2012 IL App (2d) 110127-U
No. 2-11-0127
Order filed June 29, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-176
CORY S. SEXTON,	)	Honorable Fernando L. Engelsma,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

Held: (1) The trial court's finding of fitness was not against the manifest weight of the evidence, as the evidence conflicted and the court articulated a sound rationale for its resolution of the conflict; (2) defendant's jury waiver was valid: although the trial court did not admonish him in the form that experts testified would have been most conducive to ensuring defendant's comprehension, the record nevertheless demonstrated that defendant knew the difference between a bench trial and a jury trial and that his waiver thus was knowing and understanding.

¶ 1 Defendant, Cory S. Sexton, appeals his conviction of arson (720 ILCS 5/20-1(a) (2006)), contending that he was unfit to stand trial and that his jury waiver was invalid. We determine that

the trial court's determination of fitness was not against the manifest weight of the evidence and that his jury waiver was knowing and voluntary. Accordingly, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was indicted on the charge of arson in connection with a garage fire. On May 1, 2007, defendant sought to plead guilty. During the court's admonitions, defendant stated that he did not have a choice in what was going to happen to him and, when the court told him he had a choice to go to trial, defendant said "[o]kay. How about I take that part?" The court explained the trial process further and asked "[d]o you understand?" Defendant said "[n]o, I do not, Your Honor." Defendant further stated that he did not understand that he could confront his accusers and he exhibited confusion about who his accusers were. The court refused to accept the plea and ordered a fitness evaluation by Dr. Jayne Braden. The State hired its own fitness expert, Dr. Mahoney.

¶ 4 Based on an interview and review of documents, Mahoney ultimately concluded that defendant was fit to stand trial while, based on testing and an interview, Braden determined that he was not fit. At the fitness hearing, before a different judge, each expert disagreed with the other's findings.

¶ 5 Braden testified that she met with defendant twice and based her assessment on trial competency tests and a clinical interview. She did not investigate defendant's previous experience with the court system. Braden believed that defendant had a good understanding of the roles of the participants. However, one test showed normal to mild impairment in defendant's ability to understand the proceedings and consult with counsel. Another showed clinically significant impairment in defendant's ability to consult with counsel, appreciate the situation, and understand the consequences of legal proceedings. Braden expressed surprise that Mahoney did not administer

any tests, because American Psychological Association Specialty Guidelines indicate that testing is a way to corroborate information obtained from an interview.

¶ 6 Braden also administered a test to determine malingering or feigning of mental illness, because defendant's scores on other tests raised flags for both. She said that she felt that defendant might not have been honest with her during the interview but felt that the testing alleviated any impact of that. She did not confront defendant with concerns that he might be malingering.

¶ 7 Braden stated that defendant had a pretty good understanding of the roles of the participants. However, she was concerned with his "ability to process the information that he needed in order to understand what the outcomes were, how to formulate the concept and assist counsel in the way that when he would listen to people testify, to abstractly get information from their statements to follow along in order to ask the questions that would indicate he understood the process." She said that defendant could not integrate knowledge of the greater situation, such as what pleading guilty means beyond going to jail in the big picture of life.

¶ 8 Based on her examination, Braden opined that defendant was unfit because he lacked the ability to process information and, due to his low IQ, which she interchangeably referred to as mental retardation and mental illness, he could not rationally and reasonably assist in his defense.

¶ 9 Seeking clarification, the court asked Braden whether it correctly understood that her opinion was that defendant could not process complex information and therefore might form inaccurate beliefs that would affect his decision making. Braden responded, "[y]es he has a simplistic view of the way things interact." The court then expressed concern that a vast majority of defendants would not be qualified to evaluate complex law and testimony, which is why they have attorneys.

¶ 10 Mahoney testified that, based on tests done in 1997 and 2000, defendant's IQ was 60. Mahoney said that he uses interviews, not tests to determine fitness. He was aware that Braden had administered several tests for fitness, and he considered those, but said that they were only screening tests and not true tests of competency. He also believed that Braden's findings were erroneous because the scores from the tests that she performed were inconsistent. Mahoney believed that interviews were the most effective way to determine competency, and he had been trained to determine fitness in that manner. He also reviewed documents and reports when reaching his opinion.

¶ 11 When Mahoney first interviewed defendant, defendant was unable to answer simple questions and, when Mahoney asked why, defendant admitted that he intentionally refused to give accurate answers. Defendant was angry with Mahoney because he believed that Mahoney had recommended that he be sent to jail in a previous matter. After further discussion, defendant cooperated and responded appropriately to questions. Defendant told Mahoney that he had lied to Braden out of fear that, if he said too much, he would get in more trouble, and Mahoney opined that he might not have put forth his best effort when completing testing with Braden.

¶ 12 Mahoney determined that defendant was fit to stand trial because he understood the roles of the judge, jury, prosecutor, and defense counsel, and he was capable of assisting in his defense. He said that defendant understood the charge, the consequences of the charge, and the effect of a plea agreement. Defendant knew the sentencing range and knew what to do if he disagreed with what a witness said during trial. For example defendant said that, if a witness lied, he would be mad, but would stay calm and tell his attorney so that his attorney could question the witness further. Defendant knew the difference between a bench trial and a jury trial and was adamant that he did not

want a jury trial. Mahoney said that defendant did not know what potential legal defenses were available to him, but this was not unusual.

¶ 13 In his report, Mahoney wrote that, because of defendant's mental status, it was important to not ask just yes or no questions and instead ask open-ended questions to get a clear indication of what defendant understood. Mahoney said that questions should be broken down in a simple and concrete manner and that defendant should be asked to verbalize his understanding. He suggested that the speaker look defendant in the eyes, and speak slowly and clearly.

¶ 14 The court found that defendant was fit. The court expressed concern that Braden was not applying the correct standard to determine fitness and was instead using a higher standard. Instead of determining whether defendant had the ability to consult with counsel and had a rational and factual understanding of the proceedings, Braden was assessing whether defendant could process complex information. The court asked whether a higher standard applied to the ability to plead guilty than for fitness to stand trial, and both attorneys responded that there was a single standard.

¶ 15 The court also questioned Braden's credibility and found that her report was confusing and exaggerated. The court noted that she sometimes used the term "severe mental illness" to describe defendant when there was no evidence that he was mentally ill and when prior testing did not classify his mental retardation as severe. The court then found that, taking the evidence as a whole, defendant was able to understand the nature and purpose of the proceedings and assist in his defense.

¶ 16 During later proceedings in the case, defendant's father testified that defendant often says that he understands something when he does not. To ensure that defendant understands questions, his father asks him to verbalize his understanding before giving his answer.

¶ 17 After the fitness hearing, another judge took over the case. Defendant later waived his right to a jury trial. The court admonished defendant at length, starting with an explanation that it was going to explain defendant's rights to him and that counsel was also there to answer any questions that he might have. The court asked some introductory questions to determine defendant's understanding of the parties and the process, during which defendant identified his attorney and the judge and acknowledged that he was in court. During the admonitions specific to the jury waiver, many of the questions asked by the court were lengthy and simply called for yes-or-no answers. However, on some questions, defendant showed additional understanding, such as seeking to clarify the name of the person who owned the garage and acknowledging that visits from a court officer while on probation might occur at his home. During the proceeding, the State dismissed two misdemeanor charges and defendant let the court know that he did not understand what that meant and allowed the court to explain it further. After the admonitions, defendant stated that he understood the admonitions and, when asked if he had any questions, defendant stated, "I'd like to do a bench trial." He also signed a written jury waiver.

¶ 18 The court found that the waiver was knowing and voluntary, stating that, in doing so, it considered the prior fitness proceeding, the findings of Mahoney and the previous judge, and its own observations of defendant. The court noted that defendant displayed his understanding of the proceedings by his responses to questions and by questions that he asked.

¶ 19 After the bench trial, defendant was convicted and sentenced to three years' incarceration. Defendant's motion for a new trial was denied, and he appeals.

¶ 20 II. ANALYSIS

¶ 21 Defendant first argues that the trial court applied the wrong standard and improperly found that he was fit to stand trial.

¶ 22 "Due process prohibits the prosecution of a defendant who is not fit to stand trial." *People v. Lucas*, 388 Ill. App. 3d 721, 726 (2009). "Fitness speaks only to a person's ability to function within the context of a trial and does not refer to competence in other areas." *Id.* If a *bona fide* doubt of the defendant's fitness is raised, " 'the court shall order a determination of the issue before proceeding further.' " *Id.* (quoting 725 ILCS 5/104-11(a) (West 2006)). "At the fitness hearing, the State has the burden of proving, by a preponderance of the evidence, that the defendant is fit to stand trial." *Id.*

¶ 23 A defendant is unfit if, because of 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. 725 ILCS 5/104-10 (West 2006). The trial court may consider the following factors when making a fitness determination:

> "(1) The defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process;
>
> (2) The defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel;
>
> (3) The defendant's social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes." 725 ILCS 5/104-16(b) (West 2006).

¶ 24 In general, limited intellectual ability, without more, does not render a defendant unfit. *People v. Itani*, 383 Ill. App. 3d 954, 970 (2008). Additionally, a defendant may be competent even though his mind is otherwise unsound. *Id.*

¶ 25 "In determining fitness, the trial court is not required to accept the opinions of psychiatrists." *Lucas*, 388 Ill. App. 3d at 728. "The trial court should assess the credibility and weight of expert testimony and independently analyze and evaluate the factual basis for the expert's opinion rather than rely on the ultimate opinion itself." *Id.* "However, while it is within the province of the trial court to reject or give little weight to certain testimony, even expert testimony, this power is not an unbridled one." *Id.* "A trial court cannot reject an expert's opinion that a defendant is unfit without evidence that the defendant is fit." *Id.*

¶ 26 Both parties have cited to cases from other appellate districts for the proposition that our standard of review is for an abuse of discretion. However, our supreme court held in *People v. Haynes*, 174 Ill. 2d 204, 226 (1996), that "[t]he trial court's ruling on the issue of fitness will be reversed only if it is against the manifest weight of the evidence." We continue to apply that standard. See *Lucas*, 388 Ill. App. 3d at 726; see also *People v. Schoreck*, 384 Ill. App. 3d 904, 916-17 (2008) (discussing the standard of review). "A finding is against the manifest weight of the evidence if it is not based on the evidence presented." *Lucas*, 388 Ill. App. 3d at 726.

¶ 27 We have found that a finding of fitness was against the manifest weight of the evidence when the uncontroverted expert evidence established that the defendant did not have an understanding of the proceeding or the charges and the expert who testified found that the defendant could not meaningfully participate in the trial. *Id.* at 725-27. We noted that, while the court could discount an expert's opinion, it could not find that the defendant was fit in the absence of evidence to support

that. *Id*. at 728-29. However, we distinguished cases where the court properly discounted an expert opinion in favor of other evidence of fitness. *Id*. at 729 (citing *People v. Baugh*, 358 Ill. App. 3d 718, 732-33 (2005) and *People v. Bleitner*, 189 Ill. App. 3d 971 (1989)). Those cases illustrate that, when the evidence is controverted, the ultimate issue is for the trial court, not the experts, to decide, and the credibility and weight to be given psychiatric testimony are for the trier of fact. *Baugh*, 358 Ill. App. 3d at 732; *Bleitner*, 189 Ill. App. 3d at 976.

¶ 28 Here, the record shows that the court applied the correct standard, determining that defendant had the ability to consult with counsel and had a rational and factual understanding of the proceedings. Defendant's argument that the court applied an incorrect standard is based on the court's expression of concern that Braden was applying a higher standard, while defendant notes that Braden had determined that he was unable to assist in his defense. But, when the court commented on Braden's opinions, it was not disagreeing that the standard was based on defendant's ability to assist in his defense. Instead, the court was concerned that Braden was elevating the standard into one that would require defendants to understand complex legal problems at the level of an attorney. The court then further noted credibility issues with Braden's opinion, including statements she made about mental illness when it was undisputed that defendant was not mentally ill, and evidence that defendant was not truthful with Braden. Thus, the court found Mahoney's opinion more credible and also in line with the court's own observations of defendant. In Mahoney's opinion, defendant was able to understand the nature and purpose of the proceedings against him and assist in his defense, and Mahoney gave specific examples from his examination of defendant to support that opinion. The court's agreement with that opinion was not against the manifest weight of the evidence.

¶ 29 Defendant next argues that his waiver of a jury trial was invalid because, contrary to Mahoney's recommendations, the trial court failed to break down its admonitions into short and easy-to-understand statements, and failed to ask open-ended questions. Instead, the court asked many questions that required only yes-or-no answers.

¶ 30 "Both the Illinois (Ill. Const. 1970, art. I, § 8) and Federal constitutions (U.S. Const., amends. VI, XIV) guarantee a criminal defendant's right to trial by jury." *People v. Woods*, 225 Ill. App. 3d 988, 995 (1992). "The trial court has a duty to ensure that a defendant's waiver of that right is made expressly and understandingly." *Id.* A defendant may waive his right to a trial by jury if the defendant acknowledges in open court that the waiver is knowingly and understandingly made. *People v. Spracklen*, 335 Ill. App. 3d 768, 772 (2002). Determining whether a defendant's waiver of his right to a jury trial is valid does not rely on a specific formula. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). There is no requirement that the court affirmatively advise defendant of his right to a jury trial and elicit a waiver, or advise him of the consequences of a waiver. *Woods*, 225 Ill. App. 3d at 995. Generally, a jury waiver is valid even when made by defense counsel in the defendant's presence in open court, without an objection by the defendant. *Bracey*, 213 Ill. 2d at 270. When the facts are not disputed, we review *de novo* whether a jury waiver was valid. *Id.*

¶ 31 We have held that a defendant with impaired mental functioning validly waived the right to a jury trial when the trial court carefully explained the right and the defendant repeatedly stated his understanding, signed a waiver in open court, and did not demonstrate any confusion about the issue. *Woods*, 225 Ill. App. 3d at 996. Although the lack of conflict in testimony concerning fitness played a part in our decision in that case, we also noted that, throughout the admonitions, the defendant responded appropriately to the court's inquiries, demonstrating that he understood the right and had

made a knowing decision to waive it. The record thus affirmatively showed that the defendant understood the right, and he did not subsequently revoke his decision to waive a jury trial. *Id*. at 997.

¶ 32 Here, defendant knowingly and understandingly waived his right to a jury trial. Although the court gave admonitions that were not entirely in the form recommended by experts, Mahoney previously determined that defendant understood the difference between a jury trial and a bench trial. Indeed, defendant specifically stressed to Mahoney that he did not want a jury trial and there is nothing to indicate that he ever changed his mind in that regard. While Braden disagreed with Mahoney's fitness determination, she did not address defendant's desire for a bench trial or disagree with his understanding of the difference between a bench trial and a jury trial. Finally, while many of the questions by the court required yes-or-no answers, defendant asked questions during the proceeding that illustrated his understanding and, when it came to the ultimate issue of the jury waiver, defendant specifically verbalized his desire for a bench trial, stating: "I'd like to do a bench trial." Thus, the record as a whole shows a valid jury waiver.

¶ 33 III. CONCLUSION

¶ 34 The trial court's determination that defendant was fit to stand trial was not against the manifest weight of the evidence and defendant's jury waiver was valid. Accordingly, the judgment of the circuit court of Boone County is affirmed.

¶ 35 Affirmed.