2024 IL App (4th) 231540-U

NO. 4-23-1540

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 31, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Boone County
STEPHANI ELLIS,	)	No. 22DT4
Defendant-Appellant.	)	
	)	Honorable
	)	Ryan A. Swift,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court abused its discretion and committed plain error in finding (1) no *bona fide* doubt existed as to defendant's fitness to stand trial and (2) defendant was willfully absent from trial when she was hospitalized and could be tried *in absentia*. The appellate court vacated defendant's conviction and remanded for a new trial.

¶ 2 Defendant, Stephani Ellis, was convicted of two counts of driving under the influence (DUI) (625 ILCS 5/11-501(a)(4), (a)(6) (West 2022)). On appeal, she argues that the trial court abused its discretion when it (1) found there was no *bona fide* doubt about defendant's fitness to stand trial, (2) found defendant was willfully absent from her trial when she was hospitalized and proceeded to a trial *in absentia*, and (3) denied defendant's motion for a mistrial based on defendant's inability to appear for trial. Likewise, she argues that her trial counsel was ineffective for failing to (1) request a fitness examination, (2) challenge the court's decision to proceed *in absentia*, and (3) file appropriate posttrial motions, including a motion for a new trial.

For the following reasons, we vacate defendant's conviction and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 On January 5, 2022, defendant was charged with DUI (625 ILCS 11-501(a)(4) (West 2022)) and improper lane usage (625 ILCS 5/11-709 (West 2022)). The State later charged defendant with an additional count of DUI (625 ILCS 11-501(a)(6) (West 2022)).

¶ 5 At defendant's initial appearance on January 6, 2022, she confirmed that she had a chance to watch a video about her rights but stated she "ha[s] a disability so [she's] not sure about that." The trial court appointed a public defender to represent defendant. Defendant continually interrupted the court, first raising "an issue with the gentleman being there that's with you," who she needed "to leave the courtroom." Defendant then stated that she "ha[d] no money" when the court was attempting to explain that she would be released that day without posting bond. Additionally, defendant stated that "there's a conflict of interest with [the prosecutor] representing the State."

¶ 6 Despite being represented by counsel, on February 1, 2022, defendant filed a *pro se* motion for a "continuance/dismissal" based on "on going [*sic*] [post-traumatic stress disorder (PTSD)] due to sexual assault incurred while in the Boone County Courthous[e]," which led her to "be in [*sic*] hospital for therapy and medical support from providers" and "being checked for suicide." She also stated that she was not able to receive accommodations "due to a conflict of interest which [she has] a right to according to the [Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 *et seq.* (2018))]." At a pretrial hearing on February 2, 2022, there was a closed captioner present to transcribe the hearing for defendant. Defendant reiterated her concern that the prosecutor had a conflict of interest because "[s]he's represented me through the State on other matters." The prosecutor clarified that she "did not represent [defendant], though she was a victim

in one of our cases." The trial court did find, however, that defendant had a conflict of interest with her current public defender, so a new public defender would represent defendant instead. Defendant was adamant that she wanted a female attorney to represent her because she "do[es not] feel comfortable with men." The court said it would "explore *** who might be available for appointment to represent [defendant] here in Boone County," but for the time being, defendant would be represented by "the incoming alternate public defender." While the court was trying to schedule the next pretrial hearing, defendant interjected that she has "been in and out of the hospital a lot" because of "[s]eizures and strokes and stuff."

¶ 7 The matter was continued by agreement numerous times between 2022 and 2023 for pretrial, status, and motions hearings. On April 12, 2022, defense counsel reported that defendant "indicated that she is unwell and in the process of being evicted," so counsel sought to waive defendant's presence for the pretrial hearing. Several subsequent hearings were reset because defense counsel reported that defendant was "rather ill," the trial court received a letter "from her doctor saying that she's under a doctor's care," and defendant reported that she was having "medical problems," including "cardiac and neurological issues" for which she was going to have further testing at the hospital.

¶ 8 On February 8, 2023, defense counsel moved to withdraw. Counsel reported that defendant had repeatedly requested to have a female attorney, which contributed to his "strained relationship communicating with her." Defendant stated in court that she was at "an impasse" with her current counsel because she has "a hard time taking in information from a male," and even though "he has tried," there was "a level that [she] can't get past because of one of [her] disabilities, and [she was] not completely understanding the expectation or the process." Her counsel added that there was "sort of a wall between [them], and [he does not] know what [he] can do to work

around it or over it or through it," so the "case just simply [was] not progressing." The trial court explained that it would reserve ruling on the motion to withdraw until defendant and her counsel could discuss the matter further. On March 29, 2023, defendant appeared with new, privately retained female counsel, who filed her appearance, and the court discharged defendant's public defender.

¶ 9 The matter was set for a final pretrial conference on May 3, 2023. On that date, the matter was continued again to give defendant's new counsel time to review the discovery materials to be provided by the State. At that status hearing, the trial court set the case for jury status on July 24, 2023. The court then informed defendant, "[I]f you do fail to appear for trial and if your failure is deemed willful, then a trial still could proceed in your absence, and if you were found guilty, you could be sentenced in your absence." Defendant confirmed that she understood. On July 24, 2023, the court reset the case by agreement for a jury trial status on October 23, 2023.

¶ 10 On October 11, 2023, defendant appeared for a hearing addressing her motion to suppress evidence filed on September 25, 2023. However, defense counsel informed the trial court that she was not able to proceed with the hearing because she was waiting for an expert's final report, conceding that there "was some delay on [her] part in contacting this person." The court noted that the cutoff for disclosures was the following Tuesday, and that the court would not continue the October trial "absent something unforeseen today." Defendant informed the court that she had court dates in other cases on October 23 and 24, and that "part of [her] accommodation is to have some time between court dates, which [they] haven't been doing," which was "extremely traumatizing for [her] where [she has] to have therapy almost three times a week now." The court acknowledged that it was "trying to make every reasonable accommodation," and it knew that "anybody appearing in court, no matter the case, can, at the very least, cause some stress, anxiety,

fear, all of those things, so [the court] is certainly sympathetic to that." However, the court noted that it had "a duty and obligation to get [defendant's] case resolved in a timely manner."

¶ 11 When the trial court asked defendant about her accommodations, defendant requested a copy of the transcripts from the upcoming trial and previous hearings because she "may be able to read [the closed captioning] feed, but [she] would like to comprehend what's being done to [her] and what's being expected of [her]." Defendant continued, "[T]he other part is the trauma within the court system. The last five years has caused PTSD and that is why I have in between [*sic*] so that they can help me with that." The court responded by saying that it wanted to "ensure fair proceedings and a fair trial but also to accomplish that in a timely manner," and "it's not our aim to traumatize or make [defendant] jump through any additional hoops." However, the court reiterated that it intended to keep the trial date set and that defendant "would have to be in person for trial" starting October 25, 2023. Defendant interjected that the trial date "works for [the court] but that doesn't necessarily work for [her] on a health issue," and complained that the court was "going to have [her] go back to back on court dates," and "there's only so much one woman can handle at one time." The court reset the hearing on defendant's motion to suppress to October 18, 2023.

¶ 12 On October 17, 2023, defense counsel filed an emergency motion to continue the trial, stating that defendant was "melting down" and that "her psychiatrist is working with her and has opined that she really would not be fit to participate in trial until after the first of the year, until after some time elapsed between court dates." The trial court noted that it reviewed a letter dated October 16 (which does not appear in the record) from Carol Baxter, a registered nurse at McKinley Health Center for Mental Health, and the emergency motion. However, the court denied the motion, stating that it "do[es not] think there's a *bona fide* doubt as to her fitness to stand trial,"

and it "do[es not] believe that setting extended periods of time between court dates or continuing this matter for trial after the first of the year would be a reasonable accommodation under the circumstances."

¶ 13 Prior to hearing defendant's motion to suppress on October 18, 2023, the trial court addressed some matters concerning discovery. The State objected to defendant's expert disclosures because "[t]here are opinions that haven't been previously disclosed." Defense counsel stated that she was just made aware of the issue. The court noted that it "understand[s] the position [defense counsel] is in because you can only do with what information you are provided." The court noted that while it was incumbent upon defendant to provide her counsel with information more than a week or two before trial, it was unwilling to delay the trial any further.

¶ 14 Defendant did not appear at a hearing on October 20, 2023. Defense counsel reported that she had not heard from defendant but did get a message that defendant was being "evaluated for anxiety attacks" and was "not in the right mental state right now."

¶ 15 On October 23, 2023, defense counsel moved to withdraw, explaining that she had been "unable to appropriately communicate with [defendant]." She stated that defendant had "been suffering from [PTSD], anxiety, and it's just been impossible." The trial court reiterated that it intended to proceed to trial on October 25. Defendant interjected, stating that she was "not doing medically well" and was "having a very hard time understanding [her attorney]." She added that she did not know if she was "going to make it through the day, let alone tomorrow."

¶ 16 The trial court denied the motion to withdraw and noted that it intended for the trial to proceed. The court stated that it was sympathetic to the situation but "reiterate[d] everybody who has matters in court on some level feel [*sic*] stress and anxiety" and it would be keeping the trial date, noting that defendant had already been advised of the potential for a trial *in absentia*.

Defendant interrupted, stating that she was "really bad off" and that "if I end up in the hospital, I'm letting you know beforehand. I'm trying to be as upfront as possible." Defense counsel added that defendant's condition was "above and beyond anything I've ever seen and it's clinical and it's medical." The court stated that, while it would "continue to make every reasonable accommodation for [defendant]," it was an "ongoing cycle" that they would be doing "for the next two years."

¶ 17 Defendant responded as follows:

> "I have multiple therapists, doctors, medical professionals, supports put in place, and I even told you last week that I needed my court case spread out. It's in my documentation. Those are not a joke. It's not a lie. And it's compounded and it keeps compounding and keeps compounding and, frankly, it's to the point where you have made me to the point where I'm not functioning. And, so, anything that you were to tell me right now, I can't comprehend. I can't comprehend what [my attorney] says. I couldn't comprehend what the Court says or what would even happen in a trial. And that's exactly what the psychiatrist or any other medical professional right now would tell you. I can't comprehend."

She added, "I can barely read court documents this morning that my advocate [gave me] for a simple eviction process," and "even your closed caption, I can't read it. I can't read it to understand it." She stated that she has "been trying to be straightforward" but that she "can't understand what's put in a text or in a paper" and "can't read it now and understand it and take it and even absorb it." Over the trial court's attempts to speak, defendant continued, "I don't want to get up. I don't want to even go outside. I don't function. I don't eat. I vomit blood." She expressed that she did not have "average anxiety" but "complex PTSD from the stuff that has gone on."

¶ 18 The trial court stated that it was "aware of the background," and though it was "not

a medical professional," the "only thing that's been provided to [the court] is a letter from a nurse talking about the stress that that has caused." However, the court reiterated that because the case was two years old and needed to be resolved, the trial would proceed as scheduled, and defendant was "expected to be in person." Defendant interrupted, asking, "If I'm in the hospital, what would you like me to do?" because "that's more than likely what this will push me to." The court stated that it "can't answer that." Defense counsel added that she "cannot see any way [she] could possibly represent [defendant], one, if she's in the hospital, but, two, she's not comprehending anything," so she "do[es]n't know how that could possibly be fair" under these "highly unusual circumstances." The court reiterated that it found no *bona fide* doubt as to defendant's fitness.

¶ 19 The trial court then told defendant, "I do need to advise you that [the trial is] in person. If you do fail to appear and if your failure is deemed willful, a trial still could proceed in your absence, and if you were found guilty, you could be sentenced in your absence." Defendant emphasized that she was "very disabled," "emotionally unstable," "cannot comprehend anything that would be said or would be done," and "may end up in the hospital." She explained that "we have had trial every day for the last week and three times last week, and [she] tried telling [the court] last week" that "[i]t's a lot" because she was experiencing "trauma and flashbacks and everything from the sexual assault, let alone being in that place," and "[i]t takes a while for [her] to desensitize and everything." The court noted that it did not "mean to sound callous or unsympathetic" but "there's *** been a history of delay and delay tactics, and [it] intend[s] to get this case tried."

¶ 20 Jury selection and trial began on October 25, 2023. Defendant was not present. Her counsel explained that she "ha[d] not heard from her other than two days ago to say she was in the hospital" and moved to continue the trial. The trial court denied the motion to continue, found that

defendant's failure to appear was willful, and proceeded with a trial *in absentia*. Thereafter, the State dismissed the improper lane usage charge, opting to proceed only with the two counts of DUI.

¶ 21 The State began the trial by calling Officer David Ellingson of the Belvidere Police Department. He testified that on the night of January 5, 2022, at approximately 7 p.m., he pulled defendant over after observing her drive northbound in a southbound turn lane. While Ellingson was calling in the traffic stop, defendant reversed her vehicle toward his car; once he hit his horn, she stopped reversing and put the vehicle in the parking gear. Ellingson approached the vehicle from the passenger side and saw defendant digging through the glove box on the passenger side of the vehicle. Though he was flashing his flashlight in her eyes to get her attention, she did not notice him. He then knocked on the window and she rolled it down. Ellingson described defendant as "very relaxed and slumped over in her seat," with "slow and deliberate" movements and "slow and slurred" speech, which made him believe defendant was impaired. He called for backup from Officer Matthew Korn, who requested that defendant come to the rear of his vehicle. Defendant was so unsteady that both Ellingson and Korn had to hold onto her from both sides to prevent her from falling. Defendant informed Ellingson that she had taken "several doses of Benadryl." After Ellingson testified, the trial court continued the trial to the next day.

¶ 22 The trial resumed on October 26, 2023. Defendant again did not appear. Defense counsel reported that she had heard from defendant "late last night" that she was in the hospital because "[h]er heart stopped" after she "was brought in because of a wellness check." She explained that defendant had "been seen by toxicologists, psychiatrists," was scheduled to see a neurologist and cardiologist, and was "having blood tests constantly, EKG's, x-rays, MRI's." Counsel further reported that defendant had apparently gone "from bradycardia to tachycardia"

and was "very sick." The trial court asked if defendant had provided any documentation to support this. Defense counsel showed the court a picture of defendant in a hospital bed but expressed her doubt that defendant could "garner medical records at the moment." The court noted:

> "[T]he posture of this case with [defendant] has been to delay and otherwise thwart the process of getting the matter tried; and, so, she did forecast even when her request to set multiple weeks in between court dates, which was just not in my opinion a feasible or reasonable request, forecasted that she would be ending up in the hospital."

Because defendant did not provide the court with any records, the court stated that "it's consistent with what [defendant] forecasted would happen in my opinion to further delay the trial from taking place," so it again found that defendant's failure to appear for trial was willful. Defense counsel further noted that she "can only communicate with [defendant] in writing" while she was in the hospital, but the court proceeded with the trial.

¶ 23 The State called Officer Korn. He testified that when he arrived at the scene and approached defendant's vehicle, he observed that she was "slouched," her "face was droopy," her "eyelids were pretty much closed," and "she talked so quietly and slurred that it was almost impossible to understand what she was saying." He, like Ellingson, believed she was impaired. Because it was cold and it would have been unsafe for him to conduct sobriety tests while traffic was driving by, he took defendant to a conference room in the basement of the police department. Defendant was only able to complete one sobriety test, as she was unable to stand up without falling over. At that point, Korn believed she was "heavily impaired" by some kind of opiate. Defendant informed Korn that she took Zoloft, and that day, she also took "two full cups of Benadryl," Mucinex DM, an unknown pill from a friend, and a glass of wine. Korn brought

defendant to the hospital to collect a blood sample. After they returned to the police station, he collected a urine sample.

¶ 24 The State next called Dr. Terrance Washington Jr., who testified by Zoom as an expert in the field of forensic toxicology. Dr. Washington testified that there was no alcohol present in defendant's blood sample. The urine test returned a positive result for benzodiazepines and opiates. Further testing identified 7-aminoclonazepam as the benzodiazepine and dihydrocodeine as the opiate.

¶ 25 On October 27, 2023, defendant was again not present at trial in person. However, defense counsel informed the trial court that, while defendant was still in the hospital, she indicated she did want to testify and asked whether the court would permit her to testify via Zoom. The court denied the request and found that her absence was still willful.

¶ 26 In the presence of the jury, the trial court granted the State's request to take judicial notice that dihydrocodeine was a controlled substance only available by prescription. The State then rested its case. The defense then called Dr. Adam Negrusz, a forensic toxicologist. He testified about the protocols for testing blood and urine samples for substances and opined that he was not convinced that dihydrocodeine was present in the urine sample collected from defendant. He testified that the testing showed "interference" with dihydrocodeine, which undermined his confidence in the result. After his testimony, the defense rested.

¶ 27 The State then called Jennifer Bash, a forensic toxicology specialist at the University of Illinois Chicago's Analytical Forensic Testing Laboratory, as a rebuttal witness. She testified that she was not concerned with the testing process and disagreed with Dr. Negrusz's conclusions. The State rested its rebuttal case.

¶ 28 After discussing exhibits and jury instructions, defense counsel asked the trial court

if defendant had attempted to enter the Zoom meeting. The court stated that "there was an individual just with the name Ellis that was in the waiting room of the—of the Zoom," but the court did not "let anybody in from the waiting room." The court stated that appearances by Zoom were not acceptable for a litigant in a jury trial, who must appear in person. Defense counsel asked if she could make an offer of proof as to what defendant would have testified to if she had been permitted. After the proffer, the court concluded that "[a] lot of the proffered testimony would have been disallowed based on lack of foundation and rules of evidence just standing alone."

¶ 29 After a recess, defense counsel moved for a mistrial, in part "based on the fact that [her] client has been in the hospital and has not been able to be present." The trial court denied the motion and proceeded to closing arguments and jury instructions.

¶ 30 The jury found defendant guilty on both counts. The trial court subsequently merged count I into count II. The court scheduled the sentencing hearing for November 29, 2023, and stated that defendant could appear at the hearing via Zoom.

¶ 31 On November 29, 2023, defendant appeared at the sentencing hearing virtually. As a preliminary matter, the trial court noted that it had received medical records forwarded from the University of Illinois Health Center from defendant herself, not through her attorney. The court deemed them to be *ex parte* communications containing personal medical information and stated that it was "inclined to just shred them." Defense counsel explained that she "did not have time to get those over" but that she "would ask that [the court] consider those documents" because "[t]hey show that [defendant] was unavailable during trial and was in the hospital." The court noted that "there's no motion pending for those to accompany or consider" but that it "wo[uld]n't do anything with them right now." The court also stated that defendant had transmitted a *pro se* notice of appeal from the guilty finding, which was premature.

¶ 32 The trial court proceeded with hearing factors in aggravation and mitigation. Defendant gave a statement in allocution. In pronouncing the sentence, the court acknowledged "the health issues and services and treatment [defendant] has been receiving" and stated that it was "certainly not going to hold that against [defendant]." The court entered a "straight judgment of conviction" in lieu of court supervision and imposed minimum fines, fees, and assessments. The court then asked defendant if she would like to amend her notice of appeal. Defendant stated, "I'm going to appeal about me being found guilty." Her counsel added that defendant would also be appealing the sentence. The State then noted that there were no posttrial motions filed. As a result, the court deemed the medical documents sent by defendant *ex parte* communications and stated that it intended to shred them. Defendant filed a notice of appeal that day.

¶ 33 On December 4, 2023, defendant filed a *pro se* motion to reconsider sentence. She then filed a motion to dismiss on December 11, "based on all the violations in the motion to reconsider as well as legal representation from other parties getting into my medical records to change information illegally contacting providers and refusing to hear information that was presented in the case." She continued, "Detail finding it disappointing, unethical and disturbing that such lengths would be had and a violation of my HIPPA [*sic*], constitutional and disability rights be forsaken to prosecute me." She requested "[t]hat due to poor representation and court action the entire case be dismissed and cleared off of my record" and that "no fees and monies be assessed and that from here on forth it be null and void."

¶ 34 The trial court held a hearing on December 12, 2023, to address defendant's motions. The court asked if defendant was asking to strike her previously filed notice of appeal to be able to proceed with her motion in the trial court, and defendant agreed. During the hearing, defendant claimed that her attorney's "failure to represent [her was] prominent." Consequently,

the court conducted a preliminary inquiry into any potential claims of ineffective assistance under *People v. Krankel*, 102 Ill. 2d 181 (1984), and solicited details about her claims. Defendant referenced counsel's failure to "file the appropriate motions." Defendant mentioned other things, such as being unable to attend the trial via Zoom and the court's finding that she was "unwilling to participate" in her trial. The court interjected that "those are things you are dissatisfied with me about." Defendant explained, "no, because [trial counsel] did not bother to apply those. So, and then the not filing motions, not filing things on time, waiting until the week before." Defendant claimed to be the one who found the toxicologist and gave subpoenas to her providers. The court found that defendant's allegations of deficient performance "were either a matter of trial strategy" or related to her "dissatisfaction with the court," so there was no need to appoint new counsel. The court then discussed, and subsequently denied, defendant's motion to reconsider sentence.

¶ 35 Defendant reiterated that communication issues throughout the trial could not be attributed to her because her "disability requirements were never followed through on." Defendant then continually interrupted the trial court as it attempted to explain its reasoning. The court explained that it deemed her failure to appear to be willful, in part because she "forecasted" that she "would be in the hospital" and would not be present. Defendant emphasized that the court "receive[d] a letter from [her] psychiatrist in regards to [her] health declining" but did not heed it. She explained, "[T]he day that my heart stopped, I not only missed my children's JA case—[my psychiatrist] called the Urbana Police and had them come and find me, and I was unresponsive in my heart." The court replied, "The note from your medical provider was actually not from your psychiatrist. It was from a nurse just indicating that the court dates were causing stress and anxiety." Defendant explained that "[s]he is my psychiatrist" and is a nurse practitioner.

¶ 36 When the trial court turned to defendant's motion to dismiss, defendant interjected

that "the legal representation from both parties in Boone County and Kendall County have been into my medical records multiple times without my knowledge and against my will." Defendant added that no one should have "contacted them through a third party violating my HIPAA rights." Defendant clarified that "they" meant "[c]ounsel, public defenders, and multiple attorneys that work as contracted public defender" and that "[a]t this time [she was] not able to disclose that information." The court found that there was no "statutory basis even alleged" for the motion to dismiss and denied the motion.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Defendant argues that the trial court abused its discretion when it (1) found there was no *bona fide* doubt about defendant's fitness to stand trial, (2) found defendant was willfully absent from her trial when she was hospitalized and proceeded to a trial *in absentia*, and (3) denied defendant's motion for a mistrial based on defendant's inability to appear for trial. She further argues that her trial counsel was ineffective for failing to (1) request a fitness examination, (2) challenge the court's decision to proceed *in absentia*, and (3) file appropriate posttrial motions, including a motion for a new trial.

¶ 40 A. *Bona Fide* Doubt About Fitness to Stand Trial

¶ 41 Defendant first contends that the trial court abused its discretion when it found that there was no *bona fide* doubt about defendant's fitness to stand trial. The State disagrees and argues that the finding was proper because defendant provided the court no documentation regarding her mental and physical conditions.

¶ 42 Defendant acknowledges that her trial counsel failed to properly preserve this issue for appellate review but contends that it is reviewable under either the plain error doctrine or

ineffective assistance. Forfeiture of an issue "is a limitation on the parties and not on this court." *People v. Hanson*, 212 Ill. 2d 212, 216 (2004). Under the plain error doctrine, we may still address a forfeited error

> "if the error falls under the purview of one of two alternative prongs: (1) where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from a clear or obvious error and not the evidence or (2) when a clear or obvious error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Jackson*, 2022 IL 127256, ¶ 19.

Whether a defendant is fit to stand trial "implicates defendant's substantial right in obtaining due process of law." *Hanson*, 212 Ill. 2d at 216. Consequently, courts have reviewed errors concerning fitness under the second prong of the plain error doctrine. See *Hanson*, 212 Ill. 2d at 216; *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 47; *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 28.

¶ 43 "It is axiomatic that the due process clause of the fourteenth amendment (U.S. Const., amend. XIV) prohibits prosecution of a defendant who is mentally unfit to stand trial." *Finlaw*, 2023 IL App (4th) 220797, ¶ 48. A defendant "is presumed to be fit to stand trial or to plead, and be sentenced." 725 ILCS 5/104-10 (West 2022). However, "if, because of his mental or physical condition, [a defendant] is unable to understand the nature and purpose of the proceedings against him or to assist in his defense," he is unfit to stand trial. 725 ILCS 5/104-10 (West 2022).

¶ 44 A defendant's fitness is an issue that can be raised by the defense, the State, or the trial court at any time. 725 ILCS 5/104-11(a) (West 2022). A *bona fide* doubt about a defendant's fitness arises " 'when the facts raise a real, substantial, and legitimate doubt regarding a defendant's mental capacity to meaningfully participate in his defense.' " *People v. Schnoor*, 2019

IL App (4th) 170571, ¶ 45 (quoting *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 54). If, however, the court "is not convinced that a *bona fide* doubt has been raised, the trial court has the discretion under section 104-11(b) to grant the defendant's request for appointment of an expert to aid in that determination." *People v. Brown*, 2020 IL 125203, ¶ 21. If the court finds a *bona fide* doubt about the defendant's fitness, "the court shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a) (West 2022). At the ensuing fitness hearing, "the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State." 725 ILCS 5/104-11(c) (West 2022). On the other hand, "if after the examination the trial court finds no *bona fide* doubt, no further hearings on the issue of fitness would be necessary." *Hanson*, 212 Ill. 2d at 217.

¶ 45 Relevant factors to consider when determining whether there was a *bona fide* doubt about a defendant's fitness include "the rationality of the defendant's behavior and demeanor at trial, any prior medical opinions on the defendant's fitness, and defense counsel's representations concerning the defendant's competency." *People v. Nichols*, 2012 IL App (4th) 110519, ¶ 32. However, "there are 'no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.' " *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991) (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)). "While it is correct that a defendant may be competent to stand trial even though his mind is otherwise unsound and that some doubt as to a defendant's fitness is not necessarily enough to warrant a fitness hearing [citation], a trial court's discretion in so concluding is not unbridled." *People v. Sandham*, 174 Ill. 2d 379, 388-89 (1996). A "trial court's decision whether there is a *bona fide* doubt about fitness sufficient to trigger a hearing is reviewed under the abuse of discretion standard." *Finlaw*, 2023 IL App (4th)

220797, ¶ 57. "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable; when no reasonable person would take the view adopted by the trial court; or when its ruling rests on an error of law." *People v. Johnson*, 2018 IL App (2d) 160674, ¶ 10.

¶ 46 The central issue to a fitness determination is "whether defendant could understand the proceedings and cooperate with counsel." *People v. Harris*, 206 Ill. 2d 293, 305 (2002). In *Harris*, the defendant suffered from mental impairments but still demonstrated that he understood the nature and purpose of the proceedings because he

> "participated in his own defense; communicated and conferred with his trial counsel; expressed to the court his understanding of the proceedings, including his decisions to litigate rather than agree to a plea, waive his right to testify, and waive his right to a jury at the sentencing hearing; and articulated a clear statement in allocution during mitigation." *Harris*, 206 Ill. 2d at 305.

Because fitness relates only to a defendant's "ability to function within the context of a trial," the supreme court concluded that there was no *bona fide* doubt concerning the defendant's fitness. *Harris*, 206 Ill. 2d at 305.

¶ 47 Here, defendant was apparently unable to do any of these things. She repeatedly informed the trial court that she was unable to communicate and confer with her counsel due to various obstacles, including her difficulty understanding oral communication. Even with the accommodation of closed captioning, she expressed that she struggled to understand the proceedings and requested transcripts of the hearings to have additional time to comprehend them. Her conduct in court—interrupting the court and fixating on ideas despite the court's attempts to redirect her, claiming a conflict of interest with the prosecutor, the content of her *pro se* posttrial motion alleging a violation of the ADA and violation of her rights under the Health Insurance

Portability and Accountability Act of 1996 (Pub. L. No. 104-191. 110 Stat. 1936 (1996) (codified as amended in various sections of Titles 18, 26, 29, and 42 of the United States Code)), and her confusion as to the proper timing and content of the notice of appeal—also show her lack of understanding of the judicial process. Defendant also consistently stated that she was having both mental and physical health issues throughout 2022 and 2023, including seizures, strokes, issues with her heart stopping, severe anxiety, and PTSD. She reported that she was seeing a number of medical professionals for these health issues, including cardiologists, neurologists, psychiatrists, and therapists. Defendant's statements and behavior raised clear and persistent concerns that there were possible mental and physical barriers to her ability to understand the proceedings and assist in her defense.

¶ 48 Further reinforcing that there was a *bona fide* doubt as to defendant's fitness, both appointed and retained counsel repeatedly informed the trial court that they were having serious issues communicating with defendant, defendant was "melting down," and defendant's anxiety was "above and beyond anything [her counsel had] ever seen and it's clinical and it's medical." Moreover, the court received a letter from a medical professional, who defendant identified as her psychiatrist, opining that defendant would not be fit to participate in trial until after the first of the following year. The court disregarded this letter, characterizing it as a request for an unreasonable "accommodation" rather than allowing that it raised a serious question about defendant's fitness to stand trial, which was set in October. The court acknowledged that it was "not a medical professional," yet it refused to acknowledge that the letter from a medical professional may have signaled that further inquiry and a fitness evaluation was necessary.

¶ 49 The State contends that no *bona fide* doubt existed about defendant's fitness because defendant did not provide any documentation to the trial court regarding her medical

issues. However, a *bona fide* doubt about a defendant's fitness often arises based on the perceptions of the attorneys and/or trial judge before there is any concrete documentation of the defendant's condition. Indeed, the whole purpose of ordering a fitness examination is to determine and document a defendant's condition so that the court can make an informed judgment about whether the person is fit to stand trial. If the court was unconvinced that there was a *bona fide* doubt about defendant's fitness, it could have considered and consulted counsel about appointing an expert to aid in that determination under section 104-11(b) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-11(b) (West 2022)). See *Hanson*, 212 Ill. 2d 212, 217 ("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.").

¶ 50 Facts presented in a case "cannot each be viewed in isolation," and attempts to do so " 'as if each occurred in a vacuum, cannot be countenanced.' " *People v. Brown*, 236 Ill. 2d 175, 187 (2010) (quoting *Sandham*, 174 Ill. 2d at 387-88). Taken together, defendant's own statements, her counsel's statements, and a letter from a medical professional who knew her raised a *bona fide* doubt about defendant's ability to understand the proceedings and assist in her defense. We understand that some parties may deliberately attempt to delay proceedings through malingering and manipulation, and the trial court here may have suspected defendant was doing so. Nevertheless, before concluding defendant was intentionally being difficult and dilatory, the numerous warning signs collectively and reasonably triggered a duty to order a fitness examination by a professional. While the court's concern that the case be resolved expeditiously is understandable, here, on these facts, this concern should have yielded to the duty to determine defendant's fitness. The court's determination that there was no *bona fide* doubt about defendant's

fitness was an abuse of discretion. As fitness to stand trial is an important right protected by the fourteenth amendment of the federal constitution, proceeding to trial without determining whether defendant was fit amounted to a clear and obvious error that impacted defendant's rights under the second prong of the plain error doctrine. See *Gipson*, 2015 IL App (1st) 122451, ¶ 38; *People v. Contorno*, 322 Ill. App. 3d 177, 180 (2001).

¶ 51 Having determined that plain error occurred, we must determine what relief is appropriate—a new trial versus a retrospective fitness hearing. In the next section, we hold that the trial court erred in finding defendant was willfully absent and proceeding to a trial *in absentia*, which separately requires reversal of defendant's conviction and remand for a new trial. Due to the multiple errors here, the appropriate remedy is a new trial. Moreover, given the passage of time since defendant filed her notice of appeal, there is no basis in the record to determine whether there is still a *bona fide* doubt as to her fitness. Accordingly, on remand, the trial court shall ascertain whether there is a *bona fide* doubt as to defendant's fitness. Defendant's counsel may facilitate this process by requesting an examination under section 104-11(b) of the Code. If there remains a *bona fide* doubt as to defendant's fitness, the court shall order a fitness examination and follow the procedures set forth in article 104 of the Code.

¶ 52 Because we hold that the trial court erred in finding *sua sponte* that there was no *bona fide* doubt about defendant's fitness to stand trial, we need not address defendant's argument that her trial counsel was ineffective for failing to request a fitness examination.

¶ 53 B. Trial *in Absentia*

¶ 54 Defendant next challenges the trial court's decision to proceed with a trial *in absentia*. Specifically, she argues that the court (1) erred in finding her willfully absent despite her hospitalization and (2) failed to give her sufficient *in absentia* admonishments.

¶ 55 Defendant argues that the trial court erred in finding her absence from trial willful and proceeding with trial *in absentia*, as she was physically unable to attend her trial due to her hospitalization. The State disagrees and argues that defendant's absence was willful because defendant previously told the court that she probably would be hospitalized, and defendant presented no documentation showing her hospitalization was involuntary.

¶ 56 Defendant acknowledges that this issue was raised by a contemporaneous objection but not in a posttrial motion and thus is reviewable only through a claim of ineffective assistance of counsel or under the plain error doctrine. As previously discussed, the second prong of the plain error doctrine allows us to consider this argument if "a clear or obvious error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Jackson*, 2022 IL 127256, ¶ 19.

¶ 57 A defendant has a constitutional right to be present at all stages of the trial and to confront all of the witnesses against him. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. "Trials conducted in the absence of a defendant are not favored, and courts are reluctant to permit a trial to proceed in a defendant's absence." *People v. Smith*, 188 Ill. 2d 335, 340 (1999). Even so, it is also the defendant's duty to be present, especially where he has been released on bail. *Smith*, 188 Ill. 2d at 340. A defendant waives the right to be present when he voluntarily absents himself from trial. *Smith*, 188 Ill. 2d at 341.

¶ 58 A trial court "may commence trial in the absence of the defendant" at the State's request if the State "has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial." 725 ILCS 5/115-4.1(a) (West 2022). To establish a *prima facie* case of willful absence, the State must show that the defendant (1) was advised of her trial date, (2) was advised that the failure to appear might result in her being tried *in absentia*, and (3) did not appear

for trial. *Johnson*, 2018 IL App (2d) 160674, ¶ 12. The supreme court has noted that " '[o]nly if the defendant introduces some evidence that [the defendant] did not act wilfully should more be required of the State.' " *People v. Smith*, 188 Ill. 2d 335, 343 (1999) (quoting *People v. Watson*, 109 Ill. App. 3d 880, 883 (1982)). A defendant's absence from trial is not willful if it is "both without his fault and due to circumstances beyond his control." 725 ILCS 5/115-4.1(e) (West 2022). A trial court's decision to proceed with a trial *in absentia* will only be reversed if it constitutes an abuse of discretion. *Smith*, 188 Ill. 2d at 341.

¶ 59 In this case, the trial court's decision to proceed with a trial *in absentia* was an abuse of discretion. Generally, "hospitalization, at least in the absence of a voluntary act like a suicide attempt, shows the defendant's absence is not voluntary, and therefore the court must not take testimony." *People v. Johnson*, 293 Ill. App. 3d 915, 919 (1997). Here, the record shows that (1) defense counsel informed the court that defendant was in the hospital; (2) counsel stated defendant was hospitalized because of a wellness check; (3) counsel showed the court a photo of defendant in the hospital; (4) the court knew of defendant's complaints of ongoing physical and mental health issues throughout the case; (5) defendant was hospitalized two days before trial, after informing the court that she was experiencing health issues such as vomiting blood; and (6) defendant attempted to appear at trial via Zoom on October 27, 2023, while still hospitalized. Though the State argues that the court's willful absence finding was proper because defendant did not provide the court with any documentation of her hospitalization at the time of trial, the State cites no authority that requires such documentation. The information in the record, especially considered in light of the unaddressed issue regarding the *bona fide* doubt as to defendant's fitness, was enough to show " 'some evidence that [the defendant] did not act wilfully,' " and thus

constituted a situation where " 'more [should] be required of the State.' " *Smith*, 188 Ill. 2d at 343 (quoting *Watson*, 109 Ill. App. 3d at 883).

¶ 60 The State points out the timing of defendant's hospitalization was suspicious and urges this court to follow our analysis in *People v. Smith*, 2021 IL App (4th) 190045-U. However, the circumstances here are distinguishable from *Smith*, where (1) the defendant claimed that his failure to appear was involuntary, yet he presented himself to the hospital; (2) "a toxicology screen was negative," even though he claimed that "he relapsed on methamphetamine"; and (3) "medical records reveal[ed] defendant was bright, friendly, laughing, and joking when in the hospital and would only endorse suicidal ideation when hospital staff talked to him about his legal problems or discharging him home." *Smith*, 2021 IL App (4th) 190045-U, ¶ 42. Though the State argues that *Smith* is similar because of the timing of defendant's hospitalization, the comparison is inapposite where, here, the trial court knew long before trial that defendant struggled with recurring mental *and* physical health problems that were never addressed through a fitness examination. In the face of defendant relating that she suffered from numerous ailments, including strokes, seizures, and heart issues, defendant's "forecast" that she might be in the hospital was an insufficient basis for the court to assume that her hospitalization was voluntary.

¶ 61 We recognize that it likely would have delayed the proceedings if the trial court had been open to hearing further information about the reasons for defendant's hospitalization. However, given the importance of the rights involved, we believe the court would have been well-advised to seek that information before proceeding to trial. See *People v. Wheeler*, 186 Ill. App. 3d 422, 426 (1989). In *Wheeler*, the appellate court noted that the trial court should have conducted a further investigation into the defendant's absence, which was purportedly caused by a lack of transportation, before proceeding to trial *in absentia*. *Wheeler*, 186 Ill. App. 3d at 426. If further

investigation was called for in that case—despite transportation being generally more within one's control than hospitalization—further investigation in this case was undoubtedly appropriate. The court's determination that defendant's absence was voluntary was unreasonable and constituted an abuse of discretion where the court made no effort to ascertain defendant's medical condition or the circumstances of her hospitalization. Defendant's hospitalization called into question whether she waived her constitutional right to be present at trial, and thus, proceeding to a trial *in absentia* was a clear and obvious error that "affected the fairness of the defendant's trial and challenged the integrity of the judicial process" under the second prong of the plain error doctrine. *Jackson*, 2022 IL 127256, ¶ 19. Accordingly, we must reverse defendant's conviction and remand for a new trial.

¶ 62 Our holding renders it unnecessary to address defendant's related claims that (1) she received an inadequate *in absentia* warning before trial, (2) the trial court should have declared a mistrial after learning of defendant's attempts to appear and testify, and (3) defense counsel was ineffective for failing to file a posttrial motion. However, we note that it would have been advisable for the trial court to have sealed and made a record of the medical documentation given to the court by defendant rather than *sua sponte* deciding to shred it. This would have enabled this court to review on appeal, if appropriate, the pertinent documents. Though deemed an *ex parte* communication because defendant sent it directly to the court without a formal motion or disclosing it to the State, the better approach in light of the unusual circumstances of this case would have been for the court to "promptly notify all other parties of the substance of the *ex parte* communication and give[ ] the parties an opportunity to respond." Illinois Code of Judicial Conduct Rule 2.9(A)(1)(b) (eff. May 17, 2023); see Illinois Code of Judicial Conduct Rule 2.9(B) (eff. May 17, 2023). That was not done here.

¶ 63 C. Sufficiency of the Evidence

¶ 64 The parties have not challenged the sufficiency of evidence on appeal. "However, since retrial raises concerns of double jeopardy, we are compelled to consider the sufficiency of the evidence." *People v. Garner*, 147 Ill. 2d 467, 483 (1992). Based on our review of the record and the evidence presented at trial, there was sufficient evidence to support a finding of guilt on the charged offenses. "Accordingly, defendant will not be exposed to double jeopardy upon retrial. By our holding, we make no inference, nor have we made any determination, concerning defendant's guilt." *Garner*, 147 Ill. 2d at 483.

¶ 65 III. CONCLUSION

¶ 66 For the reasons stated, we vacate defendant's conviction and remand for a new trial, with directions. On remand, as explained above, the trial court shall ascertain whether there remains a *bona fide* doubt as to defendant's fitness. If there is, the court shall order a fitness examination and follow the procedures set forth in article 104 of the Code.

¶ 67 Vacated and remanded with directions.