Circuit Court for Montgomery County
Case No. 134246C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 362

September Term, 2019

GEOFFREY SCOTT

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 11, 2020

A jury sitting in the Circuit Court for Montgomery County convicted Geoffrey Scott of attempted voluntary manslaughter and acquitted him of attempted murder in the first and second degrees. The court sentenced him to a term of ten years' incarceration, all but five years suspended, and five years' post-release probation. Appellant timely appealed, and presents two issues for our review, the first of which we have rephrased:

> l. Did the trial court commit plain error when implementing security measures recommended by the Sheriff's Office?
>
> 2. Did the trial court err by failing to conduct a *sua sponte* mid-trial competency hearing?

We answer no to each question and will affirm the court's judgment.

Background

Appellant does not challenge the sufficiency of the evidence. We will set out the facts (viewed in the light most favorable to the State) necessary to provide context for the issues he raises on appeal. *See, e.g., Joyner v. State*, 208 Md. App. 500, 503 n.1 (2012); *Baker v. State*, 223 Md. App. 750, 753 (2015).

At approximately 9:00 p.m. on June 13, 2018, appellant struck Kenneth Browne, the victim in this case, in the side of the neck with a machete, inflicting a six-inch long and four-inch deep laceration. During the ensuing struggle, Browne attempted to grasp the blade, but, in so doing, suffered another laceration to his wrist and fell down the steps on which he had been sitting. Browne attempted to flee to a gas station across the street but collapsed in mid-flight. Members of the Montgomery County Fire Department saw

Browne's collapse and came to his aid. After he had been stabilized by emergency medical personnel, Browne was presented with a photograph of appellant and identified him as his assailant. Thereafter, the police arrested and interviewed appellant. During that interview, appellant acknowledged having had a verbal altercation with Browne, but denied that he had stabbed or cut him. He further revealed having been medicated for anxiety, depression, schizophrenia, and bipolar disorder. A search of appellant's car revealed a machete, the blade of which tested positive for Browne's DNA.

At trial, appellant's counsel relied on a theory of self-defense. According to the defense, Browne was affiliated with a criminal street gang known as the "88s," whose members—including Browne—had attacked appellant on four prior occasions. Upon seeing Browne, appellant testified, he retrieved the machete so that he would be able to defend himself if attacked. It was only when Browne "lunged" at him, appellant claimed, that he swung the blade. The State sought to refute appellant's claim of self-defense, asserting that, even if Browne had been the initial aggressor, Scott violated his duty to retreat prior to resorting to the use of deadly force.

We shall include additional facts as necessary to our discussion of the issues.

Analysis

1. Courtroom Security During *Voir Dire*

A. The Prelude to *Voir Dire*

After a discussion with the deputy sheriffs assigned to courtroom security,[1] the trial court decided that the deputies should stand in close proximity to appellant whenever he approached the bench during court proceedings. Prior to *voir dire*, and outside the presence of the jury, the court informed appellant and his counsel of these security measures and advised them of possible problems that might result. The following occurred:

> THE COURT: . . . . I want to make sure that Mr. Scott is fully cognizant of what the sheriffs are saying.
>
> Typically, defendants don't like the jury to know that they're in custody. And what the sheriffs are saying is that they fear that, I mean, because Mr. Scott is in custody, if he comes up to the bench like he is asked to and that is his right, the sheriffs will move around the Courtroom closer to the bench because Mr. Scott is in custody and that may tend to alert the jurors that he is in custody. Does that pose a problem for anybody?
>
> [PROSECUTOR]: Not for the State, Your Honor.
>
> [DEFENSE COUNSEL]: It wouldn't make any difference, but, it's, you know, they [have] got to do it.
>
> THE COURT: Okay, but the alternative is for Mr. Scott to remain seated at counsel table during bench conferences.

[1] The exchange between the trial court and the deputies is not in the transcript.

[DEFENSE COUNSEL]: Well, he wants to go up.

THE COURT: Okay, that's fine. All right, you're welcome to come back in Madam Clerk. Thank you.

MR. SCOTT: Your Honor, if I may?
THE COURT: Would you speak through your attorney, please.

MR. SCOTT: Yes, I'm sorry.

THE COURT: That's okay.

[DEFENSE COUNSEL]: He's going to stay here at the counsel table.

THE COURT: Okay, so, you've elected to remain there?

MR. SCOTT: Yes, the way as what you said before right?

THE COURT: Yes, sir.

MR. SCOTT: Okay.

THE COURT: Okay, so, what that means is that you've elected to waive your right to be present during bench conference.

MR. SCOTT: Yes.

THE COURT: Okay, we have some headphones that you can wear.

[DEFENSE COUNSEL]: Okay.

THE COURT: -- and while you're seated at trial table and listen to what's happening up here.

MR. SCOTT: Okay.

[DEFENSE COUNSEL]: Perfect.

THE COURT: Okay, so, we're going to set those up for you now.

MR. SCOTT: Okay, thank you.

THE COURT: Sure.

MR. SCOTT: Okay, it's very clear.

THE COURT: You can hear it?

MR. SCOTT: Yes.

THE COURT: Great, let's put the husher on for a second and then I am going to see if you can hear it with the husher on.

MR. SCOTT: Okay. I could hear that.

THE COURT: Except that the husher wasn't on. We can't make the headphones work right now, so, let me ask defense counsel, does that change Mr. Scott's decision at all about wanting to be at the bench?

MR. SCOTT: I mean, not really, I figured into consideration what you said before about the fact that they might be aware that I am in custody and I don't really want that picture.

THE COURT: So, the defendant's decision, at this point, is to not be at the bench, is that correct?

MR. SCOTT: Right, that's correct.

THE COURT: Okay, thank you.

B. Appellant's Contentions

With this as background, appellant asserts that the trial court abused its discretion by allowing the deputies to flank him if he approached the bench because the court failed to provide appellant with a viable alternative in the form of headphones that would have allowed him to listen to what was said at the bench during *voir dire*. He points out that "'Maryland has long recognized the right of a criminal defendant to be present at every stage of trial,' *Tweedy v. State*, 380 Md. 475, 490 (2004), including the examination of prospective jurors during voir dire. *Haley v. State*, 40 Md. App. 349, 353 (1978)." As to this, appellant is indisputably correct. *See, e.g.*, *State v. Yancey*, 442 Md. 616, 625 n.7 (2015). Appellant concedes that neither he nor his trial counsel objected to the court's ruling and asks us to review his contentions pursuant to the plain error doctrine.

C. Plain Error Review

"Plain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors by a trial court which 'vitally affect[] a defendant's right to a fair and impartial trial.'" *Malaska v. State*, 216 Md. App. 492, 524 (2014) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)). For reasons of fairness and judicial efficiency, plain error review "is a discretion that appellate courts should rarely exercise[.]" *Chaney v. State*, 397 Md. 460, 468 (2007). Moreover, plain error review is not appropriate in cases in which the defendant has affirmatively waived his right to challenge the court's ruling. *See State v. Rich*, 415 Md. 567, 580 (2010) ("Forfeiture is

the failure to make a timely assertion of a right, whereas waiver is the intentional relinquishment or abandonment of a known right. Forfeited rights are reviewable for plain error, while waived rights are not.") (cleaned up). *See also Carroll v. State*, 202 Md. App. 487, 513–14 (2011), *aff'd*, 428 Md. 679 (2012) (distinguishing between forfeited and affirmatively waived trial errors, the former being eligible for plain error review and the latter being ineligible).

The State asserts that appellant affirmatively waived his contention in the following exchange (emphasis added):

> THE COURT: Except that the husher wasn't on. *We can't make the headphones work right now, so, let me ask defense counsel, does that change Mr. Scott's decision at all about wanting to be at the bench?*
>
> MR. SCOTT: *I mean, not really, I figured into consideration what you said before about the fact that they might be aware that I am in custody and I don't really want that picture.*
>
> THE COURT: *So, the defendant's decision, at this point, is to not be at the bench, is that correct?*
>
> MR. SCOTT: *Right, that's correct.*
>
> THE COURT: Okay, thank you.

Appellant concedes that he waived his right to be present at the bench during *voir dire*. He contends, however, that his waiver was invalid, because it was "unequivocally based upon the trial court's erroneous ruling," effectively arguing that he had been coerced to waive that right by the court's "inherently prejudicial" security measures. In support of

this proposition, he cites *Winters v. State*, 434 Md. 527, 550 (2013), and *Morales v. State*, 325 Md. 330, 333–335, 339–40 (1992). In *Winters*, the defendant waived his right to a jury trial after the court incorrectly advised him that, "proving [to the jury] that he was not criminally responsible, he would have to do so beyond a reasonable doubt." 434 Md. at 538. In *Morales*, the trial court told Morales (who was not represented by counsel) that if he testified, the State could impeach him about any crime that he had committed. 325 Md. at 334. But in the present case, the trial court did not give appellant incorrect legal advice; the court told him what his options were and asked him to choose. The problem that *Winters* and *Morales* addressed was simply not present in appellant's case. For these reasons, we hold that appellant affirmatively waived his argument that the trial court erred in ordering the courtroom security arrangements at issue in this case.

Assuming for purposes of analysis that appellant's contention was not affirmatively waived, the issue becomes whether the trial court erred in implementing the security measures recommended by the deputy sheriffs. The answer to that question is clearly no.

"The decision as to the method and extent of courtroom security is left to the sound discretion of the trial judge." *Miles v. State*, 365 Md. 488, 570 (2001) (citation omitted). *See also Whittlesey v. State*, 340 Md. 30, 84 (1995) ("The trial judge has broad discretion in maintaining courtroom security.").

In assessing whether the security measures in this case posed an undue risk of prejudice to appellant, our recent decision in *Campbell v. State*, 243 Md. App. 507 (2019),

cert. denied, 467 Md. 695 (2020), is instructive. Prior to jury selection in that case, the trial court advised the *pro se* defendant that deputy sheriffs would accompany him if he elected to approach any of the testifying witnesses. The defendant objected, citing concerns that the presence of the deputies would reveal that he was in custody and suggest that he was a "dangerous person[.]" *Id*. at 517.

On appeal, the defendant contended that "he was 'conspicuously restrained by a tactical security team composed of at least three armed [sheriffs] forming a close proximity mobile perimeter;' that the security measures were a 'spectacular display of choreographed, close supervision where multiple armed sheriffs shadowed every one of appellant's movements, hands on their weapons, eyes transfixed;' and that the sheriffs 'perpetually stalk[ed] appellant's every move in close proximity as he conduct[ed] his defense.'" *Id*. at 521 n.1. We held that "the court's use of security personnel was reasonable and not prejudicial to the [defendant]." *Id*. at 521 (citation omitted). In contrast to defendants who appear at trial in prison uniforms, we explained, "there is nothing inherently prejudicial about the presence of one or more security guards near a defendant during trial." *Id*. (Citation omitted). Even if the jury had noticed "that there were one or more security guards near appellant during trial," we reasoned, "that circumstance is fairly routine and subject to a wider range of inferences than other inherently prejudicial indicators like shackles or prison garb." *Id*. at 522 (citation omitted). While the jury could have inferred that the defendant was incarcerated, we explained, it could also have assumed

that the officers were present "'to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges d[id] not erupt into violence.'" *Id.* (Quoting *Holbrook v. Flynn*, 475 U.S. 560, 569 (1986)). Finally, we noted that the court had assured the defendant that "the deputies would not be 'disruptive,'" "would act in the 'least invasive way,'" and "would 'quietly move behind [the defendant]" during the proceedings. *Id.*

The security measures in this case were similar to those described in *Campbell.* The arrangements approved by the trial court in the present case posed no greater a risk of prejudice than did those in *Campbell* and were no less reasonable. Because the court's security measures did not present an unacceptable risk of prejudice, the court did not abuse its discretion in implementing them. There was no error, plain or otherwise, in the way that the trial court chose to handle courtroom security.

2. Appellant's Competency

Appellant further contends that the trial court "erred in failing to conduct a *sua sponte* mid-trial competency hearing," arguing that his history of mental illness, coupled with his "often disjointed and nonsensical" testimony, raised a bona fide doubt as to his competence to stand trial. The State rejoins that, "[v]iewed in its totality, [appellant's] testimony did not demonstrate a mind that lacked 'a reasonable degree of rational understanding' or 'a rational as well as factual understanding of the proceedings against him.'" (Citation omitted).

A. Appellant's Trial Testimony

At trial, appellant elected to testify in his own defense. He initially took the stand on January 16, 2019. At the outset, defense counsel's direct-examination was unremarkable. Counsel posed biographical questions, which appellant answered in a clear and direct manner. When the defense proceeded to pose more open-ended questions, however, appellant's answers were, at times, digressive or rambling. When, on the other hand, the defense posed more leading questions (to which the State did not object), appellant's answers were straight-forward and on-point. During cross-examination, appellant's testimony was periodically vague and, at times, seemingly evasive. On several occasions, moreover, he requested that the State either re-ask or rephrase questions.

During the State's cross-examination, defense counsel requested a bench conference, which the court granted. During that bench conference, counsel informed the court that appellant had been prescribed medication and hypothesized that he might not have been administered his medication that day. The State replied, "I was actually going to ask that, so I could just ask that now." The court responded: "Okay. If his answer to the question about the medications he hasn't been given, the medication I'm requiring to stop for the day. [O]therwise I'm inclined [to continue] until about 5:30 today. And then start tomorrow." After conferring with appellant, defense counsel informed the court: "I did ask him about the medication. He is on medication and they did not give it to him this morning because they had to leave too early." The defense then requested that the court contact the

jail in which appellant was incarcerated to ensure that he received his medication the following morning.

When trial reconvened the next day, the court apprised counsel of appellant's medication regimen, explaining that he had been instructed to take one prescription at both noon and in the evening and a second solely in the evening. The court further informed the parties that it had conferred with detention facility officials and confirmed that appellant had received his prescribed medication that morning. Appellant, in turn, twice testified that he was feeling better. The State then continued its cross-examination of appellant. Appellant does not contend that his January 17th testimony raised any concerns regarding his competency.

B. Competency

The Due Process Clause of the Fourteenth Amendment to the United States Constitution "'prohibits the criminal prosecution of a defendant who is not competent to stand trial[.]'" *Gregg v. State*, 377 Md. 515, 526 (2003) (quoting *Roberts v. State*, 361 Md. 346, 359 (2000)). A defendant is incompetent to stand trial if he or she is either unable "to understand the nature or object of the proceeding" or incapable of assisting in his or her defense. Md. Code, Criminal Procedure Article ("CP"), § 3-101(f). *See also Thanos v. State*, 330 Md. 77, 84 (1993) ("'[A] person whose mental condition is such that he [or she] lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial.'"

(Quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975))). Conversely, a defendant is competent if he or she possesses the "'present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding—and . . . a rational as well as factual understanding of the proceedings against him [or her].'" *Thanos*, 330 Md. at 85 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

A criminal defendant is initially "presumed to be competent to stand trial." *Peaks v. State*, 419 Md. 239, 251 (2011) (citation omitted). That presumption is not, however, conclusive. "If, before or during trial, the defendant in a criminal case . . . appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial," CP § 3-104(a) requires that "the court . . . determine, on evidence presented on the record, whether the defendant is incompetent to stand trial." A court's duty to conduct a competency evaluation may be triggered in one of three ways: "'(1) upon motion of the accused; (2) upon motion of the defense counsel; or (3) upon a *sua sponte* determination by the court that the defendant may not be competent to stand trial.'" *Wood v. State*, 436 Md. 276, 287 (2013) (quoting *Thanos*, 330 Md. at 85). Once triggered, "the defendant's competence to stand trial then must be determined based on evidence meeting the beyond a reasonable doubt standard." *Gregg*, 377 Md. at 538 (citation omitted).

Where, as here, neither appellant nor defense counsel requested a competency hearing, the court is required to conduct one only if the evidence "raises a 'bona fide doubt' as to a defendant's competence to stand trial[.]" *Wood*, 436 Md. at 290 (citing *Gregg*, 377

Md. at 528). "Evidence relevant in determining whether there exists a bona fide doubt as to an accused's competence, includes 'evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial[.]'" *Id*. (Quoting *Gregg*, 377 Md. at 528).

Though at times rambling, vague, and evasive, appellant's January 16th testimony did not show that he lacked "the present ability to consult with his attorneys with a reasonable degree of rational understanding or factual understanding of the proceedings." *Gregg*, 377 Md. at 541 (quotation marks and citation omitted). On the whole, appellant's testimony was, by and large, lucid, consistent, and responsive to trial counsels' questions. Nor does the record show he was incoherent or exhibited irrational behavior. Moreover, when he had difficulty understanding the questions posed on cross-examination, appellant requested that the State repeat, rephrase, or clarify its inquiries or afford him additional time to answer them. This is consistent with appellant's having a rational understanding of the proceedings.

Appellant's testimony was also consistent with the defense theory of the case, which was that the blow to Browne had been struck in self-defense. As discussed above, appellant testified that he had retrieved the machete from the trunk of his car as a precaution because he had, on four prior occasions, been "jumped" by Browne and/or his cronies. He further testified that he struck Browne a single time after Browne had "lunged" at him. He explained, "I panicked and I just swung, I just swung. I just swung once." That appellant's

testimony supported the defense theory of the case evidences his ability to aid in his defense. We note, moreover, that it is neither uncommon nor necessarily irrational for a criminal defendant to answer questions posed by the *prosecution* (the purpose of which is to *undermine* the defense) in an evasive or unresponsive fashion. Although parts of appellant's January 16th testimony were evasive, longwinded, and digressive, other parts were not. When viewed as a whole, his testimony did not raise a bona fide doubt as to an accused's competence.

For the foregoing reasons, we shall affirm the judgment of the circuit court.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED; COSTS TO BE PAID BY APPELLANT.