IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-224

Filed: 17 November 2015

Guilford County, Nos. 12 CRS 95247, 13 CRS 24208

STATE OF NORTH CAROLINA

v.

WARREN KEITH BOLTON

Appeal by defendant from judgment entered 2 October 2014 by Judge Ronald E. Spivey in Guilford County Superior Court. Heard in the Court of Appeals 24 August 2015.

Roy Cooper, Attorney General, by Marie H. Evitt, Associate Attorney General, for the State.

Stephen G. Driggers for defendant-appellant.

DAVIS, Judge.

Warren Keith Bolton ("Defendant") appeals from his convictions for possession of cocaine, possession of less than one-half of an ounce of marijuana, and attaining the status of an habitual felon. On appeal, he contends that the trial court erred in failing to conduct a hearing on the issue of whether he was competent to enter a guilty plea. After careful review, we affirm the judgment of the trial court.

Factual Background

On 18 November 2012, Officer Jason Randazzo ("Officer Randazzo") and Officer Sherrod Hairston ("Officer Hairston") with the Greensboro Police Department drove in an unmarked Ford Explorer to 705 Memphis Street in Greensboro, North Carolina to investigate a complaint that had been received regarding an individual named Kevin Johnson ("Johnson") allegedly selling narcotics out of a house located at that address. As they approached the residence, the officers noticed a Dodge Ram pickup truck ("the Dodge") parked in the driveway. After running a Department of Motor Vehicles database search on the Dodge's license plate, the officers discovered it was registered to Johnson.

Officer Randazzo began driving around the neighborhood in an attempt to find a suitable location to conduct surveillance on the house when he noticed the Dodge traveling down Memphis Street toward the intersection of Memphis Street and Alana Street. Officer Hairston observed that Johnson, who was driving, was not wearing his seat belt. Based on the seat belt violation, Officer Randazzo initiated a traffic stop of the Dodge, activating his blue lights and siren. Officer Randazzo and Officer Hairston exited their vehicle and approached the Dodge.

As Officer Randazzo was approaching the driver's side door, he observed Johnson's "right shoulder dip towards the steering wheel and his right arm moving towards the center of his body." He believed these movements to be consistent with

those of individuals attempting to hide drugs "in either their underwear or their genital areas."

Upon reaching the driver's side door, Officer Randazzo detected the odor of marijuana emanating from the vehicle. He ordered Johnson to step out of the Dodge and saw a marijuana blunt in his right hand. Meanwhile, Officer Hairston approached the passenger side of the Dodge and likewise noticed a strong odor of marijuana coming from the vehicle. He asked Defendant, who was sitting in the front passenger seat of the Dodge, to step out of the vehicle.

Officer Randazzo initiated a search of the Dodge and Officer Hairston frisked Defendant to ensure that he was unarmed. While patting down Defendant's pants, Officer Hairston "felt a bulge which [he] felt to be narcotics[.]" Based upon this discovery, Officer Hairston placed Defendant in handcuffs and proceeded to perform a more thorough search of Defendant's person. As a result of this search, Officer Hairston recovered a plastic baggie containing half of an ounce of marijuana and 3.73 grams of a substance later identified as crack cocaine from Defendant. Defendant was placed under arrest.

On 18 March 2013, Defendant was indicted on one count of possession with intent to sell or deliver cocaine and one count of possession of marijuana between one-half of an ounce and one and one-half ounces. On that same date, Defendant was also indicted for attaining the status of an habitual felon.

On 23 September 2014, Defendant filed a motion to suppress the evidence obtained as a result of Officer Hairston's search of his person. In his motion, he contended that Officer Hairston's search had violated his Fourth Amendment rights.

Over a two-day period from 30 September through 1 October 2014, a hearing on Defendant's motion to suppress was held before the Honorable Ronald E. Spivey in Guilford County Superior Court. At the hearing, the State presented the testimony of Officers Randazzo and Hairston. Defendant testified on his own behalf in support of his motion. The trial court denied Defendant's motion, making oral findings of fact and conclusions of law.[1] Defendant's trial counsel then informed the court that in light of the denial of the suppression motion, Defendant would be entering into a plea agreement with the State.

Defendant's attorney also notified the trial court that Defendant had raised concerns about Defendant's own competence to go forward with further proceedings. The trial court stated that it had read the portion of Defendant's case file discussing the fact that he had previously been found competent to stand trial by order entered on 18 July 2014 by Judge Edgar B. Gregory after having undergone a forensic evaluation conducted by Dr. Sarah Ryan, a postdoctoral fellow in Forensic Psychology at Central Regional Hospital in Butner, North Carolina, in which Dr. Ryan concluded

[1] On 10 October 2014, the trial court memorialized its ruling in a written order.

that "[i]t is my opinion that [Defendant] is **capable** of proceeding to trial at this time[.]"

Defendant proceeded to plead guilty to the reduced charges of possession of cocaine and possession of less than one-half of an ounce of marijuana. Defendant was sentenced to 21-38 months imprisonment. Defendant gave oral notice of appeal in open court.

Analysis

I. Appellate Jurisdiction

We must initially determine whether appellate jurisdiction exists over Defendant's appeal. The State has filed a motion to dismiss the appeal, contending that because Defendant entered a guilty plea without expressly reserving his right to appeal the issue of his competency, he is precluded from raising that issue before us on appeal.

The right of appeal of a defendant who enters a plea of guilty is limited. *See* N.C. Gen. Stat. § 7A-27(b)(1) (2013) ("Appeal lies of right directly to the Court of Appeals . . . [f]rom any final judgment of a superior court, other than . . . one based on a plea of guilty or nolo contendere[.]"). The State is correct that because Defendant pled guilty and did not expressly preserve his right to appeal the issue of his competency, his appeal would typically be subject to dismissal. *See State v. Hamby*, 129 N.C. App. 366, 369, 499 S.E.2d 195, 196 (1998) ("If a defendant who has pled

guilty does . . . not . . . have a right to appeal, his appeal should be dismissed."). However, in the present case Defendant has also filed a petition for writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure, requesting that this Court review the merits of his appeal.

Our Supreme Court addressed a similar issue in *State v. Bolinger*, 320 N.C. 596, 359 S.E.2d 459 (1987). In *Bolinger*, the defendant, who pled guilty to second-degree murder, argued on appeal that he did not enter into his guilty plea knowingly. *Id.* at 601, 359 S.E.2d at 462. The Court held that the "defendant is not entitled as a matter of right to appellate review of his contention that the trial court improperly accepted his guilty plea. Defendant may obtain appellate review of this issue only upon grant of a writ of certiorari." *Id.*

In applying the so-called "*Bolinger* exception," we have held that a challenge to whether a guilty plea was entered into knowingly and voluntarily is reviewable by means of a petition for certiorari. *See State v. Carter*, 167 N.C. App. 582, 585, 605 S.E.2d 676, 678 (2004) ("[A] defendant may petition for writ of certiorari when he is challenging the procedures employed in accepting a guilty plea."). In *State v. Demaio*, 216 N.C. App. 558, 716 S.E.2d 863 (2011), we stated that

> our Supreme Court has held that when a trial court improperly accepts a guilty plea, the defendant may obtain appellate review of this issue only upon grant of a writ of certiorari.

Here, Defendant did not have an appeal as of right

> from his guilty plea. However, his challenge that his plea was improperly accepted because it was not the product of informed choice and did not provide him the benefit of his bargain is a procedural challenge to the guilty plea for which he may petition this Court for writ of certiorari under *Bolinger*. Defendant properly petitioned this Court for certiorari, and, therefore, we grant certiorari to review whether the trial court erred in accepting Defendant's guilty plea.

Id. at 562, 716 S.E.2d at 866 (internal citations and quotation marks omitted); *see also State v. Rhodes*, 163 N.C. App. 191, 193, 592 S.E.2d 731, 732 (2004) (holding that where defendant on appeal challenged procedure used by trial court in accepting guilty plea, although no appeal existed as of right, his arguments were reviewable under *Bolinger* pursuant to petition for writ of certiorari).

In the present case, we believe the argument over which Defendant seeks appellate review in his certiorari petition — that the trial court erred in failing to conduct a hearing regarding his competency before accepting his guilty plea — is akin to a challenge to the procedure used by the trial court in accepting his guilty plea. Thus, we hold that the *Bolinger* exception applies in the present case and therefore grant Defendant's petition for certiorari. Accordingly, we now proceed to address the merits of his appeal.

II. Competency

Defendant's sole argument on appeal is that the trial court erred by failing to *sua sponte* conduct a hearing in order to determine whether he was competent to enter a guilty plea. We disagree.

N.C. Gen. Stat. § 15A-1001(a) states, in pertinent part, that "[n]o person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner." N.C. Gen. Stat. § 15A-1001(a) (2013); *see Carter*, 167 N.C. App. at 585, 605 S.E.2d at 679 ("[A] court may accept a guilty plea only if it is made knowingly and voluntarily.").

It is well established that

> [t]he question of capacity may be raised at any time by motion of the prosecutor, the defendant or defense counsel, or the court. Once a defendant's capacity to stand trial is questioned, the trial court must hold a hearing pursuant to N.C. Gen. Stat. § 15A-1002(b) (2003). A defendant has the burden of proof to show incapacity or that he is not competent to stand trial.
>
> The test for capacity to stand trial is whether a defendant has capacity to comprehend his position, to understand the nature of the proceedings against him, to conduct his defense in a rational manner and to cooperate with his counsel so that any available defense may be interposed. . . . So long as there is competent evidence to support the findings of fact, a trial court's conclusion that a defendant is competent to proceed to trial will not be disturbed, even if there is evidence to the contrary.

> *A trial court has a constitutional duty to institute, sua sponte, a competency hearing if there is substantial evidence that the accused may be mentally incompetent. In other words, a trial judge is required to hold a competency hearing when there is a bona fide doubt as to the defendant's competency even absent a request.*

State v. Staten, 172 N.C. App. 673, 678, 616 S.E.2d 650, 654-55 (internal citations and quotation marks omitted and emphasis added), *appeal dismissed and disc. review denied*, 360 N.C. 180, 626 S.E.2d 838 (2005), *cert. denied*, 547 U.S. 1081, 164 L.Ed.2d 537 (2006).

In the present case, the hearing on Defendant's motion to suppress began on 30 September 2014. During the hearing, the State offered the testimony of Officers Randazzo and Hairston. Defendant then testified on his own behalf in support of his motion. At one point during his testimony, Defendant testified as follows:

> Q. Now, how would you characterize your memory -- right now, how would you characterize your memory of these events?
>
> A. I recognize the gentlemen in this courtroom. I recognize everything that's been talked about.
>
> Q. Okay. Independently of what you've heard from them, how would you characterize your memory? Would you describe it as being easy or clear?
>
> A. I would describe it as a Matthew, Mark, Luke and a John.
>
> Q. Okay. Can you please explain that for us?
>
> A. Nobody's accurate for some reason. No one seem [sic] to

> be accurate, and those that were accurate held their tongue on a lot of situations, if I could say.

After considering the witnesses' testimony along with the arguments of counsel, the trial court made oral findings of fact and conclusions of law in denying Defendant's motion. Upon the trial court's denial of the motion, Defendant's trial counsel informed the court that Defendant would be entering into a plea agreement with the State. The trial court converted the proceedings into a plea hearing at which point a 15-minute recess was taken.

After court reconvened, the following exchange took place:

> [DEFENDANT'S TRIAL COUNSEL]: Judge, if I may be heard for a moment. Notwithstanding prior statements in hearings that have gone on and any conversations I've had with [Defendant], at this point he is indicating to me that he has concerns about his own competence.
>
> THE COURT: That's been addressed in the file.
>
> [DEFENDANT'S TRIAL COUNSEL]: That is true, Your Honor, I believe by Mr. Madan.
>
> THE COURT: Yes.
>
> ([DEFENDANT'S TRIAL COUNSEL] CONFERS WITH [DEFENDANT])
>
> THE COURT: The Court will note that in a previous pretrial hearing a lengthy report identified as Pretrial Exhibit 1 in the court file, a forensic evaluation conducted at Central Regional Hospital in Butner --
>
> ([DEFENDANT'S TRIAL COUNSEL] CONFERS WITH

[DEFENDANT])

[DEFENDANT]: Could I accept this without signing it? Do I have to --

THE COURT: I'll note for the record that he's made an inquiry of the Court. Do you mind me answering that?

[DEFENDANT'S TRIAL COUNSEL]: Absolutely not, Your Honor.

THE COURT: No. You have to sign it, unfortunately. Now, he's indicated you wish to reserve your right to appeal, and, of course, he's gonna argue to the Court that you ought to get the lowest possible sentence because you came in and accepted responsibility, which I usually have a propensity to follow along with that, so -- but it's completely up to you.

[DEFENDANT]: Nah. I'm gone, I'm gone. Thank you, Your Honor.

[PROSECUTOR]: Your Honor, in the matters involving Warren Keith Bolton, we've arrived at a resolution subject to the Court's acceptance of this arrangement. Mr. Wellman, your client is charged in 12-CRS-95247 with -- in a two-count indictment with possession with intent to sell and deliver cocaine and a Class 1 misdemeanor, possession of marijuana.

How would he plead in Count 1 to the Class -- or to possession of cocaine and the Class 3 misdemeanor in Count 2, possession of less than one-half ounce of marijuana, and as to the habitual status in 13-CRS-24208, the habitual felon status?

[DEFENDANT'S TRIAL COUNSEL]: He pleads guilty, Your Honor.

[PROSECUTOR]: If I may approach, Your Honor.

You would agree that he is a record level III offender for sentencing purposes?

[DEFENDANT'S TRIAL COUNSEL]: We do so stipulate.

THE COURT: Before we have him sworn, let me just address counsel since this issue has been sort of tossed out there at the last moment.

He testified earlier today and seemed lucid and had a recollection of the events that were in some parts like the officers' testimony and other parts different, but you've seen no indication that he has any issues that would prevent him going forward today, do you?

[DEFENDANT'S TRIAL COUNSEL]: Judge, I do not. I will say that there have been -- in my file provided from Mr. Madan there are extensive medical records, and I know that the proper inquiries were made with both the Monarch Center here and also at Butner. For the time I've -- I've only represented him for --

(MR. BOLTON PLANKS [sic] BACKWARDS ONTO FLOOR OF COURTROOM)

THE COURT: Oh, my goodness. Is he all right? He's having a flop. All right. We'll note for the record that he's fallen out in the floor. All right. Do you want to sit him down for a minute and see --

(PAUSE)

THE COURT: All right. Mr. Sheriff, do you need to take him out and we'll come back to this tomorrow? I'd feel a little bit better about it.

The Court will note that he fell out on the floor and is now back in the chair, but I'd almost rather wait to make sure his health is fine before we go forward with anything.

> All right.
>
> Is he all right to walk? All right. We'll hold this matter open until tomorrow.
>
> [DEFENDANT'S TRIAL COUNSEL]: Thank you, Your Honor.
>
> THE COURT: Let me -- well, do you just want me to just retain this in the court file for the moment?
>
> [PROSECUTOR]: Thank you, Your Honor.
>
> (MR. BOLTON TAKEN FROM COURTROOM)

The following day, the plea hearing resumed and the issue of Defendant's competency was raised once more:

> THE COURT: Let me ask counsel. We had some episode [sic] yesterday. Is he okay, been okay over the course of the evening?
>
> [DEFENDANT'S TRIAL COUNSEL]: Your Honor, my understanding is he was recently well to cross the street. The nurses checked him out. All his vital signs were fine. I saw him last night and he indicated that he felt fine, and this morning he says he's just a little tired.
>
> THE COURT: Okay. Mr. Bolton, if you'll please stand. Let me just make an inquiry of you since you had the episode yesterday. Do you feel like you're in a position to go forward today? Say "yes" or "no."
>
> [DEFENDANT]: Yes.
>
> THE COURT: You don't feel like you're gonna faint or anything, do you?
>
> [DEFENDANT]: Nah. It was just a long day.

> THE COURT: Well, why don't we do this. After I swear you to this, I'll have you sit down and go over the questions just in case. So to pick up where we left off yesterday, you do wish to go forward and enter a plea pursuant to all this at this time?
>
> [DEFENDANT]: That's right.
>
> THE COURT: Okay. In that case, if you'll place your left hand on the Bible and raise your right and be sworn to this, the best you can.
>
> (Whereupon, **WARREN KEITH BOLTON,** defendant, was sworn)
>
> THE COURT: Okay. You can go ahead and have a seat.
>
> [DEFENDANT'S TRIAL COUNSEL]: Your Honor, if I may, I just wanted to finish what we were in the middle of when [Defendant] actually did fall down yesterday.
>
> I just wanted to make clear for everyone -- (to [Defendant]) have a seat -- that I have -- in my experience with [Defendant] have never found the grounds in which -- that I would be able to sign or file anything, any petition for incompetence, on his part. He's only shown competence to me. So I wanted to finish that statement that I was making yesterday on the record.

The trial court then conducted a plea colloquy before accepting Defendant's guilty plea. During the plea colloquy, the following exchange occurred:

> THE COURT: And as I noted, his testimony was certainly lucid, and in some respects quite similar to the officers' and in others not. But in any event, I'm gonna go over this series of questions with you. If you'll answer out loud, our court reporter will take down your answers.

So, Mr. Bolton, are you able to hear and understand me?

[DEFENDANT]: Yes.

THE COURT: Do you understand you have a right to remain silent and any statement you make can be used against you?

[DEFENDANT]: Yes.

THE COURT: You can read and write at the twelfth-grade level?

[DEFENDANT]: GED.

THE COURT: GED. You're not under the influence of any drugs, alcohol or medicines and haven't been for at least three months.

[DEFENDANT]: Yes.

THE COURT: These charges have been explained to you by your attorney.

[DEFENDANT]: Yes.

THE COURT: You feel like you understand the nature, elements and possible defenses?

[DEFENDANT]: Yes.

THE COURT: Are you satisfied with his legal services?

[DEFENDANT]: Yes.

THE COURT: Do you understand you could plead not guilty and have a jury trial?

[DEFENDANT]: Yes.

THE COURT: Do you understand at the trial you'd have the right to confront and cross-examine the witnesses against you?

[DEFENDANT]: No, I didn't know that.

THE COURT: Okay. If you had a jury trial, the State would have to call witnesses to prove whatever it is they're gonna charge you with, and at that trial you'd have the right, through your counsel, to ask those witnesses questions and cross-examine them.

[DEFENDANT]: Oh, okay. Yes.

. . . .

THE COURT: Okay. You're doing this as part of a plea arrangement, is that correct?

[DEFENDANT]: Yes.

THE COURT: And it reads as follows: that Count 1 will be reduced to the possession charge; Count 2 will be reduced to the Class 3 misdemeanor, so you got a charge reduction; the Court will impose any terms deemed appropriate; and you will reserve your right to appeal your denial of the pretrial motion to suppress pursuant to statute.

Is that your full plea and sentencing arrangement?

[DEFENDANT]: Yes.

THE COURT: Do you accept those?

[DEFENDANT]: Yes.

> THE COURT: Other than what's written here, has anybody promised you anything else or threatened you in any way to make you enter those pleas against you [sic] wishes?
>
> [DEFENDANT]: No.
>
> THE COURT: Do you feel like you're doing this of your own free will and understand what you're doing?
>
> [DEFENDANT]: To my competency, yes.
>
> THE COURT: Okay. Well, your competency was addressed by the medical staff and it's in the court file, so do you enter this plea of your own free will and understand what you're doing today?
>
> [DEFENDANT]: Yes. To my competency, yes.

We are unable to agree with Defendant that any or all of the above-quoted portions of the proceedings required the trial court to *sua sponte* conduct a hearing on his competency. Throughout most of his testimony at the suppression hearing, Defendant offered lucid responses to the questions posed to him concerning the events of 18 November 2012 leading up to his arrest. He further expressed a general understanding of the conditions of his plea agreement during his colloquy with the trial court. Moreover, his trial counsel related to the court his belief that Defendant was, in fact, competent.

North Carolina courts have rejected similar arguments from defendants under analogous circumstances. For example, in *State v. Heptinstall*, 309 N.C. 231, 306 S.E.2d 109 (1983), the defendant was convicted of first-degree murder, armed

robbery, and felonious breaking or entering. On appeal, he argued that portions of his testimony were so "bizarre and incoherent" that the trial court erred in failing to *sua sponte* initiate a competency hearing. *Id.* at 235, 306 S.E.2d at 111-12. In determining that the trial court had not erred, we stated as follows:

> We have carefully examined defendant's testimony at both phases of his trial. Portions of defendant's testimony at both phases were bizarre and nonsensical. . . . Almost all of his testimony during the guilt phase indicates that defendant was accurately oriented regarding his present circumstances. He knew the offenses with which he was charged. He was able to recall with great detail past events and was able to respond meaningfully to questions put to him regarding the present charges against him. . . . Defendant's sentencing phase testimony was similarly responsive and sensible when it related to the charges against him. It became nonsensical and bizarre when the subject turned to matters of morality and religion.
>
> . . . .
>
> Viewing defendant's testimony as a whole, in light of some of the purposes for which the testimony was offered, and taking into account defendant's tendency to be manipulative, we conclude the testimony would not have suggested to the trial court that defendant then lacked capacity to proceed. There was, therefore, no duty of the trial court on its own motion to reopen this question.

Id. at 236-37, 306 S.E.2d at 112.

Similarly, in *Staten*, the defendant, who was charged with first-degree murder and armed robbery, argued on appeal that the trial court erred in failing to intervene *sua sponte* and conduct a competency hearing based upon his "psychotic testimony"

and mental health history. *Staten*, 172 N.C. App. at 681, 616 S.E.2d at 656. We initially observed the following regarding a trial court's duty to inquire into a defendant's competency:

> Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant to a *bona fide* doubt inquiry. 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.

Id. at 678-79, 616 S.E.2d at 655 (internal citations and quotation marks omitted). We proceeded to hold that

> the evidence in the record pertaining to defendant's competency at the time of his trial, including the trial transcript, defendant's voluntary testimony and the extensive medical records and expert testimonies, all suggest there was never a "*bona fide* doubt" as to defendant's competency to stand trial. . . .
>
> Reviewing the trial transcripts and other records of this proceeding we cannot conclude the trial court had before it sufficient objective facts showing defendant lacked the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense at the time his trial commenced. Instead, we hold that defendant had the capacity to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to assist his counsel. . . . [W]here, as here, the defendant has been examined relative to his capacity to proceed, and all evidence before the court indicates that he has that capacity, he is not denied due process by the failure of the

> trial judge to hold a hearing. This assignment of error is overruled.

Id. at 683-84, 616 S.E.2d at 657-58 (internal citations, quotation marks, brackets, and ellipses omitted).

In the present case, the trial court observed Defendant (1) recount the events of 18 November 2012 at the hearing in a cogent manner; (2) give rational and responsive answers to the questions posed to him for the majority of the hearing; and (3) acknowledge during the plea colloquy his understanding of the proceedings. In addition, the trial court reviewed the portion of Defendant's case file containing the evaluation of Defendant's competency conducted by Dr. Ryan along with Judge Gregory's prior order finding that Defendant was competent.

Notably, Defendant's trial counsel expressly informed the court that he personally had no concerns over Defendant's competency. "It is well established that the court gives significant weight to defense counsel's representation that a client is competent, since counsel is usually in the best position to determine if his client is able to understand the proceedings and assist in his defense." *Id.* at 678, 616 S.E.2d at 654.

While several of Defendant's statements during the hearing were not rational, such isolated comments fell short of requiring the trial court — on its own motion — to conduct a hearing regarding his competency. *See id.* at 681, 616 S.E.2d at 656 ("In the instant case, evidence before the trial court was not so substantial as to indicate

defendant was mentally incompetent. . . . Although sometimes a bit bizarre, defendant's testimony for the most part was coherent and displayed defendant's understanding of the proceedings."). Nor did the incident in which Defendant fell backward onto the floor on the first day of the hearing create such a duty on the part of the trial court.

Furthermore, while the trial court did not conduct a formal hearing on the competency issue, it is abundantly clear from the trial transcript that the court did not ignore the question of Defendant's competency once the issue was presented. The trial court (1) reviewed the portion of Defendant's case file addressing his competency to stand trial; (2) suspended proceedings for the day after Defendant's fall; (3) made inquiry at the outset of the proceedings the following day as to Defendant's ability to go forward; (4) noted that based upon its own observations of Defendant throughout the proceedings Defendant had appeared to provide lucid and cogent answers to the questions posed to him; and (5) conducted a plea colloquy with added emphasis on Defendant's understanding of the proceedings.

In short, far from failing to address the competency issue, the trial court explored the subject with both Defendant and his attorney, satisfying itself that Defendant was actually competent to continue with the proceedings in connection with his guilty plea. Defendant has failed to establish that the trial court erred in failing to conduct a more formal hearing into Defendant's competency on its own

motion. *See State v. Beckham*, 145 N.C. App. 119, 125, 550 S.E.2d 231, 236 (2001) ("Upon careful review of the record, we conclude that there was insufficient evidence before the trial court in the instant case indicating defendant's mental incompetence, and the trial court was, therefore, under no constitutional duty to institute a competency hearing *sua sponte*[.]").

Conclusion

For the reasons stated above, we affirm the judgment of the trial court.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).