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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.

THOMAS ALBERT GARCIA,

Defendant and Appellant.

E061853

(Super.Ct.No. FBA1200306)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Randall D. Einhorn, and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

While on a bus in Baker, California, defendant and appellant Thomas Albert Garcia attacked the passenger sitting next to him with a knife.¹ A jury convicted defendant of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))² and found true the infliction of great bodily harm allegation (§ 12022.7, subd. (a)). The trial court sentenced defendant to a total of seven years in state prison, comprised of four years for the assault and a consecutive term of three years for the great bodily injury enhancement.

Defendant's two challenges on appeal concern the competency proceedings that transpired off and on for over two years before his trial. Defendant was found to be incompetent in July 2012. He received treatment at Patton State Hospital (Patton) and, in July 2013, the court found that his competence had been restored. Over the next year, the court suspended the proceedings three more times to evaluate his competency. Each time, it found defendant competent based on the opinion of court-appointed experts. On the first day of trial, defense counsel again raised a doubt as to defendant's competency, but the court refused to order a fifth competency evaluation on the ground that there was no change of circumstances or new evidence casting doubt on the original competency finding.

¹ Throughout the proceedings, the defendant was referenced by different names: Thomas Magdaleno, Thomas Albert Garcia Magdaleno, and Thomas Albert Garcia-Magdaleno. We use Thomas Albert Garcia, the name that appears on the abstract of judgment and on the superior court case caption.

² All further statutory references are to the Penal Code.

Defendant's first argument is that the court failed to determine whether he had given his informed consent to antipsychotic medication before committing him to Patton for restoration of competency. He contends that had the court analyzed his capacity to make decisions regarding medication, it would have issued an order authorizing involuntary administration of antipsychotic medication, in which case it would have been more likely that he "would have been competent to stand trial through the duration of his trial."

Defendant's second argument is that the court erred in refusing to order a fifth competency evaluation. He contends that both of the court's errors violated his constitutional due process rights, and therefore we should reverse his assault conviction, or at the very least, order the trial court to conduct a retrospective evaluation to determine if he was competent during trial.

We reject defendant's first argument because we conclude the court did determine, based on substantial evidence, that defendant had given his informed consent to taking antipsychotic medication before committing him to Patton. To the extent defendant is arguing the court should have ordered involuntary medication, the record does not support the need for such a drastic measure. During his treatment at Patton, defendant was prescribed and took antipsychotic medication, and was restored to competency. We reject defendant's second argument because we conclude there was insufficient evidence to warrant a fifth competency evaluation. We affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *Defendant's Conviction*

On May 30, 2012, the victim was traveling home on a bus. While he was sleeping, defendant sat in the seat next to him. A couple in the next seat over woke the victim up to warn him that defendant was holding a knife.

The victim saw the knife in defendant's hand and noticed that defendant had a "glazed" look and was sweating and breathing heavily. When the bus driver announced that they were stopping for a restroom break, the victim asked defendant to move so he could use the restroom. After ignoring the victim's multiple requests to move, defendant finally replied, "No. I'm not going to let you up."

The victim pushed defendant out of his way and defendant "started coming at [him] with a knife." As they wrestled with each other, defendant cut the victim's hand with the knife. With the help of some of the other passengers, the victim was able to pin defendant down. When defendant stopped struggling, the victim relaxed his grip and defendant ran off the bus. Some passengers followed defendant and apprehended him on the sidewalk.

During the struggle, defendant nearly severed the victim's middle finger and cut two other fingers. The victim's wounds required 20 stitches, and at the time of trial, he had no feeling in his injured fingers.

San Bernardino County Sheriff's Deputy Ronald Sodaro responded to the report that a bus passenger had been stabbed. When he arrived at the scene, he found three men standing over defendant, who was lying on the sidewalk. There was a paring knife about five feet from defendant. Deputy Sodaro found another paring knife on the bus.

At trial, defendant testified that he had been defending himself from the victim, who had a bomb detonation device and had attacked him first. According to defendant, he had been sitting in the back when he heard passengers say there was a bomb on the bus. He saw that the victim was holding a detonating device and he noticed a stick of "C-4" in the bathroom. Two "Navy advisors" told him to talk to the victim. He tried to do so but the victim hit him and began choking him. The victim had a knife in his hand and had cut himself with it during the fight. Defendant also knew that the victim had a gun. He had intervened "out of the kindness of [his] heart" to keep everyone on the bus safe.

After defendant's testimony, the prosecution recalled Deputy Sodaro, who had interviewed defendant after the incident. Defendant told him that two Navy Seals had told him there was a bomb on the bus and not to let the victim leave. Defendant admitted that he carried a knife for protection and had stabbed the victim when he tried to get off the bus.

B. *Pretrial Competency Proceedings*

1. *The incompetency finding, medication, and restoration of competency*

Shortly after defendant's arraignment, defense counsel declared a doubt as to defendant's competency and requested a hearing under section 1368.³ The court appointed Dr. Randall Norris to evaluate defendant and determine, among other things, whether he was competent to understand the proceedings against him; whether he had the capacity to make decisions regarding antipsychotic medications; whether such medication was likely to restore competency; and whether alternative treatment was available. Dr. Norris found that defendant was not able to understand the nature of the criminal proceedings and was unable to cooperate with and assist his attorney. Dr. Norris did not believe defendant had the capacity to make decisions about his medication; however, he noted that the jail's medical records reflected that defendant had requested antipsychotic medication and was prescribed Thorazine. Finally, Dr. Norris believed that antipsychotic medication was necessary to restore defendant's competence and that involuntary administration of medication would be necessary "if the defendant withdraws his consent for voluntary antipsychotic medication."

³ Section 1368, subdivision (b) requires the court to conduct a hearing to determine a defendant's competence "[i]f counsel informs the court that he or she believes the defendant is or may be mentally incompetent."

At a hearing on July 30, 2012, the court found defendant incompetent and asked defense counsel if defendant was willing to sign a form consenting to antipsychotic medication. After conferring with his client, counsel informed the court that defendant was “willing to take his medication on his own. He said he doesn’t need to be forced to take medication.” Defendant apparently did not sign the form because counsel was under the impression that, by signing, defendant was not only consenting to medication but was also consenting to involuntary medication in the event he later withdrew his consent. The court appointed Dr. Mendel Feldsher “for the limited purpose of the need and basis for involuntary administration of [antipsychotic] medication.”

Dr. Feldsher observed that defendant was taking both Seroquel and Thorazine twice a day, but the jail records stated that he had been caught spitting out the Seroquel. In Dr. Feldsher’s opinion, defendant lacked the capacity to make decisions about taking medication, and the low dose of Thorazine he was currently taking was insufficient to control his psychotic symptoms. He believed defendant would likely benefit from involuntary administration of medication.

After reviewing Dr. Feldsher’s report, the court referred defendant to the San Bernardino County Mental Health Director for a placement recommendation. During a subsequent placement hearing, counsel informed the court that defendant “voluntarily and intelligently consents to the administration of [antipsychotic] medication.” Defendant began receiving treatment in West Valley Detention Center’s ROC (Restoration of Competency) Program.

On January 8, 2013, the director of the program filed a report advising the court that defendant had not achieved competency and recommended he be transferred to a state hospital for “longer term treatment.” Attached to this report was the report of Dr. Lisa Hazelwood, a forensic psychologist, who had evaluated defendant during his treatment and reported that he “seems to have exhibited some improvement in his psychiatric stability following the initiation of psychotropic medication during his incarceration.” She reported that defendant was taking 200 milligrams of Thorazine twice a day and that he had refused to consider changing the dosage or medication because he believed he was “stable.” She opined that defendant was suffering from psychotic disorder and that his competency remained significantly impaired. She believed that his competency could be restored if he consented to change his medication or if he was involuntarily medicated.

At a status update hearing on January 9, 2013, the parties stipulated to the reports from the ROC Program and to the recommendation that defendant be transferred to a state hospital. Defense counsel raised the issue of medication. He acknowledged that defendant had agreed to voluntarily take his medication. However, he explained that, in light of Dr. Hazelwood’s opinion that defendant’s competency could be restored with involuntary medication, the court should issue such an order. The court ordered defendant transferred to Patton for restoration of competency (not to exceed three years), but it refused to order involuntary medication. It stated that it would need to have more information before it could do so. In response, counsel admitted that Dr. Hazelwood’s

report did not “specifically address” the issue of involuntary administration. The court replied that it would order involuntary medication if there were “facts to support it,” but it found that “right now . . . there’s [not] competent evidence to allow me to make that order.” The court added that if the treating physicians at Patton determined that involuntary medication was necessary, they would certainly know how to make such a request.

In June 2013, Patton’s medical director certified under section 1372 that, in his and the clinical staff’s opinion, defendant was competent to stand trial. The certification stated that defendant was compliant with his current prescription of Chlorpromazine. On July 5, 2013, the parties stipulated to the certification, and the court found defendant competent and reinstated criminal proceedings.

2. *Subsequent competency evaluations*

Ten days after the proceedings resumed, defense counsel declared a doubt as to defendant’s competency. The court suspended proceedings and appointed Dr. Joseph Malancharuvil to evaluate defendant. Dr. Malancharuvil observed that defendant exhibited unusual behavior and was quick to anger, but he opined that defendant was competent to stand trial. Defense counsel requested a second doctor’s opinion and the court appointed Dr. Joy Clark. Dr. Clark “highly suspected” defendant of malingering, based on defendant’s outlandish answers to simple questions; however, defendant refused to participate in her test to screen for malingering. Dr. Clark concluded that defendant had a mental disorder and was “mainly compliant to his medications.” She opined that

defendant was competent and was “manipulating his [mental] illness and is trying to appear more ill than he actually is.” The parties stipulated to both reports and the court found defendant competent.

At the next hearing, which was scheduled to be a pre-preliminary conference, defense counsel again declared a doubt as to defendant’s competence. The bailiff confirmed that defendant had been behaving inappropriately. The court suspended proceedings and appointed Dr. Robert Suiter as the evaluator. Dr. Suiter opined that defendant understood the nature of the criminal proceedings against him and could assist his attorney in his defense. He stated that defendant was “trial competent, even though he may at times be a somewhat difficult client.” The parties stipulated to Dr. Suiter’s report and the court found that defendant was competent.

Defendant’s preliminary hearing took place in January 2014. On May 12, 2014, the day trial was scheduled to begin, defense counsel declared a doubt as to defendant’s competency. The court suspended proceedings for the fourth time and appointed Dr. John Bradford to evaluate defendant. Dr. Bradford found “no evidence of a mental disorder.” He reported that defendant “does not show any bizarre mannerisms or unusual patterns of speech or behavior. His thoughts are clear, coherent, and goal directed. He does not demonstrate any psychotic disorder or mood disorder. . . . He fully understands the nature of his criminal proceedings, and can assist counsel in a rational manner.” The parties stipulated to Dr. Bradford’s report. The court found that defendant was competent and scheduled trial for August 2014.

3. *Request for a fifth competency evaluation*

Before the jury was called in on the first day of trial, defense counsel informed the court that he again had doubts about defendant's competency. As set forth in detail in part II.B.1, *post*, the court discussed the matter with counsel and denied his request for a section 1368 hearing on the ground that there was no new evidence or change in circumstances.

II

ANALYSIS

A. *Defendant's Capacity to Consent to Medication*

Defendant argues that the court violated section 1370 by failing to hold a hearing to determine whether he was able to give his informed consent to medication before it committed him to Patton. In the alternative, he argues that if we conclude the court did determine he had given his informed consent, there was insufficient evidence to support the finding. We disagree with both contentions.

Section 1367 states, "a person cannot be tried or adjudged to punishment . . . while that person is mentally incompetent." Mentally incompetent means "unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367.) Section 1370 governs the procedures for restoring a defendant's competency. It also provides that the court must commit the defendant "to a state hospital for the care and treatment of the mentally disordered" or to

some other “available public or private treatment facility . . . that will promote the defendant’s speedy restoration to mental competence.” (§ 1370, subd. (a)(1)(B)(i).)

Section 1370 also provides that, prior to committing an incompetent defendant to a facility for restoration of competence, “[t]he court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication.” (§ 1370, subd. (a)(2)(B).) If the court determines that the defendant is able to make decisions about medication, it must then ask defendant whether he consents to the administration of antipsychotic medication. (§ 1370, subd. (a)(2)(B)(iv) & (v).) If the defendant consents, then “the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant’s consent.” (§ 1370, subd. (a)(2)(B)(iv).) If the defendant does not consent, the commitment order must direct the treating psychiatrist to determine whether antipsychotic medication is medically necessary and appropriate and “make efforts to obtain informed consent from the defendant for antipsychotic medication.” (§ 1370, subs. (a)(2)(B)(v) & (a)(2)(C).) If after this process the defendant still does not consent, “the defendant shall be returned to court for a hearing . . . regarding whether antipsychotic medication shall be administered involuntarily.” (§ 1370, subd. (a)(2)(B)(v).)

Section 1370 also requires a court to determine, before commitment, if an order authorizing involuntary medication is necessary. (§ 1370, subd. (a)(2)(B)(i)(I)-(III).) Because a defendant has a significant liberty interest in “avoiding the unwanted

administration of antipsychotic drugs” (*Sell v. United States* (2003) 539 U.S. 166, 178), such an order is only necessary if the court finds one of three circumstances to be true: (1) the defendant is unable to give informed consent and without medication “it is probable that serious harm to the physical or mental health of the patient will result”; (2) defendant was taken into custody for inflicting, or attempting or threatening to inflict, substantial physical harm on another, and, as a result of his or her mental disorder, presents a “demonstrated danger of inflicting substantial physical harm on others”; or (3) the people have charged the defendant with a “serious crime against the person or property,” involuntary medication is “substantially likely” to restore competence and is unlikely to have side effects that interfere with the defendant’s competence, less intrusive measures are unlikely to have substantially the same results, and medication is in the defendant’s best interest. (§ 1370, subd. (a)(2)(B)(i)(I)-(III).)

Here, contrary to defendant’s contention, the court determined that he had given his informed consent to medication before committing him to Patton. Section 1370 states that when determining capacity, “the court shall consider opinions in the reports of [court-appointed experts], as applicable to the issue of whether defendant lacks capacity to make decisions regarding the administration of antipsychotic medication.” (§ 1370, subd. (a)(2)(B).) When the court issued defendant’s commitment order, it had the benefit of three doctors’ reports discussing the issue of medication. The court had directed Dr. Norris, the first doctor to evaluate defendant, to consider whether defendant lacked the capacity to make decisions regarding medication. Subsequently, the court appointed Dr.

Feldsher for the specific purpose of evaluating defendant's capacity to make decisions regarding medication. Dr. Hazelwood, the third doctor to evaluate defendant, was not directed to assess the specific issue of capacity, but her report discussed how defendant's current medication was effective and should be increased in dosage. Additionally, the court asked defendant whether he was willing to consent to taking medication voluntarily. Defense counsel represented to the court on two occasions that defendant did not want to be involuntarily medicated and was willing to take antipsychotic medication.

Based on this evidence and the fact that counsel presented no facts to support a finding that one of the three circumstances in section 1370 were true, the court ruled that defendant did not require involuntary administration of medication. This ruling was also an implicit finding that defendant had given his informed consent to antipsychotic medication. Under section 1370, if the court had found that defendant had not consented to medication, it was required to direct the treating psychiatrist at Patton to determine whether antipsychotic medication was necessary and "make efforts to obtain informed consent." (§ 1370, subs. (a)(2)(B)(v) & (a)(2)(C).) The fact that the court's commitment order did not direct the treating physician to attempt to obtain defendant's informed consent indicates the court had found that defendant consented to voluntary medication.

Defendant argues that the court's failure to make a capacity to consent finding is clear from the court's statement that "it would 'have to have more information' *before it could determine* [defendant's] capacity." Defendant is mischaracterizing the court's

statement. What the court in fact said was that it would “have to have more information” before it could order *involuntary medication*. Between the doctors’ reports and defendant’s representations that he was willing to take medication, the court had ample evidence to determine whether defendant had the capacity to consent to medication.

We reject defendant’s argument that the absence of an express consent finding establishes that the court failed to determine whether defendant had consented to medication. Nothing in section 1370 requires a court to make an explicit finding as to a defendant’s capacity to consent, and a reviewing court may imply a finding where, as here, substantial evidence supports it. (See, e.g., *People v. Dickens* (2005) 130 Cal.App.4th 1245, 1252 [Fourth Dist., Div. Two].) When reviewing factual findings, we do not reweigh the evidence in the record because a trial court “generally [is] in a better position to evaluate and weigh the evidence.” (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.) Instead, we consider the record in the light most favorable to the findings and “defer to the superior court’s express *and implied* factual findings if they are supported by substantial evidence.” (*People v. Woods* (1999) 21 Cal.4th 668, 673 (*Woods*), italics added.) Defendant had twice represented to the court through his counsel that he was willing to take antipsychotic medication. Furthermore, all three doctors’ reports reflected that defendant had been prescribed and was voluntarily taking antipsychotic medication. This is substantial evidence to support a finding that defendant could make decisions about medication. The fact that there is also evidence in the record that could support a finding that defendant was unable to make decisions about

medication is not a ground for reversing the court's finding. (*Id.* at p. 674 [even where there is conflicting evidence such that the appellate court "might have reached a different conclusion" had it been the fact finder, the appellate court must uphold the finding if substantial evidence supports it].)

Finally, even if we assume for the sake of argument that the court did not determine whether defendant had consented to medication before committing him to Patton, such an omission would not have harmed defendant. The purpose of section 1370 is to facilitate the speedy restoration of competence. (See *id.*, subd. (a)(1)(B)(i).) Pursuant to section 1370, when a court finds a defendant has given informed consent to medication, the "order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist." (*Id.*, subd. (a)(2)(B)(iv).) Here, even though defendant's order of commitment does not contain a confirmation that he may be prescribed medication, the certification of competency from Patton's medical director demonstrates that defendant was prescribed antipsychotic medication during his treatment and was compliant with his medication. In other words, even if the court did not make the implicit finding that defendant had consented to medication, he nevertheless was able to receive medication at Patton and regained competency.

Despite the fact that he received medication during his treatment at Patton and was restored to competency, defendant argues that the court should have ordered involuntary medication. He asserts that "had the court ordered he be involuntarily medicated, it is

reasonably probable the [Patton] staff would have been able to further assist him in regaining his mental competence, and it is reasonably probable he would have been competent to stand trial through the duration of his trial.” To the extent defendant’s challenge to his state hospital commitment is based on the court’s failure to order involuntary medication, his challenge must fail.

Involuntary medication orders are not issued lightly. A court may authorize involuntary medication *only* if one of the three circumstances set forth in section 1370 is true. (§ 1370, subd. (a)(2)(B)(i)(I)-(III).) Defendant contends that there was sufficient evidence in the record to support a finding that he was a danger to others and thus satisfied the second circumstance listed in section 1370. He points out that the jail records reflect that he had engaged in strange and violent behavior while in custody, such as “shov[ing] a pencil into another inmate’s ear.” However, because neither defense counsel nor the prosecution presented this or any other evidence regarding any of the three section 1370 circumstances, we cannot conclude the court’s refusal to issue an involuntary medication order was error.

B. The Court’s Refusal to Order a Fifth Competency Evaluation

Defendant contends that the court erred by refusing counsel’s request for a competency evaluation. He argues that his conviction should be reversed or at the very least we should order a retrospective competency evaluation to determine if he was competent during his trial. We disagree.

1. *Background facts*

On the first day of trial, counsel informed the court that defendant was requesting a *Marsden*⁴ hearing and that he had a doubt as to defendant's competence. The court held the *Marsden* hearing and denied defendant's request for substitute counsel.⁵

Turning to the competency issue, the court asked counsel if he could point to a "substantial change of circumstances or new evidence casting doubt on the validity of [the prior] competency finding." Counsel responded that over the last two weeks defendant's "story as to the facts of the case has changed and [defendant] has flip-flopped back and forth on it." He explained that defendant's new defense was that "this was not him, he was not present at all, period." He added that after defendant's most recent evaluation (by Dr. Bradford), defendant had seemed to be competent. They had discussed "different ways of handling his defense, and at that point he was coherent and cooperative and cognizant of the defenses and the like." However, over the last two weeks, defendant had seemed to be more like he had been a year earlier and counsel did not know whether defendant was still taking his medication. Defendant interjected: "I'm competent to stand trial, your Honor."

⁴ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

⁵ This was defendant's third unsuccessful request for substitute counsel. The basis of each request was that his attorney had accused him of being guilty. Each attorney responded to defendant's allegations by explaining that he was not accusing defendant but informing him of the charges.

In response to the court's questioning, counsel admitted that it was not unusual for a client to grasp at various defenses. He also conceded that part of the reason he doubted defendant's competence was because defendant refused to enter a plea of not guilty by reason of insanity.

The court stated, "[t]he fact that [defendant] is searching for potential different approaches how to do this case is not what I consider to be substantial evidence of a change of circumstances." It also stated: "I try to do all the steps and make the correct considerations, but I also have listened to what your client has said, not only in the *Marsden* motion, which I'm not going to refer to what his comments were, but I will refer to his demeanor and his manner of expression, and he has consistently maintained that he is competent." The court believed that the reason for the multiple requests for competency hearings and "successive determinations of competence" was "a major difference of opinion in terms of what [the] defense should be."

The court stated that it had already ruled during the *Marsden* hearing that this "difference of opinion" did not affect counsel's ability to represent defendant. It then ruled that the difference of opinion also did not constitute a change of circumstances giving rise to a serious doubt about the validity of the original competency proceedings.

2. *Discussion*

When a section 1368 competency evaluation has already been held and the defendant has been found to be competent to stand trial, a new evaluation is required only upon a "substantial" change in circumstances, or new evidence, casting "serious doubt"

on the earlier competency finding. (*People v. Dunkle* (2005) 36 Cal.4th 861, 904 (*Dunkle*), disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390.) To cast serious doubt on an earlier competency finding, counsel must present more than a “general description” of how a “defendant’s mental condition had worsened” and more than an inability to cooperate with counsel. (*People v. Jones* (1991) 53 Cal.3d 1115, 1153; *Dunkle, supra*, at pp. 904-905 [“counsel’s unparticularized assertion that defendant’s condition had deteriorated, with no explanation of how it had done so” was insufficient to justify a new competency evaluation].) “[M]ore is required to raise a doubt of competence than the defendant’s mere bizarre actions or statements” (*People v. Medina* (1995) 11 Cal.4th 694, 735 (*Medina*)) or a manifestation of the “same arguably delusional beliefs” reported previously (*People v. Lawley* (2002) 27 Cal.4th 102, 136 (*Lawley*)). In determining whether there has been a significant change in a defendant’s mental state, “the trial court may appropriately take its personal observations into account.” (*People v. Jones, supra*, at p. 1153.) “The trial judge’s ruling regarding whether a competency hearing is required should be given great deference.” (*People v. Weaver* (2001) 26 Cal.4th 876, 953.)

After defendant’s competence was found to have been restored in July 2013, the court suspended proceedings three additional times and reviewed the reports of four mental health experts. All four found defendant competent to stand trial, and one highly suspected him of exaggerating his symptoms to manipulate the proceedings. Defense counsel presented the court with no reason to suspect that defendant’s mental condition

had worsened or otherwise changed. The only purportedly new evidence or changed circumstances counsel raised in support of his request for a new competency evaluation was that defendant had changed his defense strategy and was acting in a way that suggested he might not be taking his antipsychotic medication.

The court had an opportunity to observe and converse with defendant during the *Marsden* hearing prior to counsel's request for a competency hearing. The court appropriately considered those observations in concluding that the main reason for counsel's doubts about defendant's competency was a disagreement over defendant's refusal to plead not guilty by reason of insanity. The court reasonably concluded that this strategy disagreement was an insufficient basis for another competency hearing. Trial counsel's belief that a defendant's strategy decisions are ill-advised does not amount to substantial evidence of incompetence. (*People v. Blacksher* (2011) 52 Cal.4th 769, 851 [a defendant's confusion regarding the insanity plea does not necessarily amount to an inability to assist in his defense]; *People v. Oglesby* (2008) 158 Cal.App.4th 818, 828 [counsel's concern that the defendant was unable to understand the effect of waiver and plea was insufficient to warrant a second competency evaluation].)

Defendant contends that his new defense of not being present for the alleged crime constitutes a "significant change of circumstance calling into question his competence." He concedes his bomb/self-defense theory "appeared delusional from the beginning," but he argues that at least it had consistently remained his version of the events. We disagree. Substituting one arguably delusional account of events for another does not

demonstrate that defendant was not competent to stand trial. As discussed, bizarre statements and manifestation of the same arguably delusional statements as previously attributed to a defendant does not constitute substantial evidence warranting a new competency evaluation. (*Medina, supra*, 11 Cal.4th at p. 735; *Lawley, supra*, 27 Cal.4th at p. 136.) If anything, defendant’s attempt to come up with a more believable account of the incident demonstrates an understanding of the nature of criminal proceedings and the importance of a defense.

Citing to *People v. Kaplan* (2007) 149 Cal.App.4th 372 (*Kaplan*), defendant argues that his counsel’s uncertainty as to whether he was still taking antipsychotic medication was sufficient in itself to warrant an evaluation. Defendant’s reliance on *Kaplan* is misplaced. In that case, the court erred in failing to order a second evaluation despite being presented with an expert report opining that the defendant was no longer competent to stand trial as a result of his “long-standing psychotropic medications [having] been significantly changed.” (*Id.* at p. 376.) Here, counsel presented only his belief that defendant was not taking his medication. Without any supporting expert opinion, counsel’s opinions regarding antipsychotic medication do not rise to the level of new “evidence” or a substantial change in circumstances warranting a competency evaluation. (See *Dunkle, supra*, 36 Cal.4th at pp. 904-905 [an “unparticularized assertion that defendant’s condition had deteriorated” was insufficient to cast doubt upon the prior competency finding].)

Lastly, defendant points out that his counsel informed the court of his belief that defendant would become incompetent as they approached “a trial situation.” He asserts that “[a] new competency hearing was required to explore this issue.” Again, defendant is relying on mere conjecture on counsel’s part, unsupported by particularized facts or expert opinion. Arguably, counsel’s statement that defendant seemed to become incompetent every time they approached trial supports a claim of malingering, not incompetence.

The trial court’s refusal to suspend criminal proceedings a fifth time to evaluate defendant’s competence was not error.

III

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.