Filed 10/4/18 P. v. Weatherspoon CA2/4

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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. LAEVIN MEIKEL WEATHERSPOON, Defendant and Appellant.	B285342 (Los Angeles County Super. Ct. No. BA421362)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall, Judge. Affirmed.

Christian C. Buckley, 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, Marc A. Kohm and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Laevin Meikel Weatherspoon (appellant) was charged with the December 5, 2013 murder of Wanda Threadgill, with a further allegation that he used a deadly weapon, a kitchen knife, during the offense. (Pen. Code, §§ 187, subd. (a), 12022, subd. (b)(1)).[1] Appellant denied all allegations. During the three and a half years between his arrest and the start of trial, appellant's case suffered various delays and disruptions due to persistent questions about appellant's mental competency to stand trial, and his misconduct both within and outside the courtroom. Defense counsel twice declared a doubt as to appellant's competency, suspending the proceedings, and appellant was hospitalized and subjected to multiple competency evaluations by at least eight physician experts. The consensus was that appellant was a highly skilled malingerer who exaggerated psychiatric symptoms to avoid prosecution. At his last competency evaluation two months before trial, appellant was certified competent to stand trial. At trial, appellant admitted to stabbing Threadgill with the intent to kill her, suggesting he did so in self-defense. The jury found appellant guilty of first degree murder, and also found true the deadly weapon allegation. Appellant was sentenced to 26 years to life in prison.

On appeal, appellant argues the trial court erred on four grounds: (1) failing to suspend proceedings and hold a competency hearing when defense counsel declared a doubt as to appellant's competence on the second day of trial; (2) failing to properly admonish appellant regarding his decision to testify during trial; (3) denying appellant's request for self-

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[1] All further statutory references are to the Penal Code, unless otherwise stated.

representation pursuant to *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*); and (4) ordering that appellant be restrained in waist chains during trial for courtroom security. For reasons set forth below, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. *Underlying Offense*

On December 17, 2013, Wanda Threadgill was found dead in her apartment in Los Angeles. It was determined that she had died on December 4 or 5 of multiple sharp force injuries, sustaining 27 stab wounds to the right side of her neck, shoulder, breast, abdomen and back. The length and shape of the knife recovered at the scene were consistent with the type and shape of wounds she suffered.

A mixture of Threadgill's and appellant's DNA was found on the knife handle and a mop handle. Appellant's fingerprints were also found throughout the apartment. Appellant was a friend of Threadgill's and had been living with her for about six weeks. Before her death, Threadgill had told her daughter that appellant was verbally abusive, and sought her daughter's help in getting appellant to leave. Threadgill had also expressed fear about appellant to her son.

On December 18, 2013, appellant left Los Angeles and traveled to Chicago by Greyhound bus. When appellant was located by the FBI in Chicago, he said he had left Los Angeles because "it was getting really bad in L.A." Appellant was arrested in January 2014 and transported back to California in April 2014. During a custodial interview with LAPD detectives, appellant acknowledged having stayed with Threadgill in Los Angeles. He stated that Threadgill wanted to have sex with him,

that he had "thousands" of kids, and that Threadgill had stomped on and killed many of them. He denied stabbing Threadgill, but said he found her still alive with stab wounds in the apartment, and he stayed there for two days without seeking any medical treatment for her.

The LAPD also interviewed appellant's mother, Angela Weatherspoon-Williams. She stated that appellant had not been diagnosed with any mental problem, but had reported a fake mental problem in California after learning through a friend that he would be eligible for state disability benefits.[2]

B. *Competency Evaluations and History of Malingering*

Appellant's first psychiatric contact was in April 2010, when he was determined to be a "'malingerer,'" hospitalized, and found to suffer from a personality disorder with features of schizophrenia.

In the year and a half between his arrest and the preliminary hearing, appellant was evaluated multiple times by various physicians to assess his mental competency. Dr. Sahgal ruled out malingering in June 2014, though appellant "denied having mental health problems." In September 2014, Dr. Kory Knapke found appellant "'very psychotic and delusional'" and

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[2] At the preliminary hearing on June 30, 2015, a Los Angeles police department (LAPD) detective testified regarding Ms. Weatherspoon-William's interview, in which she explained: "He went to California, somebody told him that a way he could make money . . . was b[y] saying that he was crazy. He had to act like he was crazy. And the system, I guess the government, the state, whatever, if you were diagnosed with an issue, with a problem, schizophrenia, whatever, then you could get money from the state. . . . Okay, so that's what he did. "

"'not malingering,'" but reported that appellant "'understands the charges and proceedings against him.'"

The most thorough assessment of appellant's mental competency occurred at Patton State Hospital (PSH) by Dr. Crystal Mueller, when appellant was hospitalized in October 2014 as incompetent to stand trial. Dr. Mueller noted that "[i]mmediately upon admission, [the] authenticity of Mr. Weatherspoon's presentation came into question as he did not appear to suffer from any mental disorder and appeared to be attempting to gather information as to the best way to build a mental health defense for his case." Dr. Mueller further noted contradictions in appellant's responses. For example, appellant now said he was not aware of his charges, and that he """probably""" had a mental illness.

Specifically, Dr. Mueller performed a malingering assessment, and found "[t]he results are highly suggestive of malingered psychopathology." Appellant asked a number of questions related to legal strategy, which were not indicative of intellectual impairment and difficulty understanding the court process, but rather, "intelligent questions about the mental health process as it would relate to his case and promoting his best interests, in other words, forming a legal strategy using 'mental illness.'" Appellant's social worker also noted that appellant "appeared to be fishing for information to further his best legal interests," asking "'various questions regarding pleas, competency, conservatorship, NGI [not guilty by reason of insanity defense].'" After learning that his murder charge would not be dropped even if he was deemed incompetent, appellant apparently changed his strategy and decided to "'get competent and [plead] NGI.'"

Dr. Mueller concluded that "results of testing, clinical opinion, and behavioral observation over time on the unit, across numerous staff" all supported a diagnosis of malingering:

> "In my opinion, Mr. Weatherspoon does not currently display psychotic symptoms that would cloud his mind to the point of being unable to rationally cooperate with his attorney. There is much evidence to suggest that he is malingering mental illness or exaggerating symptoms in order to promote his best legal interests (e.g., either building a case for NGI, or attempting to avoid legal prosecution). . . . I recommend, with the full support of his treatment team, that he be returned to court as competent to stand trial."

Regarding appellant's understanding of his charge and legal procedures, Dr. Mueller opined: "He clearly has the intellectual capacity to understand and track what is happening in court." Furthermore, Dr. Mueller cautioned:

> "Mr. Weatherspoon may attempt to avoid prosecution by refusing to work with his attorney. This should be construed as volitional behavior on his part, and not the product of a mental disorder or developmental disability. In other words, Mr. Weatherspoon has the 'ability' to work with his attorney, although he may be 'unwilling' to do so. As such, he should be considered competent to stand trial."

In January 2015, appellant was evaluated again by Dr. Knapke, who found Dr. Mueller's report "quite compelling" and also concluded, after his own examination, that appellant was malingering. Dr. Knapke pointed out that the state hospital "has

the luxury of observing [and] interacting with the defendant twenty-four hours per day, seven days per week in a variety of clinical settings" and is better-positioned to provide a "much more accurate assessment as to whether a criminal defendant is malingering" compared to court-appointed evaluators. Dr. Knapke found appellant remarkably skilled at malingering, and competent to stand trial:

> "It is interesting to note that this particular defendant is very creative and very good at fabricating delusional comments in a very spontaneous manner and many of his comments sound extremely bizarre. In my opinion, this defendant is far more skilled with malingering than most other criminal defendants who I believed were malingering, to such an extent that I found him incompetent to stand trial when I first examined him in September 2014.
>
> "I believe the defendant is competent to stand trial. I believe he understands the charges and proceedings against him and has the capacity to rationally cooperate and assist his attorney if he chooses to do so. However, it is highly likely that Mr. Weatherspoon will continue to feign psychotic symptoms and could possibly continue feigned psychotic behavior even in the courtroom setting."

By information filed July 14, 2015, appellant was charged with one count of murder (§ 187, subd. (a)). It was further alleged that appellant used a deadly and dangerous weapon, a kitchen knife (§ 12022, subd. (b)(1)). Appellant pleaded not guilty and denied all allegations.

C. *Further Delays and Competency Evaluations*

Appellant's case stalled for two more years, due to recurrent questions about his mental competency and his refusal to cooperate with legal procedures. On October 16, 2015, defense counsel declared a doubt as to appellant's competency to stand trial, and criminal proceedings were suspended. On March 25, 2016 defense expert Dr. Haig Kojian submitted his report finding appellant "delusional" and "incompetent." On July 21, 2016, prosecution expert Dr. Knapke submitted his report, finding appellant competent and a malinger. He indicated he "was not provided any new information that would change [his] opinion" from his last report.[3]

The court appointed a third "tiebreaker" expert, Dr. Risa Grand, who submitted a report finding appellant competent, and the court reinstated proceedings on October 25, 2016. Dr. Grand concluded that appellant seemed to demonstrate "adult antisocial behavior," but did not appear to suffer from a major mental illness.[4] Although appellant "did not demonstrate a factual understanding of criminal proceedings," this "appeared to be volitional." And although appellant might be "challenging" to

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[3] Dr. Knapke noted in his report that appellant "refused to participate in a complete mental status examination," and that he was not provided with appellant's "jail mental health records," which "most likely would help confirm, once again, the fact that the defendant is malingering."

[4] Dr. Grand noted in her report that "[i]t is possible the defendant has experienced psychiatric treatment in the past and may actually suffer from a mental illness," but at the time of the evaluation, she could not support or refute his reported history of schizophrenia.

work with, this did not "equate to trial incompetence"; indeed, he could "rationally assist in his defense *if he chose to do so*." (Italics added.) Dr. Grand believed that even appellant's "behaviorally inappropriate manner" in custody was "volitional." She concluded:

> "The defendant appears to be particularly invested in moving forward with a not guilty by reason of insanity plea, and therefore does have a vested interest in appearing mentally ill.
>
> "In my opinion, Mr. Weatherspoon is competent to stand trial. I believe he is competent to stand trial because he speaks in a linear, goal-directed fashion and demonstrated no thought or behavioral disorganization as found in chronic psychotic illnesses. . . . It is my opinion, with a high degree of medical certainty, that there is not evidence to support that he suffers from a major mental illness that would impede his ability to move forward with his case. . . . If anything, it appears the defendant is [m]alingering or overstating psychiatric symptoms due to secondary gain."

Following a subsequent evaluation in January 2017 for a potential NGI plea, Dr. Carl Osborn found appellant to be "an unusually skilled [m]alingerer." In March 2017, after defense counsel again declared a doubt, Dr. Ronald Markman found appellant incompetent to stand trial, but this determination was made "[n]otwithstanding an exaggeration of his clinical condition," and was far from conclusive. The report said "[t]here was no clinical evidence of an underlying thought disorder, and there was a clinical indication that [appellant] was intentionally

acting erratically." Appellant was re-admitted to PSH. At his last evaluation in June 2017, two months before trial, appellant was diagnosed with malingering and found competent to stand trial. Dr. Kayla Fisher noted that appellant was intentionally disruptive or evasive during the evaluative process, and possessed a sophisticated understanding of legal concepts. There was no change in his condition since his last admission: "his presentation thus far has not impressed as different." PSH certified appellant as competent, and proceedings were reinstated on June 29, 2017.

Further delaying the proceedings, during the two-year period between his arraignment and trial, appellant was frequently disruptive and defiant of courtroom protocol and legal procedures. Appellant refused to appear in court for 18 of 23 scheduled hearings, and four of his five appearances were made only after the court signed an extraction order. In November 2016, he was reported to be "actively trying to gas custody staff with urine and feces. [He] [r]efuses to follow orders." After another "gassing" incident in December 2016, appellant was charged with criminal battery on a peace officer while in custody (§ 243.9, subd. (a).)

D. *Faretta Request*

At a pretrial status hearing on November 18, 2016 before Judge Laura Priver, appellant requested to represent himself:

> "THE DEFENDANT: Miss Judge, I'd like to go pro per.
>
> "THE COURT: That request is denied. You have counsel.

"THE DEFENDANT: Why?

"THE COURT: Because we're here 24 of 60.

"THE DEFENDANT: I'm a mental patient and I should be in Division 95."

After a bench conference held off the record, the judge explained her denial of appellant's *Faretta* request:

"THE COURT: We will go back on the record on the Weatherspoon matter. The defendant made a request verbally – although not with the *Faretta* waivers in place – to go pro per. I'm going to make a record as to why I denied that request. Mr. Weatherspoon has repeatedly refused to come to court. He's been extracted on numerous occasions. He's also had periods of time where he was 1368 and ultimately proceedings were reinstated based upon malingering.

"This court believes, given the number of times he's refused and been extracted once we absolutely had to get him in, the doctors' reports prepared state that he is not, number 1, going to cooperate with the court process; number 2, he's not equipped to represent himself. And but most importantly the court believes he will absent himself and play games with the court proceedings. And for those reasons the court is denying his request, although it was only verbal and sort of said spontaneously to go pro per.

"So I want the record to reflect I didn't want – I wanted the report to reflect I wasn't – I was being thoughtful. I have a long history with Weatherspoon. On almost every occasion I have to extract him. I

> don't think he would participate cooperatively with the process. We're going to trail it within the period to 49 of 60 which is December 13th. I'm not going to play games with Mr. Weatherspoon anymore. If he doesn't want to come to court I'll simply extract him on each court date."

E. *Trial Proceedings*

Appellant's case proceeded to trial on August 24, 2017 before Judge Henry J. Hall. On the first day, appellant's counsel noted on the record that appellant had refused to wear the civilian clothing she had provided him "so he would make a better impression on the jury," choosing instead to remain in his jail uniform. The judge found appellant was aware of his right to wear civilian clothing, but had chosen not to do so.

On the second day of trial, following voir dire proceedings, defense counsel requested a sidebar conference, and the following discussion ensued:

> "[DEFENSE COUNSEL]: I am wondering – and I've – I know we've been through this so many times, but I don't know that he can assist me in his defense. I honestly don't know if I should declare a doubt. And I know he's been returned so many times. I don't know if the court would allow me to.
>
> "THE COURT: There's been no change of circumstances I could see. I reviewed the record in this case and the preliminary hearing transcript and it appears to me that there is a significant history in this case of Mr. Weatherspoon malingering and feigning psychiatric symptoms. This was almost predictable yesterday when his comments were made on the record that this is a case that doesn't belong in

this court. It belongs in a mental health court and that he wanted it to go back to Department 95.

"I believe based on my review of the records in this case – and I spent several hours going through the records in the file including reading the preliminary hearing transcript – that Mr. Weatherspoon knows exactly how to feign and how to manipulate mental illness. And we're getting to the end of the pretrial portion of this case and the pre-evidence portion of this case and I believe that this is just typical of the behavior that he's been exhibiting to attempt to abort this trial. So I understand your concerns. And if something changes then we'll take a better look at it. But as of right now, particularly based on his statements yesterday that he wanted this case in mental health court, Department 95, he's well familiar with the system and how it operates that I don't have a doubt. I think that this is a continuing – continuation of the pattern of malingering. That's the record."

Defense counsel then objected to appellant being shackled in waist chains. The court explained its rationale, based on appellant's behavior while in court, out of court, and during transport:

"THE COURT: Mr. Weatherspoon has a history of acting up and a history of refusing to come to court and essentially has a history of doing what he can to thwart the court process.

"Yesterday his behavior in court was extremely questionable. He was leaning on the table, mumbling, talking over the court, talking over

everything that was happening or trying to happen in court. That's not uncommon, but I was concerned about it. And he made some comments to his attorney that I overheard that – of a sexual nature that I found to be extremely disturbing. And I was considering last night what I was going to do about that to ensure the security of the courtroom, whether it reached a point that I needed to take action or whether I could let things go as they were and I was really on the fence about that.

"Prior to the commencement of the proceedings this afternoon I was -- the bailiff came in and discussed some of Mr. Weatherspoon's behavior today.

"We were informed that he had been misbehaving in court line at the jail and had been involved in essentially stirring up other inmates to create issues there. When he was brought here in the lockup downstairs he was involved in conduct that was – had the effect of stirring up other inmates and riling them up as it were. As he was being – at that point he was ordered to be segregated and placed in waist chains for the security of the lockup. By itself that probably would have created enough of a concern that I would have required additional security in the courtroom, but it was also reported to me that while he was being transported up to this courtroom he exhibited behavior that was extremely threatening and confrontational with the bailiff.

"And I think based on that, based on his history that the waist chain security is necessary. I don't think there's a lesser form of security that would both ensure the safety and security of the courtroom and, to be honest with you, one of my main concerns is

> safety and security of his attorney given the nature of some of the comments he made to her yesterday that I overheard."[5]

The court also observed that the restraints were not "all that prejudicial" because appellant had chosen to wear his jail uniform before the jury. Defense counsel made no further objection. The court then instructed the jurors regarding the physical restraints per CALCRIM No. 204: "The fact that physical restraints have been placed on Mr. Weatherspoon is not evidence in this case and you're not to speculate about why that happened. You must completely disregard it in deciding the issues in this case."

Toward the end of the prosecution's case, defense counsel informed the court that no final decision had been made as to whether appellant would testify. Two days later, defense counsel indicated that appellant would testify:

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[5] The court elaborated on its decision to restrain appellant when it excused a prospective juror who commented on the use of shackles. The judge explained, in chambers, that physical restraints are used "only in the most extreme circumstances." The judge had not, in his 10 years on the bench, ever used them before, "but Mr. Weatherspoon [had] a history of violence while in custody." This history of violence included an incident of "gassing which is assaulting jail people with noxious substances. Apparently the substances in that case tested positive for fecal matter, semen and urine." He had also incited inmates at the jail "to commit acts of violence against the deputies." And on his way to the courtroom, he had threatened the deputy "that he was going to commit acts of violence in court."

"[DEFENSE COUNSEL]: Yes. I spoke with Mr. Weatherspoon earlier about his testimony. He is going to testify.

"THE COURT: Okay.

"[DEFENSE COUNSEL]: However, he is not willing to talk to me about what his testimony will be.

"THE COURT: Okay.

"THE DEFENDANT: We already discussed that.

"[DEFENSE COUNSEL]: We discussed it briefly and then he basically stopped communication with me.

"THE COURT: That's his right. Okay. Well?

"THE DEFENDANT: I have a problem with answering that question.

"THE COURT: We'll just see what it is.

"THE DEFENDANT: I can't answer certain questions she's been asking me because I feel like she's being disrespectful.

"THE COURT: Well, Mr. Weatherspoon, you are going to be expected to answer the questions that are propounded to you here in open court, so if you testify that's one of the things that . . . .

"THE DEFENDANT: To the best of my knowledge.

"THE COURT: That's what I'm going to expect of you. Okay."

Appellant was allowed to testify without restraints, and the judge had appellant seated in the witness box when the jury came out, "so they [wouldn't] have to see him restrained more than they absolutely [had] to." Before appellant testified, the judge advised him of his constitutional right not to testify:

"THE COURT: Okay. Then, Mr. Weatherspoon, I just want to – I want to understand one thing and I want to be sure you understand one thing. As we've discussed throughout this trial you do have an absolute constitutional right to not testify and to remain silent and to rely on the state of the evidence. If you want to testify that's totally your choice. Nobody can tell you to do otherwise. Do you understand that right? Mr. Weatherspoon, do you understand the right not to testify?

"THE DEFENDANT: No.

"THE COURT: You have an absolute constitutional right not to testify. Do you understand that?

"THE DEFENDANT: Yeah.

"THE COURT: Okay. And knowing that it's your desire to testify, correct?

"THE DEFENDANT: All right.

"THE COURT: That's all I wanted to know."

Appellant testified that he and Threadgill had known each other since 2011, and were friends. On December 5, 2013, appellant had been living with Threadgill because he was homeless. But after about six weeks, he left for Chicago because Threadgill wanted sex, and demanded he pay for cable and groceries. On cross-examination, appellant admitted that he stabbed Threadgill:

"Q: Did you see her stabbed?

"A: Yes.

"Q: Okay. Are you the person who did it?

"A: Yes."

Appellant also testified that the knife recovered at the scene "looks like" the knife he used, "but the handle was too dark." He didn't remember how many times he stabbed Threadgill, but said: "All I remember is the last one to her heart." Appellant stabbed Threadgill because she was acting "kind of crazy." She asked him to sleep in the bedroom with her and, when he refused, she tried to sleep in the living room with him. At one point, she picked up a knife and started walking around the house. She had threatened to stab him to death when he was living on Skid Row, and also threatened to stab an infant if appellant did not do it. Essentially, appellant stabbed Threadgill "[i]n defense of [his] life and in [the infant's] defense." However, at the time appellant stabbed her, Threadgill did not have a weapon in her hand, and the infant was not in the

apartment. When appellant stabbed Threadgill, he was trying to kill her. Afterwards, appellant stayed in the apartment for a few hours, "smoked a blunt," and called his therapist.

The jury found appellant guilty of first degree murder, and found the deadly weapon allegation to be true. He was sentenced to 26 years to life in prison. He timely appealed.

DISCUSSION

A. *The Trial Court Did not Err by Failing to Hold Another Competency Hearing or to Suspend Proceedings.*

Under both federal and California law, trial of a mentally incompetent criminal defendant violates due process. (§ 1367; *Godinez v. Moran* (1993) 509 U.S. 389, 396; U.S. Const., 14th Amend.; Cal. Const. art. I, §§ 7, 15.) A criminal defendant is mentally incompetent to stand trial if, "as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367, subd. (a).) In other words, a defendant is incompetent if he or she lacks a "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—[or lacks] . . . a rational as well as [a] factual understanding of the proceedings against him.'" (*Dusky v. United States* (1960) 362 U.S. 402, 402; see also *People v. Stewart* (2004) 33 Cal.4th 425, 513.) The trial court must conduct a competency hearing if defense counsel declares a doubt as to the defendant's mental competence, or on the court's own motion if there is evidence that raises a reasonable doubt on the issue. (§ 1368, subd. (b); *People v. Howard* (1992) 1 Cal.4th 1132, 1163.)

However, once a competency hearing has been held and the defendant has been found competent, the court is not obligated to suspend proceedings to conduct another competency hearing unless """"it is presented with a substantial change of circumstances or with new evidence' casting a serious doubt on the validity of that finding."""" (*People v. Taylor* (2009) 47 Cal.4th 850, 864; accord, *People v. Jones* (1991) 53 Cal.3d 1115, 1153 (*Jones*).) The trial court "may appropriately take its personal observations into account in determining whether there has been some significant change in the defendant's mental state." (*Jones*, *supra*, at p. 1153.) Reviewing courts give great deference to a trial court's decision whether to hold a competency hearing. "'An appellate court is in no position to appraise a defendant's conduct in the trial court as indicating insanity, a calculated attempt to feign insanity and delay the proceedings, or sheer temper.'" (*People v. Danielson* (1992) 3 Cal.4th 691, 727, disapproved on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) Thus, a trial court's decision to grant or deny a competency hearing is reviewed under an abuse of discretion standard. (*People v. Ramos* (2004) 34 Cal.4th 494, 507.)

The trial court did not abuse its discretion in declining to order a subsequent competency hearing. Appellant had been found competent to stand trial, and the record discloses no substantial change of circumstances or new evidence casting serious doubt on the pretrial finding of competency. Appellant had been evaluated by at least eight different physicians in a variety of contexts during the three and a half years his case was pending due to persistent questions about his competency. The consensus among these experts was that appellant was malingering and feigning psychiatric symptoms to avoid

prosecution. Appellant was observed to be not simply an ordinary malingerer, but a remarkably skilled one, capable of eluding even the most experienced psychiatric panelist. Several experts observed that appellant seemed to possess a sophisticated understanding of legal concepts, such as the nature and use of evidence at trial, the competing weight given to different testimony, and the mental health process as it related to his prosecution. Even appellant's familiarity with "Division 95," the mental health court of Los Angeles Superior Court, did not escape the trial judge's notice. Such an understanding is inconsistent with appellant's claim that he lacked the mental capacity to understand the nature of the proceedings against him or to rationally assist counsel with his defense.[6]

As respondent correctly notes, there was no significant deterioration in appellant's behavior after his second competency hearing on June 29, 2017 to justify a third competency hearing on August 25, 2017, the second day of trial. On that day, the trial judge noted there was "no change of circumstances" based on his personal observations that appellant was continuing a "pattern of malingering," a conclusion entitled to deference. At his final evaluation before trial, Dr. Fisher had also observed that appellant's "presentation thus far has not impressed as

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[6] The record further supports the inference that appellant was thoughtfully and purposefully preparing his potential defenses of incompetence and insanity during his various evaluations and hospitalizations, by gathering information from mental health providers and modifying his legal strategy accordingly. The conclusion that appellant was malingering was further supported by his mother's statements, introduced at the preliminary hearing, that he had fraudulently reported having a mental disorder to receive state disability benefits in California.

different." Thus, in light of appellant's prolonged but consistent history of malingering, and the absence of any substantial change of circumstances that would cast serious doubt on his competency, the trial court did not err in declining to order another competency hearing.

Appellant next contends that his conduct during trial warranted a further examination of his competency, and the trial court erred in failing to suspend the proceedings. However, once a defendant has been found to be competent, even "bizarre actions or statements" are not enough to require a further inquiry. (*People v. Marshall* (1997) 15 Cal.4th 1, 33.) Moreover, courts have drawn a distinction between a defendant's *unwillingness* to assist counsel in his defense, and his mental *incompetence* to do so. In *People v. Elliott*, defendant's disruptive courtroom behavior—throwing apples at the judge and jurors, and saying "'This is shit'" during proceedings—"was evidence that he was angry and upset, and perhaps that he wished to interrupt the proceedings, but it was not evidence sufficient to require the trial court to conduct a mental competency hearing." (*People v. Elliott* (2012) 53 Cal.4th 535, 583, citing *People v. Medina* (1995) 11 Cal.4th 694, 735 ["'[d]efendant's cursing and disruptive actions displayed an unwillingness to assist in his defense, but did not necessarily bear on his *competence* to do so . . . .'"] italics omitted; see also *People v. Mai* (2013) 57 Cal.4th 986, 1033 ["disruptive conduct and courtroom outbursts by the defendant do not necessarily demonstrate a present inability to understand the proceedings or assist in the defense"].)

Here, appellant demonstrated an unwillingness to assist counsel with his defense, not his incompetence to do so. When defense counsel raised the possibility of declaring doubt as to

appellant's competence, she did not set forth specific grounds for this doubt, beyond a vague suspicion that "[she didn't] know that he can assist [her] in his defense." But defense counsel never informed the court that appellant lacked a rational or factual understanding of the proceedings, or that he could not reasonably communicate with her about his case. When appellant decided to testify on his own behalf, defense counsel took issue with the fact that he was not "willing to talk to [her] about what his testimony will be," not whether he could reasonably present an effective defense. When appellant did testify, he demonstrated a general understanding of the role of the attorneys, the judge, and the jury in the case. He recalled by memory the general timeline of events leading up to and following Threadgill's death. He responded appropriately to questions asked during direct examination and cross-examination. And even when appellant admitted to stabbing Threadgill, his testimony suggested a probable defense – that he stabbed Threadgill in defense of his own life. As various physicians cautioned in their reports, appellant's volitional acts of misconduct and defiance were not "the product of a mental disorder" and did not "equate to trial incompetence." Appellant's failure to cooperate with counsel did not evidence his inability to do so, and the court was under no obligation to suspend trial proceedings.

B. *The Trial Court Had No Duty to Admonish Appellant Regarding His Right Not to Testify at Trial.*

"Under the due process guarantees of the Fourteenth Amendment to the United States Constitution, a criminal defendant has the right to testify on his or her own behalf. [Citations.]" (*People v. Mickel* (2016) 2 Cal.5th 181, 218.) "The defendant may exercise the right to testify over the objection of,

and contrary to the advice of, defense counsel. [Citations.]" (*People v. Bradford* (1997) 15 Cal.4th 1229, 1332.) "Where . . . 'a defendant is represented by counsel, there is no duty on the part of the trial court to offer the accused any advice on his election to testify or not to testify or to explain the ramifications of either choice.' [Citation.]" (*People v. Thomas* (1974) 43 Cal.App.3d 862, 867, italics omitted (*Thomas*).) "When the decision is whether to testify [citation], . . . it is only in case of an express conflict arising between the defendant and counsel that the defendant's desires must prevail. In the latter situation, there is no duty to admonish and secure an on the record waiver unless the conflict comes to the court's attention. [Citation.]" (*In re Horton (*1991) 54 Cal.3d 82, 95.) In other words, unless the court is made aware of a conflict between the defendant and his counsel on whether the defendant should testify, the court has no duty to admonish the defendant. "If the defendant voluntarily takes the stand, he effectively waives the privilege against self-incrimination as to all inquiries proper on cross-examination and is subject to impeachment the same as any other witness. [Citations.]" (*Thomas*, *supra*, at p. 867.)

In addressing the duty to admonish, courts recognize a distinction between defendants appearing with counsel and those appearing without counsel. In *Thomas*, the defendant testified on his own behalf, then argued that he was not adequately advised by the trial court of his privilege against self-incrimination. The appellate court held that a trial court has no duty to admonish a defendant represented by counsel about the right not to testify, and implied that this burden falls on defense counsel:

> "Defendant voluntarily took the stand in order to testify on his own behalf. *He had the benefit of counsel*, and the trial court specifically asked whether he had discussed with counsel the consequences of so doing. Defendant answered affirmatively. Presumably, defense counsel performed his duty as an attorney and adequately informed defendant of his legal rights. We, therefore, find that the trial court not only met, but exceeded, its obligation."
>
> (*Thomas*, *supra*, 43 Cal.App.3d at p. 868.)

Appellant concedes that our Supreme Court has never imposed a requirement that a trial court admonish a defendant regarding his or her right not to testify. He also acknowledges that few cases discuss how a court should proceed once informed that a defendant will testify against the advice or without the aid of counsel. The three Supreme Court cases appellant relies on are inapposite, and none held that a trial court has a duty to admonish a defendant represented by counsel regarding the risks of testifying on his or her behalf.

In *People v. Guzman* (1988) 45 Cal.3d 915 (*Guzman*), the Supreme Court rejected the defendant's contention that he was not properly advised by the trial court of the dangers of self-representation when he testified in the narrative format against the advice of counsel. (*Id*. at p. 946, overruled on another ground in *Price v. Superior Court*, *supra*, 25 Cal.4th 1046.) While recognizing the multiple and extensive warnings the trial court gave the defendant regarding his narrative testimony, the *Guzman* court also held, consistent with *Thomas*, that "[c]ounsel was available for and participated in all other stages of the trial. Therefore, it was not necessary that the trial court's warnings

about the dangers of self-representation be as complete as would be necessary for a defendant who sought to conduct his entire defense." (*Guzman*, at p. 946.)

In *People v. Nakahara* (2003) 30 Cal.4th 705, 717 (*Nakahara*), the appellate court expressly rejected any extension of *Guzman* to impose on the trial court a duty to admonish a defendant regarding his or her testimony, noting that "nowhere in our *Guzman* opinion did we suggest that such an array of admonishments was a necessary or constitutional prerequisite to receiving a defendant's testimony against advice of counsel." (*Ibid.*)

Lastly, in *People v. Lancaster* (2007) 41 Cal.4th 50, 100 (*Lancaster*), the appellate court found sufficient the trial court's cursory admonishment, which explained that the decision to testify was the defendant's personal choice, and no one could prevent him from testifying. Although appellant attempts to stretch *Lancaster*'s reach, the decision provides no support for the proposition that the trial court should have addressed the apparent conflict between appellant and his counsel, discussed the risk of impeachment, advised him against disregarding the advice of counsel, held a hearing on the issue, and ensured he was knowingly waiving his right not to testify. On the contrary, the *Lancaster* court expressly held that a trial court was not required to do any of those things:

> "Defendant decided to testify. He now contends the court's advisement was inadequate and misleading, because the court did not admonish him about the risks of testifying, failed to revisit the matter immediately before defendant took the stand, held no hearing to explore defendant's disagreement with

> counsel over the decision, and did not warn him that the scope of his testimony would be limited. *The court was not required to do any of those things*."
>
> (*Lancaster, supra,* 41 Cal.4th at p. 100, italics added.)

Although the defendant in *Lancaster* relied on both *Guzman* and *Nakahara*, the Supreme Court concluded that he "[had referred the court] to no authority requiring an admonition in this situation," and that a defendant "'may be allowed to exercise, or not to exercise, the right to testify, without advisement by the trial court. . . .' [Citations.]" (*Lancaster*, *supra*, at pp. 100-101.) Indeed, appellant acknowledges that *Guzman*, *Nakahara*, and *Lancaster* did not hold that any form of advisement was required.[7]

The admonishment given by the trial court here was brief, but the judge addressed appellant in court to ensure he understood that he had a constitutional right not to testify, that it was completely his choice, and that nobody could direct him to do otherwise. The court further confirmed that it was appellant's

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[7] Notably, while defense counsel informed the court that appellant would not discuss the content of his testimony with her, she never stated that they disagreed on whether he should testify. To the extent such a conflict existed, nothing in the record defeats the *Thomas* court's presumption that defense counsel performed her duty as an attorney and adequately informed appellant of his legal rights and risks in testifying on his behalf. Nothing suggests that defense counsel did not have the opportunity to advise appellant regarding his decision to testify, especially as she told the court she had discussed the decision with him.

desire to testify. Upon being asked by the court three times, appellant ratified his understanding of his constitutional right not to testify with a "Yeah," and his desire to testify with a nonambiguous "All right." No more was required.

C. *The Court Did not Err in Denying Appellant's Faretta Request Based on the Risk of Disruption and Delay.*

The court below denied appellant's *Faretta* request, describing appellant's history of delaying court proceedings, frequent refusals to appear in court and various extractions, and explaining that "most importantly the court believes he will absent himself and play games with the court proceedings."[8]

A trial court's denial of a defendant's request for self-representation is reviewed for abuse of discretion. A trial court "possesses much discretion" when it comes to granting or terminating a defendant's right to self-representation, and "the exercise of that discretion 'will not be disturbed in the absence of a strong showing of clear abuse.'" (*People v. Welch* (1999) 20 Cal.4th 701, 735 (*Welch*); see also *People v. Carson* (2005) 35 Cal.4th 1, 12 (*Carson*).)

Generally, "[a] trial court must grant a defendant's request for self-representation if three conditions are met. First, the defendant must be mentally competent, and must make his request knowingly and intelligently, having been apprised of the dangers of self-representation. [Citations.] Second, he must make his request unequivocally. [Citations.] Third, he must

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[8] Although appellant argues that the court improperly based its *Faretta* denial on defendant's inability to represent himself, he concedes that "[t]he court entirely rejected the request on the ground that it thought appellant would not come to court."

make his request within a reasonable time before trial. [Citations.]" (*Welch*, *supra*, 20 Cal.4th at p. 729.)

A trial court "may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." (*Faretta*, *supra*, 422 U.S. at pp. 834, fn. 46.) Courts have extended this discretion to the "denial of a motion for self-representation in the first instance[,] when a defendant's conduct prior to the *Faretta* motion gives the trial court a reasonable basis for believing that his self-representation will create disruption." (*Welch, supra,* 20 Cal.4th at p. 734.) "'The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.' [Citation.]" (*Id.* at p. 734.) "Ultimately, the effect, not the location, of the misconduct and *its impact on the core integrity of the trial* will determine whether termination [of self-representation] is warranted." (*Carson*, *supra*, 35 Cal.4th at p. 9, italics added; see also *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1513, 1515-1517 (*Kirvin*) [denying initial request for self-representation due to (1) defendant's refusals to come to court and meet with court-appointed expert and (2) his out-of-court misconduct in custody].) A court may also consider a defendant's conduct during pretrial proceedings if it "continuously manifested an inability to conform his conduct to procedural rules and courtroom protocol." (*People v. Watts* (2009) 173 Cal.App.4th 621, 629-630).

The trial court acted within its discretion in concluding that appellant's consistent failures to appear in court, numerous extractions, and demonstrated history of malingering compromised the core integrity of the trial, justifying the denial of self-representation. (See *Kirvin*, *supra*, 231 Cal.App.4th at

p. 1516 ["The court did not act beyond the 'bounds of reason' in concluding that Defendant's repeated refusal to come to court . . . would seriously threaten the core integrity of the trial."].) There is no requirement that a defendant's misconduct be limited to the trial itself to be a proper basis for a *Faretta* denial. (See *Carson*, *supra*, 35 Cal.4th at pp. 9-10; *Welch*, *supra*, 20 Cal.4th at p. 734 ["the trial court also relied extensively upon the circumstance that defendant repeatedly had been disruptive during the course of the *Faretta* proceedings and during hearings on prior motions in the present case"].) Neither is a court required to exhaustively document its decision to deny self-representation. Contrary to appellant's assertion that the court "summarily" denied his request, the court explained on the record that it "thoughtful[ly]" denied appellant's request, primarily because of its belief – based on its "long history" with appellant – that he would continue to "absent himself and play games" with the court, and refuse to abide by courtroom procedures. Appellant's dilatory and disruptive conduct over the 16 months that the court interacted with appellant included incidents of gassing deputies with bodily fluids and threatening acts of violence in the courtroom. This provided a reasonable basis for the court's belief that his self-representation would pose an unreasonable risk of future delay and disruption. We find dispositive appellant's demonstrated inability to conform his behavior to basic rules of procedure and courtroom protocol. The court did not abuse its discretion in denying appellant's *Faretta* request.

D. *The Trial Court Did Not Abuse Its Discretion in Ordering Appellant Physically Restrained Because There Was Manifest Need, and Any Error Was Harmless.*

"A trial court has broad power to maintain courtroom security and orderly proceedings, and its decisions on these matters are reviewed for abuse of discretion. [Citation.] That discretion, however, must yield to principles of due process. [Citation.]" (*People v. Simon* (2016) 1 Cal.5th 98, 115 (*Simon*).) Under principles of due process, a defendant may be physically restrained at trial only if there is a "manifest need for such restraints." Such a "manifest need" arises only upon a showing of unruliness, a demonstrated intention to escape, or "[e]vidence of any nonconforming conduct or planned nonconforming conduct which disrupts or would disrupt the judicial process if unrestrained. . . ." (*People v. Duran* (1976) 16 Cal.3d 282, 291, 292-293, fn. 11 (*Duran*).) The court abuses its discretion when it uses physical restraints absent a "record showing of violence, a threat of violence, or other nonconforming conduct." (*Simon, supra*, 1 Cal.5th at p. 115.)

Both federal and state Supreme Courts have recognized that visible physical restraints are inherently prejudicial and erode the "presumption of innocence" because they suggest to the jury that the defendant is a dangerous person who must be separated from the rest of the community. (*Deck v. Missouri* (2005) 544 U.S. 622, 630; see also *Duran, supra*, 16 Cal.3d at p. 290.) Also, if a defendant is "accused of a violent crime, his appearance before the jury in shackles is likely to lead the jurors to infer that he is a violent person disposed to commit crimes of the type alleged." (*Duran, supra*, at p. 290.) Thus, "even when the record establishes a manifest need for restraints, the

restraint imposed must be the least obtrusive or restrictive one that would be effective under the circumstances. [Citations.]" (*Simon, supra,* 1 Cal.5th at p. 115.)

Here, the trial court acted within its discretion in finding a manifest need for physical restraints (i.e. waist chains) based on appellant's misconduct outside the courtroom and threatened acts of violence. Courts have discretion to use physical restraints in the courtroom even when there is only the *threat of violence,* based on a defendant's previous misconduct and the court's case-specific assessment of risk, without an actual showing of violence in the courtroom. (See *People v. Williams* (2015) 61 Cal.4th 1244, 1259 (*Williams*) [""manifest need"" is "'satisfied by evidence that the defendant has threatened jail deputies, possessed weapons in custody, threatened or assaulted other inmates, and/or engaged in violent outbursts in court'"].) The trial court made sufficiently clear on the record that its decision to physically restrain appellant was based on various factors which altogether posed a serious threat of violence in the courtroom: Appellant was reported to have incited other inmates to violence against the deputies in jail, and during transport had threatened to commit acts of violence in the courtroom. He was segregated from other inmates and restrained in waist chains in the court's lockup. He was overheard making a sexually offensive and disturbing comment to his attorney. And he was charged with committing battery on a peace officer by gassing him with bodily fluids. These circumstances sufficiently demonstrated a "manifest need" to physically restrain appellant during trial.

Moreover, had we found the court abused its discretion in restraining appellant in waist chains, the error could not have prejudiced him. (See *Williams, supra,* 61 Cal.4th at p. 1259

["'[W]e have consistently held that courtroom shackling, even if error, [is] harmless if there is no evidence that the jury saw the restraints, or that the shackles impaired or prejudiced the defendant's right to testify or participate in his defense.' [Citation.]"]; *People v. Seaton* (2001) 26 Cal.4th 598, 652 ["defendant admitted to the brutal killing . . . claiming he had acted in the heat of passion. Given this admission, an occasional glimpse of defendant in shackles would not have affected the jury's verdict"].) The court instructed the jury per CALCRIM No. 204, and appellant was allowed to testify without restraints. Appellant does not explain, beyond conclusory allegations, how the use of waist chains impaired his right to testify or to participate in his defense. Furthermore, the evidence of appellant's guilt -- including his DNA on the murder weapon and his own admission on the witness stand that he stabbed Threadgill to death -- was overwhelming. Thus, even if the trial court had abused its discretion in restraining appellant during trial, any error was harmless.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P.J.

We concur:

WILLHITE, J. COLLINS, J.