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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDRIC FERGUSON,

Defendant and Appellant.

A133113

**(San Mateo County
Super. Ct. No. SC072333A)**

Frederic Ferguson appeals from a judgment of conviction and sentence imposed after a jury convicted him of possession of cocaine base and possession of narcotics paraphernalia. (Health & Saf. Code, §§ 11350, subd. (a), 11364.) He contends: (1) the court erred by depriving him of his right to represent himself and by ordering competency proceedings, which resulted in a delay of his trial in violation of his statutory and constitutional rights to a speedy trial; and (2) the evidence against him should have been suppressed because police recovered it as the result of an unlawful vehicle stop. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

Ferguson was charged in an information with felony possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)), being under the influence of cocaine base, a misdemeanor (Health & Saf. Code, § 11550, subd. (a)), and misdemeanor possession of narcotics paraphernalia (Health & Saf. Code, § 11364). The information further alleged that Ferguson had a prior “strike” conviction (Pen. Code, § 1170.12, subd. (c)(1)), four prior convictions that rendered him ineligible for probation (Pen. Code, § 1203,

subd. (e)(4)), and two prior convictions for which he had served a prison term (Pen. Code, § 667.5, subd. (b)).

Ferguson represented himself at his preliminary hearing. At his arraignment on December 7, 2010, however, the court appointed counsel for him over his objection, and counsel expressed doubt in Ferguson’s mental competency and moved for a competency hearing. (See Pen. Code, §§ 1367-1368.) The court suspended criminal proceedings and appointed two doctors to evaluate Ferguson. (See Pen. Code, § 1368.)

On April 4, 2011, after Ferguson had refused to meet with either doctor, the court found Ferguson competent to stand trial and reinstated criminal proceedings. The court also granted Ferguson’s motion to represent himself. (*Faretta v. California* (1975) 422 U.S. 806 (*Faretta*)). Ferguson entered a plea of not guilty and denied the prior-conviction allegations.

On May 9, 2011, Ferguson filed a “resubmit[ed]” motion to dismiss the charges for “violation of statutory deadlines . . . [Pen. Code] § 1382, [Pen. Code] § 1049.5” – ostensibly speedy trial grounds – alleging a wide variety of matters. The court denied the motion on May 20, 2011.

Also on May 9, 2011, Ferguson filed a motion to suppress evidence. (Pen. Code, § 1538.5.) The prosecution filed an opposition to the motion and, on May 19, 2011, after an evidentiary hearing, the court denied the suppression motion.

A jury trial commenced on May 31, 2011. On June 6, 2011, the jury found Ferguson guilty on the charge of possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)) and the charge of misdemeanor possession of narcotics paraphernalia (Health & Saf. Code, § 11364). The jury found him not guilty on the misdemeanor under-the-influence charge (Health & Saf. Code, § 11550, subd. (a)).¹ On June 7, 2011, at the conclusion of a bifurcated trial on Ferguson’s prior-conviction allegations, the jury found the allegations true.

¹ Because Ferguson challenges pre-trial rulings only, we do not set forth the evidence underlying his conviction. There is no dispute that substantial evidence supported the jury’s verdict.

On August 1, 2011, the date set for sentencing, the court declared a doubt as to Ferguson's mental competency, suspended criminal proceedings, appointed counsel for Ferguson for purposes of the competency proceedings, and appointed doctors to examine Ferguson. (Pen. Code, §§ 1367, 1368.)

On August 29, 2011, the court ruled that Ferguson was not mentally incompetent, noting that Ferguson had refused to cooperate with the appointed doctors and they were therefore unable to form opinions. The court reinstated criminal proceedings. Ferguson again moved to represent himself, but the court denied the motion.

On its own motion, the court struck Ferguson's prior "strike" conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. (See Pen. Code, § 1385.) The court then granted Ferguson three years' supervised probation on the cocaine possession conviction, stayed sentence with regard to his two prior prison terms, and sentenced him to 447 days in county jail on the conviction for possession of narcotics paraphernalia, with 447 days of credit for time served.

This appeal followed.

II. DISCUSSION

We consider each of Ferguson's contentions in turn.

A. *Self-Representation, Competency, and Speedy Trial*

Ferguson contends that, at his arraignment, the trial court erred in appointing counsel for him and denying him his right to self-representation. He further contends the court erred in instituting competency proceedings without evidence that he was incompetent as defined in Penal Code section 1367. He adds that the competency proceedings caused a delay, requiring him to spend an extra 113 days in county jail before trial, and denied him his rights to a speedy trial. We first examine the background of these pretrial proceedings in greater detail, and then address Ferguson's arguments.

1. *Background*

The felony complaint was filed against Ferguson on November 4, 2010. On November 8, 2010, he was found capable of representing himself and refused to waive time. At a preliminary hearing before Judge Cretan on November 22, 2010, Ferguson

refused to waive time and represented himself. Ferguson was held to answer, and the court strongly suggested that Ferguson request counsel at his arraignment.

a. Appointment of private defender and order of competency proceedings

On December 7, 2010, Ferguson appeared in court for his arraignment before Judge Novak. Because of the importance of the exchange, we quote it at length from the reporter's transcript: "THE COURT: Line 4, is this the gentleman who was recalcitrant this morning? Fredric Ferguson. Mr. Ferguson, good morning. The matter is on for arraignment following your preliminary hearing. Is it still your desire to represent yourself or would you like me to appoint an attorney? [¶] DEFENDANT: Your Honor, I have some documents for the court. [¶] THE COURT: Just answer my question. This is just the arraignment. [¶] DEFENDANT: Ma'am, I am trying to answer it if you would let me talk. [¶] THE COURT: It's a yes or no. Did you want to continue to represent yourself? [¶] DEFENDANT: Ma'am, I am trying my best, but right now my life is in danger, and the court is not paying any attention to what I'm trying to explain. [¶] THE COURT: Would you like me to appoint an attorney to represent you? [¶] DEFENDANT: Well, I have a motion to dismiss and a complaint. [¶] THE COURT: Would you like me to appoint an attorney to represent you, sir, or would you like to represent yourself? [¶] DEFENDANT: No, ma'am. I would like my motion responded to. I sent it to the court. [¶] THE COURT: Today is not a date for motions, Mr. Ferguson. [¶] DEFENDANT: Today is the date to railroad people, is that what you saying then? Because the court hasn't listened to me since I have been here. [¶] THE COURT: All I need is an answer to this question. Would you like me to appoint an attorney to represent you? [¶] DEFENDANT: No, ma'am. I do not want anyone to send me to prison. [¶] THE COURT: Did you want to represent yourself in this matter? [¶] DEFENDANT: Okay. Ma'am— [¶] THE COURT: Yes or no. [¶] DEFENDANT: *I have no answer for that, ma'am.* [¶] THE COURT: I'm going to appoint the Private Defender to represent Mr. Ferguson. [¶] DEFENDANT: No. I will not deal with a Private Defender. I have already told you that. It's in my motion. I have given you

evidence, but the court is ignoring me. [¶] MS. JACOMB [PRIVATE DEFENDER]: In the lower court, he was granted *Faretta* status. [¶] THE COURT: I know that. I just asked him if he wanted to represent himself and *he said I have no answer for that*.

[¶] DEFENDANT: Okay, ma'am, because you won't let me say anything.

[¶] MS. JACOMB: Mr. Ferguson, this is your arraignment. The only thing that happens at arraignment is you find out who your lawyer is going to be and enter your plea and set dates for everything else. You don't argue motions now. [¶] (Talking over each other.)

[¶] THE COURT: One more person yells in this courtroom and that person gets removed. Do I make myself perfectly clear? [¶] DEFENDANT: Yes. [¶] MS. JACOMB: Mr. Ferguson, do you want the Private Defender to represent you?

[¶] DEFENDANT: I am pro per. [¶] THE COURT: Okay. That was my question. Do you want to continue to represent yourself? [¶] DEFENDANT: *Okay. Would the court accept a motion to dismiss?* [¶] MS. JACOMB: Not today. [¶] THE COURT: Not today. [¶] MS. JACOMB: We have to set a date for that. You enter your plea and you set dates. [¶] DEFENDANT: Okay. [¶] THE COURT: Ms. Jacomb, I am appointing the Private Defender today to handle the arraignment, and should he seek to represent himself, he is entitled to do that. I'm not comfortable with a finding that he is capable of handling the arraignment today. He will have an attorney to represent him today for the arraignment. Ms. Jacomb— [¶] MS. JACOMB: Mr. Ferguson, we are actually trying to protect your rights. [¶] DEFENDANT: No, you are not protecting me. You got custody status. [¶] THE COURT: Mr. Ferguson, please don't interrupt. [¶] MS. JACOMB: I am making a 1367, 1368 motion. I don't believe Mr. Ferguson is able to assist himself or anybody else in presenting a proper defense. [¶] THE COURT: All right. We will then suspend criminal proceedings. I will appoint two doctors to evaluate Mr. Ferguson. I will appoint Dr. Howard Fenn. His phone number is . . . [¶] DEFENDANT: Okay. I still have a right to a speedy trial, and that's what I'm asking for. I have a right to refuse. I will not talk to none of your set of doctors. [¶] THE COURT: He can be removed. [¶] DEFENDANT: You should have left me in there anyway. This here is like the

1950's. Gonna tell me some shit like that.” (Italics added.) The court appointed the second doctor and continued the matter for receipt of the doctors’ reports.

b. Setting of the competency hearing

On January 28, 2011, attorney O’Brien appeared for Ferguson, over his objection. Judge Novak noted that Ferguson had refused to meet with either doctor. The court then set the matter for a competency hearing, with agreement of defense counsel. Ferguson asked why the court was “forcing an attorney” on him, and the court explained that, because a doubt was expressed as to his competency, he had to have an attorney for the competency proceedings. He would again be able to represent himself, the court added, if he were found competent. The court further observed that Ferguson “presented such difficulty every time” he appeared in court that she “underst[oo]d” and “concur[red] with the suspension of the criminal proceedings.” Ferguson asserted that the “attorneys was [sic] forced upon [him] to keep the court from responding to [his] three motions.”²

c. Finding of competency and grant of Faretta motion to self-represent

After a continuance, the competency hearing took place on April 4, 2011. Ferguson testified. The court (Judge Parsons) found Ferguson competent to stand trial and reinstated criminal proceedings. Judge Parsons also granted Ferguson’s motion to represent himself. (*Faretta, supra*, 422 U.S. 806.) Ferguson entered a plea of not guilty and denied the prior-conviction allegations.

d. Ferguson’s motion to dismiss on speedy trial grounds

In May 2011, Ferguson filed a motion to dismiss the case on speedy-trial grounds. The motion – over 20 handwritten pages stating various rights, deprivations, and accusations – included a citation to the Sixth Amendment right to a speedy trial and the *Faretta* right of self-representation.

² As the court set the date for the competency hearing, Ferguson asked, “Why don’t you take me out and hang me, man;” when the court explained that his attorney needed adequate time to prepare for the competency hearing, Ferguson replied, “Oh, to make up some stuff to stick on a brother.”

The trial court denied the dismissal motion on May 20, 2011. Again, for clarity we set forth in full detail the court's basis for its ruling: "Mr. Ferguson, in trying to diffuse what is contained within your motion, it is a perfect example as to the risks defendants take when they elect to represent themselves. Although the Constitution certainly provides you that opportunity, your motion has been described by research attorneys who have reviewed it as lengthy and at times incoherent. The arguments that you raise in your motion are very difficult to decipher, and it is not the role of the court to play a guessing game simply because you choose to represent yourself. ¶] But what I have opined is that the legal tenor of your motion is that this case should be dismissed because your speedy trial rights have been denied by virtue of the fact that your trial has not occurred within 60 days of your arraignment. I think it is important to set forth a chronology of what has happened in this case since the date of your arraignment. ¶] First and foremost, the charges stem from an offense that—a complaint was filed on November 4th, 2010. The defendant had a preliminary hearing. He was held to answer at that preliminary hearing. He appeared in this department on December 7, 2010, for arraignment. The court declared a doubt pursuant to 1368—1367, 68 of the Penal Code. ¶] As required, although the defendant was pro per, those proceedings required an attorney to represent a defendant for whom a doubt has been declared. The Private Defender was appointed. Ms. O'Brien was designated the attorney at that time. ¶] On April 4th, 2011, a competency hearing was held before Judge Parsons, and the court found that the defendant was competent to stand trial. At the time of the defendant's arraignment on December 7, the 60 day window in which statutorily, and it is a statutory requirement that the trial must be set, was essentially tolled and did not begin to run because criminal proceedings were suspended on the court's declaration of a doubt as to your competency, Mr. Ferguson. ¶] And the criminal proceedings remained suspended until April 4 when Judge Parsons found that you were competent to proceed to trial. ¶] On that date, the matter was set on a time not waived basis, and, again, that requires the setting within the statutory time limit of 60 days, and your trial is set for Monday, May 23rd, which is well within the 60 day time frame. ¶] So because of those reasons,

there is no legal basis to grant the speedy trial motion that you have filed seeking to have the matter dismissed.” The court also addressed other contentions in Ferguson’s motion, finding none of them to warrant dismissal. (None of the other contentions in Ferguson’s motion are at issue in this appeal.)

Ferguson then argued that defense counsel had been forced on him and that counsel “conspired and attempted to have defendant ruled incompetent to stand trial,” even though “[d]efendant was able to understand the nature of the proceedings, and defendant could have allegedly assist[ed] in the alleged conduct of [the] defense in a rational manner if defendant had chosen,” although he chose not to because of his “irreconcilable differences with the Private Defender office.” Although he had “never waived time,” several months had passed and he still had not been tried, and the competency proceeding “must not be a factor because criminal proceedings should not have been suspended.” Judge Novak acknowledged: “You have made a very clear record here this morning.”

2. *Issue One: Denial of Self-Representation*

Ferguson contends he was denied his right to represent himself beginning at the arraignment on December 7, 2010, and continuing through April 6, 2011, after his *Faretta* request was granted.

In criminal proceedings, the right to counsel is guaranteed at an arraignment, as well as at the preliminary hearing and trial. (*People v. Cummings* (1967) 255 Cal.App.2d 341, 345.) On the other hand, criminal defendants have a due process right to represent themselves. (*Faretta, supra*, 422 U.S. 806.) To invoke the *Faretta* right of self-representation, however, a defendant must do so unequivocally. (*People v. Clark* (1992) 3 Cal.4th 41, 98.) Furthermore, self-representation may be denied to a defendant who is not competent to represent himself, even if he is competent to stand trial. (*Indiana v. Edwards* (2008) 554 U.S. 164, 177-178 (*Edwards*) [federal Constitution permits denial of self-representation to criminal defendants not competent to represent themselves due to severe mental illness, even if they are competent to stand trial]; *People v. Johnson* (2012)

53 Cal.4th 519, 531 [California court may deny self-representation in the situation where *Edwards* permitted such a denial].)

If a defendant has previously waived his right to counsel after being brought before a magistrate and advised of the filing of a criminal complaint, the trial court is required by Penal Code section 987 to readvise the defendant of his right to counsel when the defendant is arraigned in superior court on the information and to secure another waiver of the defendant's right to counsel. (*People v. Crayton* (2002) 28 Cal.4th 346, 360-361.)

Here, Judge Novak asked Ferguson at his arraignment if he wanted counsel. (Pen. Code, § 987, subd. (a).) While Ferguson now argues that he made it “perfectly clear that he refused to be represented by the Private Defender program and wished to represent himself,” the record does not show an unequivocal invocation of his right of self-representation, or a clear waiver of his right to counsel.

The first four or so times Judge Novak asked Ferguson whether he wanted counsel appointed to represent him or wanted to represent himself, Ferguson did not respond to the question with any direct answer. When the court asked Ferguson for a fifth time, “Would you like me to appoint an attorney to represent you, sir, or would you like to represent yourself?”, Ferguson answered equivocally, “No, ma’am. I would like my motion responded to. I sent it to the court.” Ferguson then told the court he did not want an attorney appointed to represent him, but when the court followed up by asking if he wanted to represent himself, Ferguson said, “I have *no answer* for that, ma’am.” After the court indicated it would appoint the Private Defender to represent him, Ferguson said he would not deal with the Private Defender and began talking over the court and, apparently, yelling. When attorney Jacomb asked him if he wanted the Private Defender to represent him, he said “I am pro per;” but when the court promptly asked, “Do you want to continue to represent yourself,” Ferguson did not say “yes” or “no,” but instead replied equivocally: “Okay. Would the court accept a motion to dismiss?” It is not clear whether “[o]kay” meant “yes” to the court’s question or was instead tied to (or conditioned upon) his request to submit a motion to dismiss. Certainly the court – who

observed Ferguson firsthand – was not satisfied with his answers, as it promptly appointed the Private Defender to represent Ferguson for the arraignment.

Based on the record, it was reasonable for the court to conclude that Ferguson had not unequivocally invoked his right to self-representation or waived his right to counsel. The court then acted to protect Ferguson’s right to counsel – at least at his arraignment – by “appointing the Private Defender today to handle the arraignment. . . . He will have an attorney to represent him today for the arraignment.”

Ferguson contends the court could have tried to determine if he suffered from a severe mental illness that rendered him incompetent to represent himself, and it erred by revoking his right of self-representation without such evidence. His argument is unpersuasive. In the first place, self-representation may be denied if there is no unequivocal invocation of the right, whether the defendant is incompetent to represent himself or not. Furthermore, in our view the court’s appointment of counsel at the arraignment served to preserve Ferguson’s rights and protect his interests in case he *was* incompetent to represent himself: indeed, Ferguson’s inability to understand the nature of the arraignment and respond to the court’s questions – or his refusal to abide by the nature of the arraignment and respond to the court’s questions – suggested a possible incompetence that could be examined by the appointed counsel. As the court observed, it was “not comfortable with a finding that [Ferguson] is capable of handling the arraignment today.” In any event, Ferguson’s inability or refusal to state directly and unequivocally that he wanted to represent himself, precludes a finding of judicial error.

3. *Issue Two: Order for Competency Proceedings*

Ferguson next contends he was required to undergo a competency proceeding without evidence sufficient for the court to order one. As a result, he urges, the competency determination should not toll the period for a speedy trial.

Trial of an incompetent defendant violates the due process clause of the Fourteenth Amendment to the United States Constitution and article I, section 15 of the California Constitution. (*People v. Hayes* (1999) 21 Cal.4th 1211, 1281.) Accordingly, Penal Code section 1367 provides: “A person cannot be tried or adjudged to punishment

while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of a mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (§ 1367, subd. (a); see *Cooper v. Oklahoma* (1996) 517 U.S. 348, 354 [under the federal Constitution, a criminal defendant may not be tried unless he or she has an adequate ability to consult with counsel and a rational and factual understanding of the proceedings].)³

Section 1368 sets forth the procedure for ordering competency proceedings. The statute provides in part: “If, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.” (§ 1368, subd. (a).)

Section 1368, subdivision (b) advises how to proceed if defense counsel tells the court that the defendant may be mentally incompetent: “If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant’s mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369.”

In the matter before us, it is unclear whether the court actually expressed a doubt, within the meaning of section 1368, as to Ferguson’s competence to stand trial at the arraignment. Judge Novak did not explicitly declare such a doubt. Instead, she stated at the arraignment that she was “not comfortable with a finding that [Ferguson] is capable

³ Except where otherwise indicated, all statutory references hereafter are to the Penal Code.

of handling the arraignment today,” which seems to pertain more to Ferguson’s competence to *represent himself* (in tandem with his failure to state unequivocally that he wanted to represent himself) than his competence to be *tried*. But the court might well have been thinking along those lines: the court immediately suspended criminal proceedings once the Private Defender indicated a doubt as to Ferguson’s ability to assist in his defense and moved for a competency hearing; and at the ensuing January 28 hearing, Judge Novak “concur[red]” with the suspension of criminal proceedings at the arraignment. Furthermore, at the hearing on the motion to dismiss in May 2011, Judge Novak stated that “the *court* [had] declared a doubt pursuant to 1368 – 1367-68 of the Penal Code” at the arraignment and the “criminal proceedings were suspended on the *court’s* declaration of a doubt as to [Ferguson’s] competency.” (Italics added.)

Even if the court did not state a doubt as to Ferguson’s mental competence at the arraignment, once defense counsel expressed doubt in Ferguson’s competence by “making a 1367, 1368 motion” because she did not “believe Mr. Ferguson [was] able to assist himself or anybody else in presenting a proper defense,” the court had the authority to “recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.” (§ 1368, subd. (a).) The court also had authority to order a competency hearing. (§ 1368, subd. (b).)

Ferguson argues that more than bizarre actions or statements by a defendant, or statements by defense counsel that the defendant is incapable of cooperating in his defense, are necessary to constitute substantial evidence of incompetency, such that a section 1368 hearing is mandatory. (*People v. Laudermilk* (1967) 67 Cal.2d 272, 285; *People v. Ramirez* (2006) 39 Cal.4th 398, 430-431; see also *People v. Johnson* (1978) 77 Cal.App.3d 866, 870-871 [a finding of incompetency solely on evidence of a defendant’s refusal to cooperate is unwarranted].) It is true that a section 1368 hearing is *mandatory* only if there is substantial evidence of present mental incompetence. (E.g., *People v. Pennington* (1967) 66 Cal.2d 508, 518 (*Pennington*).) However, where there is less than substantial evidence of insanity or incompetence, the trial court still *may* conduct a

section 1368 hearing: “the trial judge has discretion on whether to grant such a hearing during the course of a trial.” (*People v. Boyd* (1971) 16 Cal.App.3d 901, 907; *Pennington, supra*, 66 Cal.2d at pp. 515, 518; *People v. Stiltner* (1982) 132 Cal.App.3d 216, 222-223.)

Here, the court did not abuse its discretion in this regard. Although Ferguson contends there was no evidence that he suffered from a mental condition rendering him incapable of understanding the proceedings or assisting in his defense, there was indeed such evidence. Ferguson refused to give a direct answer to most of the court’s questions, believed that his life was “in danger,” stated that the court was trying to “railroad” him by not hearing his motions when he wanted to bring them, talked over and yelled at the court, and never seemed able to comprehend that the proceeding at which he was appearing was for the purpose of entering a plea and determining whether he wanted an attorney rather than submitting motions. (See *People v. Danielson* (1992) 3 Cal.4th 691, 727 [““An appellate court is in no position to appraise a defendant’s conduct in the trial court as indicating insanity, a calculated attempt to feign insanity and delay the proceedings, or sheer temper””], overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)

The trial court did not abuse its discretion in suspending the criminal proceedings to determine Ferguson’s mental competence under section 1368.

4. *Issue Three: Speedy Trial*

Ferguson contends he was denied his statutory right to be tried within 60 days of arraignment and denied his constitutional right to a speedy trial. (§ 1382, subd. (a)(2).) He points out that he refused to waive time for trial, was arraigned on December 7, 2010, and was therefore entitled to commencement of trial no later than February 7, 2011, but trial did not begin until May 31, 2011.

A trial may be delayed beyond the statutory limits if there is “good cause.” (§ 1382.) Ferguson contends there was no good cause to extend the time limit, because the delay was the result of two void orders: the denial of Ferguson’s right to represent himself, and the institution of competency proceedings under section 1368.

For reasons stated *ante*, we find no error in the appointment of counsel at the arraignment and in the institution of competency proceedings. The competency proceedings provided good cause for the delay in bringing Ferguson to trial and tolled the period for trial to commence. Neither the failure to bring Ferguson to trial by February 7, 2011, nor the resulting additional days of incarceration before trial compel reversal.

B. *Suppression Motion*

Ferguson's other major contention is that the police had no lawful basis for stopping his car, and if the police had not stopped his car they would not have found the rocks of cocaine and narcotics paraphernalia. Therefore, Ferguson argues, his motion to suppress evidence should have been granted and his conviction should now be reversed.

1. *Law*

A temporary detention of a motorist during a traffic stop by police constitutes a seizure within the meaning of the Fourth Amendment. (*Whren v. United States* (1996) 517 U.S. 806, 809-810.) The stop is constitutionally permissible if the officer has a "reasonable suspicion that the driver has violated the law;" but the "officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity.'" ' ' (*People v. Wells* (2006) 38 Cal.4th 1078, 1082-1083.)

2. *Evidence*

On November 4, 2011, East Palo Alto Police Officer Alcaraz was on patrol around 1:23 a.m., in full uniform and in a marked police vehicle. He proceeded eastbound on Euclid Avenue toward Bell Street. At a stop light (or sign), he heard loud music coming from a car in front of his vehicle. The car turned right onto Bell Street. Alcaraz stopped his vehicle at the stop sign and let the car go on. When the car was "three houses past the intersection," "midway" down Bell Street, the officer could still hear the music "coming from" the car. Alcaraz estimated that, at this point, the car was more than 50 feet away from him – "probably about 80 to a hundred feet." Alcaraz therefore believed that there was a violation of the Vehicle Code "for having excessive music." (See Veh. Code, § 27007.)

Officer Alcaraz made a right turn onto Bell Street, caught up with the car and, at the intersection with University Avenue, activated his emergency lights in order to initiate a traffic stop. The car stopped in the middle of University Avenue. Alcaraz then “got on [his] loudspeaker and told the driver to pull over to the side of the road,” and the driver complied. Alcaraz noted that the driver appeared to be rocking from one side to the other.

Officer Alcaraz made contact with the driver (identified to be Ferguson) at the car’s driver-side window. Alcaraz asked Ferguson for his driver’s license and related paperwork. According to the officer: “During my initial contact and speaking with [Ferguson] at the driver’s side window, I first noticed that his complexion appeared to be sweaty, while we spoke, he was very fidgety with his arms and hands. What I mean by fidgety, it seemed that he was unable to sit still as he is now, and he was moving his arms back and forth constantly.” Ferguson handed Alcaraz his driver’s license and began looking around his vehicle for the other documents. Eventually Ferguson told Alcaraz that he had just purchased the car and did not have any paperwork for it.

Because Ferguson remained “fidgety,” Officer Alcaraz asked him if he used narcotics recently. Ferguson responded that he had smoked crack a day earlier. Alcaraz asked Ferguson follow-up questions and concluded, based on his experience, that Ferguson was under the influence of a controlled substance.

Officer Alcaraz placed Ferguson under arrest. Alcaraz told Ferguson why he was under arrest and that he intended to give Ferguson more tests. Ferguson became “very upset, very vocal and started yelling obscenities” at Alcaraz and the other officers who had arrived at the scene.

Officer Alcaraz informed Ferguson that the police would have to tow his vehicle. Ferguson asked if the officers would contact his father to get the car; Alcaraz used Ferguson’s cell phone to call Ferguson’s father and learned that the father would not pick up Ferguson’s vehicle.

Officer Alcaraz then conducted a “tow inventory” search of the car. During the search, in the driver-side door pocket, the officer found a wadded-up dollar bill; inside

the bill were three white rocks that he suspected to be cocaine base. Alcaraz also found two glass pipes inside the car, underneath the hand brake.

On cross-examination, Ferguson asked Officer Alcaraz why he did not issue a citation for the Vehicle Code violation, and Alcaraz replied, “because I arrested you.”

Ferguson testified that he had not played music “too loud,” although he did have his radio on with the windows down. He claimed the officer’s stopping him with bright lights made him afraid that someone was after him, and he did not know about the cocaine and pipes found in his car.

3. *Analysis*

Vehicle Code section 27007 provides: “No driver of a vehicle shall operate, or permit the operation of, any *sound amplification system which can be heard outside the vehicle from 50 or more feet* when the vehicle is being operated upon a highway, unless that system is being operated to request assistance or warn of a hazardous situation.

[¶] This section does not apply to authorized emergency vehicles or vehicles operated by gas, electric, communications, or water utilities. This section does not apply to the sound systems of vehicles used for advertising, or in parades, political or other special events, except that the use of sound systems on those vehicles may be prohibited by a local authority by ordinance or resolution.”

Officer Alcaraz had a reasonable suspicion sufficient to stop Ferguson’s car and detain him for a potential violation of Vehicle Code section 27007. Because he heard music coming from Ferguson’s vehicle from more than 50 feet away, it was reasonable for him to suspect that the music might be coming from a sound amplification system in violation of the statute. He was therefore entitled to proceed to stop the vehicle and investigate.

Ferguson argues that, as a matter of law, Officer Alcaraz had no reasonable suspicion to stop his car because a “sound amplification system” within the meaning of Vehicle Code section 27007 pertains only to sound systems mounted outside a car, not a car radio or stereo inside the car. He asserts: “On its face, [Vehicle Code] section 27007 does not regulate the noise made by a car radio or car stereo intended to be used for the

entertainment of the occupants of the vehicle. It was clearly intended to regulate the use of *external* sound systems mounted on a vehicle, such as those sometimes used in parades or political rallies, and to allow local authorities to regulate such uses.” (Italics added.)

The plain language of Vehicle Code section 27007, however, is that it pertains to “*any* sound amplification system which can be heard outside the vehicle from 50 or more feet.” (Italics added.) The statute does not limit sound amplification systems to those externally mounted; to the contrary, as respondent asserts, “sound amplification system” seems to include a radio or stereo located inside a car, as long as it is heard outside.⁴

In any event, while the parties argue at length about the language and legislative history of the statute, we need not consider further the precise meaning of “sound amplification system” since, even if it means what Ferguson now claims it means, Officer Alvaraz had a reasonable suspicion to stop Ferguson’s vehicle in order to investigate whether the statute was violated.

The legal principle underlying Ferguson’s argument is that an officer does not have probable cause to stop a vehicle if the facts perceived by the officer do not constitute a violation as a matter of law, regardless of the officer’s subjective belief that they do. (*People v. White* (2003) 107 Cal.App.4th 636, 641, 643-644 [officer’s mistaken belief that the location of an air freshener and the absence of a license plate violated the Vehicle Code was insufficient to justify stop of vehicle]; see *In re Justin K.* (2002) 98 Cal.App.4th 695, 700; cf. *United States v. Wallace* (9th Cir. 2000) 213 F.3d 1216, 1217, 1220-1221 [probable cause did exist for the stop of a vehicle, where the officer was correct in his belief that the car’s window tinting was illegal, even though he was wrong about why].)

In the matter before us, however, we do not have a situation where the facts on which Officer Alvaraz relied could not constitute a violation as a matter of law. The

⁴ Respondent filed a motion for judicial notice of the legislative history of Vehicle Code section 27007. We deferred ruling on the motion pending our consideration of the merits. Ferguson does not object to the motion for judicial notice, and we grant it at this time.

officer testified that he stopped Ferguson’s car because he could hear loud music “coming from [Ferguson’s] vehicle” from over 50 feet away. Those facts *could* be the basis of a violation of Vehicle Code section 27007. Nothing in those facts precluded a violation of Vehicle Code section 27007, and there was no other evidence at trial that precluded a violation of Vehicle Code section 27007 either, even if (as Ferguson now claims) the statute applies only to external amplification systems: for example, Alvaraz did not testify that the music was coming specifically from *inside* Ferguson’s vehicle, or that he knew Ferguson’s vehicle did *not* have an external amplification system. Simply put, the facts known to the officer indicated that Ferguson *may* be involved in unlawful activity, and that is all that was needed to stop the car. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299; see *People v. Durant* (2012) 205 Cal.App.4th 57, 62-63 [traffic stops are investigatory detentions that need only be supported by suspicion of a Vehicle Code violation or criminal activity] (*Durant*); *People v. Logsdon* (2008) 164 Cal.App.4th 741, 746 [“[T]he question is not whether [the defendant] *actually* violated the statute. Rather, the issue was if some ‘objective manifestation’ that the person *may* have committed such an error was present. [Citation.]”].)

Similarly, there is no evidence that Ferguson did not in fact violate Vehicle Code section 27007 even if, as Ferguson claims, the statute pertains only to external sound amplification systems. Although Ferguson said at trial that his radio was on and his window was down, there was no evidence that he did not have an external speaker. And the reason Officer Alvaraz did not cite Ferguson for the Vehicle Code violation was because he arrested Ferguson on the drug charges, not because Ferguson was innocent of the Vehicle Code charge.⁵

⁵ Furthermore, even if Vehicle Code section 27007 pertained only to external amplification systems and Ferguson’s car did not have one, the evidence at trial did not preclude the conclusion that Officer Alvaraz believed, albeit mistakenly, that the music *was* coming from an external amplification system. (*Durant, supra*, 205 Cal.App.4th at p. 63 [“ ‘ ‘an officer’s mistaken factual belief, held reasonably and in good faith, can provide reasonable suspicion for a traffic stop’ ’ ”].)

In the final analysis, Ferguson fails to establish that he was detained without a reasonable suspicion that he had violated Vehicle Code section 27007. There is no dispute that he was then lawfully arrested on probable cause for being under the influence of narcotics, that the officer was then entitled to search for evidence of the crime, or that the officer was in any event entitled to have the vehicle towed and conduct an inventory search. Accordingly, Ferguson has not demonstrated error in the denial of his motion to suppress, or the admission of the evidence against him.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.