UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0595

September Term, 2014

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TRENTON ROBINSON

v.

STATE OF MARYLAND

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Leahy,
**Zarnoch,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: January 5, 2015

**Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Appellant Trenton Robinson was convicted in the Circuit Court for Montgomery County of first-degree felony murder, armed robbery, use of a handgun in the commission of a crime of violence, and conspiracy to commit armed robbery for his participation in a fatal armed robbery on December 21, 2010, just one month after he turned fifteen-years old.

Appellant raises three issues for our consideration:

> 1. Did the court err in denying Mr. Robinson's motion to suppress when the evidence at issue was seized after officers illegally entered Mr. Robinson's residence?
>
> 2. Did the trial court err in admitting into evidence the whole of a witness's police interview as a prior inconsistent statement when the entirety of the interview was not inconsistent with the witness's in-court testimony?
>
> 3. Did the trial court err in permitting Mr. Robinson to be tried without properly determining whether he was competent to stand trial in accordance with Maryland Code, Criminal Procedure Article § 3-104?

We only address Appellant's last question because we hold that once the circuit court raised the issue of competency *sua sponte* and ordered a competency evaluation, the court was obligated to make a competency determination before proceeding with the ensuing motions to suppress and trial. Once the issue of competency is legitimately raised, the trial court, pursuant to Maryland Code (2001, 2008 Repl. Vol.) Criminal Procedure article ("CP"), § 3-104(a), "shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial." Only after receiving evidence and "finding that the defendant is competent" may the "trial begin . . . or if already begun, [] continue." CP § 3-104(b). "Competence to stand trial is dependent upon when a proceeding occurs

and other factors, such as medication administration, among others, which necessitates an explicit judicial determination **when the issue is in doubt**." *Sibug v. State*, ___ Md. ___, ___ No. 2, Sept. Term 2015, slip op. at 47-48 (filed Nov. 25, 2015) (emphasis added), and the failure to determine competency upon testimony and evidence presented on the record nullifies not only the determination itself, but also the trial and resulting conviction. *Peaks v. State*, 419 Md. 239, 253-54 (2011) (quoting *Jones v. State*, 280 Md. 282, 289 (1977)). Therefore, we vacate the judgments of the circuit court and remand to that court for a new trial if and when competency is established.

## BACKGROUND[1]

### A. Offense and Arrest

On the morning of December 21, 2010, Doodley DeRose, just 19 years old, was killed in his family home by a single gunshot to the abdomen. Three men arrived at Mr. DeRose's house and called him to the front door. As Mr. DeRose opened the front door and greeted them, two of the men pushed their way into the house and pointed handguns at Mr. DeRose. As Mr. DeRose attempted to slam the door shut, two shots were fired into the house, one of which struck him in the abdomen, inflicting a fatal wound. The two shooters immediately fled the scene, and the third man, Eirene Dubuche, called 911.

After police arrived, Mr. Dubuche identified the individuals who were with him and fled as the shooters. One shooter he identified as Corey Yates. He gave a physical

[1] We briefly discuss the facts for context and then focus our attention on the determinate issue on appeal. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

description of the second shooter: brown skin, taller than Mr. Dubuche by about six inches, with a slim mustache, small twists in his hair, and a tattoo under his eye. Subsequently, police obtained an arrest warrant for Yates on December 22, 2010, and began searching for him and the unnamed accomplice.

The police linked Yates to a home at 734 Rittenhouse Street, Washington, DC. During surveillance of the residence, the police happened upon the owners who explained that they were waiting for a rent check for the property and gave the surveilling officers a key. After receiving the key and seeing a man they believed to be Yates enter the residence, the officers approached the house and began knocking on the door, eventually inserting the key into the door lock. Before the officers could unlock the door, the door was opened from the inside by a man matching the description of the shooter—with a tattoo under his eye. The officers promptly detained the man at the front door, entered the house, and performed a search of the remainder of the house. During their search of the Rittenhouse dwelling, the officers encountered a locked door on the basement level. After the officers knocked, Appellant—who also matched the physical description of the second shooter—opened the basement door. The officers detained Appellant, and recovered a .357 handgun lying on a nearby credenza. Mr. Yates was not found within the Rittenhouse dwelling. Appellant was arrested and later charged with the first-degree murder of Doodley DeRose.[2]

[2] The indictment contained the "umbrella" charge that Appellant did "feloniously, willfully and of deliberately premeditated malice aforethought kill and murder Doodley DeRose . . . ." Appellant was also charged with conspiracy to commit murder, armed robbery, conspiracy to commit armed robbery with a dangerous weapon, and use of a handgun during the commission of a felony or a crime of violence.

**B. Competency and Conviction**

On January 21, 2011, Appellant filed a motion in the district court requesting transfer of his case to the juvenile court. In his motion, Appellant states:

> 6. [Appellant] is 15. On December 20, 2010 (one day before the homicide) [Appellant] underwent a six-hour "confidential psycho educational evaluation[''] through the Superior Court of the District Of Columbia Family Court- Court Social Services Division . . . . The report does indicate that [Appellant] has significant issues. Diagnostic impressions include posttraumatic stress disorder, chronic; disruptive behavior disorder not otherwise specified; cannabis abuse; mood disorder due to a general medical condition (traumatic brain injury); borderline intellectual functioning. As to the traumatic brain injury, there is evidence that [Appellant] was badly beaten at age 12. As to borderline intellectual functioning his apparent IQ is 71.
>
> * * *
>
> 9. . . . [Appellant] is immature, subnormally intelligent, brain-damaged, psychologically impaired and stuck in what cannot be a healthy environment for a boy.

In response to that motion, the district court signed an order directing the Department of Juvenile Services to "immediately begin a study concerning the child, the family of the child, the environment of the child, and other matter concerning the disposition of this case," on February 7, 2011. However, Appellant's case was transferred to the Circuit Court for Montgomery County on February 17, 2011 and Appellant made his initial appearance in that court on February 25, 2011.

On March 4, 2011, Appellant, now in the circuit court, filed a motion to transfer to juvenile court, followed by a March 24, 2011 motion for bond review. In the meantime, the Department of Juvenile Services completed its investigation regarding the transfer of jurisdiction on May 20, 2011. Although the investigation report notes the diagnoses from

Appellant's earlier evaluation through the District of Columbia Court Social Service division—i.e., posttraumatic stress disorder, disruptive behavior disorder, cannabis abuse, and mood disorder due to a general medical condition (traumatic brain injury)—the report concludes by recommending that Appellant "appears to be mentally competent and physically able."

During the June 3, 2011 hearing on Appellant's motion to transfer and motion for bond review, his counsel raised the issue of Appellant's competency. Counsel for Appellant stated:

> [A]lthough Mr. Robinson is only 15 years old, Your Honor, the testing that was done during the psychological evaluation was extremely extensive.
>
> * * *
>
> He actually again, although chronologically 15 years old, cognitively is 8 or 9 years old in many circumstances, third or fourth grade when you go through some of the tests. Specifically [] the test that they went through a full-scale IQ of 71, which classified him in the borderline range, placed him in the third percentile of verbal comprehension index, which represents the ability to reason with previously learned information . . . .
>
> * * *
>
> A perceptual reasoning index, which measures his ability to look and synthesize visual stimuli as well as to reason with that. He earned a score of 73, which placed him in the fourth percentile and in the borderline range. A working memory index, which is a measure of short-term memory. It represents his ability to remember and respond to information in a sequential fashion. He had a score of 102. That placed him in the 55th percentile and in the average range. Processing speed index measures the ability to perform cognitive tasks while under time pressure. He had a score of 65, [which] placed him in the first percentile and in the extremely low range of functioning.
>
> They did the Woodcox-Johnson test of achievement. This is to assess his academic functioning. His performance in the broad reading category,

> he obtained a score of 70 . . . corresponding to third grade and 9 months grade equivalent.

Forensic Social Worker Veronica Cruz, also testified regarding Appellant's psychological condition and stated that "[Appellant] is chronologically 15, but not psychologically." Appellant's father also testified about his concerns with having Appellant housed in an adult facility and told the court that "[Appellant] got almost beaten to death when he was in the eighth grade, Okay. . . . he was put in the hospital, taken by ambulance. He had to have surgery on his face."

Thereafter, the presiding judge, the Honorable Eric M. Johnson raised the issue of Appellant's competency to stand trial. The following colloquy transpired:

> THE COURT: What's the doctor's name over at . . . the jail? Doctor . . . Smith?
>
> [COUNSEL FOR THE STATE]: Jimmy Smith.
>
> THE COURT: Jimmy Smith.
>
> [COUNSEL FOR THE STATE]: No one has raised that as any sort of issue, Your Honor.
>
> THE COURT: But I mean what I'm really hearing this kid is not all there.
>
> [COUNSEL FOR THE STATE]: And dangerous.
>
> THE COURT: And getting into trouble. He's getting into it in jail. I mean, please.
>
> [COUNSEL FOR THE STATE]: Your Honor, he's getting into less trouble in jail than he was out on the street.
>
> THE COURT: Well, I know, the nature of the charges. But I mean the notion that you could get in trouble in jail is troubling. So I'm going to, and **I don't have to wait for you to raise it.**

> **I'm going to order a competency evaluation** typically done by Dr. Smith over at the jail.
>
> [COUNSEL FOR APPELLANT]: Okay.
>
> THE COURT: Those things reveal all kinds of information sometimes.
>
> * * *
>
> THE COURT: [T]ell his parents that I'm going to order a competency. There's a doctor over at the jail. And even his father has talked about all these problems that's got. So let's see. And one thing for sure, it cannot hurt.

(Emphasis added). A week after this discussion and hearing, the judge issued a written order committing Appellant "to the Department of Health and Mental Hygiene for its examination and report as to whether [Appellant] is competent to stand trial." The order also directed the Department to "send a report of its opinion to the Court, the State's Attorney, [Appellant], and to [Appellant's] Counsel within sixty days."

After a conflict arose with his representation, Appellant was assigned new counsel through the Office of the Public Defender on June 29, 2011, and on July 6, filed a consent motion requesting a brief continuance.

The next hearing in the case took place on September 1, 2011, before a different circuit court judge. During the hearing, there was no mention of the competency exam until a witness for Appellant referenced records she reviewed in preparing for the hearing, including the report of the court-ordered competency exam. The presiding judge indicated her confusion over the report the witness was referencing, which led to the following clarification:

> THE WITNESS: There is a, there should be one in the record, Your Honor. It's a competency exam.
>
> [COUNSEL FOR THE STATE]: He was found competent.
>
> THE COURT: Oh, okay. Okay.
>
> [COUNSEL FOR APPELLANT]: It was found competent but it's a part of the Court file, Your Honor.
>
> THE COURT: Okay.
>
> [COUNSEL FOR THE STATE]: Judge [Johnson], Your Honor, ordered it *sua sponte*.
>
> [COUNSEL FOR APPELLANT]: Yes.
>
> THE COURT: Okay. It's early in the case. I remember that part. Okay.

The presiding judge recalled that a competency exam had been ordered *sua sponte* and noted that Appellant was found competent in the medical report issued from the competency exam. However, the court did not take evidence on or rule on the matter of Appellants' competency. On September 6, the court denied Appellant's motions to transfer and for bond review.

Only one other mention of Appellant's competency or the competency exam took place before the trial court. On the fourth day of Appellant's trial, the trial judge made a passing reference to the competency report contained in the court file. Listing the items in the file, the court recited:

> There's a pretrial motion, which they all say anything, an omnibus motion, and then **an office of forensics service report from somewhere. Eldersburg, Springfield, where he was found competent.** Motion for evaluation under health general. A sentencing memorandum by counsel. Motion to unseal [Appellants'] motion to enforce plea agreement.

(Emphasis added). Again, the court did not take evidence on or make a finding regarding Appellant's competency to stand trial and assist with his defense.

On October 18, 2013, after an eight day jury trial, Appellant was found guilty of first-degree felony murder and attendant charges, and on May 28, 2014, was sentenced to life imprisonment with all but fifty years suspended. Appellant filed a timely notice of appeal.

## DISCUSSION

### I.

Appellant asserts that the failure of the trial court to find him competent to stand trial resulted in a denial of due process of law. The State disagrees, arguing that Appellant's failure to pursue the issue of competency at any point during the trial amounted to a waiver of this issue on appeal. In the alternative, the State argues that there was no evidence supporting Appellant's incompetence, therefore, the trial was not obligated to make a determination regarding his competency to stand trial. We disagree with the State and hold that the trial court erred by not finding Appellant competent to stand trial.

There is a deep-rooted constitutional protection for criminal defendants who are not competent to stand trial. As stated by the Supreme Court of the United States, "[i]t is well established that the Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial." *Medina v. California*, 505 U.S. 437, 439 (1992) (citing *Drope v. Missouri*, 420 U.S. 162 (1975); *Pate v. Robinson*, 383 U.S. 375 (1966)). We preserve this constitutional interest by demanding

that judicial determinations of competency "meet the due process requirements under the Fourteenth Amendment to the United State Constitution and Article 21 of the Maryland Declaration of Rights." *Gregg v. State*, 377 Md. 515, 537 (2003) (footnotes and citations omitted).

In Maryland, this due process protection takes the form of a statute delineating the process a trial court is to follow in determining the competency of a criminal defendant to stand trial. Under CP§ 3-104(a)[3]:

> 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.

CP § 3-104(a). The statute establishes the "proper procedure the trial court must follow when determining a criminal defendant's competence to stand trial." *Kennedy v. State*, 436 Md. 686, 693 (2014) (citing CP § 3-104(a)). If the trial court does not follow this delineated procedure in determining a defendant's competency, the court violates the defendant's right to due process of law. *See Trimble v. State*, 321 Md. 248, 254 (1990) (citing *Sangster v. State*, 312 Md. 560, 573 (1988)) ("If a state fails to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent, it denies him due process.").

[3] Formerly codified as Maryland Code (1982, 1987 Cum. Supp.), § 12-103 of the Health-General Article, the statute was recodified as CP § 3-104(a) in 2001. *Kennedy v. State*, 436 Md. 686, 693 n.1 (2014). The recodification did not make any substantive changes to the content of the statute. *Id.; see also Sibug,* ___ Md. at ___, slip op. at 28-30 (examining history of the statute).

Implicit within this statutory procedure is an initial presumption that "a person accused of committing a crime is . . . competent to stand trial." *Wood v. State*, 436 Md. 276, 285 (2013) (citing *Peaks*, 419 Md. at 251; *Ware v. State*, 360 Md. 650, 703 (2000)). This presumption, however, can be called into question through "'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.'" *Kennedy*, 436 Md. at 694 (quoting *Thanos v. State*, 330 Md. 77, 85 (1993)). The occurrence of any one of these three events triggers the "'trial court's duty to determine the competency of the accused.'" *Id.* (quoting *Thanos*, 330 Md. at 85).

Raising the issue of whether the defendant is competent voids the "'original presumption'" of competency, so that "'there remains no presumption one way or the other.'" *Roberts v. State*, 361 Md. 346, 368 (2000) (quoting *Colbert v. State*, 18 Md. App. 632, 641 (1973)). Under these circumstances, the trial court has an affirmative duty to resolve this indeterminacy by "'find[ing] beyond a reasonable doubt that the defendant is competent to stand trial.'" *Id.* (quoting *Colbert*, 18 Md. App. at 641). In the event of a *sua sponte* request for a competency evaluation, the obligation to make a competency determination attaches to the court, not exclusively the trial judge requesting the evaluation. *Cf. Peaks*, 419 Md. at 259 ("[W]ithin the meaning of subsection (c) [of § 3-104], it is the obligation of the court, and not exclusively the judge who requested the evaluation, to make the competency determination.")

The General Assembly enacted CP § 3-104 "to ensure that the requirements of due process are satisfied . . . once competency properly is made an issue." *Gregg*, 377 Md. at

538 (citing *Roberts*, 361 Md. at 356). The statute protects due process by mandating the "precise actions" the trial court must take "when an accused's competency to stand trial [is] questioned." *Roberts*, 361 Md. at 363. When obligated to make a competency determination, the trial court must comply with the following statutory guidelines:

> (1) First, a determination of competency may be made at any time before or during a trial; (2) Second, such a determination must be made if the defendant in a criminal case appears to be incompetent to stand trial or the defendant alleges incompetence to stand trial; and (3) Finally, the court must make its determination on the evidence presented on the record.

*Id.* at 364; *see also* CP § 3-104(a). These statutory guidelines reflect a clear intention by the General Assembly for the court's competency determination to be an essential component in preserving the due process rights of the accused. *Roberts*, 361 Md. at 366. Moreover, the determination must be made explicit; once CP § 3-104(a) is triggered, an "implicit finding of competency" by the trial court is not sufficient to meet the court's statutory burden. *Kennedy*, 436 Md. at 702 n.6. Moreover, mere reliance on a competency report, without the court taking evidence and reaching its own determination, is not enough. *Sibug*, ___ Md. at ___, slip op. at 47. Recently, in *Sibug v. State*, the Court of Appeals made clear that "the responsibility for a competence determination lies with the court . . . . A determination made by a psychiatrist is not sufficient; delegation by the court of its constitutional responsibility is not acceptable." ___ Md. at ___, slip op. at 47 (paragraph break omitted).

The consequence of an absent or defective competency finding is severe. When a defendant's competency is at issue, "the proceedings cannot continue until the trial judge

determines that the defendant is competent to stand trial beyond a reasonable doubt." *Kennedy*, 436 Md. at 692-93 (citing *Peaks*, 419 Md. at 252). "[F]ailure to determine competency upon testimony and evidence presented on the record as required by the statute, nullifies not only the determination itself but also the trial and resulting conviction." *Peaks*, 419 Md. at 253-54 (quoting *Jones v. State*, 280 Md. 282, 289 (1977)) (internal quotation marks omitted).

In the present case, both parties acknowledge that the issue of Appellant's competency was raised by the trial court *sua sponte* during the June 3 bond review hearing. The State's argument that there is no evidence in the record which should have caused the subsequent trial court to question Appellant's competence is, therefore, immaterial. The court *did* question Appellant's competency and the State does not dispute that fact.

The State's argument that a defendant can waive the right to a competency determination was just extinguished by the Court of Appeals in *Sibug*, observing that "'it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently waive his right to have the court determine his capacity to stand trial.'" ___ Md. at ___, slip op. at 27 (quoting *Pate*, 383 U.S. at 385-86). In *Sibug* the Court of Appeals reversed this court's determination that the circuit court there was not obligated to determine competency because the issue was not raised prior to or during Sibug's new trial. *Id.* at 20, 51.

Whatever the evidence before it at the June 3 hearing, the trial court was concerned enough to state:

> [T]ell his parents that I'm going to order a competency [evaluation]. There's a doctor over at the jail. And even [Appellant's] father has talked about all these problems that [Appellant]'s got. So let's see. And one thing for sure, it cannot hurt.
>
> * * *
>
> It may not get you what you're looking for. But I'm very worried when I see a young man get involved in this kind of trouble and then what he's doing over there. He clearly doesn't grasp the magnitude of it[.]
>
> * * *
>
> I've ordered a[] [competency] evaluation that Dr. Smith is going to do. And **we're going to have that hearing. And we're going to move it up to July 15th**. And let's get all of the information out here.
>
> And I don't want to make you any promises. I don't want you to get your hopes up and I don't want you to get your hopes down. But we're going to get more information about it.

(Emphasis added). However, after the court determined that it would order a competency evaluation *and* hold a competency hearing, Appellant received new counsel, and the next hearing was postponed until September 1, 2011, and held before a new judge. It appears that in the confusion, the competency hearing never took place.

Once the issue of competency was raised, the trial court, not Appellant or counsel for Appellant, was under a duty to resolve the issue by making a determination of competency based upon evidence on the record. *Sibug*, ___ Md. at ___, slip op. at 47; c*f. Peaks*, 419 Md. at 259 ("[W]ithin the meaning of subsection (c) [of § 3-104], it is the obligation of the court . . . to make the competency determination."). Although counsel and the court collectively noted the competency report contained in the record, the court never resolved the issue. An implicit finding based in reliance on the results of the

competency evaluation does not equate to the finding beyond a reasonable doubt needed to satisfy the requirements of CP § 3-104(a). *See Sibug*, ___ Md. at ___, slip op. at 47.

Here, no determination was ever made on the record regarding Appellant's competency, or his ability to understand the nature and object of the proceedings against him or to assist counsel in his defense. Although the court need not hold a separate formal hearing solely on the issue of competency, "an accused must be afforded an opportunity to present evidence upon which a valid determination can be made." *Peaks*, 419 Md. at 254 (quoting *Roberts,* 361 Md. at 356). Without the necessary determination that Appellant was competent to stand trial, Appellant's trial and subsequent convictions are invalid. *Peaks*, 419 Md. at 253-54 (citation omitted).

Accordingly, we vacate Appellant's convictions and remand for a new trial if and when competency is established. As noted above, because we vacate Appellant's convictions on the basis of the trial court's failure to make the necessary determination of whether Appellant was competent to stand trial, we do not need to address the other issues Appellant raises on appeal.

**JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND CASE REMANDED FOR A NEW TRIAL WHEN COMPETENCY IS FOUND.**

**COSTS TO BE PAID BY MONTGOMERY COUNTY.**