Circuit Court for Prince George's County
Case No. CT170199X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1118

September Term, 2018

EDWARD RAMON SHAW

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: February 12, 2020

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The Circuit Court for Prince George's County found appellant Edward Ramon Shaw ("Shaw") guilty of having committed four separate robberies (or attempted robberies) within a one-week span. On appeal, Shaw argues that the circuit court erred (1) by not severing the pertinent charges into separate trials, and (2) by not *sua sponte* conducting a competency inquiry at sentencing. Finding no error with respect to either claim, we affirm.

BACKGROUND AND PROCEDURAL HISTORY

Shaw was charged with five counts of robbery, five counts of second-degree assault, three counts of theft of property valued under $1,000, and two counts of attempted theft under $1,000 for a string of purse-snatchings conducted over a one-week period in November 2016. Each of the incidents involved Shaw assaulting a woman who was walking alone, running errands, in the same general vicinity near Hyattsville and New Carrollton. Of central concern on appeal, the circuit court joined all fifteen counts into one trial after denying Shaw's pre-trial motion to sever the charges into five separate trials.[1]

Over the course of a two-day bench trial in March 2018, each of four female victims testified separately about the particular robbery that had targeted her. Each of the women had identified Shaw in a photo array soon after the pertinent robbery, and each

[1] In denying the motion, the circuit court found that "the facts are substantially the same. I find that the evidence in each is mutually admissible. I find that it would be judicially economic[al] to try them together, and even balancing I don't find that the prejudicial value outweighs the probative value. For those reasons, I'm denying the defendant's motion to sever counts."

woman testified in court that Shaw had threatened her by posturing or threatening that he had a weapon that he would use if she did not hand over her money. (We shall describe further testimony as may be relevant in the discussion below.).

At the close of trial on March 20, 2018, the circuit court convicted Shaw of three counts of robbery, one count of attempted robbery, four counts of second-degree assault, three counts of theft of property valued under $1,000, and one count of attempted theft under $1,000.[2] At a sentencing hearing on June 29, 2018, following an allocution that Shaw now argued should have triggered a *sua sponte* competency evaluation by the court, the circuit court imposed a consecutive sentence of 15 years, all but 5 years suspended, for each of the four robbery convictions (*i.e.*, 20 years total), with 5 years of supervised probation to follow. The assault and theft convictions merged into the robbery convictions.

Shaw's appeal followed.

DISCUSSION

I. SHAW WAS NOT PREJUDICED BY THE CIRCUIT COURT'S JOINDER DECISION.

Shaw first contends that the circuit court erred by joining the separate charges from distinct robberies into one trial.

Rule 4-253(b) generally allows a court to join multiple cases against the same defendant into one trial, so long as the evidence about each separate incident would be "mutually admissible" at separate trials. *Cortez v. State*, 220 Md. App. 688, 694-95

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[2] The State entered a *nolle prosequi* on the other counts.

(2014). Shaw's core argument is that the evidence here was not mutually admissible: he claims that the evidence about each separate robbery was the sort of "other crimes evidence" that is generally inadmissible at trial—and that it did not meet the exception permitting other crimes evidence that proves "motive, intent, absence of mistake, a common scheme or plan, identity, opportunity, preparation, knowledge, absence of mistake or accident." *State v. Faulkner*, 314 Md. 630, 634 (1989); *see also McKnight v. State*, 280 Md. 604, 612-13 (1977).

However, in the context of a bench trial, improperly joining separate charges only constitutes reversible error if the defendant was *in fact* prejudiced by the misjoinder. *Graves v. State*, 298 Md. 542, 547 (1984) ("[I]n a [bench] trial, upon joinder of similar offenses where the evidence would not be mutually admissible at separate trials, prejudice is not assumed as a matter of law. The question [] is whether a given defendant is in fact prejudiced by the joinder."). Because Shaw elected a bench trial,[3] we need not

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[3] When electing a bench trial, there was no contention from Shaw or his defense counsel that a bench trial was being chosen due to the court's earlier denial of the motion to sever. *See McKinney v. State*, 82 Md. App. 111, 127 (1990) ("If there had been any contention that the joinder ruling had caused appellant to forego a jury trial in order to minimize the prejudice, that factor alone might have been so prejudicial that reversal would be required.").

Defense counsel did make an oral motion at the start of trial in the hopes of "preserving" Shaw's severance argument, but in making this request defense counsel explicitly acknowledged that different standards apply to joinder in a bench trial versus a jury trial. (It is not entirely clear to us why this oral motion—initially described as a "motion to recuse"—was made. If defense counsel thought that by making the request Shaw could "preserve" a jury trial's "prejudice as a matter of law" standard in a bench trial, any such misunderstanding would not constitute reversible error on the part of *the court*. And as the trial judge noted, it was not clear why the defense would be asking the

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resolve whether the evidence was mutually admissible (or not), given our ultimate conclusion that Shaw was not prejudiced by the court's decision to join the charges.

Simply put, Shaw suffered no prejudice from the circuit court's joining all charges into one trial.[4] The circuit court judge meticulously detailed her factual findings when announcing each conviction, and the court's findings demonstrate that the judge focused only on the evidence that was pertinent to each incident when arriving at a guilty verdict on each particular count:

- Robbery #1 (Vicenta Lucero): The circuit court found that on November 4, 2016, Ms. Lucero was walking home by herself from a bank in Hyattsville when she was approached by Shaw, who gestured that he had a gun, grabbed her purse, and pulled on it so hard that he bruised Ms. Lucero's arm. (Shaw also took her wallet.). Ms. Lucero called 911, gave a description of the defendant to the police, and eight days later identified Shaw in a photo array. Ms. Lucero also identified Shaw in person at trial.

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trial judge to "recuse," given that a different judge had heard and denied the earlier motion to sever.).

We further note that the circuit court engaged in the requisite colloquy with Shaw to determine that he was voluntarily waiving his right to a jury trial. Shaw has not challenged this finding—that the jury waiver was made "knowingly and voluntarily and understandingly"—in the context of his separate claim regarding competency. Indeed, Shaw concedes that no issues arose during the trial, prior to sentencing, that raised competency concerns.

[4] In *McKinney*, 82 Md. App. at 126, this Court stated that "[t]he principal prejudicial effects of misjoinder . . . may be []phrased as follows:

1. The accused may be embarrassed or confounded in presenting separate defenses.
2. The jury may cumulate the evidence of the various crimes charged and find guilt where, if the offenses were tried separately, it would not do so.
3. Multiple charges may produce latent hostility.
4. A jury that believes the accused is guilty of one offense may infer from that guilt a criminal disposition on the part of the accused, which may be a persuasive factor in determining guilt on the other charges."

- Robbery #2 (Nicole Alexander): The circuit court found that on November 5, 2016, Ms. Alexander was walking home in New Carrollton from a grocery store when Shaw approached her, threatened to shoot her if she did not give him her money, took the ten dollar bill that she had on her person (while refusing her two singles), then asked twice if she had a phone before leaving the scene. Ms. Alexander called the police, provided a description of the defendant, and later identified Shaw in a photo array. Ms. Alexander identified Shaw in person at trial.

- Robbery #3 (Isis Harrington): The circuit court found that Ms. Harrington was walking home alone (from the same grocery store in New Carrollton) when she was approached by Shaw. Shaw told Ms. Harrington to give him her purse or he would shoot her; she gave him her purse which contained $17, a photo identification, and a medical card. Ms. Harrington called 911, and approximately five days later, identified Shaw in a photo array. Although Ms. Harrington said in court that Shaw looked "a little different" from the time of the incident, and that she was not sure about identifying him at trial because his hair was different, the circuit court ultimately "d[id] not find that that takes away from her out of court identification or her in court identification," given that it had been two years since the robbery, and given that the State's exhibits showed that Shaw's hair was, in fact, different from the time of the robbery.[5]

- Robbery #4 (Sheila Jones): The circuit court found that on November 9, 2016, Ms. Jones was walking home alone (from the same grocery store in New Carrollton) when she noticed a man standing in a dark area near a tree where there was not much light. Feeling uncomfortable, she crossed the street, and the man followed her. After exchanging a few words, Shaw threatened to shoot her in the head if she did not give him her purse. Ms. Harrington called 911 as she was given a ride home, and the next day identified Shaw in a photo array as the individual who tried to take her purse. Ms. Jones also identified Shaw in court.

[5] Shaw argues that Ms. Harrington's slightly equivocal identification during the trial indicates that cumulative evidence or other bias may have affected the court's findings with respect to her incident. We are not persuaded. As the circuit court pointed out when making its findings, Ms. Harrington's prior photo array identification was still sufficient to support a conviction, and she *did* identify Shaw during the trial. Moreover, as the court noted, Shaw did have different hair since the time of the robbery.

As demonstrated by the above findings: separate, sufficient evidence undergirded each conviction. The circuit court was persuaded by the fact that each woman had separately identified Shaw in open court, that each woman had previously (and separately) identified Shaw in a photo array shortly after the particular robbery that affected her, and that each woman had credibly testified to the circumstances of her own specific incident. There is no indication from the record that cumulative evidence or latent hostility may have affected any conviction, *see McKinney*, 82 Md. App. at 126, nor that evidence from one incident bootstrapped any other, weaker charge. Each conviction stood on its own, and Shaw was not prejudiced by joining his charges into one bench trial.[6]

II. THE CIRCUIT COURT DID NOT ERR BY NOT CONDUCTING A COMPETENCY INQUIRY AT SENTENCING.

Shaw's second claim on appeal is that the circuit court erred by not *sua sponte* making a competency determination upon Shaw's unusual behavior at sentencing.

The presumption that a defendant is competent to stand trial[7] may be called into question "(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

[6] We also note that the trial judge could not have been affected in any way by the pre-trial arguments regarding severance, given that a different judge had heard and denied the motion to sever. As the trial judge observed at the start of trial (in response to defense counsel's "motion to recuse"): "[The] only thing the Court knows [at this point is] that there was a motion for severance, that severance was denied. And this member of the Bench does not know any of the facts and circumstances of the case that is getting ready to go forward."

[7] Section 3-101(f) of the Criminal Procedure Article defines "[i]ncompetent to stand trial" as meaning not able "(1) to understand the nature or object of the proceeding; or (2) to assist in one's defense."

stand trial." *Kennedy v. State*, 436 Md. 686, 694 (2014) (quoting *Thanos v. State*, 330 Md. 77, 85 (1993)). Section 3-104(a) of the Criminal Procedure Article requires a trial court to make such a competency inquiry "[i]f, before or during a trial, the defendant . . . appears to the court to be incompetent to stand trial . . .." Section 3-104(c) then adds that the court may reconsider the question of competency "[a]t any time before final judgment[.]"[8] The Court of Appeals recently noted in *Sibug v. State*, 445 Md. 265, 316 (2015), that "a bona fide doubt created by evidence on the record" triggers the circuit court's "*sua sponte* duty to evaluate [a defendant's] competency." (discussing *Wood v. State*, 436 Md. 276, 291 (2013)) (Quotation marks omitted). On appeal, if a circuit court did not conduct a competency hearing, we review the evidence in the record as a whole to determine if the court erred. *Gregg v. State*, 377 Md. 515, 546-47 (2003).

Here, both sides agree that nothing occurred during the merits portion of Shaw's trial to warrant a competency inquiry.[9] Shaw, however, contends that his subsequent,

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[8] The State does not contest Shaw's position that a court's competency obligations apply during sentencing. *See Sibug v. State*, 445 Md. 265, 294 (2015) ("the purpose of our statute governing insanity was . . . to protect [an accused] from *being punished* for an offense as if he were sane") (Emphasis added, quotation marks omitted); *id.* at 316 ("*Wood* [] supports our decision in the present case that not only was a competency determination required, but that the judge clearly erred in determining at sentencing that Sibug was competent."); *cf. Smallwood v. State*, 237 Md. App. 389, 406 (2018) (Sentencing is a critical stage of a criminal proceeding, such that the constitutional right to counsel attaches).

[9] Prior to trial, Shaw had been evaluated and found competent multiple times. At one point, though, prior to trial, when Shaw attempted to fire his attorney, the circuit court ordered an additional evaluation to determine whether Shaw was competent to waive his right to counsel; at a subsequent hearing, however, there was a substitution of counsel from the Office of the Public Defender and the suggestion of incompetency was

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atypical comments during his sentencing allocution should have triggered the court's *sua sponte* duty to evaluate whether he was competent. Based on the record before us, we do not agree that the circuit court erred by not conducting such an inquiry.

Shaw's appeal brief emphasizes how, during his allocution, "he made several references to a 'functioning device,' and his apparent delusion that it was controlling him." Shaw's brief also highlights emphatic comments he made about the course of the legal proceedings, *i.e.* that the State was "railroading" him and keeping him in jail for longer than expected. In context, however, these statements do not necessarily reflect a mind that lacked "a reasonable degree of rational understanding" or "a rational as well as factual understanding of the proceedings against him." *Thanos*, 330 Md. at 585 (quoting the competency "test" established by *Dusky v. United States*, 362 U.S. 402 (1960)); *see* CP § 3-101(f) (defining "incompetent to stand trial" as "not able [] to understand the nature or object of the proceeding[.]").

Prior to imposing Shaw's sentence, the circuit court had ordered an evaluation for drug and alcohol treatment under § 8-505 of the Health General Article, upon defense counsel's request. (Indeed, the circuit court halted the initial sentencing hearing as soon as defense counsel made the § 8-505 request, in recognition of the fact that the Justice

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withdrawn. *See Sibug*, 445 Md. at 316 (discussing *Wood*, 436 Md. at 290) ("We determined that, '[t]he withdrawal of Petitioner's request for an evaluation, under the circumstances, rendered the issue of competency moot' in part because the trial judge could give 'credence to the fact that Petitioner's counsel ultimately withdrew his request for a competency evaluation.'").

Reinvestment Act now requires a court to conduct such an evaluation, if requested, before imposing sentence.). The evaluation that was submitted to the court noted that Shaw had reported during the evaluation that he had had a heart device implanted. Against this backdrop, Shaw's comments during allocution might have sounded, in person, less alarming, delusional, and irrational than Shaw now contends. To somebody familiar with Shaw's § 8-505 evaluation (such as the circuit court judge), Shaw's comments might have sounded like an inarticulate description about a device that was playing a role in maintaining his physical health, and not a description of a device that was somehow "controlling" his mind or rendering him mentally incompetent for the purposes of understanding his sentencing.[10]

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[10] It is not entirely clear from the record before us whether Shaw was in fact telling the truth about having an implanted device. Shaw's brief suggests that his comments about being *controlled* by the device were delusional, but the brief does not explicitly deny that he *had* such a device. Along similar lines, during the sentencing hearing, before Shaw began his allocution, defense counsel made the following statement after conferring with Shaw: "Your Honor, Mr. Shaw just reiterated, there's part of the evaluation where it refers to, I guess, something that was implanted in his chest. And I haven't had a chance to get, you know, medical records to follow up with that because, again, I think there has been a lot of – I think there has been a lot of shame regarding his mental issues, but I think an evaluation, in conjunction with probation, or in conjunction with a treatment program, I think would be very helpful to kind of go over these issues. So with that . . .."

Shaw's motion for reconsideration in the circuit court did not reference or contest any statements made during the sentencing hearing. Additionally, Shaw's application for a review of his sentence by a three-judge panel devoted one sentence to mental health concerns stemming from the sentencing hearing: "[T]he Court did not sufficiently take into account Defendant's mental health issues, which were on display during sentencing."

As the State suggests, it could be possible that the circuit court may have also thought that Shaw was emphasizing the implanted device during allocution to persuade the court to order treatment instead of incarceration.

At a broader level, it is clear from Shaw's exchanges with the circuit court that he could understand what was occurring during the sentencing hearing. To be sure, Shaw's animated, meandering, and frustrated tone reflected an (understandable) reluctance to spend more time in jail. Still, even if Shaw did not express himself with the diplomatic finesse or technical know-how of a defense attorney, his comments reflected a rational understanding of the proceedings, and a cognizant awareness that the prospect of more jail time loomed over him. Indeed, Shaw's extended back and forth with the circuit court judge—even asking for clarification upon being told his sentence[11]—indicated that he

[11] After the judge announced Shaw's sentence, the following exchange occurred:

> [The Defendant]: Ms. Honor, I'm – I'm a little bit confused. I heard everything you said, but I'm a little bit confused.
>
> The Court: Okay.
>
> [The Defendant]: My lawyer is trying to make me understand, so I'd like to hear it from you so I know exactly what's going on.
>
> The Court: Okay. Okay. So there were several counts that you were convicted of. Do you remember that?
>
> [The Defendant]: Yes, ma'am.
>
> The Court: Ok . . . So basically, we're sentencing you on four counts, because those lesser charges go into the larger charge. You understand that.
>
> [The Defendant]: Uh-huh.
>
> ***
>
> The Court: Okay. So total is 60 years, suspending all but 20. Okay? And so they're basically – they run one right after the other. Does that make more sense to you?

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was well aware that he faced imprisonment; his rambling monologue can be understood as the frustration of a defendant who had already spent more than 500 days in jail,[12] who felt that he had been badly served by various legal actors, and who wished to avoid a

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> [The Defendant]: Uh-huh.
>
> The Court: So do you understand so far?
>
> [The Defendant]: Yes, so far.
>
> ***
>
> [The Defendant]: So I have to go to prison for 20 years?
>
> The Court: Yes, sir.
>
> [The Defendant]: So –
>
> The Court: So it's five years per robbery.
>
> [The Defendant]: So I got sentenced to 20 years?
>
> The Court: Yes, sir.
>
> [The Defendant]: So after I leave jail, I go to prison for 20 years?
>
> The Court: At some point, they're going to transfer you from Upper Marlboro Department of Corrections to the Division of Corrections for the State of Maryland.
>
> [The Defendant]: Oh, I didn't know. So I got 20 years on my first offense?
>
> The Court: Yes, sir. Do you understand sir?
>
> [The Defendant]: Yes ma'am. So I want to get it appealed then.

[12] Shaw was arrested on November 10, 2016.

longer sentence. Although we understand his position, we do not believe, based on the record before us, that Shaw's remarks reflected an irrational mind that was incompetent to stand trial. *See Gregg*, 377 Md. at 545-47 ("stubborn and argumentative" behavior at trial, as well as evidence of two stints in mental facilities for evaluation, did not necessitate a *sua sponte* competency evaluation); *Thanos*, 330 Md. at 85-86 (notwithstanding the defendant's "whimsical" decisions, "strange remarks," and "general history of mental illness," the trial court did not have a *sua sponte* duty to conduct a competency hearing.).

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