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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

TREDERIALO BACA,

Defendant and Appellant.

C069469

(Super. Ct. No. 10F05492)

Following a jury trial, defendant Trederialo Baca was convicted of corporal injury to a spouse (Pen. Code, § 273.5, subd. (a); undesignated statutory references that follow are to the Penal Code) and felony vandalism (§ 594, subd. (a)). The trial court sustained a strike and two prior prison term allegations (§§ 667, subds. (b)-(i), 1170.12, 667.5, subd. (b)) and sentenced defendant to 11 years 4 months in state prison with 537 days of presentence credit (358 actual and 179 conduct).

On appeal, defendant contends that the prospective application of the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15) violates his right to equal protection of the law, and the case must be remanded for the trial court to

address fines, fees, and assessments. In a supplemental brief, defendant claims the trial court violated his Sixth Amendment right to self representation by denying his *Faretta* (*Faretta v. California* (1975) 422 U.S. 806 [45 L.Ed.2d 562]) motion. We agree with defendant's *Faretta* claim and reverse the judgment of conviction.

#### FACTS AND PROCEEDINGS

Jessica S. started a serious relationship with defendant in 2005 and married him on January 1, 2008. She ended the relationship and moved out of the house in the summer of 2008. They were in the process of divorcing at the time of the trial.

On July 24, 2010, Jessica S. and Lynette G. went to a downtown Sacramento bar for drinks. They left together in Jessica S.'s car at 1:00 a.m. the following morning. Jessica S. first drove towards her home, but changed course and drove to defendant's home on 14th and V streets to see how he was doing.

Jessica S. parked by defendant's home. She remained in the car while Lynette G. walked up to the entrance and came back with defendant. Lynette G. reentered the passenger seat, while defendant walked to the driver's side and talked to Jessica S. Defendant eventually asked Jessica S. whether they would get back together. His demeanor did not change when she told him no.

Defendant told Jessica S. that his cousin Y.H. was living with him, and asked whether she would like to greet her. Jessica S. agreed, so defendant went inside and got Y.H. Jessica S. was sitting in her car when defendant returned with Y.H.; defendant asked Jessica S. to come out of the car and give Y.H. a hug.

Jessica S. got out of the car, hugged Y.H., and started talking with her. Defendant then asked Jessica S. who owned the car, a 1992 Lexus. Jessica S. said the car was hers, and then resumed talking with Y.H. Jessica S. next remembered defendant's hand around her throat as he pushed her against the car and started punching her in the face. Y.H., who stood beside defendant, grabbed defendant's arm and told him to stop. When

defendant stopped punching Jessica S., he threw her to the rear of the car and got into the driver's seat. Lynette G. left the car, and defendant drove straight into a telephone pole across the street.

Jessica S. and Lynette G. ran to W Street, stopping on the way for Jessica S. to call 911. Jessica S. and Lynette G. came to a street corner where they saw a police car stopped at a red light. They banged on the car window, yelling, "He's going to kill me," but the officer did not immediately respond.

Sacramento Police Officer Robert Schmidt responded to Jessica S. after determining that she needed assistance. Jessica S. told him that her husband had beaten and punched her. She complained of jaw pain and told Officer Schmidt that her husband lived nearby. Officer Schmidt saw scratch marks on the back of Jessica S.'s neck.

Officer Schmidt went to defendant's house, but the lights were off and no one answered when he knocked on the front door. Jessica S.'s Lexus was parked on V Street, just west of 14th Street. It was not adjacent to a telephone pole, but had sustained damage consistent with Jessica S.'s version of events. An officer found debris next to a telephone pole that was consistent with a vehicle striking it. A trail of oily liquid led from the pole to the street. The same liquid was accumulating underneath Jessica S.'s car.

Testifying for the defense, Y.H. confirmed hugging Jessica S. and saying hello to her. Jessica S. embraced defendant, who whispered into her ear. Jessica S. giggled, and said, "that's not going to happen."

Y.H. turned around to go home and get her lighter. After about 30 seconds, she turned around to see Jessica S. clawing at defendant. Y.H. jumped in and tried to separate them. She may have struck Jessica S. with enough force to cause injury. She did not see defendant strike Jessica S. or grab her neck.

Y.H. heard Jessica S. yell for Lynette G. to leave the car. Defendant jumped into the car while Lynette G. jumped out. Defendant said, “It’s all over, it’s all over,” and then drove into the telephone pole.

## DISCUSSION

Two of defendant’s three contentions address sentencing matters--whether he is entitled to extra conduct credits under the Realignment Act, and the pronouncement and proper recording of fines and fees. Since we reverse defendant’s conviction for *Faretta* error, we do not address these contentions.

In a supplemental brief, defendant contends that the trial court erroneously denied his motion to represent himself, a violation of his due process rights under *Faretta*.

The trial court heard motions on December 3, 2010, six months before the trial commenced on June 7, 2011. Defense counsel informed the trial court that defendant would like to represent himself. Defendant told the trial court that he had read the court’s “*Faretta* warning” regarding self-representation and the jail’s policy on access to legal materials. After defendant affirmed that he wanted to represent himself, the trial court informed him of his right to counsel and the various risks associated with self-representation.

After the trial court told defendant that he could not appeal based on his own incompetent representation, defendant and the trial court engaged in the following exchange:

“[Defendant]: Exactly.

“[The Court]: The Court of Appeal is going to say--

“[Defendant]: Under case law it says if any medical or psychological or identified mental disorder, disability, or state of mind might be accepted as a basis for a claim of incompetence. I do suffer a mental disorder. I just want that to be noted.

“[The Court]: [Defense counsel], we haven’t pursued any 1368?

“[Defense counsel]: I have no intention, if I remain on the case, of declaring a doubt pursuant to 1368 at the time.

“[The Court]: Do we know what the nature of the condition of [defendant], regarding any mental health issues?

“[Defense Counsel]: I believe that he has a mental health issue. Its specific nature, I’m not aware of any exact diagnosis. However, I do not feel--

“[Defendant]: I know the diagnosis.

“[The Court]: What is your diagnosis?

“[Defendant]: Post traumatic stress disorder. Bipolar disorder. Reactive depression disorder.

“[The Court]: Okay. Are you seeking or getting treatment right now?

“[Defendant]: Currently taking pharmaceutical medication.

“[The Court]: Okay. Thank you. The next thing I want to mention is if you are disruptive, you will be removed from the courtroom and an attorney will be brought in to finish your case if you are disruptive in court. [¶] Do you understand that?

“[Defendant]: Yes, I do.

“[The Court]: You have the right to hire an attorney. However, a Court will not delay your case to allow an attorney to represent you. [¶] Do you understand that?

“[Defendant]: Yes, I do.

“[The Court]: Can you give me some background on your educational training?

“[Defendant]: Through the tenth-grade. No college.

“[The Court]: Have you graduated from high school?

“[Defendant]: No I haven’t.

“[The Court]: So tenth grade?

“[Defendant]: Yes.

“[The Court]: How long has it been since you’ve been in school?

“[Defendant]: I believe 1986, ‘87.

“[The Court]: Any courses since high school? Any type of classes at all?

“[Defendant]: No. Other than in state penitentiary vocational work.

“[The Court]: I want to be up front with you, sir. I have some concerns. You voluntarily said I’m suffering from several mental health issues. Right now it sounds like you’re taking antipsychotic medications.

“[Defendant]: Right.

“[The Court]: So I’ve got--and you’re educational background is, you know, it’s you don’t have any training in the law or criminal procedures. So I’ve got some major concerns about your ability to represent yourself at trial. Have you really thought long and hard about this?

“[Defendant]: Yes. I really thought this out.

“[The Court]: Does this have anything to do with--well, I’m not going to ask that.  
[¶] Does either counsel wish to be heard on this issue at this point?

“[Defense Counsel]: No, your honor. Submit it to the court.

“[Prosecutor]: No, your Honor.

“[The Court]: Sir, have you gone through the documents regarding county jail privileges?

“[Defendant]: Yes, I have.

“[The Court]: And you understood all of that?

“[Defendant]: Yes, I do.

“[The Court]: Do you feel that [defendant], given the educational issues and particularly the mental health issues, that he’s in a position to represent himself for trial?

“[Defense counsel]: Um, I feel based upon my conversations previously with [defendant] that he demonstrates an understanding of the charges against him regarding the proceedings and regarding generalized case law information to a degree greater than several of my clients.

“[Defendant]: But under PC 1368 proceeding is capacity to cooperate not cooperation. In fact--

“[The Court]: That is very enlightening, sir. That’s so enlightening that I’m not inclined to grant your request for you to go pro per. You’re talking about a competency proceeding; we’re talking about a jury trial. So I’m not sure you’re in a position to really understand what is happening.

“[Defendant]: So am I being denied my constitutional right to represent myself?

“[The Court]: The court does have the discretion under certain circumstances to deny your right to self representation. If you’re telling me--citing case law about competence to stand trial--

“[Defendant]: But see I’m not filing a 1368 competency proceedings. That’s not what--my motion really is a mental disorder defense under Penal Code section 2962.

“[The Court]: Okay.

“[Defendant]: That’s what I am, mental disorder.

“[The Court]: That applies after you go to prison. A mental disorder proceedings takes place at that point. [¶] I feel that [defendant] cannot represent himself at this point. I’m going to deny the motion.”

Shortly thereafter, the trial court explained its reasoning after defendant asked why his motion was denied:

“Just because of exactly what I said. You have a very limited educational background. You’re referring to MDO, 1368. It sounds like you’re taking some look at some cases and you’re in no position to represent yourself. I do have a legitimate concern in light of your mental health condition to allow you to represent yourself. [¶] I’ll look at the issue. I may be wrong on this but I’m going to deny it. We’ll continue your case over to December 22nd at 8:30 in this department. I may--I’ll look at the issue, but I feel that at this point you’re not in a position to represent yourself.”

Defendant replied: “I feel my incompetency is related to my attorney.” The record contains no further mention of defendant’s motion. Defendant was represented by counsel without incident for the remainder of the trial. He was never subjected to a mental health examination.

Upon a timely and unequivocal request, a defendant in a criminal trial has a constitutional right to self-representation. (*Faretta, supra*, 422 U.S. at p. 836 [45 L.Ed.2d at p. 582]; *People v. Windham* (1977) 19 Cal.3d 121, 127-128.) The requirements for self-representation are, for the most part, relatively straightforward. First, the request must be unequivocal. (*People v. Hines* (1997) 15 Cal.4th 997, 1028.) Second, the motion must be made a reasonable time before trial. (*Windham*, at pp. 127-128.) Third, the trial court must satisfy itself that the decision is knowing and intelligent. (*People v. Welch* (1999) 20 Cal.4th 701, 729.) *Faretta* error is reversible per se. (*Ibid.*)

However, the right of self-representation is not absolute. (*Indiana v. Edwards* (2008) 554 U.S. 164, 171 [171 L.Ed.2d 345, 353] (*Edwards*).) “[A] *Faretta* motion may be denied if the defendant is not competent to represent himself [citation], is disruptive in the courtroom or engages in misconduct outside the courtroom that ‘seriously threatens the core integrity of the trial’ [citations], or the motion is made for purpose of delay [citation].” (*People v. Lynch* (2010) 50 Cal.4th 693, 721-722, disapproved in part on other grounds as stated in *People v. McKinnon* (2011) 52 Cal.4th 610, 637-638.)

In deciding whether to exercise their discretion to deny self-representation, trial courts should apply the following standard: “whether the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel.” (*People v. Johnson* (2012) 53 Cal.4th 519, 530 (*Johnson*).) The court also observed that a trial court need only inquire into the mental competence of a defendant seeking self-representation “if it is considering denying self-representation due to doubts about the defendant’s mental competence.” (*Ibid.*) The court further cautioned that “[s]elf-representation by defendants who wish it

and validly waive counsel remains the norm and may not be denied lightly.” (*Id.* at p. 531.)

“As with other determinations regarding self-representation, we must defer largely to the trial court’s discretion. [Citations.] The trial court’s determination regarding a defendant’s competence must be upheld if supported by substantial evidence. [Citation.] Such deference is especially appropriate when, as here, the same judge has observed the defendant on numerous occasions.” (*Johnson, supra*, 53 Cal.4th at p. 531.)

Defendant’s request was timely, there is no evidence he was disruptive, and he agreed to the necessary waivers. The only question is whether he was competent to represent himself.

We begin by noting that it is proper to apply the standard articulated in *Johnson* to the trial court’s decision even though it was decided after the trial court ruled on defendant’s motion. Before *Edwards*, California courts held that a defendant who was competent to stand trial was competent to represent himself under *Faretta*. (See, *Johnson, supra*, 53 Cal.4th at p. 527.) The *Johnson* court declined to articulate a more specific standard than that provided in *Edwards*, a case decided before the trial court’s ruling. (*Johnson, supra*, 53 Cal.4th at p. 530.) The California Supreme Court went on to hold that “[l]ower courts may decide questions of first impression, including the effect that subsequent events, such as a United States Supreme Court decision, have on decisions from a higher court, including this one. . . . [T]hat authority includes deciding whether to accept the *Edwards* invitation. If a higher court believes the lower court decided the question erroneously, it can take appropriate action. But a lower court does not violate [*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450] merely by deciding questions of first impression.” (*Johnson*, at p. 528.)

Thus, the trial court properly should have decided whether to “accept the *Edwards* invitation” (*Johnson, supra*, 53 Cal.4th at p. 528) and, if it chose not to do so, rule on the matter as the law stood in California at the time. Had the trial court chosen to follow

*Edwards* (which ultimately became the law in California), the trial court's decisions would have been reviewable by the appellate courts.

The trial court had some evidence that defendant might have impaired competency--defendant admitted to bipolar disorder, post-traumatic stress syndrome, and reactive depression disorder, and to taking psychoactive drugs to treat his disorders. Defendant's answers to the trial court's questions showed some difficulty in understanding the law; defendant did not understand that he could not appeal based on the ineffectiveness of his own representation, and cited irrelevant statutes in response to some of the court's questions. In addition, the court had some opportunity to observe defendant before the motion, having two prior hearings with defendant before the *Faretta* hearing. However, this did not amount to substantial evidence of a severe mental illness which would prevent defendant from carrying out the basic tasks necessary for self-representation.

Although the defendant indicated he suffered from several mental illnesses, there was no extrinsic evidence regarding those alleged illnesses, their nature, or how they could prevent defendant from representing himself. Unlike the defendants in *Edwards* and *Johnson*, a mental health professional never diagnosed defendant with a mental illness which prevented him from representing himself. (See, *Edwards, supra*, 554 U.S. at pp. 167-169 [171 L.Ed.2d at pp. 351-352]; *Johnson, supra*, 53 Cal.4th at p. 532.) The trial court also had no evidence regarding whether defendant's medication rendered him competent for self-representation in spite of his professed mental illnesses.

The case before us also differs from *Johnson* and *Edwards* in that there is no extrinsic evidence of defendant's behavior that would raise doubts as to his competency for self-representation. (See *Edwards, supra*, 554 U.S. at pp. 176, 178 [171 L.Ed.2d at pp. 356, 358] [motions and other documents prepared by the defendant in the case demonstrating incompetence to represent himself]; *Johnson, supra*, 53 Cal. 4th at p. 533 & fn. 2 [same].) Instead, the evidence we have of defendant's behavior, his lucid

answers to the court's questions and the lack of any disruptive behavior, indicate that defendant was competent to represent himself. While defendant's responses to the trial court's questions showed that he was not knowledgeable in the law, this has no bearing on a defendant's right to self-representation. (See, *Faretta, supra*, 422 U.S. at p. 836 [45 L.Ed.2d at p. 582] ["technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself"].)

The court trial court denied defendant's *Faretta* motion without sufficient evidence of a severe mental illness which would prevent defendant from conducting the basic tasks of self-representation. This was an abuse of the trial court's discretion. Since the erroneous denial of a timely *Faretta* motion is reversible per se (*People v. Welch, supra*, 20 Cal.4th at p. 729), we shall reverse the judgment of conviction.

#### DISPOSITION

The judgment is reversed.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ BLEASE \_\_\_\_\_, J.