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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN KEITH REAMS,

Defendant and Appellant.

F055639

(Super. Ct. No. BF114556A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Stephen P. Gildner and Clarence Westra, Jr., Judges.

Susan Pochter Stone, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and Jennifer M. Poe, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted appellant Brian Keith Reams of first degree burglary, receiving stolen property and loitering. He argues that his convictions must be reversed for several reasons. First, Reams claims there was insufficient evidence to support the loitering

conviction. He also contends the trial court committed the following errors: (1) allowing the involuntary administration of psychotropic drugs, (2) failing to conduct a second competency hearing, and (3) permitting him to remain handcuffed during trial. Finally, Reams asks that we independently review sealed records to determine whether all discoverable material was disclosed. We disagree with his contentions, find all discoverable material was disclosed, and affirm the judgment.

### **FACTUAL AND PROCEDURAL SUMMARY**

L.C. Brown lived on Gentry Street in Bakersfield. The yard surrounding his home was enclosed by a chain-link fence in back with wooden fencing on the sides. Brown did not give Reams permission to be in his backyard on January 31, 2006.

On that day, after receiving a report, Bakersfield Police Officer Joseph Calvillo saw Reams in the backyard of Brown's home. Calvillo drew his weapon and ordered Reams to come out of the yard. Reams came through the gate to the front yard where Calvillo took him into custody.

Reams told Calvillo he was in the backyard collecting aluminum cans. Calvillo saw two duffel bags in the backyard where Reams had been standing. Reams said the duffel bags were his and gave Calvillo permission to search the bags. One bag contained a Toshiba laptop computer; the other bag contained several items, including a bottle of Admiral Nelson's spiced rum, a jar of change, cigarettes, and DVD's. There were no cans in either of the duffel bags or in the backyard.

Reams told Calvillo that the items in the duffel bags belonged to him and that he had purchased the computer downtown. Reams later told another officer that he purchased the computer for \$30 from someone who was looking for money to buy drugs.

When interviewed at the police station later that same day, Reams said he collected cans and scrap metal for money. When asked what he was doing in Brown's backyard, Reams said he was taking a "short cut." Reams stated he never had any intention of entering Brown's house.

Reams stated he paid a person he did not know \$30 for a laptop computer he estimated was worth \$800 and that the laptop might be stolen. Reams also had jewelry in his possession. He claimed he purchased the watch he was wearing at the Los Angeles airport, found a casino card in Hollywood or some section of Los Angeles, and the jar of change and rum were from his sister's house.

Philip Montalvan lived on Hahn Avenue in Bakersfield. During the period between January 29 and February 2, 2006, Montalvan was away from his residence. Upon returning home, Montalvan discovered he had been burglarized and his Toshiba laptop computer, a watch, and a bottle of Admiral Nelson's spiced rum were among the items taken. Montalvan identified these items, found in Reams's possession, as belonging to him. A fingerprint belonging to Reams was found inside Montalvan's home.

Gloria Spivey lived on Plains Road in Bakersfield. On January 26, 2006, her house was burglarized. Among the items missing were a jar of change, a necklace, and a wallet that held her casino card bearing her name. All of these items were found in Reams's possession.

The prosecutor charged Reams with first degree burglary, receiving stolen property, and loitering. It was further alleged that Reams had two prior serious felony convictions, a prior strike conviction for attempted burglary, and had served two prior prison terms. Reams pled not guilty and not guilty by reason of insanity.

On September 20, 2006, the trial court found Reams not competent to stand trial. On October 26, 2006, Reams was admitted to a state hospital and psychotropic medication was ordered administered. On April 17, 2007, the trial court found Reams had been restored to competency.

On May 12, 2008, defense counsel filed a motion to continue the trial date and requested the trial court order a confidential psychiatric reexamination pursuant to

Evidence Code section 1017. The trial court denied the motion to continue, but made no specific ruling on the section 1017 request.

On May 27, 2008, the jury trial began. The jury convicted Reams of first degree burglary, receiving stolen property, and loitering. They also found Reams was legally sane at the time the offenses were committed. In a bifurcated proceeding, the trial court found true the prior strike conviction, one prior serious felony conviction, and one prior prison term. Reams was sentenced on June 30, 2008, to a total aggregate term of 19 years four months.

## **DISCUSSION**

Reams makes six arguments here. First, he argues the trial court erred in 2006 when it ordered that psychotropic medication be administered to him against his will. Second, he contends the trial court erred when it refused defense counsel's request in 2008 for appointment of a confidential psychiatric expert and therefore deprived him of the ability to present new evidence on his lack of competency. Third, Reams claims the trial court erred when it failed to conduct a second competency hearing in 2008. Fourth, he contends the trial court erred when it agreed to his request to remain in handcuffs during the trial. Fifth, he claims there was insufficient evidence to support his conviction for loitering. Sixth and finally, he asks this court to review the personnel records of certain police officers that were produced and examined by the trial court in camera in accordance with *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535 (*Pitchess*) to determine if there are any appellate issues.

### **I. Forced Administration of Medication**

Reams contends the trial court erred in ordering the forced administration of psychotropic drugs. This contention fails for two reasons. First, the criteria for the forced administration of medication were met. Second, Reams has failed to demonstrate that the administration of psychotropic drugs deprived him of a fair trial.

A brief review of the record demonstrates that the criteria for forced administration of psychotropic medication were met. Psychotropic medication may be administered against a defendant's wishes in order to render him or her competent to stand trial if (1) the defendant is a danger to himself or herself, or others, and the treatment is medically appropriate; (2) the treatment is substantially unlikely to have side effects that undermine the fairness of the trial; and (3) the treatment is necessary to further important government trial-related interests. (*Sell v. United States* (2003) 539 U.S. 166, 179 (*Sell*)). As the *Sell* court stated, however, if forced administration of psychotropic medication is warranted in order to prevent a defendant from engaging in potentially dangerous behavior toward himself or herself, or others, then a trial court need not even address whether forced medication is appropriate to render a defendant competent to stand trial. (*Id.* at pp. 181-182.)

Here, a psychological examination of Reams by Eugene T. Couture, Ph.D., and Ana L. Chiles, Psy.D., revealed that Reams was actively suicidal, made numerous statements about wishing to die, attempted to overdose on drugs he had hoarded, and was believed to be a serious threat to himself if not properly medicated with psychotropic medication. Three days before the psychiatric evaluation, Reams had attempted suicide by inserting 14 razor blades into various parts of his body, including his anus, penis, and throat, and by ingesting 37 tablets of Seroquel that he had been hoarding in his cell. The recommendation was that Reams be required to take psychotropic medication by injection for his own protection and to avoid hoarding of drugs and further suicide attempts. Robert Sincoff, a physician and psychiatrist, recommended that Reams be treated with the psychotropic medication Atarax.

As an appellate court, we review judicial action, not judicial reasoning. (*City of National City v. Wiener* (1992) 3 Cal.4th 832, 850 (conc. opn. of Baxter, J.) [well-settled principle of appellate review that correct decision of trial court must be upheld even if based on erroneous reasoning].) Regardless of the rationale articulated by the trial court

for the forced administration of psychotropic medication, we assess the evidence to determine if the order was warranted on any grounds. (*Ibid.*)

The evidence established that Reams was engaging in behavior that was dangerous to himself and that treatment with the psychotropic medication Atarax was necessary in order to prevent further suicidal behavior. Under *Sell*, no further evidence was needed to justify forced administration of psychotropic medication. (*Sell, supra*, 539 U.S. at pp. 181-182.)

Finally, we conclude that the forced administration of psychotropic medication did not deprive Reams of a fair trial. “Whether a particular drug will tend to sedate a defendant, interfere with communication with counsel, prevent rapid reaction to trial developments, or diminish the ability to express emotions” (*Sell, supra*, 539 U.S. at p. 185) is important in determining whether forced medication made a trial unfair (*id.* at p. 177).

In *Riggins v. Nevada* (1992) 504 U.S. 127 (*Riggins*), a case relied on by Reams, the defendant was given a forced dosage of Mellaril, in a quantity large enough to cause a sedation-like effect and confusion and to place the dosage in the “toxic” range. (*Id.* at p. 137.) The *Riggins* court concluded that the administration of Mellaril at toxic levels likely affected the defendant’s communication with counsel and comprehension of the trial. (*Id.* at pp. 137-138.) Because there was no showing that psychotropic medication was administered to the defendant because of any safety concerns or to accomplish an essential state policy, the *Riggins* court concluded the defendant had been denied a fair trial and reversed. (*Id.* at pp. 136-138.)

In *Sell*, the defendant specifically was found not to be dangerous and psychotropic medication was administered solely for the purpose of rendering the defendant competent to stand trial. (*Sell, supra*, 539 U.S. at p. 184.)

Here, Sincoff set forth the potential side effects of psychotropic medication in his letter recommending treatment with Atarax. Potential side effects included “drowsiness,

dry mouth, constipation, blurry vision, difficulty urinating, muscle stiffness, slowed movements, tremor, restlessness, dizziness, weight gain ... problems with sexual functioning, lightheadedness, difficulty walking, potential for abuse or dependence and abnormal involuntary movements.” Sincoff opined that these potential side effects were unlikely to interfere significantly with Reams’s ability to assist in his defense at trial.

The present case is distinguishable from the holdings of *Riggins* and *Sell* in two respects. First, Sincoff opined that the dosage of Atarax proposed to be given to Reams would not affect his ability to communicate with counsel or comprehend the trial. The side effects of the Atarax did not include a sedation-like effect, confusion, or a toxic level of the drug. Different psychotropic medications produce different side effects. (*Carter v. Superior Court* (2006) 141 Cal.App.4th 992, 1005.) There was no evidence Atarax would produce symptoms similar to that of the Mellaril given to the defendant in *Riggins*.

Second, Reams’s contention that he was denied a fair trial is based on the premise that the factors necessary to support forced administration of drugs purely for purposes of achieving trial competency were not met. Expert evaluations established, however, that Reams was a danger to himself and actively suicidal. Danger to one’s self or others is grounds for forced administration of psychotropic medication, and not subject to an analysis using the factors to determine whether forced administration is warranted to achieve trial competency. (*Sell, supra*, 539 U.S. at p. 186; *Riggins, supra*, 504 U.S. at p. 138.)

We conclude the trial court did not err in ordering forced administration of the psychotropic medication Atarax to Reams.

## **II. Competency to Stand Trial**

Reams contends the trial court erred prejudicially when it denied a May 2008 defense request for appointment of a confidential psychiatric expert and failed to make further inquiry into his competency to stand trial at that time. He also contends the trial

court erred in failing to hold another Penal Code section 1368<sup>1</sup> competency hearing. We disagree.

***Failure to Appoint***

Reams's motions to continue the trial and for the appointment of a confidential psychiatric expert were made on the first day of trial, May 27, 2008. The attorney representing Reams also moved to be relieved as counsel. The trial court first addressed the motion to be relieved as counsel.

Defense counsel stated that Reams was refusing to meet with or cooperate with him. The trial court explained that Reams "has an attitude about participating in a proceeding, whether it is with the Sheriff's deputies or whether it is with his counsel." The trial court concluded that Reams had made a conscious and considered choice not to speak to his counsel and there was no indication Reams would cooperate with anyone else. Therefore, the trial court denied the motion.

The trial court then proceeded to address the motion for a confidential evaluation. In support of the motion, defense counsel had filed a declaration stating that Reams had sought to disqualify counsel with a *Marsden*<sup>2</sup> motion and refused to confer with counsel. The declaration also stated that on April 25, 2008, "REAMS was observed to be in a deteriorated mental state and had great difficulty maintaining any train of thought."

Defense counsel asked for a confidential evaluation in order to determine whether Reams "is competent to assist [counsel] in the furtherance of his trial and understands the nature of the charges against him, the process, itself." Defense counsel noted that the evaluation would take three or four weeks and delay the trial.

After defense counsel concluded his argument, the trial court noted that there was no evidence of any change in Reams's competency since April 2007, when he had been

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<sup>1</sup>All further statutory references are to the Penal Code unless otherwise noted.

<sup>2</sup>*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).



found competent to stand trial. Reams had participated in two recent hearings pursuant to *Marsden*, including one that took place on May 14, 2008, a mere two weeks before the start of trial and after the April 25 date referenced in counsel's declaration. Reams gave no indication in those hearings that he might be incompetent to stand trial. Mental health experts had been appointed pursuant to the section 1026, plea of insanity, and would be testifying at trial. The trial court also noted that the issue had not been raised with the Presiding Judge when the matter had been assigned out for trial. The trial court concluded that an additional evaluation would not serve any purpose, thus, the appointment of a confidential psychiatric expert would not assist the defense in any relevant way.

The trial court also noted that Reams refused on occasion to change out of jail clothes and to cooperate with any counsel and had "an attitude about participating in a proceeding." This, combined with the trial court's ability to observe Reams's apparent competency to stand trial on two recent occasions, including on May 14, 2008, when Reams requested *Marsden* hearings, led the trial court to conclude there was no indication of incompetency, despite defense counsel's assertion, merely an uncooperative defendant.

The transcript of the May 14 *Marsden* hearing demonstrates that Reams was articulate, comprehended the proceedings and charges against him, understood options available to him, and was able to carry on a lengthy and lucid exchange with the trial court regarding matters before the court. This transcript makes it abundantly clear that Reams was capable of participating in and understanding the proceedings when he chose to do so.

In *People v. Campbell* (1987) 193 Cal.App.3d 1653 (*Campbell*), on the eighth day of trial, defense counsel sought a psychological examination under section 1368 based on counsel's opinion that the defendant was unable to understand and appreciate the nature of the proceedings. (*Campbell*, at p. 1661.) During the trial, the trial court had the

opportunity to observe the defendant as he testified and denied the motion on the basis that the court had no doubt as to the defendant's competency. (*Ibid.*) The appellate court concluded the trial court had not abused its discretion. (*Id.* at p. 1661.)

Here, as in *Campbell*, the trial court did not abuse its discretion. Reams's ability to comprehend the proceedings recently had been observed by the trial court. Nothing during those proceedings indicated a lack of competency. Nothing in the May 14, 2008, *Marsden* proceeding would give rise to a suspicion on the part of the trial court, or a reasonable possibility, that Reams lacked competency. (*Campbell, supra*, 193 Cal.App.3d at pp. 1663, 1668.) That Reams refused to converse, communicate, or cooperate with defense counsel was, as evidenced by the May 14 *Marsden* hearing transcript, a conscious choice by Reams and not evidence of any incompetency.

***Failure to hold second competency hearing***

In his supplemental brief, Reams argues that his history of mental illness and defense counsel's declaration in support of the motion to appoint a psychiatrist constituted substantial evidence of incompetency, warranting a second competency hearing. We disagree.

A trial court is not required to suspend proceedings and conduct a second competency hearing unless it is presented with a substantial change of circumstances or new evidence that casts doubt on a defendant's competence to stand trial. (*People v. Lawley* (2002) 27 Cal.4th 102, 136 (*Lawley*).) No such evidence was presented.

As discussed above, defense counsel's assertion that Reams's mental state was deteriorating was not sufficient to support a reasonable probability that Reams was incompetent, in light of the trial court's recent observations during the May 14 *Marsden* hearing and Reams's history of being uncooperative with counsel. (*Campbell, supra*, 193 Cal.App.3d at pp. 1663, 1668.) It follows, therefore, that there was no evidence of a substantial change in circumstances casting a serious doubt on Reams's competency. (*Lawley, supra*, 27 Cal.4th at p. 136.)

### **III. Allowing the Use of Restraints**

On May 28, 2008, the trial court noted that Reams had told the bailiff that he, Reams, preferred to remain handcuffed during the trial. The trial court asked defense counsel if Reams wished to remain handcuffed during the trial. Reams and his defense counsel conferred, after which Reams stated his preference that he remain handcuffed. Defense counsel stated a preference that Reams not be handcuffed.

There was some discussion about Reams and the bailiff assigned to the courtroom. When the trial judge explained that the bailiff could remove the handcuffs without any problems and that the trial court was willing to remove the handcuffs, Reams again expressed a preference to remain handcuffed. The trial court then directed a comment to defense counsel, noting that Reams expressed a preference to remain handcuffed and that his hands were below the table and not visible to the jury. Defense counsel made no comment and did not reply to the trial court.

On May 29, 2008, Reams was not responding to questions from the trial court or his own counsel. The trial court stated that things would remain as requested by Reams until he stated another preference. The morning of May 30 Reams expressed a preference for the handcuffs to be removed, and they were.

The afternoon of May 30 Reams asked that the handcuffs remain in place. Defense counsel asked if Reams was “absolutely sure” and if he was “choosing to keep them on.” Reams replied, “Yeah,” and defense counsel responded, “Okay.”

During a conversation on jury instructions, the trial court noted that on one or two occasions, Reams’s handcuffs may have been visible at the edge of the table, but the trial court was unsure whether any juror had seen the restraints. The trial court stated its intent to give an instruction regarding physical restraints to the jury. The trial court gave the jury a modified version of CALCRIM No. 204, instructing it to disregard any restraints or clothing worn by Reams as they had no evidentiary value and must not factor into deliberations.

Reams now contends the trial court erred in permitting him, at his request, to remain handcuffed, because defense counsel expressed a preference that he not be restrained and there had been no finding of necessity by the trial court. This argument has been forfeited.

At no time during the several discussions surrounding Reams's request to remain in handcuffs did defense counsel make a motion for the handcuffs to be removed or press for a ruling on the propriety of the restraints. Even if we could construe as an objection defense counsel's comment that the handcuffs be removed, the failure to press for a ruling on the propriety of the restraints or to make a motion to remove the restraints "depriv[es] the trial court of the opportunity to correct potential error." [Citation.]” (*People v. Ramirez* (2006) 39 Cal.4th 398, 450.)

In order to preserve this issue for review, Reams was required to make a motion against the use of physical restraints. (*People v. Alvarez* (1996) 14 Cal.4th 155, 192 & fn. 7.) When no motion has been made, and the trial court acquiesces in a defendant's request regarding restraints, the claim of error is rejected. (*Id.* at p. 192.) “A defendant may be precluded from raising an error as a ground of appeal where, by conduct amounting to acquiescence in the action taken, he waives the right to attack it.” [Citation.]” (*People v. Williams* (1968) 265 Cal.App.2d 888, 899.)

#### **IV. The Sufficiency of the Evidence Supporting the Loitering Conviction**

Reams contends his conviction for prowling must be reversed because the evidence failed to establish that he had the requisite intent to commit any crime. He is mistaken.

Our role in a challenge to the sufficiency of the evidence is to view the evidence in the light most favorable to the prosecution, to presume in support of the judgment every fact reasonably inferable from the evidence, and to determine if, on the entire record, a rational trier of fact could find the accused guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People*

*v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Reversal of the judgment for insufficiency of the evidence is not warranted unless it appears that “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]. [Citation.]” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. (*Ochoa*, at p. 1206.)

The statutory definition of loitering is as set forth in the relevant part of section 647:

“Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: [¶] ... [¶]

“(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, ‘loiter’ means to delay or linger without a lawful purpose for being on the property and *for the purpose of committing a crime* as opportunity may be discovered.” (Italics added.)

Reams claims there is no substantial evidence that he harbored the requisite intent specified in section 647, subdivision (h). There is rarely direct evidence of a defendant’s intent. Such intent usually must be derived from all the circumstances of the attempt, including the defendant’s actions. (*People v. Lashley* (1991) 1 Cal.App.4th 938, 946.)

Here, the evidence established that Reams was found standing in the backyard of a private residence without permission of the owner, was within two feet of the house, and was in possession of two duffel bags that contained items belonging to victims of his burglaries. When apprehended at the residence by law enforcement, Reams told them he was collecting aluminum cans, but there were no cans in the backyard. When interviewed later at the station house, Reams changed his story, claiming he was taking a “short cut” through the property.

Reams’s argument is fundamentally a request that we reweigh the facts. That we cannot do. (*People v. Bolin* (1998) 18 Cal.4th 297, 331-333.) The evidence was

sufficient to support a reasonable inference that Reams was in the backyard for the purpose of committing a crime and harbored the requisite intent, as set forth in section 647, subdivision (h).

**V. *Pitchess* Motion**

Reams asks us to review the trial court's in camera examination of personnel records of certain Bakersfield Police Department officers. The People do not oppose the request.

This court examines the sealed records of the in camera hearing, reviewing the trial court's determination of discoverability for abuse of discretion. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229-1232; *Pitchess, supra*, 11 Cal.3d at p. 535.) We have conducted the requested review, have applied the relevant law, and have determined that the record shows no error.

**DISPOSITION**

The judgment is affirmed.

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CORNELL, J.

WE CONCUR:

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WISEMAN, Acting P.J.

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POOCHIGIAN, J.