2011 IL App (1st) 092115-U

No. 1-09-2115

FIFTH DIVISION
September 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 15726
	)	
JAMES SAMUELS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Joseph Gordon and Fitzgerald Smith concurred in the judgment.

O R D E R

HELD: Because defendant is unable to establish based on the record before us that a *bona fide* doubt of his fitness to stand trial existed, we find his claims based on the trial court's failure to *sua sponte* order a fitness hearing and his claims based on trial counsel's alleged ineffectiveness for failing to request a fitness hearing are without merit.

¶ 1Following a bench trial, defendant James Samuels was convicted

of first degree murder and concealment of a homicidal death. He was sentenced to a 30-year prison term on the murder charge and a consecutive 4-year term on the concealment charge. On appeal, defendant contends the trial court erred by failing to *sua sponte* order a fitness hearing where a *bona fide* doubt of defendant's fitness to stand trial existed. Defendant also contends his trial counsel provided ineffective assistance by failing to specifically request a fitness hearing, in violation of his constitutional right to effective assistance of counsel. For the reasons that follow, we affirm defendant's convictions and sentences.

¶ 2 BACKGROUND

¶ 3Defendant does not challenge the sufficiency of the evidence that resulted in his conviction. The evidence adduced at trial established that on June 12, 2005, defendant strangled his girlfriend, Shanelle Williams, to death and then placed her in the trunk of his car.

¶ 4 Prior to trial, the trial court informed the Assistant Public Defender assigned to defendant's case during a status hearing that "Samuels did not wish to come up today," and that the court "did not feel under the circumstances that it was worth having him cuffed and dragged up." The Assistant Public Defender informed the court that defendant had "mental health issues in

his background," and that counsel had heard defendant "saying things that seemed rather strange also." Defense counsel noted: "That may have been why he was uncooperative, but I don't know. I'm going to try to see him before the next court date. Hopefully we can resolve this." The following colloquy then occurred:

> "THE COURT: Is there any reason to suspect he should have a BCX?
>
> [Assistant Public Defender]: Well, in the past -- I'll talk to him and let the court know.
>
> THE COURT: I don't want to be waiting around two years."

¶ 5 No further discussion regarding defendant's fitness to stand trial appears in the record before us.

¶ 6 Defense counsel subsequently filed a motion to quash defendant's arrest and a motion to suppress evidence allegedly illegally seized from defendant's automobile. Defendant testified at the subsequent hearing on the motions. Following the hearing, the court denied both motions on August 16, 2006. Defendant's assigned counsel moved to withdraw on February 26, 2007, explaining he had been subpoenaed to testify against defendant in another matter. The Assistant Public Defender was

allowed to withdraw, and Daniel Coyne, an attorney from the Chicago-Kent College of Law, was appointed by the court to represent defendant.

¶ 7 At trial, a friend of defendant's, William Gore, testified defendant admitted to him that he had strangled Williams to death and placed her in the trunk of his car.

¶ 8 Chicago Police Detective Richard Sullivan testified that after defendant was placed in custody and transported to the Area 2 police station, defendant was placed in an interview room. According to Detective Sullivan, defendant was highly emotional, upset and agitated. However, defendant refused to go to the hospital. After being informed of his *Miranda* rights, defendant gave a statement to Detective Sullivan. Defendant told Detective Sullivan that while he was parked in his car near a park with Williams, Williams told him she wanted to break up because defendant could not control his temper. Defendant told Detective Sullivan that he and Williams began driving around the park when at some point anger overcame him and he forced the car to a stop. Defendant said that after he forced the car to a stop, he blacked out. According to Detective Sullivan, defendant said he often blacked out when he had bouts of anger. Defendant said that when he came to, he was driving Williams' car towards where his car was parked. When he reached his car, defendant placed her body

into the trunk and covered it with a blanket. Defendant told Detective Sullivan that he did not remember killing Williams because he blacked out, and that he only came to the realization of what he had done when he was putting her body in the trunk.

¶ 9 The defense entered three stipulations as part of its case, one of which noted that a police officer on lockup duty at Area 2 would testify if called at trial that defendant was acting "irrational" while in custody.

¶ 10 Following the bench trial, the court found defendant guilty of first degree murder and concealment of a homicidal death. Prior to sentencing, a pre-sentence investigation (PSI) report was completed. The PSI indicated defendant was "first seen by a mental health professional while in grammar school." The report noted defendant had been diagnosed with "being Bipolar and Claustrophobic," and that he had "attempted suicide 4 times (by overdose on Med.) Since his incarceration." Defendant said he was also currently prescribed "Depakote, Zoloft and Doxipan [*sic*]."

¶ 11 The trial court sentenced defendant to a 30-year prison term on the murder charge and a consecutive 4-year term on the concealment charge. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 Defendant contends the trial court erred by failing to *sua*

sponte order a fitness hearing where the record reflects a *bona fide* doubt of his fitness to stand trial existed. Defendant also contends his trial counsel was ineffective for failing to request a fitness hearing.

¶ 14 The due process clause of the fourteenth amendment bars prosecution if a defendant is unfit to stand trial. *People v. Shum*, 207 Ill. 2d 47, 57 (2007). "A defendant is unfit to stand trial if he is 'unable to understand the nature and purpose of the proceedings against him or to assist in his defense.' " *People v. Weeks*, 393 Ill. App. 3d 1004, 1008 (2009), quoting *People v. Burton*, 184 Ill. 2d 1, 13 (1998).

¶ 15 Under section 104-10 of the Code of Criminal Procedure of 1963, a defendant is presumed to be fit to stand trial, to plead and to be sentenced. 725 ILCS 5/104-10 (West 2008). However, a defendant is entitled to a fitness hearing where the evidence suggests a *bona fide* doubt exists as to his fitness to stand trial. *People v. Moore*, 408 Ill. App. 3d 706, 710 (2011), citing *People v. McCallister*, 193 Ill. 2d 63, 110 (2000). If a *bona fide* doubt is raised regarding a defendant's fitness, the trial court must *sua sponte* order a fitness hearing to determine the issue before proceeding. *Weeks*, 393 Ill. App. 3d at 1009, citing 725 ILCS 5/104-11(a) (West 2008). "A defendant bears the burden of proving there is a *bona fide* doubt of his fitness." *Weeks*,

393 Ill. App. 3d at 1009.

¶ 16 When considering whether a *bona fide* doubt as to defendant's fitness exists, courts consider " 'a defendant's irrational behavior, demeanor at trial, any prior medical opinion on the defendant's competence, and any representations by defense counsel on the defendant's competence.' " *Moore*, 408 Ill. App. 3d at 711, quoting *People v. Brown*, 236 Ill. 2d 175, 186-87 (2010). " 'No fixed or immutable sign, however, invariably indicates the need for further inquiry on a defendant's fitness. [Citation]. Rather, the question is often a difficult one implicating a wide range of manifestations and subtle nuances.' " *Id.* Whether a *bona fide* doubt exists is a question reviewed for abuse of discretion. *Weeks*, 393 Ill. App. 3d at 1009.

¶ 17 In support of his contentions, defendant argues the record reflects a *bona fide* doubt existed based on his initial counsel's indication to the trial court that defendant had "mental health issues in his background," and that counsel had also heard defendant "saying things that seemed rather strange." Defendant contends that although the record reflects his counsel indicated to the court that he would investigate defendant's conduct and see if a fitness hearing was necessary, no further discussions appear in the record regarding whether such an inquiry ever occurred.

¶ 18 Defendant also notes his PSI report confirmed he had an "extensive" psychological history, which included a bipolar diagnosis, multiple suicide attempts while in custody and current prescriptions for three psychotropic medications. Further, defendant notes that Detective Sullivan's trial testimony and the lock-up police officer's stipulated testimony indicated defendant was acting "irrational" while in custody following his arrest.

¶ 19 The State counters that several facts in the record before us clearly demonstrate defendant was fit for trial. Specifically, the State notes defendant evidenced his understanding of the proceedings to the trial court when he testified coherently in support of his pre-trial motions to quash his arrest and suppress evidence. The State also notes defendant clearly understood why his initial appointed counsel was withdrawing from the case, pointing to the following colloquy between defendant and the court:

> "THE COURT: Mr. Samuels, do you understand why the Public Defender is asking leave to withdraw?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Under these circumstances there is no way the Office can represent you having been compelled to be a witness against

you apparently at some sort of proceeding involving the Grand Jury. Do you understand all of that?

THE DEFENDANT: Yes, sir.

THE COURT: I am appointing Professor Coyne to represent you. Do you understand?

THE DEFENDANT: Yes, sir."

¶ 20 Further, the State notes defendant also evidenced a clear understanding of the proceedings when he answered the court's questions regarding his jury waiver and plea of not guilty on the day of trial, as shown by the following colloquy:

"THE COURT: Mr. Samuels, I assume you know this, you are charged with two counts of attempt [*sic*] first degree murder and one count of concealing homicidal death. These offenses allegedly occurred on the date of June 12th in the year 2005 the complaining witness being Chanel [*sic*] Williams. It's my understanding you are pleading not guilty to the charges, is that correct, sir?

DEFENDANT: Correct.

THE COURT: When you plead not guilty, you have a right to have a trial and

specifically you have a right to have a jury trial. Is there a jury waiver executed? The document you are signing is a jury waiver. Let the record reflect the defendant signed it in open court. Is this your signature?

DEFENDANT: Yes, sir.

THE COURT: You understand that when you sign that document, you give up a right to have a trial by jury, do you understand? The legal affects of signing that document is I'll decide whether you are guilty or not guilty based on the evidence in court. Do you understand that, sir?

DEFENDANT: Yes.

THE COURT: It's your decision that I hear this case, and not a jury, you have to answer yes or no?

DEFENDANT: Yes.

THE COURT: You had an opportunity to discuss that decision with your attorney Mr. Coyne and your other attorneys, is that correct?

DEFENDANT: Yes, sir.

> THE COURT: Let the record reflect I find the jury waiver to be knowingly and intelligently executed and made part of the court."

¶ 21 Contrary to defendant's contention, we find the totality of the record before us does not indicate a *bona fide* doubt existed regarding his fitness to stand trial. When defendant refused to appear at a pre-trial status hearing, the trial court asked defense counsel whether a fitness hearing should be conducted. Counsel responded that defendant had "mental health issues in his background," and that counsel had also heard defendant "saying things that seemed rather strange." The trial court then asked defense counsel to further inquire into the matter to determine if a hearing would be required. Although we recognize the record does not clearly indicate whether counsel ever did so, we note nothing else in the record regarding defendant's conduct during the proceedings suggests he was unfit to stand trial. We find the rather isolated comments surrounding defendant's refusal to appear at a status hearing did not raise a *bona fide* doubt of his fitness sufficient to trigger a duty on the trial court's part to conduct a *sua sponte* fitness hearing.

¶ 22 In reaching our conclusion we note defendant was able to testify in his defense at length during the pre-trial hearing

held on his suppression motions. Defendant's behavior during his pre-trial suppression hearing was rational and his demeanor while testifying at the hearing was normal, indicating defendant was able to understand the proceedings against him and assist his counsel in the perpetration of his defense. Besides counsel's limited comments regarding defendant's refusal to appear at a status hearing, nothing in the record suggests the trial court was aware of any other bizarre or inappropriate conduct on defendant's part that indicated a fitness problem.

¶ 23 While we recognize defendant's PSI report noted a history of mental health problems, several apparent suicide attempts while in custody and prescriptions for at least three psychotropic medications, we note evidence of mental illness and psychotropic medication usage alone does not automatically give rise to a *bona fide* doubt of fitness. See *People v. Weeks*, 393 Ill. App. 3d 1004, 1009 (2009). Because the totality of the record before us shows defendant was able to understand the nature and purpose of the proceedings and participate in his defense, we find there was not sufficient evidence to warrant a *sua sponte* order for a fitness hearing.

¶ 24 II. Ineffective Assistance

¶ 25 Defendant also contends his trial counsel was ineffective for failing to specifically request a fitness hearing.

¶ 26 To establish a claim of ineffective assistance, a defendant must prove: (1) counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) the defendant suffered prejudice as a result of the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Ford*, 368 Ill. App. 3d 562, 571 (2006). "Prejudice is shown when there is 'a reasonable probability' that, but for counsel's ineffectiveness, the defendant's sentence or conviction would have been different." *Ford*, 368 Ill. App. 3d at 571, citing *People v. Mack*, 167 Ill. 2d 525, 532 (1995). A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome" of the proceeding. *Strickland*, 466 U.S. at 694.

¶ 27 In assessing an ineffectiveness claim, the court must give deference to counsel's conduct within the context of the trial and without the benefit of hindsight. *People v. King*, 316 Ill. App. 3d 901, 913 (2000); *People v. Tate*, 305 Ill. App. 3d 607 (1999). "As such, 'a defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of *sound* trial strategy and not incompetence.' " (Emphasis in original.) *King*, 316 Ill. App. 3d at 913, quoting *People v. Coleman*, 183 Ill. 2d 366, 397 (1998).

¶ 28 Where a defendant's assertion of ineffective assistance of

counsel involves counsel's failure to request a fitness hearing, our supreme court has recognized:

> "To establish that 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.' " *People v. Harris*, 206 Ill. 2d 293, 304 (2002).

¶ 29 Accordingly, a defendant is only entitled to relief if he establishes the trial court would have had a *bona fide* doubt of his fitness and ordered a hearing had it been apprised of the evidence referenced on appeal. *Weeks*, 393 Ill. App. 3d at 1011, citing *Harris*, 206 Ill. 2d at 304.

¶ 30 As we have already noted, nothing in the record before us adequately suggests defendant was unable to understand the nature of the proceedings against him or cooperate in his own defense. Again, we note the record reflects defendant was able to testify competently in his own defense during a pre-trial hearing on his suppression motions. Aside from defendant's refusal to appear at one of his pre-trial status hearings, the record reflects

defendant appeared before the trial court on several other occasions without any apparent irrational behavior or incident. Although the psychological history presented in defendant's PSI report prior to sentencing indicated a history of mental illness and treatment, the PSI report itself did not suggest defendant could not understand the nature of the proceedings or cooperate in his defense. See *Weeks*, 393 Ill. App. 3d at 1012, citing *People v. Easley*, 192 Ill. 2d 307, 320 (2000) ("The issue is not one of mental illness or sanity but whether defendant could understand the proceedings against him and cooperate in his defense. 'Fitness speaks only to a person's ability to function within the context of a trial. It does not refer to sanity or competence in other areas.' ")

¶ 31 Because defendant is unable to establish there was a *bona fide* doubt concerning his fitness based on the evidence in the record before us, we cannot say there was a sufficient likelihood that the court would have conducted a fitness hearing if such a hearing had been requested by counsel. Accordingly, we find defendant has failed to establish he was prejudiced by any alleged ineffectiveness of his trial counsel in failing to request a fitness hearing.

¶ 32 CONCLUSION

¶ 33 We affirm defendant's convictions and sentences.

¶ 34 Affirmed.