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2012 IL App (3d) 091009-U

Order filed August 16, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-09-1009
)	Circuit No. 05-CF-2326
)	
PATRICK DAVIS,)	Honorable
)	Robert P. Livas,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice McDade specially concurred.

ORDER

- ¶ 1 *Held:* The trial court's decision to remand defendant for further treatment was not against the manifest weight of the evidence, and defendant has not shown that the trial court denied him a fair trial.
- ¶ 2 Defendant, Patrick Davis, was charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2004)) and armed violence (720 ILCS 5/33A-2(a) (West 2004)). The trial court found him unfit to stand trial and extended his treatment period. At the end of the treatment period, the State

filed a motion to remand defendant for further treatment, which was granted by the trial court. Defendant appeals, arguing that: (1) the State failed to establish that defendant was subject to involuntary confinement at the conclusion of his treatment period; and (2) he did not receive a fair hearing because the trial court exhibited bias against him.

¶ 3

FACTS

¶ 4 Defendant was indicted on charges of armed robbery (720 ILCS 5/18-2(a) (West 2004)) and armed violence (720 ILCS 5/33A-2(a) (West 2004)). The trial court found defendant unfit to stand trial, and the cause proceeded to a discharge hearing where the court extended defendant's treatment period for two years. At the expiration of defendant's treatment period, the State filed a motion to remand defendant for further treatment. A hearing followed on November 20, 2009.

¶ 5 At the hearing, the State presented the testimony of Dr. Randi Zoot, who had examined defendant in 2006, 2007, and before the hearing in 2009. According to Zoot, defendant would present a significant threat to public safety if he were discharged. Significant factors in her determination were that defendant: (1) had not improved his reasoning and judgment; (2) was not able to be restored to fitness; and (3) had not developed any insight into his mental disorders. Defendant told Zoot that he did not believe that there would be any appreciable change in his condition should he stop taking his medication, and he failed to accept or acknowledge his participation in his crime. Based on her evaluations, Zoot concluded that, if left to his own devices, defendant could easily deteriorate again and could pose a significant risk.

¶ 6 Defendant presented the testimony of Dr. Donna Luchetta. Luchetta had been treating defendant since June 1, 2008. While treating defendant, Luchetta would see him three or four times a week and meet with him individually once or twice a month. It was Luchetta's belief that

defendant had made progress with his depression and currently exhibited a stable mental state. She further testified that defendant was compliant with his treatment and understood its purpose. It was Luchetta's opinion that defendant would not be a significant danger to anyone else and that he did not currently constitute a serious threat to public safety.

¶ 7 On cross-examination, the prosecution inquired as to why Luchetta had changed her opinion regarding where defendant should go after he left treatment. An earlier report had stated that she believed defendant should be allowed to go home; however, her opinion changed in a later report where she indicated that defendant should go to a mental health facility. Luchetta stated that she had concluded that defendant would benefit from more structure. The prosecution also elicited testimony from Luchetta that defendant, if left untreated, would return to the same mental state he was in prior to the commission of his crime. However, she was not concerned that he would be a serious threat to public safety because he was merely an accomplice to the crime and did not have a prior criminal history.

¶ 8 Following each expert's testimony, the trial court undertook its own examination of the witnesses. The court's questions focused on why each doctor had come to a different conclusion. While questioning Luchetta, the court explored her opinion that defendant would not pose a serious threat to public safety because defendant was merely an accomplice and did not have a prior criminal history. The court was not satisfied that Luchetta was answering its questions. The doctor's responses led the court to state: (1) "I am having difficulty getting you to answer the question"; (2) "No. I didn't ask you that"; (3) "No, ma'am, you're going off. I asked you an easy question"; (4) "You're still not answering the question"; and (5) "Ma'am, I got that; answer my question."

¶ 9 Defense counsel objected a number of times during the hearing. Most of the objections were addressed directly by the court, except on two occasions. In the first instance, during the cross-examination of Luchetta, defense counsel said, "Objection[,] " and the court said, "Stop." The second instance occurred while the court was questioning Luchetta. Defense counsel said, "Judge, I am sorry[,] " to which the court again responded, "Stop."

¶ 10 Following the hearing, the trial court found that defendant still constituted a serious threat to public safety and remanded him back to the Department of Human Services for further treatment. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant first argues that the State failed to establish that defendant was subject to involuntary confinement at the conclusion of his treatment period. If, at the conclusion of a defendant's extended period of treatment he remains unfit to stand trial, the court may remand the defendant for further treatment if the State proves by clear and convincing evidence that the defendant is subject to involuntary admission under the Mental Health and Developmental Disabilities Code or constitutes a serious threat to public safety. 725 ILCS 5/104-25(g) (West 2008). The standard of review for an involuntary commitment proceeding is whether the judgment is against the manifest weight of the evidence. *In re Shirley M.*, 368 Ill. App. 3d 1187 (2006). A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *People v. Urdiales*, 225 Ill. 2d 354 (2007).

¶ 13 Here, we do not find that the trial court's determination was against the manifest weight of the evidence. Two experts testified that they examined defendant. Zoot stated that she

believed defendant would pose a significant threat to public safety if discharged. Luchetta testified that it was her opinion that defendant did not currently constitute a serious threat to public safety. Their testimony reached opposite conclusions and, faced with conflicting experts, the trial court accepted Zoot's opinion over Luchetta's. That fact does not make the court's determination against the manifest weight of the evidence, and we see no reason to disturb its determination.

¶ 14 Defendant next argues that he did not receive a fair hearing because the trial court exhibited bias against him. As evidence of bias, defendant notes that the trial court twice prevented defense counsel from objecting, and the court's questioning of his expert witness, Luchetta, was aggressive and undertaken with a frustrated tone. A trial court is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the allegation of bias. *Eychaner v. Gross*, 202 Ill. 2d 228 (2002). An allegation of bias must be viewed in context and should be evaluated in terms of the trial court's specific reaction to the events taking place. *Urdiales*, 225 Ill. 2d 354. The fact that a trial court displays displeasure or irritation with certain behavior is not necessarily evidence of judicial bias against defendant. *People v. Jackson*, 205 Ill. 2d 247 (2001).

¶ 15 Here, when the trial court's comments are viewed in context, they do not evidence bias against defendant. If anything, the comments show that the trial court was impatient with Luchetta's evasive answers to its questions. A showing of impatience, with nothing more, does not lead to a conclusion that the trial court was biased against defendant. See *People v. Faria*, 402 Ill. App. 3d 475 (2010). Therefore, we find that defendant has failed to overcome the strong presumption that the trial court was impartial.

¶ 16

CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.

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¶ 19 JUSTICE McDADE, specially concurring

¶ 20 I concur in the majority's decision affirming the trial court's determination to remand the defendant for further treatment.

¶ 21 I write specially to express my concern over what appears to be the trial court's refusal to allow defense counsel to make a record of perceived errors. I understand the court believed Dr. Luchetta to be unwilling or unable to provide clear and direct answers to its questions, and also its resulting impatience with her testimony. However, even the State recognized that "the trial judge could have shown a touch more patience when dealing with Dr. Luchetta." Finding that this impatience did not rise to the level of overbearing and bias, the State asserts that the defendant got a fair hearing if not a perfect one.

¶ 22 My concern is different. With the supreme court's increasing restrictions on review of unpreserved error (see *People v. Thompson*, 238 Ill. 2d 598 (2010)), a trial court's foreclosure of some of counsel's objections and its refusal to rule on others can effectively frustrate the defendant's (or any party's) ability to mount an effective appeal. Although the conduct does not appear to have negatively impacted review in this case, I do not believe we should allow it to occur without acknowledgment or comment.