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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. REMONDO DEMARCO BELL, Defendant and Appellant.	B339691 (Los Angeles County Super. Ct. No. NA101672)

APPEAL from an order of the Superior Court of Los Angeles County, Judith Levey Meyer, Judge. Reversed.

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Amanda V. Lopez and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Remondo Demarco Bell appeals the denial of his resentencing petition under Penal Code[1] section 1172.6. We reverse.

FACTUAL BACKGROUND

For context only, we recite the underlying facts taken from our opinion affirming Bell's conviction. (*People v. Bell* (2020) 48 Cal.App.5th 1 (*Bell*).)[2] On March 28, 2015, Bell went to Erik Sliskovich's car restoration business to sell him high-end cigars. Bell was accompanied by three masked men. They arrived in a U-Haul van which Sliskovich admitted onto his gated property. Bell got out of the van and he and Sliskovich greeted each other with a handshake as they had done business together in the past. The three masked accomplices also got out of the van and approached Sliskovich in a threatening manner. (*Id.* at p. 7.) Two of the men, including murder victim Ernest Young, confronted Sliskovich and demanded money. (*Ibid.*)

Fearing for his life, Sliskovich pulled out a pistol he was carrying and opened fire, striking three of the four men, including Bell. (*Bell*, *supra*, 48 Cal.App.5th at pp. 7–8.) The assailants scattered. Accomplice Young fell near the rear of the U-Haul van. (*Id.* at p. 8.)

Bell managed to get into the driver's seat of the van. He backed it up, running over Young's head and torso. He then drove forward, running over Young a second time as he fled the property. Young's body was caught underneath the van, which

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1 Undesignated statutory references are to the Penal Code.

2 We also grant Bell's request for judicial notice of the record in this prior appeal. (Evid. Code, §§ 452, 459.)

Bell drove for 2.5 miles, dragging Young's body along the way. Bell was arrested driving the van with Young's body trapped underneath. (*Bell*, *supra*, 48 Cal.App.5th at p. 8.)

At trial, two doctors opined about Young's cause and time of death. The doctor called by the People testified that although Young sustained a fatal gunshot wound to his aorta, the video surveillance showed his body was still moving before the van ran over him. That doctor agreed that if a person is moving, " '[t]he person is not quite dead yet.' " (*Bell*, *supra*, 48 Cal.App.5th at pp. 8–9.)

The doctor called by Bell testified that as soon as Young's aorta was pierced, his circulation stopped and he was instantly dead, so the blunt force trauma from being run over by the van was not the cause of death. That doctor characterized the movement of Young's body as " 'death throws,' " which he described as involuntary muscle twitching and nerve discharge " 'as the person is dying.' " (*Bell*, *supra*, 48 Cal.App.5th at p. 9.)

As we noted in our prior opinion, the People sought to hold Bell responsible for Young's death under two alternate factual scenarios. First, if Young was still alive when Bell ran over him, then Bell killed him with the van and was the actual killer. Under that theory, Bell could have been convicted of first degree felony murder; second degree murder because he ran over Young aware of the danger to human life and with a conscious discard thereof after the robbery was over; or hit and run causing death because Bell ran over Young and did not stop. (The jury acquitted Bell of this charge.) (*Bell*, *supra*, 48 Cal.App.5th at p. 9.)

Under the second factual scenario, if Young was dead by the time he was run over, then Bell was guilty of provocative act

first degree murder—to wit, his act of staging the robbery involving 3 masked, threatening assailants provoked Sliskovich into firing his weapon at them, killing Young. Such a murder would and could have been in the first degree because the underlying crime was robbery. (*Bell, supra*, 48 Cal.App.5th at p. 9.)

PROCEDURAL BACKGROUND

On October 24, 2017, the People filed a First Amended Information charging Bell with attempted second degree robbery in violation of sections 664 and 211 (Count 1) during which a principal was armed with a handgun within the meaning of section 12022, subdivision (a)(1); hit and run driving resulting in death to another person in violation of Vehicle Code section 20001, subdivision (b)(2) (Count 2); and murder in violation of section 187, subdivision (a) (Count 3). It was alleged all offenses were committed while Bell was on bail for another offense within the meaning of section 12022.1. Prior conviction enhancements were also alleged. On November 1, 2017, a jury convicted Bell of the attempted second degree robbery of Sliskovich and found not true that a principal was armed with a handgun during the commission of the offense. The jury acquitted Bell of hit and run driving resulting in the death of Young and convicted him instead of the lesser offense of hit and run driving in violation of Vehicle Code section 20001, subdivision (b)(1). The prior conviction enhancements were also found true by the court after a bench trial. Finally, as relevant here, the jury convicted Bell of the second degree murder of Young, the accomplice shot by robbery victim Sliskovich and run over by Bell during Bell's escape. Bell appealed the judgment of conviction. After affirmance of the

convictions and a remand by this court for resentencing, the trial court sentenced Bell to 15 years to life in prison plus three years.

On December 6, 2023, the trial court received from Bell a form petition for resentencing pursuant to section 1172.6. He alleged he could not now be convicted of murder based on changes made to sections 188 and 189. The trial court appointed counsel for Bell and considered briefing from the parties in addition to reviewing the record of conviction. On April 15, 2024, the People filed a response to the petition for resentencing. The People argued Bell was convicted of second degree murder, and the jury was instructed on implied malice second degree murder—a killing resulting from an intentional act dangerous to life—which remains a valid theory of liability after changes made to sections 188 and 189. The jury was not instructed on the natural and probable consequences theory of liability. The People concluded Bell had not made a prima facie case for relief. The People attached the jury instructions as an exhibit to their response to the resentencing petition.

On May 13, 2024, Bell filed a second pleading entitled, "Petitioner's Request for Relief Pursuant to Senate Bill 1437, Penal Code Section 1172.6/Senate Bill 775 for Petitioner's Conviction in Count 3, Murder."

On July 9, 2024, the trial court denied the petition. It found Bell had failed to make a prima facie case for relief because he had been convicted of second degree murder as the actual killer of his accomplice Ernest Young, a theory of liability still valid notwithstanding the changes made to sections 188 and 189.

Bell timely appealed.

THE JURY INSTRUCTIONS

The jury was instructed with multiple theories of murder including felony murder, implied malice second degree murder, and provocative act murder. The jury was not instructed on the natural and probable consequences theory of murder.

A. Felony Murder

The trial court instructed the jury with a modified version of CALJIC No. 8.10 as follows: "Defendant is accused in Count 3 of having committed the crime of murder, a violation of section 187 of the Penal Code. [¶] Every person who unlawfully kills a human being during the commission or attempted commission of Robbery is guilty of the crime of murder in violation of Penal Code section 187. [¶] In order to prove this crime, each of the following elements must be proved: [¶] 1. A human being was killed; [¶] 2. The killing was unlawful; and [¶] 3. The killing occurred during the commission or attempted commission of Robbery."

B. Provocative Act Murder

The trial court instructed the jury with a modified version of CALJIC No. 8.12: "A homicide committed during the commission of a crime by a person who is not a perpetrator of that crime, in response to an intentional provocative act by a perpetrator of the crime other than the deceased perpetrator, is considered in law to be an unlawful killing by the surviving perpetrator of the crime. [¶] If the underlying crime which provokes the killing does not require an intent to kill, the provocative act must be an act beyond that necessary simply to commit the crime. [¶] An aider and abettor to the underlying crime is equally liable for a provocative act committed by a

surviving accomplice. An 'intentional provocative act' is defined as follows: [¶] 1. The act was intentionally committed; [¶] 2. The natural consequences of the act were dangerous to human life; and [¶] 3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for human life. [¶] In order to prove this crime, each of the following elements must be proved: [¶] 1. The crime of Attempted Robbery was committed; [¶] 2. During the commission of the crime, the defendant also committed an intentional provocative act; [¶] 3. The victim of the Attempted Robbery in response to the provocative act, killed a perpetrator of the crime; [¶] 4. The defendant's commission of the intentional provocative act was a cause of the death of Ernest Young. [¶] Murder, which occurs during the commission or attempt to commit the crime of Robbery, when there was in the mind of the perpetrators of that crime, the specific intent to commit Robbery is murder of the first degree. [¶] Murder which is not of the first degree is murder of the second degree."

C. First-Degree Felony Murder

As to first-degree felony murder, the trial court instructed the jury with CALJIC No. 8.21: "The unlawful killing of a human being, whether intentional, unintentional, or accidental, which occurs during the commission or attempted commission of the crime of Robbery is murder of the first degree when the perpetrator had the specific intent to commit that crime. [¶] The specific intent to commit Robbery and the commission or attempted commission of that crime must be proved beyond a reasonable doubt. [¶] In law, a killing occurs during the commission or attempted commission of a felony so long as the fatal blow is struck during its course, even if death does not then result."

D. Second Degree Murder – Killing Resulting from Unlawful Act Dangerous to Life

The trial court instructed the jury with CALJIC No. 8.31: "Murder of the second degree is the unlawful killing of a human being when: [¶] 1. The killing resulted from an intentional act; [¶] 2. The natural consequences of the act are dangerous to human life, and [¶]3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life. When the killing is the direct result of such an intentional act, it is not necessary to prove that the defendant intended that the act would result in the death of a human being."

E. Duty of Jury as to Degree of Murder

The trial court instructed the jury with CALJIC No. 8.70: "Murder is classified into two degrees. If you should find the defendant guilty of murder, you must determine and state in your verdict whether you find the murder to be of the first or second degree."

F. Doubt Whether First or Second Degree Murder

Finally, the trial court gave CALJIC Nos. 8.71 and 8.74: CALJIC No. 8.71 stated: "If any juror is convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but has a reasonable doubt whether the murder was of the first or of the second degree, that juror must give defendant the benefit of that doubt and find that the murder is of the second degree." CALJIC No. 8.74 told the jury: "Before you may return a verdict in this case, you must agree unanimously not only as to whether the defendant is guilty or not guilty, but also, if you should find him guilty of an unlawful killing, you must agree unanimously as to whether he is guilty of murder of

the first degree or murder of the second degree. [¶] However, you are not required to agree unanimously on the theory of guilt."

THE RULING OF THE TRIAL COURT

In denying the petition, the trial court stated: "This case does bring up some very interesting issues. . . . Bottom line is, the jury was in fact instructed on felony murder, provocative act murder, and second degree murder, and—but you cannot consider—as everybody knows—the facts as to what is going on in the case. [¶] So when you just look at the legal grounds, felony murder, the only instruction that was given is it would come back with first degree murder. And that was the only way they were instructed. They were not even instructed on [some] form . . . of second degree felony murder. So to me, I am not concerned about the felony murder."

The court continued: "They were instructed on provocative act murder. It was very interesting the way they were instructed on it because theoretically if you did it by provocative act, it should be first degree murder, yet the instruction has this weird little line at the end saying that, 'All murders that are not first degree are second degree,' but either way, the current state of the law right now is that provocative act does not apply under a resentencing scenario. [¶] They were instructed on second degree murder—you have to know a little bit of the facts here—as far as being run over. [¶] When you look at everything, felony murder and natural and probable consequences, there is just no way the jury came back with either of those theories whatsoever based on their verdict. Their verdict was straight up second degree murder. The only way you can get to second degree murder is based on the idea that Mr. Bell was in fact the direct perpetrator in this particular case. He's the one that actually killed the

victim in the case. That's the only way you can get to that under second degree murder. [¶] I am not going to take into account anything else. But if they can only get to second degree murder, that is a proper basis and has not been changed by the law. [¶] [The] verdict came back second degree murder. [¶] The only theory you can get to second degree murder on this particular case is the idea that he was the actual perpetrator or it was a provocative act. If it was a provocative act, that does not qualify under [section] 1172.6. [¶] This may be a controversial ruling because I know that there is just a lot of fluidity going on in the appellate court. . . . [¶] [But] the verdict basically flat out says that Mr. Bell was the perpetrator running over, essentially this person, and this shouldn't apply."

On appeal, Bell contends that the instructions allowed the jury to convict Bell without a finding that he acted with imputed malice—a theory no longer valid under Senate Bill No. 1437. We agree.

DISCUSSION

A. Senate Bill No. 1437

Effective January 1, 2019, Senate Bill No. 1437 (2017–2018 Reg. Sess.) amended "the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life." (Stats. 2018, ch. 1015, §1, subd. (f).) It accomplished this by amending sections 188 and 189. (Stats. 2018, ch. 1015, §§ 2, 3; *People v. Lewis* (2021) 11 Cal.5th 952, 957 (*Lewis*).) Section 188, subdivision (a)(3) now

prohibits imputing malice based solely on an individual's participation in a crime and requires proof of malice to convict a principal of murder, except under the revised felony-murder rule in section 189, subdivision (e). Section 189 requires the prosecution to prove the defendant was the actual killer; an aider and abettor to murder who acted with the intent to kill; or a major participant in the underlying felony who acted with reckless indifference to human life. (§ 189, subd. (e); *People v. Curiel* (2023) 15 Cal.5th 433, 448 (*Curiel*); *People v. Wilson* (2023) 14 Cal.5th 839, 868–869.)

"The Legislature, to provide relief to those with existing murder convictions dependent on theories of the crime it had rejected, devised a path to resentencing. [Citations.] It has since expanded this path to allow relief for those with 'attempted murder' convictions based on 'the natural and probable consequences doctrine.' (§ 1172.6, subd. (a); Stats. 2021, ch. 551, § 2.)" (*People v. Patton* (2025) 17 Cal.5th 549, 558 (*Patton*).) The Legislature provided a procedure, now codified in section 1172.6, whereby defendants may petition the court to vacate their convictions and seek resentencing on any remaining counts if they show they could not now be convicted of murder, attempted murder, or manslaughter because of the changes to sections 188 and 189. (§ 1172.6, subd. (a).) If a section 1172.6 petition includes the requisite information, the trial court must appoint counsel, upon request, to represent the petitioner. (*Lewis, supra*, 11 Cal.5th at pp. 962–963.)

After briefing by the parties, the court must hold a hearing to determine whether the petitioner has made a prima facie showing of entitlement to relief. (*People v. Nino* (2025) 111 Cal.App.5th 844, 852; § 1172.6, subd. (c).) If the court finds

petitioner has made a prima facie case of eligibility for relief, it must issue an order to show cause and conduct an evidentiary hearing to determine whether the People have proved beyond a reasonable doubt that the evidence supports conviction on a theory of liability still valid notwithstanding the changes to sections 188 and 189. If the court determines such a conviction has not been proven beyond a reasonable doubt, the trial court shall vacate the conviction and resentence petitioner on any remaining counts. (§ 1172.6, subds. (c), (d)(1).)

In assessing whether a petitioner has made a prima facie case for relief, the trial court conducts a limited inquiry. (*Lewis, supra*, 11 Cal.5th at p. 971.) It is entitled to review the record of conviction, which includes the jury summations, jury instructions, verdict forms, and prior appellate opinions. (*Id.* at pp. 970–972.) However, *Lewis* cautions that although appellate opinions are generally considered to be part of the record of conviction, the prima facie bar was intentionally set very low. (*Id.* at p. 972.) The probative value of an appellate opinion is case-specific and a trial court should not engage in " 'factfinding involving the weighing of evidence or the exercise of discretion.' " (*Ibid.*; *Patton*, *supra*, 17 Cal.5th at p. 563.)

If the record of conviction establishes ineligibility for resentencing as a matter of law, the petition is properly denied at the prima facie stage. (*Lewis, supra*, 11 Cal.5th at pp. 970–972.) However, the petition and record of conviction must establish conclusively that the defendant is ineligible for relief. (*People v. Lopez* (2022) 78 Cal.App.5th 1, 14.) We independently review a trial court's determination whether a petitioner has made a prima facie showing of eligibility for relief. (*Ibid.*)

B. Bell Is Not Ineligible for Relief As a Matter of Law

Bell challenges the instructions given to the jury on felony murder. He argues that based on the felony murder instruction, the jury may have convicted Bell of murder based solely on his participation in the attempted robbery. We conclude Bell has made a prima facie showing that he was entitled to relief. The record of conviction does demonstrate a possibility that he was convicted of second degree murder under an imputed malice theory, that is, that he was guilty of murder based solely on his participation in the robbery. In assessing section 1172.6 petitions, the jury instructions will be critical. (*People v. Antonelli* (2025) 17 Cal.5th 719, 731. Indeed we look at the jury's verdicts, viewed *in light of the court's jury instructions,* to assess whether a defendant has made a prima facie showing for relief under section 1172.6. (*Curiel, supra,* 15 Cal.5th at p. 441.)

Bell's jury was instructed with a first degree felony murder instruction that did not require the jury to find implied or express malice. It allowed the jury to convict Bell on a theory of imputed malice. However, Bell was convicted of second degree murder. Does that mean the jury did not convict him under a theory of felony murder? We cannot say as a matter of law that the jury so decided and we conclude other instructions gave the jury the option of finding felony murder in the second degree.

The felony murder instruction told the jury that felony murder is in the first degree "when the perpetrator had the specific intent to commit [the crime of robbery]." However, there were other instructions that arguably gave the jury the option of finding Bell guilty of second degree felony murder. CALJIC No. 8.71 directed the jury: "If any juror is convinced beyond a reasonable doubt that the crime of murder has been committed

by a defendant, but has a reasonable doubt whether the murder was of the first or of the second degree, that juror must give defendant the benefit of that doubt and find that the murder is of the second degree." A second instruction, CALJIC No. 8.70, told the jury: "Murder is classified into two degrees. If you should find the defendant guilty of murder, you must determine and state in your verdict whether you find the murder to be of the first or second degree." The jury was also told in CALJIC No. 8.74 that it did not have to unanimously agree on a theory of liability, only the degree of murder. Finally, the provocative murder instruction, given right before the felony murder instruction, stated: "Murder, which occurs during the commission or attempt to commit the crime of Robbery, when there was in the mind of the perpetrators of that crime, the specific intent to commit Robbery is murder of the first degree. [¶] Murder which is not of the first degree is murder of the second degree."

We note that "[s]econd degree felony murder is 'an unlawful killing in the course of the commission of a felony that is inherently dangerous to human life but is not included among the felonies enumerated in section 189.' " (*People v. Chun* (2009) 45 Cal.4th 1172, 1182; *In re White* (2019) 34 Cal.App.5th 933, 946.) Here the jury was instructed that the underlying felony was attempted robbery, an enumerated felony. Because second degree felony murder is based on a felony that is not enumerated in section 189, Bell, as a matter of law, could not have been convicted of second degree felony murder. Yet the jury was not expressly instructed that second degree felony murder was off the table as an option it could consider.

We find it significant that the jury was also instructed, "Murder which is not of the first degree is murder of the second degree." This is not a correct statement of the law as applied to felony murder *in this case*. The jury heard this statement directly before it was instructed on felony murder, leaving open the possibility that it found the elements of felony murder and then applied that sentence to convict Bell of second degree felony murder. Combined with the other instructions that told the jury it must find a degree of murder yet did not need to agree on the theory of liability underlying the degree, we cannot say as a matter of law that the verdict was based on a theory of liability still valid under sections 188 and 189.

We presume juries follow the trial court's instructions. These instructions were muddled. In denying the petition, the trial court did the best it could with another court's instructions. Because we conclude these instructions potentially allowed the jury to convict Bell of second degree felony murder without a finding of express or implied malice, we cannot say that Bell is ineligible for relief as a matter of law. As a result, we reverse the trial court's order denying the 1172.6 petition at the prima facie stage and direct the court to issue an order to show cause and convene an evidentiary hearing pursuant to section 1172.6, subdivision (d) at which it can examine the evidence and render a decision based on current iterations of sections 188 and 189.

DISPOSITION

The order denying the petition for resentencing is reversed.

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STRATTON, P. J.

We concur:

WILEY, J.

VIRAMONTES, J.