

No. 1-11-0880

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 CR 61715
	)	
JEFFREY DAVIS,	)	Honorable
	)	Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in allowing defendant to proceed *pro se*. Defendant's claim that he was incompetent to represent himself is not supported by the record where the trial court had the ability to observe defendant's behavior firsthand through multiple court dates and proceedings, and where defendant was twice found competent to stand trial.

¶ 2 After a bench trial, defendant Jeffrey Davis was convicted and sentenced for robbery (720 ILCS 5/18-1(a) (West 2008)) and aggravated battery of a senior citizen (720 ILCS 5/12-4.6(a) (West 2008)). The events arose out of defendant's assault of a 77-year-old man in the victim's residence and the theft of the victim's cellular telephone. On November 8, 2010, after hearing

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factors in aggravation and mitigation, the trial court sentenced defendant to concurrent terms of seven years in the Illinois Department of Corrections.

¶ 3 On this direct appeal, defendant claims that the trial court erred in allowing him to represent himself because he was incompetent, as demonstrated at trial. Specifically, defendant argues that, based on his behavior throughout the trial proceedings, the trial court should have known that defendant was not competent to represent himself *pro se*, and should not have honored his repeated requests to proceed *pro se*.

¶ 4 For the reasons discussed below, we affirm.

¶ 5 BACKGROUND

¶ 6 I. Pretrial Proceedings

¶ 7 A. Psychiatric Examinations and Withdrawal of Counsel

¶ 8 When defendant was arraigned on November 5, 2009, an assistant public defender (APD) was appointed to represent him. Prior to the appointment of counsel, defendant asked the trial court whether he could “get a bond reduction.” The case was continued to January 5, 2010. On that date, the APD did not request a bond reduction, but did request a behavioral clinical examination (BCX) of defendant to determine his fitness to stand trial.

¶ 9 On February 16, 2010, the trial court received a letter from Forensic Clinical Services written by Dr. Jonathan Kelly, a forensic psychiatrist, opining that defendant was fit to stand trial with medication, was sane at the time of the offense, that he understood the charges against him, the nature and purpose of the legal proceedings, and had the ability to assist his attorney in his defense. Dr. Kelly reported that defendant was prescribed antipsychotic medication and needed

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to take this medication “in order to maintain adequate remission of symptoms of his [s]chizophrenic [d]isorder” to maintain his fitness to stand trial. Dr. Kelly’s report indicated that defendant informed him that he took his medication daily.

¶ 10 Dr. Kelly explained that, while defendant was alert, oriented, and cooperative, he could also be inconsistent and unreliable in his responses and laughed inappropriately at times. Dr. Kelly diagnosed defendant at the “Axis I” level and opined that defendant exhibited “Features of Malingering” and manifested these features with contradictory responses, which the psychiatrist explained were inconsistent responses compared to a previous evaluation conducted in 2005. Dr. Kelly also opined that there was an inconsistency between his subjective admissions of psychotic symptoms as compared to a lack of objective presentation of psychotic symptoms.

¶ 11 In addition, on February 16, 2010, defendant stated to the trial court that “I [have] been in jail for 6 months and I’m ready to go *pro se*. I don’t need an attorney.” Defendant informed the trial court that his APD had “six months. I’m going *pro se*.” Defendant was obviously disturbed that he had been incarcerated for 6 months and there had been no action on his motion to reduce bond.

¶ 12 On later court dates, defendant had further discussions with the court about matters that he believed he had previously been charged with, which he referred to as “double jeopardy.” Defendant was convicted of aggravated battery with a weapon in 2005 and had an arrest for simple battery in 2008 that had been dismissed or *nolle prossed* with leave to reinstate. Additionally, defendant was arrested on April 19, 2010, for aggravated battery of a police officer, which was pending before another judge. Defendant eventually came to understand that there

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was no issue of “double jeopardy” after the trial court stated, “[y]ou and I both know you haven’t been found not guilty on this, Mr. Davis. You haven’t [proceeded] to trial.”

¶ 13 On March 12, 2010, defendant’s APD informed the court that she would not stipulate to Dr. Kelly’s findings concerning defendant’s fitness to stand trial. The APD stated that she did not “believe he is fit [for trial] after speaking with him,” and further stated that she would consider having defendant evaluated by an “expert of our own.”

¶ 14 The trial court received another report from Dr. Kelly dated March 10, 2010, which opined that defendant was “mentally fit to stand trial with medication” indicating that defendant was prescribed Risperidone daily and that defendant was “Legally Sane” at the time of the alleged offense.

¶ 15 Dr. Kelly’s second report considered defendant’s hospital records from November 11, 2009, in which the psychiatric assessment diagnosis of defendant was “Malingering.” Defendant had admitted to Dr. Kelly that he malingered in order to gain attention and medication, and made up psychological symptoms in order to receive transfers to Cermak Hospital. The basis of Dr. Kelly’s opinion of malingering consisted of: (1) defendant’s admission that he made up psychological symptoms in order to receive transfers; (2) that he was inconsistent in his explanation of his symptoms in contrast to his statements in a previous evaluation; (3) that he was found to be malingering in a previous evaluation; and (4) that he reported that he was not compliant in taking his prescribed medication.

¶ 16 On March 12, 2010, defense counsel asked for a continuance and the court informed her that, if there was no stipulation as to the facts relating to fitness, then the court would need to

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conduct a full fitness hearing. Defendant then asked “What about my *pro se* filings[?]” to which the court responded “I don’t know anything [about] *pro se* filings.”

¶ 17 On April 12, 2010, defense counsel indicated that she was withdrawing her reservations about defendant’s fitness. The case was passed to allow the parties to prepare a stipulation concerning defendant’s fitness to stand trial, and, upon recall, defendant’s counsel informed the court that defendant wanted to proceed *pro se*.

¶ 18 The trial court then inquired of defendant whether he wanted to represent himself. Defendant stated “Yes” and that he had been considering the prospect of doing so for eight months. Defendant's background indicated that defendant had attended community college and that his legal background consisted of his previously representing himself *pro se*. When asked on two occasions by the trial court whether he wanted to waive his right to appointed counsel, defendant stated: “Yes.” The trial court admonished defendant pursuant to Supreme Court Rule 401 and defendant indicated that he did not wish to have an attorney represent him. The trial court then granted the ADP leave to withdraw, and tendered the discovery to defendant.

¶ 19 Defendant and the State then stipulated that Dr. Kelly was a forensic psychiatrist employed by the Forensic Clinical Services of Cook County, and was qualified to testify as an expert in the area of forensic psychiatry, and that he had evaluated defendant with respect to defendant’s fitness to stand trial and sanity. It was further stipulated that, based on a reasonable degree of medical and psychiatric certainty, Dr. Kelly had opined that defendant was fit to stand trial and legally sane at the time of the offense. While defendant stipulated that he was fit to stand trial, he would not stipulate to Dr. Kelly’s opinion that his alleged schizophrenia was not a

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contributing factor to his mental state at the time of the offense.

¶ 20 On May 12, 2010, defendant appeared in court *pro se*. The trial court asked defendant whether he wished to represent himself or receive an attorney on his behalf. Defendant responded that he wanted to “continue to represent myself.” At the next court date, on May 27, 2010, defendant informed the court that he wanted to file a motion to quash arrest and suppress evidence. A suppression hearing on that motion was set for July 8, 2010.

¶ 21 On July 8, 2010, defendant was tendered additional discovery by the State, prompting defendant to inquire why he was not tendered the information before. The trial court explained to defendant that discovery was an ongoing process. The trial court then suggested that defendant’s suppression motions be continued, but defendant was unhappy with the suggestion and stated that he demanded trial. The trial court explained that he would have to withdraw his suppression motions if he wanted to demand trial, to which defendant responded, “Your Honor, I just want to sue the State for extortion. That’s it. That’s all I want to do right now.” The trial court attempted to ascertain whether defendant would indeed like to withdraw his motion and demand trial, but defendant raised his voice and was subsequently escorted from the courtroom. Defendant’s suppression motions were eventually continued to another date.

¶ 22 B. Motion to Quash Arrest and Suppress Evidence

¶ 23 On August 17, 2010, defendant’s case was set for a hearing on his motion to quash arrest and suppress evidence. The police officer needed for that hearing, however, was not present in court. Defendant informed the trial court that he desired to bring a “Motion to Dismiss.” Defendant argued that he had been in court for more than “eight court dates” and the State had

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not been ready when he demanded trial. The trial court responded that in looking at the court file, there were numerous “by-agreement” dates and a clinical exam ordered, and therefore any speedy trial demand effectively ceased. The trial court continued the case.

¶ 24 C. Defendant's *Pro Se* Motion

¶ 25 On September 9, 2010, defendant presented a *pro se* motion to dismiss based on a speedy trial violation, which stated that the corrections officers in Cook County Jail had beaten him up twice, placed him into segregation and denied him medical attention. Defendant’s motion also stated that he had previously been tried for the same offense and was found not guilty in 2009. The trial court denied the motion. The court also heard argument on defendant’s *pro se* motion to quash arrest. Defendant stated that he had two witnesses to present but neither appeared in court, and the court denied the motion.

¶ 26 Also on September 9, 2010, defendant presented a *pro se* motion for a restraining order against the State’s witnesses, which was also denied. On September 27, 2010, defendant presented a *pro se* motion to reconsider the motion to quash arrest, but withdrew his motion to reconsider and continued to demand trial, realizing that his motion to reconsider would require another court date, and he desired to proceed to trial.

¶ 27 II. Bench Trial

¶ 28 On October 12, 2010, defendant waived his jury demand and a bench trial commenced. After the State’s opening statement, defendant said, “I am Jeffrey Davis she’s lying,” and told the court not to believe anything the State’s attorney said because she was not there. The trial court informed defendant that the prosecutor was supposed to tell the court what she thought the

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evidence would show during the State's opening statement. Defendant said that the evidence would demonstrate that he is innocent and that he did not steal the cellular telephone, stating that, "I didn't rob the old man and self defense if anything else comes up."

¶ 29 A. The State's Case

¶ 30 The State presented the testimony of two witnesses at trial: (1) the victim, Benjamin Leslie, and (2) Officer Sandra Baptiste-Lefridge, the arresting police officer.

¶ 31 1. Benjamin Leslie's Testimony

¶ 32 Leslie testified that on September 23, 2009, he was 77 years old and lived in Markham, Illinois. At that time, a woman named Penny Harris rented a room from Leslie and his wife. Harris had lived with the Leslies for less than a month when she had a guest visit on September 23, 2009. Leslie identified the guest in court as defendant. Leslie also testified that he observed defendant in his home on September 23 at approximately 4 a.m., and that he came to Harris's assistance as defendant was "whipping her." This situation prompted Harris to call out and ask Leslie to call the police.

¶ 33 Leslie testified that he was unsuccessful in calling the police because defendant struck him about the eyes, nose, and mouth with his fist approximately five times, and took his cellular phone.

¶ 34 After defendant left the house, Leslie went next door to a neighbor to call the police. A friend had informed Leslie that defendant resided at the Harvey 100 Club (the Club), a rehabilitation facility, and they both proceeded to drive there to find defendant. Upon their arrival at the Club, Leslie observed defendant, called the police and, when they arrived, defendant was

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arrested. Leslie's cellular telephone was found in defendant's possession upon his arrest.

¶ 35 After defendant's arrest, Leslie went to the South Suburban Hospital where he was treated for a fractured eye bone and nose. Leslie testified that his eye continues to drain and that his vision is not as clear as before. The State offered into evidence five photographs of Leslie depicting his injuries which were received by the trial court over defendant's objections.

¶ 36 On cross-examination, Leslie testified that defendant informed him that the cellular telephone belonged to defendant, and that defendant removed the phone from Leslie. Leslie denied that he gave defendant his cellular telephone. When defendant showed Leslie the photographs, Leslie testified that defendant caused the injuries depicted in the photos, and hit him with his fists.

¶ 37 2. Officer Sandra Baptiste-Lefridge's Testimony

¶ 38 Next, Officer Lefridge testified that she was employed as a police officer with the Harvey police department on September 23, 2009, when she responded to a call at the Club between 7 and 8 a.m. Officer Lefridge described the Club as a large building that housed persons in rehabilitation, which is open 24 hours a day. Officer Lefridge proceeded to the Club and met with Leslie upon arrival, whom she described as an older man with a lot of bruises on his face and whose jaw appeared to be sunken in.

¶ 39 Officer Lefridge proceeded into the building because Leslie told her that defendant had caused his injuries. After placing defendant under arrest, Officer Lefridge brought him outside for Leslie to identify. A protective patdown search by the officer yielded a U.S. Cellular telephone, which Leslie identified as his.

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¶ 40 On cross-examination, defendant asked Officer Lefridge how old she believed he was, and the officer responded, between 20 and 30 years old. Defendant indicated that he is 33.

Defendant then asked, “Knowing that I’m a lifetime member of the Harvey 100 Club, why would you arrest me without a warrant?” Officer Lefridge responded, “I didn’t know you were a lifetime member and you were pointed out as an offender in a crime that had just previously been committed that was actually not even 10 or 15 minutes old.”

¶ 41 The State then rested.

¶ 42 B. The Defense Case

¶ 43 Defendant testified on his own behalf as his only witness. Defendant disputed the date of the offense, stating that “the date was actually [Monday] September 21st” and that he knew that to be true because Harris had called him the previous Friday to harass him. Defendant testified that he went to Harris’s house because he was “going to let her braid” his hair. While at Harris’s house, Harris woke up “the old man” and Leslie became angry. Defendant further testified that, as he was leaving, Leslie blocked his way prompting defendant to ask “why you in my way” to which Leslie replied, “you over here bothering us.” Defendant testified the “cell phone belong[s] to me because they stole the cell phone from the Club which everybody know, I’m a lifetime member of.”

¶ 44 On cross-examination, defendant explained that he had visited Harris’s house three days in a row (Friday, Saturday, and Sunday) to have his hair braided, and that the incident happened on Monday. Defendant could not tell whether Leslie appeared to be injured because it was dark, but when Leslie came to the door after Harris woke him up, Leslie did not have any visual

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injuries.

¶ 45 Defendant testified that, when he left Harris's home, he went back to the Club, and Officer Lefridge arrested defendant "the next day." Defendant testified that he was arrested by "some retarded lady" whose gun did not work. This woman looked battered and bruised herself and was not Officer Lefridge. While defendant was in handcuffs, he observed Leslie and told the arresting officer to "get [Leslie] out of my way." When defendant observed Leslie at the Club, Leslie did not have the injuries depicted in the photographs. Furthermore, defendant testified that he did not strike Leslie or steal his cellular telephone.

¶ 46 Defendant then sought to call two witnesses, but neither was present in court, and the defense rested.

¶ 47 C. Closing Arguments

¶ 48 During the State's closing argument, defendant requested a continuance to bring his witnesses to court, which the trial court denied. The trial court explained that defendant had demanded trial and had stated previously that he was ready to proceed with his case.

¶ 49 Defendant argued in closing that Leslie could have received his injuries by falling down the stairs, or losing a game of dominos and then being beaten when he would not pay. Defendant further argued that he would not have stolen Leslie's cellular phone because it did not have a camera.

¶ 50 D. Conviction and Sentencing

¶ 51 The trial court found that the issues came down to the credibility of the witnesses. After observing the demeanor of the witnesses, the trial court found Leslie's testimony credible, and

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found defendant guilty of robbery, aggravated battery of a senior citizen, and aggravated battery.<sup>1</sup>

¶ 52 On November 8, 2011, the parties proceeded to sentencing in which a presentence investigation report (PSI) was filed with the court, and the information contained was considered in aggravation and mitigation. In addition, in aggravation, the State detailed defendant's criminal background, which included a conviction for unlawful use of a weapon in 1996, and a conviction for aggravated battery in 2005.

¶ 53 In mitigation, defendant argued that the State's argument was "a bunch of malarkey." Defendant further argued that, as a lifetime member of the Club, he is known as someone who minds his own business and helps others with computer problems. Defendant argued that Harris and Leslie attacked him and that he called the police. Defendant argued that he was trying to be honest, that he did not know Leslie, but that a long time ago he "kidnapped my sister." Defendant also argued that he did not receive any state or federal government help in trying to "fight" his case, and was trying to figure out how he was "railroaded."

¶ 54 The trial court noted defendant's employment history and military service, as well as his criminal background. The trial court sentenced defendant to concurrent seven-year terms for robbery and aggravated battery of a senior citizen and two years mandatory supervised release. Defendant was given 411 days, pretrial custody credit for time served.

¶ 55 III. Posttrial Motion

¶ 56 On November 15, 2010, defendant filed a *pro se* posttrial motion for a new trial, which

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<sup>1</sup> In a postsentencing proceeding, the trial court merged the aggravated battery count into the count for aggravated battery of a senior citizen, and vacated its sentence on the former count.

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was heard on March 2, 2011. Defendant's motion argued that he should receive a new trial because he was denied assistance of standby counsel and access to a law library for legal research and preparation for trial, and therefore was not able to present a proper defense at trial. Defendant argued that he was "innocent" and that the case, he "figures," was actually worth "maybe four years tops," and not seven years to be "locked up in jail for something like that."

¶ 57 The trial court addressed only defendant's claim concerning his self-representation and reiterated that defendant "insisted on proceeding with this matter *pro se*." The trial court detailed its dealings with defendant including that it had admonished defendant pursuant to the Supreme Court Rule 401 and offered defendant attorneys from the public defender's office, but defendant did not want an attorney. The trial court found that defendant "clearly waived" his right to trial counsel.

¶ 58 The trial court then recounted the various ways defendant had represented himself *pro se*, including the filing of his *pro se* motion for pretrial discovery, his *pro se* motion to quash arrest, and his *pro se* motion to dismiss. Furthermore, the trial court listed eight court dates where defendant represented himself and filed an answer to discovery, attended to additional discovery matters as tendered by the State, filed petitions for restraining orders, demanded trial, tendered his jury waiver form to the trial court, and argued at the hearings on his motions.

¶ 59 The trial court then denied defendant's *pro se* posttrial motion for a new trial. Defendant sought leave to appeal, and the trial court appointed the state appellate defender. The trial court then merged the aggravated battery conviction into the aggravated battery of a senior citizen conviction and vacated the accompanying five-year sentence.

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¶ 60 Defendant then asked the court if there was a reason he could not have the case reopened. The court stated that it had just ruled and there was no legal basis for a new trial. Defendant stated, “It is legal. I’m still trying to find an attorney.” The court said that its prior order would stand. Defendant stated, “This is bullsh\*\*.” The court told him to watch his mouth in the courtroom. Defendant then stated, “It’s my courtroom just as well as yours. I live in this God damn community.” Defendant was then escorted from the courtroom.

¶ 61 A timely notice of appeal was filed on March 2, 2011, and this appeal followed.

¶ 62 ANALYSIS

¶ 63 On this direct appeal, defendant claims that the trial court erred in allowing him to represent himself because he was incompetent, as demonstrated by his behavior at trial. The State argues in response that the trial court did not err in its decision to allow defendant to proceed with trial *pro se*. For the following reasons, we affirm.

¶ 64 I. Standard of Review

¶ 65 Defendant contends in his opening brief that we should apply a *de novo* standard of review because the relevant facts are undisputed. Defendant argues that he should not have been allowed to represent himself because “his ability to do so was debilitated by his continuing struggle with mental illness.”

¶ 66 The State contends in its brief that we should apply an abuse-of-discretion standard of review to determine whether the trial court erred in allowing defendant to represent himself *pro se*, and that we should review only for plain-error. The State argues that defendant waived this issue for review, and that defendant cannot show that the complained-of error was structural. The

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State argues that defendant should have addressed his continuing struggle with mental illness in his *pro se* motion for new trial, instead of arguing that he was denied the assistance of “stand by counsel” and access to a law library for legal research and preparation for trial, and therefore, he was not “able to present a proper defense and defend myself at trial.”

¶ 67 Defendant’s reply brief states that the parties agree that defendant did not preserve this error for review, and that the State is incorrect to suggest that review under the substantial rights prong of the plain-error rule is limited to structural errors.

¶ 68 A trial court’s decision concerning a defendant’s request for self-representation is reviewed for an abuse of discretion. *People v. Baez*, 241 Ill. 2d 44, 116 (2011); *People v. Rohlf*s, 368 Ill. App. 3d 540, 545 (2006).

¶ 69 Since defendant’s reply brief concedes that he did not preserve this error for review, we review the issue under the plain-error doctrine. The Illinois Supreme Court has held that a “defendant must both specifically object at trial and raise the specific issue again in a posttrial motion to preserve any alleged error for review.” *People v. Woods*, 214 Ill. 2d 455, 470 (2005); *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). When a defendant has failed to preserve an error for review, we may still review for plain error. *People v. Piatkowski*, 225 Ill. 2d 551, 562-63 (2007) (“Plain-errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.”).

¶ 70 The plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the

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error, or (2) a clear or obvious error occurred and that error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 565. The first step of plain-error review is to determine whether any error occurred. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009). In plain-error review, the burden of persuasion rests with the defendant. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009).

¶ 71 Though plain-error analysis normally requires the same kind of inquiry as does harmless-error review, there is an “important difference” between the two. *People v. Magallanes*, 409 Ill. App. 3d 720, 727 (2011). In a harmless-error analysis, which applies when a defendant has made a timely objection, it is the State that bears the burden of persuasion with respect to prejudice. *Magallanes*, 409 Ill. App. 3d at 727. In other words, the State must prove beyond a reasonable doubt that the verdict would have been the same absent the error. *Magallanes*, 409 Ill. App. 3d at 727. The situation is different under a plain-error analysis, which applies where the defendant has failed to make a timely objection. Then, “[i]t is the defendant rather than the [State] who bears the burden of persuasion with respect to prejudice.” *Magallanes*, 409 Ill. App. 3d at 727.

¶ 72 II. Defendant’s *Pro Se* Representation

¶ 73 On this appeal, defendant argues that the trial court erred in allowing him to represent himself because he was incompetent to conduct his trial *pro se*, as demonstrated by his behavior throughout the proceedings.

¶ 74 A. The Right to Self-Representation

¶ 75 Criminal defendants have a constitutional right to self-representation guaranteed by the

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sixth and fourteenth amendments of the United States constitution. *Faretta v. California*, 422 U.S. 806, 807 (1975); U.S. Const., amends. VI, XIV.

¶ 76 1. The Ability to Waive Counsel

¶ 77 While it is well established that a defendant has a constitutional right to be represented by counsel at every stage of a criminal proceeding including sentencing, it is equally well established that a defendant has a correlative constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. *Faretta*, 422 U.S. at 814; *People v. Baker*, 92 Ill. 2d 85, 90 (1982). Thus, a defendant may competently waive counsel if such an election is voluntary and constitutes a knowing and intelligent relinquishment or abandonment of a known right or privilege. *Baker*, 92 Ill. 2d at 90. A defendant who waives his right to the assistance of counsel need not be more competent than a defendant who does not, since there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functions than the decision to waive other constitutional rights. *Godinez v. Moran*, 509 U.S. 389, 399 (1993).

¶ 78 2. *Edwards*

¶ 79 Defendant argues that, although he was found mentally competent to stand trial, he was not mentally competent to conduct his own trial *pro se*, as demonstrated by his behavior throughout the proceedings. Defendant relies on *Indiana v. Edwards*, 554 U.S. 164 (2008), in which the United States Supreme Court recognized that a defendant who is fit to stand trial is not necessarily fit to represent himself, and that a court may appoint an attorney over a defendant's objection. In other words, defendant argues that *Edwards* stands for the proposition that the

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federal constitution allows for a higher standard than just basic fitness when the defendant chooses to represent himself.

¶ 80 The issue in *Edwards* concerned a criminal defendant whom a state court found mentally competent to stand trial if represented by counsel but not mentally competent to represent himself *pro se* at trial. *Edwards*, 554 U.S. at 167. The United States Supreme Court considered whether under these circumstances the Constitution forbids a court from insisting that the defendant proceed to trial with counsel, thereby denying the defendant the right to represent himself. *Edwards*, 554 U.S. at 167. The court found that it was constitutional for a court to deny the defendant the right to represent himself when the defendant was not mentally competent to do so. *Edwards*, 554 U.S. at 168-169. In reaching that determination, the court noted its “foundational ‘self-representation’ case” of *Faretta v. California*, 422 U.S. 806 (1975). *Edwards*, 554 U.S. at 170 (citing *Faretta*, 422 U.S. at 807). The court, however, made it clear that *Faretta* did not answer the question presented in *Edwards* because *Faretta* did not concern a defendant with mental competency issues, or what is sometimes called a “gray-area” defendant. *Edwards*, 554 U.S. at 171. The court stated that the question in *Edwards* concerned whether there was a mental illness-related limitation on the scope of the right of self-representation. *Edwards*, 554 U.S. at 171. In finding that it was constitutional to limit this right, the court reasoned that an individual may well be able to satisfy the mental competence standard to stand trial when represented by counsel, yet may be unable to carry out the basic tasks needed to present his own defense without the help of counsel. *Edwards*, 554 U.S. at 175-76. The court also noted that “mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-

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representation even if he can play the lesser role of represented defendant.” *Edwards*, 554 U.S. at 176. The court additionally noted that a right of self-representation at trial will not affirm the dignity of a defendant who lacks the mental capacity to conduct his defense without the assistance of counsel. *Edwards*, 554 U.S. at 176.

¶ 81 The *Edwards* court first analyzed *Godinez v. Moran*, 509 U.S. 389 (1993), stating that: “*Godinez* involved a [court] that sought to permit a ‘gray-area’ defendant to represent himself. *Godinez*’s constitutional holding is that a State may do so.” *Edwards*, 554 U.S. at 173. The court concluded however, that *Godinez* did not resolve the question of whether a court may deny a “gray-area” defendant the right to represent himself. *Edwards*, 554 U.S. at 173. The Supreme Court concluded that the Constitution permits judges to take into account a defendant’s particular mental capacity by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. *Edwards*, 554 U.S. at 177. Thus, counsel may be appointed for a defendant who is competent enough to stand trial but due to severe mental illness is not competent to conduct trial proceedings by himself. *Edwards*, 554 U.S. at 178.

¶ 82 3. Not a Higher Standard

¶ 83 Despite defendant’s contention, *Edwards* did not hold there was a higher standard of competence requiring an additional inquiry before a trial court permitted a defendant to proceed *pro se*. Rather, *Edwards* simply found that a defendant’s right to self-representation was not absolute and could be limited if a defendant was not mentally competent to proceed *pro se*, yet was still competent to stand trial with representation.

¶ 84 In *People v. Allen*, 401 Ill. App. 3d 840, 841-42 (2010), the defendant represented himself

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at trial, but on appeal argued that he was not mentally competent to represent himself pursuant to *Edwards*. The court had ordered multiple behavioral clinic examinations. *Allen*, 401 Ill. App. 3d at 843. Defendant was twice found unfit to stand trial because he was harboring numerous delusions, but was later found fit to stand trial. *Allen*, 401 Ill. App. 3d at 844. Prior to trial, defendant fired counsel. *Allen*, 401 Ill. App. 3d at 845. At that time, defendant stated that he was 51 years old and had graduated from the University of Illinois with an engineering degree. *Allen*, 401 Ill. App. 3d at 845.

¶ 85 On appeal, relying upon *Edwards*, defendant argued that although he was mentally competent to stand trial, he was not mentally competent to conduct his own defense. *Allen*, 401 Ill. App. 3d at 850. We rejected the defendant's contention that *Edwards* mandates a higher standard of competence requiring an additional inquiry before a trial court permits a defendant to proceed *pro se* and affirmed the conviction. *Allen*, 401 Ill. App. 3d at 851.

¶ 86 Defendant in the case at bar maintains that his behavior throughout trial indicated that he was not mentally competent to proceed *pro se*. Defendant points to his "rambling outbursts and jumbled thought process" caused by his ongoing struggle with schizophrenia to suggest that he was a "gray-area" defendant during the proceedings. Defendant argues that the trial court erred in allowing him to proceed *pro se*, without appointing an attorney over his objection, because citing *Edwards*, the court allowed the trial to become a "humiliating spectacle."

¶ 87 The State contends that defendant here is not a mentally or psychologically "gray-area" defendant, who performed so poorly that the trial court should have questioned defendant's mental competence to conduct his own defense.

¶ 88

B. Pretrial Proceedings

¶ 89 In the case at bar, defendant first informed the trial court that he sought to fire his attorney and proceed *pro se* on February 16, 2010. The trial court did not directly address defendant's *pro se* request, but instead continued the case, asking defendant to give his attorney a chance to do her job. Defendant responded: "She [has] six months. I'm going *pro se*." On court dates in March, April, and May 2010, defendant continually indicated that he wanted to proceed *pro se*. On the second court date, the trial court directly inquired of defendant whether he wanted to represent himself. Defendant stated, "Yes" and that he had been considering the prospect of doing so for eight months. The trial court asked defendant about his background and elicited that defendant had attended community college and that his legal background consisted of his representing himself *pro se* before. When asked on two subsequent occasions by the trial court whether he wanted to waive his right to appointed counsel, defendant again stated: "Yes." The trial court found that defendant had been admonished pursuant to Supreme Court Rule 401 and indicated that he did not wish to have an attorney. Defendant stipulated that he was fit to stand trial on April 12, 2010. Specifically, Dr. Kelly found defendant fit to stand trial and legally sane at the time of the offense; and defendant stipulated that he was fit to stand trial, but would not stipulate to Dr. Kelly's opinion that his alleged schizophrenia was not a contributing factor to his mental state at the time of the offense.

¶ 90 In May, July, August, and September 2010, defendant filed various *pro se* motions including a motion to quash arrest and suppress evidence, as well as a lengthy motion for dismissal, alleging violations of the fifth, sixth, and eighth amendments to the United States

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Constitution, and a second *pro se* motion to dismiss based on speedy trial grounds. Defendant also demanded trial. On September 9, 2010, defendant proceeded on his motion to quash arrest in which he stated that he had two witnesses to present, but neither appeared in court. The trial court denied the motion. On September 27, 2010, defendant filed a motion to reconsider the court's ruling denying his motion to quash arrest, but upon realizing that the motion would require another court date to allow the State to respond thus postponing a trial date further, he withdrew the motion and continued to demand trial.

¶ 91 In addition to defendant's personal demonstration through his motions of his grasp of the proceedings, there were two behavioral clinical examination reports generated by Dr. Kelly, which firmly established defendant's fitness to stand trial. Dr. Kelly's opinions made it clear that defendant was not only fit to stand trial, but that most of defendant's "issues" actually were faked. Dr. Kelly's diagnosis was malingering, followed by a diagnosis of schizophrenia that was actually "now in remission." Defendant even admitted that he made up his psychological symptoms. When directed by the court to determine defendant's fitness to stand trial, a trained expert in psychiatry ultimately opined that defendant was fabricating or exaggerating symptoms of any mental disorders. In the case at bar, defendant was not only found fit to stand trial, but the fact that he was diagnosed as "Malingering" calls into question any argument that defendant's behavior at trial was anything but a product of his own desire to avoid culpability.

¶ 92 Defendant, having not only been found fit to stand trial but also to be malingering, knowingly waived his right to counsel and proceeded to trial *pro se*, which was his right to do.

¶ 93

C. Defendant's Conduct at Trial

¶ 94 Defendant also demonstrated an ability to represent himself at trial. During his bench trial, defendant asserted a reasonable defense in light of the evidence against him, namely, that there was a reasonable doubt; and he exhibited a sound, albeit unsuccessful trial strategy in his cross-examination of the State's witnesses. He cross-examined the victim regarding the taking of the cell phone trying to assert that Leslie gave the cell phone to defendant, thus negating the wrongful taking element of a robbery. Additionally, defendant further impeached Leslie by asking him the date upon which defendant struck him, which Leslie did not know.

¶ 95 During his cross-examination of Officer Lefridge, defendant elicited that, upon his arrest, he complied with the officer's requests and the use of force was thus unnecessary. Defendant also questioned the officer as to what she thought his age was, eliciting a response that he was between 20 and 30 years old when he was actually 33 years old. Defendant also questioned the officer about what he perceived was a lack of probable cause to arrest him.

¶ 96 Following the witnesses, the State sought to enter into evidence photos of the victim's injuries and a copy of the victim's cellular telephone record respectively. Defendant objected to the introduction of the evidence, arguing that the photos were irrelevant to the charges against him. Defendant testified in his case in chief in furtherance of his strategy to create a reasonable doubt, testifying that the date of the incident was actually September 21, and not the 23<sup>rd</sup>.

¶ 97 Defendant provided a reason for his presence at Harris's home stating that she was going to braid his hair. Defendant testified that it was Harris that woke Leslie, which made Leslie mad. Defendant testified that he then attempted to leave, but Leslie stood in his way and wanted to

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know why “you over here bothering us,” and defendant responded, he did not have anything to do “with that.”

¶ 98 Defendant then testified that the cellular telephone in question actually belonged to him. After he was cross-examined, defendant again sought to call his two witnesses, but neither was present in court. Defendant rested, but prior to his closing argument, he asked for a continuance to present his witnesses, which the trial court denied.

¶ 99 While defendant’s closing argument was not nearly as concise as one from a learned counsel would be, the record indicates that defendant did present a relatively cohesive and well-expressed argument that there was reasonable doubt in the case. *People v. Tatum*, 389 Ill. App. 3d 656, 670 (2009) (a *pro se* defendant is held to the same standards as an attorney). Defendant’s closing argument was merely the result of “a nonlawyer defending himself.” *Tatum*, 389 Ill. App. 3d at 670.

¶ 100 Defendant argued in his closing how the victim could have been injured not by him, and why defendant would not have taken the victim’s cellular telephone. Specifically, defendant first argued, regarding the cellular telephone, that the records introduced into evidence could have been “doctored.” Defendant stated that, because he had taken computer classes, he believed that anyone with access to a computer could alter the records to say whatever they want. Defendant also argued that the bruises and marks on the victim’s face could have occurred as a result of the victim tripping and falling down the stairs, or perhaps losing in a game of dominos and being beaten as a result of not being able to pay the winner. Defendant further argued that he would have no incentive to take the victim’s cellular telephone because it was not a very good cellular

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telephone, as it did not have a camera function.

¶ 101 In sum, defendant does not fall into the “gray-area” of mental fitness addressed by *Edwards*. See *Allen*, 401 Ill. App. 3d at 852 (defendant was not a “gray-area” defendant where he was found fit to stand trial, and where the trial court had an opportunity to observe him firsthand). Although defendant argues that some of the theories he advanced indicated that he was not competent to represent himself, the record reflects that he did a decent job, in light of the evidence against him. His arguments were grounded on facts in the record and inferences that could be drawn from them.

¶ 102 In *Allen*, we found no error in the trial court’s decision to allow defendant to proceed *pro se*, where defendant had been found fit to stand trial and where the trial court had an opportunity to observe his behavior firsthand. *Allen*, 401 Ill. App. 3d at 852. We stressed that an appellate court should not substitute its’ judgment for that of the trial court on the question of whether defendant was mentally competent to represent himself. *Allen*, 401 Ill. App. 3d at 852. Similarly, in the case at bar, we will not substitute our judgment for that of the trial court, which had lengthy discussions with defendant over multiple court dates and was therefore in the best position to ascertain defendant’s competency to represent himself *pro se*. Accordingly, we find that the trial court did not err by allowing defendant to proceed *pro se* as he repeatedly requested to do.

¶ 103

#### CONCLUSION

¶ 104 For the reasons set forth above, we find that the trial court did not abuse its discretion in allowing defendant to proceed *pro se*, without appointing counsel over his objection. Defendant’s

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behavior throughout the trial proceedings did not require the trial court to override defendant's repeated requests to proceed *pro se*, where defendant was twice found competent to stand trial, and where the trial court had the ability to observe defendant's behavior firsthand through multiple court dates and proceedings.

¶ 105 Affirmed.