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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ARCIGA RAMON CAMACHO, Defendant and Appellant.	E038725 (Super.Ct.No. FVA022804) OPINION

APPEAL from the Superior Court of San Bernardino County. Roberta McPeters, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, and Lilia E. Garcia and Raquel M. Gonzalez, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

1. Introduction

Defendant and appellant Arciga Ramon Camacho appeals after he was convicted of one count of driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)), one count of driving with a blood alcohol level of .08 percent or higher (Veh. Code, § 23152, subd. (b)), and one count of driving while his driving privilege was suspended because of a prior drunk driving conviction (Veh. Code, § 14601.2). Defendant contends that he was mentally incompetent to stand trial and that imposition of the aggravated term violated his constitutional rights under *Blakely v. Washington* (2004) 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403]. Neither contention is meritorious.

2. Factual and Procedural History

On July 6, 2004, at approximately 9:30 p.m., Isaias Bustos was outside his house watering his lawn. He saw a small car driving on his residential street. He saw the car go through a stop sign without stopping, turn in at the parking lot of a nearby liquor store, turn out of the parking lot, and drive through a red light at a traffic signal, without stopping. The car was traveling at a high rate of speed. Bustos then saw the car drive onto a vacant lot and spin several circles in the dirt. The car once again entered the roadway, proceeded along the street, turned onto the driveway of another house, and finally stopped there, in front of some trees. Bustos had observed only one person in the car. When the car stopped, Bustos went into his house and called police.

Officer Sandidge from the California Highway Patrol (CHP) responded to the call. A deputy sheriff was already on the scene interviewing Bustos. Officer Sandidge saw a tan or beige car parked in the driveway of a residence. The driver's door was partially

open and the driver was leaning halfway out, passed out. Officer Sandidge had some difficulty rousing the driver; at trial, the officer identified defendant as the driver.

Officer Sandidge noted fresh vomit on the ground immediately below defendant's head. He eventually succeeded in awakening defendant and asked him to step out of the car. Defendant's gait was unsteady and he had to hold onto the car or a tree to walk. Defendant's speech was slurred. The officer could smell alcohol both inside the car and on defendant's person. He administered three or four field sobriety tests; defendant performed poorly on each.

Defendant appeared to have difficulty understanding the officer or following directions. The officer had to repeat himself several times. Defendant admitted only that he had had one beer, but otherwise denied that he had been drinking. He stopped his car at a residence that was not his own and was disoriented as to his location.

Officer Sandidge placed defendant under arrest and transported him to the jail. There, a technician drew blood for purposes of alcohol testing. Forensic testing showed that defendant's blood alcohol level at the time of the blood draw was .24 percent. The criminalist estimated that defendant would have to have drunk between 16 and 17 beers to achieve that blood alcohol level.

Defendant testified in his own behalf at trial. He insisted that Officer Sandidge was not the officer who had arrested him and that Officer Sandidge did not administer any field sobriety tests. He denied running the stop sign, or the red light, or driving in circles in the vacant lot.

Defendant admitted that he was driving the car and testified that he had left his home to get some food. He explained that he had stopped his car in the driveway of a residence "[b]ecause I wanted to rest awhile there." When asked why he wanted to rest, defendant stated, "[b]ecause there's trees and a big field." He denied drinking or smelling of alcohol or vomiting.

Defendant admitted that he had been convicted of a prior felony charge of driving under the influence of alcohol. He also admitted driving the car when he knew his driving privilege had been suspended. The jury convicted defendant on all three charges; defendant waived jury trial of alleged prior offenses and the court found the prior convictions true.

At the time of sentencing, defendant asked for another attorney, claiming that his public defender was against him and claiming he was innocent. He stated, "Me, I'm saying I'm not guilty. I already went to the stand and declared what happened. I was not driving under the influence. What the officer said, it was not true." The court pointed out that the jury had found him guilty and that the felony drunk driving was his fifth drunk driving conviction. Defendant insisted that "four years is too much for one DUI," and said, "I don't want to be in jail."

When the court began to pronounce the sentence, defendant protested, saying, "You left and they send me another date for the jury to come and do the plea," and that "The jury is not here. They set me an out date." The court tried to explain to defendant that he had been convicted and would not be released. Defendant contradicted the court, stating, "Yes. They sent me an out date," at which point the court invited defense

counsel to make a motion to determine defendant's competence under Penal Code section 1368.

A court-appointed psychologist examined defendant. The psychologist reported that defendant presented at the interview, in a disheveled condition, with poor personal hygiene. His thought processes were somewhat impaired and he spoke about irrelevant matters. He was markedly suspicious and fearful of ordinary questions. His short-term and long-term memory appeared to be impaired, and he had difficulty with comprehension. His functioning appeared to be somewhat lower than his level of cognitive abilities. Although defendant understood the reason for his arrest, he denied his guilt. He was able to articulate the various roles of the trial judge, the prosecutor, defense counsel, and the jury, but his statements about the charges were rather paranoid, stating, "'they are accusing me so that they can keep me in jail,'" and opining that his public defender was not helping him: "'I am better of[f] defending myself because they [i.e., the prosecutor, defense counsel and the court] are all friends.'" The psychologist opined that defendant would likely be unable to cooperate with counsel because of "his suspiciousness, rigidity, evasiveness, and a speech that is circumstantial and irrelevant." The psychologist therefore concluded that defendant was presently incompetent to participate in the sentencing proceedings.

Defendant was admitted for inpatient treatment at Patton State Hospital. Over the next few months, he received treatment including individual and group therapy, and psychiatric medication. After approximately three months of treatment, and with his medication, defendant's delusional thinking and his apparent belief that his attorney was

conspiring against him had subsided. The hospital staff opined that he had recovered sufficiently to resume proceedings. At the evaluation, defendant "presented with speech content that was clear and focused, he was pleasant and cooperative and his affect and mood were appropriate. [He] was able to state charges, possible pleas and courtroom procedure. He did not display any delusional thinking and appears able to assist his attorney in his defense."

The court proceedings resumed and the court sentenced defendant to the aggravated term of three years on count 1, felony driving under the influence of alcohol. The sentence on count 2, having a blood alcohol level in excess of .08 percent, was to run concurrently. The court also imposed one year for a prior prison term enhancement, for a total sentence of four years.

3. Analysis

I. There Is No Evidence That Defendant Was Incompetent At The Time The Case Was Tried Before The Jury

Defendant first argues that his conviction must be reversed because he was not competent to stand trial at the time the case was presented to the jury.

A criminal defendant may not be tried or "'adjudged to punishment'" when she or he is mentally incompetent. (*People v. Jones* (1997) 15 Cal.4th 119, 149, overruled on another point in *People v. Hill* (1998) 17 Cal.4th 800, 823; see also Pen. Code, § 1368.) When the court has a doubt as to the mental competence of the defendant, the judge must inquire of defense counsel about the defendant's mental status. If counsel believes that

the defendant may be incompetent, the court shall order a hearing to determine the defendant's competence. (Pen. Code, § 1368, subds. (a) & (b).)

Here, defendant's conduct and statements, which triggered the court's inquiry into defendant's mental status, took place at the sentencing hearing, approximately a month after the jury trial had been concluded. Until that time, there was no indication apparent on the record that defendant was unable to understand the proceedings against him or unable to cooperate with counsel and assist in his defense.

Defendant points to the discharge or competency report from Patton State Hospital, which assigns defendant's differential diagnoses of schizophrenia, paranoid type, and polysubstance abuse. The sum and substance of defendant's argument on appeal is that "[s]chizophrenia, paranoid type, was not a transitory condition." Thus, "[t]here was no evidence that [defendant] had received treatment for his schizophrenia prior to the trial. If [defendant] was incompetent to stand trial as of March 2005, there was no reason to believe that he was competent to stand trial without medication when the trial commenced in late December 200[4]."

This claim is mere unsupported speculation. The record at trial demonstrates that defendant was well able to understand the proceedings against him. He responded comprehensibly to questions and was able to pose relevant questions of his own about the proceedings at each stage.

A defendant is presumed competent in the absence of any showing that he or she is not. (Pen. Code, § 1369, subd. (f); see *People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1273.) "[E]ven a history of serious mental illness does not necessarily constitute

substantial evidence of incompetence . . . ." (*People v. Blair* (2005) 36 Cal.4th 686, 714.) Here, of course, defendant had no such documented history. Moreover, a finding of incompetence at one stage of proceedings does not "relate back" to earlier stages of the proceedings. In *People v. Smith* (2003) 110 Cal.App.4th 492 (*Smith*), the Court of Appeal rejected a claim, akin to that advanced by defendant here, that a finding of incompetence shortly after the trial began meant that "[the defendant's] incompetency necessarily predated by at least a few days the suspension of the criminal proceedings; [and that] accordingly, . . . his waiver of jury trial was not competently made and he was not competent during a portion of the presentation of evidence . . . ." (*Id*. at p. 497.) The *Smith* court stated: "No authority supports appellant's argument that the temporal relationship between the waiver and the first evidentiary sign of incompetence alone is sufficient to invalidate an otherwise valid waiver." (*Id*. at p. 501.)

The court reiterated the point: "There is no denying that the timeframe between proceedings occurring when a defendant is presumed competent and the finding of doubt as to competency can be a very brief time period. But proximity of time alone is not determinative; our finding rests on a failure of proof. The statutory procedure establishes a discernible point at which evidence of incompetence is sufficient to halt proceedings and renders further proceedings constitutionally invalid. Under the statute, the question of incompetency arises the moment the court expresses a doubt as to a defendant's competency ([Pen. Code,] § 1368, subd.(a)) and is based on the consideration of all the relevant circumstances, including the behavior of the defendant and the comments of counsel. [Citation.] In the absence of evidence sufficient to find incompetency as a

matter of law, or a retroactive finding of incompetency by the trial court, we cannot find the later incompetency finding under section 1369 reaches back to some unknown and unidentified point in earlier proceedings. Doing so would create an unmanageable and unjustified quagmire for appellate and trial courts alike." (*Smith, supra*, 110 Cal.App.4th 492, 505, fn. omitted.) We decline defendant's invitation to create or enter such a quagmire. As in *Smith*, there is a complete failure of proof that defendant was incompetent at any point before the trial court expressed a doubt as to his mental status at sentencing. Defendant's assertion otherwise is pure speculation, unsupported by evidence.

II. Defendant's Sentence Was Proper Under *Blakely*

Defendant next contends that his sentence to the aggravated term violated his Sixth Amendment right to a jury trial and his right to due process, citing *Blakely, supra*, 542 U.S. 296 [124 S.Ct. 2531, 159 L.Ed.2d 403]. The California Supreme Court, in *People v. Black* (2005) 35 Cal.4th 1238, has rejected this claim; the selection of an aggravated sentence under the determinate sentencing law by the court, rather than by a jury, does not contravene *Blakely*. (*Black, supra*, at p. 1244.)

4. Disposition

Defendant's contentions are without merit. The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

RICHLI
J.