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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DERRICK BEAL, Defendant and Appellant.	B260599 (Los Angeles County Super. Ct. No. BA405493)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed.

Paul Couenhoven, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Derrick Beal appeals from the judgment entered following his conviction by jury of second degree murder with findings a principal personally and intentionally discharged a firearm causing great bodily injury and death, and appellant committed the offense for the benefit of, at the direction of, or in association with, a criminal street gang. (Pen. Code, §§ 187, 12022.53, subds. (d) & (e)(1), 186.22, subd. (b)(1).) The court sentenced appellant to prison for 15 years to life for the murder, plus 25 years to life for the firearm enhancement. We affirm.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established as follows. On May 24, 2012, Sophia Orellana lived in the area of 52nd and Denker. She testified as follows. During the late afternoon or the evening on the above date, Orellana was in front of a house near 52nd when she heard two Black men talking loudly. One man (hereafter, the assailant) pushed the other (later identified as Hicks, the decedent). Orellana also testified it was "kind of like a mutual shove." The assailant reached towards his waistband as if to retrieve a gun. Orellana turned to flee and heard three or four gunshots. Hicks lay on the ground. The assailant wore dark attire.

Monique McGhie testified as follows. About 6:45 p.m. on May 24, 2012, McGhie was in her kitchen in her home in the area of 52nd and Denker when she saw two people fighting outside. McGhie turned around and heard gunshots. She looked outside and saw Hicks on the ground. A male wearing a red top was running on Denker. A bicycle was in the vicinity. Appellant's face looked familiar and McGhie recognized it. However, she could have seen appellant anywhere. The running male looked like Christopher Whetstone.

Jamil Bivens testified as follows.[1] In May 2012, Bivens belonged to the 55 Neighborhood Crips gang (hereafter, Neighborhood Crips) with appellant and Whetstone.[2] Bivens's grandmother lived in a pink duplex, in particular, in a house next to a bungalow. On May 24, 2012, Bivens was in the back of the duplex with six or seven people, including Whetstone, Dion Williams, and Jeremy Stephenson. Appellant approached, asked Bivens for a gun, and told Bivens "there were enemies in the front riding around saying derogatory terms to the neighborhood." Appellant told Bivens, "[t]hey were saying, Fuck Naps." This was a derogatory reference to the Neighborhood Crips.

Bivens retrieved a gun from behind his grandmother's house and gave the gun to appellant. Appellant left on Williams's black bicycle. Whetstone followed appellant on a pink and blue bicycle that had been hanging on a gate. The latter bicycle was, in a way, Bivens's bicycle, but everyone around the neighborhood used it. Appellant and Whetstone rode towards 54th. Whetstone was wearing a red sweatshirt bearing the initials "L.V." with an extra embroidered "V" that made it appear to say "L.W." "L.V." referred to the Neighborhood Crips.

About five or ten minutes after appellant and Whetstone rode towards 54th, appellant returned. Bivens, Williams, and Stephenson were still at the house. Bivens saw appellant stash the gun in Bivens's grandmother's barbeque pit when appellant returned. Bivens asked what was going on and appellant replied, "[n]othing." Appellant also said he would tell Bivens later. Appellant indicated the group needed to leave the

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[1] Whetstone and Bivens were codefendants in appellant's first trial, which resulted in a hung jury and a mistrial as to all defendants. Bivens subsequently pled guilty or no contest to charges arising out of the present incident and testified at appellant's retrial pursuant to a leniency agreement according to which he would be sent to prison for eight years if he testified truthfully. At the conclusion of the retrial, the jury convicted appellant as previously indicated but acquitted Whetstone.

[2] The parties stipulated Neighborhood Crips was a criminal street gang for purposes of Penal Code section 186.22.

area. Whetstone returned but was not wearing the red sweatshirt. Bivens identified appellant and Whetstone at trial.

Dion Williams testified as a hostile witness. Williams testified he used to be a member of the Neighborhood Crips. Appellant was known as Tiny Western, Whetstone was known as Blu Flag, and Bivens was known as Infant Western. Appellant, Whetstone, and Bivens were Williams's fellow gang members. In May 2012, the 51 Trouble gang and the Neighborhood Crips were rivals. The 51 Trouble gang claimed the area around 52nd and Denker.

On May 24, 2012, Williams was at the back of a pink duplex. Williams told police he saw appellant come into the back and speak to Bivens. Williams saw appellant take what looked like a gun and leave on a bicycle. Williams heard gunshots and saw appellant return. Williams identified appellant and Whetstone at trial.

Williams made statements to detectives in recorded interviews as follows. During a June 2012 interview, Williams initially denied hearing about a shooting but later admitted he knew what detectives were talking about and told them the following. Williams and others were in a backyard of a duplex near 54th and Denker. Appellant came back there and said to Bivens, "[Bivens], give me the burner. The enemy is in front." Appellant said the enemy was in front in a car. Bivens gave the burner to appellant. Appellant took the bicycle, went out front, and left. Williams told police, "He like – we're like, 'Man, he about to go do something. He about to do something.' "

Five minutes later, Williams heard about five or six gunshots. Williams told police, "Oh, shit. I know that was him. I knew it was him." Appellant returned by himself. Williams told police, "We like, 'Don't come over here.' " Appellant went down an alley. Appellant was wearing a black hoodie and rode a black and blue bicycle that had been sitting in the back; it was the neighborhood bicycle. In October 2012, Williams told detectives that on the day of the shooting, Williams was at the bungalow with appellant, Bivens, and others. Bivens gave appellant a revolver. Appellant left and returned.

About 6:50 p.m. on May 24, 2012, police arrived at 52nd and Denker and found Hicks face down in the street. He had $207 on him. Police recovered from the scene a baggie containing 30 individual packages of a substance resembling cocaine base, a phone case, blood-stained clothing, a brown bicycle, and a "pinkish-bluish" bicycle. A red sweatshirt was in a trash can between 52nd and 54th. No firearm or shell casings were at the scene. Police released a bicycle to Hicks's family.

Video from surveillance cameras at and/or near 5300 Denker depicted the following. On May 24, 2012, about 6:46 p.m. and 14 seconds, two people were riding bicycles, one following the other, northbound on Denker towards the murder scene. One rider was wearing dark clothing; the other was wearing a red sweatshirt. About 6:47 p.m. and 58 seconds, a person wearing a white top was near the trash can from which police recovered the red sweatshirt. About 6:48 p.m. and 23 seconds, two people were traveling southbound on Denker.[3] One was riding a bicycle and the other, wearing a white top, was running.

Cell phone records reflected calls from appellant's cell phone, and calls between appellant's cell phone and a cell phone under an account in the name of Whetstone's father.[4] On May 25, 2012, text messages were sent between appellant's cell phone and a phone with a phone number ending with 7977. In one message, someone at the 7977 number texted, "LOL Homies did their shit huh?" Someone at appellant's phone replied, " 'LOL,' or laugh out loud."

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[3] Time displayed on the cameras was about 20 minutes slow. The actual times above account for that fact.

[4] Someone made calls on appellant's cell phone on May 24, 2012, at 5:27 p.m., 6:13 p.m., 6:18 p.m., 6:42 p.m., 6:50 p.m., and 6:51 p.m. The last five calls used a cell tower at 5921 South Western. Calls at 6:55 p.m. and 6:57 p.m. used a cell tower at 1340 West 58th. On May 25, 2012, two text messages were sent from the Whetstone phone to appellant's phone.

A deputy medical examiner testified Hicks died as a result of multiple gunshots wounds. Three bullets were recovered from his body. A criminalist testified they were all fired from the same .38-caliber or .357-caliber revolver.

On June 21, 2013, Williams testified at appellant's preliminary hearing. About 4:00 p.m. that day, appellant, in jail, had a telephone conversation with Genisha Jones, appellant's girlfriend. The conversation was surreptitiously recorded. During the conversation, appellant told Jones, "Shit, that bitch ass nigga came to court." Appellant also said, "Yeh, Nigga I told yah niggas, niggas to, to stop niggas from coming." In another conversation, Jones referred to "Fly" and appellant said, inter alia, "Call that nigga and tell them niggas, man, them niggas did poorly on their job, man. Cuz came to court and all type of shit, cuz." Jones replied, "I know. Niggas already on that shit."

Los Angeles Police Officer Brent Sforzini, a gang expert, testified as follows. Sforzini was assigned to monitor various gangs including the Neighborhood Crips.[5] The territory of the Neighborhood Crips was bounded by 54th on the north and Western on the west. The rivals of the Neighborhood Crips included the 51 Trouble gang (a Crips gang) on the north and the Van Ness Gangsters (a Bloods gang) on the west. The area of 52nd was claimed by the 51 Trouble gang. Appellant and Whetstone admitted to Sforzini they were members of the Neighborhood Crips.

Sforzini talked to gang members daily about what was happening in their lives and occurring in their neighborhoods. According to Sforzini, a gang member gained respect within the gang by committing crimes, especially violent crimes in the presence of another gang member who could corroborate the crime occurred. A gang member who entered a rival gang's territory to commit a shooting enjoyed a greater level of respect because of the violence of the act. When an individual gang member entered a rival

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[5] On May 5, 2012, Sforzini detained numerous Neighborhood Crips members, including Bivens, Whetstone, Williams, and Stephenson, who had gathered to celebrate Gang Hood Day at a blue house at 5410 Denker. The house and pink bungalows next door were a Neighborhood Crips stronghold. Citing this reference to the house at 5410 Denker, appellant concedes Bivens's grandmother's house was in territory claimed by the Neighborhood Crips.

gang's territory and committed a violent crime, it benefited the gang because it created fear in the community, and entry into the rival gang's territory indicated the gang did not fear reprisal from the rival gang.

When one gang disrespected a rival gang by entering the latter's territory and yelling derogatory terms concerning the rival gang, the rival gang would often retaliate. When one gang entered a rival gang's territory to commit crime, the target was not necessarily a known rival gang member. Sforzini testified a gang did not "have the time to sit there in rival gang area and question somebody regarding their gang affiliation." More often than not the crime was opportunistic and the gang would commit crime whether or not the target was a rival gang member. There was no evidence Hicks belonged to a gang.

In response to a hypothetical question based on evidence, Sforzini testified as follows. The shooting was committed for the benefit of a criminal street gang. This was so because killing in a rival gang's territory showed a willingness to commit the crime and bolstered the gang's reputation. Committing violent crime this way created fear in the community. That the victim was a drug dealer and not a gang member was irrelevant because gang members sought to commit a crime of opportunity to create fear and bolster their reputation. The shooting was committed in association with a gang because one gang member handed a gun to another gang member and the latter rode a bicycle into rival gang territory.

Appellant presented no defense witnesses.

ISSUES

Appellant claims (1) there is insufficient evidence appellant had specific intent to benefit the gang, (2) the trial court erred by excluding evidence of gang culture, and (3) the trial court erroneously denied appellant's request to represent himself.

DISCUSSION

1. *There Was Sufficient Evidence of the Requisite Specific Intent.*

Appellant claims there is insufficient evidence of the specific intent required by the Penal Code section 186.22, subdivision (b) gang enhancement. That subdivision requires a defendant to have "the specific intent to promote, further, or assist in any criminal conduct by gang members." Relying on familiar principles,[6] we reject appellant's claim.

Appellant concedes the People proved he was a gang member who shot Hicks in rival gang territory. Appellant also concedes there was evidence appellant (1) obtained a gun from Bivens, (2) said he needed the gun because enemies were driving around in a black car and insulting Neighborhood Crips, (3) rode a bicycle two blocks, (4) entered a rival gang's territory, and (5) argued with and then shot Hicks. There was ample evidence of all of these facts and we accept the concessions.

There was also ample evidence, and there is no dispute, appellant was a Neighborhood Crips member who murdered Hicks in rival gang territory. Appellant complained to fellow gang members that enemies were insulting the gang. Appellant obtained a gun from Bivens, a fellow gang member. There was evidence when appellant obtained the gun, Williams and fellow gang members knew appellant was about to go and do something. It was reasonably inferable from Williams's statement to detectives and the video evidence that the murder occurred only a *few minutes* after appellant left.

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[6] On appeal we review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence, i.e., evidence that is reasonable, credible, and of solid value, from which a reasonable trier of fact could find appellant guilty beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, our opinion the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. We presume in support of the judgment the existence of every fact the trier of fact could reasonably have deduced from the evidence. Unless it is clearly shown that on no hypothesis whatever is there sufficient substantial evidence to support the verdict, the conviction will not be reversed. The same standard of review applies to true findings on gang enhancement allegations. (*People v. Williams* (2009) 170 Cal.App.4th 587, 623-624.)

There was also evidence a fellow gang member, possibly Whetstone, accompanied appellant to the shooting scene. It was reasonably inferable from Sforzini's testimony that this second gang member accompanied appellant to corroborate appellant had committed violent crime in a rival gang's territory, a fact that would benefit the gang by creating fear in the community and by signaling appellant's gang did not fear reprisal from the rival gang. Appellant rode to the shooting scene on a bicycle belonging to Williams, appellant's fellow gang member. Whetstone or the fellow gang member who accompanied appellant rode a bicycle belonging to Bivens, another Neighborhood Crips member. There was evidence Whetstone, or the person who accompanied appellant, was wearing a sweatshirt bearing letters referring to the Neighborhood Crips. After Williams heard shots, he knew appellant had fired them.

When appellant returned following the shooting, he again associated with Bivens, Williams, and Stephenson, fellow gang members. Appellant told Bivens nothing had happened, but also indicated he would later tell Bivens what happened, a fact from which it reasonably could be inferred appellant wanted one or more fellow gang members to know what he had done. Appellant reflected concern for his fellow gang members when he told them they needed to leave. Appellant hid the gun in a barbeque pit at Bivens's grandmother's house, where appellant's fellow gang members had been congregating. The day after the murder, appellant laughingly suggested on his cell phone that "Homies did their shit." It was reasonably inferable from appellant's recorded jail conversations that he wanted his girlfriend to stop fellow gang members like Williams from testifying against appellant.

Sforzini, a gang expert, testified to the effect the murder, accomplished by appellant's entry into rival gang territory, was committed for the benefit of the Neighborhood Crips because it showed a willingness to commit the crime and bolstered the gang's reputation. He also testified the shooting was committed in association with a gang because one gang member handed a gun to another gang member and the latter rode a bicycle into rival gang territory. He further testified that the fact Hicks was not a gang

member was not dispositive, because gang members would commit opportunistic crimes in rival gang territory.

We hold there was sufficient evidence to convince a rational trier of fact, beyond a reasonable doubt, that appellant murdered Hicks for the benefit of, and in association with, a criminal street gang for purposes of Penal Code section 186.22, subdivision (b), including sufficient evidence appellant had the requisite "specific intent to promote, further, or assist in any criminal conduct by gang members" within the meaning of that subdivision. None of the cases cited by appellant, or his arguments, compel a contrary conclusion. This includes his arguments Hicks was a nongang member and a dope dealer unassociated with the black car to which appellant referred when he asked Bivens for a gun, and that Hicks fought with someone other than appellant.

2. *The Trial Court Did Not Erroneously Exclude Evidence About Gang Tax Collecting Practices.*

Prior to the retrial, the prosecutor moved to exclude, inter alia, evidence of cocaine base found near Hicks, a vial of PCP found down the street, and third party culpability evidence. Appellant's counsel commented the present case involved circumstantial evidence because no one could say appellant and Whetstone were the shooters, and the jury would be instructed to look for reasonable explanations pointing to innocence. Appellant's counsel argued Hicks's possession of a large quantity of drugs when he was shot indicated the incident was simply drug-related, not gang-related. Appellant's counsel argued, in the alternative, there would be evidence a rival gang had "tax" collectors and a person failing to pay taxes could be shot, therefore, this was a reasonable exculpating explanation as to appellant and Whetstone even though the cocaine base was found near the victim.

The court ruled evidence of rock cocaine found in or around Hicks was admissible, but excluded evidence of the PCP. The court then stated, "I also will grant the People's motion on third party culpability. We're not going to be blaming this rival gang when we've had no further evidence other than basically speculation. . . . The issue

is, is the evidence sufficient to show that the defendants who are on trial here did the crime that they're accused of."

Appellant claims the trial court erroneously excluded the evidence about gangs collecting taxes from drug dealers. Relying on familiar principles,[7] we disagree. Appellant proffered the tax collecting evidence to prove that Hicks may have been murdered by someone else from a different gang based on evidence Hicks was a drug dealer and certain rival gang members collected taxes from drug dealers and might harm those who refused to pay. The problem is appellant failed to proffer evidence Hicks's assailant (1) actually was a rival gang member who collected taxes, (2) knew Hicks was a drug dealer, (3) believed Hicks owed taxes to the rival gang, (4) believed Hicks was

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[7] The standard for admitting evidence of third party culpability is the same as for other exculpatory evidence. The evidence has to be relevant and its probative value cannot be substantially outweighed by the risk of undue delay, prejudice, or confusion under Evidence Code section 352. To be admissible, the third-party evidence need only be capable of raising a reasonable doubt of defendant's guilt. At the same time, appellate courts do not require that any evidence, however remote, must be admitted to show a third party's possible culpability. Evidence of another person's mere motive or opportunity to commit the crime, without more, does not suffice to raise a reasonable doubt about a defendant's guilt. There must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime. (*People v. Hamilton* (2009) 45 Cal.4th 863, 914.) Evidence that does not connect the third party to the crime is inadmissible as third party culpability evidence and irrelevant to the issue of reasonable doubt as to the defendant's guilt. (*Ibid.*)

Moreover, testimony based on speculation is irrelevant. (*People v. Chatman* (2006) 38 Cal.4th 344, 382.) Speculative matters are not a proper basis for an expert's opinion. (*Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 478.) Expert opinion based on speculation or conjecture is inadmissible. (*Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 564.) Further, as a general matter, the ordinary rules of evidence do not impermissibly infringe on an accused's constitutional right to present a defense, and this principle applies to third party culpability evidence. (*People v. Cudjo* (1993) 6 Cal.4th 585, 611.) We review a trial court's rulings on relevance and third party culpability issues for abuse of discretion. (*People v. Elliott* (2012) 53 Cal.4th 535, 581; *People v. Waidla* (2000) 22 Cal.4th 690, 717.) We similarly review for abuse of discretion a trial court's ruling that a question calls for speculation from a witness. (*People v. Thornton* (2007) 41 Cal.4th 391, 429.)

refusing to pay the taxes, or (5) argued with, pushed, or shot Hicks because the rival gang member believed Hicks was refusing to pay taxes.

The trial court did not err or abuse its discretion by excluding the proffered evidence as speculative, and inadmissible third party culpability evidence. Nor did the application of ordinary rules of evidence, as here, violate appellant's right to present a defense.

None of appellant's arguments compels a contrary conclusion. Although appellant asserts in his reply brief that the issue he raises does not involve third party culpability evidence, this is contradicted by the opening brief which argues that the court erred by excluding evidence that "Hicks was likely killed by a gang tax collector, and not by Beal." Appellant's argument the excluded evidence was admissible to show that the circumstances of the killing suggested it resulted from a dispute between Hicks and a rival gang tax collector (as opposed to the People's theory the murder was quick, random, and opportunistic) necessarily asked the jurors to infer third party culpability (i.e., that appellant was not the person who committed the crime). Appellant did not offer it to prove, for example, *he* was acting as a tax collector when he murdered Hicks.[8]

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[8] As to whether exclusion of the evidence was prejudicial, third party culpability evidence goes to the issue of identity, and there was ample evidence appellant was the person who murdered Hicks. The significance of the hung jury in appellant's first trial is diminished by the facts the vote was nine to three in favor of conviction (see *People v. Christensen* (2014) 229 Cal.App.4th 781, 799) and different trials are tried differently. We note Bivens did not testify at the first trial. *People v. Soojian* (2010) 190 Cal.App.4th 491, 520, cited by appellant to support his argument of prejudice, does not compel a conclusion contrary to ours because *Soojian* did not involve consideration of the impact of a *prior* hung jury on the issue of prejudice arising from alleged evidentiary error at a retrial. The jury deliberations were not inordinately long and any length in the deliberations, and/or any readbacks of testimony, can be reconciled simply as the actions of a conscientious jury. (See *People v. Houston* (2005) 130 Cal.App.4th 279, 301.) To the extent appellant argues the excluded evidence was admissible to show someone other than appellant was such a tax collector, the exclusion was not error or prejudicial because the evidence was properly excludable under Evidence Code section 352 given the risk the jury would confuse it with third party culpability evidence.

3. *The Trial Court Properly Denied Appellant's Motion to Represent Himself.*

a. *Pertinent Facts.*

On November 21, 2014, the jury convicted appellant and the court continued the case to December 9, 2014, for sentencing. On December 9, 2014, appellant moved for a new trial based on insufficiency of the evidence supporting the gang allegation. The court denied the motion.

The court asked whether appellant waived arraignment for judgment and sentence. Appellant's counsel indicated appellant was asking the court to continue sentencing past the holidays to early January 2015 so he could marry and see his family before sentencing. The court denied the request and again asked whether appellant waived arraignment for judgment and sentence.

Appellant's counsel then told the court appellant wanted to represent himself. The court indicated the motion was untimely, stating, "And I see this as a delaying tactic . . . [asserted because] I turned you down on trying to stick around in jail for the holidays [by requesting a postponement of sentencing] . . . ."

The court asked what appellant believed he would gain by representing himself. Appellant replied he wanted to "study the case law . . . [and] go over insufficient evidence that was in this trial to where [appellant] could file my appeal." The court suggested appellant should discuss those issues with appellate counsel. The court told appellant he would not accomplish anything if the court granted his motion at a point when nothing but sentencing remained to be imposed before an attorney would be

appointed for his appeal. Appellant later indicated he wanted to "look over everything [himself]." The court denied appellant's request for self-representation.[9]

b. *Analysis.*

Appellant claims the trial court erroneously denied his motion to represent himself. We disagree. A motion for self-representation that is not made a reasonable time prior to the commencement of a sentencing hearing is untimely. (Cf. *People v. Miller* (2007) 153 Cal.App.4th 1015, 1024.) An untimely motion to represent oneself is addressed to the sound discretion of the court. (Cf. *People v. Mayfield* (1997) 14 Cal.4th 668, 809 (*Mayfield*).) When ruling on such an untimely motion, a trial court properly considers the five factors discussed in *People v. Windham* (1977) 19 Cal.3d 121 (*Windham*).[10]

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[9] Appellant's counsel later waived arraignment for judgment and sentencing, the court sentenced appellant, and the court indicated the matter was concluded. Appellant asked permission to address the court and the court advised him he could say whatever he wished. Appellant represented that during trial, he had seen two jurors sleeping, he had advised his counsel of this, and appellant had "filed for a mistrial, but it never happened." (The record on appeal contains no mistrial motion.) The court indicated it had not observed what appellant was claiming. Appellant interrupted and said he had seen it. The court denied seeing the jurors were inattentive. The court said it thought the jurors were interested in the case and seemed to be attentive to the presentation of the evidence. The court indicated appellant had made a record and thanked appellant. The following then occurred: "[Appellant]: Fuck you. Bitch ass judge. [¶] The Court: I'm sorry you feel that way. [¶] [Appellant]: Fuck you white fucker."

[10] These factors are " 'the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion.' [Citation.]" (Cf. *Mayfield, supra,* 14 Cal.4th at p. 810.)

Moreover, "A motion for self-representation made in passing anger or frustration, . . . or one made for the purpose of delay or to frustrate the orderly administration of justice may be denied." (*People v. Marshall* (1997) 15 Cal.4th 1, 23.) "We have observed that 'a [*Faretta*] motion made out of a temporary whim, or out of annoyance or frustration, is not unequivocal—even if the defendant has said he or she seeks self-representation.' [Citation.]" (*People v. Stanley* (2006) 39 Cal.4th 913, 932.)

In the present case, appellant points to nothing in the record of the December 4, 2014 proceedings suggesting that, before the court denied appellant's continuance request, he wanted to represent himself. It was only after the court denied appellant's continuance request that the issue was raised. The trial court reasonably could have concluded appellant's assertions—that he wanted to represent himself so he could study case law, review the sufficiency of evidence, and "look over everything [himself]" to prosecute his appeal—were vague and/or makeweights.

The trial court also reasonably could have concluded appellant uttered the above assertions out of frustration over the trial court's denial of his continuance request. Appellant did not explain why he did not raise in his motion for a new trial any matters he was concerned about, did not suggest his new trial motion was the product of ineffective assistance of counsel, and did not explain why appellant had not made a self-representation motion earlier.

Appellant's profanity-laden insults to the court after it denied his request provide further evidence he was simply upset over the court's refusal to continue sentencing. We conclude the trial court did not abuse its discretion by denying appellant's untimely motion to represent himself. (Cf. *People v. Doolin* (2009) 45 Cal.4th 390, 452, 454-455, fn. 39.)

None of appellant's arguments compels a contrary conclusion. This includes his argument the trial court failed to exercise, and abused, its discretion by failing to consider the *Windham* factors. The trial court was not required to expressly state the reasons for its decision. (*Windham, supra,* 19 Cal.3d at p. 129, fn. 6.) Substantial evidence supports the inference the court had the *Windham* factors in mind when it ruled, and there were sufficient reasons on the record for the court to exercise its discretion to deny appellant's untimely request to represent himself. Nothing more was required. (*People v. Bradford* (2010) 187 Cal.App.4th 1345, 1354; see *Windham,* at p. 129, fn. 6.)[11]

[11] Even if the court's discretionary denial of appellant's untimely self-representation motion was error, it does not follow that we must reverse. We evaluate any such error for prejudice under the standard enunciated in *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Nicholson* (1994) 24 Cal.App.4th 584, 594-595.) Given the strong evidence supporting (1) appellant's conviction, (2) the gang finding, and (3) the firearm finding, there was no prejudice. To the extent the trial court erroneously believed appellant had to make any self-representation motion prior to trial, any such error was not prejudicial since it is clear the trial court would have denied appellant's self-representation motion apart from any such erroneous belief. (See *People v. Gamble* (2008) 164 Cal.App.4th 891, 901; *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896.)

DISPOSITION

The judgment is affirmed.

HOGUE, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.