IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 67444-7-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
JAMAL A. ALI,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: January 22, 2013
	)	
	)	

Cox, J. — Jamal Ali appeals his judgment and sentence for second degree assault and bail jumping. We hold that the State presented sufficient evidence to support the bail jumping conviction. We also hold that three different judges did not abuse their discretion by refusing to order a second competency evaluation. We agree with Ali that two conditions of community custody imposed by the trial court must be vacated. We affirm in part, reverse in part, and remand with instructions.

On July 12, 2010, Amal Ali called 911 to report that her cousin Jamal Ali was "going crazy." She told police that Ali, who had mental health issues, was talking to himself, throwing things, and using street drugs. When police arrived at the apartment and attempted to speak with him, Ali ran into a bedroom and slammed the door. Detective Benjamin Callahan kicked the door down. Ali charged Callahan with what appeared to be a kitchen knife and knocked him into a wall. As a result, the State charged Ali with second degree assault with a deadly weapon. The State later amended the information to add a charge of bail

jumping, alleging that Ali failed to appear for a hearing on December 3, 2010.

At a pre-trial hearing on February 2, 2011, the prosecutor and defense counsel requested an evaluation of Ali's competency based on his recent Mental Health Court screening in another pending case and a breakdown of communication between Ali and defense counsel. Relying on those statements, the trial court ordered a competency evaluation. A Western State Hospital psychologist evaluated Ali and prepared a report on March 11, 2011. At a hearing on March 14, the trial court concluded Ali was competent to stand trial based on the report.

On June 14, 2011, defense counsel stated that he did not believe that Ali would assist him in the preparation of the case, but was "not sure if that is a competency issue … [o]r it is simply Mr. Ali does not trust or want to work with me." Based on interactions with Ali at the hearing, information in the court file, and the earlier competency report, the trial court found no reason to doubt Ali's competency and denied the request for a second evaluation. On June 20 and 21, defense counsel renewed his concerns regarding Ali's competency in hearings before two additional judges, who refused to revisit the issue.

After a bench trial held June 20 through 23, the court found Ali guilty as charged, entered written findings, and imposed a standard range sentence.

Ali appeals.

Sufficiency of the Evidence

Ali first contends that the State presented insufficient evidence to support

his conviction for bail jumping. We disagree.

In a sufficiency challenge, this court reviews the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[1] We draw all reasonable inferences from the evidence in the State's favor and interpret the evidence most strongly against the defendant.[2] We assume "the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."[3] We defer to the trier of fact on the persuasiveness of the evidence.[4]

The State charged Ali with bail jumping in violation of RCW 9A.76.170(1), which provides that "[a]ny person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, . . . and who fails to appear . . . as required is guilty of bail jumping." To prove bail jumping, the State must establish that "the defendant (1) was held for, charged with, or convicted of a particular crime; (2) had knowledge of the requirement of a subsequent personal appearance; and (3) failed to appear as required."[5]

At trial, the State presented certified copies of the following documents: (1) the motion and finding of probable cause and order fixing bail; (2) the amended information charging Ali with second degree assault; (3) Ali's surety

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[1] State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
[2] Joy, 121 Wn.2d at 339; Salinas, 119 Wn.2d at 201.
[3] Salinas, 119 Wn.2d at 201.
[4] State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000).
[5] State v. Downing, 122 Wn. App. 185, 192, 93 P.3d 900 (2004).

bond and power of attorney; (4) a motion, certification and order for a bench warrant filed July 22, 2010; (5) an order quashing a bench warrant filed August 9, 2010; (6) an order continuing the trial date filed November 4, 2010; (7) clerk's minutes dated November 4, 2010; (8) clerk's minutes dated December 3, 2010; and (9) a motion, certification and order for a bench warrant filed December 3, 2010. Ali did not testify and did not present any evidence.

The trial court made the following findings:

> 1. The crime occurred on December 3, 2010;
> 2. It occurred in King County, Washington;
> 3. The defendant failed to appear before a Court, an Omnibus hearing on that date in King County Superior Court;
> 4. That at the time the defendant was charged with the crime of Assault in the Second Degree, a Class B felony; and
> 5. The defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court. The Court finds specifically that the defendant previously posted bail and that bail was reinstated prior to his non-appearance on December 3, 2010.[6]

Ali contends that the State failed to prove he had notice of the December 3, 2010 hearing date because the order continuing the trial date had an empty check box next to the phrase "Omnibus hearing date is 12/3/10." Relying on cases involving the interpretation of empty check boxes or blanks on a juvenile court order and a no-contact order,[7] Ali claims that the absence of a check here

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[6] Clerk's Papers at 49.

[7] State v. Minor, 162 Wn.2d 796, 797, 174 P.3d 1162 (2008) (court's failure to check box on preprinted order on adjudication and disposition prohibiting possession of firearms violated statute and affirmatively misled juvenile offender); State v. Wilson, 136 Wn. App. 596, 605-05, 150 P.3d 144 (2007) (where check marks appeared in certain preprinted blanks and other blanks were not checked on no-contact order, the order language prohibited defendant only from being in contact with protected party but did not prohibit him from entering any specific location).

indicates "the hearing date was inapplicable." We disagree.

The order continuing the trial date indicates that the court granted Ali's motion to continue the trial "currently set for 11/16/10 . . . to 12/13/10." The order provides that it is further ordered, "Omnibus hearing date is 12/3/10. Expiration date is 12/13/10." An empty check box appears before each phrase and the dates are handwritten on preprinted lines. The order indicates it was "DONE IN OPEN COURT" on November 4, 2010. Ali's signature appears at the bottom of the order. The certified copy of the clerk's minutes indicates that Ali appeared with counsel on November 4, when the omnibus hearing was continued to December 3 and the trial date was continued to December 13. No testimony or other evidence was presented at trial to suggest that Ali misunderstood or was misled as to the date of the omnibus hearing by the court's failure to check a box on the order. Viewed in the light most favorable to the State, this evidence would allow a rational finder of fact to find that Ali had notice of the December 3 omnibus hearing date.[8]

Ali also argues that the State failed to present sufficient evidence to show that he knew his presence was required at the December 3 omnibus hearing. In State v. Ball,[9] the State demonstrated Ball's knowledge that he was required to appear by producing documents signed by Ball that included a warning that failure to appear constituted the crime of bail jumping. Ali suggests the State failed to present sufficient evidence that he knew his presence was required

[8] State v. Carver, 122 Wn. App. 300, 306, 93 P.3d 947 (2004) (State must prove only that defendant was given notice of his court date).

[9] 97 Wn. App. 534, 987 P.2d 632 (1999).

because it did not produce an order with similar language. We disagree.

The State presented a copy of the $40,000 bond Ali posted conditioned on his appearance before the court "as ordered." The State also produced documents demonstrating that Ali failed to appear for a hearing in July, the court issued a bench warrant for his failure to appear, and the court later quashed the warrant and reinstated bail. Based on this evidence, a rational trier of fact could reasonably infer that Ali knew he was required to appear in court for scheduled hearings and understood the consequences should he fail to appear.

Finally, relying on State v. Coleman,[10] Ali argues that the State failed to provide sufficient evidence to support the conviction because it did not prove his absence at the time specified for the hearing. We reject this argument.

In Coleman, the jury considered an order directing Coleman to appear at 9:00 a.m. on a particular day, an 8:30 a.m. clerk's minute entry, and testimony explaining that the clerk's minute entry meant Coleman did not appear at the 8:30 status hearing.[11] This court determined that the evidence was insufficient to support Coleman's conviction for bail jumping because "nothing before the jury established that Coleman was absent at the time specified on his notice."[12] Here, the order scheduling the hearing does not specify a time for the hearing and nothing in the record indicates the time the hearing was actually held. But Coleman does not require such evidence. The time of the hearing is not an element of the crime. Based on the clerk's minutes and motion, certification and

[10] 155 Wn. App. 951, 231 P.3d 212 (2010).
[11] Id. at 963.
[12] Id. at 964.

order for bench warrant dated December 3, 2010, a rational fact finder could reasonably infer that Ali failed to appear for the hearing held on December 3. The State presented sufficient evidence to support Ali's conviction for bail jumping.

Reason to Doubt Competency

Ali next argues that three different judges abused their discretion on June 14, 20, and 21, by refusing to order a second competency evaluation. Ali argues that each judge failed to give sufficient weight or "any weight" to defense counsel's opinion regarding the existence of a reason to doubt Ali's competency. We disagree.

There is a general presumption in Washington that a defendant is competent to stand trial and the defendant bears the burden of proof to show that he is incompetent.[13] The test for competency to stand trial is whether the defendant (1) understands the nature of the charges, and (2) is capable of assisting in his defense.[14] RCW 10.77.060(1)(a) requires a competency hearing whenever there is "reason to doubt" a defendant's competency. " 'A reason to doubt' is not definitive, but vests a large measure of discretion in the trial judge."[15] "There are no fixed signs which invariably require a hearing, but the factors to be considered include evidence of a defendant's irrational behavior, his demeanor, medical opinions on competence and the opinion of defense

[13] State v. Coley, 171 Wn. App. 177, 286 P.3d 712, 713 (2012).

[14] In re Pers. Restraint of Fleming, 142 Wn.2d 853, 862, 16 P.3d 610 (2001) (citing State v. Hahn, 106 Wn.2d 885, 894, 726 P.2d 25 (1986); State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985)).

[15] City of Seattle v. Gordon, 39 Wn. App. 437, 441, 693 P.2d 741 (1985).

counsel."[16]

"We distinguish the determination of a reason to doubt competency from an actual determination of competency."[17] The court must make the threshold determination that there is a reason to doubt competency before a hearing to determine competency is required.[18] The fact that a motion to determine competency has been made does not by itself constitute a reason to doubt.[19] "[T]he motion must be supported by a factual basis. Only then will the court inquire to verify the facts."[20] Although defense counsel's view of the defendant's ability to assist in his defense may suggest incompetence, a trial court may legitimately determine after inquiry that counsel's view was "unsupported by sufficient facts to cause a reason to doubt."[21]

Here, contrary to Ali's contention, the record reveals that at the June 14 hearing, the trial court questioned defense counsel, the prosecutor, and Ali after defense counsel expressed his concerns and repeatedly admitted that he did not know whether Ali was unable or simply unwilling to assist in his defense. The court specifically recognized Ali's frustration with the repeated delays in his case and questioned him about his understanding of the proceedings. Nothing in the record indicates that the judge failed to give counsel's view the weight it was due. Instead, the court exercised its discretion and concluded that its

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[16] State v. O'Neal, 23 Wn. App. 899, 902, 600 P.2d 570 (1979) (citations omitted).
[17] Gordon, 39 Wn. App. at 441.
[18] Id.
[19] State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991).
[20] Id. (citing Gordon, 39 Wn. App. at 441-42).
[21] Gordon, 39 Wn. App. at 442-43.

observations of Ali in court, the information in the file, and the recent finding of competence outweighed counsel's expressed concerns. There was no abuse of discretion in this respect.

On June 20, defense counsel requested appointment of new counsel for Ali because "We have had a fundamental breakdown in communication." Counsel continued, "I, frankly, think that some of that has to do with what I believe to be my client's lack of competence." Counsel requested a colloquy, explaining that Ali did not trust him and that Ali believed that "his case has already been resolved," and "that a trial at this point has no legal status," and "doesn't really understand why he's here." But when asked by the court what he wished to say, Ali responded, "Nothing really." The court then denied the motion for new counsel and stated, "The Court's ruled on competency."

Despite his suggestion that the trial court failed to be alert to circumstances indicating a change in Ali's competence, the record of this hearing reveals no new facts to establish a reason to doubt competence. Defense counsel merely repeated his previously stated concerns without offering any new evidence for the court to consider. To the extent the June 20 motion for new counsel should be considered a renewed motion to determine competency, Ali fails to demonstrate any abuse of discretion.

On the first day of trial, June 21, defense counsel again expressed concern that Ali "is not understanding what has been happening here," suggested that it may be a question of "cultural competence," and requested a

colloquy. After expressing reluctance to revisit the issue of competency, the court questioned Ali about his understanding of his options and his choice of proceeding to trial rather than pleading guilty. In a lengthy statement, Ali claimed he understood his options but then complained about his circumstances and repeatedly refused to plead guilty. After considering Ali's responses and demeanor in court, the trial judge proceeded to trial, evidently satisfied that defense counsel's expressed concerns and Ali's statements did not raise a reason to doubt his competence and require a hearing. Under the circumstances here, we cannot say that the judge ignored counsel's concerns or abused the wide discretion vested in the trial court for that determination.

Community Custody Conditions

Ali contends, and the State concedes, that the court failed to make statutorily required findings for imposing mental health treatment and medications as a condition of community custody.[22] We accept the concession and remand with directions to strike the mental health conditions unless the court "determines that it can presently and lawfully comply" with RCW 9.94B.080.[23]

Ali also challenges a condition prohibiting consumption of "non-Rx drugs." Ali points out that the trial court properly imposed a condition prohibiting possession or consumption of "controlled substances except pursuant to lawfully

[22] See RCW 9.94B.080; State v. Jones, 118 Wn. App. 199, 209-10, 76 P.3d 258 (2003).

[23] Jones, 118 Wn. App. at 212 n.33.

issued prescriptions."[24] But he claims the court lacked the authority to impose the additional condition, which given its plain language and ordinary meaning, encompasses legal, non-prescribed drugs, without additional findings to support the condition as crime-related.

The State argues that the condition is not unconstitutionally vague.[25] But as Ali states in his reply, he does not challenge the condition on constitutional grounds.

When imposing community custody, the court shall order the offender to "[r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions."[26] And a trial court may impose additional prohibitions and affirmative conditions, so long as they relate to the offender's crime.[27] There is no evidence that legal, non-prescription drugs related to Ali's crime. To the extent the challenged condition can be read to prohibit Ali's use of legal, non-prescription drugs, it was entered without authority. To the extent the condition can be read to refer only to illegal, non-prescription drugs, it is unnecessary. Upon remand, the trial court should strike or clarify the condition.

We affirm the convictions, vacate the part of the judgment and sentence containing the challenged community custody conditions, and remand for further proceedings.

Cox, J.

[24] RCW 9.94A.703(2)(c).
[25] See State v. Valencia, 169 Wn.2d 782, 793-95, 239 P.3d 1059 (2010).
[26] RCW 9.94A.703(2)(c).
[27] RCW 9.94A.505(8); RCW 9.94A.030(10).

WE CONCUR: