In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **DOMINGO L. RODAS,** **Defendant and Appellant.**

Case No. S237379

SUPREME COURT
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The Honorable Robert J. Perry, Judge

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ISSUE PRESENTED

Did the trial court violate appellant Rodas's constitutional right to due process by failing to suspend proceedings after his attorney declared a doubt as to his competence?

INTRODUCTION

Rodas was charged with multiple counts of first degree murder and attempted first degree murder for stabbing five homeless men. The criminal trial proceedings were suspended in February 2012 when Rodas was found to be incompetent to stand trial. The trial proceedings resumed in May 2013, after mental health authorities certified that Rodas had been restored to competency. Although Rodas had stopped taking psychotropic medication upon his release from Atascadero State Hospital in May 2013, defense counsel did not declare any doubt as to his competency until March 18, 2014, after a jury had been sworn and just before opening arguments were to begin. Counsel explained that she had difficulty understanding Rodas the prior evening. The trial court conducted an ex parte hearing wherein the court questioned Rodas about the proceedings and his ability to assist counsel. The court stated that it was impressed with Rodas's clarity of speech and reasoning, and it found no basis for declaring a doubt as to his competency.

The Court of Appeal properly held that the trial court had no duty to suspend the criminal trial and conduct further competency proceedings. As the Court of Appeal found, although defense counsel's comments suggested Rodas suffered from mental illness, the comments did not amount to substantial evidence of Rodas's incompetence to stand trial. Accordingly, the trial court had discretion to determine whether further proceedings were necessary. The Court of Appeal further properly found that the trial court

did not abuse its discretion in ruling that further competency proceedings were unnecessary because Rodas's discussion with the court suggested competence. Indeed, Rodas demonstrated he understood the proceedings and could reasonably assist counsel with his defense in a rational manner.

STATEMENT OF THE CASE

On July 19, 2009, Frederick Lombardo was fatally stabbed in the heart while he was on a sidewalk in Hollywood. On August 6, 2009, four other homeless men (Keith Fallin, Kenneth McFetridge, Ronald Vaughn, and Roger Cota) were similarly stabbed in or near their hearts, all within a mile away from each other in Hollywood. Fallin and Cota died from their wounds. (Court of Appeal Opinion (Opn.) at 2-3.)

Rodas was arrested shortly after and a short distance away from the last stabbing on August 6, 2009. He had a knife in a homemade sheath in his sleeve. His DNA and that of Fallin, McFetridge, and Lombardo was found on the knife and/or sheath. A security video also depicted Rodas stabbing Fallin. (Opn. at 2-3.)

During pretrial proceedings in 2011, defense counsel expressed a doubt as to Rodas's competency to stand trial. Counsel did not articulate her reasons for the record, but had presented the court with a psychiatric report from Dr. Sara Arroyo. Judge Patricia Schnegg agreed based upon Dr. Arroyo's report and Rodas's history of mental illness. The judge suspended criminal proceedings pending a competency hearing. (2RT A1-A6; see, e.g., 1CT 157-160, 166; 2CT 176-177.) At the competency hearing on February 3, 2012, the defense and prosecution submitted on reports by their respective experts finding that Rodas suffered from schizophrenia and that he was incompetent to stand trial. Judge Schnegg found Rodas incompetent to stand trial and ordered him to be placed in Patton State Hospital. (2RT B1-B9; see 2CT 204-205.)

A Certification of Mental Competency, signed on May 1, 2013, was filed with the superior court on May 10, 2013. (2CT 201; Supp. CT 56.) A report from Atascadero State Hospital, dated April 18, 2013 ("Atascadero report"), accompanied the Certification. (2CT 201-209; Supp. CT 47-55.) The report and attached letter stated that Rodas should be returned to court as competent to stand trial pursuant to Penal Code section 1372.[1] Both documents recommended that he stay on his prescribed medications to prevent "mental decompensation" and to maintain his competency. (2CT 202, 205; Supp. CT. 47-55.)

At a May 10, 2013, hearing, Judge Charlaine Olmedo found Rodas competent to stand trial pursuant to section 1368. Judge Olmedo specifically found that Rodas was able to understand the proceedings against him and was able to assist counsel in a rational manner. Trial proceedings resumed. (Supp. CT 26-27; Supp. RT 1-3; 2RT C1-C6.)

Ten months later, on March 18, 2014, the day after the jury had been sworn, defense counsel expressed a doubt as to Rodas's competence and requested an ex parte proceeding. (2RT 303, 308.) During the ex parte proceeding, counsel explained that when she and Rodas discussed his desire to testify, he wrote her a note saying: "playing record Hollywood Department westside honor ranch L.A. County. Two police officers visiting. Four records. Call to testify in court. Statement you are the one that murdered a series of persons in a tunnel." (2RT 305.) His notes also referred to "transcriptures [sic] of acquittal of execution, transcriptures of the advance of the court date . . . and transcriptures of the name Plake Rodas, Domingo to Doudley Brown." (2RT 305.)[2]

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

[2] Rodas's birth name was Dudley Kenneth Brown.

Counsel also said that Rodas had referred to videos as "assimilations"; had told counsel that two officers visited him in jail, which was not accurate; and had stated that police accused him at the time of his arrest of murdering four people in a tunnel. (2RT 306.) Counsel said that when she asked Rodas what he meant by "transcriptures of acquittal of execution," his response amounted to "word salad" or using polysyllabic words that did not make sense. (2RT 306.) According to counsel, Rodas did not make sense when he said that Patton hospital engaged in forgery by referring to him as Doudley Brown. (2RT 307.) Counsel also expressed concern about Rodas testifying because she did not know what he would say, and because he had told her he was not taking his medication. (2RT 308-309.) She said she had not previously had trouble communicating with Rodas. (2RT 309.)

The trial court addressed Rodas personally and asked how he was doing. (2RT 309.) Rodas explained as follows:

> [Rodas]: I'm fine, thank you, Your Honor. Since I have returned from Atascadero State Hospital, that I've been proved mentally competent to stand trial, it is the first time that I made those notes and I had a conversation with Carole Telfer [defense counsel] just yesterday. And I really didn't mean to be obstructive to the person's attention. I didn't know that there was the person means. I was being belligerent as how the – antagonistic as how the person said, and I didn't know that I was being obstructive or confrontive, or con . . . .
>
> [The Court]: Confrontational.
>
> [Rodas]: Yeah, confrontational. And I didn't know that I was being by anyone – being obstructive against the person.

(2RT 309.)

The trial court asked Rodas how he felt that day. (2RT 309-310.) Rodas answered, "I feel perfectly fine, Your Honor. I [] don't consider – I only wanted to ask the person's pardon if I possibility [*sic*] was being obstructive that I made up these notes, and I really don't mind how the

person to continue defending my case for me and I do mean to keep quiet." (2RT 309-310.) Rodas said, "Yes," when the court asked if he understood there was a jury, a trial was about to begin, and he was charged with serious crimes. (2RT 310.) The court asked Rodas what the charges against him were. Rodas responded, "Yes, I understood yesterday the proceedings were going over and that I was being charged with three counts of murder and two counts of attempted murder." He said, "Yes," when the court asked if he understood that defense counsel was there to help him and whether he would assist her with his defense. (2RT 310.)

The trial court commented, "And, you know, I'm impressed with his clarity of speech and apparent clarity of reasoning in addressing the court. He understands the charges. He says he's willing to help you." (2RT 311.) The court asked if it was fine to continue with the trial, and Rodas said, "That will be properly fine, yes, Your Honor." (2RT 311.)

The trial court commented that Rodas "certainly seems together." (2RT 311.) When the court asked Rodas if he had been taking his medication, Rodas answered that he had not, and that he was doing fine without it:

> No, your honor. I've been doing without medication. I've been doing fine. I've been getting along well. I've been there about a year already. I returned from Atascadero Hospital since May of last year and I've been doing fine. I have been doing without my medications. It was just the notes that I made to Ms. Telfer and she thought I was being obstructive or confrontative.

(2RT 311.) The court said, "Well, I think you were somewhat confusing to [defense counsel] in what your note said and that gave her concerns and that's what she wanted to tell me." Rodas responded, "Okay." (2RT 311.)

The trial court asked if Rodas understood what was going on and whether he would try to help his counsel as best he could. He answered, "Yes, Your Honor," to both questions. The court ordered the trial to

continue. (2RT 312.) Defense counsel said, "Fine. I just wanted to make a record." (2RT 312.) Trial resumed without any further discussion of Rodas's mental health or competency to stand trial.

Rodas was convicted of the first degree murder of Fallin (count 1), with true findings on the special circumstance allegation that he killed the victim by means of lying in wait and the allegation that he personally used a knife. The jury further found Rodas guilty of the attempted first degree murders of McFetridge (count 2) and Vaughn (count 4), and found true the allegations that the crimes were willful, premeditated, and deliberate; that Rodas personally used a knife; and that he personally inflicted great bodily injury on the victims. The jury acquitted Rodas on the remaining counts and found the remaining allegations not true. (2CT 282-292, 296-297.)

The Court of Appeal affirmed the judgment, holding that the trial court had no duty to conduct further competency proceedings because it had not been presented with substantial evidence of Rodas's incompetence. (Opn. at 13.) The Court of Appeal found that defense counsel's comments "suggested mental illness," but did not constitute substantial evidence of Rodas's incompetence. Also, Rodas's responses to the trial court "suggested competence: [Rodas] knew he was in a jury trial; he recited charges against him with precision; he knew that [defense counsel] was defending him; and he apologized for his 'obstructive' and 'belligerent' behavior." (Opn. at 13.)

ARGUMENT

THE TRIAL COURT PROPERLY DECLINED TO CONDUCT FURTHER COMPETENCY PROCEEDINGS BECAUSE IT WAS NOT PRESENTED WITH SUBSTANTIAL EVIDENCE OF INCOMPETENCE AND WAS, INSTEAD, PRESENTED WITH EVIDENCE SUGGESTING COMPETENCE

A criminal trial court is required to suspend trial proceedings and conduct a mental competency hearing if presented with substantial evidence that a defendant is incompetent to stand trial. However, signs of mental illness, alone, do not demonstrate a person is incompetent. Defense counsel's comments to the trial court did not amount to substantial evidence of a change of circumstance or of new evidence showing incompetency such that the trial court had no discretion to assess the matter and had a duty to hold further competency proceedings. The trial court also properly exercised its discretion in determining that further competency proceedings were not warranted because Rodas's discussion with the court suggested he was competent.

A. Absent a Substantial Change of Circumstance and/or a Showing of Incompetence That Is Substantial As a Matter of Law, a Trial Court's Decision Not to Order a Competency Hearing Is Entitled to Great Deference on Appeal

"A person cannot be tried or adjudged to punishment . . . while that person is mentally incompetent." (§ 1367, subd. (a); see *Indiana v. Edwards* (2008) 554 U.S. 164, 170, citing *Dusky v. United States* (1960) 362 U.S. 402 (per curiam) & *Drope v. Missouri* (1975) 420 U.S. 162; *People v. Sattiewhite* (2014) 59 Cal.4th 446, 464 [federal due process and state law prohibit trying or convicting a criminal defendant while he or she is mentally incompetent].) A defendant is mentally incompetent if, "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 *Edwards*, *supra*, 554 U.S. at p. 170; *Sattiewhite*, *supra*, 59 Cal.4th at p. 464; *People v. Lawley* (2002) 27 Cal.4th 102, 131.)

The trial court is required to suspend trial proceedings and conduct a competency hearing if there is substantial evidence of incompetence, "that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial. [Citations.]" (*Sattiewhite*, *supra*, 59 Cal.4th at p. 464; see *People v. Rogers* (2006) 39 Cal.4th 826, 847.) "Substantial evidence of incompetence exists when a qualified mental health expert who has examined the defendant states under oath, and 'with particularity,' a professional opinion that because of mental illness, the defendant is incapable of understanding the purpose or nature of the criminal proceedings against him, or of cooperating with counsel." (*People v. Mai* (2013) 57 Cal.4th 986, 1032-1033.) A defendant's demeanor, irrational behavior, or prior medical history may "in proper circumstances, constitute substantial evidence of incompetence" without the testimony of an expert. (*Id.* at p. 1033; see *Drope*, *supra*, 420 U.S. at p. 180 [also noting there are "no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated"].) However, a "defendant must exhibit more than bizarre, paranoid behavior, strange words or a preexisting psychiatric condition . . . ." (*People v. Ramos* (2004) 34 Cal.4th 494, 508; accord, *Sattiewhite*, *supra*, 59 Cal.4th at p. 464; *People v. Young* (2005) 34 Cal.4th 1149, 1218; *People v. Murdoch* (2011) 194 Cal.App.4th 230, 236.)

If a doubt arises in the mind of the trial court, or if defense counsel declares a doubt as to a defendant's competence to stand trial *and* presents substantial evidence of the defendant's incompetence, the court "shall" hold a competency hearing. (See § 1368, subds. (a) & (b) [also noting the court

"may" hold a hearing if counsel does not express a doubt about the defendant's competency]; *People v. Welch* (1999) 20 Cal.4th 701, 738, citing *Pate v. Robinson* (1966) 383 U.S. 375, 384-386; see also *Mai, supra*, 57 Cal.4th at p. 1033 [noting counsel's belief is entitled to "some weight," but is insufficient to require a hearing absent substantial evidence]; accord, *Sattiewhite, supra*, 59 Cal.4th at p. 465.) "[A]bsent a showing of incompetence that is substantial as a matter of law, the trial judge's decision not to order a competency hearing is entitled to great deference, because the trial court is in the best position to observe the defendant during trial." (*Mai, supra*, 57 Cal.4th at p. 1033; accord, *Sattiewhite*, 59 Cal.4th at p. 465.)

If a criminal defendant is found incompetent to stand trial, criminal proceedings can be resumed after a qualified mental health facility director has certified that the defendant has been restored to competency. (§ 1372.) When criminal trial proceedings resume, the trial court has a continuing duty to monitor for substantial evidence of the defendant's incompetence. (*People v. Pennington* (1967) 66 Cal.2d 508, 520; see also *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1485.) However, "'[w]hen a competency hearing has already been held and the defendant has been found competent to stand trial . . . a trial court need not suspend proceedings to conduct a second competency hearing unless it "is presented with a substantial change of circumstances or with new evidence" casting a serious doubt on the validity of that finding.'" (*People v. Mendoza* (2016) 62 Cal.4th 856, 884-885, quoting *People v. Jones* (1991) 53 Cal.3d 1115, 1153; see also *People v. Taylor* (2009) 47 Cal.4th 850, 864; *People v. Weaver* (2001) 26 Cal.4th 876, 954; *People v. Medina* (1995) 11 Cal.4th 694, 734.)

When a competency hearing has already been held, a 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." (*Mendoza*, *supra*, 62 Cal.4th at p. 885.) A defendant is presumed competent, and he bears the burden of demonstrating the contrary by a preponderance of the evidence. (§ 1367, subd. (f); *People v. Ary* (2011) 51 Cal.4th 510, 518.)

B. The Trial Court Properly Exercised Its Discretion to Continue with the Criminal Proceedings Because Its Conversation with Rodas Suggested He was Competent

The trial court properly exercised its discretion in ordering the criminal trial to continue because (1) defense counsel did not demonstrate there was a substantial change of circumstance or new and substantial evidence casting serious doubt on the court's earlier finding of competency, and (2) the court's conversation with Rodas suggested he was competent. (See *Mendoza*, *supra*, 62 Cal.4th at pp. 884-885; *Taylor*, *supra*, 47 Cal.4th at p. 864; *Weaver*, *supra*, 26 Cal.4th at p. 954; see also § 1367, subd. (a).)

Defense counsel's expressed doubt about Rodas's competency, made after the jury had been sworn, was not sufficient to require a second competency hearing. (See *Mai*, *supra*, 57 Cal.4th at p. 1033 [counsel's expressed belief that defendant is incompetent to stand trial "is entitled to some weight," but is not sufficient alone to require a competency hearing].) Counsel declared a doubt as to Rodas's competency because, on the previous evening, he used bizarre words that she sometimes did not understand (or engaged in a "word salad" as was typical of schizophrenics), he erroneously believed that officers visited him in jail and accused him of murdering four people in a tunnel, and he had stopped taking his medication. However, a "defendant must exhibit more than bizarre, paranoid behavior, strange words or a preexisting psychiatric condition." (*Sattiewhite*, *supra*, 59 Cal.4th at p. 464; see *Welch*, *supra*, 20 Cal.4th at p. 742 [more is required than mere bizarre actions or statements or statements of defense counsel that defendant is incapable of cooperating in his

defense]; see, e.g., *Mendoza*, *supra*, 62 Cal.4th at p. 895 [where defendant suffered from major depression, defense counsel's doubt as to competency and statements that he had deteriorated since the prior finding of competency, combined with defendant's emotional response during trial, rambling speech, religious preoccupation, and religion-infused comments at sentencing did not demonstrate substantial change in circumstances warranting new competency hearing because many factors were displayed by defendant prior to and were addressed at the competency hearing]; *Lawley*, *supra*, 27 Cal.4th at p. 139 [although defendant's speech and demeanor during closing prompted the prosecutor to ask to have him examined for being under the influence of a controlled substance, it did not demonstrate substantial change of circumstances warranting a second competency hearing]; *Jones*, *supra*, 53 Cal.3d at p. 1153 [general claim that defendant's condition was worsening and he was unable to cooperate with counsel is inadequate to justify second competency hearing].)

Defense counsel's concern focused on some of Rodas's statements; for example, that officers visited him in jail and that, at the time of his arrest, two officers accused him of murdering four people in a tunnel. Counsel stated that the information was not true. (2RT 306-308.) Yet even if officers did not speak with Rodas while he was in jail, he was charged with murdering or attempting to murder four people in the same general area on the same day. Thus, his statement, while somewhat confused, is not too far afield from the actual accusations, which officers would have told him at the time of his arrest.

Although Rodas had a history of schizophrenia and sometimes used incorrect or bizarre words, he responded appropriately to the trial court's questions, demonstrating he understood the proceedings and was capable of assisting in his defense. (See *People v. Rodriguez* (2014) 58 Cal.4th 587, 625 (*Rodriguez*) [defendant's statements to the court showed "she was

articulate, understood the charges against her, and was able to assist counsel"].) He correctly and precisely told the court that he had been charged with three counts of murder and two counts of attempted murder. Rodas also correctly named his counsel, understood she was there to defend and help him, and understood that his note was one of the reasons she questioned his competence. He apologized to counsel and showed he was willing and able to work with her when he stated that he "wanted to ask the person's pardon if I possibility [*sic*] was being obstructive that I made up these notes, and I really don't mind how the person to continue defending my case for me and I do mean to keep quiet." (2RT 309-310.)

As Rodas notes, the 2013 Atascadero report recommended that Rodas stay on his medications to avoid mental decompensation (2CT 202, 205; Supp. CT 47, 54), and Rodas told the trial court and counsel in March 2014 that he had not been taking his medications (2RT 311). (OBOM 19-20.) However, that was not a recent development. Rodas told the court that he had not taken his medications since he had returned from the hospital almost a year earlier. (2RT 311.) Despite that, Rodas demonstrated that he understood the charges and proceedings, responded appropriately to the court, and showed his willingness to assist his counsel. Also, during that intervening year, neither counsel nor any of the superior court judges who had observed him expressed any doubt as to his competency. The same was true for the remainder of the trial after the March 2014 hearing. (See, e.g., *People v. Blacksher* (2011) 52 Cal.4th 769, 797-798 [capital defendant diagnosed with paranoid schizophrenia was competent to stand trial where psychiatrist concluded he remained sufficiently in contact with reality and where he demonstrated he understood the charges, was able to discuss his legal situation coherently, and was willing to cooperate with his attorney]; *Weaver*, *supra*, 26 Cal.4th at p. 954 [psychiatrist opinion, based on in court observations, that Rodas suffered from undifferentiated schizophrenia and

appeared to be hallucinating, "did not address whether there had been a substantial change in circumstances" warranting a second competency hearing where defendant otherwise appeared to understand the proceedings].)

Rodas's reliance on *People v. Murdoch* (2011) 194 Cal.App.4th 230, is misplaced. (See OBOM 20-21; Opn. at 13-14.) There, the Court of Appeal held that the trial court erroneously failed to hold a second competency hearing after the defendant, who suffered from "severe mental illness," revealed that his defense would be to demonstrate that the prosecution witnesses were not human. (*Id.* at pp. 233, 238.) Initially, the court had declared a doubt as to the defendant's competency and found him to be incompetent. Within two months, doctors found that his mental competency had been restored due to medication, but stated that he was refusing to take it and could decompensate if he continued to refuse the medication. (*Id.* at p. 233.) The defendant chose to represent himself at trial. As trial began, approximately three months after the defendant's competency had been restored, he told the court his defense was to demonstrate that the prosecution witnesses were not human because they lacked shoulder blades, which were "symbolic of angelic beings," and he planned to use pages from the Bible as exhibits. (*Id.* at pp. 233-235, 238.) At trial, the defendant cross-examined only one witness and asked only one question which addressed his theory that the witness was not human. (*Id.* at p. 235.)

Although Rodas was similarly diagnosed with a mental illness and had not taken his medications, he did not display severely, or ultimately any, delusional thinking like the defendant in *Murdoch*. The *Murdoch* defendant's attempt to prove that witnesses were not human is a far cry from Rodas's confusion about officers accusing him of murdering four people in a tunnel, especially since Rodas was, in fact, accused of

murdering or attempting to murder four people in the same area on the same day. Rodas's focus on videos of the crimes or transcripts hardly suggests he suffered from delusions or was otherwise incompetent. Indeed, Fallin's murder was depicted in the Fonda Theater's surveillance video (2RT 331-344; 3RT 948, 958-959), and Rodas had told hospital staff that he wanted to "[t]ake [his] chances at a jury trial because there is an opportunity that the evidence will not match up" (2CT 207). Rodas had also been off his medications for almost a year by the time of trial, but still responded appropriately to the court, knew the exact charges against him, and demonstrated an understanding of the proceedings. Additionally, Rodas did not represent himself, and he showed the court that he was willing and able to work with counsel.

The 2013 Atascadero report also did not necessarily condition Rodas's mental competence on his use of medication. (Compare OBOM 20-21, with Opn. at 14 [while the report connected his medication with maintaining competence, Rodas's characterization of the report as "conditioning" competence on medication usage was an "overstatement"].) As noted, the report recommended that Rodas stay on his medications to avoid mental decompensation, but there was no suggestion that Rodas had previously stopped taking medication and then hospital staff or others witnessed signs of decompensation. There also was no medical report from 2014 discussing the impact, if any, on Rodas from his failure to take his medication. In contrast, in *Murdoch*, the defendant refused his medication while still under the care of the psychiatric hospital and was hearing voices. (See *Murdoch*, *supra*, 194 Cal.App.4th at p. 233; see Opn. at 14.) Additionally, Rodas had stopped taking his medication almost a year earlier, whereas the *Murdoch* defendant had been off his medications and out of the hospital for only three months. (See *Murdoch*, *supra*, 194 Cal.App.4th at p. 233.)

Further, Rodas did not exhibit most of the symptoms of mental illness he had displayed when he was declared incompetent to stand trial in 2012. (Compare with OBOM 19-20.) On March 18, 2014, defense counsel told the trial court that Rodas used bizarre words and answered some of her questions with what amounted to "word salad." (2RT 306.) She did not describe any delusions or paranoid ideations, except to the extent that she said he accused the hospital of forgery for referring to him by his birth name, Dudley Brown, rather than the name he preferred, Domingo Rodas. (2RT 307.) In contrast, the Atascadero report reflected that Rodas had displayed many more severe signs of mental illness when he was found incompetent in 2012. (2CT 204-205.)

Of particular significance is Atascadero's report that Rodas "did not understand the charges against him" during his January 2012 interview in which he was deemed to be incompetent. (2CT 205.) The report further described him as "uncooperative and psychotic." (2CT 205.) Rodas rambled, became "increasingly agitated," and "presented as angry, hostile, and argumentative along with insisting the evaluator was speaking with the wrong person." Rodas refused to be interviewed and said things like, "You are accusing me of being at a hospital!," when he was at a hospital. (2CT 205.) He also engaged in rapid and loud speech with circumstantial and tangential thought processes. Rodas was described as "delusional, paranoid, and thought disordered." (2CT 204.) He specifically expressed paranoia that people were trying to poison his food, and he refused to eat "to the point of losing weight and requiring gastric feedings." (2CT 204.)

At the March 18, 2014 hearing, counsel stated only that Rodas had used bizarre words, engaged in a "word salad," and was confused about a few points. However, Rodas used bizarre words when he was found to have regained competency in April 2013, e.g., he said he wanted to proceed to trial because there was "conflictionary evidence," but that did not impact

the finding that he had been restored to competency. (2CT 208.) Also, Rodas did not engage in any "word salad" when the trial court spoke with him, and the few points of confusion regarding Rodas's contacts with police were not far removed from what actually occurred. As counsel's statements did not demonstrate a substantial change in circumstances or substantial evidence of incompetence as a matter of law, and counsel did not present any recent psychiatric report questioning Rodas's competence, the trial court's decision to proceed with the criminal trial is entitled to great deference. (See *Mai, supra*, 57 Cal.4th at p. 1033; see, e.g., *People v. Marshall* (1997) 15 Cal.4th 1, 33 [rejecting defendant's claim that second competency hearing was required because, after an initial finding of competency, his statements that he had large sums of money, that he was born in Spain, that he was a god, that the President and Governor were conspiring against him, and that conspirators would be beheaded did not amount to substantial change of circumstances or new evidence giving rise to serious doubt about prior competency finding].)

Once the trial court spoke with Rodas, it was presented with evidence affirmatively suggesting competence. (See *Rodriguez, supra*, 58 Cal.4th at p. 625.) Rodas listed and appeared to understand the exact charges against him; he responded appropriately to the court's questions; he appeared to understand the proceedings; he understood that his note to counsel was a basis for her concern; he was cooperative; and he demonstrated he was willing and able to assist counsel. (See Opn. at 14.) Rodas did not appear to be agitated or angry, did not engage in rapid or loud speech, and did not say anything to counsel or the trial court to suggest he was suffering from delusions or paranoia.[3] As noted, the court commented that it was

[3] As noted, counsel said Rodas accused the hospital of engaging in forgery because it referred to him by his birth name, Dudley Brown, instead (continued...)

impressed with Rodas's clarity of speech and reasoning (2RT 311). (See *Mendoza, supra*, 62 Cal.4th at pp. 884-885 [after an initial competency hearing, the trial court may appropriately consider its personal observations]; *Mai, supra*, 57 Cal.4th at p. 1033 [the "trial judge's decision not to order a competency hearing is entitled to great deference [] because the trial court is in the best position to observe the defendant"].)

Maxwell v. Roe (9th Cir. 2010) 606 F.3d 561, wherein the Ninth Circuit Court of Appeals found on habeas corpus that the state court had unreasonably failed to conduct a second competency proceeding, is easily distinguished from the instant case. (See OBOM 19.) There, after having been found competent to stand trial, the defendant engaged in "erratic, irrational, and disruptive" courtroom behavior. (*Maxwell, supra*, 606 F.3d at p. 565.) The trial court removed the defendant from the proceedings, finding he was a danger to court staff and counsel. Defense counsel repeatedly told the court throughout the trial that the defendant's condition was worsening and that communication with him was "severely strained." (*Ibid.*) The trial court found that the behavior was feigned. The defendant then attempted suicide. (*Ibid.*) Although the defendant was placed on a two-week psychiatric hold, the court again found that the defendant's behavior was feigned and trial proceeded. (*Id.* at pp. 565-566.) The jury convicted the defendant, despite never having seen him. (*Id.* at p. 566.)

None of the factors present in *Maxwell* apply here. Rodas did not engage in any erratic or disruptive courtroom behavior, he did not attempt to kill himself, and there was no suggestion that he posed any danger to anyone in the courtroom. Instead, Rodas was respectful toward the court

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(...continued)
of his chosen name, Domingo Rodas. This is not comparable to the paranoia he exhibited in 2012, when he refused to eat because he believed that his food was being poisoned.

and counsel, demonstrated his willingness and ability to work with counsel, and appeared to understand the proceedings. Tellingly, after the March 18, 2014 hearing, defense counsel never again expressed any concern about Rodas's ability to communicate with her.

Rodas contends that his later trial testimony demonstrated his incompetence because it was difficult to understand and because he was focused on presenting videotapes and statements officers made to him. (OBOM 22, citing 3RT 652-655.) However, Rodas's behavior is to be assessed at the time of the trial court's ruling on competency. (*People v. Panah* (2005) 35 Cal.4th 395, 434, fn. 10.) In any event, before Rodas testified, both the trial court and counsel had discussions with him about his right to testify and his right against self-incrimination. Defense counsel represented to the court that Rodas understood. (3RT 650.) The court discussed the matter with Rodas on more than one occasion and did not have any difficulty understanding Rodas. Rodas appeared to understand the court, and he gave appropriate responses. (See 3RT 638-641, 649-651; Opn. at 13, fn. 9 [Rodas's responses "were clear and appropriate" each time he discussed his right to testify with the trial court, and he understood when counsel explained those rights to him].)

Although Rodas's manner of speaking during his testimony was somewhat bizarre and confusing, the parties and the trial court understood him. Based on their conversations before Rodas testified, defense counsel knew that Rodas planned to discuss matters that were not relevant to the charges. (3RT 650.) During his testimony, Rodas said:

> I just wanted to say, Your Honor, if it was possible to order the three video record exhibition and report for video filming in the nature exhibited, the copy from the Hollywood Police Department, the copy that [defense counsel] showed me at Wayside Honor Ranch, and the copy in the nature that is being exhibited here at the courtroom, that [defense cousel] has shown me the same copy over at the Los Angeles County Jail. If it was

possible to order all three copies consecutive here at the courtroom, for there to exhibited simultaneous for . . . .

(3RT 652-653.) The court asked him to slow down and clarified, "So you're asking for three copies of videotapes to be brought to the courtroom?" Rodas answered, "Yes, Your Honor." (3RT 653.)

After discussing a few more points, defense counsel asked if Rodas had anything else to say. The following then took place during Rodas's testimony:

> [Rodas]: Yes, Your Honor. I just wanted to finalize and ask if it was possible to order the two police officers that went and visited me at Wayside Honor Ranch, that I understand that their visiting is in file copy. According to Wayside Honor Ranch, their names are available. And if they could be ordered to the courtroom to testify per the four – four record copies on their video copy of record of filming in their possession, if it was a possibility of exhibition of the same nature that is exhibited . . . .
>
> [The Court]: Again, you're starting to go fast. [¶] So you're saying that two officers came and visited you while you were in custody at Wayside and you would want them to come and testify?
>
> [Rodas]: Yes, Your Honor.
>
> [The Court]: And it has to do with videotapes?
>
> [Rodas]: Yes, four video record tapes.

(3RT 654.) Rodas added that the officers "committed me the statements to the four video record copies that you are the one that committed a serious [*sic*] of murders in a tunnel. That's all, Your Honor. I do not have further to say." (3RT 655.) The court asked, "So you're saying that the officers accused you of committing murder?" (3RT 655.) Rodas responded, "Yes, I am." (3RT 655.) The court clarified, "In a tunnel or something; is that right?" (3RT 655.) Rodas said, "Yes, Your Honor. I am just saying

committed active statement, that the officer committed me the statement." (3RT 655.)

The foregoing demonstrates only that Rodas was focused on videos and statements officers made to him that did not appear to be pertinent to his legal defense, and that he spoke in a somewhat confusing manner, but not that he was unable to rationally assist counsel with his defense or did not understand the proceedings. Rodas was understandable and able to communicate with the court and counsel. Also, his manner of speaking might have been affected by the fact that he was apparently more comfortable speaking Spanish.[4] As noted, after the March 18, 2014, ex parte hearing, defense counsel never again raised the issue of Rodas's competence during the trial. Thus, the trial court was not presented with evidence suggesting a substantial change of circumstance such that the prior finding of competency was in doubt. (See, e.g., *Lawley*, *supra*, 27 Cal.4th at p. 139 [although defendant's speech and demeanor during closing prompted the prosecutor to ask to have him examined for being under the influence of a controlled substance, it did not demonstrate substantial change of circumstances warranting a second competency hearing].)

Under the circumstances, Rodas fails to show that his somewhat bizarre statements or word choices, or the fact that he had not taken his medication, amounted to a substantial change in circumstances casting serious doubt on the prior finding of competence. (See *Weaver*, *supra*, 26 Cal.4th at p. 954; see generally *People v. Leonard* (2007) 40 Cal.4th 1370,

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[4] Rodas spoke English as well as Spanish, but he was born in Puerto Rico (3RT 648), had used a Spanish interpreter during prior proceedings (see, e.g., 2CT 176, 178, 180, 187, 189), had previously spoken with counsel and doctors in Spanish (2RT 204, 308), and had insisted at one point that he spoke only Spanish (2RT 204).

1385, 1391-1392 [sufficient evidence defendant was competent to stand trial where defendant suffered from possible bipolar disorder, schizophrenia, a learning disorder, and a complex seizure disorder; had religious delusions; declared in open court that he was guilty; and one expert declared him incompetent, but another found that he had a "marginal, but adequate" understanding of the legal proceedings and had a positive relationship with counsel such that he was competent to stand trial].) Indeed, Rodas's discussion with the trial court during the March 18, 2014, ex parte proceeding suggested he was competent. Accordingly, the trial court did not abuse its broad discretion, and certainly did not violate Rodas's constitutional rights, by continuing with the criminal proceedings.

Finally, even if the trial court should have ordered further competency proceedings on March 18, 2014, respondent respectfully requests that this Court remand the matter for a retrospective competency hearing. (See *People v. Lightsey* (2012) 54 Cal.4th 668, 682, 706-711, 732-733 [remanding for retrospective competency hearing, if feasible, where defendant was erroneously permitted to represent himself at competency hearing]; see also *People v. Kaplan* (2007) 149 Cal.App.4th 372, 387-389; *People v. Ary* (2004) 118 Cal.App.4th 1016, 1027-1028 [permitting retrospective competency hearing], citing *Drope*, *supra*, 420 U.S. at p. 183 [accepting the possibility of a constitutionally adequate post-appeal evaluation of a defendant's pretrial competence].)

CONCLUSION

As shown above, the trial court properly continued with the criminal proceedings because it was not presented with evidence of a substantial change in circumstances that cast doubt on the prior finding that Rodas was competent to stand trial. Therefore, respondent respectfully requests that the Court affirm the judgment of the Court of Appeal.

Dated: April 27, 2017

Respectfully submitted,

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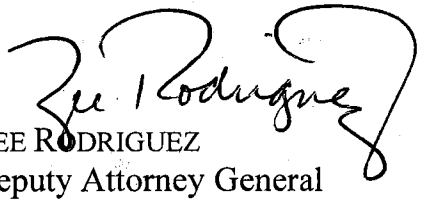

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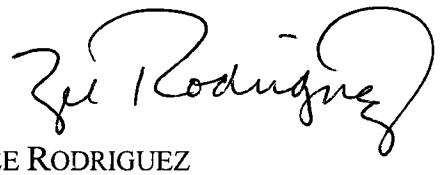
CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 6,422 words.

Dated: April 27, 2017

XAVIER BECERRA
Attorney General of California



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DECLARATION OF SERVICE

Case Name: **People v. Domingo Rodas** No.: **S237379**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 27, 2017, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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On April 27, 2017, I caused one electronic copy of the **ANSWER BRIEF ON THE MERITS** in this case to be served on the California Supreme Court and by sending the original and eight copies to the Supreme Court pursuant to Rule 8.212(c) via **FedEx** overnight mail, **Tracking No. 8107 9097 5540** .

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 27, 2017, at Los Angeles, California.

Lisa P. Ng
Declarant


Signature

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