2017 IL App (1st) 150595-U

No. 1-15-0595

Order filed August 14, 2017

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 12024
	)	
HOWARD ROBERTS,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed where the trial court did not err in failing to order a fitness hearing *sua sponte* because there did not exist a *bona fide* doubt of defendant's fitness to stand trial.

¶ 2 Following a jury trial, defendant Howard Roberts was convicted of aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2012)) and sentenced to an extended-term sentence of 10 years'

imprisonment. Defendant appeals, arguing that the trial court violated his right to due process when, rather than conducting its own inquiry, it deferred to a psychiatrist's report, finding him fit to stand trial. We affirm.

¶ 3 Defendant was charged by indictment with one count of attempt first degree murder and six counts of aggravated battery. Prior to trial, defense counsel requested a Behavior Clinical Examination (BCX) to evaluate defendant's fitness to stand trial. In requesting the evaluation, counsel informed the court that defendant had told him that he had been diagnosed with "schizophrenia bipolar" and was taking medication for this condition. The trial court signed the BCX order and granted a continuance.

¶ 4 On the next court date, the trial court notified the parties that it was in receipt of a report from Dr. Nadkarni. The court noted that in the report the doctor concluded that defendant was legally sane at the time of the offense and would have been able to understand his *Miranda* rights. The doctor also concluded that defendant was fit to stand trial. The parties then discussed the status of discovery and the case was continued.

¶ 5 On a subsequent date, defendant asked the court about the status of his case. After the court explained the discovery procedures to defendant, he stated that he "would appreciate a shorter date." Defendant also asked the court "what happened okay originally you had it scheduled for a jury trial?" The court acknowledged that it reserved a jury trial date for "today," but explained to defendant that the case could not proceed to trial because discovery had not yet been completed. Defendant then informed the court that he was "cooperating" with the police officers and the office of the State's Attorney, but that "it's over 9 months now" and that he was,

essentially, under the impression that the trial would have started. After further colloquy with the court, defendant agreed to a shorter date.

¶ 6 On the date of trial, the State nol-prossed four counts of aggravated battery and indicated that it was proceeding on one count of attempt murder and two counts of aggravated battery. Before jury selection, and while a venire of prospective jurors was waiting in the hallway outside of the court room, the trial court executed warrants for defendant's daughter and another potential witness, both of whom had failed to appear while under subpoena. As the pair was taken into custody, defendant stood up, screamed "this is not fair, this is not right," and then flipped over counsel's table, which the trial court described as being eight feet long and made of mahogany.

¶ 7 After the trial court discharged the venire that had been waiting in the hallway, the case was recalled. The court warned defendant that it would try him *in absentia* if there were "any other outbursts or inappropriate behavior." Defendant responded "I'm fine, your honor." Defense counsel requested a "short" continuance, stating that there were concerns about defendant's ability and willingness to assist in his defense. Counsel continued: "I'm asking the Court to allow cooler heads to prevail, essentially, and give us a couple days to calm down and talk to [defendant] and pick up where we're leaving off here this coming Monday." The following colloquy then took place:

> THE COURT: [Defendant] seems completely at this juncture calmed down. I'll note that he was calm all morning. There were no problems, certainly nobody foresaw that kind of behavior or outburst. It was brought about, apparently, by the fact that his very own daughter was not cooperating with a subpoena served upon her in this case, and

> based on the fact that it's a demand, the State represented to me that the term is going to run two days from today * * * And on today's date, two of those witnesses who had warrants out were present in court. They've now been taken in to custody. I'm very mindful of their custody status, so I don't want to hold them over the weekend in order to – for [defendant] to clear his mind or whatever the term might be. He seems perfectly fine and capable to this Court.
>
> [Defendant], you understand what I'm saying and you're able to comport your behavior to that of a reasonable person, the way you behaved in court on every other court date since the case started. You're able to do that, correct?
>
> DEFENDANT: Yes, ma'am.

The court denied counsel's request for a continuance and the case proceeded to a jury trial. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the evidence presented to the extent necessary to resolve the issue raised on appeal.

¶ 8 The evidence adduced at trial showed that, on June 5, 2013, defendant arrived at the apartment of Raphine Reese, the mother of his son, to pick up his son, Ramel. There, defendant and Marco Williams, Reese's boyfriend, got into an argument on the front porch. Williams left the porch and walked towards Reese's van. Defendant followed Williams and hit him on the side of the head with a "Billy club." He then pushed Williams into the van, got on top of him, and stabbed him multiple times. Defendant also attempted to "gouge" Williams's eyes.

¶ 9 When police arrived, they unsuccessfully attempted to drag defendant off of Williams and out of the van. As they did so, an officer drew his service weapon and threatened to shoot defendant if he did not exit the van. Defendant then exited the van, and police arrested him.

Williams was rushed to the hospital, where he was treated for stab wounds on his face, neck, left arm, and left side.

¶ 10 After argument, the jury found defendant not guilty of attempt murder, but guilty of both counts of aggravated battery. The trial court denied defendant's motion for a new trial. After merging the aggravated battery counts, the court sentenced defendant to an extended-term of 10 years' imprisonment. The court subsequently denied defendant's motion to reconsider sentence, and defendant filed a timely notice of appeal.

¶ 11 On appeal, defendant maintains that "the purported fitness hearing" in this case was constitutionally deficient. Specifically, he argues that the trial court violated his right to due process when, without conducting its own inquiry, the court completely deferred to the psychiatrist's report on the issue of his fitness to stand trial.

¶ 12 In setting forth this argument, defendant acknowledges that he has forfeited his fitness argument on appeal by failing to raise this issue in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (holding both a trial objection and a written posttrial motion raising the issue are required in order to preserve the issue for review on appeal). However, defendant argues, and we agree, that the alleged error regarding his fitness to stand trial involves a fundamental right and may be reviewed under the plain-error doctrine. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶¶ 50-51 (and cases cited therein) (finding that a trial court's failure to order a fitness hearing may be reviewed as plain error because it involves a substantial right). That said, a reviewing court conducting plain error analysis must first determine whether an error occurred, as "without reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). Here, we find no error.

¶ 13 It is well-settled that " 'due process bars the prosecution of an unfit defendant.' " *People v. Washington*, 2016 IL App (1st) 131198, ¶ 70 (quoting *People v. Brown*, 236 Ill. 2d 175, 186 (2010)). Under Illinois law, a defendant is presumed to be fit to stand trial, unless, due to a mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. *People v. Brown*, 236 Ill. 2d 175, 186 (2010); 725 ILCS 5/104-10 (West 2016). To be competent to stand trial, a defendant must have a rational and factual understanding of the proceedings against him. *People v. Washington*, 2016 IL App (1st) 131198, ¶ 70. If a *bona fide* doubt of a defendant's fitness is raised, a trial court must order a fitness hearing. *Brown*, 236 Ill. 2d at 186; 725 ILCS 5/104-11(a) (West 2016). At the fitness hearing, a trial court's determination of defendant's fitness may not be based solely upon psychiatric conclusions or findings. *People v. Cook*, 2014 IL App (2d) 130545, ¶ 14.

¶ 14 We initially note that defendant's argument, in his opening brief, is premised on the assumption that by ordering the BCX report the trial court found a *bona fide* doubt of his fitness to stand trial. Based on this assumption, defendant maintains that the resulting "fitness hearing" was "constitutionally deficient" because the court deferred solely to the psychiatrist's opinion in making its fitness determination. In support of this argument, defendant relies on *People v. Cleer*, 328 Ill. App. 3d 428 (2002).

¶ 15 However, we observe, as pointed out by the State, that our supreme court has specifically considered *Cleer* and rejected its reasoning that, by appointing a qualified expert to examine the defendant, a trial court implicitly concludes that a *bona fide* doubt as to the defendant's fitness exists. See *People v. Hanson*, 212 Ill. 2d 212, 222 (2004) (holding that "[t]he mere act of granting a defendant's motion for a fitness examination cannot, by itself, be construed as a

definitive showing that the trial court found a *bona fide* doubt of the defendant's fitness"). As such, contrary to defendant's argument, the "purported fitness hearing" in this case was not a fitness hearing at all. Rather, the record shows that, after receiving the BCX report, the trial court simply summarized the psychiatrist's report in open court and, essentially, concluded that there did not exist a *bona fide* doubt of defendant's fitness to stand trial. Having reached this conclusion, the trial court did not order a fitness hearing. Therefore, defendant's arguments regarding the due process requirements of a fitness hearing, and the trial court's alleged failure to abide by these requirements by independently determining his fitness, miss the mark.

¶ 16 That said, in his reply brief, defendant contends that the trial court erred by not conducting a fitness hearing because the record shows the existence of a *bona fide* doubt of his fitness to stand trial. Specifically, he argues that his initial request for a BCX report, his violent outburst prior to trial, and counsel's request for a continuance due to his concern over defendant's ability to participate in his defense created a *bona fide* doubt of his fitness to stand trial. Defendant, thus, maintains that the trial court was required to, *sua sponte*, order a fitness hearing. We disagree.

¶ 17 "Whether a *bona fide* doubt exists is within the discretion of the trial court, which is in the best position to observe the defendant and evaluate his or her conduct." *Washington*, 2016 IL App (1st) 131198, ¶ 72. As such, contrary to defendant's argument that we should apply a *de novo* standard of review, we review the trial court's failure to order a fitness hearing *sua sponte* for an abuse of discretion. *Tolefree*, 2011 IL App (1st) 100689, ¶ 53. A trial court abuses its discretion only where no reasonable person would take the court's view or "where its ruling is arbitrary, fanciful, or unreasonable." *Id.*

¶ 18 The test of whether a *bona fide* doubt of defendant's fitness exists is objective and examines if the facts raise a "real, substantial, and legitimate doubt" of the defendant's mental capacity to meaningfully participate in his defense. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). Although no fixed or immutable sign indicates the need for further inquiry on a defendant's fitness, our supreme court has identified relevant factors that a trial court may consider in determining whether a *bona fide* doubt exists. *Eddmonds*, 143 Ill. 2d at 518. These factors include: (1) the rationality of defendant's behavior and demeanor at trial; (2) any representations by defense counsel on the defendant's competence; and (3) any prior medical opinion on the issue of defendant's fitness. *People v. Rosado*, 2016 IL App (1st) 140826, ¶ 31 (citing *Eddmonds*, 143 Ill. 2d at 518)).

¶ 19 After reviewing the record in light of these factors, we cannot say that there existed a *bona fide* doubt of defendant's fitness to stand trial. First, defendant's demeanor and behavior during the vast majority of the proceedings were rational, respectful and appropriate. In considering this factor, we initially note that unlike this court, the trial court had the opportunity to observe defendant's demeanor during the proceedings and expressed no concerns about defendant's ability to understand the nature of the proceedings or assist defense counsel. See *Hanson*, 212 Ill. 2d at 224. To the contrary, the record shows that in admonishing defendant following his angry outburst the court expressly noted that defendant had behaved like a "reasonable person" on every "court date since the case started."

¶ 20 At his arraignment, defendant acknowledged understanding his rights including the meaning of bail and that he needed to be present in court for his court dates. On a subsequent court date, following his BCX, defendant politely expressed frustration over the speed at which

the case was proceeding and, essentially, demanded trial. In doing so, defendant pointed out that he was under the impression that the case was set for a jury trial on the date of the hearing and informed the court that he had been cooperating with the police and the office of the State's Attorney. The court acknowledged that it had reserved a jury trial date for "today," and explained to defendant that the case could not proceed to trial because discovery had not yet been completed. After further rational colloquy with the court, defendant acquiesced to a shorter continuance. At all subsequent court dates prior to trial, defendant's demeanor and behavior were rational.

¶ 21 Although the court granted defense counsel's unopposed request for a psychological examination, this alone, as mentioned, is insufficient to prove that defendant's demeanor and behavior provided evidence of *bona fide* doubt of his fitness to stand trial. *Hanson*, 212 Ill. 2d at 224. This is especially so where, as here, the record shows that defendant had a rational and factual understanding of the proceedings against him.

¶ 22 Defendant nevertheless argues that his act of flipping the table on the date of trial shows that he was unable to handle the stresses of trial and supports the conclusion that there was a *bona fide* doubt as to his fitness. In support of this argument, defendant asserts that "it is certainly possible that [his] outburst was the result of an uncontrollable mental lapse rather than an isolated reaction to frustrating circumstances." We find this claim belied by the record.

¶ 23 Contrary to defendant's argument, his act of flipping the table on the date of trial does not, in and of itself, demonstrate his inability to meaningfully participate in his defense such that it raised a bona *fide doubt* of his fitness. Rather, in this case, it shows his comprehension of the proceedings where his angry outburst was motivated by the court's execution of an arrest warrant

for his daughter based on her failure to appear while under subpoena. The record shows that following defendant's outburst the trial court admonished him and warned him that he could be tried *in absentia* if he engaged in any other "inappropriate behavior." Defendant responded "I'm fine, your honor." The court then noted that defendant "was calm all morning" and that "certainly nobody foresaw that kind of behavior or outburst." The court further noted that the outburst was "brought about, apparently, by the fact that his very own daughter was not cooperating with subpoena served upon her in this case[.]" The court then asked defendant if he was "able to comport [his] behavior to that of a reasonable person, the way [he] behaved in court on every other court date since the case started." Defendant responded "Yes, ma'am." No other issues relating to his fitness arose during the trial. Thus, defendant's behavior and demeanor at trial did not raise a *bona fide* doubt of his fitness to stand trial.

¶ 24 Second, the representations by defense counsel regarding defendant's competence do not raise a *bona fide* doubt of his fitness. In considering this factor, we initially note that, even had counsel asserted that defendant was unfit to stand trial, this assertion, standing alone, would not raise a *bona fide* doubt of defendant's fitness. *Eddmonds*, 143 Ill. 2d at 519. That said, counsel made no such representations in this case. Rather, in requesting the BCX, counsel informed the court that defendant had told him that he had been diagnosed with "schizophrenia bipolar." Counsel also informed the court that defendant was taking medication for this condition. Beyond these representations, counsel did not provide further information regarding defendant's fitness or inability to understand the proceedings against him. See *Hanson*, 212 Ill. 2d at 224 (refusing to give great weight to this factor because the motion for a psychological examination failed to provide any facts to substantiate counsel's "feeling" that there existed a *bona fide* doubt as to

whether the defendant was able to understand the nature of the proceedings against him). Therefore, these representations were insufficient to support the conclusion that there existed a *bona fide* doubt of defendant's fitness.

¶ 25 In support of this second factor, defendant argues that defense counsel's request for a continuance, following his pre-trial outburst, indicated that defendant was unwilling to assist in his defense. The record shows that, in requesting the continuance, counsel stated that there were concerns about defendant's ability and willingness to assist in his defense. However, counsel also stated that he was asking for the continuance to "allow cooler heads to prevail" and give defendant a chance to "calm down." Given this record, counsel's representations further support the conclusion that defendant was angry as a result of his daughter being taken into custody, not unfit to stand trial. Moreover, in denying counsel's request, the court admonished defendant about the outburst and noted that he had calmed down. Defendant acknowledged being "fine" and assured the court that he would behave like a "reasonable person." As such, defense counsel's request was also insufficient to prove that there existed a *bona fide* doubt of defendant's fitness.

¶ 26 As for the final factor, the medical opinions about defendant's fitness likewise do not support a finding of *bona fide* doubt. Defendant's BCX report, produced after a psychiatrist examined him, indicated that "[defendant] would have been legally sane at the time of the offense, would have been able to understand *Miranda* and was fit to stand trial." Thus, the results of the BCX do not weigh in favor of defendant's argument.

¶ 27 With regard to this final factor, we briefly note that, even assuming that defendant was diagnosed with "schizophrenia bipolar," the mere existence of a mental disturbance or the need

for psychiatric care does not require a finding of *bona fide* doubt because " 'a defendant may be competent to participate at trial even though is mind is otherwise unsound.' " *Hanson*, 212 Ill. 2d 224-25 (quoting *Eddmonds*, 143 Ill. 2d at 519).

¶ 28 In sum, after reviewing the relevant factors, we do not find that there is sufficient evidence to support an independent finding of a *bona fide* doubt in defendant's fitness to stand trial. See *Hanson*, 212 Ill. 2d 225. Accordingly, the trial court did not abuse its discretion in failing to, *sua sponte*, order a hearing to determine whether defendant was fit to stand trial.

¶ 29 In reaching this conclusion, we have considered *People v. Sandham*, 174 Ill. 2d 379 (1996), cited by defendant in support of his argument, and find it readily distinguishable. The defendant in *Sandham* was convicted of aggravated criminal sexual abuse and sentenced to five years' imprisonment. On appeal, our supreme court reversed the defendant's conviction and remanded for a new trial, finding that a *bona fide* doubt existed regarding his fitness to stand trial and the trial court was required to conduct a fitness hearing. *Id*. at 389. Factors which raised a *bona fide* doubt of the defendant's fitness included: defense counsel's request for an indefinite continuance claiming that the defendant "had been unable to cooperate with defense counsel except with difficulty" as he had been admitted to a psychiatric ward; a pair of letters from the defendant to the trial court in which he requested 14-years of imprisonment with "no good time" so that he "could proceed with [his] real life and have no regrets about ending this one;" testimony from the sentencing hearing that the defendant "wasn't always there" mentally; an evaluation from the psychiatric ward which found that defendant had a slight chemical imbalance and "a slight case of schizophrenia;" and defendant's bizarre outbursts at sentencing, including a request that he have his brain cut out so that he would be "brain dead." *Id.* at 388.

During sentencing, the trial court commented that defendant "[did not] even seem to understand what's going on." Under these circumstances, our supreme court held that "the trial judge had no discretion and was required to conduct, *sua sponte*, a fitness hearing at the point he questioned defendant's capacity to comprehend what was transpiring." *Id*. at 389.

¶ 30 Here, defendant's outburst in flipping the table was a far cry from the series of circumstances and bizarre comments which raised a *bona fide* doubt of the *Sandham* defendant's fitness. While in *Sandham* the circumstances pointed to the defendant's lack of comprehension of the court proceedings, defendant's behavior in this case arguably indicated no more than an anger management problem. Further, as mentioned, the trial court addressed the outburst and secured defendant's assurance that it would not happen again. No other concerns over his ability to understand the proceedings or assist in his defense arose during trial. Therefore the trial court did not commit any error and defendant's claim is forfeited. See *Tolefree*, 2011 IL App (1st) 100689, ¶ 63.

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

¶ 32 Affirmed.