

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 16, 2012

v

HOWARD KEITH COLE,
Defendant-Appellant.

No. 299969
Wayne Circuit Court
LC No. 10-001832-FC

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

After a bench trial, the trial court convicted defendant Howard Keith Cole of armed robbery, MCL 750.529; carrying a concealed weapon, MCL 750.227; and felony-firearm, MCL 750.227b. Defendant appeals as of right. We affirm.

At about 11:00 p.m. on February 4, 2010, the complainant and his acquaintance were sitting in the complainant's limousine drinking beer. Defendant entered the rear passenger section of the limousine and sat directly behind the complainant. Defendant had a black handgun. The complainant heard a click directly behind the back of his head, and defendant said "run your pockets." The complainant gave defendant a \$5 bill. Defendant then exited the limousine and left. Shortly thereafter, the complainant stopped a police car and told the police about the robbery. The complainant identified defendant to the police. The officers detained and searched defendant. The officers found a black .38 caliber handgun and a \$5 bill on defendant and then arrested him.

Defendant argues that he was denied the right to meaningful allocution at sentencing due to lack of competency. We disagree.

We review this unpreserved issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

At sentencing, a trial court must "give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." MCR 6.425(E)(1)(c). "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *People v Matheson*, 70 Mich App 172, 180; 245 NW2d 551 (1976), quoting

Drope v Missouri, 420 US 162, 181; 95 S Ct 896; 43 L Ed 2d 103 (1975). “Whether [a] defendant is competent to stand trial is an ongoing concern of the court, and the issue of competence may be raised at any time during or after trial.” *People v Garfield*, 166 Mich App 66, 74; 420 NW2d 124 (1988); see also *People v Blocker*, 393 Mich 501, 510; 227 NW2d 767 (1975) (“If there be *evidence* of incompetence, the issue must be decided. This is true whether . . . the evidence appears before, during or after the trial.”). Indeed, the Michigan Court Rules provide: “The issue of the defendant’s competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant.” MCR 6.125(B). Criminal defendants are presumed competent. MCL 330.2020(1); see also *People v Abraham*, 256 Mich App 265, 283; 662 NW2d 836 (2003). The issue of competency may be raised by either party or by the trial court sua sponte. MCL 330.2024; MCR 6.215(B). However, the trial court is only obligated to raise the issue of competency when facts brought to its attention raise a “bona fide doubt” regarding the defendant’s competence. *In re Carey*, 241 Mich App 222, 227-228; 615 NW2d 742 (2000); see also *People v Whyte*, 165 Mich App 409, 412; 418 NW2d 484 (1988).

Here, defendant insists that he was incompetent to allocute because he suffers from bipolar disorder. Defendant relies exclusively on his presentence investigation report (PSIR) as evidence of his purported incompetence. Although the PSIR contains one isolated note of defendant’s bipolar condition, it also notes that defendant is “in overall good health mentally and physically.” Defendant fails to cite any additional proof from the record that he was incompetent at sentencing; he presents no evidence that his competency was questionable at any stage of the trial aside from the isolated statement in the PSIR. Indeed, the record shows that defendant was found competent to stand trial at a pretrial hearing. The trial court made this determination after reviewing defendant’s competency report, to which defendant’s trial counsel stipulated. The isolated statement in defendant’s PSIR is insufficient to raise a bona fide doubt of defendant’s competency. See *Carey*, 241 Mich App at 227-228; *Whyte*, 165 Mich App at 412.

Furthermore, the trial court gave defendant an opportunity to allocute as required by MCR 6.425(E)(1)(c). And, defendant took advantage of that opportunity. The trial judge, upon learning that defendant wished to speak, said, “I’m listening to you, Mr. Cole.” Defendant then thanked the court for giving him “time to speak,” disputed the court’s factual findings, and said that he was “remorseful for whatever participation [he] had in this” crime. Defendant also asked the court for leniency and for “credit for time served.” Defendant’s statements were cogent and coherent and could not have given the trial court any doubt—much less a “bona fide doubt”—that he was competent. Accordingly, there is no plain error.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ William C. Whitbeck
/s/ Jane M. Beckering