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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.

LINDA MICHELLE
BOGGESS,

Defendant and Appellant.

2d Crim. No. B277790
(Super. Ct. No. 2012023255)
(Ventura County)

A jury convicted Linda Michelle Boggess of four counts of insurance fraud. (Ins. Code, § 1871.4, subd. (a)(1).) The trial court placed her on probation for five years. Boggess contends the court erred when it denied her motion to represent herself at trial. (*Faretta v. California* (1975) 422 U.S. 806, 819-820 (*Faretta*).) We reverse.

BACKGROUND

Boggess was charged with insurance fraud in April 2013. In September 2015, Boggess felt that she had “been shuffled off to the backside of the burner” and moved to

substitute her “overburdened” public defender. (See *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).) The trial court denied her motion. Boggess brought a second *Marsden* motion seven months later, reiterating the same concerns. The court again denied her motion. It set June 3, 2016, as the last day for trial.

On May 25, both sides announced they were ready to proceed to trial on June 1. Boggess indicated she wanted to retain private counsel for trial, but did not do so because he could not be ready by the following week. She then moved to dismiss her case pursuant to Penal Code section 1385: “I don’t [want to], you know, basically waste court resources. [¶] It’s been three years. I’ve been in front of a lot of judges. Several of you said this case has gone on too long, don’t take it any further, and somehow I’m here in 2016.” The court replied that the “case gets continued for one reason or the other,” but did not rule on her motion.

Boggess then moved to represent herself and filled out a *Faretta* waiver. Her attorney supported the motion: “My understanding is she’s very well versed in the case, knows the case forward and backwards, done her own legal research. Apparently, she is very sharp. She’s able to recite how many times she’s been here, how many continuances, how many judges. She just really wanted to press for the right to represent herself.” Although Boggess never requested a continuance of trial as part of her request to represent herself, the trial court apparently believed she would require one if it granted the motion: “[I]f I allowed you to represent yourself, I think you probably need time to get ready for trial and learn all the procedures and so forth. I don’t think that’s in your best interest or the People’s best

interest.” It denied her motion, finding it would “[un]duly delay an already-delayed case.”

Bogges protested the trial court’s decision: “I know the case inside and out And I want this done with myself. I know it inside and out. It’s been my life for the last three years. I’d like to get this resolved.” The court was unswayed: “Well, if you know your case inside and out, you’ll be able to help your attorney prepare for trial adequately.”

On June 1, Bogges again told the court she wanted to proceed with private counsel. The trial court said it would permit her to do so if she had an attorney ready to try the case. She did not; her desired attorney could not be ready for another three weeks. The court then denied the motion to dismiss Bogges had made on May 25, and commenced jury selection.

DISCUSSION

A defendant has a constitutional right to represent herself at trial. (*Faretta*, *supra*, 422 U.S. at p. 819.) The trial court must permit her to do so if she makes her request: (1) knowingly and intelligently (*id.* at p. 835), (2) unequivocally (*ibid.*), and (3) “within a reasonable time prior to the commencement of trial” (*People v. Windham* (1977) 19 Cal.3d 121, 128 (*Windham*)). The erroneous denial of a timely *Faretta* motion requires automatic reversal. (*People v. Joseph* (1983) 34 Cal.3d 936, 939 (*Joseph*).)

Bogges argues that her *Faretta* motion was timely, and that even if it was untimely the trial court abused its discretion when it denied the motion. We agree with Bogges’s first argument, and do not reach the second.

In general, *Faretta* motions “made long before trial [are] timely” and those “made on the eve of trial are untimely.”

(*People v. Lynch* (2010) 50 Cal.4th 693, 722-723 (*Lynch*), abrogated on other grounds by *People v. McKinnon* (2011) 52 Cal.4th 610, 637.) But a timeliness determination requires more than “a mere counting of the days between the motion and the scheduled trial date.” (*Id.* at p. 723.) *Faretta* motions made as late as the morning of trial have been deemed timely (see, e.g., *People v. Herrera* (1980) 104 Cal.App.3d 167, 174-175 (*Herrera*); *People v. Tyner* (1977) 76 Cal.App.3d 352, 355 (*Tyner*)), while motions made two, six, or even 35 days before trial have been deemed untimely (see, e.g., *Lynch*, at p. 726 [35 days]; *People v. Frierson* (1991) 53 Cal.3d 730, 742 [two days]; *People v. Ruiz* (1983) 142 Cal.App.3d 780, 791 [six days]). There is no “Pythagorean ‘secret magic of numbers’” that determines when a motion is timely. (*People v. Ruiz*, at p. 790.)

To determine whether a *Faretta* motion is timely, the trial court must consider the totality of the circumstances known at the time the defendant moves for self-representation. (*People v. Marshall* (1997) 15 Cal.4th 1, 24, fn. 2.) These factors include “whether trial counsel is ready to proceed to trial, the number of witnesses and the reluctance or availability of crucial trial witnesses, the complexity of the case, any ongoing pretrial proceedings, and whether the defendant had earlier opportunities to assert [her] right of self-representation.”¹ (*Lynch, supra*, 50 Cal.4th at p. 726.) The court may also consider whether the

¹ No appellate court has specified which standard—de novo, substantial evidence, or abuse of discretion—governs review of a trial court’s timeliness determination. We do not decide that issue here because we conclude that Boggess’s motion was timely under any standard of review.

defendant would need a continuance if it granted the motion. (*Windham, supra*, 19 Cal.3d at p. 128, fn. 5.)

Bogges's *Faretta* motion was timely under the circumstances presented here. Bogges was ready to proceed to trial; she knew the case "inside and out." (*Herrera, supra*, 104 Cal.App.3d at p. 171 [motion timely where defendant ready to proceed]; *Tyner, supra*, 76 Cal.App.3d at p. 354 [same]; cf. *People v. Perez* (1992) 4 Cal.App.4th 893, 903-904 [motion untimely where defendant was not ready to proceed].) The case was not complex; it involved four counts of one crime.² (Cf. *Lynch, supra*, 50 Cal.4th at p. 726 [motion untimely where case involved three murders, five burglaries, four robberies, and multiple special-circumstance allegations].) And the only outstanding pretrial proceeding was a ruling on the motion to dismiss that Bogges had argued herself. (Cf. *ibid.* [motion untimely where case required "voluminous" discovery and "inherently complex" trial preparation].)

Additionally, while Bogges had earlier opportunities to assert her *Faretta* rights, she did try to speed proceedings along by moving to substitute her "overburdened" public defender and by attempting to secure private counsel. And she did not move to represent herself "in passing anger or frustration" or "for the purpose of delay." (*People v. Valdez* (2004) 32 Cal.4th 73, 99.) To the contrary, the trial court noted that any delay up to that point was not attributable to Bogges.

Finally, Bogges did not request a continuance; despite the court's view that she would need time to prepare for

² When the case proceeded to trial, it lasted three days and included testimony from 11 witnesses, 12 exhibits, and a half-day of jury deliberations.

trial, Boggess had done her legal research and was ready to proceed. (*Herrera, supra*, 104 Cal.App.3d at pp. 174-175 [motion timely where no continuance requested]; *Tyner, supra*, 76 Cal.App.3d at pp. 354-355 [same]; cf. *Lynch, supra*, 50 Cal.4th at p. 727 [motion untimely where continuance required].) Her *Faretta* motion was timely. The trial court's erroneous denial requires reversal. (*Joseph, supra*, 34 Cal.3d at p. 939.)

DISPOSITION

The judgment is reversed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Derek D. Malan and David M. Hirsch, Judges

Superior Court County of Ventura

Jolene Larimore, 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, Senior
Assistant Attorney General, Stacy S. Schwartz, Deputy Attorney
General, for Plaintiff and Respondent.