Circuit Court for Wicomico County
Case No. C-22-CR-21-000156

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1078

September Term, 2022

DAMON D. WILLIAMSON

v.

STATE OF MARYLAND

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 24, 2024

* 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).

A jury in the Circuit Court for Wicomico County found the appellant, Damon D. Williamson ("Appellant"), guilty of two counts of second-degree rape, two counts of fourth-degree sex offense, three counts of second-degree assault, attempted first-degree rape, attempted second-degree rape, kidnapping, and attempted fourth-degree sex offense. Merging counts for sentencing purposes, the court sentenced Appellant to life imprisonment for the attempted first-degree rape, twenty years of imprisonment for each of the two counts of second-degree rape, and thirty years for kidnapping, for a total sentence of life plus seventy years' imprisonment.

Appellant presents three questions for our review:

1. Did the court err in allowing F.L. to make an in-court identification of [Appellant] that was tainted by an improper out-of-court identification made the morning of trial?

2. Did the court err in admitting hearsay statements as prompt reports of sexual assault?

3. Did the court err in failing to, sua sponte, order a competency evaluation of [Appellant], who was receiving treatment for cancer and was showing signs of mental incompetency?

For the following reasons, we shall affirm the judgments of the circuit court.

BACKGROUND

The charges stemmed from three incidents involving two victims: J.J.M. and F.L. J.J.M. testified that she first met Appellant in 2021 outside of her friend's apartment in Salisbury. There, she and Appellant "made the agreement that . . . [J.J.M.] would give him oral sex for $30" worth of crack cocaine. J.J.M. testified that she had struggled with

addiction for about fifteen years. Appellant drove J.J.M. to a nearby motel in a "small white four-door" car. J.J.M. testified about what transpired in the motel room:

> [W]e were doing drugs, and I performed oral sex on him, and I finished my drugs.
>
> * * *
>
> He didn't want me to leave. And he made me sit down on the bed, and he struck me in the side of my face. And he hit me so hard my nose ring flew out of my nose.
>
> He put me on my knees. He took my pants down. . . . he had sex with me, and it was -- he raped me.

After about fifteen minutes, J.J.M. left the motel room.

Later, J.J.M. saw Appellant outside of a "rooming house" in Salisbury at night. Appellant approached in a vehicle, and "apologized for what had happened before[.]" Appellant offered her $50 in exchange for "some sort of sex act." J.J.M. testified about what occurred after Appellant took her to an industrial park:

> I got into the back seat. And I -- I started giving -- doing oral sex, and he stopped me, and we were -- he made me take my right leg out of my pant leg.
>
> * * *
>
> And -- and he hit me in my head[.]

Following Appellant's commands, J.J.M. continued performing oral sex on Appellant. Then, Appellant "flipped [J.J.M] over on to [her] knees, like he was going -- he was going to have sex with [her]. But for some reason changed his mind and made [her] continue the oral sex." J.J.M. exited the car, ran, and hid from Appellant. After about fifteen or twenty minutes, J.J.M. saw Appellant leave, and then she left the area.

When J.J.M. arrived at her home, she told her housemate Bobby about Appellant's abuse, and F.L. also heard what happened. F.L. then left the house, and J.J.M. fell asleep. When J.J.M. awoke, F.L. was "crying hysterically" and "the right side of her face was so swollen." J.J.M. testified that F.L. told her that a "small white car" approached her, and "there was someone in the back seat that jumped out and grabbed her and threw her in the car." J.J.M. "want[ed] to say that they raped" F.L., "but [she] can't confirm that" because J.J.M. could not remember. But J.J.M. knew that F.L. had been badly beaten.

F.L. testified that she had left her house to walk to Royal Farms. A white car approached, and the driver asked if F.L. knew where he could obtain drugs, and F.L. responded that she did not "mess around like that." At Royal Farms, she obtained cash from the ATM and began walking home. The white car approached again, the back door opened, and a man pulled her into the backseat of the car. The driver drove to the industrial park area, and the man in the backseat restrained F.L. so that she could not exit the car. Then, the driver told F.L. that she was either going to perform fellatio or vaginal intercourse with him, and she refused. The driver then punched F.L. in the side of her head, but then the driver fled as a different car approached.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I.

Appellant argues that F.L.'s in-court identification of Appellant was tainted by an improper out-of-court identification that occurred on the morning of trial. The State

responds that this contention was waived, and even if this issue had been preserved, the trial court properly permitted F.L. to identify Appellant in court during trial.

A. Background

F.L. described the assailant as a tall, bald, skinny man. Police showed F.L. a photo array, and she was unable to identify anyone, but she testified that she was ninety-five percent sure that the assailant was depicted in photograph number six on the array. Appellant was depicted in the array in the photographs numbered two and four.

F.L. testified that she remembered voices better than faces, and she has "always been like that since [she] was a child." The State then attempted to introduce evidence of an out-of-court identification made by F.L. on the morning of trial, which occurred when an investigator showed her a video of law enforcement's interview with Appellant:

[THE STATE:]	So you didn't identify someone, specifically. Since then, have you been shown a video of [Appellant]?
[F.L.:]	Yes.
[THE STATE:]	On that video, were you able to hear his voice?
[F.L.:]	Yes.
[THE STATE:]	Were you able to recognize the person in the video?
[F.L.:]	One hundred percent sure.

Defense counsel objected, and then the following occurred during a bench conference:

[DEFENSE COUNSEL]:	It sounds as if we're about to ask [F.L.] to make an identification based on a voice, which I don't

believe has ever been disclosed to me that she was able to do or shown. It certainly could have been something that's litigated pretrial as to the identification.

All I have was a photo line-up where she could not identify anyone.

[THE STATE]: So, and I really didn't mean to not tell [defense counsel] that because it's just -- today has been a little crazy,[] but she did see, I think -- my understanding is that our investigator showed her the video of the interview to see if she recognized him then, and she did.

Unfortunately, no law enforcement showed her any voice video until today.

I mean, I can have her identify him today in court.

[DEFENSE COUNSEL]: My issue is that we now have a pretrial identification that occurred that wasn't disclosed, wasn't litigated and arguably taint the in-court identification but it hasn't been litigated.

THE COURT: What does he look like on the video?

[THE STATE]: Well, he has a mask on in the video. So he was --

THE COURT: Did he have hair in it --

[DEFENSE COUNSEL]: It was like a short haircut.

[THE STATE]: I think he has more hair, yes --

[DEFENSE COUNSEL]: More hair than he does now.

* * *

THE COURT: And the basis for the identification on the videos is the voice?

[THE STATE]: I honestly don't even know.

All I have is a text message that she identified him, so I don't -- I haven't had a chance to find out more.

And I should have brought it up sooner. I didn't think of it until she is on the stand, and I am realizing I need to have her identify him.

[DEFENSE COUNSEL]: I should say to be clear for the record is that my request given all of this information is that no identification be permitted. That it be excluded from given that there is now a pretrial identification that would potentially taint the in-court identification.

I don't know the circumstances fully of that, nor does the State it sounds like.

The court ultimately sustained defense counsel's objection to the question relating to the pre-trial identification, and the court otherwise indicated that the in-court identification would be addressed when it occurred:

THE COURT: All right.

I'm going to allow it.

[THE STATE]: Allow just the in-court -- not touch about on that?

THE COURT: Yes.

Let's see if we can cross that bridge, first.

We'll have to see where we are.

(Counsel returned to the trial tables, and the following occurred in open court.)

THE COURT: Objection, sustained.

F.L. then identified Appellant as the assailant in court, testifying that she was "one hundred percent sure" that Appellant was the assailant.

B. Analysis

On appeal, the State argues that this issue is unpreserved because Appellant's trial counsel failed to timely object to the in-court identification. Md. Rule 4-323(c) provides as follows: "For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Here, Appellant's trial counsel objected and requested "that no identification be permitted." The court ultimately stated: "I'm going to allow it[,]" referring to the in-court identification. Thus, this issue is preserved for our review. *See also* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Turning to the merits of this issue, "[d]ue process protects the accused from the introduction of evidence tainted by 'unreliable pretrial identifications obtained through unnecessarily suggestive procedures.'" *Traynham v. State*, 243 Md. App. 717, 732 (2019) (quoting *Moore v. Illinois*, 434 U.S. 220, 227 (1977)). "[W]hat triggers due process concerns is police use of an unnecessarily suggestive identification procedure, whether or not they intended the arranged procedure to be suggestive." *Perry v. New Hampshire*, 565 U.S. 228, 232 n.1 (2012).

"The admissibility of an extrajudicial identification is determined in a two-step inquiry." *Smiley v. State*, 442 Md. 168, 180 (2015). "'The first question is whether the identification procedure was impermissibly suggestive.'" *Id*. (quoting *Jones v. State*, 310 Md. 569, 577 (1987) (death sentence vacated and new capital sentencing hearing ordered on different grounds)). "The accused, in his challenge to such evidence, bears the initial burden of showing that the procedure employed to obtain the identification was unduly suggestive." *James v. State*, 191 Md. App. 233, 252, *cert. denied*, 415 Md. 338 (2010). "If the procedure is not impermissibly suggestive, then the inquiry ends." *Smiley*, 442 Md. at 180. "If, however, the procedure is determined to be impermissibly suggestive, then the second step is triggered, and the court must determine 'whether, under the totality of circumstances, the identification was reliable.'" *Id*. (quoting *Jones*, 310 Md. at 577).

Suppression rulings "present a mixed question of law and fact." *Thornton v. State*, 465 Md. 122, 139 (2019). "In assessing the admissibility of an extrajudicial identification, we look exclusively to the record of the suppression hearing and view the facts in the light most favorable to the prevailing party." *In re D.M.*, 228 Md. App. 451, 473 (2016). "We accept the circuit court's factual findings unless they are clearly erroneous, but extend no deference to the circuit court's ultimate conclusion as to the admissibility of the identification." *Id*.

Here, Appellant failed to meet his burden to show that the extrajudicial identification was impermissibly suggestive. Indeed, Appellant produced no evidence to meet the "initial burden of showing that the procedure employed to obtain the

identification was unduly suggestive." *James*, 191 Md. App. at 252. Appellant did not request to call any witnesses outside of the presence of the jury to litigate a motion to suppress the in-court identification. Because Appellant produced no evidence to meet his initial burden to demonstrate impermissible suggestiveness, "our inquiry ends and the identification is deemed reliable." *Morales v. State*, 219 Md. App. 1, 14 (2014).

For all these reasons, the court did not err in allowing F.L.'s in-court identification of Appellant.

II.

Next, Appellant claims that the court erred in admitting hearsay statements as prompt reports of sexual assaults. According to Appellant, the testimony at issue "went beyond the boundaries of the hearsay exception to include narrative details of the complaint." The State responds that the court's rulings were correct at the time that the rulings occurred, and Appellant "did not object to the admission of later testimony that he now challenges on appeal."

A. Background

At trial, the State attempted to elicit testimony from three witnesses about F.L.'s prompt report of a sexual assault: J.J.M., Officer Daniel Derasmo, and Nurse Danielle Shores. We reproduce each witness's testimony on this issue in relevant part:

i. J.J.M.'s Testimony

J.J.M.'s testimony consisted of the following:

[THE STATE:] And so [F.L.] comes back to the house. Does she tell you what happened to her?

[J.J.M.:] Yeah. She was -- she was crying hysterically. Her face, the whole -- I believe it was the right side of her face was so swollen.

And I -- go ahead.

You have a question. I'm sorry.

[THE STATE:] What did she tell you about what happened to her?

[DEFENSE COUNSEL]: Objection.

[THE STATE]: Prompt report of a sexual assault.

The court overruled the objection, and then J.J.M. testified about what F.L. had told her:

[THE STATE:] What did [F.L.] tell you about what happened to her?

[J.J.M.:] As well as I can remember, she walked in. She was hysterical. Like I said, the first thing I saw was her face. She was screaming. She had -- I remember she called, and she was asking what color was the car. What color -- I don't know if she called my phone or Bobby's phone. I can't remember that part. But -- and I stressed to her -- I know I keep jumping around. I'm sorry.

[THE STATE:] That's okay.

[J.J.M.:] That it was a small white car with, you know, four doors. And so when she got there, she was like screaming it was him, it was him.

And, you know, she said that -- do you want me -- do you want me to tell you what she said?

[THE STATE:] What she said happened to her? Yes.

[J.J.M.:] I don't know where -- maybe, oh, maybe she said near Church Street, railroad. Maybe she was over there that way. She made it that far.

And a white car with four doors approached her, and -- but apparently, this time there was someone in the back seat that jumped out and grabbed her and threw her in the car.

[THE STATE:] And did she describe where she was taken in the car?

[J.J.M.:] The industrial park.

[THE STATE:] Did she describe to you what happened to her when she was there?

[J.J.M.:] We were both pretty hysterical, but as well as I can remember, I don't know if she had sex with anybody. I can't -- you know, it was all -- you have to understand, you know, after something like that happens, you're just kind of screaming, and everything crazy, but the -- both of the men beat her up really bad.

They -- I want to say that they raped them (sic), but I can't confirm that. I can't really -- I can't remember.

[THE STATE:] Okay.

[J.J.M.:] But I know they beat her. They beat her really bad.

ii. Officer Derasmo's Testimony

Officer Derasmo of the Salisbury City Police Department testified that F.L. approached him and asked about reporting a sexual assault. Officer Derasmo testified, defense counsel objected, and the court overruled the objection:

[THE STATE:] Did she tell you, specifically -- do you remember exactly how she told you about the kidnapping and sexual assault?

[OFFICER DERASMO:] She -- during -- during my interview with her, she explained to me that she was walking.

[DEFENSE COUNSEL]: Objection.

[THE STATE]: It's a prompt report of sexual assault.

THE COURT: Approach.

(Whereupon, counsel and the defendant approached the bench, and the following ensued.)

[DEFENSE COUNSEL]: Just that it's a hearsay objection.

[THE STATE]: It's a prompt report of sexual assault.

[DEFENSE COUNSEL]: I would just note for the record that the timing is some time midday the next day --

[THE STATE]: 1:00 p.m.

[DEFENSE COUNSEL]: Not immediately after the sexual assault.

THE COURT: Okay.

Objection is overruled.

Officer Derasmo then testified about what F.L. had told him about the assault:

[OFFICER DERASMO:] During my initial interview, she was explaining to me that she was walking in the area of, I believe, it was a church. I forget the exact street.

If I may refer to my report to refresh my memory?

[THE STATE:] Yes.

[OFFICER DERASMO:] She was walking in the area of Elizabeth Street and Baker Street when an older white sedan approached her. She advised that a male that she thought his name was -- she was familiar with him as Chris.

If I may refer back to the report for the exact quote --

[THE STATE:] Sure.

[OFFICER DERASMO:] -- he said?

So if I may correct myself. She believed the suspect at the time's name to be Allen, and the suspect identified himself to her as Chris. He then asked her if she was trying to do anything?

She declined and the vehicle continued on until it circled the block and came back up to her where another male exited the vehicle and forced her inside of the vehicle.

[THE STATE:] And did she describe where she was taken after that?

[OFFICER DERASMO:] Yeah.

She advised me that she was taken to the industrial park area where the driver forced her out of the vehicle and struck her once in the side of the face.
He advised -- he advised her, you know, I believe the exact quote was, are you going to suck my penis -- or if I may refer to my report for --

[THE STATE:] Yes, please.

[OFFICER DERASMO:] -- for the exact quote?

Pardon me. That exact quote was, bitch, you're going to suck my dick and don't play with me.

At that time, [F.L.] told him, no, and he struck her in the face again.

[THE STATE:] And did she describe what he was doing after he struck her in the face?

[OFFICER DERASMO:] He began to pull his penis out of his pants.

[THE STATE:] Okay.

And did she describe to you that he just unzipped his pants?

[OFFICER DERASMO:] Yes.

[THE STATE:] Okay.

ii. Nurse Shores's Testimony

Nurse Shores performed a domestic violence examination on F.L. the day after the assault. **[T2. 52-53]** The State asked Nurse Shores about F.L.'s statements, defense counsel objected, and the court again overruled the objection:

[THE STATE:] What statements did she make to you about what brought her to you?

[NURSE SHORES:] That --

[DEFENSE COUNSEL]: Objection.

[NURSE SHORES]: Can I read from here?

THE COURT: Hold on.

[DEFENSE COUNSEL]: Hearsay, Your Honor.

[THE STATE]: It's a prompt report sexual assault.

THE COURT: Overruled.

Noting prior objections on the same basis.

Nurse Shores then testified about F.L.'s statements made during the examination:

[NURSE SHORES]: Can I read from here to say what the patient told me?

[THE STATE:] Is that the only way you are able to remember what she told you?

[NURSE SHORES:] No, I can remember that she told me, she came in. She had been in her words, attacked by a black gentleman. He had beat her and was trying to rape her, but she was able to get away and banged on some doors for help.

[THE STATE:] Okay.

Did she make any further statements about the assault, itself, other than her being beat? And if you need to read the report to refresh your recollection, that's fine.

[NURSE SHORES:] She did mention that it was someone she did not know. He had threw her down. He had hit her, grabbed her, was yelling at her.

She said that she had threw dirt at him and noticed another car coming, and that's when she was able to get away.

[THE STATE:] And when you first -- when you met with her, did she identify whether the clothing she was wearing was the same clothing she had on the previous night --

[NURSE SHORES:] Yes.

[THE STATE:] -- or the night of the assault?

[NURSE SHORES:] Yes, it was.

[THE STATE:] Okay.

Was she able to provide or did you ask her for a timeframe of when this event had happened?

[NURSE SHORES:] Yes.

[THE STATE:] Okay.

What timeframe did she provide?

[NURSE SHORES:] I have to find it. . . . She had told me it was the previous night.

[THE STATE:] Okay.

Is that documented within your report? It's on page --

[NURSE SHORES:] Yes.

* * *

[NURSE SHORES:] Around 10:45 p.m. on 2-15.

* * *

[THE STATE:] And just going back to the statement that she made, she did identify that it was two men that took her, is that correct? I know you mentioned only one, but --

[NURSE SHORES:] Yes.

She stated two black men.

[THE STATE:] Okay.

Did she identify if she was transported anywhere?

[NURSE SHORES:] She told me that they grabbed her took and, yes, they took her down a dead-end road, but she did not know the name of the road.

[THE STATE:] Okay.

[NURSE SHORES:] She just was able to describe the area.

[THE STATE:] Did she describe the vehicle that she was placed in?

[NURSE SHORES:] A white four-door car.

B. Analysis

Md. Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule." *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). "Whether evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005).

Hearsay testimony that is a "prompt complaint of sexually assaultive behavior" is admissible if it falls under Md. Rule 5-802.1(d), the "prompt complaint exception," which states:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> * * *
>
> (d) A statement that is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]

We have observed that the "'legally sanctioned function'" of the prompt complaint exception is to "'give added weight to the credibility of the victim'" by corroborating the victim's account of the alleged assault. *Choate v. State*, 214 Md. App. 118, 146 (2013) (quoting *Nelson v. State*, 137 Md. App. 402, 411 (2001)). Professor McLain explains the

rationale for this hearsay exception in her treatise: "Admission of the fact that a prompt complaint was made will forestall the creation of reasonable doubt in the jurors' minds, simply because they have not heard when the first report of rape was made." 6A Prof. Lynn McLain, *Maryland Evidence State and Federal* § 801(2):2 at 305 (3d ed. 2013).

In *Muhammad v. State*, 223 Md. App. 255, 268 (2015), we stated: "The purpose of the exception is fulfilled by allowing the State to introduce, in its case-in-chief, the basics of the complaint, *i.e.*, the time, date, crime, and identity of the perpetrator." We also observed in *Muhammad*: "The narrative details of the complaint are not admissible, as they exceed the limited corroborative scope of the exception." *Id*. In addition, "'[a]lthough the earlier case law admitted only the bare fact that the complaint had been made, the restraints have been loosened at least to the point of admitting as well the essential nature of the crime complained of and the identity of the assailant.'" *Vigna v. State*, 241 Md. App. 704, 731 (2019) (quoting *Cole v. State*, 83 Md. App. 279, 293 (1990)), *aff'd on other grounds*, 470 Md. 418 (2020).

Here, the State correctly notes on appeal that the three portions of challenged testimony "follow[] the same pattern: the prosecutor asks a witness about what he or she was told by [F.L.], and there was a single, immediate objection." Significantly, at the time of the objections, the State's questions were appropriate under the prompt complaint exception. Appellant's trial counsel objected to the following questions: "What did she tell you about what happened to her?"; "[D]o you remember exactly how she told you about the kidnapping and sexual assault?"; and "What statements did she make to you about what brought her to you?"

"An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Md. Rule 4-323(a). This Court has explained the purpose of requiring a contemporaneous objection as follows:

> The appellate court will not entertain a hidden error as the basis for a reversal. What is required is a timely and clearly stated objection made to the trial court so that the court has an opportunity to consider the issue and to correct the error. Appellate refusal to take notice of an unpreserved objection is not an exclusionary or cathartic measure. It is not intended to punish the negligent party nor reward the diligent. It is first, last, and always an insistence that the trial court has been given the opportunity to correct its own error.

Jordan v. State, 246 Md. App. 561, 586-87 (2020). Notably, Appellant did not request a continuing objection, and the court did not grant a continuing objection. *Cf. Kang v. State*, 393 Md. 97, 119 (2006) (noting that Md. Rule 4-323(b) "was created to provide a trial judge with the discretion to grant a continuing objection and thus obviates the need to object persistently to similar lines of questions that fall within the scope of the granted objection").

After the trial judge ruled on Appellant's objections, the witnesses testified and responded to additional questions asked by the prosecutor. Appellant did not object to that additional testimony, which he now challenges on appeal.

In Appellant's reply brief filed in this Court, he argues as follows: "Here, the record demonstrates that the court understood the basis of counsel's objections and that further objections would have been futile." From that premise, Appellant argues that

additional objections were unnecessary under *Wright v. State*, 247 Md. App. 216, 228 (2020), *aff'd*, 474 Md. 467 (2021).

The rare "exception to the general rule for a contemporaneous objection is when it is apparent that any further ruling would be unfavorable, *i.e.*, an objection would be futile." *Id*. Here, there was no indication that any further ruling would be unfavorable for Appellant. To be sure, after Appellant's counsel objected to the prosecutor's question to Nurse Shores, the court stated: "Overruled. Noting prior objections on the same basis." However, defense counsel's previous objections were based on three arguments: that the question called for hearsay, that the question called for testimony that was not disclosed in discovery, and that the question called for a late report of sexual assault.[1] The prior objections were not based on the contention that Appellant now raises for the first time on appeal: that the witnesses' testimony exceeded the scope of the prompt complaint exception because it included narrative details of the assault.

In sum, the court correctly overruled defense counsel's objections at the time that they were lodged, allowing the witnesses to respond to permissible questions eliciting prompt complaint testimony under Md. Rule 5-802.1(d). In addition, Appellant did not object to the prosecutor's subsequent questions, which elicited narrative details as to the prompt complaints. As a result, Appellant's claim is unpreserved for our review. Md. Rule 8-131(a).

[1] In his reply brief filed in this Court, Appellant attempts to analogize this ruling to a continuing objection. But Appellant provides no authority to support that analogy. The bottom line is that Appellant did not request a continuing objection, and the court did not grant a continuing objection.

III.

Lastly, Appellant claims that the court erred in failing to raise the issue of Appellant's competency to stand trial *sua sponte*. The State contends that the record lacks any indication that Appellant could not understand the proceedings or consult with his attorneys.

A. Background

Before trial, Appellant's counsel alerted the court that Appellant was undergoing treatment, including multiple sessions of chemotherapy, for stage four throat cancer. Defense counsel also indicated that Appellant was "very anxious, very depressed."

Before sentencing, Warden Ruth Colbourne of the Wicomico County Detention Center emailed the court about the scheduling of Appellant's sentencing. Warden Colbourne wrote the following:

> [Appellant] has already attempted suicide by overdose the last time he was scheduled for sentencing. [Appellant] has a feeding tube, has terminal cancer, and is adamant that he isn't going back to prison. [Appellant] has threatened to take a[n] officer or deputy's weapon so he can be shot. He has threatened to grab a pen and stab himself in the neck. In short, [Appellant] is a high-risk inmate, with nothing to lose. I would prefer that [Appellant's] sentencing be moved up ASAP, to a date he is not planning for. I would also recommend that, if the law allows, [Appellant] attend sentencing via video, rather than in person.

As noted in the pre-sentence investigation, Appellant was taking prescription painkillers for pain management.

At sentencing, Appellant's counsel told the court that although Appellant's cancer was in remission, he had neck surgery, and he was still in pain. In addition, defense

counsel stated "that there has been a very clear decline in [Appellant's] mental health after being found guilty in this. He is, you know, many times suicidal[.]"

B. Analysis

Appellant acknowledges that he did not raise the issue of competency in the circuit court, instead arguing on appeal that the circuit court should have raised the issue of Appellant's competency *sua sponte*. "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)). "[A] person accused of committing a crime is presumed competent to stand trial." *Wood v. State*, 436 Md. 276, 285 (2013). Maryland Code, Criminal Procedure Article ("CP") § 3-104(a) provides, in relevant part, as follows:

> (a) *In general.* — 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.

"'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." CP § 3-101(f).

When, like 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. Although Appellant was undergoing treatment for cancer and experiencing mental health struggles, those matters did not raise a bona fide doubt as to Appellant's ability "(1) to understand the nature or object of the proceeding[s]; or (2) to assist in [his] defense." CP § 3-101(f). Thus, the trial court was not obligated to raise the issue of competency *sua sponte*.

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