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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME LUIS LOPEZ,

Defendant and Appellant.

2d Crim. No. B235904
(Super. Ct. No. 1191961)
(Santa Barbara County)

Jaime Luis Lopez ("Lopez") was charged with assaulting a teenage boy and, two weeks later, with attempting to murder two other men. For the first incident, he was convicted of assault with a gang allegation (§§ 245, subd. (a)(1), 186.22, subd. (b)(1)). For the second incident, he was convicted of first degree burglary (§ 459) and two counts of attempted murder (§§ 187/664). For both incidents, he was convicted of street terrorism (§ 186.22, subd.(a)).¹ Lopez was sentenced to a determinate term of 18 years, followed by an indeterminate term of 14 years to life in state prison.

Among other things, Lopez now challenges the trial court's findings that he was competent to stand trial and that he was properly housed in a "safety cell" during trial. These arguments lack merit, and we affirm.

¹ All statutory references are to the Penal Code.

DISCUSSION

I. Competency Issues

A. The reinstatement of criminal proceedings

In April 2009, the trial court found Lopez incompetent to stand trial and suspended criminal proceedings. The court reinstated proceedings in May 2011. Lopez argues that the reinstatement was improper for three reasons. First, the court should have postponed the reinstatement hearing so mental health experts could be appointed to evaluate his competence. Second, the court should not have found him competent. Third, the court should have made findings before ordering the involuntary administration of medication.

The trial court was not required to continue the reinstatement hearing. To begin with, Lopez forfeited this argument because he never asked for a continuance. (*People v. Riccardi* (2012) 54 Cal.4th 758, 810.)

Even if we were to consider the issue, we would reject Lopez's argument. Lopez contends that *People v. Rells* (2000) 22 Cal.4th 860 (*Rells*) stands for the proposition that any and all procedures applicable in initial competency hearings under section 1369 also apply in reinstatement hearings under section 1372. Because the court would have been required to appoint mental health experts to assess his competency under section 1369, Lopez asserts that the court was also required to do so for his reinstatement hearing.

Lopez reads too much into *Rells*. *Rells* borrowed from section 1369 to conclude that a defendant bears the burden of proving his incompetence at a reinstatement hearing. (*Rells, supra*, 22 Cal.4th at pp. 867-868.) *Rells* did not mandate or otherwise suggest the wholesale importation of *all* of section 1369's procedures into the section 1372 context. Nor does such importation make sense, as this case illustrates. An absolute prerequisite to a reinstatement hearing is an evaluation and certification by mental health experts that a defendant is competent. There is accordingly no reason to require a second, duplicative round of expert evaluations in every reinstatement hearing.

The trial court also did not err in finding that Lopez did not prove his incompetence. State mental health professionals certified that Lopez was once again competent. Moreover, the professional who evaluated Lopez reaffirmed her certification at the reinstatement hearing. To be sure, Lopez's most recent evaluation was six months before the hearing, and the evaluating professional opined that Lopez's competency might deteriorate if he was not properly medicated. But no one, including Lopez's own counsel, disputed that Lopez was still competent at that time of the hearing because deterioration had yet to occur.

Lastly, the court did not err in ordering involuntary administration of medication should Lopez display signs of deterioration. The trial court's cursory treatment of the issue was not erroneous because the court had already issued several prior orders mandating involuntary medication—in January 2008, July 2009, and February 2010. Those orders had complied with the Penal Code and the due process requirements for inmates posing a risk of inflicting substantial physical harm to themselves or others. (See § 1370, subd. (a)(2)(B)(ii) & (7); *Sell v. United States* (2003) 539 U.S. 166, 179; *Riggins v. Nevada* (1992) 504 U.S. 127, 134-135.) Lopez cannot demonstrate prejudice in any event because he was never forced to accept medication after the reinstatement hearing.

B. The refusal to convene a mid-trial competency hearing

Lopez next contends that the trial court erred when it declined to convene a mid-trial competency hearing after defense counsel declared a doubt about Lopez's competency. The trial court committed no error.

When confronted with defense counsel's declaration, the court asked the right question: Since the most recent hearing declaring Lopez competent, had there been a substantial change in circumstances or new evidence that gives rise to a serious doubt about the validity of the recent competency finding? (*People v. Marshall* (1997) 15 Cal.4th 1, 33.) Defense counsel's declaration of a doubt regarding Lopez's competency, while relevant, was not dispositive. (*People v. Welch* (1999) 20 Cal.4th 701, 739, fn. 7.) The trial court was required to assess

for itself whether substantial evidence dictated a "yes" answer to the above question. (*People v. Young* (2005) 34 Cal.4th 1149, 1216.)

The trial court did not err in its assessment that Lopez had not presented substantial evidence of his incompetence. The court had information that Lopez had attacked one deputy and thrown water at another the weekend before his counsel declared a doubt about his competency. The trial court appropriately examined this information in light of the entire record, including from the recent reinstatement hearing and from a further hearing on Lopez's competence held a few weeks earlier.

From these hearings, the court learned the following. State mental health professionals had declared Lopez competent as of May 2011, but had opined that his mental condition might deteriorate if he did not take medication. Lopez suffers from an antisocial personality disorder and, consistent with this disorder, had previously engaged in malingering behavior. In fact, the court had previously found that Lopez "knows exactly how to exaggerate symptoms" of his mental illnesses. Lopez had been off his medication since November 2010, but had remained competent and stable. Indeed, he was competent enough to enter a plea in a felony assault case during that period. Lopez had started engaging in bizarre behavior in early June 2011, just after learning that his case was set for trial. Lopez had been responsive to the court's questions regarding dressing in jail garb and his seating arrangements during the five days of trial leading up to the day his counsel declared a doubt about his competency. Viewed together, the trial court found that these circumstances did not "rise to the level of having another competency hearing." This ruling was not an abuse of discretion. (*People v. Rogers* (2005) 39 Cal.4th 826, 847.)

We reject Lopez's arguments to the contrary. He asserts that *People v. Murdoch* (2011) 194 Cal.App.4th 230 controls. To be sure, the mental health diagnosis in *Murdoch* suggested that the defendant's competence might deteriorate if he stopped taking his medication. Lopez's diagnosis was similar. However,

Murdoch's competence *did* deteriorate, as he sought to proceed pro se so he could argue that his victims were not "human." Lopez's did not. To the contrary, Lopez was off his medication for 10 months without any noteworthy deterioration. Lopez's "bizarre" behavior started only after the matter was set for trial, timing entirely consistent with his history of malingering.

Lopez also contends that the trial court's conclusion was faulty because the court was not allowed to rely on its own observations and because the court could not physically see Lopez while he was in the safety cell. We reject these contentions. Trial courts may consider their own observations in assessing whether to order a subsequent competency hearing. (*People v. Jones* (1991) 53 Cal.3d 1115, 1133.) Lopez was not in the safety cell during any of the exchanges on which the trial court relied.

II. *Use of the Safety Cell*

Lopez next asserts that the trial court violated his constitutional rights by confining him a safety cell. The cell was a separate room within the courtroom with see-through walls from waist level up. Normally, a jury could see a defendant but not any restraints. Lopez, however, chose to draw the blinds to block the jury's view of him completely. Lopez could still communicate with his attorney using a microphone system and earpiece. Lopez forfeited any challenge to this procedure by not objecting to it. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 95.) There was no abuse of discretion in any event. (*People v. Cunningham* (2001) 25 Cal.4th 926, 987.)

Lopez first argues that the court did make the requisite finding of a "manifest need" for this special restraint. (*People v. Ervine* (2009) 47 Cal.4th 745, 773.) However, the record reveals that the trial court made precisely that finding.

Lopez next contends that placing him in a safety cell was too severe because he could have remained in the courtroom wearing shackles. The court's finding of "manifest need" was based on 10 different violent attacks by Lopez against other inmates, mental health patients, and custody officials. These attacks

included incidents of spitting, throwing water and abrasive powder, making threats, and even punching a mental health patient hard enough to rupture his eyeball and blind him. Most of these attacks involved "either throwing objects or spitting." Given this conduct, the trial court had ample basis to impose the most severe and most obvious restraints. The court opted instead for the safety cell, which would have concealed any shackles. We reject Lopez's further suggestion that his counsel was constitutionally ineffective, as counsel made the tactical decision to concur in the court's well-reasoned order.

Lopez lastly argues that the jury disregarded the court's repeated admonition to ignore his placement in the safety cell. Lopez points to a note from the jury asking, among other things, whether he would be present when the verdicts were read. We presume jurors follow a court's instructions. (*People v. Fuiava* (2012) 53 Cal.4th 622, 669.) That presumption has not been rebutted here. Nothing in the jury's note suggests that Lopez's placement in the safety cell factored into its deliberations on the verdicts. At most, the note suggests the jury's curiosity as to who was in the safety cell which had, at Lopez's counsel's request and with Lopez's consent, been blocked from view by window shades during the entire trial because Lopez refused to wear street clothes.

III. *Attempted Murder Convictions*

A. *Sufficiency of the evidence regarding premeditation*

Lopez contends that the jury's findings that his two attempted murder convictions were not supported by substantial evidence. More specifically, Lopez argues that the State did not adduce sufficient evidence that his stabbings of Ramon Cabrera and Jesus Hernandez Flores were premeditated and deliberate.

Viewed in the light most favorable to the verdict, the evidence indicated that Lopez, a gang member, walked up to a house in rival gang territory at 1:30 a.m., knocked on the door, and waited for someone to answer. When Hernandez Flores answered the door, Lopez immediately stabbed him and then

Cabrera repeatedly, and then fled. This was not the first time Lopez had engaged in this type of attack. Just weeks before, Lopez had punched and stomped on another stranger who had been walking through rival gang territory. Moreover, as a juvenile, Lopez had knocked on a door and stabbed the person who answered with a shard of glass. A gang expert testified that attacking people located in a rival gang's territory enhances a gang member's reputation.

Taken together, this is circumstantial evidence that Lopez's attacks in this case were part of a longstanding pattern of planned behavior aimed at enhancing his gang reputation. This evidence is "'reasonable, credible, and of solid value.'" (*People v. Garcia* (2007) 153 Cal.App.4th 1499, 1508.) It refutes Lopez's argument that his attacks were a "hastily executed, . . . unconsidered or rash impulse" (*People v. Thomas* (1945) 25 Cal.2d 880, 900.) Lopez suggests that we may not consider the gang motivation for the attack because he was not charged with gang enhancements for the attempted murders. The State's decision not to charge an enhancement does not preclude us, or the jury, from considering how this possible motivation bears on the issue of premeditation.

B. Erroneous defense instruction

Lopez finally argues that the trial court gave an incomplete jury instruction on his mental illness defense. The court's instruction informed the jury it could consider whether Lopez's mental illness negated the intent element of attempted murder, and defined that element as the intent to kill. Lopez argues that the instruction should have also referred to the additional element of intent to act with premeditation and deliberation. We reject this argument because the crime of attempted murder has only one intent requirement—the intent to kill. (*People v. Lee* (2003) 31 Cal.4th 613, 627.) When it comes to attempted murder, the elements of premeditation and deliberation pertain to the *circumstances* of the crime, and not the defendant's intent. (*Ibid.*) The cases Lopez cites are irrelevant because they deal with the crime of murder, for which State must also prove the

defendant's *intent* to act with premeditation and deliberation. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1248.)

CONCLUSION

The judgment is affirmed.

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HOFFSTADT, J.*

We concur:

GILBERT, P. J.

YEGAN, J.

* Assigned by the Chairperson of the Judicial Council.

Kay S. Kuns, Judge

Superior Court County of Santa Barbara

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