

No. 1-12-0425

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. 07 CR 4421
)	
RODELL NUNLEY,)	Honorable
)	Thomas M. Tucker,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Because the court did not abuse its discretion by *sua sponte* ordering a behavioral clinical examination (BCX), defendant's speedy-trial term was properly tolled.

¶ 2 Following a jury trial, defendant Rodell Nunley was convicted of burglary and sentenced to three years in prison. On appeal, defendant contends that the trial court abused its discretion in ordering a behavioral clinical examination (BCX), and therefore the time awaiting the BCX results should not have tolled defendant's speedy trial clock. He further contends that his conviction should be reversed because 120 days not attributable to his delay passed before the

commencement of his trial in violation of section 103-5(a) of the Code Criminal Procedure of 1963 (speedy-trial statute)(725 ILCS 5/103-5(a)(West 2006)). We affirm.

¶ 3 Because defendant does not challenge the sufficiency of the evidence, only a summary discussion of the facts is required. According to the State's theory of the case, defendant hid in the basement of a Kmart store, emerged when the store was closed on Christmas day 2006, smashed display cases, and made off with a duffel bag full of jewelry. The State supported its theory of the case with surveillance video and evidence that stolen items were located in defendant's possession when he was arrested. On appeal, defendant challenges only whether he was tried within the 120-day statutory speedy trial limit. Although this case was pending in the trial court for nearly five years, defendant concedes that most of that delay was attributable to him, and the parties agree that whether defendant was tried within the 120-day limit comes down to the issue of whether a single 39-day delay which resulted when the trial court ordered a BCX was attributable to defendant.

¶ 4 The trial court ordered the exam in question over defendant's objections on October 17, 2011. Defendant objected on the basis that he had been evaluated twice in the past and found fit. Defense counsel maintained that he had reasonable, articulate conversations with defendant about the case and his defense. The court responded that the proper thing to do was to have a BCX done prior to moving to trial to determine if defendant was fit.

¶ 5 On November 7, 2011, defense counsel indicated that neither he nor defendant had been in contact with Forensic Clinical Services to complete a BCX because defendant still objected to the exam and was asserting a presumption of fitness. The court ordered a new evaluation, and defendant was eventually examined. While the BCX was pending, defendant continued to demand trial, and filed a motion to dismiss for lack of a speedy trial. The motion asserted that 120 days had passed since defendant had demanded trial, and because nothing suggested that he

was unfit for trial, the court-ordered BCX should not toll the speedy-trial clock. The State argued that the BCX was a delay attributable to defendant. The court agreed with the State, and stated that the BCX order tolled the speedy-trial term.

¶ 6 Thirty-nine days later, on December 16, 2011, the court received the results of the BCX, finding defendant fit to stand trial. The jury trial commenced on December 19, 2011, and defendant was found guilty of burglary.

¶ 7 Defendant renewed his speedy trial objections in his posttrial motion and the trial court addressed the issue stating:

"I did feel at the time after listening to him a couple of times and some of the things he was saying and not saying and keeping his head down and not looking around, I thought there may be a medical problem. It wasn't but I wanted to get that done for him. I wanted to get any help that he could get."

¶ 8 The court subsequently sentenced defendant to three years in prison.

¶ 9 On appeal, defendant contends that because the trial court abused its discretion in ordering the BCX, the evaluation should not have tolled defendant's speedy trial clock.

¶ 10 The right to a speedy trial is guaranteed by both the United States Constitution and the Constitution of Illinois. See *People v. Crane*, 195 Ill. 2d 42, 46 (2001). However, because of the "imprecise nature" of the constitutional rights our legislature has implemented statutory speedy-trial provisions. *Id.* at 48. "The statute implements the constitutional guarantee, but is not equivalent to, or coextensive with, the constitutional right." *Id.* Generally, in the absence of prolonged delay or novel circumstances, the statute operates to prevent constitutional claims from arising. *Id.* Here, defendant asserts only a violation of his statutory right to a speedy trial.

¶ 11 The applicable standard in reviewing whether a trial court denied a defendant the statutory right to a speedy trial violation is abuse of discretion. *People v. Brexton*, 2012 IL App (2d) 110606, ¶ 14. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009). In evaluating the trial court's exercise of its discretion, we will keep in mind that the trial court is in a superior position to view the defendant's behavior firsthand. *People v. Tapscott*, 386 Ill. App. 3d 1064, 1075 (2008). The defendant has the burden of establishing a violation of his or her speedy-trial rights. *People v. Higgenbotham*, 2012 IL App (1st) 110434, ¶ 16.

¶ 12 Section 103-5(a) of the speedy-trial statute provides: "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, [or] by an adjudication of unfitness to stand trial." 725 ILCS 5/103-5(a) (West 2006).

¶ 13 Fitness to stand trial requires that a defendant understand the nature and purpose of the proceedings against him and be able to assist in his defense. 725 ILCS 5/104-10 (West 2006). The issue of a defendant's fitness to stand trial may be raised by the court at any time before, during, or after trial, and the court may order an examination by a psychologist or psychiatrist. 725 ILCS 5/104-11(a), (b), 104-13(a) (West 2006). Our supreme court has held that the trial court may request a fitness examination to assist in its determination of whether a *bona fide* doubt of a defendant's fitness exists prior to holding a fitness hearing. *People v. Hanson*, 212 Ill. 2d 212, 217 (2004). This court has held that "an examination for fitness ordered under this section operates to toll the speedy trial term." *People v. Seaman*, 203 Ill. App. 3d 871, 879 (1990).

¶ 14 First, we find that the trial court did not abuse its discretion when it ordered a BCX on defendant. Here, the court was within its authority to order a BCX *sua sponte*. 725 ILCS 5/104-11(a), (b), 104-13(a) (West 2006). The record shows that the trial court harbored concerns regarding whether defendant understood the nature and purpose of the proceedings. At the hearing on defendant's posttrial motion, the trial court expressly addressed defendant's claim that a BCX was unwarranted and described the observations of defendant's demeanor and behavior that prompted the trial court to order the BCX. Once the results of the BCX established defendant's fitness, the court proceeded to trial. Defendant incorrectly argues that the court was required to establish a *bona fide* doubt of defendant's fitness prior to ordering the BCX. As the State points out, the court is required to demonstrate a *bona fide* doubt of defendant's fitness prior to holding a fitness hearing; however, the court is not required to have a *bona fide* doubt to order a BCX. *Hanson*, 212 Ill. 2d at 217. In fact, a BCX is a device that the court often uses to determine if a *bona fide* doubt of defendant's fitness exists before holding a fitness hearing. *Id.* Thus, because the court is in a superior position to view defendant's behavior firsthand, we defer to its judgment that defendant was required to undergo a BCX before proceeding to trial.

¶ 15 Finding that the trial court properly ordered defendant's BCX, we find that defendant's speedy-trial term was properly tolled. The speedy-trial statute specifically provides that a court-ordered BCX effectively stops the speedy-trial clock. 725 ILCS 5/103-5(a) (West 2006). In this case, we find no exception to this rule. The court did not err when it found that the 39-day delay which resulted when it ordered the BCX properly tolled the speedy-trial clock.

¶ 16 Defendant relies on *People v. Benson*, 19 Ill. 2d 50 (1960), *People v. Gibson*, 21 Ill App. 3d 692 (1974), and *People v. Hugley*, 1 Ill. App. 3d 828 (1971) and argues that not every fitness evaluation will serve to toll the speedy trial clock. We disagree. We agree with the State that *Benson* predates the current version of the speedy-trial statute, and thus has limited value. In

Gibson, this court upheld the trial court's discharge of the defendant because the trial court found that the State improperly sought an exam when the defendant did not manifest symptoms suggesting he was unfit to stand trial. *Gibson*, 21 Ill. App. 3d at 696. In *Hugley*, this court reversed the defendant's conviction because the State's petition suggesting incompetency "was filed merely for purposes of delay." *Hugley*, 1 Ill. App. 3d at 831. Conversely, in the instant case, the BCX was ordered by the trial court *sua sponte*; there is no indication in the record that the State sought the BCX nor any indication that it did so to improperly delay defendant's trial. Thus, because we find that the BCX was properly ordered, the 39 days spent awaiting the results of the BCX were correctly attributed to defendant under the provisions of the speedy-trial statute. Accordingly, defendant was tried within the statutorily mandated 120-day speedy trial term.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.