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2013 IL App (4th) 120243-U

NO. 4-12-0243

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
March 18, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
PAUL R. FARROW, JR.,	)	No. 10CF219
Defendant-Appellant.	)	
	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in finding defendant unfit for trial and sentencing.

¶ 2 In December 2010, a jury convicted defendant, Paul R. Farrow, Jr., who was proceeding *pro se*, of burglary (720 ILCS 5/19-1(a) (West 2008)). Prior to sentencing, defendant requested the appointment of counsel. Appointed counsel filed a motion for a finding of unfitness. Following a July 2011 fitness hearing, the trial court granted that motion and found defendant unfit.

¶ 3 The State appeals, arguing the trial court erred in finding defendant was unfit because it applied the wrong standard in making its fitness determination. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 27, 2010, the State charged defendant with burglary (720 ILCS 5/19-1(a))

(West 2008)).

¶ 6 At his August 18, 2010, arraignment, defendant declined court appointed counsel and instead elected to proceed *pro se*.

¶ 7 Following defendant's December 22, 2010, trial, the jury found defendant guilty of burglary.

¶ 8 On February 15, 2011, defendant requested the appointment of counsel for sentencing.

¶ 9 On April 11, 2011, defendant's appointed counsel filed a motion for a fitness examination, arguing a "*bona-fide* doubt [existed] as to [d]efendant's previous fitness to stand trial and his present fitness to be sentenced."

¶ 10 Following an April 18, 2011, hearing, the trial court ordered a fitness exam, presumably because a *bona-fide* question as to defendant's fitness existed. We note a transcript of this hearing is not included in the record on appeal.

¶ 11 On May 23, 2011, Dr. David Coleman examined defendant. According to Dr. Coleman's June 3, 2011, written report, defendant had "unusual associations and difficulty with logical reasoning," and his personality testing indicated "significant symptoms of paranoid and delusional thought." While defendant was related as to person, place, day, and purpose of the evaluation, and could answer concrete questions, he routinely had difficulty explaining or giving reasons for things. As a result, defendant was unable to contribute to his own defense because he did not demonstrate the ability to appreciate and make rational decisions regarding his legal choices. While defendant was able to identify court roles, functions, and procedures, he was unable to give rational explanations regarding why certain facts or evidence were relevant.

Defendant was also unable to provide rational explanations regarding how he would interact with an attorney or how he thought the judicial decision-making process operated. Dr. Coleman diagnosed defendant with schizoaffective disorder, bipolar type. According to the report, defendant had no insight into his mental illness. It was Dr. Coleman's opinion defendant "was not competent at the time of his trial to represent himself or to stand trial." While Dr. Coleman opined defendant was unfit to stand trial, he believed defendant could be made fit within one year.

¶ 12 During defendant's July 13, 2011, fitness hearing, the State called Dr. Coleman who testified it was his conclusion defendant was not presently fit for sentencing and was not fit to stand trial. Dr. Coleman testified he gave defendant several standardized tests, including the verbal portion of the Wechsler Adult Intelligence Scale, a personality assessment inventory, the Brief Symptom Inventory, the MacArthur Competence Assessment Tool, and a mental health status evaluation, which involved a structured interview of defendant.

¶ 13 Dr. Coleman testified defendant had previously been diagnosed with bipolar disorder. Dr. Coleman diagnosed defendant as having schizoaffective disorder, bipolar type. According to Dr. Coleman, defendant also had a history of not taking his medication.

¶ 14 Dr. Coleman also examined defendant's opening statement and his motion to withdraw counsel, the police reports, counsel's fitness motion, and defendant's mental health records. Defendant's opening statement in his burglary trial began with the following:

"[W]hat I'm going to tell you here today is I'm not guilty of this crime. The crime charges me with burglary. I'm not a foreign surveillance expert. I'm not no Chinese control expert. I'm nothing

but an American citizen. I'm an electronics technician.

I've worked a little bit in intelligence in the past indirectly, not ever on a payroll. I've had some friends working over in Newport in the chemical industry there, what we call the VX bomb. You know, that's why we've got a government that controls areas that ha[ve] high-technology devices like the VX bombs.

It's not much of a secret. If you research the history of Newport, you know, you've got a lot of control in this area, when you've got bombs, equipment. You've got VX which, when dropped, would, you know, kill a human being.

There's been gallons spilled over there. It's been in the newspaper in the last few years. There been a lot of planes going over, dropping chemicals. So you know that we've got a controlled area, you know, so there's really not a lot of CIA activity around here, or FBI, even though you might think there is, but there's not.

I'm just here, a regular citizen, not trained in anything formally. I know how to do about anything anybody else would do in those fields. Just a regular citizen. However, we've got a lot of problems in this area, and we've had a lot of problems in the past about where [*sic*]. And I'm not at liberty to discuss it. I'm not an expert, but I've been involved with some stuff."

defendant's "functional cognitive ability at the time of the evaluation was in the low average range overall with respect to verbal and reasoning abilities but [also showed] he had particular weakness well below average in working memory and in verbal reasoning." Dr. Coleman explained verbal reasoning refers to "the ability to use language to understand a situation and to either make judgments about that situation or to solve problems related to that situation." Dr. Coleman also testified defendant's answers "had no clear relevance to the question being asked" which meant "his mind had what's often called loose associations or flight of ideas where he jumped from something that was stated to him to an association that most people would not think of."

¶ 16 Dr. Coleman also testified the results of the MacArthur Competence Assessment Tool, which is specifically designed to assess competency to stand trial, indicated defendant suffered from significant impairment in reasoning. Dr. Coleman testified defendant was unable to provide adequate explanations regarding why he would do certain things, why he would identify something as evidence, why he would choose to accept a plea agreement, or why he would pick a particular person as his attorney. Dr. Coleman noted he was particularly concerned with defendant's inability to recognize he suffered from a mental health condition. Defendant also failed to recognize his own statements could jeopardize his credibility. According to Dr. Coleman's testimony, defendant

"doesn't have an understanding of the impact of his behavior, of his speech patterns, he doesn't have an understanding of the weaknesses in his judgment and reasoning ability, doesn't have an understanding of the fact he cannot give good reasons for why he would have certain

kind[s] of choices, what would be included as evidence, how he would select or reject a plea agreement, and those are all things that are considered to be relevant to the issue of competency."

¶ 17 It was Dr. Coleman's opinion defendant was not fit at the time of his trial to represent himself. Dr. Coleman testified he observed "very little difference between [defendant's] ability to make reasoned decisions, statements and judgments from the time of his pretrial motion to the time of his []motion to withdraw, to the time of the motion by [defense counsel] for a fitness evaluation." According to Dr. Coleman, "I didn't see any real change and so my concern that [defendant] does not currently possess the reasoning and appreciation characteristics needed would apply to each of those time frames." Dr. Coleman further opined defendant could be made fit with treatment and medication within one year.

¶ 18 At the conclusion of the fitness hearing, the trial court found the following:

\*\*\*\* I am going to make a finding at this time that [defendant] is not fit to proceed.

So, [(addressing defendant)] the bottom line is Dr. Coleman thinks that there are some issues that you need to work on and that you're not fit to stand trial. So, I am going to have to—and I agree with that assessment and we've heard his testimony, and I am going to require that you receive and participate in some treatment to see if we can get you in a better position."

¶ 19 Two days later, on July 15, 2011, Judge Claudia Anderson, rather than Judge Michael Clary, signed an agreed written order regarding defendant's fitness. Both the assistant

state's attorney and the assistant public defender signed the agreed order. In that order, the court found defendant "unfit for trial as well as post[]trial motions and sentencing."

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, the State argues the trial court erred in finding defendant unfit for trial and sentencing. Specifically, the State contends the trial court applied the wrong standard in making its fitness determination.

¶ 23 Defendant initially argues this case is moot because defendant has been subsequently found fit. Defendant apparently bases this theory on the premise the trial court only found defendant unfit for sentencing, which has not yet occurred in the case. The State disagrees, arguing the fact defendant was later restored to fitness is irrelevant regarding the issue of his fitness to stand trial in December 2010. We agree. If the court's decision is upheld, defendant's original trial is a nullity. While we agree with the State the case is not moot, we disagree with the State's argument the court erred in finding defendant unfit for trial and sentencing.

¶ 24 "Due process prohibits the prosecution of a defendant who is not fit to stand trial." *People v. Lucas*, 388 Ill. App. 3d 721, 726, 904 N.E.2d 124, 129 (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." *Lucas*, 388 Ill. App. 3d at 726, 904 N.E.2d at 129. The issue of a defendant's fitness to stand trial may be raised by the court, defense, or State at any time before, during, or after trial. 725 ILCS 5/104-11(a) (West 2010). "If a *bona fide* doubt of the defendant's fitness is raised, 'the court shall order a determination of the issue before proceeding further.'" *Lucas*, 388 Ill. App. 3d at 726, 904 N.E.2d at 129 (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." *Lucas*, 388 Ill. App. 3d at 726, 904 N.E.2d at 129.

¶ 25 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 2010). 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 2010).

¶ 26 Although the trial court in this case agreed with Dr. Coleman's assessment of defendant's fitness, a court is not required to accept the opinions of psychiatrists in determining fitness. *Lucas*, 388 Ill. App. 3d at 728, 904 N.E.2d at 130. Instead, the court should assess the credibility and weight of the expert's testimony as well as independently analyze and evaluate the factual basis for that opinion. *Lucas*, 388 Ill. App. 3d at 728, 904 N.E.2d at 130-131. While it is within the province of the trial court to reject or afford little weight to certain expert testimony,

this power is not unbridled. *Lucas*, 388 Ill. App. 3d at 728, 904 N.E.2d at 131. "A trial court cannot reject an expert's opinion that a defendant is unfit without evidence that the defendant is fit." *Lucas*, 388 Ill. App. 3d at 728, 904 N.E.2d at 131. "The trial court's ruling on the issue of fitness will be reversed only if it is against the manifest weight of the evidence." *People v. Haynes*, 174 Ill. 2d 204, 226, 673 N.E.2d 318, 328 (1996). "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, 904 N.E.2d at 129.

¶ 27 We note on July 15, 2011, Judge Claudia Anderson (who did not hear the evidence in this case) signed an order prepared by defendant's counsel and approved by both the assistant state's attorney and the assistant public defender. While the parties agreed the trial court found defendant unfit to stand trial, Judge Michael Clary, in a later proceeding, voiced some doubt about this. During the March 2, 2012, hearing restoring defendant to fitness, the following colloquy took place:

"THE COURT: Well, we have a number of motions that—I think some things may have been filed by the Public Defender and we have some filed by [defendant.] I would like to have an opportunity to get that sorted out to know where we stand on this case that we had the trial on and that [defendant] was awaiting sentencing on.

MS. MORRIS [(Assistant Public Defender)]: Yes, Your Honor. You had found him to—unfit to stand trial and then I believe the State filed a notice of appeal with the Appellate Court on that issue and I am unsure at the present time of the status of that appeal.

Because, of course, the Appellate Defender would handle it.

\* \* \*

[THE COURT:] Well, I guess we need to know something about the status of that appeal, but, as I said, I—I don't know the impact of a finding of unfitness after the trial before the sentencing, whether that has any impact on the conviction or not, I don't know, and I'm not sure if anybody's gonna file a motion about that."

During a March 13, 2012, status hearing, the following colloquy occurred:

"THE COURT: And as I recall, we set this for a status to determine how we're going to proceed, what motions have to be heard, and so forth. So—and just [defendant], just as we were walking into the courtroom, I had asked counsel the status of the appeal. You know, the State appealed the finding of unfitness, and so what did you determine was the status of that?"

MS. MORRIS: Well, Your Honor, after you found him unfit for trial and sentencing, the State filed a notice of appeal on July 22, 2011.

\* \* \*

[MS. MORRIS:] I think at this point, it would be back to a pretrial setting \*\*\*.

\* \* \*

THE COURT: Well, we can do that, although you

mentioned that would go back to a pretrial setting. That case was already tried.

MS. MORRIS: Exactly, Your Honor, but you found him unfit to stand trial.

THE COURT: For sentencing. I don't know that negates anything.

\* \* \*

THE COURT: Yeah, that has not been resolved. That might be important for [defendant] to know that he was found unfit after the trial before sentencing. That does not necessarily relate back to the trial. I mean, I don't know. We've had no hearing. Nobody has presented any case law on that, any evidence about that. So, it would not be a foregone conclusion that that's the status of that case. I just want you to know that that hasn't been decided."

After defendant addressed the trial court to explain the court had found him unfit for trial following Dr. Coleman's testimony, the State agreed and the following colloquy took place:

"MS. LAWLYES [(assistant State's Attorney)]: Judge, that was my understanding of the ruling, which was why we appealed. I think if the Court had just found him unfit for sentencing, we would have let the fitness issue run its course until he was made fit. But—and I think that was why when we were here last time and [defendant] was now found fit, we had discussed the ramifications of

us at this point withdrawing our appeal, and we had discussed the fact that the issue of the trial and the fitness for the original trial was probably an issue that was going to be addressed on the appeal as well. So, those two were tied in together based on Dr. Coleman's findings, and I think ultimately, the Court's findings.

THE COURT: Well, I guess I'll need to see what I said July 13th, as I'm not sure that I could make a specific finding. I may have said things about that, but I'm not sure that just finding unfitness at that point was also dispositive of the trial situation. It may be, but I'm going to go back and see, and I would need to know what the law is about that before I'm positive that that whole issue has already been laid to rest. So, it may not be laid to rest. It might be. I don't recall what I said, although I do recall mentioning things about the trial in making my ruling."

¶ 28 As defendant points out, the agreed written order was signed by Judge Claudia Anderson instead of Judge Michael Clary, who presided over the fitness hearing. We question the necessity and wisdom of such a practice. As can be seen here, it appears Judge Clary thought he found defendant unfit only for sentencing. The attorneys obviously thought when Judge Clary said he agreed with Dr. Coleman's assessment he meant he agreed defendant was unfit for trial as well. If the agreed order had been presented to Judge Clary rather than to a judge who had not heard the matter, perhaps Judge Clary would have questioned the language of the agreed order. Nevertheless, Dr. Coleman testified defendant was unfit for trial and sentencing, Judge Clary

stated on the record he agreed with Dr. Coleman's assessment, and an order was signed finding defendant unfit for trial, posttrial motions, and sentencing.

¶ 29 Our review of the record shows the trial court applied the correct standard in making its fitness determination. In this case, a *bona fide* doubt was raised as to defendant's fitness. The State does not challenge this finding. Because a *bona fide* doubt was raised, the burden shifted to the State to present evidence of defendant's fitness. *Lucas*, 388 Ill. App. 3d at 726, 904 N.E.2d at 129. However, at the fitness hearing, the State called Dr. Coleman to testify, whose detailed report and live testimony concluded defendant was unfit because his mental illness impaired his ability to defend himself. As stated, "[a] trial court cannot reject an expert's opinion that a defendant is unfit without evidence that the defendant is fit." *Lucas*, 388 Ill. App. 3d at 728, 904 N.E.2d at 131. The State presented no other evidence; Dr. Coleman was the *State's* witness.

¶ 30 In addition to reviewing the report and hearing Dr. Coleman testify, the trial court had the opportunity to observe defendant during trial. As a result, the court was able to observe firsthand how defendant's mental state affected his ability to present a defense. We note the court took judicial notice of both the trial and pretrial proceedings in this case. Considering the State's burden of proof and lack of evidence to contradict the State's own expert's testimony, the court had insufficient evidence from which it could find defendant fit. The court's determination defendant was unfit for trial and sentencing was not against the manifest weight of the evidence.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the trial court's judgment and remand the case for further proceedings.

¶ 33

Affirmed.