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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARION RICK MARBLEY, JR.,

Defendant and Appellant.

E059998

(Super.Ct.No. RIF1202462)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Mark E. Johnson, and Jeffrey Prevost, Judges.* Affirmed with directions.

Lizabeth Weis, under appointment by the Court of Appeal, for Defendant and Appellant.

* Judge Dugan presided at the first competency hearing, Judge Johnson presided at the second competency hearing, and Judge Prevost presided at the trial.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, and Eric Swenson and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

After defendant Marion Rick Marbley, Jr. was twice found competent to stand trial (Pen. Code, § 1367),¹ a jury found him guilty of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 1) and battery resulting in serious bodily injury (§ 243, subd. (d); count 2). The jury also found he personally inflicted great bodily injury in each count. (§ 12022.7, subd. (a).)

The assault and battery occurred in Fairmount Park in Riverside in May 2012. The victim was Thomas Costlow, a 54-year-old homeless man. Defendant was 59 years old at the time of the assault and battery. After defendant and Costlow were drinking liquor and talking on a park bench, defendant punched Costlow, then kicked Costlow several times in the face, while wearing steel-toed boots, as Costlow lay on the ground. Defendant was sentenced to 16 years in prison.²

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The court found defendant had five prior strike convictions (§ 667, subds. (c), (e)(2)A)), one prior serious felony conviction (§ 667, subd. (a)), and three prison priors (§ 667.5, subd. (b)). For purposes of sentencing, the court struck four of defendant's five prior strike convictions and sentenced him to 16 years in prison, comprised of the upper term of eight years on count 1, plus three years for the great bodily injury enhancement on count 1, plus five years for the prior serious felony conviction. Additional terms were imposed but stayed on count 2 and the great bodily injury enhancement on count 2.

On this appeal, defendant asserts no claims of trial error. Instead, he challenges the court's two findings, on two separate occasions before trial, that he was competent to stand trial. He claims (1) the California statutory standard for determining whether a criminal defendant is competent to stand trial does not meet federal due process requirements, and (2) insufficient evidence supports the trial court's factual determinations that he was competent to stand trial.

We reject these claims. As we explain, the California and federal standards for determining competency are the same, and substantial evidence supports the court's findings that defendant was competent to stand trial. We therefore affirm the judgment in all respects. We remand the matter with directions to the trial court to correct two minor errors in the abstract of judgment.

II. THE EVIDENCE PRESENTED AT TRIAL³

A. *Prosecution Evidence*

On May 4, 2012, Costlow, who lived on the streets in Riverside, drank a half pint of vodka, then went to a liquor store, bought more vodka, and met defendant at the liquor store. Defendant was drinking whiskey and also drank some of Costlow's vodka. Defendant and Costlow walked from the liquor store to Fairmount Park, where free food was available. The two men sat on a park bench and continued to talk and drink. The

³ The prosecution and defense evidence described in this section are taken from defendant's second jury trial that began on June 17, 2013, after a mistrial was declared in the first trial that began on April 9, 2013.

next thing Costlow recalled was waking up in the hospital. He did not recall arguing with defendant or that defendant hit or kicked him.

Ryan Flaherty was driving into Fairmount Park when he saw a man, whom he identified at trial as defendant, kicking another man who was lying on the ground. Flaherty drove up to defendant and asked him what was going on. Defendant made eye contact with Flaherty, appeared physically exhausted, and took a step toward Flaherty. Flaherty drove away and called 911. After he called 911, Flaherty drove back to defendant and asked him something like: “Hey, were you guys having an argument? Is your buddy okay?” Defendant responded, “Yes, but it’s settled now,” and walked away.

Flaherty got out of his car and assisted Costlow, who was still lying on his back on the ground, unconscious, bleeding from his face, and choking on blood. Flaherty rolled Costlow onto his side and stayed with him until paramedics arrived. Costlow suffered a broken nose and cheekbone, among other injuries.

Other witnesses in the park also saw defendant hitting and kicking Costlow. Jesus Madrigal and his girlfriend Rachel Marquez were standing in line to get free hot dogs when defendant tried to cut in line with Costlow. After Costlow shook his head “no,” defendant “got mad” and started swinging at Costlow, and punched Costlow in the face. Costlow fell to the ground, and defendant, wearing boots, began kicking Costlow in the face. Costlow did not fight back. According to Marquez, defendant appeared “[m]ean, mad, really mad,” and frightened Marquez when he started coming toward her, Madrigal, and several other people in the park. Marquez called 911, and in the background of her

call defendant was heard yelling at Marquez and Madrigal. Around 10 minutes earlier, Marquez saw defendant and Costlow sitting on a park bench, talking.

Riverside Police Officer Richard Kerr was dispatched to the park, and when he arrived, other officers were already there. Defendant was sitting on a curb, visibly agitated, shaking his head, swearing, and ranting aggressively. At one point, Officer Kerr heard defendant say, “he got his.” It was as though defendant was explaining something to someone, but no one was talking to him. Defendant was wearing steel-toed work boots, and there was blood on the toe of his right boot and right pant leg. He apparently had no injuries.

Officer Kerr checked on Costlow before the paramedics arrived. Costlow was “out of it,” and his responses to questions were unfocused and mumbling. Costlow did not want to testify because he feared retribution from other homeless people in the community.

Officer Kerr transported defendant to jail. On the way, defendant was “[e]xtremely agitated.” He repeatedly told Officer Kerr “fuck you”; he was going to “kick the West Texas dog shit out of” the officer, and he was going to kill the officer. When Officer Kerr asked defendant, “are you going to kill me,” defendant responded, “not your body, but your soul.”

B. Defense Evidence

Defendant testified in his own defense. He met Costlow at the liquor store and they both bought liquor. They walked to the park where they drank at a table where two

other men were standing. As defendant was standing and looking away, someone began punching him in the head, and he fought back against all three men. Two of the men ran away, leaving defendant and Costlow. Defendant admitted hitting Costlow and kicking him several times in the face with his steel-toed boots. Defendant also admitted having several 1995 convictions for committing lewd acts on a child.

C. Procedural Background/The Trial Court's Two Competency Determinations

During the preliminary hearing in May 2012, defendant yelled obscenities at Officer Kerr while the officer was testifying, and was removed from the courtroom after he tried to overturn the counsel table. The hearing was continued to the following day, at which time defendant said he was fine and wanted to continue with the hearing. The hearing concluded without further incident. Defendant then attended and participated in his arraignment on June 7, 2012, without incident. But at the trial readiness conference on June 25, 2012, the court declared doubt concerning defendant's competency to stand trial, apparently at the behest of defense counsel.

Dr. Stacey Wood met with defendant on July 19, 2012, by video conference, and explained the purpose of the evaluation. In a report filed on July 23, 2012, Dr. Wood opined that defendant was "able to understand the current proceeding" and "able to cooperate in a rational manner." (§ 1367.) During the evaluation, defendant responded "fairly directly to questions and made a good effort to answer them." He knew he had appointed counsel; he understood the roles of key courtroom participants, court proceedings, and the concept of a plea bargain; and he believed he could work with his

counsel. Dr. Wood also reported that defendant made appropriate eye contact during the evaluation; his thought processes were logical but at times tangential; his mood ranged from calm to mildly agitated; and he swayed at times. He reported “a long history” of treatment for paranoid schizophrenia and being treated with Seroquel, but he was not currently taking any medication. He felt the medication was helpful and said he would take it voluntarily if he needed it. Dr. Wood opined that defendant’s “paranoid psychotic symptoms” were “relatively under control at present.”

On July 25, 2012, the court declared defendant competent to stand trial based on Dr. Wood’s report. Defendant was present at the July 25 hearing and at a July 26 trial readiness conference. He was not transported to court for a further conference on August 27, because he was being held in a safety cell. He was present at subsequent proceedings on August 20 (trial readiness conference), September 12 (trial continued), October 10 (trial continued), October 15 (trial readiness conference), October 19 (trial continued), and October 22 (trial trailed until the afternoon).

During jury selection on October 22, 2012, the court again declared a doubt as to defendant’s competency at the request of defense counsel and ordered a further evaluation. Dr. Michael E. Kania, a clinical and forensic psychologist, met with defendant in jail on November 16, 2012, and explained the purpose of the examination. Defendant said he understood and agreed to cooperate. He described his current charge

as “robbery of someone in the park” and assaulting the victim.⁴ He acknowledged he was also charged with “being in possession of the victim’s wallet” and having prior convictions. His speech was clearly articulated although “loud and animated at times,” and his thought processes were “essentially logical and organized.” His attention, concentration, and comprehension were “good.”

Defendant identified his attorney as a female public defender, explained the roles of the key courtroom participants, and said his sentence would be determined “by the law—what’s in the statutes.” He also defined the concept of a plea bargain, stating it was a “‘deal’ when one pleads guilty to a lesser offense in return for a lesser sentence.” He had accepted plea agreements in the past, but said he would not consider one in the present case because he was innocent. He initially denied he had been disruptive in court, then acknowledged he was “singing and yelling about Vietnam (where he never served).” He believed he would be able to control himself in court in the future, but then made a point of saying his behavior was controlled when he was removed from court. He was adamant that he did not need medication, but said he would only take Seroquel.

Defendant told Dr. Kania that he first received “intensive psychiatric treatment” in state prison in 1989, and was prescribed medication. In another state prison in 1997, he was diagnosed with paranoid schizophrenia and treated with antipsychotic medication. He was later transferred to another state prison, where he was again diagnosed with

⁴ Defendant was originally charged with robbery, apparently because he was found in possession of Costlow’s wallet.

schizophrenia. At Veteran's Administration hospitals following his release from prison, he was again diagnosed with schizophrenia and prescribed Seroquel, which he took until the time of his May 2012 arrest. He was told upon his admission to the jail that the jail did not carry Seroquel.

Dr. Kania also reported that defendant exhibited "possible delusional-like ideas" when he said he had been falsely convicted of child molestation and planned to file a lawsuit which would bring him "\$500 million dollars or more." He became "very loud and animated" in discussing the topic, but calmed down when asked, and acknowledged he became upset when discussing the topic of being falsely accused of child molestation. He "seem[ed] to deny ever experiencing hallucinations," and significant emotional problems, or severe depression.

Like Dr. Wood before him, Dr. Kania concluded that defendant was (1) able to understand the nature and purpose of the criminal proceedings against him, and (2) able to cooperate in a rational manner with counsel in presenting a defense. Dr. Kania expressed "some concerns" about defendant's ability to behave appropriately in the courtroom, though he was able to calm down when asked to do so. Dr. Kania believed defendant could "quite likely benefit from Seroquel," but unfortunately he was unwilling to take any substitute medication.

Dr. Wood evaluated defendant once again on November 26, 2012, and prepared a second report filed on November 27. During his second evaluation with Dr. Wood, defendant presented as "somewhat more agitated and manic" than in his July 19

evaluation. His speech was more rapid and included repeated “rhymes/raps,” but he otherwise presented as he did on July 19. He “continued to demonstrate[] a clear understanding of key aspects of the legal process,” along with “some ability to assist [his] counsel,” and an understanding of appropriate courtroom behavior and the consequences of being disruptive in court. Again, Dr. Wood opined that defendant was (1) able to understand the current proceedings and (2) able to cooperate in a rational manner in preparing his defense. (§ 1367.) Dr. Wood also opined, however, that defendant “lack[ed] judgment” regarding his decisions to take antipsychotic medication, and his psychotic symptoms had worsened since the July 19 evaluation. He did not present a danger to himself or others. (§ 1370.)

On November 27, 2012, the court found defendant competent to stand trial based on Dr. Kania’s report and Dr. Wood’s second report. A jury trial in April 2013 ended in a mistrial due to the prosecution’s publication of a prior booking photograph of defendant. During that trial, defendant accused Officer Kerr, in profane terms, of lying while testifying.

A second jury trial commenced on June 17, 2013, and lasted five court days. On the last day of trial, after the prosecutor made her rebuttal argument and the jury was excused for lunch, defendant went into a “profanity laced tirade,” and was removed from the courtroom. After lunch, the court finished instructing the jury and the jury retired for deliberations without defendant being present.

During deliberations, the jury sent a note to the court asking: “Does mental illness factor into the defendant’s case[?] If so, do we have any evidence of mental illness in [defendant?] Are we to consider this as evidence[?]” In response, the court instructed the jury that: “Mental illness is not a defense to either of the charges against defendant.” The jury then returned its verdicts and findings.

III. DISCUSSION

A. *The California Standard for Determining Competency to Stand Trial Under Section 1367 Comports with the Federal Due Process Standard*

““Both the due process clause of the Fourteenth Amendment to the United States Constitution and state law prohibit the state from trying or convicting a criminal defendant while he or she is mentally incompetent. (§ 1367; *Drope v. Missouri* (1975) 420 U.S. 162, 181 . . . ; *Pate v. Robinson* [(1966)] 383 U.S. [375,] 384-386 . . . ; *People v. Ramos* (2004) 34 Cal.4th 494, 507) A defendant is incompetent to stand trial if he or she lacks a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—[or lacks] . . . a rational as well as a factual understanding of the proceedings against him.” (*Duskey v. United States* (196[0]) 362 U.S. 402, 402 . . . ; see also *Godinez v. Moran* (1993) 509 U.S. 389, 399-400 . . . ; § 1367; *People v. Stewart* (2004) 33 Cal.4th 425, 513)” (*People v. Rogers* (2006) 39 Cal.4th 826, 846-847 . . . , brackets added herein.)’ (*People v. Lewis* (2008) 43 Cal.4th 415, 524)” (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 464.)

“Competency [to stand trial] under federal law requires sufficient present ability to consult with one’s lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the proceedings against one.” (*People v. Halvorsen* (2007) 42 Cal.4th 379, 401; citing *Dusky v. United States* (1960) 362 U.S. 402.)

Similarly, section 1367 prohibits the trial of a mentally incompetent person and provides that a person is mentally incompetent to stand trial “if, as a result of 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); *People v. Halvorsen, supra*, at p. 401.)

Defendant claims the state law standard for determining incompetency under section 1367 “[i]s [t]oo [n]arrow” because it “requires a specific diagnosed [mental] disorder or disability,” while the federal due process standard “allows for a finding of incompetency based on apparent competency issues not falling under a particular, specified diagnosis.” We disagree. (See *People v. Halvorsen, supra*, 42 Cal.4th at p. 401 [noting that the standards for determining competency under § 1367 and the 14th Amend. are “similar”].) Defendant cites no authority, and we have found none, supporting the proposition that the standard for determining competency under section 1367 impermissibly narrows the federal due process standard.

Further, there was no difference between the state law and federal constitutional standards as applied in this case. The trial court’s two findings that defendant was competent to stand trial were based on the expert opinions of Drs. Kania and Wood that,

despite his paranoid schizophrenia, defendant was able to (1) “understand the nature of the criminal proceedings” and (2) “assist counsel in the conduct of a defense in a rational manner.” (§ 1367, subd. (a).) The court findings were not based on, and the court did not require, an evidentiary showing that defendant suffered from any “specific diagnosed mental disorder or disability” that undermined his ability to understand the proceedings or rationally assist his counsel in conducting his defense.

Defendant correctly points out that the court had a continuing duty to “be alert to circumstances suggesting a change that would render [him] unable to meet the standards of competence to stand trial.” (*Drope v. Missouri, supra*, 420 U.S. at p. 181.)

Throughout the trial, there were no circumstances suggesting that defendant was unable to understand the proceedings or rationally assist his counsel in conducting his defense. To the contrary, defendant testified in his own defense, and offered a cogent explanation that he struck and kicked Costlow in self-defense, after Costlow and two other men attacked him in the park.

B. *Substantial Evidence Supports the Court’s Competency Findings*

Defendant next claims insufficient evidence supports the trial court’s two findings that he was competent to stand trial. He points out that both findings were based solely on the reports and expert opinions of Drs. Wood and Kania, and argues their expert opinions were “severely undercut by undisputed facts compelling a contrary conclusion.” We disagree.

A defendant is presumed competent to stand trial unless the contrary is proven by a preponderance of the evidence by the party contending the defendant is incompetent. (§ 1369, subd. (f); *Medina v. California* (1992) 505 U.S. 437, 446-448; *People v. Medina* (1990) 51 Cal.3d 870, 881-885; Cal. Rules of Court, rule 4.130(e)(2).) In reviewing a finding of competency, we must view the record in the light most favorable to the finding and uphold it if substantial evidence supports it. (*People v. Blacksher* (2011) 52 Cal.4th 769, 797; *People v. Marshall* (1997) 15 Cal.4th 1, 31.)

Here, the first report of Dr. Wood, admitted in the first competency hearing, and the report of Dr. Kania and second report of Dr. Wood, admitted in the second competency hearing, constitute substantial evidence that defendant was competent to stand trial. In all three reports, the doctors opined that defendant (1) understood the nature of the proceedings, and (2) could rationally assist his counsel in conducting his defense. (§ 1367.) The doctors' expert opinions were amply supported by evidence that defendant was competent to stand trial. In all three evaluations, defendant was able to explain the roles of key court personnel, including his defense counsel, the prosecutor, the court, and the jury, and also generally explain the nature of the charges against him.

Defendant points out that Dr. Kania found he “demonstrated grandiose and paranoid-like thinking”; had “concerns” regarding his ability to behave in the courtroom; and did not believe he was qualified to make his own decisions concerning his treatment with antipsychotic medications. None of these factors undermine the sufficiency of the evidence that defendant was competent to stand trial. The experts' reports demonstrated,

with reasoned analysis, that defendant understood the nature of the proceedings and could rationally assist his counsel in conducting his defense.

C. *Corrections to Abstract of Judgment*

In a letter filed on July 23, 2014, the same date his opening brief on appeal was filed, defendant asked this court to direct the trial court to correct his abstract of judgment in two respects in which the abstract does not comport with the court's oral pronouncement of sentence: (1) in paragraph 4, on page 1 of the abstract, the box should be checked to reflect that he was sentenced as a second strike offender; and (2) paragraph 14, on page 2 of the abstract should be amended to reflect that his custody credits were calculated pursuant to section 2933.1, not section 4019.

The People have not opposed the request, and the record shows the two corrections should be made in order to conform the abstract of judgment to the court's oral pronouncement of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471 [oral pronouncement of judgment controls over any errors in abstract of judgment]; *People v. Mitchell* (2001) 26 Cal.4th 181, 185 [courts have inherent authority to correct clerical errors in court records].) We therefore remand the matter with directions to the trial court to correct the abstract as defendant has requested.

IV. DISPOSITION

The judgment is affirmed in all respects. The matter is remanded to the trial court with directions to correct defendant's abstract of judgment in the two respects described in this opinion, namely, to reflect that defendant was sentenced as a second strike

offender and to reflect that his custody credits were calculated pursuant to section 2933.1, not section 4019. The trial court is further directed to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

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KING
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.