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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. HUSIE OUTING, Defendant and Appellant.	B232225 (Los Angeles County Super. Ct. No. BA365299)

APPEAL from a judgment of the Superior Court of Los Angeles County. Carol H. Rehm, Jr., Judge. Affirmed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Husie Outing was convicted of assault by means likely to produce great bodily injury (Pen. Code, § 245, former subd. (a)(1), now subd. (a)(4)). Although he was found competent to stand trial, he claims that his conviction should be reversed because the trial court did not order a second competency hearing when substantial evidence emerged that he was not competent to stand trial. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

After Outing attacked and beat Frederick Crissey in December 2009, he was charged with assault by means likely to produce great bodily injury, with associated enhancement allegations.

A. Commencement of Case Through Competency Proceedings

Outing's unusual behavior began at the preliminary hearing when he told the court it did not matter how the court pronounced his name and resisted the deputy's effort to remove his handcuffs, preferring to remain handcuffed during court proceedings. After the preliminary hearing defense counsel declared a doubt as to Outing's competency to stand trial. The court suspended the criminal proceedings and ordered Outing to be evaluated by mental health experts. When one psychiatrist, Joseph Simpson, attempted to evaluate Outing, Outing refused to see him. In court, upon hearing of these events, the trial court commented, "I frankly think Mr. Outing is playing games with us." Outing responded, "I ain't playing games with you." The court advised Outing that it had not asked for his comments, and Outing began to speak again, causing the court to instruct Outing to be silent.

Ultimately Simpson and another doctor evaluated Outing and submitted reports to the court. Both concluded that Outing was mentally ill. One expert concluded Outing was competent, the other that he was incompetent to stand trial. Simpson specifically noted Outing's beliefs of racial conspiracy: "He described beliefs that white people conspire to keep him incarcerated. 'Everyone's white. The judge is white. The parole

agent is white.' He stated that the alleged victim is white and expressed a belief that the entire case 'could have been premeditated and set up' in order to lead to his arrest. 'It's too coincidental.' He expressed the belief that he cannot get a fair trial because of 'the track record' of his treatment by white people. Throughout the entire interview he made repeated statements to the effect that he does not like white people and does not want 'anything from them.' He repeatedly told me that because I was white, I could not be helpful to him."

At an August 2010 hearing, the court discussed the experts' reports thoroughly and placed his conclusions about Outing on the record: "If we take all these [facts from the two reports] together, what I see is that the defendant understands what he's charged with, he understands the role of [defense counsel], he understands the nature of the court proceedings, he understands even what a plea bargain is, and he knows, in his mind, what he thought he was facing in court. [¶] He was able to respond appropriately to all questions asked by both doctors. He did not at any point appear to either doctor to be hallucinating. He did not appear to be overtly psychotic at any point. [¶] So what we're left with is a gentleman who at some point chose not to speak with his lawyer, who may be depressed and anxious, who in the past may have suffered from some psychiatric illness that may be depression, that he believes that there are racial issues involved in his life. And frankly, in the county jail, I think we all know that he may be right, that we do have many racial incidents in the county jail between African-Americans and Hispanics and others. [¶] So at all times he seemed to be able to understand everything that he needs to understand in order to be competent in the case. [¶] So my finding is that the defendant is competent to proceed, and I will reinstate criminal proceedings."

B. Pretrial Proceedings

The following month, at the next court hearing, defense counsel asked the trial court to reopen the issue of competency and to conduct a trial on that issue. Defense counsel told the court, "Your Honor, let me apprise the court of something. If we go to trial on this matter without an additional report from a doctor or a doctor available to

testify in this matter, I think it's going to deprive Mr. Outing of a fair trial. And the reason for that is there is evidence that he's paranoid and he has his own perception of what is real and what is not real, and we need a psychiatrist to at least lay out that illness to the jury as a possible defense in this matter." The court refused a continuance or to appoint a new doctor.

At the next court hearing, Outing requested that new counsel be appointed for him pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The court denied the motion. At court the following day, the trial court led discussions about a possible plea bargain; and after first refusing to come into court, Outing spoke extensively on the record. Outing told the court he wanted to skip the trial: "[W]hat I am saying now is I don't feel I am going to get no fair trial so I don't want to waste my time going through the motions, jury selection and all of that. It's a waste of my time. [¶] We can move on another way and you can just sentence me guilty because, you know, I don't see where that is going to play no role or part in helping my defense just based on the likelihood of the suggestion you made yesterday to keep Mr. Hardy on as my attorney where I didn't see fit or justified, so it's not a situation where it's set up where I am going to get a fair trial then." Outing contended that because he was Black and others involved in the case were White, "[J]ust based on experiences and dealing with the White folks that is going to be involved in this case, they are going to be racist. And the Black issue they going to be like Oreos. Their decision is going to be pretty much like you all's decision. And whatever you going to give me, give me now and I just . . . move onto the next phase and it's like this." Outing expressed a desire to proceed directly to his appeal and said to the judge, "So, like I say, sentence me right now and we can get it over right now because I don't want to deal with it anymore and I don't have time to waste."

The court inquired whether Outing understood that "that sort of decision" could result in a 19-year prison term, and asked if that was what Outing desired. Outing responded, "Whatever you going to do, you just do it at your discretion. I ain't asking for 19 years, but I am just saying whatever. You take your decision, you know, you feel effective to give to me the time you feel accordingly making a righteous judgment do it,

but like I said, I ain't trying to get no time because other things I could be doing too. [¶] I just don't like living up in prison or in jail. That ain't the nature of what I want to be doing either, but I am just saying based on I don't have control over the situation and you are in control, you know what I am saying?"

The court tried to express to Outing the aspects of the proceedings over which he had control, but Outing broke in: "I don't. I ain't trying to look stupid. I know what the situation, dealing with the individual over there and the decision you made yesterday [on the *Marsden* motion] when you trying to railroad somebody the way you perceive like you trying to disguise things. [¶] I can see. I read right between the lines. It's self evident. It's crystal clear what you are doing. If you had some purpose and you wanted to see that I was going to get a fair trial, I stipulated the reason why the attorney over here could be fired and you know I can get some new counsel, but you see when you didn't take it upon yourself to do that—I am not stupid, you know. One thing leads to another and I am not in solution about what is going on."

The court told Outing that many of his opinions "ha[d] no basis in reality" and that he was "clearly focused on a lot of issues that are not components of the trial in this case." The court also noted that Outing was smirking, and advised, "Mr. Outing, if you were going to be requesting some sort of a lenient offer from this court, your behavior in this courtroom and your remarks are not demonstrating that you are a gentleman who deserves some kind of leniency." After some additional discussion with the attorneys, the court returned to addressing Outing: "I want to explain something to you. [¶] Based on your comments today, I see you rolling your eyes and rolling your head—" Outing interrupted: "I am just listening to you. I can't just listen to you. I am listening to what you have to say." The court responded, "You can listen to the court without sarcastic body language and we will try to get through this together."

The court again tried to discuss the plea bargain offer made by the People. Outing rejected the 7-year offer, saying, "No. Let's just go ahead. I will just deal with it." The court asked, "Deal with what?" and Outing responded, "Just like I mentioned. Because you know what I am saying, I can't see where I get no fair trial. And I am, based on the

likelihood I tried to fire this gentleman for incompetence, when I see something like that and I stipulated to what he told me specifically and you didn't see where to make a clear judgment where I can get another attorney in his absence, just based on what he told me because it's not consistent with him being, you know, in my favor making good judgment as far as in my case relating, you know what I am saying. Just issues like that. It's small, but it's really substantial." The court said, "It's not small to me. You make a lot of statements here, as I said, that aren't based on any fact." "How much fact do we need?" asked Outing.

The court attempted to ascertain whether Outing understood the plea bargain being offered, but Outing apparently responded by shaking his head. When the court admonished him to answer verbally, Outing complained, "You talking to me like I ain't got no good sense." The court responded, "You are demonstrating you don't have good sense, Mr. Outing." Outing answered, "You are just trying to assert total control like I don't got no conscious mind," to which the court addressed Outing at length about his behavior in court: "It has nothing to do with conscious mind on your part. It has everything to do with the control of a courtroom. And let me make it clear to you in case I did not yesterday. You are not in control of this courtroom. [¶] You have been acting up, not coming out to court and then coming out and demonstrating to all of us what your personal beliefs are and why you don't think you can get a fair trial and why you think this is all a waste of time so just let it pass and let me pursue my appeal rights. That seems to be your position. [¶] I want to make it clear to you. You are not in control of this courtroom. I will ask you one more time so the record is clear. The People's offer is seven years. Do you understand that?" Outing confirmed that he understood the offer and had discussed it with his counsel, and he declined the offer.

C. Conduct During Trial

The case went to trial, and Outing testified on his own behalf. Out of the presence of the jurors, while the attorneys were conferring about a jury instruction pertaining to a defendant's failure to explain or deny evidence against him, Outing spoke out. As counsel and the court discussed the evidence to determine which statement items Outing

had denied for the purposes of the propriety of that instruction, Outing interjected, "People lie." The court held a discussion off the record, but when proceedings resumed on the record, Outing accused the court: "You don't care about me. I am being honest with you. I am just trying to be honest with you. I am not trying to cover up. [¶] I have been honest with you all the time." The court responded, "Mr. Outing has been addressing counsel and the court off the record. That apropos the court's ruling on [CALCRIM No.] 361, according to Mr. Outing, the court just wants him to lie. The court doesn't want you to lie, Mr. Outing."

"You don't respect honesty and truth. Can I go back?" said Outing. The court asked Outing if he wished to waive his presence in the courtroom for the conference concerning jury instructions, and Outing said, "You don't care. You don't care. I am being honest. You want me being honest and truthful. That is all I have been doing the whole time. It is not respect, so why should I be here[?]" Outing waived his presence for purposes of discussing jury instructions, repeating in the process several times that the court did not care.

Later that day, Outing refused to reenter the courtroom for the afternoon session. The court and counsel went to see Outing in lockup. The court said, "Mr. Outing, I see you walking back and forth in here in lockup. I want to explain to you, you have a right to be out—okay. You are bouncing your hands on the floor. Mr. Outing, do you even want to talk to us?" Outing waved the group off, indicating he did not want to talk. The court explained that if he wanted to absent himself from the proceedings he could follow them by means of a sound transmission into the lockup area. Outing said, "I hear what you are saying. That is all." The court asked, "Do you understand what I told you?" Outing did not respond. The court found that Outing had voluntarily absented himself from the proceedings. Outing interrupted the court, saying, "My hand is messed up. Look at my hand. Look at my hand. The White dude is strong enough to do push-ups and everything, you know, to get himself strong enough. I am disabled, too. I have all kinds of stuff. It is garbage what you are staying. Look at my hand. You can see it is real visible, you know what I mean. He's not strong enough to prepare himself, but I am?

So you want to act like it's more than something, me defending myself. You know, come on man."

When the court tried to speak, Outing again interrupted: "You are White. He is White. He's not strong enough to prepare himself, push-ups and to do things physical to heal himself, because my hand is messed up too. My hand was just like that. I work out and I do all kinds of things, you know, to heal myself. But you want to take it personal with me because you are White, he is White, and he is not strong enough to heal himself and repair. [¶] So, you know, you are defending his side. And you are White. That is all it is. Because you know, it ain't nothing but working out to get yourself strong enough to use your hand, and he can't do that. So you want to make me the guilty party. [¶] Have a nice day."

The court continued to address Outing about listening to court proceedings, but Outing said, "Thank you, sir. I don't want to talk to you. Please, don't talk to me." The court said, "And if at any time you wish to come back into—Mr. Outing is flushing the toilet so he won't have to listen to the court. So we will just attempt to tell you anyway." Outing said, "Please go. Please go." The court tried again: "If you want to come in at any time," and Outing said, "I had enough. You know, you are just trying to convict me because I am Black. I explained I am innocent of the whole thing. You are just trying to convict me." The court continued, "You just let us know that you want to come back. Thank you." The jury was instructed in Outing's absence.

Before closing arguments, defense counsel told the court that he wished to read a letter to the jury that Outing had written, perhaps, counsel noted, in anticipation of his election to absent himself from the proceedings. Counsel represented that the letter contained no inflammatory language or criticism of the purposes of the prosecution or the case but was "an expression of his self-examination." The court refused to permit counsel to read the letter to the jury. Outing declined to attend court for closing arguments.

The following day, the court made the following statement on the record: "Mr. Outing is not with us today. The record should reflect that Mr. Outing personally told

counsel and the court yesterday that he did not want to come into the courtroom for further proceedings. We conducted the basic jury instructions and closing arguments of counsel outside Mr. Outing's presence. [¶] While the court was reading jury instructions, we could hear Mr. Outing, who was in lock up, screaming. This morning Mr. Outing again was returned to lock up and has been in a fight with another defendant. Mr. Outing has been taken to the hospital[.] That other defendant was not taken to the hospital."

Outing was convicted of assault by means likely to cause great bodily injury. After the presentation of evidence concerning the prior conviction allegations, the jury found true the allegations concerning Outing's prior offenses. The court sentenced Outing to 11 years in state prison. Outing appeals.

DISCUSSION

I. The Trial Court's Obligation to Reinstitute Competency Proceedings

Even after a court has found a defendant competent to stand trial, as here, the court has a continuing duty to monitor for substantial evidence of the defendant's incompetency. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1485.) A second competency hearing must be held when the court is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the defendant's competency. (*People v. Jones* (1991) 53 Cal.3d 1115, 1153.) The court's personal observations may be taken into account in determining whether there has been a significant change in the defendant's mental state. (*Ibid*.) Because the trial court has the opportunity to observe a defendant during court proceedings, its decision whether to hold a competency hearing is entitled to deference. (*People v. Rogers* (2006) 39 Cal.4th 826, 847.) We review the court's ruling for substantial evidence. (*People v. Marshall* (1997) 15 Cal.4th 1, 31.)

Outing contends that the trial court erred in not declaring a second doubt and instituting new competency proceedings as his conduct grew "increasingly bizarre and contentious," including the refusal to participate in trial and the incident where his screaming in lockup could be heard in the courtroom. Outing asserts that he displayed irrational thinking, failure to understand the judicial process, and an inability to act in his own best interest when he urged the court to skip the trial and simply sentence him. He states that his comments were nonsensical and suggests that he was "somewhat delusional" about the situation facing him. He notes that he "persisted in conspiratorial thinking" in interpreting the ruling on his *Marsden* motion as evidence of a "'white' conspiracy against him," and contends that he interpreted the court's inquiry about the plea bargain irrationally. Outing characterizes his outburst in conjunction with the jury instructions as a misinterpretation of the court proceedings prompted by his "mistrust and conspiratorial worldview," and asserts that he was unable "to assist his attorney in presenting a defense if he could not rationally understand the proceeding in which he was involved." Outing claims that the conversation in lockup in which he asked the court to leave him alone demonstrated that he was "increasingly distressed and, as a result, correspondingly unable to understand and participate in the proceeding," meaning that he was unable to prepare his defense or consult with his counsel. Accordingly, Outing asserts that the failure to declare a doubt and hold new competency proceedings was reversible error.

We conclude that the trial court did not err by failing to institute additional competency proceedings. Outing's conduct after the competency hearing, while disruptive, contentious, manipulative and suspicious, was consistent with his behavior prior to the competency hearing. Well before the competency hearing, Outing had remained aloof or unavailable whenever he could exercise any control over the course of events: For instance, he had refused to assist the court in pronouncing his name properly and would not meet with the evaluator who came to interview him. From the earliest points in the case he had interrupted court proceedings when the court's discussion turned to him or his motivations, as when he interrupted a hearing to contradict the court's

assessment that he was playing games by refusing to meet with the psychiatrist sent to evaluate him. Before the competency proceedings, he had also made known his view that White people were conspiring against him and that he would be unable to obtain a fair trial, and his refusal to assist the court with pronunciation and his election to remain handcuffed are consistent with his belief that the trial was a sham. The trial court was aware of Outing's mental illness, knew that he was uncooperative and had strong views that he was being subjected to racial injustice, and concluded that Outing nonetheless understood the charges, his counsel's role, the nature of the court proceedings, and what a plea bargain was.

After the competency hearing Outing continued to engage in similar behavior. He continued to express his belief that the legal proceedings were a fundamentally unfair charade and that the trial was a mere formality before punishment, first challenging the court to forego the trial and to sentence him right away; later refusing the plea offer so that he could "deal with" the unfair trial; and absenting himself from the proceedings as a protest against a court that he believed did not "care." He continued to allege that the trial was a racist conspiracy. He expressed contempt for the proceedings by rolling his eyes and engaging in "sarcastic body language." Outing continued to interrupt proceedings whenever they touched on his character or his motivations, as evidenced by his interjected comments when he misunderstood a jury instruction concerning a defendant's failure to explain or deny evidence. He attempted to assert control of the courtroom by refusing to come to court, asking to leave court proceedings, and even attempting to drown out the court's voice by flushing a toilet in lockup. When his efforts to control the proceedings by refusing to participate failed, he tried to disrupt the trial by screaming in lockup. Outing's behavior may have become more intensely angry, disrespectful and disruptive, but it did not evidence a substantial change in circumstances; nor did it cast serious doubt upon the validity of the earlier competency determination.

Outing, however, contends that his behavior actually demonstrated that he was unable to make rational decisions and that he was therefore incompetent. The record

does not demonstrate that Outing was unable to behave rationally. He requested new counsel and presented to the trial court his reasons for his dissatisfaction with his attorney. He testified on direct examination and on cross-examination uneventfully, demonstrating that he was able to follow and participate in the proceedings. He wrote a letter that was, by his attorney's representation, free of invective and criticism of the proceedings, in order to attempt to present argument to the jury. Although he misunderstood CALCRIM No. 361 and the colloquy about that instruction, believing the court to be instructing the jury that he had lied or conveying a desire that he lie, his objection to a jury instruction and articulation of a basis for his view evince a misunderstanding of a specific legal point and a strong feeling of personal outrage rather than an inability to follow or participate in the proceedings. Outing claims his refusal to accept a plea bargain offering seven years in prison and his challenge to the trial court to sentence him to 19 years without a trial was evidence that he was unable to make rational decisions. It is not irrational to be unwilling to admit culpability when one believes one's conduct to have been justified, as Outing apparently did; and it is not irrational to refuse to negotiate with a prosecutor and trial court one believes to be racially biased as a means of protesting the perceived unfairness of the legal system. Moreover, Outing's desire to skip trial and proceed to sentencing was, he said, based on his belief that a trial was a sham and a waste of his time; he preferred to proceed directly to sentencing and then to appeal. One might reasonably be willing to forego trial if one believes, as Outing did, that the outcome was a foregone conclusion and that immediate sentencing will hasten one's appeal. While few of Outing's decisions were sensible, they do not demonstrate that he was incompetent. The trial court was not required to conduct further competency proceedings.

II. Ineffective Assistance of Counsel

Outing contends that his trial counsel provided ineffective assistance by failing to reassert a doubt as to his competence based on Outing's behavior after the competency

hearing. As Outing's conduct after the hearing did not constitute a substantial change of circumstances or new evidence casting a serious doubt on the finding of competency (*People v. Jones*, *supra*, 53 Cal.3d at p. 1153), it is not reasonably probable that he was not mentally competent at the time of trial and counsel was not ineffective for failing to declare a doubt as to Outing's competence. (See, e.g., *People v. Deere* (1991) 53 Cal.3d 705, 714 [counsel is not ineffective for failing to raise issue of competency where the trial court had not erred in failing to conduct a competency hearing earlier in the trial and there was no evidence that the state of the defendant's mental competency had declined].)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.