. Accordingly we hereby reverse defendant's conviction and remand for further proceedings consistent with this order.

¶ 24 Reversed; cause remanded with directions.