People v. Dickey-O'Brien

2005 | Cited 0 times | California Court of Appeal | November 28, 2005

NOT TO BE PUBLISHED

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Defendant Rain Dancer Dickey-O'Brien admitted he robbed and murdered a United States Forest Service employee but maintained he was insane when he did it. A jury found he was sane, and the trial court sentenced him to life without the possibility of parole for murder, a determinate term of three years for robbery, and a concurrent term of 25 years to life for weapons enhancements. On appeal, defendant asserts error in determination of competency, court-ordered administration of drugs, instruction of the jury, and pleas accepted by the court. We affirm.

PROCEDURE

Defendant was charged with robbery and murder, with a special circumstance allegation that the murder occurred during the commission of a robbery. The information also alleged defendant personally used and discharged a firearm in committing the two crimes. Defendant entered a not guilty plea, with an additional plea of not guilty by reason of insanity.

The court suspended criminal proceedings because it had a doubt about defendant's competency. It conducted a mental competency trial under Penal Code section 1368. Based on the psychological report, the court found that each of the psychologists agreed defendant was able to understand the proceedings, but did not have the ability to assist his lawyer in conducting a defense or conducting his own defense in a rational manner. Therefore, the court determined defendant was incompetent to stand trial. On January 8, 2002, the court sent defendant to Atascadero State Hospital until his mental competence was restored.

On May 6, 2002, the medical director at Atascadero State Hospital submitted a certification of mental competency to the court pursuant to Penal Code section 1372. The medical director declared: "[Defendant's] attending physician and staff, and the Medical Director of the hospital, agree that he is now able to understand the nature of the proceedings being taken against him and to cooperate rationally with an attorney in his defense." He also wrote: "[I]t is my opinion that this defendant probably does need placement in a psychiatric facility in order to maintain competence to stand trial."

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On May 14, 2002, the court ordered defendant to be kept in the county jail. The court also ordered that defendant be seen by the mental health department as often as possible. Finally, the court ordered defendant to continue taking the medications he was on, until adjusted by a physician.

Defendant pled not guilty to the information and not guilty by reason of insanity. On November 19, 2002, defendant entered a guilty plea on the murder and robbery charges and admitted each of the special circumstance and enhancement allegations. The court informed defendant fully of the consequences of his guilty plea, acknowledging that the issue of sanity remained to be tried by jury. The court proceeded with a jury trial to determine whether defendant was sane at the time of the crimes. The jury found that defendant was sane at the time he committed both the murder and the robbery.

FACTS

Mark Levitoff's pickup truck was found at a campground in Prattville, California with the hood up and jumper cables attached to the battery. Levitoff's body was found later that day under some snow at the campground. The coroner saw an injury consistent with a gunshot wound to the victim's forehead and a wound to the left palm.

Two expended shotgun shells, and a metal letter "H" near the pickup, were found during a search of the area. The victim's wallet was not found on his person or in his vehicle. It was soon learned someone was using the victim's credit and debit cards. The district attorney requested that the victim's bank accounts be kept open so they could track the suspect. The bank alerted the authorities that the credit and debit cards were being used in Nevada, Utah, and Wyoming. Authorities received information that a suspect had used the victim's credit card at a gas station in Utah and a witness saw a Honda (possibly white) with Nevada plates.

On January 24, 2000, Officer Melvin McNiece of the United States Forest Service in Utah advised two local sheriff's deputies of the possibility a suspect was in the area. Officer McNiece learned one of the deputies had run a records check on a Nevada license plate on a Honda parked at the nearby Little Hole Campground. There was no information on the plate, although it had been reported stolen in Las Vegas on January 19. Officer McNiece went to Little Hole Campground and saw a white Honda there. After talking to campers led nowhere, Officer McNiece left to patrol the area. When he returned to the campground, the Honda was gone.

Officer McNiece drove to Dripping Springs Campground, which was fairly close to Little Hole, and again saw the white Honda -- this time with someone near the car. He contacted the sheriff's deputies and reported his location. Officer McNiece spoke with the man, who identified himself as Rain Dancer Dickey-O'Brien, defendant in this case.

Defendant, who stated he had been fishing, was cited for possession of an illegal fish. He gave the

officers permission to search his car for weapons. A substantial amount of cash and some credit cards were located on the front seat. Officer McNiece also noticed defendant's wallet contained a number of credit cards when defendant took it out to show his fishing license. Defendant became suspicious and uneasy when asked about all the cash and extra credit cards. Officer McNiece took one of the credit cards from the front seat of the car and found it belonged to the victim, Mark Levitoff.

Defendant was arrested. When officers searched defendant's camp, they found a sawed-off 12-gauge pump action shotgun.

DISCUSSION

I. Restoration Certification

Defendant argues that the restoration certification was not an adequate basis to recommence criminal proceedings because the accompanying medical report raised doubts regarding defendant's competency. Defendant also argues the trial court's refusal to execute the Atascadero State Hospital's recommendation to house him in a psychiatric facility, which was made as a part of defendant's competency restoration certification, under Penal Code section 1372, subdivision (e), was reversible error. Both claims are without merit.

"If the medical director of the state hospital . . . determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested." (Pen. Code, § 1372, subd. (a)(1).)

"A defendant subject to . . . subdivision (a) . . . who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community program director . . . . The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed." (Pen. Code, § 1372, subd. (e), italics added.)

"To trigger a hearing on a defendant's recovery of mental competence, a specified mental health official must have filed a certificate of restoration thereto. . . . The official's filing of the certificate has legal force and effect in and of itself. . . . At such a hearing, as we have concluded, there is a presumption that the defendant is mentally competent unless he is proved by a preponderance of the evidence to be otherwise . . . ." (People v. Rells (2000) 22 Cal.4th 860, 868.)

The California Supreme Court referred approvingly, in Rells, to People v. Mixon (1990) 225 Cal.App.3d 1471. "Upon receipt of this certification and the defendant's return to court, the trial court, absent a request for a hearing, had authority to summarily approve the certification. [Penal Code] [s]section 1372, subdivision (c) [citation] does not mandate a hearing, and subdivision (d) implies approval authority without such a hearing." (People v. Mixon, supra, 225 Cal.App.3d at p. 1480, fns. omitted.) "[T]he Legislature did not prescribe an automatic hearing for defendants certified competent. Instead, the trial court was authorized to merely `approve[] the certificate of restoration to competence . . . .' [Citation.] But, as we have also observed, the Legislature did provide a `hearing' for those returned defendants who requested one." (Id. at 1482, italics added.)

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (Shamblin v. Brattain (1988) 44 Cal.3d 474, 478-479.)

The trial court chose to house defendant at the county jail. The court noted it had contacted the mental health director who told the judge he believed defendant "could be housed at the county jail, that he would make sure that he was seen by the mental health department and also seen by a psychiatrist, and that he would assist in making sure that [defendant] took the appropriate medication."

The trial court recognized this decision might change in the future. For example, when discussing various aspects of defendant's health that needed monitoring, the court noted that, "[i]f that's not working, then we need to place him in an appropriate location."

Defendant claims that only a psychiatrist, psychologist, or state hospital could give an opinion on defendant's competence. Defendant argues that since the mental health director was none of these, the court abused its discretion by basing its decision on the health director's recommendation. However, Penal Code section 1372, subdivision (e) specifically recognizes that the court has discretion to place a defendant at an "appropriate secure facility approved by the community program director, the county mental health director, or the regional center director." (Pen. Code, § 1372, subd. (e), italics added.) The trial court did not abuse its discretion in deciding to keep defendant at the county jail.

Since there is no automatic right to a competency hearing after a restoration certificate has been issued, the burden was on defendant to request such a hearing. There is no evidence in the record that one was requested. In fact, defendant specifically stated he did not wish to contest competency. The trial court brought up the issue sua sponte. Defendant's attorney stated, "[A]t this point today we don't wish to challenge the finding of competency." To which the court responded, "So that being the case, the Court will reinstitute criminal proceedings." Defendant's attorney responded, "Yes."

Furthermore, even if a hearing had been demanded and granted, Rells makes clear defendant would be presumed competent unless disproved by a preponderance of the evidence.

Defendant attempts to salvage his claim by citing language from Rells which allegedly supports his position. Specifically, defendant makes reference to the portion of Rells which states: "Therefore, in our view, this presumption should be understood to be applicable at a hearing on the defendant's recovery of mental competence, where it conforms in fact with the certificate of restoration filed by the specified mental health official." (People v. Rells, supra, 22 Cal.4th at p. 867, italics in original.) Defendant argues: "Rells' general rule -- that a § 1372 return order supersedes the presumption of incompetence -- doesn't apply in these unusual circumstances" because the trial court did not follow the medical director's placement recommendation. This line from Rells specifically applies to "a hearing on the defendant's recovery of mental competence." Defendant refused the opportunity to have such a hearing and thus this part of Rells does not apply.

The trial court did not abuse the discretion given it explicitly in Penal Code section 1372, subdivision (e) by placing defendant in the county jail even though the restoration certification recommended placement at a psychiatric facility.

Accompanying Medical Report

Defendant contends further doubts of his competence were raised by the restoration certificate and accompanying medical report which necessitated the holding of a competency hearing. We disagree.

The certification of mental competency stated defendant was competent. It also specifically declared: "[Defendant's] attending physician and staff, and the Medical Director of the hospital, agree that he is now able to understand the nature of the proceedings being taken against him and to cooperate rationally with an attorney in his defense." The only language in the certification which could be in any way construed to undermine a presumption of competency is the statement: "Pursuant to Section 1372(e) . . . , it is my opinion that this defendant probably does need placement in a psychiatric facility in order to maintain competence to stand trial." This language does not raise a doubt of competency, but merely fulfills the statutory requirements of Penal Code section 1372, subdivision (e). Therefore, the certification, taken by itself, does not raise further doubts of defendant's competency.

Defendant appears to argue that language found in a report accompanying the certification of mental competency should be treated as part of the main certification document. Defendant specifically focuses on language in the report (entitled Recommended Continuing Care Plan/Discharge Summary) which states defendant still had "paranoid, grandiose, and bizarre delusions" which were "complicated and prominent." The remainder of defendant's examples are mostly taken from experts' reports from before defendant's commitment at Atascadero. The entire hospital report contains many examples of statements supporting the certification's finding of competency.

The cover letter of the report states: "Attached are evaluations reflecting this competence." The section entitled, Hospital Course and Progress, includes numerous accounts of his competence for trial. Some examples are: "[Defendant's] psychotic symptoms and manic symptoms resolved fairly quickly. He was able to pass the Competency Assessment Instrument . . . . He passed the Mock Trial Activity . . . without difficulty on the first attempt . . . . He had a good understanding of the nature and seriousness of the charges against him, understood the roles of courtroom personnel, and appeared to have confidence in his attorney. He also felt that he would have fair treatment by the court. . . . [He] showed a good understanding of the pleas available to him including the Not Guilty by Reason of Insanity (NGI) plea and plea bargaining. His mental status has stabilized and he appears able to cooperate with his attorney in the formulation of a rational defense. . . . He appears physically and psychiatrically stable for discharge." The competency certification and hospital report both provide persuasive evidence, unambiguously, of defendant's competency.

Defendant's claim that the restoration certificate and accompanying report raised a continuing doubt of competency is not supported by the record.

II. Competency Hearing

Defendant asserts the judgment should be reversed because the trial court did not hold a competency hearing once it learned defendant was not taking the drugs in the court's antipsychotic drug order. Specifically, defendant claims it was a "major oversight" for the trial court not to realize defendant was taking a drug in November 2002 which was different from what he was taking in May 2002.

Defendant also argues that grounds existed for the trial court to order a competency hearing based on a combination of factors, including his arguments raised in relation to the restoration certification from the state hospital, the plea colloquy, and statements by the prosecutor and trial experts. None of the claims has merit.

Facts

The discharge report from Atascadero State Hospital, dated May 2, 2002, stated defendant was taking Zyprexa/Olanzapine, Wellbutrin, and Depakote. On May 14, 2002, the court ordered that defendant be given Zyprexa/Olanzapine, Wellbutrin, and Depakote.

Defendant claims a switch from Depakote to Trileptal took place in August 2002. Defendant cites the "jail medication logs, which were attached to the probation report" as the source for this information. The probation officer's report, which is dated February 13, 2003, states that the defendant was on Zyprexa, Depakote and Wellbutrin. It does not even mention Trileptal. The report then states: "The defendant has been on the anti-psychotic medications since his hospitalization in Atascadero State Hospital." Even though defendant claimed he was taking Trileptal, the record does not establish when the switch was made.

On November 19, 2002, the court asked defendant's counsel, "Do you have any doubt in your mind that [defendant] understands what he's doing here today?" She responded, "I have no doubt." Defendant's lawyer told the court defendant had seen a psychiatrist or psychologist recently and the doctor had not indicated any doubt regarding defendant's competency. The court next asked defendant's attorney, "So at this time you're satisfied that [defendant] is competent as outlined in the law and he understands what's going on here today." Defendant's attorney responded, "Yes, I am certain."

The court then addressed defendant and asked him what medications he was currently taking. Defendant told the court he was taking Zyprexa/Olanzapine, Wellbutrin, and Trileptal. The court asked defendant numerous questions about the effect of his medications and his understanding of his guilty plea. Defendant told the court the medications made him drowsy. The court asked, "Other than feeling drowsy, does the medication affect you in any way?" Defendant said, "Well, it affects me. It makes me better."

When asked by the court about other side effects from the medications, defendant said, "There are a few side affects [sic] but nothing that would interfere with my ability to comprehend the proceedings." Defendant said these side effects consisted of "dry mouth" and "kind of like, a spacey-headed feeling." The court asked if that interfered with his ability to understand what was going on. Defendant said no.

After accepting defendant's guilty plea, the court stated: "And just for the record so there's no misunderstanding, I've had a discussion with [defendant]. I've had a chance to observe him today and also over the past few weeks. . . . I feel that [defendant] understands what we've talked about. I have not noticed any problems with him understanding me. He is looking at me, he is making eye contact. [¶] I have watched him. I have no doubt in my mind that he understands what we're talking about. He is a very intelligent young man and I don't feel that he's had any difficulties . . . nor does the medication appear to be interfering with his thought processes. I think he is cogent, he is paying attention, and I feel that he has followed our conversation and discussion very well . . . ."

"As a matter of due process, the trial court is required to conduct a [Penal Code] section 1368 hearing to determine a defendant's competency whenever substantial evidence of incompetence has been introduced. [Citations.] Substantial evidence is evidence that raises a reasonable doubt about the defendant's competence to stand trial. [Citations.]" (People v. Frye (1998) 18 Cal.4th 894, 951-952.) "The court's decision whether to grant a competency hearing is reviewed under an abuse of discretion standard." (People v. Ramos (2004) 34 Cal.4th 494, 507.)

"The doubt which triggers the obligation of the trial judge to order a hearing is not a subjective one but rather a doubt determined objectively from the record. [Citation.] Evidence which raises merely a suspicion of lack of present sanity but which does not purport to state facts of a present lack of ability through mental illness to participate rationally in a trial is held not to be substantial evidence

of lack of present sanity." (People v. Stiltner (1982) 132 Cal.App.3d 216, 222.)

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (Shamblin v. Brattain, supra, 44 Cal.3d at pp. 478-479.)

The record does not contain substantial evidence defendant was incompetent during the November 19 plea colloquy or any time after reinitiating criminal proceedings and before judgment. The doctor who had recently examined defendant did not express doubts regarding defendant's competency. Defendant's own lawyer said he was competent on November 19. The trial court repeatedly questioned defendant on that day to determine the effect, if any, of his medications and whether he fully understood and was able to participate in the court proceedings. Defendant told the court more than once that he understood what was going on. Finally, the court expressly went on the record to make clear that it believed defendant was competent and why it entertained that belief.

Furthermore, a mere change in medication establishes nothing absent evidence of a substantial negative impact on competency. Here, even assuming the record supports defendant's assertion of a medication change, it does not support a change or diminution of competency.

The facts did not give rise to a duty to hold a competency hearing. The trial court did not abuse its discretion.

III. Antipsychotic Drug Order

Defendant argues the trial court violated his Fourteenth Amendment rights by ordering him to take large doses of antipsychotic drugs over several months for trial competency. He also alleges that the drug order violates California law, as laid out in In re Qawi (2004) 32 Cal.4th 1. We disagree.

Facts

On May 14, 2002, the court stated: "[Defendant] is taking medication. . . . And then also that he . . . be given the appropriate medication, which at the time of dictation are Olanzapine, 20 milligrams; Wellbutrin SR, 150 milligrams; Depakote ER, a thousand milligrams . . . ." Defendant's attorney pointed out that these were antipsychotic drugs. The court continued: "I order that he be given all these drugs until a psychiatrist or other doctor says it's inappropriate. They're saying this is what he's given and he's right now competent. . . . [W]hat I'm concerned about is while he's in our county jail, he maintain his competency, so we can proceed to trial and have whatever is going to happen is going to happen. [Sic.]" Defendant's attorney responded, "I agree," and did not make any objection to the court's order.

The trial court continued defendant on the same antipsychotic medications, with the exact same dosages, that he was receiving at Atascadero State Hospital. The discharge report from the state hospital recommended that defendant be kept on the medications. Furthermore, when the trial court discussed defendant's medications with him on November 19, 2002, defendant did not object or complain about being compelled to take the drugs. In fact, defendant testified the medication "makes me better."

Defendant had already taken various antipsychotic medications before the events leading to his current convictions. When defendant was 18 years old he was taking Depakote, a mood stabilizer for bipolar disorder, and Anafranil, an antidepressant. A psychiatrist took defendant off Anafranil and prescribed Wellbutrin instead. Defendant had also been treated with lithium (an antimanic medication) and Risperdal, Malderal and Zyprexa (antipsychotic medications.)

Defendant claims this order by the trial court violates California law. Defendant's attorney made no objection to the trial court's May 14, 2002, drug order and, in fact, expressed agreement with the judge's decision. Normally, an objection must be made in the trial court in order to preserve the issue for appeal. (People v. Saijas (2005) 36 Cal.4th 291, 301.) Failing to do so, he forfeited further consideration of the matter and cannot claim it resulted in a miscarriage of justice. (See Cal. Const., art. VI, § 13 [no reversal without miscarriage of justice].) In any event, his contention the trial court erred by ordering him to take the medication is without merit.

Fourteenth Amendment Claim

Defendant claims the trial court was required to first make certain findings as laid out by Sell v. United States (2003) 539 U.S. 166 [156 L.Ed.2d 197], before ordering defendant to take psychotropic drugs. The claim fails.

Sell involved a defendant who refused to take antipsychotic medication after a recommendation by the medical center where he was being treated. (Sell v. United States, supra, 539 U.S. at p. 171.) The medical center staff wanted to administer the medicine against the defendant's will. (Ibid.) Based on the circumstances of the case, the court vacated the Court of Appeals' decision allowing forced administration of drugs. (Id. at pp. 175, 186.)

"The question presented is whether the Constitution permits the Government to administer antipsychotic drugs involuntarily to a mentally ill criminal defendant -- in order to render that defendant competent to stand trial for serious, but nonviolent, crimes. We conclude that the Constitution allows the Government to administer those drugs, even against the defendant's will, in limited circumstances . . . ." (Sell v. United States, supra, 539 U.S. at p. 169, italics added.)

The Sell court prescribed four standards for determining when "involuntary administration of drugs solely for trial competence purposes" is permissible. (Sell v. United States, supra, 539 U.S. at p. 180,

italics added.) "A court need not consider whether to allow forced medication for that kind of purpose [rendering the defendant competent to stand trial], if forced medication is warranted for a different purpose, such as the purposes set out in [Washington v. Harper (1990) 494 U.S. 210 (108 L.Ed.2d 178)] related to the individual's dangerousness, or purposes related to the individual's own interests where refusal to take drugs puts his health gravely at risk. [Citation.]" (Id. at pp. 181-182.)

This case is distinguishable from Sell in many respects, two of which we note here. First, Sell dealt with a defendant on trial "for serious, but nonviolent, crimes." (Sell v. United States, supra, 539 U.S. at p. 169.) Defendant here, on the other hand, was on trial for the serious, violent crimes of murder and robbery. And second, defendant in Sell refused to take antipsychotic medicine and the medical center staff sought permission to give it to him against his will. An order was secured from the courts allowing for involuntary medication. There is no evidence presented in this case that defendant refused to take the medication. In fact, defendant's attorney did not object when the trial court ordered defendant to continue taking the same medicine he was taking at Atascadero. Defendant, himself, said the medicine helped him. This was not a case of involuntary or forced medication. Because this case does not involve forced medication, the Sell findings were not required. (People v. Dunkle (2005) 36 Cal.4th 861, 892.)

Even if this were a case of involuntary medication, it was not done solely for purposes of trial competence. Although the judge said he was "concerned about . . . maintain[ing] his competency, so we can proceed to trial," he also made it clear he would be willing to change his order if a medical professional decided it was inappropriate for defendant to continue receiving these drugs. Defendant cannot successfully claim the drugs were given solely for trial competency purposes.

The trial court's order for defendant to continue taking the drugs given to him at the state hospital was not a violation of his due process rights.

In re Qawi

Defendant claims California law also prohibits the trial court's antipsychotic drug order, thus requiring reversal. Defendant focuses specifically on the California Supreme Court's In re Qawi, supra, 32 Cal.4th 1, decision as the primary basis for his argument. Defendant did not make this argument in the trial court and thereby abandoned it. (See People v. Scott (1994) 9 Cal.4th 331, 351-352 [issues that could have been raised in trial court and litigated there but were not are deemed abandoned].) In any event, Qawi is not applicable.

"[T]he mentally disordered offender law (MDO) is a civil commitment scheme that applies to certain offenders during or after parole." (In re Howard N. (2005) 35 Cal.4th 117, 127, italics added.) "We hold that . . . an MDO can be compelled to take antipsychotic medication in a non-emergency situation only if a court, at the time the MDO is committed or recommitted, or in a separate proceeding, makes one of two findings: (1) that the MDO is incompetent or incapable of making decisions about

his medical treatment; or (2) that the MDO is dangerous within the meaning of Welfare and Institutions Code section 5300." (In re Qawi, supra, 32 Cal.4th at pp. 9-10, italics in original.)

The California Supreme Court's holding in Qawi was specifically applicable to MDOs, who by definition are convicts who "receive mental health treatment during and after the termination of their parole . . . ." (In re Qawi, supra, 32 Cal.4th at p. 9, italics added.) Defendant was not on parole and subject to MDO proceedings. Qawi is thus not on point.

IV. M'Naghten Jury Instructions

Defendant argues the trial court's jury instructions on insanity violated the traditional M'Naghten standard. (M'Naghten's Case (1843) 10 Clark & Fin. 200, 210 [8 Eng.Rep. 718, 722].) Specifically, defendant asserts the trial court's instruction allowed the jury to find defendant sane if he could distinguish right from wrong in a general way, rather than in relation to the specific acts charged. He claims that, as a result of this alleged error, both sanity verdicts should be reversed because there was strong evidence supporting an insanity verdict. Defendant further alleges CALJIC No. 4.00, the jury instruction on insanity given in this case, violates state and federal due process. We disagree on both counts.

"In deciding whether an instruction is erroneous, we ascertain at the threshold what the relevant law provides. We next determine what meaning the charge conveys in this regard. Here the question is, how would a reasonable juror understand the instruction. [Citation.] In addressing this question, we consider the specific language under challenge and, if necessary, the charge in its entirety. [Citation.] Finally, we determine whether the instruction, so understood, states the applicable law correctly." (People v. Warren (1988) 45 Cal.3d 471, 487.)

"The language of a statute defining a crime or defense is generally an appropriate and desirable basis for an instruction, and is ordinarily sufficient when the defendant fails to request amplification. If the jury would have no difficulty in understanding the statute without guidance, the court need do no more than instruct in statutory language." (People v. Poggi (1988) 45 Cal.3d 306, 327.)

"In any criminal proceeding . . . in which a plea of not guilty by reason of insanity is entered, this defense [insanity] shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (Pen. Code, § 25, subd. (b), italics added.)

"[D]efendant's vagueness challenge to section 25(b) is nothing less than a challenge to the M'Naghten test itself as it existed for over a century in this state and even longer in other parts of the common law world. . . . [T]hat test passes constitutional muster." (People v. Kelly (1992) 1 Cal.4th 495, 533.) "The relevant inquiry regarding sanity is whether the defendant was incapable of distinguishing

right from wrong, that is, of realizing that his crimes were morally wrong. There is nothing impermissibly vague in this inquiry. The M'Naghten test is constitutional." (Id. at p. 535, italics in original.)

In reference to a challenge to CALJIC No. 4.00, the California Supreme Court stated: "Defendant contends the instruction is ambiguous and misleading in several ways. However, we find no error. The standard instruction correctly and adequately explained the applicable law to the jury, and the court was not required to rewrite it sua sponte." (People v. Kelly, supra, 1 Cal.4th at p. 535, italics added.)

The trial court gave the following instruction to the jury: "A person is legally insane when, by reason of mental disease or mental defect, he was incapable of either: [¶] (1) Knowing the nature and quality of his act; or [¶] (2) Understanding the nature and quality of his act; or [¶] (3) Distinguishing right from wrong at the time of the commission of the crime. [¶] Defendant has the burden of proving his legal insanity at the time of the commission of the crime by a preponderance of the evidence." This instruction is taken almost verbatim from CALJIC No. 4.00. After these instructions were given, defendant did not object or request additional clarifying instructions. Defendant argues the third criterion -- concerning capability of discerning right from wrong at the time of the offense -- is not a correct statement of the M'Naghten standard.

Defendant in this case, like the defendant in Kelly, objects to Penal Code section 25, subdivision (b) and CALJIC No. 4.00. In Kelly, the California Supreme Court rejected challenges to both. We therefore conclude defendant's contentions are without merit.

Defendant's argument regarding the effect of Dr. Howle's testimony on the jury is also without merit. Defendant maintains that Dr. Howle's statements regarding the M'Naghten standard, if believed by the jury, would have made a difference in their determination of sanity. However, the court told the jury that: "You must accept and follow the law as I state it to you, regardless of whether you agree with the law. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions." The jury was obligated to follow the instructions on law the trial court gave, which the California Supreme Court has upheld, not the statements of counsel or the testimony of witnesses.

V. Guilty Plea

Defendant asks this court to strike any references to a "plea of guilty" because the guilty plea was allegedly unauthorized by the plea statute. We decline.

Defendant pled not guilty to the information and not guilty by reason of insanity. On November 19, 2002, defendant changed his plea to guilty on the murder and robbery charges, and admitted each of the enhancements and special allegations. The court made sure defendant understood the direct

consequences of his guilty plea.

Prior to accepting defendant's guilty plea, the trial court said to defendant: "In essence, what you're telling me that you want to do today is that you want to stand here and tell me you're going to plead guilty to first-degree murder and the special circumstance, and in return, I am going to have to sentence you to life without the possibility of parole, subject to what happens, which we'll talk about in a minute, in the insanity phase. Is that your understanding?" (Italics added.) Defendant responded in the affirmative.

When advising defendant of the constitutional rights he was giving up by pleading guilty, the court discussed defendant's right to a jury trial. The court stated, "Although I'm going to ask you if you understand and give up this right [to a jury trial], this is only to the right to a jury trial on the criminal aspect of the case. This jury that we've just seated, based on if you were to follow through with this plea, would then hear the case regarding the insanity phase. Do you understand that?" Defendant responded, "Yes."

A sanity trial was held with a jury. The jury determined defendant was sane when he committed both crimes.

"A defendant who does not plead guilty may enter one or more of the other pleas." (Pen. Code, § 1016.) "When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered . . . ." (Pen. Code, § 1026.) However, "[a] defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged." (Pen. Code, § 1016.)

Multiple pleas are allowed under California law. Normally, a guilty plea must stand alone. In this case, taking guilty pleas to charged crimes and enhancements did not prejudice defendant. Instead, it gave the trial court the opportunity to advise him fully of the consequences of pleading not guilty by reason of insanity without also pleading not guilty. Even if the trial court should not have allowed defendant to enter the two pleas of not guilty by reason of insanity and not guilty at the same time, any error was invited by defendant since he consented to the procedure and desired its effect. (People v. Riel (2000) 22 Cal.4th 1153, 1214.)

In any event, defendant does not seek a trial as to guilt. He merely requests this court to strike "reference" in the record to a guilty plea. We will not. Changing the record would not change what occurred in the trial court.

Finally, entry of a guilty plea, while expressly reserving for trial the issue of insanity, did not require defendant to obtain a certificate of probable cause in order to raise on appeal issues relating to the sanity phase. (Pen. Code, § 1237.) His plea of not guilty by reason of insanity made it clear he was preserving issues related to that plea and the resulting trial for appeal.

DISPOSITION

The judgment is affirmed.

We concur: SIMS, Acting P.J., HULL, J.