

Circuit Court for Garrett County
Case No. C-11-CR-22-000065

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 314

September Term, 2024

PAUL KIP BURNS

v.

STATE OF MARYLAND

Reed,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 26, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a jury trial in the Circuit Court for Garrett County, Paul Kip Burns (“appellant”) was convicted of sex abuse of a minor, incest, perverted practice, fourth-degree sex offense, and second-degree assault. The court sentenced appellant to 25 years for sex abuse of a minor, with concurrent sentences of 10 years for incest, 10 years for perverted practice, 1 year for fourth-degree sex offense, and 10 years for second-degree assault. On appeal, appellant presents one question for our review:

Did the trial court abuse its discretion by denying [appellant] a continuance to secure a psychiatric opinion as to his competence to stand trial?

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

BACKGROUND

This case stems from an allegation that appellant had sex with his 17-year-old daughter-in-law against her will.¹ On the morning of the first day of trial, appellant’s attorney moved for a continuance for a psychiatrist to evaluate appellant’s competency to stand trial. Defense counsel told the court:

My interactions with [appellant] have been long term, a lot of time, and he has been fluctuating between an understanding and not. Most recently it has been more on the side of [appellant] not being able to communicate and, in my opinion, understand the charges against him, the elements against him.

Although the motion occurred at the eleventh hour, immediately preceding the scheduled jury trial, defense counsel said the competency issue was ongoing and long-standing:

¹ For context, we provide only a brief statement of the evidence adduced at trial. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008) (noting that a complete recitation of the trial evidence is unnecessary when the evidentiary sufficiency is unchallenged).

This is not something that I’m just dropping on the State at the last minute. From the very beginning, . . . this issue has been discussed. My concerns have been provided to the State [T]here’s never been a moment when I have said I believe that [appellant] should go forward with the jury trial, never.

Defense counsel then noted that he had retained a psychiatrist to evaluate appellant, but the psychiatrist “backed out and was unable to handle the case.”

Arguing that good cause existed, defense counsel sought a continuance for appellant to undergo a psychiatric evaluation. Alternatively, defense counsel sought a competency hearing.

The State opposed the continuance request, noting that appellant’s trial counsel had represented appellant for several months. The State referenced recent jail calls when appellant had discussed strategy, demonstrated an understanding of the difference between a jury trial and bench trial, and stated that he wanted a jury trial. The State also maintained that a continuance would prejudice the State, emphasizing that defense counsel and appellant were aware that the case and its pendency were impacting the victim’s mental health.

Defense counsel then called appellant to testify during the pre-trial hearing. Appellant testified that he could neither read nor write, that he had been suicidal and isolated in jail, and that he lacked an understanding of the charges’ elements. Appellant repeatedly stated that he had passed a polygraph examination which he believed should exonerate him.

On cross-examination, appellant stated that his counsel had helped him with unrelated District Court matters. The court examined appellant, asking him questions about

his age, birthday, birthplace, work history, and medication regimen. Appellant testified that he had never been hospitalized in a mental institution and that heartburn medication was the only medicine he took. Appellant confirmed that he understood that the State was attempting to prove that he had sex with his daughter-in-law against her will.

After appellant testified, the State played recordings of jail calls with his wife. During a jail call that occurred one day prior, appellant stated that he wanted a jury trial on the criminal charges and that he wanted to seek a civil remedy for the victim’s alleged dishonesty.

The circuit court determined that appellant was not credible when he claimed lack of knowledge about what it means to be found guilty of a crime. The court issued a thorough ruling from the bench, concluding that appellant was competent to stand trial and denying the continuance request. We shall reference additional facts as necessary for our discussion of the issue on appeal.

DISCUSSION

Maryland Rule 4-271(a)(1) provides: “[o]n motion of a party, or on the court’s initiative, and for good cause shown, the county administrative judge or that judge’s designee may grant a change of a circuit court trial date.” *See also* Md. Code Ann., CRIM. PROC. § 6-103(b)(1) (“For good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a circuit court[.]”). We review a denial of continuance for an abuse of discretion. *E.g., Adkins v. State*, 258 Md. App. 18, 35 (2023).

“It 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). The Supreme Court of Maryland has recognized “that a person whose mental condition is such that he 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 a trial.” *Kennedy v. State*, 436 Md. 686, 692 (2014) (quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975)). “‘Incompetent to stand trial’ means not able: (1) to understand the nature or object of the proceeding; or (2) to assist in one’s defense.” CRIM. PROC. § 3-101(f).

Competency to stand trial “is much more a function of rationality than of mental health generally[.]” *Muhammad v. State*, 177 Md. App. 188, 259 (2007), *cert. denied*, 403 Md. 614 (2008). Indeed, competency to stand trial “is far more a matter of raw intelligence than it is of balanced psychiatric judgment or legal sanity or of mental health generally.” *Id.* “There are, of course, 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.” *Drope*, 420 U.S. at 180.

“[A] person accused of committing a crime is presumed competent to stand trial.” *Wood v. State*, 436 Md. 276, 285 (2013). CRIM. PROC. § 3-104(a) provides, in relevant part, as follows:

(a) If, before or during a 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, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.

The statute mandates “[t]he 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). “[C]ompetency to stand trial is a factual determination which will not be reversed unless it is clearly erroneous.” *Id.* (quoting *Peaks v. State*, 419 Md. 239, 252 (2011)).

Appellant’s counsel argues: “Here, by denying Mr. Burns the psychiatric evaluation he requested a continuance to secure, the court did not adequately consider his competence to stand trial.” Appellant’s counsel expands on this argument in the reply brief, claiming that although CRIM. PROC. § 3-104(a) requires courts to rule on competency when raised, the court need not rule on competency *immediately*, and the trial court here should have postponed the trial for the defense to retain a psychiatrist. Appellant’s counsel claims: defense counsel in circuit court “did not renew the continuance request after the court made its competency finding—there was no reason to because the issue had passed.”

After the parties’ initial arguments on the continuance motion for a competency evaluation, the court told defense counsel: “Alright, I’ll hear -- any witnesses you want to call[.]” After some discussion about which party would present evidence first, defense counsel stated: “I’m happy to call [appellant].” The court then stated: “But I’m not forcing you to.” Then, defense counsel called appellant as a witness, and appellant testified in support of the motion for continuance and concerning his competency.

After appellant had testified, defense counsel argued that the evidence warranted “at least an evaluation before going forward” and that “there’s good cause to continue the case to permit an evaluation.” The State responded by “ask[ing] the Court to deny the motion to continue[.]” As the transcript accurately shows, the court then ruled on the continuance

motion and appellant’s competency. After a detailed analysis, the court ruled: “I understand [defense counsel’s] concerns, but I don’t think they add up to or warrant to a reasonable doubt on competency *and, therefore, I’ll deny the request to continue.* I find him competent.” (Emphasis added.)

Once the issue of competency had been raised, the court properly allowed defense counsel to present evidence about appellant’s competency and in support of the continuance motion. Defense counsel chose to present appellant’s testimony. Ample evidence supported the court’s decision to deny the request for a continuance to obtain a psychiatric evaluation. *Roberts v. State*, 361 Md. 346 (2000), is instructive but ultimately supports affirmance. In *Roberts*, the trial court denied the defendant’s motion for a competency examination without holding any hearing and without developing any record evidence regarding competency. *Id.* at 370–71. The Supreme Court of Maryland reversed because the trial court had “no basis” for its ruling and had denied the defendant any “opportunity to present evidence upon which a valid determination can be made.” *Id.* at 356. The circuit court here did precisely what *Roberts* required: it allowed the defense to present evidence, heard appellant’s live testimony, reviewed the jail call recordings, and issued a thorough ruling on the record. During appellant’s testimony, appellant conceded that his lawyers had helped him with his legal proceedings. In addition, during a jail call placed the day before trial, appellant described his decision to elect a jury trial, demonstrating his understanding of the difference between jury trials and bench trials.

For all these reasons, the court properly denied appellant’s continuance motion.

Appellant’s argument, sharpened in the reply brief, is that the circuit court was not required to rule immediately on competency — it could have granted a continuance to allow the defense to secure a psychiatrist to provide expert evidence for the competency determination. We disagree. Section 3-104(a) requires the court to determine competency “on evidence presented on the record” — not on expert testimony specifically. The statute does not mandate psychiatric evaluation as a precondition to ruling. As we have observed, competency “is far more a matter of raw intelligence than it is of balanced psychiatric judgment or legal sanity.” *Muhammad*, 177 Md. App. at 259. Indeed, “a defendant’s conversation with a judge may be far more revealing than a defendant’s conversation with a psychiatrist or psychologist.” *Id.* Appellant cites *Hill v. State*, 35 Md. App. 98, 104 (1977), for the proposition that expert testimony may be necessary in some cases. But *Hill*’s language is permissive, not mandatory. The court was not required to delay its ruling; it was required to make one.

Appellant also urges us to apply the three-part “missing witness” continuance standard drawn from *Smith v. State*, 103 Md. App. 310, 323 (1995), acknowledging that no caselaw specifically governs continuances to secure competency evaluations. We decline. The *Smith* missing-witness doctrine addresses a party’s need to obtain evidence to prove the merits of a case. Here, by contrast, the court was discharging a statutory obligation to determine competency “on evidence presented on the record.” CRIM. PROC. § 3-104(a). Once it had done so — on a substantial evidentiary record — ordinary abuse-of-discretion review governs the continuance ruling.

Appellant also argues that all doubts must be resolved in favor of incompetency under *Langworthy v. State*, 46 Md. App. 116 (1980). That rule addresses the standard of proof for the competency determination itself — not the threshold for granting a continuance. Where, as here, the court found competency beyond a reasonable doubt, there were no unresolved doubts for *Langworthy* to resolve. The argument fails: accepting it would mean that any assertion of incompetency, however thin, would require a continuance for expert evaluation — an outcome inconsistent with the statute’s mandate that the court determine competency “on evidence presented on the record.”

The circuit court’s conclusion that appellant was competent despite his misunderstanding of whether consent was an element of every charge was also legally correct. Section 3-101(f) defines incompetency as the inability “to understand the nature or object of the proceeding” or “to assist in one’s defense.” That standard asks about understanding the nature of the proceedings, not legal sophistication as to the elements of specific offenses. The court properly distinguished between the two, concluding that appellant understood he was charged with having sexual contact with his daughter-in-law and that the State was seeking to prove he did so against her will. That is the relevant inquiry under § 3-101(f).

We also reject appellant’s contention, drawn from *Medina v. California*, 505 U.S. 437, 450 (1992), and *Thanos v. State*, 330 Md. 576, 586 (1993), that defense counsel’s assessment of incompetency should have carried dispositive weight. Both cases held the opposite. *Medina v. California*, 505 U.S. 437 (1992), was cited by appellant for the proposition that defense counsel will often have the “best-informed view” of a defendant’s

ability to participate in his defense. *Id.* at 450. That observation, however, was made in the context of upholding a California statute that placed the burden of proving incompetency on the defendant — the precise opposite of what appellant argues here. The Court reasoned that placing the burden on the defendant was not fundamentally unfair in part because defense counsel typically has superior access to information about the client’s mental state. *Id.* Maryland’s competency statute operates differently, placing the determination in the court rather than the parties (See Md. Code Ann., Crim. Proc. § 3-104(a)), but *Medina*’s underlying logic reinforces rather than undermines affirmance: if defense counsel is best positioned to assess competency, the fact that counsel here had spoken with appellant “many, many times” and still chose not to dispute the State’s trial-day observation that appellant was actively participating in his defense is itself evidence supporting the court’s competency finding. In *Thanos*, the Supreme Court of Maryland affirmed that a trial court need not order a competency hearing even where counsel failed to request one, because “judges must depend to some extent on counsel to bring issues into focus”. The statute vests the competency determination in the court, not counsel. Defense counsel’s concerns served their statutory purpose: they triggered the court’s obligation under § 3-104(a). Once that obligation was triggered and fulfilled through a hearing, the determination was the court’s to make on the evidence before it. That is precisely what occurred here.

**JUDGMENTS OF THE CIRCUIT COURT
FOR GARRETT COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**