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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DIRCK MORGAN WHITE,

Defendant and Appellant.

2d Crim. No. B275489  
(Super. Ct. No. BA431881-01)  
(Los Angeles County)

Dirck Morgan White appeals a judgment following conviction of attempted premeditated murder of a police officer in the performance of his duties; assault on a police officer with a firearm; exhibition of a deadly weapon to a police officer to resist arrest; unlawful possession of a firearm by a felon; and second degree burglary. (Pen. Code, §§ 187, subd. (a), 664, subds. (e) & (f), 245, subd. (d)(2), 417.8, 29800, subd. (a)(1), 459, 12022.53, subd. (b) & (c).)<sup>1</sup> We affirm.

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<sup>1</sup> All further statutory references are to the Penal Code unless stated otherwise.

### *FACTUAL AND PROCEDURAL HISTORY*

This appeal concerns criminal offenses arising from a “shootout” between White and two Los Angeles police officers who responded to a complaint of a vehicle burglary in progress. The police officers were better marksmen than White, however; he suffered two gunshot wounds but managed to strike a parked vehicle near one police officer. White was a fugitive for the murder of an Oregon weighmaster who had detained White on the highway as he hauled firewood in his employer’s truck.

#### *Murder of Clackamas County, Oregon Weighmaster*

On February 6, 2014, Eagle Creek, Oregon resident Amber Robinson saw a traffic enforcement officer detain a truck driver hauling firewood. Robinson saw the officer walk toward the truck and then she heard three gunshots. As the fallen officer lay in the roadway, the truck driver drove away.

Responding police officers found the body of Officer Grady Waxenfelter with gunshot wounds to his head. Waxenfelter wore a Clackamas County Weighmaster’s uniform, including a jacket that stated “Truck Enforcement” on the back. The officers found two shell casings near Waxenfelter’s feet.

White was employed by the O’Malley Brothers Corporation trucking business as a truck driver. On the day of the shooting, he was assigned to deliver firewood and was late in his deliveries. At approximately 11:00 a.m. that morning, White returned to the trucking business office, parked his assigned truck, grabbed a notebook containing his delivery records, and left quickly. White did not return to his employment and his supervisor, Mike O’Malley, did not see him again until the present trial. O’Malley opined that White appeared normal and was not under the

influence of methamphetamine on the morning of the Waxenfelter murder.

*Los Angeles Vehicle Burglary and Subsequent Shootout*

On November 29, 2014, Chalida Sangsawat parked and locked her Toyota automobile near her residence on Lemon Grove Street in Los Angeles. The following morning, a neighbor saw White trying to break into the automobile and she telephoned for police assistance.

Los Angeles Police Officers Stuart Jaye and Jose Granados soon responded in a marked patrol vehicle. Jaye saw White sitting in the driver's seat of the Toyota automobile, with the driver's door open. White was "fiddling around" on the front passenger seat. When White saw the officers, he left the automobile and ran down Lemon Grove Street. The officers gave chase on foot.

As Granados pursued White, he saw that White was carrying a handgun. Jaye believed that White was carrying an object that may have been a knife. Jaye decided to return to the patrol vehicle and follow White in the vehicle. Coincidentally, a taxi cab driver saw Granados pursue White on foot, and he offered to drive Granados during the pursuit.

Jaye saw White running and then walking quickly along the sidewalk. Jaye stopped his patrol vehicle approximately 30 yards from White. As Jaye walked around the side of the patrol vehicle, White raised his firearm, pointed it at Jaye, and fired. Jaye testified that White "was actually looking over his arm, the outstretched arm, down the sights of the weapon." The bullet struck the roof of an automobile parked in front of the patrol vehicle.

Jaye returned fire and hit White in his left arm. White slumped forward and then crawled behind another vehicle. Meanwhile, Granados heard the gunshots and left the taxi cab. He saw White on the ground behind a parked vehicle, pointing his handgun toward Jaye, “acquir[ing] a target.” Granados then shot White in the face.

When the officers approached the wounded White, they found a Kimber handgun and a cartridge case laying near him in the street. White also had a .45 caliber bullet and two magazines of ammunition in his pants pockets. Officers recovered additional ammunition as well as a screwdriver, two hammers, and a dent-puller near the Toyota automobile. The ignition of the automobile had been damaged.

Later forensic firearm testing revealed that the cartridge cases collected from the Oregon murder scene, as well as the bullets within Waxenfelter’s body, were fired from White’s semiautomatic firearm.

Following White’s arrest, he received treatment and drug testing at a local hospital. White’s laboratory test result for methamphetamine was “a fairly high level,” implying that he had consumed the drug within several hours of the test.

Forensic pathologist Frank Sheridan testified that a person who is under the influence of methamphetamine may not engage in thoughtful and reasoned thinking. Sheridan stated that chronic methamphetamine use may result in violent and combative behavior, sometimes resulting in a police confrontation. He also opined that “a wide variation” exists in response to the use of stimulant drugs.

Prior to trial, White admitted that he suffered a prior felony conviction.

### *Conviction, Sentencing, and Appeal*

The jury convicted White of attempted premeditated murder of a police officer in the performance of his duties (count 1); assault on a police officer with a firearm (count 2); exhibition of a deadly weapon to a police officer to resist arrest (count 3);<sup>2</sup> unlawful possession of a firearm (count 4); and second degree burglary (count 5). (§§ 187, subd. (a), 664, subds. (e) & (f), 245, subd. (d)(2), 417.8, 29800, subd. (a)(1), 459.) It also found that White personally used and discharged a firearm during commission of counts 1 and 2. (§ 12022.53, subds. (b) & (c).)

The trial court sentenced White to 15 years to life for count 1, plus 20 years pursuant to the section 12022.53 firearm enhancement. The court also imposed an upper three-year term for count 4 (unlawful firearm possession), plus a subordinate-consecutive term of eight months for count 5 (vehicle burglary), for a total determinate term of 23 years eight months. Upper terms were imposed for the remaining counts but the sentences were stayed pursuant to section 654. The court also imposed a \$10,000 restitution fine, a \$10,000 parole revocation restitution fine (suspended), a \$200 court security assessment, a \$150 criminal conviction assessment, and awarded White 681 days of presentence custody credit. (§§ 1202.4, 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

White appeals and contends that: 1) the trial court abused its discretion by revoking his self-representation in violation of *Faretta v. California* (1975) 422 U.S. 806, 807, 819; 2) the trial court abused its discretion by admitting evidence of the Oregon

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<sup>2</sup>The counts were renumbered following the dismissal of an offense charged in the information as count 3. We shall refer to the counts as numbered in the jury verdict forms.

weighmaster murder; and 3) insufficient evidence supports his conviction of premeditated and deliberate attempted murder. The parties have also submitted supplemental briefing regarding the retroactive application of Senate Bill No. 620, providing discretion to the trial court to strike a section 12022.53 firearm enhancement.

## *DISCUSSION*

### *I.*

White argues that the trial court abused its discretion by revoking his self-representation in violation of the Sixth Amendment to the United States Constitution. (*People v. Becerra* (2016) 63 Cal.4th 511, 520 [erroneous denial of a *Faretta* motion is reversible per se].) He asserts that the court did not provide sufficient warning of the revocation possibility and it failed to consider alternative sanctions.

On August 6, 2015, the trial court granted White's request to represent himself following his signed and initialed advisement and waiver of the right to counsel. The advisement warned that White, as his own attorney, must conduct his own trial and follow the requirements of law, including the rules of court. On April 13, 2016, after trial had commenced, the court revoked White's *propria persona* status.

During the eight months of White's self-representation, the following occurred: White received funds on five occasions for his investigator but made no telephone calls to him; he received two continuances of trial but was denied additional continuances; his motion and renewed motions for discovery of a police dashcam video recording were denied because no recording exists; and his motions to dismiss and for \$1.25 million damages were denied. In addition, White feigned chest pains and did not appear at trial

on one occasion, causing the jury venire to be released for the day. Also, on February 10, 2016, White broke a sprinkler head in the lockup area, causing \$200,000 in water damages to the lockup area and adjacent offices and courtrooms, necessitating the use of temporary courtrooms.<sup>3</sup> White also failed to heed the court's admonitions regarding the restrictions on introducing himself to the jury and ignored the court's attempt to interrupt him.

Following a hearing, testimony from a sheriff's deputy regarding White's complaint of chest pains, and argument by the parties, the trial judge revoked White's self-representation, stating that White's "manipulative and intentional conduct has delayed the proceedings of [the] case, has impacted the operations of this courthouse and has compromised the security of the lockup area." The judge stated that the right to self-representation is not absolute and "may be compromised by [a defendant's] own obstreperous conduct." The court then appointed White's stand-by counsel as trial counsel of record.

A criminal defendant has the Sixth Amendment right to represent himself at trial. (*Faretta v. California, supra*, 422 U.S. 806, 807, 819.) The trial court must grant a defendant's request for self-representation if the defendant knowingly and intelligently makes an unequivocal and timely request after advice of its dangers. (*Id.* at p. 834 ["It is the defendant, therefore, who must be free personally to decide whether in his

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<sup>3</sup> The Los Angeles City Fire Captain, who responded to the flood, opined that the sprinkler head had been physically damaged. At the time, White was the only inmate in the cell; he had a waist chain but one hand was free. The captain also stated that in his experience inmates would use waist chains to damage fire sprinklers.

particular case counsel is to his advantage”]; *People v. Williams* (2013) 58 Cal.4th 197, 252.)

The right of self-representation, however, is not absolute; it is not a license to abuse the dignity of the courtroom or to not comply with relevant rules of procedural and substantive law. (*Faretta v. California, supra*, 422 U.S. 806, 834-835, fn. 46 [“[T]he trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct”]; *People v. Williams, supra*, 58 Cal.4th 197, 253 [the government’s interest in ensuring the integrity and efficiency of trial at times outweighs the defendant’s interest in acting as his own lawyer].) The trial court must decide whether a defendant is or will remain so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his actions or words as to preclude his right of self-representation. (*People v. Becerra, supra*, 63 Cal.4th 511, 518; *Williams*, at p. 253.)

The trial court possesses “much discretion” in deciding to terminate a defendant’s right to self-representation. (*People v. Williams, supra*, 58 Cal.4th 197, 253.) Termination of the right to self-representation is a “severe sanction” that must not be imposed lightly. (*People v. Becerra, supra*, 63 Cal.4th 511, 518.) In deciding whether to terminate defendant’s self-representation, the court should consider the nature of defendant’s misconduct and its effect on the trial proceedings, including the availability and suitability of alternative sanctions, whether defendant has received warnings of misconduct and termination of his status, and whether defendant has intentionally sought to delay and disrupt trial. (*Ibid.*) “On review, 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.” (*Ibid.*)

The trial court did not abuse its broad discretion by revoking White’s self-representation. White failed to prepare for trial during his eight-month self-representation, refused to observe court procedure, renewed meritless motions that had already been denied, refused to attend court on one occasion causing the court to issue an extraction order, and destroyed court property thus disrupting other proceedings in the courthouse. Despite warnings from the court, White repeatedly sought continuances. He made no attempt to prepare for trial despite multiple warnings from the court that he must “get ready for trial.” By contrast, when standby counsel was appointed, she announced that she was prepared for trial. White also stated that he “was going to go ‘man down,’ and . . . start complaining of chest pain” when he did not receive a cup of hot water that he requested in lockup. White’s resulting medical evaluation resulted in the jury venire being sent home for the day. Although White made 101 telephone calls during his confinement, no calls were made to his investigator or a defense witness. In view of all the circumstances, imposition of alternative sanctions would not have addressed White’s repeated obstruction of the proceedings, including refusal to attend court and his sabotage of courthouse facilities.

## *II.*

White contends that the trial court abused its discretion by admitting evidence of the Oregon weighmaster’s murder because the probative value of the evidence was substantially outweighed by its undue prejudice. He contends that the evidence is

inadmissible propensity evidence pursuant to Evidence Code section 1101, subdivision (a) that deprived him of due process of law pursuant to the United States and California Constitutions.<sup>4</sup>

Section 1101, subdivision (a) prohibits the admission of character evidence if offered to prove conduct in conformity with that character trait, sometimes described as propensity evidence. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 405-406.) Section 1101, subdivision (b) permits evidence of a prior or uncharged act, however, when relevant to prove some other disputed fact. (*Id.* at p. 406.) “If an uncharged act is relevant to prove some fact other than propensity, the evidence is admissible, subject to a limiting instruction upon request.” (*Ibid.*)

Even if uncharged acts evidence is otherwise admissible, a defendant may assert that section 352 precludes the evidence. (*People v. Bryant, Smith and Wheeler, supra*, 60 Cal.4th 335, 406.) Pursuant to section 352, a trial court may exclude otherwise relevant evidence if its probative value is substantially outweighed by concerns of undue prejudice, confusion, or consumption of time. (*People v. Edwards* (2013) 57 Cal.4th 658, 713.) Evidence is substantially more prejudicial than probative if it presents an intolerable risk to the fairness of the proceedings or the reliability of the outcome. (*Ibid.*; *People v. Eubanks* (2011) 53 Cal.4th 110, 144 [“undue prejudice” as used within section 352 refers to prejudging a person on the basis of extraneous factors].) We test the court’s ruling pursuant to section 352 for an abuse of discretion; that is, whether the court exercised its discretion in an arbitrary or unreasonable manner. (*People v. Suff* (2014) 58 Cal.4th 1013, 1066.)

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<sup>4</sup> All statutory references in Part II. are to the Evidence Code.

The trial court did not abuse its discretion by admitting evidence of the Oregon murder. Section 1101, subdivision (b) includes “a crime, civil wrong, or other act” as may bear upon White’s motive and intent, including the elements of premeditation and deliberation, in the attempted murder of Jaye. White, a fugitive in the Oregon murder, sought to elude arrest for the present offenses and engaged in a shootout with a Los Angeles police officer to avoid being taken into custody. The evidence also was relevant to negate the defense of methamphetamine intoxication asserted by White at trial. The prosecution is entitled to prove its case, including the issue of intent. (*People v. Steele* (2002) 27 Cal.4th 1230, 1243.) By his not guilty plea, White placed the burden on the prosecution to establish all the elements of the charged offenses. (*Ibid.*)

The evidence also was not unduly prejudicial. (*People v. Eubanks, supra*, 53 Cal.4th 110, 144.) “The potential for such prejudice is ‘decreased’ when testimony describing the defendant’s uncharged acts is ‘no stronger and no more inflammatory than the testimony concerning the charged offenses.’” (*Ibid.*) Here the Oregon murder occurred close in time to the present offenses and was established by the independent evidence of an eyewitness. The Oregon murder and the present offenses both involved shooting at a police officer, although the Oregon officer was killed. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 404-405 [discussing factors determining whether undue prejudice outweighs probative value], superseded by statute as stated in *People v. Robertson* (2012) 208 Cal.App.4th 965, 991.) The trial court did not exercise its discretion “in an arbitrary, capricious, or patently absurd manner that resulted in a manifest

miscarriage of justice.” (*People v. Rogers* (2013) 57 Cal.4th 296, 326.)

### III.

White argues that his conviction of premeditated and deliberate attempted murder is not supported by sufficient evidence. He describes his action as “mere unconsidered or rash impulse hastily executed” when confronted by police officers. (*People v. Anderson* (1968) 70 Cal.2d 15, 27 [premeditated deliberate murder requires a killing the result of preexisting reflection and mastering of considerations].) White asserts that his methamphetamine intoxication precluded thoughtful and reasoned deliberation. He adds that possession of a firearm and ammunition, without more, does not establish premeditation and deliberation.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*Johnson*, at p. 988; *People v. Watkins* (2012) 55 Cal.4th 999, 1020.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 [“Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact”].) We must accept logical inferences that the jury might have drawn from the evidence although we would have concluded otherwise. (*People v. Streeter* (2012) 54

Cal.4th 205, 241.) “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*Albillar*, at p. 60.)

Moreover, the testimony of a single witness is sufficient to prove a fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

“The mental state [for first degree murder] is uniquely subjective and personal. It requires more than a showing of intent to kill; the killer must act deliberately, carefully weighing the considerations for and against a choice to kill before he or she completes the acts that caused the death.” (*People v. Chiu* (2014) 59 Cal.4th 155, 166.) The process of premeditation and deliberation does not require any extended period of time. (*People v. Watkins*, *supra*, 55 Cal.4th 999, 1026.) The test is one of the extent of reflection and not the duration of time. (*Ibid.*)

In *People v. Anderson*, *supra*, 70 Cal.2d 15, 26-27, our Supreme Court identified three categories of evidence relevant to establishing premeditation and deliberation. (*People v. Brooks*, *supra*, 3 Cal.5th 1, 58-59; *People v. Houston* (2012) 54 Cal.4th 1186, 1216.) The categories include: 1) events occurring before the killing that indicate planning; 2) motive to kill; and 3) manner of killing that reflects a preconceived design to kill. (*Ibid.*) The factors are not exclusive nor are they invariably determinative. (*Brooks*, at p. 59; *Houston*, at p. 1216.) Evidence of each category is not required to affirm a judgment of first degree murder. (*People v. Mejia* (2012) 211 Cal.App.4th 586, 605.) The factors are merely a guide in determining whether the evidence supports an inference that the killing occurred as a result of preexisting reflection rather than a rash impulse. (*Brooks*, at p. 59.)

Sufficient evidence and all reasonable inferences therefrom support White's conviction of attempted premeditated and deliberate murder. Rather than surrender and be taken into custody during the automobile burglary, White fled until caught and confronted by police officers. White then decided to shoot Jaye who was approximately 30 yards away. Jaye testified that White "was actually looking over his arm, the outstretched arm, down the sights of the weapon . . . ." which he pointed at Jaye. After missing Jaye with the first shot, White prepared to fire a second shot. Granados then shot and wounded White as White was "acquir[ing] a target." The process of premeditation and deliberation does not require an extended period of time. (*People v. Brooks, supra*, 3 Cal.5th 1, 58 [statement of general rule].)

White's handgun was the handgun that shot and killed the Oregon weighmaster. White also had two magazines of ammunition in his back pockets in addition to ammunition he abandoned at the scene of the automobile burglary. It is a reasonable inference from the evidence that White continued to carry the weapon with abundant ammunition to resist arrest for the Oregon murder. This evidence and all reasonable inferences therefrom suggest planning activity, motive, and an attempted killing according to a preconceived design.

#### IV.

##### *Senate Bill No. 620 and Section 12022.53 Firearm Enhancement*

On October 11, 2017, the Governor signed Senate Bill No. 620. This legislation provides that effective January 1, 2018, section 12022.53, subdivision (h) is amended to permit the trial court to strike, in its discretion, a firearm enhancement. The amended section 12022.53, subdivision (h) provides: "The court may, in the interest of justice pursuant to Section 1385 and at the

time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (Stats. 2017, ch. 682, § 2.) The People concede that if White’s appeal is not final as of January 1, 2018, then the amended section applies to his sentencing absent the unlikely circumstances of a referendum. (*People v. Brown* (2012) 54 Cal.4th 314, 323-324; *People v. Francis* (1969) 71 Cal.2d 66, 75-76.)

White contends that his case must be remanded for resentencing regarding the now-discretionary section 12022.53 firearm enhancement. He points out that he was under the influence of methamphetamine at the time of the present offenses and asserts that striking the firearm enhancement from the determinate term would allow “sufficient punishment” in view of the remaining sentence.

At sentencing, the trial court imposed the upper prison term for count 4, unlawful possession of a firearm, and subordinate consecutive sentencing for count 5, burglary. White’s probation report listed seven aggravating sentencing factors and none in mitigation, as well as a criminal history dating from 1991. The trial judge stated that he imposed the upper term for count 4 due to White’s numerous criminal convictions. Upper terms were also imposed for the remaining counts except the vehicle burglary. In selecting the upper terms, the judge also referred to “great violence” involved in the present crimes. In view of the trial judge’s comments and selection of upper terms, it serves no purpose to remand the matter for resentencing. (*People v. Gamble* (2008) 164 Cal.App.4th 891, 901 [idle act to remand where record demonstrates trial court would not have exercised

discretion even if it believed it could do so]; *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896; *People v. Bravot* (1986) 183 Cal.App.3d 93, 98 [given trial judge's remarks, "virtual certainty," he would receive the same sentence on remand].) A remand for resentencing would be an idle act.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.



Bernie C. LaForteza, Judge  
Superior Court County of Los Angeles

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