IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

---

THE STATE OF ARIZONA,
*Appellee*,

*v.*

RAHIM MUHAMMAD,
*Appellant*.

No. 2 CA-CR 2019-0307
Filed January 28, 2021

---

Appeal from the Superior Court in Pinal County
No. S1100CR201700597
The Honorable Delia Neal, Judge

**REMANDED IN PART; AFFIRMED IN PART**

---

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Tanja K. Kelly, Assistant Attorney General, Tucson
*Counsel for Appellee*

Czop Law Firm PLLC, Higley
By Steven Czop
*Counsel for Appellant*

---

**OPINION**

Judge Eckerstrom authored the opinion of the Court, in which Presiding Judge Espinosa and Vice Chief Judge Staring concurred.

---

E C K E R S T R O M, Judge:

**¶1** Rahim Muhammad appeals from his convictions and sentences for aggravated harassment. He contends: (a) his waiver of a jury trial was constitutionally insufficient; and (b) the trial court erred in not *sua sponte* ordering a third mental competency evaluation partway through trial. For the reasons that follow, we remand on the first issue and affirm on the second.

**Factual and Procedural Background**

**¶2** The underlying facts are not in dispute. In 2016, Muhammad was serving prison terms in the Arizona Department of Corrections (ADOC). From February through September of that year, he sent a series of threatening letters to J.G., an ADOC employee, in knowing violation of two prior injunctions against harassment. The state charged him with thirteen counts of aggravated harassment.

**¶3** In August 2017, Muhammad's counsel moved for a preliminary competency evaluation pursuant to Rule 11.2(c), Ariz. R. Crim. P. The trial court granted the motion and appointed Dr. Cooper-Lopez to conduct the Rule 11 prescreen. After listing his mental health diagnoses and medications, the resulting report concluded that Muhammad "appears to suffer from psychotic and mood disorders," "experiences delusions of grandeur, auditory hallucinations and depressive symptoms," and that his "ability to understand his case and discuss his rights and responsibilities within the court system was significantly impaired," such that further Rule 11 examination was required. The report noted that Muhammad "may have exaggerated his lack of legal knowledge during the exam" and recommended that "this be assessed further in subsequent evaluations."

**¶4** In October 2017, the trial court granted Muhammad's request for a full competency evaluation and appointed two mental health experts to conduct it. Both psychologists concluded that Muhammad was not competent to stand trial at that time.

**¶5** In particular, Dr. Harris concluded that Muhammad—who reported "current auditory and visual hallucinations" as well as "psychotic symptoms" such as "obvious delusional beliefs"—met the diagnostic criteria for a diagnosis of delusional disorder. Harris also found that Muhammad displayed an "inadequate understanding of basic legal information," including "any familiarity of the charges against him in this

matter, as well as the possible consequences associated with conviction," although she "share[d] Dr. Cooper-Lopez's concerns that he may be exaggerating his lack of understanding." She concluded that Muhammad was "not competent to proceed to trial," but that "it should be possible for [him] to be restored to competence" with "aggressive treatment of his psychotic symptoms" and "education to remediate deficits in his understanding of basic legal information."

**¶6** Dr. Geary also concluded that Muhammad was "not competent to stand trial or assist his attorney in his defense." He found that Muhammad "is clearly affected by significant mental illness," providing a diagnostic impression of schizophrenia. However, Geary noted "no observed difficulties with judgment" and concluded that Muhammad—who "professed to have neither factual nor rational understanding of the charges against him"—"extensively feigned [his] lack of knowledge about legal/judicial matters," concluding there was "an element of malingering in this case." Geary thus determined, unlike Dr. Harris, that Muhammad's "potential for restoration appears to be low because of [his] indifference and resistance."

**¶7** In January 2018, the trial court found Muhammad incompetent to stand trial and ordered him to participate in an outpatient restoration to competency program with Dr. Cooper-Lopez, the same psychologist who had initially recommended the full Rule 11 evaluation.[1] In April 2018, after a few months of treatment, Cooper-Lopez concluded that Muhammad—whom she diagnosed with schizophrenia and unspecified bipolar and related disorder—was competent to stand trial. She explained that, although Muhammad may "suffer from a bonafide psychiatric condition," various test results indicated that he had "been exaggerating his memory, psychiatric, and legal knowledge deficits." She also reported, based on nine meetings with Muhammad, that he "appears to possess a rational and factual understanding of his charges and legal situation, as well as the capacity to appropriately consult with counsel." Based on this report, in May 2018, the court found Muhammad competent to stand trial.

[1]The trial court initially found Muhammad competent to stand trial but then reconsidered, after a hearing on Muhammad's motion highlighting the conclusion of the appointed psychologists that he was not competent but potentially restorable.

**¶8** In October 2018, after Muhammad sought and was appointed new counsel, his new attorney requested a second full Rule 11 examination. The state objected in part, arguing that any Rule 11 examination should be prescreen only and requesting that the examining doctor be ordered to review all prior Rule 11 reports and administer a test for malingering. In November, after a hearing, the trial court agreed "that a pre-screening evaluation [was] necessary to determine whether a further Rule 11 evaluation [was] necessary" and appointed Dr. Vega to perform that prescreen.

**¶9** The resulting Rule 11 prescreen report found that although Muhammad suffers from schizophrenia, auditory hallucinations, and delusions, he was competent to stand trial and required no further Rule 11 examination. In particular, Dr. Vega found that Muhammad "has a full understanding of the reason for his arrest and the seriousness of his offense," "has a factual and rational understanding of the nature of the proceedings against him," "will be able to assist counsel in the preparation of his own defense," and understands the legal process, court procedures, "the concept of a plea agreement versus taking a case to trial and the roles of the pertinent parties in court." In January 2019, after considering this prescreen report, the trial court found Muhammad competent to stand trial, concluding that no further Rule 11 evaluations were necessary.

**¶10** In June 2019, after a two-day bench trial, the trial court found Muhammad guilty as charged, subsequently sentencing him as a category three repetitive offender to consecutive and concurrent prison terms totaling 16.5 years. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

## Waiver of Jury Trial

**¶11** In April 2019, Muhammad's counsel presented the trial court with a waiver of trial by jury signed by Muhammad. In June, on the first day of trial, Muhammad renewed his request for a bench trial. His counsel explained "the reasoning behind this is with a name like Rahim Muhammad, my client believed he could not get a fair trial in front of a largely white jury." The court proceeded to personally examine Muhammad regarding the waiver, including explaining that waiving his right to a jury trial meant "giving up some important rights" (which the court outlined), establishing that he nonetheless preferred to proceed before a judge rather than a jury, and confirming that he understood the possible consequences of doing so. The court then found that Muhammad had

"knowingly, intelligently and voluntarily waived his right to a jury trial," and formally signed and filed the completed waiver form.

**¶12** On appeal, Muhammad argues the trial court abused its discretion[2] in finding that he knowingly, intelligently, and voluntarily waived his right to a jury trial. "Whether there is an intelligent, competent, self-protecting waiver of jury trial by an accused must depend upon the unique circumstances of each case." *State v. Butrick*, 113 Ariz. 563, 566 (1976).

**¶13** Under Rule 18.1(b)(3), Ariz. R. Crim. P., "[a] defendant's waiver of a jury trial must be in writing or on the record in open court." Muhammad's waiver was both. The rule also specifies that "[b]efore accepting a defendant's waiver of a jury trial, the court must address the defendant personally" and "inform the defendant of [his] right to a jury trial." Ariz. R. Crim. P. 18.1(b)(2). These criteria were clearly satisfied here.

**¶14** Muhammad's claim that the trial court "never explained to [him] the difference between trial to a jury and to a judge" is flatly contradicted by the record. The court explained, "if we had a jury trial all the jurors would need to agree unanimously as to your guilt" and that waiving his right to a jury trial meant the judge alone would instead "be listening to the evidence that's presented and making a decision about whether or not the state has proven the charges beyond a reasonable doubt." The court also explained that the waiver would mean "giv[ing] up the right to have the jury decide whether any aggravating factors exist," which could increase the possible length of Muhammad's prison term, leaving that determination to the judge. Muhammad then confirmed that he understood he was giving up those rights. His contention on appeal that the court "needed to expand on the explanation of what it means to be tried by a jury," or ask Muhammad to explain in his own words the difference between jury and bench trials, is unsupported by our jurisprudence. *See State v. Conroy*, 168 Ariz. 373, 376 (1991) (trial court "explain[ing] to defendant that he had a right to a jury trial, that by waiving the right he was

---

[2]As indicated by the parties' citation to cases involving the waiver of different constitutional rights, our supreme court has not yet settled the applicable standard of review governing the issue of a defendant's waiver of the right to a jury trial. Because the issue is not disputed by the parties, we decline to address it here and note that our holding in this case would be the same under either the abuse of discretion standard the parties agree should apply or a less deferential *de novo* standard.

abandoning the privilege of allowing a jury to determine the facts of his case and agreeing to let the trial court determine the facts and determine his guilt or innocence" normally "all that is required to accomplish the intentional waiver of a known right").

**¶15** However, in order for a waiver of a jury trial to be valid, the trial court must also "determine that the defendant's waiver is knowing, voluntary, and intelligent." Ariz. R. Crim. P. 18.1(b)(2). Muhammad argues that, given his mental health issues and prior competency concerns, the court in this case "needed to make a specific on-the-record finding of Muhammad's competency to waive the jury trial." We agree.[3]

**¶16** In *State v. Cameron*, this court agreed with the appellant that "[w]here a defendant's competency" "has been put in issue, the trial court must look further than to the usual 'objective' criteria in determining the adequacy of a constitutional waiver." 146 Ariz. 210, 212 (App. 1985) (quoting *Sieling v. Eyman*, 478 F.2d 211, 214 (9th Cir. 1973)). In such circumstances, it is not sufficient for the court to make a finding that the defendant's waiver of a jury trial is knowing, intelligent, and voluntary. The court must also "make a specific on-the-record finding of [the defendant's] competency to waive the jury trial." *Id.* at 211-12. Importantly, a prior finding of general competency to stand trial does not suffice; "such a determination is inadequate because it does not measure the defendant's capacity by a high enough standard." *Id.* at 212 (quoting *Sieling*, 478 F.2d at 214-15). Waiver of this constitutional right requires a degree of competency "which enables [a defendant] to make decisions of very serious import." *Id.*

**¶17** Muhammad's competency had clearly "been put in issue" in this case, even if—as the state contends—nothing in the colloquy itself "would have alerted the trial court to any emotional or mental condition affecting the defendant's competency to waive his right to a jury trial." Muhammad's competency issues had been the primary focus of many months of pretrial litigation. Four separate licensed psychologists had previously reported to the court on his history of significant mental illness.

---

[3]This agreement does not extend to Muhammad's broader argument that the trial court was required to "conduct a more in-depth examination into Muhammad's understanding of his waiver of his right to a jury trial." The case law does not necessarily require "a more specific colloquy" on the issue of a defendant's competence to waive that right, which may also be established in the record before the court at the time of its finding. *See State v. Cameron*, 146 Ariz. 210, 213 (App. 1985).

Dr. Harris discussed "a large number of different diagnoses," including schizophrenia and psychotic disorder, and reported concerns regarding hallucinations and "bizarre grandiose delusional beliefs." Three of these experts and the trial court had previously found Muhammad incompetent to stand trial.

**¶18** Moreover, on the first day of trial, before the trial court questioned Muhammad regarding the jury trial waiver, both defense counsel and the state repeatedly noted his mental health issues. His counsel also advised the court that Muhammad did not believe he was "getting adequate medical care, particularly psychiatric/psychological care" and that, as of a week before trial, he was "still hearing voices" and having "hallucinations." And, immediately after the court found the jury waiver knowing, intelligent, and voluntary, Muhammad confirmed that "[h]e is on psychotropic medication" and "hear[s] voices," although he told the court that this was not affecting his decision to go forward with trial. In this context, "it was error [for the court] not to make a specific on-the-record finding of his competency to waive the jury trial." *Cameron*, 146 Ariz. at 212.

**¶19** The state contends *Cameron* is distinguishable, but we see no relevant distinction. Here, as in *Cameron*, 146 Ariz. at 213, the experts who provided reports on Muhammad's competency were not fully in agreement as to his mental condition. Also like *Cameron*, Muhammad provided only monosyllabic responses to the trial court's questions during the exchange regarding the jury trial waiver. *Id.* And, as in *Cameron*, we have no basis to conclude "that the medication which contributed to the appearance of competence to stand trial necessarily proved a competence to waive constitutional rights."

**¶20** The present case differs from *Cameron* in that Muhammad chose to testify. But that testimony came on the second day of the bench trial, well after the colloquy regarding his jury trial waiver, and it involved no separate finding of competence by the trial court. And, during his testimony, Muhammad stated that he had threatened J.G. because, thanks to his "power of discernment," he "know[s]" she "works for the pharaoh" and "is satan herself," whereas he "[is] Moses." Such testimony would have provided little reassurance that Muhammad possessed the degree of

competency required to waive the right to a jury trial. *See Cameron*, 146 Ariz. at 212. In fact, portions of his testimony were fully non-responsive.[4]

**¶21** The state points to our supreme court's opinion in *State v. Decello*, 111 Ariz. 46 (1974), as "instructive." But there, the court observed that there was no "'substantial question' as to [the defendant's] mental capacity": the appointed mental health experts and evaluating hospital were in agreement that the defendant did not suffer from mental illness, could think clearly and logically, understood the nature of the proceedings against him, and could assist in his own defense. *Id.* at 48-49 (quoting *Sieling*, 478 F.2d at 214). One report focused expressly on the defendant's lack of hallucinations or delusions. *Id.* at 48. In such circumstances, our supreme court found that no further hearing was necessary to establish the defendant's competency to waive his right to a jury. *Id.* at 49.

**¶22** Here, by contrast, all the experts agreed that Muhammad suffers from mental illness manifesting with hallucinations and delusions, even if he consciously exaggerated his lack of legal knowledge. He and his attorney repeatedly advised the trial court that he was still hearing voices at the time of trial. These are the "other facts" that were absent in *Decello*, 111 Ariz. at 49, the presence of which required the court make a specific on-the-record finding of Muhammad's competence to waive his right to a jury trial. *See State v. Berger*, 171 Ariz. 117, 121 (App. 1992) ("other facts," including defendant's "twenty-year history of schizophrenia and hospitalizations" and his "sometimes non-responsive answers to the court's questions," justified remand for determination of defendant's competency to waive right to jury trial).

**¶23** Muhammad contends the trial court's error requires reversal of his convictions. However, "it is not necessary to reverse [the judgment of the court] if the record can be expanded on remand to include a finding by the trial judge of the appellant's competence to waive a jury trial." *Cameron*, 146 Ariz. at 213. Here, as in *Cameron*, "more than one mental health expert filed reports which were in the record from which the trial judge may be able to make a determination of the higher standard of competency required to waive the right" to a jury trial: whether

---

[4]For example, at one point Muhammad stated: "Y'all cannot stop this. I will take the sun out the sky. That's what I will do. You will not give me more time to keep the sunshine. I will take the sun out the sky and my kingdom will reign forever and ever and ever. See, y'all think that you need Jesus but Jesus is not coming back."

Muhammad was making a rational and reasoned decision to make that waiver. *Id.*; *see also Sieling*, 478 F.2d at 216 ("trial court should have an opportunity to review the psychiatric evidence in light of our opinion, to decide in the first instance, whether there is sufficient evidence upon which to make . . . determination" as to defendant's competence to waive constitutional right). We therefore remand to the trial court for a hearing to determine: (1) whether the court did, in fact, find that Muhammad was competent to waive his right to a jury trial; or (2) if this cannot be determined, whether Muhammad was, in fact, competent to waive that right. *See Cameron*, 146 Ariz. at 213.

**Additional Competency Evaluation**

**¶24** Immediately after the lunch break on the first day of trial, Muhammad informed the trial court that he was experiencing "medical distress" and could not assist his counsel in proceeding with trial that day. He requested that the court break for the day and resume the trial on the next scheduled day. After allowing Muhammad to "give a brief summary of what his medical condition is,"[5] the court asked: "If we took a break and came back on Friday, do you think you would be feeling better by then?" Muhammad answered in the affirmative and assured the court "we'll be able to finish on Friday."[6]

**¶25** Over the state's objection, the trial court granted Muhammad's request to recess due to his "medical issue," advising him to be prepared "to be in court all day on Friday." When trial resumed on

---

[5]Muhammad advised the trial court he has been diagnosed with schizophrenia and bipolar disorder, for which he takes an antipsychotic medication and mood stabilizers. He stated his medications sometimes render him "incoherent," "not understanding what's going on," and "real drowsy and fatigued," and he was "having a hard time right now." He later explained, "I want to get through this as quick as possible but today right now at the moment I am not mentally capable of going through this" and "I feel like I have to sleep this off."

[6] When the trial court asked Muhammad whether it might be possible for the state to continue its questioning of a detective and take a break for Muhammad to let the court know how he was feeling, Muhammad responded that he would prefer to let his counsel proceed without him for the day. But his counsel objected to such an approach, expressly requesting that the court "take it up fresh on Friday after he's had his medication."

Friday, neither Muhammad nor his counsel indicated that he was still suffering any of the symptoms that had caused him to request a recess. To the contrary, Muhammad proceeded to testify in his own defense after establishing that he was taking medications that "help [him] think better and more rationally."

**¶26** Muhammad now contends on appeal that the trial court erred in "not ordering another Rule 11 evaluation" because of "new concerns" regarding his ability to understand the proceedings and assist in his own defense. He urges us to reverse his convictions on this basis. As Muhammad did not raise this issue below, we review only for fundamental, prejudicial error. *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018); *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20 (2005). We find no error, much less fundamental error, here.

**¶27** Muhammad is correct that a trial court has a "continuing duty to inquire into a defendant's competency, and to order a Rule 11 examination *sua sponte* if reasonable grounds exist." *State v. Amaya-Ruiz*, 166 Ariz. 152, 162 (1990). But the latter is only necessary if new facts or circumstances create a good faith doubt about the defendant's ability to participate intelligently in the proceedings. *See State v. Cornell*, 179 Ariz. 314, 322-23 (1994) (finding in record "no reason to suspect [defendant] was mentally incompetent to understand his rights").

**¶28** The due process obligation of a trial court "to raise the issue and hold a hearing *sua sponte*" only arises "if it appears to the judge . . . that competency is in doubt." *Bishop v. Superior Court*, 150 Ariz. 404, 407 (1986). Even in cases where the defense has requested a competency evaluation, "the trial court has broad discretion in determining if reasonable grounds exist, and unless there has been manifest abuse in this discretion, the trial court will be upheld." *State v. Salazar*, 128 Ariz. 461, 462 (1981).

**¶29** Nothing in the record demonstrates that the trial court abused its discretion in not initiating a third Rule 11 process. Much of what Muhammad and his counsel stated to the court on the first day of trial had already been established in the two prior Rule 11 proceedings. Those proceedings both ultimately led to the conclusion that Muhammad was competent to stand trial. *See State v. Moody*, 208 Ariz. 424, ¶ 48 (2004) ("[I]f a defendant has already been adjudicated competent, the court must be permitted to rely on the record supporting that previous adjudication.").

**¶30** To the extent Muhammad or his counsel raised new details during this incident, the trial court responded by doing precisely as they

requested: it called a recess and resumed trial a few days later. And, when the trial resumed, neither Muhammad nor his counsel indicated there were any continuing concerns—something both had previously not hesitated to assert. *See Cornell*, 179 Ariz. at 323 (relevant that counsel did not question defendant's competence); *State v. Morris*, 121 Ariz. 364, 366 (App. 1979) (trial court "entitled to some extent to rely upon counsel's failure to raise the question [of competency] as constituting, at least by implication, some representation by counsel of appellant's competency to proceed").

**¶31** We therefore find no error, much less fundamental error, in the trial court's failure to *sua sponte* order a third mental competency evaluation partway through trial.

## Disposition

**¶32** For the foregoing reasons, we remand this case for further proceedings consistent with this opinion. "Upon the filing of the record in this court of the further proceedings in the trial court, if the court has found [Muhammad] was competent to waive the jury trial, the judgment of convictions and sentences will be affirmed by supplemental opinion. If no such finding is made, the judgment will be reversed." *Cameron*, 146 Ariz. at 215.