Filed 3/6/24 P. v. Jones CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. TYREE DUBOIS JONES, Defendant and Appellant.	2d Crim. No. B318171 (Super. Ct. No. YA100371) (Los Angeles County)

Tyree Dubois Jones appeals from the judgment after a jury found him guilty of second degree murder of Ivan Harge (Pen. Code, §§ 187, subd. (a), 189, subd. (b); count 1),[1] attempted voluntary manslaughter of Lisa Harge-Redd and Dolores Harge (§§ 664, 192, subd. (a), as lesser included offenses of attempted murder for counts 2 and 3), and misdemeanor battery on Ivan[2]

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

[2] For ease of reference, we refer to family members by their first names. No disrespect is intended.

(§ 242; count 5). As to count 1, the jury found true an enhancement for discharging a firearm causing death (§ 12022.53, subd. (d)). For count 2, the jury found true an enhancement for inflicting great bodily injury (§ 12022.7, subd. (a)). For count 3, the jury found true an enhancement for inflicting great bodily injury on a person age 70 or older (§ 12022.7, subd. (c)). The jury acquitted Jones of making criminal threats (§ 422, subd. (a); count 4).[3] The trial court sentenced Jones to 40 years to life in prison.

Jones contends his murder conviction should be reversed based on instructional error, ineffective assistance of counsel, disregard of district attorney special directives regarding dismissal of enhancements, and not dismissing the enhancement for discharging a firearm causing death. Jones also claims cumulative errors resulted in an unfair trial. We affirm.

FACTUAL AND PROCEDURAL HISTORY

The shootings

Jones and several family members lived in buildings on the same property. Jones's mother Lisa lived in one house. Jones's uncle, Ivan, lived in a second house. Jones's grandmother Dolores, age 70, lived in a third house, and Jones lived in a garage behind it. Except for counts 4 and 5, the claims at issue stem from incidents that occurred on June 19, 2019.

On June 19, Lisa was inside her home when Jones, armed with a shotgun, knocked on her door and said he wanted to talk

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[3] For count 2, the jury also found true firearm enhancements (§ 12022.53, subds. (b), (c), (d)), but the trial court properly found they did not apply because attempted voluntary manslaughter is not an offense listed in section 12022.53, subdivision (a).

with her. Lisa went inside her bedroom and lay on the bed. Jones stood in the bedroom doorway. He asked why she had "call[ed] the police on him," "put cases on him," and "fucked his life up." They argued about an incident the day before when he put trash in the driveway.

Lisa got louder and "started to go into like a scream." Jones said, "All I've ever tried to do was love my family." Lisa sat up in the bed. Jones became agitated when they talked about an incident two weeks earlier in which Lisa hit him in the head with a cane.

Jones then shot Lisa in the back of the head. The shot threw her to the floor. Jones went into the living room, reloaded, returned to Lisa's bedroom, and shot her in the shoulder.

Immediately after leaving Lisa's house, Jones walked to Ivan's house. Jones knocked on the door. A neighbor saw Jones standing outside Ivan's house yelling. A male voice inside the house told Jones to leave. Jones tried to open the door. He then shot through the metal grate door. Ivan died from a gunshot wound to his chest.

Jones then walked away from Ivan's house. Dolores came outside and stood on her porch yelling at Jones. She was motioning towards Jones and nervously touching her hair. She asked, "Why did you do it?" Jones punched Dolores in the jaw, repeatedly hit her with his hands, and kicked her three or four times. He yelled, "You guys tried to kill me." He was pacing, gesturing with his arms, and appeared nervous, upset, and angry, but not afraid. Jones told police, "I fucked up my grandmother because she didn't leave me alone."

Police found a sawed-off 20-gauge shotgun on Jones's bed that required reloading between each shot. An expended

cartridge was in the shotgun, and two more cartridges were found in Jones's jacket pocket. A sample of his blood taken after arrest contained methamphetamine.

Prior incidents

There was considerable evidence of prior conflict between Jones and his family members. There were allegations that Ivan was "sexually inappropriate" with Jones in the past. Lisa said Ivan "had been evil" to Jones and he had blamed Jones for things he didn't do. But Lisa said Jones "play[ed] an equal part" in the arguments with Ivan. On an undisclosed date, she heard Ivan threaten to kill Jones.

Lisa had also hit Jones in the head with a cane. Jones appeared paranoid, delusional, and agitated at times in the months and years before the shootings. The night before the shooting, a neighbor saw Jones and Ivan arguing.

Jones posted messages on social media complaining about his family. Three weeks before the shooting, he wrote, "I have to go to court because of you . . . I'm not going blow for blow I'm knocking everything I get my hands on and now I'm not going to hold back." A week before the shootings, he posted that Dolores "needs to be stopped before I actually for the first time do something becouse [*sic*] if I do something I will tell you I don't rum [*sic*] or hide if I did it you will know it was me." Two days before the shooting, he posted, "Fuck family they going to get what they have coming."

Defendant's testimony

Jones used methamphetamine every day for several years. Ivan sexually molested Jones when he was a child and teased

him for being overweight. When Jones was 15 or 16, Ivan pushed, shoved, and chased Jones, attempting to start a fight.

In 2017, Ivan attacked Jones with a running weed eater. Ivan threatened to kill Jones twice, and Jones overheard Ivan ask a friend to kill Jones. Jones was afraid of Ivan and believed Ivan wanted to kill him.

On the day of the shootings, Jones went to Lisa's house to discuss what had been occurring between them. Jones carried a firearm because he was scared and did not know who might be inside Lisa's house.

Jones stood at the foot of Lisa's bed. Lisa sat up in the bed and yelled. Jones saw her reach for something, but a chest of drawers blocked his view of her hands. He shot Lisa because he was scared she would shoot him. He saw she was on the ground.

Jones then walked into the living room and heard "metal clanking" noises coming from Lisa's bedroom. He ejected the spent shell, put it in his pocket, and reloaded the shotgun. He then stood behind the chest of drawers and without looking shot again towards the direction of the noises.

Jones left Lisa's house on a walkway that passed Ivan's house. When Jones heard yelling from inside the house he reloaded his shotgun. He heard the door swing open. He fired a shot "in the direction of the sound" because he had "great fear" that Ivan was going to attack him. Jones was on the walkway and did not see Ivan when he fired the shot.

Dolores was walking down the stairs of her house toward Jones and said, "I heard you shot your mom." He got "a quick glimpse of something in her hand." He struck her because he thought she was going to shoot him and he needed to defend himself.

Dr. Kafka's testimony

Forensic psychologist Anna Kafka, Psy.D., provided an assessment of Jones's mental state on the day of the shootings. Jones believed Lisa, Ivan, and Dolores were jealous of his success and were "part of a campaign to ruin his life, land him in jail or end his life." His fear of his family was based on actual events that included Ivan sexually abusing Jones when he was 5 or 6 years old, and physical violence and threats by Ivan and Lisa. This disorder can cause visual and auditory hallucinations, delusions, hypervigilance, and paranoia. Family conflicts and fear of violence can exacerbate and trigger psychotic episodes.

Convictions and sentence

The jury found Jones guilty of the second degree murder of Ivan (§§ 187, subd. (a), 189, subd. (b)) and found true an enhancement for personally discharging a firearm causing death (§ 12022.53, subd. (d)). Jones was sentenced to 15 years to life plus a consecutive sentence of 25 years to life for the firearm enhancement.

Based on imperfect self-defense, the jury found Jones guilty of the lesser included offense of the attempted voluntary manslaughter of Lisa (§§ 664, 192, subd. (a)) and found true enhancements of infliction of great bodily injury (§ 12022.7, subd. (a)) and personal use of a firearm (§ 12022.53, subds. (b), (c) & (d)). The court imposed a concurrent sentence of three years, found section 12022.53 did not apply, stayed a firearm enhancement pursuant to section 12022.5, and stayed the great bodily injury enhancement. The jury similarly found Jones guilty of the lesser included offense of the attempted voluntary manslaughter of Dolores (§§ 664, 192, subd. (a)) and found true an enhancement of infliction of great bodily injury on a person

age 70 or older (§ 12022.7, subd. (c)). The court imposed a concurrent sentence of three years (§§ 664, 192, subd. (a)) and stayed the great bodily injury enhancement (§ 12022.7, subd. (c)). The court stayed an on-bail enhancement (§ 12022.1) and imposed a concurrent county jail sentence of six months for a misdemeanor battery conviction (§ 242).

DISCUSSION

Jury instruction principles

"A trial court must instruct the jury, even without a request, on all general principles of law that are ' "closely and openly connected to the facts and that are necessary for the jury's understanding of the case." ' [Citation.] . . . The court may, however, 'properly refuse an instruction offered by the defendant . . . if it is not supported by substantial evidence [citation].' " (*People v. Burney* (2009) 47 Cal.4th 203, 246.)

"[A] trial court errs if it fails to instruct, sua sponte, on all theories of a lesser included offense which find substantial support in the evidence." (*People v. Breverman* (1998) 19 Cal.4th 142, 162, disapproved on other grounds in *People v. Schuller* (2023) 15 Cal.5th 237, 260, fn 7.)

We apply the independent standard of review to claims of instructional error. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 919; *People v. Manriquez* (2005) 37 Cal.4th 547, 581 [failure to instruct regarding voluntary manslaughter reviewed de novo].) And "[i]n determining the correctness of jury instructions, we consider the entire charge of the court, in light of the trial record. [Citation.]" (*People v. Covarrubias*, at p. 926.)

Failure to instruct regarding principles that would negate malice such as heat of passion or imperfect self-defense, when supported by substantial evidence, is subject to the federal

"beyond a reasonable doubt" harmless error standard of *Chapman v. California* (1967) 386 U.S. 18, 24. (*People v. Schuller*, *supra*, 15 Cal.5th at pp. 243, 260, fn. 7.)

Heat of passion

The jury was instructed regarding voluntary manslaughter based on imperfect self-defense for counts 1, 2, and 3. Jones did not request an instruction regarding voluntary manslaughter based on heat of passion but contends the trial court erred when it failed to give the instruction sua sponte. We disagree.

A person who intentionally and unlawfully kills "upon a sudden quarrel or heat of passion" is guilty of voluntary manslaughter, which is a lesser necessarily included offense of murder. (§ 192, subd. (a); *People v. Breverman*, *supra*, 19 Cal.4th at pp. 153-154.) Heat of passion "has both an objective and a subjective component." (*People v. Dominguez* (2021) 66 Cal.App.5th 163, 174.) Here, substantial evidence does not support either component.

Objectively, " '[t]he provocative conduct by the victim . . . must be sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection.' " (*People v. Dominguez*, *supra*, 66 Cal.App.5th at pp. 174-175.) The defendant's reaction is "not measured against that of . . . [a] person who 'was intoxicated' or 'suffered various mental deficiencies' or 'psychological dysfunction due to traumatic experiences.' " (*Id.* at p. 176.) "The issue is whether the provocation would cause an emotion so intense that an ordinary person in the same or similar circumstances 'would simply react, without reflection.' " (*Id.* at p. 175.) " '[I]f sufficient time has elapsed between the provocation and the fatal blow for passion to subside and reason to return,

the killing is not voluntary manslaughter.' " (*People v. Breverman, supra,* 19 Cal.4th at pp. 163, 150 [heat of passion where shooting "moments" after threats from mob].)

The objective element of provocation was not shown here. Ivan's mistreatment of Jones when he was a child and other incidents months or years before the crimes did not warrant a heat of passion instruction. Nor would hearing someone yell inside a house cause a reasonable person outside to act rashly or without deliberation.

Nor is the subjective element supported by substantial evidence. A heat of passion instruction is not required where "substantial evidence was lacking that defendant killed while subjectively under the actual influence of 'a strong passion . . . " 'rather than from judgment.' " ' " (*People v. Moye* (2009) 47 Cal.4th 537, 541.) In *Moye*, "[d]efendant's own uncontested testimony established he did not act rashly, or without due deliberation and reflection, or from strong passion rather than from judgment, when he claimed to have used the bat defensively to allegedly fend off an attack from the homicide victim." (*Ibid.*) Similarly here, Jones testified he acted in self-defense, based on his assessment that Ivan might harm him. The court was not required to give a heat of passion instruction because it was not supported by substantial evidence.[4]

Involuntary manslaughter instructions

Jones also contends the trial court erred when it failed to instruct the jury sua sponte regarding involuntary manslaughter

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[4] There are handwritten notes in the margin of the attempted murder jury instruction stating "impulsive" and "out of head with rage." We do not consider these notes because the record is unclear who wrote them.

as a lesser included offense for murder. Again, we disagree.

Involuntary manslaughter is killing without malice "in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection." (§ 192, subd. (b).) Jones does not contend the "unlawful act" (misdemeanor-manslaughter) theory applies, but relies on the "unlawful manner" (criminal negligence) theory.

"The words lack of 'due caution and circumspection' " are "the equivalent of 'criminal negligence,' " i.e., " 'the natural and probable result of a reckless or culpably negligent act.' " (*People v. Penny* (1955) 44 Cal.2d 861, 879-880.) " ' "The risk must be of such a nature and degree that the actor's *failure to perceive it*, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." ' " (*People v. Velez* (1983) 144 Cal.App.3d 558, 565.)

Here, Jones's conduct did not merely amount to criminal negligence. Jones testified he shot to protect himself from his family. And his testimony that he did not see Ivan when he shot him is not evidence the shooting was merely negligent. Jones had already shot his mother twice before shooting Ivan and there is no evidence that Jones " 'shot to frighten . . . but had no intention of killing or injuring anyone.' " (*In re Ferrell* (2023) 14 Cal.5th 593, 607.) Jones testified he heard yelling inside Ivan's house, reloaded, and "fired a shot in the direction of the sound." Substantial evidence did not support an involuntary manslaughter instruction.

Imperfect self-defense

With respect to imperfect self-defense, Jones contends the trial court should have instructed the jury that Jones had no duty to retreat. There was no error.

Regarding complete self-defense, the court instructed the jury with CALCRIM No. 505, which states a defendant is not required to retreat but may stand their ground and defend themselves. Regarding imperfect self-defense, the court instructed with CALCRIM No. 571, which has been upheld as a correct statement of the law. (*People v. Lopez* (2011) 199 Cal.App.4th 1297, 1306.) Jones cites no authority for the novel proposition that CALCRIM No. 571 must be modified to discuss lack of duty to retreat.

As read to the jury, CALCRIM No. 571 stated in part: "The difference between complete self-defense and imperfect self-defense depends on whether the defendant's belief in the need to use deadly force was reasonable." In our view, this language suggests that other principles of complete self-defense included in CALCRIM No. 505 apply, such as the defendant's right to stand his ground.

We review a jury instruction " ' " 'in the context of the overall charge,' " ' " and " 'assume that jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given.' " (*People v. Richardson* (2008) 43 Cal.4th 959, 1028.) Taken together, the jury instructions here properly advised the jury regarding the right to stand one's ground rather than retreat. No error has been shown.

Contrived self-defense

Jones contends the trial court erred when it instructed the jury regarding contrived self-defense. We are not persuaded.

The court instructed the jury: "A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force." (CALCRIM No. 3472.) The court also instructed: "Imperfect self-defense does not apply when the defendant, through his own wrongful conduct, has created circumstances that justify his adversary's use of force." (CALCRIM No. 571, modified.)

Defense counsel stated he did not "have a good faith basis to object" to the language regarding contrived self-defense in the imperfect self-defense instruction. "As a general rule, failure to object to an instruction forfeits the issue on appeal. [Citation.] An exception to the rule of forfeiture arises, however, if the instruction affected the substantial rights of defendant," i.e., "if the instruction results in a miscarriage of justice, making it reasonably probable that absent the erroneous instruction defendant would have obtained a more favorable result." (*People v. Campbell* (2020) 51 Cal.App.5th 463, 498-499.)

There was no miscarriage of justice here. The instructions regarding contrived self-defense are a correct statement of the law. (*People v. Eulian* (2016) 247 Cal.App.4th 1324, 1333, citing *People v. Enraca* (2012) 53 Cal.4th 735, 761 [self-defense and imperfect self-defense].) The instructions were also supported by substantial evidence.

For example, substantial evidence supported a scenario in which Jones armed himself with a loaded shotgun, initiated contact with his mother, argued with her, then used her sitting up in bed as a pretext to shoot her. Substantial evidence also supports the conclusion that Jones, still armed, went to Ivan's home, attempted to enter it, shouted at him from the front porch, and then relied on shouting inside the house as a justification to

kill him. The jury did not ultimately find premeditation, but for purposes of the jury instructions, the evidence could have supported the conclusion that Jones was not defending himself, but armed himself with the intent to injure or kill family members he believed had wronged him in the past. The court properly gave the instructions because they were "predicated upon some theory logically deducible from the evidence." (*People v. Eggers* (1947) 30 Cal.2d 676, 687.) No error has been shown.

Ineffective assistance of counsel

Jones contends counsel rendered ineffective assistance by not requesting jury instructions regarding heat of passion, involuntary manslaughter, and no duty to retreat for imperfect self-defense, and not objecting to instructions regarding contrived self-defense. We reject this contention because Jones does not show deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694.)

Jones has not shown a reasonable probability that requesting the instructions would have resulted in a different outcome. Substantial evidence did not support instructions regarding heat of passion or involuntary manslaughter, either sua sponte or if counsel had requested them. The jury was adequately instructed that Jones had no duty to retreat, and he has not shown a reasonable probability of a different outcome if that principle had been repeated in the imperfect self-defense instruction. Failure to object to instructions regarding contrived self-defense was not prejudicial because they were supported by substantial evidence and, as trial counsel correctly conceded, there was no valid basis to object to them. Declining to make a futile objection does not constitute ineffective assistance of counsel. (*People v. Anderson* (2001) 25 Cal.4th 543, 587.)

Mental disorder instruction

Jones also contends his counsel was ineffective by not requesting CALCRIM No. 3428 regarding the effect of mental impairment on imperfect self-defense. We reject Jones's contention.

"California law allows the jury to consider a defendant's mental disabilities in deciding whether he or she had an actual but unreasonable belief in the need for self-defense." (*People v. Ocegueda* (2016) 247 Cal.App.4th 1393, 1407.) CALCRIM No. 3428 provides that the jury may consider evidence the defendant suffered from a mental disease, defect, or disorder "for the limited purpose of deciding whether, at the time of the charged crime, the defendant acted . . . with the intent or mental state required for that crime." Because this is a "pinpoint" instruction "required to be given upon request when there is evidence supportive of the theory," it need not be given sua sponte. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119; *People v. Larsen* (2012) 205 Cal.App.4th 810, 824 [mental disease or defect instruction].)

Here, the jury instructions given adequately explained the relevant legal principles. The jury was instructed: it "must consider" the opinions of expert witnesses (CALCRIM No. 332); it may consider voluntary intoxication with a drug regarding intent to kill, deliberation, and premeditation (CALCRIM No. 625); and an element of imperfect self-defense is "[t]he defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury" (CALCRIM No. 571, modified). In our view, these instructions were sufficient for the jury to consider the effect of methamphetamine-induced psychosis on imperfect self-defense.

Nor did an absence of a pinpoint jury instruction preclude

the defense from presenting evidence regarding Jones's mental condition or from arguing to the jury that it affected his belief of danger for imperfect self-defense. Dr. Kafka testified that Jones suffered from methamphetamine-induced psychosis, which can cause visual and auditory hallucinations, delusions, hypervigilance, and paranoia. Trial counsel argued that the paranoia, delusions, and belief in nonexistent threats, as explained by Dr. Kafka, formed "the context for [Jones's] state of mind" that showed he "felt his life was in danger."

No prejudice has been shown because "the court's omission of the CALCRIM No. 3428 instruction did not remove from the jury's consideration or incorrectly define the intent element of the offenses." (*People v. Larsen, supra*, 205 Cal.App.4th at p. 830.) The instructions given, Dr. Kafka's testimony, and counsel's argument sufficiently informed the jury that Jones's mental disorder could play a role in imperfect self-defense.

Special directives

Jones contends the trial court abused its discretion when it declined to dismiss the enhancements based on district attorney special directives. The record does not support this contention.

"[T]he court shall dismiss an enhancement if it is in the furtherance of justice to do so." (§ 1385, subd. (c)(1).) We review denial of a motion to dismiss sentence enhancements for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.)

Before trial, the deputy district attorney moved to dismiss the allegations of discharging a firearm causing death or great bodily injury (§ 12022.53, subd. (d)) for counts 1 and 2, and the great bodily injury enhancements (§ 12022.7, subds. (a) & (c)) for counts 2 and 3. The motions were based on the District Attorney's Special Directives 20-08 and 20-08.1. The court had

heard there was a policy but did not know what it was. Other than referring to the directives by number, the record does not show that either party provided the court with a copy of the directives or summarized them.

A relative of Ivan and Dolores made a victim impact statement asking for justice for the victims by retaining the enhancements. She said Ivan could not speak for himself because he was deceased, Dolores was still in a coma fighting for her life, and the crimes were hard on the whole family.

The deputy district attorney withdrew the motion to dismiss the great bodily injury allegations (§ 12022.7, subds. (a) & (c)). She moved to dismiss the firearm discharge allegations (§ 12022.53)[5] for counts 1 and 2, and to substitute firearm use allegations (§ 12022.5, subd. (a)). The court asked, "So what specifically about this case is in the interest of justice to dismiss these allegations and enhancements?" The deputy district attorney said, "I do not have any specific articulable facts related to this specific case as to why we're seeking the dismissal. They're solely based on the policies delineated under Special Directive[s] 20-08.1 and 08.2." The court declined to dismiss the enhancements because it heard nothing warranting dismissal in the interest of justice, or any defect in the information that would warrant an amendment.

The special directives are not in the record here. But they are summarized in *Nazir v. Superior Court* (2022) 79 Cal.App.5th 478, 486-487 (*Nazir*), upon which Jones relies. *Nazir* explains that the special directives directed prosecutors to not file

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[5] Based on the reporter's and clerk's transcripts, it is unclear whether the prosecution sought to strike the allegations of subdivision (b) or (d) of section 12022.53.

sentence enhancements, and to withdraw them in pending matters. (*Id.* at p. 486.) The directives stated the sentencing triads without enhancements were " ' "sufficient to protect public safety and serve justice," ' " and " ' "sentencing enhancements or special allegations provide[] no deterrent effect or public safety benefit of incapacitation—in fact, the opposite may be true, wasting critical financial state and local resources." ' " (*Id.* at p. 487, fn. omitted.) *Nazir* concluded the trial court was required to consider general sentencing objectives included in the special directives, along with case-specific factors regarding the defendant and the crimes. (*Id.* at pp. 485, 497.)

In *Nazir*, "the People filed a written motion under section 1385 to dismiss the firearm enhancements, restating verbatim the arguments recited in Special Directive 20-08.1." (*Nazir*, *supra*, 79 Cal.App.5th at p. 488.) But here, no policy considerations from the special directives were presented to the court. The prosecutor merely stated that a motion was being made pursuant to special directives and referred to them by number. The trial court stated it did not know what the special directives were. The published opinion in *Nazir*, which summarized the policies cited in the special directives, had not yet been issued.

A court's exercise of discretion is based on the record before it when the motion is heard. (*People v. Cook* (2006) 39 Cal.4th 566, 581.) Because the motion to dismiss was not supported by either policy considerations or case-specific reasons, the trial court did not abuse its discretion when it concluded that dismissal of the enhancements was not in the furtherance of justice.

Firearm enhancement

The court had discretion to dismiss the enhancement for discharge of a firearm causing great bodily injury. (§§ 1385, subd. (c)(1) & (2), 12022.53, subds. (d) & (h).) Jones contends the trial court erred when it declined to dismiss the enhancement and imposed the enhancement of 25 years to life. We disagree.

"The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted.) The trial court's exercise of discretion " ' " 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.' " ' " (*People v. Mendoza* (2023) 88 Cal.App.5th 287, 298.)

The trial court considered section 1385, as amended by Senate Bill No. 81 (2021-2022 Reg. Sess.) (Stats. 2021, ch. 721, § 1). It provides that "the court shall dismiss an enhancement if it is in the furtherance of justice to do so." (§ 1385, subd. (c)(1).) It further provides, "In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. 'Endanger public safety' means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others." (§ 1385, subd.

(c)(2).)

Jones contends three mitigating circumstances listed in section 1385, subdivision (c)(2) apply: (1) the enhancement would result in a sentence over 20 years, and the murder is connected to (2) mental illness and (3) prior victimization or childhood trauma. (§ 1385, subd. (c)(2)(C), (D), (E).)

We reject Jones's contention that dismissal of the enhancement was required based on mitigating circumstances and the seemingly mandatory language that it "shall be dismissed" if it "could result in a sentence of over 20 years." (§ 1385, subd. (c)(2)(C).) The trial court retained discretion to impose the enhancement if the court found dismissal would endanger public safety. (See, e.g., *People v. Mendoza, supra*, 88 Cal.App.5th at pp. 291, 296-297; *People v. Lipscomb* (2022) 87 Cal.App.5th 9, 17-21.) And here, the court found that Jones posed a significant danger to public safety. (§ 1385, subd. (c)(2).) The court described the murder as "a very violent, cruel, indefensible killing" that "screams for the imposition of that additional 25 years to life." This finding is supported by substantial evidence, including the murder of Ivan who was inside his house by Jones who was outside the house with a metal door between them, and violent unprovoked attacks on two other family members.

Our conclusion is consistent with cases holding a trial court has discretion whether to dismiss multiple enhancements (§ 1385, subd. (c)(2)(B)), even though that provision also contains the language that "all enhancements beyond a single enhancement shall be dismissed." (*People v. Anderson* (2023) 88 Cal.App.5th 233, 240-241, review granted Apr. 19, 2023, S278786; *People v. Walker* (2022) 86 Cal.App.5th 386, 396-399,

review granted Mar. 22, 2023, S278309.) There was no abuse of discretion here.

Cumulative errors

Jones contends that cumulative errors resulted in an unfair trial. "[W]e have found no error to cumulate." (*People v. Koontz* (2002) 27 Cal.4th 1041, 1094.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BALTODANO, J.

We concur:

YEGAN, Acting P. J.

CODY, J.

Hector M. Guzman, Judge

Superior Court County of Los Angeles

Cynthia Grimm, 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, Steven D. Matthews and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Appendix B

Court of Appeal, Second Appellate District, Division Six - No. B318171

S284549

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TYREE DUBOIS JONES, Defendant and Appellant.

The petition for review is denied.

GUERRERO
Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
EVA McCLINTOCK, CLERK

DIVISION 6

Los Angeles County Superior Court

THE PEOPLE,
Plaintiff and Respondent,
v.
TYREE DUBOIS JONES,
Defendant and Appellant.
B318171
Los Angeles County Super. Ct. No. YA100371

***** REMITTITUR *****

I, Eva McClintock, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on March 6, 2024 and that this order, opinion or decision has now become final.

Witness my hand and the seal of the Co[illegible]
affixed at my office this May 16, 2[illegible]

EVA McCLINTOCK, CLERK

by: S. Claborn,
Deputy Clerk

cc: All Counsel (w/out attachment)
File