2014 IL App (1st) 123244-U
No. 1-12-3244
November 25, 2014

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CR 18596
	)	
TERRY BROWN,	)	The Honorable
	)	Matthew Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it found no *bona fide* doubt of the defendant's fitness to stand trial, despite his use of psychotropic medications. The trial court did not abuse its discretion when it denied the *pro se* defendant's request for counsel in the middle of trial. Where evidence supports the inference that the defendant used a weapon as well as he could to kill his victim, the trier of fact may infer an intent to kill even if the defendant does not inflict severe physical harm.

¶ 2 A jury found the defendant, Terry Brown, guilty of attempted first degree murder. In this appeal, Brown argues that (1) the trial court should have held a fitness hearing once Brown told the court that he used psychotropic medications; (2) the trial court should have granted

his mid-trial request for representation by counsel; (3) the prosecution did not produce sufficient evidence to prove that he intended to kill the victim; and (4) the prosecution drew unsupported inferences in closing argument.

¶ 3 We find that the trial court did not abuse its discretion when it decided not to interrupt *voir dire* to hold a fitness hearing, nor did the court abuse its discretion when it refused to permit Brown, in the middle of the trial, to revoke his decision to represent himself. We find that the evidence sufficiently supported the inferences the prosecutor asked the jury to draw, and the evidence sufficiently supported the conviction. Therefore, we affirm the trial court's judgment.

¶ 4 BACKGROUND

¶ 5 Around 5 a.m. on September 21, 2009, Lyonell Davis, a transport officer working for the Cook County Department of Corrections, took Terry Brown, an inmate of Cook County Jail, to the jail's dispensary so that Brown could get his medications. An alarm went off when Brown passed through a metal detector outside the dispensary. Brown handed Davis an inhaler Brown carried to treat his asthma. The inhaler appeared to have some metal parts. Davis quickly patted Brown down, found nothing, and permitted Brown to enter the dispensary without again passing through the metal detector.

¶ 6 Cathy Alexis-Poags, a nurse, worked in the dispensary that morning, helping diabetic inmates. A different nurse handled Brown's request for medication. Moments after Brown received his medications, guards wrestled him to the floor. Alexis-Poags had several small puncture wounds to her chest and a bleeding cut along her thigh. A grand jury indicted

Brown for attempting to murder Alexis-Poags, and for possessing a contraband weapon, a shank, in the jail.

¶ 7 The public defender assigned Stephen Journey to represent Brown. In pretrial proceedings, Brown expressed his dissatisfaction with Journey's work. Brown repeatedly asked the court to appoint a bar association attorney to represent him. The court denied the requests.

¶ 8 After several months of discovery, the State offered a minimal sentence in exchange for a guilty plea, and the State informed the court, on the record, of the offer. The court asked Brown whether he understood the offer. Brown said, "I understand it now, but my attorney didn't tell me. I want to fire my attorney." Journey told the court that his supervisor watched while he explained the offer to Brown. Journey's supervisor corroborated Journey's account and added that Brown "adamantly rejected the offer [and] would not even discuss it." The supervisor told the court that Brown also rejected the supervisor's offer to go with Journey to visit Brown in jail to explain more freely and at greater length the reasons Journey recommended acceptance of the State's offer, especially in view of the statute requiring consecutive sentencing for an offense committed by a jail inmate.

¶ 9 Brown said that Journey and his supervisor could not prove that they told him about the State's offer. He repeated his demand for appointment of a bar association attorney to represent him. The court asked whether Journey and the supervisor had just spoken to him outside of the courtroom. Brown said, "I don't know." But then Brown admitted that he told the two attorneys that he did not commit the charged offense. Brown refused to answer the judge's question about whether Brown told Journey that he would not accept any offer from

the State. Brown only said, "I need a *** defender from the bar association." When the court denied the request, Brown said, "I will represent myself."

¶ 10 The court explained to Brown the many difficulties he would encounter representing himself, and the court made sure Brown understood the admonitions about proceeding *pro se*. See Ill. Sup. Ct. R. 401 (eff. July 1, 1984). The court treated Brown's request as a motion to proceed *pro se*, and the court continued the motion to give Brown an opportunity to reconsider the request in light of the admonitions.

¶ 11 At the next hearing, the court again reminded Brown of the advantages of having an attorney represent him, but Brown reasserted his preference for representing himself. The court finally asked, "do you understand that I am not going to allow you to go back and forth, I want to represent myself, I want a Public Defender. You will be stuck with this decision?" Brown said, "Okay," and again said he wished to represent himself. The court granted Journey leave to withdraw and granted Brown leave to represent himself.

¶ 12 At the outset of the trial, Brown asked for standby counsel. The court appointed Journey to assist Brown. Brown capably argued several pretrial motions *in limine*. The court held that if Brown testified, the State could use two of Brown's prior convictions for impeachment purposes, but the court barred any mention of Brown's other convictions.

¶ 13 During *voir dire*, Brown moved to strike a venire member for cause because she worked as a nurse. The trial court pointed out that the venire member said she could weigh the evidence without bias, and the court denied the motion to strike her for cause. Brown exercised a peremptory challenge to remove her from the jury. Brown moved to strike another venire member for cause, because the venire member's cousin worked as a police

officer. The court denied the motion, and asked Brown if he wanted to use a peremptory challenge against the venire member. Brown answered, "No, I'm not going to use any[]more strikes. I'm going to respectfully request for a fitness hearing." The trial court denied the request.

¶ 14 The court later asked Brown whether he had any motions to exclude other venire members for cause. Brown said, "What difference would it make? You're going to deny me anyway." The court asked whether Brown wanted to exercise any peremptory challenges. Brown said, "I accept anything you want," and "I'm not fixing to get no fair trial anyway." Brown added, "you can just pick a jury ***. I don't care."

¶ 15 After the parties had chosen nine jurors, Brown interjected that he wanted a fitness hearing because he took psychotropic medications. The court denied the request, finding no *bona fide* doubt of Brown's fitness to stand trial. The court noted on the record that the court believed Brown raised the issue to delay the trial.

¶ 16 Brown later sought to use a peremptory challenge to strike a selected juror from the jury because the juror said that serving on the jury would cause her special hardship. The court disallowed the belated strike.

¶ 17 Brown gave a remarkably coherent opening argument in which he told the jury that the State would present no evidence of fingerprints on the alleged weapon and no DNA evidence linking Brown to the crime. Brown explained to the jury that he sued the jail's nursing staff some years earlier and the nurses sought revenge.

¶ 18 Alexis-Poags testified that on September 21, 2009, after Brown received his medications, he asked Alexis-Poags for permission to use the sink. She sat at a counter with her back near

the sink, dispensing insulin to diabetic inmates. She allowed Brown to use the sink while she continued to work. Alexis-Poags testified that Brown suddenly wrapped his hand around her neck and started punching her in the chest with a sharp object. She heard Brown say, "I will kill this bitch." He hit her three or four times before two guards grabbed him and all four of them fell to the floor. The shank in Brown's hand cut Alexis-Poags's thigh. Alexis-Poags identified in court the shank Brown used to cut her. Several pictures showed small puncture wounds to her chest and the cut to her thigh.

¶ 19 Two guards and another inmate testified that they saw the incident. All corroborated Alexis-Poags's account of the attack. During Brown's cross-examination of a guard, when the court sustained an objection to a remark Brown made concerning the testimony, Brown said, "[Y]ou're not allowing me to say what I need to say or do what I need to do in order to prove my point in my case. So I'm requesting that Mr. Journey represent me." The court denied the request.

¶ 20 After both parties rested, Brown asked the court to permit Journey to give the closing argument on his behalf. The court denied the request.

¶ 21 In his closing argument, Brown used the pictures of Alexis-Poags's wounds and asked, "Do that *** to you all look like attempt murder? *** or do it look like a puncture? I say a needle. And the reason I say a needle is because she herself said that she was doing insulins." He said a chair leg cut Alexis-Poags's thigh. Brown returned to the pictures of the chest wounds, saying, "this right here *** is a needle mark ***. This is not a stab wound." Again, Brown emphasized the lack of fingerprints and DNA evidence. He also pointed out inconsistencies in the witnesses' accounts of why Brown needed to use the sink.

¶ 22 In rebuttal, the prosecutor said:

> "[Alexis-Poags is] lucky that she doesn't have more serious injuries. But [Brown] doesn't get rewarded for that. He doesn't get rewarded because maybe he has bad aim and he [doesn't] get rewarded because he didn't pick a sharper shank."

¶ 23 The jury found Brown guilty of attempted murder and possession of contraband in jail.

¶ 24 Brown asked to have Journey represent him for sentencing. The court allowed the motion. Before sentencing, the court ordered a retrospective fitness examination for Brown. Dr. Fidel Echevarria reported that he examined Brown and found, to a reasonable degree of psychiatric certainty, that Brown was fit to stand trial. The court found no *bona fide* doubt of Brown's fitness, so the court did not hold an evidentiary hearing concerning fitness.

¶ 25 The State presented evidence that Brown had two prior convictions for offenses that Illinois would now classify as Class X crimes. The court sentenced Brown to natural life in prison. Brown now appeals.

¶ 26 ANALYSIS

¶ 27 Brown raises four issues on this appeal. He contends that the trial court erred (1) when it refused to order a fitness hearing during *voir dire*, and (2) when it denied Brown's request, made during cross-examination of a witness and repeated before closing arguments, to have Journey represent him. Brown also contends that the evidence does not prove that he intended to kill Alexis-Poags, and that the prosecution's closing argument deprived him of a fair trial.

¶ 28 Fitness Hearing

¶ 29 According to section 104-11 of the Code of Criminal Procedure, "(a) The issue of the defendant's fitness for trial *** may be raised by the defense, the State or the Court at any appropriate time *** before, during, or after trial. When a *bona fide* doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a) (West 2012). The trial court has discretion to determine whether the court has a *bona fide* doubt of the defendant's fitness. *People v. Hanson*, 212 Ill. 2d 212, 222 (2004). We will not reverse the trial court's determination unless the court abused its discretion. *People v. Weeks*, 393 Ill. App. 3d 1004, 1009 (2009).

¶ 30 The trial court must presume the defendant fit to stand trial. *People v. Eddmonds*, 143 Ill. 2d 501, 512 (1991). The defendant bears the burden of proving a *bona fide* doubt of his ability to understand the nature and purpose of proceedings against him or to assist in his defense. *Hanson*, 212 Ill. 2d at 222. The court may consider the defendant's demeanor, his irrational behavior, any relevant medical opinions, and defense counsel's representations concerning the defendant's competence. *Eddmonds*, 143 Ill. 2d at 518. However, 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." *Drope v. Missouri*, 420 U.S. 162, 180 (1975).

¶ 31 Here, Brown did not present any medical opinions, but the alleged prescription of psychotropic medications implied that at some time, a doctor found sufficient cause to prescribe the medications. Defense counsel never mentioned any difficulty with Brown's

understanding of the proceedings or Brown's ability to assist in his defense. Throughout the proceedings, Brown consistently showed that he understood the nature and purpose of the proceedings very well, and he put before the jury a reasonably competent defense in the face of strong evidence for the prosecution.

¶ 32 Brown contends that the trial court should have ordered an examination to help the court determine whether Brown raised a *bona fide* doubt of his fitness. Brown told the court, during *voir dire*, that he took psychotropic medications. Although Brown frequently complained that he did not receive prescribed pain medications in jail, he did not tell the court before the end of the trial that he did not receive prescribed psychotropic medications. At the sentencing hearing, Brown claimed that he did not receive his medications, "[m]edical and psych," during the trial. Thus, at the time Brown requested the fitness hearing, the court had observed Brown's work representing himself during several hearings, and Brown's conduct during many hearings before that. The court also heard from Brown that he used psychotropic medications. But the use of psychotropic medications alone does not raise a *bona fide* doubt of a defendant's fitness for trial. *People v. Mitchell*, 189 Ill. 2d 312, 331 (2000).

¶ 33 Brown describes his behavior during the pretrial proceedings and *voir dire* as irrational. Brown points specifically to two incidents. First, in a discussion concerning the plea bargain Journey negotiated, Brown told the court that Journey did not inform him of the State's offer. When the court directly questioned Brown about whether he spoke with Journey outside the courtroom, in the place where Journey said he informed Brown about the offer, Brown

answered only that he wanted a different attorney. Eventually, Brown claimed that he did not remember whether he spoke with Journey.

¶ 34 The second incident took place after the court denied Brown's challenge for cause against a venire member. Brown petulantly refused to exercise his peremptory challenges against several jurors, as he said he was "not fixing to get no fair trial anyway." Brown soon sought to exercise some of his peremptory challenges.

¶ 35 Like the trial court, we see Brown's behavior during pretrial motions and *voir dire* not as irrational, but as goal directed attempts to manipulate the court into appointing a new attorney to represent Brown, thereby delaying the trial. Brown's expression of displeasure during *voir dire* does not raise any doubt of his ability to understand the nature and purpose of proceedings against him or to assist in his defense. See *Hanson*, 212 Ill. 2d at 224-25. Therefore, we cannot say that the trial court abused its discretion when it refused to hold a fitness hearing.

¶ 36 Appointment of Counsel

¶ 37 After Brown represented himself through some pretrial proceedings and most of the trial, during cross-examination of a witness for the State, Brown asked the court to appoint Journey to represent him. The trial court denied the request. Brown repeated the request before closing argument, and the trial court again denied the request. Brown contends that we must reverse the judgment because the trial court did not protect his right to counsel.

¶ 38 The trial court has discretion to decide whether to accept a defendant's revocation of his waiver of the right to counsel. *People v. Pratt*, 391 Ill. App. 3d 45, 52-53 (2009). Before accepting Brown's waiver of his right to counsel, the trial court admonished Brown in accord

with Supreme Court Rule 401 (Ill. Sup. Ct. R. 401 (eff. July 1, 1984)), informing Brown about the drawbacks of proceeding *pro se*. The court specifically told Brown that the court would "not *** allow [Brown] to go back and forth, I want to represent myself, I want a Public Defender," and that Brown would "be stuck with this decision" to represent himself.

¶ 39 The appellate court stated the applicable principles in *People v. Palmer*, 382 Ill. App. 3d 1151, 1163 (2008):

> "If a trial court has fully complied with Rule 401 ***, the court can hold the defendant to his election to proceed *pro se* even though the defendant subsequently changes his mind during trial. Indeed, considering (1) the importance of judicial administration and (2) the need to avoid giving a defendant the opportunity 'to game the system' ***, a court would be justified in informing a defendant of a deadline (perhaps a few weeks before the trial date) by which his decision to proceed *pro se* at trial will become irrevocable, making clear that it is not just at trial itself that the decision will become irrevocable."

¶ 40 Brown apparently sought to game the system, so that he could go back and forth from representing himself to having a public defender represent him, to the detriment of the trial. We cannot say that the trial court abused its discretion when the court kept its word that it would not permit Brown to revoke his choice during the trial.

¶ 41 Sufficiency of the Evidence

¶ 42 Brown contended at trial that the evidence did not prove he intended to kill Alexis-Poags, because she suffered only a few superficial wounds. "Upon a challenge to the sufficiency of the evidence of a defendant's guilt, it is not the function of this court to retry the defendant.

[Citation.] Rather, determinations of the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact. [Citation.] In the consideration of a defendant's challenge to the sufficiency of the evidence, the relevant question is whether, after viewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. McLaurin*, 184 Ill. 2d 58, 79-80 (1998).

¶ 43 Brown compares the evidence in this case to the evidence in *People v. Garrett*, 216 Ill. App. 3d 348 (1991), *People v. Thomas*, 127 Ill. App. 2d 444 (1970), and *People v. Jones*, 184 Ill. App. 3d 412 (1989). The *Garrett* court summarized the other two cases:

> "In *People v. Thomas*, *** the defendant was armed with a knife which he held on the victim while raping her, using it a few times to prick and probe her body. He struck the victim repeatedly, knocked her head against furniture, and even stabbed her in the shoulder. While the attack was in progress, he also threatened several times to kill her. The defendant was ultimately convicted of rape, attempt murder, robbery and aggravated battery. The review court reversed the attempt murder conviction, finding that the evidence was insufficient to establish the requisite mental state.
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> *** [In *People v. Jones*, t]he victim was beaten about the body, kicked repeatedly and suffered a broken nose at the hands of armed assailants. Additionally, they verbally threatened to kill the victim and his family. The victim in that case was treated on an outpatient basis and received a number of stitches for various

lacerations. This court found there that the character of the attack on the victim did not warrant an inference of an intent to kill." *Garrett*, 216 Ill. App. 3d at 353-54.

¶ 44 Similarly, the defendant in *Garrett*, together with two others, robbed and severely beat the victim. The *Garrett* court said, "the assailant was armed, yet did not use the weapon on the victim, and repeatedly assaulted [the] victim causing lacerations and other serious injuries and also threatened to kill [the victim]. *** Just as it was in *Jones*, the character of the attack on [the victim] was not of the type that justifies an inference of an intent to kill." *Garrett*, 216 Ill. App. 3d at 354.

¶ 45 Brown, like Thomas, Jones and Garrett, threatened to kill his victim. But Brown, unlike Thomas, Jones and Garrett, used his weapon to the best of his ability to inflict as much injury as he could on Alexis-Poags. We find this case more like *People v. Green*, 339 Ill. App. 3d 443, 451-52 (2003), in which the defendant fired his gun wildly in the direction of his victims, but failed to hit them. The *Green* court found the evidence sufficient to support the inference that the defendant intended to kill the persons at whom he shot because the jury could infer that the defendant "was simply unskilled and missed his targets." *Green*, 339 Ill. App. 3d 452. Similarly, we find the evidence here sufficient to support the inference that Brown intended to kill Alexis-Poags when he stabbed her with a shank while saying "I will kill this bitch," even though the shank did not inflict severe physical harm on Alexis-Poags.

¶ 46 Closing Argument

¶ 47 Finally, Brown contends that the prosecutor's closing argument denied him a fair trial. The prosecutor argued that the jury should not reward Brown "because maybe he has bad aim

and *** he didn't pick a sharper shank." Brown concedes that he did not object to the remark at trial, so we review the issue only for plain error. See *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). A reviewing court may consider a forfeited issue where the error could have changed the outcome of a case with closely balanced evidence, or the error compromised the integrity of the judicial process. *Herron*, 215 Ill. 2d at 186-87. Brown does not argue that the need to protect the integrity of the judicial process justifies review of the issue. We review the issue only under the first prong of plain error analysis.

¶ 48 Prosecutors have wide latitude to make arguments based on the evidence presented at the trial. *People v. Hood*, 229 Ill. App. 3d 202, 218 (1992); *People v. Young*, 347 Ill. App. 3d 909, 924 (2004). The prosecutor may draw reasonable inferences from the evidence. *Young*, 347 Ill. App. 3d at 924. Here, Alexis-Poags recounted the violence with which Brown choked her and pounded her with the shank while saying, "I will kill this bitch." Photographs of the injuries showed that the shank did not penetrate very deeply and the cuts did not come near Alexis-Poags's major arteries. The prosecutor reasonably asked the jurors to infer that the dullness of the blade – which the jury saw in court – and Brown's inability to find the major arteries helped save Alexis-Poags's life, despite Brown's intention to kill Alexis-Poags. We find no plain error in the closing argument.

¶ 49 CONCLUSION

¶ 50 The trial court did not abuse its discretion when it refused to interrupt *voir dire* to hold a fitness hearing, where Brown's behavior did not raise a *bona fide* doubt of his fitness to stand trial. The court also did not abuse its discretion when it denied Brown's request, made during the cross-examination of a witness and repeated before closing arguments, for the

appointment of counsel to represent Brown. The evidence that Brown stabbed Alexis-Poags repeatedly with the weapon he brought to the dispensary, while saying, "I will kill this bitch," sufficiently supports the conviction for attempted murder. And the prosecutor, in closing argument, permissibly inferred from the evidence that Brown did not succeed in the attempted murder of Alexis-Poags, in part, because he did not have a very sharp shank and he did not know exactly where to aim the shank. Accordingly, we affirm the convictions and sentence the trial court imposed.

¶ 51 Affirmed.