

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 170099-U

NO. 4-17-0099

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 16, 2019

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff-Appellee, )

v. )

DANIEL L. ROBINSON, )

Defendant-Appellant. )

) Appeal from the

) Circuit Court of

) Edgar County

) No. 12CF186

) The Honorable

) Steven L. Garst,

) Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.

Presiding Justice Holder White and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court’s fitness determination.

¶ 2 This is defendant’s second appeal in this case. In the first appeal, after defendant was convicted of aggravated battery, this court reversed his conviction and remanded “for a new fitness hearing and, if necessary, a new trial.” *People v. Robinson*, 2015 IL App (4th) 140147-U, ¶ 67. In that appeal, we concluded that the record made clear that the trial court improperly based its fitness determination of defendant upon the parties’ simple stipulation that defendant was fit. After deeming that stipulation error, we addressed whether the proper remedy “requires reversal of defendant’s conviction and remand for a new trial, or simply remand for a retrospective fitness hearing.” *Id.* ¶ 57. We concluded that a new fitness hearing was required, in part because the report of Dr. Nageswararao Vallabhaneni, a psychiatrist with the Illinois Department of Human Services, that the parties stipulated to was deemed by this court to be “of questionable

reliability because it included contradictory statements regarding the medication defendant was taking at the time.” *Id.* ¶ 59.

¶ 3 Despite this court’s conclusion and direction on remand, the trial court failed to conduct a new fitness hearing upon remand and instead relied upon that same report to conclude that defendant was fit to stand trial. We again reverse and remand for a new trial.

¶ 4 I. BACKGROUND

¶ 5 A. The First Trial

¶ 6 In October 2012, the State charged defendant, Daniel L. Robinson, with aggravated battery. 720 ILCS 5/12-3.05(d)(4) (West 2012). In January 2013, pursuant to section 104-11 of the Code of Criminal Procedure of 1963 (Code), defense counsel requested a determination as to defendant’s fitness to stand trial. 725 ILCS 5/104-11 (West 2012). Later that month, the trial court granted this request and appointed Dr. Marilyn Marks-Frey, a clinical psychologist, to perform a fitness examination pursuant to section 104-13 of the Code. *Id.* § 104-13.

¶ 7 In April 2013, Marks-Frey filed a report in which she concluded that defendant “suffers from multiple severe mental illnesses” and that “there is very little likelihood that [defendant] will attain fitness within one year[.]” Later that month, the trial court (1) found defendant unfit to stand trial and (2) ordered defendant committed to the Illinois Department of Human Services (IDHS) for treatment and periodic evaluations regarding his fitness to stand trial.

¶ 8 In August 2013, Vallabhaneni filed the earlier-mentioned progress report pursuant to section 104-18 of the Code. *Id.* § 104-18. Vallabhaneni found that defendant had “impaired insight, impulse control, and judgment” and his “memory, attention, concentration, and abstraction [were] unable to assess at the present time.” Nonetheless, Vallabhaneni opined that defendant was fit to stand trial.

¶ 9 Later in August 2013, the trial court conducted a fitness hearing. The State and defense counsel stipulated that defendant was fit to stand trial based on Vallabhaneni’s report. There was no discussion regarding the reliability of Vallabhaneni’s findings. The court, the State, nor defense counsel questioned defendant during this hearing. The court accepted the parties’ stipulation that defendant was fit to stand trial. Ultimately, defendant was found guilty of aggravated battery.

¶ 10 B. The First Appeal

¶ 11 On his first appeal, defendant argued that the trial court erred by accepting the parties’ stipulation that he was fit to stand trial. This court agreed, concluding that the trial court “erred by adjudicating defendant fit to stand trial based upon the parties’ stipulation to that effect.” *Robinson*, 2015 IL App (4th) 140147-U, ¶ 56.

¶ 12 This court also concluded that “Vallabhaneni’s report was of questionable reliability” and reasoned as follows:

“Even [after] taking everything in Vallabhaneni’s report as true, it is clear that defendant’s mental competence was prone to sudden change, which calls into question whether defendant remained fit nearly four months after Vallabhaneni filed his report. It is simply impossible to determine with any modicum of certainty whether defendant remained fit by the time of trial.” *Id.* ¶¶ 58, 59.

¶ 13 Accordingly, this court (1) concluded that the trial court erred by adjudicating defendant fit to stand trial, (2) reversed defendant’s conviction and sentence, and (3) remanded for a new fitness hearing. *Id.* ¶¶ 56, 60.

¶ 14 C. The Second Trial

¶ 15 In December 2015, following this court’s reversal of defendant’s conviction and

remand, the trial court purported to conduct a new fitness hearing. However, no new fitness examination of defendant was ever conducted. Instead, the State and defense counsel stipulated to the contents of Vallabhaneni's report and stipulated that defendant was fit to stand trial. Defendant testified that he believed he was fit to stand trial and that he understood the trial process. The court concluded that "based upon the report and my observations of [defendant] in court \*\*\*, I find that he is fit to stand trial." Ultimately, the jury found defendant guilty of aggravated battery.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant appeals, arguing that the trial court erred when it found him fit to stand trial. We agree.

¶ 19 A. The Applicable Law

¶ 20 The due process clause prohibits the prosecution of a defendant who is unfit to stand trial. U.S. Const., amend. XIV; *People v. Holt*, 2014 IL 116989, ¶ 51, 21 N.E.3d 695. Because fitness for trial is a fundamental right, courts may review this argument under the second prong of the plain error doctrine. *People v. Moore*, 408 Ill. App. 3d 706, 710, 946 N.E.2d 442, 446 (2011). 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 2014). When "a defendant was previously adjudicated to be unfit to stand trial, a presumption exists that the condition of unfitness remains until the defendant has been adjudicated to be fit at a valid subsequent hearing." *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 29, 34 N.E.3d 560. A trial court's fitness determination will not be reversed absent an abuse of discretion. *People v. Cook*, 2014 IL App (2d) 130545, ¶ 13, 25 N.E.3d 717. A

trial court abuses its discretion when its ruling is arbitrary or unreasonable. *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 54, 115 N.E.3d 1148.

¶ 21 B. This Case

¶ 22 On remand, the trial court relied upon Vallabhaneni's report in which he concluded that defendant was fit to stand trial. However, this court had previously concluded that "Vallabhaneni's report was of questionable reliability" and that even if we took "everything in Vallabhaneni's report as true, it is clear that defendant's mental competence was prone to sudden change, which calls into question whether defendant remained fit nearly four months after Vallabhaneni filed his report." *Robinson*, 2015 IL App (4th) 140147-U, ¶¶ 58, 59.

¶ 23 We emphasize that this is not a case in which the court was making an *initial* determination regarding defendant's fitness to stand trial. Instead, this is a case in which the trial court had earlier determined that defendant was unfit (in April 2013), so the question before the court should have been, based upon new evidence, had defendant become fit to stand trial. Of course, this was the same question before the trial court in defendant's first trial, and this court reversed the trial court's affirmative answer to that question.

¶ 24 On remand, the trial court abused its discretion by relying upon a report which this court had previously rejected. Moreover, the reliability of Vallabhaneni's report is further undermined because it was over two years old at the time of defendant's second fitness hearing. Further, given that the trial court originally found that defendant was unfit for trial in April 2013 after Marks-Frey concluded that defendant "suffers from multiple severe mental illnesses[,]," the court should have exercised greater scrutiny before finding that defendant was no longer unfit. Accordingly, we reverse defendant's conviction and remand for a new fitness hearing to be conducted in accordance with our instructions and previous holdings.

¶ 25

### III. CONCLUSION

¶ 26

For the reasons stated, we reverse and remand with directions.

¶ 27

Reversed and remanded with directions.