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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.

ROBERT LEE CHARACTER,

Defendant and Appellant.

B264591

(Los Angeles County  
Super. Ct. No. SA089227)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Young, Judge. Affirmed.

David W. Scopp, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Robert Lee Character appeals from a judgment of conviction entered after a jury convicted him of attempted first degree burglary with a person present (Pen. Code, §§ 459, 664).<sup>1</sup> The trial court sentenced him under the three strikes law to 25 years to life for his offense plus an additional 15 years for three prior serious felony convictions (§§ 667, subds. (a)(1), (b)-(i), 1170.12).<sup>2</sup> The trial court stayed sentence as to five prior prison terms (§ 667.5, subd. (b)).

Character contends the trial court erred in denying his request for a competency hearing, denying his motion to declare a mistrial, and continuing the trial in his absence after his apparent suicide attempt. We affirm.

## FACTUAL BACKGROUND

Nicholas Kendall is a violinist who was staying at Le Montrose Suite Hotel in West Hollywood while in the Los Angeles area to perform on Dancing With the Stars. After performing on November 17, 2014, he returned to his hotel room and went to

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<sup>1</sup> Unless otherwise specified, all further statutory references are to the Penal Code.

<sup>2</sup> The amended information alleged 13 prior prison terms under section 667.5, subdivision (b), eight prior serious felonies under section 667, subdivision (a)(1), and eight prior serious or violent felonies under section 667, subdivision (d), and section 1170.12, subdivision (b). The prior conviction allegations were tried to a jury, which found them true.

sleep with the glass door to the balcony open but the screen door closed.

Kendall awoke at about 4:30 a.m. to see the screen door partially open and Character entering his room. Kendall yelled, "Hey," and Character froze. Kendall asked, "What are you doing?" Character said, "I'm looking for somebody." He went back onto the balcony and jumped to the ground. Kendall called the front desk and reported what had happened.

Johnson Chan Bong, who was working the front desk, notified security and began looking for the intruder. He saw Character outside and asked if he was lost. When Character did not respond, Bong asked what he was doing at the back gate. Character said he wanted to use the restroom. Bong asked if he was a guest of the hotel; Character did not respond. Bong notified security that he had found the intruder.

Detective Richard Cardenas of the Los Angeles County Sheriff's Department arrived at the hotel and placed Character under arrest. He searched Character and found a pair of plastic gloves in the front pocket of Character's jacket; he asked Character about the gloves, but Character did not respond. Kendall then came downstairs, and Detective Cardenas asked if he could identify Character as the man who entered his hotel room; Kendall did so.

Detective Michael Berbiar and his partner subsequently interviewed Character. Character initially stated that he did not remember how he got onto the hotel property and said he was searching for a restroom. When Detective Berbiar asked how he got onto the balcony, Character said, "I had to move a bunch of stuff around to get up there." Character acknowledged he did not know the person whose room he entered.

## **PROCEDURAL BACKGROUND**

Character represented himself at his arraignment on February 23, 2015, and the court appointed stand-by counsel. Character continued to represent himself at several pretrial hearings.

When the case was called for trial on April 6, 2015, Character was late to court. When the court asked what happened, he explained, “This morning when they happened to crack the door, I was defecating, and he said he would come back and get me, and I didn’t see nobody until the next shift.” The court admonished him that he needed to get to court on time and said it would talk to the sheriff’s department about what happened. The court then asked if he had anything to say before the noon recess, and Character indicated he wanted “to do a [Code of Civil Procedure section] 170.6” motion. The court granted his motion, and the case was transferred.

That afternoon, the trial court asked Character if he had anything to bring up before the jury panel was brought in. He said he wanted information on “the witnesses for the People and their records, if they have any prior records.” The prosecutor said she would give that information to defendant. The court then proceeded with jury selection.

The following morning, Character failed to appear in court. The trial court was “informed by the Los Angeles Sheriff’s Department that the defendant has a medical complaint and refuses to walk. The defendant also refuses to come to court unless provided a wheel/safety chair.” The court ordered that Character be transported to court in a wheel/safety chair, but

Character still refused to come to court. The court issued an extraction order.

That afternoon, the trial court noted Character had seen a doctor that morning. “The doctor found absolutely nothing wrong with you at all. He gave you a clean bill of health as far as your legs are concerned even though you complained about leg pain.” The court further noted that Character had been late to court the previous day as well. It told him, “You have a privilege and a right of representing yourself, but if I come to the conclusion that you’re attempting to delay or challenge this proceeding by failing to come to court in a timely fashion, that right will be revoked.” The court asked Character if he understood that.

Character responded, “I don’t even know what’s going on.” He attempted to take his shirt off, explaining, “I have scratches and stuff to show you.” He said, “I don’t know what’s going on, that’s all I can say. I fell down the escalator.”

The trial court stated that the People had a witness—presumably Kendall—who was only available to testify that day, adding, “It has also come to my attention that you know that that witness is only able to testify today. When I combine that fact with the fact that a doctor gave you a clean bill of health this morning and said there was absolutely nothing wrong with you, it is hard to conclude anything but the fact that you are not sincere in your description of the injuries you may have.”

Character reiterated that he did not know what was going on. He said he fell down some stairs—“[t]he police officer said [it was an] escalator.” He did not know where; “All I know is I woke up and they was asking me what happened.” He did not know if he hit his head “because I was unconscious. They woke me up.”

The trial court attempted to question him about bifurcating trial on his prior convictions, but Character repeated that he did not know what was going on. The court asked if he knew where he was, and he responded, “They kept saying, ‘court,’ so I guess I’m in court.” He added, “I don’t know why I’m here, your honor.”

The trial court expressed a belief that Character was malingering. The court questioned the bailiff, who indicated that while Character was in lockup, he was able to communicate and follow directions and never indicated that he did not know where he was or what was going on.

At that point, the trial court recapped what had occurred the past two days: “[Y]esterday when you were due to get on the bus to come to court, you claimed you had to use the restroom and you missed the bus. Today when you were due to come to court early this morning, you stated you fell. You were taken to a medical evaluation. You stated you were unable to walk, yet during that medical examination, there was nothing wrong . . . . No symptoms of concussion or any issues were found. You were able to cooperate on your transportation out here, yet when you come to court, you claim you don’t know where you are. As I said, I don’t credit your statements. I believe this is an intentional effort to delay the trial and hope that a witness that you knew was only going to be here today would leave . . . .”

The court stated it was going to order the witness back the following morning and it would have standby counsel present. It asked Character if he still wanted to represent himself. He responded, “I don’t know what you’re talking about, your honor.” The court responded, “I’m sure you don’t. And we’ll see where we are tomorrow morning.” The court added that if Character was unable to represent himself, it would consider sending Character

out for a mental examination or have standby counsel represent him. After discussing the matter with counsel, the court ordered a medical examination and standby counsel to be present. The court also signed an extraction order and advised Character that if he refused to come to court the following day, he would be extracted and brought into court forcefully.

The following morning, in response to the trial court's questions, Character stated that he was feeling the same as the previous day and did not know where he was. The trial court stated that Character had two medical examinations the previous day. The court "did talk to the doctor, who is sending over a formal report. He did forward to me the fact that you refused to cooperate or communicate with medical staff, answer any questions. They did a full set of x-rays, examination and they found out there is absolutely nothing wrong with you, no injuries consistent with the fall that you claimed to have suffered." The medical staff "found no head trauma or no head injuries whatsoever or any injuries that would be consistent with you falling." When asked to comment on the lack of head injuries, Character stated, "All I know is yesterday they said I fell down the escalator and I was unconscious and asleep or whatever, and they had me at the hospital or something, that's all I remember. They kept talking about court, some other stuff. I don't know." The court asked if he was able to keep representing himself, and Character responded, "Like I said, I don't understand what you're talking about."

The court stated that it did not believe Character. It believed he faked his injuries and answers to the court's questions in order to delay the trial in hopes that the People's witness would be unable to testify. Despite the medical report

indicating he had no head injuries, “you indicated that you didn’t understand a single question that I asked you or where you were.” The court relieved Character of his self-represented status, appointed standby counsel to represent him, and stated that they would start the trial.

Character responded, “I never said I knew where I was. I always said I didn’t know where I was at. I don’t even know who I am, so how could I know where I was at? I don’t understand at all.”

After a brief recess to allow counsel to speak with Character, the court stated, “While the court was in recess and [counsel] you may comment on the record in any way you would like to, [Character], it sounded like he had access to a razor blade. He made a series of superficial cuts to his wrist or hand. Would that be accurate?” Counsel stated that he did not see what happened but heard a commotion, saw Character fall and the bailiff and a detective rush over to him. Detective Berbiar confirmed that Character had “a series of superficial cuts or cuts on his wrist caused by a razor blade.”

At that point, the trial court made a tentative finding that Character “has willfully refused to participate in the proceedings and to go forward with the trial. The basis for that would be, as counsel is well aware, the People had a witness who was only available yesterday, arranged for the witness to also come in today. The trial has commenced.”

The court added that it had heard from an officer who reviewed the video of Character’s fall. “It appeared that [Character] waited at the top of the escalator for all the other inmates to go down, then followed them all down. Then when everybody started to clear off, he started to walk back up the escalator and



then seemed to engage in a self-tumble down the escalator and then when other people came, he went limp at that point.” The court added that Character refused to cooperate with medical personnel and, despite the fact that the medical examinations showed no head injuries, stated that he did not know where he was. The court appointed standby counsel to take over the case. The jury was outside, the “witness [was] available simply this morning, and then [Character] knowing that trial had commenced, knowing that we were moving forward today with [standby] counsel, he took matters in[to] his own hands and did cut himself multiple times forcing him to be taken to the hospital.” The court also noted that “during jury selection two days ago, [Character] was very cooperative, engaged and seemed to understand the process clearly. At all times otherwise, he’s been very well behaved.”

In response, defense counsel moved to dismiss the case on the ground that Character was “unavailable at this time in my opinion due to psychological issues beyond his control” and the jury had been sworn in and jeopardy attached. In the alternative, counsel requested that the trial court declare a doubt as to Character’s competency to stand trial, explaining that when he attempted to interview Character that morning, Character “indicated that he had no idea what I was talking about, that he did not understand the charges against him, that he could not adequately and effectively assist me in any way in the presentation of his defense.”

The court denied the motion to dismiss, finding Character to be voluntarily absent from the proceedings. As to the request to declare a doubt as to Character’s competency, the court reiterated its previous findings. It added that “[t]here is very strong

evidence that [Character] intentionally attempted to either create an injury or fake an injury at the escalator at men's county jail, which is shown on the videotape [of] his efforts, and there are no injuries." Looking at the entire record, it was "incredibly clear beyond any standard of proof in the court's mind that he is faking these injuries, these accidents, his inability to know where he was, where he was in court or able to help you with his defense for the sole purpose of delaying this case." The court found no evidence to substantiate defense counsel's request that the court declare a doubt as to Character's competency.

The trial court called the jury into the courtroom and instructed them to draw no inference from the fact that Character was no longer present in court and was being represented by counsel. At that point, one of the jurors asked, "Does it matter that some of us or all of us may know what happened to the defendant based upon what we saw outside of this courtroom?" The court had the jurors who did not see anything step out of the courtroom, and the court then asked the remaining jurors what they saw. They indicated that, looking out a window, they saw something in the parking lot involving Character and an ambulance. The court polled them to determine if they could still be fair and impartial in the case. All except Juror No. 7 and Alternate Juror No. 2 said they could.

Juror No. 7 said, "I'll try." The court responded, "And if you can't, I'll just ask that you raise your hand at any point and let me know that you don't think you can do that."

Alternate Juror No. 2 stated, "I'm not sure because there was also some other observations that I noticed when I came in, so I'm taking that into account." When questioned outside of the presence of the other jurors, Alternate Juror No. 2 stated, "I did

notice obviously, that he was in a wheelchair and I notice[d] that and from there, we started to making reference to the way that his socks were and the way that he was acting and behavior that he was just kind of like laying down, so I wasn't the only one that observed that, and a couple of us did as well and we started making opinions on that, so I cannot be sure if I can be fair to him because of that."

When the trial court explained that what the jurors observed in the parking lot was not evidence, Alternate Juror No. 2 stated, "We know that he was in a fight." The court told the juror, "Well, again, that's a conclusion, that's not supported. There's no evidence and it's not relevant to the charges in this case, which is burglary." The court asked if the juror could make a decision based on the evidence presented in court and put aside the observations, and the juror responded, "I can try, but it's kind of a tough one because of the observations that we've been making." The juror indicated four or five of them had made these observations, talked about it, and reached the same conclusions. The juror agreed to follow the court's admonition that "if at some point you can't be fair and impartial, . . . you need to raise your hand and let me know."

The court then brought all the jurors into the courtroom and admonished them that their decision must be based on the evidence presented in court, and their observations of Character "cannot shape or form your decision as to whether he's guilty or not guilty of the charge." Again, all jurors agreed or said they would try and would let the court know if they were unable to do so.

Defense counsel then moved to dismiss the jury and declare a mistrial, "based on the statements of the alternate juror,

mainly that there was a doubt in her mind about their ability to be fair to the defendant based on what they observed today and yesterday and based on her statement that we all talked about it today . . . .” The trial court responded that the jury talked about Character’s appearance and his being in a wheelchair, but not about the case. The jurors “all understood and they all agreed with only two jurors saying they would try. Everyone else was emphatic that they could be fair and impartial.” The trial court therefore denied the motion. Trial proceeded that day in Character’s absence.

Character was present in court the following day, April 9. The court attempted to find out from him if he still wished to testify in his own behalf, but Character did not respond. The jury reached a verdict. Thereafter, the trial court attempted to find out whether Character still wanted a jury trial on the prior conviction allegations. He said he did not know or understand what was going on.

Character was present in court on April 10 for the bifurcated trial on his prior convictions, and defense counsel renewed his motion to declare a doubt as to Character’s competency. He explained that he “again had the opportunity to speak with [Character] and to explain to him again the processes that we are about to undertake in terms of the priors trial, and I asked him if he understood what had happened yesterday and what was going to happen this morning, and he told me that he did not understand . . . .”

The trial court denied the motion “for the reasons the court set forth previously.” The court added that Character “was cleared psychologically by Centinela Hospital after his actions of trying to cut his wrists in court.” Character’s actions “combined with his

earlier competent representation of himself . . . , this is in the court's mind clearly an effort to disrupt or obstruct the proceedings and so the motion is denied."

Character was again present on May 14, when defense counsel renewed the motion one final time prior to the hearing on his new trial motion and sentencing. Counsel stated that he went to see Character "at the L.A. County Jail on May the 12th a couple days ago and he was at that time in a mental ward of that facility. From what I gathered, he is under significant medications for mental and emotional conditions. And I tried to explain to him what would happen today and what the purpose of today's proceedings were or was or is and he was unable to understand and unable to communicate with me and unable to rationally assist me in the preparation for today's proceedings, and so on that basis, I would ask the court to adjourn the proceedings pursuant to [sections] 1367 and [13]68 and appoint a psychiatrist to examine him."<sup>3</sup>

The court reiterated that Character previously represented himself competently, and "[i]t was only after the jury was picked in this case that he was seen on videotape, which is evidence in this case, did [Character] go the wrong way or back up on an escalator intentionally, looked around before he did so. [He m]ade a conscious decision to go up the escalator and throw himself down the escalator backwards. And then after falling down some of the stairs, did he look up and around to see if

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<sup>3</sup> Section 1367 provides that a defendant cannot be tried while he or she is mentally incompetent. Section 1368 provides for the trial court to recess the proceedings and hold a competency hearing if it has a doubt as to the defendant's mental competence.

anyone was watching, put his head back down and then going forward claimed he had no understanding. He was examined. He had no head injuries, no physical [injuries] whatever, [but] he was []able to engage the deputies outside of the courtroom in a conversation, several conversations indicating that he knew what was going on.

“In fact after a guilty verdict was found in this case he once again engaged the deputies in a conversation. Yet when he comes into court, he claims he has no ability to even understand where he is or what he’s doing. The court’s view obviously is that [Character] is trying to disrupt the court proceeding, that he’s malingering and there is no basis to find him incompetent.” The court added that “there may be mental issues, but he fully understands the proceedings. He could if he chose to participate in his defense, but [he] has made a conscious decision not to do that. There’s no evidence before the court other than [Character’s] behavior in court that would show otherwise, and there is substantial evidence to show his behavior out of court, et cetera, that he is fully competent.” The court therefore denied the defense’s motion.

## DISCUSSION

A. *The trial court did not abuse its discretion in refusing to hold a competency hearing.*

Character argues that there was substantial evidence that raised a reasonable doubt concerning his competence to stand trial, so the court erred by denying his request to declare the existence of such a doubt, suspend the trial, and order a competency hearing. We disagree.

The Supreme Court in *People v. Sattiewhite* (2014) 59 Cal.4th 446 recently reviewed the principles applicable to a determination whether to hold a competency hearing: ““Both the due process clause of the Fourteenth Amendment to the United States Constitution and state law prohibit the state from trying or convicting a criminal defendant while he or she is mentally incompetent. [Citations.] A defendant is incompetent to stand trial if he or she lacks a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—[or lacks] . . . a rational as well as a factual understanding of the proceedings against him.” [Citations.]”” (*Id.* at p. 464.) Accordingly, ““[b]oth 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.]” [Citation.]” (*Ibid.*)

However, “to be entitled to a competency hearing, “a defendant must exhibit more than bizarre . . . behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel. [Citations.]” [Citation.]’ [Citation.]” (*People v. Sattiewhite, supra*, 59 Cal.4th at pp. 464-465.) Similarly, “defense counsel’s expressed belief that [the] defendant might be mentally incompetent does not automatically trigger a” requirement that the trial court order a competency hearing. (*Id.* at p. 465.) While “[c]ounsel’s assertion of a belief in a client’s

incompetence is entitled to some weight,” it “does not, in the absence of substantial evidence to that effect, require the court to hold a competency hearing.’ [Citations.]” (*Ibid.*)

Rather, “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.] Otherwise, we give great deference to the trial court’s decision not to hold a competency trial.” (*People v. Sattiewhite, supra*, 59 Cal.4th at p. 465.)

Character argues that his “suicide attempt,”<sup>4</sup> bizarre behavior, and absence from the courtroom constituted substantial evidence of incompetency, requiring the trial court to hold a competency hearing. The trial court, which was “in the best position to observe the defendant during trial” (*People v. Sattiewhite, supra*, 59 Cal.4th at p. 465), concluded to the contrary that these actions constituted a deliberate attempt to delay the trial until a critical witness for the prosecution was no longer available to testify. The court’s conclusion was supported by Character’s previous lack of any signs of incompetency (including his engagement in the jury selection process), the lack of any medical evidence of head trauma to support Character’s

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<sup>4</sup> The trial court did not believe that Character attempted suicide, only that he made “a series of superficial cuts or cuts on his wrist [with] a razor blade.” The court also noted that Character “was cleared psychologically by Centinela Hospital after his actions of trying to cut his wrists in court.”



claims that he did not know where he was or what was going on, and Character's behavior outside the courtroom, which was inconsistent with his claims.

Character emphasizes, and we recognize, that all that is needed to trigger the requirement to hold a competency hearing is substantial evidence to raise a reasonable doubt as to the defendant's competence to stand trial. At the same time, however, a malingering defendant cannot be permitted to abuse that rule by willfully engaging in bizarre behavior and contending that the behavior constitutes substantial evidence necessitating a competency hearing. Accordingly, the trial court must have some discretion to determine that the defendant is indeed malingering and that the defendant's conduct does not constitute substantial evidence to raise a reasonable doubt as to competence, even though the same conduct might, in another context, be sufficient. The record here overwhelmingly supports the trial court's determination that Character was malingering. While self-represented, he competently participated in pre-trial proceedings, including jury selection. The day after the jury was sworn, he purported to have no idea where he was or what was going on, and the only proffered explanation for the change was his fall on the escalator. The trial court reviewed the video recording of the fall and concluded that it was clearly a deliberate act. Repeated medical examinations found nothing wrong with Character, no leg injuries to support his claim that he needed a wheelchair and no head injuries to explain his purported mental incapacitation. After he self-inflicted some superficial cuts on his wrists, the hospital psychologically cleared him. Viewed as a whole, the record fully supports the trial court's determination that Character was malingering and that his conduct consequently

did not constitute substantial evidence to raise a reasonable doubt about his competence to stand trial.

In the absence of any medical evidence or other substantial evidence to support defense counsel's claim that Character was not competent to stand trial—as opposed to malingering and deliberately trying to delay the proceedings—the trial court had no obligation to grant the defense's motions to suspend the proceedings and hold a competency hearing. (*People v. Sattiewhite*, *supra*, 59 Cal.4th at p. 465.) We conclude the trial court did not err in denying the motions.

B. *The trial court did not abuse its discretion in denying the request for a mistrial.*

Character contends the trial court should have granted a mistrial based on several jurors' observation of him being taken away in an ambulance, their speculation that he had been in a fight, and Alternate Juror No. 2's uncertainty as to whether she could put aside her observations and reach a verdict based solely on the evidence presented in court. We disagree.

A defendant's motion for a mistrial should be granted "if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions." (*People v. Haskett* (1982) 30 Cal.3d 841, 854; accord, *People v. Johnson* (2015) 61 Cal.4th 734, 764.) We review the trial court's ruling on the motion under "the deferential abuse of discretion standard." (*People v. Wallace* (2008) 44 Cal.4th 1032, 1068; accord, *Johnson*, at p. 764.)

As the People point out, “[d]efendants may not complain on appeal about the possible effect on jurors of their own calculated misdeeds.” (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1030; see also *People v. Huggins* (2006) 38 Cal.4th 175, 201; *People v. Hines* (1997) 15 Cal.4th 997, 1054; *People v. Hendricks* (1988) 44 Cal.3d 635, 643.) In addition, the record reflects that Alternate Juror No. 2 was not seated and was actually excused before the trial on the prior convictions, so her uncertainty about whether she could be fair and impartial could not be the basis for a mistrial.

Moreover, the trial court instructed the jury to base its verdict on the evidence presented in the courtroom alone and to notify the court if they felt they could not do so. We presume the jury followed this instruction. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1005.) In the absence of any evidence to the contrary, we find no abuse of discretion in the trial court’s denial of Character’s request for a mistrial. (*People v. Harris* (2013) 57 Cal.4th 804, 857; *People v. Wallace, supra*, 44 Cal.4th at p. 1068).

C. *Conducting the trial in Character’s absence did not violate his constitutional right to be present at trial.*

A criminal defendant has the right under both the United States Constitution and the California Constitution to be present at trial. (U.S. Const., 6th & 14th Amends; Cal. Const., art. I, § 15; see *People v. Gutierrez* (2003) 29 Cal.4th 1196, 1202.)

The right to be present may, however, be voluntarily relinquished or forfeited through misconduct. For purposes of California law, section 1043 recognizes both of those limitations on the right to be present: “The absence of the defendant in a felony case after the trial has commenced in his presence shall

not prevent continuing the trial to, and including, the return of the verdict” in any case in which the court must remove the defendant for disruptive behavior, or “[a]ny prosecution for an offense which is not punishable by death in which the defendant is voluntarily absent.” (*Id.*, subds. (a), (b).) The United States Supreme Court has likewise recognized that the federal constitutional right to be present “may be lost by consent or at times even by misconduct.” (*Illinois v. Allen* (1970) 397 U.S. 337, 342-343 [90 S.Ct. 1057, 25 L.Ed.2d 353], quoting *Snyder v. Massachusetts* (1934) 291 U.S. 97, 106 [54 S.Ct. 330, 78 L.Ed.2d 674].)

In light of these provisions, “[t]here can be no doubt whatever that the governmental prerogative to proceed with a trial may not be defeated by conduct of the accused that prevents the trial from going forward.” [Citation.]’ [Citation.]” (*People v. Gutierrez, supra*, 29 Cal.4th at p. 1204, fn. omitted.) So long as the defendant was present when the trial began, as required by section 1043, subdivision (b)(2), his voluntary absence will not prevent the trial from proceeding. (*Gutierrez*, at p. 1204.) In determining whether a defendant is voluntarily absent from the proceedings, the trial court must look at the totality of the circumstances, including its own observations and other “reliable information, such as statements from jail or court personnel, to determine whether a defendant has waived the right to presence.” (*Id.* at p. 1205.)

Here, after Character cut his wrists and was transported to the hospital, the court determined that Character was voluntarily absent, so the trial could proceed without him. Character argues on appeal that the court violated his due process rights by failing to “conduct a sufficient inquiry to afford the basis for deciding the

issue of waiver,” citing *Drope v. Missouri* (1975) 420 U.S. 162 [95 S.Ct. 896, 43 L.Ed.2d 103] as support. We disagree.

When the trial court determined that Character “willfully refused to participate in the proceedings,” the court thoroughly explained the basis for its decision. On the first day of trial, Character was not transported to court because, he claimed, “he needed to use the restroom.” The next day he staged the fall on the escalator, refused to come to court without a wheelchair although a medical examination revealed he had no relevant injuries, and insisted once he got to court that he did not know where he was. The following day he again claimed that he did not know where he was and then self-inflicted some superficial wounds to his arms, requiring that he be transported to the hospital. Again, multiple medical examinations had revealed that there was nothing wrong with Character, and he had failed to cooperate with at least one of those examinations by refusing to answer questions or otherwise communicate with the medical staff.

Considered in light of that explanation, Character’s argument that the court should have conducted a further inquiry fails for two reasons. First, the court’s explanation was more than sufficient to justify its determination that Character was voluntarily absent. The totality of the circumstances indicated that Character had fabricated grounds to refuse transportation to court, feigned mental incapacitation in order to obstruct the proceedings, and finally self-inflicted certain superficial injuries to require that he be taken away. The facts recited by the court thus showed that Character was deliberately attempting to prevent his own presence at trial without expressly waiving his right to be present, thereby obstructing the proceedings. No

further inquiry was needed before the court concluded that Character was voluntarily absent.

Second, the facts described by the court (which are fully supported by the record) show that any further inquiry would have been futile. Character insisted that he did not know where he was or what was going on. Nothing in the record indicates that further questioning of him would have produced additional relevant information. The court had received reports of multiple medical examinations, all of which found that there was nothing wrong with Character. Apart from a competency hearing, which we have already addressed, we do not know what further inquiry the court could have usefully conducted, and Character identifies none.<sup>5</sup>

*Drope v. Missouri, supra*, 420 U.S. 162 is distinguishable. In that case, the defendant failed to appear at trial, and his attorney moved for a mistrial based on information that the defendant shot himself that morning. The trial court denied the motion and proceeded with the trial. (*Id.* at p. 166.) The Supreme Court held, however, that there was evidence raising a question as to the defendant's competence to stand trial. (*Id.* at pp. 174-175.) Because a competency hearing should have been conducted, the Supreme Court found it "unnecessary to decide whether, as [the defendant] contends, it was constitutionally impermissible to conduct the remainder of his trial on a capital offense in his enforced absence from a self-inflicted wound.

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<sup>5</sup> We note again that after Character self-inflicted the injuries to his arms, he was psychologically cleared by the hospital that treated him. The results of the hospital's psychological evaluation thus tend to show that further inquiry would have supported rather than undermined the court's decision.

[Citation.] However, . . . what we have already said makes it clear that there was an insufficient inquiry to afford a basis for deciding the issue of waiver. [Citations.]” (*Id.* at p. 182.) Here, by contrast, there was insufficient evidence to warrant a competency hearing, and the evidence established that Character was voluntarily absent and that further inquiry would have been pointless.<sup>6</sup>

For all of these reasons, we reject Character’s argument that the court should have inquired further before proceeding with the trial in Character’s absence.

## DISPOSITION

The judgment is affirmed.

MENETREZ, J.\*

We concur:

PERLUSS, P. J.

SEGAL, J.

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<sup>6</sup> In view of our conclusion that there was no error, we reject defendant’s contention that cumulative error deprived him of a fair trial and requires reversal of his conviction. (*People v. Phillips* (2000) 22 Cal.4th 226, 244.)

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