No. 125203

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Illinois Appellate Court, Third District, No. 3-17-0119
Plaintiff-Appellant,	)	There on Appeal from the Circuit Court of the Tenth Judicial
v.	)	Circuit, Peoria County, Illinois, No. 16 CF 315
SHAWN MARLON BROWN,	)	The Honorable Jodi M. Hoos,
Defendant-Appellee.	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

The People appeal from the judgment of the Illinois Appellate Court, Third District, which reversed defendant's armed robbery conviction and remanded for a new trial. *People v. Brown*, 2019 IL App (3d) 170119-U (A5). No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether no fitness hearing was required where the trial court never found a bona fide doubt of defendant's fitness to stand trial.

2. Whether, assuming that the trial court found a bona fide doubt of defendant's fitness, the court appropriately exercised its independent discretion in determining that defendant was fit to stand trial where it received and reviewed a contemporaneous fitness report, and the parties stipulated to the contents of that report and that the evaluator would testify consistently with that report, but did not stipulate to defendant's fitness.

3. Whether the proper remedy, should this Court hold that the trial court improperly failed to exercise its independent discretion, is remand for a retrospective fitness hearing where it is possible to adequately assess petitioner's fitness at the time of trial.

STANDARD OF REVIEW

Whether a bona fide doubt of fitness has arisen "is generally a matter within the discretion of the trial court." *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). "However, because this issue is one of constitutional dimension,

the record must show an affirmative exercise of judicial discretion regarding the determination of fitness." *People v. Shaw*, 2015 IL App (4th) 140106, ¶ 25. Whether a retrospective fitness hearing is an appropriate remedy appears to be a mixed question of law and fact, as it requires the reviewing court to determine whether it is still possible to hold a meaningful retrospective hearing to find whether defendant was fit to stand trial at the time of the proceedings. *E.g.*, *McManus v. Neal*, 779 F.3d 634, 660 (7th Cir. 2015). When ruling on such issues, the reviewing court affords deference to a lower court's factual findings, but "remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *People v. Crane*, 105 Ill. 2d 42, 51 (2001).

JURISDICTION

Jurisdiction lies under Supreme Court Rule 315. This Court allowed the People's petition for leave to appeal on November 26, 2019.

STATEMENT OF FACTS

Defendant was charged by indictment with one count of armed robbery and one count of aggravated robbery for the April 2016 robbery of a Family Dollar store in Peoria. C1-2.[1] One week before the scheduled trial date, at an August 29, 2016 pre-trial conference, defendant's counsel stated that the

[1] Citations to pages of the common law record, the supplement to the common law record, and the report of proceedings appear as "C__," SC__," and "R__," respectively.

defense was ready for trial, but in speaking with defendant the previous evening, he learned that defendant had a past "mental problem" that had resurfaced. R21. Defendant told counsel that he "had in the past heard voices" and that he was "again starting to hear the voices and said that he was having some difficulty communicating with [counsel]." *Id.* "Having been told by [his] client that he [was] again having these problems," counsel requested a fitness evaluation. R22. Counsel stated his impression that defendant understood most of what counsel told him and that any difficulties were "more of a matter of education than of mental illness." *Id.* But counsel sought a fitness evaluation because he could not determine that defendant was fit "just by myself talking to him." *Id.*

The prosecutor assented, *id.*, and the court ordered a fitness evaluation and set the matter for "review" on September 29, 2016. R23; C44. Jean L. Clore, Ph.D., an Illinois licensed clinical psychologist and Assistant Professor at the University of Illinois College of Medicine at Peoria, SC1, 4, interviewed defendant and prepared a report. Dr. Clore opined that defendant met the DSM-5 diagnostic criteria for (1) schizoaffective disorder, bipolar type; (2) posttraumatic stress disorder (PTSD); and (3) mild intellectual disability. SC1-2. At the time of the interview, defendant was experiencing auditory hallucinations of voices that "put him down and command him to do things such as break objects and hurt others in order to feel better." SC2.

As to defendant's PTSD, Dr. Clore noted that, beginning at the age of 12, defendant was a member of the Chicago Gangster Disciples street gang and that he had been "repeatedly exposed to life threatening events including being threatened with weapons and seeing friends injured and killed." *Id.* Dr. Clore also diagnosed defendant with a mild intellectual disability, noting that he reported attending special education classes beginning in the sixth grade and dropped out of school in the eighth grade because he was teased about his clothing, "the way he talked, and for being 'slow.'" *Id.* Defendant's vocabulary and conversation skills during the interview "were consistent with below average intelligence." *Id.*

After recounting defendant's diagnoses and the results of her mental status examination, Dr. Clore concluded that defendant "had sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and had a rational and factual understanding of the proceedings against him." SC3. Dr. Clore explained that defendant knew his attorney's name and that he was a public defender appointed to represent and help defendant with his case, that a prosecutor would be trying to convict him, and that the judge was the person "wearing the black robe sitting on the high chair" who "sentences people." *Id.* Defendant was able to learn and retain the difference between a bench and a jury trial and that there are typically twelve jurors. *Id.* Defendant knew that the jury's role was to "analyze the case and determine if you're guilty or not," and he said he would

elect a jury trial because there would be more people listening to his case. SC3-4. Defendant was aware of the charges and that he would be sent to prison if he were found guilty. SC4. He understood what a plea agreement was and said that he had been offered thirty years. *Id.* Defendant was also able to identify the potential evidence against him. *Id.* Defendant understood the options of pleading guilty and not guilty, and he learned the additional options of not guilty by reason of insanity and guilty but mentally ill. *Id.* He also knew the role of a witness and what it meant to testify. *Id.* Defendant expressed concern that he might be too anxious to testify, but agreed that practicing beforehand would help manage his anxiety. *Id.* Defendant recognized that his attorney would be the best person to ask questions about his case or the court process and "exhibited understanding of and the capacity to conform to appropriate courtroom behavior." *Id.*

In summary, Dr. Clore concluded:

> Despite meeting criteria for schizoaffective disorder, PTSD, and a mild intellectual disability, Mr. Brown had the ability to understand the nature and purpose of the proceedings against him and to assist in his defense. He required some information on some of the concepts (for example, the number of jurors), but once educated, understood the material and was able to retain the information some time later. Because of mild intellectual disability, it may be reasonable for his attorney to periodically provide reminders and education during the adjudication of the alleged crime.

SC4.

At the ensuing review proceedings, defendant's counsel noted that he had "already tendered a copy of Dr. Clore's report" finding "that there is no

reason to believe that my client is unfit to stand trial in any way." R27. Defense counsel then asked the court to put the case "back on the calendar for jury trial." *Id.* The court asked the prosecutor whether that was his understanding, and the prosecutor agreed. *Id.* The court then "acknowledge[d] receipt of the report with the findings contained therein and acknowledge the stipulation if called to testify the doctor would testify consistent to that report." *Id.* In accordance with defense counsel's request, the court set a November trial date. *Id.* In an order on that same date, the court noted that the fitness report was received and that the parties stipulated to the contents of the report; the order concludes: "by agreement-Defendant is fit to stand trial." C54.

The case proceeded to a jury trial in November 2016. Jean Louis, manager of the Family Dollar store, testified that he was working alone on the day of the robbery. R132-34. Defendant walked up, bought a piece of candy, and when the register opened, he drew a gun and "snatched" the money out of the register. R135. The robbery was captured on multiple store surveillance cameras, and the video recordings were played for the jury. R140-43; *see* Peo. Exh. 1 (DVD).

Defendant testified that he robbed the Family Dollar store, but that he did so with a pellet gun, which he discarded in the trash after the robbery. R187-88. When asked why he committed the robbery, defendant stated, "My little brother had passed in Chicago and I had no means to get money."

R188. Defendant testified that the robbery proceeds were used for round trip transportation to attend the funeral. R189.

The jury found defendant guilty, and at the sentencing hearing, the prosecutor noted that defendant had five prior felony convictions, including two convictions for "weapons offenses." R231. In allocution, defendant stated,

> I stand before you today humbly asking for the smallest amount you can give me. Each day that goes by I am extremely regretful and remorseful for my actions. I could not turn back the hands of time, although I can control what actions I take in the future.
>
> Having suffered a great loss of my brother and no means of getting to his funeral, I took actions the wrong way. I made a mistake that I cannot take back. I am forever changed itself because of the event and the loss of my brother. I am asking you to spare me some emotion. My life is in your hands. Thank you and God bless.

R234.

After considering the parties' arguments and the statutory factors, the court sentenced defendant on the armed robbery count to 21 years in prison, the statutory minimum. C116.

On appeal, defendant argued that the trial court failed to exercise its independent discretion before finding that he was fit to stand trial, violating due process. Defendant conceded that he forfeited the issue and asked the appellate court to review it under the second prong of the plain error doctrine. *Brown*, 2019 IL App (3d) 170119-U, ¶ 12. The appellate majority reversed defendant's conviction and remanded for a new trial, holding that

the trial judge's written order demonstrated that she failed to exercise her independent discretion in determining that defendant was fit to stand trial. *Id.* ¶ 15. The majority also rejected the People's argument that the case should be remanded for a retrospective fitness hearing, reasoning that more than two years had passed since trial and sentencing and that this case did not present an exceptional situation where the defendant's fitness may be determined "long after the fact." *Id.* ¶ 19.

In dissent, Justice Wright disagreed that the trial judge had failed to independently exercise her discretion before finding defendant fit to stand trial. *Id.* ¶ 26 (Wright, J., dissenting). The trial judge acknowledged receipt of Dr. Clore's report and the findings therein, as well as the parties' stipulation that if called to testify, Dr. Clore would testify consistently with her report. *Id.* ¶ 27. The dissent noted that the parties merely stipulated that Dr. Clore would testify consistently with her report, not to the report's conclusions. *Id.* The dissent concluded that the trial judge exercised independent judicial discretion when she found defendant fit to stand trial and that, because no due process violation occurred, defendant's procedural default should be enforced. *Id.*[2]

[2] The dissent also rejected petitioner's Rule 431(b) claim, which the majority did not reach. *Brown*, 2019 IL App (3d) 170119-U, ¶ 29 (Wright, J., dissenting).

ARGUMENT

The appellate court concluded that the trial court committed plain error when it found defendant fit to stand trial because it failed to exercise its independent discretion in reaching that finding. *Brown*, 2019 IL App (3d) 170119-U, ¶¶ 11-15. That holding is incorrect for two reasons: (1) the trial court never found a bona fide doubt as to defendant's fitness, so no fitness hearing was required; and (2) the record demonstrates that the trial court exercised its discretion in determining that defendant was fit to stand trial.

Having found that the trial court committed plain error, the appellate court also held that the only available remedy was remand for a new trial. *Id.* at ¶¶ 17-20. This too was incorrect. Because defendant's fitness at the time of trial can be determined from Dr. Clore's contemporaneous fitness evaluation, the proper remedy in this case — should this Court disagree with the People that there was no plain error — would be remand for a retrospective fitness hearing.

I. Because the Court Never Found a Bona Fide Doubt of Defendant's Fitness, No Fitness Hearing Was Required.

The trial court never found a bona fide doubt of defendant's fitness to stand trial, so no fitness hearing was required. The parties' arguments below and the appellate court's decision proceeded from the assumption that the trial court had found a bona fide doubt. But because the trial court never found a bona fide doubt of defendant's fitness, no fitness hearing was required, and the trial court committed no error — plain or otherwise — in

granting defense counsel's request to set the matter for trial.[3] Accordingly, this Court should affirm defendant's conviction.

The criminal trial of an unfit defendant violates due process. *People v. Stahl*, 2014 IL 115804, ¶ 24. But a defendant is presumed fit and is unfit only "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." 725 ILCS 5/104-10. Importantly, a defendant is entitled to a fitness hearing only if a court finds a bona fide doubt of his fitness. *People v. Eddmonds*, 143 Ill. 2d 501, 512 (1998); 725 ILCS 5/104-11(a).

While it is true that the trial court ordered a fitness examination, both section 104-11 and this Court's precedent plainly provide that ordering an examination is not the same as finding a bona fide doubt as to fitness. As relevant here, section 104-11 provides:

> (a) When a bona fide doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further.

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[3] Omission of this argument below does not prevent the People from raising it before this Court. *See People v. Artis*, 232 Ill. 2d 156, 164 (2009) ("where the appellate court reverses the judgment of the trial court, and the appellee in that court brings the case to this court as appellant, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if the issues were not raised before the appellate court"). Nor is the Court barred from reviewing the issue despite the fact that it was not raised in the People's PLA. *People v. McKown*, 236 Ill. 2d 278, 310 (2010) (omission from PLA presents no jurisdictional bar and review is appropriate where issue is inextricably intertwined with other matters properly before the Court); *In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008) (same).

> (b) Upon request of the defendant that a qualified expert be appointed to examine him or her to determine prior to trial if a bona fide doubt as to his or her fitness to stand trial may be raised, the court, in its discretion, may order an appropriate examination. However, no order entered pursuant to this subsection shall prevent further proceedings in the case.

725 ILCS 5/104-11(a) & (b). The "primary distinction between sections 104-11(a) and 104-11(b) is that section 104-11(a) ensures that a defendant's due process rights are not violated when the trial court has already found bona fide doubt to have been raised, while section 104-11(b) aids the trial court in deciding *whether* there is a bona fide doubt of fitness." *People v. Hanson*, 212 Ill. 2d 212, 218 (2004) (emphasis added). As this Court explained in *Hanson*, subsections (a) and (b) "may be applied in tandem or separately, depending on if and when the trial court determines a bona fide doubt of fitness is raised." *Id.* at 217. "If the trial court is not convinced bona fide doubt is raised, it has the discretion under section 104-11(b) to grant the defendant's request for appointment of an expert to aid in that determination." *Id.* (citing 725 ILCS 5/104-11(b)). "Even for a motion filed under section 104-11(a), the trial court could specify its need for a fitness examination by an expert to aid in its determination of whether a bona fide doubt is raised without a fitness hearing becoming mandatory." *Id.* If, after completion of the fitness examination, "the trial court determines there is bona fide doubt, then a fitness hearing would be mandatory under section 104–11(a)[.]" *Id.* But, "if after the examination the trial court finds no bona fide doubt, no further hearings on the issue of fitness would be necessary." *Id.* It is this latter

scenario that occurred here: after the examination the trial court had no doubt as to defendant's fitness.

Whether a bona fide doubt of fitness has arisen "is generally a matter within the discretion of the trial court." *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). But this case requires the Court to determine a different question: whether in granting defendant's motion for a fitness evaluation, the circuit court found a bona fide doubt of defendant's fitness, a question of law that is answered by *Hanson*. Here, as in *Hanson*, the court "simply granted defendant's unopposed motion for a psychological examination without comment," which is insufficient to satisfy defendant's "burden of proving that his demeanor and behavior provided evidence of bona fide doubt of his fitness." 212 Ill. 2d at 224. Counsel's oral motion sought an evaluation to determine *whether* there was a bona fide doubt of defendant's fitness, stating that he had learned the previous evening that defendant's past "mental problem" had resurfaced. R21. He believed that defendant understood him and that any difficulties were "more of a matter of education than of mental illness." *Id.* But because counsel could not determine whether defendant was fit "just by … talking to him," he sought a fitness evaluation. *Id.*

As in *Hanson*, the trial judge never stated — orally or in writing — that she had a bona fide doubt of defendant's fitness, and precedent confirms that none of the surrounding circumstances dictated such a finding. The

mere fact that the court granted defendant's motion for a fitness examination does not establish that the trial court found a bona fide doubt. *Hanson*, 212 Ill. 2d at 222. Nor does the fact that defendant suffered from a mental illness establish a bona fide doubt because fitness is a legal question, and "'[a] defendant may be competent to participate at trial even though his mind is otherwise unsound.'" *Id.* at 224-25 (quoting *Eddmonds*, 143 Ill. 2d at 519). Similarly, the fact that the People assented to defendant's request for an evaluation does not establish a bona fide doubt because, as in *Hanson*, the prosecutor's assent "could just as readily be attributed to the [prosecutor's] belief that section 104-11(b), not section 104-11(a), was being applied." 212 Ill. 2d at 223; *see also People v. Garcia*, 2012 IL App (1st) 103590, ¶ 132 (where defense counsel expressed doubt about the defendant's fitness, but trial court never found a bona fide doubt, fitness evaluation ordered pursuant to section 104-11(b)).

Counsel never requested a fitness hearing, nor did the court order one. The trial court merely set a date to review the results of the evaluation. *See* R20-28; C44 (order setting matter for "review"). Once Dr. Clore evaluated defendant, the parties appeared before the court "on a review of fitness," where defense counsel stated that Dr. Clore's report "finds that there is no reason to believe that [my] client is unfit to stand trial in any way. And so we are looking to have this put back on the calendar for jury trial[.]" R27. The court acknowledged receipt of the report "with the findings contained therein

and acknowledged the stipulation if called to testify the doctor would testify consistent to that report," *id.*, but never found a bona fide doubt of defendant's fitness. Thus, no fitness hearing was necessary, *Hanson*, 212 Ill. 2d at 217, and the court did not err by accepting the parties' stipulation. *See People v. Schnoor*, 2019 IL App (4th) 170571, ¶¶ 48-49 (where court's order granting fitness examination made no reference to bona fide doubt, and defense counsel requested examination to determine whether bona fide doubt existed, defendant not entitled to a fitness hearing and court committed no error by agreeing to parties' stipulation regarding fitness report's conclusions"); *see also People v. Westfall*, 2018 IL App (4th) 150997, ¶ 57 (where court merely granted motion for fitness evaluation and did not find bona fide doubt of defendant's fitness, court not required to conduct fitness hearing); *People v. Edwards*, 2017 IL App (3d) 130190-B, ¶ 72 (where record established that court granted motion for fitness evaluation merely to determine whether there was bona fide doubt, no error in proceeding to trial without fitness hearing); *People v. Vernon*, 346 Ill. App. 3d 775, 779 (3d Dist. 2004) (that trial court granted defense motion to appoint a psychiatric expert did not, by itself, raise bona fide doubt and court did not err by failing to conduct fitness hearing).

Accordingly, there was no error, much less plain error, and this Court should affirm defendant's conviction. *Edwards*, 2017 IL App (3d) 130190-B, ¶¶ 71-73 (finding "no error, plain or otherwise, in the trial court's decision to

proceed to trial without holding a fitness hearing" where court made no finding of bona fide doubt).

II. Alternatively, the Trial Judge Exercised Her Independent Judicial Discretion in Finding that Defendant Was Fit to Stand Trial.

In the alternative, assuming that the trial judge, *sub silentio*, found a bona fide doubt of defendant's fitness, the record establishes that she exercised her independent judicial discretion in finding that defendant was fit to stand trial.[4]

The ultimate issue of a defendant's fitness is a legal question for the trial court, not the experts, to decide. *People v. Bilyew*, 73 Ill. 2d 294, 302 (1978). Thus, a court's fitness determination may not rely "'solely upon the unsupported stipulation, agreement, or plea, alone, made by the accused or by his counsel.'" *People v. Lewis*, 103 Ill. 2d 111, 115 (1984) (quoting *People v. Reeves*, 412 Ill. 555, 561 (1952)). But where, as here, the stipulations are not to the ultimate fact of fitness, but instead to the opinion testimony that would have been provided by the expert evaluator, a trial court may consider the expert's opinion as to the defendant's fitness. *Id.* at 116. A trial court's ruling on the question of fitness will be reversed only if it is against the

[4] Although defendant forfeited this claim, this Court may consider it either under the plain error doctrine or in accordance with the principle that forfeiture is a limitation on the parties and not on this Court. *See Hanson*, 212 Ill. 2d at 216 (noting that appellate court had considered forfeited fitness issue under plain error doctrine, but reaching issue because forfeiture is a limitation on the parties, not the Court).

manifest weight of the evidence. *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). This case does not require the Court to determine whether the court's fitness ruling was against the manifest weight of the evidence, but instead whether, as a factual matter, the circuit court exercised its independent discretion in making that ruling.

Here, the appellate court selectively relied solely on a portion of the trial court's written order (the words "by agreement") — to the exclusion of other portions of the same written order and the court's contemporaneous oral statements — to conclude that the trial judge had failed to independently exercise her discretion in determining that defendant was fit to stand trial. *See Brown*, 2019 IL App (3d) 170119-U, ¶ 15. The appellate court noted that the trial judge "did not indicate that [she] had reviewed the contents of the report or that [she] was basing [her] finding of fitness on the stipulated testimony of the doctor. *Id.* And, seizing upon the final line of the judge's written order, the majority found that it "indicated that [she] found the defendant fit by agreement of the parties." *Id.*

This conclusion overlooks both the preceding portion of the same order noting "fitness report received, parties stipulate to *contents* of report," C54 (emphasis added), and the judge's oral remarks, in which she "acknowledge[d] receipt of the report with the findings contained therein and acknowledge[d] the stipulation [that] if called to testify[,] the doctor would testify consistent to that report," R27. As the dissenting justice recognized,

"instead of adopting the report's conclusions as dispositive, the trial court acknowledged or recognized the existence of the report and its contents." *Brown*, 2019 IL App (3d) 170119-U, ¶ 27 (Wright, J., dissenting). Further, the parties stipulated that the expert would testify consistently with her report; they did not stipulate to the expert's conclusions. *Id.* Indeed, the report does not purport to reach a conclusion as to the ultimate legal question of defendant's fitness. All of these circumstances demonstrate that the trial court properly exercised its independent judicial discretion in finding defendant fit to stand trial; accordingly, even if the court found a bona fide doubt, the trial court's eventual fitness determination was not error.

III. Even If the Trial Judge Failed to Exercise Independent Discretion, the Proper Remedy Is a Retrospective Fitness Hearing.

Even if this Court were to find that the trial judge found a bona fide doubt of defendant's fitness *and* failed to exercise her independent discretion in finding defendant fit to stand trial — which, for the reasons explained above, it should not — reversal is still required because the appellate court ordered the wrong remedy. The appellate court reversed and remanded for a new trial, reasoning that more than two years had passed since trial and sentencing, and that defendant's condition "was not alleged to have been caused by a single, readily assessed factor" so as to warrant a retrospective fitness hearing. *Brown*, 2019 IL App (3d) 170119-U, ¶ 19 (citing *People v.*

Neal, 179 Ill. 2d 541 (1997), and *People v. Esang*, 396 Ill. App. 3d 833 (1st Dist. 2009)). This was error.

Retrospective fitness hearings are not per se impermissible if more than two years have passed since trial. Nor are they are permissible only if the defendant's unfitness was the result of some "single, readily assessed factor." To be sure, in *People v. Gevas*, 166 Ill. 2d 461 (1995), this Court held that after the passage of two years, it would be impossible to conduct a meaningful hearing as to the defendant's fitness at the time of trial and sentencing. *Id.* at 471; *see also People v. Nitz*, 173 Ill. 2d 151, 164 (1996) (rejecting "any notion that a nunc pro tunc determination of fitness can provide the necessary reliability."). But the Court soon retreated from this position. The following year, in *People v. Burgess*, 176 Ill. 2d 289, 303 (1997), the Court departed from the automatic reversal rule in the context of a prior version of the statute, which provided that a defendant who was taking psychotropic drugs was entitled to a fitness hearing. *See* 725 ILCS 5/104-21(a) (1994). The Court accepted the trial court's finding, following a supplemental hearing, that the defendant was not impaired by those drugs at the time of trial. *Burgess*, 176 Ill. 2d at 304. That same year, in *Neal*, the Court approved a fitness hearing held a full fifteen years after trial. 179 Ill. 2d at 553-54. Although *Neal* noted that retrospective fitness hearings "will normally be inadequate to protect a defendant's due process rights when more than a year has passed since the original trial and sentencing," the

Court also recognized that "in exceptional cases," "circumstances may be such that the issue of the defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact." *Id.* at 554. The retrospective fitness hearing in *Neal* sufficiently protected the defendant's rights — even fifteen years after the fact — because the court could fairly and accurately assess the effects of the psychotropic medication he had taken at the time of trial. *Id.* at 554. Indeed, in 2000, this Court noted that the automatic reversal rule had been "replaced by the 'case-by-case' approach" and that "retrospective fitness hearings are now the norm." *People v. Mitchell*, 189 Ill. 2d 312, 338-39 (2000); *see also People v. Payne*, 2018 IL App (3d) 160105, ¶ 14 (noting that rather than automatic reversal, retrospective fitness hearings now the norm); *People v. Gipson*, 2015 IL App (1st) 122452, ¶ 38 (noting that although "our supreme court previously disapproved of retroactive fitness hearings, that disapproval has since been overcome").

That *Neal* concerned a defendant's statutory right to a fitness hearing (due to his use of psychotropic medications), rather than a due process right, is of no moment. As the Seventh Circuit has explained, a retrospective hearing is a viable remedy as long as it is still possible to hold a meaningful hearing to determine if the defendant was fit to stand trial at the time of the original proceedings, that is, "if there is sufficient evidence in the record derived from knowledge contemporaneous to trial." *McManus v. Neal*, 779 F.3d 634, 660 (7th Cir. 2015) (internal quotations and citation omitted); *see*

also Newman v. Harrington, 526 F.3d 921, 929 (7th Cir. 2013) (citing *United States ex rel. Bilyew v. Franzen*, 842 F.2d 189, 193 (7th Cir. 1988) ("passage of even a considerable amount of time may not be an insurmountable obstacle if there is sufficient evidence in the record derived from knowledge contemporaneous to trial").

In other words, unless it is apparent from the record that the defendant's fitness at the time of trial cannot be fairly determined, *see McManus*, 779 F.3d at 660, a retrospective fitness hearing is the proper remedy. If the court determines that the defendant was unfit at the time of his original trial, or that no meaningful hearing may be had on that question, then the defendant is entitled to a new trial. *Gipson*, 2015 IL App (1st) 122452, ¶ 38. But if the court determines that the defendant was fit when tried, his conviction may be affirmed. *Id.*

People v. Cook, 2014 IL App (2d) 130545, where the appellate court rejected the defendant's request for a new trial and instead remanded for a retrospective fitness hearing, is instructive. *Id.* ¶ 22. Relying on *Neal*'s statement that in "exceptional cases," "circumstances may be such that the issue of defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact," 179 Ill. 2d at 554, the appellate court held that Cook's was such a case: "[b]ecause the parties stipulated to the only evidence presented, the trial court is perfectly capable of reviewing that evidence and finding whether, in light of that evidence,

defendant was fit when he pleaded guilty and was sentenced." *Cook*, 2014 IL App (2d) 130545, ¶ 22. Just so here: because the parties stipulated to the contents of Dr. Clore's report, upon remand for a retrospective fitness hearing, the trial court can review that stipulated evidence and determine whether defendant was fit at trial and sentencing.

The appellate court's reliance on *Esang* to reach the contrary outcome is misplaced. In that case, the court found that the defendant's lack of cooperation with medical personnel limited the extent of his fitness evaluations and therefore no accurate judgment of his mental state was possible more than two years after trial. 396 Ill. App. 3d at 841. But here, unlike *Esang*, defendant was assessed for fitness contemporaneous to trial, and there is no indication that he was anything other than cooperative with the evaluator. *See* SC1-4.

The appellate court acknowledged *Cook*'s holding, and further acknowledged that, as in *Cook*, "the only evidence presented at the fitness hearing in this case was the stipulated testimony of a clinical psychologist," but repeated that it did not believe that a retrospective hearing was the appropriate remedy because, "as in *Esang*, the defendant's condition was not alleged to have been caused by a single, readily assessed factor." *Brown*, 2019 IL App (3d) 170119-U, ¶¶ 19, 20. But the question is not whether the defendant's condition was alleged to have been caused by "a single, readily assessed factor," but instead whether the defendant's fitness at the time of

trial may be fairly and accurately determined after the fact. *Neal*, 179 Ill. 2d at 554; *see People v. Melka*, 319 Ill. App. 3d 431, 439 (1st Dist. 2000) (explaining that "exceptional circumstances" language in *Neal* permitted retrospective fitness hearing where there was "contemporaneous evidence regarding defendant's fitness to stand trial"). Applying that standard, many appellate court decisions have remanded for retrospective fitness hearings, even in cases in which the record was not limited to stipulated testimony. *See Gipson*, 2015 IL App (1st) 122452, ¶ 38 (remanding for retrospective fitness hearing, at which parties could present testimony of two experts to clarify opinions held at time of original fitness hearing); *People v. Moore*, 408 Ill. App. 3d 706, 713 (1st Dist. 2011) (remanding for retrospective fitness hearing "to determine what effect, if any, defendant's failure to regularly receive his medication had on his fitness to stand trial").

* * *

In sum, the appellate court's judgment should be reversed on any of three independent bases. First, because the trial court never found a bona fide doubt of defendant's fitness, no fitness hearing was required. Second, even if the circuit court had found a bona fide doubt of defendant's fitness, the trial judge properly exercised her independent discretion to find that defendant was fit for trial. And third, even if a fitness hearing was required and the trial judge did not exercise her independent discretion in finding defendant fit for trial, the proper remedy was a retrospective fitness hearing.

CONCLUSION

This Court should reverse the appellate court's judgment.

February 4, 2020

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twenty-three pages.

s/Katherine M. Doersch
Assistant Attorney General

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 4, 2020, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

Mark D. Fisher, Supervisor
Emily Brandon, Assistant Defender
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Third Judicial District
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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/Katherine M. Doersch
Katherine M. Doersch
eserve.criminalappeals@atg.state.il.us

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2/4/2020 12:11 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

APPENDIX

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TABLE OF CONTENTS TO THE APPENDIX

INDEX TO RECORD ON APPEAL

Common Law Record

2019 IL App (3d) 170119-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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).

Appellate Court of Illinois, Third District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,
v.
Shawn Marlon BROWN, Defendant-Appellant.

Appeal No. 3-17-0119
|
Order filed July 19, 2019

Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois, Circuit No. 16-CF-315, Honorable Jodi M. Hoos, Judge, Presiding.

ORDER

JUSTICE HOLDRIDGE delivered the judgment of the court.

***1** ¶ 1 *Held*: The trial court committed second-prong plain error in failing to affirmatively exercise its discretion at the defendant's fitness hearing.

¶ 2 The defendant, Shawn Marlon Brown, appeals his conviction for armed robbery. The defendant contends that the trial court (1) erred in failing to affirmatively exercise its discretion in determining whether he was fit to stand trial, and (2) failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012).

¶ 3 I. BACKGROUND

¶ 4 The defendant was charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)) and aggravated robbery (*id.* § 18-1(b)(1)).

¶ 5 At a pretrial hearing, defense counsel advised the court that the defendant had been hearing voices. Defense counsel stated:

> "[I]n speaking with [the defendant] just last night, he told me * * * of a mental problem that he has had in the past [that] has resurfaced. He's under medication for this, but he had in the past heard voices. He tells me that he is again starting to hear the voices and said that he was having some difficulty in communicating with me.
>
> This is the first that I've heard of it since I've been representing him, although he did mention to me previously that he had this condition and that it may have factored into the events in question in this case.
>
> So having been told by [the defendant] that he is again having these problems, I'm bringing it to the Court's attention because I think it may be necessary to do an evaluation to determine whether or not he's fit to stand trial."

Defense counsel clarified that he was, in fact, requesting that an evaluation be performed to determine whether the defendant was fit to stand trial. The State indicated that it did not object to the defendant's request for a

fitness evaluation. The court ordered that the defendant undergo an evaluation.

¶ 6 A fitness evaluation report prepared by Dr. Jean Clore, a clinical psychologist, was submitted to the court. Clore found that the defendant suffered from schizoaffective disorder, posttraumatic stress disorder, and a mild intellectual disability. Clore noted that the defendant had been experiencing auditory hallucinations, among other symptoms, at the time of the evaluation. Clore also noted that the defendant's medications included an antipsychotic, a mood stabilizer, and an antidepressant. Clore concluded, nonetheless, that the defendant was fit to stand trial. Clore stated that "it may be reasonable for [defense counsel] to periodically provide reminders and education during the adjudication of the alleged crime" due to the defendant's mild intellectual disability.

¶ 7 At the next hearing, a new judge presided over the proceedings. The following exchange occurred:

> "[DEFENSE COUNSEL]: Your Honor, we are here on a review of fitness. I believe I have already tendered a copy of Dr. Clore's report. * * * That report finds that there is no reason to believe that [the defendant] is unfit to stand trial in any way.
>
> And so we are looking to have this put back on the calendar for jury trial and I have forgotten what the dates were. I believe they have been tendered in the order with the new dates for trial and pretrial.
>
> ***2** THE COURT: Is [this] your understanding, [State]?
>
> [ASSISTANT STATE'S ATTORNEY]: Yes, Your Honor.
>
> THE COURT: All right. The Court will acknowledge receipt of the report with the findings contained therein and acknowledge the stipulation if called to testify the doctor would testify consistent to that report."

¶ 8 The court entered a written order stating that "by agreement–The defendant is fit to stand trial." The order also stated: "[F]itness report received. Parties stipulate to contents of report."

¶ 9 A jury trial commenced on November 29, 2016. At the conclusion of the trial, the jury found the defendant guilty on both counts. On January 13, 2017, the court sentenced the defendant to 21 years' imprisonment for armed robbery. The court did not enter a judgment for aggravated robbery.

¶ 10 II. ANALYSIS

¶ 11 The defendant argues that the trial court erred in failing to affirmatively exercise its discretion in finding him fit to stand trial.

¶ 12 The defendant concedes that he forfeited this issue by failing to object in the trial court. However, the defendant requests that we review this issue under the second prong of the plain error doctrine. Under the second prong, a reviewing court may consider an unpreserved error when "a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v.*

Piatkowski, 225 Ill. 2d 551, 565 (2007). "The right to be fit for trial * * * is fundamental." *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). Accordingly, issues concerning a defendant's fitness to stand trial are subject to review under the second prong of the plain error doctrine. See *People v. Moore*, 408 Ill. App. 3d 706, 710 (2011). See also *People v. Esang*, 396 Ill. App. 3d 833, 840 (2009) ("A trial court's failure to independently analyze and weigh expert testimony in making a fitness finding is a constitutional error, properly considered under the plain error doctrine and reversible unless it can be proved to be harmless beyond a reasonable doubt."); *People v. Contorno*, 322 Ill. App. 3d 177, 180 (2001) ("The determination of a defendant's fitness to stand trial concerns a substantial right, and plain-error review is appropriate.").

¶ 13 "The fourteenth amendment's due process clause precludes the prosecution of a defendant who is unfit to stand trial." *People v. Smith*, 2017 IL App (1st) 143728, ¶ 84. 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 due to a mental or physical condition. 725 ILCS 5/104-10 (West 2016).

¶ 14 "When a *bona fide* doubt as to a defendant's fitness exists, the trial court has a duty to hold a fitness hearing." *Contorno*, 322 Ill. App. 3d at 179. Because the issue of a defendant's fitness to stand trial is one of constitutional dimension, "the record must show an affirmative exercise of judicial discretion regarding the determination of fitness." *Id.* "A trial court's determination of fitness may not be based solely upon a stipulation to the existence of psychiatric conclusions or findings." *Id.* However, a defendant's due process rights are not violated when a trial court's finding of fitness is also based on its own observations of the defendant and a review of a psychological report. *People v. Cook*, 2014 IL App (2d) 130545, ¶ 15. Where the parties stipulate as to what an expert would testify rather than stipulating to the expert's conclusion, the court may consider this stipulated testimony in exercising its discretion. *Contorno*, 322 Ill. App. 3d at 179.

***3** ¶ 15 In the instant case, the trial court's written order stated that it found the defendant fit "by agreement." The court acknowledged that it had received the fitness evaluation report and that the parties stipulated that Clore would testify consistently with report. However, the court did not indicate that it had reviewed the contents of the report or that it was basing its finding of fitness on the stipulated testimony of the doctor. Rather, the court's written order indicated that it found the defendant fit by agreement of the parties. Additionally, the judge who found the defendant fit was a different judge from the one who had presided over the prior proceedings. Thus, the judge could not rely on her past observations of the defendant in determining fitness. Under these circumstances, we find that the court failed to independently exercise its discretion in finding the defendant fit to stand trial.

¶ 16 We reject the State's argument that there was "no room for judicial discretion" to conclude that the defendant was anything but fit to stand trial because the sole evidence before the court was a report in which Clore opined that the defendant was fit to stand

trial. The State contends that the court was not in a position to reject Clore's finding because there was no contradictory evidence. See *People v. Baldwin*, 185 Ill. App. 3d 1079, 1087 (1989) (holding that the trial court could not reject uncontradicted expert testimony that the defendant was unfit to stand trial without evidence that the defendant was fit other than the defendant's own statement). While the State is correct that the only evidence presented at the fitness hearing was Clore's report, the court was still required to exercise judicial discretion in finding the defendant fit to stand trial. See *Contorno*, 322 Ill. App. 3d at 179 ("The ultimate decision as to a defendant's fitness must be made by the trial court, not the experts.").

¶ 17 Having found that court did not exercise its discretion in finding the defendant fit to stand trial, we now consider the appropriate remedy. The defendant argues that his conviction should be reversed and the matter should be remanded for a new trial. The State argues that the matter should be remanded for a retrospective fitness hearing and that a new trial should be ordered only if the trial court retrospectively determines that the defendant was unfit to stand trial.

> "[R]etrospective fitness determinations will normally be inadequate to protect a defendant's due process rights when more than a year has passed since the original trial and sentencing. In exceptional cases, however, circumstances may be such that the issue of the defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact." *People v. Neal*, 179 Ill. 2d 541, 554 (1997).

¶ 18 In *Neal*, the court held that a retrospective fitness determination was appropriate despite the fact that 15 years had passed since the defendant's trial where the defendant claimed that he had been taking a psychotropic medication during his pretrial incarceration and did not receive a fitness hearing. *Id.* at 545, 553-54. The court reasoned that the chemical properties of the psychotropic medication could accurately be assessed in light of the defendant's known medical history. *Id.* at 554. On the other hand, in *Esang*, 396 Ill. App. 3d at 840-41, the court held that a retrospective fitness hearing was not the appropriate remedy given that (1) more than two years had passed since the defendant's trial; (2) the defendant's condition was not alleged to have been produced by a single, readily assessed factor; (3) the defendant failed to adequately cooperate with medical personnel; and (4) the extent of the defendant's evaluations was limited.

¶ 19 In the instant case, more than two years have passed since the original trial and sentencing. We do not believe that this case presents an exceptional situation where the defendant's fitness may be determined long after the fact. Like in *Esang*, the defendant's condition was not alleged to have been caused by a single, readily assessed factor. Accordingly, we find that reversal and remand for a new trial is the appropriate remedy.

***4** ¶ 20 In reaching our holding, we recognize that the court in *Cook*, 2014 IL App (2d) 130545, ¶ 22, found that a fitness determination could fairly and accurately be made more than a year after the trial based on a similar factual situation as in this case. The court noted that the

only evidence presented at the fitness hearing was a stipulation. *Id.* The *Cook* court reasoned that the trial court was capable of reviewing the stipulated evidence and determining whether the defendant was fit when he pleaded guilty and was sentenced. *Id.* Like in *Cook*, the only evidence presented at the fitness hearing in this case was the stipulated testimony of a clinical psychologist. However, for the reasons we have discussed, we do not believe that a retrospective fitness hearing is the appropriate remedy in this case.

¶ 21 Because we reverse and remand the matter for a new trial on the basis of the fitness issue, we do not consider the merits of the defendant's second argument—namely, that the trial court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). In the event of a new trial, we caution the trial court to determine whether each prospective juror both understands *and* accepts the principles set forth in Rule 431(b).

¶ 22 III. CONCLUSION
¶ 23 For the foregoing reasons, the judgment of the trial court is reversed. The matter is remanded for a new trial.

¶ 24 Reversed and remanded.

Justice McDade concurred in the judgment.

Justice Wright dissented.

¶ 25 JUSTICE WRIGHT, dissenting:
¶ 26 I respectfully disagree with the majority's finding that the trial court, Judge Hoos, failed to independently exercise her discretion before finding defendant fit to stand trial. The majority correctly asserts that the trial court's fitness determination may not be based solely upon a stipulation to the existence of psychiatric conclusions or findings.

¶ 27 Here, the trial court acknowledged receipt of the psychologist's report and the findings contained therein. The trial court further acknowledged the parties' stipulation that if called to testify, the psychologist would testify consistent to the contents of the report. The trial court's use of the term "acknowledge" signifies the trial court's exercise of discretion. For instance, instead of adopting the report's conclusions as dispositive, the trial court acknowledged or recognized the existence of the report and its contents. Moreover, the parties merely stipulated that the expert would testify consistently with her report, not to the expert's conclusions. Trial courts may consider such stipulated testimony when exercising their discretion regarding fitness determinations. *Contorno*, 322 Ill. App. 3d at 179. For these reasons, I would conclude that the trial court exercised independent judicial discretion when it found defendant fit to stand trial. I would hold that no due process violation occurred and that procedural default applies.

¶ 28 Turning to defendant's Rule 431(b) contention, defendant concedes that trial counsel failed to raise the alleged error in the trial court. Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Accordingly, defendant's claim is subject to the doctrine of plain error. See *Piatkowski*, 225 Ill. 2d 551, 564-65 (2007).

¶ 29 Rule 431(b) requires that the court "ask each potential juror, individually or in a group, whether that juror understands and accepts" what have come to be known as the *Zehr* principles. Ill. S. Ct. R. 431(b) (eff. Jul. 1, 2012); See *People v. Zehr*, 103 Ill. 2d 472 (1984). Here, despite defendant's contention, the trial court, Judge Kouri, asked each panel of prospective jurors whether they accepted and understood the *Zehr* principles. As such, no error has occurred here and procedural default applies. Defendant's convictions should be affirmed.

All Citations

Not Reported in N.E. Rptr., 2019 IL App (3d) 170119-U, 2019 WL 3297518

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	Case No. 16 CF 315
SHAWN BROWN,	)	
Defendant.	)	

MOTION HEARING

REPORT OF PROCEEDINGS of the hearing had before **CIRCUIT JUDGE STEPHEN A. KOURI**, on August 29, 2016.

APPEARANCES:

MR. GERALD W. BRADY, JR.,
State's Attorney of Peoria County, and by
MR. BRIAN W. FITZSIMONS,
Assistant State's Attorney,
for the People of the State of Illinois.

MR. JOEL E. BROWN,
Peoria County Public Defender, and by
MR. WILLIAM ATKINS,
Assistant Public Defender,
for the Defendant, Shawn Brown.

Tana J. Hess, RMR, CRR
CSR #084-002784
Official Court Reporter
Peoria County Courthouse
324 Main Street, Room 215
Peoria, IL 61602

R20

9:16 a.m.

(Whereupon the following proceedings were duly had:)

THE COURT: 16-CF-315, People versus Shawn Brown. Mr. Brown is here with his attorney, Mr. Atkins. Mr. FitzSimons is here for the State.

What's our status here?

MR. ATKINS: Your Honor, although I believe that we are ready for trial, in speaking with my client just last night, he told me that -- of a mental problem that he has had in the past has resurfaced. He's under medication for this, but he had in the past heard voices. He tells me that he is again starting to hear the voices and said that he was having some difficulty in communicating with me.

This is the first that I've heard of it since I've been representing him, although he did mention to me previously that he had this condition and that it may have factored into the events in question in this case.

So having been told by my client that he is again having these problems, I'm bringing it to the Court's attention, because I think it may be

necessary to do an evaluation to determine whether or not he's fit to stand trial.

THE COURT: Well, are you asking for one, or are you thinking about it?

MR. ATKINS: I am asking for one, Your Honor. I'm asking for it based on the statements by my client. I can tell you it seemed to me that he was understanding most of what I was telling him, but any difficulties were more a matter of education than of mental illness. However, he tells me that he has these issues, and I -- I can't determine that he's fit just by myself talking to him. I don't have that ability. So I think that we have to have an evaluation in order to determine whether or not he's fit to stand trial.

THE COURT: Your position on this, Mr. FitzSimons?

MR. FITZSIMONS: I guess I'd rather -- now that it's raised, I guess I'd rather have an evaluation.

THE COURT: All right. So we're going to vacate the trial date?

MR. ATKINS: Yes.

THE COURT: And order an evaluation; come back in 30 days. Is that a good time frame?

MR. FITZSIMONS: I would think so. I mean, I know usually people ask that Doctor Finkenbine's office perform the evaluation, if for no other reason than he's pretty timely, if that's acceptable to Mr. Atkins.

THE COURT: Is that acceptable?

MR. ATKINS: That's who I was planning on using, just because I heard that he was utilized a lot. As I said, I heard about this just last night, so I haven't had any time to make any kind of arrangements.

THE COURT: Well, why don't we -- if you have no objection, why don't we order that the evaluation be done and that it be done by Doctor Finkenbine.

MR. ATKINS: That sounds good.

THE COURT: And then we'll set this out. Today is the 29th, I think. So we'll set this out to September 26th. Well, let's say --

THE CLERK: September 29th at 1:45 would be good.

THE COURT: Yeah, September 29th, 1:45.

MR. FITZSIMONS: 1:45?

THE CLERK: Yes.

THE COURT: Any questions, Mr. Brown?

THE DEFENDANT: No.

MR. FITZSIMONS: And just want -- the evaluation would just be for fitness?

MR. ATKINS: That's all that I'm asking for is for fitness.

MR. FITZSIMONS: Okay.

THE COURT: Okay.

MR. ATKINS: Thank you, Your Honor.

9:21 a.m.

WHICH WERE ALL THE PROCEEDINGS HAD ON SAID DAY IN SAID CAUSE

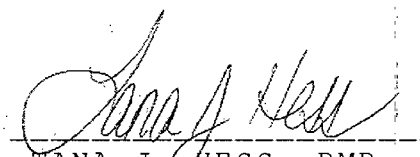
R24

IN THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF ILLINOIS
PEORIA COUNTY, ILLINOIS

REPORTER'S CERTIFICATE

I, **TANA J. HESS, CSR, RMR, RPR, CRR, CBC, CCP**, an Official Court Reporter in and for the Tenth Judicial Circuit of the State of Illinois, Peoria County, do hereby certify that I reported in machine shorthand the foregoing proceedings had before **CIRCUIT JUDGE STEPHEN A. KOURI**, Judge of said Court on said date, and that I thereafter caused the same to be transcribed into typewriting, which I now certify to be a true and accurate transcript of the proceedings had on said date in said cause.

Dated this 27th day of March, 2017.



TANA J. HESS, RMR
CSR, RMR, RPR, CRR, CBC, CCP
Official Court Reporter
License #084-002784

IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

PEORIA COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	FILED ROBERT M. SPEARS APR 04 2017 CLERK OF THE CIRCUIT COURT PEORIA COUNTY, ILLINOIS
Plaintiffs,	)	
v.	)	Case No. 2016CF515
SHAWN M. BROWN,	)	
Defendant.	)	

REVIEW

REPORT OF PROCEEDINGS of the hearing had before the **HONORABLE JODI M. HOOS**, Judge of said Court, on the 29th of September, 2016.

APPEARANCES:

MR. JERRY BRADY,
State's Attorney of Peoria County, by
MR. BRIAN FITZSIMONS,
Assistant State's Attorney,
REPRESENTING THE PLAINTIFF;

MR. JOEL E. BROWN
Public Defender of Peoria County, by
MR. BILL ATKINS,
Assistant Public Defender,
REPRESENTING THE DEFENDANT.

REPORTED BY:

Robin L. Roberts, CSR-RPR-CRR
Official Court Reporter
License No. 084-004317

R26

THE COURT: This is 16-CF-315, People of the State of Illinois versus Shawn Brown. Mr. Brown is present in custody with his attorney, Mr. Atkins. Mr. FitzSimons is here for the People. What should come to the Court's attention today?

MR. ATKINS: Your Honor, we are here on a review of fitness. I believe I have already tendered a copy of Dr. Clore's report. She is an associate with Dr. Finkenbine who was appointed to perform the fitness review in this case. That report finds that there is no reason to believe that my client is unfit to stand trial in any way.

And so we are looking to have this put back on the calendar for jury trial and I have forgotten what the dates were. I believe they have been tendered in the order with the new dates for trial and pretrial.

THE COURT: Is there your understanding, Mr. FitzSimons?

MR. FITZSIMONS: Yes, Your Honor.

THE COURT: All right. The Court will acknowledge receipt of the report with the findings contained therein and acknowledge the stipulation if called to testify the doctor would testify consistent to that report.

So, Mr. Brown, good news for you we get to keep the case moving here. We are going to set -- your next dates are November 17th for a review basically, and that's at 1:00 p.m., and November 28th at 9:00 a.m.

Now, if you are released from jail, you need to make sure you appear on those dates. If you don't appear at your trial, we can go ahead without you. That's not a good thing. If you are convicted, we can have a sentencing without you also. Okay. So if you are released -- if you are still in jail they will bring you over on those dates, but if you get released you need to make sure you appear on those dates.

THE DEFENDANT: November what?

THE COURT: November 17 and November 28th. You will get a copy of this order. Good luck to you.

(End of Proceedings.)

IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

PEORIA COUNTY, ILLINOIS

REPORTER'S CERTIFICATION

I, **ROBIN L. ROBERTS, CSR-RPR-CRR,** an Official Court Reporter in the Tenth Judicial Circuit of the State of Illinois, do hereby certify that I reported in machine shorthand the foregoing proceedings had before the **HONORABLE JODI M. HOOS,** in the above-entitled cause, and that I thereafter caused the same to be transcribed into typewritten form which I now certify to be a true and accurate transcription of same.

Dated this 3rd of April, 2017.

Robin L. Roberts

Robin L. Roberts, CSR-RPR-CRR
Official Court Reporter
License No. 084-004317

000020

R29

STATE OF ILLINOIS, PEORIA COUNTY
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff

VS. } Case No. 16 CF 315

Shawn Brown

Defendant

Order

Judge: Hoos for Kerry	Court Reporter: Roberts	Pltf. Atty: Fitzsimmons
Date: 9/29/16 Court Room 214	Clerk: Carson	Deft. Atty: Atkins

The Defendant having been called in Open Court on this date, and:

- ☒ 1. Defendant is present in custody / out of custody;
- ☐ 2. Defendant is informed of the charge in the _____ and furnished with a copy thereof;
- ☐ 3. The Defendant desires Court appointed counsel and the Court determines the Defendant is / is not indigent;
- ☐ 4. The Defendant request additional time for private counsel to appear;
- ☒ 5. Counsel identified above appears for the Defendant;
- ☐ 6. The Defendant waives the reading or explanation of the charge;
- ☐ 7. The Defendant moves that the People furnish Discovery pursuant to Illinois Supreme Court Rules;
- ☐ 8. The People move that the Defendant furnish Discovery pursuant to Illinois Supreme Court Rules;
- ☐ 9. The Defendant enters a plea of Not Guilty to each count of the charge;
- ☐ 10. The Defendant is advised pursuant to 725 ILCS 5/115-4.1 of the consequences of the failure to appear for trial and sentencing;
- ☐ 11. The Defendant waives a Jury Trial and requests a Bench Trial after admonition;
- ☐ 12. The People / Defendant move(s) for a continuance;
- ☐ 13. The Defendant moves for reduction of bail;
- ☐ 14. The Defendant fails to appear;
- ☐ 15. Hearing held on People's / Defendant's Motion for: _____
- ☐ 16. Defendant advised that Bond Money is presumed to be the property of the Defendant and Bond Money maybe used for Costs, Fine, Restitution, Attorney Fees, or other purposes authorized by the Court;
- ☒ 17. Other: Fitness report received. Parties Stipulate to contents of report.

FILED
ROBERT M. SPEARS
SEP 29 2016
CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

IT IS HEREBY ORDERED THAT:

- ☐ A The Public Defender is / is not appointed for the defendant.
- ☐ B. This matter is continued on Defendant's / People's Motion to _____, 20___, at _____A.M. / P.M. for _____.
- ☐ C. The People are to furnish Discovery pursuant to Supreme Court Rules By _____, 20___.
- ☐ D. The Defendant is to furnish Discovery pursuant to Supreme Court Rules By _____, 20___.
- ☐ E. The People's / Defendant's Motion _____
- ☒ F. The Scheduling Conference is set for 11/17, 2016, at 1:00 A.M. / P.M.
- ☒ G. The Jury / Bench Trial is set for 11/28, 2016, at 9:00 A.M. / P.M.
- ☐ H. The Defendant's Motion for bond reduction is ☐ granted ☐ denied. Bail set at $_____.
- ☐ I. A Warrant of Arrest for the Defendant issue with bail set at $_____.
- ☐ J. The Bond Forfeiture Order entered herein on _____ is vacated.
- ☐ K. The Warrant of Arrest ordered to issue on _____ is recalled.
- ☐ L. People to Elect within _____ days.
- ☐ M. Trial / Hearing Date of _____ is vacated.
- ☒ N. Subpoenas to remain in full force and effect.
- ☒ O. Other: By agreement - Defendant is fit to stand trial.

DATE ENTERED: 9/29/16

S. M. Hoos
JUDGE OF THE TENTH JUDICIAL CIRCUIT

WHITE - CLERK'S COPY CANARY - STATE'S COPY PINK - DEFENDANT'S COPY GOLD- SHERIFF'S COPY

000021

ORDER

Form No. 14