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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL PENA AYALA,

Defendant and Appellant.

2d Crim. No. B239548
(Super. Ct. No. YA077814)
(Los Angeles County)

Angel Pena Ayala appeals from the judgment following his conviction for kidnapping for carjacking (Pen. Code, § 209.5, subd. (a)),¹ kidnapping to commit another crime (§ 209, subd. (b)(1)), five counts of robbery (§ 211), two counts of carjacking (§ 215, subd. (a)), burglary (§ 459), escape by force (§ 4532, subd. (b)(2)), and dissuading a witness (§ 136.1, subd. (b)(1)). He was sentenced to prison for 137 years eight months to life. Ayala contends the trial court erred by failing to order a second mental competency hearing based on a substantial change in circumstances. We affirm.

FACTS

Ayala committed a series of offenses during the months of March and April 2010. In March 2010, Ayala met Dennis Watanabe through a Craig's List personal advertisement. On March 27, 2010, Watanabe brought Ayala to Watanabe's apartment.

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

Ayala pulled a gun. After tying Watanabe up, Ayala took various items of Watanabe's personal property from the apartment.

On March 31, 2010, after meeting Jimmy Wong through a Craig's List advertisement, Ayala and Wong went to Wong's apartment. Ayala drew a gun, tied Wong up, and took various items of Wong's personal property. He then forced Wong into Ayala's car and went to an ATM where he forced Wong to withdraw cash. Ayala took the cash.

On April 13, 2010, Jose Limon was in his apartment with a female friend. Ayala was waiting outside. The female friend took out a gun and let Ayala into the apartment. Ayala tied Limon up and took various items of Limon's personal property. He also threatened to kill Limon and his family if Limon reported the crime to the police. Ayala left the apartment and drove away in Limon's truck. Ayala was arrested and charged later in April 2010.

COMPETENCY PROCEEDINGS

Trial was set for May 11, 2011. On that date, Ayala made a motion to be relieved of appointed counsel. During the hearing on that motion, Ayala made some strange statements and his counsel expressed a doubt as to his competence. Pursuant to section 1368, the trial court declared a doubt as to Ayala's sanity and adjourned the proceedings.

The trial court appointed two mental health experts to examine Ayala and reviewed their written reports prior to a July 15, 2011, competency hearing. In a May 23, 2010, report, psychiatrist Kaushal Sharma concluded that Ayala was malingering. He stated that Ayala "is an antisocially motivated sociopath" whose presentation during an interview "shows that he is trying to pretend to be mentally incompetent to stand trial" through bizarre statements. Dr. Sharma concluded that Ayala "is aware of his present legal predicament and can rationally cooperate with his attorney as he was able to rationally cooperate with me." In a May 31, 2011, report, psychiatrist Kristen Ochoa stated that Ayala met the criteria for a schizoaffective disorder, bipolar type, and

concluded that he was not competent to stand trial. She believed that Ayala's delusional beliefs were genuine.

Because of the conflicting reports of Doctors Sharma and Ochoa, the trial court appointed a third psychiatrist, Dr. Sanjay Sahgal, to evaluate Ayala. Dr. Sahgal concluded that Ayala was malingering. He opined that Ayala met the criteria for an antisocial personality disorder, had a substance abuse problem, suicidal behavior and mood instability, but that he was fabricating other psychotic symptoms.

After the July 15, 2011, hearing, the trial court found that Ayala had failed to meet his burden of demonstrating incompetence and, therefore, was competent to stand trial. During the ensuing September 2011 trial, Ayala told the trial court that he did not want to attend his own trial any longer, and did not care about the consequences. His counsel expressed concern that Ayala's mental condition had deteriorated. The following day, defense counsel stated that, although Ayala had cooperated with and participated in the cross-examination of one victim the day before, he was not cooperating with counsel in the examination of another victim a day later.

The trial court stated that Ayala was lucid, understood conversations with the court, and followed the court's direction. In addition, the court and counsel conferred with psychologist Cynthia Reston-Parham who had interviewed Ayala that morning. Dr. Reston-Parham believed Ayala's increased agitation was caused by stopping his medications, but concluded that he understood and was assisting his counsel. The trial court stated that a change from one day to the next was consistent with malingering, and found no substantial evidence of a material change in Ayala's mental health. The court ruled that Ayala remained competent to stand trial. Trial resumed.

Ayala filed a timely appeal of the judgment following his conviction on all charged offenses.

DISCUSSION

Ayala contends the trial court violated his due process rights by not ordering a second mental competency hearing based on a substantial deterioration of his mental condition during trial. We disagree.

Due process prohibits trial of a criminal defendant who is mentally incompetent. (*People v. Ary* (2011) 51 Cal.4th 510, 517.) "A defendant is deemed competent to stand trial only if he "'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"' and "'has a rational as well as factual understanding of the proceedings against him.'"" (*Ibid.*, quoting in part *Dusky v. United States* (1960) 362 U.S. 402.) "When a trial court is presented with evidence that raises a reasonable doubt about a defendant's mental competence to stand trial, federal due process principles require that trial proceedings be suspended and a hearing be held to determine the defendant's competence. [Citations.] Only upon a determination that the defendant is mentally competent may the matter proceed to trial." (*Ary*, at p. 517.)

Sections 1367 through 1369 reflect these constitutional requirements. Section 1368, subdivision (a), requires a trial court to suspend criminal proceedings at any time prior to judgment if the court reasonably doubts the mental competence of the defendant. Section 1369 requires the appointment of mental health experts to assess the defendant's mental competence, and allows the defense and prosecution to present evidence to either support or counter a claim of the defendant's mental incompetence to stand trial.

A defendant is presumed to be mentally competent "unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent." (§ 1369, subd. (f).) Accordingly, the defendant bears the burden of proving mental incompetence. (*People v. Ary*, *supra*, 51 Cal.4th at p. 518.) Where, as in the instant case, a competency hearing has previously been conducted and the defendant found competent to stand trial, a second competency hearing is not warranted unless there has been a showing of a "substantial change of circumstances or new evidence casting a serious doubt on the validity of the prior finding." (*People v. Huggins* (2006) 38 Cal.4th 175, 220.) We review a finding regarding a defendant's competence to stand trial under the substantial evidence test. (See *People v. Marshall* (1997) 15 Cal.4th 1, 31.)

Here, we conclude that substantial evidence supported the trial court's denial of a second competency hearing. The first competency hearing had been

conducted approximately two months earlier and the only indication of a changed circumstance was Ayala's statement that he did not want to attend his own trial any longer. The trial court could reasonably conclude that this expression of defiance was evidence of further malingering and an escalation of his attempts to delay or avoid trial rather than a deterioration in his mental condition. The record shows that Ayala had cooperated with counsel the day before the event which triggered his counsel's request for a further hearing. In addition, two of the three mental health professionals who examined Ayala prior to the first competency hearing concluded that he was feigning mental illness. Ayala's request during trial that he be excused from further attendance is consistent with malingering and not the result of a deterioration in his mental condition.

Evidence of incompetence may come from the defendant's demeanor and irrational behavior, but more than mere bizarre actions or statements is required to raise a doubt regarding a defendant's competence. (*People v. Kroeger* (1964) 61 Cal.2d 236, 243–244; *People v. Williams* (1965) 235 Cal.App.2d 389, 398.) The standard is whether a defendant is capable of assisting in his or her own defense, not whether a defendant defiantly refuses to participate for other reasons. (See *People v. Rogers* (2006) 39 Cal.4th 826, 847; *People v. Murdoch* (2011) 194 Cal.App.4th 230, 236-237.)

Ayala's reliance on *Murdoch* is misplaced. In that case, the trial court found the defendant to be competent based on evidence that he had a severe mental illness and was competent to stand trial only if he remained on his medication. (*People v. Murdoch, supra*, 194 Cal.App.4th at p. 238.) Later at trial, the defendant stopped taking his medication and, representing himself, defended on the theory that his assault victim was "not a human," and lacked "shoulder blades." (*Id.* at p. 233.) The appellate court concluded that defendant's deteriorating behavior combined with expert opinion that his competence depended on medication required the trial court to conduct a second competency hearing. (*Id.* at p. 238.) In contrast, here there was no evidence that medication was required for Ayala's competence and substantial evidence that he was

malingering both before and after his competency hearing. Further, Ayala did not display delusional behavior at trial.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Alan B. Honeycutt, Judge
Superior Court County of Los Angeles

Rachel Lederman, under appointment by the Court of Appeal, for
Defendant and Appellant.

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