2017 IL App (1st) 152627-U

No. 1-15-2627

Order filed October 26, 2017

Fourth 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. 15 DV 73284
	)	
MICHAEL JAMES,	)	Honorable
	)	Laura Bertucci-Smith,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

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

¶ 2 Following a bench trial, defendant Michael James was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and sentenced to one year conditional discharge with parenting and anger management classes. Defendant appeals, arguing that the trial court erred by

not conducting a fitness hearing after learning facts which showed that there was a *bona fide* doubt as to his fitness to stand trial. Defendant also contends that his counsel was ineffective for failing to request a fitness evaluation based on the available facts. We affirm.

¶ 3 Defendant was charged with two counts of domestic battery. Defendant waived his right to a jury trial and the case proceeded to a bench trial. Since defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the facts only to the extent necessary to resolve the limited issue raised on appeal, that of defendant's fitness to stand trial.

¶ 4 The State's evidence at trial showed that, on March 27, 2015, defendant and his wife argued about her failure to discipline their 17-year-old daughter. After the argument with his wife, defendant came up behind his daughter in the kitchen, grabbed her, and a physical altercation ensued. Defendant and his daughter fell to the floor. Defendant, who was now on top of his daughter, struck her. As she fought back, defendant bit her finger. Robin James, defendant's wife, struck him with a broom. Defendant's younger daughter also struck him while he was on top of the 17-year-old. Eventually, defendant stood up, returned to his bedroom, and the altercation ceased. Defendant's wife and their two daughters retreated to the 17-year-old's bedroom. Later, defendant entered the bedroom and the argument continued. During the renewed argument, his younger daughter, fearing defendant would again be violent, positioned herself between defendant and the 17-year-old. Defendant then struck his younger daughter in the face. She called the police. Officers arrived and, after observing injuries to the girls consistent with their stories, arrested defendant.

¶ 5 Defendant testified that he has had multiple back surgeries, for which he is prescribed "a whole lot of medication," and sometimes needs the aid of a walker to move around. Defendant

testified that he and his wife disagree on how to discipline their children. On the night in question, defendant was angry with the 17-year-old because she had been disrespectful to his mother and she wanted to go to a party. When asked, during his direct examination, to explain what happened in the kitchen on the night in question, defendant described how he had come up behind the 17-year-old and grabbed her by the shoulder. In describing his actions, defendant stood up at the witness stand to demonstrate his movements for the court. The trial judge asked him to take a seat, take a deep breath, and answer counsel's question. The judge continued, "If she asks you to stand up and demonstrate something, then we'll deal with that at that point." Defendant complied and related that he touched the 17-year-old's shoulder and told her that she needed to stop disrespecting him. She moved away and, due to his encumbered mobility, he fell on top of her. Both daughters and his wife all struck him while he was on top of the 17-year-old. Defendant felt the 17-year-old "stabbing" him with something. Defendant hit her with an open hand on the side of her leg. Defendant denied striking his younger daughter later that evening.

¶ 6 On cross-examination, defendant admitted that he was the disciplinarian in the family. He related that he had problems with the behavior of all of his daughters. When asked about how he grabbed the 17-year-old's shoulder in the kitchen, defendant went into detail regarding a prior incident with his daughter. The judge asked defendant to refrain from "going off on tangents" and to do his best to answer only the questions asked of him. Defendant concluded his testimony without incident.

¶ 7 The trial court found defendant guilty of both counts of domestic battery. At sentencing, defendant told the trial court, *inter alia*, that he left his witnesses "at home" because his wife told him that they were going to drop the case against him. These witnesses, according to defendant,

knew him and knew that his daughters "do what they do." Defendant was sentenced to one year of conditional discharge, with parenting and anger management classes. The court also ordered a one-year order of protection.

¶ 8 Defendant moved for a new trial. During arguments, defense counsel told the court that, at the time of the trial, defendant had not taken his prescribed antidepressant and pain medication. Counsel argued that defendant's failure to take his medication affected his demeanor, his ability to testify, and his ability to help counsel prepare for trial. As an example, counsel reminded the court that it needed to admonish defendant to sit down and take a breath when he stood up during his testimony. Counsel also noted that, during defendant's allocution, he admitted that he had left potential witnesses "at home," a fact that he had withheld from counsel.

¶ 9 The court denied defendant's motion for a new trial. In announcing its decision, the court noted that it had "no evidence" to support the "mere allegation" that defendant could not assist in his defense because he failed to take his medication. Rather, the court pointed out that, initially, defendant was unsure if he wanted a bench trial or a jury trial. The court gave defendant time to discuss the matter with his attorney, and, after that discussion, he told the trial judge that he wanted a bench trial. The court noted that this indicated that defendant "was able to communicate with his attorney." Regarding the witnesses that defendant allegedly withheld from his attorney, the court noted that it heard from all of the eyewitnesses present for the altercation. As such, there was no reason to believe the outcome would have been different if these witnesses had been presented. The court rejected the argument that defendant's failure to take his medication is what caused him to withhold the witnesses from his attorney. The court found

nothing in defendant's testimony or his demeanor in court that "made him unfit and not able to assist in his defense."

¶ 10 On appeal, defendant first contends that the trial court erred by not conducting a fitness hearing because his behavior at trial, and the subsequent revelations that he withheld witnesses from his attorney and failed to take his prescription medication, raised a *bona fide* doubt of his fitness to stand trial.

¶ 11 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. *Brown*, 236 Ill. 2d at 186; 725 ILCS 5/104-10 (West 2014).

¶ 12 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 bizarre behavior during trial, his failure to take his prescribed medication, and his admission during allocution that he withheld certain witnesses from his counsel created a *bona fide* doubt that he was fit to stand trial. Defendant, thus, maintains that the trial court was required to, *sua sponte*, order a fitness hearing.

¶ 13 "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, we review the trial court's failure to order a fitness hearing *sua sponte* for an abuse of discretion. *People v. 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." *Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 14 The test for 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 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 501, 518 (1991). These factors include: (1) the rationality of defendant's behavior and demeanor at trial; (2) any representations by defense counsel on 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).

¶ 15 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 *People v. Hanson*, 212 Ill. 2d 212, 224 (2004). This is not surprising, given defendant's behavior throughout the trial.

¶ 16 The record shows that defendant testified coherently at trial. He was able to clearly convey his version of events and, although the judge did not find his story to be credible, his testimony suggests that he knew and understood the nature of the proceedings. Defendant testified that he has issues with how his daughters behave and that he and his wife disagree on whether to discipline their children. On the night in question, defendant testified that he was defending himself after his daughter began to hit him. His testimony suggested that the 17-year-old had hit him in the past. The record shows defendant was responsive to the questions posed to him by defense counsel, the assistant State's Attorney, and the trial judge. In short, nothing in the record shows that defendant's behavior at trial should have raised a doubt as to his fitness to stand trial.

¶ 17 Defendant nevertheless points to two instances of "irrational and inappropriate" behavior that should have alerted the court that there was a *bona fide* doubt as to his fitness to stand trial. Specifically, defendant points to the fact that he stood up during his direct examination and that, during his cross-examination, the court had to admonish him to not go off on tangents. Again, the trial court is in the best position "to determine whether the defendant's behavior was so abnormal as to raise a doubt of his fitness." *People v. Jackson*, 91 Ill. App. 3d 595, 603 (1980). Here, an examination of the record demonstrates that these two examples are readily explainable and do not raise a *bona fide* doubt of defendant's fitness.

¶ 18 Although defendant stood up at the witness stand during his direct examination, he explained to the court, after it asked what he was doing, that he was merely attempting to demonstrate how he grabbed the 17-year-old in the kitchen that night. The court told him to sit down, take a deep breath, and to only stand up to demonstrate if counsel asked him to do so.

Examining the record provides a simple explanation for defendant's behavior. Earlier in the trial, both daughters were allowed to demonstrate the physical altercation during their testimony without objection from the court. Thus, when defendant was asked to explain what happened during the altercation, he also attempted to physically demonstrate the altercation. After being instructed by the court not to stand, defendant complied for the remainder of his testimony.

¶ 19 Likewise, when defendant was admonished by the court during cross-examination to avoid going off on tangents and do his best to answer the question asked of him, he complied. Defendant's cross-examination continued without incident. Moreover, the record shows that when the court admonished defendant for his tangent, defendant was, essentially, attempting to contextualize his argument with his daughter by detailing a prior incident that precipitated the argument in question. As such, defendant's behavior does not show that he was "irrational" or unable to understand the nature of the proceedings. Rather, defendant's behavior demonstrates that he was actively trying to convey his version of events to the court. Thus, defendant's act of standing to physically demonstrate the altercation on the witness stand, and a solitary admonishment by the trial court for going off on a tangent, which defendant heeded, do not raise a *bona fide* doubt of defendant's fitness to stand trial.

¶ 20 Second, the representations by defense counsel regarding defendant's competence do not raise a *bona fide* doubt of his fitness. In defendant's motion for a new trial, counsel informed the court that she had just been made aware that defendant was not taking his prescribed antidepressant and pain medications throughout the proceedings. Counsel argued that defendant's failure to take his medication affected his ability to testify at trial and help counsel prepare his defense. Specifically, counsel suggested that the two incidents that occurred during

defendant's testimony were a result of his failure to take his medication. Counsel further suggested that defendant's admission during allocution that he did not call some witnesses showed that he was not assisting in his defense.

¶ 21 In considering this factor, we initially note that, even assuming defendant was diagnosed with a mental illness and prescribed antidepressants, the mere existence of a mental condition 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 his mind is otherwise unsound.' " *Hanson*, 212 Ill. 2d at 224-25 (quoting *Eddmonds*, 143 Ill. 2d at 519). Moreover, the fact that defendant was not taking his prescribed medication during trial would not raise a *bona fide* doubt where, as here, the record does not indicate defendant behaved irrationally or that he was unable to assist in his defense. See *People v. Woodard*, 367 Ill. App. 3d 304, 320 (2006) (finding that the trial court did not err in failing to hold a fitness hearing where the record showed that the defendant's behavior was "interested, rational, and appropriate," even though defendant was prescribed antidepressants, which she stopped taking prior to trial, and had previously attempted suicide).

¶ 22 This is especially so where, as here, the record indicates that defendant was able to assist in his defense. For example, as pointed out by the trial court in denying defendant's motion for a new trial, the record shows that defendant, after consulting with counsel, elected a bench trial. After defendant did so, the court asked him a series of questions until it was satisfied that he understood his decision. This, coupled with defendant's aforementioned behavior at trial, belies the claim that defendant was unfit and unable to assist in his defense. Therefore, counsel's representations are insufficient to support the conclusion that there existed a *bona fide* doubt of defendant's fitness to stand trial.

¶ 23 As for the final factor, defendant did not present any medical opinions regarding his fitness to stand trial, nor did he provide any testimony showing a medical condition that interfered with his fitness to stand trial. Thus, there is nothing that would raise a *bona fide* doubt of his fitness.

¶ 24 In sum, after reviewing the relevant factors in light of the record at bar, we do not find that there is sufficient evidence to support an independent finding of a *bona fide* doubt regarding defendant's fitness to stand trial. See *Hanson*, 212 Ill. 2d at 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.

¶ 25 Having reached this conclusion, we necessarily reject defendant's claim that his counsel was ineffective for failing to request a fitness hearing. See *People v. Harris*, 206 Ill. 2d 293, 304 (2002) ("To establish that the failure to request a fitness hearing prejudiced a defendant within the meaning of *Strickland*, a defendant must show that facts existed at the time of trial that would have raised a *bona fide* doubt of his ability to understand the nature and purpose of the proceedings against him or to assist in his defense." (Internal quotation marks omitted.)). As mentioned, defendant has not shown that there existed a *bone fide* doubt of his fitness to stand trial. Accordingly, defendant cannot succeed on his ineffective assistance of counsel claim because he cannot show that he was prejudiced by counsel's failure to request a fitness hearing. See *People v. Strickland*, 466 U.S. 668, 687 (1984) (holding that a defendant must show, both, that counsel's performance was deficient and that the deficient performance prejudiced the defendant).

¶ 26 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.