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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. MARVIN LEWIS TUGGLE, Defendant and Appellant.	B285061 (Los Angeles County Super. Ct. No. PA088891

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden Zacky, Judge. Affirmed.

William G. Holzer, 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, Stacy S. Schwartz and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Marvin Lewis Tuggle appeals his convictions following a jury trial on three counts of second degree burglary of a vehicle (Pen. Code, § 459).[1] He contends the trial court's denial of his request for self-representation under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), warrants reversal of his convictions. We find the trial court did not abuse its discretion in ruling that the timing of appellant's *Faretta* request immediately following the denial of his *Marsden*[2] motion, along with his obstreperous conduct while in jail, justified denying his request for self-representation. Accordingly, we affirm the lower court's judgment.

PROCEDURAL HISTORY

Appellant was charged in counts 1 through 4 with second degree burglary of a vehicle (§ 459), in count 5 with driving on a suspended license (Veh. Code, § 14601.2), and in count 6 with driving without an ignition interlock device (Veh. Code, § 23247, subd. (e)).

At his arraignment on the morning of June 27, 2017, appellant requested a hearing under *Marsden*, which the court heard and denied. As the court was about to issue a formal ruling on the *Marsden* motion, the defendant interrupted and made a *Faretta* request:

> "The Defendant: I don't want her to represent me. I don't trust her.

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[1] All further unspecified statutory references are to the Penal Code.

[2] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

> "The Court: Then you have one choice. Hire your own lawyer or represent yourself.
>
> "The Defendant: Yes, I exercise my *Faretta* right.
>
> "The Court: All right. Then I'll bring you out at the end of today. We'll give you a *Faretta* waiver. We'll see where we're at, and I'll ask my bailiff to please run an incident report history in the jail for me."

As the court concluded the proceedings, the defendant interjected again and accused the court of rushing him. The court responded: "Mr. Tuggle, you know what, every time you talk in court out of turn, I could consider that when deciding whether or not to let you represent yourself."

Later that afternoon, on June 27, 2017, the court issued a formal ruling denying the *Marsden* motion, and defendant reasserted his *Faretta* request:

> "The Court: When the *Marsden* motion was implicitly denied, and now it's been explicitly denied, Mr. Tuggle had indicated that he wanted to exercise his *Faretta* rights and represent himself. Is that correct, Mr. Tuggle?
>
> "The Defendant: Yes."

At some point before the afternoon session, defendant was provided a *Faretta* advisement and waiver form (*Faretta* form). Appellant filled out, signed and dated the *Faretta* form that same day, although the exact time is unknown. The form explained the dangers and disadvantages of self-representation. The form advised appellant that he would not receive any special consideration or assistance from the court, and that the court did

not recommend going forward without a lawyer. Appellant clearly initialed 18 out of 20 boxes on the form, but left two boxes blank or with what appear to be faint (perhaps deleted) marks.[3]

Appellant initialed two boxes that warned him of the consequences of misconduct both in and out of the courtroom. The first box (Paragraph J) stated: "I understand that I must not act disrespectfully in court. I understand that the Judge may terminate my right to act as my own attorney in the event that I engage in serious misconduct or obstruct the conduct and progress of the trial. . . ." The second box (Paragraph L) stated: "I understand that misconduct occurring outside of court may also result in restriction or termination of my right to act as my own attorney."

During the afternoon hearing on June 27, 2017, the court denied appellant's *Faretta* request on the grounds that (1) his request following the denial of his *Marsden* motion was equivocal, and (2) his out-of-court behavior toward the court bailiffs was disruptive. The court explained that "when a request is made immediately after a *Marsden* motion has been denied and is motivated by the defendant's desire to rid himself of appointed counsel, the court may deem the request to be equivocal and impulsive and deny the request for self-representation." In addition, the court noted that it "may consider events that occurred outside the courtroom when considering whether to revoke, or in my opinion, grant the defendant's [propria persona

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[3] The first un-initialed box explained that if defendant were to change his mind and request an attorney, the court could deny the request. The second un-initialed box explained that it was the advice and recommendation of the court that defendant not act as his own attorney and accept court-appointed counsel.

(pro per)] status." It explained: "Ultimately, it's the effect, not the location of misconduct, its impact on the court, and integrity of the trial [that] determines whether termination or, as I said in my interpretation, granting of self-representation is necessary and appropriate. The right of self-representation is not a license to abuse the dignity of the court, nor is it a license not to comply with relevant rules of procedure or substantive law."

The court described appellant's out-of-court behavior: "Mr. Tuggle, my bailiffs informed me that when you were in lockup, after the *Marsden* motion was denied, you were kicking the doors. You were kicking the cells. You called Deputy Dalton, who is Caucasian, a cracker. You called Deputy Hong, who is Korean, every derogatory Asian name in the book. You also called him a derogatory name for a homosexual, to wit, a fag. You also called him and disparaged his mother, and you told him to go back to his country."[4]

At the pretrial hearing two months later, on August 22, 2017, the court reiterated its *Faretta* ruling on the same grounds. First, "the court felt that it was an impulsive request made after a *Marsden* motion was denied." And second, "the court made a finding at that time, and I am restating it again, that the conduct of Mr. Tuggle as exhibited on that particular day was disruptive, obstreperous, disobedient, disrespectful, or obstructionist in his words or actions so as to preclude the exercise of the right of self-representation." Appellant did not renew his *Faretta* request,

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[4] It is unclear whether the misconduct occurred before or after the *Marsden* motion. The court said its ruling was based on defendant's misconduct "after the *Marsden* motion was denied," but defendant responded: "All right. And record reflect, it happened before I had my *Marsden* hearing . . . I was in there talking to myself."

and was represented by counsel during the *Pitchess*[5] hearing on August 10, pretrial hearing on August 22, and when the case proceeded to trial on August 24, 2017.

On August 30, 2017, a jury found appellant guilty of counts 1, 3, and 4. Appellant admitted two prior strike convictions and three prison prior enhancements. The court dismissed counts 5 and 6 and the third prison prior enhancement. The court imposed a total prison term of 10 years and eight months.

Appellant filed a timely notice of appeal on September 13, 2017, seeking reversal of his convictions on the ground that his request for self-representation was improperly denied. On appeal, he also requests that this court review the sealed in camera proceedings from his discovery motion under *Pitchess* to determine whether the trial court properly exercised its discretion in determining there were no relevant police officer personnel records to disclose. Respondent does not object to an independent review of the *Pitchess* hearing.

DISCUSSION

A. Standard of Review

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*).) Nevertheless, a court's discretion is not unlimited, and subject to the limitations of the legal principles

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[5] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

governing its actions. (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 738.)

A trial court's decision on the discoverability of police personnel files is also reviewable under an abuse of discretion standard. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220-1221.)

B. The Trial Court did not Abuse its Discretion in Denying Appellant's *Faretta* Request for Self-representation.

In *Faretta*, the United States Supreme Court held that a defendant in a criminal case "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." (*Faretta*, *supra*, 422 U.S. at p. 807, italics omitted.) The defendant thus possesses two mutually exclusive constitutional rights under the Sixth Amendment of the United States Constitution regarding representation: the right to be represented by counsel at all critical stages of a criminal prosecution, and the right to represent himself or herself. (*People v. Marshall* (1997) 15 Cal.4th 1, 20 (*Marshall*).) Unlike the former, the latter right is not self-executing. (*Ibid.*) "The right to counsel persists unless the defendant affirmatively waives that right"; moreover, "[c]ourts must indulge every reasonable inference against waiver of the right to counsel." (*Ibid.)*

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

1. *The Court did not Err in Finding Appellant's Post-Marsden Faretta Request Equivocal.*

At issue here is whether appellant made an unequivocal *Faretta* request. On this matter, courts must determine "whether the defendant truly desires to represent himself or herself." (*Marshall*, *supra*, 15 Cal.4th at p. 23.) Thus, "an insincere request or one made under the cloud of emotion may be denied." (*Id*. at p. 21.) As our Supreme Court explained in *Marshall*, in addressing this issue, "the court's duty goes beyond determining that some of [the] defendant's words amount to a motion for self-representation. The court should evaluate all of a defendant's words and conduct to decide whether he or she truly wishes to give up the right to counsel and represent himself or herself and unequivocally has made that clear." (*Id.* at pp. 25-26.)

Courts may interpret any ambiguity or equivocation against waiver of the right to counsel. "Because the court should draw every reasonable inference against waiver of the right to counsel, the defendant's conduct or words reflecting ambivalence about self-representation may support the court's decision to deny the defendant's motion." (*Marshall*, *supra*, 15 Cal.4th at p. 23.) Also, a motion "made in passing anger or frustration, an ambivalent motion, or one made for the purpose of delay or to frustrate the orderly administration of justice may be denied." (*Ibid.*)

Applying these principles, courts have concluded that under some circumstances -- such as immediately after the denial of a *Marsden* motion -- a defendant's *Faretta* request may be deemed "equivocal, insincere, or the transitory product of emotion." (*People v. Tena* (2007) 156 Cal.App.4th 598, 607 (*Tena*).) In *People v. Scott* (2001) 91 Cal.App.4th 1197 (*Scott*), the

defendant asserted a *Marsden* motion before trial. After the trial court denied the motion, the defendant stated, "If that's the case, I hereby move the court to let me go pro se." (*Id.* at p. 1205, fn. 3.) When the trial court asked, "'For the record . . . are you sure you want to represent yourself,'" the defendant confirmed his request. (*Id.* at p. 1205.) The *Scott* court concluded that these remarks, viewed in context, were too equivocal to constitute a *Faretta* request, and that the defendant made them out of frustration at the denial of his *Marsden* motion. (*Id.* at pp. 1205-1206; see also *People v. Danks* (2004) 32 Cal.4th 269, 295-297 [defendant's request to go pro per at the end of his *Marsden* hearing, viewed in context, was not a sincere *Faretta* request]; *Jackson v. Ylst* (9th Cir. 1990) 921 F.2d 882, 888, 889 [defendant's pro per request was an "impulsive response to the trial court's denial of his request for substitute counsel," and "did not demonstrate unequivocally that he desired to represent himself"].)

In analyzing whether a defendant's *Faretta* request was unequivocal, the *Tena* court found it relevant to consider "whether appellant reasserted a request for self-representation when presented with the opportunity to do so." (*Tena*, *supra*, 156 Cal.App.4th at p. 608, discussing *People v. Valdez* (2004) 32 Cal.4th 73, 99-100 (*Valdez*) ["The court in *Valdez* concluded that the defendant had not asserted an unequivocal *Faretta* request, reasoning, inter alia, that he made only a single reference to self-representation, and failed to press for self-representation at his next court appearance before the new bench officer."].)

As in *Scott* and *Valdez,* the circumstances below indicate that appellant's *Faretta* request immediately following the denial of his *Marsden* motion was an impulsive reaction to the court's

Marsden ruling, rather than an unequivocal *Faretta* request. Appellant asserted his *Faretta* request as the court was about to issue its ruling denying his *Marsden* motion. Although appellant confirmed his *Faretta* request that afternoon when questioned by the court, he never reasserted his *Faretta* request beyond that day. He consented to representation by counsel during the two months leading up to trial, including during his next two appearances before the court for his *Pitchess* hearing on August 10, and his pretrial hearing on August 22.

Appellant argues that the facts here resemble *People v. Dent* (2003) 30 Cal.4th 213 (*Dent*), where a defendant's failure to renew a *Faretta* motion in front of the same judge was not fatal to his appellate claim, and the trial court's denial of self-representation was reversed. (*Dent*, *supra*, at p. 222.) We find *Dent* distinguishable because the trial court's *Faretta* denial was improperly based on a misunderstanding of the law -- that the case was "'a death penalty murder trial.'" (*Id.* at p. 218 ["'the nature of the charge is irrelevant to the decision to grant or deny a timely proffered *Faretta* motion.' [Citations.]"].) Furthermore, *Dent* is distinguishable on other grounds. The defendant's *Faretta* request was in response to the court's sua sponte removal, on the morning of trial, of counsel whom the defendant wished to retain. The trial court did not allow the defendant to speak and initially ignored his request. The trial court, "which was in a position to view defendant's demeanor, appears to have treated the request to proceed in propria persona not as equivocal but serious, and emphatically denied it." (*Id.* at p. 219.) That was not the case here, where the trial court expressly based its *Faretta* ruling on equivocality, following the denial of a *Marsden* motion for substitution of counsel.

Appellant also argues that his request was unequivocal because he had read, initialed, and signed the *Faretta* form advising him of the risks of self-representation. However, a *Faretta* form is not dispositive of whether a defendant's request was unequivocal. Courts have held that the Los Angeles Superior Court *Faretta* form used here "must be seen as no more than a means by which the judge and the defendant seeking self-representation may have a meaningful dialogue concerning the dangers and responsibilities of self-representation," and not a "test to be passed to achieve self-representation." (*People v. Silfa* (2001) 88 Cal.App.4th 1311, 1322.)

Furthermore, if anything, appellant's *Faretta* form introduces ambiguity into his request, which may be interpreted against the waiver of the Sixth Amendment right to counsel. *People v. Miranda* found a voluntary and intelligent waiver where the defendant had "signed the waiver form after initialing all the boxes," acknowledging his understanding of the risks of self-representation. (*People v. Miranda* (2015) 236 Cal.App.4th 978, 987.) Here, appellant's *Faretta* form inexplicably left two boxes un-initialed, raising an inference of equivocation, which we interpret against a waiver of his right to counsel.

2. *The Court did not Err in Finding Appellant's Out-of-court Misconduct Threatened the Integrity of the Proceedings.*

Faretta warned that a trial court "may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." (*Faretta*, *supra*, 422 U.S. at p. 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.) As our Supreme Court noted in *Welch*:

> "'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.] The [United States Supreme Court] reiterated this point in [*McKaskle v. Wiggins* (1984) 465 U.S. 168, 173] noting 'an accused has a Sixth Amendment right to conduct his own defense, provided only that he knowingly and intelligently forgoes his right to counsel *and that he is able and willing to abide by rules of procedure and courtroom protocol.*' [Citation.] This rule is obviously critical to the viable functioning of the courtroom. A constantly disruptive defendant who represents himself, and who therefore cannot be removed from the trial proceedings as a sanction against disruption, would have the capacity to bring his trial to a standstill.
>
> "Thus, a trial court must undertake the task of deciding whether a defendant is and will remain so disruptive, obstreperous, disobedient, disrespectful or obstructionist in his or her actions or words as to preclude the exercise of the right to self-representation. The trial court possesses much discretion when it comes to 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.' [Citations.]"

(*Welch*, *supra*, 20 Cal.4th at pp. 734-735.)

Our Supreme Court extended the trial court's discretion to consider a defendant's *out-of-court* misconduct in *terminating* a

defendant's pro per status: "[O]pportunities to abuse the right of self-representation and engage in obstructionist conduct are not restricted to the courtroom." (*Carson*, *supra*, 35 Cal.4th at p. 9.) As the court observed, courtroom procedures and protocol which a defendant must follow "are not limited to those relating solely to the trial itself." (*Ibid.*) "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." (*Ibid.*) *Carson* expressed no opinion whether its holding applied to *Faretta* motions in the first instance. However, *Carson* has been extended to deny an initial *Faretta* request where the defendant's out-of-court misconduct was not the *only* basis for denying self-representation, and an additional ground for denial existed. (*See People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1513, 1515-1517 (*Kirvin*) [denying 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 jail].)

The trial court acted within its discretion in concluding that appellant's disrespectful and disruptive conduct outside the courtroom compromised the integrity of the proceedings and, along with the equivocal nature of his *Faretta* request, justified denial of self-representation. 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.) It is also immaterial whether appellant's misconduct occurred before or after his initial *Marsden* request. (See *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"].) Appellant's disorderly conduct while in custody gave the trial court a reasonable basis for believing that his self-representation would pose an unreasonable risk of future disruption. We will not disturb that exercise of discretion absent a clear showing of abuse.

We do not find the *Carson* factors that appellant relies on applicable here. *Carson* said that "[w]hen determining whether *termination* [of self-representation] is necessary and appropriate," the trial court should consider additional factors. (*Carson, supra,* 35 Cal.4th at p. 10, italics added [describing additional factors such as availability of alternative sanctions, and whether defendant was warned that misconduct would result in termination of pro per status].) But it did not extend the application of these factors to a *Faretta* motion in the first instance. (See *Kirvin*, *supra*, 231 Cal.App.4th at pp. 1516-1517 [no need for the court "to give warnings or to consider alternative remedies" in finding that defendant's misconduct would interfere with trial as a basis for denial of his *Faretta* request].)[6]

We find no abuse of discretion in the trial court's denial of appellant's *Faretta* request on the grounds that appellant's post-*Marsden* request was equivocal, and that his out-of-court misconduct threatened the integrity of the trial.

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[6] Although we are not bound to consider the *Carson* factors, we note the trial court here did provide a verbal warning to appellant at the conclusion of his *Marsden* hearing that his repeated interruptions during court proceedings might impair his right to self-representation, and a written warning through the *Faretta* form, which advised of the consequences of misconduct.

C. Appellant's *Pitchess* Motion

Trial courts are granted wide discretion when ruling on motions to discover police officer personnel records. (*People v. Mooc* (2001) 26 Cal.4th 1216.) When requested to do so by an appellant, an appellate court may independently review the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (*Id.* at p. 1229.)

Pursuant to appellant's request, we have reviewed the sealed transcript of the trial court's *Pitchess* hearing. We discern no error by the trial court.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P.J.

We concur:

WILLHITE, J.

COLLINS, J.