

S237379

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
vs.)
Domingo Rodas)
)
Defendant and Appellant.)
_____)

Court of Appeal No. B255598

Superior Court No. BA360125

SUPREME COURT
FILED

SEP 22 2016

Frank A. McGuire Clerk

Petition From A Judgment Of The Court Of Deputy
Appeal, State Of California, Second Appellate District, Division Three

PETITION FOR REVIEW

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF
THE SUPREME COURT FOR THE STATE OF CALIFORNIA:

Domingo Rodas, petitioner and defendant, through counsel, respectfully petitions this Honorable Court for review in the above-entitled matter after decision affirming the conviction rendered by the Court of Appeal of the State of California, Second Appellate District, Division Three, filed on August 15, 2016. A copy of the opinion of the Court of Appeal is attached as an appendix.

ISSUES PRESENTED FOR REVIEW

1. Did The Court Of Appeal Err In Finding No Error In The Court Proceeding With The Trial Without A Proper Competency Hearing Under Penal Code Section 1368, Violating Petitioner's Constitutional Right To Due Process, A Fair Trial?
2. Did The Court Of Appeal Err In Finding No Error In The Trial Court Failing To Suspend Proceedings Under Penal Code Section 1368 And Continuing With The Trial After Defense Counsel Expressed Doubt On Petitioner's Competency, Violating Petitioner's Constitutional Right To Due Process, A Fair Trial?
3. Did The Court Of Appeal Err In Finding No Error In The Trial Court Allowing The Prosecution To Elicit Expert Testimony That Essentially Provided An Opinion That Petitioner Premeditated And Deliberated The Crimes, Implicating Petitioner's Constitutional Right To A Fair Trial?

GROUNDS FOR REVIEW

Review is necessary to settle important questions of law and to secure uniformity of decision. (Cal. Rules of Court, 8.500 (b).) Review is also necessary because petitioner must exhaust his claims in state court prior to seeking federal relief. (*O'Sullivan v. Boerckel* (1999) 526 U.S. 838, 840-42 [119 S. Ct 1728, 144 L.Ed.2d 1].)

INTRODUCTION

In his appeal, petitioner argued the court erred in proceeding with the trial without a proper competency hearing under Penal Code section 1368 and the trial court later erred in not suspending proceedings under Penal Code section 1368 after defense counsel expressed a doubt on petitioner's competency. Also, the trial court prejudicially erred in allowing the prosecution to elicit improper expert opinion testimony. Other than modifying the judgment for sentencing errors, the Court of Appeal found no error and affirmed the judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Petitioner adopts the statement of facts and procedural background in the Court of Appeal's opinion attached hereafter as an appendix.

NECESSITY FOR REVIEW

I. REVIEW IS NECESSARY TO DECIDE IF A CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL IS VIOLATED WHEN THE COURT PROCEEDS WITH THE TRIAL WITHOUT A PROPER COMPETENCY HEARING UNDER PENAL CODE SECTION 1368 WHEN THE RECORD DID NOT SUPPORT A FINDING OF COMPETENCY

On this issue, the Court of Appeal found no error. It concluded a stipulation was not required and absent a request for further hearing, the court could summarily approve prior certification that his competency was restored. According to the Court of Appeal, Judge Olmedo did make comments that could be interpreted as referring to a competency hearing held before another bench officer that defense counsel was unaware of; but this interpretation was “strained” and the record showed the only other competency hearing was the one before Judge Schnegg on February 3, 2012. There was no showing that petitioner’s counsel at the May 10 hearing was confused on the issue. (Ct App. Opn. p. 12.) Further, as to petitioner’s claim that evidence that he was not taking his medication constituted substantial evidence he was not competent, there was no showing of mental decompensation that he was no longer competent. (Ct. App. Opn. pp. 12-13.) Petitioner disagrees.

A trial court’s failure to employ procedures to protect against trial of an incompetent defendant deprives that defendant of his or her due process right to a fair trial and requires reversal of the conviction. (*Pate v. Robinson* (1966) 383 U.S. 375, 377-78 [86 S. Ct. 836, 15 L. Ed. 2d 815]; *Drope v. Missouri* (1975) 420 U.S. 162, 171-72 [95 S. Ct. 896, 43 L. Ed. 2d 103]; *People v. Hale* (1988) 44 Cal. 3d 531, 539; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7.)

The court's duty to conduct a competency hearing may arise at any time prior to judgment. Due process and state law require a trial judge to suspend trial proceedings and conduct a competency hearing whenever the court is presented with substantial evidence of incompetence, i.e., evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial. Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and prior mental evaluations. (*People v. Rogers* (2006) 39 Cal. 4th 826, 846-47; *People v. Murdoch* (2011) 194 Cal. App. 4th 230, 236; Pen. Code, § 1368.)

Here, contrary to the Court of Appeal's opinion, the court erred in proceeding with the trial without a proper hearing on petitioner's competency. There was no agreement that the matter would be submitted based on the doctor reports without a hearing and no indication in the record that the attorney standing in for petitioner during the May 10, 2013 proceeding knew that a prior hearing on competency had not been held. (Supp. RT 6, 10.) Further, the medical reports and evidence that petitioner was currently not taking his medication supported the conclusion that he was not competent to stand trial. Contrary to what the Court of Appeal decided, the doctor reports did condition petitioner's competency on him taking his medication. According to the medical reports, without his medication, petitioner would decompensate. (2 CT 209, 202, 205.) At the May 10, 2013 proceeding, counsel appearing for petitioner sought a medical order as to petitioner's medication and stated: "he's not getting his medication; which would certainly affect this case." (2 RT C3.)

Additionally, as reflected in the medical reports, petitioner had a long history of mental illness, multiple hospitalizations, and had been found incompetent to stand trial beginning back in the 1980's based on the same mental illness and symptoms, e.g., paranoid schizophrenia, delusional thinking, "thought disordered with

evidence of word salad and incoherence.” (E.g., 2 CT 193, 201, 204, 205, 209.) The current proceedings, appellant suffering from mental illness and exhibiting signs of decompensation and incompetency, were no different.

In short, the court erred in proceeding with the trial and the Court of Appeal erred in deciding otherwise. The error violated petitioner’s constitutional right to due process. (*Pate v. Robinson, supra*, 383 U.S. 375, 377-78; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7.) This court should grant review, examine the decision and reverse.

II. REVIEW IS NECESSARY TO DECIDE WHETHER A CRIMINAL DEFENDANT’S CONSTITUTIONAL RIGHT TO DUE PROCESS IS VIOLATED WHEN A TRIAL COURT FAILS TO SUSPEND PROCEEDINGS UNDER PENAL CODE SECTION 1368 AND CONTINUES WITH THE TRIAL AFTER DEFENSE COUNSEL EXPRESSED DOUBT ON THE DEFENDANT’S COMPETENCY

Here, citing *People v. Mai* (2013) 57 Cal.4th 986, the Court of Appeal decided there was no substantial evidence petitioner was incompetent and proceedings should have been adjourned. Although counsel’s description of her client’s note and behavior suggested mental illness, this was not substantial evidence. Instead, petitioner’s responses to Judge Perry suggested he was competent. He knew he was in a jury trial and recited the charges. He knew counsel was defending him and was willing to help. He also apologized for his obstructive behavior. (Ct. App. Opn. p. 13.) As to petitioner’s failure to take his medication, he still showed some understanding of the nature of the criminal proceedings. There was no current medical report from 2014 describing the effect of Rodas’s failure to take his medication. (Ct. App. Opn. p. 14.) Petitioner disagrees.

The conviction of an accused person who is legally incompetent violates due process. (*Pate v. Robinson, supra*, 383 U.S. 375, 377-78; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7.) A defendant is incompetent to stand trial if he or she lacks a sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding, and a rational as well as a factual understanding of the proceedings. (*People v. Rogers, supra*, 39 Cal.4th at pp. 846-47; *Dusky v. United States* (1960) 362 U.S. 402 [80 S. Ct. 788, 4 L. Ed. 2d 824].)

Here, contrary to what the Court of Appeal concluded, the trial court erred in failing to suspend proceedings under Penal Code section 1368 and continuing with the trial, violating petitioner's constitutional due process rights. (*Pate v. Robinson, supra*, 383 U.S. 375, 377-78; *People v. Murdoch* (2011) 194 Cal. App. 4th 230, 237-39; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7.) The psychiatric reports for the Penal Code section 1368 proceeding the year before did condition petitioner's competency on him continuing to take his medication. At the time the reports were written, April of 2013, petitioner was found compliant in taking his medication. (2 CT 202, 205, 206, 209.) Almost a year later when counsel expressed her concern about petitioner's competency, he was not taking his medication and his behavior was exactly as that described in the competency reports that manifested his mental illness. (E.g., 2 CT 204.) Although the Court in *People v. Mai, supra*, 57 Cal. 4th 986, stated that counsel's assertion that his or her client is or may be incompetent does not, in the absence of substantial evidence to that effect, require the court to hold a competency hearing (*id.* at p. 1033), it also stated that "[c]ounsel's assertion of a belief in a client's incompetence is entitled to some weight." (*Id.*) In any respect, counsel also described notes appellant made which showed his incompetence to proceed with the trial. Appellant had written down: "playing record Hollywood Department westside honor ranch L.A. County. Two police officers visiting. Four records. Call to testify in court. Statement you

are the one that murdered a series of persons in a tunnel.” (2 RT 305.) The second page had written: “has transcriptures (sic) of acquittal of execution, transcriptures of the advance of the court date. . . and transcriptures of the name Plake Rodas, Domingo to Doudley Brown.” (2 RT 305.) Appellant had referred to the videos as assimilations. (2 RT 306.)

On this issue, the Court of Appeal found *People v. Murdoch, supra*, 194 Cal. App. 4th 230 not relevant as in that case the defendant had already stopped taking the medication at the time the report was made and was showing signs of decompensation. (Ct. App. Opn. p. 14.) Petitioner disagrees; the case is relevant. In *People v. Murdoch, supra*, 194 Cal. App. 4th 230, the defendant was known to be mentally ill. The experts concluded that while the defendant was competent at the time he was examined, competence was dependent upon medication compliance. Additionally, one doctor’s report stated the defendant had stopped taking his medication. The defendant told another doctor the medication did not help him, he did not like taking it, and only took it sometimes. (*Id.* at pp. 237-39.)

Similarly, here, the medical reports consistently reflected the doctors’ opinions that petitioner had to be on his medication in order to retain competency to stand trial. Further, there was evidence petitioner had stopped taking his medication. Counsel at the May 10, 2013 hearing sought an order for petitioner to take his medication. (2 RT C3.) Almost a year later, defense counsel informed the trial court petitioner told her he was not taking his medication. He told the trial court the same thing. His behavior, despite an ability to recite the general charges, reflected nonsensical statements and delusions. (2 RT 306-07, 311.) He did not show a logical understanding of the current proceedings. His counsel could not ascertain what he wanted. His behavior was the same as that described for his prior competency proceedings, beginning decades ago. He could not have

consulted with his counsel with any rational understanding. (2 CT 202, 204, 205, 206, 209; 2 RT 311.)

In sum, the trial court erred in failing to suspend proceedings under Penal Code section 1368, violating petitioner's constitutional due process rights. In his condition, he was unable to consult with his lawyer with any degree of logical understanding and failed to demonstrate he understood the import of the proceedings. (*Pate, supra*, 383 U.S. 375, 377-78; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7.) The Court of Appeal erred in deciding otherwise. This court should grant review, examine the decision and reverse.

III. REVIEW IS NECESSARY TO DETERMINE IF A CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL IS VIOLATED WHEN THE TRIAL COURT ALLOWS THE PROSECUTION TO ELICIT EXPERT TESTIMONY THAT ESSENTIALLY PROVIDES AN OPINION THAT THE DEFENDANT PREMEDITATED AND DELIBERATED THE CRIMES

For this issue, the Court of Appeal rejected petitioner's argument, finding the hypotheticals were appropriate tools of impeachment to attack Dr. Morris's suggestion on direct examination that a schizophrenic is impulsive and lacks reasoning and logic. The prosecution countered this with questions designed to show that a schizophrenic can be goal oriented and plan. The prosecutor stopped short of asking whether the hypothetical person premeditated and deliberated. (Ct. App. Opn. p. 18.) Petitioner disagrees.

An important element of a fair trial is that a jury consider only relevant and competent evidence bearing on the issue of guilt or innocence. (*Bruton v. United States* (1968) 391 U.S. 123, 131, fn. 6 [88 S.Ct. 1620, 20 L.Ed.2d 476]; *McKinney v. Rees* (9th Cir. 1993) 993 F.2d 1378, 1384; U.S. Const. Amend. V, XIV; Cal. Const. Art. 1, § 7, 15.) Any expert testifying about a defendant's mental illness,

mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states; this is a question to be decided by the jury. (Pen. Code, § 29.) Expert testimony may not invade the province of the jury to decide a case. (*People v. Lowe* (2012) 211 Cal.App.4th 678, 684.)

Here, contrary to what the Court of Appeal decided, the prosecution's question, asking Dr. Morris whether "that person not only conceal[ing] the knife, but looks for an opportunity where nobody's around before the person takes the act in killing . . . [was] thinking methodically, planning out his course of action, goal oriented" (3 RT 924), sought Dr. Morris's opinion on whether petitioner premeditated and deliberated the crimes. This was improper. The jury, not Dr. Morris, had to decide petitioner's intent. "Counsel was simply planning by means of the hypothetical to do indirectly what he could not do directly under the statute, namely, elicit an opinion from [Dr. Morris] regarding defendant's specific intent." (*People v. Bordelon* (2008) 162 Cal. App. 4th 1311, 1327; *People v. Pearson* (2013) 56 Cal. 4th 393, 444.)

The error was also prejudicial. Testimony on the subject was harmful for the defense. The expert's responses to hypotheticals based on the circumstances of these crimes focused on whether the particular conduct showed planning and goal oriented behavior. Given the lack of other witnesses to testify on the subject, the jurors likely used the testimony to conclude petitioner premeditated and deliberated the crimes. Also, the prosecution lacked an overwhelming case against petitioner on the question of premeditation and deliberation. Although evidence showed possession of a weapon, there was no evidence of planning activity or motive.

In short, the trial court erred in overruling the defense's objections to the prosecution's questions to Dr. Morris, seeking an opinion on whether petitioner premeditated and deliberated the crimes. The resulting testimony was improper

and impinged on the jury's function. The error implicated petitioner's constitutional right to a fair trial. (U.S. Const. Amend. V, XIV; Cal. Const. Art. I, § 7.) The Court of Appeal erred in deciding otherwise. This court should grant review, examine the decision and reverse.

CONCLUSION

This case involves important constitutional issues, including an accused's federal constitutional rights to due process, a fair trial. The Court of Appeal's decision, finding no error or constitutional violation, conflicts with established law pertaining to this right and thereby justifies this court's review of petitioner's case. Should this court grant review, petitioner submits that the case be resolved in petitioner's favor. For these and the foregoing reasons, petitioner requests that this court grant his petition for review.

DATED: _____, 2016

Respectfully Submitted,

Joanna McKim
California Bar No. 144315
Attorney for Petitioner

Certification Regarding Petition For Rehearing And Word Count

A petition for rehearing was not filed in the appellate court for this defendant. Further, the word count is 2694 words according to my Microsoft Word program. (Cal. Rules of Court, Rule 8.504.)

I declare under penalty of perjury that this statement is true.
Executed on _____, 2016, at San Diego, California,

Signature: _____, Name: Joanna McKim - 144315
P.O. Box 19493
San Diego, CA 92159
(619) 303-6897
Attorney for Appellant/Petitioner

APPENDIX

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DOMINGO RODAS,

Defendant and Appellant.

B255598

(Los Angeles County
Super. Ct. No. BA360125)

COURT OF APPEAL - SECOND DIST

FILED

AUG 15 2016

JOSEPH A. LANE Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert J. Perry, Judge. Modified and, as modified, affirmed.

Joanna McKim, 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, Susan Sullivan Pithey, and
Zee Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Domingo Rodas was charged with multiple counts of murder and attempted murder. He was found incompetent to stand trial. Criminal proceedings were adjourned, and Rodas was remanded to a treatment facility. After the trial court found that Rodas's competency had been restored, he was tried by a jury and found guilty. Rodas's primary contention on appeal is there was substantial evidence he was not competent to stand trial. We conclude, however, that there was insufficient evidence he was incompetent, and therefore the trial court did not err by refusing to hold further competency proceedings. Although we reject this and Rodas's other contentions, we modify the judgment to correct sentencing errors. The judgment is affirmed as modified.

BACKGROUND

I. Factual background

A. The murder of Frederick Lombardo on July 19, 2009

On the evening of July 19, 2009, officers responded to a report of a "man down" at 6174 Santa Monica Boulevard near El Centro. The man, identified as Lombardo, died from a chest stab wound.

B. The murders of Roger Cota and Keith Fallin and attempted murders of Ronald Vaughan and Kenneth McFetridge on August 6, 2009

Less than a month after Lombardo's murder, four similar incidents occurred on August 6, 2009 in the Hollywood area, within a mile to half-mile of each other.

At approximately 1:15 p.m., Wilford Tiu was in a parking lot on Sunset Boulevard. A man who looked homeless and was later identified as Roger Cota walked slowly toward Tiu. Cota said he'd been shot, but he didn't know who did it. Cota had been stabbed, not shot, and he died from his wound.

Ashli Hughes was working at the Fonda Theatre, near Hollywood and Gower. While she was outside, Hughes noticed Rodas, who had been "hanging out" for 20-to-30 minutes. Another man, Keith Fallin, was sleeping on the street. At just before 2:00 p.m.,

Hughes briefly went back into the theatre. When she came back out, Fallin had been stabbed in the chest.¹ He died from his wound.

Kenneth McFetridge was homeless. While on Yucca, between Wilcox and Cahuenga, he took a nap on the sidewalk about midafternoon. When he awoke it was “coming on evening” and he had severe chest pain. At approximately 4:00 p.m., firefighters responded, but McFetridge refused to be taken to the hospital without his belongings. McFetridge eventually went to the hospital, where he was treated for a stab wound.

Ronald Vaughan was homeless. While walking on Yucca Avenue at approximately 5:45 p.m., he noticed a Black man behind him. When Vaughan stepped aside to let the man pass, the man “hit” Vaughan, or so he thought. In fact, Vaughan had been stabbed. He survived.

C. *The investigation*

Officers investigating the crimes on August 6, 2009 received a description of the suspect as a “male Black” wearing a black and white long sleeved shirt with black pants and a green backpack. When officers searched the area around Yucca and Argyle, they saw Rodas on Gower and detained him. In his sleeve, he had a knife with a black handle wrapped in a homemade sheath.

A DNA mixture of three individuals, including victims Lombardo and Fallin, was on the knife handle. A DNA mixture of at least two individuals was on the knife’s blade, and the majority profile matched Lombardo. A DNA mixture of at least three individuals was on the knife sheath, and the major profile matched Fallin. A swab from a red stain on the sheath matched Lombardo’s DNA profile. McFetridge’s DNA was on Rodas’s shirt.

¹ The incident was captured by surveillance cameras.

D. *Rodas's testimony*

Rodas testified in his defense. He asked the court to “order the three video record exhibition and report for video filming in the nature exhibited, the copy from the Hollywood Police Department, the copy that Carole Telfer [his public defender] showed me at Wayside Honor Ranch, and the copy in the nature that is being exhibited here at the courtroom” He also said that officers “committed” him to “the statements to the four video record copies that you are the one that committed a serious of murders in a tunnel.” Rodas’s testimony was stricken and the jury was ordered not to consider it.

E. *Defense expert testimony*

Dr. Raphael Morris, a psychiatrist, was asked to form an opinion on whether Rodas has a mental illness. Based on his review of Rodas’s police records, military records, psychiatric evaluations, and state hospital records, Dr. Morris diagnosed Rodas with “schizophrenia, undifferentiated type, subtype.”

II. Procedural background

In 2011, an information was filed alleging three counts of murder and two counts of attempted murder, with special circumstances and weapons allegations, against Rodas. In 2012, Rodas was found incompetent to stand trial. Proceedings were adjourned but resumed in 2013 after a certification of restoration of mental competency was filed.

Rodas was then tried by a jury, which rendered its verdict on March 24, 2014. The jury found Rodas guilty of count 1, the first degree murder by lying in wait of Fallin (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(15)),² and of counts 2 and 4, the willful, deliberate and premeditated attempted murders of Vaughan and of McFetridge (§§ 187, subd. (a), 664)). As to all counts, the jury found true weapon allegations (§ 12022, subd. (b)(1)). As to counts 2 and 4, the jury found true personal infliction of great bodily injury allegations (§ 12022.7, subd. (a)). The jury found Rodas not guilty of count 3, the murder of Cota, and of count 5, the murder of Lombardo.

² All further undesignated statutory references are to the Penal Code.

On April 14, 2014, Rodas was sentenced, on count 1, to life without the possibility of parole, plus one year for the use of a weapon. The court imposed a five-year term for a prior conviction found true by the court. On count 2, the court sentenced Rodas to a consecutive life term, one year for the use of a weapon, and three years for the personal infliction of great bodily injury enhancement. On count 4, Rodas was sentenced to a consecutive life term, one year for the use of a weapon, three years for the personal infliction of great bodily injury enhancement, and five years for a prior conviction that the court found true.

CONTENTIONS

Rodas contends **I.** there was substantial evidence he was incompetent to stand trial, **II.** the prosecutor elicited improper testimony from Dr. Morris that Rodas had the specific intent to commit the crimes, and **III.** the abstract of judgment must be corrected.

DISCUSSION

I. Rodas's competence to stand trial

A. Background regarding the competency proceedings

Defense counsel declared a doubt as to Rodas's competency in September 2011. The court then appointed psychiatrists to examine Rodas. After the People's and the defense's doctors found Rodas to be incompetent, Judge Patricia Schnegg, on February 3, 2012, found that Rodas was not presently mentally competent to stand trial. Proceedings were adjourned, and Rodas was remanded to a treatment facility.

A certification of Rodas's restored mental competency was filed by the medical director of Atascadero State Hospital on May 10, 2013, and a hearing was held that day before Judge Charlaine Olmedo. The report accompanying the certification recommended that Rodas be found competent to stand trial. It also recommended he remain on his medication regimen once returned to custody to prevent "mental decompensation" and to maintain competency-related abilities. At the May 10 hearing, Judge Olmedo did not have Rodas's "case file"; she only had a "docket sheet." But it

was the court's "understanding that he's been found competent." No objections to that understanding were raised by any counsel.

Instead, the public defender assigned to the courtroom asked the court to sign a medical order, because "[a]pparently, he's not getting his medication; which would certainly affect this case." When Rodas's public defender arrived, the court repeated that Rodas had been found competent. Without objection, all counsel agreed to a trial date. And when the court asked defense counsel if there was a medical order he wanted filled out concerning Rodas's medication, counsel replied, "I'm not quite certain I'm going to fill this out today, but I'll – can I let you know later?" The court told counsel to "let me know either way on the record, or, if not, there's an actual order form you fill out. If you choose to do it and you want us to know, check the box that indicates that the court wants to be apprised of the results, and then you will get a court letter on whether or not he is getting his medication."

Because of ambiguities in the record, a hearing was held on December 5, 2014 to settle the record from the May 10, 2013 proceeding.³ Judge Olmedo had no independent recollection of the case. In reviewing the transcript and docket sheet, "it appears . . . I had a dummy file, not the case file before me." In the dummy file was a letter from the doctor finding Rodas competent. The court said it had found Rodas was competent and that neither side objected to that finding, and defense counsel did not ask for a hearing on Rodas's competency. Judge Olmedo said, "So it is clear, in settling the record, I believe that I – if it's not clear from my words, but that I inferentially found him competent based upon the doctor's letter, that both sides submitted based upon that letter, and that there was no objection to the court relying upon it to resume the criminal proceedings and find the defendant competent [to] go forward."⁴

³ We ordered the trial court to settle the record "with respect to the competency hearing held between April 18, 2013 . . . and May 10 of 2013."

⁴ Carole Telfer, defendant's trial counsel, was not present at the May 10, 2013 hearing and therefore could not help settle the record.