UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2258

September Term, 2015

ROBERT NATHANIEL BERRY, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: March 6, 2017

Convicted of second-degree assault, at the conclusion of a bench trial in the Circuit Court for Baltimore County, Robert Nathaniel Berry, Jr., appellant, filed an appeal, presenting the following question for our review: Did the circuit court err in denying his request for a competency evaluation and in finding him competent to stand trial? We conclude that it did not, and affirm.

A criminal defendant is presumed to be competent to stand trial. *Stewart-Bey v. State*, 218 Md. App. 101, 117 (2014) (citations omitted). "[T]hat presumption is overcome when it shall appear to the court or be alleged that he is incompetent to stand trial." *Roberts v. State*, 361 Md. 346, 368 (2000) (citation and internal quotation marks omitted). "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." Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("CP"), § 3-101(f). In other words, to be competent, 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." *Wood v. State*, 209 Md. App. 246, 291 (2012), *aff'd* 436 Md. 276 (2013) (citation and internal quotation marks omitted).

"Once the issue of competency has been raised, the General Assembly places the duty to determine the defendant's competency on the trial court, in order to ensure that the requirements of due process are satisfied." *Stewart-Bey*, 218 Md. App. at 117 (citation omitted). *See also* CP § 3-104. The trial court's determination of competency must be based on evidence on the record, and is held to a standard of beyond a reasonable doubt. *Peaks v. State*, 419 Md. 239, 252 (2011) (citations omitted). "[C]ompetency to stand trial

is a factual determination which will not be reversed unless it is clearly erroneous." *Id*. (citation omitted).

Berry first contends that the motions court erred in denying his request for a competency evaluation. CP § 3-105(a) provides that: "[f]or good cause and after giving the defendant an opportunity to be heard, the court *may* order the Health Department to examine the defendant to determine whether the defendant is competent to stand trial." (Emphasis added). Therefore, the issue of whether to order a competency evaluation is within the court's discretion.

After the motions judge indicated that he was not inclined to grant a defense request to postpone the trial so that witnesses that Berry had informed defense counsel about the day before trial could be located, the judge inquired about the grounds for the request for evaluation. Defense counsel stated that she was "having some concerns" that she "just [could not] explain", and that she was "having difficulties" communicating with Berry, but she did not explain the nature of the difficulties, apparently due to concerns about the attorney-client privilege. The judge then questioned Berry himself regarding his understanding of the nature of the proceedings. Berry answered "yes" when asked whether he understood that he was in a courthouse, that he had been charged with two crimes, and that defense counsel was his attorney. Berry then stated that he planned on taking the case to trial, but that he was "open to [the] idea of a psychiatric evaluation." He then claimed that he felt he needed an evaluation because he did not understand "the whole process."

After giving Berry an opportunity to be heard, the judge determined that Berry was not credible, and that the reasons for the postponement were not "bona fide," and, therefore,

there was no good cause to postpone the trial for an evaluation to be completed. "We defer to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous." *Hicks v. State*, 189 Md. App. 112, 120 (2009) (citation and internal quotation marks omitted). Finding no such error, we conclude that the motions court did not abuse its discretion in denying the request for an evaluation.

Berry also claims that the motions court's determination that he was competent to stand trial was based on "insufficient factual findings" and that, therefore, the determination was not "meaningfully based on evidence presented on the record." We disagree. Berry has cited no authority, and we are aware of none, requiring the court to make findings other than that the defendant understands the nature of the proceedings and is able to assist in his defense. Those findings were made by the court in this case, and were based on evidence on the record.

When the parties appeared before the motions court a second time, after trial had begun before a different judge, defense counsel renewed her motion for a postponement in order to have Berry evaluated, on the grounds that she had just learned that Berry had been hospitalized at some point for "some sort of psychotic episode."[1] The State proffered that

[1] A history of mental illness, without more, does not require a court to order a competency hearing. *See e.g. People v. Duffy*, 4 N.Y.S.3d 394, 395 (2015) ("[A]bsent reasonable grounds to believe that [a defendant] is incapable of understanding the proceedings due to a mental disease or defect, a court is not required to order a competency hearing based solely upon a history of substance abuse or mental illness.") (citations omitted).

Berry "seemed to follow along" with what the trial judge was saying, and that there "didn't appear that there was any issue with him not being able to understand." Berry claimed that because he had been diagnosed with "ADD" it was "hard for [him] to pay attention." When Berry was asked by defense counsel if he understood what the trial judge was explaining, he responded, "It wasn't that. It was just the fact that I'm, I'm feel [sic] like I'm being rushed . . . ." Defense counsel then told the judge that Berry wanted to terminate her services in order to obtain private counsel.[2]

In addition to questioning Berry regarding his understanding of the proceedings, the motions judge had the opportunity to observe Berry's demeanor in the courtroom, as well as his interaction with his attorney, before making the finding that Berry "understands the nature and object of these proceedings and is perfectly capable of assisting in his own defense." As we have stated, "a trial judge's observation of a defendant in the courtroom can be critical and dispositive evidence on the issue of competence to stand trial." *Muhammed v. State*, 177 Md. App. 188, 266 (2007), *cert. denied*, 403 Md. 614 (2008). *See also Peaks,* 419 Md. at 256. ("The observation of the defendant's behavior may . . . be considered 'evidence on the record' which might support a determination on the issue of competency.")

Moreover, the court was not required, as Berry suggests, to explain why it rejected the claim of incompetency. Although the law requires that the determination be made on

[2] Berry withdrew his request to discharge counsel after his motion for postponement was denied, and makes no claim on appeal that the court did not comply with Md. Rule 4-215(e).

"evidence on the record," there is no requirement that the court explain the findings on the record.

Furthermore, we note that the same finding of competency was made by the trial court, although it was not required to do so. *Id.* at 252 (stating that once a defendant is found competent to stand trial, "the court is not required to hold an additional hearing merely because [the defendant] again alleges he is incompetent.") (citations omitted). Berry ascribes the same error to the trial court's finding, that is, that the trial judge "failed to meaningfully base its competency determination on evidence presented on the record." We conclude that, even though the trial court did not need to make a second competency determination, the judge's observation of Berry's behavior in the courtroom, along with the trial court's own inquiry into Berry's understanding of the proceedings, constituted sufficient evidence to support the finding of competency.[3]

In sum, after a thorough review of the record, we conclude that there was sufficient evidence on the record to support the findings, made by both the motions court and the trial court, that Berry understood the nature of the proceedings and that he was capable of

[3] Berry suggests that the trial court's finding of competency, "despite [his] indecision" over whether he wanted a jury trial or a bench trial, was "counterintuitive." We disagree. Although Berry alternated numerous times between opting for a jury trial and a bench trial, it was not necessarily an indication of incompetence. *See Johnson v. State*, 138 Md. App 539, 567 ("Indecisiveness is not the same as incompetency however. (Indeed, indecision over whether to exercise the right to testify may reflect a capacity to understand the consequences of either choice.)"), *cert. denied*, 365 Md. 267 (2001).

assisting in his defense. Accordingly, we hold that the competency findings were not clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.