2019 IL App (3d) 170613-U

Order filed October 7, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-17-0613
v.	)	Circuit No. 17-CM-1023
	)	
NATHAN LAMAR JOHNSON,	)	Honorable
	)	Albert L. Purham Jr.,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The record indicated a *bona fide* doubt of defendant's fitness.

¶ 2 Defendant, Nathan Lamar Johnson, appeals his conviction for domestic battery and disorderly conduct, arguing (1) there was a *bona fide* doubt of his fitness to stand trial, and (2) the waiver of his rights to counsel and trial by jury were not knowingly and voluntarily made. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by information with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2016)) and disorderly conduct (*id.* § 26-1(a)(1)). At the first court appearance on July 19, 2017, the court asked defendant if he was going to hire an attorney or ask for the public defender to be appointed. Defendant stated, "I'm speaking for myself acting as the attorney." The court began to admonish defendant about proceeding *pro se*. When asked if he understood that he faced up to 364 days in jail, defendant stated, "Yes. I understand there was no criminal (indiscernible ***) in this matter, and they have no purpose of filing disorderly conduct without showing a witness statement." For most of the questions, defendant solely answered yes or no. Defendant answered, "[y]es," to the question of whether he understood his right to counsel and wished to waive it. When asked how old he was, defendant said, "28." Multiple places in the file shows that his birth date was September 6, 1978, so he was 38 years old at the time. When asked where he worked, defendant stated, "Capital Enterprise. Also, legalized corporations that are reserved by a financial institution, and also, Department of Corporate Affairs under the Small Business Concern Act. It's a corporation." The court found that defendant knowingly and voluntarily waived his right to counsel. Defendant told the court he wished to waive his right to a jury trial. The court again admonished defendant, asking yes or no questions. When asked if he was in good health mentally and physically, defendant answered, "No." The court did not follow up on this. Defendant answered, "[y]es," to the question of whether he understood the difference between a bench trial and a jury trial and wished to waive his right to a jury trial. The court found that defendant knowingly and voluntarily waived his right to a jury trial.

¶ 5 Right before trial, the court asked defendant if he had any motions to present. The following exchange occurred:

"THE DEFENDANT: The fact it was pretense on the verdict where, that the State show that there was no evidence towards, no battery. It showed that it was content on the matters of the police being called, and the Court tolled the motion on *habeas corpus* that was on the verdict on a typical procedure.

THE COURT: I'm not quite sure what you're saying.

THE DEFENDANT: It was a situation where I was looking up that the United States was under question for its democracy with these laws with domestic battery. It hasn't been amended for these laws to be pressing charges against individuals of the United States without completing the file. Now, we see upon record, that this was held under some ability.

THE COURT: Um-hmm.

THE DEFENDANT: Those charges being pressed by the State, it was *habeas corpus*."

¶ 6 Officer Matheson Wood testified that he worked for the Peoria Police Department and was dispatched to a call of a dispute between a brother and sister that resided in the same home. When Wood arrived at the residence, he observed defendant "standing outside the residence pacing back and forth. He appeared very upset." Michelle Johnson, defendant's sister, told Wood that defendant was on the telephone with someone and was getting upset. He began using foul language that she did not approve of so she asked him to stop. Defendant got upset, yelled at her, put his hands on her, and pushed her down. Wood then questioned defendant, but was "not getting much of a viable statement from him." Wood stated that defendant also seemed agitated as he was "Yelling. *** [S]peaking in a loud tone of voice. Clenching his fists. Pacing back and

forth in a way that shows some type of distress." Wood arrested defendant. Defendant cross-examined Wood. While some of defendant's questions were coherent, others did not make sense.

¶ 7 Michelle testified that she lived at her parents' home and cared for them as they both had health issues. When deciding to stay home to care for her parents, she told them she "did not want to care for [defendant] because it was too much." She said that defendant had mental health issues that she "couldn't handle" in addition to caring for her parents. However, since defendant had nowhere else to go, he continued to live in the house. Michelle testified that their sister entered the house, defendant got upset and began yelling, Michelle called the police, and then defendant pushed her. Again, defendant's cross-examination was coherent at times and incoherent at other times. When the court asked defendant if he had any evidence to present, defendant stated, "For the matter of the evidence on the record show what was being detained and asked by the accuser was—the witness that was on the paper, that was not explained to the Court. Not sent to the Court upon statement. So, I would like you to review the record on the statement."

¶ 8 The court found defendant guilty, and the parties proceeded directly to a sentencing hearing. The State said that defendant had prior misdemeanors for resisting arrest in 1999, possessing cannabis in 2000, and battery in 2004. Defendant stated that his records were expunged. The following exchange occurred:

> "THE DEFENDANT: My whole record is expunged because I have credit, [Y]our Honor.
>
> THE COURT: I'm not sure what you're saying. What do you mean you got credit?

THE DEFENDANT: There's credit from the Tax Reform Act. I was granted credit to be in business in United States. That was prior to getting the records expunged by getting the credit.

THE COURT: Credit for what?

THE DEFENDANT: The Small Business Act.

THE COURT: So, if there's a Small Business Act, you were able to get—

THE DEFENDANT: They were giving credit while expunging those records. When the last time you seen that record on the history?"

The court stated that it would like to know if defendant "has some mental health problems." The State said they could recommend a mental health assessment as a sentencing alternative. The court asked if they knew whether defendant was getting mental health treatment. The State said, "[T]here was a case that was dismissed from last year that I believe there was a referral made to Mental Health Court." The State recommended 60 days' jail time, two years probation, and mental health treatment. The court again asked defendant where he worked. Defendant replied,

> "Capital Enterprise. It's a firm. A individual firm that's on record in the Civil Code of Procedures. There's a verdict downstairs showing my report. I was granted that in the Bush administration as soon as Ford was in there. We were both granted the immunity for the Tax Reform Act which we were granted for us to be in business in, the United States granted me to be in business in the United States following regulations."

The court asked defendant what his company did, and defendant said, "It's a firm. It has a national school that I'm building." The court sentenced defendant to two years' probation and

told him to get a mental health assessment and abide by the recommendation by December 12, or he would spend 60 days in jail.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues that (1) there was a *bona fide* doubt as to his fitness before, during, and after trial so the court should have *sua sponte* ordered a fitness evaluation, and (2) his waiver of his rights to counsel and a jury trial were not knowingly and voluntarily made. Based on defendant's unresponsive answers, inability to meaningfully articulate information, Michelle's statement about his mental health issues, and the court's own concerns about his mental health during the punishment phase, we find that a *bona fide* doubt existed as to defendant's fitness to stand trial. Because a *bona fide* doubt to defendant's fitness existed, defendant was unable to knowingly and voluntarily waive his rights to counsel and a jury trial.

¶ 11 Defendant acknowledges that these issues were not preserved in a posttrial motion, but asks that we apply plain error analysis. We note that "prosecuting a defendant where there is a *bona fide* doubt as to that defendant's fitness renders the proceeding fundamentally unfair" and satisfies the second prong of the plain error doctrine. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). Therefore, we need only consider whether error occurred.

¶ 12 A criminal defendant is presumed fit to stand trial. 725 ILCS 5/104-10 (West 2016). "A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." *Id*. The issue of a defendant's fitness for trial may be raised at any time, by either party or the court. *Id*. § 104-11(a). In fact, the trial court has an affirmative duty to order a fitness hearing, *sua sponte*, anytime a *bona fide* doubt as to defendant's fitness exists. *Sandham*, 174 Ill. 2d at 389. "When a *bona fide* doubt of the defendant's fitness is raised, the court shall order a determination of the

issue before proceeding further." 725 ILCS 5/104-11(a) (West 2016). The burden is then on the State to prove by a preponderance of the evidence that a defendant is fit to stand trial. *Id*. § 104-11(c). The test of a *bona fide* doubt is objective and examines whether the facts raise a "real, substantial, and legitimate doubt" regarding the defendant's mental capacity to meaningfully participate in his or her defense. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). "[*S*]*ome* doubt as to a defendant's fitness is not necessarily enough to warrant a fitness hearing." (Emphasis added.) *Sandham*, 174 Ill. 2d at 389.

¶ 13 The question of whether a *bona fide* doubt exists is a matter within the discretion of the trial court. *Id*. Accordingly, a trial court's failure to conduct a fitness hearing amounts to reversible error only where that decision, premised on the lack of a *bona fide* doubt of fitness, is arbitrary, fanciful, or unreasonable such that no reasonable person would take the view adopted by the court. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 14 In *Eddmonds*, the supreme court discussed the factors that play a role in determining whether a *bona fide* doubt of fitness exists, stating:

> "Relevant factors which a trial court may consider in assessing whether a *bona fide* doubt of fitness exists include a defendant's 'irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial.' (*Drope v. Missouri*, 420 U.S. 162, 180 (1975)). The representations of defendant's counsel concerning the competence of his client, while not conclusive, are another important factor to consider. [*Id.* at 177 n.13.] It is undisputed, however, that there are 'no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question

is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.' [*Id.* at 180.]" *Eddmonds,* 143 Ill. 2d at 518.

¶ 15 Subsection 104-16(b) of the fitness statute provides that matters admissible on the question of a defendant's fitness include:

> "(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 2016).

Because such factors are probative of a defendant's fitness to stand trial, they are also relevant to the existence of a *bona fide* doubt as to that fitness.

¶ 16 We find that the record demonstrates serious questions about defendant's fitness to stand trial at all stages of the proceedings. Before trial, defendant was able to answer questions necessitating a yes or no response. However, his answers to questions requiring a longer response were mostly incoherent. He stated that he was employed at "Capital Enterprise. Also, legalized corporations that are reserved by a financial institution, and also, Department of Corporate Affairs under the Small Business Concern Act. It's a corporation." When asked if he understood that he faced up to 364 days in jail, defendant stated, "Yes. I understand there was no criminal (indiscernible ***) in this matter, and they have no purpose of filing disorderly conduct

without showing a witness statement," making it unclear whether he actually understood the potential punishment he faced. Defendant gave the wrong age when asked how old he was. Moreover, the court asked him if he was in good health mentally and physically, defendant answered, "no," and there was no follow up.

¶ 17 On the day of trial, defendant again gave many incoherent responses. The court asked defendant if he had any motions or evidence to present, and defendant's answer was unresponsive. While some of defendant's cross-examination questions were coherent, many were not. Moreover, defendant's own sister testified that that defendant had mental health issues that she "couldn't handle" in addition to caring for her parents. The way defendant's behavior was described by Michelle and Wood could have indicated a mental health issue.

¶ 18 When the matter proceeded to sentencing right after trial, defendant stated that his criminal record was expunged because he had credit from the Tax Reform Act. When asked again where he was employed, defendant's answer, again, was incoherent. The court questioned if defendant had mental health issues, and the State said that he had a case in mental health court the previous year. The State told the court that it could order a mental health assessment as part of the sentence.

¶ 19 Considering defendant's unresponsive answers, inability to meaningfully articulate information, Michelle's statement about his mental health issues, and the court's own concerns about his mental health during the punishment phase, we find that a *bona fide* doubt existed as to defendant's fitness to stand trial. This was compounded by the fact that defendant did not have an attorney to help him understand the proceedings and lead his defense. In so finding, we are not finding defendant unfit, but solely finding that the existence of a *bona fide* doubt compelled the trial court to *sua sponte* order a fitness hearing. The court's failure to do so amounted to

reversible error under the second prong of the plain error doctrine. *E.g.*, *People v. Moore*, 408 Ill. App. 3d 706, 710 (2011).

¶ 20 Because we find that the court erred in failing to *sua sponte* order a fitness hearing as there was a *bona fide* doubt of defendant's fitness to stand trial, we vacate defendant's conviction and remand for a new trial. We note that "[t]he question of fitness may be fluid." *People v. Weeks*, 393 Ill. App. 3d 1004, 1010 (2009). The fact that there was a *bona fide* doubt of defendant's fitness to stand trial at the time of defendant's first trial, does not necessarily mean that there will be on remand. "Therefore, a fitness hearing is necessary on remand only if there should arise a *bona fide* doubt of defendant's current fitness." *People v. Schoreck*, 384 Ill. App. 3d 904, 927 (2008). The court is under a "continuing obligation" to assess defendant's fitness and must hold a fitness hearing whenever a *bona fide* doubt of defendant's fitness arises. *Id.* at 922.

¶ 21 As there was a *bona fide* doubt as to defendant's fitness to stand trial, he could not waive his right to counsel. *People v. Washington*, 2017 IL App (4th) 150054, ¶¶ 19-21. "Where a *bona fide* doubt exists as to a defendant's competency to stand trial, that defendant cannot intelligently waive his constitutional right to representation by counsel and permitting him to represent himself is reversible error." *People v. Esang*, 396 Ill. App. 3d 833, 841 (2009). " 'Logically, the trial court cannot simultaneously question a defendant's mental competence to stand trial and at one and the same time be convinced that the defendant had knowingly and intelligently waived his right to counsel.' " *Washington*, 2017 IL App (4th) 150054, ¶ 20 (quoting *United States v. Purnett*, 910 F.2d 51, 55 (2nd Cir. 1990)). Applying this reasoning, we also find that defendant could not knowingly and voluntarily waive his right to a jury trial.

¶ 22 III. CONCLUSION

¶ 23 The judgment of the circuit court of Peoria County is reversed and remanded.

¶ 24 Reversed and remanded.