2026 IL App (1st) 251257-U

No. 1-25-1257

Order filed October 8, 2026

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 24 CR 3152
	)	
ROBERT AUSTIN,	)	Honorable
	)	Mariano R. Reyna,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Justices Mitchell and Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's entry of a directed verdict finding defendant unfit to stand trial.

¶ 2 Before trial, defense counsel raised a *bona fide* doubt as to defendant Robert Austin's fitness to stand trial. The trial court accordingly ordered a fitness hearing. Pursuant to section 104-12 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-12 (West 2024)), Austin requested a jury determination of his fitness. During the fitness hearing, following the State's presentation of evidence, defense counsel moved for a directed verdict on the ground that the State

had failed to prove Austin was fit to stand trial. The trial court agreed and entered a directed verdict finding Austin unfit. Austin now appeals, contending that the court's entry of a directed verdict violated his statutory right to have a jury determine his fitness. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2024, a grand jury indicted Austin on several counts, including multiple charges of attempted first-degree murder. During the proceedings, defense counsel raised a *bona fide* doubt as to Austin's fitness to stand trial, and the trial court accordingly ordered a fitness examination.

¶ 5 In April 2025, Dr. Rachel Klauber, a psychiatrist, evaluated Austin and, in a written report, opined that he was unfit to stand trial. Two months later, Austin requested a jury determination of his fitness pursuant to section 104-12 of the Code (*id.*), and the trial court empaneled a jury for a fitness hearing. At the hearing, the State's sole witness was Dr. Klauber, who testified as an expert in forensic psychiatry and opined that Austin was unfit. Following her testimony, defense counsel moved for a directed verdict, arguing that the State failed to prove Austin was fit. The State agreed, and the trial court granted the motion, entering a directed verdict finding Austin unfit.

¶ 6 This appeal follows.

¶ 7 II. ANALYSIS

¶ 8 Austin contends that the trial court violated his statutory right to have a jury determine his fitness to stand trial when it entered a directed verdict finding him unfit, thereby removing the issue from the jury's consideration. Austin therefore argues that the court's order finding him unfit must be vacated.

¶ 9 A defendant is presumed fit to stand trial. *Id.* § 104-10. He will be deemed "unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the

proceedings against him or to assist in his defense." *Id.* Under the due process clause of the United States Constitution (U.S. Const., amend. XIV), the State may not prosecute a defendant who is unfit. *People v. Holt*, 2014 IL 116989, ¶ 51. Consistent with this due process requirement, defense counsel's first responsibility when appointed to a case is "to independently assess whether the client is fit." *Id.* ¶ 52. Defense counsel therefore "should bring to the court's attention any facts raising a *bona fide* doubt as to the accused's competency." *People v. Brown*, 31 Ill. 2d 415, 418 (1964). When a *bona fide* doubt as to the defendant's fitness is raised, the trial court must order a fitness hearing before the case proceeds further. 725 ILCS 5/104-11(a) (West 2024).

¶ 10 Although there is no constitutional right to a jury determination of fitness (*People v. Haynes*, 174 Ill. 2d 204, 220 (1996)), section 104-12 of the Code (725 ILCS 5/104-12 (West 2024)) provides a statutory right. That section provides:

> "The issue of the defendant's fitness may be determined in the first instance by the court or by a jury. The defense or the State may demand a jury or the court on its own motion may order a jury. However, when the issue is raised after trial has begun or after conviction but before sentencing, or when the issue is to be redetermined ***, the issue shall be determined by the court." *Id.*

The phrase "[t]he defense" encompasses the defendant. *Haynes*, 174 Ill. 2d at 222-24.

¶ 11 At a fitness hearing, the State has the burden to prove the defendant is fit to stand trial by a preponderance of the evidence. 725 ILCS 5/104-11(c) (West 2024). However, because due process forbids the State from prosecuting a defendant who is unfit (*Holt*, 2014 IL 116989, ¶ 51), the State "may, for ethical reasons, refrain from attempting to meet that burden." *People v. Wilber*, 2018 IL App (2d) 170328, ¶ 13. Thus, when the State believes a defendant is unfit, it should not attempt to bring that defendant to trial. *Id.* Similarly, when the defendant believes he is fit but

defense counsel disagrees, counsel is not required "to adopt the defendant's position and argue for a finding of fitness." *Holt*, 2014 IL 116989, ¶ 56. Whether we view Austin's contention as one of statutory construction, as he suggests, or as a challenge to the propriety of a directed verdict, our review is *de novo*. See *People v. Vesey*, 2026 IL 130919, ¶ 53 n.1; *People v. Stoecker*, 2014 IL 115756, ¶ 21.

¶ 12 Our supreme court has long recognized that a directed verdict may be entered in a fitness hearing before a jury. In *People v. Reeves*, 412 Ill. 555, 557-61 (1952), our supreme court found a directed verdict was improper because it was based on a stipulation, but it observed: "We do not now say the court cannot direct a verdict in a sanity hearing, which is a civil case, upon a proper state of the evidence and the record." Following *Reeves*, our supreme court upheld directed verdicts entered by trial courts during fitness hearings before juries. See *People v. Rosochacki*, 41 Ill. 2d 483, 488-89 (1969) ("We agree that there was no issue of fact to go to the jury, and we hold that the judge properly directed the jury verdict" during a fitness hearing); *People v. Speck*, 41 Ill. 2d 177, 204-05 (1968), *judgment vacated in part sub nom. by Speck v. Illinois*, 403 U.S. 946 (1971) (finding that "the [trial court's] direction of a verdict of competency was not error"); *Brown*, 31 Ill. 2d at 420-21 (finding that, "[i]n our opinion the direction of the verdict [of competency] was proper"); *People v. Woods*, 26 Ill. 2d 557, 561 (1963) (finding that "[t]he [trial] court properly directed the jury to return a verdict finding defendant competent"). Notably, in *People v. McKinstray*, 30 Ill. 2d 611, 616-17 (1964), where defense counsel failed to move for a directed verdict of unfitness, our supreme court held that the trial court should have *sua sponte* directed a verdict of unfitness based on the evidence.

¶ 13 Recently, in *Holt*, 2014 IL 116989, our supreme court encountered facts materially similar to those here. The defendant requested a jury determination of his fitness, and during the hearing,

the State presented one witness, a clinical psychologist, who opined that the defendant was unfit to stand trial. *Id.* ¶¶ 23, 28, 31. Following the testimony of the psychologist, defense counsel moved for a directed verdict of unfitness despite the defendant's assertion that she was fit. *Id.* ¶ 33. The State conceded that it had failed to meet its burden. *Id.* The trial court accordingly granted the motion and entered a directed verdict finding the defendant unfit. *Id.* The issue before our supreme court was not the propriety of the directed verdict but whether defense counsel provided ineffective assistance by failing to advocate for the defendant's position that she was fit. *Id.* ¶¶ 1, 49. Ultimately, the court concluded: "Where, as here, the evidence clearly indicates that defendant is unfit, but a defendant contends that he or she is fit, defense counsel is not obligated to adopt the defendant's position and argue for a finding of fitness." *Id.* ¶ 56. The court therefore held that defense counsel was not ineffective and affirmed the court's finding. *Id.* ¶¶ 56-58. Thus, although *Holt* did not directly address the procedural propriety of a directed verdict, its affirmance under those circumstances is consistent with using such a procedure in a fitness hearing before a jury.

¶ 14 In addition, the appellate court has expressly held that a trial court may enter a directed verdict during a fitness hearing before a jury. In *Wilber*, 2018 IL App (2d) 170328, ¶ 3, before the fitness hearing began and outside the jury's presence, the State informed the court that it did not expect to meet its burden of proving the defendant fit for trial. At the hearing, the State's sole witness was a clinical psychologist who opined that the defendant was unfit to stand trial. *Id.* ¶¶ 3-8. After the State rested, defense counsel moved for a directed verdict of unfitness despite the defendant's insistence that he was fit, and the trial court entered a directed verdict. *Id.* ¶ 1. On appeal, the defendant argued that the trial court erred by entering the directed verdict because the State and defense counsel's shared belief that he was unfit deprived him of an opportunity to establish his fitness. *Id.* ¶¶ 10, 12.

¶ 15 The appellate court rejected the argument, explaining that defense counsel was not required to adopt the defendant's position and the State could, for ethical reasons, decline to attempt to establish his fitness. *Id.* ¶ 13. The court observed that denying an otherwise meritorious motion for a directed verdict would be futile because the State had no additional evidence to present and defense counsel, having sought a finding of unfitness, was unlikely to present evidence of fitness. *Id.* ¶ 16. Thus, the appellate court concluded that the trial court's directed verdict was proper. *Id.* ¶ 19. More recently, relying on *Wilber*, the appellate court in *People v. Pairadee*, 2024 IL App (3d) 230092-U, ¶¶ 28-34, found no error in the trial court's entry of a directed verdict finding the defendant unfit to stand trial.

¶ 16 Taken together, these decisions establish that a trial court may enter a directed verdict in a fitness hearing before a jury, whether the verdict finds the defendant fit or unfit to stand trial.

¶ 17 Nevertheless, Austin points to the language of section 104-12 of the Code (725 ILCS 5/104-12 (West 2024)), and argues that, once a jury has been demanded, the statute permits the trial court to determine fitness in only three situations: (1) after trial has commenced; (2) after conviction but before sentencing; or (3) when the issue is to be redetermined. According to Austin, because none of those situations apply, the court could not remove the issue of fitness from the jury's consideration. Although a fitness hearing arises within a criminal case, it "is a preliminary civil proceeding." *Rosochacki*, 41 Ill. 2d at 489. Consistent with the characterization of a fitness hearing being civil in nature, our supreme court has, as noted, repeatedly recognized that directed verdicts in fitness hearings before juries are proper. See *id.* at 488-89; *Speck*, 41 Ill. 2d at 204-05; *Brown*, 31 Ill. 2d at 420-21; *McKinstray*, 30 Ill. 2d at 613-14, 617; *Woods*, 26 Ill. 2d at 561; *Reeves*, 412 Ill. at 557-61. And thus, section 104-12's silence regarding a directed verdict in a fitness hearing before a jury does not render the procedure improper.

¶ 18 Austin also argues that *Haynes*, 174 Ill. 2d 204, and *People v. McCoy*, 2014 IL App (2d) 130632, require us to vacate the directed verdict and remand for a jury determination of his fitness. Neither case, however, addresses whether a trial court may enter a directed verdict during a fitness hearing before a jury. *Haynes*, 174 Ill. 2d at 221-25, addressed an amendment to section 104-12 of the Code replacing "the defendant" with "[t]he defense" and held that the latter term encompassed the defendant. *McCoy*, 2014 IL App (2d) 130632, ¶¶ 4, 21-27, addressed a materially different circumstance in which the trial court ignored the defendant's jury demand and never empaneled a jury. Accordingly, neither *Haynes* nor *McCoy* controls here, and the trial court did not violate Austin's statutory right to a jury determination of his fitness by entering a directed verdict finding him unfit to stand trial.

¶ 19 Lastly, we note that Austin challenges only the procedural propriety of a directed verdict in a fitness hearing before a jury; he does not contend that the evidence was insufficient to warrant a directed verdict under *Pedrick v. Peoria & Eastern R. Co.*, 37 Ill. 2d 494 (1967), the standard that "governs a motion for directed verdict during a jury trial." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 276 (2003); see also *Speck*, 41 Ill. 2d at 205 (applying the *Pedrick* standard to a directed verdict during a fitness hearing before a jury). Consequently, he has forfeited any contention that the evidence did not warrant a directed verdict. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.