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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DAVID BALDERAS,

Defendant and Appellant.

G044856

(Super. Ct. No. 08ZF0018)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed.

Robert E. Boyce, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Michael David Balderas appeals from his convictions for second degree murder and assault on a child with force likely to produce great bodily injury resulting in death. Balderas contends the trial court erred by failing to question his competence to stand trial and hold a competency hearing. We find the evidence insufficient to show Balderas could not understand the proceedings or assist his counsel and, accordingly, we affirm the judgment.

FACTS & PROCEDURE

In view of the limited issue on appeal, we need not go into great detail about the facts surrounding the horrific death of two-and-one-half-year-old Jo Jade. Jo Jade began living with her uncle, Balderas, and his girlfriend, Shannon James, in October 2005 when her mother was incarcerated. James worked; Balderas cared for Jo Jade, who was potty trained but still had accidents. Although James initially helped with Jo Jade's care, by mid February 2006, Balderas took over caring for her exclusively, and insisted he would potty train Jo Jade because James was being too nice about it.

On March 30, 2006, James went to work in the early morning. In the late morning, she got a telephone call from Balderas who was upset because Jo Jade had defecated in her pants and spit at him. In the early afternoon, Balderas called James again because Jo Jade was refusing to take a nap. At around 4:00 p.m., Balderas called James and said he had really "fucked up" and she had to come home immediately.

When James got home, Balderas met her at the door holding Jo Jade's pale and motionless body. When James tried to call 911, Balderas said it would be quicker to drive to the hospital. James drove, while Balderas carried Jo Jade and attempted to resuscitate her. James called 911 while driving; Balderas told her, "Hang up the phone. I'm going to jail for this."

Jo Jade was pronounced dead at the hospital. Her body was severely bruised and battered. She had extensive bruises and abrasions on her torso, buttocks, and legs. She also had contusions on her face, forehead, forearms, and hands. Her anus and

vagina were swollen, stretched and torn, consistent with foreign objects having been forced inside her. The cause of death was blunt force trauma resulting in bleeding to death internally. A belt and an adult pair of jeans, both with Jo Jade's blood on them, were found in her bedroom. Trace amounts of Jo Jade's DNA was found on Balderas's penis, but the cells were not from her mouth, vagina, or anus.

Balderas admitted to police that he spanked Jo Jade several times on the day she died because she soiled her pants and spit on him. He put her to bed after the last round of spanking, and when he went to check on her approximately half an hour later, she was not breathing. He tried performing CPR on the child, and called James telling her to come home because "something's fucked up."

An indictment charged Balderas with murder with a torture special circumstance (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(18))¹ (count 1), and assault on a child with force likely to produce great bodily injury resulting in death (§ 273ab subd. (a)) (count 2). The prosecution eventually dismissed the special circumstance. At his January 2011 trial, the jury found Balderas guilty of second degree murder on count 1, and guilty as charged on count 2. The trial court sentenced Balderas to 25 years to life on count 2, and imposed and stayed a sentence of 15 years to life on count 1.

DISCUSSION

Balderas contends the trial court should have raised doubts about his competency to stand trial and ordered a competency evaluation. We find no error.

"A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent . . . 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).) A defendant's trial while incompetent violates state law

¹ All further statutory references are to the Penal Code.

and federal due process guarantees. (*Pate v. Robinson* (1966) 383 U.S. 375, 385; *People v. Pennington* (1967) 66 Cal.2d 508, 516-517.)

At no time during the trial court proceedings did defense counsel request a competency hearing. Nonetheless, Balderas refers to occurrences during the proceedings that he argues should have raised a question in the trial judge's mind as to whether he was competent to stand trial.

First, at the beginning of trial there was a discussion about the admissibility of evidence that Balderas had attempted suicide while awaiting trial. Defense counsel indicated she intended to introduce evidence of the suicide attempt because it went to malice, and "as the court is aware, . . . Balderas has suffered permanent severe permanent [sic] brain damage." Defense counsel reminded the court that in earlier court proceedings, Balderas sometimes yawned and giggled at inappropriate times, and had grown a "huge dreadlock," which jail personnel made him shave off. Defense counsel explained evidence of the suicide attempt, and Balderas's resulting brain damage, would help the jury understand Balderas's demeanor in court, i.e., "there's an explanation why he's behaving that way as opposed to him being calloused and uncaring and not remorseful" The trial court suggested it was more concerned the jury might use the suicide attempt against Balderas as evidence of consciousness of guilt. The court agreed with the prosecutor the evidence would be better handled by way of a stipulation to the effect that due to a medical condition, developed post-crime, Balderas had certain behaviors that were not to be considered by the jury in determining guilt.²

² The jury was eventually instructed with the parties' stipulation that, "[Balderas] has a serious medical condition that may cause him to exhibit unusual behavior during trial. This medical condition did not exist at the time of the crimes charged in this case. This medical condition has no bearing on the charges in this case and should not be considered by you in any way when deliberating on the charges. You are being told about the condition solely to explain any unusual behavior you may observe and to ensure that you do not attribute any negative reason for [Balderas's] behavior."

Next, after the prosecution rested its case, defense counsel indicated she wanted to call Balderas's sister (Jo Jade's mother), to testify about the excessive discipline used on Balderas by their own mother when they were children to show Balderas's lack of malice. When the prosecutor objected, and suggested Balderas could take the stand to testify about his state of mind, defense counsel replied, "[a]s far as my client testifying, the court is very well aware he suffered irreversible brain damage." The trial court replied, "I understand defense argument that [Balderas] can't testify"

Finally, during the prosecutor's closing arguments, Balderas "raised his right arm beside his head and extended his middle finger." The court later admonished Balderas outside the presence of the jury, "that's not going to help you. I'm assuming you won't be doing that again."

A defendant is presumed mentally competent unless proved otherwise by a preponderance of the evidence. (§ 1369, subd. (f).) But that presumption may be rebutted by evidence "including the defendant's demeanor, irrational behavior, and prior mental evaluations." (*People v. Rogers* (2006) 39 Cal.4th 826, 847 (*Rogers*)). "If a defendant presents substantial evidence of his lack of competence and is unable to assist counsel in the conduct of a defense in a rational manner during the legal proceedings, the court must stop the proceedings and order a hearing on the competence issue. [Citations.] In this context, substantial evidence means evidence that raises a reasonable doubt about the defendant's ability to stand trial. [Citation.] . . . The court's decision whether to grant a competency hearing is reviewed under an abuse of discretion standard. [Citations.]" (*People v. Ramos* (2004) 34 Cal.4th 494, 507 (*Ramos*)).

"A trial court's decision whether or not to hold a competence hearing is entitled to deference, because the court has the opportunity to observe the defendant during trial." (*Rogers, supra*, 39 Cal.4th at p. 847.) An appellate court is generally ""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.""

[Citations.]” (*People v. Marshall* (1997) 15 Cal.4th 1, 33.) Similarly, “[a]lthough trial counsel’s failure to seek a competency hearing is not determinative [citation], it is significant because trial counsel interacts with the defendant on a daily basis and is in the best position to evaluate whether the defendant is able to participate meaningfully in the proceedings [citation].” (*Rogers, supra*, 39 Cal.4th at p. 848.)

Here, we have no grounds to second-guess the trial court. “[A] defendant must exhibit more than bizarre, paranoid behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel.” (*Ramos, supra*, 34 Cal.4th at p. 508.) The record indicates Balderas suffered some sort of brain injury as a result of his botched suicide attempt, and his occasional poor demeanor in court might have been due to that brain injury, or due to medication he took as a result. But that evidence is not tantamount to substantial evidence Balderas was incompetent to stand trial—i.e., that he was “‘incapable of understanding the purpose or nature of the criminal proceedings being taken against him or is incapable of assisting in his defense or cooperating with counsel’ [Citation.]” (*People v. Stankewitz* (1982) 32 Cal.3d 80, 92.)

Defense counsel never disputed Balderas’s competence to stand trial. (See *Rogers, supra*, 39 Cal.4th at p. 848 [defense counsel “is in the best position to evaluate whether the defendant is able to participate meaningfully in the proceedings”].) There was no evidence of a mental evaluation showing Balderas was incapable of understanding the nature of the proceedings. We have reviewed the entire reporter’s transcript of the trial that took place over eight days and found no indication Balderas behaved other than impeccably throughout the trial—there were no reports of any outbursts, giggling, yawning, or any other questionable conduct by Balderas—until during the prosecutor’s closing argument when he slyly tried to “flip off” the prosecutor. The trial court admonished Balderas, and there is nothing indicating he engaged in any similar conduct thereafter.

Balderas's reliance on this court's opinion in *People v. Murdoch* (2011) 194 Cal.App.4th 230, is misplaced. In *Murdoch*, after defendant's arraignment competency proceedings were instituted and the trial court appointed two experts to examine him. (*Id.* at p. 233.) Both experts concluded defendant suffered from serious or severe mental illness. He was competent so long as he continued taking prescription medication, but he had already stopped taking his medication. (*Ibid.*) Shortly before the trial began, defendant informed the court his defense was the victim was not human. (*Ibid.*) The court found defendant was competent and reinstated the criminal proceedings. The court subsequently granted defendant's request to represent himself. At trial, prior to opening statements, defendant again advised the court his defense was going to be that the witnesses were not human. (*Id.* at p. 234.) He intended to introduce pages from the Bible, question the witnesses if they "[were] from Sodom and Gomorra[,]" and question them about their shoulder blades, because "[s]houlder blades are symbolic of angelic beings. These two that are going to be taking the stand do not have shoulder blades. Okay?' . . . 'All I need to do, okay, if my assertion of their anatomy is correct, they have a bone that runs from here to here. They cannot shrug their shoulders. That's all I'm asking.'" (*Ibid.*) At trial, defendant cross-examined only one witness and asked a single question relating to his theory that the witness was not human—whether he could shrug his shoulders. (*Id.* at p. 235.) This court concluded the expert evidence coupled with defendant's behavior should have prompted the trial court to raise a doubt about defendant's competence during trial. (*Id.* at p. 238.)

In contrast, here there was no psychological or psychiatric information before the court indicating Balderas was not competent, i.e., did not understand the nature of the proceedings or was unable to assist his counsel. There was no display of completely delusional or irrational thinking. The record lacks substantial evidence demonstrating Balderas was incompetent to stand trial and, thus, the trial court did not err

in failing to declare a doubt as to his competency or institute competency proceedings.
(*People v. Lewis* (2008) 43 Cal.4th 415, 526.)

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.