

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

| |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NELSON M. MORAN,

Defendant and Appellant.

B280454

(Los Angeles County
Super. Ct. No. VA132327)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Olivia Rosales and Roger Ito, Judges.
Affirmed.

Doris M. LeRoy, 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, Scott A. Taryle and Pamela C. Hamanaka,
Deputy Attorneys General for Plaintiff and Respondent.

A jury convicted Nelson M. Moran of multiple counts of sexual intercourse or sodomy with, and oral copulation or sexual penetration of, his young daughter, beginning when she was five years old and continuing over a three-year period. On appeal Moran contends the court erred when it found him competent to stand trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

An information filed April 2, 2014 charged Moran with two counts of sexual intercourse or sodomy with a child 10 years old or younger (Pen. Code, § 288.7, subd. (a))¹ and four counts of oral copulation or sexual penetration of a child 10 years old or younger (§ 288.7, subd. (b)). At his April 8, 2014 arraignment, Moran pleaded not guilty.

2. Moran's First Competency Hearing and the Trial Court's Initial Finding of Incompetence

On September 23, 2014 Moran's counsel declared a doubt about Moran's competence to stand trial. The trial court suspended criminal proceedings and ordered a competency hearing. Moran was then evaluated by two mental health experts, Dr. Michael J. Perrotti, a neuropsychologist selected by the defense, and Dr. Kory J. Knapke, a psychiatrist selected by the People.

At the July 28, 2015 competency hearing, Dr. Perrotti's April 13, 2015 written evaluation and Dr. Knapke's June 15, 2015 written evaluation were submitted into evidence and, by stipulation of the parties, considered by the court as if both

¹ Statutory references are to this code.

experts had been called, sworn and testified to the matters contained in their reports.

Dr. Perrotti opined Moran suffered from severe panic disorder, impaired memory and cognitive function, and mild developmental disability that, considered together, prevented him from being able to sufficiently understand the proceedings and consult with his counsel at trial. Noting Moran had fainted at the preliminary hearing when asked about the charges against him, Dr. Perrotti opined the cause of the “drop attack” was psychological, not physical.

Dr. Knapke interviewed Moran and concluded he was not developmentally disabled. Moran understood the charges against him and had, at the very least, a rudimentary understanding of courtroom proceedings and the potential consequences he faced if convicted. Nonetheless, Dr. Knapke opined, Moran suffered from “depressive and anxiety symptoms” so extreme that they “precipitated what appeared to be a partial complex seizure during his clinical interview” with him. In particular, when Dr. Knapke broached the subject of the charges against Moran during his interview, Moran became “confused, unresponsive, and began to break out in a profuse sweat (diaphoresis)” and suffer what appeared to be a complex partial seizure. Believing it impossible for Moran to have feigned some of the physical symptoms he exhibited, Dr. Knapke opined that, under current conditions, Moran would be unable to assist his counsel or participate with any meaningful understanding in trial proceedings. Dr. Knapke recommended Moran be transferred to a state hospital for mental health evaluation and treatment of his anxiety and a complete neurological workup, including an

evaluation for antiseizure medication. He believed Moran could be restored to competence in a timely manner.

After reviewing the reports of Drs. Perrotti and Knapke, the prosecutor and defense counsel stipulated to a finding of Moran's incompetence based on mental disease or defect; defense counsel reserved any argument on developmental disability for a later date. The court found Moran not competent to stand trial within the meaning of section 1368 based on mental disease or defect and ordered Moran committed to the California Department of Health for placement in Patton State Hospital pending restoration of his mental competency.

3. Moran's Second Competency Hearing and the Trial Court's Finding of Competence

On October 14, 2015 Dr. Kayla Fisher of Patton State Hospital issued a report pursuant to section 1372 certifying that Moran was mentally competent. Moran's counsel contested that finding and requested a competency hearing.

A second competency hearing was held on March 17, 2016 and continued on April 6, 2017. Dr. Perrotti testified in person, repeating the conclusions he had discussed in his April 13, 2015 report. In addition, Dr. Perrotti testified that the panic-induced seizure issue had not been addressed at Patton and thus Moran remained at risk of the same reaction to the charges against him that had led Dr. Knapke and Dr. Perrotti to find Moran incompetent to stand trial. Dr. Perrotti also testified Moran was mildly developmentally disabled.

Dr. Luciano Tristan, a clinical neuropsychologist in the forensic evaluation unit at Patton State Hospital and the author of the report relied on by Dr. Fisher to certify Moran's competence to stand trial, disagreed with Dr. Perrotti. Dr. Tristan testified Moran had received a full neurophysiological

workup at Patton that included magnetic resonance imaging (MRI) and electroencephalogram (EEG) tests and psychiatric evaluations. Moran's MRI and EEG results were normal and unremarkable. Moran presented as calm, rationale, clear and coherent in thought and speech. According to Dr. Tristan, Moran was able to participate in cognitively demanding activities, including playing chess. However, when asked by his psychiatric evaluators to discuss the nature of the charges against him, Moran professed confusion, insisting he was unaware of any legal charges despite having spoken with his lawyer previously. Moran's medical team then referred him to Dr. Tristan for possible malingering.

Dr. Tristan found Moran's performance on forensic cognitive testing was inconsistent with what would be expected of cognitively and memory-impaired patients and indicative of malingered psychopathology. Dr. Tristan also found Moran was not developmentally disabled. Based on consistent data from physiological and cognitive tests and the observations of his evaluation team, Dr. Tristan opined Moran was malingering and concluded he was competent to stand trial within the meaning of section 1367.

During cross-examination defense counsel attempted to question Dr. Tristan as to whether Moran's anxiety-induced seizure disorder had been addressed at Patton. The court sustained the prosecutor's objection, ruling Dr. Tristan was not a neurologist and was not qualified to address a physiological condition.² The court permitted Dr. Tristan to address whether

² The court stated, "He's not a medical doctor, and if he gave an opinion, I would say I'm not accepting that opinion because

there was any psychological reason for Moran's seizure disorder. Dr. Tristan reiterated his opinion that there was no psychological impairment to Moran's ability to stand trial.

The trial court found Moran had not carried his burden to show he was incompetent to stand trial. The court stated, "[I]n my estimation, the defense has failed to shoulder any burden whatsoever that Mr. Moran is not competent to proceed. That's based on the medical documentation, the testimony of Dr. Perrotti, the testimony of [Dr. Tristan] just this morning. So I'm going to make a finding that [Moran] is not incompetent. I should say specifically that if he was previously incompetent, he's been restored to competence and that [the] case should proceed." The court ordered criminal proceedings to be reinstituted.

4. Moran's Trial, Verdict and Sentence

Moran was tried before a jury and testified without difficulty in his own defense. There is no indication in the record that Moran was unable to participate in his trial or assist his counsel; and defense counsel did not renew any declaration of doubt as to competency. Moran was convicted on all counts and sentenced to an aggregate indeterminate state prison term of 25 years to life.

he's not a medical doctor. How can he tell us what mechanisms cause people to faint?"

DISCUSSION

1. *Governing Law and Standard of Review*

“A person cannot be tried or adjudged to punishment . . . while that person is mentally incompetent.” (§ 1367, subd. (a); see *People v. Sattiewhite* (2014) 59 Cal.4th 446, 464 [““[b]oth the due process clause of the Fourteenth Amendment to the United States Constitution and the state law prohibit the state from trying or convicting a criminal defendant while he or she is mentally incompetent””]; *People v. Rogers* (2006) 39 Cal.4th 826, 846 [same].) A defendant is incompetent if it is proved, “as a result of mental disorder or developmental disability, the defendant 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); see *Sattiewhite*, at p. 464; *People v. Ramos* (2004) 34 Cal.4th 494, 507.)

If the court finds a defendant mentally incompetent following a hearing, it must suspend all proceedings until the person becomes mentally competent. (§ 1370, subd. (a)(1)(B).) The court must then order the mentally incompetent defendant to be delivered by the sheriff to the Department of State Hospitals facility “that will promote the defendant’s speedy restoration to mental competence” (§ 1370, subd. (a)(1)(B)(i).)

When the medical director of the state hospital to which the defendant has been committed determines the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration of competence. (§ 1372, subd. (a)(1).) If the defendant challenges the certificate of restoration to competence, the court must hold a hearing. At the hearing the defendant’s competence is presumed, and the defendant bears the burden of proving by a

preponderance of the evidence that he or she is incompetent. (*People v. Rells* (2000) 22 Cal.4th 860, 867-868.)

A trial court's competency finding after consideration of conflicting evidence must be upheld if supported by substantial evidence. (*People v. Sakarias* (2000) 22 Cal.4th 596, 618; cf. *People v. Mendoza* (2016) 62 Cal.4th 856, 871-872 [the jury's determination that a defendant is competent to stand trial is reviewed under deferential substantial evidence standard]; *In re R.V.* (2015) 61 Cal.4th 181, 185-186 [a claim of insufficient evidence to support a juvenile court's determination of competency is, like a challenge to an adult competency proceeding, "reviewed deferentially under the substantial evidence test"].)³

2. *Substantial Evidence Supports the Trial Court's Competency Finding*

Moran contends there is no substantial evidence to support the court's finding of his competence to stand trial. While acknowledging Dr. Tristan's testimony that Moran's test results

³ Although courts refer to review of a finding of competency for substantial evidence, when an appellant challenges a finding on appeal as to which he or she bore the burden of proof at trial, the question for the reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law, not whether there is substantial evidence to support the contrary finding. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 966; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Of course, when, as here, conflicting evidence was presented at trial, substantial evidence to support a finding of competence necessarily means a finding of incompetence cannot be compelled as a matter of law.

and clinical presentation showed he was malingering, nothing in Dr. Tristan's testimony or the written report summarizing the findings of his neurologists, he argues, addressed, much less rebutted, the evidence that Moran suffered from panic attacks so extreme that they precipitated seizures and had caused two mental health experts earlier to declare him incompetent to stand trial. Absent any evidence the panic attack-induced seizures that had led to the trial court's finding of incompetency in July 2015 had been treated and abated, Moran argues, there was simply no evidence to find his competence had been restored.

To the extent Moran suggests the court's previous finding of incompetence was presumed unless rebutted, he is mistaken. As discussed, once the medical director at Patton certified him as competent, Moran's competence was presumed; and it was his burden to demonstrate he was incompetent to stand trial. (See *People v. Rells, supra*, 22 Cal.4th at pp. 867-868.)

Moran failed to carry his burden to show incompetence. He insists Dr. Tristan did not address the panic disorder that caused a partial seizure. However, Dr. Tristan testified Moran had received the neurological work-up Dr. Knapke had recommended and Moran's results on those tests were normal and unremarkable. In addition, Dr. Tristan found Moran exhibited none of the symptoms at Patton that had led to the original findings of incompetence. In fact, Dr. Tristan concluded, to the extent Moran professed to continue to be suffering from any cognitive impairment or memory loss, he was malingering, an opinion Dr. Tristan based on findings following Moran's neurological examination and medical imaging tests, multiple forensic cognitive tests, Dr. Tristan's own observations and those of Moran's treating psychologists and physicians. The trial court

credited Dr. Tristan's testimony. Substantial evidence supports the trial court's competence finding.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

BENSINGER, J.*

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