2017 IL App (4th) 170012-U

NO. 4-17-0012

FILED
October 4, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
KEITH M. McINTOSH,	)	No. 12CF504
Defendant-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's finding of fitness at the retrospective fitness hearing was not against the manifest weight of the evidence, and there was no indication defendant received the ineffective assistance of counsel.

(2) The trial court did not apply an improper legal standard at trial as it related to the application of the limited authority doctrine.

(3) The trial court did not abuse its discretion in removing defendant from the sentencing hearing based upon defendant's disruptive conduct.

(4) Defendant forfeited his claims of error regarding the trial court's imposition of sentence.

¶ 2 In a May 2013 bench trial, the trial court found defendant, Keith M. McIntosh, guilty of home invasion (720 ILCS 5/12-11(a)(2) (West 2010)). The court sentenced him to 30 years' imprisonment. He appealed.

¶ 3 We reversed the trial court's judgment (*People v. McIntosh*, 2016 IL App (4th) 140438-U, ¶ 38), and we remanded this case for a retrospective fitness hearing, because after

previously finding defendant to be unfit to stand trial, the court failed to hold a valid restoration hearing. See *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 38. Although the court had held a restoration hearing, the record failed to affirmatively show the court had independently exercised its discretion in finding defendant to be restored to fitness, as opposed to going along with the attorneys' stipulation to the conclusions in the psychological report. See *People v. Greene*, 102 Ill. App. 3d 639, 641-42 (1981). Consequently, the presumption of defendant's continuing unfitness had not been rebutted by a valid restoration hearing. See *Greene*, 102 Ill. App. 3d at 643.

¶ 4 On remand, the trial court conducted a retrospective fitness hearing. Only the psychological report was admitted as evidence and the parties stipulated to the findings set forth therein. The trial court accepted the parties' stipulation and held defendant had been restored to fitness. Defendant appeals the court's holding and raises additional issues challenging the evidence at trial and factors related to sentencing. We affirm.

¶ 5 I. BACKGROUND

¶ 6 On August 23, 2012, in another case against defendant, People v. McIntosh, Vermilion County case No. 11-CF-699, the trial court found him to be unfit to stand trial. The examining psychiatrist, Lawrence Jeckel, had recommended that defendant receive medication and outpatient treatment, but he was unsure that defendant could regain fitness within a year. However, defendant's arrest and incarceration in the present case prevented him from undergoing the treatment.

¶ 7 On January 23, 2013, when the case was scheduled for trial, defense counsel requested a fitness examination in both cases. The trial court appointed a psychologist, David Coleman, to evaluate defendant and opine whether he had regained fitness. In his February 20,

2013, report, Coleman stated that defendant functioned in the low-average range and that defendant had a verbal intelligence quotient of 86. Coleman diagnosed defendant as having post-traumatic stress disorder; bipolar I disorder, most recent episode mixed with psychotic (paranoid) features; and antisocial personality disorder. Although he opined that defendant was fit to stand trial, he added that defendant only "marginally" demonstrated an ability to choose among his legal options and to appreciate the implications of his decision. He noted that defendant would have difficulty confining his statements to concise and clearly relevant responses and that he might need reminders to consult his attorney before making legal choices.

¶ 8 On March 19, 2013, having received Coleman's report, the trial court held a hearing on the question of whether defendant had regained his fitness to stand trial. Defendant was present at the hearing, with defense counsel. The parties stipulated to Coleman's findings, the court accepted that stipulation, and the court found defendant competent to stand trial.

¶ 9 On May 1, 2013, the trial court conducted defendant's bench trial. Gracie Pruitt testified first for the State. She said she was 30 years old and a friend of defendant's. On October 19, 2012, Pruitt was at her friend Steven Ladd's house. Defendant came to Ladd's several times, knocked loudly on the door, but no one let him in. Finally, that evening Ladd answered the door when defendant knocked. Pruitt said she did not remember what happened, only that she was scared. She took her phone into the closet and called the police. She could only hear, not see, what was happening in the house. She said when Ladd opened the door, she "heard someone get hit." She heard defendant say: " 'Is Gracie here? I'm gonna kill that bitch if I find her.' " She ran to the back bedroom closet. Pruitt said she heard the police arrive. She said she waited approximately 10 minutes before she came out from the closet. She saw Ladd with the police. He had bruises on his face and leg.

¶ 10 On cross-examination, Pruitt admitted at the time of her testimony she was in prison on a drug charge. She said she and Ladd were just friends. She had personal items at defendant's house, as she often stayed there to use drugs.

¶ 11 Officer Patrick Carley testified he was dispatched to Ladd's residence for a home invasion where the suspect fled on a bicycle. Carley noticed the "whole left side of [Ladd's] face" was red. Ladd informed Carley he had opened the door for defendant.

¶ 12 Ladd testified Pruitt had arrived at his residence in the afternoon or evening. He said he and Pruitt were friends, with no romantic involvement. Pruitt was telling Ladd about her "concerns about her boyfriend." Ladd said, later that evening, defendant showed up at his house while he and Pruitt were in the bedroom talking. Ladd heard the pounding on the door. He opened the door to see defendant. Defendant asked if Pruitt was there. Ladd said she was. Defendant demanded to speak with her. Ladd told defendant he would check with Pruitt to see if she wanted to speak with him. She did not. Ladd went back to the door to tell defendant she did not want to speak with him and Ladd began to close the door. He said: "All of a sudden the door comes bursting in on me and it knocked me over[.]" Ladd said defendant knocked him to the floor and "proceeded to come in and start pummeling [him]." Defendant was sitting on Ladd punching him in the face with both fists. Ladd kicked defendant in the groin which caused defendant to stop. Defendant got up, went to the bedroom, opened the door, looked in, but then left. Police arrived and took pictures of Ladd's injuries to his knee, leg, and face.

¶ 13 Defendant testified on his own behalf. He acknowledged he had the following prior convictions: (1) possession of a controlled substance in 2010 and (2) possession of cannabis with the intent to deliver in 2004. He said he was unemployed and received disability due to injuries he received in a car accident. On the day of the incident, defendant went to look for

Pruitt. He ended up at Ladd's house. He had known Ladd for a few months. He said he knocked on the door and announced himself. Ladd opened the door and defendant stepped inside. Defendant asked Ladd if Pruitt was there and Ladd said she was. Defendant asked to speak with her but Ladd said no. Defendant said he tried to walk around Ladd, but Ladd grabbed him and they "got to tussling." Defendant said they fell to the floor. He said he "held him with one hand and [he] was hitting him a couple of times with one hand[.]" Defendant said he told Ladd not to "have [his] girl over here." They exchanged words and Ladd told defendant to leave, so he did.

¶ 14 After considering the evidence and arguments of counsel, the trial court found defendant guilty of home invasion, noting that either Ladd's or defendant's version supports the conviction. In March 2014, the court sentenced defendant to 30 years in prison in defendant's absence, as the judge ordered defendant removed from the courtroom due "to defendant's unwillingness to allow the court to complete its explanation of sentence[.]"

¶ 15 In May 2014, at a hearing on defendant's motion to reconsider his sentence, the trial court vacated its previous finding of great bodily harm, which effectively removed the requirement of defendant serving 85 percent of his sentence. He was now entitled to day-for-day good-conduct credit. The court otherwise affirmed the sentence. Defendant appealed. This court reversed the trial court's judgment and remanded for a retrospective fitness hearing. See *People v. McIntosh*, 2016 IL App (4th) 140438-U, ¶ 36 (after the retrospective fitness hearing, if defendant was unfit, the trial court should order a new trial; if defendant was fit, defendant's conviction may stand).

¶ 16 On December 6, 2016, the trial court conducted a retrospective fitness hearing. Defendant's counsel indicated to the court that he would be willing to stipulate to the findings from Dr. Coleman's February 16, 2013, report. The prosecutor also indicated the State would

stipulate that if called to testify, Dr. Coleman would testify consistent with what he documented in his report. The trial court stated:

> "If I didn't then, I would now indicate that I also had had the opportunity to have conversations with [defendant] in open court on a number of occasions and found him to be capable of articulating his position, sometimes even when his position differed from the position of his counsel. I found him capable of understanding the proceedings. I found him capable of understanding why it was and what it was that he was doing here in court. He was able to answer my questions intelligently, articulately.
>
> I reviewed Dr. Coleman's report and based upon his observations, his history and his evaluation, Dr. Coleman's conclusions were the same as mine. And as it turns out, I had not had occasion to deal with [defendant], I don't believe, prior to the unfitness issue even being raised. I think my first experience with [defendant] was after he was brought back to court and the intention was to determine whether he was to be restored to fitness. We had conversations at that time and [defendant] was able to articulate his position. I found him then to be both fit and competent to proceed.
>
> In reviewing the psychological evaluation, the substantive findings of Dr. Coleman were consistent with a finding of competency. I think Dr. Coleman actually put it best when he talked about treatment issues, paragraph 4, page 7, '[Defendant] understands that some of his behavior is punishable under the law, but maintains that he is justified in his choices and actions nonetheless.'
>
> * * *

There was no question in my mind, nor is there now, that [defendant] was both fit and competent to proceed. The substance of Dr. Coleman's report verifies that conclusion. The results of his evaluation were that [defendant] met the criteria for fitness. I agreed with them then, I agree with them now.

* * *

So I find that the substance of Dr. Coleman's report, the conclusions of Dr. Coleman's report are that [defendant] was fit at the time he proceeded to trial, at that previous hearing. I think unfortunately the appellate court may have focused on the stipulation by the attorneys as to the conclusions in the report and perhaps it was just poorly worded at the time. But our intention was to make it clear that everyone believed that based upon what we saw, heard, and observed of [defendant], it was all consistent with both the substance and the conclusions of Dr. Coleman.

I honestly thought that I had made that clear on the record and obviously I must not have. And if not, then I am doing so now to make it clear that I also had had observations and conversations with [defendant] and was firmly convinced in my discussions with him that he was fully capable of comprehending what it was he was charged with, assisting in his defense, and in fact, met all of the criteria for fitness. And I thought we actually had a conversation in that regard back when we had the first hearing.

So, for those reasons, I would find that pursuant to the mandate of the appellate court, we have conducted a retrospective fitness hearing. The conclusion of the court is and was that [defendant] was fit at the time based on the entirety of

the psychological evaluation performed by Dr. Coleman back on February 16 of 2013, and that my finding of fitness would continue.

With that then, I think the matter goes back to the appellate court to address the other substantive issues raised in his appeal."

¶ 17 Defendant's counsel stated he had discussed with defendant the meaning of the stipulation. According to counsel, defendant "agree[d], he's okay with that, stipulating to what Dr. Coleman would testify to if called." This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant raises four primary issues on appeal: (1) defendant should be granted a new trial because the evidence at the retrospective fitness hearing suggested he was unfit; (2) defendant should be granted a new trial because the trial court did not hold the State to the requisite burden of proof; (3) defendant's due-process rights were violated when he was removed from the sentencing hearing; and (4) defendant's sentence was excessive after the court considered an element inherent in the offense as a factor in aggravation.

¶ 20 A. Retrospective Fitness Hearing

¶ 21 After the December 2016 retrospective fitness hearing, the trial court found the evidence suggested that defendant was in fact fit, and therefore, the court declined to grant defendant a new trial. In this appeal, defendant claims the trial court erred in finding defendant was fit. In the alternative, defendant claims his counsel rendered ineffective assistance at the retrospective fitness hearing.

¶ 22 In August 2012, in another case (Vermilion County case No. 11-CF-699), Dr. Lawrence Jeckel had recommended defendant be found unfit, that he take medication, and undergo outpatient treatment. Dr. Jeckel suggested that, although defendant was well-versed and

understood the nature of the criminal proceedings, he was unable to assist his counsel with a defense.

¶ 23 Within two months, defendant was arrested on the current charge. As a result, he was unable to participate in the treatment suggested by Dr. Jeckel. Then, in February 2013, Dr. Coleman opined defendant was fit to stand trial, as he only "marginally" demonstrated an ability to choose among his legal options and to appreciate the implications of his decision. Dr. Coleman noted defendant would have difficulty confining his statements to concise and clearly relevant responses and would possibly need reminders to consult his counsel before making legal choices. This court was concerned that Coleman's "marginally" language was akin to saying defendant was kind of fit. See *McIntosh*, 2016 IL App (4th) 140438-U, ¶ 30. After the direct appeal, the parties were left with a presumption that defendant was unfit per Dr. Jeckel's report since this court found the restoration of fitness hearing invalid. Like the initial restoration of fitness hearing, no evidence, other than Dr. Coleman's 2013 report, was presented at the retrospective fitness hearing. However, the trial court spent a great deal of time clarifying the bases for its finding of fitness.

¶ 24 Defendant claims the trial court's statement about the parties' prior stipulation indicates the court misunderstood the purpose of a restoration hearing. The court stated: "everyone believed that based upon what we saw, heard, and observed of [defendant], it was all consistent with both the substance and conclusions of Dr. Coleman." Defendant argues (1) Dr. Coleman's conclusions "raise insurmountable concerns regarding [defendant's] fitness," (2) Dr. Jeckel's concerns had not been adequately resolved, and (3) as a result, defendant remained unfit at the time of his trial. We disagree with defendant's assessment.

¶ 25 Our review of the record demonstrates seemingly normal exchanges between defendant and the trial court during the various trial court proceedings. Defendant points to a statement made by the trial court during a posttrial hearing where the court stated: "As you are aware, the last hearing resulted in a sentence of six months for contempt." The court must have been referring to another case of defendant's. As such, we are not privy to the circumstances of the event to which the court was referring. However, otherwise, the exchanges between defendant and the court, though sometimes heated, were rational, intelligible, and logical.

¶ 26 At the retrospective hearing, the trial court relied on its experience with defendant in the various proceedings, while also considering Dr. Coleman's findings in his report. Neither party disputed Dr. Coleman's findings, and thus, the court properly considered the report as if Dr. Coleman had testified. Based on the evidence as set forth in the report and the court's personal experience with defendant in proceedings over which the court presided, the court found defendant "met all of the criteria for fitness."

¶ 27 A defendant is unfit to stand trial if a mental or physical condition prevents him from understanding the nature and purpose of the proceedings against him or assisting in his defense. 725 ILCS 5/104-10 (West 2016). After a fitness issue is raised, the trial court may order an examination by a psychologist or psychiatrist. 725 ILCS 5/104-11(a), (b) (West 2016). The court must then conduct a hearing to determine a defendant's fitness in light of the professional's report. 725 ILCS 5/104-16(a) (West 2016). "On the basis of the evidence before it, the court *** shall determine whether the defendant is fit to stand trial[.]" 725 ILCS 5/104-16(d) (West 2016).

¶ 28 At the fitness hearing, "the trial court may consider an expert's stipulated testimony to assess a defendant's fitness but may not rely solely on the parties' stipulation to an expert's *conclusion* that the defendant is fit." (Emphasis in original.) *Gipson*, 2015 IL App (1st)

122451, ¶ 30. "However, where the parties stipulate to what an expert would testify, rather than to the expert's conclusion, a trial court may consider this stipulated testimony in exercising its discretion." *People v. Contorno*, 322 Ill. App. 3d 177, 179 (2001). Although the court may utilize an expert's conclusion as to the defendant's fitness, the ultimate decision is that of the court, not the expert. *People v. Shaw*, 2015 IL App (4th) 140106, ¶ 26; see *Contorno*, 322 Ill. App. 3d at 179 ("A trial court must analyze and evaluate the basis for an expert's opinion instead of merely relying upon the expert's ultimate opinion."). The court's finding of fitness will not be reversed absent an abuse of discretion. *Shaw*, 2015 IL App (4th) 140106, ¶ 25. But, because the " 'issue is one of constitutional dimension, the record must show an affirmative exercise of judicial discretion regarding the determination of fitness.' " *Shaw*, 2015 IL App (4th) 140106, ¶ 25 (quoting *Contorno*, 322 Ill. App. 3d at 179).

¶ 29 In *Lewis*, our supreme court distinguished between improper and proper stipulations. *People v. Lewis*, 103 Ill. 2d 111 (1984). A proper stipulation is stipulating to the *findings* of a professional, whereas an improper stipulation is stipulating to the *conclusion* of a professional. See *Lewis*, 103 Ill. 2d at 115-16. When presented with the opinion testimony, the court could "find defendants fit, seek more information, or find the evidence insufficient to support a finding of restoration to fitness." *Lewis*, 103 Ill. 2d at 116.

¶ 30 Defendant relies on this court's decision in *People v. Gillon*, 2016 IL App (4th) 140801, where we concluded the trial court's reliance on the parties' stipulation that defendant had been restored to fitness was improper. However, the facts of *Gillon* are distinguishable from those presented here. There, it was apparent the trial court relied on the stipulation to the *conclusion* of the finding of fitness. *Gillon*, 2016 IL App (4th) 140801, ¶¶ 25-26. Further, the report was based on an evaluation by a social worker, not by a psychiatrist or psychologist.

Gillon, 2016 IL App (4th) 140801, ¶ 29. And, finally, the defendant's behavior during the proceedings should have raised a *bona fide* doubt of defendant's fitness. *Gillon*, 2016 IL App (4th) 140801, ¶ 30. For these reasons, we found the court's reliance on the stipulation was error. *Gillon*, 2016 IL App (4th) 140801, ¶ 31.

¶ 31 These facts are substantially different than *Gillon*. Here, we have a licensed psychologist, who in his professional opinion, found defendant "does meet criteria for fitness." Defendant did not exhibit any behavior inconsistent with a finding of fitness. During exchanges with the trial court, defendant seemed to fully understand the proceedings and seemed capable of assisting in his defense. At the retrospective fitness hearing, the trial court clearly recounted its reasons for making its independent assessment finding defendant to be fit. The court did not merely, or in a dismissive manner, accept the parties' stipulation and "simply 'rubber stamp' an expert's ultimate conclusion that [] defendant has been restored to fitness." *Gillon*, 2016 IL App (4th) 140801, ¶ 21. The court thoughtfully and with sufficient detail made an independent decision based on its own inquiry, observation, and experience. See *People v. Cook*, 2014 IL App (2d) 130545, ¶ 15. As such, we find no error.

¶ 32 Defendant next contends his attorney at the retrospective fitness hearing rendered ineffective assistance by failing to challenge Dr. Coleman's report, "present a single word of argument on [defendant]'s behalf," or ask that defendant be granted a new trial. Based on our decision above regarding the propriety of the retrospective fitness hearing, we can discern no bases upon which defendant could form a successful ineffective-assistance-of-counsel claim.

¶ 33 Under *Strickland*, a defendant must show both that (1) counsel's performance was deficient and (2) defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "More specifically, the defendant must demonstrate that counsel's performance

was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' Because a defendant must satisfy both prongs of the *Strickland* test to prevail, the failure to establish either precludes a finding of ineffective assistance of counsel. [Citation.]" *People v. Cherry*, 2016 IL 118728, ¶ 24 (quoting *Strickland*, 466 U.S. at 694).

¶ 34 Because the trial court (1) carefully and thoroughly analyzed defendant's fitness based on its own observations and experience, and (2) had previously considered Dr. Jeckel's and Dr. Coleman's findings from their respective reports, there is no reason to believe any argument made by defendant's counsel would have resulted in a different outcome at this fitness hearing. Counsel simply stipulated that if Dr. Coleman was called as a witness, he would testify to what was stated in his report. Any argument that counsel would have made, asking the trial court to refer back to Dr. Jeckel's report, or to grant defendant a new trial because his unfitness had not yet been resolved, would not likely have been successful. This is so because the court was to determine fitness based on its own knowledge, observation, and experience with defendant. "The ultimate decision as to a defendant's fitness must be made by the trial court, not the experts." *Contorno*, 322 Ill. App. 3d at 179. No further evidence or argument would have changed the outcome. We conclude defendant cannot successfully demonstrate either deficient performance by counsel or prejudice from counsel's representation as a result of the retrospective fitness hearing.

¶ 35 B. Legal Standard at Trial

¶ 36 Defendant next contends the trial court did not hold the State to the appropriate burden of proof at trial. He claims the court shifted the burden to defendant to prove that his

entry to Ladd's residence was authorized, rather than requiring the State to prove his entry was unauthorized. We disagree.

> "[W]hen a defendant comes to a private residence and is invited in by the occupant, the authorization to enter is limited and *** criminal actions exceed this limited authority. [Citation.] No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*. [Citation.]" *People v. Bush*, 157 Ill. 2d 248, 253-54 (1993).

Thus, the proper analysis for determining whether the limited-authority doctrine applies begins with a determination of whether the State proved beyond a reasonable doubt that defendant's entry was unauthorized. Was defendant invited in? If not, the limited-authority doctrine has no role in the case. If so, the trial court should conduct a limited-authority doctrine analysis.

¶ 37 At trial, the trial court stated "it almost doesn't matter whose version you believe, there's still proof of unauthorized entry as it's defined in the home invasion statute." The court went on to state:

> "As home invasion is defined, even if [defendant] were admitted into the residence, which I don't believe there's sufficient evidence he was, but even if he was, he wasn't admitted in for the purpose of beating up Mr. Ladd, which then exceeds his authority to enter, having exceeded his authority to enter, it is now an unlawful entry and any injury that occurs as a result of that constitutes home invasion.

If you believe Mr. Ladd's version that he went to the door, he opened the door. [Defendant] asked to see [Pruitt], he closes the door, asks [Pruitt], she says no, he comes back, opens the door, ['] she doesn't want to see ya.['] [Defendant] asks again. ['] She doesn't want to see you.['] [Ladd] goes to close the door. The door's now pushed open and the fight's on. That's home invasion.

If you believe [defendant's] version that he knocked, Mr. Ladd said ['] who is it[?'] He says ['] Keith.['] He opens the door, he stepped in, he wasn't invited in, he stepped in. He asked to see [Pruitt] and starts to go to the bedroom he said himself and as he described here on the stand, he put him—Mr. Ladd then puts himself between the defendant and the bedroom and now he says, [defendant], if assuming what [defendant] said now, then Mr. Ladd grabs him once, he tries to push past him. That too was an unlawful entry because he's being told he cannot enter. He's specifically entering for a purpose now which he's being told he doesn't have any right to enter. He's told she doesn't want to see him. When he goes to push past Mr. Ladd and Mr. Ladd is simply putting himself between the two of them and he then starts fighting with Mr. Ladd, that's home invasion too, even if he got inside the door initially with Mr. Ladd's approval. So really it does amount to home invasion either way you look at the set of facts.

The set of facts that [defendant] testified to is still home invasion. He's not allowed authority into the house to beat up Mr. Ladd. He was not allowed entry into the house to see [Pruitt]. He wasn't allowed to enter that house at all. He stepped in when the door was opened and as soon as he then started to move in further, Mr. Ladd puts himself between [defendant] and the bedroom and tells him

> 'get out of my house.' *** Even if you were allowed in the door initially, once he says 'get out of my house,' the only option is get out of his house. From that point on, the struggle begins and ensues and there is no authorized entry from that point on, and the lack of unauthorized entry we now have intentional injury that's a classic definition of home invasion.
>
> * * *
>
> So accepting either version of the facts, the State has established the elements of the offense of home invasion causing injury sufficiently."

¶ 38 Defendant insists the trial court erred by not "correctly understanding the limited-authority doctrine, as the issue of which version of events was believed was determinative in this case." We disagree with defendant and agree with the trial court that either version of the events as provided by either defendant or Ladd supports a conviction for home invasion.

¶ 39 It is clear from the trial court's comments at the conclusion of the bench trial, the court understood the law, particularly the application of the limited-authority doctrine. The court made it clear that regardless of whether defendant's entry into the residence was initially authorized or not, his entry was certainly unauthorized at least at the time defendant began beating Ladd, making him guilty of home invasion. See *People v. Donnelly*, 226 Ill. App. 3d 771, 775 (1992), *abrogated on other grounds by People v. Williams*, 239 Ill. 2d 503 (2011), ("Exceeding the scope of that authority by threatening or injuring an occupant may render the perpetrator guilty of home invasion."). The court specifically held the State sufficiently proved "unauthorized entry as it is defined in the home invasion statute." This is so regardless of the absence of a step by step analysis applying the doctrine or the elements of the statute. We find no basis to reverse the trial court's judgment of conviction.

¶ 40 C. Defendant's Absence at Sentencing

¶ 41 Defendant next contends his due-process rights were violated when he was removed from his sentencing hearing. Because he failed to raise this issue in the trial court proceedings, the State contends the issue is forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, in his reply brief, defendant asks that we review the issue under the plain-error doctrine. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (defendant can raise a plain-error argument for the first time in his reply brief). We agree to do so. The first step in a plain-error analysis is to determine whether any error occurred. *People v. Shaw*, 2016 IL App (4th) 150444, ¶ 69.

¶ 42 Defendant attempts to distinguish the harsh effects of *Illinois v. Allen*, 397 U.S. 337 (1970), arguing that his behavior during his sentencing hearing was "far less extreme than what occurred in *Allen*" and did not rise to the level that would require his removal from the courtroom. In *Allen*, the defendant repeatedly argued with the judge, threatened the conduct of the trial, and continuously disrupted the proceedings. *Allen*, 397 U.S. at 339-41. The Supreme Court held the defendant had lost his right to be present. *Allen*, 397 U.S. at 346.

¶ 43 A criminal defendant has the right to be present at every stage of his trial. *Allen*, 397 U.S. at 338. Nevertheless, "a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Allen*, 397 U.S. at 343. The defendant can reclaim his right to be present at trial once the defendant indicates his willingness to conduct himself with decorum and respect toward the court and the judicial proceedings. *Allen*, 397 U.S. at 343. Courts "confronted with disruptive, contumacious,

stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations." *Allen*, 397 U.S. at 343.

¶ 44 Defendant claims his disruptions were "simply attempting to engage the court in a dialog regarding information being put on the record," and did not rise to the level that required his removal from the sentencing hearing. We disagree. The court repeatedly told defendant to be quiet to no avail. Defendant's behavior indicated he was unwilling to heed the court's warning to remain quiet while the court spoke. Defendant continued to interrupt. Further, the court had been made aware that defendant had threatened to create "a show" at sentencing. In light of defendant's conduct and the anticipated threats, the court decided it best to remove defendant from the courtroom. Defendant's behavior clearly demonstrated an unwillingness to conduct himself appropriately in court. Simply because defendant's behavior failed to rise to such an extreme level of misconduct as in *Allen*, it does not mean the court should allow defendant's continued disruptions. Because defendant would not allow the court to finish a sentence without interruption, we conclude the court did not err in removing defendant from the courtroom during the court's pronouncement of sentence.

¶ 45 Defendant could have added nothing to this part of the proceedings. Neither he nor his counsel could have objected or contributed in any way. No substantial constitutional rights were denied at this point in the proceedings. See *People v. McLaurin*, 235 Ill. 2d 478, 490-93 (2009). Defendant had already given his statement in allocution. If he wanted to contest or challenge the sentence, he would have no recourse during the hearing but would have had to file a postsentencing motion, which he did. Further, admonishments of defendant's right to appeal are not considered substantial or fundamental rights. See *People v. Pendleton*, 223 Ill. 2d 458,

471 (2006). More important, his absence was the result of his own disruptive conduct. Thus, in the absence of a threat to defendant's substantial constitutional rights, we find no error in the trial court's removal of him from the courtroom during sentencing. Because we find no error, the plain-error analysis does not apply, and as such, we find defendant's claim forfeited.

¶ 46 D. Sentence

¶ 47 Finally, defendant contends his maximum sentence should be reduced or the case remanded for resentencing because (1) the court improperly considered Ladd's injuries, an inherent element of the offense, in sentencing; (2) the court failed to consider mitigating factors; (3) the court considered Ladd's injuries more severe than they really were; and (4) the court was biased against him. Defendant concedes he failed to raise these issues in his motion to reconsider sentencing but, he asks this court to review this issue under the plain-error doctrine.

¶ 48 As this court recently noted:

> "In *People v. Reed*, 177 Ill. 2d 389, 393 (1997), the supreme court held that this statute 'require[s] sentencing issues be raised in the trial court in order to preserve those issues for appellate review.' *** The *Reed* court explained the rationale behind the statute as follows: 'Requiring a written post-sentencing motion will allow the trial court the opportunity to review a defendant's contention of sentencing error and save the delay and expense inherent in appeal if they are meritorious. Such a motion also focuses the attention of the trial court upon a defendant's alleged errors and gives the appellate court the benefit of the trial court's reasoned judgment on those issues.' " *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 16 (quoting *Reed*, 177 Ill. 2d at 394).

¶ 49 Defendant acknowledged he failed to present his matters of contention to the trial court, and he urges us to consider the errors under the plain-error doctrine. However, defendant does not persuade us to consider the matter under either prong of the rule. That is, he does not contend the evidence is closely balanced, nor does he specifically argue that the trial court committed an error so serious that it deprived him of a fair hearing. See *People v. Ahlers*, 402 Ill. App. 3d 726, 734 (2010) ("[S]entencing errors raised for the first time on appeal are reviewable as plain error if (1) the evidence was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing.").

¶ 50 As a result, defendant has failed to meet his burden of establishing plain error. See *Hanson*, 2014 IL App (4th) 130330, ¶ 30. We decline to automatically apply plain-error despite defendant's urging because, in light of *Reed*, we find it imperative that a defendant first present sentencing issues to the trial court to give that court the opportunity to either clarify or correct the issue if necessary. As our supreme court has previously noted, the plain-error rule is "not a general savings clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court. [Citation.] Instead, it is a narrow and limited exception to the general rule of forfeiture, whose purpose is to protect the rights of the defendant and the integrity and reputation of the judicial process. [Citation.]" (Internal quotation marks omitted.) *People v. Allen*, 222 Ill. 2d 340, 353 (2006). Defendant does not sufficiently contend that his arguments rise to the level at which the exception should be applied. We find the sentencing issues forfeited.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 53 Affirmed.