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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

QUINT RAY MILLER,

Defendant and Appellant.

2d Crim. No. B270254
(Super. Ct. No. 2014019364)
(Ventura County)

Quint Ray Miller appeals his conviction by jury for stalking (Pen. Code, § 646.9, subd. (b))[1] and six counts of disobeying a domestic relations court order (§ 273.6, subd. (a)). Appellant was sentenced to four years state prison and claims that the trial court erred in not suspending the trial proceedings and ordering a mental competency hearing. (§ 1368, subd. (b).) We affirm.

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

Facts

In 2013 L.R. broke up with appellant and told him she wanted no communication with him. Appellant stalked and emailed L.R., saying that he could not "see his life without [her]." In December 2013, appellant followed L.R. home, made a forced entry, screamed at L.R., and slammed her into a wall.

The stalking and harassment did not stop. In March 2014, L.R. obtained a restraining order. Appellant was ordered not to contact L.R. and stay at least 100 yards away.

In June 2014, appellant camped outside L.R.'s house, sitting in his car four or five hours at a time. L.R. was scared and called the police, but appellant continued to call and text her. During the months of June and July, appellant emailed her five or six times a day.

At trial, appellant claimed that he never intended to scare or threaten L.R. Appellant admitted texting, calling, and emailing L.R. but said it was L.R. who initiated the communications. Appellant said that the breakup left him heartbroken and that he suffered bouts of depression with crying spells and blackouts.

Competency Hearing

Appellant contends that the trial court erred in not suspending the proceedings and ordering a competency hearing pursuant to section 1368, subdivision (b). We conclude that there is no substantial evidence appellant was mentally incompetent to stand trial or that appellant's behavior and statements required the trial court to order a competency hearing. The record reflects the following:

At the conclusion of the preliminary hearing on July 31, 2015, defense counsel requested that appellant be referred for

counseling and treatment pursuant to section 4011.6.[2] The trial court ordered the sheriff to transfer appellant to a "72 hour facility" for a psychological evaluation.

Doctor Thuong-Phuong Nguyen conducted a psychiatric evaluation and reported that appellant was depressed but did not suffer from psychosis, mania, delusions, or paranoia. Appellant told the doctor that he had been abusing marijuana to cope with anxiety and depression, and that Prozac and therapy had been beneficial. Doctor Nguyen reported that appellant was not distressed and was "alert and oriented to time, place and person." The doctor recommended that appellant continue taking Prozac for anxiety and depression, continue going to psychotherapy, and abstain from alcohol and illicit drugs.

When the case was tried in November 2015, no one expressed doubt about appellant's competency to stand trial or assist counsel in his defense. Appellant did make a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118) but the motion had nothing to do with appellant's mental competency. Appellant cried at the hearing but was responsive to the trial court's questions and understood the nature of the proceedings. Appellant complained, "I have been through three attorneys. . . .

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[2] Section 4011.6 provides in pertinent part: "In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code . . . ."

I told them a number of times they needed to do discovery" and that they needed "to look into" L.R.

At trial, appellant testified about the breakup and was responsive to the questions. Appellant denied that he intended to scare L.R. or that he grabbed or threw her against a wall. Appellant was "sad" and "livid" about the breakup, and blamed L.R. who contacted him after he was served with the restraining order. Appellant exercised his Fifth Amendment right not to testify in response to one question and objected that another question was "open for debate."

After the verdicts were entered, the trial court referred the matter to probation for a recommendation and a psychological assessment. At the sentencing hearing, the trial court noted that probation had not conducted a psychological evaluation. The court reviewed Doctor Nguyen's pretrial psychiatric evaluation and stated that "I don't think that I would gain anymore significantly different information [were] I . . . to repeat that process again and delay sentencing."

Right to Competency Hearing

A defendant is mentally incompetent to stand trial if he "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).) "Both federal due process and state law require a trial judge to suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial. [Citations.] . . . Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and

prior mental evaluations. [Citations.]" (*People v. Rogers* (2006) 39 Cal.4th 826, 847.)

Defense counsel's belief that his client might be mentally incompetent does not automatically trigger a competency hearing. (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 465.) Instead, "defense counsel must present expert opinion from a qualified and informed mental health expert, stating under oath and with particularity that the defendant is incompetent, or counsel must make some other substantial showing of incompetence that supplements and supports counsel's own opinion. Only then does the trial court have a nondiscretionary obligation to suspend proceedings and hold a competency trial. [Citation.]" (*Ibid.*)

Appellant contends that he suffered a mental disorder that rendered him unable to rationally assist in his own defense. Trial counsel, however, never said that appellant did not understand the nature of the proceedings or was unable to assist in his defense. Counsel expressed concern about appellant's treatment for anxiety and depression while in jail and requested the section 4011.6 evaluation. Doctor Nguyen confirmed that appellant was suffering from depression but had no mental disorder. The doctor reported that appellant is "sad mostly. Thought process is linear and goal directed. Content is unremarkable for psychosis, mania, delusions or paranoia."

Appellant complains that a section 4011.6 psychiatric evaluation is not the same as a section 1368 competency evaluation. But in this case, it was a good indicator of appellant's mental status and competency. Section 4011.6 evaluations are used to determine whether a person is gravely disabled or a danger to others or himself/herself under the Lanterman-Petris-

Short Act. (Welf. & Inst. Code, § 5150, subd. (a).) A person is "gravely disabled" where the person suffers from a condition in which the person has been found mentally incompetent under section 1370 and "[a]s a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner." (Welf. & Inst. Code, § 5008, subd. (h)(1)(B)(iii).)

Doctor Nguyen reported that appellant was "alert and oriented to time, place, and person." During the psychiatric evaluation, appellant complained that he felt an increased sense of despair because of ongoing legal issues with L.R. The remark was telling and showed that appellant understood the nature of the criminal proceedings. Had appellant suffered from a mental disorder or was too distressed to understand the nature and purpose of the proceedings, the doctor would have so reported.

Appellant argues that his moods were so unstable that even the victim asked him to get psychiatric help. At trial, appellant stated that he was saddened about the breakup, would cry for hours on end, and started losing sense of time. That was consistent with Doctor Nguyen's diagnosis: Adjustment Disorder with Depressed Mood, Cannabis Abuse. Appellant used marijuana for years to help with the depression and was recreationally abusing Adderall, a stimulant.

Appellant was uncooperative at a bail review hearing but no one expressed the belief that appellant lacked the mental competency to stand trial. During the *Marsden* hearing, defense counsel stated that he was working with appellant's treating psychiatrist but appellant revoked medical authorization to obtain additional mental health information. If Doctor Nguyen,

appellant's treating psychiatrist, or defense counsel suspected that appellant lacked mental competency to stand trial, they would have so advised the court. "[T]rial counsel's failure to seek a competency hearing . . . 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]." (*People v. Rogers*, *supra*, 39 Cal.4th at p. 848.)

Appellant argues that he made irrational, self-serving statements at trial and may have testified against the advice of counsel. Appellant's testimony was consistent with the defense claim that he was despondent about the breakup and never intended to threaten or harm L.R. It was a plea for sympathy and discredited by the jury. More is required to raise a doubt as to a defendant's competency than mere bizarre actions or bizarre statements, or psychiatric testimony that defendant is immature, dangerous or psychopathic. (*People v. Nelson* (2016) 1 Cal.5th 513, 559; *People v. Mai* (2013) 57 Cal.4th 986, 1034 [self-defeating outbursts in court is not substantial evidence of incompetence].)

A criminal defendant is presumed to be competent unless proven otherwise by a preponderance of the evidence. (*People v. Rells* (2000) 22 Cal.4th 860, 869.) On appeal, the trial court's decision whether or not to hold a competence hearing is entitled to great deference, because the trial court had the opportunity to observe the defendant during trial. (*People v. Mai*, *supra*, 57 Cal.4th at p. 1033.) "'A trial court is required to conduct a competence hearing, sua sponte if necessary, whenever there is substantial evidence of mental incompetence. [Citations.] Substantial evidence for these purposes is evidence

that raises a reasonable doubt on the issue. [Citation.]'" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1110, quoting *People v. Howard* (1992) 1 Cal.4th 1132, 1163.) "[T]his doubt which triggers the obligation of the trial judge to order a hearing on present sanity is not a subjective one but rather a doubt to be determined objectively from the record. [Citation.]" (*People v. Sundberg* (1981) 124 Cal.App.3d 944, 955-956.)

Appellant makes no showing that the trial court erred in not suspending the proceedings and ordering a section 1368 competency hearing.

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Matthew P. Guasco, Judge

Superior Court County of Ventura

Richard C. Gilman, under appointment by the Court of Appeal, for Defendant and Appellant.

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