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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TRAYSHAWN MCGRUDER,

Defendant and Appellant.

B279005

(Los Angeles County
Super. Ct. No. TA140583)

APPEAL from a judgment of the Superior Court of
Los Angeles County, John J. Lonergan, Jr., Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Susan Sullivan Pithey and Robert M. Snider,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Trayshawn McGruder appeals from the judgment entered following his conviction by jury for burglary. He contends the trial court abused its discretion when it revoked his right to represent himself at trial. We affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *Procedural Background*

The Los Angeles County District Attorney (the People) filed an information on July 29, 2016 charging defendant with one count of burglary (Pen. Code, § 459).¹ The information further alleged that defendant suffered a prior serious or violent felony conviction (§§ 667, subds. (b)-(j), 1170.12) and was previously incarcerated and failed to remain free of custody for five years following release (§ 667.5, subd. (b)).

The jury found defendant guilty as charged and found the special allegations true. The court denied defendant's motion to strike his prior conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and sentenced defendant to five years in prison. Defendant timely appealed.

II. *Defendant's Self-Representation*²

Defendant's case was called for arraignment on July 29, 2016. Defendant was represented by a public defender. According to the minute order from the hearing, a sheriff's deputy informed the court that defendant was refusing to come to court. Accordingly, the court trailed the matter to August 1, 2016 and

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

² Defendant challenges only the court's revocation of his in propria persona status; thus, we omit the factual circumstances of his burglary conviction.

noted that an extraction might be necessary “if the defendant continues to refuse to be transported.”

Defendant appeared at his arraignment on August 1, 2016 and requested to proceed in propria persona pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). He later withdrew the request. The court also noted that defendant was “refusing to come to court the other day.” Defendant responded that he “wasn’t feeling too well.” The court warned defendant that if he was representing himself and failed to come to court, the prosecution could proceed without him.

At the next hearing on September 1, 2016, defendant renewed his request to proceed in propria persona. After finding that defendant understood and waived his rights pursuant to *Faretta*, the court granted defendant’s motion to represent himself.

The case was called for trial on October 13, 2016 before Judge John Lonergan. Prior to voir dire, the court noted defendant’s prior refusal to come to court and told defendant there would be a “standing extraction order” in the event defendant failed to appear in the morning court line for transportation to court. The court also explained that standby counsel had been assigned, and told defendant that “if you don’t follow the rules and if at any time I have to revoke your pro per status, and that would include if you refuse to come to court,” that standby counsel would “continue with the trial so there’s no delays. Okay. That is the policy that we have in all pro per cases to prevent any distractions or delays by defendants that are in pro per status.” Continuing, the court noted: “I don’t expect any of these problems. I’m just telling you what’s going to happen if there are any problems. And other than your refusal at one time,

I have no indication that you've done anything or distracted the court or caused any distractions."

On the next court day, October 18, 2016, the court went on the record at 10:40 a.m. and noted that defendant was present in the courthouse, but the jury had been released at 10:00 a.m. to return at 11:30 a.m. The court stated that defendant "was a refusal this morning." In addition, the bailiff reported that "the information I was given" was that defendant was "taking unknown liquids," possibly bodily fluid, "and throwing [it] on deputies as he was passing by" before leaving his housing location. The court also noted it heard "some commotion in lockup," and the bailiff reported defendant was "being disruptive to other inmates speaking to their attorneys. He is giving them legal advice." Defendant was then brought into the courtroom. The court noted defendant's refusal, conduct in throwing "unknown bodily fluids" at deputies, subsequent late arrival to court, and continued "disruptions in lockup." The court then admonished defendant that he "caused a delay with our jury panel until 11:30. And [] when we come back out, I'm at the point where I'm going to revoke your pro per status."

After a recess, defendant's standby counsel stated he had spoken to defendant and advised him "that the court may take away his pro per status and I gave him examples of behavior that might cause that. So I just told him . . . that if he wants to keep his pro per status, he needs to do certain things that are consistent with [what] the court has described to him this morning." Counsel also noted that defendant "has denied some of the incidents that are alleged against him today." The court told defendant, "[S]o far I have enough now to revoke your pro per status based on everything you've done including continuing to

disrupt both courtrooms on this floor . . . by your conduct in lockup because that goes through the walls.” The court asked defendant if he wished to proceed without an attorney, noting he was “very close to having your pro per status revoked.” Defendant replied that he did not know. The court stated it would “leave it status quo” with defendant representing himself “until if and when” that status was revoked. After lunch, defendant confirmed that he wished to “stay pro per.”

The rest of the afternoon and the following day proceeded without incident. The parties completed voir dire, presented opening statements, and the People began presenting witnesses. At the end of the day, the court told the jury that due to scheduling issues in the morning, trial would begin at 1:30 p.m. the following day. Outside of the jury’s presence, the court then reminded defendant, “I don’t know what time they are going to get you here, but I don’t want any issues regarding refusals.”

The following day, October 20, the court went on the record at 1:38 p.m., noting defendant was “present in custody, not dressed,” and that the jury had been waiting since 1:30 p.m. The court stated that “this morning, Mr. McGruder was [a] refusal again.” Defendant protested that he was told to come at 1:30 p.m. The court responded: “He didn’t show up at court line. His excuse was because we start the trial at 1:30. That has absolutely nothing to do with the transportation of the inmates to and from their court appearances as he is aware and, therefore, he was a refusal again. This is the third -- at least the third time he has been a refusal. In fact the court has had a standing extraction order because of his refusals to come in the past and I spent an extensive time which is very clear on the record talking

to him about his conduct and his refusal to come to court. . . .
And then now he has caused a disruption.”

Defendant stated that did not “cause anything. These people attempted to kill me.” He claimed the sheriff’s deputy present in the courtroom was using “excessive force” and it was “all on camera.” The court inquired why defendant was not dressed, and the deputy stated that “while we were walking up, he created a disturbance.” Defendant contended he “didn’t create a disturbance. Check the cameras.” The court responded, “Mr. McGruder’s pro per status is now revoked. Also, for the record I got a note from the sheriff’s department this morning . . . indicating that his pro per privileges were suspended based on his conduct in the pro per module.” The court revoked defendant’s right to represent himself, and appointed standby counsel to proceed on defendant’s behalf. Later, based on his refusal to cooperate with court orders and an outburst in front of the jurors, defendant was removed from the proceedings entirely.

The following day, the court indicated it wanted to put on the record additional detail regarding defendant’s conduct immediately preceding the revocation of his in propria persona status: “Just shortly after 1:30 when we were attempting to bring him out when he was still in pro per status . . . prior to him even getting upstairs, he was agitated. He was causing a problem. He refused to dress. . . . There was such an outburst in the lockup attempting to get him brought out that the court actually opened the door and noticed that Mr. McGruder was on the ground. The deputy was over him holding him down, stomach down on the ground while Mr. McGruder was yelling profanities.”

Later that day, as the jury deliberated on the prior convictions portion of the trial, the court indicated it wished to “make use of the time” by adding to the record regarding its decision to revoke defendant’s *Faretta* rights. The court detailed the procedural history of the case, noting the prior judge’s notes and the court record indicated that defendant was a refusal for the first time on July 29, 2016 at his arraignment. The court then reviewed the second incident, where defendant “was not only a refusal ordered initially to get in court line and come, but we got an indication that he was gassing [throwing bodily fluids at] the sheriff’s personnel. . . . [T]hat was the reason I was given that there were problems with Mr. McGruder” that morning, which “delayed us with our jury selection.” The court also noted its repeated explanations to defendant as to “what we expect and how he could lo[se] his pro per privileges.”

Finally, the court recounted defendant’s refusal to come to court in the morning on October 20, but “because of our late start they were able to initiate the extraction and ultimately talk him into getting on the bus, so he was a late arrival but it did not interfere with our 1:30 start.” At that point, the court stated it had not yet terminated defendant’s *Faretta* rights and “wanted to talk to him about these issues before I made my decision.” However, at 1:30 p.m., the deputies were “attempt[ing] to get [defendant] to dress” to come out to the courtroom, the court heard “a disruption and commotion” and saw defendant “flailing his arms and legs [and] yelling numerous things. . . . And he wouldn’t dress and they couldn’t even get him to come out to the courtroom.” The court at that point “felt I was unable to get anything out of Mr. McGruder or get him to calm down,” so it ordered standby counsel to step in.

The court then indicated it decided to revoke defendant's *Faretta* rights "using the *Carson* standard."³ The court continued: "The government's interest in insuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer, and a pro per status after defendant who [*sic*] engages in deliberate dilatory or obstructive behavior that threatens to subvert the core concept of the trial or to compromise the court's ability to conduct a fair trial was at issue and that's why I made my decision. [¶] The termination of a right to self-representation is a severe sanction and must not be imposed lightly. That's why I waited as long as I did." The court reviewed its analysis under the factors set forth in *Carson*. In particular, it found that defendant "knew exactly what he was doing" in "refusing to come to court and [] then his conduct since he has been here during this trial."

DISCUSSION

Defendant claims the trial court erroneously revoked his right of self-representation. We disagree.

I. *Governing principles*

A criminal defendant has a constitutional right to forgo the assistance of counsel and to represent himself at trial. (*Faretta*, *supra*, 422 U.S. at pp. 807, 819.) "That right is not without limits, however. [Citation] "[The] government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." [Citations.]" (*People v. Becerra* (2016) 63 Cal.4th 511, 518 (*Becerra*)). Our Supreme Court has held that a trial court "may terminate the pro per status of a defendant who engages in "deliberate dilatory or obstructive behavior" that "threatens to

³ *People v. Carson* (2005) 35 Cal.4th 1 (*Carson*).

subvert “the core concept of a trial” [citation] or to compromise the court’s ability to conduct a fair trial,’ (*Carson, supra*, 35 Cal.4th at p. 10), but [] that ‘[t]ermination of the right of self-representation is a severe sanction and must not be imposed lightly’ (*id.* at p. 7).” (*Becerra, supra*, 63 Cal. 4th at p. 518.)

“When determining whether termination is necessary and appropriate, the trial court should consider several factors in addition to the nature of the misconduct and its impact on the trial proceedings,’ including: (1) ‘the availability and suitability of alternative sanctions’; (2) ‘whether the defendant has been warned that particular misconduct will result in termination of in propria persona status’; and (3) ‘whether the defendant has ‘intentionally sought to disrupt and delay his trial.’” (*Carson, supra*, 35 Cal.4th at p. 10.)

Misconduct warranting termination of *Faretta* rights may occur in or out of the courtroom. (*Carson, supra*, 35 Cal.4th at p. 9.) “Ultimately, the effect, not the location, of the misconduct and its impact on the core integrity of the trial will determine whether termination is warranted.” (*Ibid.*) However, as the court in *Carson* recognized, out-of-court misconduct may require additional procedures, as “it is necessary to preserve a chronology of relevant events for possible appellate review.” (*Carson, supra*, 35 Cal.4th at p. 11.) As such, with out-of-court misconduct, the trial court must “document its decision to terminate self-representation with some evidence reasonably supporting a finding that the defendant’s obstructive behavior seriously threatens the core integrity of the trial. Unsubstantiated representations, even by the prosecutor, much less rumor, speculation, or innuendo, will not suffice. (Cf. *People v. Duran* (1976) 16 Cal.3d 282, 291; *People v. Murphy* (2003) 107

Cal.App.4th 1150, 1158.) To this end, the court may need to hold a hearing or may want to solicit the parties' respective arguments with written points and authorities and any evidentiary support on which they may seek to rely. Because circumstances will vary with the facts of each case, we leave to the trial court's discretion the ultimate decision as to how best to proceed in making an appropriate record." (*Id.* at p. 1158.)

We review a ruling revoking a defendant's in propria persona status for abuse of discretion. (*Carson, supra*, 35 Cal.4th at p. 12; *People v. Doss* (2014) 230 Cal.App.4th 46, 54.) We "accord due deference to the trial court's assessment of the defendant's motives and sincerity as well as the nature and context of his misconduct and its impact on the integrity of the trial in determining whether termination of *Faretta* rights is necessary to maintain the fairness of the proceedings." (*Carson, supra*, 35 Cal.4th at p. 12; *People v. Doss, supra*, at p. 54.)

II. Analysis

Defendant challenges the trial court's revocation of his *Faretta* rights in two respects: (1) he contends that much of the conduct cited by the trial court occurred outside of the courtroom and did not have evidentiary support in the record, in violation of the requirements set forth in *Carson, supra*, 35 Cal.4th. at p. 11; and (2) even if there was evidence supporting his alleged misconduct, he argues that it was an abuse of discretion for the trial court to conclude that this misconduct had a deleterious impact on the trial proceedings.

We disagree on both points. We note that the trial court set out on the record in great detail the bases for its revocation decision, both during each incident and with fuller explanations afterward. Moreover, defendant's misconduct was properly

supported by evidence in the record, including observations from the court itself and direct statements from court and law enforcement personnel.

Specifically, defendant's initial refusal to come to court for his arraignment, which is documented in the minute order and was not disputed by defendant at the time, caused the court to issue a standing extraction order. Despite this precaution and the court's clear, repeated warnings regarding the effect of any further refusals, defendant was late to court a second time on October 18, 2016. The court stated on the record that defendant refused to come to court that morning. Defendant did not directly dispute this finding and offered no other explanation for his late arrival. Judge Lonergan indicated he had personally heard a "commotion in lockup" and the courtroom bailiff reported that defendant was causing a disruption. Defendant's late arrival and continued disruption once at the courthouse delayed the start of voir dire with the jury panel until 11:30 that morning.⁴ The court admonished defendant that his loud misconduct in the courthouse was disruptive to two courtrooms, "because that goes through the walls." Rather than revoke defendant's in propria persona status, both the court and standby counsel warned defendant that further disruption would result in revocation.

⁴ We put aside the contention that defendant was throwing unknown liquids at sheriff's deputies while in jail. The evidence of that misconduct is tenuous and, even if true, would be insufficient by itself as a basis to revoke his *Faretta* rights, as it had no effect on trial proceedings. (See *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1516 [defendant's "repeated episodes of showering jail officials with his excrement are not, without more, a proper ground for denying his request for self-representation"].)

The court again reminded defendant at the end of the day on October 19 to be sure to be on time. Despite these warnings, the following morning defendant was not present in the line for transportation to court, requiring the initiation of an extraction. Defendant did not dispute this fact, but gave the excuse that trial did not start that day until 1:30 p.m. In response, the court noted that, as defendant was aware, the trial start time “has absolutely nothing to do with transportation of the inmates to and from their court appearances.” In addition, the court observed that while defendant was present in the courthouse in time for the start of trial, he was refusing to get dressed or to come into the courtroom and was again causing a disruption so loud it could be heard in the courtroom. Along with Judge Lonergan’s personal observations regarding defendant’s conduct, the sheriff’s deputy reported that defendant was not dressed because he had “created a disturbance.” Defendant asserted that the sheriff’s deputy had engaged in excessive force against him. Defendant’s conduct again delayed the start of trial that afternoon. At that point, the court revoked his *Faretta* status.

We conclude that the trial court was within its discretion to revoke defendant’s right to self-representation under these circumstances. Defendant’s repeated refusals to be present and ready for court delayed the start of trial on two occasions and kept both the court and the jury waiting. In addition, defendant repeatedly engaged in loud altercations in the courthouse, disrupting multiple courtrooms each time. This conduct directly and repeatedly impacted the trial proceedings. And while defendant attempts to paint the trial court’s decision as a “first impulse,” that suggestion is not supported by the record. Instead, the trial court repeatedly warned defendant regarding his

behavior, and revoked his rights only after defendant refused to dress or cooperate following a second late arrival. The court also expressly found that defendant was deliberately attempting to disrupt the trial.

As such, the trial court appropriately assessed defendant's misconduct and the additional factors set forth under *Carson*, *supra*, 35 Cal.4th at p. 10. We "accord due deference to the trial court's assessment of the defendant's motives and sincerity as well as the nature and context of his misconduct and its impact on the integrity of the trial in determining whether termination of *Faretta* rights is necessary to maintain the fairness of the proceedings." (*Id.* at p. 12; *People v. Doss*, *supra*, at p. 54.) Given this deference, we find no abuse of discretion in the court's determination that defendant's misconduct threatened the "core integrity of the trial," and would likely continue to do so. (*Carson*, *supra*, 35 Cal.4th at p. 6.) "If, as our Supreme Court has noted, a defendant's refusal to sit in the appropriate place in the courtroom is a basis for denying the right to self-representation (*Carson*, *supra*, 35 Cal.4th at pp.10-11), the defendant's total absence from the courtroom surely is." (*People v. Kirvin*, *supra*, 231 Cal.App.4th at p. 1516.)

Defendant argues that the trial court relied on "unsubstantiated representations" rather than evidence, citing *Carson*, *supra*, 35 Cal.4th at p. 11 and *Becerra*, *supra*, 63 Cal.4th 511. We are not persuaded. The relevant language in *Carson* emphasizes the court's duty to "document its decision . . . with some evidence reasonably supporting a finding that the defendant's obstructive behavior seriously threatens the core integrity of the trial." (*Carson*, *supra*, 35 Cal.4th at p. 11.) By contrast, "[u]nsubstantiated representations, even by the

prosecutor, much less rumor, speculation, or innuendo, will not suffice. [Citations.]” (*Ibid.*) The *Carson* court expressly left to the trial court’s discretion the determination of what procedure would be best to make such a record—there is no requirement to hold a hearing or take sworn testimony (*ibid.*), nor does defendant cite to any case so holding. As detailed above, the trial court documented each incident of defendant’s misconduct, often based on its own observations and bolstered by statements on the record by the law enforcement personnel with whom defendant had engaged. This evidence reasonably supported the trial court’s decision.

Moreover, the circumstances in *Becerra* were very different than those in this case. There, the defendant, who was representing himself, made extensive discovery requests over the course of several months. (*Becerra, supra*, 63 Cal.4th at pp. 515-516.) The prosecution did not object to these requests, and in some instances acknowledged that some documents remained outstanding. (*Id.* at p. 515.) At the next hearing, the trial court terminated the defendant’s self-representation without prior warning, telling the defendant that “everything you’ve done is dilatory” and “all you’re doing is stalling.” (*Id.* at p. 516.) The Supreme Court reversed the defendant’s conviction on the ground that the trial court had erred by revoking his self-representation. (*Id.* at pp. 520-521.) The Court held that “although the [trial] court said defendant had been dilatory, the record does not contain factual support for this finding.” (*Id.* at p. 519.) In addition, the Court stated that “[t]erminating a defendant’s self-representation status should be considered a last resort, not a first impulse.” (*Id.* at p. 520.)

Here, by contrast, the court repeatedly warned defendant and then thoroughly documented its bases for revoking defendant's self-representation status. Moreover, there was no evidence in *Becerra* that the defendant's conduct delayed the trial in any way. Defendant here did so repeatedly. We conclude that the trial court made an appropriate record supported by evidence of "the precise misconduct on which the trial court based the decision to terminate." (*Carson, supra*, 35 Cal.4th at p.11.)

DISPOSITION

The judgment of the trial court is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.