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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.

NICHOLAS BAUCOM,

Defendant and Appellant.

2d Crim. No. B277306  
(Super. Ct. No. 1481584)  
(Santa Barbara County)

A jury convicted Nicholas Baucom of three counts of second degree commercial burglary (Pen. Code,<sup>1</sup> § 459), three counts of procuring a false instrument (§ 115, subd. (a)), one count of forgery (§ 470, subd. (a)), and one count of counterfeiting a seal (§ 472). The trial court sentenced him to three years in state prison. Baucom contends the court abused its discretion when it: (1) granted his motion for self-representation, and (2) denied his request for assistance of counsel during cross-examination. We affirm.

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

## BACKGROUND

Baucom was arrested after he presented a suspicious quitclaim deed to the local clerk-recorder's office. The People charged Baucom with eight felonies related to the deed. At the conclusion of Baucom's preliminary hearing, the magistrate ordered a mental health evaluation. Two weeks later, Baucom's attorney declared a doubt as to his competency. (§ 1368, subd. (a).) The court suspended proceedings and appointed two psychologists and a psychiatrist to evaluate Baucom. (§ 1368, subd. (b).)

The trial court received the mental health reports in December. Two reports state that Baucom was competent to stand trial, and one states that he was not. The court found Baucom competent and reinstated proceedings.

Five months later, Baucom's attorney told the trial court that Baucom had "deteriorated to the point where he [could not] rationally assist" in his defense "due to deep-seated delusions." Baucom objected. He told the court that he "passed" his prior evaluations. He said that he understood the People's settlement offers and that he was "ready to go" to trial.

The trial court once again suspended proceedings, and appointed two psychologists to evaluate Baucom. The court received their reports two weeks later. One report states that Baucom was competent to stand trial. The second—written by the same psychologist who previously deemed him incompetent to stand trial—states that Baucom was not competent. The court again found Baucom competent to stand trial.

At the same hearing, the trial court granted Baucom's motion for self-representation. It said: "I have dealt with you, had many discussions with you about your case and

your knowledge of the case, and your motion to represent yourself is granted.” Baucom signed a *Faretta*<sup>2</sup> waiver, which states that he “freely and voluntarily g[a]ve up [his] right to have a professional attorney represent [him] unless otherwise appointed during trial.” Baucom noted on the waiver that he had graduated from college, and that he had experience in criminal justice, criminal law, and political science. He reiterated those statements to the court when discussing the waiver.

At the end of the first week of trial, Baucom requested that counsel represent him on cross-examination if he chose to testify. The trial court asked Baucom if he had authority to support his request. Baucom replied that “it would be one-sided in argumentative questions by the prosecution to where it may or may not be easy for the jury to understand both sides of the story coming from a sort of negative approach to the questions.” The court denied Baucom’s request as untimely because Baucom had not previously requested advisory counsel, and appointment on the last day of trial would be “unduly consuming of time.” It said that Baucom provided “no specific authority allowing or requiring the [c]ourt to appoint someone.”

## DISCUSSION

### *Motion for Self-representation*

Baucom contends the trial court erred when it granted his *Faretta* motion despite “strong evidence” he suffered from mental illness. We disagree.

In deciding whether to grant a *Faretta* motion when doubts have been raised about a defendant’s mental competence, the court should consider whether a defendant “suffers from a severe mental illness to the point where he or she cannot carry

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<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

out the basic tasks needed to present the defense without the help of counsel.” (*People v. Johnson* (2012) 53 Cal.4th 519, 530 (*Johnson*).) We defer to the trial court on the issue of whether Baucom suffered a mental illness, and we will uphold its determination if supported by substantial evidence. (*Id.* at p. 531.) “Such deference is especially appropriate when, as here, the same judge has observed the defendant on numerous occasions.” (*Ibid.*) We review for abuse of discretion. (*Ibid.*)

Substantial evidence supports the court’s ruling. One of the May 2016 mental health reports concludes that Baucom was competent to stand trial, and two of the December 2015 reports reach the same conclusion. That another psychologist reached the opposite conclusion is irrelevant. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926 [reviewing court looks only at evidence supporting prevailing party].) Moreover, the trial court observed Baucom multiple times and had multiple discussions about the case with him during the nine months preceding its May 2016 mental health determination. The court’s consideration of such evidence is proper. (*Johnson, supra*, 53 Cal.4th at pp. 531-532; see also *People v. Kurbegovic* (1982) 138 Cal.App.3d 731, 755-756 [*Faretta* motion properly granted where same judge presides over defendant’s competency hearing, explains rules for self-representation, and makes clear finding that defendant competent to represent himself].)

This case is unlike both *Indiana v. Edwards* (2008) 554 U.S. 164 (*Edwards*) and *Johnson, supra*, 53 Cal.4th 519, upon which appellant relies. In *Edwards*, the trial court found the defendant incompetent to stand trial at two competency hearings. (*Edwards*, at pp. 167-168.) But here, the trial court found Baucom competent at two competency hearings.

Additionally, the *Edwards* defendant had a history of schizophrenia (*id.* at p. 169), whereas Baucom has no mental illness diagnoses. In *Johnson*, the defendant had “bizarre, noncompliant, and disruptive behavior in court and in jail.” (*Johnson*, at p. 525.) He also exhibited “disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses . . . .” (*Ibid.*) But here, Baucom presented none of these symptoms. There was no abuse of discretion.

#### *Request for Advisory Counsel*

Baucom contends the trial court improperly denied his request for the appointment of advisory counsel during cross-examination. We again disagree.

The trial court did not abuse its discretion when it refused Baucom’s request to appoint advisory counsel during cross-examination because he failed to “make a showing of need.” (*People v. Crandell* (1988) 46 Cal.3d 833, 862 (*Crandell*), abrogated on another ground by *People v. Crayton* (2002) 28 Cal.4th 346, 364-365.) The trial court was in the best position “to appraise the courtroom situation and determine what procedure [would] best promote orderly, prompt, and just disposition of the cause.” (*People v. Mattson* (1959) 51 Cal.2d 777, 797 (*Mattson*).) And it properly considered Baucom’s “demonstrated legal abilities,” education, familiarity with California law, and “reasons for seeking appointment of advisory counsel” before making its ruling. (*Crandell*, at pp. 863-864.) The court had also witnessed Baucom file several motions, participate in settlement conferences, and argue the admissibility of evidence. It properly

found that “[h]e was and is trial savvy.” (*People v. Debouver* (2016) 1 Cal.App.5th 972, 977.)

In addition, the trial court properly considered Baucom’s reasons for seeking advisory counsel when it deemed the request untimely and unduly consumptive of time. Those are valid considerations when ruling on a request for advisory counsel. (*People v. Clark* (1992) 3 Cal.4th 41, 111-116 [efforts to manipulate proceedings], abrogated on other grounds as stated in *People v. Edwards* (2013) 57 Cal.4th 658, 704-705.) The court also pointed out that Baucom presented no authority that would require it to appoint advisory counsel, a correct statement of the law.<sup>3</sup> (*Crandell, supra*, 46 Cal.3d at p. 863.)

Because “there exists “a reasonable or even fairly debatable justification, under the law, for”” the denial of Baucom’s request, the trial court did not abuse its discretion. (*Crandell, supra*, 46 Cal.3d at p. 863, citations omitted; see *People v. Garcia* (2000) 78 Cal.App.4th 1422, 1431 [“a defendant who has competently elected to represent himself should not be heard to complain that he was denied the assistance of advisory or stand-by counsel”].)

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<sup>3</sup> That the trial court also stated that Baucom presented no authority “allowing” it to appoint advisory counsel does not change our conclusion. Absent a contrary showing, we presume the court knew and followed the law. (*People v. Castaneda* (1975) 52 Cal.App.3d 334, 342.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

John F. McGregor, Judge

Superior Court County of Santa Barbara

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