UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2265

September Term, 2015

THOMAS A. JOHNSON

v.

STATE OF MARYLAND

Krauser, C. J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: September 6, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted, by a jury, in the Circuit Court for Prince George's County, of theft of property with a value of over $10,000 but less than $100,000, Thomas A. Johnson, appellant, presents one question for our review. Rephrased, it is: Did the court err in failing to make a determination, *sua sponte*, as to his competency to stand trial? We shall affirm.

Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("CP") § 3-104(a) provides:

> If, before or during a trial, the defendant in a criminal case or a violation of probation proceeding appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.

"Incompetent to stand trial" is defined as "not able: (1) to understand the nature or object of the proceeding; or (2) to assist in one's defense." CP § 3-101(f). In other words, a defendant must have "present ability to consult with his lawyer with a reasonable degree of rational understanding – and . . . a rational as well as factual understanding of the proceedings against him." *Thanos v. State*, 330 Md. 77, 85 (1993) (citation and internal quotation marks omitted).

"[W]here the evidence raises a 'bona fide doubt' as to a defendant's competence to stand trial, the trial judge must *sua sponte* raise the issue and make a competency determination based on evidence presented on the record." *Wood v. State,* 436 Md. 276, 290 (2013) (citation omitted). "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.* at 291 (citation and internal quotation marks omitted).

After a thorough review of the record, we conclude that the evidence before the court was not sufficient to create a bona fide doubt as to whether Johnson was competent to stand trial, such that the court was required to make a determination. Preliminarily, we note that Johnson's counsel did not request a competency hearing, which, "though not dispositive, undermines [a] post-hoc bid for such an inquiry." *Thanos,* 330 Md. at 586.

The evidence before the trial judge was that Johnson was on medication for a serious illness, that the medication "sometimes" affected his ability to think, but that he understood the nature of the proceedings. When Johnson declined to testify in the defense portion of the case, he explained to the court that he would have testified "if [he] wasn't on all this medication and [he] felt coherent[.]" He further stated that the medications he was taking were "fogging a lot of the appearances and stuff and the contracts must have got in my head" and that he was "just not clear on a few things." This prompted the court to again inquire as to Johnson's understanding of the proceedings. Johnson responded that he was "clear of what's going on," and understood the pros and cons of his decision not to testify.

Although Johnson claimed that the medication affected his ability to articulate "some things" "as far as a few years ago", that would not have affected his understanding of the proceedings, nor would it have affected his ability to consult with his lawyer. *See also Morrow v. State*, 47 Md. App. 296, 302-03 (1980) (holding that the ability to assist in one's defense is not dependent upon remembering the crime), *aff'd* 293 Md. 247 (1982).

It is apparent from our review of the record that Johnson had the "present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." Accordingly, the circuit

court did not err in failing to make a *sua sponte* determination regarding competency to stand trial.[1]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] In his brief, Johnson points to statements made by defense counsel at the sentencing hearing, which was held two months after the trial. In moving for a postponement of the hearing, defense counsel stated that because Johnson "ha[d] not been able to clearly communicate with counsel" she felt they were "not properly prepared for sentencing." Later, in arguing for a reduced sentence, defense counsel stated that "[Johnson] is not always able to fully assist in his defense." But this was not information that was brought to the attention of the court during the trial, and, therefore, has no bearing on whether there was a bona fide doubt of Johnson's competency to stand trial.