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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DYLAN TIMOTHY HURRELE,

Defendant and Appellant.

F062839

(Super. Ct. No. 9446)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Mariposa County. F. Dana Walton, Judge.

J. Edward Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Kane, J., and Detjen, J.

A jury convicted appellant, Dylan Timothy Hurre, of two felony counts of resisting an executive officer by means of threat or violence (Pen. Code, § 69;<sup>1</sup> counts 7, 8) and individual counts of felony vandalism (§ 594, subds. (a), (b)(1); count 6) and the following misdemeanors: resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1); count 9); vandalism (§ 594, subds. (a), (b)(2)(A), count 10); and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 11). The jury acquitted appellant of the remaining felony charges: two counts of second degree burglary (§§ 459, 460, subd. (b); counts 2, 3); and individual counts of first degree burglary (§§ 459, 460, subd. (a); count 1); unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a); count 4) and receiving stolen property (§ 496, subd. (a); count 5). Appellant admitted enhancement allegations that he had served three separate prison terms for prior felony convictions (§ 667.5, subd. (b)).

The court imposed a prison term of six years eight months, consisting of the three-year upper term on count 6, concurrent eight-month terms on each of counts 7 and 8, and one year on each of the three prior prison term enhancements. The court imposed concurrent one-year terms on each of counts 9, 10 and 11, and awarded presentence custody credit of 348 days, consisting of 232 days of actual time credit and 116 days of conduct credit.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant, apparently in response to this court's invitation to submit additional briefing, has submitted a letter in which he argues, as best we can determine, that (1) he was

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<sup>1</sup> Except as otherwise indicated, all statutory references are to the Penal Code.

denied a fair trial because the trial judge was biased against him, and (2) he was denied his constitutional right to the effective assistance of counsel. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Facts***

Connie Hurrle testified to the following: She lives in Mariposa. On the evening of October 6, 2010 (October 6), as she was arriving home, Mariposa County deputy sheriffs arrived at her house, and shortly thereafter, she received a telephone call from appellant, her son.<sup>2</sup> He was “kind of freaking out” because the deputies were at Connie’s house, and he was asking her if she had called them. Connie went to speak with the deputies, and they left shortly thereafter. However, in subsequent telephone calls, appellant threatened to “tear up the property,” and Connie called the Mariposa County Sheriff’s Department (MCSD).

The deputies returned, and appellant, who was somewhere in the woods near the house, was “taunting” them and “yelling things” at them. At some point thereafter, the deputies left and urged Connie to also leave. She stayed, fearful of what appellant might do to her property.

After the deputies left the second time and Connie was inside her house, appellant started pounding on the door, screaming and cursing at her. Immediately thereafter, Connie heard the hot water heater, which was a few feet away from the door, “go down.” She later saw that there were dents in the water heater that had not been there before the evening of October 6. After this incident, Connie called the MCSD again, and deputies arrived very soon thereafter.

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<sup>2</sup> For the sake of clarity and brevity, and intending no disrespect, we sometimes refer to Ms. Hurrle by her first name.

With the deputies present, Connie inspected her vehicle, which had been parked right outside her house when she arrived home that evening. It was undamaged when she arrived home, but upon inspection she saw there were large dents in the front passenger door. The parties stipulated that a representative of a local body shop estimated the cost of repairing the vehicle door would be \$1,330.65.

Mariposa County Deputy Sheriff Lisa Sullivan testified to the following: On October 6, at approximately 8:30 p.m., she was dispatched to Connie's house. She left a few minutes after making contact with Connie, but returned approximately one hour later in response to another dispatch report. At that time, she began searching for appellant. She could hear a male voice "screaming at us to come and shoot him [and] that he was going to shoot us." At some point thereafter, she saw appellant lying on the ground near a large tree by the house. She shined her flashlight on appellant, told him he was under arrest, and directed him to stay on the ground. Appellant asked what would happen if he did not comply and Sullivan responded she would shoot him with her taser. At that point, appellant "bolted up," and the deputy discharged her taser. Appellant was struck with the taser prongs, but he was "able to run [away] and break the connection." Deputy Sullivan did not give chase.

Mariposa County Deputy Sheriff Rudy Mirelez testified to the following: At some point after midnight on October 6, he and Deputy Michael King were positioned on either side of Connie Hurrell's house when appellant emerged from the brush. Mirelez ordered appellant to get down on the ground. Appellant complied initially, but then got back up. At that point, Mirelez, concerned that appellant would again flee, "jumped on his back" and held him down. Deputy King arrived on the scene shortly thereafter and, although appellant ignored commands that he put his hands behind his back and "began pulling his arms underneath him," the two deputies were able to forcibly handcuff appellant.

King and Mirelez then got appellant to his feet and began to escort him to a nearby patrol car. Appellant resisted, “yelling obscenities,” digging his heels into the ground, and “pulling away” from the deputies. When they got to the patrol car, appellant continued to struggle. Mirelez got the vehicle door open and King kept appellant pinned against the car, at which point, with appellant kicking at King, the deputies were able “to pick him up and manually insert him into the car.”

Appellant was later taken to a hospital, where he admitted to medical staff that he had “used a little bit” of methamphetamine. During appellant’s encounter with Mirelez and King, appellant was grinding his teeth, sweating profusely, and displaying “intense levels of aggression” and “rigid muscle tone.” Based on these factors, Deputy Mirelez opined that appellant was under the influence of methamphetamine. Bill Posey, director of Central Valley Toxicology, testified that chemical tests of a sample of appellant’s blood indicated the presence of a “moderate” amount of methamphetamine.

### ***Procedural Background***

Prior to the taking of testimony, during the hearing on motions in limine, the court stated: “... I need to make a disclosure this morning. My wife said she had looked at the court calendar and ... asked me if Mr. Hurrle, the defendant, was related to Connie Hurrle. And I asked her who Connie Hurrle was, and she said she went to our church. I wouldn’t know her if I saw her, but I need to make that disclosure.... And I’ll just indicate I can be fair and impartial. I’ve never socialized with her -- like I said, I’m not even sure if I recognize who she is.”

### **DISCUSSION**

Appellant first asserts that the trial judge “admitted to going to my church,” yet “claims not to know us,” even though “this is a very small community,” appellant and his family “have attended this church for over 6 years,” appellant’s mother and daughter “are

invol[v]ed in every program at this church,” and appellant’s daughter “sings in the choir ever[y] week.” We interpret the foregoing as a claim of judicial bias.

“A fair trial in a fair tribunal is a basic requirement of due process,” and “the Due Process Clause guarantees a criminal defendant the right to a fair and impartial judge.” (*People v. Freeman* (2010) 47 Cal.4th 993, 1000.) Judicial bias must be raised at the ““earliest practicable opportunity”” and cannot be raised for the first time on appeal. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111, disapproved on another point in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) “[D]efendant’s willingness to let the entire trial pass without [a] charge of bias against the judge not only forfeits his claims on appeal but also strongly suggests they are without merit. [Citation.]” (*Id.* at p. 1112.)

We need not address the merits of appellant’s claim because, for at least two reasons, it is not cognizable on appeal. First, appellant did not raise any such claim below. (*People v. Guerra, supra*, 37 Cal.4th at p. 1111.) Second, it is based entirely on matters outside the record. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1183 [“review on a direct appeal is limited to the appellate record”].) We note also that there is nothing in the record that is even remotely suggestive of judicial bias.

Appellant also suggests he was denied his right to the effective assistance of counsel. He asserts his trial counsel and the judge were formerly “business partners,” and “every wit[ ]ness I asked of him[ ] never got done” [*sic*].

In order to establish ineffective assistance of counsel, a criminal defendant must show both deficient performance—“that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates,” and prejudice—“that it is reasonably probable a more favorable determination would have resulted in the absence of counsel’s failings.” (*People v. Price* (1991) 1 Cal.4th 324, 386.)

Again, we need not, and therefore do not, reach the merits of appellant's contention. This claim too is based on matters outside the appellate record. (*People v. Barnett, supra*, 17 Cal.4th at p. 1183.) Moreover, the purported factual bases of appellant's claim, even if true, would not establish ineffective assistance of counsel.

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

#### **DISPOSITION**

The judgment is affirmed.