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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GHADIR GHANBARPOUR,

Defendant and Appellant.

D059736

(Super. Ct. No. SCE298700)

APPEAL from a judgment of the Superior Court of San Diego County, John M. Thompson, Judge. Affirmed.

Ghadir Ghanbarpour was convicted by a jury of residential burglary (Pen. Code,<sup>1</sup> §§ 459 & 460); assault with a deadly weapon (§ 245, subd. (a)(1)); stalking with a court order in effect (§ 646.9 subd. (b)); and violating a court order concerning domestic violence (§ 273.6, subd. (a)). The jury also found true weapons allegations under sections 12022, subdivision (b)(1) and 1192.7, subdivision (c)(23).

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Appellant was sentenced to a determinate term of five years in prison.

Appellant contends the trial court committed prejudicial error in denying his requests for continuance of the trial date and also contends the court erred in allowing him to go to trial dressed in jail clothing. We will find no abuse of discretion and no prejudice on either contention and will affirm the judgment.

Since this appeal does not raise any issue regarding the facts of the underlying offenses, we will omit the traditional statement of facts.

#### PROCEDURAL BACKGROUND

Appellant first appeared in this case on February 25, 2010, and was represented by the public defender through the preliminary hearing on March 23, 2010. After the preliminary hearing, appellant requested a Persian or Afghani interpreter for future proceedings. Appellant also brought a *Marsden*<sup>2</sup> motion, which was denied.

A trial date was set for May 24, 2010, however, it was continued until July 26, 2010. On June 8, 2010, the court again continued the trial, this time until September 13, 2010.

On July 26, 2010, appellant requested to relieve his counsel and represent himself. That motion was denied because of appellant's lack of proficiency in English. On July 30, 2010, the court reconsidered its decision on appellant's request, at which time appellant said he actually did not need an interpreter. The court granted appellant pro per status and requested services for him.

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

On August 13, 2010, the court reviewed appellant's discovery request and arranged for appellant's runner (Michael Hawkins) to pick up the discovery package and the preliminary hearing transcript. On August 19, 2010, appellant told the court he had discovery package, but was missing the preliminary hearing transcript. On August 23, 2010, appellant requested a further continuance, complaining of insufficient discovery and his recent pro per status. The court granted the motion, this time postponing the trial date until October 18, 2010.

On September 16, 2010, appellant filed a motion to continue the trial, again complaining about discovery of 911 transcripts, the need to interview character witnesses, and problems in the jail. On September 22, 2010, appellant filed a memorandum of points and authorities, again requesting a continuance for essentially the same reasons.

At a status conference on September 22, 2010, the court heard appellant and Mr. Hawkins. Hawkins explained the services that had been provided to appellant, including delivery of the prosecution's discovery and forms that may be necessary to obtain further services, including an investigator. Hawkins stated that appellant received the preliminary hearing transcript on August 25, 2010. A copy of the 911 transcript from the day of the events at issue was provided to appellant at the status conference. The court denied the request for a continuance.

On October 18, 2010, the date set for trial, appellant again requested a continuance. Appellant based the request on not having obtained an investigator and

wanting to interview six to eight potential character witnesses. The court again denied the motion and sent the case to a trial department (Judge Thompson).

When the case reached the trial department, appellant made a number of motions to continue. Those motions were based on more requests for discovery and the need for his and the victim's phone records. Judge Thompson denied the requests to continue the trial. On the next day, appellant again requested a continuance and filed what was described as a "boilerplate" motion for discovery. The continuance request was again based on the need for phone records from times and events that were not part of this case, and for time to have forensic examination of photographs, to obtain exculpatory evidence, and to file a motion to obtain expert evidence. The motions were again denied. Thereafter the case proceeded to trial.

## DISCUSSION

### I

#### *DENIAL OF CONTINUANCE MOTIONS*

Appellant contends the trial court abused its discretion in denying his multiple requests for continuance of the trial date. Our review of the record reveals one of the classic difficulties of pro per defendants. Appellant was not able to focus on this case. Many of his requests for information involved materials he already received. Several requests for information from the prosecutor were for documents, such as 911 transcripts from prior events and the appellant's own phone records, which the prosecutor neither had discovered nor planned to discover as they had little, if any, relation to the case. Appellant made multiple requests for continuance, but did not follow up on his request

for an investigator or do anything to subpoena witnesses. Many of his requests, such as those for forensic examination of photographs and for an undisclosed expert witness, had no anchor in the events of this case.

Indeed, even his request for an interpreter demonstrated either he was playing games with the court or he was uncertain about what he wanted. He participated in the preliminary hearing without an interpreter. After the hearing, he requested and received an interpreter. Yet, when his request for pro per status was denied based on lack of English proficiency, appellant no longer needed an interpreter and his English skills were good. He explained he only needed an interpreter because his lungs were bad and he spoke softly. The court offered him a microphone, and appellant then needed an interpreter to write things down for him. He would later tell Judge Thompson he had been denied a translator. In short, appellant seemed to have differing explanations for events depending on the perceived needs of the moment. In any event, we will now turn to an analysis of his contentions on appeal.

#### A. Legal Principles

" 'Continuances shall be granted only upon a showing of good cause.' [Citation.]" (*People v. Beeler* (1995) 9 Cal.4th 953, 1003 (*Beeler*), quoting Pen. Code, § 1050, subd. (e).) A defendant requesting a continuance must demonstrate that he has exercised "due diligence and all reasonable efforts to prepare for trial [citation], and the court has broad discretion to grant or deny the motion for continuance." (*People v. Grant* (1988) 45 Cal.3d 829, 844.) When a continuance has been denied, the burden falls to the defendant to establish an abuse of judicial discretion. (*Beeler, supra*, at p. 1003.) "An important

factor for a trial court to consider is whether a continuance would be useful." (*Ibid.*) "A reviewing court considers the circumstances of each case and the reasons presented for the request to determine whether a trial court's denial of a continuance was so arbitrary as to deny due process." (*People v. Doolin* (2009) 45 Cal.4th 390, 450.)

#### B. Presiding Judge Deddeh

In this case, appellant brought motions to continue before both the presiding judge (Judge Deddeh) and the trial judge (Judge Thompson). In denying appellant's motions, neither judge abused his discretion. At a September 22, 2010 conference, Judge Deddeh confirmed that appellant had received the preliminary hearing transcript and had the prosecution provide him with the relevant 911 transcript. Deddeh also confirmed with Hawkins that appellant had been provided with instructions for obtaining an investigator to assist appellant with discovery, then denied appellant's request for a continuance, stating:

"Mr. Rizgari, you're requesting a continuance, and you say you need more time to prepare. Now that we've worked out this issue with the investigator request, I'm going to deny your motion. . . . [Y]our trial date is the 18th, so you have almost four weeks. So I think in almost four weeks, you can get the things done you need to get done through the investigator."

On October 18, 2010, the day of the trial, appellant again represented to Judge Deddeh that he needed a continuance. Appellant had made little or no progress in preparing for trial since the September 22 conference. Appellant had yet to obtain an investigator, had not subpoenaed phone records he wanted to use as evidence, and had not prepared character witnesses to testify on his behalf. Upon choosing to represent

himself, appellant signed an acknowledgement concerning right of self-representation, acknowledging that he would not receive any special treatment, any more library privileges than those available to other people representing themselves, and that he was expected to follow specified procedures when making requests for an investigator. Appellant's request for a continuance, however, was apparently based on a need for special treatment and extended library hours and an inability to follow standard procedures to obtain an investigator. Therefore, Judge Deddeh's denial of appellant's motion for a continuance was not an abuse of discretion. (See *People v. Grant*, *supra*, 45 Cal.3d at p. 844 [a judge may deny a motion for a continuance where the defendant does not show due diligence or reasonable efforts to prepare for trial]; *People v. Sherrod* (1997) 59 Cal.App.4th 1168, 1175 [pro se defendant is not entitled to any more or less time or privileges than would be any other attorney].)

### C. Trial Judge Thompson

After Judge Deddeh denied appellant a continuance, he assigned the case to trial in another department where Judge Thompson would preside over the trial, set to begin later that day. Appellant renewed his request for a continuance before Judge Thompson, who first determined that appellant had received all discovery from the prosecutor, then declined to rehear a motion that the presiding judge had already ruled on earlier that morning. Judge Thompson stated that if appellant retained counsel, a step appellant claimed to be considering, he would revisit the issue of whether a continuance would be warranted at that time. Appellant persisted in his request, and after an off-the-record discussion, Judge Thompson stated that if the phone records appellant claimed were

integral to his case truly might be significant based on witness testimony, the court would "revisit the issue and see where we have to go." Appellant brought up the request to continue several more times, but never with a new basis, always restating the same issues, which revolved around appellant being unprepared either because he chose to wait until the last minute to get organized for trial, or he did not understand his responsibilities in preparing for trial. Either way, Judge Thompson determined that appellant's own inadequacies in representing himself did not serve as cause for a continuance when appellant was specifically instructed that he would not receive that kind of special treatment.

Judge Thompson was operating within his discretion when denying appellant's motions to continue. First, when Judge Thompson initially denied appellant a continuance, it was based on the sound reasoning that Judge Deddeh, who was familiar with the case having presided over several hearings over the previous few months, had denied the same motion earlier that same morning. Judge Thompson was not required to reconsider a motion the presiding judge had just ruled on. Second, when Judge Thompson again denied appellant's motion, it was after a discussion regarding what appellant might gain if he had extra time. Judge Thompson apparently considered what the phone records might hold and possibly what appellant's potential witnesses, not present on the day of the incident, might testify to if appellant was granted a continuance so he could subpoena them. Though Judge Thompson left the issue open for reconsideration after testimony by the prosecution's witnesses, he likely did not see this potential evidence as being of significant benefit to appellant who had already had ample

time to subpoena witnesses and phone records had he chosen to do so. (*Beeler, supra*, 9 Cal.4th at p. 1003 [court can consider whether a continuance would result in the party being able to obtain materially useful evidence within a reasonable amount of time].)

## II

### *APPEARING WEARING JAIL CLOTHING*

Appellant contends that his constitutional right to a fair trial was violated because he was forced to appear before the jury in jail clothing. Appellant contends that although the court did not insist that he wear jail clothes, not specifically informing appellant that he had a right to wear something else, was a violation. The argument is that since appellant did not know he had a right to wear other clothing, and as a pro se defendant did not have an attorney to advise him of this right, his failure to make a formal objection to wearing jail clothes did not serve as a waiver of his right to wear other clothes.

After addressing in limine motions and other pretrial issues, but before the close of the morning session or going over the procedure of selecting a jury, Judge Thompson addressed the issue of appellant's clothing through the following exchange:

"[Judge Thompson]: Do you have any clothes, or are you just going to go forward with your jail clothes?"

"[Appellant]: I don't have any.

"[Judge Thompson]: That's fine. We go forward with that. They will know you are in custody. That's fine.

"[Appellant]: Okay, your honor."

### A. Legal Standard

A defendant in a jury trial has a constitutional right to be tried in civilian clothes if he so chooses. (*Estelle v. Williams* (1976) 425 U.S. 501, 503-506.) Because one defense tactic is to elicit sympathy from the jury by wearing prison clothes, however, a defendant must invoke or abandon the right to civilian clothes. (*Id.* at p. 508.) A trial judge is not obligated to ask a defendant or his counsel whether the defendant is deliberately going to trial in jail clothing, and a failure to object to going to trial in jail clothing "negate[s] the presence of compulsion necessary to establish a constitutional violation." (*Id.* at pp. 512-513; *People v. Taylor* (1982) 31 Cal.3d 488, 495 ["the right [to be tried in civilian clothes] may be waived by a failure to timely object or otherwise bring the matter to the court's attention"].)

### B. Analysis

Though Judge Thompson did not specifically ask appellant whether he would prefer to be tried wearing civilian clothes or instruct him that he had a right to wear something other than prison clothing, Judge Thompson did give appellant sufficient opportunity to invoke his right to wear civilian clothes. Appellant did not object to wearing prison clothes and said, "Okay" when advised the jury would know he was in custody. Although appellant may not have known he had a right to wear other clothing, the court was not under an obligation to instruct appellant of that or any other right. Appellant was advised when he opted to represent himself that he was not entitled to special treatment, he had to follow all substantive and procedural rules in all aspects of the case, including objections, and that self-representation could result in conducting the

case in a manner that was harmful to himself. Because appellant did not invoke his constitutional right to wear civilian clothes by objecting to wearing prison clothes, his rights were not violated. We therefore determine that the court did not err by allowing appellant to be tried in prison clothes.

#### DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.