2013 IL App (1st) 113086-U

SIXTH DIVISION
May 10, 2013

No. 1-11-3086

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 15776
	)	
TIMOTHY RICE,	)	Honorable
	)	Lawrence Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for possession of a controlled substance with intent to deliver within 1,000 feet of a school (Count 1) is affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt, and the trial court did not abuse its discretion when it accepted a psychiatrist's opinion finding defendant fit for trial and sentencing. Defendant's conviction for Count 2 is vacated because it is a lesser included offense of Count 1.

¶ 2 Following a bench trial, defendant Timothy Rice was convicted of two counts of possession of a controlled substance with intent to deliver, with the first count being within 1,000 feet of a school. The trial court sentenced defendant to concurrent terms of natural life in prison based on him being an habitual criminal. On appeal, defendant contends that the State failed to

prove him guilty beyond a reasonable doubt because none of the witnesses testified that they saw defendant possess or deliver the drugs, the testimony regarding the chain of custody of the drugs was questionable, and the State failed to prove that the offense occurred within 1,000 feet of a school. Defendant further contends, and the State agrees, that his conviction for Count 2 must be vacated because it is a lesser included offense of Count 1. In addition, defendant contends that a *bona fide* doubt of his mental fitness remains because the investigation to determine his fitness was inadequate, and the trial court abused its discretion when it accepted a psychiatrist's finding of fitness despite her failure to follow the court's order to review defendant's records and reports before reaching her conclusion. We vacate defendant's conviction under Count 2 and affirm his conviction under Count 1.

¶ 3 At trial, Patricia Ann Williams, principal of St. Agatha Catholic Academy, testified that the fourth through eighth grade campus for the school is located at 3900 West Lexington Street, and crosses with Springfield Avenue and Flournoy Street. Catherine Creamer, an investigator with the Cook County State's Attorney's office, testified that she measured the distance from 3922 West Flournoy Street to St. Agatha Catholic Academy, located at 3900 West Lexington Street, and found it to be 300 feet. Creamer used a Rolatape measuring device, which she calibrated before leaving her office to insure it would calculate an accurate measurement.

¶ 4 Chicago police officer Karen Rittorno testified that about 8:45 p.m. on July 30, 2009, she and her partner, Officer Miranda, conducted a narcotics surveillance of 3922 West Flournoy Street, a location known for narcotics activity. Officer Rittorno observed defendant and female codefendant, Renee Morganfield, standing together on the porch of that address. The police observation point was across the street, about 50 feet from defendant, and closer to 3940 West Flournoy Street. Officer Rittorno observed three separate transactions where an unidentified person approached codefendant, and after a brief conversation, codefendant signaled defendant

by holding up one or two fingers. In each instance, defendant walked to a white fence pole in a vacant lot at 3940 West Flournoy Street, knelt down, and tore an item from a yellow napkin. Defendant returned to codefendant and handed her that item. During the first two transactions, the unidentified persons then handed codefendant unknown objects in exchange for the items defendant handed codefendant, and left the area. During the third transaction, when defendant returned to codefendant, the police approached the scene and the unidentified man walked away.

¶ 5 While Officer Rittorno detained defendant and codefendant, she observed Officer Miranda walk to the white pole in the vacant lot, kneel down, and recover the same yellow napkin defendant had previously retrieved. Officer Miranda held that yellow napkin in his hand and walked directly toward Officer Rittorno. Officer Miranda then showed Officer Rittorno that the yellow napkin contained eight tinfoil packets, which each contained a white powder substance of suspect heroin. Officer Rittorno observed Officer Miranda place the yellow napkin containing those items into his pocket. Defendant and codefendant were then arrested and taken to the police station. Officers Rittorno and Miranda drove to the police station in the same car.

¶ 6 At the police station, Officer Rittorno watched Officer Miranda remove the recovered items from his pocket and place them on the table in front of them. The items looked exactly the same as they did when Officer Miranda recovered them at the scene. She then observed Officer Miranda inventory those items by accessing the police computer tracking system and obtaining the unique inventory identification number 11743537. Officer Miranda placed the items in an inventory bag and submitted that bag to the sergeant for approval, after which the bag was heat-sealed and sent to the crime laboratory for testing and analysis. During a custodial search of codefendant, Officer Rittorno recovered one tinfoil packet containing a white powder of suspect heroin and $221. No drugs or money were found on defendant.

¶ 7 Officer Rittorno verified that a photograph accurately depicted the white fence poles in the vacant lot, and testified that defendant and Officer Miranda retrieved the yellow napkin from one of those poles, but she could not identify which pole. Officer Rittorno identified the inventory bag, and the yellow napkin and tinfoil packets contained therein, and testified they were the same items retrieved by defendant and recovered by Officer Miranda.

¶ 8 Officer Rittorno acknowledged that her handwritten case report stated that defendant was sitting, rather than standing, on the porch. She further acknowledged that her report stated that codefendant signaled defendant, but did not specify that codefendant did so by holding up her fingers. Officer Rittorno could not recall the number of times codefendant held up one or two fingers. The officer also acknowledged that she could not hear any conversation between defendant and codefendant, and that defendant did not hand any items to the unidentified people. Officer Rittorno testified that she did not meet or speak with an investigator from the State's Attorney's office to discuss the precise location where the offense occurred.

¶ 9 Forensic chemist Adrienne Alley testified that she received the sealed inventory bag in this case from the evidence technician at the drug chemistry vault at the Illinois State Police forensic science center. Alley verified that the contents of the bag matched the description on the inventory sheet attached to the bag. Alley then tested the contents of the eight tinfoil packets contained in the inventory bag and found them positive for 1.8 grams of heroin.

¶ 10 Defense counsel objected to the admission of the narcotics as evidence arguing that a sufficient chain of custody had not been established. The trial court expressly found that the chain of custody was sufficient and admitted the evidence over counsel's objection.

¶ 11 The trial court summarized the evidence presented and found that the evidence showed that defendant and codefendant were acting in concert. The court found that it was clear from defendant's conduct that he aided codefendant in completing the transactions by providing the

drugs on three separate occasions, which were observed by police. Consequently, the trial court found defendant guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a school.

¶ 12 At a posttrial status hearing, defense counsel filed a motion for a mental fitness examination of defendant. During the trial, the court learned from the defense that defendant was receiving psychiatric treatment and taking two psychotropic medications. At that time, defendant objected to undergoing a fitness evaluation and told the court that he was of sound mind and understood everything that was happening in the courtroom. Defense counsel informed the court that defendant no longer objected to an examination. The trial court granted the motion and ordered the fitness evaluation.

¶ 13 On November 16, 2010, the trial court received a report indicating that defendant was evaluated and found fit. The court then entered an order directing Forensic Clinical Services to review and reexamine its fitness report dated November 3, 2010, because the report indicated that no psychiatric records were received or reviewed prior to rendering the fitness examination. The order stated that the trial court reviewed a copy of a Cermak Health Services form entitled "Inmate Transfer Medical Synopsis" which indicated that defendant was transferred in custody to Loretto Hospital on August 13, 2010,[1] where he was diagnosed as being bipolar and prescribed three medications: Trazodene, Risperidone and Cogentin. The order stated "Forensic Services shall obtain and review all relevant records and report on December 14 2010" to the trial court.

¶ 14 In a letter dated December 13, 2010, Dr. Dawna Gutzmann, a staff psychiatrist with Forensic Clinical Services, informed the trial court that, pursuant to the court's order, she examined defendant on December 2, 2010, to determine his fitness to stand trial with medication

[1]Defendant's bench trial commenced with two witnesses on April 20, 2010, continued with additional witnesses and closing arguments on August 17, 2010, and the trial court found defendant guilty on August 31, 2010.

and his fitness for sentencing. Dr. Gutzmann stated that based on her "review of the record" and her clinical interview, she found defendant fit to stand trial and fit for sentencing. Dr. Gutzmann found that "defendant demonstrates an understanding of the charge against him, comprehends the nature of courtroom proceedings, correctly identifies the roles of various courtroom personnel, and displays the capacity to assist counsel in his defense." The doctor discussed the three medications defendant was taking, two being antidepressants and one being an antipsychotic medication. She opined that it was not necessary for defendant to continue to take these medications to maintain his fitness for trial or sentencing. In addition, the medications would not interfere with his fitness. Dr. Gutzmann referred the court to the report of her psychiatric evaluation for the details regarding the basis of her opinions. That report is not contained in the record on appeal.

¶ 15 On the next court date, the trial court noted for the record that it received Dr. Gutzmann's report which indicated that defendant was fit for trial and sentencing. The court further noted that the report discussed defendant's medications, which was a reason why the second evaluation was requested.

¶ 16 At sentencing, the State argued that defendant should be sentenced to natural life imprisonment as a habitual criminal. The trial court then decided that due to the serious nature of the sentence, it wanted Dr. Gutzmann to testify in court regarding her conclusions and reasons for finding defendant fit for trial and sentencing.

¶ 17 Pursuant to the trial court's examination, Dr. Gutzmann testified that she considered the medications defendant was taking when she reached the conclusion that he was fit to stand trial and fit for sentencing. Dr. Gutzmann verified for the court that her opinion that defendant did not need to continue taking the medications to maintain his fitness, and that the medications did

not interfere with his fitness, were based on her evaluation of defendant at the time she made that evaluation. The court then stated "[o]kay. I just wanted to get that on the record."

¶ 18 Dr. Gutzmann further testified that, based on her evaluation, she did not find that defendant suffered from a psychiatric illness, and instead, concluded that he was malingering. Dr. Gutzmann testified that she did not obtain and review defendant's records from Loretto and Cermak Hospitals prior to rendering her opinion. The doctor noted that the trial court's order from November 16, 2010, directed her to "obtain and review all relevant records," and did not specify any particular records. The doctor did review the November 3, 2010, report of the initial evaluation of defendant conducted by Dr. Eric Neu of Forensic Clinical Services. Dr. Gutzmann testified that the records from Loretto and Cermak Hospitals would not have changed or affected her opinion that defendant was malingering, nor would they have changed her opinion that defendant was fit to stand trial and fit for sentencing. Dr. Gutzmann stated that if she believed that she needed defendant's medical records to render her opinion, she would have requested them and waited for them, but she did not need those records.

¶ 19 The trial court emphasized that Dr. Gutzmann's evaluation of defendant was for "a limited specific purpose" of determining his fitness for trial and sentencing, and it was not meant to be "a full psychiatric evaluation." The court stated that the fact that Dr. Gutzmann did not review defendant's records from Loretto and Cermak Hospitals would go to the weight of the evidence. The court expressly noted, however, that the doctor testified that she would have requested those records "if she felt she needed them for her evaluation for the specific purpose for which the evaluation was ordered." The trial court stated that it was mandated by law to sentence defendant to natural life in prison, and it imposed that sentence.

¶ 20 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because no drugs or money were recovered from him, and Officer Rittorno did

not see the item he possessed and handed to codefendant. Defendant argues the State did not prove he possessed the drugs because he did not control the vacant lot where the drugs were found, which was open to the public and accessible by anyone. Defendant also claims that Officer Rittorno's testimony was uncertain and confused because she could not recall important details such as which fence pole defendant went to, and could not recall what she had written in her police report without referring to it.

¶ 21 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard applies whether the evidence is direct or circumstantial. *Id.* at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not credible or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 22 To convict defendant of possession of a controlled substance with intent to deliver, the State must prove defendant knew the drugs were present, they were in his immediate possession

or control, and he intended to deliver the drugs. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Possession may be either actual or constructive. *Givens*, 237 Ill. 2d at 335. Possession may be established by constructive possession where defendant did not have actual control of the narcotics, but knew they were present and exercised control over them. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is often demonstrated entirely by circumstantial evidence. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Defendant's knowledge that the narcotics were in the location where they were found may be inferred from his conduct. *Burks*, 343 Ill. App. 3d at 769.

¶ 23 Here, we find the evidence was sufficient for the trial court to find defendant knowingly possessed the eight tinfoil packets of heroin recovered by Officer Miranda from the white fence pole in the vacant lot. Officer Rittorno testified that during each of the three narcotics transactions, after receiving a hand signal from codefendant, defendant walked to the white pole, knelt down, and tore an item from a yellow napkin. Defendant handed that item to codefendant, who then handed it to an unidentified person in exchange for an unknown object. There is no evidence that anyone other than defendant went near the white pole during the surveillance. While detaining defendant and codefendant, Officer Rittorno observed Officer Miranda walk to the white pole and recover the same yellow napkin defendant had retrieved. Officer Miranda showed Officer Rittorno that the yellow napkin contained eight tinfoil packets of white powder, which subsequently tested positive for 1.8 grams of heroin.

¶ 24 Sitting as the trier of fact, it was the trial court's responsibility to determine the credibility of Officer Rittorno's testimony, to weigh the evidence, and to draw reasonable inferences from that evidence. Here, the trial court expressly found that it was clear from defendant's conduct that he acted in concert with codefendant and provided the drugs on three separate occasions, which were observed by the police. This finding shows that the trial court properly inferred

defendant's knowledge and possession of the heroin from his conduct. The finding further shows that the trial court found Officer Rittorno's testimony credible. The fact that Officer Rittorno did not recall that she wrote in her report that defendant was sitting, rather than standing, on the porch, and could not recall how many fingers codefendant held up during each transaction, was insignificant. Similarly, the fact that she could not identify in the photograph which white pole defendant retrieved the napkin from was a matter for the trial court to consider when determining her credibility. The record shows that, although she could not identify the specific pole, Officer Rittorno positively testified that defendant retrieved the yellow napkin from one of the poles pictured in the photograph. The trial court summarized the evidence presented and found Officer Rittorno's testimony credible. The trial court was in the superior position to assess the credibility of the witnesses, observe their demeanor, weigh their testimony and resolve any conflicts therein, and we find no reason to disturb its findings. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004).

¶ 25 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt because Officer Rittorno's testimony regarding the chain of custody of the drugs was questionable. Defendant argues that, because Officer Miranda was unavailable or unable to testify at trial,[2] the adequacy of the chain of custody is speculative.

¶ 26 Our supreme court has held that a challenge to the chain of custody asserts that the State failed to lay an adequate foundation for the evidence , and thus, attacks the admissibility of the evidence, not its sufficiency. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). Where evidence, such as narcotics, is not readily identifiable or may be susceptible to tampering, exchange or contamination, the State must establish that there was a sufficient chain of custody to render it improbable that the evidence was tampered with or substituted. *Id.* at 467. The State must

[2]The record shows that shortly before trial, Officer Miranda was injured in the line of duty in an unrelated incident, and after recovering, was out of state on furlough.

demonstrate that the police employed reasonable protective measures to ensure that the substance recovered from defendant was the same as that tested by the chemist and that it had not been altered. *Id.* The State is not required to present testimony from every person in the chain, or exclude every possibility of tampering, unless defendant produces evidence of actual tampering or substitution. *Id.* Where the State has established that the evidence was not subject to tampering or substitution, and defendant has not shown actual evidence of tampering, any deficiencies in the chain of custody go to the weight of the evidence, not its admissibility. *Id.*

¶ 27 Here, we find that the State established a sufficient chain of custody of the heroin recovered by Officer Miranda. Officer Rittorno testified that she observed Officer Miranda walk to the white pole in the vacant lot, kneel down, and recover the same yellow napkin defendant had previously retrieved. Officer Rittorno observed Officer Miranda hold that yellow napkin in his hand as he walked directly toward her from the pole. Officer Rittorno testified that Officer Miranda showed her that the napkin contained eight tinfoil packets, which each contained white powder they suspected was heroin. Officer Rittorno watched Officer Miranda place the yellow napkin containing the tinfoil packets into his pocket. The officers drove to the police station in the same car. At the station, Officer Rittorno saw Officer Miranda remove the napkin and packets from his pocket and place them on the table in front of them. Officer Rittorno testified that the items looked exactly the same as they did when Officer Miranda recovered them at the scene. She then observed Officer Miranda inventory those items in accordance with police procedure. In court, Officer Rittorno identified the inventory bag, and the yellow napkin and tinfoil packets contained therein, and testified they were the same items retrieved by defendant and recovered by Officer Miranda. There is no indication in the record, and defendant does not claim, that the recovered items were tampered with, altered or substituted. With no evidence of actual tampering or substitution, the fact that Officer Miranda was unavailable to testify, and

instead, Officer Rittorno testified to the links in the chain, went to the weight of the evidence. The record shows that Officer Rittorno testified to every movement Officer Miranda made with the yellow napkin and tinfoil packets, she rode to the police station with him, and she watched him remove the items from his pocket and inventory them. The trial court found that the chain of custody was sufficient, and we find no reason to disturb that determination.

¶ 28 Defendant next contends that the State failed to prove that the offense occurred within 1,000 feet of a school because the measurement was taken from 3922 West Flournoy Street, rather than from the white pole where defendant allegedly possessed the drugs. Defendant notes that Officer Rittorno never spoke with the investigator from the State's Attorney's office to discuss the precise point of the drug possession for measuring purposes, and the investigator and principal were not present at the time of the offense.

¶ 29 The record shows that investigator Catherine Creamer testified that she measured the distance from 3922 West Flournoy Street to St. Agatha Catholic Academy, located at 3900 West Lexington Street, and found it to be 300 feet. The principal, Patricia Ann Williams, testified that the school was located at 3900 West Lexington Street, and noted that one of the crossing streets was Flournoy Street. Officer Rittorno testified that the offense occurred at 3922 West Flournoy Street. That is the address where she observed defendant and codefendant on the porch, and where codefendant conducted the drug sales. The yellow napkin containing the packets of heroin was located in a vacant lot at 3940 West Flournoy Street. Officer Rittorno testified that during each narcotics transaction, defendant walked west on Flournoy Street to a white pole in the vacant lot to retrieve the drugs. She further testified that the police observation point was across the street, about 50 feet from defendant, and closer to 3940 West Flournoy Street. The trial court expressly found that defendant and codefendant were working together in concert. We find that, based on this record, 3922 West Flournoy Street, the location where defendant handed the drugs

to codefendant and the drug sales occurred, was a proper measuring point in this case. Moreover, from this evidence, the trial court could easily infer that, although 3940 West Flournoy Street may have been slightly farther from the school, it was well within the statutory requirement of being within 1,000 feet of the school. Accordingly, we find that evidence was sufficient to prove beyond a reasonable doubt that the offense occurred within 1,000 feet of the school.

¶ 30 Defendant next contends, and the State agrees, that his conviction under Count 2, possession of a controlled substance with intent to deliver, must be vacated because it is a lesser included offense of Count 1, possession of a controlled substance with intent to deliver within 1,000 feet of a school. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we vacate defendant's conviction and sentence for possession of a controlled substance with intent to deliver under Count 2, and direct the clerk of the circuit court to amend the mittimus to reflect this modification.

¶ 31 Finally, defendant contends that a *bona fide* doubt of his mental fitness remains because the investigation to determine his fitness was inadequate, and the trial court abused its discretion when it accepted Dr. Gutzmann's finding of fitness despite her failure to follow the court's order to review defendant's records and reports from the other hospitals before reaching her conclusion. Defendant argues that the trial court relied on Dr. Gutzmann's report without further inquiry or investigation, and the court should have asked her why she concluded that defendant was malingering and why he did not need to continue taking his medications.

¶ 32 A defendant is presumed to be fit for trial and fit for sentencing. 725 ILCS 5/104-10 (West 2008). 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 2008). Defendant's due process rights are violated if he is subjected to trial or sentencing while being unfit. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). The trial court

may request a fitness examination to assist in its determination of whether a *bona fide* doubt of defendant's fitness exists without a fitness hearing becoming mandatory. *People v. Hanson*, 212 Ill. 2d 212, 217 (2004). Where the trial court finds that a *bona fide* doubt of defendant's fitness exists, the court has a mandatory duty to hold a fitness hearing before proceeding any further. 725 ILCS 5/104-11(a) (West 2008); *Hanson*, 212 Ill. 2d at 217. If, however, the trial court finds there is no *bona fide* doubt of defendant's fitness following a fitness examination, no further hearings regarding the issue of fitness are necessary. *Hanson*, 212 Ill. 2d at 217.

¶ 33 Whether a *bona fide* doubt of defendant's fitness exists is a matter within the trial court's discretion. *Sandham*, 174 Ill. 2d at 382. The fact that the trial court granted defendant's motion for a fitness examination does not, by itself, establish that the court found a *bona fide* doubt of defendant's fitness. *Hanson*, 212 Ill. 2d at 222. Our supreme court has repeatedly found that "the existence of a mental disturbance or the need for psychiatric care does not necessitate a finding of *bona fide* doubt since '[a] defendant may be competent to participate at trial even though his mind is otherwise unsound.' " *Hanson*, 212 Ill. 2d at 224-25, quoting *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991).

¶ 34 In this case, our review of the record reveals that the trial court never found a *bona fide* doubt of defendant's fitness to stand trial or his fitness for sentencing at any time during the court proceedings. Defendant's mental health issues were initially brought to the court's attention on July 8, 2010, after trial had been commenced and continued. Defense counsel informed the court that defendant was no longer receiving his medication in jail and requested a referral to Cermak Hospital for an evaluation because defendant preferred to be on the medication. Defendant said he was previously housed in the psychiatric division of the jail, but was recently transferred to another division. The trial court referred defendant to Cermak Hospital for an evaluation.

¶ 35 On July 27, 2010, defense counsel informed the court that defendant had returned to the psychiatric division of the jail and was taking two psychotropic medications. Counsel advised defendant that they should request an evaluation of his fitness to stand trial, but defendant "strenuously objected." Counsel told the court that defendant was lucid, focused, cooperative, understood everything counsel said, and contributed useful ideas. Counsel opined that based on his observations and communication with defendant, he had no facts that supported the need for an evaluation, and no reason to believe defendant could not cooperate. Defendant said he was returned to the psychiatric division because he was distraught and having difficulty dealing with the pressure of the possible penalties he faced. Counsel said he would usually request an evaluation "to be safe," but did not want to do so over defendant's objection.

¶ 36 Defendant informed the court that, prior to his arrest, he was taking medication and regularly seeing a therapist and psychiatrist at Loretto Hospital because he was diagnosed as "bipolar schizo." Defendant told the court "I have a sound mind, everything. I understand everything that's going on in this courtroom." Pursuant to the court's questioning, defendant verified that he understood everything counsel told him, understood the court process, understood everyone's roles in the courtroom, and was consistently taking his medication in jail. Defendant also verified that he did not want a fitness evaluation. The trial court stated:

> "Based upon your representations to me regarding his cooperation with you during the process of this trial coupled with the fact that he's been forthright, I believe, with his answers to my questions, and I asked him specifically if he wanted an evaluation, and he indicated to me that he didn't. He indicated to me that he's had a history of psychiatric – a psychiatric diagnosis for which he has been receiving treatment and is taking medication, and he's currently taking his medication. I'm not going to order – I'm not going to order an evaluation.

> You have appeared in front of me on a number of occasions, and I haven't noted any actions on your part which would indicate to me that you don't understand the process, and from everything that I have heard so far, I don't believe it would be appropriate at this time. So I'm not going to order it."

¶ 37 Following the trial, defense counsel informed the court that defendant no longer objected to a fitness examination, and the court granted defendant's motion for the evaluation. Defendant was examined by Forensic Clinical Services, and on November 3, 2010, was found fit for trial and sentencing. The record shows that on November 16, 2010, the trial court ordered a second examination because the initial report indicated that defendant's psychiatric records were not reviewed prior to the examination. The court ordered Forensic Clinical Services to "obtain and review all relevant records" as part of the evaluation. Following the second examination, defendant was again found fit for trial and sentencing. The court expressly noted that the new report discussed defendant's medications, which was a reason why the second evaluation was requested. At this point, the record shows that the parties and the court agreed that defendant's fitness was no longer at issue. There was no *bona fide* doubt of defendant's fitness.

¶ 38 Over the next eight months, the proceedings continued with hearings on defendant's posttrial motion and sentencing. No issues were raised as to defendant's fitness. Prior to sentencing defendant to natural life in prison as a habitual criminal, the trial court decided that "[b]ecause of the serious nature" of the sentence, it wanted Dr. Gutzmann to testify in court regarding her conclusions and reasons for finding defendant fit for trial and sentencing. Still, there was no question regarding defendant's fitness. Dr. Gutzmann testified that she did not request defendant's records from Loretto and Cermak Hospitals because she did not need them to render her opinion. The doctor correctly noted that the court order dated November 16, 2010, directed her to "obtain and review all relevant records," and did not specify any particular

records. Dr. Gutzmann explained that the additional records would not have changed or affected her opinion. The record shows that trial court accepted Dr. Gutzmann's explanation and emphasized to defense counsel that the doctor's evaluation was for the "limited specific purpose" of determining defendant's fitness for trial and sentencing, and was not "a full psychiatric evaluation."

¶ 39 Based on this record, we find that the investigation to determine defendant's fitness was sufficient. Defendant underwent two fitness examinations by two different doctors at Forensic Clinical Services. Both found him fit to stand trial and fit for sentencing. The trial court never found a *bona fide* doubt of defendant's fitness, and therefore, no further hearings regarding his fitness were necessary. *Hanson*, 212 Ill. 2d at 217. Our review of the record reveals that the trial court prudently requested Dr. Gutzmann to testify for the sole purpose of having her conclusions on the record due to the serious nature of sentencing defendant to life in prison. Accordingly, we find no abuse of discretion by the trial court in this case.

¶ 40 For these reasons, we vacate defendant's conviction under Count 2 and affirm his conviction and sentence under Count 1.

¶ 41 Affirmed in part; vacated in part.