No. _____

IN THE

Supreme Court of the United States

KALAMICE PIGEE,

Petitioner,

v.

GENA JONES, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX

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NOT FOR PUBLICATION

FILED

FEB 26 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KALAMICE K. PIGGEE, Petitioner-Appellant, v. WILLIAM MUNIZ, Warden, Respondent-Appellee.	No. 22-55770 D.C. No. 2:17-cv-07384-FLA-SK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Argued and Submitted February 6, 2024
Pasadena, California

Before: OWENS, BUMATAY, and MENDOZA, Circuit Judges.

Kalamice Piggee, a state criminal defendant, appeals the district court's denial of his habeas corpus petition. Piggee alleges that his federal due process rights were violated when, after a prior determination that Piggee had been restored to competence to stand trial, the state trial court did not grant Piggee's subsequent request for a competency hearing. We have jurisdiction under 28 U.S.C. § 1291 and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

28 U.S.C. § 2253(c). We review a district court's denial of habeas corpus relief de novo and its factual findings for clear error. *Carrera v. Ayers*, 699 F.3d 1104, 1106 (9th Cir. 2012) (en banc). On habeas review, we review the state court's "last reasoned decision." *Dyer v. Hornbeck*, 706 F.3d 1134, 1147 (9th Cir. 2013) (citation omitted).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal court can grant a habeas petition under two circumstances: first, if the state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or second, if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2). Neither occurred.

1. The California Court of Appeal's decision was neither contrary to, nor an unreasonable application of, clearly established law. 28 U.S.C. § 2254(d)(1). Only Supreme Court precedent can be used to establish "clearly established law." *Id.* *Pate v. Robinson*, 383 U.S. 375 (1966), established that a competency hearing is required "[w]here evidence raises a 'bona fide doubt' as to a defendant's competence to stand trial …." *Id.* at 385 (citation omitted). We have interpreted this guidance to require a competency hearing "at any time" substantial evidence puts the defendant's competence in doubt. *de Kaplany v. Enomoto*, 540 F.2d 975, 980 (9th

Cir. 1976) (en banc) (quoting *Moore v. United States*, 464 F.2d 663, 666 (9th Cir. 1972) (per curiam)).

Piggee argues that the California Court of Appeal imposed two requirements contrary to clearly established law. First, he claims it applied *People v. Jones*, 811 P.2d 757 (Cal. 1991), in a manner inconsistent with *Pate* by creating a requirement that an expert submit a report about competency before a trial court can declare a doubt as to competency. But Piggee did not raise this argument in his petition nor before the district court. So this argument is forfeited. *See Majoy v. Roe*, 296 F.3d 770, 777 n.3 (9th Cir. 2002).

Second, Piggee claims the California Court of Appeal violated clearly established law by placing the burden on Piggee to show incompetence, contrary to *Drope v. Missouri*, 420 U.S. 162 (1975). Under *Drope*, "a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181. And under *Pate*, "[w]here the evidence before the trial court raises a 'bona fide doubt' as to a defendant's competence to stand trial, the judge on his own motion must conduct a competency hearing." *Maxwell v. Roe*, 606 F.3d 561, 568 (9th Cir. 2010) (quoting *Pate*, 383 U.S. at 385). But the Court of Appeal's holding that Piggee failed to establish a bona fide doubt as to his incompetence did not relieve the trial court of its burden to remain "alert to circumstances suggesting a change that would render

the accused unable to meet the standards of competence to stand trial," *Drope*, 420 U.S. at 181, because the only evidence presented to the trial court in September 2014 came from Piggee's counsel due to Piggee's absence from court. So the decision was not "contrary to" Supreme Court precedent.

2. The California Court of Appeal's denial of Piggee's due process claim was not an unreasonable determination of the facts under § 2254(d)(2) nor an unreasonable application of clearly established law under § 2254(d)(1). *See Andrews v. Davis*, 944 F.3d 1092, 1107 (9th Cir. 2019) (explaining "the same standard of unreasonableness under § 2254(d)(1) applies under § 2254(d)(2)"). To be competent to stand trial, a defendant must "have (1) a rational as well as factual understanding of the proceedings against him, and (2) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." *Stanley v. Cullen*, 633 F.3d 852, 860 (9th Cir. 2011).

The central question is whether a "bona fide doubt" existed as to Piggee's competence when Piggee's counsel asserted a doubt as to his competency in September 2014. *See Pate*, 383 U.S. at 385 (citation omitted). To show a "bona fide doubt," a defendant must show "substantial evidence" of incompetence. *Davis v. Woodford*, 384 F.3d 628, 644 (9th Cir. 2004) (citations omitted). Relevant evidence includes "a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial." *Stanley*, 633 F.3d at 860

(citations omitted). While the Supreme Court has never spoken on what evidence is required for a competency hearing after a prior determination on competence to stand trial, our case law is "persuasive" when evaluating whether a state court "unreasonabl[y] appli[ed]" Supreme Court precedent. *Davis*, 384 at 638 (citation omitted). We have previously declared a competency hearing is necessary after a prior determination on competence when the evidence before the trial court constitutes "substantial evidence" that "would have raised a bona fide doubt in a reasonable trial judge that [the defendant] was no longer able to 'consult with his lawyer with a reasonable degree of rational understanding.'" *Maxwell v. Roe*, 606 F.3d 561, 576 (9th Cir. 2010) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

After Piggee's competency was restored in July 2012, Piggee made several sophisticated legal motions. And while Piggee behaved oddly, the trial judge attributed Piggee's behavior to tactics designed to manipulate the court. Although Piggee's counsel raised a doubt as to Piggee's competence on September 3, 2014, based on his apparent inability to communicate with counsel, the trial judge concluded that nothing had changed in Piggee's behavior, and that he was just putting on a "show." And notwithstanding the September 15 report of Dr. Sara Hough, who opined that Piggee was incompetent and not fully compliant with his psychotropic medication regime, we cannot say that the evidence before the trial

court raised a bona fide doubt as to Piggee's competence "beyond any possibility for fairminded disagreement." *See Shinn v. Kayer*, 592 U.S. 111, 118 (2020). The California Court of Appeal reviewed the record and agreed that record supported the trial court's determination that "substantial evidence" to doubt Piggee's competency did not exist. Also weighing in favor of the California Court of Appeal's determination is that the trial judge subsequently received a report from Dr. Phani Tumu that was consistent with the trial judge's interpretation of Piggee's behavior. Dr. Tumu concluded not only that Piggee was competent but also that Piggee was exaggerating his symptoms. Although reasonable minds may differ as to whether the evidence before the trial court amounted to substantial evidence giving rise to a bona fide doubt as to Piggee's competency, we "may not characterize these state-court factual determinations as unreasonable 'merely because [we] would have reached a different conclusion in the first instance.'" *Brumfield v. Cain*, 576 U.S. 305, 313–14 (2015) (alteration in original). So the district court properly concluded that the denial of Piggee's claim was not unreasonable under 28 U.S.C. § 2254(d)(2).

AFFIRMED.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KALAMICE PIGGEE, Petitioner, v. WILLIAM MUNIZ, Warden, Respondent.	Case No. 2:17-cv-07384-FLA (SK) **JUDGMENT**

Pursuant to the Order Accepting the Report and Recommendation of the United States Magistrate Judge, **IT IS ADJUDGED** that the petition for writ of habeas corpus is denied and that this action is dismissed with prejudice.

DATED: July 19, 2022

FERNANDO L. AENLLE-ROCHA
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KALAMICE PIGGEE,

Petitioner,

v.

WILLIAM MUNIZ, Warden,

Respondent.

Case No. 2:17-cv-07384-FLA (SK)

ORDER (1) ACCEPTING REPORT AND RECOMMENDATION TO DENY HABEAS PETITION; AND (2) GRANTING PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY

In accordance with 28 U.S.C. § 636, the court has reviewed the Report and Recommendation ("R&R") to deny the petition under 28 U.S.C. § 2254, any pertinent records as needed, and petitioner's objections. The court has reviewed de novo those identifiable portions of the R&R to which petitioner has specifically objected.[1] *See* 28 U.S.C. § 636(b)(1)(C); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Based on that review, the court concludes that

[1] Many of petitioner's objections (*e.g.*, ECF 59 at 5-6, 8-9) repeat arguments considered and rejected in the R&R rather than object to specific portions of the R&R as required. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). Nevertheless, the court considered—and now rejects—those purported objections even though it has no duty to consider them. *See, e.g.*, *Trejo Perez v. Madden*, 2020 WL 1154807, at *1 (E.D. Cal. Mar. 10, 2020) (objections that "merely repeat[] the same arguments . . . considered and found to be insufficient" merit no review because such objections "do not meaningfully dispute the magistrate judge's findings and recommendations"); *Hagberg v. Astrue*, 2009 WL 3386595, at *1 (D. Mont. Oct. 14, 2009) ("Objections to a magistrate's Findings and Recommendations are not a vehicle for the losing party to relitigate its case."). The court also rejects petitioner's attempt to preserve a blanket boilerplate objection "to all adverse legal conclusions and factual findings" in the R&R. (ECF 59 at 5). That is the equivalent of no objection and "waiv[es] the right to further consideration of any sort" of the unchallenged parts of the R&R. *Thomas v. Arn*, 474 U.S. 140, 152 (1985).

none of petitioner's objections materially affects the findings, conclusions, or recommendations in the R&R. The court also concludes that petitioner's objections—even if arguably material—lack merit on their own terms for the following reasons.

First, petitioner objects that the R&R overlooked isolated ways in which the Court of Appeal's opinion was in "direct contravention of clearly established federal law." (ECF[2] 59 at 6). For one, he contends that the opinion's analysis "bears no resemblance to [the Ninth Circuit's] test for due process" in *Moore v. United States*, 464 F.2d 663 (9th Cir. 1972). (ECF 59 at 7). Petitioner, however, never raised that argument in support of his petition (nor even cited *Moore*), so it requires no consideration when raised only for the first time in his objections. *See United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000).

Additionally, circuit precedent like *Moore* is not clearly established federal law for purposes of § 2254(d)(1). *See Lopez v. Smith*, 574 U.S. 1, 6-7 (2014); *see also Parker v. Matthews*, 567 U.S. 37, 49 (2012) (circuit opinion decided "under pre-AEDPA law" cannot "even *purport* to reflect clearly established law as set out in [the Supreme] Court's holdings"). And, in any event, four years after *Moore* was decided, the Ninth Circuit (sitting en banc) clarified "*Moore*'s formulation of the *Pate* standard and the manner in which it should be applied." *de Kaplany v. Enomoto*, 540 F.2d 975, 981 (9th Cir. 1976). It read the language from *Moore* that petitioner echoes "to mean nothing more than that once good faith doubt exists, or should exist, its resolution requires a hearing." *Id.* at 982. It did not mean, the Ninth Circuit explained, "that doubt necessarily exists, and thus a hearing is required, because certain evidence exists which would create a doubt were it not for other evidence which precludes doubt." *Id.* "Genuine doubt, not a synthetic or constructive doubt, is the measuring rod." *Id.* at 982-83.

[2] This court adopts, where needed, the abbreviations to the record set forth in footnote 1 of the R&R.

Petitioner also argues that the Court of Appeal contravened *Drope v. Missouri*, 420 U.S. 162 (1975), by applying a rigid formula for how a trial court must assess bona fide doubt based on contradictory state law. (ECF 59 at 6-7). However, this is a distortion of the Court of Appeal's analysis. In context, the Court of Appeal recognized that many factors can trigger a trial court's due process "obligation to suspend proceedings and hold a competency trial." (LD 14 at 11). It discussed and considered petitioner's "irrational behavior," his counsel's expression of doubt, and the defense expert's opinion (LD 14 at 11-14)—just as *Drope* teaches. 420 U.S. at 180. That is the "fair reading of its opinion," *Maggio v. Fulford*, 462 U.S. 111, 113 (1983), and it does not matter that the Court of Appeal framed its analysis in state law terms. Since "neither the reasoning nor the result" of the Court of Appeal's decision contradicted *Drope*, it was not contrary to clearly established federal law just because it may not have recited chapter and verse from *Drope*. *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam).

Second, petitioner objects to the R&R's conclusion that he failed to address the reasonableness of the Court of Appeal's decision as such. (ECF 59 at 5). He then merely cites his supplemental traverse (ECF 24), as if that were enough to settle the issue. (ECF 59 at 5). The R&R, however, never denied that Petitioner *professed* to be challenging the reasonableness of the Court of Appeal's opinion. (R&R at 21-23). A search of the traverse will indeed reveal two sentences—conclusory and perfunctory—asserting that the Court of Appeal's decision was "unreasonable." (ECF 24 at 24, 26). The R&R's point was that petitioner's arguments—in substance and effect—afforded no operative deference to the state court's findings but sought functional de novo review "in all but name." (R&R at 22). After all, it is one thing for the court to treat "the unreasonableness question as a test of its confidence in the result it would reach under *de novo* review," *Shinn v. Kayer*, 141 S. Ct. 517, 523 (2020), which is what petitioner *really* seeks here despite his conclusory claim otherwise. (ECF 59 at 5-6). It is another thing altogether to

frame the "relevant question as whether a fairminded jurist could reach a different conclusion." *Shinn*, 141 S. Ct. at 524. The AEDPA forbids the former inquiry and mandates the latter. Yet it is the latter question that petitioner essentially avoids—but that the R&R correctly answers.

Third, petitioner objects that the R&R's "statement of facts omits key evidence" of "incompetency" before the trial judge. (ECF 59 at 5). To the contrary, the R&R cites the material parts of the record petitioner claims the magistrate judge overlooked. (*E.g.*, 3 ART 1-2 (counsel's reasons for declaring doubt); 3 ART 4-5 (same); 2 CT 248-51 (Dr. Hough's complete report); 3 RT 901-04 (counsel's request to suspend proceedings including conversation with supervisor); 3 RT 1805 (petitioner breaking toilet and smearing feces in his cell)). Moreover, it is petitioner who omits mention of inconvenient and contrary evidence of competency—also cited in the R&R—that the trial judge faced as well. (*E.g.*, 2 CT 179 (sanity evaluation finding no reason to doubt competency); 2 CT 253-60 (Dr. Tumu's report); 3 ART 5-7 (trial court's credibility assessments); 3 RT 913-15 (counsel's failure to declare doubt during two years of pretrial proceedings)). All that said, nothing in the R&R depends on an audit of its statement of facts against petitioner's preferred set of facts.[3] Again, the only relevant issue is whether fairminded jurists could debate the Court of Appeal's factual determination that the trial judge

[3] Petitioner's related "objection" that the R&R strays from hard-hitting questions the magistrate judge posed to respondent at oral argument (ECF 59 at 5) is meritless. "Oral responses from the bench" do not necessarily—and indeed rarely—"convey the judge's ultimate evaluation" of a case. *Ellison v. Shell Oil Co.*, 882 F.2d 349, 352 (9th Cir. 1989). If the rule were otherwise, judges could never play "devil's advocate" at hearings to probe the relative strengths and weaknesses of competing arguments (or ask challenging and counterintuitive questions) for fear of undermining their ultimate judgments. As a result, judges cannot be "bound by [their] statements at oral argument." *Healix Infusion Therapy, Inc. v. Heartland Home Infusions, Inc.*, 733 F.3d 700, 705 (7th Cir. 2013). Accordingly, Petitioner's attempt to use the magistrate judge's oral remarks at the argument on the petition as the basis for objecting to the R&R fails. (ECF 59 at 5, 6, 7, 8).

reasonably harbored no genuine doubt about Petitioner's competence. Answering that question does not require the state court—let alone a federal habeas court—"to address every jot and tittle of proof suggested to them." *Taylor v. Maddox*, 366 F.3d 992, 1001 (9th Cir. 2004), *overruled on other grounds by Murray v. Schriro*, 745 F.3d 984, 999-1000 (9th Cir. 2014).

Fourth, petitioner objects that the R&R's "approach" is "unprecedented." (ECF 59 at 8). To start, he criticizes the R&R's citations to California state law, calling the use of such law a misunderstanding of correct "principles of competency hearing review" and a turning of the "AEDPA's stringent habeas review on its head." (*Id.*). The first group of state law citations Petitioner condemns (R&R at 3-4), however, reflect only neutral explications—in context-setting footnotes—of California state competency hearing procedures. Nothing there even pretends to set forth substantive legal standards at play here, much less incorrect—or contested—"principles of competency hearing review."

Nor, contrary to petitioner's claim, is the R&R turning the AEDPA "on its head" with the second group of citations (R&R at 16-20) used to assess whether "California law comports with federal law." (ECF 59 at 8). Despite having advanced the same arguments in his briefs—petitioner challenges Penal Code § 1367(a) as contrary to federal law (ECF 24 at 25); attacks the Court of Appeal's reliance on *People v. Jones*, 53 Cal. 3d 1115 (1991), as inconsistent with clearly established federal law (*id.*); claims California state court procedures contravene the Supreme Court's decision in *Hicks v. Oklahoma*, 447 U.S. 343 (1980) (*id.* at 26); and asserts other similar claims in his objections (ECF 59 at 5-6). It is difficult to imagine how the magistrate judge—and now this court—should address such arguments challenging state law's concordance with federal law without reference to state law.

To the contrary, state law is highly relevant when assessing "procedural" competence claims (unlike "substantive" competence claims). *Davis v. Woodford*,

384 F.3d 628, 644 (9th Cir. 2004). Petitioner even recognized this previously, at least before taking a contrary position in his objections. (*E.g.*, ECF 49). As its title denotes, a procedural competence claim turns on whether the state has enacted and enforced "procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial." *Drope*, 420 U.S. at 173. Here, as elsewhere, those criminal procedures derive from state, not federal, law. *See Medina v. California*, 505 U.S. 437, 443-45 (1992).

Consequently, it is not just sometimes helpful to evaluate state law when evaluating procedural competence claims, it is almost always indispensable. That is especially true with habeas review for factual reasonableness under § 2254(d)(2), since it does not depend on Supreme Court precedent alone—as with habeas review for legal reasonableness under § 2254(d)(1). So, if as here, state law governing competency procedures "provides the framework" in which "factual determinations were made," that law is undeniably germane to review under § 2254(d)(2). *Brumfeld v. Cain*, 576 U.S. 305, 313 n.3 (2015).

Finally, there is no merit to Petitioner's contention that the R&R's "approach" in applying a rebuttable presumption of correctness to the trial judge's factual findings even on de novo review is "unsupported in this circuit." (ECF 59 at 8). The Ninth Circuit has consistently held that even on de novo review of a habeas claim, "factual determinations by the state court are presumed correct and can be rebutted only by clear and convincing evidence." *Pirtle v. Morgan*, 313 F.3d 1160, 1168 (9th Cir. 2002); *see also Stevens v. Davis*, 25 F.4th 1141 (9th Cir. 2022) ("even under a de novo review, 'we still defer to a state court's factual findings under § 2254(e).'") (quoting *Crittenden v. Chappell*, 804 F.3d 998, 1011 (9th Cir. 2015)); *Kirkpatrick v. Chappell*, 950 F.3d 1118, 1131 (9th Cir. 2020). Simply put, the rebuttable presumption of correctness owed to the trial judge's findings of fact even on de novo review is required by the AEDPA's plain terms, 28 U.S.C. § 2254(e)(1), and mandated by Ninth Circuit precedent interpreting that plain text. Indeed, that

presumption has always been the rule even before the AEDPA, as noted in the R&R. *See, e.g.*, *Sumner v. Mata*, 449 U.S. 539, 547 (1981); *Deere v. Cullen*, 718 F.3d 1124, 1145 (9th Cir. 2013).

For all these reasons, the court concurs with the material findings and conclusions in the R&R and accepts its recommendations. The petition under 28 U.S.C. § 2254 is therefore denied, and judgment will be entered dismissing this habeas action with prejudice. Petitioner's request for a certificate of appealability, however, is granted because it meets the minimum standard for that relief. *See* 28 U.S.C. § 2253(c)(2); *Buck v. Davis*, 137 S. Ct. 759, 773 (2017); *Silva v. Woodford*, 279 F.3d 825, 832 (9th Cir. 2002).

IT IS SO ORDERED.

DATED: July 19, 2022

FERNANDO L. AENLLE-ROCHA
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KALAMICE PIGGEE,
Petitioner,
v.
WILLIAM MUNIZ,
Respondent.

Case No. 2:17-cv-07384-FLA (SK)

REPORT AND RECOMMENDATION TO DENY HABEAS PETITION

I.
INTRODUCTION

Petitioner Kalamice Piggee is a California state prisoner convicted by jury of robbery and assault. When first charged, Petitioner was found incompetent to stand trial and committed to a state hospital for restoration of competency. After doctors certified his restored competence, Petitioner was evaluated in an uncontested competency proceeding and adjudged competent. Two years of pretrial proceedings followed during which no one questioned Petitioner's competence. Yet five days before trial, defense counsel expressed doubt about his client's competence and requested another competency determination. Counsel renewed that request during jury deliberations based on a defense expert's report obtained for the first time just days before. The trial judge denied both requests for a second competency hearing, finding no substantial evidence to doubt Petitioner's competence since it had been adjudged restored at the first proceeding. The California Court of Appeal affirmed the trial judge's ruling on direct appeal, after which the California Supreme Court summarily denied review.

Petitioner now seeks habeas relief under 28 U.S.C. § 2254, claiming that he was denied due process when the trial judge refused to suspend trial for a second competency hearing. But because the Court of Appeal denied that claim on the merits, he cannot relitigate it here unless that state court decision was contrary to clearly established federal law, an unreasonable application of such law, or an unreasonable determination of the facts in the trial court record. *See* 28 U.S.C. § 2254(d). Petitioner has satisfied none of these preconditions for relief. Indeed, he has not even tried to show that the Court of Appeal's decision was unreasonable on its own terms under § 2254(d). Nor has Petitioner tried to rebut by clear and convincing evidence—as he must even on de novo review—the presumed correctness of the trial judge's reasons not to harbor doubt about his competence. *See* 28 U.S.C. § 2254(e)(1). As a result, the Court recommends that the petition be denied and this action dismissed. *See* 28 U.S.C. § 636(c); G.O. 05-07.

II.
BACKGROUND

A. Pretrial Proceedings

In 2012, Petitioner attacked and robbed a janitor in a California casino, leading to charges for second degree robbery and assault with a deadly weapon. (2 ACT 4, 119; 1 CT 30-34).[1] Because he had two prior

[1] As used throughout, "CT" refers to the Clerk's Transcripts, "ACT" refers to the Augmented Clerk's Transcripts, "RT" refers to the Reporter's Transcripts, and "ART" refers to the Augmented Reporter's Transcripts. Each reference is preceded by the volume number and followed by the applicable page number(s). "LD" denotes the Lodged Documents and is identified by the lodgment number followed by the applicable page number(s). "ECF" refers to an Electronic Case File in the Court's case management system and is followed by the applicable docket and page number(s).

convictions for violent crimes, the prosecution also sought a sentencing enhancement under California's three-strikes law. (1 CT 31-33). Right after being charged, Petitioner was found incompetent to stand trial and committed to Patton State Hospital for restoration of competency under California state procedures.[2] (1 ACT 6, 9; 2 CT 173, 179, 188-89, 209-10, 215; 1 ART 2, 4-5). The doctors there diagnosed Petitioner with paranoid schizophrenia, documented his history of mental illness, and confirmed that he was incompetent to be tried. (2 CT 172-73, 179, 189-91, 257).

After two months of treatment, however, Petitioner's competence was restored. (2 CT 168-69, 171-72, 174-75, 189-90; 1 ACT 10; 2 ACT 2). The treating doctors certified that Petitioner was competent as required by California Penal Code § 1372. (2 CT 171, 174-75). A court-appointed doctor evaluated Petitioner afterward and wrote a report finding Petitioner competent in accordance with Penal Code § 1368. (2 CT 167-70, 189, 215, 253). Relying on that § 1368 report, the trial court entered a summary finding of competence.[3] (1 ACT 10; 2 ACT 1; 2 CT 167). It then restarted

[2] California's procedures—none of which is challenged here—are codified in the state's Penal Code sections 1367 through 1376. When a defendant's competence is in doubt, proceedings must be suspended until competency is determined by hearing. *See* Cal. Penal Code § 1368. If the defendant is adjudged incompetent, *see id*. § 1369, he may be committed to a mental institution for treatment with trial remaining suspended until he regains competence. *See id*. § 1370. If a mental health professional concludes that the defendant's competence has been restored, a certificate of competence must be filed. *See id*. § 1372. The § 1372 certification creates a presumption of competence. *See People v. Rells*, 22 Cal. 4th 860, 867-68 (2000).

[3] The trial court had no duty to hold a hearing after the § 1372 certification unless one was requested. *See People v. Mixon*, 255 Cal. App. 3d 1471, 1480-81 (1990); *Rodriguez v. Super. Ct. of Santa Clara Cnty.*, 70 Cal. App. 5th 628, 648 (2021). And, as noted, a competency evaluation was performed and a corresponding "§ 1368 report" provided to the trial court. (2 CT 167-70, 189). Because no one suggests (and nothing in the record shows) that these procedures were challenged, the trial court was allowed to enter a

Petitioner's criminal case.[4] (1 ACT 10; 2 ACT 1).

Two months later, Petitioner appeared for his first hearing with the judge who would later preside over his trial. (2 ACT 15, 17). His counsel confirmed then that Petitioner was competent to proceed. (5 ART 10; 2 ACT 18). Petitioner was also later examined by four psychiatrists in connection with his plea of not guilty by reason of insanity. (2 ACT 38; 2 CT 182-83, 194-99, 205-06, 222-23). None of those doctors suggested that Petitioner was incompetent, and one of the doctors retained by the defense said she saw "no issues regarding his competency." (2 CT 179, 194, 197, 205, 222). The doctors did, however, verify Petitioner's history of mental illness and agreed that he suffered from some form of schizoaffective disorder for which he needed medications to control his bipolar and schizophrenic symptoms. (2 CT 179-80, 188-97, 200, 206, 217-21).

Even so, Petitioner managed to file criminal motions on his own accord and engage in plea negotiations with the prosecution. During

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summary adjudication of competence based on the § 1372 certification and the abridged § 1368 report. *See Mixon*, 225 Cal. App. 3d at 1480-82; *People v. Taylor*, 47 Cal. 4th 850, 861 (2009); *People v. Weaver*, 26 Cal. 4th 876, 903 (2001). And because Petitioner cites no evidence to the contrary, the Court may presume that this uncontested judicial determination of competence satisfied the "hearing" requirement in § 1369. *See People v. Sakarias*, 22 Cal. 4th 596, 616-18 (2000); *People v. Rogers*, 2004 WL 1045973, at *8-9 (Cal. Ct. App. May 10, 2004); *cf. Weaver*, 26 Cal. 4th at 903-04; *Rells*, 22 Cal. 4th at 867-88.

[4] Though immaterial to the outcome here, Petitioner technically had two criminal cases against him, the latter leading to his challenged convictions. The original case was dismissed briefly when the prosecution lost contact with the victim. (2 ACT 119). But because the prosecution quickly found the victim, the case was refiled soon enough that Petitioner was apparently never released from pretrial custody. (ECF 24 at 4; 2 CT 148; LD 14 at 11 n.3). And while Petitioner entered a plea of not guilty by reason of insanity in the original case, he entered a straight not-guilty plea in the refiled case. (ECF 24 at 12; 3 RT 902-03).

pretrial proceedings, in fact, the trial judge heard (and rejected) five *Marsden* motions from Petitioner to remove his appointed attorneys. (2 ACT 20, 25, 90, 113; 1 CT 50-51). The judge also entertained (but denied) Petitioner's *Romero* motion to have his prior convictions precluded from consideration under the state's three-strikes law. (2 ACT 45-46). And the trial judge witnessed Petitioner trying to negotiate favorable plea deals with the prosecution. (2 ACT 117; 1 CT 51, 55; 2 RT A-14, A-15).

At the same time, other conduct by Petitioner caused considerable delays. (2 ACT 4, 119; 1 CT 30-34, 36). For one, Petitioner had to be shuttled for months between the downtown Los Angeles courthouse and the trial judge's courthouse in Torrance because Petitioner claimed he needed a wheelchair for an ankle injury—an accommodation he demanded even after medically cleared of the need.[5] (1 ACT 10; 2 ACT 2, 4, 7-8, 11-13, 15, 61, 63-64, 67, 69; 1 CT 39, 44, 54, 56-57). And as he started losing his pretrial motions, Petitioner began refusing to appear in court. (2 ACT 43, 45-46, 53, 59). In a span of eight months, for instance, Petitioner missed nearly 20 hearings, most set before the trial judge. (2 ACT 67, 69, 71, 72, 76, 78, 81, 87, 94, 96, 99, 104, 106, 108, 111, 112, 114, 115). The judge even had to order Petitioner forcibly extracted at least a dozen times to ensure his appearance. (2 ACT 59, 71, 72, 81, 87, 99, 104, 106, 108, 112, 113, 115). When in attendance, Petitioner often acted out and disrupted the proceedings if events seemed unfavorable to him. (3 ART 2, 4-5; 1 CT 1-12, 66). This behavior led one of the downtown Los Angeles judges to find at a pretrial hearing that Petitioner's refusals to appear in

[5] Evidently, only the downtown courthouse could accommodate wheelchair users at the time.

court—punctuated by his misbehavior when in court—were intentional tactics to delay trial. (1 CT 4-6, 11).

This pattern of conduct persisted even once the downtown Los Angeles judges refused to accept Petitioner's medically suspect transfer requests and his case was permanently assigned to the Torrance courthouse. (1 CT 39, 44, 54, 56-57). He continued refusing to appear for hearings with the trial judge. (1 CT 39, 40, 41, 42, 46, 48, 59, 60, 62, 63, 65, 68, 142). And, as before, the judge had to order several forcible extractions. (1 CT 63, 66). Eventually, the trial judge refused to have Petitioner extracted anymore (given the associated dangers) and warned him many times that further failures to appear would lead to him being tried in absentia. (1 CT 50, 66, 68-69, 71; 2 ACT 102, 117).

B. Trial Proceedings

During those protracted pretrial proceedings, no defense counsel expressed doubt about Petitioner's competence since it had been restored two years before. (1 CT 11-12). Yet five days before trial was set to begin in September 2014, counsel cited communication difficulties with Petitioner for the first time and declared a doubt about his competence. (3 ART 1-2, 4-5). The trial judge refused to join in that doubt. (3 ART 2, 5-6). Pointing to Petitioner's behavior during the prior two years, the judge found that his apparent refusal to cooperate with counsel was just more of "what [Petitioner had] been doing the whole time even after he was restored to competency." (3 ART 5-7). The judge declined to convene a competency hearing and ordered trial to begin as scheduled. (3 ART 7). Petitioner refused to appear, however, and was tried in absentia over three days. (1

CT 70-71, 73-74, 76-78; 2 RT 1-3, 6-16, 301, 305, 308-11, 320-69; 3 RT 601-36, 643-64, 666-83, 690-724).

Counsel requested a competency hearing again after the close of evidence right as jury deliberations began. (1 CT 136; 3 RT 901-02). This time, counsel relied on a psychologist's four-page report he had obtained a couple of days before. (2 CT 248-51; 3 RT 901-04). That psychologist, Sara Hough, interviewed Petitioner once at his cell and talked to his supervising nurse in the county jail. (2 CT 249). Dr. Hough reported that Petitioner had "rambled nonsensically" during her questioning and that his nurse had described him as "paranoid [and] easily agitated." (2 CT 250). She stated that Petitioner's "mental status was significantly impaired," and that his "impaired mental state appeared legitimate and not exaggerated." (*Id.*). She acknowledged, though, that Petitioner's failure to be "compliant with his prescribed psychotropic medications" when she saw him "likely contribute[d] to his impaired mental status." (*Id.*). Still, she concluded that Petitioner was incompetent to stand trial "[d]ue to his mental illness and impaired mental status," but otherwise cited no clinical reasons for her opinion. (2 CT 250-51). Citing Dr. Hough's brief report, counsel reiterated his doubt about Petitioner's competence and asked again that trial be suspended for a competency hearing. (3 RT 901-02, 907-08; 1 CT 136).

Rejecting that request, the trial judge repeated that Petitioner had still presented insufficient evidence creating a genuine doubt about his competence. (1 CT 136-37; 3 RT 902-18). The judge rebuffed counsel's suggestion that Petitioner's failures to appear in court and his disruptions in court had been caused by his mental illness, finding that Petitioner "ha[d] been doing that all along" even after the certifying doctors from

Patton State Hospital had "said he was competent." (3 RT 908). For that same reason, the judge discounted Dr. Hough's report, finding that it described behavior no "different than what [he'd] seen throughout these years with" Petitioner. (3 RT 915-16). If anything, the trial judge said, Petitioner had become more "manipulative" after being found competent, acting out when he did not "get his way" but cooperating when he did. (3 RT 908, 913-14). The judge referred to the doctors' reports he had read clearing Petitioner to appear in court without a wheelchair despite his demands for one. (3 RT 915). And the judge pointed again to his related firsthand observations of Petitioner's pretrial behavior, which the judge assessed as factitious. (3 RT 913-15).

Meanwhile, the jury found Petitioner guilty on the substantive charges. (3 RT 919-20). Then, in a brief bifurcated trial, the jury found true the special sentencing allegations, including the three-strikes enhancement based on Petitioner's prior felony convictions. (3 RT 945-47).

C. Post-Trial Proceedings

Although the trial judge had found no substantial evidence of Petitioner's incompetence to justify suspension of trial, he agreed to consider suspending post-trial proceedings for a competency hearing. (3 RT 910-11, 914-17, 942). To that end, he delayed sentencing and invited the parties to submit expert reports.[6] (3 RT 916-18, 942, 1203-06). Yet

[6] California procedures permit a trial court to seek additional psychiatric evaluations to help it decide whether to declare a doubt. *See* Cal. R. Ct. 4.130 adv. comm. cmt.; *People v. Visciotti*, 2 Cal. 4th 1, 35-36 (1992); *People v. Garcia*, 159 Cal. App. 4th 163, 170 (2008).

only the prosecution submitted new evidence—the report of a clinical psychiatrist, Phani Tumu, who examined Petitioner shortly after trial. (2 CT 253-60). Unlike Dr. Hough, Dr. Tumu reviewed Petitioner's extensive medical records, police reports and criminal history, court transcripts, and the five prior expert reports, including Dr. Hough's. (2 CT 253). He agreed with the other examining doctors that Petitioner suffered from a mental illness (schizoaffective disorder-bipolar type) but disagreed with Dr. Hough's lone opinion that Petitioner had been incompetent to be tried. (*Id.*). Dr. Tumu noted that Petitioner had "restarted" his psychotropic medications before the doctor's clinical evaluation, while Petitioner had admittedly been off his medication when Dr. Hough interviewed him. (2 CT 254-55, 256). Ultimately, Dr. Tumu concluded that Petitioner was "embellishing" his "manic and psychotic symptoms" for "secondary gain." (2 CT 257). He observed that Petitioner "should stay on his medications in order to maintain his competency." (2 CT 259). Otherwise, he concluded that Petitioner had a "factual and rational understanding of the charges against him and [was] able to rationally cooperate with his attorney." (*Id.*).

For Petitioner's part, counsel maintained that his client had been incompetent during trial: he pointed to his own declarations of doubt, Petitioner's erratic behavior in court, and Dr. Hough's report as sufficient evidence that should have triggered a doubt about competency during trial. (3 RT 911-12, 918, 1203-04; 2 CT 145). Counsel requested that a new trial be ordered or else a mistrial declared. (3 RT 1501-02; 1804-05; 2 CT 145). But the trial judge denied that request, again relying mostly on his direct interactions with Petitioner over the years of pretrial proceedings but also alluding to Dr. Tumu's report. (3 RT 1503-04, 1806; 2 CT 299-300). The

judge reiterated his observation that Petitioner's conduct had been consistently disruptive even after his competence was first restored. (3 RT 1804-06). As a result, the judge ruled that there was no new evidence or changed circumstances to doubt Petitioner's competence to be tried or sentenced. (3 RT 1501-04, 1804-06).

D. Appellate Proceedings

On appeal, Petitioner challenged the trial judge's decision not to suspend trial for a second competency hearing as a violation of due process. (LD 11 at 27, 38-44). He cited counsel's declarations of doubt, the defense expert's report, his own refusals to appear in court, and his overall erratic behavior as new evidence that should have caused the trial judge to harbor doubt about Petitioner's competence to be tried. (*Id.* at 28-44). But the California Court of Appeal denied Petitioner's claim on the merits (LD 14), after which the California Supreme Court summarily denied review (LD 18).

The Court of Appeal recognized that "[w]hen the accused presents substantial evidence of incompetence, due process requires that the trial court conduct a full competency hearing." (LD 14 at 10 (quoting *People v. Jones*, 53 Cal.3d 1115, 1152 (1991)). At the same time, it explained that because Petitioner's competence had been found restored before trial, the trial judge had to be "presented with a substantial change of circumstances or with new evidence" since the initial competency determination to justify a "second competency hearing." (*Id.* (quoting *Jones*, 53 Cal.3d at 1153)). Based on its review of the record, the Court of Appeal agreed with the trial judge "that there was no substantial change of circumstances or new

evidence" casting doubt on the initial determination of Petitioner's restored competence. (*Id.* at 4). It found instead that "substantial evidence" supported the trial judge's decision not to suspend trial for a competency hearing given the judge's "personal observations of and interactions with [Petitioner] and Dr. Tumu's report and opinion." (*Id.* at 3).

In so finding, the Court of Appeal gave "great deference" to the trial judge's assessment of Petitioner's credibility. (*Id.* at 10). It stressed that because of the extended pretrial proceedings, the trial judge had spent "a lot of time" evaluating and observing Petitioner. (*Id.* at 7, 11 n.3). By contrast, the Court of Appeal observed that it was "in no position to appraise" whether Petitioner's conduct had suggested incompetence or "a calculated attempt to . . . delay the proceedings." (*Id.* at 10). It found that the record "amply supported" the trial judge's findings that (i) Petitioner "had been engaging in the same type of behavior throughout the proceedings" even after his competency was first restored, (ii) that his "bizarre behavior constituted a ploy and an attempt . . . to manipulate the trial proceedings," and (iii) that his refusals to appear in court were just a "'show' . . . to disrupt and delay the trial." (*Id.* at 8, 12). The Court of Appeal contrasted those disruptive displays with Petitioner's demonstrated capacity to make "multiple *Marsden* motions," to insist on a *Romero* hearing, and "to negotiate a favorable plea bargain by advising the court he would plead if he were hospitalized or received credit for time served." (*Id.* at 12). That kind of "participation during trial" by Petitioner, the Court of Appeal reasoned, "reflected his understanding and use of legal concepts and procedures," thereby undermining the notion that Petitioner's misbehavior was "a product of mental incompetency." (*Id.*).

The Court of Appeal also ruled that the trial judge "was entitled to give . . . no credence to Dr. Hough's report." (*Id.* at 12). As it explained, her opinion was "based solely on her one-time encounter with defendant" and did "not address the pivotal issues of changed circumstances and new evidence." (*Id.*). The deficiencies in her four-page report were especially evident, the Court of Appeal found, in view of Dr. Tumu's report that "took into account the history of defendant's behavior and the prior evaluations of his sanity and competency and provided a detailed analysis for his opinion." (*Id.* at 13). It also remarked that their competing opinions could be attributed to the fact that Petitioner was admittedly unmedicated when he spoke with Dr. Hough. (*Id.*). Finally, the Court of Appeal found that Dr. Tumu's report—which had concluded that Petitioner exaggerated his mental symptoms for secondary gain—"bolstered" the trial judge's similar credibility finding that Petitioner was malingering for perceived litigation advantage. (*Id.*). And so, when combined with the judge's "personal observations of and interactions with defendant" over years of pretrial proceedings, this expert report was found to be substantial evidence supporting the trial judge's decision not to harbor doubt about Petitioner's competence during trial. (*Id.* at 3).

III.
DISCUSSION

The Supreme Court established long ago that the Due Process Clause prohibits the criminal prosecution of a defendant who is mentally incompetent. *See Medina v. California*, 505 U.S. 437, 439 (1992). So when the evidence before the trial court "raises a 'bona fide doubt' as to a

defendant's competence to stand trial," the judge must on his own motion conduct a competency hearing. *Pate v. Robinson*, 383 U.S. 375, 385 (1966); *see Drope v. Missouri*, 420 U.S. 162, 172-73 (1975). A defendant is competent to be tried, however, so long as "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). Due process thus requires a hearing only if there appears substantial evidence of an accused's incompetence. *See Clark v. Arnold*, 769 F.3d 711, 729 (9th Cir. 2014); *People v. Johnson*, 6 Cal. 5th 541, 575 (2018). Substantial evidence exists if a reasonable judge in the same position as the trial judge would be expected to experience a genuine doubt about the defendant's competence.[7] *See Maxwell v. Roe*, 606 F.3d 561, 568 (9th Cir. 2010) (citing *de Kaplany v. Enomoto*, 540 F.2d 975, 983 (9th Cir. 1976) (en banc)); *United States v. Telles*, 18 F.4th 290, 299 (9th Cir. 2021). That standard presents a "high bar" to trigger a trial court's sua sponte duty to hold a competency hearing. *Clark*, 769 F.3d at 729; *see United States v. Garza*, 751 F.3d 1130, 1135 (9th Cir. 2014).

Petitioner claims that the evidence before the trial judge here met that standard. His claim, however, is subject to the limits on habeas relief under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). *See Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997). AEDPA establishes a highly deferential standard for federal collateral review of

[7] What was first described in *Pate* as "bona fide doubt" has come to be expressed also as "sufficient doubt," "good faith doubt," "genuine doubt," and "reasonable doubt." *Blazak v. Ricketts*, 1 F.3d 891, 893 n.1 (9th Cir. 1993). These terms all describe the same federal constitutional standard. *See id*.

state court decisions, demanding that they "be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam). AEDPA's purpose is to ensure that federal habeas review functions only as a "guard against extreme malfunctions" in the state court system, not as a means of "error correction." *Greene v. Fisher*, 565 U.S. 34, 38 (2011). So if a state court has adjudicated a claim on the merits, federal courts must uphold that decision unless it "was contrary to, or involved an unreasonable application of, clearly established Federal law" as determined by the U.S. Supreme Court, 28 U.S.C. § 2254(d)(1), or it "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2). And even on de novo review of a habeas claim, a trial court's factual findings are presumed correct unless rebutted by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1).

If these standards are "difficult to meet," it is because they were "meant to be." *Harrington v. Richter*, 562 U.S. 86, 102 (2011). "AEDPA prevents defendants—and federal courts—from using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts." *Renico v. Lett*, 559 U.S. 766, 779 (2010). It achieves that by compelling federal courts to uphold the last-reasoned decision of a state court under § 2254(d) unless "there is no possibility fairminded jurists could disagree" about the correctness of that decision. *Harrington*, 562 U.S. at 102. And it is why findings of fact are presumed correct even on de novo review under § 2254(e)(1) because "undoing a final state-court judgment is an extraordinary remedy, reserved for only extreme malfunctions in the state criminal justice system and different in kind from

providing relief on direct appeal." *Brown v. Davenport*, 142 S. Ct. 1510, 1523-24 (2022) (cleaned up). "Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam).

So too here. As the last-reasoned decision denying Petitioner's claim on the merits, the Court of Appeal's opinion is the pertinent state court adjudication subject to deference under § 2254(d). *See Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). Fairminded jurists could debate the correctness of that decision, if for no other reason than because the cost of an erroneous competency determination is steep for the accused. *See Cooper v. Oklahoma*, 517 U.S. 348, 367 (1996) ("While important state interests are unquestionably at stake, . . . the defendant's fundamental right to be tried only while competent outweighs the State's interest in the efficient operation of its criminal justice system."). But the Court is not tasked here to evaluate Petitioner's due process claim on a blank slate. If the last-reasoned state court adjudication of that claim—the Court of Appeal's opinion—can be the subject of disagreement among reasonable jurists, it must be upheld. *See Sexton v. Beaudreaux*, 138 S. Ct. 2555, 2558 (2018).

Similarly, even if the trial judge's decision not to harbor doubt about Petitioner's competence were reviewed de novo, that factual determination is presumed correct unless rebutted by clear and convincing evidence. *See Stevens v. Davis*, 25 F.4th 1141, 1165-66 (9th Cir. 2022); *Crittenden v. Chappell*, 804 F.3d 998, 1010-11 (9th Cir. 2015). Thus, even if the Court

were to view this as a close case and think that the trial judge should have erred on the side of caution and found reason enough to doubt Petitioner's competence to stand trial, that is not the permitted standard for relief. The only relevant issue instead is whether Petitioner has overcome the high bars to relief erected by AEDPA. And, here, he has not.

A. The California Court of Appeal's Decision Was Not Contrary to Clearly Established Federal Law

Petitioner has not shown that the Court of Appeal's decision was "contrary to" clearly established federal law as determined by the U.S. Supreme Court.[8] 28 U.S.C. § 2254(d)(1). To make that showing, Petitioner must prove that the Court of Appeal arrived at a result different from that of a "materially indistinguishable" Supreme Court case or applied a legal rule "that contradicts the governing law" from binding Supreme Court precedents. *Williams*, 529 U.S. at 405-06. Petitioner does not press the first theory here. He contends only that the Court of Appeal applied legal rules contradicting those established by *Pate*, *Drope*, and *Dusky*. (ECF 24 at 24-25). None of those arguments is convincing.

[8] The parties agree that *Dusky*, *Pate*, and *Drope* constitute clearly established federal law for § 2254(d)(1) purposes. Petitioner, however, adds *Hicks v. Oklahoma*, 447 U.S. 343 (1980), to the list. (ECF 24 at 26). But that case does not "squarely address[]" or "clearly extend" to his claim. *Wright v. Van Patten*, 552 U.S. 120, 123, 125 (2008). If the Supreme Court "has not broken sufficient legal ground to establish an asked-for constitutional principle, the lower federal courts cannot themselves establish such a principle with clarity sufficient to satisfy the AEDPA bar." *Williams v. Taylor*, 529 U.S. 362, 381 (2000). In any event, the "denial of state-created procedural rights is not cognizable on habeas corpus review unless there is a deprivation of a substantive right protected by the Constitution." *Bonin v. Calderon*, 59 F.3d 815, 841-42 (9th Cir. 1995) (citing *Olim v. Wakinekona,* 461 U.S. 238, 250-51 (1983)). Otherwise, nearly every claimed violation of state procedure could be recast as a federal due process claim. That is not what the Supreme Court established in *Hicks*, much less clearly so. *See Hedlund v. Ryan*, 854 F.3d 557, 565 (9th Cir. 2017); *Nunes v. Ramirez-Palmer*, 485 F.3d 432, 443 (9th Cir. 2007).

First, Petitioner argues that the Court of Appeal improperly required that Petitioner's incompetence be the "result of mental disorder or disability," implying that the Supreme Court has never required that condition. (*Id.* at 25). The quoted language is drawn from California Penal Code § 1367(a), which defines incompetence as the inability to understand criminal proceedings or assist defense counsel "as a result of a mental health disorder or developmental disability." But the "focus of a competency inquiry is the defendant's mental capacity." *Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993). That is, after all, why the Supreme Court held that an accused "may not be subjected to a trial" if his "mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." *Drope*, 420 U.S. at 171. Even the parallel federal statute defines incompetence in relation to "a mental disease or defect." 18 U.S.C. § 4241(a); *see United States v. Duncan*, 643 F.3d 1242, 1249 n.2 (9th Cir. 2011) (recognizing that the "standard set out in § 4241(a) tracks the standard for deciding the need for a competency hearing" under *Pate*). Thus, requiring that Petitioner's claimed incompetence stem from a "mental disorder or disability" was not contrary to clearly established federal law. *See People v. Lightsey*, 54 Cal. 4th 668, 691 (2012) ("The applicable [California competency] statutes essentially parallel the . . . federal constitutional directives.").

Second, Petitioner argues that the Court of Appeal's reliance on *Jones*, 53 Cal. 3d 1115, when deciding whether the trial judge should have held a "second" competency hearing was contrary to *Pate*. (ECF 24 at 25). In *Jones*, the California Supreme Court said that "[w]hen a competency

hearing has already been held and 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." 53 Cal. 3d at 1153 (cleaned up). That rule, Petitioner argues, contradicts clearly established federal law because it changes the quality of evidence sufficient to trigger a *Pate* hearing (by requiring that it be "new"), and then eliminates the trial court's duty under *Pate* to hold a hearing at "any time" (by supposedly shifting the burden of producing evidence to the defendant). (ECF 24 at 25). On both counts, Petitioner distorts the Court of Appeal's application of the so-called *Jones* rule to imply a legal conflict with Supreme Court precedent that does not exist.

To begin with, as the California Supreme Court recently explained, there is no conflict between *Jones* and *Pate*: the rule in *Jones* "does not . . . alter or displace the basic constitutional requirement of *Pate*," requiring trial courts "to suspend criminal proceedings and conduct a competence hearing upon receipt of substantial evidence of incompetence." *People v. Rodas*, 6 Cal. 5th 219, 234 (2018). The only intended "effect of the *Jones* rule is simply to make clear that the duty to suspend is not triggered by information that substantially duplicates evidence already considered at an earlier, formal inquiry into the defendant's competence." *Id.* Nothing in *Pate* or any other Supreme Court decision prohibits such a commonsense

rule.[9] *See, e.g.*, *Johnson v. Kane*, 482 F. App'x 227, 229 (9th Cir. 2012) ("The district court correctly held that [*Jones* is] consistent with Supreme Court precedent."). Nor is there any clearly established federal law relieving a defendant adjudged competent at an initial hearing of any burden to "come forward" with new evidence of incompetence to justify a second hearing. *People v. Welch*, 20 Cal. 4th 701, 738 (1999), *abrogated on other grounds by People v. Blakeley*, 23 Cal. 4th 82, 92 (2000). All else equal, requiring a defendant to produce evidence of alleged incompetence does not conflict with a trial court's ongoing duty to remain "alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence." *Drope*, 420 U.S. at 181. Thus, even if the Court of Appeal intended to introduce some novel burden of production to trigger a *Pate* hearing, as Petitioner implies, no Supreme Court decision forecloses that approach. *Cf. Medina*, 505 U.S. at 450-51 ("While reasonable minds may differ as to the wisdom of placing the burden of proof on the defendant in these circumstances, . . . we see no basis for concluding that placing the burden [of proving incompetence] on the defendant violates the principle approved in *Pate*.").

Aside from these possible judicial glosses to the *Jones* rule (which Petitioner has not proven are outlawed by any clearly established federal law), California state courts do not otherwise construe *Jones* as creating a different—or stricter—legal standard for a competency hearing than that set forth in *Pate*. *See, e.g.*, *People v. Lawley*, 27 Cal. 4th 102, 131, 136 (2002);

[9] Petitioner himself invokes the rule: he asserts that even though his competence had been found restored before trial, he had the right to another competency determination during trial "once . . . there [appeared] substantial *new evidence* of incompetence." (ECF 24 at 28 (emphasis added)).

People v. Kaplan, 149 Cal. App. 4th 372, 384 (2007). California, long ago, aligned its competency statutes with *Pate*'s due process standard. *See People v. Pennington*, 66 Cal. 2d 508, 521 (1967). And federal judges must begin with "the presumption that state courts know and follow the law." *Woodford*, 537 U.S. at 24. In the end, "neither the reasoning nor the result of" the Court of Appeal's decision contradicts controlling Supreme Court precedents, *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam), which is all that matters for § 2254(d)(1)'s contrary-to clause. *See Johnson*, 482 F. App'x at 229; *see also Marks v. Davis*, 112 F. Supp. 3d 949, 974 (N.D. Cal. 2015) (recognizing that "California's standard for conducting a second competency hearing" is not "contrary to" clearly established federal law); *Smart v. Harrington*, 2011 WL 4726156, at *21 (N.D. Cal. Oct. 7, 2011) (applying *Jones* rule on federal habeas review when deciding whether denial of second competency hearing conflicted with *Pate*).

B. The Court of Appeal's Decision Was Not Objectively Unreasonable

Petitioner also has not shown that the Court of Appeal's decision was an "unreasonable application" of Supreme Court precedents, 28 U.S.C. § 2254(d)(1), or an "unreasonable determination of the facts" based on the trial court record, *id.* § 2254(d)(2). Because *Pate*'s "bona fide doubt" standard is intrinsically a fact-bound inquiry, the Court of Appeal's decision could be reviewed under either provision. *See Torres v. Prunty*, 223 F.3d 1103, 1107 (9th Cir. 2000), *overruled in part on other grounds by Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). Petitioner even agrees it makes no difference since the analysis under the unreasonable-application clause of § 2254(d)(1) would be the same under § 2254(d)(2). (ECF 37 at 12-14).

Thus, the Court need not engage in redundant analysis of Petitioner's claim under both provisions. *See Maxwell*, 606 F.3d at 568, 576; *cf. Andrews v. Davis*, 944 F.3d 1092, 1107 (9th Cir. 2019) ("[T]he same standard of unreasonableness under § 2254(d)(1) applies under § 2254(d)(2)."). Consistent with the prevailing approach, it will instead evaluate the Court of Appeal's rejection of Petitioner's *Pate* claim as a factual determination entitled to deference under § 2254(d)(2). *See Mendez v. Knowles*, 556 F.3d 757, 771 (9th Cir. 2009); *Davis v. Woodford*, 384 F.3d 628, 644 (9th Cir. 2004).

So framed, "the question on habeas review is whether the California Court of Appeal was unreasonable in determining that a reasonable judge in the trial judge's position would not have experienced doubts about Petitioner's competency." *Burton v. Cate*, 913 F. Supp. 2d 822, 838 (N.D. Cal. 2012) (citing *Maxwell*, 606 F.3d at 568). That is different than—and an analytical step removed from—the question the Court of Appeal itself faced on direct review: "whether a reasonable judge in the trial court's position would have experienced doubt about competency." *Id.*; *see People v. Hines*, 58 Cal. App. 5th 583, 599 (2020). Yet while professing to apply § 2254(d)(2) to the Court of Appeal's decision, Petitioner ignores that court's reasons for affirming the trial judge. (ECF 24 at 24-30; ECF 37 at 12-17). Instead, he suggests that the claimed unreasonableness of the trial judge's decision alone necessarily renders the appellate court's opinion unreasonable. But that conflated approach is both impermissible under AEDPA and inadequate to carry Petitioner's burden under § 2254(d)(2).

It is impermissible because when constrained by § 2254(d), the Court must "review the 'last reasoned decision' by the state court addressing the

petitioner's claim." *Cheney v. Washington*, 614 F.3d 987, 995 (9th Cir. 2010). Here, that is the Court of Appeal's opinion—not the trial judge's decision as such. *See Brown*, 142 S. Ct. at 1528; *Powell v. Shinn*, 842 F. App'x 100, 102 (9th Cir. 2021). And whether the Court of Appeal itself relied on unreasonable factual grounds to affirm the trial judge is "the only question that matters." *Harrington*, 562 U.S. at 102 (quoting *Lockyer*, 538 U.S. at 71). That is because satisfying § 2254(d)(2) is a "precondition" to relief, not an "entitlement" to it. *Fry v. Pliler*, 551 U.S. 112, 119 (2007). By not addressing the Court of Appeal's factual determinations on their own terms, Petitioner effectively bypasses § 2254(d) altogether. *See Greene*, 565 U.S. at 40. That mistake alone precludes relief here.[10] *See Brown*, 142 S. Ct. at 1520 (proving entitlement to habeas relief without AEDPA is "a necessary, not a sufficient, condition to relief" because "AEDPA too must be satisfied"); *Shinn v. Ramirez*, 596 U.S. ___, 2022 WL 1611786, at *10 (2022) ("Where Congress has erected a constitutionally valid barrier to habeas relief, a court *cannot* decline to give it effect.").

Equally problematic, by skipping the last-reasoned adjudication of his claim, Petitioner seeks—in all but name—de novo review of the trial judge's decision, as "if this were an appeal from a district court decision." *Hibbler v. Benedetti*, 693 F.3d 1140, 1146 (9th Cir. 2012) (citation omitted). He

[10] Doubtless, there will be cases applying § 2254(d)(2) where it may not matter whether the appellate court's findings are reviewed for reasonableness separate from the trial court's findings. But that is usually true when the appellate court's findings amount to a "determination of what the trial judge found" as a "historical fact." *Parker v. Dugger*, 498 U.S. 308, 320 (1991). In other cases, as here (*see infra* pp. 23-29), the fact-based determinations of a reviewing court can pose "analytically distinct questions" from a trial court's findings, *Brown*, 142 S. Ct. at 1526 n.3—if nothing else because the reviewing court's findings must be filtered through standards of appellate review. *See Lambert v. Blodgett*, 393 F.3d 943, 972, 978 (9th Cir. 2004).

contends that "[n]o reasonable judge" faced with the same facts before the trial judge here would have refused to doubt Petitioner's competence. (ECF 24 at 26). But that is the question the Court of Appeal had to answer on direct review; it is not the right question on federal collateral review. *See Ayala*, 576 U.S. at 276 ("The role of a federal habeas court is . . . not to apply *de novo* review of factual findings and to substitute its own opinions for the determination made on the scene by the trial judge."). Petitioner then catalogues facts that—by his estimation—would have raised a doubt about his competence in the mind of a reasonable trial judge. (ECF 24 at 26-27). But that analysis is indistinguishable from what the Court of Appeal necessarily had to do; it just happens to reweigh the facts in Petitioner's favor to achieve a different outcome—"without ever framing the relevant question as whether a fairminded jurist could reach a different conclusion." *Shinn v. Kayer*, 141 S. Ct. 517, 524 (2020). And so it invites the Court to treat "the unreasonableness question as a test of its confidence in the result it would reach under *de novo* review." *Id.* at 523-24. That is inadequate to meet Petitioner's burden under § 2254(d)(2) because a "state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Nor can Petitioner claim to have satisfied § 2254(d)(2), as he does here, just by "tacking on a perfunctory statement at the end of [his] analysis asserting that the state court's decision was unreasonable." *Sexton*, 138 S. Ct. at 2560.

In any event, even if he had tried, Petitioner cannot establish that the Court of Appeal's decision was an unreasonable determination of the facts. He does not challenge the Court of Appeal's factual determinations as

unsupported by the record. *See Hibbler*, 693 F.3d at 1146. So the only way he can show that the Court of Appeal was unreasonable under § 2254(d)(2) is to prove that its "fact-finding process" was "deficient in some material way." *Id*. In other words, because there is no "dispute as to the evidence possibly relevant to [P]etitioner's mental condition that was before the trial court," his challenge to the Court of Appeal's fact-finding process turns on the "inferences . . . drawn from the undisputed evidence." *Drope*, 420 U.S. at 174. But "a federal court may not second-guess a state court's fact-finding process unless . . . it determines that the state court was not merely wrong, but actually unreasonable." *Stevens*, 25 F.4th at 1153 (quoting *Sifuentes v. Brazelton*, 825 F.3d 506, 517 (9th Cir. 2016)). That means the Court must be convinced that "*any* appellate court to whom the defect in the state court's fact-finding process is pointed out would be unreasonable in holding that the state court's fact-finding process was adequate." *Loher v. Thomas*, 825 F.3d 1103, 1112 (9th Cir. 2016) (quoting *Hibbler*, 693 F.3d at 1146-47). This standard poses a "substantially higher threshold" for relief, *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007)—one that Petitioner cannot surmount.[11]

[11] None of the cases Petitioner relies on compels a contrary conclusion. (ECF 24 at 23-30). The petitioner in *Odle v. Woodford*, 238 F.3d 1084 (9th Cir. 2001), had a grapefruit-sized portion of his brain removed and "had attempted suicide while in prison." *Id*. at 1088-89. The petitioner in *Maxwell* had also attempted suicide during pretrial custody and was then involuntarily committed to a mental hospital in the middle of trial. *See* 606 F.3d at 576. Indeed, the Ninth Circuit has recognized that *Odle*, *Maxwell*, and like cases involved "overwhelming indications of incompetence," *Davis*, 384 F.3d at 646—including almost without exception a "suicide attempt" during trial. *See, e.g.*, *Anderson v. Gipson*, 902 F.3d 1126, 1134 (9th Cir. 2018). So whatever similarities these cases may share on the margins with Petitioner's, the dissimilarities are pronounced and distinctive enough that they aren't the cookie-cutter matches Petitioner suggests. And it would take many more such matches anyway to prove that

For starters, fairminded jurists could agree with the Court of Appeal's decision to pay "great deference" to the trial judge's assessments of Petitioner's credibility. *People v. Marshall*, 15 Cal. 4th 1, 33 (1997). The trial judge "is in the best position to evaluate claims of physical and mental illness impacting the defendant at trial." *Telles*, 18 F.4th at 299 (quoting *United States v. Turner*, 897 F.3d 1084, 1105 (9th Cir. 2018)). Deciding whether Petitioner appeared mentally incapable of understanding the proceedings and assisting in his defense—or seemed to be exaggerating his mental health symptoms to upend an orderly trial—depended "heavily on the trial court's appraisal of witness credibility and demeanor," which "cannot be easily discerned from the appellate record." *Thompson v. Keohane*, 516 U.S. 99, 111 (1995) (quoting *Wainwright v. Witt*, 469 U.S. 412, 429 (1985)). And if appellate judges cannot comfortably second-guess a trial judge's credibility findings based on a cold record, *see Ayala*, 576 U.S. at 274, federal habeas courts are "doubly" ill-equipped to question those findings two steps removed from the trial court proceedings.[12] *Briggs v. Grounds*, 682 F.3d 1165, 1170 (9th Cir. 2012). "Reasonable minds reviewing the record might disagree about [Petitioner's] credibility, but on habeas review that does not suffice to supersede the trial court's credibility determination." *Rice v. Collins*, 546 U.S. 333, 341-42 (2006).

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the Court of Appeal "managed to blunder so badly that every fairminded jurist would disagree" with its decision. *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021).

[12] This is not to say that it would be impossible for a federal habeas court to find that a state trial court's credibility determination was unreasonable. *See Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). But it wouldn't be that far from impossible either, since such a credibility determination could be unreasonable only if *no* fairminded jurist could ever agree with it.

None of this is to deny the competing inferences that Petitioner draws from his refusals to appear in court and from his erratic behavior when in the courtroom. (ECF 24 at 27). But that "conflicting inferences . . . may reasonably be drawn from this evidence" at all is the very thing that "preclude[s] us from saying that" the Court of Appeal's decision to defer to the trial judge's reconciliation of those inferences was objectively unreasonable. *Sansing v. Ryan*, 997 F.3d 1018, 1035 (9th Cir. 2021); *see Cowans v. Bagley*, 639 F.3d 241, 247-48 (6th Cir. 2011) (finding it reasonable for trial judge not to doubt competence based on the accused's "requesting new counsel and angry outbursts" since those "could be read in one of two ways: as evidence of mental incompetence or of an angry, hostile personality"). "Perhaps some jurists would share [Petitioner's] views, but that is not the relevant standard. The question is whether a fairminded jurist could take a different view." *Shinn*, 141 S. Ct. at 525. Here, they could. *See*, *e.g.*, *Gordy v. Hedgpeth*, 616 F. App'x 322, 323 (9th Cir. 2015) (trial court reasonably had no doubt about competence where "three of five examining psychiatrists" found defendant competent and judge "made numerous observations on the record" that defendant's "actions appeared strategic rather than authentic").

Nor does recognizing such possible fairminded disagreement imply that counsel's declarations of doubt before and during trial carried no weight. (ECF 24 at 26). Counsel's informed opinion about a "defendant's inability to assist counsel can, in and of itself, constitute probative evidence of incompetence" since they "will often have the best-informed view of the defendant's ability to participate in his defense." *Medina*, 505 U.S. at 450. But at the same time, a "defendant who refuses to work with his lawyer out

of spite alone is not incompetent even if that defendant has a serious mental disease or defect." *Garza*, 751 F.3d at 1136. Given how Petitioner tried to fire his appointed counsel numerous times while trying to negotiate (unsuccessful) plea deals on his own, it was not unreasonable for the Court of Appeal to view Petitioner's professed inability to work with counsel as a "strategy of noncooperation" rather than a telltale sign of incompetence. *Amaya-Ruiz v. Stewart*, 121 F.3d 486, 491 (9th Cir. 1997), *overruled on other grounds by United States v. Preston*, 751 F.3d 1008, 1019-20 (9th Cir. 2014); *see Cowans*, 639 F.3d at 247-48 (finding efforts to fire counsel could reasonably be viewed as rational, "as they coincided with negative developments in the proceedings").

Likewise, the Court of Appeal's process for weighing the probative value between Dr. Hough's and Dr. Tumu's competing reports was not objectively unreasonable. Reasonable jurists can reject an expert's opinion if it fails to establish a reliable connection between a defendant's mental illness and his competence to stand trial. *See Telles*, 18 F.4th at 300; *Cacoperdo v. Demosthenes*, 37 F.3d 504, 510 (9th Cir.1994); *People v. Lewis & Oliver*, 39 Cal. 4th 970, 1047 (2006); *see also Maggio v. Fulford*, 462 U.S. 111, 113-17 (1983) (per curiam) (finding no habeas error when state court discredited "eleventh hour" expert report based on one hour-long interview). And naturally the flipside of that proposition is true: fairminded jurists can agree that a more detailed, clinically rigorous report like Dr. Tumu's is more credible and should carry more weight. *See generally* Cal. R. Ct. 4.130(d)(2) (enumerating required contents of competency expert's report including "detailed analysis of the competence of the defendant," an assessment "conducted for malingering or feigning

symptoms," and a "list of all sources of information considered by the examiner" like "psychiatric records," the "evaluations of other experts," the "results of psychological testing," and "police reports" or "criminal history").

To be sure, as with the trial judge's adverse credibility determinations, it is not impossible to imagine that the Court of Appeal could have given Dr. Hough's report more weight, especially when combined with counsel's expressed doubts about his client's competence. *See, e.g.*, *People v. Bolen*, 2017 WL 2345593, at *15 (Cal. Ct. App. May 30, 2017). But the *Pate* test for whether a reasonable judge would be expected to have a bona fide doubt about a defendant's competence is a "general standard" only, giving trial courts much "more leeway . . . in reaching outcomes in case-by-case determinations." *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004). The bona fide doubt standard is also open-ended. *See Drope*, 420 U.S. at 172-73. And it is intensively fact-driven, requiring an evaluation of the totality of the circumstances before the trial judge. *See de Kaplany*, 540 F.2d at 983 ("The emergence of genuine doubt in the mind of a trial judge necessarily is the consequence of his total experience and his evaluation of the testimony and events of the trial."); *Chavez v. United States*, 656 F.2d 512, 518 (9th Cir. 1981) ("In determining whether or not there is a substantial doubt, the trial judge must evaluate all the evidence and evaluate the probative value of each piece of evidence in light of the others.").

Altogether, then, these "open-ended standards and the high threshold for establishing incompetence give state courts wide latitude in a habeas case." *Cowans*, 639 F.3d at 247. "When virtually everything is potentially

relevant and nothing is dispositive, reasonable minds occasionally may come to different conclusions about whether to hold a competency hearing." *Id.* (citing *Yarborough*, 541 U.S. at 664). That is the case here, and so it requires that the Court of Appeal's denial of Petitioner's due process claim be upheld under § 2254(d)(2). *See Balbuena v. Sullivan*, 980 F.3d 619, 633 (9th Cir. 2020) (confirming that when § 2254(d) applies, "even a strong case for relief does not mean the state court's contrary conclusion was unreasonable" (quoting *Harrington*, 562 U.S. at 102)).

C. Petitioner Is Entitled to No Habeas Relief Even On De Novo Review

Even if Petitioner could somehow satisfy § 2254(d)(2), it would still not guarantee him federal habeas relief. "In reviewing the merits of a habeas petitioner's claim after § 2254(d) is satisfied, we still defer to a state court's factual findings under § 2254(e)" by presuming "those findings are . . . correct, a presumption that can be overcome only by clear and convincing evidence." *Crittenden*, 804 F.3d at 1010-11 (citing § 2254(e)(1)); *see Sumner v. Mata,* 449 U.S. 539, 547 (1981) (holding same under pre-AEDPA predecessor statute to § 2254(e)(1)). "Unlike § 2254(d), § 2254(e)(1)'s application is not limited to claims adjudicated on the merits." *Kirkpatrick v. Chappell*, 950 F.3d 1118, 1131 (9th Cir. 2020). It applies "to all factual determinations made by state courts." *Id.* So even if Petitioner "can overcome . . . AEDPA deference to the [California] appellate court's adjudication of his claim," the Court must "still presume to be correct the trial court's finding that he did not present sufficient evidence . . . to raise a bona fide doubt as to his competence." *Rever v. Acevedo*, 590 F.3d 533, 537 (7th Cir. 2010); *see Kirkpatrick*, 950 F.3d at

1131-32, 1135 (reviewing findings about prisoner's competency to waive right to petition for state postconviction relief under § 2254(e)(1) even when § 2254(d) was inapplicable). And Petitioner must, in turn, overcome that presumption by clear and convincing evidence to secure habeas relief. *See Deere v. Cullen*, 718 F.3d 1124, 1145 (9th Cir. 2013) (state court's pre-AEDPA findings about competency to stand trial presumed correct unless rebutted by clear and convincing evidence); *Jacks v. Lynch*, 2020 WL 5167785, at *9 (C.D. Cal. July 10, 2020) ("In this habeas proceeding, the state court's competency finding is entitled to a presumption of correctness, as petitioner has not rebutted the presumption by clear and convincing evidence.").[13]

But Petitioner does not even attempt to make that showing, much less a clear and convincing one. In fact, he repudiates the need to do so, citing as support *Maxwell*, 606 F.3d at 576, *Anderson*, 902 F.3d at 1135, and *Torres*, 223 F.3d at 1110 n.6. (ECF 37 at 11-12). But despite the outcomes of those cases, none had any reason to address whether § 2254(e)(1) separately applies on de novo review because the respondents there never raised that argument. Those cases thus cannot mean, as Petitioner asserts, that § 2254(e)(1) is categorically inapplicable on de novo review of *Pate-*

[13] This case presents no occasion, nor the need, to address whether the presumption under § 2254(e)(1) has any role embedded within a § 2254(d)(2) review for factual reasonableness. That textual conundrum remains unresolved. *See Burt v. Titlow*, 571 U.S. 12, 18 (2013). But resolving it is unnecessary here, where § 2254(e)(1) applies—on its own terms—under de novo review of the trial judge's findings of fact without regard to § 2254(d)(2). *See Stevens*, 25 F.4th at 1165-66.

Drope due process claims.[14] *See United States v. Corrales-Vazquez*, 931 F.3d 944, 954 (9th Cir. 2019) ("Cases are not precedential for propositions not considered, or for questions which merely lurk in the record."). Not only would such a sub-rosa holding create an irreconcilable intra-circuit split (*contra Crittenden*, *Kirkpatrick, Stevens*, and more), but it would also defy the Supreme Court's pronouncement that § 2254(d) is a "precondition," not an "entitlement," to the grant of habeas relief. *Fry*, 551 U.S. at 119; *see Brown*, 142 S. Ct. at 1528 (reiterating that no habeas relief may issue unless all "AEDPA's applicable conditions are satisfied").

In any event, on the record here, Petitioner cannot rebut—by clear and convincing evidence—the presumed correctness of the trial judge's reasons not to harbor doubt about Petitioner's competence. When "reviewing whether a state trial judge should have . . . conducted a competency hearing, a federal court may consider only the evidence that was before the trial judge." *Williams v. Woodford*, 384 F.3d 567, 604 (9th Cir. 2004). According to Petitioner, that evidence consisted of counsel's declarations of doubt; his intentional absences from court; his erratic behavior when in court; his mental health history; the defense expert's report; and his attempts to fire counsel. (ECF 24 at 19-20). He contends that these factors, individually or collectively, created a bona fide doubt about his competence sufficient to justify a competency hearing. (ECF 24

[14] Alternatively, Petitioner argues that the presumption under § 2254(e)(1) is automatically rebutted by an unreasonableness finding under § 2254(d)(2). (ECF 37 at 12). But review under § 2254(e)(1) is arguably "more deferential" to state court decisions than reasonableness review under § 2254(d)(2). *Wood*, 558 U.S. at 301. For that reason, *Torres* is no help to Petitioner on this score because it mistakenly equated "unreasonable" under § 2254(d) with "clear error," 223 F.3d at 1108, a legal mistake the Supreme Court later exposed. *See Lockyer*, 538 U.S. at 75.

at 20).

It was of course possible, as Petitioner asserts, for the trial judge to weigh these facts in favor of entertaining doubt about his competence. But that is a far cry from proving that the trial judge was undeniably wrong under a clear and convincing standard. There are, after all, "no fixed or immutable signs which invariably indicate the need for" a competency hearing, and "the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated." *Drope*, 420 U.S. at 180. Whether a reasonable trial judge would have experienced a bona fide doubt about competence is intensively fact dependent. *See Brumfield v. Cain*, 576 U.S. 305, 313-14 (2015); *Maggio*, 462 U.S. at 117. The defendant's demeanor before and during trial, his behavior in and out of court, credible medical testimony or reports about the defendant's competence, and defense counsel's informed opinion of his client's competence are all relevant considerations. *See Drope*, 420 U.S. at 180; *Williams*, 384 F.3d at 604; *Garza*, 751 F.3d at 1134. Depending on the totality of the circumstances, any one or combination of these factors—and even none of these factors—could raise a genuine doubt about competence. *See Drope*, 420 U.S. at 180. After all, "trained psychiatrists" commonly arrive at "varying opinions" about a defendant's competence on the "same facts." *Id.* It is thus nearly impossible to hold that the trial judge here had no possible choice but to doubt Petitioner's competence.

Start with the judge's overriding conclusion that Petitioner's refusals to make court appearances—and to be disruptive when he did make them—was not evidence of incompetence but of malingering instead. The transcripts (and other trial court records) are susceptible to both views.

But when the evidence is in such equipoise, Petitioner cannot carry his clear and convincing burden just by urging the Court to pick his interpretation over the trial judge's. *See, e.g.*, *Davis v. Brewer*, 2018 WL 4333957, at *3 (E.D. Mich. Sept. 11, 2018) ("A trial judge is allowed to rely on his or her own observations of the defendant's comportment or demeanor to determine whether that defendant is competent to stand trial."); *Saldano v. Davis*, 759 F. App'x 276, 279 (5th Cir. 2019) (in-court behavior did not establish by clear and convincing evidence that trial judge had to doubt competency after seven weeks of directly observing and interacting with defendant). Indeed, questions of credibility "lie peculiarly within a trial judge's province." *Stevens*, 25 F.4th at 1151 (quoting *Ayala*, 576 U.S. at 273-74). So just because the trial judge's findings may be subject to de novo review "gives federal habeas courts no license to re-determine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them." *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983); *see Aiken v. Blodgett*, 921 F.2d 214, 217 (9th Cir. 1990).

Similarly, the trial judge's decision to discount counsel's declarations of doubt is exceedingly hard to question on a cold record. To be fair, counsel's expressions of doubt were not "unparticularized assertions" that courts easily reject. *People v. Buenrostro*, 6 Cal. 5th 367, 410 (2018). Still, after Petitioner's competence was originally restored and during two years of protracted pretrial proceedings, counsel never once questioned Petitioner's competence. Nor did the doctors who examined him during that time suggest a possibility of incompetence. So when counsel suddenly announced a doubt just three business days before trial was set to begin, the trial judge had reason to be skeptical. In the end, Petitioner has no

clear and convincing evidence to prove that the trial judge had to accept counsel's declarations of doubt unreservedly. *See Woodley v. Bradshaw*, 451 F. App'x 529, 538 (6th Cir. 2011) (counsel's concerns alone did not amount to the "clear and convincing" showing needed to rebut the state court finding of competence); *Johnson*, 6 Cal. 5th at 576 ("Defendant's unwillingness to cooperate with counsel" combined with "courtroom outbursts" and belief in conspiracy between counsel and prosecutor insufficient to create doubt about competency). And contrary to Petitioner's argument that his efforts to fire his appointed counsel evidenced incompetence (ECF 24 at 27), the equally—if not more—convincing interpretation is that it supported the trial judge's perception of Petitioner's behavior as an effort at manipulation rather than as evidence of incompetence. *See, e.g.*, *United States v. Mikhel*, 889 F.3d 1003, 1040 (9th Cir. 2018) (finding defendant's "requests for new counsel did not raise any genuine doubt as to his competency" but "to the contrary, they evinced his intelligence, his firm grasp of the proceedings and the legal system, and his own strong views on the best strategy for his defense").

Nor does anything in the trial record show—by clear and convincing evidence anyway—that Dr. Hough's report deserved more weight than the trial judge gave it. Petitioner says nearly nothing to defend the substance of this report other than maintain that its ultimate opinion was enough to raise a genuine doubt.[15] (ECF 24 at 26-27). That "conclusory assertion[] of incompetency" is not enough, though, "to rebut the presumption [under

[15] That may be because even a cursory review of Dr. Hough's four-page report shows that it would fall well below the California state courts' own established norms for reliable expert reports about competency. *See* Cal. R. Ct. 4.103(d)(2).

§ 2254(e)(1)] by clear and convincing evidence." *Bryson v. Ward*, 187 F.3d 1193, 1204 (10th Cir. 1999). Indeed, no trial judge must accept—uncritically—a medical professional's opinion at face value when deciding whether to entertain a doubt. *See Maggio*, 462 U.S. at 117-18 (rejecting notion that "trial judge was obligated to credit both the factual statements and the ultimate conclusions of [competency expert] solely because he was 'unimpeached'"); *see also Lewis & Oliver*, 39 Cal. 4th at 1047-48; *Weaver*, 26 Cal. 4th at 953-54. Unlike Dr. Tumu, Dr. Hough reviewed no medical records and interviewed Petitioner only briefly from outside his cell while he was unmedicated with the drugs he needed to maintain competence. She failed to explain in any nonconclusory way, much less in clinically rigorous terms (like Dr. Tumu did), how the mental impairments she saw in Petitioner prevented him from understanding his criminal proceedings or cooperating with counsel in his defense. Thus, because the trial judge faced "conflicting opinions" about Petitioner's competence, the Court must "give due regard to the trial court's superior ability to draw the appropriate inferences from its observation of the defendant and expert witnesses, as well as the examination reports before it." *Ray v. Duckworth*, 881 F.2d 512, 516 (7th Cir. 1989).

Last, Petitioner cannot overcome the presumed correctness of the trial judge's decision by pointing to Petitioner's undisputed history of mental illness. (ECF 24 at 27). The "existence of a mental disorder or developmental disability that does not implicate a defendant's competency to stand trial" is inadequate to trigger a trial court's duty to suspend proceedings. *People v. Romero*, 44 Cal. 4th 386, 420 (2008); *see Jacks*, 2020 WL 5167785, at *11 n.5 ("[D]iagnosis of paranoid schizophrenia

'do[es] not necessarily imply that [the petitioner] did not understand the proceeding or could not cooperate with his counsel.'" (quoting *Bassett v. McCarthy*, 549 F.2d 616, 619 (9th Cir. 1977))). "Even a mentally deranged defendant is out of luck if there is no indication that he failed to understand or assist in his criminal proceedings." *Garza*, 751 F.3d at 1136. "And even if that same defendant did fail to understand or assist in his proceedings, he would still be out of luck unless his mental impairment caused the failure." *Id.* Here, there was enough medical opinion evidence to support the trial judge's finding that Petitioner's mental illness was not the cause of any inability to understand the proceedings or assist counsel in his defense. The evaluating doctors who saw Petitioner after his competence had been restored made no such connections between his mental illness and his competence to stand trial. And, of course, Dr. Tumu's comprehensive assessment lent support—if only in hindsight—to the conclusion that Petitioner's observable misbehavior was exaggerated for secondary gain. On the other hand, Petitioner points to nothing in the record—much less any clear and convincing evidence—to prove that the trial judge was flat out wrong not to experience doubt just because of Petitioner's history of mental illness. *See Boyde v. Brown*, 404 F.3d 1159, 1166 (9th Cir. 2005); *Grant v. Brown*, 312 F. App'x 71, 73 (9th Cir. 2009).

In the end, the trial judge had a courtside seat to witness Petitioner's conduct firsthand for more than two years. During that time, he observed not only Petitioner's undeniably erratic behavior but also his deliberative efforts in criminal motion practice and substantive plea negotiations. The trial judge also had to make countless judgment calls about Petitioner's claims of physical injury (requiring a wheelchair) and his refusals to come

to court without extraction orders. Even a different judge who had—independently—observed Petitioner's pretrial behavior found that it was deliberately calculated to cause delay and disrupt proceedings. Without the benefit of having personally witnessed these events (rather than just reading about them in a cold record), the Court simply has no sound basis to disagree with the trial judge's overarching assessment of Petitioner's credibility—much less conclude that the judge was wrong by clear and convincing evidence.

IV.
CONCLUSION

For all these reasons, the Court recommends that the habeas petition be denied and that this action be dismissed with prejudice.

DATED: June 8, 2022

STEVE KIM
U.S. MAGISTRATE JUDGE

Court of Appeal, Second Appellate District, Division Two - No. B260410

S235057

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

KALAMICE K. PIGGEE, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

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

DIVISION 2

THE PEOPLE,
Plaintiff and Respondent,
v.
KALAMICE K. PIGGEE,
Defendant and Appellant.

B260410
Los Angeles County No. YA089772

THE COURT:

Petition for rehearing is denied.

cc: File
Office of the Attorney General
Gloria Ceil Cohen

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KALAMICE K. PIGGEE, Defendant and Appellant.	B260410 (Los Angeles County Super. Ct. No. YA089772)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eric C. Taylor, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Kalamice K. Piggee appeals from the judgment entered following a jury trial that resulted in his conviction of robbery (Pen. Code, § 211; count 1),[1] during which he used a deadly weapon (screwdriver) (§ 12022, subd. (b)(1)), and assault with a deadly weapon (§ 245, subd. (a)(1); count 2) and findings he had suffered two prior convictions for a serious felony (§ 667, subd. (a)), which qualified as strikes under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and he had served a prior prison term (§ 667.5, subd. (b)). He was sentenced to prison on count 1 for 25 years to life, plus seven years for enhancements, consisting of five years for a prior serious felony conviction, one year for use of a deadly weapon, and one year for the prior prison term.

Defendant contends the judgment must be reversed, because "the conviction of an accused person while he is legally incompetent violates due process" (*Pate v. Robinson* (1966) 383 U.S. 375, 378) and the trial court improperly relied on *People v. Jones* (1991) 53 Cal.3d 1115 in denying his multiple requests for a hearing on his mental competency (§ 1368), despite substantial evidence of his incompetence, which necessitates a hearing "as a matter of right" (*People v. Pennington* (1967) 66 Cal.2d 508, 518-519).

We affirm the judgment. In the original case, Los Angeles County Superior Court case No. (LASC No.) YA083790, the trial court found defendant incompetent to stand trial and ordered him committed to Patton State Hospital. The court subsequently received notice that defendant's competency had been restored, and defendant was held to answer. When the prosecution advised that it was unable to proceed because of lost contact with the victim, the court ordered the case dismissed for lack of prosecution. Subsequently, the case was refiled under LASC No. YA089772, the present case. During jury deliberations, defense counsel presented the report of Dr. Sara Hough, who concluded defendant was incompetent to stand trial, and requested the trial court declare a doubt as to defendant's competency and suspend the trial proceedings. Although

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1 All further section references are to the Penal Code.

declining to suspend proceedings, the court allowed the parties an opportunity to obtain additional medical evaluation of defendant's competency. In his report, Dr. Phani Tumu, an appointed prosecution expert, opined defendant was competent. The trial court declined to declare a doubt as to defendant's mental competency and suspend proceedings for a second competency hearing. Substantial evidence supports the trial court's rulings in view of the court's personal observations of and interactions with defendant and Dr. Tumu's report and opinion.

BACKGROUND

On March 13, 2012, about 7:00 a.m., Gregorio Machuca Navarro (Machuca), a maintenance person at the Normandie Casino in Gardena, was fixing the door to a small storage room in the bathroom with a screwdriver when defendant entered the bathroom and pushed Machuca in the back. As Machuca turned towards defendant, defendant grabbed his screwdriver, threatened him with it, and lunged at him. Machuca dodged away and tried to leave but defendant blocked the only exit. Retreating into a stall, Machuca closed and locked the door. After breaking through the door, defendant entered and struck Machuca, who fell to the ground. Climbing on top of him, defendant grabbed Machuca by the hair and bashed his head against the wall and toilet. When defendant demanded his wallet, Machuca gave up his wallet, which contained over $1,000, a cell phone, an employee identification badge, and his truck keys. After defendant left, Machuca followed and called for help.

As John Temple, a Normandie Casino security officer, went to investigate a reported altercation, he observed defendant and Machuca swinging fists at each other. After detaining defendant, Temple found two plastic bags.

At the casino, defendant acknowledged to Gardena Police Officer Ryan Nigg that the bags were his. Machuca's wallet containing about $1,000, a cell phone, an employee identification badge, truck keys, and a screwdriver were recovered from one bag. Asked if he took Machuca's money, defendant responded, "everything is in the bag."

At trial, defendant did not present any affirmative evidence.

DISCUSSION

Defendant contends the trial court committed prejudicial error in refusing to suspend trial proceedings and conduct a competency hearing (§ 1368), because substantial evidence established a doubt as to his mental competency to stand trial. No error occurred. Substantial evidence supports the trial court's findings that there was no substantial change of circumstances or new evidence casting a serious doubt on the finding of competency that would warrant a second competency hearing.

Relevant Trial Proceedings in LASC Nos. YA083790 and YA089772

1. *LASC No. YA083790*

In LASC No. YA083790, defendant was charged with a single count of robbery (§ 211). Defendant entered a plea of not guilty.

On April 12, 2012, Dr. Jack Rothberg, a defense expert, evaluated defendant and diagnosed him with bipolar disorder. He opined defendant was incompetent to stand trial.

On April 23, 2012, after defense counsel declared a doubt as to defendant's competency, the trial court suspended the proceedings for evaluation of his mental competency in Department 95.

On May 21, 2012, the court found defendant incompetent to stand trial and committed him to Patton State Hospital until May 10, 2015, the maximum confinement period.

On August 2, 2012, a certification of defendant's mental competency from Patton State Hospital was filed with the court.

On September 12, 2012, defendant entered a plea of not guilty.

On October 29, 2012, defendant spoke to the trial court (Judge Eric C. Taylor) about his commitment at Patton State Hospital, where he broke his leg. He asserted he suffered from bipolar disorder for which he required medication and he had not been taking the medication at the time of the Machuca altercation. He then waived time to allow defense counsel time to prepare for trial. Defense counsel advised that defendant's competency had been restored and there was no declaration of doubt pending.

On November 26, 2012, defendant appeared in court. The court acknowledged it received his request for placement in a mental health or drug treatment program. The court also heard and denied his motion to discharge his counsel (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*)). Defendant then asserted he was being denied his rights to due process and under the Sixth Amendment. When the court discussed with defendant whether he would waive time again, he refused.

On January 2, 2013, defendant made another *Marsden* motion, which the court denied. Afterward, he requested an opportunity to communicate ex parte with the court and stated he had not been granted a *Romero* hearing (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497).[2] Defendant again asserted he was innocent because of his mental illness. On this occasion, he agreed to waive time.

On February 27, 2013, defendant withdrew his plea of not guilty and entered a plea of not guilty by reason of insanity. Defense counsel submitted psychiatric evaluations regarding defendant's sanity. The trial court granted the prosecution an opportunity to retain its own expert to evaluate defendant.

On March 27, 2013, following a pretrial hearing, the trial court denied defendant's *Romero* motion. Defendant claimed the court did so because the court did not like him.

On December 3, 2013, and on February 28, 2014, defendant made additional *Marsden* motions, which the court denied.

On March 6, 2014, the prosecutor advised the trial court that he was unable to proceed, because he had lost contact with the victim. The court ordered the case dismissed for lack of prosecution.

2. *LASC No. YA089772*

On May 1, 2014, the prosecution refiled the case. The two-count information charged defendant with, respectively, robbery (§ 211), during which he used a deadly weapon (screwdriver) (§ 12022, subd. (b)(1)) and assault with a deadly weapon (§ 245,

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2 His *Romero* motion to dismiss the two alleged strikes was made on February 13, 2013.

subd. (a)(1)). As to both counts, defendant allegedly suffered two prior serious felony convictions (§ 667, subd. (a)), which qualified as strikes under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and he had served two prior prison terms (§ 667.5, subd. (b)). Defendant entered a not guilty plea.

On June 23, 2014, defendant appeared in court with counsel, who advised that defendant's wheelchair had been taken. After noting defendant had been medically cleared from requiring a wheelchair, the court further noted that defendant repeatedly had refused to appear in court and if he continued to do so, the court would proceed without him. Defendant requested a *Marsden* hearing. Following the hearing, the court denied his motion. When the court discussed a possible plea, defendant stated he would plead in exchange for hospitalization or time served.

On June 27, 2014, when defendant refused to appear in court, the court ordered him extracted from his jail cell. Defendant appeared wearing a cast for his broken leg and requested additional time to consider how he would plead.

On September 3, 2014, defense counsel declared a doubt as to defendant's competency. He asserted defendant could not communicate effectively with him and pointed out that when defendant was in court previously, he yelled about being "Jesus" and the "sheriff." The court inquired how defendant's behavior had changed since his competency was restored and stated that in its opinion, defendant always "act[ed] out more in that way" whenever the court did not give him what he wanted. Counsel admitted defendant always had been "difficult" in court, but asserted defendant was "clearly delusional" and his behavior had worsened.

The prosecutor pointed out after defense counsel had declared his belief in defendant's competency at the preliminary hearing, defendant was "ranting and raving." He noted at that time, the court placed on the record the fact defendant usually had to be extracted from his cell to appear in court, and once he arrived, he would claim a medical injury and that defendant was engaging in behavior for the purpose of obstructing and delaying the proceedings. In view of such matters, the prosecutor stated his belief defendant was engaging in "forum shopping" by claiming that, although he was

medically cleared as to his broken leg, he still needed a wheelchair, compelling the case be tried in the downtown Los Angeles courthouse, which could accommodate a wheelchair case. He added that when the case was not transferred because the court found defendant did not need a wheelchair, defendant acted out and disrupted the proceedings by manipulating the system.

After noting it had spent "a lot of time to evaluate and observe" defendant, the court agreed defendant's goal was to be tried in downtown Los Angeles, adding that defendant always calmed down if such possibility was discussed. The court found whenever defendant got what he wanted, his behavior was fine. The court pointed out whenever the court and staff had to go to lockup because defendant refused to come out, the court observed defendant was calm until they arrived, at which point, "the show starts." After concluding defendant's behavior had not changed since his competency was restored, the court declined to declare a doubt.

On September 8, 2014, defendant refused to appear in court despite being "medically and psychologically cleared" to do so. After noting it had to order him extracted a number of times already, which was expensive and placed people at risk, the court announced it would not order his extraction.

The next day, defendant refused to appear in court unless a "wheelchair bus" was sent for him. The bus was sent. Defense counsel advised the court that after he explained to defendant the court would no longer order his extraction, defendant agreed to go to court. The court responded that defendant was engaging in ploys, including not allowing his cast to be removed. After arriving at the courthouse in a wheelchair bus, defendant refused to enter the courtroom, because he wanted to speak with defense counsel or a sheriff's department supervisor. The court allowed defense counsel to speak with him. Afterward, counsel advised the court that defendant would not enter the courtroom unless he could speak with his mother. The bailiff advised that defendant had responded to his request to enter by rambling about motions and walking away.

On September 10, 2014, defendant again claimed he required a wheelchair to attend court. When asked if he would attend if provided a wheelchair, defendant rambled incoherently and returned to his jail cell.

On September 13, 2014, Dr. Hough submitted her report regarding defendant's competency to defense counsel. She concluded defendant was "incompetent to proceed with trial."

On September 15, 2014, in light of Dr. Hough's report, defense counsel requested the court declare a doubt as to defendant's competency and suspend the proceedings. The prosecutor pointed out the court already had found defendant was not incompetent because circumstances had not changed since his competency was restored. He noted deliberations already had commenced and argued the jury should be allowed to finish because defendant's competency no longer had any bearing on the trial on the charged offenses. Defense counsel responded defendant's competency may have kept him from entering a plea of not guilty by reason of insanity.

The court placed on the record the fact defense counsel never requested the court appoint Dr. Hough to evaluate defendant; rather, while the court was dark, defense counsel made the request to another judge, who knew nothing about defendant's case. Counsel explained he contacted the other judge because defendant called his supervisor and was babbling. He acknowledged, however, defendant had been calling his supervisor on an ongoing basis.

The court declined to suspend jury deliberations while the court considered the competency issue. After noting that following restoration of his competency defendant had been engaging in the same type of behavior throughout the proceedings, the court found defendant was simply being manipulative.

Defense counsel requested a mistrial, because defendant was incompetent earlier in the proceedings, which affected his entry of a plea. The prosecutor argued such retroactive assertion of incompetence was not appropriate. He noted although the case had been around for nearly two and a half years, no issue of defendant's competency had

been raised until three days before trial and further argued defendant was being manipulative rather than incompetent.

The court readopted its earlier findings that defendant had been acting the same way throughout the proceedings after his competency was restored and he cooperated if he got his way but became disruptive and acted out when he did not. The court further found that nothing in Dr. Hough's report shed light on any new behavior or circumstances. The court declined to declare a doubt as to defendant's competency at that point, denied the mistrial motion, and ruled the trial would proceed.

On September 16, 2014, a day after the jury's verdicts and findings, defendant refused to enter the courtroom. Defense counsel reported defendant had asked him if counsel had killed the psychologist, i.e., Dr. Hough, and expressed concern about defendant's competency. The court declined to declare a doubt but continued sentencing to afford the parties an opportunity to obtain further medical evaluation regarding defendant's competency.

On October 26, 2014, Dr. Tumu, the prosecution's appointed expert, submitted to the court his report in which he opined defendant was competent.

On October 30, 2014, defendant appeared in court with his counsel, who again moved to have him declared incompetent. In opposition, the prosecutor pointed out Dr. Tumu had found defendant exaggerated the symptoms of his mental illness for secondary gain and he was competent. The court found defendant was competent and denied the defense motion to declare a doubt as to his competency.

On November 6, 2014, although cleared medically and psychologically, defendant did not appear, and the court proceeded with sentencing.

3. *Applicable Legal Principles*

An accused is incompetent to stand trial if, due to "mental disorder or developmental disability," he 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).) The due process standard is "'whether [the accused] has sufficient present ability to consult with his lawyer with a reasonable degree of rational

understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" (*Dusky v. United States* (1960) 362 U.S. 402.)

Section 1368 sets forth the criteria for a competency hearing. "When the accused presents substantial evidence of incompetence, due process requires that the trial court conduct a full competency hearing." (*People v. Jones*, *supra*, 53 Cal.3d 1115, 1152.) "Evidence is 'substantial' if it raises a reasonable doubt about the defendant's competence to stand trial." (*Ibid.*) "When a competency hearing has already been held and the defendant has been found competent to stand trial, however, 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. [Citations.]" (*Id.* at p. 1153.) "Evidence that merely raises a suspicion that the defendant lacks present sanity or competence but does not disclose a present inability because of mental illness to participate rationally in the trial is not deemed 'substantial' evidence requiring a competence hearing." (*People v. Deere* (1985) 41 Cal.3d 353, 358, disapproved on a different point in *People v. Bloom* (1989) 48 Cal.3d 1194, 1228, fn. 9.) Further, "'more is required to raise a doubt [of competence] than . . . psychiatric testimony that defendant is immature, dangerous, psychopathic, or homicidal or such diagnosis with little reference to the defendant's ability to assist in his own defense [citation].'" (*Deere*, at p. 35.) "'[T]o be entitled to a competency hearing, "a defendant must exhibit more than bizarre . . . behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel. [Citations.]" [Citations.]'" (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 464-465 (*Sattiewhite*).)

In short, the litmus test is whether the defendant has the capacity to understand the nature of the proceedings and to assist his counsel in his defense in a rational manner. A trial court's ruling regarding a competency hearing is entitled to great deference because "'[a]n appellate court is in no position to appraise a defendant's conduct in the trial court as indicating insanity, a calculated attempt to feign [mental incompetence] and delay the proceedings, or sheer temper.'" (*People v. Danielson* (1992) 3 Cal.4th 691, 727,

overruled on a different point in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)

4. *Prerequisites to Second Competency Hearing Not Established*

Defendant fails to establish the prerequisites for a second competency hearing. A trial court's decision not to order a competency hearing is entitled to "great deference," *unless* the defendant demonstrates "'incompetence' that is 'substantial' as a matter of law." (*People v. Mai* (2013) 57 Cal.4th 986, 1033 (*Mai*); see also § 1369, subd. (f) [defendant's burden to demonstrate incompetence].) "[D]efense counsel must present expert opinion from a qualified and informed mental health expert, stating under oath and with particularity that the defendant is incompetent, or counsel must make some other substantial showing of incompetence that supplements and supports counsel's own opinion. Only then does the trial court have a nondiscretionary obligation to suspend proceedings and hold a competency trial." (*Sattiewhite*, *supra*, 59 Cal.4th at p. 465.)

Although a defendant's demeanor and irrational behavior may constitute substantial evidence of incompetence, "disruptive conduct and courtroom outbursts by the defendant do not necessarily demonstrate a present inability to understand the proceedings or assist in the defense." (*Mai*, *supra*, 57 Cal.4th at p. 1033.) "[T]he trial court is in the best position to observe the defendant during trial. [Citation.]" (*Ibid.*)[3]

In this instance, defendant has not met his burden to show his mental "'incompetence' . . . is 'substantial' as a matter of law." (*Mai*, 57 Cal.App.4th at p. 1033.) Substantial evidence in fact supports the trial court's findings that no substantial change of circumstances or new evidence was presented, which are the prerequisites for a second competency hearing.

When viewed in context, the issue of a second competency hearing was not properly before the court until September 3, 2014, when defense counsel expressed his

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[3] The trial judge in this case also presided over most of the trial proceedings in the original case after defendant's competency was restored and until that case was dismissed.

concern about defendant's mental competency in light of Dr. Hough's report. (*Sattiewhite*, *supra*, 59 Cal.4th at p. 465 [denial of motion to suspend proceedings not error where counsel requested hearing without offering substantial evidence of incompetence].)

Dr. Hough's report and her opinion that defendant was mentally incompetent were not conclusively binding on the trial court. They were based solely on her one-time encounter with defendant, and her report does not address the pivotal issues of changed circumstances and new evidence. The trial court therefore was entitled to give, and gave, no credence to Dr. Hough's report and opinion. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1047-1049 & fn. 25 [opinion defendant incompetent not substantial evidence when not credible]; *People v. Weaver* (2001) 26 Cal.4th 876, 953-954 [not substantial evidence where psychiatrist did not examine defendant and incompetency opinion based on observing defendant's in-court demeanor].)

Additionally, the trial court expressly found that, rather than a product of mental incompetency, defendant's bizarre behavior constituted a ploy and an attempt on defendant's part to manipulate the trial proceedings. These findings are amply supported by the court's personal observations of and interactions with defendant. The trial court also observed defendant had been consistently "ranting and raving" after his competency was restored. Defendant's participation during the trial reflected his understanding and use of legal concepts and procedures. He made multiple *Marsden* motions, a legal procedure through which a criminal defendant seeks to discharge his appointed counsel. He reminded the court no hearing had been held under *Romero*, a legal procedure to dismiss one or more alleged strikes under the Three Strikes law. He attempted to negotiate a favorable plea bargain by advising the court he would plead if he were hospitalized or received credit for time served.

Moreover, substantial evidence supports the trial court's findings that defendant was putting on "a show" when he refused to attend court, which refusal served to disrupt and delay the trial. His refusal to go to court ceased once the trial court announced it would no longer order him extracted from jail, which was costly and perilous, and he

could no longer put on "a show." Although no longer requiring a wheelchair, defendant also refused to attend court unless he had wheelchair accommodations. (*Mai, supra*, 57 Cal.4th at p. 1033 ["disruptive conduct and courtroom outbursts by the defendant do not necessarily demonstrate a present inability to understand the proceedings or assist in the defense"].)

The trial court's findings are further bolstered by Dr. Tumu's report and his opinion that defendant was competent. In contrast to Dr. Hough's report, Dr. Tumu's report reflected he took into account the history of defendant's behavior and the prior evaluations of his sanity and competency and provided a detailed analysis for his opinion. Dr. Tumu also noted Dr. Hough evaluated defendant in a setting where he could not be forcibly medicated, which could have led to the presentation of exacerbated symptoms.

Dr. Tumu pointed out that upon their meeting, defendant asked, "Are you from Department 95? Is this a competency evaluation?" "95" was "the San Fernando Mental Health Court." Defendant understood the concept of not guilty by reason of insanity, which he referred to by the acronym of "NGI." Further, defendant understood other legal concepts. He indicated that he was communicating with two attorneys whose practice concerned disability or patient law rights regarding his fractured ankle. He knew the names of the attorneys in this case and understood which one was prosecuting him and which was defending him. Further, he knew section 211 of the Penal Code as charging "robbery without a weapon" and that this was his original charge. He was able to express a rational reason for rejecting a plea deal, i.e., he would not receive credit for time served, and stated his understanding as to how such credit was calculated. Also, he recalled his prior criminal history and "all his previous forensic doctors and their conclusions."

Regarding defendant's bizarre behavior, Dr. Tumu explained that although he diagnosed defendant as mentally ill, he believed defendant was "embellishing his symptoms for secondary gain" and was "embellishing paranoia." Dr. Tumu concluded that defendant "was angling for mental health treatment," which was uncommon for those mentally ill. Further, he had "a rational understanding of the charges against him"; he "is able to rationally cooperate with his attorney"; and he "clearly understood the

purpose of [his] evaluation and how that can possibly impact his case." (*People v. Ramos* (2004) 34 Cal.4th 494, 508 [no competency hearing where mere preexisting psychiatric condition not bearing on defendant's ability to assist defense counsel].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA THURSDAY, NOVEMBER 6, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: P.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PEOPLE VERSUS PIGGEE. THIS IS YA089772.

MR. EWELL AND MR. TORO ARE BOTH HERE.

MR. PIGGEE IS NOT. MR. PIGGEE WAS A REFUSAL.

ACCORDING TO THE FAX SENT HERE THIS MORNING, OR 12:33, BY THE SHERIFF -- IT WAS DATED 11:00 O'CLOCK -- OR RATHER TIME 11:00 O'CLOCK THIS MORNING. IT SAYS REASON FOR REFUSAL, INMATE WAS MEDICALLY AND PSYCHOLOGICALLY CLEARED FOR COURT BUT REFUSING TO GO. WHEN INMATE PIGGEE WAS TOLD THAT T.S.T. TRANSPORT WAS HERE -- THAT'S THE SPECIAL TRANSPORT FOR DISABLED -- WAS HERE TO PICK HIM, HE STATED HE COULD NOT GO TO COURT TODAY

BECAUSE HE HAD TO PRAY.

HE WAS REFUSING TO COOPERATE WITH DEPUTIES AND MENTAL HEALTH STAFF.

OKAY. WE'LL PUT THAT IN THE FILE.

WE HAD PLANNED TO HOLD A SENTENCING HEARING DOWNSTAIRS IN THE TRANSPORTATION BAY WHEN THE T.S.T. BUS ARRIVED BECAUSE OF HIS LAST -- AFTER HIS LAST APPEARANCE ON OCTOBER 30, MR. PIGGEE, REPORTEDLY FROM THE SHERIFF -- I SAW SOME OF THE PICTURES OF IT -- DESTROYED -- ESSENTIALLY DESTROYED ONE OF THE CELLS BY WRITING WITH HIS FECES ON THE WALL MY NAME, ONE OF THE DEPUTIES' NAMES, AND THEN, I LOVE JESUS, AND HE SMASHED THE TOILET. HAZMAT HAD TO COME CLEAN IT UP. THE CELL IS NOT USABLE BECAUSE THERE IS I HEARD $5,000 WORTH OF DAMAGE TO IT. SO, IT'S NOT REPAIRED.

SO, I AGREED TO TAKE THE STAFF AND TAKE EVERYONE -- I THINK WE ALL TALKED ABOUT IT -- TO GO DOWN TO THE BAY SO WE DON'T HAVE TO UNLOAD HIM FROM THE BUS AND RISK ANYONE'S SAFETY OR RISK ANY FURTHER PROPERTY DAMAGE TO CONDUCT THIS HEARING.

BUT HE REFUSED TO COME TODAY. I TOLD HIM ON A NUMBER OF OCCASIONS PRIOR THAT I WOULDN'T ORDER HIM OUT BY FORCE ANYMORE BECAUSE OF THE ISSUE OF SAFETY TO DEPUTIES, THE SIZE OF THIS PARTICULAR INMATE, HIS PAST ACTING OUT, AND PHYSICAL AND VERBAL WAYS, AND SO THERE'S A LONG HISTORY IN THE RECORD.

HERE WE ARE FOR SENTENCING, AND THERE IS A MOTION FOR A NEW TRIAL AND A ROMERO MOTION, AND I ALSO

HAVE A SENTENCING MEMORANDUM FILED BY THE PEOPLE.

MR. EWELL.

MR. EWELL: YES, THANK YOU. I UNDERSTAND MR. PIGGEE --

THE COURT: FIRST OF ALL IS THAT ACCURATE? I WANT TO MAKE SURE THE SUMMARY IS ACCURATE.

MR. EWELL: THAT'S AN ACCURATE SUMMARY.

I WOULD JUST REQUEST HE BE BROUGHT HERE. I KNOW HE'S VERY PROBLEMATIC, BUT HE HAS A RIGHT TO BE HERE.

SUBMITTED.

THE COURT: OKAY. PEOPLE.

MR. TORO: I'LL SUBMIT ON THAT PART.

AND I DID FILE AN OPPOSITION FOR THE MOTION FOR NEW TRIAL.

I THINK THE COURT HAS GIVEN US BUT A SNIPPET OF THE HISTORY OF THIS CASE, AND I BELIEVE THE CASE THAT I CITED IN MY OPPOSITION, PEOPLE V HOWZE, H-O-W-Z-E, 2001, 85 CAL.APP. 4TH 1380 SHARES SOME OF THE FACTUAL SIMILARITIES TO OUR CASE, BUT BASICALLY QUOTING, "WE FIND A DEFENDANT WHO REFUSES TO COME TO COURT UNDER SUCH CIRCUMSTANCES IS ESTOPPED TO ASSERT THAT THE TRIAL COURT IMPROPERLY COMMENCED IN HIS ABSENCE." THAT'S EXACTLY WHAT WE HAVE HERE.

I THINK THE COURT ON NUMEROUS OCCASIONS HAS MADE A RECORD OF -- HAS ADMONISHED MR. PIGGEE WHEN HE HAS BEEN IN COURT, AND THE COURT AT SOME POINT TOLD HIM THE TRIAL WOULD START WITHOUT YOU. I'M NOT GOING TO HAVE YOU ORDERED EXTRACTED BECAUSE I'M NOT GOING TO PUT DEPUTIES'

SAFETY IN JEOPARDY.

SO, I BELIEVE THE COURT EXERCISED DISCRETION IN DOING SO, AND IT WAS APPROPRIATE TO DO SO.

AND I'LL SUBMIT ON THAT.

THE COURT: THE PRIOR ORDERS OF EXTRACTION -- I'M NOT SURE HOW MANY. THERE WERE NUMEROUS EXTRACTION ORDERS ISSUED FOR HIM, AND I'VE HAD A COUPLE OF DIFFERENT CONVERSATIONS WITH HIM TELLING HIM I WOULD NOT DO THAT AGAIN. IF HE DECIDED HE DIDN'T WANT TO COME, I WASN'T GOING TO HAVE HIM DRAGGED OUT OF THE CELL AND BROUGHT HERE EXPOSING ALL THESE PEOPLE TO POTENTIAL HARM.

SO, WITH RESPECT TO THE -- WELL, IT SEEMS LIKE WE ARE MOVING ON TO THE MOTION WITH RESPECT TO THAT.

THE MOTION FOR NEW TRIAL ANY RESPONSE TO THE HOWZE CASE? H-O-W-Z-E.

MR. EWELL: MR. PIGGEE, AS THE COURT IS WELL AWARE HAS A LONG HISTORY OF MENTAL ILLNESS. I BELIEVE THE MENTAL ILLNESS, PARANOIA, AND BIPOLAR DISORDER EXACERBATES HIS DECISION MAKING, AND NOT ONLY WAS HE NOT PRESENT, HE DIDN'T ASSIST COUNSEL AT ALL. I DON'T BELIEVE HE WAS COMPETENT DURING THE TRIAL.

I KNOW WE'VE ADDRESSED THAT ISSUE ALREADY, BUT I WAS ASK THAT THE COURT TO ALLOW MR. PIGGEE TO HAVE ANOTHER CHANCE AT TRIAL. HE WOULD ENTER AN N.G.I. PLEA. BECAUSE I THINK THAT WAS A COLORABLE DEFENSE, AND WITHOUT MR. PIGGEE BEING HERE OR PARTICIPATING IN HIS OWN TRIAL, HE DIDN'T HAVE A FAIR CHANCE TO DEFEND HIMSELF.

SUBMITTED.

THE COURT: OKAY. AGAIN, I THINK THE RECORD IS CLEAR HE HAD EVERY OPPORTUNITY TO BE HERE AND DID EVERYTHING IN HIS POWER NOT TO BE HERE. I CAN'T THINK OF ANYTHING ELSE A PERSON CAN DO OTHER THAN -- OTHER THAN -- ASIDE FROM WHAT HE DID. HE -- INCLUDING AFTER THE TRIAL. I MEAN, DESTROYING ONE OF OUR LOCKUPS, SMEARING FECES. I UNDERSTAND HE HAS SOME MENTAL HEALTH ISSUES. HE WAS CLEARED TO COME TO COURT, AND THE CIRCUMSTANCES DIDN'T CHANGE.

THAT CLEARANCE CAME FROM -- WAS THAT DONE HERE OR 95? I DON'T RECALL. IT'S BEEN A LONG TIME.

WAS HE CLEARED IN 95 OR HERE?

MR. EWELL: I THINK IT WAS PATTON WHO DECLARED HIM COMPETENT AGAIN.

MR. TORO: THAT WAS UNDER THE ORIGINAL FILING, AND THEN THERE WAS NO ISSUE EVER RAISED AGAIN REGARDING HIS COMPETENCY UNTIL JUST BEFORE THE START OF THE TRIAL UNDER THIS CASE NUMBER.

THE COURT: OKAY.

MR. EWELL: THAT'S CORRECT.

THE COURT: RIGHT.

SO, I THINK HOWZE -- IT SEEMED TO BE RIGHT ON POINT THAT IF THE COURT DOES EVERYTHING IT CAN TO MAKE SURE A PERSON IS IN COURT, INCLUDING DRAGGING HIM OUT A NUMBER OF TIMES AGAINST HIS WILL AND THEN TELLING HIM I'M NOT GOING TO DRAG YOU OUT OF THE CELL ANYMORE FROM DOWNTOWN. I JUST WON'T DO THAT. DO YOU UNDERSTAND. HE UNDERSTOOD. HE -- AT LEAST I -- I MADE A FINDING HE

UNDERSTOOD, AND WE EVEN WENT INTO LOCKUP ON A DIFFERENT FLOOR BECAUSE ONCE HE WAS HERE, HE REFUSED TO COME OUT. SO, WE TOOK THE ENTIRE COURT STAFF AND COUNSEL DOWN TO LOCKUP AND HELD THAT HEARING AND INFORMED HIM OF WHAT THE FUTURE PLANS WERE.

SO, I THINK HE WAS AFFORDED EVERY OPPORTUNITY TO BE HERE. EVEN FOR SENTENCING, AFTER -- I MEAN, AFTER -- WELL, AT THE LAST HEARING PRIOR TO TODAY, HE WAS TOLD WHAT DAY THIS WAS GOING TO HAPPEN, AND HE PROCEEDED TO TAKE VENGEANCE ON ONE OF THE CELLS. BUT I THINK WE'VE PAID -- WE'VE PAID ALL THE PRICE WE CAN TO TRY TO GET HIM HERE AND HAVE HIM BE A PART OF THIS.

SO, THE MOTION FOR THE NEW TRIAL IS DENIED.

WE DO HAVE A ROMERO MOTION. I READ AND CONSIDERED THAT.

ANYTHING TO SAY ABOUT IT?

MR. EWELL: JUST THAT HIS PRIOR STRIKE IS FROM -- PRIOR STRIKES ARE FROM 1997. THEY ARISE OUT OF ONE CASE, ONE COURSE OF CONDUCT. I WOULD ASK THE COURT TO CONSIDER STRIKING ONE OF THOSE STRIKES IN THE INTEREST OF JUSTICE.

SUBMITTED.

MR. TORO: I WOULD JUST ADD IT WAS ONE CASE BACK IN, I BELIEVE, THE ARREST WAS IN '96. HOWEVER, THERE WERE TWO VICTIMS. THERE WAS A ROBBERY OF ONE VICTIM, AND A 245(A)(2) OF A SECOND VICTIM WHO WAS STANDING NEXT TO THE ROBBERY VICTIM. AND ACCORDING TO THE PROBATION REPORT, IF YOU LOOK AT THE ADULT HISTORY, HE REALLY HAS BEEN IN

CUSTODY FOR THE MOST PART IN FOR MOST OF THAT TIME PERIOD BETWEEN THAT CONVICTION AND THE OCCURRENCE IN OUR CASE WHICH WAS IN 2012.

SO, I DON'T BELIEVE THE ROMERO SHOULD BE GRANTED. I WILL SUBMIT ON THAT.

THE COURT: OKAY.

AND GIVEN THE NATURE OF THE CURRENT OFFENSE WHICH IS ANOTHER VIOLENT OFFENSE WHERE HE -- THE JURY HAS FOUND HE ROBBED A JANITOR AT A CASINO, DRAGGING HIM INTO A BATHROOM AT THE CASINO AND USING A SCREWDRIVER AND OTHER VIOLENCE TO TAKE HIS WALLET AND THREATEN THE MAN'S LIFE. SO, I DON'T SEE A REASONABLE GROUNDS TO GRANT A ROMERO MOTION. SO THAT MOTION IS DENIED.

OKAY. SO, WE'RE HERE FOR SENTENCING NOW.

MR. EWELL: YES.

THE COURT: OKAY.

MR. TORO: HIS EXPOSURE IS BECAUSE OF THE PRIOR STRIKES IS 25 TO LIFE. ADDITIONALLY THE JURY FOUND THE 667(A) PRIOR TO BE TRUE. SO THAT'S A MANDATORY FIVE YEARS.

THERE WAS ALSO -- THE JURY FOUND THAT HE PERSONALLY USED A DEADLY WEAPON, TO WIT, A SCREWDRIVER DURING THE COMMISSION OF SAID ROBBERY. SO, THAT TAKES US TO 31. AND THE PEOPLE PROVED UP A ONE-YEAR PRIOR. I BELIEVE IT WAS A 487(C), GRAND THEFT PERSON, FROM 2006.

THE COURT: OKAY.

MR. TORO: SO HIS MAXIMUM EXPOSURE IS 32 TO LIFE.

AND I WILL SUBMIT TO THE COURT'S DISCRETION AS TO WHAT IT WANTS TO DO BEYOND THE 31 TO LIFE WHICH IS MANDATORY, I BELIEVE.

THE COURT: SO, YOU MEAN ON THE ONE YEAR?

MR. TORO: THE ONE-YEAR PRIOR. I DON'T KNOW, CAN THE COURT STAY THE ONE-YEAR WEAPON ENHANCEMENT. I DON'T KNOW IF IT CAN.

THE COURT: I DON'T THINK THERE IS A REASON TO UNLESS THERE IS A REASON.

MR. EWELL: I AGREE WITH MR. TORO REGARDING THE -- IF THE COURT IMPOSES THE 25 TO LIFE, I THINK IT HAS IS TO IMPOSE THE FIVE YEARS CONSECUTIVE.

I BELIEVE THE COURT CAN EITHER STAY OR RUN THE ONE-YEAR WEAPONS ENHANCEMENT AND THE ONE-YEAR PRISON PRIOR -- I BELIEVE THOSE CAN BE EITHER RUN CONCURRENT OR STAYED. I THINK THE COURT HAS DISCRETION TO DO THAT.

THE COURT: THE QUESTION IS WHY WOULD THE COURT DO THAT GIVEN HIS CONDUCT?

MR. EWELL: HE'S ALREADY GOING TO BE DOING 30 TO LIFE AT LEAST, AND I THINK THAT'S ENOUGH TIME GIVEN THE NATURE OF THE CURRENT OFFENSE AND GIVEN MR. PIGGEE'S MENTAL HEALTH ISSUES.

THE COURT: OKAY. THEN SUBMITTED?

MR. EWELL: SUBMITTED.

MR. TORO: SUBMITTED.

THE COURT: DEFENDANT IS SENTENCED TO 32 YEARS TO LIFE. 25 TO LIFE WITH HIS PRIOR STRIKES IN THE CURRENT CASE, FIVE YEARS CONSEC. THAT'S 30 TO LIFE PLUS ONE YEAR

FOR THE SCREWDRIVER AND ONE YEAR FOR THE ONE-YEAR PRIOR. IT'S 32 TO LIFE.

WITH CREDIT?

MR. EWELL: THANK YOU.

YOUR HONOR, BEFORE WE GET TO THAT, I THINK -- I KNOW EVERYONE ALWAYS SAYS 32 TO LIFE. I THINK THE WAY IT ACTUALLY SHOULD BE IS SEVEN YEARS AND THEN PLUS 25 TO LIFE. I THINK IS THE TECHNICAL WAY.

THE COURT: RIGHT. AND I THINK YOU ARE RIGHT. SO, SEVEN YEARS PLUS 25 TO LIFE.

MR. EWELL: THANK YOU.

HIS CREDITS BY MY CALCULATIONS ARE 976 ACTUAL, AND I BELIEVE HE ONLY GETS 15-PERCENT GOOD-TIME/WORK-TIME. SO, THAT'S AN ADDITIONAL 147 FOR A TOTAL OF 1,123 DAYS.

THE COURT: 1,123 DAYS.

IT'S 976 PLUS 147 FOR 1,125 DAYS. I HAVE 125.

OH, ROUNDED DOWN. IT'S 1,122 DAYS.

MR. EWELL: OKAY. I THOUGHT 123, BUT ....

THE COURT: YEAH. IT'S .4. SO IT ROUNDS DOWN TO THE 22. 1,122.

OKAY. $300 -- ACTUALLY THIS IS FROM 2012.

$280 RESTITUTION.

$280 PAROLE REVOCATION, STAYED.

A $40 SECURITY FEE DOUBLED FOR THE TWO COUNTS --

THE CLERK: IT IS, YOUR HONOR.

THE COURT: -- FOR $80.

$30 CRIMINAL CONVICTION ASSESSMENT DOUBLED FOR $60.

$10 CRIME PREVENTION FUND FINE.

296 FOR DNA IS ORDERED.

AND HIS VICTIM RESTITUTION?

MR. TORO: WELL, I KNOW THERE WAS DAMAGE AT THE CASINO. HOWEVER, I'VE NOT RECEIVED A FIGURE. I WOULD ASK THE COURT TO RETAIN JURISDICTION. I KNOW IT'S COMPLICATED BECAUSE HE'S NOT HERE TO WAIVE HIS PRESENCE, BUT IF I RECEIVE ANYTHING, I'LL DISCUSS IT WITH MR. EWELL, AND ASK THE COURT TO CALENDAR IT.

THE COURT: OKAY. THAT'S FINE. HE'S NOT HERE TO WAIVE HIS PRESENCE. SO, WE CAN'T TAKE THAT. SO, WE MAY HAVE TO ORDER HIM BACK OUT IF THAT BECOMES AN ISSUE.

OKAY. SO, THAT WILL BE -- WE'LL RETAIN JURISDICTION FOR THAT.

HE'S REMANDED TO BE TRANSPORTED FORTHWITH TO THE DEPARTMENT OF CORRECTIONS TO SERVE OUT HIS TERM.

MR. TORO: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

MR. EWELL: DOES THE COURT WANT TO SAY ANYTHING ABOUT HIS APPEAL RIGHTS?

THE COURT: OH, WELL, SINCE HE'S NOT HERE, HE MAY READ THIS RECORD.

HE DOES HAVE A RIGHT TO APPEAL. IF HE CANNOT AFFORD HIS OWN COUNSEL, HE CAN ASK THE APPELLATE COURT TO ASSIGN ONE TO HIM FREE OF CHARGE.

HE HAS A RIGHT TO FILE AN APPEAL WITHIN 60 CASE OF TODAY. HE HAS A RIGHT TO A FREE TRANSCRIPT OF THE RECORD OF ALL NECESSARY PROCEEDINGS IN THIS COURT.

WRITTEN NOTICE OF APPEAL MUST BE TIMELY FILED.

MR. EWELL, ARE YOU GOING TO BE IN CONTACT WITH HIM?

MR. EWELL: I HAVE TRIED. HE MAY CALL ME. I TRIED TO SET UP VIDEO CONFERENCES WITH HIM, BUT THEY DON'T DO IT BECAUSE OF WHERE HE'S HOUSED.

THE COURT: SO, I'M GOING TO ASK THAT THE --

CAN WE SEND HIM MINUTES TO THE JAIL SO HE HAS NOTICE OF THIS?

THE BAILIFF: COUNTY MAIL.

THE COURT: THE CLERK WILL MAIL THIS TO HIM IN CUSTODY SO HE HAS A -- HE KNOWS OF HIS APPELLATE RIGHTS. IT'S THE APPELLATE RIGHT ISSUE.

MR. EWELL: I DON'T HAVE THE FORM WITH ME, BUT I ANTICIPATE I'LL DO THAT ON HIS BEHALF ANYWAY.

THE COURT: I THINK THAT MIGHT HELP CURE ANY ISSUES SO HE DOESN'T MISS THE DEADLINE.

MR. EWELL: OKAY. THANK YOU.

THE CLERK: WHAT AM I MAILING?

THE COURT: COPY OF THESE MINUTES, AND IT SHOULD INCLUDE HE HAS A RIGHT TO FILE AN APPEAL, A RIGHT TO FREE COUNSEL FOR THE APPEAL IF HE CAN'T AFFORD IT, A RIGHT TO A FREE TRANSCRIPT AND RECORD OF NECESSARY PROCEEDINGS, AND THE NOTICE OF APPEAL HAS TO BE TIMELY FILED, AND MR. EWELL

INTENDS TO FILE THAT WITHIN 24 HOURS.

MR. EWELL: YES.

THE COURT: OKAY.

MR. EWELL: THANK YOU.

(PROCEEDINGS CONCLUDED)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA THURSDAY, OCTOBER 30, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PEOPLE VERSUS PIGGEE.

THE DEFENDANT: I BELIEVE IN JESUS. IS MY FAMILY HERE?

THE COURT: OKAY. MR. PIGGEE IS HERE STANDING IN THE CUSTODY DOOR WITH MR. EWELL. MR. TORO IS ALSO HERE.

IT'S ON FOR FURTHER PROCEEDINGS TODAY WITH A SENTENCING DATE OF NOVEMBER 4.

THE DEFENDANT: OKAY. WAIT.

THE COURT: OKAY. MR. EWELL.

MR. EWELL: THANK YOU, YOUR HONOR.

AT THIS TIME I'M RENEWING MY MOTION TO HAVE MR. PIGGEE BE FOUND NOT COMPETENT BY THE COURT. THE COURT

HAS DR. HOUGH'S REPORT. I WOULD SUBMIT ON DR. HOUGH'S REPORT WHERE SHE STATES IN HER OPINION SHE JUST EVALUATED HIM ABOUT A MONTH AGO THAT HE'S NOT COMPETENT.

I WOULD ASK PROCEEDING BE SUSPENDED.

THE COURT: PEOPLE.

MR. TORO: YOUR HONOR, I THINK PREVIOUSLY THIS COURT RULED THAT GIVEN THE FACT THAT MR. PIGGEE WAS A SECOND-BITE-AT-THE-APPLE, PURSUANT TO 1368 DID NOT FIND THAT THERE WAS A CHANGE OF CIRCUMSTANCES. YOU DID NOT FIND THAT THERE WAS, IN FACT, A DOUBT EITHER BEFORE TRIAL OR AT THE TIME THE JURY WENT TO DELIBERATE -- INTO DELIBERATIONS. IT WAS AFTER THAT THAT THE DEFENSE PRODUCED A REPORT FROM DR. HOUGH INDICATING THAT IN HER OPINION HE WAS NOT COMPETENT.

WE PUT IT OVER TO TODAY'S DATE BECAUSE I BELIEVE THE COURT WANTED TO MAKE SURE THAT IT WAS CORRECT IN ITS RULING.

THE DEFENDANT: I BELIEVE IN JESUS.

MR. TORO: IT WAS AT THAT TIME THAT DR. TUMU WAS APPOINTED BY THIS COURT. DR. TUMU HAS SUBMITTED A REPORT, AND BASICALLY TO SUMMARIZE IT, HE BELIEVES THAT MR. PIGGEE EXAGGERATES HIS SYMPTOMS FOR SECONDARY GAIN, AND MORE IMPORTANTLY DR. TUMU OPINED THAT MR. PIGGEE IS, IN FACT, COMPETENT OR WAS AT THE TIME HE EVALUATED HIM.

BASED ON THAT, WE BELIEVE THAT THE COURT EXERCISED ITS DISCRETION APPROPRIATELY IN DENYING --

THE COURT: WAIT. WAIT. THE ELEVATOR --

THE DEFENDANT: I CAN'T HEAR. CAN I STEP IN

HERE? IT'S VERY IMPORTANT -- WHATEVER HAPPENS IS VERY IMPORTANT TO ME HERE AT LEAST, SIR.

WHAT HAPPENED WAS THOSE PEOPLE DID COME. SARA HOUGH CAME, AND TUMU CAME --

THE COURT: WAIT. I'LL LET MR. TORO FINISH.

THE DEFENDANT: OKAY. JAMES TORO. KALAMICE PIGGEE. MY MOM IS KIM PIGGEE --

THE COURT: WE DON'T HAVE YOU IN THE COURTROOM, BUT IF YOU --

THE DEFENDANT: I WON'T --

THE COURT: IF YOU KEEP DOING THAT --

THE DEFENDANT: IF YOU LET ME IN, I PROMISE I WON'T SAY NOTHING.

THE COURT: YOU TALK ABOUT PEOPLE PUNCHING YOU -- I CAN'T DO THAT. WE'LL TRY TO MAKE SURE WE TALK UP FOR YOU. OKAY.

THE DEFENDANT: OKAY. THANK YOU, JUDGE ERIC C. TAYLOR.

MR. TORO: SO, I BELIEVE THE COURT HAS AN ADDITIONAL BASIS FOR FINDING THAT THERE HAS BEEN NO CHANGE OF CIRCUMSTANCES, AND THAT THE DEFENDANT SHOULD NOT HAVE BEEN DEEMED INCOMPETENT JUST BEFORE THIS TRIAL BEGAN, DURING, OR AFTER.

AND I'LL SUBMIT ON THAT.

THE COURT: ANYTHING ELSE?

MR. EWELL: I WOULD ADD EVEN DR. TUMU OPINED THAT MR. PIGGEE SUFFERED FROM MAJOR MENTAL HEALTH ISSUES.

THE DEFENDANT: I'M --
MR. TORO: SUBMITTED.
THE COURT: RIGHT. BUT ALSO FINDS HE WAS COMPETENT.
THE COURT STILL FINDS THE SAME. SO, THAT MOTION IS DENIED. WE'LL PUT IT OVER --
THE DEFENDANT: WHAT -- I DON'T KNOW WHAT IS GOING ON.
THE COURT: YOU WANT TO HAVE THE MOTION FOR NEW TRIAL HEARD ON THE --
MR. EWELL: YES, PLEASE.
THE COURT: WANT TO MAKE THAT THE 6TH NOW?
MR. EWELL: YES, PLEASE.
THE COURT: OKAY. MR. PIGGEE, YOU DO HAVE A RIGHT TO A SPEEDY SENTENCING TO OCCUR WITHIN 20 DAYS OF CONVICTION. YOU'RE WAIVING THAT RIGHT TO HAVE THIS MATTER SET --
THE DEFENDANT: DOES -- CAN I ASK YOU A QUESTION PLEASE. QUESTION --
THE COURT: ARE YOU WAIVING THAT TO HAVE THIS MATTER SET FOR SENTENCING ON NOVEMBER 6?
THE DEFENDANT: FOR HOW FAST CAN I HAVE A RECOMMENDATION? CAN I GET A RECOMMENDATION? WHERE'S CHERYL CLARK? CAN I HAVE A RECOMMENDATION FROM YOU?
THE COURT: YOUR ATTORNEY WANTS THE COURT TO HEAR A MOTION FOR A NEW TRIAL.
THE DEFENDANT: FOR A NEW TRIAL.
THE COURT: AND HE WANTS TO HAVE IT HEARD ON

THE SENTENCING DATE.

THE DEFENDANT: WHAT'S THE PLUS AND MINUS OF THE SITUATION?

THE COURT: YOU CAN TALK TO YOUR ATTORNEY.

THE DEFENDANT: OKAY. WHAT IS THE PLUS AND MINUSES?

(DEFENDANT CONFERS WITH HIS COUNSEL SOTTO VOCE OFF THE RECORD)

THE COURT: HE'S TALKING WITH COUNSEL.

(DEFENDANT CONFERS WITH HIS COUNSEL SOTTO VOCE OFF THE RECORD)

THE COURT: WELL, THIS WILL GIVE YOU TIME TO TALK TO YOUR COUNSEL ABOUT EVERYTHING. WOULD YOU LIKE TO PUT THIS OVER TO NOVEMBER 6?

THE DEFENDANT: WHAT IS TODAY'S DATE?

THE COURT: THE 30TH.

MR. EWELL: 30TH OF OCTOBER.

THE DEFENDANT: BASED ON A WHOLE CHANCE TO GET OUT OF JAIL, YES.

SOMETHING IS TERRIBLY WRONG HERE. I'M INNOCENT. I DID NOT COMMIT A CRIME. I HAVE BEEN IN SINCE MARCH 12, 2012, ERIC C. TAYLOR.

THE COURT: WOULD YOU LIKE THE TIME TO TALK TO YOUR COUNSEL ABOUT THIS MOTION?

THE DEFENDANT: HUH. CAN I USE THE PHONE? SINCE I'M IN COUNTY, I CAN'T USE THE PHONE. CAN I TALK TO HIM OUT RIGHT NOW OUTSIDE THIS PLACE?

THE COURT: HE'S WILLING TO TALK TO YOU.

THE DEFENDANT: SOMETIMES THE DEPUTIES WANT TO RUSH ME BACK.

THE COURT: I THINK HE'S COMING TO WHERE YOU ARE.

MR. EWELL: I'LL GO TO THE SECOND FLOOR.

THE DEFENDANT: FOR A WHOLE NEW TRIAL, OCTOBER 6?

THE COURT: IT'S A MOTION FOR A NEW TRIAL. YOUR ATTORNEY WANTS TO ARGUE THAT.

THE DEFENDANT: THE LAST TRIAL, WHAT DID YOU DECIDE?

THE COURT: YOU CAN TALK TO HIM ABOUT THAT TOO.

THE DEFENDANT: SEE. THEY LIE TO ME SO MUCH. I'M GOING TO CALL MY FAMILY.

I SEE FAMILY. THAT LOOKS LIKE BILLY. SOMEBODY FROM MY FAMILY IS HERE.

KALAMICE KESON PIGGEE. WHAT IS SAID -- NOW, WHAT? I TRUST YOU ERIC C. TAYLOR. I WILL WAIT JUST TO SEE WHAT HAPPENS. YES.

THE COURT: OKAY. DO YOU WAIVE YOUR RIGHT TO A SENTENCING TODAY AND --

THE DEFENDANT: JAMES TORO OFFERED ME FIVE YEARS ONE TIME. ETHNA BURNS -- IS THE DEAL STILL ON THE TABLE?

MR. TORO: NO.

THE DEFENDANT: I'LL WAIT. I'LL WAIT. HE OFFERED --

THE COURT: NOVEMBER 6 IS OKAY FOR YOU?

THE DEFENDANT: TO WAIT FOR EVERYTHING?

THE COURT: EXACTLY.

THE DEFENDANT: YES. FOR A NEW TRIAL. I DON'T KNOW WHAT'S GOING ON.

THE COURT: COUNSEL JOIN?

MR. EWELL: YES, THANK YOU.

THE COURT: OKAY. WAIVER IS TAKEN.

NOVEMBER 6.

(WHEREUPON AN ADJOURNMENT WAS TAKEN UNTIL THURSDAY, NOVEMBER 6, 2014, AT 9:00 A.M.)

(NEXT PAGE NUMBER IS 1801)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA TUESDAY, SEPTEMBER 16, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: ALL RIGHT. PEOPLE VERSUS PIGGEE.

MR. PIGGEE WAS ORDERED TO THE BUILDING. I ISSUED AN EXTRACTION ORDER. HE IS HERE IN THE BUILDING NOW. HE COOPERATED, BUT NOW HE REFUSES ONCE AGAIN TO COME INTO THE COURTROOM.

A FEW WEEKS AGO WE WENT TO LOCKUP TO TALK WITH HIM. I DON'T INTEND TO DO THAT AGAIN. SO, WOULD YOU LIKE TO GO TALK TO HIM, OR HAVE YOU TRIED TO SEE IF HE'LL COME DOWN?

MR. EWELL: I DID, YOUR HONOR. I WENT AND SPOKE WITH HIM. THE FIRST THING HE ASKED ME WAS DID I KILL SARA HOUGH WHO IS THE PSYCHOLOGIST ON THE CASE. THEN HE TOLD ME THAT HE, MR. PIGGEE, HAD WITCHES ON HIS FEET.

HE ASKED ME ABOUT THE QUESTIONS. HE ASKED IF I HAD A COPY OF THE POLICE REPORT.

AGAIN I'M EXPECTING -- I HAVE CONCERNS AS TO HIS COMPETENCY AT THIS TIME.

THE COURT: OKAY. SO, WELL, WE HAVE TO SET A SENTENCING DATE. HE WON'T COME OUT. I DON'T KNOW IF I WANT TO PUT MY OFFICERS AT RISK DRAGGING HIM OUT HERE. HE'S A RELATIVELY BIG GUY.

SO, I CAN FIND GOOD CAUSE TO PUT SENTENCING OVER PENDING -- I'M NOT SURE IF THE D.A. WANTS TO GET A REPORT DONE TOO OR PRESENT ANYTHING ELSE?

MR. TORO: WELL, I THINK THIS COURT MADE A VERY GOOD RECORD AS TO THE HISTORY OF THE CASE, MR. PIGGEE, THE FACT THAT HE MANIPULATES THE SYSTEM, THE FACT HE ACTS OUT WHEN HE DOESN'T GET EXACTLY WHAT HE WANTS. I KNOW THE DEFENSE ATTEMPTED TO GET THE -- DECLARE A DOUBT BEFORE THE TRIAL, AND THIS COURT FOUND NO CHANGE IN CIRCUMSTANCES.

I WANT TO CLARIFY THAT ONCE THE COURT HAD DR. HOUGH'S REPORT AND THAT WAS NOT UNTIL OUR JURY WAS ALREADY DELIBERATING, I DON'T KNOW IF THE COURT SPECIFICALLY MADE A FINDING THAT THERE WAS NO CHANGE OF -- SUBSTANTIAL CHANGE OF CIRCUMSTANCES. I HAD EXPRESSED THAT IF THE COURT WAS UNCERTAIN AND WANTED US TO GET AN EXPERT TO LOOK AT HIM, THAT IF THE COURT FELT THAT WAS USEFUL, WE WERE WILLING TO DO THAT. BUT THE POSITION THAT WE'RE IN IS THAT HE'S COOPERATIVE WITH DR. HOUGH, YET WHEN HE HAS TO COME TO COURT, HE REFUSES TO DO SO. AND I DON'T KNOW IF APPOINTING AN EXPERT -- BECAUSE THIS CAN'T BE

COMPELLED, BECAUSE THIS PROCEEDINGS HAVE NOT BEEN STAYED. IT'S NOT 1368. SO, HE WOULD HAVE TO AGREE TO SPEAK WITH WHATEVER EXPERT HE SPOKE. I DON'T KNOW IF IT'S GOING TO BE FRUITFUL GIVEN HIS CONDUCT.

SO, I'LL LEAVE IT UP TO THE COURT.

THE COURT: OKAY. ALL RIGHT. SO, THERE'S A CONVICTION. WE HAVE SENTENCING UP NEXT. THE DEFENSE IS ASKING THAT HE BE FOUND AGAIN INCOMPETENT.

OFF THE RECORD FOR A MINUTE.

(DISCUSSION WAS HELD OFF THE RECORD)

THE COURT: ON THE RECORD.

I HAD A CONVERSATION WITH COUNSEL OFF THE RECORD. WE WERE TRYING TO FIGURE OUT WHAT THE BEST WAY WOULD BE TO PROCEED AT THIS POINT GIVEN THE VERDICT OF THE JURY.

MR. EWELL STILL HAS CONCERNS ABOUT MR. PIGGEE'S COMPETENCY. MR. PIGGEE IS HERE AT COURT IN THE BUILDING. HE AGREED TO COME TO THE BUILDING, BUT NOW HE IS NOT AGREEING ONCE AGAIN TO COME FROM THE FIFTH FLOOR DOWN TO THE THIRD WHERE WE ARE AND COME OUT TO THE COURTROOM. I WILL NOT ISSUE AN EXTRACTION ORDER BECAUSE OF THE LIMITED NUMBER OF DEPUTIES THAT WE HAVE HERE, THE RISK TO THE DEPUTIES, MR. PIGGEE'S SIZE, AND SOME OF HIS OUTBURSTS THROUGHOUT THE LAST COUPLE YEARS.

SO, SINCE ALL WE HAVE LEFT IS SENTENCING IN THIS, I'LL FIND GOOD CAUSE TO PUT SENTENCING OVER BEYOND

THE 20 DAYS TO AROUND THE 45 DATE WHICH WOULD BE -- WE'LL SAY BEGINNING OF NOVEMBER. NOVEMBER 4.

IN THE MEANTIME THAT WILL GIVE US TIME TO ENTERTAIN MR. EWELL'S CONCERN ABOUT MR. PIGGEE'S COMPETENCY ONCE AGAIN, AND ALSO SOLICIT INPUT FROM THE PEOPLE IF THEY WOULD LIKE TO THROUGH THEIR OWN DOCTOR, IF MR. PIGGEE WILL COOPERATE WITH ANOTHER DOCTOR, TO SEE WHETHER OR NOT THERE'S ANYTHING CHANGED IN HIS MENTAL STATE OF RECENT THAT'S DIFFERENT FROM ALL OF THE PREVIOUS MENTAL ISSUES THAT WE'VE LITIGATED AD NAUSEAM AT THIS POINT.

SINCE WE'RE JUST AT THE SENTENCING STAGE, I DON'T REALLY KNOW IF -- I'M NOT GOING TO DECLARE A DOUBT. WE'VE GONE OVER THAT SO MUCH ALREADY, BUT I'M GOING TO OFFER TIME TO GET FURTHER INPUT BEFORE WE PROCEED WITH THE SENTENCING BECAUSE -- IF COMPETENCY STILL IS AN ISSUE EVEN AT THE TIME OF SENTENCING, I THINK THAT'S THE BEST PLAN.

WHAT DO YOU BOTH THINK?

MR. TORO: THAT'S FINE.

IS THE COURT GOING TO BE APPOINTING A DOCTOR OF OUR CHOICE, OR ARE THE PEOPLE MAKING THAT REQUEST AND PAYING THE EXPERT THEMSELVES?

THE COURT: THE PEOPLE CAN IF YOU WANT.

I ALSO WAS GOING TO ALLOW MR. EWELL TO LOOK INTO THE ISSUE FURTHER IF YOU WANT TO HAVE A FURTHER REPORT DONE.

MR. TORO: BY THE SAME DOCTOR?

THE COURT: I'LL LISTEN TO WHATEVER YOU ALL WANT

TO OFFER ME.

YOU KNOW, THIS IS A UNIQUE SITUATION IN THAT WE'VE ALREADY LITIGATED THIS A LOT, AND -- AND HE WAS SENT OUT, RESTORED, AND I DON'T THINK ANYTHING HAS CHANGED. OTHER COURTS HAVE LOOKED AT THIS TOO WITH MR. PIGGEE. HE'S USED A MEDICAL EXCUSE FOR A LONG TIME. HE'S BEEN MEDICALLY CLEARED. THEY CLEARED HIM MENTALLY TO COME BACK TO COURT FROM THE JAIL, BUT YET HE STILL COMPORTS HIMSELF IN A CERTAIN WAY. I'M NOT SURE IF THIS CONTINUES TO BE MANIPULATIVE BEHAVIOR I'VE SEEN THROUGHOUT THIS CASE OR IF IT IS SOMETHING ELSE, BUT IN AN ABUNDANCE OF CAUTION AND IN THE INTEREST OF JUSTICE, I THINK IT'S BEST TO PROCEED THIS WAY. AT LEAST HERE, MR. EWELL, SINCE THERE'S REALLY NOTHING FOR US TO LOSE AT THIS POINT EXCEPT A DELAY IN SENTENCING. MR. PIGGEE IS IN LOCKUP SO HE'S NOT A DANGER TO THE PUBLIC. SO, IF YOU WOULD LIKE TO HAVE SOMEBODY EXAMINE HIM, I WELCOME YOU TO IF THE PEOPLE WOULD LIKE.

MR. TORO: I WOULD, AND I THINK AT THIS TIME I WOULD ASK DR. SAHGAL TO BE APPOINTED.

THE COURT: HE'S APPOINTED.

MR. TORO: I THINK IT'S A UNIQUE SITUATION BECAUSE IT'S NOT REALLY A 1368. SO IT'S COMPLETELY VOLUNTARY.

THE COURT: IT IS.

MR. TORO: AND --

THE COURT: PERHAPS MR. EWELL COULD TELL HIM THAT DR. SAHGAL IS ASKING HIM IF HE WOULD LET HIM

INTERVIEW HIM.

MR. EWELL: I'VE TRIED SPEAKING WITH MR. PIGGEE, YOUR HONOR. I TRIED TO GET HIM TO COME DOWN HERE TO COURT TODAY. HE WON'T LISTEN TO ME.

THE COURT: BUT HE DID ALLOW THE OTHER DOCTOR TO INTERVIEW HIM AND PRODUCE THAT REPORT OVER THE WEEKEND. WAS SOMETHING SPECIAL SAID TO HIM FOR THAT TO HAPPEN?

MR. EWELL: I DON'T KNOW. I WASN'T THERE, YOUR HONOR. BUT MR. PIGGEE DID ASK ME TODAY IF I KILLED HER, AND HE ASKED ME WHAT SHE WANTS HIM TO DO. I DON'T KNOW IF HE UNDERSTANDS WHAT WAS GOING ON WITH DR. HOUGH.

THE COURT: OKAY. WELL, MAYBE YOU CAN LET -- I'M NOT SURE WHAT YOU CAN TELL HIM. I DON'T WANT TO GET IN THE MIDDLE OF IT, BUT I'VE READ THE REPORT. IT LOOKS LIKE, YOU KNOW, SAME TYPE OF BEHAVIOR WE'VE ALREADY SEEN, AND HE'S BEEN CLEARED ON. SO, WE'LL SEE WHAT WE HAVE WHEN THE TIME COMES.

SO, SENTENCING WILL BE PUT OFF UNTIL NOVEMBER 4, AND WE'LL COME BACK AGAIN ON OCTOBER 30 TO SEE WHAT THE REPORTS SAY.

MR. PIGGEE IS ORDERED OUT BUT NOT BY FORCE FOR THE NEXT DATE.

MR. TORO: THANK YOU, YOUR HONOR.

MR. EWELL: OKAY.

THE COURT: OCTOBER 6 IS VACATED.

THANK YOU.

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA MONDAY, SEPTEMBER 15, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PIGGEE NUMBER, 10, TRIAL MATTER, 89772.

OKAY. THE JURY IS DELIBERATING.

MR. EWELL.

MR. EWELL: YES, YOUR HONOR. MY FIRST REQUEST WOULD BE FOR THE COURT TO SUSPEND PROCEEDINGS AT THIS POINT. THE COURT WAS DARK HERE THURSDAY AND FRIDAY. I ASKED THE COURT TO APPOINT AN EXPERT TO EVALUATE MR. PIGGEE FOR COMPETENCY. THE EXPERT WENT AND EVALUATED HIM ON FRIDAY AND CAME BACK. THE COURT NOW HAS THE REPORT IN FRONT OF THE COURT AS WELL AS THE PROSECUTOR.

THE REPORT FINDS IN THE OPINION OF THE DOCTOR THAT MR. PIGGEE IS NOT COMPETENT. SO, I'M ASKING

THE COURT TO SUSPEND PROCEEDINGS. AT THIS POINT I'M ASKING THE COURT TO DECLARE A DOUBT AS TO HIS COMPETENCY.

THE COURT: PEOPLE.

MR. TORO: YOUR HONOR, I BELIEVE IT WAS ON SEPTEMBER THE 4TH THAT MR. EWELL -- OR THEREABOUTS MR. EWELL TRIED TO DECLARE A DOUBT, AND WE HAD A HEARING BEFORE THIS COURT, AND THE COURT AGREED THAT THERE WAS NO SHOWING OF CIRCUMSTANCES GIVEN THE FACT MR. PIGGEE PREVIOUSLY HAD BEEN RESTORED TO COMPETENCY.

MY POSITION IS THAT IF WE WERE TO ACCEPT THIS REPORT, IT DOESN'T REALLY AFFECT THE PROCEEDINGS AT THIS STAGE, THAT BEING THAT THE JURY HAS THE CASE, THE JURY IS DELIBERATING. THERE IS NOTHING MR. PIGGEE OR HIS ATTORNEY COULD DO AT THIS POINT THAT COULD OR SHOULD DISTURB THAT PART OF THE PROCESS.

SO, MY POSITION WOULD BE WE ALLOW THE JURY TO CONTINUE DELIBERATING. IF THEY ARE ABLE TO REACH A VERDICT, THEN WE DEAL WITH THIS ISSUE.

JUST TO LET THE COURT KNOW, I DO BELIEVE IF THEY COME BACK GUILTY, GIVEN THIS REPORT WE DO NEED TO STEP BACK AND LOOK AT WHETHER OR NOT PROCEEDINGS SHOULD BE SUSPENDED, AND I SHOULD BE GIVEN THE OPPORTUNITY TO APPOINT MY OWN EXPERT BEFORE WE PROCEED TO A PRIORS TRIAL.

THAT IS THE PEOPLE'S POSITION.

MR. EWELL: RESPOND BRIEFLY.

PART OF THE PROBLEM WITH THE TRIAL WE'VE DONE UP TO THIS POINT, YOUR HONOR, IS MR. PIGGEE HAS NOT BEEN HERE, NOR HAS HE ENTERED AN N.G.I. PLEA. I THINK HAD

HE BEEN HERE OR HAD HE ENTERED AN N.G.I. PLEA WHICH HE SHOULD HAVE DONE, I THINK IT WOULD HAVE DRASTICALLY CHANGED THE TRIAL.

I'M CONCERNED THAT IF HE'S NOT COMPETENT, THAT COULD BE THE REASON WHY HE DID NOT ENTER AN N.G.I. PLEA OR WHY HE DID NOT COME OUT TO COURT.

THE COURT: OKAY. WELL, THE PROCEEDINGS ARE NOT YET SUSPENDED. THE JURY IS DELIBERATING. WE ARE NOT DOING ANYTHING ACTIVE AT THIS POINT.

THIS REPORT CAME AFTER I LEFT. THERE WAS NO REQUEST FOR APPOINTMENT OF AN EXPERT. WHY DID IT HAPPEN THE DAY OR TWO DAYS AFTER I LEFT?

MR. EWELL: COULD WE GO OFF THE RECORD BRIEFLY REGARDING THAT?

THE COURT: I DON'T THINK SO. YOUR CLIENT IS NOT HERE. I THINK THERE NEEDS TO BE A FULL RECORD.

JUDGE ARNOLD SIGNED THIS WHO KNEW NOTHING ABOUT THIS CASE AT ALL.

MR. EWELL: SO, THIS COURT WAS DARK ON THURSDAY AND FRIDAY OF LAST WEEK. ON THURSDAY MORNING MR. PIGGEE CALLED MY SUPERVISOR, CANDACE GLOVER. SHE HAD A PHONE CONVERSATION WITH HIM. SHE SAID IN HER OPINION THAT HE WAS BABBLING, SAYING ALL KINDS OF THINGS THAT WERE NOT -- THAT SHOWED HE WAS NOT -- IN HER OPINION NOT COMPETENT OR SUFFERING FROM DELUSIONS.

THE COURT: HADN'T HE BEEN CALLING HER ON AN ONGOING BASIS?

MR. EWELL: HE HAS BEEN CALLING HER ON AN

ONGOING BASIS FOR SOME TIME.

THE COURT: I THOUGHT THE SAME THING WAS REPORTED BEFORE.

MR. EWELL: WHAT SHE TOLD ME ON THURSDAY MORNING WAS THAT THIS WAS A WHOLE OTHER LEVEL OF MR. PIGGEE SUFFERING FROM SOME OF SORT DELUSIONS.

I DID NOT HAVE A CONVERSATION WITH MR. PIGGEE MYSELF SO I DON'T KNOW.

BUT, SO, THEN SHE SPOKE WITH ANOTHER PUBLIC DEFENDER FROM DEPARTMENT 95, SARA BRADFORD, WHO RECOMMENDED DR. HOUGH, THE ONE THAT DID THE REPORT, BECAUSE DR. HOUGH WORKS WITH DEPARTMENT 95 AND WORKS WITH THE COUNTY JAIL AND SHE WAS AVAILABLE TO GO ON FRIDAY.

SO, ON THURSDAY THE ONLY JUDGE WHO WAS AVAILABLE TO SIGN THE APPOINTMENT ORDER WAS JUDGE ARNOLD.

THE COURT: OKAY. WELL, THAT'S FINE.

SO, I HAVE A NEWER REPORT. IT INDICATES AN OPINION.

THE JURY IS ALREADY DELIBERATING. SO, WE'RE NOT DOING ANYTHING ACTIVE.

THEY HAVE A NEW QUESTION BY THE WAY. THEY WANT A DEVICE TO PLAY PEOPLE'S 2, THE DVD FOOTAGE.

YEAH. SO, I'LL GRANT THEM THAT REQUEST. WE'LL HAVE TO SET IT UP SOMEHOW FOR THEM.

AS FAR AS THE PRIORS, I MEAN, THAT WOULD BE THE NEXT REALLY EVIDENTIARY OR SUBSTANTIVE HEARING.

BUT THE JURY, THEY'RE ON AUTO PILOT AT THIS POINT. AND SINCE PROCEEDINGS WERE NOT SUSPENDED BEFORE

THEY WENT INTO DELIBERATIONS AND THE PRESENTATION OF THE CASE, THE STATUS QUO IS TO LET THEM FINISH THEIR JOB. IT DOESN'T REQUIRE INTERACTION WITH YOUR CLIENT OR HIS PRESENCE TO DO THEIR JOB. IN FACT, NONE OF US ARE IN THERE.

THEN THE ISSUE COMES AS TO WHAT WE DO WITH THE PRIORS IF THEY COME BACK WITH A GUILTY OR SIMILAR VERDICT.

YOUR CLIENT HAS NOT BEEN HERE TO WAIVE A JURY FOR THAT. SO, IT MAY AFFECT THAT PORTION OF THE PROCEEDINGS AS FAR AS THE PRIORS.

SO, YOU HAVE SEEN THE REPORT, PEOPLE?

MR. TORO: YEAH. I GOT IT AT 9:00 THIS MORNING.

THE COURT: HAVE YOU HAD A CHANCE TO GO OVER AND TALK TO YOUR PEOPLE ABOUT IT?

MR. TORO: I HAVE. I CALLED OUR PEOPLE WHO HANDLE DEPARTMENT 95, AND WHILE THEY AGREE THIS IS A HIGHLY UNUSUAL SITUATION, THEY -- THERE SEEMS TO BE SOME CONCURRENCE WITH --

I TOLD THEM I THOUGHT THAT EVEN IF WE, AS I TOLD THIS COURT, WE ACCEPTED THIS REPORT, THAT THE JURY WAS DELIBERATING. THEY AGREED. THEY DID FEEL THAT IT COULD POSSIBLY AFFECT ANY PRIORS TRIAL, AND I AGREED WITH THEM ON THAT.

SO, I THINK WE'RE TREADING UPON NEW TERRITORY HERE, BUT I THINK THE COURT HAVING SEEN MR. PIGGEE, KNOWING THE HISTORY OF IT, IS CORRECT IN THAT -- I STILL DON'T SEE ANYTHING DIFFERENT.

I HAVE READ REPORTS FROM MR. PIGGEE, AND I KNOW THAT HE USES TERMINOLOGY THAT TO ME INDICATES THAT HE DOES KNOW WHAT'S GOING ON, AND THERE'S MANIPULATION, BUT WE'LL GET TO THAT AT A LATER POINT. BUT I THINK WE SHOULD LET THIS JURY CONTINUE TO DELIBERATE.

THE COURT: WE'LL DO THAT, BUT AS FAR AS APPOINTING A DOCTOR, GETTING INTO THAT, IS THAT WHAT YOU'RE ASKING FOR ALSO?

MR. TORO: I THINK THAT IF WE GET TO THAT POINT -- WHEN WE GET TO THAT, AS THE COURT HAS SAID, I DON'T THINK THE ISSUE IS RIPE RIGHT NOW BECAUSE THERE'S NOTHING THAT MR. PIGGEE'S COMPETENCY OR NOT COMPETENCY WOULD AFFECT, THAT IS, THE JURY DELIBERATIONS.

MY SUGGESTION IS ONCE THEY REACH A VERDICT OR INDICATE OTHERWISE, THAT WE DEAL WITH THIS ISSUE. MY INDICATION TO THE COURT WOULD BE THAT AT THAT POINT I WOULD ASK FOR THE APPOINTMENT OF AN EXPERT, AND IF -- PROCEEDINGS MAY HAVE TO BE SUSPENDED AT THAT POINT.

BUT IF IT'S A DEFENSE MOTION, THEN I THINK WE'RE BASICALLY HAVING TO DECLARE A MISTRIAL ON A PRIORS TRIAL.

THE COURT: I THINK I NEED TO ORDER HIM EXTRACTED TO BE HERE.

DO YOU THINK WE CAN GET HIM HERE THIS AFTERNOON ON THE WHEELCHAIR BUS?

THE BAILIFF: WE'LL TRY.

IT WILL BE A WHEELCHAIR BUS.

THE COURT: IT WILL HAVE TO BE A WHEELCHAIR BUS,

THE SPECIAL TRANSPORT. I'LL ORDER HIM EXTRACTED THROUGH AN EXTRACTION ORDER TO SEE IF WE CAN GET HIM HERE TODAY, SEE WHAT HIS STATUS IS, AND EVEN -- I MEAN, WE'RE TALKING NOW ABOUT SUSPENDING PROCEEDINGS, ABOUT THE N.G.I. PLEA -- I DON'T KNOW MAY BE MOOT AT THIS POINT -- THE PENDING JURY OF WHETHER OR NOT HE WILL WAIVE ON THAT OR IF HE'S IN ANY CONDITION TO DO THAT EVEN. SO, WHY DON'T WE --

HE'S ORDERED EXTRACTED. WE'LL HAVE HIM HERE AS SOON AS WE CAN.

MR. EWELL: MY REQUEST WOULD BE TO DECLARE A MISTRIAL. THE WHOLE TRIAL THAT WE'VE DONE UP TO THIS POINT, I BELIEVE IF HE'S NOT COMPETENT NOW, THAT THAT WOULD GREATLY AFFECT HOW THE TRIAL HAS GONE UP TO THIS POINT.

THE COURT: YOU'RE ASKING FOR A RETROACTIVE --

MR. EWELL: WELL --

THE COURT: -- ORDER FINDING HIM INCOMPETENT PRIOR TO THE CLOSE OF THE TRIAL?

MR. EWELL: I'M ASKING THE COURT TO SUSPEND PROCEEDINGS RIGHT NOW UNTIL WE DETERMINE IF HE'S COMPETENT OR NOT.

THE COURT: NO. YOU ASKED FOR SOMETHING ELSE. YOU'RE ASKING FOR A MISTRIAL BASED ON EVERYTHING THAT HAPPENED PRIOR TO THIS EVEN THOUGH THIS DETERMINATION IS YET TO COME. HE'S BEEN FOUND COMPETENT, BEEN FOUND -- WE DID AN EVALUATION BEFORE. HE WAS RESTORED. NOTHING CHANGED. YOU'RE ASKING FOR A RETROACTIVE ORDER.

MR. EWELL: MY CONCERN, YOUR HONOR, IS IT'S NOT

LIKE HE JUST BECAME INCOMPETENT WHEN THE DOCTOR EVALUATED HIM. I BELIEVE HE'S BEEN INCOMPETENT FOR SOME TIME NOW. THAT HAS AFFECTED HIM ENTERING HIS N.G.I. PLEA, PARTICIPATING IN THE TRIAL, HIS ABILITY TO COMMUNICATE WITH ME, HIS COUNSEL.

THE LAST TIME HE WAS HERE IN COURT, HE WAS YELLING OUT, I'M JESUS, I'M A SHERIFF.

THE COURT: HE HAS BEEN DOING THAT ALL ALONG. HE WAS DOING THAT EVEN AT THE TIME WHEN THEY SENT HIM BACK AND SAID HE WAS COMPETENT.

MR. EWELL: OKAY. WELL --

THE COURT: THEY MADE THAT DETERMINATION THAT HE WAS COMPETENT, AND HE SEEMED TO BE MORE MANIPULATIVE.

MR. EWELL: I'M LETTING THE COURT KNOW MY CONCERNS.

THE COURT: RIGHT. RIGHT.

I WANT TO GET WHAT YOU'RE REQUESTING RIGHT. YOU'RE ASKING FOR A MISTRIAL NOW BECAUSE --

MR. EWELL: YES.

THE COURT: -- YOU FEEL HE WAS INCOMPETENT BEFORE NOW.

MR. EWELL: RIGHT.

THE COURT: WHAT I THINK IS PERHAPS NEW TERRITORY. I'M NOT SURE.

MR. TORO: YEAH. MY POSITION WOULD BE THAT THE REPORT IS BASED ON AN INTERVIEW THAT ACCORDING TO DR. HOUGH WAS CONDUCTED OF THE 12TH OF THIS MONTH. SO LAST FRIDAY. AT THAT POINT WE HAD TERMINATED -- WE HAD

COMPLETED, I SHOULD SAY, PRESENTATION OF THE CASE, AND IT WAS ALREADY IN THE JURY'S HANDS. SO, I DON'T KNOW AS THE COURT HAS INDICATED HOW THIS COULD BE APPLIED RETROACTIVELY. I DON'T THINK THAT WOULD BE APPROPRIATE.

THE COURT: I'LL GIVE YOU UNTIL HE'S BROUGHT HERE TO TAKE A LOOK AT THAT ISSUE. SO, I MEAN, I THINK WE ALL WANT TO GET THAT RIGHT.

MY INITIAL INCLINATION IS TO DENY THAT BECAUSE I DON'T THINK THERE IS ANY GROUNDS TO FIND -- TO GRANT A MISTRIAL BASED ON A NEW FINDING OF INCOMPETENCY AND WIPE OUT THE THINGS WE HAVE DONE IN THE PAST AFTER HE HAD BEEN DECLARED COMPETENT AGAIN. WE WERE WORKING ON THAT PRESUMPTION.

BUT I THINK GOING FORWARD, THIS COULD AFFECT WHAT WE DO GOING FORWARD WITH THE PRIORS TRIAL AND WHATEVER ELSE COMES. SO, I'LL LET YOU LOOK AT IT. MAYBE -- PROBABLY WON'T BE HERE UNTIL THIS AFTERNOON.

MR. EWELL: OKAY.

THE COURT: IF WE CAN GET HIM AT ALL TODAY.

MR. EWELL: THANK YOU.

THE COURT: ALL RIGHT. SECOND CALL.

MR. TORO: I'LL NEED TEN MINUTES TO GET A CLEAN COMPUTER UNLESS WE WANT TO PUSH THE WHOLE CART IN THERE. THIS ONE IS READY.

THE COURT: YOU CAN TAKE THAT IN THERE.

(PAUSE IN PROCEEDINGS)

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: PEOPLE VERSUS PIGGEE, RECALLING THAT.

THE JURY HAS A VERDICT APPARENTLY.

BOTH COUNSEL ARE HERE. MR. PIGGEE IS NOT.

WE TRIED TO -- WE'RE LOOKING TO EXTRACT HIM. THE JURY HAS A VERDICT NOW BEFORE NOON.

MR. TORO.

MR. TORO: THANK YOU, YOUR HONOR.

I'VE BEEN ON THE PHONE TO MENTAL HEALTH -- TO OUR APPELLATE DEPARTMENT. MY RECOMMENDATION TO THE COURT IS -- I BELIEVE THE COURT RULED CORRECTLY ALLOWING THE JURY TO CONTINUE THE DELIBERATIONS. I DON'T THINK THE REPORT THAT WAS GIVEN TO THE COURT IN ANY WAY IMPACTS THAT RULING -- YOUR RULING TO ALLOW THEM TO DO SO.

WHAT I WOULD ASK THE COURT IS TO PROCEED WITH THE PRIORS UNLESS THE COURT, BASED ON THE REPORT AND KNOWING THE HISTORY THAT THE COURT KNOWS OF MR. PIGGEE IN FACT BELIEVES -- IF YOU DECLARE A DOUBT, THEN I THINK WE HAVE TO SUSPEND PROCEEDINGS. BUT I THINK AN ALTERNATIVE IF THE COURT DOES NOT HAVE A DOUBT, NOTWITHSTANDING THE REPORT THAT WAS JUST GIVEN TO US TODAY, WOULD BE TO GO AHEAD WITH THE PRIORS. LET'S SEE WHAT HAPPENS WITH THAT WITH THE UNDERSTANDING THAT THE PEOPLE WOULD BE ALLOWED -- I'LL ASK MY OWN EXPERT BE APPOINTED AND NOT SUSPEND

PROCEEDINGS BUT TO ASSIST THE COURT TO SEE WHETHER OR NOT IF YOU HAVE NOT -- YOU DON'T HAVE A DOUBT AT THIS TIME, WHETHER OR NOT THAT WOULD CHANGE YOUR MIND OR SWAY YOU IN ANY WAY.

I BELIEVE THAT FOR JUDICIAL EFFICIENCY PURPOSES, WE HAVE THE JURY HERE, WE MAKE THAT DECISION, AND IF THE COURT, IN FACT, DETERMINES THAT YOU WERE INCORRECT, I THINK YOU CAN RETROSPECTIVELY GO BACK AND GO AHEAD AND BASICALLY VACATE THE PRIORS IF NOT THE ACTUAL WHOLE TRIAL. I DON'T THINK THE WHOLE TRIAL SHOULD BE AFFECTED BECAUSE I THINK THE COURT WAS CORRECT IN NOT FINDING A CHANGE IN CIRCUMSTANCE WHEN THE ISSUE OF COMPETENCY WAS BROUGHT UP APPROXIMATELY THREE OR FOUR DAYS BEFORE WE BEGAN THE TRIAL.

SO, THAT WOULD BE MY RECOMMENDATION.

IF THE COURT BELIEVES THAT, IN FACT, YOU DO HAVE A DOUBT, YOU SHARE THAT, THEN THE COURT WOULD HAVE TO SUSPEND PROCEEDINGS, BUT I WOULD ASK THE COURT TO TAKE A WAIVER OF HAVING THIS JURY DETERMINE THE PRIORS TRIAL. AND, AGAIN, I THINK -- MY SENSE IS THAT ONLY THE PRIORS ARE BEING AFFECTED BY THIS NEW 1368 ISSUE.

THE COURT: OKAY.

MR. EWELL: YOUR HONOR, I DID NOT HAVE THE REPORT UNTIL THIS MORNING, BUT I DON'T THINK THAT MR. PIGGEE SUDDENLY BECAME INCOMPETENT JUST WHEN HE WAS SEEN BY THE DOCTOR WHO OPINED THAT HE'S INCOMPETENT. I THINK WE HAVE A REAL ISSUE HERE WITH MR. PIGGEE BEING INCOMPETENT BEFORE THE TRIAL BEGAN, AND HE DEMONSTRATED

THAT BY YELLING OUT THINGS IN COURT THAT SHOWED THAT HE WAS NOT THINKING CLEARLY. I EXPRESSED TO THE COURT BEFORE I EVEN BEGAN THE TRIAL THAT I HAD CONCERNS, AND DURING THE TRIAL, I HAD CONCERNS REGARDING HIS COMPETENCY.

HE WAS NOT SPEAKING WITH ME AT ALL. HE WOULD JUST YELL THINGS OUT. I THINK THE TOTAL TRIAL IS PROBLEMATIC.

I'M ASKING THE COURT TO DECLARE A DOUBT, AND I'M ASKING FOR A MISTRIAL.

I THINK THERE ARE TOO MANY ISSUES HERE REGARDING HIS LACK OF PARTICIPATION. I THINK HE SHOULD HAVE ENTERED AN N.G.I. PLEA. I KNOW I'VE SAID THIS BEFORE, BUT I REALLY HAVE CONCERNS. WE HAVE GONE THROUGH THIS WHOLE EXERCISE OF HAVING A TRIAL. HE COULD VERY WELL HAVE BEEN INCOMPETENT THE WHOLE TIME.

IT'S NOT LIKE SOME GREAT AMOUNT OF TIME PASSED BETWEEN WHEN I ASKED THE COURT TO DECLARE A DOUBT RIGHT BEFORE THE TRIAL AND WHEN HE WAS EXAMINED BY THE DOCTOR. I THINK THAT WAS SIX DAYS OR SOMETHING LIKE THAT. THAT'S JUST A SHORT AMOUNT OF TIME. I THINK THAT SHOWS HE'S BEEN INCOMPETENT THROUGHOUT THE PROCEEDINGS.

MR. TORO: I WOULD JUST POINT OUT WHAT SHOULD BE OBVIOUS TO THE COURT IS THAT THIS CASE HAS BEEN AROUND FOR OVER TWO-AND-A-HALF YEARS, AND SINCE THE REFILE IN THIS CASE, THIS ACTION WOULD -- I BELIEVE, WAS IN JANUARY OF THIS YEAR. IT WAS NOT UNTIL THREE DAYS BEFORE TRIAL THAT WE FIRST HEAR ANY DOUBTS BEING EXPRESSED ABOUT HIS COMPETENCY TO GO TO TRIAL.

I HAVE MY CONCERNS AND I THINK THE COURT SHARES THEM WITH THE WAY -- THE MANNER IN WHICH MR. PIGGEE HAS MANIPULATED, AND I BELIEVE EVEN SOME OF THE -- WHEN HE HAD PREVIOUSLY ENTERED AN N.G.I. AND HAD BEEN EVALUATED FOR THE DEFENDANT TO BE USING TERMINOLOGY, I'M NOT MALINGERING, WAS NOT EPISODIC DURING THE INCIDENT; I THINK THOSE ARE THINGS THAT -- I'M NOT AN EXPERT, BUT I ALSO KNOW CRAZY PEOPLE DON'T KNOW THEY ARE CRAZY WHICH IN MY MIND CONFIRMS MY OWN SUSPICION HE, IN FACT, IS MANIPULATING THE SYSTEM.

I WOULD JUST ASK THE COURT TO CONSIDER THAT THE LENGTH OF TIME THE CASE HAS BEEN AROUND FOR THE FIRST INKLING OF A DOUBT TO BE DECLARED A FEW DAYS BEFORE WE STARTED THE TRIAL TO HAVE AN EXPERT APPOINTED AFTER THE CASE HAD ALREADY BEEN SUBMITTED TO THE JURY.

THE COURT: OKAY. SO, WE'RE FACED WITH SOMEONE WHO HAS BEEN -- WE DECLARED A DOUBT ON BEFORE WHO HAS BEEN EVALUATED, HE'S BEEN FOUND RESTORED, WHO ACTED, TO ME, SINCE HE WAS PRO PER AND MANY OTHER THINGS, HE ACTED THE SAME WAY THROUGHOUT THIS. WHEN HE'S NOT GETTING HIS WAY, HE ACTS OUT EVEN MORE. WHEN HE DOES GET HIS WAY AND THINKS HE'S GOING TO BE TRANSFERRED TO A COURT HE WANTS TO GO TO, HE COOPERATES.

THERE WAS NO FINDING THAT HE WAS INCOMPETENT, NO SUSPENSION OF PROCEEDINGS, NOTHING NEW UNTIL THIS ISSUE COMES UP, AND THE JURY IS HERE WITH THE VERDICT TODAY.

I'VE ORDERED MR. PIGGEE OUT. BECAUSE OF

THIS NEW ISSUE, ORDERED HIM EXTRACTED. I TOLD HIM HE WOULDN'T BE EXTRACTED ANYMORE. HE COULD COME IF HE WANTED TO, BUT I WASN'T GOING TO PUT PEOPLE AT RISK EXTRACTING HIM EVERY DAY. I'VE HAD TO EXTRACT HIM, AND IT'S JUST NOT THE WAY WE NEED TO DO THINGS.

DOESN'T THE LAW REQUIRE I FORCIBLY REMOVE THE RISK OF PHYSICAL INJURY TO SOMEONE FROM LOCKUP TO PARTICIPATE IN HIS OWN TRIAL. EVEN WHEN HE WAS BROUGHT HERE DURING THE TRIAL, HE REFUSED TO COME OUT. HE HAS BEEN IN THIS BUILDING AND REFUSED TO COME OUT BEFORE.

SO, WE'RE FACED HERE NOW WITH THE TRIAL THAT'S ALREADY OCCURRED, RAISING OF A DOUBT AFTER THE JURY IS READY TO RETURN WITH A VERDICT, AND THEN WE HAVE THE ISSUE OF THE PRIORS TO BE LITIGATED WHICH REQUIRES SOMEONE TO TESTIFY ABOUT WHETHER OR NOT SOMETHING HAS BEEN CERTIFIED WHICH IS REALLY JUST IN A LOT OF WAYS JUST A MINISTERIAL FUNCTION. IT DOESN'T REQUIRE A WHOLE LOT OF CHALLENGING SOMEONE'S VERACITY TO LOOK AT CERTIFIED TRANSCRIPTS AND TO -- AND TO MATCH PICTURES.

I THINK AT THIS POINT THERE WOULDN'T NEED TO BE MR. PIGGEE IN COURT. IT WOULD BE HIS PICTURE.

SO, AS FAR AS THE TRIAL HAS ALREADY OCCURRED, I DON'T SEE A REASON TO DO THIS RETROACTIVE. IN FACT, I THINK I CAN SEE THIS AS A HUGE SLIPPERY SLOPE OF PEOPLE AFTER THE FACT THE ARGUMENT BEING MADE THEY WEREN'T COMPETENT THREE YEARS AGO AT TRIAL, AND THAT THE -- THE ISSUE IS BEING RAISED NOW, AND ALL OF THESE CONVICTIONS OR PROCEEDINGS BEING SET ASIDE AND ALL NEW TRIALS HAVE TO

START. I JUST SEE THAT AS BEING A COMPLETE CAUSE OF COMPLETE UPHEAVAL NOT IN ONLY IN THIS CASE BUT MANY CASES.

I DON'T SEE A PROBLEM WITH ANYTHING WE HAVE DONE SO FAR.

THE QUESTION IS WHETHER OR NOT WE SHOULD GO AHEAD WITH --

THE MOTION FOR THE MISTRIAL IS AGAIN DENIED FOR WHAT'S HAPPENED SO FAR.

THEN WE MOVE FORWARD TO THE PRIORS TRIAL, AND SHOULD WE PROCEED?

I HAVEN'T SEEN ANYTHING OFFERED THAT'S DIFFERENT THAN WHAT I'VE SEEN THROUGHOUT THESE YEARS WITH MR. PIGGEE IN THAT THE DOCTORS' NOTES THAT I'VE REVIEWED AND THE DOCTORS I'VE TALKED WITH, THE PEOPLE DOWNTOWN WHO HAVE EXPERIENCED THE SAME THING, I HAVEN'T SEEN OR HEARD ANYTHING DIFFERENT. EVEN READING THE REPORT THAT WAS AUTHORED OVER THE WEEKEND, I DON'T SEE ANYTHING DIFFERENT THAT WOULD REQUIRE ME AT THIS POINT TO DECLARE A DOUBT. THIS ISN'T THE FIRST TIME THIS ISSUE HAS COME UP

AND THEN EVEN IF A DOUBT WERE DECLARED, WOULD THAT MEAN WE NEED TO STOP AND RISK THIS JURY LEAVING RISKING EVERYTHING WE'VE ALREADY DONE, POTENTIALLY HAVE ONE OF THE ACTUAL JURORS WHO DELIBERATED BEING INJURED AND DYING. A LOT OF THINGS CAN HAPPEN BETWEEN NOW AND THEN PUTTING ALL OF THIS AT RISK.

IF I WERE TO PROCEED WITH THE TRIAL AT THE PRIORS, AT WHAT RISK WOULD IT BE AND HOW WOULD IT BE CURED? NOT DOING IT COULD RESULT IN A MISTRIAL OF THE

WHOLE THING. DOING IT NOW MAY RESULT IN IT BEING SET ASIDE, BUT I'M NOT SURE WHERE THE HARM WOULD HAVE BEEN GIVEN HOW LIMITED THESE TYPES OF HEARINGS ARE.

WE DON'T REQUIRE TESTIMONY FROM THE DEFENDANT. IT'S USUALLY ONLY ONE WITNESS TESTIFYING ABOUT CERTIFIED TRANSCRIPTS, THEIR COMPARISON OF A PICTURE, ONE PICTURE TO ANOTHER.

SO, THIS REALLY IS A DIFFICULT QUESTION. I'M INCLINED GIVEN WHAT POTENTIALLY COULD HAPPEN WITH A MISTRIAL FOR THE WHOLE THING BECAUSE WE DELAYED. TO HAVE MR. PIGGEE COME HERE AND TO HAVE A DISCUSSION, MAKE ANOTHER REPORT COME 30 OR MORE DAYS BEFORE I EVEN DECIDE WHETHER OR NOT THERE IS A REASON TO SUSPEND ANYTHING.

GIVEN THE BACK AND FORTH THAT'S ALREADY HAPPENED WITH THIS, I'M INCLINED NOT TO DECLARE A DOUBT AT THIS POINT. I'M NOT SEEING ANYTHING NEW. DEFERRING THAT UNTIL AFTER I HAVE SEEN ANOTHER REPORT OR MAYBE EVEN A THIRD REPORT AND REEVALUATIONS BY EVERYONE.

I'M INCLINED TO GO FORWARD WITH THE PRIORS TRIAL AND DENY THE MOTIONS TO DELAY THAT.

WE WON'T HAVE THE ALTERNATES INVOLVED BECAUSE THAT'S NOT THE SAME PANEL THAT DECIDED WHATEVER THE VERDICT MAY COME OUT. OF COURSE, THE VERDICT COULD COME BACK AS NOT GUILTY, AND, I GUESS, IF THAT HAPPENS, THEN ALL OF THIS IS MOOT.

SO, WE'LL TAKE THE VERDICT NOW.

DEPENDING WHAT THE VERDICT IS, I'LL PROCEED WITH THE PRIORS TRIAL. I'LL DELAY SUSPENDING ANY

PROCEEDINGS UNTIL I GET FURTHER REPORTS.

I'VE NEVER SEEN THIS ISSUE BEFORE, AND MY COLLEAGUES, THE ONES THAT I TALKED TO, HAVE NEVER SEEN ANYTHING LIKE THIS BEFORE EITHER.

HAVE YOU COME UP WITH ANY CASE LAW DURING THE BREAK THAT YOU HAD?

MR. TORO: NO.

MR. EWELL: I DID FIND A CASE, YOUR HONOR. IT'S STANKEWITZ 32 CAL.3D 80, 1982 CASE.

IT SAYS THAT WHERE THERE IS -- THE COURT WHEN I HAD ASKED THE COURT TO DECLARE A DOUBT BEFORE THE TRIAL HAD SAID THERE WAS NOTHING NEW. I THINK HAVING A REPORT FROM A QUALIFIED PROFESSIONAL WHO GIVES HER OPINION THAT MR. PIGGEE IS INCOMPETENT IS SOMETHING VERY SIGNIFICANT, AND, SO, I THINK THE COURT THIS MORNING SHOULD HAVE DECLARED A DOUBT AND SUSPENDED PROCEEDINGS.

THE COURT: YOU MEAN THIS MORNING BEFORE THE JURY WAS ALREADY DELIBERATING?

MR. EWELL: I THINK WHEN THE COURT HAD ARRIVED, YOUR HONOR, THEY WERE NOT YET DELIBERATING.

THE COURT: WELL, NO, BUT THERE'S NOTHING NEW PRESENTED TO THEM. THEY ARE JUST GOING INTO THE JURY ROOM, TALKING. THEY'RE DISCUSSING THINGS THAT WERE PRESENTED LAST WEEK.

MR. EWELL: RIGHT. THEY DON'T KNOW ANYTHING OF MR. PIGGEE BEING INCOMPETENT; RIGHT.

THE COURT: HIS INCOMPETENCY DOESN'T AFFECT WHAT THEY ARE DOING AT ALL BECAUSE WE'RE NOT PRESENTING IT TO

THEM.

MR. EWELL: HIS INCOMPETENCY DOES NOT AFFECT THEIR PROCEEDINGS, BUT IT DOES AFFECT THE TRIAL.

THE COURT: WELL, WE'RE TALKING ABOUT THE SAME THING, BUT THE ONLY THING THAT IT WOULD AFFECT IS ANY ADDITIONAL PROCEEDINGS WHICH IN THIS CASE WOULD BE A PRIORS TRIAL IF WE GET INTO THAT. I THINK THAT'S THE STICKIER ISSUE.

BUT, I MEAN, THERE IS A BALANCING WHETHER OR NOT LETTING THEM GO FOR 40 DAYS AND THEN HAVE THEM COME BACK FOR A PRIORS TRIAL, WOULD PUT EVERYTHING IN JEOPARDY, AND I THINK GIVEN MY EXPERIENCE WITH THIS -- I MEAN, A LOT OF JURORS MOVE, THEY GO ON TO OTHER PLACES, PASS AWAY, GET SICK. THEY DON'T REMEMBER THINGS. 45 DAYS, THEY MOVE ON WITH THEIR LIVES, AND IT CAUSES -- TO ME BALANCING THE TWO THINGS, THE GREATER RISK AT CAUSING A HUGE WASTE FOR LITTLE REASON GIVEN WHAT HE WOULD DO IN A PRIORS TRIAL.

SO, THE MOTION TO DELAY THINGS IS DENIED.

THE MOTION FOR MISTRIAL IS DENIED.

WE WILL PROCEED WITH THE PRIORS -- WITH THE PRIORS TRIAL ALSO.

HOW FAST CAN YOU PUT THAT ON?

MR. TORO: THIS AFTERNOON.

THE COURT: OKAY.

WE'LL COME BACK AND DO THE VERDICT NOW, AND WE'LL HAVE THEM COME BACK AT 1:30 FOR THE PRIORS TRIAL.

MR. TORO: CAN WE DO 1:45?

THE COURT: YES.

MR. TORO: THANK YOU.

THE COURT: BUZZ THEM OUT PLEASE.

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT
IN THE PRESENCE OF THE JURY:)

THE COURT: ALL THE JURORS ARE BACK, AND THE ALTERNATES ARE HERE ALSO.

AND YOU HAVE SELECTED A FOREPERSON?

JUROR NO. 5: YES, YOUR HONOR.

THE COURT: THAT'S JUROR NUMBER 5.

JUROR NO. 5: CORRECT.

THE COURT: YOU HAVE REACHED A VERDICT?

JUROR NO. 5: YES, WE HAVE.

THE COURT: AND DO YOU HAVE ALL THE VERDICT FORMS SIGNED AND UNSIGNED IN THAT ENVELOPE?

JUROR NO. 5: YES.

THE COURT: OKAY. WOULD YOU PLEASE HAND THAT TO THE BAILIFF.

OKAY. WILL THE CLERK PLEASE READ AND RECORD THE VERDICTS.

THE CLERK: TITLE OF COURT AND CAUSE.

THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS KALAMICE KESON PIGGEE, CASE NUMBER YA089772.

WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT, KALAMICE KESON PIGGEE, GUILTY OF THE CRIME OF SECOND-DEGREE ROBBERY IN VIOLATION OF PENAL CODE

SECTION 211(A), A FELONY. WHO DID UNLAWFULLY AND BY MEANS OF FORCE AND FEAR TAKE PERSONAL PROPERTY FROM THE PERSON, POSSESSION, AND IMMEDIATE PRESENCE OF GREGORIO MACHUCA NAVARRO AS CHARGED IN COUNT 1 OF THE INFORMATION.

WE FURTHER FIND THE ALLEGATION THAT SAID DEFENDANT, KALAMICE KESON PIGGEE, PERSONALLY USED A DANGEROUS AND DEADLY WEAPON, TO WIT, A SCREWDRIVER WITHIN THE MEANING OF PENAL CODE SECTION 12022(B)(1) TO BE TRUE.

THIS 15TH DAY OF SEPTEMBER 2014.

SIGNED BY FOREPERSON IN JUROR SEAT NUMBER 5.

SAME TITLE OF COURT AND CAUSE.

WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND THE DEFENDANT, KALAMICE KESON PIGGEE, GUILTY OF THE CRIME OF ASSAULT WITH A DEADLY WEAPON IN VIOLATION OF PENAL CODE SECTION TO 245(A)(1), A FELONY, WHO DID WILLFULLY AND UNLAWFULLY COMMIT AN ASSAULT UPON GREGORIO MACHUCA NAVARRO WITH A DEADLY WEAPON, TO WIT, A SCREWDRIVER AS CHARGED IN COUNT 2 OF THE INFORMATION.

THIS 15TH DAY OF SEPTEMBER, 2014.

SIGNED BY JUROR IN SEAT NUMBER 5.

JURORS OF DEPARTMENT C, ARE THESE YOUR VERDICTS SO SAY YOU ONE, SO SAY YOU ALL?

(JURORS ANSWER IN THE AFFIRMATIVE)

THE COURT: OKAY. WOULD COUNSEL LIKE THE JURORS POLLED?

MR. EWELL: YES, PLEASE.

THE COURT: I'LL ASK YOU EACH ABOUT THESE VERDICTS ON FIRST COUNT 1, VERDICT WAS GUILTY AS TO SECOND-DEGREE ROBBERY IN VIOLATION OF PENAL CODE SECTION 211(A). INCLUDED IN THAT WAS THE FINDING OF TRUE THAT THE DEFENDANT, MR. PIGGEE, PERSONALLY USED A DEADLY WEAPON, A SCREWDRIVER, UNDER PENAL CODE SECTION 12022(B)(1).

DOES THIS ACCURATELY REFLECT YOUR VERDICT?

JUROR NUMBER ONE?

JUROR NO. 1: YES.

THE COURT: TWO?

JUROR NO. 2: YES.

THE COURT: THREE?

JUROR NO. 3: YES.

THE COURT: FOUR?

JUROR NO. 4: YES.

THE COURT: FIVE?

JUROR NO. 5: YES.

THE COURT: SIX?

JUROR NO. 6: YES.

THE COURT: SEVEN?

JUROR NO. 7: YES.

THE COURT: EIGHT?

JUROR NO. 8: YES.

THE COURT: NINE?

JUROR NO. 9: YES.

THE COURT: TEN?

JUROR NO. 10: YES.

THE COURT: 11?

JUROR NO. 11: YES.

THE COURT: 12?

JUROR NO. 12: YES.

THE COURT: SECOND WAS ON COUNT 2, A FINDING OF GUILTY AS TO THE CRIME OF ASSAULT WITH A DEADLY WEAPON VIOLATION OF PENAL CODE SECTION 245(A)(1) AGAINST THE SAME VICTIM NAVARRO WITH A SCREWDRIVER AS CHARGED IN COUNT 2 OF THE INFORMATION. AGAIN VERDICT WAS GUILTY.

DOES THAT ACCURATELY REFLECT YOUR VOTE? JUROR 1?

JUROR NO. 1: YES.

THE COURT: TWO?

JUROR NO. 2: YES.

THE COURT: THREE?

JUROR NO. 3: YES.

THE COURT: FOUR?

JUROR NO. 4: YES.

THE COURT: FIVE?

JUROR NO. 5: YES.

THE COURT: SIX?

JUROR NO. 6: YES.

THE COURT: SEVEN?

JUROR NO. 7: YES.

THE COURT: EIGHT?

JUROR NO. 8: YES.

THE COURT: NINE?

JUROR NO. 9: YES.

THE COURT: TEN?

JUROR NO. 10: YES.

THE COURT: 11?

JUROR NO. 11: YES.

THE COURT: 12?

JUROR NO. 12: YES.

THE COURT: OKAY. ALL RIGHT. I TOLD YOU THERE IS A SHORT HEARING THAT HAS TO OCCUR. IT REALLY IS A VERY SHORT HEARING. I WOULD SAY NO MORE THAN TEN OR 15 MINUTES. WE HAVE TO DO IT.

WE'LL COME BACK AT 1:45 AND DO THAT.

YOU GO BACK IN, MAKE YOUR FINDING, AND THERE ARE VERDICTS FOR THAT.

I DO APPRECIATE YOUR PATIENCE THROUGH THIS.

FOR THE ALTERNATES, YOU DO NOT NEED TO COME BACK BECAUSE THE JURY HAS DELIVERED A VERDICT ON THE MAIN CHARGES. SO, YOU CAN GO BACK TO THE JURY ROOM. THEY WILL RELEASE YOU IF THEY'RE STILL THERE.

THEY ARE AT LUNCH. WE CAN HAVE THEM MAILED TO YOU IF YOU WANT, BUT THAT WOULD CONCLUDE YOUR JURY SERVICE. WE DO APPRECIATE YOUR BEING HERE.

THE MAIN JURY HAS TO STAY BECAUSE THEY'RE THE ONES THAT DECIDED ON THE UNDERLYING CHARGES. SO, AGAIN, YOU WOULDN'T NEED TO BE HERE.

DO YOU WANT TO HAVE THEM MAIL IT TO YOU OR COME BACK AT 1:30?

ALTERNATE JUROR NO. 1: COME BACK.

THE COURT: COME BACK.

THANK YOU ALL. HAVE A GREAT LUNCH.

I KNOW YOU ARE FRUSTRATED. I SEE YOUR FACES, BUT WE ARE A DAY SHORTER THAN WE TOLD YOU IT WOULD BE. AND SO WE'LL SEE YOU AFTER LUNCH.

THANK YOU.

(WHEREUPON A LUNCH RECESS WAS TAKEN UNTIL 1:45 P.M. OF THE SAME DAY)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA WEDNESDAY, SEPTEMBER 10, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

THE COURT: HE WAS CLEARED FROM THE WHEELCHAIR. WHEN IT COMES TIME TO WALK TO THE COURT LINE, HE REFUSES TO DO IT. WHEN ASKED IF HE'LL AGREE IN A WHEELCHAIR, HE RAMBLES INCOHERENTLY AND GOES BACK TO -- GOES TO THE BACK OF HIS CELL.

OKAY. SO, HE'S REFUSING.

MR. EWELL: YOUR HONOR, I WOULD RENEW MY REQUEST TO HAVE HIM EXTRACTED HERE FOR TRIAL.

THE COURT: I WON'T DO THAT. WE GAVE HIM A

SPECIAL TRANSPORT YESTERDAY. WHEN HE GOT TO THE COURTHOUSE, HE REFUSED TO COME OUT.

SO, COUNT THE JURORS.

THE BAILIFF: 14 JURORS.

(PAUSE IN PROCEEDINGS)

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

MR. TORO: PEOPLE'S 1 WAS A -- IS A PHOTOGRAPH THAT THE WITNESSES HAVE BEEN IDENTIFYING THAT MR. EWELL -- AT MR. EWELL'S REQUEST I REDACTED INFORMATION ON THE LEFT PORTION OF THAT. IT'S BASICALLY A BOOKING PHOTO SHEET THAT HAS THE BOOKING NUMBER AND OTHER IDENTIFIERS, FBI NUMBER.

GIVEN THE FACT MR. PIGGEE HAS VOLUNTARILY ABSENTED HIMSELF, I STILL HAVE TO PROVE IDENTIFICATION THAT IN FACT IS MR. KALAMICE PIGGEE. THERE ARE SEVERAL THINGS I CAN DO. MY INTENTION WAS TO CALL DETECTIVE ROSS WHO ON THE DAY AFTER THE ARREST MET WITH MR. PIGGEE. HE SAID HE CALLED HIM MR. PIGGY, AND MR. PIGGEE BECAME UPSET AND SAID IT'S PIGGEE. THEN DETECTIVE ROSS WENT AND VERIFIED THE INFORMATION HERE USING THE IDENTIFIERS IN THAT DATABASE TO CONFIRM DATE OF BIRTH AND DETERMINE THAT IS IN FACT KALAMICE PIGGEE.

THE OTHER WAY TO DO IT, AT THE PRELIMINARY HEARING ON APRIL 17TH OF THIS YEAR, DETECTIVE ROSS WAS

THERE. THE VICTIM IDENTIFIED -- MR. MACHUCA IDENTIFIED THE DEFENDANT HAVING BEEN IN THE COURT BEFORE HE WAS REMOVED, AND I THINK THE COURT CAN TAKE JUDICIAL NOTICE OF THE FACT THAT THAT JUDGE, JUDGE INJEJIKIAN INDICATED IT WAS THE DEFENDANT WHO WAS IN FACT KALAMICE PIGGEE.

THE COURT: IF HE WAS POINTED OUT IN COURT, HE CAN.

WHAT YOU CAN DO IS STIPULATE THAT IS HIM IN THE PHOTO.

MR. EWELL: I DON'T THINK I CAN DO THAT.

THE COURT: ALL RIGHT. I MEAN, THE OTHER THING IS I CAN HAVE HIM EXTRACTED AND BROUGHT HERE IN THE COURTROOM, AND -- BUT I THINK THAT'S A DISSERVICE AND PROBABLY AFFECT YOUR CASE.

MR. EWELL: CAN WE GO OFF THE RECORD?

THE COURT: SURE.

(PARTIES AND THE COURT
CONFER OFF THE RECORD)

THE COURT: OKAY. WE TALKED ABOUT SOME DIFFERENT OPTIONS FOR THE IDENTIFICATION. I'M NOT SURE WHAT YOU WANT TO AGREE TO.

MR. EWELL: WE ALREADY HAVE MR. TEMPLE. HE SAID HIS NAME WAS KALAMICE PIGGEE. DETECTIVE ROSS WILL SAY HE SAID HIS NAME WAS KALAMICE PIGGEE. I THINK WITH THAT, THAT'S ENOUGH. MY ONLY REQUEST WOULD BE TO KEEP THE -- TO USE THE PHOTO BUT NOT ANY OF THE INFORMATION ON THE PHOTO

INCLUDING HIS NAME BECAUSE WE DON'T KNOW WHO GENERATED THAT DOCUMENT OR HOW IT WAS GENERATED.

MR. TORO: WELL, AS THE COURT HAS SAID MR. PIGGEE HAS CREATED THIS SITUATION, AND WE NEED TO BE MINDFUL OF THE FACT IF HE IS CONVICTED IN A TRIAL, THERE WILL BE A PRIORS TRIAL. AT THE PRIORS TRIAL I HAVE TO USE A 969(B) PACKET, AND I BELIEVE I SHOULD PUT IN MORE IDENTIFIERS THAN JUST A NAME GIVEN BY TWO LAY WITNESSES. THAT'S WHY I THINK IT'S IMPORTANT FOR DETECTIVE ROSS TO BE ABLE TO TESTIFY AS TO THIS DOCUMENT. I MEAN, I'M NOT SURE WHICH NUMBER IS OFFENSIVE BECAUSE I DON'T BELIEVE THAT JURORS ARE GOING TO BE FAMILIAR WITH WHAT AN S.I.D. NUMBER IS. I DON'T KNOW EVEN KNOW WHAT THAT IS. FBI NUMBER, I DON'T KNOW WHAT THAT IS. BUT I DON'T THINK -- I MEAN, THEY CAN BE TOLD THEY ARE NOT TO CONSIDER IT FOR ANY OTHER PURPOSE OTHER THAN FOR THE PURPOSE OF IDENTIFICATION. I THINK THAT LIMITING INSTRUCTION WOULD CURE ANY PREJUDICE.

MR. EWELL: WHY DO YOU NEED THOSE NUMBERS?

MR. TORO: THOSE ARE THE NUMBERS HE'S GOING TO USE TO RUN HIM IN THE DATABASE AND CONFIRM, IN FACT, HE WAS KALAMICE PIGGEE.

THE COURT: OKAY. I THINK THAT'S A LEGITIMATE REASON.

MR. EWELL: WELL, IF WE'RE GOING TO DO THAT AT A PRIORS TRIAL, THEN I DON'T HAVE A PROBLEM WITH IT.

THE COURT: HE'S GOING TO TESTIFY NOW?

MR. TORO: HE GOING TO TESTIFY NOW BECAUSE I'M NOT COMFORTABLE WITH THE IDENTIFICATION THAT WE HAVE AT

THIS POINT.

THE COURT: OKAY. I'LL HAVE TO AGREE WITH THAT. THERE WON'T BE A STIPULATION AS TO IDENTITY. HE REFUSES TO COME INTO COURT SO WITNESSES CAN'T IDENTIFY HIM HERE IN OPEN COURT. YOU KNOW, I MEAN, THAT COULD INDICATE THAT HE'S TRYING TO FLEE JUSTICE. SO, I THINK, I MEAN, THE SCALES ARE BALANCED IN A WAY OF GIVING SOME LEEWAY TO THE PEOPLE OF PROVING UP IDENTITY. SO, I'LL ALLOW THAT WITH THE NUMBERS ON IT.

AS FAR AS HIS PREVIOUS IDENTIFICATION IN COURT THAT THE JUDGE ACKNOWLEDGED, I CAN TAKE JUDICIAL NOTICE THAT'S WHAT THE JUDGE DID IN THE TRANSCRIPT. I CAN'T TELL THEM I'M TAKING JUDICIAL NOTICE OF THIS. I'LL LET YOU USE THE TRANSCRIPT TO FILL IN THE BLANKS ABOUT HE WAS -- WHEN HE WAS IN COURT ON THE PRIOR OCCASION WAS IDENTIFIED.

MR. TORO: THAT'S FINE. BECAUSE DETECTIVE ROSS, I WAS GOING TO ASK HIM IF HE WAS AT THE PRELIMINARY HEARING AND IN FACT SAW MR. PIGGEE IN COURT THAT DAY --

THE COURT: OKAY.

MR. TORO: -- WHEN HIS CASE WAS CALLED.

MR. EWELL: OKAY. WELL, THE ONLY CONCERN I HAVE WITH THAT IS IT'S NOT LIKE MR. PIGGEE WAS SITTING HERE AND THE WITNESS IDENTIFIED HIM FROM THE STAND. I WAS THERE AT THE PRELIM. IT WAS MORE LIKE, DID YOU SEE THE GUY WHO GOT WHEELED IN AND WHEELED OUT.

THE COURT: YOU WANT TO READ THE TRANSCRIPT?

MR. TORO: WELL, THE PROBLEM IS IF WE START

GETTING INTO THE TRANSCRIPT, HE TALKS ABOUT THE GUY IN BLUE, AND THE GUY THAT WAS IN THE WHEELCHAIR. I MEAN, I DON'T THINK THAT NEEDS TO COME IN. I DON'T THINK -- I THINK I CAN ASK THE COURT TO TAKE JUDICIAL NOTICE THAT WHEN THE WITNESS WAS ASKED TO IDENTIFY THE PERSON WHO COMMITTED THE OFFENSE, THE COURT TOOK JUDICIAL NOTICE THAT IT WAS -- THE COURT STATED IT WAS THE DEFENDANT.

THE COURT: I'M NOT SURE THAT'S A PROPER FORM OF JUDICIAL NOTICE. WELL, I HAVE TO DO SOME RESEARCH BEFORE WE DO THAT.

MR. TORO: GIVEN THE FACT WE ARE DOING -- THE COURT HAS ALLOWED ME TO USE THE PHOTOGRAPH WITH THE IDENTIFYING NUMBERS, I'LL -- AND I'VE ALERTED COUNSEL THAT HE DID IDENTIFY HIMSELF TO DETECTIVE ROSS THE DATE OF THE ARREST AS KALAMICE PIGGEE WHEN HE CORRECTED HIM WHEN HE MISPRONOUNCED THE NAME, I THINK THAT WILL BE SUFFICIENT. I'LL JUST LEAVE IT AT THAT.

THE COURT: OKAY. OKAY. I THINK THE JUDICIAL NOTICE ON THAT POINT IS TRICKY.

MR. EWELL: I'LL SAY AN UNRELATED THING.

YOU KNOW, I WAS THINKING ABOUT THIS A LOT YESTERDAY. AFTER SPEAKING WITH MR. PIGGEE, IT'S ALMOST LIKE I FEEL I HAVE MY HANDS TIED BECAUSE I REALLY FEEL LIKE HE'S MENTALLY ILL, BUT BECAUSE HE'S NOT COMING TO COURT AND WON'T DO AN N.G.I. PLEA, I ALMOST FEEL I HAVE MY HANDS TIED. I CAN'T REPRESENT HIM THE WAY I WOULD WANT TO OR WHAT I THINK HE NEEDS.

THE COURT: IT WOULD BE HELPFUL IF HE CAME TO

COURT, BUT --

MR. EWELL: I KNOW THE COURT HAS GIVEN HIM EVERY OPPORTUNITY TO COME TO COURT. I DON'T KNOW IF THAT'S PART OF HIS MENTAL ILLNESS OR WHAT THAT HE REFUSES TO COME TO COURT, BUT --

THE COURT: WE'VE BEEN OVER THE MENTAL ILLNESS ISSUE. I THINK IT'S -- THE RECORD WILL SPEAK FOR ITSELF. I'VE DONE EVERYTHING I CAN TO TRY TO GET HIM HERE. YOU HAVE TOO. IT DOES MAKE IT DIFFICULT. HE'S BEEN EXAMINED. HE'S BEEN CLEARED. THINGS HAVEN'T REALLY CHANGED AT ALL. SO, WE'LL MOVE FORWARD.

WE HAVE OUR JURY OUTSIDE. ARE YOU ALL SET UP? I NEED TO GIVE THESE FOLKS A MINUTE.

MR. EWELL: I'M READY WHENEVER.

MR. TORO: READY WHENEVER.

(PAUSE IN PROCEEDINGS)

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT
IN THE PRESENCE OF THE JURY:)

THE COURT: OKAY. GOOD MORNING AGAIN.

ALL THE JURORS ARE BACK. WELCOME AGAIN.

I'M SORRY FOR THE DELAY THIS MORNING.

THE WITNESS IS ON THE STAND STILL UNDER OATH.

AND MR. EWELL.

MR. EWELL: THANK YOU.

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA TUESDAY, SEPTEMBER 9, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL:)

THE COURT: PEOPLE VERSUS PIGGEE.

MR. PIGGEE IS AGAIN NOT HERE. WE DON'T HAVE AN UPDATE FROM THE JAIL YET. WE WASN'T ON THE REGULAR BUS.

IT LOOKS LIKE HE'S DEMANDING A WHEELCHAIR BUS. THE BAILIFF IS TELLING ME THEY ARE SENDING THAT, BUT HE'S BEEN CLEARED FROM THE WHEELCHAIR. I EXPLAINED THAT TO HIM ALSO.

MR. EWELL: I'M SORRY TO INTERRUPT, YOUR HONOR. I WOULD JUST ASK IF WE CAN WAIT ON THE FAX TO KNOW WHETHER HE'S A MISS-OUT OR REFUSAL. THAT WOULD BE MY REQUEST.

THE COURT: HE MISSED. HE'S NOT ON THE REGULAR BUS.

MR. EWELL: RIGHT. I DON'T KNOW IF THAT'S BECAUSE HE'S A MISS-OUT OR BECAUSE HE'S ACTUALLY REFUSED.

THE COURT: THEY'RE SENDING A WHEELCHAIR BUS.

MR. EWELL: I DON'T KNOW WHY THEY'RE DOING THAT.

THE COURT: BECAUSE HE'S BEEN DEMANDING IT. SO THEY'RE TRYING TO ACCOMMODATE HIM ALTHOUGH HE'S -- HE WAS MEDICALLY CLEARED FROM THE WHEELCHAIR. I TOLD HIM IF HE DEMANDED A WHEELCHAIR, THAT WOULD NOT BE REASON FOR US TO DELAY PROCEEDINGS. SO, THE BAILIFF IS STILL TRYING TO FIGURE OUT WHAT IS GOING ON WITH HIM.

WE DO HAVE JURORS OUTSIDE, AND THEY WERE SUPPOSED TO BE HERE TEN MINUTES AGO, AND THEY --

MR. TORO: I THINK WE ARE SHORT TWO ACCORDING TO YOUR CLERK.

WE HAD SOME DISCUSSION OFF THE RECORD. I WAS WONDERING IF THE COURT WOULD INQUIRE OF DEFENSE COUNSEL AS TO ANY COMMUNICATIONS HE MAY HAVE HAD WITH MR. PIGGEE REGARDING --

THE COURT: RIGHT. BECAUSE THE PEOPLE WERE -- SEEMED IN AN AMOUNT OF CAUTION WERE GOING TO JOIN IN A REQUEST TO -- REQUEST FOR AN EXTRACTION ORDER.

MR. TORO: THAT'S CORRECT.

THE COURT: IS THE DEFENSE REQUESTING THAT AGAIN?

MR. EWELL: YES. THANK YOU.

THE COURT: I'M NOT INCLINED TO ORDER AN EXTRACTION AGAIN. AGAIN, IT PUTS TOO MANY PEOPLE IN HARMS WAY INCLUDING MR. PIGGEE. HE'S BEEN TOLD I WASN'T GOING TO EXTRACT HIM AGAIN.

AND, SO -- BUT YOU DID HAVE A CONVERSATION WITH HIM?

MR. EWELL: YES. THANK YOU, YOUR HONOR.

I WENT ON MY OWN ON FRIDAY TO TWIN TOWERS. I DID MEET WITH HIM IN THE MEDICAL WING OF TWIN TOWERS. HE AND I HAD A LENGTHY CONVERSATION, ABOUT AN HOUR AND A HALF. I WANTED TO MAKE SURE HE UNDERSTOOD THE COURT'S RULING THAT IF HE REFUSED, THEN HE MIGHT NOT BE EXTRACTED AND WE WOULD PROCEED AND DO THE TRIAL WITHOUT HIM.

SO, THE REASON I WENT WAS TO MAKE SURE HE UNDERSTOOD THAT, AND I WANTED TO URGE HIM TO COME TO TRIAL. SO, I THINK HE UNDERSTOOD THAT AFTER SPEAKING WITH HIM.

THE COURT: OKAY. AND YET HE STILL REFUSED ON MONDAY, AND HE'S NOT HERE TODAY.

MR. EWELL: THE ONLY THING I WOULD ADD, YOUR HONOR, YESTERDAY WE HAD A FAX. IT WAS VERY DETAILED. IT SAID HE WAS A REFUSAL. I WAS JUST -- I WOULD JUST ASK TODAY SO WE'RE CLEAR IF WE CAN WAIT UNTIL WE GET A FAX LIKE THAT SO WE KNOW HE'S EITHER REFUSING OR THAT HE'S A

MISS-OUT.

THE COURT: OKAY. ANYTHING ELSE WE CAN DO IN THE MEANTIME?

MR. TORO: ONE 402, AND I DID TALK TO MR. EWELL ABOUT THIS ONE ISSUE THAT CAME UP WITH QUESTIONING I BELIEVE WAS ON JUROR NUMBER 9. I WOULD ASK THE COURT TO EXCLUDE ANY QUESTIONS -- ANY REFERENCE TO OBSERVATIONS MADE BY OFFICERS OR SECURITY GUARDS ABOUT MR. PIGGEE'S -- WHAT THEIR OPINION OF HIS MEDICAL OR MENTAL STATE WAS AT THE TIME.

BASED ON THE INTERVIEW CONDUCTED BY OFFICER NIGG, HE MENTIONS HE'S NOT SURE IF HE'S GOING TO TAKE MR. PIGGEE TO THE HOSPITAL BEFORE HE TAKES -- OR TO THE POLICE STATION TO BE ARRESTED.

I THINK AT THIS POINT GIVEN THE FACT YOU HAVE A DEFENDANT WHO IS VOLUNTARILY ABSENTING HIMSELF FROM THE PROCEEDINGS, IF WE HAVE ANY KIND OF LAY OPINION REGARDING THAT, THE JURY IS GOING TO GO CRAZY WITH SPECULATING AS TO WHAT IS GOING ON IN THIS CASE. I THINK WE HAVE ENOUGH ISSUES, AND I THINK THAT ONE IS NOT RELEVANT UNDER 352. I WOULD ASK THE COURT TO EXCLUDE ANY QUESTIONING ABOUT THAT WITH ANY REFERENCE TO IT.

MR. EWELL: THANK YOU. JUST BRIEFLY.

AS I MENTIONED YESTERDAY, I CANNOT ENTER AN N.G.I. ON BEHALF OF MR. PIGGEE. HE HAS TO DO THAT HIMSELF. SO, WITHOUT THAT, I CAN'T DO AN N.G.I. DEFENSE. AS MUCH AS I WOULD LIKE TO AT THIS POINT, I WON'T ASK ANY QUESTIONS OF ANY WITNESSES REGARDING ANY MENTAL HEALTH

ISSUES.

THE COURT: OKAY.

ANYTHING ELSE?

MR. EWELL: I HAVE ONE MORE THING.

IF MR. PIGGEE DOES COME AND HE WANTS TO ENTER AN N.G.I. PLEA, I'M NOT REALLY PREPARED AT THIS POINT TO PURSUE THAT BECAUSE HE HASN'T ENTERED N.G.I. YET, AND I HAVEN'T FOLLOWED UP WITH WITNESSES TO SEE IF HE'S AVAILABLE.

THE COURT: WHEN YOU SPOKE WITH HIM, DID HE SAY THAT'S WHAT HE WANTED TO DO?

COME TO COURT TO DO THAT?

MR. EWELL: HE HAS TOLD ME ON MANY OCCASIONS THAT HE HAS WANTED TO DO THAT, BUT THEN WHENEVER WE'RE HERE IN COURT, I SAY, LOOK, IF YOU'RE GOING TO ENTER AN N.G.I. PLEA, NOW IS THE TIME TO DO IT. HE FOR WHATEVER REASON DOESN'T DO IT. SO, HE TOLD ME BOTH, I GUESS. HE SAID HE HAS WANTED TO DO IT, BUT THEN HE HASN'T. SO ....

THE COURT: OKAY.

ALL THE JURORS ARE HERE.

OKAY. ANY UPDATES ON MR. PIGGEE?

THE BAILIFF: YES, SIR. I'M -- NO, SIR. I'M TRYING TO GET THE UNIT FOR THE -- I'M TRYING TO CALL THE UNIT.

THE COURT: WE'RE RUNNING 15 MINUTES LATE NOW. WE CAN BLAME THAT ON A COUPLE JURORS. WE'RE PUTTING A CALL TO THE JAIL.

(PAUSE IN PROCEEDINGS)

THE COURT: WE'RE ON THE RECORD.

THE BAILIFF INDICATED MR. PIGGEE IS VOLUNTARILY COMING DOWN FOR THE WHEELCHAIR BUS. WE'RE GOING TO KEEP MOVING FORWARD AND KEEP ASKING QUESTIONS WITH THE JURY. IF HE'S HERE IN THE AFTERNOON, THAT'S GREAT. HE CAN JOIN US.

MR. EWELL: AT THIS POINT, YOUR HONOR, I GUESS I WOULD ASK TO WAIT. IT SEEMS LIKE MAYBE HE'S NOT A VOLUNTARY MISS-OUT. MAYBE JUST SEEMS LIKE FOR WHATEVER REASON SOMEONE ORDERED THE WHEELCHAIR BUS FOR HIM AND --

THE COURT: I MEAN, FROM THE LONG HISTORY I'VE HAD WITH HIM AND THE PRESIDING AND ASSISTANT PRESIDING JUDGES OF CRIMINAL, CHARLAINE OLMEDO AND JIM BRANDLIN, HAVE BOTH BEEN INVOLVED IN DISCUSSIONS WITH ME, AND THE DOCTOR THEY COMMUNICATED -- THE DOCTOR COMMUNICATED TO ALL OF US HE'S MEDICALLY CLEARED AND DOES NOT REQUIRE A WHEELCHAIR. AND HE'S PSYCHOLOGICALLY CLEAR; DOES NOT REQUIRE ANY SPECIAL ASSISTANCE.

BUT MR. PIGGEE HAS WITH RESPECT TO HIS CAST DEMANDED NOBODY TOUCH HIS CAST TO TAKE IT OFF. AND HE EVEN THOUGH DOCTOR SAYS YOU'RE FINE NOW, HE WON'T LET ANYBODY TREAT HIM SO HE CAN KEEP STILL BE IN -- BE HELD UNDER THE GUISE OF NEEDING SOME SPECIAL ASSISTANCE. THIS IS ONE OF MANY PLOYS THAT HE'S UTILIZED DURING THIS.

WE ARE GOING TO MOVE FORWARD. I'M HAPPY HE MAY COME THIS AFTERNOON. AS WE KNOW HE'S COME TO COURT

AND STILL BEEN IN CUSTODY AND REFUSED TO LEAVE ANOTHER FLOOR TO TAKE THE ELEVATOR TO THIS FLOOR WITH OR WITHOUT A WHEELCHAIR, AND I'M NOT GOING TO LET HIM DELAY THIS. I WARNED HIM. HE STILL CONTINUES TO DEMAND A WHEELCHAIR.

THE SHERIFF IS DOING THEIR BEST TO GET HIM HERE. IF HE DEMANDS IT, THEY TRY TO ACCOMMODATE HIM SOMEHOW REALLY FOR NO MEDICAL REASON BUT TO TRY TO GET HIS COOPERATION IN SOME WAY, AND THERE'S NO WAY WE CAN DO A TRIAL IN THE AFTERNOONS WHEN HE DECIDES TO COME.

WE STILL HAVE 50-PLUS JURORS WAITING OUTSIDE FOR THE LAST 25 MINUTES. THIS IS EXACTLY WHAT I WANTED TO AVOID BY WARNING HIM BEFOREHAND.

SO, WE'LL HAVE THE JURORS COME IN NOW.

(VOIR DIRE OF THE PROSPECTIVE JURORS RESUMES, REPORTED, NOT TRANSCRIBED HEREIN, NO WHEELER MOTIONS NOR MOTIONS FOR MISTRIAL HAVING BEEN MADE BY THE APPELLANT AND DENIED IN WHOLE OR IN PART)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA TUESDAY, SEPTEMBER 9, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: P.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:)

THE COURT: ON THE RECORD IN PEOPLE VERSUS PIGGEE.

ATTORNEYS ARE PRESENT. THE JURORS ARE NOT.

MR. PIGGEE DID COME THIS AFTERNOON ON THE WHEELCHAIR BUS. HE IS IN THE BUILDING. HE HAS CLOTHES. HE'S ON THE SECOND -- NO -- ON THE FIFTH FLOOR, AND HE IS REFUSING TO COME OUT TO THE COURTROOM.

THE BAILIFF: HE WANTS TO TALK TO HIS ATTORNEY.

IF THAT'S NOT POSSIBLE, HE'S REQUESTING A COURT SUPERVISOR.

THE COURT: UNTIL HE TALKS TO HIS ATTORNEY AND A COURT SUPERVISOR.

THE JURORS ARE OUTSIDE, AND WE'RE 15 MINUTES DELAYED. I BELIEVE EVERYONE IS HERE.

THE CLERK: EVERYONE IS HERE, YOUR HONOR.

THE COURT: EVERYONE IS HERE ACCORDING TO MY CLERK. HE'S NOT COMING OUT.

THE BAILIFF: MR. PIGGEE SAID -- WE RELAYED THE MESSAGE TO HIM. HE SAID, HOW DO I KNOW WHAT YOU'RE SAYING IS TRUE? I SAID, YOU DON'T HAVE TO BELIEVE ME. YOU CAN COME DOWN TO THE COURT AND HEAR IT FROM THE JUDGE AND ATTORNEY YOURSELF. HE SAID THIS IS A BIG OLD TRAP. HE ASKED TO SPEAK TO A SHERIFF DEPARTMENT SUPERVISOR.

THE COURT: OKAY. SO, WHILE HE IS DOING THAT, WE'LL PROCEED TO SELECT A JURY.

MR. EWELL: OKAY. WOULD YOU LIKE ME TO GO SPEAK WITH HIM OR --

THE COURT: I'LL GIVE YOU FIVE MINUTES TO SPEAK WITH HIM. IF HE'S NOT IN THE COURTROOM, WE'RE GOING TO KEEP GOING.

MR. EWELL: YES.

THE COURT: I'M LETTING MR. EWELL GO TALK TO HIM. THEY'RE TAKING HIM ESPECIALLY THROUGH THE SHERIFF'S ELEVATOR TO TALK TO MR. PIGGEE. I'VE GIVEN HIM FIVE MINUTES AND TOLD HIM THIS IS THE ONLY TIME WE'RE GOING TO DO THIS. HE'S HERE IN FIVE MINUTES OR NOT INVOLVED TODAY.

(PAUSE IN PROCEEDINGS)

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:)

THE COURT: WE ARE BACK IN COURT WITH MR. EWELL. I GAVE YOU FIVE MINUTES. YOU'RE BACK.

MR. EWELL: YES. THANK YOU.

I SPOKE WITH MR. PIGGEE. I TOLD HIM NOW IS THE TIME TO COME DOWN. HE SAID HE WANTED TO CALL HIS MOM FIRST. I TOLD HIM IF HE WANTS TO ENTER AN N.G.I., HE HAS TO DO THAT PERSONALLY. I CAN'T DO THAT WITHOUT HIM. HE DID NOT WANT TO COME DOWN NOW. HE WANTS TO SPEAK WITH HIS MOM FIRST. SO....

THE COURT: WE'RE GOING TO PROCEED. WE'LL NOT STOP. THERE ARE NO MORE DELAYS. IT'S NOW 22 MINUTES PAST WHEN WE TOLD THE JURY WE WOULD START AGAIN.

MR. EWELL: THANK YOU, YOUR HONOR, FOR THAT, LETTING ME GO TALK TO HIM.

THE COURT: THANK YOU. I APPRECIATE ALL THE EFFORTS YOU MADE TRYING TO BRING HIM HERE.

WHICH LOCKUP IS HE IN? FIFTH-FLOOR LOCKUP AGAIN REFUSING.

(THE FOLLOWING PROCEEDINGS ARE HELD IN OPEN COURT IN THE PRESENCE OF THE PROSPECTIVE JURY PANEL:)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA MONDAY, SEPTEMBER 8, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: A.M. SESSION

APPEARANCES:

DEFENDANT KALAMICE PIGGEE, PRESENT WITH COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PEOPLE VERSUS PIGGEE. ON FOR TRIAL.

MR. EWELL AND MR. TORO ARE BOTH HERE.

AND I HAVE A FAX FROM THE SHERIFF, 7:03 THIS MORNING, AND IT SAYS THAT MR. PIGGEE IS REFUSING. SAYS, INMATE WAS MEDICALLY AND PSYCHOLOGICALLY CLEARED TO COURT BUT REFUSING TO GO. INMATE PIGGEE REQUESTED MENTAL HEALTH STAFF MAKE HIM A NO-GO MED SO HE WOULDN'T HAVE TO REFUSE, BUT HE WAS TOLD HE WAS CLEAR AND SHOULD GO TO COURT. INMATE PIGGEE STATED HE DID NOT WANT TO GO TO COURT.

SO, HE'S REFUSING. I'LL PUT THIS IN THE FILE, AND I INFORMED HIM ALREADY I WAS NOT GOING TO HAVE HIM EXTRACTED AGAIN, COUNSEL.

MR. EWELL.

MR. EWELL: YES, YOUR HONOR. THANK YOU.

YOUR HONOR, I WOULD -- THIS IS HIS DAY FOR TRIAL. I KNOW THE COURT HAS EXTRACTED HIM ON OTHER OCCASIONS. I'M ASKING THE COURT TO EXTRACT HIM TODAY. THIS IS A THIRD-STRIKE, LIFE CASE. HE HAS A RIGHT TO BE HERE. I THINK HE SHOULD BE HERE. SUBMITTED.

THE COURT: OKAY.

PEOPLE.

MR. TORO: SUBMITTED.

THE COURT: ALL RIGHT. I AGREE. HE HAS A RIGHT TO BE HERE. I WANT HIM TO BE HERE, BUT I'VE HAD TO EXTRACT HIM A NUMBER OF TIMES ALREADY TO COME TO COURT. OTHER COURTS HAVE HAD TO EXTRACT HIM. THIS IS BECOMING A VERY EXPENSIVE MATTER AND PUTS A LOT OF PEOPLE AT RISK INCLUDING THE DEPUTIES, AND, HONESTLY, ESPECIALLY THE DEPUTIES. I DON'T THINK IT'S --

GIVEN WHAT I HAVE TOLD HIM ALREADY ABOUT HIS REFUSALS AND THE WAY HE'S REACTED, I WON'T ORDER HIM EXTRACTED. HE WAS TOLD. HE KNOWS HE NEEDS TO BE HERE. THEY TRIED TO BRING HIM HERE, AND HE REFUSED. THAT'S JUST GOING TO BE WHAT IT IS

MR. EWELL: IF I CAN ADD ONE THING BRIEFLY, YOUR HONOR. I DISCUSSED ENTERING AN N.G.I. PLEA WITH MR. PIGGEE ON MANY OCCASIONS. I THINK THAT'S WHAT HE SHOULD DO, BUT I CANNOT ENTER IT WITHOUT HIM. HE NEEDS TO ENTER IT HIMSELF. SO, I'M STUCK IN A POSITION WHERE I REALLY THINK AN N.G.I. PLEA IS APPROPRIATE, BUT, I GUESS,

WE DON'T HAVE THAT.

THE COURT: OKAY. WE DO HAVE JURORS.

MR. EWELL: I'M READY.

THE COURT: WE'LL GET STARTED. IF HE WANTS TO COME TOMORROW, HE'S WELCOME TO COME HERE ANY DAY HE WANTS, AND I'LL ASK THE BAILIFF IF HE COULD LET THEM KNOW IF THEY CAN GIVE US A DAILY THING WITH HIM, TELL US WHAT HE'S GOING TO DO. IT WOULD BE GOOD TO KNOW IF HE'S COMING OR NOT.

MR. EWELL: I WILL ASK DAILY IF MR. PIGGEE IS NOT HERE TO BE EXTRACTED DAILY.

THE COURT: I UNDERSTAND, AND I APPRECIATE IT, BUT I'M JUST NOT GOING TO LITERALLY DRAG SOMEONE OUT IN THE COURTROOM FOR HIM TO ABSENT HIMSELF WHILE HE'S HERE BECAUSE HE DOESN'T COME OUT OF THE JAIL CELL OR YELLS FROM THE BACK AND CURSES UNLESS HE GETS WHAT HE WANTS, AND THEN HE STOPS. I JUST WON'T DO THAT.

SO, I APPRECIATE YOUR POSITION THAT AT LEAST YOU'RE IN WHICH CAN'T BE EASY, BUT THERE HAVE BEEN OTHER CASES THAT HAVE BEEN TRIED IN ABSENTIA. THAT'S WHAT WE'LL DO IF HE DOESN'T WANT TO COME.

MR. TORO: YOUR HONOR, FOR THE RECORD I KNOW THE COURT HAS PREVIOUSLY ADMONISHED MR. PIGGEE IF HE DIDN'T COME TO COURT THAT HE WOULD BE VOLUNTARILY ABSENTING HIMSELF FROM THESE PROCEEDINGS AND THE TRIAL, AND I THINK YOU MADE IT ABUNDANTLY CLEAR TO HIM.

THE COURT: I BELIEVE I DID. WE WENT INTO THE JAIL CELL ON ONE OCCASION TO TELL HIM THAT. HE WAS ON

ANOTHER FLOOR BECAUSE HE REFUSED TO COME OUT. AND WE JUST CAN'T DO THIS WITH EVERY CASE, AND EVERYBODY STARTS TELLING US TO COME IN THE HALLWAY, COME TO THEIR HOUSE. I'M NOT GOING TO DO THAT.

SO, WE'LL GET STARTED SOON.

MR. EWELL: YES, YOUR HONOR.

THERE'S A FEW 402 ISSUES. OTHER THAN THAT I THINK WE ARE BOTH READY.

THE COURT: WE'LL TAKE THOSE UP IN ABOUT 30 MINUTES.

MR. TORO: THANK YOU.

MR. EWELL: OKAY. THANK YOU.

(PAUSE IN PROCEEDINGS)

THE COURT: PEOPLE VERSUS PIGGEE. RECALLING THAT MATTER.

COUNSEL ARE BOTH HERE. MR. PIGGEE HAS ABSENTED HIMSELF BY REFUSING TO COME TO COURT.

AND WE HAVE BEING ASSISTED BY THE SPANISH LANGUAGE INTERPRETER --

MR. TORO: FOR MR. GREGORIO MACHUCA, M-A-C-H-U-C-A.

I ALSO HAVE OFFICER NIGG AND DETECTIVE MIKE ROSS FROM THE GARDENA POLICE DEPARTMENT.

THE COURT: OKAY. YOU WOULD LIKE THEM ON CALL?

MR. TORO: YES, FOR THE DURATION OF THE TRIAL.

THE COURT: OKAY. ON THREE-HOUR CALL.

WITHIN THREE HOURS YOU NEED TO COME BACK TO COURT.

THE WITNESS: OKAY.

MR. TORO: THANK YOU, YOUR HONOR.

(PAUSE IN PROCEEDINGS)

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. KALAMICE PIGGEE
TORRANCE, CALIFORNIA WEDNESDAY, SEPTEMBER 3, 2014
DEPARTMENT SW C HON. ERIC C. TAYLOR, JUDGE
REPORTER: DARCY S. SENFF, CSR NO. 11953
TIME: P.M. SESSION

APPEARANCES:

RICHARD EWELL, DEPUTY PUBLIC DEFENDER ON BEHALF OF DEFENDANT KALAMICE PIGGEE; JAMES TORO, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: PEOPLE VERSUS PIGGEE, 89772.
MR. TORO AND MR. EWELL ARE HERE.
MR. PIGGEE IS NOT.
YOU ASKED THIS BE SET ON?

MR. EWELL: I DID, YOUR HONOR. THANK YOU. WITH THE UPCOMING TRIAL SET FOR MONDAY AS 10 OF 10 --

THE COURT: 8 OF 10 -- 10 OF 10; RIGHT.

MR. EWELL: I BELIEVE ON MONDAY WE'RE 10 OF 10.
YOU KNOW, YOUR HONOR, AFTER SPEAKING WITH THE APPELLATE DEPARTMENT IN THE PUBLIC DEFENDER DIVISION AND MY ATTEMPTS TO SPEAK WITH MR. PIGGEE, I WANT TO DECLARE A DOUBT OR ASK THE COURT TO DECLARE A DOUBT AS TO HIS COMPETENCY. I DON'T THINK HE'S ABLE TO EFFECTIVELY

COMMUNICATE WITH COUNSEL.

ALSO, THE LAST TIME WE WERE HERE IN COURT, HE WAS YELLING OUT THINGS LIKE, I'M JESUS. I'M THE SHERIFF. SO, I THINK WE NEED TO HAVE HIM EVALUATED FOR COMPETENCY. I WANTED TO DO THAT SOONER RATHER THAN LATER SO WE DON'T ORDER A PANEL FOR MONDAY.

THE COURT: SO WHAT HAS CHANGED?

MR. PIGGEE HAS BEEN LIKE THIS CONSISTENTLY, ALWAYS BEEN THIS WAY. IT SEEMS WHEN HE'S NOT GETTING HIS WAY, HE ACTS OUT MORE IN THAT WAY.

MR. EWELL: YOUR HONOR, ALL I CAN SAY FROM WHEN I FIRST MET MR. PIGGEE, HE WOULD AT LEAST BE ABLE TO COMMUNICATE SOMEWHAT. I KNOW HE'S ALWAYS BEEN VERY DIFFICULT HERE IN COURT. IT SEEMS THE LEVEL OF THE WAY HE'S ACTING IN COURT AND HIM YELLING OUT THESE THINGS, HE SEEMS TO BE CLEARLY DELUSIONAL.

AND JUST HE AND I ARE NOT ABLE TO COMMUNICATE AT ALL. HE YELLS OVER ME THE WHOLE TIME. IT'S GRADUALLY GOTTEN WORSE FROM THE TIME I FIRST MET HIM. WHEN I FIRST SPOKE WITH HIM TO WHERE WE ARE NOW, IT'S GRADUALLY DETERIORATED. IT'S GOTTEN TO THE POINT WHERE I DO HAVE SOME SERIOUS CONCERNS ABOUT HIS COMPETENCY.

THE COURT: OKAY. PEOPLE.

MR. TORO: MY POSITION IS THAT I READ THE TRANSCRIPT FROM THE -- THIS CASE IS A REFILE. I READ THE TRANSCRIPT FROM THE PRELIM. ON THAT DATE MR. EWELL DECLARED THAT HE BELIEVED THAT MR. PIGGEE WAS, IN FACT, COMPETENT, AND FOR ABOUT EIGHT PAGES MR. PIGGEE IS RANTING

AND RAVING. AND JUDGE INJEJIKIAN MADE A FINDING AT THAT TIME THAT HAVING REVIEWED HIS RECORD -- BECAUSE MR. PIGGEE AT THAT TIME INDICATED HE WANTED TO GO PRO PER. SHE SAID THAT, YOU KNOW, WHEN HE COMES TO COURT, HE USUALLY HAS TO BE EXTRACTED TO GET HIM TO COURT. EVERY TIME HE GETS THERE, HE CLAIMS SOME SORT OF MEDICAL INJURY THAT THEN CAUSES DELAY AGAIN. AND TO QUOTE HER, "EVERYTHING YOU DO IS ABOUT DELAY AND OBSTRUCTION, AND SO THAT'S WHY YOU'RE ASKING TO GO PRO PER TO FURTHER DELAY, TO FURTHER OBSTRUCT, AND I CAN'T LET YOU DO THAT."

I THINK THERE IS A CASE WHICH WOULD ALLOW YOUR HONOR TO NOT FIND THAT HE IS NOT COMPETENT BASED ON COUNSEL'S REPUTATION. I'M CITING PEOPLE V. JONES, A 1991 CASE, 53 CAL.3D 1115. AND THE GIST OF THAT DECISION IS BASICALLY THAT WHEN SOMEBODY HAS BEEN DECLARED NOT COMPETENT BUT HAS BEEN RESTORED TO COMPETENCY, AND I'LL QUOTE HERE, "A SECOND COMPETENCY HEARING, IT'S NOT REQUIRED UNLESS" -- I'M SORRY. BASICALLY THEY HAVE TO SHOW A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR NEW EVIDENCE CASTING A SERIOUS DOUBT ON THE VALIDITY OF THAT FINDING.

AND I THINK GIVEN THE HISTORY OF THIS CASE, MR. PIGGEE WHO I BELIEVE IS BASICALLY FORUM SHOPPING BECAUSE HE TONES DOWN WHEN HE'S ASKED IF HE'LL WAIVE TIME TO SEE IF THIS CASE IS A WHEELCHAIR CASE AND TO BE TRIED DOWNTOWN, AND WHEN THAT DID NOT COME THROUGH, THEN I BELIEVE HE STARTED ACTING OUT.

MY CONCERN IS I THINK IF THE COURT IS CONSIDERING FINDING HIM NOT COMPETENT AT THIS TIME, I'M

ASKING THE COURT TO DO IT BASED ON SEEING MR. PIGGEE IN COURT AND MAKE YOUR OWN FINDING AS TO THAT TO SEE IF, IN FACT, THERE IS A SUBSTANTIAL CHANGE OF CIRCUMSTANCE.

BUT WE ARE KIND OF UNDER THE GUN BECAUSE MONDAY IS TECHNICALLY LAST DAY, AND IF MR. PIGGEE WERE TO COME OUT AND HE WERE COMPLETELY LUCID AND DIFFERENT -- I'M NOT CASTING DOUBT AS TO WHAT MR. EWELL IS SAYING BECAUSE I THINK HE'S A VERY ETHICAL ATTORNEY -- BUT I JUST THINK MR. PIGGEE HAS FOUND A WAY TO MANIPULATE THE SYSTEM. AND I HAVE SAID IT BEFORE. SO, I WILL SAY IT AGAIN. MY RECOMMENDATION IS HE BE ORDERED OUT BUT THAT WE HAVE SOME KIND OF BACK-UP PLAN IN CASE WE DO GO FORWARD AND IT IS LAST DAY.

THIS IS A DISMISSAL. I HAD TO DO THAT BECAUSE THE VICTIM WAS UNAVAILABLE, WAS IN MEXICO AT THE TIME, AND I'M NOT GOING TO GET ANOTHER BITE AT THIS APPLE.

MR. EWELL: MAY I RESPOND BRIEFLY?

THE COURT: YES.

MR. EWELL: AT THE TIME OF PRELIM THE REASON WHY THE JUDGE ASKED ME IF I FELT HE WAS COMPETENT WAS BECAUSE IT WAS -- THE COURT HAD CONCERNS THEN WHETHER OR NOT HE WAS COMPETENT. AND IT WAS ONLY AFTER I WAS ABLE TO SPEAK WITH MR. PIGGEE FOR SOME TIME THAT I DIDN'T ASK THE COURT TO DECLARE A DOUBT AT THAT TIME.

AND ALSO I DON'T THINK THIS IS A DELAY TACTIC BY MR. PIGGEE BECAUSE HE'S NOT EVEN ASKING FOR ME TO DECLARE A DOUBT. I'M DOING IT ON MY OWN JUST BASED ON CONCERNS THAT I HAVE REGARDING HIS ABILITY TO SIT STILL OR

PARTICIPATE IN HIS OWN TRIAL OR JUST COMMUNICATE WITH ME.

I THINK WE DID THE PRELIM SIX MONTHS AGO. I'M NOT SURE ON THE DATE.

MR. TORO: APRIL 17 OF THIS YEAR.

MR. EWELL: IT'S BEEN -- THERE'S BEEN -- JUST FROM MY OBSERVATIONS, THERE'S BEEN A STEADY DECLINE IN OUR COMMUNICATION. AND I JUST -- I JUST HAVE CONCERNS AS TO HIS COMPETENCY. I REALLY DO. I THINK IT'S GOTTEN WORSE OVER TIME.

THE COURT: OKAY. WELL, I'VE HAD THIS CASE FOR SOME TIME, AND I HAVE HAD A LOT OF TIME TO EVALUATE AND TO OBSERVE MR. PIGGEE FROM BEING REPRESENTED AND AS A PRO PER AND REPRESENTED AGAIN, AND DECLARED A DOUBT, RESTORED TO COMPETENCY. I DISCUSSED IT WITH DOWNTOWN, WHAT WE WERE GOING TO DO WITH HIM AND HIS EFFORTS TO HAVE A WHEELCHAIR AND BE TRIED DOWNTOWN. THAT SEEMS TO BE ALMOST A GOAL TO HIM TO HAVE HIS TRIAL THERE.

WHEN WE MENTION THINGS LIKE TRYING TO EVALUATE THIS FOR DOWNTOWN TO HAVE THIS BE A WHEELCHAIR AND TRIED THERE, HE CALMS DOWN. AND HE -- HE ALMOST -- IT'S ALMOST LIKE WHEN HE GETS WHAT HE WANTS, HE'S FINE.

I'VE GONE INTO LOCK-UP WITH MY COURT STAFF BECAUSE HE REFUSES TO COME OUT. THEN WHEN WE GO THERE, THE SHOW STARTS. BEFORE WE GET THERE, THE SHOW IS PRETTY CALM. AND IT JUST -- I JUST DON'T SEE THAT THINGS HAVE CHANGED AT ALL FOR HIM. IT SEEMS EVEN ANOTHER COURT -- HE'S ACTING THAT WAY IN ANOTHER COURTROOM WITH ANOTHER JUDGE WHO HAS EXPERIENCED THE SAME THINGS I HAVE

EXPERIENCED.

I DON'T BELIEVE THERE IS ANY REASON RIGHT NOW FOR THE COURT TO DECLARE A DOUBT IN THIS CASE BECAUSE IT DOESN'T SEEM ANYTHING HAS CHANGED FOR HIM.

THE ISSUE IS WITH THE WHEELCHAIR AND HAD TO DO WITH THE CAST APPARENTLY. HE HAD A CAST ON HIS FOOT BUT WOULDN'T LET ANYBODY TOUCH IT TO TAKE THE CAST OFF UNTIL WE HAD SEVERAL DOCTORS LOOK AT HIM. THEY SAID, WE'RE WILLING TO KEEP HIM IN A WHEELCHAIR SO WE DON'T HAVE TO HASSLE WITH HIM ANYMORE, BUT HE DIDN'T NEED A CAST. THEY TOOK IT OFF.

I DON'T SEE ANYTHING HAS CHANGED. IT SEEMS TO BE WHAT HE'S BEEN DOING THE WHOLE TIME EVEN AFTER HE WAS RESTORED TO COMPETENCY.

SO, AT THIS POINT I WILL NOT DECLARE A DOUBT.

MR. EWELL: THANK YOU.

THE COURT: BUT I UNDERSTAND YOU'RE IN A REALLY DIFFICULT POSITION, AND IT CAN'T BE EASY BECAUSE I HAVE A LOT OF TROUBLE TALKING WITH HIM OR GETTING IN A WORD EDGEWISE.

MR. EWELL: RIGHT.

THE COURT: SO, I HAVE EXPLAINED TO HIM ABOUT REFUSING TO COME TO COURT. I'M NOT GOING TO ORDER HE BE EXTRACTED ANYMORE.

IT'S LIKE EVERY OTHER JUDGE HAS HAD TO DO THE SAME THING TO BRING HIM TO COURT. IT'S HIS WAY OF CONTROLLING THE PROCEEDINGS. I WILL NOT DO THAT. I HAVE

EXPLAINED TO HIM IF HE DEMANDS A WHEELCHAIR OR COMING ON THE WHEELCHAIR BUS AND DOESN'T GET HERE UNTIL THE AFTERNOON, WE'LL PROCEED WITH TRIAL WITHOUT HIM BECAUSE HE DOESN'T HAVE A LEGITIMATE REASON TO BE IN A WHEELCHAIR ACCORDING TO THE DOCTORS. HE HASN'T PRESENTED ANY MEDICAL REASON OR EXCUSE OR NOTE FOR JUSTIFYING HIS DEMANDING A WHEELCHAIR TRANSPORT.

NONE OF THE SHERIFFS WILL FIGHT HIM ANYMORE. I THINK THEY ARE PUTTING HIM ON THE WHEELCHAIR BUS JUST SO THEY DON'T HAVE TO DEAL WITH HIS OUTBURSTS.

SO, IT'S HIS WAY OF MANIPULATING, BUT I WILL NOT BE MANIPULATED. THE TRIAL WILL START ON TIME.

UNLESS SOMETHING ELSE COMES UP, SOMETHING OUT OF THE ORDINARY THAT YOU CAN EXPRESS, I DON'T SEE A REASON AT THIS POINT TO DECLARE A DOUBT.

IT HAS BEEN GOING ON FOR HOW LONG?

MR. TORO: THE CRIME TOOK PLACE --

THE COURT: 2012, MARCH 12TH.

MR. TORO: MARCH 12TH OF 2012.

THE COURT: SO, THIS IS OVER TWO YEARS OLD THAT THIS OCCURRED, AND IT'S BEEN SET FOR TRIAL DOWNTOWN, AND IT'S BACK HERE.

IT'S BEEN GOING ON FOR A LONG TIME. IT'S BEEN SIX MONTHS SINCE THE REFILE.

MR. TORO: REFILING WAS IN JANUARY OF THIS YEAR. THE PRELIM WAS IN APRIL. IT WAS DOWNTOWN.

THE COURT: OKAY. SO, LET ME KNOW IF I CAN DO ANYTHING ELSE TO HELP YOU. I KNOW THIS CAN'T BE EASY FOR

YOU.

MR. EWELL: CAN I BE HEARD AS TO EXTRACTION?

THE COURT: YES.

MR. EWELL: I KNOW THE COURT DOES NOT WANT TO EXTRACT MR. PIGGEE. I WOULD, HOWEVER, ASK THE COURT TO IF, IT COMES TO THAT, ON MONDAY WHERE HE'S REFUSING TO COME TO COURT, I WOULD ASK THE COURT TO EXTRACT HIM. THIS IS A THIRD-STRIKE CASE. HE HAS A RIGHT TO BE HERE. I THINK HE DEFINITELY NEEDS TO BE HERE.

THE COURT: RIGHT.

WELL, YOU KNOW, I PONDERED THIS FOR A WHILE. I UNDERSTAND IT WOULD BE GOOD TO HAVE HIM HERE. I THINK HE DOES HAVE A RIGHT TO BE HERE AND SHOULD BE HERE, BUT I HAVE TO EXTRACT HIM EVERY TIME TO BRING HIM TO COURT, AND THAT'S WHAT I'VE HAD TO DO, NOT EVERY TIME, BUT A NUMBER OF TIMES. HE -- THE DELAY CAUSES US TO DELAY IN STARTING TRIAL. WE HAVE 60 JURORS HERE. I HAVE TO BALANCE WHAT THE RIGHT THING IS; KEEPING 60 PEOPLE HERE TO PICK A JURY OR WAITING FOR HIM TO BE EXTRACTED WHEN I HAVE ALREADY EXPLAINED TO HIM I WILL NOT EXTRACT HIM GIVEN IF HE REFUSES, THAT'S HIS DECISION. BUT I'VE TRIED TO GIVE HIM EVERY RIGHT TO BE HERE, AND I PUT TOO MANY PEOPLE'S SAFETY AS RISK BY GOING THROUGH THIS PROCESS WITH HIM EVERY TIME.

I TOLD HIM WHAT HIS RIGHT WAS. I TOLD HIM HE WAS GOING TO START HIS TRIAL TODAY. IF HE DECIDED NOT TO BE HERE, THEN THAT'S -- IT'S NOT A GAME I THINK THE COURT SHOULD BE INVOLVED IN ESPECIALLY WHEN IT COULD END

UP IN INJURY OF ONE OF THE DEPUTIES. HE'S NOT A SMALL PERSON.

I THINK IT'S A DECISION HE'S MADE AT THIS POINT WITH ALL THE EXTRACTIONS EVEN WITH THE OTHER COURT EXTRACTING HIM. THIS IS A DECISION HE'S MADE. IT WILL CAUSE DELAY IN OUR PROCEEDINGS. IT WILL CAUSE DELAY WITH THE JURORS, AND, YOU KNOW, THERE WAS A POINT WHERE WE EXTRACTED HIM AND BROUGHT HIM TO COURT, AND THEN I HAD TO GO DOWN WITH MY COURT REPORTER AND ALL THE STAFF AND THE CLERK TO DEPARTMENT L, DEPARTMENT L, TO GO INTO THEIR LOCK-UP WHICH WE'RE NOT SUPPOSED TO DO TO HAVE COURT WHERE HE WAS BECAUSE THAT'S WHAT HE DECIDED TO DO. THEN HE GOT UP, STOOD OUTSIDE THE JAIL CELL, AND YELLED THINGS UNTIL HE HEARD I WAS TRYING TO FIND WHETHER OR NOT THIS SHOULD BE DOWNTOWN, AND HE CALMED DOWN, AND SAID THANK YOU, AND WE LEFT. I TOLD HIM THEN I WOULD NOT EXTRACT HIM.

I TOLD HIM WHEN HE WAS HERE LAST TIME IN OUR COURT. HE TRIED TO OVER TALK ME THAT THE TRIAL WAS GOING ON. HE GOT UPSET ABOUT IT, AND I TOLD HIM I WOULD NOT EXTRACT HIM AGAIN. IT'S REALLY HIS DECISION.

SO, YEAH. SO, I WILL NOT ISSUE AN EXTRACTION ORDER.

MR. EWELL: OKAY.

THE COURT: I THINK IT'S VERY CLEAR AT THIS POINT. HE HAS A RIGHT TO BE HERE, AND I WANT HIM TO. IF HE DECIDES NOT TO, THAT'S HIS OWN DECISION.

AGAIN, I'M SORRY.

MR. EWELL. I APPRECIATE THAT. THANK YOU. I

JUST WANT TO MAKE SURE THE RECORD IS CLEAR REGARDING COMPETENCY AND REGARDING EXTRACTION.

THE COURT: HOPEFULLY IT'S CLEAR. YOU WANT TO ADD ANYTHING ELSE TO IT?

MR. EWELL: I DON'T THINK WE NEED TO.

MR. TORO: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY. SO, I'LL STILL ORDER THE JURORS FOR MONDAY. WE'LL STILL HAVE 65 JURORS.

MR. EWELL: 10 OF 10 MONDAY?

THE COURT: 10 OF 10 MONDAY.

MR. EWELL: OKAY.

THE COURT: AND YOU CAN COMMUNICATE WITH HIM AND REMIND HIM WE'RE NOT GOING TO ISSUE AN EXTRACTION, AND I WILL NOT DEMAND A WHEELCHAIR FOR HIM. IF HE'S NOT HERE AT 10:30, WE'LL START TRIAL, AND WE'LL START WITHOUT HIM.

MR. EWELL: OKAY.

THE COURT: UNLESS SOMETHING IS WRONG WITH THE REGULAR BUS.

MR. TORO: THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

(PROCEEDINGS CONCLUDED)

CASE NUMBER: **YA089772**
CASE NAME: PEOPLE V. **KALAMICE PIGGEE**
LOS ANGELES, CA; THURSDAY, APRIL 17, 2014
DEPARTMENT NO. 032 HON. MARAL INJEJIKIAN
REPORTER: PHYLLIS YOUNG, CSR NO. 9122
TIME: P.M. SESSION
APPEARANCES:

THE DEFENDANT, KALAMICE PIGGEE, BEING PRESENT IN COURT AND REPRESENTED BY COUNSEL, RICHARD EWELL, DEPUTY PUBLIC DEFENDER OF LOS ANGELES COUNTY; DAVID ZYGIELBAUM, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

THE COURT: IN THE MATTER OF KALAMICE PIGGEE, YOUR APPEARANCES, PLEASE.

MR. EWELL: GOOD AFTERNOON, RICHARD EWELL DEPUTY PUBLIC DEFENDER ON BEHALF OF MR. PIGGEE.

MR. ZYGIELBAUM: DAVID ZYGIELBAUM FOR THE PEOPLE.

THE COURT: WAIT, WAIT, WAIT. NO, NO, YOU'RE NOT GOING TO BE INTERRUPTING. HE'LL TELL ME WHEN YOU NEED TO SPEAK.

MR. ZYGIELBAUM: PEOPLE ARE READY, YOUR HONOR.

MR. EWELL: DEFENSE IS READY, YOUR HONOR, MR. PIGGEE HAS REQUESTED TO REPRESENT HIMSELF IN COURT.

THE COURT: THAT'S NOT GOING TO HAPPEN?

THE DEFENDANT: WHY, I HAVE NO NGI, NO NOTHING. ACCORDING TO THOMAS ORSEOLO, WHO IS SITTING HERE --

MATTER OF FACT, YOU KNOW WHAT THOUGH, I CAN WALK. HE SAID AS SOON AS I REGAIN WALKING, I'LL GO BACK TO TORRANCE. SO I'LL DO THAT, I CAN WALK.

THE COURT: OKAY, ANYTHING ELSE YOU NEED TO SAY?

THE DEFENDANT: WELL, YES, MY JUDGE IS THOMAS ORSEOLO. I HAD ETHNA BURNS AT FIRST. MY NAME IS KALAMICE PIGGEE, TODAY IS APRIL 17TH, 2014. I'M SITTING IN FRONT OF MARAL INJEJIKIAN, AND I SEE THE STENOGRAPHER SITTING RIGHT THERE.

FIRST, I'M INNOCENT.

SECOND, I'VE BEEN IN JAIL 235 DAYS. THE ALLEGED VICTIM HAS NEVER BEEN ON THE STAND, MICHAEL WALLER (PHONETIC) AND JOHN TEMPRELL (PHONETIC), THE SECURITY GUARDS, THE ONLY WITNESSES FROM THE NORWEGIAN CASINO, I HAVE A LAWYER HERE BY THE NAME OF MARCUS HUNTLEY. MY ARRESTING OFFICER CHRISTOPHER MENDEZ WAS NEVER REGISTERED UNDER PROP 32. MY JUDGE WAS ROBERT K. KIHARA, THEY MOVED FOR 95 DISMISSAL FROM THE JUMP.

THE COURT: WHY ARE YOU TELLING ME THIS TODAY?

THE DEFENDANT: BECAUSE I'M TELLING YOU TODAY, I HAVE NO MENTAL HOLD. I WAS DISCHARGED FROM PATTON, AND WITH ALL DUE RESPECT, YOUR HONOR, COMPETENT TO STAND TRIAL, AND I HAVE THE RIGHT TO DEFEND MYSELF. AND IF NOT, NOT A PROBLEM, BUT HERE'S MY THING, BUT IF IT IS A PROBLEM, JUDGE THOMAS ORSEOLO TOLD ME AS SOON AS I CAN WALK, I CAN GO BACK TO TORRANCE COURT, IF I JUST GET THEM TO REMOVE MY WHEELCHAIR STATUS. SO EITHER WAY IT GO, I WOULD LIKE TO WAIVE TIME TO DEFEND MYSELF AND RETURN BACK TO TORRANCE. I DON'T NEED A WHEELCHAIR ANYMORE. AND I'M INNOCENT, THAT'S THE LAST THING I HAVE TO SAY.

THE COURT: THE REASON I'M NOT GRANTING YOUR PRO PER STATUS IS BECAUSE I AM ABSOLUTELY 100 PERCENT SURE, HAVING LOOKED AT THE FILE, THAT THE ONLY REASON YOU'RE ASKING TO DO THAT IS TO CAUSE FURTHER DELAY. EVERY TIME THIS MATTER IS SET FOR ANYTHING, YOU REFUSE TO COME OUT OF YOUR CELL, YOU HAVE TO BE EXTRACTED, YOU HAVE TO BE DRAGGED TO COURT.

AND THEN WHEN YOU GET HERE, OR AFTER THEY EXTRACT YOU, WHICH IS WHAT HAPPENED AGAIN YESTERDAY, YOU CLAIM SOME SORT OF MEDICAL INJURY WHICH THEN CAUSES THE DELAY AGAIN.

EVERYTHING YOU DO IS ABOUT DELAY AND OBSTRUCTION, AND SO THAT'S WHY YOU'RE ASKING TO GO PRO PER, TO FURTHER DELAY, TO FURTHER OBSTRUCT, AND I

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CAN'T LET YOU DO THAT, OKAY.

THE DEFENDANT: WITH ALL DUE RESPECT, MA'AM, MS. JEANETTE LEE --

THE COURT: I'VE MADE MY RULING.

THE DEFENDANT: RICHARD EWELL, RICHARD SAID HE'S ONLY MY LAWYER FOR ONE DAY.

IS THAT TRUE? ARE YOU ONLY MY JUDGE FOR TODAY?

THE COURT: YES.

THE DEFENDANT: BUT I DO WAIVE TIME, MARAL INJEJIKIAN.

THE COURT: I KNOW YOU'VE BEEN DOING THIS FOR TWO YEARS NOW.

ARE WE READY FOR PRELIM?

MR. EWELL: YES.

CAN WE DO IT PER 1368.1?

THE COURT: ABSOLUTELY.

GIVE ME JUST ONE MOMENT.

MR. ZYGIELBAUM: YES, WE'RE READY.

THE DEFENDANT: MR. EWELL, ARE YOU DOING THE PRELIM TODAY?

MR. EWELL: YES.

THE DEFENDANT: NO, I'M NOT HAVING THAT.

IF DEPUTY RODRIGUEZ DON'T REMOVE ME, I'M GOING TO TALK OUT LOUD AND IRATE. BUT I'LL JUST SAY THE LODGE ON TORRANCE BOULEVARD AND PROSPECT, THE MASONIC LOUNGE AND THE GARDENA POLICE STATION ARE INVOLVED, BUT I HAVE NO MENTAL ILLNESS, NO HANGUPS,

NONE OF THAT, I WAS DISCHARGED BY DIANA REYES FROM PATIENCE RIGHTS AFTER FRANK WEB AND RICHARD ROSE BROKE MY ANKLE IN THREE PLACES, AND MS. JEANETTE LEE, YOU KNOW WHAT SHE SAID, SHE SAID WHEN SHE SENT HER DETECTIVE, WHAT THEY SAID IS THE ALLEGED VICTIM DON'T EVEN SPEAK ENGLISH FIRST OF ALL.

SECOND OF ALL, SHE SAID EVERYTHING IS ON VIDEO, DR. ROTHENBERG, HE SAID THAT THE MAN SAID THIS MAKES NO SENSE TO ME, THIS WHOLE THINGS MAKES NO SENSE. I HAD DR. GORDON PLOTKINS, AND I ALSO HAD DR. SIEGEL WHO SENT ME TO PATTON IN 2010.

YES, I AM BIPOLAR. I SEE YOU, MS. STENOGRAPHER LADY, BUT AM I EPISODIC RIGHT NOW? NO.

WHY WOULD THEY DO A PRELIMINARY HEARING TODAY AND THE MAN HAS NEVER BEEN ON THE STAND, AFTER MARCUS M. HUNTLEY HAD ALREADY DISMISSED THE CASE.

WHY WOULD THEY DO A PRELIMINARY HEARING TODAY? THAT MAKES NO SENSE. IT WAS LAWYER DANA FLAUGHM (PHONETIC) WHO I SAW, MS. STENOGRAPHER, THE OTHER DAY. WHAT THEY SAID IS HE'S GOING TO REFILE, THEY'VE ALREADY MOVED FOR A DISMISSAL.

I HAVE THE RIGHT TO DEFEND MYSELF -- NOW, MARAL INJEJIKIAN CANNOT GRANT IT BECAUSE HE'S ONLY MY LAWYER FOR THE DAY, BUT I REFUSE TO PARTICIPATE IN A PRELIMINARY BECAUSE I WANT TO GO PRO PER. I'M NOT HAVING AN EPISODE. MY DOCTOR IS A

MR. JOSEPH VERGO (PHONETIC). THESE ARE ALL MY PSYCHIATRISTS AT CCTF TWIN TOWERS, 1839 BAUCHET STREET. I'M VERY COMPETENT. THOMAS ORSEOLO, I KNOW HIM FROM THE PAST. HE WAS ON MY SIDE. HE SAID THERE ARE JUDGES HIGHER THAN ME. HE SAID THE REPORTER WAS ERIC C. TAYLOR. HE SAID I'M GOING TO SEND YOU TO CCB, AND HE ALSO SAID CHECK THIS OUT, IF YOU CAN WALK OR WHATEVER, THEY'LL SEND YOU BACK TO TORRANCE COURT, AND I KNOW EVERYBODY THERE FROM MS. SANDRA THOMAS WHO IS NOW A JUDGE, TO MS. SHERRY MILLER WHO USED TO BE MY PUBLIC DEFENDER. SHE'S NOW A JUDGE, MS. YVETTE VERASTEGUI WAS MY PUBLIC DEFENDER FOR A YEAR. I WAS ALSO INNOCENT, CUSSERO (PHONETIC) WAS MY ARRESTING OFFICER, THE TRAINING OFFICER OF MR. JOHN CUNNINGHAM AND HAWTHORNE POLICE DEPARTMENT. I HAD TO SIT THERE FOR A YEAR, BUT I BEAT ALL THREE CHARGES, OKAY.

SO I HAVE REASON TO BELIEVE THEY'RE TRYING TO SET ME UP. BUT LIKE I SAID, I'M NOT HAVING ANY PSYCHOSIS, AND ERIC C. TAYLOR ATTEMPTED NOT TO ALLOW ME TO DEFEND MYSELF TWICE, BUT IT HAD NOTHING TO DO WITH ME DELAYING THE CASE BECAUSE IT'S ONLY OBVIOUS, I HAVE REAL PSYCH ISSUES, THAT'S A COP OUT. EVEN THOUGH I'VE BEEN DIAGNOSED BIPOLAR, I'M TAKING MY MEDS, I'M TOTALLY COMPETENT TO STAND TRIAL, MS. STENOGRAPHER.

THE COURT: YOU TALK WAY TOO FAST. I HAVE TO STOP YOU.

WE'RE GOING TO GO FORWARD WITH THE

PRELIM.

THE DEFENDANT: WITHOUT ME THAT'S FINE, BECAUSE I'M GOING TO KEEP TALKING AND IT DOESN'T MAKE ANY SENSE BECAUSE MARCUS M. HUNTLEY MOVED FOR A DISMISSAL UNLESS DEBBIE RODRIGUEZ WANT TO ATTACK ME, SO I WOULD JUST LIKE TO ASK FOR A SERGEANT, SOME HELP BECAUSE I'M GETTING LOUD AND KEEP TALKING ABOUT THE ILLUMINATI, DEPUTY RAZ (PHONETIC) LIVES ON 137TH AND --

THE COURT: SO YOU'RE TELLING ME YOU'RE GOING TO KEEP TALKING THROUGH THE PRELIM.

THE DEFENDANT: YES, YES. AND I DON'T WANT TO STAND UP OR BE ATTACKED, SO I'M ASKING POLITELY TO BE DISMISSED BECAUSE I HAVE A RIGHT TO DEFEND MYSELF.

WE HAVE DEPUTY ANDERSON, HE WORKS AT THE LAWNDALE SHERIFF'S STATION, 149 AND PRAIRIE. MY MOM IS A DEPUTY SHERIFF FOR INGLEWOOD. MY DAD HAS BEEN A DRUG COUNSELOR IN LANCASTER FOR THE LAST TEN YEARS.

WE HAVE INMATE DAVID MOFRED (PHONETIC). WE HAVE INMATE BINGE RIGHT, HAIR HARRY ME, THE NEVER FEE DISCUSS STEY'S ASSISTANT MS. JARAMILLO IN THE JAIL, (UNINTELLIGIBLE).

I HAVE ALL MY SENSES STENOGRAPHER. I'M TAKING ALL MY MEDS, SO I WOULD LIKE TO GET DISMISSED FROM HERE.

THE COURT: ALL YOU HAVE TO DO IS JUST SIT.

THE DEFENDANT: MA'AM, I CANNOT, I CANNOT, SO

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I'M ASKING AGAIN, BECAUSE EVEN ON TV, I'VE NEVER SEEN A MOCK TRIAL. I'VE NEVER SEEN A TRIAL WHERE THEY MADE YOU SIT THERE ANYWAY. BECAUSE NOW I KNOW IT'S A SET UP. SO LET'S JUST TALK ABOUT THE CASE, CHECK THIS OUT. I GUESS THE ALLEGED VICTIM, RIGHT, CHECK THIS OUT, IN THE RESTROOM WHERE THEY SAID, I'M INNOCENT, THE MAN HAD A RADIO IN HIS HAND. WHEN THEY ASKED THE SECURITY GUARD, I WAS THERE THE DAY PRIOR TO, MS. JEANETTE SHOWED ME THE VIDEO.

YOU KNOW WHAT HE SAID, "AMIGOS JESSIE, AMIGOS JESSIE." SO MS. JEANETTE LEE SAID SHE SENT HER DETECTIVE. THE MAN WITHOUT SAYING NO NAMES THAT HE NEVER SPOKE ENGLISH NOT ONCE, SO SOMEBODY IS LYING. SO ACCORDING TO THE POLICE REPORT --

THE COURT: CLEARLY, WE'RE GOING TO FIND THAT HE IS GOING TO VOLUNTARILY ABSENT HIMSELF, AND WE'RE GOING TO PUT HIM IN THE LOCKUP WHERE MAYBE HE CAN HEAR, BUT WE DON'T HAVE TO HEAR HIM.

MR. ZYGIELBAUM: UNLESS THE COURT WANTS TO ORDER A GAG.

THE COURT: NO, DON'T WANT TO DO THAT, THEY DON'T LIKE DOING THAT. SO THANK YOU VERY MUCH.

THE DEFENDANT: SANDRA SMITH, SHE'S A SUPERVISOR.

COME ON, DEPUTY RODRIGUEZ, LET'S GET OUT OF HERE, OR MOVE TWO DOWN. SEE YOU MARAL INJEJIKIAN. I AIN'T GOING TO LIE I'M NOT PLEADING CRAZY OR NOTHING. I SEE YOU, MS. STENOGRAPHER.

YOU GUYS HAVE A BLESSED DAY.

THE COURT: ARE WE READY?

MR. ZYGIELBAUM: READY.

THE COURT: CALL YOUR FIRST WITNESS.

MR. EWELL: MR. PIGGEE, I KNOW HE'S ABSENTED HIMSELF BY MISBEHAVING IN COURT.

THE COURT: HE MADE IT MORE THAN CLEAR HE'S NOT GOING TO STOP TALKING. IT'S CLEAR HE HAS ENOUGH ENERGY TO KEEP TALKING FOR THE WHOLE REST OF THE DAY, SO EITHER WE'RE GOING TO LET HIM SUCCEED IN GOING ANOTHER TWO OR THREE YEARS, DISRUPTING THIS CASE FROM MOVING FORWARD, OR I'M GOING TO FINALLY HAVE TO SAY DO WHAT YOU NEED DO, BUT I NEED TO PROCEED.

HAVING SAID THAT HE HAS VOLUNTARILY ABSENTED HIMSELF, WE NEED TO GO FORWARD.

MAKE ALL THE RECORD YOU NEED, BUT MAKE IT SLOWLY BECAUSE I THINK SHE'S ALREADY LIKE TOAST.

MR. EWELL: JUST BRIEFLY, I HAD A BRIEF CONVERSATION WITH MR. PIGGEE, I BELIEVE HE'S COMPETENT AT THIS POINT, ALTHOUGH AFTER THAT RANTING AND RAVING, I'M NOT SURE, BUT I GUESS --

THE COURT: BUT YOU DID SAY WE'RE PROCEEDING PURSUANT TO 1368.1.

MR. EWELL: YES, YOUR HONOR.

THE COURT: YOU WANT TO APPROACH FOR JUST A SECOND.

(THERE WAS A DISCUSSION

HELD AT THE BENCH WHICH
WAS NOT REPORTED.)

(THE FOLLOWING WAS HELD IN
OPEN COURT:)

THE COURT: YOU WANT TO MAKE SOME MORE OF A RECORD, OR ARE YOU DONE?

MR. EWELL: I BELIEVE HE'S COMPETENT. I'M ASKING THE COURT TO PROCEED PURSUANT TO 1368.1. MR. PIGGEE HAS A RIGHT TO BE HERE, HIS BEING EXCLUDED WOULD BE OVER DEFENSE OBJECTION.

THE COURT: OF COURSE HE HAS A RIGHT TO BE HERE, BUT HE DOESN'T HAVE A RIGHT TO CONTINUE TO DISRUPT THE PROCEEDING, AND IT WAS VERY CLEAR THAT THAT WAS ALL HE WANTED TO DO FOR AS LONG AS HE COULD.

READY?

MR. EWELL: YES.

THE COURT: CALL YOUR FIRST WITNESS.

MR. ZYGIELBAUM: THANK YOU, YOUR HONOR.

BEFORE WE DO THAT, I HAVE AN INVESTIGATING OFFICER. HIS NAME IS DETECTIVE ROSS, HE'S HERE AT COUNSEL TABLE.

THE COURT: NO PROBLEM.

AND WE'RE WAIVING FORMAL ARRAIGNMENT AND READING OF THE COMPLAINT?

MR. EWELL: YES.

MR. ZYGIELBAUM: THE PEOPLE CALL GREGORIO

CASE NUMBER: YA089772-01
CASE NAME: PEOPLE VS. PIGGEE
TORRANCE, CA. MONDAY, APRIL 23, 2012
DEPT. 3 HON. HECTOR M. GUZMAN, JUDGE
APPEARANCES: (AS HERETOFORE NOTED.)
REPORTER: DAWSHA LAYLAND, CSR NO. 5166
TIME: A.M. SESSION

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT:)

THE COURT: ON THE MATTER OF KALAMICE PIGGEE.

MS. BURNS: PIGGEE.

THE DEFENDANT: HOW ARE YOU DOING?

THE COURT: FINE. HE'S PRESENT IN CUSTODY, REPRESENTED BY MS. BURNS. GOOD MORNING, MS. BURNS.

MS. BURNS: GOOD MORNING, YOUR HONOR.

THE COURT: THE PEOPLE ARE REPRESENTED BY MR. ZOUMBERAKIS. THE MATTER IS HERE FOR PRELIMINARY HEARING?

MS. BURNS: YES. AT THIS TIME I WOULD LIKE TO DECLARE A DOUBT AS TO MY CLIENT'S COMPETENCY.

THE COURT: OKAY. IS THAT BECAUSE HE'S UNABLE TO UNDERSTAND THE NATURE OF THE CRIMINAL PROCEEDINGS OR TO ASSIST YOU IN THE CONDUCT OF A DEFENSE?

MS. BURNS: I THINK IT'S BASED ON THE SECOND PRONG, OF BEING UNABLE TO RATIONALLY ASSIST IN THE PREPARATION OF HIS DEFENSE.

THE COURT: THANK YOU. I DECLARE A DOUBT ABOUT THE DEFENDANT'S MENTAL COMPETENCE TO STAND TRIAL. I AM UNCERTAIN ABOUT WHETHER AS A RESULT OF A MENTAL DISORDER OR DEVELOPMENTAL DISABILITY THE DEFENDANT IS UNABLE TO UNDERSTAND THE NATURE OF THE CRIMINAL PROCEEDINGS OR TO RATIONALLY ASSIST IN THE DEFENSE OF THE MATTER.

ALL PROCEEDINGS IN THIS CRIMINAL PROSECUTION ARE SUSPENDED UNTIL THE QUESTION OF MENTAL COMPETENCE OF THE DEFENDANT IS DETERMINED. I ORDER THIS MATTER FOR A COMPETENCY HEARING IN DEPARTMENT 95, MAY 7TH, 8:30 IN THE MORNING. I AM SETTING A NONAPPEARANCE HEARING IN THIS COURT MAY 21ST, AND THAT'S A NONAPPEARANCE DATE, FOR A PROGRESS REPORT FROM DEPARTMENT 95.

ANYTHING FURTHER ON THIS MATTER?

MS. BURNS: NO, YOUR HONOR, BUT MY CLIENT, OVER MY OBJECTION -- AGAINST MY ADVICE, WISHES TO SPEAK TO YOUR HONOR.

THE COURT: WELL, IT'S PROBABLY NOT A GOOD IDEA, BUT WHETHER --

THE DEFENDANT: I ASK ONE THING, PLEASE --

THE COURT: -- NOT BECAUSE OF THE NATURE OF THE PROCEEDINGS; AND THE REASON I DO IT IS EVERYTHING IS BEING RECORDED RIGHT NOW, AND I DON'T WANT YOU TO SAY SOMETHING THAT'S GOING TO --

THE DEFENDANT: I WON'T INCRIMINATE MYSELF.

THE COURT: I'VE HEARD THAT BEFORE.

THE DEFENDANT: I PROMISE. I PROMISE.

THE COURT: WHY DON'T YOU HOLD OFF. I WILL SEE YOU

BACK --

THE DEFENDANT: I JUST WANT TO SAY I'M INNOCENT.

THE COURT: THAT'S NOT GOING TO HURT YOU THEN. YOU HAVE A GOOD DAY.

THE DEFENDANT: YOU TOO. HAVE A BLESSED ONE.

(THE MATTER WAS CONTINUED TO
MONDAY, MAY 21, 2012,
AT 8:30 A.M.)