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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY PAUL KNIGHT,

Defendant and Appellant.

2d Crim. No. B276973
(Super. Ct. No. 2014020260)
(Ventura County)

Timothy Paul Knight appeals a judgment following conviction of assault with force likely to produce great bodily injury, and battery resulting in serious bodily injury, with findings that he personally inflicted great bodily injury, suffered a prior serious felony conviction, suffered two prior serious or violent felony strike convictions, and served three prior prison terms. (Pen. Code, §§ 245, subd. (a)(4), 243, subd. (d), 12022.7,

subd. (a), 667, subd. (a)(1), 667, subds. (b)-(d), 1170.12, subds. (a)-(d), 667.5, subd. (b).)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

This appeal concerns a physical altercation between Knight and his cellmate, Daniel Henderson, at the Ventura County Jail. The two men argued regarding custody "politics" and then began to fight. Knight knocked Henderson to the cell floor but continued to strike him. Knight eventually called for assistance from the jailers, stating: "Come and get this guy [Henderson] right here, he's about to die." A jailhouse audio-recording captured the argument and the sounds of the ensuing fight. Henderson suffered serious injuries from the altercation, was hospitalized for several weeks, and now has few memories of the incident. At trial, the parties stipulated that Henderson suffered great and serious bodily injury within the meanings of sections 12022.7, subdivision (a) and 243, subdivision (d).

For nearly one year, Knight and Henderson shared a cell within the county jail administrative segregation unit. Jail officials housed Knight in administrative segregation based upon his history of violent assaults. The officials housed Knight and Henderson together because they believed the two men were compatible. Henderson testified, however, that he did not agree to a cellmate but relented when jail officials promised not to house him with Knight.

On June 15, 2014, Henderson was permitted time in the recreation yard located on the roof of the jail. When he returned, he confronted Knight regarding statements other inmates made in the yard. Knight became angry and Henderson initiated the

¹ All statutory references are to the Penal Code unless otherwise stated.

physical altercation to “take charge” of the situation. Henderson believed that the altercation involved "mutual combat[]." He testified that he did not recall how he sustained his injuries but believed that Knight did not cause them.

Jailhouse Audio-Recording

The argument and sounds of the fight between Henderson and Knight were recorded in a jailhouse audio-recording. Henderson testified that he did not recognize the voices on the recording; a jail deputy recognized the voices, however, as belonging to Knight and Henderson. The prosecutor played the jailhouse recording at trial.

During the conversation and later argument, the two men spoke in street-argot. Henderson stated that he spoke with "Snoop," "Motah," and "Freddy," and that Freddy stated that Knight was "on [Freddy's] last nerve" due to "politicking." Knight responded that Henderson "shouldn't done that," and that he told Henderson "go jam up all these dudes." Henderson responded that he "jammed up Snoop." Knight replied, "Motah's gone And you do that shit every time you go up there. You're always trying to fuckin' talk about something, homie."

The two men then argued regarding Motah. Henderson stated that Knight "brought up some kind of politics" with Motah which Knight denied. Henderson then stated: "let's fuckin' handle our business then real quick." Knight replied, "Well, come get some then. Stand up and fight, Man. Hey, you like it Butch?" The recording captured repeated thumping, labored breathing, and gurgling sounds during the physical altercation. Knight finally called to jail deputies, "Come and get this guy right here, he's about to die."

Deputies entered the cell and found Henderson unconscious on the floor, making gurgling and moaning sounds. Knight was pacing in the cell and appeared agitated; he was breathing heavily and clenching his fists. Blood pooled on the cell floor and was splattered throughout the cell.

Knight had swollen and bloody knuckles, facial cuts, bruises, and scratches on his shoulder. He also had blood on his clothing, shoe, and ankle. A deputy opined that Knight's injuries were consistent with those suffered during a fight. At trial, the prosecutor introduced photographs of the injuries to Knight's hands.

Deputies handcuffed Knight and escorted him outside the cell to the law library. As they passed the dayroom cell, Knight stated to an inmate, "[S]ee that, you're next." A video-recording captured the deputies escorting Knight down the hallway. He appeared to "strut" with his chest "puffed up."

In the law library, Knight made angry statements to the two deputies who had handcuffed him and were restraining him. Knight had a violent criminal history and the deputies viewed his statements as threats.²

Criminal Street Gang Evidence

Deputy Tyler McMahon testified as an expert witness regarding gang tattoos on jail inmates. Knight has a "SUR" tattoo on his neck, a reference to "Sureno." He also has a tattoo of a kanpol, the Aztec number for 13 and a symbol for the Mexican Mafia.

² The jury could not agree upon verdicts regarding the charged counts of making criminal threats and resisting an executive officer. The court declared a mistrial regarding these counts and later granted the prosecutor's motion to dismiss them.

At trial, Henderson admitted that he has a large tattoo declaring "Simi" on his chest and stomach. He denied, however, that he was a member of a criminal street gang. Henderson acknowledged that Knight had a "13" tattoo on his face.

During the prosecutor's case-in-chief, Deputy Ernan Jauregui testified regarding criminal street gang culture within the custodial setting. He explained that "politicking" referred to a prohibition among gang members "go[ing] against each other or talk[ing] bad about each other." Within the gang culture, politicking could result in the assault or death of a gang member.

During the prosecution rebuttal, Jauregui explained that the tattoo "SUR" or "Sureno" meant that the inmate was an active Sureno gang member. He also explained that a kanpol tattoo signified the Aztec number 13 and was associated with the letter M and the Sureno gang. Jauregui opined that Knight was a Sureno gang member based upon the "13" tattoo on his face, and the "SUR" and kanpol tattoos on his neck. He also opined that the Sureno gang prohibited its members from politicking and that respect was important in a custodial setting.

Knight's Trial Testimony

At trial, Knight testified that Henderson attacked him and that he responded in self-defense. Knight acknowledged hearing his and Henderson's voices in the jailhouse audio-recording.

Knight denied that his tattoos were gang-related or that he was a Sureno gang member. He explained that tattoo "13" on his face referred to his former Little League district and not the letter "M" for the Mexican Mafia. Knight explained that he was in the process of having the "13" tattoo removed. He described the kanpol tattoo as "an earring piece." Knight also stated that he did not recall making threats to the dayroom inmate or to the

deputies in the law library. He added that "politicking" referred to "presidential debates."

Conviction and Sentencing

The jury convicted Knight of assault with force likely to produce great bodily injury (count 1), and battery resulting in serious bodily injury (count 2). (§§ 245, subd. (a)(4), 243, subd. (d).) It also found that Knight personally inflicted great bodily injury upon Henderson during the commission of count 1. (§ 12022.7, subd. (a).) In a separate proceeding, the trial court found that Knight suffered a prior serious felony conviction, suffered two prior serious felony strike convictions, and served three prior prison terms. (§§ 667, subd. (a)(1), 667, subds. (b)-(d), 1170.12, subds. (a)-(d), 667.5, subd. (b).)

The trial court sentenced Knight to a prison term of 25 years to life for count 1, plus five years for the prior serious felony conviction. (§ 667, subd. (a)(1).) The court imposed but stayed sentence for count 2 pursuant to section 654, and it also struck the prior prison term enhancements. (§ 667.5, subd. (b).) For this case and an unrelated pending case, the court imposed a \$450 restitution fine and a \$450 parole revocation restitution fine (suspended), other fines and fees, and awarded Knight 2,432 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45.)

Knight appeals and contends that the trial court abused its discretion by permitting evidence of his criminal street gang association over defense objection and motion for mistrial.

*DISCUSSION*³

Knight argues that the trial court abused its discretion by permitting evidence of his tattoos and gang affiliation to impeach

³ All statutory references hereafter are to the Evidence Code.

his credibility. He contends that the evidence is irrelevant, improper character evidence, impeachment on collateral issues, unduly prejudicial, and a denial of due process of law pursuant to the United States Constitution. (§§ 1101, subd. (a), 352; *People v. Albarran* (2007) 149 Cal.App.4th 214, 230-232 [defendant's due process rights violated by admission of gang-related evidence that was irrelevant, inflammatory, and prejudicial].) Knight asserts that the error is not harmless beyond a reasonable doubt.

Section 210 defines relevant evidence as evidence that has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." The test of relevance is whether the evidence tends to establish a material fact such as identity, intent, or motive. (*People v. Tully* (2012) 54 Cal.4th 952, 1010.) The trial court has broad discretion to determine the relevance of evidence. (*Ibid.*)

The trial court also has broad discretion pursuant to section 352 to exclude even relevant evidence if the court determines that the probative value of the evidence is substantially outweighed by its possible prejudicial effect. (*People v. Jones* (2017) 3 Cal.5th 583, 609; *People v. Merriman* (2014) 60 Cal.4th 1, 74.) "Prejudicial" describes evidence that tends to evoke an emotional bias against the defendant as an individual and which has little effect on the issues. (*People v. Henriquez* (2017) 4 Cal.5th 1, 25 [evidence is not prejudicial merely because it undermines the opponent's position].) We review the trial court's ruling regarding the admissibility of evidence for an abuse of discretion. (*Jones*, at p. 609; *Merriman*, at p. 74.)

In prosecutions not involving a gang enhancement allegation, evidence of gang membership is potentially prejudicial

and should be excluded if its probative value is minimal. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.) Evidence of gang membership, however, is often relevant to and admissible regarding the charged offense. (*Ibid.*) "Evidence of the defendant's gang affiliation – including evidence of the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like – can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime." (*Ibid.*)

The trial court did not abuse its discretion by permitting evidence of Knight's tattoos and gang affiliation. This evidence was relevant to explain a motive for the fight between Henderson and Knight, to refute Knight's self-defense claim, and to impeach his credibility. (*People v. Hernandez, supra*, 33 Cal.4th 1040, 1049.) The evidence tended to explain an otherwise inexplicable physical altercation between the cellmates over "politicking." It also aided in the interpretation of the recorded argument during which Henderson and Knight spoke in street-argot. Moreover, the evidence tended to impeach Knight's credibility because he denied being a gang member, having gang-related tattoos, or having knowledge of the meaning of the terms and names in the recorded conversation. (§ 1101, subd. (c).)

The evidence was not cumulative and its undue prejudicial effect did not outweigh its relevance. Compared to the graphic evidence of the assault and battery committed on Henderson, the gang-related evidence "was not so minimally probative on the charged offense[s], and so inflammatory in comparison, that it threatened to sway the jury to convict regardless of [Knight's] actual guilt." (*People v. Hernandez, supra*, 33 Cal.4th 1040,

1051.) Moreover, the evidence did not pose an intolerable risk to the fairness of the trial or the reliability of the outcome. (*People v. Edwards* (2013) 57 Cal.4th 658, 713.) Hence, Knight was not denied due process of law or a fair trial by the admission of this evidence.

The judgment is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Mark S. Borrell, Judge

Superior Court County of Ventura

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, Peggy Z. Huang, Deputy Attorney General, for Plaintiff and Respondent.