Filed 3/29/07 P. v. Sargeant CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LARRY BRANT SARGEANT, Defendant and Appellant.	A112220 (Alameda County Super. Ct. No. C149313)

Defendant Larry Sargeant was charged with and convicted of one count of vandalism of a place of worship after he attacked a religious statue with an axe. He contends the court erred by failing to hold a second hearing to determine whether he was competent to stand trial, that the statutory prohibition against vandalizing a place of worship applies only to real property, that he was denied an adequate restitution hearing, and that the court improperly imposed an upper term sentence based on facts not found by a jury. We reverse as to the sentence and remand for resentencing based on *Blakely/Cunningham*[1] error. In all other respects, the judgment is affirmed.

BACKGROUND

The Offense

A large statue of Jesus Christ stands in the visitor center at the Church of Jesus Christ of Latter Day Saints in Oakland. Visitors gather around the statue to pray, read

[1] *Blakely v. Washington* (2006) 542 U.S. 961; *Cunningham v. California* (2007) 549 U.S. __ [127 S.Ct. 856].

scripture, and listen to narrations about the life and teachings of Christ. The Mormon missionaries who staff the center pray there daily.

On December 9, 2004, defendant entered the visitor center, placed a written proscription against the making of graven images at the feet of the statue, and struck the statue repeatedly with an axe, severing a thumb and several fingers.

One missionary received a superficial injury from a flying fragment. Another missionary fainted. Others wrestled defendant to the floor and seized the axe, while a visitor seized a large knife from defendant's tool belt.

Defendant testified that God had commanded him to " 'break off the thumbs and fingers of the statue that the [M]ormons false prophets have made' " and to " 'break off both the arms also.' " Jesus Christ had ordained him "president, prophesier, revelator, and high priest of the Church of Jesus Christ of Latter Day Saints" and given him a "deed of ownership to all the properties" belonging to the church. The Heavenly Father ordained him a prophet.

In 1985, defendant was convicted of felony vandalism when at God's directions he severed the thumbs and fingers of a statue at the Mormon church's Los Angeles visitor center. The Los Angeles incident occurred shortly after defendant was released from the Salt Lake County Jail, where he was incarcerated for felony vandalism after breaking the thumbs and fingers off of another church statue.

The Legal Proceedings

Defendant was charged with one count of vandalism of religious property, and the Los Angeles offense was alleged as a prior conviction. (Pen. Code, § 594.3, subd. (a).)[2]

The court, Judge Smith presiding, initiated a competency inquiry, before the preliminary examination. Dr. Fred Rosenthal reported that defendant was incompetent to stand trial. Dr. Rosenthal described defendant as "a man who holds to completely irrational beliefs; he cannot entertain the idea that he has a mental disorder or that his attempts to convince others of his position vis-à-vis his legal situation are completely

[2] All further statutory references are to the Penal Code.

hopeless. Therefore there can be no doubt that at present Mr. Sargeant could not be mentally competent to stand trial." Dr. Mark Saunders also evaluated defendant. He believed defendant's performance on the MacCat-CA psychological assessment instrument, designed to judge an individual's "ability to seek, identify, weigh and balance information and make informed decisions[,] . . . suggests that [defendant] has a basic understanding of participant roles and legal processes that may lead to a legal resolution and there is some indication that he can implement that understanding under certain conditions. [¶] Taken from a different point of view, it appears that Mr. Sargeant's internal resources and abilities may not be sufficient to meet competency requirements." Dr. Saunders concluded that tests and findings "suggest substantial impairment in numerous abilities required for meaningful participation in legal proceedings. While Mr. Sargeant's basic knowledge of the legal process and the choices available to him is quite adequate, symptoms consistent with an affective disorder interfere with his reasoning and judgment which will adversely affect his ability to interact and plan appropriately. The fact that he intends to act as his own attorney further exacerbates his vulnerabilities. He is likely to make poor, if not irrational judgments in weighing the costs and benefits of alternative legal options. [¶] It is likely that additional treatment in a trial competency program would assist in furthering Mr. Sargeant's functioning with respect to the skills and abilities required to aid in his defense."

Pursuant to section 1368, a competency hearing was held on May 19, 2005. Judge Hurley presided. Although defendant was representing himself in the criminal proceedings, he was represented by appointed counsel in the competency hearing. All parties asserted that he was competent. Defendant correctly identified his attorney, the judge, the prosecutor and their respective roles. He accurately described the charges against him, the nature of the competency and trial proceedings and the possible consequences if he were found guilty. He explained that he initially wanted to represent himself but had recently changed his mind and decided it would be better to have an attorney. He also discussed the 1985 felony vandalism trial in Los Angeles when he acted as his own attorney. He described for the court a jury instruction that was given in

that trial that said defendant could not be convicted of vandalism if he believed he owned the church property. Defendant said he would cooperate with his lawyers in the Oakland prosecution even if such a defense was not available and the instruction was not given.

The court concluded defendant was competent and said: "This is not a close issue. [Defendant] is clearly lucid. He understands in every way. He doesn't understand it as a lawyer might, but I would be hard put to find a law student who would understand better than he does his situation. He knows his maximum. He knows what it's all about. He's been through it before, apparently. He appears lucid about the issues before me as to whether or not he understands the nature of the charges, the nature of the proceeding. Seems more than willing to go forward and assist counsel. [¶] He's come to the realization now that it's better to have a lawyer, but anybody who decided on a *Faretta* [*Faretta v. California* (1975) 422 U.S. 806] was right. He understands far better than the average person representing himself in pro per in a criminal matter, from what I can tell. He may not understand everything. He may not get the law that he wants, but I don't think the law is quite that simple about: you think it's true, you can do what you want. . . . [¶] Anyway, this issue is not particularly close. I've considered the reports. But at this point, it is clear to me he is not [section] 1368. He is mentally competent. Even if there were not a presumption on what I have as the evidence, I find him mentally competent."

On August 2, 2005, the court (Judge Conger presiding) proposed a plea bargain under which defendant would plead guilty in return for a suspended sentence, a grant of probation and restitution. As conditions of probation he would be required to return to his home in Washington and stay away from Alameda County and property of the Mormon Church.

Defendant rejected the offer. He explained he was willing to go to trial, that Jesus Christ would testify in his defense, and that he had a right to destroy Mormon property because the Lord deeded it to him in 1964. He also wanted the court to convey him a "valid deed to the Mormon Church property."

After extended discussion about the terms of a plea bargain, the court expressed doubt that defendant possessed the capacity to assist counsel with his defense. The court suspended the proceedings and, over defendant's objection, appointed Doctors Rosenthal and Saunders to again evaluate defendant. Defendant's counsel emphasized his belief "that Mr. Sargeant is competent to stand trial in that he understands the nature of the proceedings and he is able to assist counsel in the defense of his case."

Dr. Rosenthal reevaluated defendant on August 25, 2005, this time finding him competent. "Currently Mr. Sargeant is calm and able to respond in a reasonable manner. His mood is expansive and he firmly denies that he has any mental problems. Outside his delusional thinking, Mr. Sargeant remains generally appropriate, with no indication of serious cognitive or memory deficits. From a review of the court proceedings on August 2, 2005, it was evident that Mr. Sargeant has an adequate understanding of his case while continuing to think in his distorted and convoluted manner. In fact, Mr. Sargeant seems to be quite clever in argument with the court even though his reasoning is distorted. Mr. Sargeant is aware of his charges and while he firmly believed his behavior was justified, he is also aware that he is charged with criminal actions. Thus although Mr. Sargeant continues to have a significant mental illness for which apparently he has not had treatment since he was in his thirties, he is now able to comprehend his legal situation sufficiently to be considered mentally competent to stand trial."

Dr. Saunders continued to be of the opinion defendant was not competent. He concluded that tests and interviews "suggest that substantial impairment in specific abilities required for meaningful participation in legal proceedings. Mr. Sargeant's grasp of the basic knowledge and strategic reasoning skills and abilities required to participate in legal proceedings is quite adequate. Symptoms of a psychotic disorder, namely a fixed delusional system, (1) interfere in weighing the costs and benefits of his alternatives and (2) may constrain him in how he uses counsel's advice and direction and/or his own abilities. The use of medication is not likely to remove that delusional system. Medication would make it less likely for Mr. Sargeant to act destructively in the community. [¶] It is likely that additional treatment in a trial competency program would

assist in furthering Mr. Sargeant's functioning with respect to the skills and abilities required to aid in his defense."

The court considered that the two reports were "conflicting in terms of the issue of whether or not [defendant] should be found competent to stand trial," with "one of the doctors indicat[ing] that you are so competent." In light of the stipulation that defendant was competent, however, Judge Conger concluded there was no issue to be determined. She accepted the stipulation, and reinstated the criminal proceedings.

A jury found defendant guilty of the sole count charged and the court sentenced him to the three-year upper term. Defendant was ordered to pay a $600 restitution fine with another $600 fine imposed and stayed pending completion of parole, and to pay actual restitution "as outlined in the Probation Department's restitution claim form in the total amount of $4,173.68." This appeal timely followed.

DISCUSSION

I. *The Evidence Did Not Mandate a Second Competency Trial*

Defendant contends the trial court erred by not holding a second hearing into his competency after he was reexamined by Doctors Rosenthal and Saunders. His contention is unpersuasive.

Legal Standards

The court is required to suspend criminal proceedings and hold a competency hearing, sua sponte when necessary, if there is substantial evidence a defendant may be incompetent to stand trial. (§ 1368; *People v. Howard* (1992) 1 Cal.4th 1132, 1163; *People v. Medina* (1990) 51 Cal.3d 870, 882.) "[E]ven though section 1368 is phrased in terms of whether a doubt arises in the mind of the trial judge and is then confirmed by defense counsel . . . , once the accused has come forward with *substantial evidence* of incompetence to stand trial, due process *requires* that a full competence hearing be held as a matter of right. . . . [¶] 'Substantial evidence' has been defined as evidence that raises a reasonable doubt concerning the defendant's competence to stand trial." (*People v. Welch* (1999) 20 Cal.4th 701, 737-738; *Howard, supra*, at p. 1163.)

In this case defendant does not challenge the initial finding that he was competent, but instead contests the court's decision not to hold a *second* hearing to determine whether he remained competent. "When, as here, a competency hearing has already been held and the defendant was found to be competent to stand trial, a trial court is not required to conduct a second competency hearing unless 'it "is presented with a *substantial change of circumstances or with new evidence*" ' that gives rise to a 'serious doubt' about the validity of the competency finding. [Citation.] More is required than just bizarre actions or statements by the defendant to raise a doubt of competency. [Citations.] In addition, a reviewing court generally gives great deference to a trial court's decision whether to hold a competency hearing. As we have said: ' "An appellate court is in no position to appraise a defendant's conduct in the trial court as indicating insanity, a calculated attempt to feign insanity and delay the proceedings, or sheer temper." ' " (*People v. Marshall* (1997) 15 Cal.4th 1, 33, italics added; accord, *People v. Marks* (2003) 31 Cal.4th 197, 220.) At this juncture, moreover, "the trial court may appropriately take its personal observations into account in determining whether there has been some significant change in the defendant's mental state." (*People v. Jones* (1991) 53 Cal.3d 1115, 1153.) We review whether the determination not to hold a second competency hearing was supported in substantial evidence. (*People v. Huggins* (2006) 38 Cal.4th 175, 220.)

Analysis

Here, the facts did not compel the court to hold a second competency hearing. Initially, the two doctors' opinions provided Judge Hurley substantial evidence requiring a section 1368 hearing. Notwithstanding the parties' agreement that it was unnecessary, Judge Hurley properly held a competency hearing and found defendant competent to stand trial. (See *People v. Pennington* (1967) 66 Cal.2d 508, 521 [trial court may not proceed once a doubt arises as to the defendant's competency].)

Defendant's contention that the evidence mandated a second competency hearing fails for the reasons discussed in *People v. Huggins, supra,* 38 Cal.4th at page 220. There, defense counsel expressed concerns about his client's competency at the start of

the penalty phase, several years after the prior competency proceedings. (*Ibid*.) The Supreme Court explained, "Although the fact of the prior competency determination did not by itself establish defendant's competency . . . , a second competency hearing was required only on a showing of substantial change of circumstances or new evidence casting a serious doubt on the validity of the prior finding [citation]. The prior finding was based on a thorough inquiry into defendant's competency, and the evaluations made at that time and the verdict of competency must be viewed as a baseline that, absent a preliminary showing of substantially changed circumstances, eliminated the need to start the process anew." (*Ibid*.)

The Supreme Court made this point also in *People v. Weaver* (2001) 26 Cal.4th 876, where it wrote: "[D]efendant fails to mention an important fact critically undermining his claim: the trial court had already declared a doubt as to defendant's competence at the time of the arraignment, had suspended proceedings, and had defendant examined by two psychiatrists. The parties submitted the matter, and the trial court found defendant legally competent. 'Once a defendant has been found competent to stand trial, a second competency hearing is required only if the evidence discloses a substantial change of circumstances or new evidence is presented casting serious doubt on the validity of the prior finding of the defendant's competence.' " (*Id.* at p. 954.)

Here, there is no evidence of substantially changed circumstances or new evidence casting serious doubt on the prior finding of competence. Defendant's behavior during the hearings before Judge Conger was not materially different from his earlier presentation in terms of his evident understanding of the proceedings and ability to assist his counsel. As Dr. Rosenthal noted and the hearing transcripts confirm, defendant continued to think in a distorted and convoluted manner. But a defendant's distorted and convoluted thought processes do not require a court to conclude he is incompetent to stand trial. "More is required than just bizarre actions or statements by the defendant to raise a doubt of competency." (*People v. Marshall, supra,* 15 Cal.4th at p. 33.) Nor does defendant's unwillingness to plead no contest constitute a change of circumstances or new evidence that required a second competency trial. Defendant is presumed to be

competent, and his personal decision not to plead no contest, although for reasons that might seem bizarre, does not undermine that presumption. (*People v. Stanley* (1995) 10 Cal.4th 764, 806 [the defendant's refusal to present mitigating evidence not substantial evidence of incompetence]; *People v.* Lang (1989) 49 Cal.3d 991, 1029-1033 [same]; *People v. Guzman* (1988) 45 Cal.3d 915, 964-965 [refusal to present mitigating evidence and preference for death penalty].) Finally, although Dr. Saunders found defendant incompetent in his second evaluation, this finding was not substantially different from his initial assessment. In his second examination, Dr. Rosenthal found defendant was now competent to stand trial. Although Judge Conger had concerns stemming from her impressions of his tactical decisions and courtroom behavior, defendant's tactics and behavior had not changed significantly since Judge Hurley found he was competent. A second competency hearing was therefore not required.

II. *The Court Properly Construed Section 594.3, Subd. (a)*

Section 594.3, subdivision (a), provides: "Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year." Defendant contends the court erroneously denied his motion for judgment of acquittal because he vandalized personal property (statue) and there was not substantial evidence supporting a conclusion that he vandalized real property. The claim fails because section 594.3 encompasses vandalism to real and personal property.

"When interpreting a statute, 'we turn first to the language of the statute, giving the words their ordinary meaning.' [Citation.] If the language permits more than one reasonable interpretation, then the court looks 'to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.' [Citation.] In the end, '[w]e must select the construction that

comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' " (*People v. Rubalcava* (2000) 23 Cal.4th 322, 328.)

Defendant contends that by specifying acts of "vandalism to a church, synagogue, mosque," etcetera, the Legislature intended to narrow the statute's application to damage to realty and exclude personalty. But the statutory language does not imply this limitation. As a matter of common sense, vandalism "to" a place of worship can readily be understood to include damage to religious or other artifacts within it. We find it hard to imagine that defacing church texts, vestments or reliquaries with graffiti would not ordinarily be understood as an act of vandalism against, or to, the church itself. If we were to accept defendant's construction of the statute damaging a trailer or portable building used as a place of worship would not be within the scope of section 594.3.

Even if the statutory language admits some ambiguity when taken in its ordinary sense, that the Legislature intended a broader meaning is evidenced by its use of the word "vandalism." Section 594 defines vandalism. It provides that "(a) Every person who maliciously commits any of the following acts with respect to any *real or personal* property not his or her own . . . is guilty of vandalism: [¶] (1) Defaces with graffiti or other inscribed material. [¶] (2) Damages. [¶] (3) Destroys." (Italics added.) Section 594.3 in turn, applies to "any act of *vandalism*" i.e., damage, defacement or destruction of real *or personal property*, to a specified place of worship. Construing section 594.3 in the context of the entire statutory scheme (*People v. Rubalcava*, *supra*, 23 Cal.4th 322), we reasonably conclude that the Legislature intended it to apply to personalty as well as realty. Indeed, it is hard to fathom any purpose for limiting the scope of section 594.3 to acts causing damage to religious structures but not to their

contents—items which may have as much as or more intrinsic religious import than the structures themselves.[3]

III. *Defendant Waived a Restitution Hearing*

Defendant contends the court erroneously imposed $4,173.68 in victim restitution without affording him a hearing to contest the amount of restitution. The claim was waived by defendant's failure to request a hearing below.

Background

The probation department submitted a restitution claim seeking total restitution of $4,173.68, of which $1,806.96 was to repair the statue and $2,366.72 for emergency room and ambulance costs incurred on behalf of the church member who fainted during the attack. The claim form was signed under penalty of perjury and supported with an itemized list of medical expenses.

At the sentencing hearing, defense counsel said: "In terms of the restitution, we would submit it on the amount of [$]1,806.96 for the statue. But in terms of the ambulance ride or the other amount of [$2,366.72], first of all, I don't believe that there is enough information in the probation report or from the Probation Department . . . that indicates that that cost was associated with this incident. And second of all, I don't believe that Mr. Sargeant should be liable for that. He was convicted of the [section] 594.3, and I think should be liable for the damage he caused to the statue, and that alone only. [¶] *So I'll submit it on that*." (Italics added.) A church representative then spoke on behalf of the church. He said, "I'm a little insulted that they objected to the medical costs incurred, that this young lady has remains [*sic*] traumatized, and her life has forever changed for what has happened here. She was actually pinned underneath [defendant] during the fracas, trying to get him to stop, and that is something that we think should be considered." After the prosecutor argued for an aggravated term and restitution to cover the full medical expenses, defense counsel again submitted the matter.

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[3] In light of this conclusion, we need not and do not consider whether the court erred in failing to instruct the jury that the People were required to prove the vandalized

Analysis

Defendant relies on *People v. Foster* (1993) 14 Cal.App.4th 939, 944 and *People v. Scroggins* (1987) 191 Cal.App.3d 502, 508, to argue he was entitled to dispute the amount of restitution at a hearing because he lodged an objection. Those cases hold that a defendant is entitled to a hearing on the amount of restitution *if he requests one*. Although defendant objected to imposition of the claimed medical costs, he submitted the matter without requesting a hearing. He has therefore waived the claim for purposes of appeal. (See *Foster, supra,* at p. 944 [failure to object waived any error in amount]; *cf. Scroggins, supra,* at p. 508 [defendant requested hearing].)

IV. *Blakely/Cunningham Error*

On January 22, 2007, the United States Supreme Court issued its opinion in *Cunningham v. California*, *supra*, 549 U.S. __ [127 S.Ct. 856]. The court held that California's determinate sentencing law violates a defendant's right to a jury trial and the necessity of proof beyond a reasonable doubt by allowing trial courts to find facts in support of aggravating factors used to impose an upper term sentence. Here, the trial court imposed the aggravated term based on factors not found by a jury: that the crime involved an act of great violence and callousness towards the many people in the vicinity; that defendant was armed with the axe and knife; that the manner in which the crime was committed indicated a depth of planning; that defendant had engaged in violent conduct now and in the past, indicating a serious danger to society; defendant's willingness to commit similar attacks in the future; and his unsatisfactory performance on probation. Because the court's reliance on these facts that were not found by a jury implicates *Cunningham,* we reverse as to the sentence and remand to the trial court for resentencing.

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statue was a fixture, as opposed to personal property.

DISPOSITION

The judgment is reversed as to the sentence and the case is remanded to the trial court for resentencing. In all other respects, the judgment is affirmed.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Pollak, J.