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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 ROMELL CROPPER,

Defendant and Appellant.

G050806

(Super. Ct. No. 14NF2107)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.  
Michael Hayes, Judge. Affirmed.

Arielle Bases, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

The prosecution charged defendant Michael Romell Cropper with three counts of indecent exposure (Pen. Code, § 314, subd. 1), two counts of failing to register as a sex offender while a transient (Pen. Code, § 290.011), and one count of engaging in lewd conduct (Pen. Code, § 647, subd. (a)). A jury found him guilty of all charges except lewd conduct and returned true findings that he had suffered a prior conviction for indecent exposure. The trial court sentenced him to two years in state prison on each indecent exposure count and one year each in county jail on the failure to register counts, with all five terms to be served concurrently.

Defendant timely appealed from the judgment and we appointed counsel to represent him on appeal. Counsel filed a brief which set forth the facts of the case. She advised the court that she did not find any issues to argue on defendant's behalf, but identified the question of whether the evidence supported a finding he had the necessary mental state to support the indecent exposure convictions as a matter to be considered. Defendant was given 30 days to file written argument on his own behalf. That period has passed and we have received no communication from him. Pursuant to *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] and *People v. Wende* (1979) 25 Cal.3d 436, we have examined the record and find no arguable issue. Thus, we affirm the judgment.

## FACTS

One day defendant, a transient previously convicted of indecent exposure, was seen in a public park wearing no clothing. Defense witnesses denied he engaged in any conduct that was lewd or drew attention to his genitals. Both of them left the area when the police arrived. A police officer testified he saw defendant standing on a park monument with his arms raised, turning in circles while moving his hips, thereby causing

his penis to swing back and forth. Defendant ran to a nearby tree line and then reappeared wearing clothes. When asked why he was naked defendant said, “he was following God’s law and God says to be naked under the sun.”

Two weeks later, G.C., described as having developmental or mental disabilities, entered the men’s restroom at a public library. He encountered defendant who was naked from the waist down. When questioned before trial and while on the witness stand, G.C. gave conflicting accounts of what occurred. One account was that defendant was holding his erect penis and asked G.C. if he wanted to “suck” or “kiss” it. Two police officers who spoke to G.C. at different times testified he gave them a similar account of the incident. Defendant told the police he had an accident and went into the bathroom to clean himself and his clothes.

A short time later, a library employee sitting near a computer lab for teenagers heard a complaint of someone exposing himself. She saw defendant sitting at one of the computers with his genitals exposed and his penis erect. Two other library employees summoned to the computer lab testified defendant’s shorts were pulled up high on his thigh, but neither of them saw his genitalia. One employee asked defendant to pull down the pant leg on his shorts and he complied.

The failure to register counts related to each date defendant was charged with indecent exposure. While defendant had been informed of his obligation to register as a sex offender at the time of his previous indecent exposure conviction, there was no evidence he complied with the requirement.

## DISCUSSION

As noted, appellate counsel filed a brief stating she could not find any arguably meritorious issues to present on defendant’s behalf. The sole question

suggested by the opening brief is whether the evidence supported a finding defendant had the requisite mental state to support his indecent exposure convictions.

We answer this question in the affirmative. “[W]e review the entire record in the light most favorable to the prevailing party to determine whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Carbajal* (2003) 114 Cal.App.4th 978, 986-987.) “[T]he same standard [applies] to convictions based largely on circumstantial evidence.” (*Id.* at p. 987.)

To convict a person of violating Penal Code section 314, subdivision 1, the prosecution must prove beyond a reasonable doubt that “the defendant . . . willfully and lewdly expose[d] the private parts of his person[,] . . . in a public place or in a place where there are present other persons to be offended or annoyed thereby.” (*People v. Carbajal, supra*, 114 Cal.App.4th at p. 982.) Proof that a defendant acted with the requisite criminal “intent must usually be inferred from all of the facts and circumstances disclosed by the evidence” (*People v. Rehmeyer* (1993) 19 Cal.App.4th 1758, 1765), and “[w]hen the evidence justifies a reasonable inference of felonious intent, the verdict will not be disturbed on appeal” (*id.* at p. 1766). Here, there was testimony from witnesses that on all three occasions defendant engaged in conduct from which it could be inferred he had “the requisite specific intent to expose himself in a lewd manner.” (*Ibid.*) The fact that there was conflicting evidence on the indecent exposure charges does not compel a different result. “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Based on our independent review of the appellate record, we briefly mention two other matters. First, the record reflects that when trial began, defendant

declared he had a disagreement with the deputy public defender appointed to represent him. The court conducted an in camera hearing on the matter. (*People v. Marsden* (1970) 2 Cal.3d 118.) Defendant complained his counsel failed to assert his statutory speedy trial right, was “in collusion” with the prosecutor, and planned to call witnesses that he believed would “turn on him.” Defense counsel noted trial had commenced within 60 days of defendant’s arraignment and she expected the prospective witnesses would testify they did not see defendant expose himself during the library incident. The court denied the motion. The record supports the trial court’s ruling. It reflects defendant was brought to trial within 60 days of his arraignment on the information. (Pen. Code, § 1382, subd. (a)(2).) Further “*Marsden* error” does not occur “where complaints of counsel’s inadequacy involve tactical disagreements.” (*People v. Dickey* (2005) 35 Cal.4th 884, 922.)

Second, we note defendant knowingly and voluntarily absented himself from trial. Defendant began interrupting the prosecutor during his opening statement. The court excused the jury and counseled defendant that he needed to remain quiet. Defense counsel conferred with defendant. She then informed the court that defendant “would like to . . . testify on his own behalf, but he doesn’t want to be present for the other portions of the trial.” The court informed defendant of his right to be present at trial and the decision to be absent was his choice. Defendant was adamant that he would “continue to speak when [the prosecutor] lies.” As a result, the court found defendant was being disruptive and placed him in a holding cell for the remainder of opening statements. The court told the jury to disregard the fact defendant was not present.

After a lunch break, defendant executed a written waiver of his presence at trial in compliance with Penal Code sections 977, subdivision (b)(2) and 1043, subdivision (b)(2). Defendant was allowed to return to the courtroom to testify, but chose not to do so. The procedure followed by the trial court was proper. (*People v.*

*Concepcion* (2008) 45 Cal.4th 77, 82-83; *People v. Howze* (2001) 85 Cal.App.4th 1380, 1393-1395; *People v. Howard* (1996) 47 Cal.App.4th 1526, 1536-1539, overruled on another ground in *People v. Fuhrman* (1997) 16 Cal.4th 930, 947, fn. 11.)

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.