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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

THE PEOPLE, Plaintiff and Respondent, v. LUIS R., Defendant and Appellant.	B282148 (Los Angeles County Super. Ct. No. ZE039994)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Charles Lee, Judge. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury found that defendant Luis R. qualified for a Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code section 5000 et seq.[1]) conservatorship. On appeal, defendant contends that the trial court erred when it advised the jury of the one-year duration of an LPS conservatorship. According to defendant, that error was structural, and therefore reversible per se, because it relieved the prosecution of the burden of proving one or more elements of its case. In the alternative, defendant contends that the error was prejudicial, under both the federal *Chapman* and state *Watson* standards[2] for determining harmless error. The Attorney General concedes the trial court's advisement to the jury was erroneous, but argues that it was not structural or prejudicial under either standard for determining harmless error.

We hold that although the trial court erred in advising the jury about the one-year duration of the LPS conservatorship, such error was neither structural nor prejudicial. We therefore affirm.

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1 Further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

2 *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*) and *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*).

II. BACKGROUND

A. *Conservatorship Petition*

On July 21, 2016, the Los Angeles County Public Guardian filed a petition under section 5008, subdivisions (h)(1)(A) (LPS conservatorship) and (B) (Murphy conservatorship)[3] for reappointment as conservator of the person and estate of defendant.

B. *Trial*

1. Preliminary Instructions

On December 1, 2016, jury trial commenced on the petition. Prior to reading the preliminary instructions, the trial court

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[3] "A Murphy conservatorship under the [LPS Act] may be established for criminal defendants who have been found incompetent to stand trial under Penal Code section 1370; have a pending information or indictment for a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person; and are presently dangerous. (Welf. & Inst. Code, § 5008, subd. (h)(1)(B); *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 176-177 . . . .)" (*Conservatorship of Lee C.* (2017) 18 Cal.App.5th 1072, 1077.)

For purposes of proving the Murphy conservatorship, the parties stipulated that defendant was under criminal indictment in case number BA435244 for making serious criminal threats to the physical well-being of another person, that defendant had been found incompetent to stand trial in that proceeding, and that the indictment had not been dismissed and was still pending.

advised the jury as follows: "I didn't mention yesterday that there's an effort to impose conservatorships on [defendant], but they last [a] year, and then it's subject to possible renewal." Defendant's counsel did not object to the court's advisement or request any clarification or limitation concerning it.

The trial court then gave, among others, the following instructions: "The parties have a right to a jury . . . that will attempt to reach a verdict based on the evidence presented." "You must not decide on a verdict until after you've heard all [of] the evidence and have discussed it thoroughly with your fellow jurors in your deliberations." "You must decide what the facts are in this case only from the evidence you see [and] hear during the trial. Sworn testimony, documents, or anything else may be admitted as evidence." "Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness." "Parties can receive a fair trial only if the facts and information on which you base your decisions are presented to you as a group with each juror having the same opportunity to see, hear, and evaluate the evidence."

2. Prosecution's Case

a. Dr. Tumu

Dr. Phani Tumu, a psychiatrist with a background in general and forensic psychiatry, was appointed by the court to evaluate defendant to determine if he qualified for LPS and Murphy conservatorships. Dr. Tumu had evaluated defendant

three times at the Metropolitan State Hospital[4] between April 2015 and September 2016, and had read defendant's treating physician's notes, the psychologist's notes, and the interdisciplinary progress notes prepared by staff members who interacted with defendant on a regular basis.

Dr. Tumu also reviewed defendant's history, which included a commitment at Atascadero State Hospital[5] from 2010 to 2012. Prior to that commitment, defendant had received treatment in a full service partnership program (FSP), in which clinicians visited patients in their homes or shelters and provided them with needed medication.

In Dr. Tumu's opinion, defendant suffered from schizophrenia. Defendant had suffered from that mental illness for "many years" and exhibited at least three symptoms: auditory hallucinations, delusional thinking in the form of paranoid and grandiose delusions, and thought disorganization. When Dr. Tumu first examined defendant in 2015, all three of those symptoms were "very prominent." Since that time, the symptoms had improved because "a different medication was started." Among other grandiose delusions, defendant believed he was a home owner, a fighter pilot, and a USC graduate. He also talked about having millions of dollars in the bank. During Dr. Tumu's first interview with defendant, he "talked about . . . being poisoned by the police, using chloroform, having his hair

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[4] Metropolitan State Hospital treated persons with mental illness who had been charged with crimes.

[5] Atascadero State Hospital, like Metropolitan State Hospital, treated persons with mental illness who had been charged with crimes.

and eyeballs changed out, [and] various staff members . . . doing things to him." But those delusions "seem[ed] to have improved with the initiation of the new medication."

According to Dr. Tumu, defendant was currently taking three different medications to treat his symptoms: clozaril, an anti-psychotic used specifically to treat schizophrenia; lithium, a mood stabilizer; and haldol decanoate, a longer lasting anti-psychotic medication. Defendant, however, did not believe he had an illness and therefore did not believe he needed medications. Defendant also told other members of his treatment team that he did not want to be on medications. The fact that defendant previously had been in a FSP program suggested to Dr. Tumu that defendant had been chronically noncompliant with medication and hospitalized "many times." Dr. Tumu explained that if defendant did not believe he had schizophrenia, he would not have any motivation to take his medication.

Based on his interviews of defendant and his record review, Dr. Tumu opined that defendant could not provide food, shelter, and clothing for himself due to his mental illness. Defendant "needed prompting for his activities of daily living while in the hospital. He . . . needed encouragement by staff to get up and attend groups . . . . He [also] need[ed] a significant amount of attention while in the hospital," and Dr. Tumu did not "believe he would be able to [function] independently."

When defendant was first admitted to Metropolitan State Hospital in 2014, he was involved in various incidents, "including incidents for which he was placed in five-point restraints and seclusion due to paranoia about various staff members and patients . . . ." When he was given clozaril some of his symptoms improved; but in June 2016, he was involved in new incidents,

including, when he became angry, clenched his fist and tried to strike another patient, that required multiple injected and oral doses of PRN, or emergency as-needed, medications to treat agitation and anxiety. Later that same month, defendant became verbally aggressive with staff. In August 2016, defendant reported to staff that he was hearing voices that his current medications could not control and which required doses of PRN medications. Dr. Tumu believed that if defendant was no longer under a conservatorship, he would not be able to obtain the PRN medications required to control his symptoms of aggression.

Defendant told Dr. Tumu that if he were released from commitment, he would use the money he had in the bank to take care of himself, but he could not elaborate about the money or where it was located. To Dr. Tumu's knowledge, defendant did not have any contact with family members who could help him provide for himself. If defendant were discharged from the hospital without a conservatorship, Dr. Tumu believed he would not continue taking his medication. Defendant lacked insight into his illness, had a history of noncompliance with his medications, and would "decompensate psychiatrically" without his medications. Defendant did not understand that he needed to take psychotropic medications for the rest of his life. Dr. Tumu opined that defendant was unable to accept voluntarily meaningful treatment for his illness. He therefore concluded that there was no viable alternative to a LPS conservatorship for defendant.

b. Dr. Sibal

Dr. Nerissa Sibal, a staff psychiatrist at Metropolitan State Hospital, was defendant's treating psychiatrist from November 2015 through September 2016. Her unit, the LPS unit, was comprised of males that were "sexually inappropriate[6] or . . . highly assaultive, aggressive . . . ."[7]

During the time defendant was in Dr. Sibal's unit, he never participated in the available group programs. She and her treatment team encouraged him to participate in the groups, but he responded that he did not "'need those groups'" because he did not have a mental illness.

Dr. Sibal and her team would have a formal meeting with defendant once a month, and every time they met, he asked her to discontinue his medications because he did not want to take them anymore. Defendant would also approach Dr. Sibal informally when she was in the unit and ask her to discontinue his medications. In response, Dr. Sibal would repeatedly tell defendant that he needed to take the medications because he had an illness; but he would consistently deny he had an illness.[8]

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[6] On January 22, 2016, while he was assigned to Dr. Sibal's unit, defendant allegedly "grabbed [a] nurse's behind."

[7] Defendant's psychiatric background showed he had a long history of criminal charges and that he had been committed to Atascadero Hospital for "a long time." He had also been committed to Patton Hospital.

[8] Defendant believed the police would "'beat him up'" if he did not take his medications.

Dr. Sibal diagnosed defendant as suffering from schizophrenia. He exhibited "auditory hallucinations," "a lot of delusions, both paranoid and grandiose" and was unable to care for himself.

Dr. Sibal confirmed that defendant did not have insight into his illness. She spoke to him about his illness almost every day while trying to convince him to take his medications. According to Dr. Sibal, defendant needed PRN medications regularly to control episodes of aggression and agitation. For example, he would tell staff, "'I feel like I want to hit some[one].'" He would also "kick on the . . . walls or punch on . . . doors." And, on the first day defendant came to Dr. Sibal's unit, he had to be placed in "five-point" leather restraints due to aggressive behavior. On some of those occasions, the PRN medications were injected to be "quicker acting" to control hand clenching and muscle twitching.

Like Dr. Tumu, Dr. Sibal confirmed that defendant would be unwilling or unable to accept voluntarily meaningful treatment for his illness. She "honestly believe[d that] the minute he walk[ed] out [of the unit], he [would] not take his medication" and, as a result, would decompensate psychiatrically. She therefore believed there was no alternative to commitment.

c. Dr. Diaz

Dr. Selene Diaz, a staff psychiatrist at Metropolitan State Hospital, was defendant's treating psychiatrist at the time of trial. Defendant had been transferred to her unit because it housed patients who were under a Murphy conservatorship.

Dr. Diaz confirmed that defendant suffered from schizophrenia. Like Dr. Tumu and Dr. Sibal, Dr. Diaz noted that prior to being prescribed clozapine, defendant exhibited aggression toward peers and staff.

Dr. Diaz stated that if a patient was released from a conservatorship, left the hospital, and then discontinued clozapine abruptly, he or she would suffer seizures. And, if that patient did not voluntarily submit to regular blood tests, the pharmacy would not dispense the needed medication, which would lead to seizures.

From Dr. Diaz's perspective, defendant would not be a "good candidate" to continue on clozapine if he were no longer on a conservatorship and discharged from the hospital. She predicted that, outside the hospital setting, defendant "[would] quickly decompensate and that would put him at risk for seizures." She reported that defendant currently did not want to take his medication in the hospital setting.

Dr. Diaz concluded that defendant did not have insight into his mental illness and would be unwilling or unable to accept voluntarily meaningful treatment. She also did not believe that defendant could provide for his basic needs, such as food, shelter and clothing because of his illness, and she did not know of any acceptable alternative to conservatorship.[9]

3. Defense Case

Defendant testified on his own behalf. He believed it would "[b]e good if [he] could get off of [the conservatorship]." And, if

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[9] Dr. Diaz did believe that if defendant continued to improve, she could refer him to a locked institute for mental disease (IMD).

the conservatorship terminated, defendant would live at his parents' house.

Defendant was aware of his diagnosis, "schizoaffective bipolar disorder." He currently was taking lithium, haldol, and clozapine and believed those medications were helpful. He would continue to take them if the conservatorship terminated. Defendant believed his current medications were better than the ones he had previously taken. He also believed that if he were released to a lower level of care, he would comply with orders and the structure of that setting.

On cross-examination, defendant asserted that he was aware he had a mental illness. He had been taking medication for his illness since 1999. He did ask Dr. Sibal and Dr. Diaz to lower the dosage of his medications, but did not tell the doctors that he did not have a mental illness or that he did not want to take medication.

Defendant stated that he was 37 years old[10] and that he graduated from "L.A. High" in 1997, but then stated that he graduated in the 1980's. After claiming his birthday was June 3, 1980, defendant stated that he did not remember when he graduated from high school.

Defendant went through school to become an astronaut by obtaining a Ph.D. in mathematics in 2007.[11] Before he went to USC, he studied at El Camino College.

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[10] Defendant was 27 years old at time of trial.

[11] Defendant claimed he "[g]raduated a couple of times."

Defendant denied being homeless before the incident in 2013[12] and insisted that he had been living in a house that he owned. He was able to purchase the house because he worked at NASA as an "aeronautical engineer" and at the airport as a commercial airline pilot for Delta and Continental airlines. He received his pilot's license in 1990. Defendant was also an astronaut, but he forgot when he was an astronaut "because [he] was under the influence. [He] dropped out and started smoking marijuana."

Defendant claimed to have "plenty" of money in the bank because his father owned Continental airlines and gave him $250 million. He had three bank accounts at Wells Fargo and Chase. Before the 2013 incident he was able to withdraw money from the bank, which was how he was able to purchase his house. But he did not know who currently lived in his house. Defendant also owned an apartment complex comprised of four houses. He tried to collect rent from the occupants, "but it didn't work out. So [he] gave it up."

Defendant denied that he currently experienced auditory hallucinations, but admitted he had them in the past. He last had them in 2002 and "immediately went to the clinic because [he] had . . . medical insurance. . . . [H]e went to the pharmacy and . . . picked up medication."

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[12] In context, it appears defendant was referring to events that led to the filing of the criminal indictment pending against him.

4. Jury Instructions and Argument

After the parties presented their evidence, the trial court instructed the jury, repeating many, if not all, of the preliminary instructions it had delivered. On the issue of the LPS conservatorship, the trial court gave the following specific instructions: "The Office of the Public Guardian acting through the District Attorney claims that [defendant] is gravely disabled due to a mental disorder and therefore should be placed in a conservatorship. [¶] In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled due to a mental disorder. To succeed on this claim, the District Attorney must prove beyond a reasonable doubt all of the following: One, that [defendant] has a mental disorder; two, that [defendant] is gravely disabled as a result of a mental disorder; and, three, that [defendant] is unwilling or unable to voluntarily . . . accept meaningful treatment. [¶] . . . [¶] The term 'gravely disabled' for an LPS conservatorship . . . means that a person is unable to provide for his or her basic needs for food, shelter, and clothing because of a mental . . . disorder." "In determining whether [defendant] is gravely disabled, you must not consider or discuss the type of treatment, care, or supervision that may be ordered if a conservatorship is established."

During closing argument, defense counsel specifically informed the jury not to consider the treatment defendant might receive under a conservatorship. "One of the instructions that [you will] get, and [has] been read to [you] . . . talks about . . . things that you're not to take into consideration. [¶] Don't take into consideration what sort of treatment somebody was going to

receive if they're placed on a conservatorship. That's up to the judge to make that call. That's outside . . . your concern." The prosecutor thereafter voiced his agreement with defense counsel concerning the relevance of the treatment defendant might receive under a conservatorship. "So the defense has told you not to consider [treatment] and . . . pointed out the jury instruction which says you're not to consider [the] consequences of . . . treatment. And I agree with that."

5. Jury Questions and Mistrial Motion

During deliberations, the jury submitted three handwritten questions to the trial court: [13] "1. When is [defendant's] case reviewed for LPS and Murphy again? [¶] 2. Does our decision pertain to a one-year period for [defendant] and then he is up for review again? [¶] 3. If [defendant] stays on Murphy by jury decision and shows improvement is he eligible for re-asses[s]ment to IMD?"

In response to the jury questions, defense counsel moved for a mistral and the trial court and counsel engaged in a lengthy exchange. Defense counsel asserted that the jury's questions were problematic because they showed that the jury was considering "what sort of treatment [defendant would receive under the conservatorship and] how long it would be, that sort of thing. . . ." According to defense counsel, those considerations violated CACI No. 4004 which admonished the jurors not to "consider or discuss the type of treatment, care, or supervision

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[13] Judge Charles Lee presided over the trial but, due to Judge Lee's unavailability following closing arguments, Judge James Bianco presided while the jury deliberated.

that may be ordered" if a conservatorship was established. A mistrial was warranted, counsel argued, because if the jurors "were unable to follow the very simple instruction of don't do this, that [is] more of an indication they could be doing anything back there relating to the other instructions. [I]t's misconduct for them to even engage in a [discussion] related to the treatment."

The court denied the motion for mistrial and expressed tentative views on the appropriate response to the notes. After further colloquy between and among court and counsel, the trial court took a recess to consider the issue further.

Upon return from the recess, the trial court reiterated that it was denying the mistrial motion: "The Court: Back on the record. [¶] I've spoken with Judge Lee just to get his input, and he agrees that the court's response to questions 1 and 2 should simply be the statement that LPS and Murphy conservatorships last for one year and that the court's response to question 3 should be simply to reread jury instruction [CACI No.] 4004. [¶] . . . [¶] So the motion for mistrial is denied. Let's bring out the jury, please. [¶] . . . [¶] The Court: Good morning, ladies and gentlemen. I'm Judge Bianco. Judge Lee asked me to fill in for him. . . . But I have discussed your questions both with the attorneys and with Judge Lee. And here are the court's answers: As to questions 1 and 2, LPS and Murphy conservatorships last for one year. And as to question 3, I'm going to reread instruction [CACI No.] 4004, which reads as follows: 'In determining whether [defendant] is gravely disabled, you must not consider or discuss the type of treatment, care, or supervision that may be ordered if a conservatorship is established. That applies to both types of conservatorship.'"

6. Jury Verdict

On December 6, 2016, the jury found that defendant qualified for an LPS conservatorship under section 5008, subdivision (h)(1)(A) and a Murphy conservatorship under section 5008, subdivision (h)(1)(B). Following a hearing on defendant's motions for judgment notwithstanding the verdict or new trial, the trial court granted defendant a new trial on the request for renewal of the Murphy conservatorship only. Following the new trial on the Murphy Conservatorship in March 2017, the jury again found that defendant qualified for a Murphy conservatorship. Defendant filed a notice of appeal from the orders imposing the conservatorships.

III. DISCUSSION

A. *Any Instructional Error Was Harmless*

Defendant contends that the trial court committed reversible error when it advised the jury that the duration of defendant's commitment under the LPS conservatorship would be one year.[14] According to defendant, the recent decision in *Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163 (*P.D.*) confirms that informing the jury about the duration of an LPS conservatorship and types of treatments available was instructional error. Citing the California Supreme Court's

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[14] Defendant challenges on appeal only the jury's finding that he qualified for an LPS conservatorship. He does not challenge the subsequent finding on retrial in March 2017 that he qualified for a Murphy conservatorship.

decision in *People v. Blackburn* (2015) 61 Cal.4th 1113, 1134 (*Blackburn*), defendant argues that the error in this civil commitment case was structural, as it would be in a criminal case where the error effectively relieved the prosecution of the burden of proving one or more of the necessary elements of its case. In the alternative, defendant contends that the error was prejudicial under the federal harmless error standard in *Chapman, supra,* 386 U.S. 18, as well as under the less rigorous state standard in *Watson, supra,* 46 Cal.2d 818.

The Attorney General concedes that the trial court's advisement that the LPS conservatorship would last one year was error under *P.D., supra*, 21 Cal.App.5th 1123. Nevertheless, the Attorney General maintains that the error was not structural and was harmless under either the *Chapman, supra,* 386 U.S. 18 or *Watson, supra,* 46 Cal.2d 818 standards.

We agree that the trial court erred in advising the jury about the length and potential for renewal of the LPS conservatorship. (*P.D.*, *supra*, 21 Cal.App.5th 1163, 1168-1169 ["[I]nformation about the consequences of conservatorship for P.D. was irrelevant to the only question before P.D.'s jury: whether, as a result of a mental disorder, he is unable to provide for his basic personal needs for food, clothing, or shelter. (§ 5008, subd. (h)(1)(A).)"]) Thus, the only issues on appeal are: (1) was that error structural requiring reversal per se; and, if not, (2) was that error prejudicial.

In *P.D.*, *supra,* 21 Cal.App.5th 1163, the court noted that the concept of structural error may not apply in a civil case: "Where an instruction in a criminal case relieves the prosecutor of its burden to prove every element of the offense beyond a reasonable doubt, the error is structural and reversal is required.

(*Sullivan v. Louisiana* (1993) 508 U.S. 275, 281-282, ...) But this is a civil case. (*Conservatorship of John L.* [(2010)] 48 Cal.4th [131,]150 . . .)" (*Id.* at p. 1169.) The court continued, "And even if we were to apply the standard of *Chapman*[*, supra,*] 386 U.S. 18 . . . , on the theory that the special instructions invited the jury to consider irrelevant information and thus undermined P.D.'s due process right to a fair trial (see *Bruton v. United States* (1968) 391 U.S. 123, 131, fn. 6 . . .), we would find it harmless beyond a reasonable doubt." (*Ibid.*)

Contrary to the suggestion in *P.D., supra*, 21 Cal.App.5th 1163, defendant contends that the structural error doctrine applies in this case, citing *Blackburn, supra,* 61 Cal.4th 1113 and *People v. Tran* (2015) 61 Cal.4th 1160 (*Tran*). We disagree. Although both of those cases did find structural error in the civil commitment context, they did so under procedural circumstances that were far different from the jury advisement at issue here.

In *Blackburn, supra*, 61 Cal.4th 1113, the court found that it was error for the trial court not to personally advise and obtain a waiver from a defendant of his right to a jury trial under the Mentally Disordered Offender Act, Penal Code section 2960 et seq. (*Blackburn, supra,* at p. 1122, 1125.) The court also held that the failure to obtain a valid personal waiver of the right to a jury trial was structural error. "[W]e treat a trial court's failure to obtain a required personal jury trial waiver as tantamount to the denial of a jury trial, and as such, it constitutes a 'miscarriage of justice' under California Constitution, article VI, section 13. (See *People v. Breverman* (1998) 19 Cal.4th 142, 174 . . . ['In rare instances involving "fundamental 'structural defects'" [citation] in a criminal proceeding (for example, the complete denial of the right to a jury, or to an impartial judge), it may be impossible, or

beside the point, to evaluate the resulting harm by resort to the trial record, and a miscarriage of justice may arise regardless of the evidence.']; [*People v.*] *Cahill* [(1993)] 5 Cal.4th [478,] 491 ['in some contexts—for example, the erroneous denial of a defendant's right to jury trial—an error may result in a miscarriage of justice, and require reversal, regardless of the strength of the evidence properly received at trial'].)" (*Id.* at p. 1134.)[15]

Even assuming the structural error doctrine applies in the context of this civil LPS conservatorship proceeding, we conclude the trial court's erroneous advisement fell far short of constituting structural error. Here, unlike in *Blackburn, supra,* 61 Cal.4th 1113 and *Tran*, *supra,* 61 Cal.4th 1160, the error in question did not result in the complete denial of defendant's right to a jury trial on the entire cause in the commitment proceeding. Therefore, the authority upon which defendant bases his structural error contention is inapposite. In this case, defendant was afforded a jury trial on the commitment issue during which

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[15] Similarly, in *Tran, supra*, 61 Cal.4th 1160, the trial court failed to personally advise and obtain a waiver from the defendant of the right to a jury trial under Penal Code section 1026.5 before conducting a bench trial to extend the defendant's involuntary commitment after he had been found not guilty by reason of insanity. (*Id*. at p. 1164.) The court in *Tran* held that error to be structural. "As to whether a trial court's acceptance of an invalid jury trial waiver under [Penal Code] section 1026.5[, subdivision] (b)(4) may be deemed harmless, we hold for the reasons set forth in *Blackburn*, *supra*, 61 Cal.4th at pp. 1132-1137 that such error—resulting in a complete denial of the defendant's right to a jury trial on the entire cause in a commitment proceeding—is not susceptible to ordinary harmless error analysis and automatically requires reversal." (*Id*. at 1169.)

the jurors received an advisement about information—the duration of the LPS conservatorship—that was not relevant to the limited issue before it, whether defendant was gravely disabled.

Ordinarily, such errors are not considered structural and are instead reviewed for prejudice under the *Watson, supra*, 46 Cal.2d 818 standard. "'It is error to give an instruction which correctly states a principle of law which has no application to the facts of the case.' (*People v. Sanchez* (1947) 30 Cal.2d 560, 572 . . . .) Yet such an error is usually harmless, having little or no effect 'other than to add to the bulk of the charge.' (*Id.* at p. 573.) There is ground for concern only when an abstract or irrelevant instruction creates a substantial risk of misleading the jury to the defendant's prejudice." (*People v. Rollo* (1977) 20 Cal.3d 109, 122-123; see also *Solgaard v. Guy F. Atkinson* (1971) 6 Cal.3d 361, 370 ["Generally, 'Even though an instruction is couched in proper language it is improper, if it finds no support in the evidence, and the giving of it constitutes prejudicial error if it is calculated to mislead the jury. [Citations.]' [Citations.] In determining whether the giving of an irrelevant instruction constituted prejudicial error, the reviewing court must consider all of the circumstances of the case, including the evidence and the other instructions given; no precise formula can be drawn"]; *Butigan v. Yellow Cab Co.* (1958) 49 Cal.2d 652, 660-661 ["The giving of a confusing or misleading instruction is, of course, error . . . . [¶] The determination whether, in a specific instance, the probable effect of the instruction has been to mislead the jury and whether the error has been prejudicial so as to require reversal depends on all the circumstances of the case, including the evidence and the other instructions given. No precise formula can be drawn"].)

Based on the foregoing authority, we find no merit in defendant's structural error contention. The error in question did not completely deprive defendant of his right to a jury trial. Moreover, whether we review the error for prejudice under either *Watson, supra,* 46 Cal.2d 818 or *Chapman*, *supra*, 385 U.S. 18, we conclude it was harmless. The evidence against defendant was overwhelming. The independent psychiatric evaluator, Dr. Tumu, explained that defendant suffered from long-term schizophrenia, had been noncompliant in the past in voluntarily taking needed medication, and would be noncompliant in the future if the conservatorship was terminated and defendant was released from the structured setting of the hospital. Dr. Tumu therefore concluded that defendant was unable to accept voluntarily meaningful treatment for his mental disorder and was otherwise unable to provide for his basic needs for food, shelter, and clothing. Moreover, both of defendant's treating psychiatrists, Dr. Sibal and Dr. Diaz, corroborated Dr. Tumu's opinions based on their percipient and frequent observations of defendant's behavior while housed in their units. And, rather than casting doubt upon the psychiatrists' conclusions, defendant's own testimony provided firsthand confirmation for the jurors that defendant suffered from the serious and multiple delusions identified by each of them in their testimony.

In addition, the trial court's special instructions made clear to the jury the three elements that the prosecutor needed to prove beyond a reasonable doubt to support the Public Guardian's renewed request for an LPS conservatorship, including the need for proof that defendant was unwilling to accept voluntarily

meaningful treatment for his mental disease.[16] Those instructions also clearly defined the term gravely disabled, i.e., that defendant was unable to provide for his basic needs for food, shelter, and clothing. And, both the trial court's preliminary and final instructions to the jury repeatedly emphasized that the jurors were to decide the foregoing issues based solely on the evidence presented at trial, and not based on any other extraneous considerations.

Given all the circumstances of the case, the error in question did not mislead or confuse the jury to defendant's prejudice, the three questions notwithstanding. The trial court's answers to those questions merely repeated that the

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[16] There is a split in authority as to whether the District Attorney was required to prove that defendant was "unwilling or unable of voluntarily accepting treatment," as this language does not appear in the LPS Act's definition of "gravely disabled." (§ 5008, subd. (h)(1) defining "gravely disabled" as "[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.") (See *Conservatorship of Early* (1983) 35 Cal.3d 244, 256 [declining to reach the issue of whether trial court erred in refusing appellant's requested instruction that appellant was not gravely disabled if he voluntarily accepted treatment]; compare *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 ["we doubt a finding that the proposed conservatee is unable or unwilling to accept treatment is necessary under the statutory scheme"]; with *Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 322-323 [concluding trial court properly instructed jury that it must find conservatee was gravely disabled as a result of mental disorder and was unwilling or incapable of accepting treatment voluntarily].) In light of the trial court's instruction, we need not address this split in authority.

conservatorship was one year, subject to renewal, and the jury was required to follow the mandate in CACI No. 4004, but did not otherwise suggest or imply that the one-year duration of the conservatorship or the potential for its future renewal were proper subjects for the jury's consideration. We therefore assume that the jury followed the trial court's admonition under CACI No. 4004 and its other instructions and conclude that the erroneous advisement was not prejudicial under either the state or federal standard.

IV. DISPOSITION

The judgment renewing the LPS conservatorship is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P. J.

SEIGLE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.