

No. 1-12-0943

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 17133
	)	
BOBBY FORD,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Simon and Liu concurred in the judgment.

**ORDER**

*Held:* Where there was no *bona fide* doubt as to defendant's fitness to stand trial and represent himself, the trial court did not err when it did not hold a fitness hearing, nor did it err in finding defendant in direct criminal contempt of court.

¶ 1 Following a jury trial, defendant Bobby Ford was convicted of possession of contraband in a penal institution and sentenced to 14 years' imprisonment as a Class X offender. In addition, the trial court found defendant in direct criminal contempt of court and sentenced him to a

consecutive term of 180 days in prison. On appeal, defendant contends the trial court erred when it did not hold a fitness hearing or make an independent determination of his fitness, because defendant's repeated angry outbursts before and during trial, his refusal to take his psychotropic medications, and other evidence documenting his history of mental illness raised a *bona fide* doubt as to his fitness to stand trial and represent himself. Defendant also contends the court erred when it summarily found him in direct criminal contempt of court without holding a hearing on his mental capacity to form the intent to commit contempt because there was evidence that he was suffering from a mental illness. We affirm.

¶ 2 The record shows that defendant was in custody in the Cook County Department of Corrections for a retail theft case when he was charged with possession of contraband in a penal institution for possessing a sharpened metal object in his jail cell.<sup>1</sup> At his arraignment on the possession charge, defendant refused to allow the court to appoint him counsel for the trial. The trial court noted that during prior proceedings in the retail theft case, it had discussed with defendant his right to counsel and his desire to represent himself *pro se*. By reference, the court incorporated those prior conversations into the record. The court advised defendant of the possible sentencing penalties he faced. Defendant affirmed that he understood the possible penalties and insisted on representing himself.

¶ 3 Moments later, defendant questioned why it took two months to indict him on the possession charge. After explaining the process, the court stated "[t]his is where you get yourself in trouble because you are really out of your league. You think you know a lot more than you do." Defendant replied "[t]hat's bullshit" and requested discovery. The court acknowledged that defendant was angry, but advised him not to use profanity in the courtroom. The State elected to

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<sup>1</sup> Defendant has another appeal pending in this court under case number 1-13-0147.

proceed on the possession case before the retail theft case, and defendant demanded trial.

Defendant then requested copies of his disciplinary reports and the names of the men who were in the cells adjacent to his, whom he planned to call as witnesses. The court granted defendant's request, but explained that he could not demand trial and request discovery at the same time.

After discussing the issue for a few minutes, the court stated that it was going to continue the case without a demand running and order a behavior examination to determine defendant's fitness to represent himself. Defendant stated that he did not want an examination. The court replied that it was concerned because defendant understood some things, but misunderstood others. Over defendant's repeated objections, the court ordered a fitness examination. Defendant again refused to take the examination, addressed the court with profanity, and was removed from the courtroom. The court then stated "I will not enter any contempt orders until I have a return on the fitness exam. I am not sure that he is stable."

¶ 4 On the next status date, the trial court noted that defendant insisted on proceeding *pro se* and stated "[w]e've had long talks about that." The court further noted that it requested a fitness examination because defendant repeatedly became "very profane and belligerent," and nothing had occurred to provoke such a reaction. Defendant asked how much time remained on his term. The court explained that the term was not running because, based on defendant's profane language, it wanted to be sure he was fit for trial and capable of representing himself. Defendant said he was upset at the time. The court was concerned that something was "going on" with defendant, and that he would use profanity and swear in front of the jury. The court stated "I need to have this examination checked out, because you have a short fuse." The court assured defendant that it was not delaying the trial, but that it had a duty to insure that everything was being done correctly. Defendant repeatedly stated that he did not need an exam, that there was

nothing wrong with him, and that he was angry at the time. He then questioned how the court could say "hell with [the] term" and accused the court of punishing him. The court denied defendant's accusation and explained "I know you're frustrated, but I can't just set this for trial until I'm sure that you're fit for trial and you're raising some issues to me that make me wonder if you're actually fit for trial or not so I have an obligation to check that out." The court assured defendant that if he was found fit, it would set a trial date. Defendant claimed he was being denied his right to trial and that he had a right to be upset, which did not make him "crazy." The court continued the case for completion of the fitness exam.

¶ 5 At the next status date, the court stated that defendant was found fit for trial and fit to represent himself, and concluded "[s]o that issue is passed." Defendant again demanded trial and asked how many days remained on his term. The court explained that it could not advise him or act as his lawyer, and that it was allowing defendant to represent himself "regardless of whether I think it's a good idea or a bad idea." The court set a trial date and offered to appoint counsel for defendant. Defendant insisted that he did not want a lawyer appointed.

¶ 6 Prior to trial, defendant filed a motion to dismiss claiming his right to a speedy trial had been violated. The court stated that there was no violation and denied the motion. Defendant questioned when his term began, and the court again stated that it was not his lawyer and could not answer him. The court then told defendant that the term began the day he was indicted, and that the case was within 120 days of that date. Defendant then addressed the court using profanity. The following exchange then occurred:

"THE COURT: If you're going to start talking like this in court, you're going to end up in contempt of court, you're going to cost yourself more time. I don't even want to put you in contempt

of court, I just want to get the case done. You can't do this in front of the jury. You get mad all the time. You get profane –

THE DEFENDANT: Excuse me, can I go? Can I go?

THE COURT: Talk to me. Listen to me.

THE DEFENDANT: I don't want to talk to you about nothing, your Honor. You're full of shit.

THE COURT: We're not going to have a trial because you'll end up in contempt of court.

THE DEFENDANT: I'm not – look, I don't want to talk to you because you're not listening to me.

THE COURT: You're going to end up in contempt and you're going to complicate this. The way – if you want to get to trial and have the jury hear the case, then we have to be calm, you can't be swearing. If you start swearing at me, you're going to end up in contempt of court. I have a thicker skin than most. I don't really care too much, but you will not do this in front of everybody and make the courtroom into a circus. You can't talk like that here. You're not going to do that again. If you do that again you're going to end up in contempt, there will not be a trial, and you'll accumulate time in jail for contempt of court. You're on notice."

¶ 7 Immediately preceding jury selection, defendant confirmed that he had previously participated in jury selection *pro se* in a prior case. The trial court explained the jury selection process, and defendant replied "I understand." While reviewing the State's motion *in limine*, the

court advised defendant of how the trial would proceed, and of topics he could and could not discuss in front of the jury. The record shows that defendant participated in jury selection and used his peremptory challenges to strike potential jurors. He also gave an opening statement.

¶ 8 Defendant is not challenging the sufficiency of the evidence to sustain his conviction for possession of contraband in a penal institution. Therefore, a detailed account of the evidence presented at trial is not necessary. The evidence established that on August 29, 2011, defendant became angry after his cellmate in the Cook County Department of Corrections, Janusz Kopycinski, spat into the toilet and ignored defendant's order to flush the toilet. Defendant retrieved a white object, approximately one foot long, from underneath his mattress and charged at Kopycinski, holding the object in his right hand. After a brief struggle, defendant placed the object back under his mattress. Kopycinski reported the incident to correctional officer Jacob Pietryla, who recovered the object from underneath defendant's mattress. The object was comprised of two pieces of white metal, originally part of a light fixture, flattened to be partially sharpened, and tied together at one end with torn sheets. Officer Pietryla testified that inmates are prohibited from possessing such objects. The record shows that defendant cross-examined both Kopycinski and Officer Pietryla. Defendant also presented testimony from Darren Hayes, who had been detained in the cell next to defendant's, and defendant testified himself.

¶ 9 Defendant began his closing argument by stating "I'm tired of hearing that bullshit." The court cautioned defendant to watch his language. Moments later, defendant began discussing a video that was never presented as evidence during trial. The trial court advised defendant that he could not discuss the video, and defendant repeatedly stated that he was not a lawyer. Defendant then said "I don't understand what the hell you're saying to me," and the court excused the jury from the courtroom. Defendant began arguing with the court, and the court warned him that he

would be held in contempt of court if he continued yelling and using profanity. The court advised defendant about what he was allowed to discuss in his closing argument, and defendant responded "I talk about what the fuck I want to talk about." Defendant continued arguing and swearing. The trial court then found defendant in direct criminal contempt of court. The court stated that it was going to bring the jury back for defendant to finish his argument, but advised him that if he began yelling or talking about the video, it would stop him. Defendant finished his argument without incident, but interrupted the State's rebuttal argument by interjecting that Kopycinski was "a liar." The court admonished defendant not to interrupt the prosecutor again. Shortly thereafter, the court stopped the State's argument because defendant excused himself from the courtroom to spit. When the State's argument resumed, defendant continued interjecting comments, including "[t]hat's a lie" and "[g]uards are full of shit."

¶ 10 While the trial court instructed the jury, defendant began making remarks such as "I'm locked up for a retail theft. Why would I do something like that?" and "This is crazy as hell." The court warned defendant that if he said anything else, he would be removed from the courtroom. Minutes later, defendant again interrupted, stating "Can you tell them how much time you're talking about I'm getting for this?" Defendant was then removed from the courtroom. On his way out, defendant remarked "Talking about me getting 6 to 30 and I'm here for retail theft. You all got to be lost y'all mind. I would never do nothin' like this." The trial court informed the jury that it could not allow defendant to cause a disruption, and that he could listen to the proceedings from the back room. The court admonished the jury to focus on the law and not to consider defendant's behavior in any way in reaching its verdict. After deliberating for two hours, the jury found defendant guilty of possession of contraband in a penal institution. Defendant then requested counsel to represent him for posttrial motions and sentencing.

¶ 11 During posttrial proceedings, the court asked defendant why he refused to speak with the probation officer who was conducting the presentence investigation. Defendant claimed he was taking psychiatric medications, including Theodol and Risperdal, and he did not have them at the time of the investigation. The court verified that defendant had been examined and found fit and not in need of medication. The court explained the purpose of the investigation. Defendant claimed he did not understand what the court was saying and that no one was explaining anything to him. The court said it believed defendant understood what was occurring, and that defendant was "a very manipulative man." The court added "[y]ou have a history of it. And I've seen the way you've conducted yourself throughout all these proceedings." The court instructed defense counsel to draft a posttrial motion for defendant and continued the case.

¶ 12 Defense counsel filed a posttrial motion arguing that the court should have ordered a second fitness evaluation because one of the doctors who conducted the first evaluation indicated that defendant refused to take his Depakote and Prozac medication. The trial court summarized the history of this case, noting that it tried numerous times to talk defendant out of representing himself. The court further noted that it went against defendant's will and ordered him to be examined for fitness to represent himself. The court stated that the written psychiatric evaluation indicated that defendant understood the court system, the roles of the parties, and the courtroom proceedings. The court further stated that defendant gets "a little hostile when he doesn't get his way." The court said it did everything it could to insure that defendant was fit for trial, and tried to talk him out of representing himself. The court concluded:

"I am looking at everything that happened here. If he chose not to take his meds, it doesn't mean he is not fit for trial. I am convinced he was fit for trial. His displays of hostility are of his

own making and his own doing. He wanted to represent himself.

So be it. He did represent himself."

The trial court denied defendant's posttrial motion. During sentencing, defense counsel stated that defendant had "mental health problems," that he was prescribed four medications, including Risperdal and Depakote, but he did not take them regularly. The trial court sentenced defendant to 14 years' imprisonment as a Class X offender based upon his extensive criminal history. The court also sentenced defendant to a consecutive prison term of 180 days for direct criminal contempt of court based upon his conduct during the trial.

¶ 13 On appeal, defendant first contends the trial court erred when it did not hold a fitness hearing or make an independent determination of his fitness, because defendant's repeated angry outbursts before and during trial, his refusal to take his psychotropic medications, and his history of mental illness, including a prior suicide attempt, raised a *bona fide* doubt as to his fitness to stand trial and represent himself. Defendant claims that even if he was fit for trial, he was not fit to represent himself. Defendant argues that a realistic account of his mental health would have revealed his inability to control his temper when confronted with unfavorable rulings or legal concepts he was unable to understand. He further argues that the court was required to make an independent determination of his fitness rather than deferring to the psychological evaluations.

¶ 14 The State argues that defendant had no right to a fitness hearing because there was no *bona fide* doubt of his fitness. The State asserts that defendant was found fit, he communicated clearly with the trial court throughout the proceedings, and his hostility and profane outbursts were not due to mental illness, but instead, were manipulative and volitional.

¶ 15 A defendant is presumed to be fit to stand trial. 725 ILCS 5/104-10 (West 2010). Defendant is unfit when he is unable to understand the nature and purpose of the court

proceedings or cannot assist with his defense due to his mental or physical condition. 725 ILCS 5/104-10 (West 2010); *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). Fitness refers only to defendant's ability to function within the context of a trial. *Haynes*, 174 Ill. 2d at 226. "A defendant may be competent to participate at trial even though his mind is otherwise unsound." *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991).

¶ 16 A defendant is entitled to a fitness hearing only when a *bona fide* doubt of his fitness to stand trial has been raised. *Eddmonds*, 143 Ill. 2d at 512. To determine if a *bona fide* doubt of fitness exists, the trial court may order a fitness examination by a qualified expert. 725 ILCS 5/104-11(b) (West 2010). The decision to order such an examination is within the sole discretion of the trial court because the court is in the superior position to observe defendant and evaluate his conduct. 725 ILCS 5/104-11(b) (West 2010); *Haynes*, 174 Ill. 2d at 253. The trial court may request a fitness examination to determine if a *bona fide* doubt exists without a fitness hearing becoming mandatory. *People v. Hanson*, 212 Ill. 2d 212, 217 (2004). If, after the examination, the trial court finds no *bona fide* doubt exists, then no further hearings on the issue of fitness are necessary. *Hanson*, 212 Ill. 2d at 217.

¶ 17 Factors the trial court may consider to assess whether a *bona fide* doubt of fitness exists include defendant's irrational behavior, his demeanor in court, and any prior medical opinion on his competence to stand trial. *Eddmonds*, 143 Ill. 2d at 518. Our supreme court has stated "[i]t is undisputed, however, that there are 'no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.'" *Eddmonds*, 143 Ill. 2d at 518, quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975). The existence of a mental disturbance or the need for psychiatric care does not necessitate a finding of *bona fide* doubt.

*Hanson*, 212 Ill. 2d at 224. Similarly, the taking of psychotropic medication does not require a finding of a *bona fide* doubt of fitness. *People v. Mitchell*, 189 Ill. 2d 312, 330-31 (2000). Our supreme court has also held that a history of suicide attempts does not, by itself, demonstrate that a defendant is unfit. *People v. Sanchez*, 169 Ill. 2d 472, 483 (1996). Moreover, a defendant's extremely disruptive behavior in the courtroom, including aggressive yelling and the repeated use of profanity, does not compel a finding of a *bona fide* doubt of fitness. *People v. Smith*, 253 Ill. App. 3d 948, 953-54 (1993).

¶ 18 The ultimate issue of defendant's fitness is determined by the trial court, not the experts. *People v. Coleman*, 168 Ill. 2d 509, 525 (1995). Whether a *bona fide* doubt of defendant's fitness exists is a matter within the sound discretion of the trial court. *People v. Johnson*, 191 Ill. 2d 257, 269 (2000).

¶ 19 Here, we find that the trial court did not abuse its discretion when it determined that a fitness hearing was not necessary because there was never a *bona fide* doubt of defendant's fitness. The record shows that the trial court ordered the fitness examination because defendant repeatedly became "very profane and belligerent" during pretrial proceedings. The court was concerned because nothing had occurred to provoke such a reaction. The court specifically ordered that the examination was to determine defendant's fitness for trial, and his fitness to represent himself. The court expressly stated that it was concerned that defendant would use profanity in front of the jury during the trial. Defendant was adamant that he did not need a fitness examination and repeatedly objected to the court's order, yelling and using profanity until he was removed from the courtroom. On the next court date, defendant argued that he did not need a fitness exam because there was nothing wrong with him, and he was merely angry and upset. Defendant claimed he had a right to be upset, which did not make him "crazy." The court

explained that it needed to order the fitness examination because defendant had a "short fuse," and the court had a duty to insure that everything was being handled properly and that defendant was fit for trial. The court assured defendant that if he was found fit during the examination, it would set a trial date. Both doctors who examined defendant found him fit for trial and fit to represent himself. Based on those findings, the court concluded "that issue is passed." The record shows that the court had no further questions regarding defendant's fitness.

¶ 20 The issue of defendant's fitness did not arise again until posttrial proceedings. When defendant claimed he did not understand what the court was telling him, the court stated that it believed defendant understood what was occurring, and that defendant was "a very manipulative man." The court added "[y]ou have a history of it. And I've seen the way you've conducted yourself throughout all these proceedings." When counsel raised the issue of defendant's fitness in the posttrial motion, the court denied the motion, expressly stating that it was "convinced he was fit for trial" and that defendant's "displays of hostility are of his own making and his own doing." The record thus shows that the trial court had no doubt whatsoever regarding defendant's fitness for trial and fitness to represent himself. The trial court had the opportunity to personally observe defendant and evaluate his conduct throughout all of the proceedings in this case. On that basis, the court found that defendant's hostility and profane outbursts were not due to mental illness, but instead, arose from defendant's own volition and his attempts to manipulate the court and the jury. We find no reason to disturb that determination.

¶ 21 Furthermore, our review of the record reveals no merit in defendant's argument that his angry outbursts, his refusal to take his psychotropic medication, and his history of mental illness, when considered collectively, raised a *bona fide* doubt as to his fitness to stand trial and represent himself. As discussed above, the trial court found that defendant's angry outbursts

were not a result of mental illness, but instead, were of his own volition and attempts at manipulation. Regarding defendant's psychotropic medication, the record indicates that his refusal to that medication had no effect on his mental fitness. The record contains a psychiatric summary report written by Dawna Gutzmann, a staff psychiatrist with Forensic Clinical Services, who examined and evaluated defendant. Dr. Gutzmann reported that defendant had been prescribed Prozac and Depakote, but he told her he had stopped taking the medications about two weeks before his evaluation. Defendant denied any negative consequences as a result of discontinuing the medication. In her report, Dr. Gutzmann expressly opined that "defendant need not take this medication in order to be fit for trial." Consequently, defendant's refusal to take the medication did not raise a *bona fide* doubt of his fitness.

¶ 22 Similarly, we find that nothing in the record regarding defendant's mental health history raises a *bona fide* doubt of his fitness. Dr. Gutzmann found that defendant did not demonstrate or endorse any psychotic symptoms, and he denied any mood disturbance or neurovegetative symptoms. Defendant told Dr. Gutzmann that he had never undergone any mental health treatment. He said he had suicidal ideation many years earlier, but denied a history of actual suicide attempts. Dr. Gutzmann found that defendant's thought processes were coherent and goal directed, and he was fully oriented with no evidence of a thought disorder or delusions. His memory, concentration, reasoning, judgment and impulse control were intact and consistent with at least an average level of intellectual functioning. Based on her examination of defendant and her review of his record, which included previous psychiatric and psychological evaluations by Forensic Clinical Services, Dr. Gutzmann opined that defendant was fit to stand trial and fit to represent himself. She expressly found that defendant understood the charge against him,

comprehended the nature of the courtroom proceedings, correctly identified the roles of various courtroom personnel, and displayed the capacity to assist counsel in his defense.

¶ 23 In addition to Dr. Gutzmann's psychiatric evaluation, the record also contains a psychological evaluation written by Erick Neu, a licensed clinical psychologist with Forensic Clinical Services who also examined defendant. Dr. Neu found that defendant was only marginally cooperative and not a very reliable historian because he was quite guarded, refused to answer some questions, and provided some contradictory information. Dr. Neu found that defendant's attitude was not attributed to a mental illness or cognitive impairment, but instead, was "volitional." Dr. Neu noted that defendant was frustrated and somewhat angry about having to undergo a fitness examination.

¶ 24 Dr. Neu also reviewed defendant's prior psychiatric evaluation from 2010. Defendant claimed that he had never received mental health treatment, but then acknowledged that he was once hospitalized overnight and previously prescribed Depakote after being confronted with the information from his prior psychiatric evaluation. Defendant denied ever receiving any additional mental health treatment. Defendant also denied that he ever attempted suicide, then acknowledged that the prior evaluation indicated he once attempted suicide, but he refused to discuss it any further. The prior evaluation, contained in the record, indicates that the night before his trial in 2010, defendant attempted to hang himself in his jail cell. During an evaluation the following day, defendant told Dr. Mathew Markos, the director of Forensic Clinical Services, that he had no intention of killing himself, but instead, intended to draw attention to himself and the fact that jail personnel beat him and took his personal belongings.

¶ 25 Similar to Dr. Gutzmann, Dr. Neu also found no indication of thought disorder, delusions, psychotically based paranoia, depression or prominent cognitive dysfunction. Dr. Neu

asked numerous questions about courtroom procedure and courtroom personnel and defendant answered every question correctly. Based on his examination and review of defendant's record, Dr. Neu also opined that defendant was fit to stand trial and fit to represent himself. The record before this court therefore reveals that defendant's mental health history consists of merely one overnight hospitalization, one alleged suicide attempt which defendant denies was a suicide attempt, and a couple of prescribed medications that were not necessary for his fitness.

Consequently, we find that his mental health history did not raise a *bona fide* doubt of his fitness. Even considering his angry outbursts, his refusal to take his medications and his mental health history collectively, no *bona fide* doubt of defendant's fitness existed. Throughout the proceedings, defendant adamantly maintained that he did not need a fitness examination, that he was fine, and that he was angry and upset, not "crazy." Both Dr. Gutzmann and Dr. Neu concluded that defendant thoroughly understood the nature and purpose of the court proceedings, and was fit for trial and fit to represent himself. Based on these expert opinions and its own personal observations, the trial court found that there was no *bona fide* doubt of defendant's fitness. Accordingly, we find no abuse of discretion in the trial court's decision to end the fitness inquiry without conducting a fitness hearing.

¶ 26 Defendant further argues that the United States Supreme Court added an additional "crucial layer" for fitness determinations creating a higher standard of fitness for cases where the defendant is representing himself *pro se*. See *Indiana v. Edwards*, 554 U.S. 164 (2008). This court has previously rejected this same argument. *People v. Allen*, 401 Ill. App. 3d 840, 851 (2010); *People v. Tatum*, 389 Ill. App. 3d 656, 670 (2009). In *Allen*, we found that

*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 held 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." *Allen*, 401 Ill. App. 3d at 851.

¶ 27 We decline to depart from our prior holdings in *Allen* and *Tatum*, and similarly reject defendant's argument here. The record shows that on numerous occasions throughout the proceedings, and in prior proceedings, defendant insisted on representing himself, even against the trial court's advice. The trial court had "long talks" with defendant and tried to talk him out of representing himself. Defendant told Dr. Gutzmann that he wanted to represent himself because he was unable to trust his attorney. Defendant told Dr. Neu that a public defender would not have his "best intentions at heart." Dr. Neu expressly found that "there was nothing to suggest that a mental condition was causing him to refuse the services of a public defender or would prevent him from being capable of representing himself." As stated above, defendant was found fit to represent himself, and no *bona fide* doubt of his fitness existed. These findings were sufficient to allow defendant to represent himself, and no further inquiry was required.

¶ 28 Defendant next contends the trial court erred when it summarily found him in direct criminal contempt of court without holding a hearing on his mental capacity to form the intent to commit contempt because there was evidence that he was suffering from a mental illness. Defendant maintains his argument that his angry outbursts, which were the bases for the contempt finding, raised a *bona fide* doubt of his fitness. Consequently, defendant argues that there was a question of his fitness at the time of the contempt finding.

¶ 29 Our supreme court has defined criminal contempt of court as "conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (Internal quotation marks omitted.) *People v. Simac*, 161 Ill. 2d 297, 305 (1994). Direct criminal contempt occurs when the contemptuous conduct takes place in the judge's presence, rendering all of the elements of the offense as matters within the judge's personal knowledge. *Simac*, 161 Ill. 2d at 306. Consequently, the trial court may summarily punish direct criminal contempt because the elements are within its own immediate knowledge. *Simac*, 161 Ill. 2d at 306. On appeal, a finding of direct criminal contempt is reviewed to determine whether the evidence was sufficient to support that finding, and whether the trial court considered facts outside its own personal knowledge. *Simac*, 161 Ill. 2d at 306.

¶ 30 To cite defendant for direct criminal contempt, the trial court must find that his conduct was willful. *Simac*, 161 Ill. 2d at 307. Where there is a substantial issue regarding defendant's mental capacity to commit contempt, the elements of the offense are not within the trial court's knowledge. *People v. Willson*, 302 Ill. App. 3d 1004, 1006 (1999). In that situation, the court may not summarily punish the contempt, but instead, must afford defendant his due process rights by conducting a hearing and giving defendant an opportunity to present a defense. *Willson*, 302 Ill. App. 3d at 1006.

¶ 31 Here, we find that the trial court did not err when it summarily found defendant in direct criminal contempt because there was no evidence that defendant was suffering from a mental illness. Significantly, at the end of defendant's arraignment, after he had been removed from the courtroom following a profane outburst, the trial court expressly stated "I will not enter any contempt orders until I have a return on the fitness exam." As discussed at length above, there

was never a *bona fide* doubt of defendant's fitness. The trial court found that defendant's angry outbursts were not due to mental illness, but instead, were volitional and manipulative. The trial court's finding was supported by the fitness examinations conducted by Dr. Gutzmann and Dr. Neu, who both found that defendant had no symptoms of mental illness that would affect his fitness for trial and fitness to represent himself. The record shows that on several occasions throughout the proceedings, the trial court cautioned defendant to watch his language and not to use profanity. The court tolerated numerous profane outbursts by defendant and warned him before the trial that he would be found in contempt if he swore in front of the jury. The court finally found defendant in contempt after he yelled at the court and used profanity during a sidebar during closing arguments. Accordingly, we find that the evidence was sufficient to allow the trial court to summarily find defendant in direct criminal contempt of court.

¶ 32 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.