Filed 7/26/16 P. v. Gonzales CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ALEXANDER GONZALES, Defendant and Appellant.	B257042 (Los Angeles County Super. Ct. No. BA407699)

APPEAL from a judgment of the Superior Court of Los Angeles County. Edmund Wilcox Clarke, Jr., Judge. Affirmed.

Adrian K. Panton; and Robert Bryzman, 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, Paul M. Roadarmel, Jr., and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

In an amended information filed by the Los Angeles County District Attorney, defendant and appellant Alexander Gonzales was charged with attempted murder (count 1; Pen. Code, §§ 664/187, subd. (a)),[1] assault by means likely to produce great bodily injury (count 2; § 245, subd. (a)(4)), assault with a deadly weapon, to wit, a knife (count 3; § 245, subd. (a)(1)), and attempted willful, deliberate, and premeditated murder (count 4; §§ 664/187, subd. (a)). It was alleged as to all four counts that appellant personally inflected great bodily injury within the meaning of section 12022.7, subdivision (a), and that he personally used a deadly and dangerous weapon, within the meaning of section 12022, subdivision (b)(1).

Appellant pleaded not guilty.

A jury convicted appellant as to count 3 and found the great bodily injury enhancement true. He was acquitted of count 4. Counts 1 and 2 were dismissed.

The trial court sentenced appellant to the low term of two years, plus three years for the enhancement, for a total of five years in state prison. He received presentence custody credit for 490 days of actual custody, plus 73 days of conduct credits, for a total credit of 563 days.

Appellant timely filed a notice of appeal. On appeal, he raises two arguments. First, appellant contends that the trial court's bias and unjustified hostility towards his trial counsel denied him a fair trial and undermined his defense attorney's ability to provide effective assistance of counsel. Second, appellant asserts that the trial court erred in failing to instruct the jurors that they could not convict him solely on the basis of a pretrial statement.

We affirm.

FACTUAL BACKGROUND

I. *Prosecution Evidence*

On January 26, 2013, Diego Negrete (Negrete), his girlfriend Michelle Melchor (Melchor), and his brother, Luis Negrete (Luis), attended a warehouse party in

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

Los Angeles. Appellant was "moshing" in the "mosh pit"[2] along with about 10 other people. The music stopped and appellant's brother, Andrew Gonzales (Andrew), approached Negrete, told him that he was "messing with him," and asked Negrete why he was singling him out. Negrete remembered responding as follows: "'It's the pit.'" Andrew, mad, "got really [in Negrete's] face," close enough that the men were chest to chest. Negrete then punched Andrew in the side of his head. The men separated, the music continued to play, the party resumed as normal, and Negrete continued to enjoy the party.

Fifteen minutes later, Negrete went outside to get fresh air and smoke a cigarette. While he was standing outside, he saw appellant, Andrew, and their friends escorted out. Appellant approached Negrete and asked, "'Why are you fucking with my brother?'" Negrete could not remember how he responded. Appellant then took a fighting stance, put his fists up, and threw a punch at Negrete's face. Negrete leaned back, dodged the punch, and both men fell to the ground. A fight ensued.

Someone lifted Negrete up. As soon as he stood up, he felt pain under his left pectoral area. Negrete touched the area and felt that his shirt was hot and wet. Negrete lifted his shirt and saw "blood squirting out" from where appellant had stabbed him. Melchor saw Negrete bleeding right after his "altercation" with appellant and saw stab wounds on Negrete's back and chest. After a couple of minutes, Negrete could not breathe and it felt like his lungs were not expanding. Negrete passed out and Melchor drove him to the hospital.

Alexander Medina (Medina) worked security at the show and was posted outside. Ramon Valdivia (Valdivia) was working as the doorman. Medina and Valdivia escorted appellant and his friends out of the warehouse that night. While Medina was escorting appellant to the street, he heard a commotion behind him. Medina turned and saw that a fight had broken out between Andrew and Negrete. Medina saw appellant run towards

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[2] Negrete testified that "moshing" is a type of dancing where people jump around to music, "kind of pushing and shoving."

the fight and join in it. At one point, all three men were on the ground fighting. Once the men were separated, Medina heard Negrete complain that his body hurt. Negrete pulled up his shirt and appeared to be bleeding. Valdivia saw blood on one of appellant's arms and another man holding a clean knife. Appellant and Andrew took off running.

Aaron Gonzales (Aaron), appellant's brother, went to the warehouse party with appellant and Andrew. Aaron saw Negrete punch Andrew in the face. Aaron, appellant, and the other individuals with them helped separate the men instantly. The men calmed Andrew down and, after a few minutes, the men left. While the men were walking out, Negrete followed them, used profanity, and tried to provoke a fight with Andrew. Aaron took Andrew to the car, looked back, and saw appellant on the ground with Negrete on top of him. Aaron ran towards the fight, but the men were separated before he reached them. After the men were separated, Aaron saw blood on appellant's right arm that did not appear to be his own. Aaron testified that appellant carried a red-handled knife in his pocket on a regular basis. After the night of the stabbing, Aaron never saw appellant's knife again.

Officer Eric Rose and Officer Kevin Raines subsequently interviewed appellant regarding the events surrounding the stabbing. Appellant told the officers that he was inside the warehouse when "everything kind of [got] blurry." He explained that he drank a lot, but he remembered the altercation. He saw Negrete "pushing people over and trying to fight." Andrew was one of the people that Negrete bullied. Appellant saw Negrete punch Andrew. Appellant told Andrew that they should leave. As they were leaving, appellant saw Negrete outside. Negrete started "talking shit" to the men. Initially, the men "[blew] off everything." But, when security guards were escorting Andrew to his car, a fight broke out between Negrete and appellant. At first, appellant claimed that he could not recall what had happened during the fight because he blacked out. While he told the officers that he was "really drunk" and could not remember who threw the "first swing," he did remember Negrete was "talking shit" and was "a lot bigger" than him. Appellant admitted that at some point he pulled out his little red-

handled knife and stabbed Negrete twice. He claimed that Negrete "provoked it." Appellant threw his knife out of the car.

II. *Defense Evidence*

Natalie Rodriguera (Rodriguera), an acquaintance of Negrete, was working at the party, taking money at the front door. She saw Negrete drinking that night and he appeared to have been intoxicated. She saw him get into an altercation inside the warehouse with Andrew. After the altercation, she saw security escort Andrew, appellant, and their friends out of the building. Negrete left right after them. She saw a verbal altercation between Negrete and Andrew turn into a physical altercation. She also saw Negrete start the fight outside. She never saw anyone with a knife.

During Medina's cross-examination, the defense introduced surveillance video of the fight that showed a number of people surrounding appellant and Negrete.

DISCUSSION

I. *Judicial Bias*

Appellant argues that judicial bias denied him his constitutional right to due process and the right to effective assistance of counsel.

A. Forfeiture

The People contend that appellant forfeited this contention by failing to object below. We agree.

A defendant's failure to object to alleged judicial bias forfeits the claim on appeal. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1320 ["[a]s a general rule, a specific and timely objection to judicial misconduct is required to preserve the claim for appellate review"]; *People v. Banks* (2014) 59 Cal.4th 1113, 1177 ["isolated 'judicial misconduct claims are not preserved for appellate review if no objections were made on those grounds at trial'"], overruled in part on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 391, fn. 3; *People v. Boyette* (2002) 29 Cal.4th 381, 458–459.) The purpose of requiring a timely objection is to allow the trial court to cure any possible harm with an admonition. (*People v. Melton* (1988) 44 Cal.3d 713, 735.)

Here, with the exception of the trial court's comment outside the jury's presence that defense counsel was attempting to communicate with the jury by making faces "as if to pantomime shock and discouragement that [defense counsel was] being treated unfairly," appellant never objected on the grounds of judicial bias. And, even in that instance, defense counsel only stated: "I would like to state that I did not make a face. I object to the court saying that. [¶] Your Honor, this whole trial I do not know where this is [coming] from, you have been admonishing me when I have been acting completely professional. I have not been acting in any way out of bounds."

In light of appellant's failure to object on grounds of judicial bias, the trial court was never given an opportunity to cure any alleged harm. It follows that appellant's claim is forfeited. (*People v. Boyette, supra*, 29 Cal.4th at pp. 458–459 [defendant's failure to object forfeited the issue for appellate review]; see also *People v. Johnson* (2015) 60 Cal.4th 966, 980 [by failing to object to the judge's relationship with the prosecutor during trial, the defendant's objection on the grounds of bias was not preserved for appellate review]; *People v. Guerra* (2006) 37 Cal.4th 1067, 1111 [failure to object amounts to forfeiture of issue of trial judge's alleged bias that affected trial court rulings].)

B. Merits of Appellant's Judicial Bias Claim

Even if we were to consider the merits of appellant's claim, it would fail on the merits.

1. *Relevant Legal Authority*

Criminal defendants have a fundamental right to a fair trial 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.) To succeed on a judicial bias claim, a defendant must overcome a presumption of judicial honesty and integrity. (*Withrow v. Larkin* (1975) 421 U.S. 35, 47.) In the absence of any evidence of some extrajudicial source of bias or partiality, neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity, even if those remarks are critical or even hostile to counsel, the parties, or their cases. (*Liteky v. United States* (1944) 510 U.S.

540, 555; *People v. Guerra*, *supra*, 37 Cal.4th at pp. 1111–1112 [judicial rulings alone, even when erroneous, will not support a claim of judicial bias].)

A trial court has the duty and discretion to control the conduct of a trial. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1108; see also § 1044.) But, a court "commits misconduct if it persistently makes discourteous and disparaging remarks to defense counsel so as to discredit the defense or create the impression it is allying itself with the prosecution." (*People v. Carpenter* (1997) 15 Cal.4th 312, 353, superseded by statute on other grounds.) "Nevertheless, '[i]t is well within [a trial court's] discretion to rebuke an attorney, sometimes harshly, when that attorney asks inappropriate questions, ignores the court's instructions, or otherwise engages in improper or delaying behavior.' [Citation.]" (*People v. Snow* (2003) 30 Cal.4th 43, 78.) "[M]ere expressions of opinion by a trial judge based on actual observation of the witnesses and evidence in the courtroom do not demonstrate a bias." (*People v. Guerra*, *supra*, 37 Cal.4th at p. 1111.)

In reviewing a claim of judicial bias or misconduct, an appellate court's role "is not to determine whether the trial judge's conduct left something to be desired, or even whether some comments would have been better left unsaid." (*People v. Snow*, *supra*, 30 Cal.4th at p. 78.) Rather, the appellate court "'must determine whether the judge's behavior was so prejudicial that it denied [the defendant] a fair, as opposed to a perfect, trial.' [Citation.]" (*Ibid.*; see also *People v. Guerra*, *supra*, 37 Cal.4th at p. 1112.) A new trial is required when the trial judge engages in judicial bias or unfairness to the extent that the defendant could not have received a fair trial. (*People v. Freeman*, *supra*, 47 Cal.4th at p. 1000.)

2. *Analysis*

Appellant asserts that the trial "court repeatedly made comments which were likely to be interpreted by jurors as criticisms of counsel as incompetent, unprofessional and/or unethical." We disagree.

a. <u>defense counsel's first appearance</u>

The following colloquy, outside the presence of the jury, occurred:

"[THE COURT]: The matters' been assigned here for trial. I do see in the file a two-page motion to set aside the information, brought by [defense counsel] on behalf of [appellant]. [¶] Did the People receive a copy of that?

"[THE PROSECUTOR]: I have not, Your Honor.

"[DEFENSE COUNSEL]: Your Honor, I have a proof of service that I filed—I personally took it upstairs and filed it . . . . [L]et me just see if I have the proof on here. . . .

"[THE COURT]: You can find that later. I'm not sure [the prosecutor] is disputing you may have left a document somewhere in the building, she just does not have one. [¶] Do you have an extra copy she can look at?

"[DEFENSE COUNSEL]: I don't. I didn't just leave it somewhere, I filed it with her office. . . .

"[THE COURT]: Yes. You don't need to dispute me on the first moment that you get here for trial.

"[DEFENSE COUNSEL]: I'm not disputing it.

"[THE COURT]: I've got a 995 that you filed at the last minute. I'm trying to figure out how to get that sorted out.

"[DEFENSE COUNSEL]: It doesn't say anything is what I'm saying.

"[THE COURT]: You didn't just leave it, you served it at 11:59 and 59 seconds before midnight, procedurally, we might say. [¶] Now, did you tell Department 100 you were challenging the information?"

The trial court, defense counsel, and the prosecutor then discussed whether appellant's motion was timely. While the prosecutor was not disputing whether the document had been filed, she was merely pointing out that she did not have a copy of the motion.

The trial court went on to summarize that appellant (and his codefendant, Andrew) had been arraigned on the amended information on January 14. Defense counsel then jumped in:

"[DEFENSE COUNSEL]: I don't think it was January the 14th—okay.

"[THE COURT]: Did I ask you what you thought? I'm reading from the court file. So it could be mistaken, but if I want to know what you think, usually I'll ask you what do you think. And if I don't—

"[DEFENSE COUNSEL]: Is there a problem here?

"[THE COURT]: [Y]ou would be wise just to keep your mouth closed. We're just establishing the background for this motion. We're not having a discussion of how you feel or what you think.

"[DEFENSE COUNSEL]: What is the problem here? Is there a problem here?

"[THE COURT]: [Defense counsel], you're acting in a rude manner is part of the problem. You're impertinent. If you continue to interrupt me, I'll fine you. So when I want to know your position, it will be obvious to you. You'll notice neither of the other lawyers have spoken out of turn. Neither of them has made an impertinent or smart aleck remark to me yet. They'll have time to do that as the trial progresses. But you're in first place. If that was your goal, you've achieved it."

According to appellant, this "initial judgment of counsel affected the court's assessment of counsel's conduct throughout the ensuing trial."

Taken in context, the record shows that the trial court asked the prosecutor if she had received a copy of the motion, and she replied that she had not. Immediately, defense counsel became defensive, almost accusatory, stating that she had a proof of service that she had personally completed and that she personally served the motion "upstairs and filed it." The trial court explained that the prosecutor was not disputing that the document had been served; in fact, the trial court was not seeking proof of service. Rather, the trial court only wanted to know if defense counsel had an extra copy for the prosecutor to review. Again defense counsel became defensive, arguing that she did not "just leave it" somewhere, but that she had filed it. The trial court commented that defense counsel did not need to be argumentative from the first moment she arrived in court; all the trial court was trying to do was sort out the last minute, possibly even late-filed, motion.

The trial court then attempted to move the proceedings along by reading from the court file, only to be interrupted and corrected by defense counsel. The trial court told defense counsel that it was not asking for her opinion, to which she retorted: "Is there a problem here?" Understandably annoyed with defense counsel's repeated argumentative nature and defensiveness, the trial court explained that it was just trying to establish the background for defense counsel's motion and that she should refrain from talking, to which defense counsel disrespectfully asked, "What is the problem here? Is there a problem here?" The trial court then stated that defense counsel was not only behaving rudely, but she was also being "impertinent." This exchange that appellant complains of demonstrates that defense counsel failed to afford the trial court proper respect and courtesy. If anything, defense counsel was hostile, not the trial court.

Regardless, these remarks were not prejudicial in any way because this exchange occurred outside the presence of the jury. (See, e.g., *People v. Guerra*, *supra*, 37 Cal.4th at p. 1112.)

b. comments in the jury's presence

Next, appellant contends that although the trial court was more restrained in its criticism of counsel in the jury's presence, the trial court's subsequent comments in front of the jury led it to believe that counsel was incompetent and untrustworthy.

First, appellant complains about the following, which occurred during the prosecutor's direct examination of Valdivia:

"[THE PROSECUTOR]: So the pocketknife you saw on the other male, some person other than [appellant]; correct?

"[VALDIVIA]: Yes.

"[DEFENSE COUNSEL]: Objection. I'm going to object. This is all leading and repeating what he says.

"[THE COURT]: Well, you realize it can't be both.

"[DEFENSE COUNSEL]: I'm sorry?

"[THE COURT]: It can't be both. All right. You can't lead someone and be repeating their answer both. To lead someone is to suggest a response, not to repeat a response. So overruled on both grounds."

Appellant complains that this exchange demonstrates an attempt by the trial court "to educate counsel about the defects in her objection[, which] likely led jurors to infer that the court doubted counsel's knowledge of the rules of evidence."

Preliminarily, appellant neglects to direct us to any legal authority that prohibits the trial court from explaining objections to counsel. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [when an appellant fails to support a point with reasoned argument and citations to authority, we treat the point as waived].) Setting that procedural obstacle aside, as set forth above, appellant cannot demonstrate judicial bias merely by pointing to adverse rulings. (*People v. Guerra*, *supra*, 37 Cal.4th at p. 1112.) And, appellant has failed to demonstrate unfairness or undue criticism of defense counsel. (§ 1044; *People v. Fudge*, *supra*, 7 Cal.4th at p. 1108 [trial court entitled to "exercis[e] its reasonable control of the trial"].)

Appellant also complains of judicial bias arising out of another exchange during the prosecutor's direct examination of Valdivia:

"[THE PROSECUTOR]: When you saw [Negrete] and this other bald man in the mosh pit, were there other people in the mosh pit at the same time?

"[VALDIVIA]: Yes, there was.

"[THE PROSECUTOR]: And were all the people that were in the mosh pit sort of slamming into each other? Banging each other around? Pushing each other around? That kind of activity?

"[DEFENSE COUNSEL]: Objection. Leading, Your Honor.

"[THE COURT]: Overruled.

"[VALDIVIA]: Yes.

"[THE PROSECUTOR]: How much time from—how much time passed from the time you observed that typical mosh pit activity until you observed—

"[DEFENSE COUNSEL]: I'm going to object. Counsel's testifying now.

"[THE COURT]: Do you have a legal objection?

"[DEFENSE COUNSEL]: Yes. Leading and repeating what she says.

"[THE COURT]: You'll need to look at the Evidence Code, tell me where repeating what someone says is a legal objection.

"[DEFENSE COUNSEL]: It's leading. That's what it's called.

"[THE COURT]: All right. Sustained."

According to appellant, "[j]urors were likely to read the court's sarcasm and repeated challenges to counsel to make a 'legal objection' as exasperation at counsel's supposed inability to handle her responsibilities or her unwillingness to comply with the relevant law." But, the trial court's comment that "repeating" is not a legal objection does not amount to judicial bias. (*Liteky v. United States*, *supra*, 510 U.S. at pp. 555–556 ["judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge" and "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display" do not establish bias or impartiality].) Appellant has not shown unfairness or undue criticism of defense counsel. (§ 1044; *People v. Fudge*, *supra*, 7 Cal.4th at p. 1108.)

Similarly, appellant argues that the trial court displayed judicial bias when, after the prosecutor interrupted defense counsel's question with the objection that her question assumed facts not in evidence, the trial court replied: "Well, it probably will, but we'll let her get the whole question out." Shortly thereafter, the prosecutor's objection was overruled.

According to appellant, the use of the possessive plural "*we'll*" suggested to the jury that the trial court was allied with the prosecutor in ensuring that the rules of evidence were observed. The trial court's use of the term "we'll" appears to have been nothing more than a generic remark. And, in light of the fact that the trial court overruled the prosecutor's objection, we disagree.

Appellant next complains that, in response to the prosecutor's objection that defense counsel was "leading" the witness, the trial court stated: "Sustained. You can ask what she observed, but you should not suggest an answer. That is what a leading question is. When a question suggests the answer, then it's leading. If it gives the witness choices, it's not leading." Appellant contends that "the [trial] court's supposed attempts to educate counsel on the applicable law were likely to convey to the jury the court's doubts about counsel's competence."

Again, we disagree. The trial court rightly sustained the prosecutor's objection and properly advised defense counsel how to ask a question without leading the witness. (Evid. Code, § 765, subd. (a) [trial court has duty to "exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth"].) And, appellant fails to cite to any legal authority that prohibits a trial court from explaining how to question a witness effectively.

For the same reasons, we see no bias in the following exchange challenged by appellant: While defense counsel was questioning Rodriguera, the trial court asked defense counsel if she "would you like to have [Rodriguera] give the description of who they are or would [she] like to ask a leading and argumentative question?" The trial court did not simply ask a rhetorical question or make an angry accusation against counsel. Rather, it was properly exercising its authority to """"participate in the examination of witnesses."""" (*People v. Hawkins* (1995) 10 Cal.4th 920, 948, abrogated on other grounds in *People v. Lasko* (2000) 23 Cal.4th 101, 110; see also § 1044; *People v. Fudge*, *supra*, 7 Cal.4th at p. 1108 .)

Appellant then directs us to the following exchange:

"[DEFENSE COUNSEL]: [Rodriguera], you talked to my investigator, and I just, if I may approach, want you to look back at that line that counsel had you read.

"[THE PROSECUTOR]: Objection. No question pending.

"[THE COURT]: Overruled. You can show her the document. [¶] Show it to her. Ask her to read it, and then ask the question.

"[DEFENSE COUNSEL]: I'm going to. She had—

"[THE COURT]: Then stop talking. What you do is you want to interject previews and comments along the way that's not appropriate and now you make faces."

The trial court then sent the jury into the jury room and spoke to counsel outside the jury's presence:

"[THE COURT]: [Defense counsel], when I made my comments to you, you turned and faced the jury and dropped your face down as if to pantomime shock and discouragement that you were being treated unfairly. This is unprofessional conduct and I will not tolerate it. It's an attempt to communicate to the jury inappropriately. [¶] So you will confine yourself to the lectern with your questions from this point forward. You will refer to the witnesses by her last name which is what court protocol requires. Unless she is a child she should not be referred to by her first name. [¶] I tolerated that because I assumed you hadn't learned her last name or didn't know how to say it, but this is a good time for you to learn it and follow the court rules and examine the witness correctly and you will work from the [lectern]. [¶] And if I see you mugging at the jury again, I will point it out in front of the jury and point out to them how inappropriate it is.

"[DEFENSE COUNSEL]: I would like to state that I did not make a face. I object to the court saying that. [¶] Your Honor, this whole trial I do not know where this is [coming] from, you have been admonishing me when I have been acting completely professional. I have not been acting in any way out of bounds. [¶] I was trying to explain to you that [Rodriguera] was shown a highlighted portion, and that's what I was trying to do. And you prevented me from doing that and I was just saying let me show her the highlighted portion that she was shown because it specifically went to that line. That's all it was. [¶] I do not know what you're referring to. I deny that I looked at the jury as if pantomiming. I do not know what that means.

"[THE COURT]: You're denying that you turned away from the witnesses and towards the jury?

"[DEFENSE COUNSEL]: I totally deny that.

"[THE COURT]: Well, I can tell you it did happen, and we have an officer at the table who saw it happen and your opponent saw it happen and the witness is right here and she saw it happen and your client saw it happen. I won't ask him about it. [¶] Just to avoid further problems, you will work from the lectern from this point forward.

"[DEFENSE COUNSEL]: Why is this rule just [applied] to me? What? Why?

"[THE COURT]: Because of your inappropriate conduct at the witness stand and mugging in front of the jury and disrespect for the court.

"[DEFENSE COUNSEL]: I do not know what mugging in front of the jury means.

"[THE COURT]: It's what you just did.

"[DEFENSE COUNSEL]: What is it? I do not understand.

"[THE COURT]: All right. I'm not going to chase you in circles while you say you do not know what it is.

"[DEFENSE COUNSEL]: I do not.

"[THE COURT]: Look it up overnight and if you still don't understand tomorrow, I will get out a dictionary and read it to you so you understand what mugging in front of a jury is. But it's a little bit like you're doing now where you open your hands and make a[n] expressive face as if, 'oh my, goodness, I do not know what's going on.' [¶] You try to communicate something with your face instead of just using words and evidence as you should."

As for the comments made in front of the jury, there is no indication that the "harsh rebuke of counsel" signaled anything to the jurors. The trial court did not commit misconduct simply by expressing irritation with counsel or admonishing counsel in the jury's presence. (*People v. Carpenter*, *supra*, 15 Cal.4th at p. 353.) As for the comments made after the jury was dismissed from the courtroom, there was no prejudice as the jurors were not present. (*People v. Guerra*, *supra*, 37 Cal.4th at p. 1112.) In any event, we agree with the People that this exchange demonstrates that defense counsel was "extremely contentious and disrespectful, and her behavior was highly inappropriate."

c. alleged bias that affected the disposition of issues

Appellant argues that the trial court's hostility towards counsel outside the presence of the jury affected the disposition of issues raised by counsel.

For example, prior to cross-examining Valdivia, defense counsel advised the trial court that she wanted to use the surveillance video in her cross-examination. But, she was unable to open the video with her computer. Certainly the trial court was frustrated with defense counsel's unpreparedness and excuses for being unprepared. But she ultimately was able to introduce and play the surveillance video during Medina's cross-examination. And, at defense counsel's request, Valdivia was available for recall. Thus, there was no evidence of judicial bias that affected the disposition of this issue.

Appellant also objects to the trial court's denial of defense counsel's request for a copy of the jury instructions that were going to be read to the jury. The trial court's denial of appellant's request does not demonstrate judicial bias. Appellant cites to no legal authority requiring the trial court to provide defense counsel with a copy of the jury instructions, particularly when the trial court explained how the instructions were going to be read and defense counsel had her own copy prior to the final jury instruction conference.

C. Harmless Error

Even if the trial court's comments were improper and conveyed bias, which we conclude did not, the judgment is still not subject to reversal. Appellant has not shown that there is a reasonable probability that, absent these comments, he would have received a more favorable result. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Harris* (2005) 37 Cal.4th 310, 350–351.)

The trial court instructed the jury not to be influenced by bias or sympathy (CALCRIM No. 200), not to speculate as to why the court made specific rulings (CALCRIM No. 222), and to determine on its own the credibility and believability of witnesses (CALCRIM No. 226). The jurors are presumed to have followed these instructions. (*People v. Harris*, *supra*, 37 Cal.4th at p. 350.) Moreover, the evidence against appellant was overwhelming, including appellant's admission and testimony from

numerous eyewitnesses, including appellant's brother. Under these circumstances, it is not reasonably probable that the jury would have reached a different result had the trial court not made the challenged statements.

People v. Sturm (2006) 37 Cal.4th 1218 is readily distinguishable. In that case, the trial court behaved inappropriately towards two key expert witnesses for the defense and suggested that the defense attorney was being sneaky. (*Id*. at p. 1240.) Such improper conduct did not occur here.

II. *Trial Court's Sua Sponte Duty to Instruct on Corpus Delicti Rule*

Appellant contends that the trial court had a sua sponte duty to instruct the jury on the corpus delicti rule pursuant to CALCRIM No. 359 because his out-of-court statements admitting that he had stabbed Negrete out of anger were part of the prosecution's evidence.[3]

Whenever the defendant's extrajudicial statements form part of the prosecution's evidence, a trial court has a sua sponte duty to instruct on the corpus delicti rule and inform the jury that a finding of guilty cannot be based on the statements alone. (*People v. Najera* (2008) 43 Cal.4th 1132, 1137; *People v. Alvarez* (2002) 27 Cal.4th 1161, 1170, 1181.) But, any error in omitting a corpus delicti instruction is harmless if it is not reasonably probable that the jury would have reached a result more favorable to the defendant had the instruction been given. (*People v. Alvarez, supra,* at p. 1181.)

As set forth above, the prosecution did not rely solely on appellant's extrajudicial statements to prove his guilt. There was eyewitness testimony, including that of Negrete, who testified that appellant took a fighting stance, put his fists up, threw a punch, which

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3 The trial court did instruct the jury pursuant to CALCRIM No. 358 as follows: "You have heard evidence that the defendant made oral or written statements before the trial. You must decide whether the defendant made any of these statements, in whole or in part. If you decide that the defendant made such statements, consider the statements, along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statements. [¶] Consider with caution any statement made by the defendant tending to show his guilt unless the statement was written or otherwise recorded."

Negrete dodged, causing the men to fall to the ground fighting. When he stood up from fighting appellant, Negrete stated that he felt pain, lifted his shirt, and saw "blood squirting out" from where appellant had stabbed him. Melchor also testified that she saw Negrete bleeding after his fight with appellant and that she saw the stab wounds to Negrete's back and chest. Valdivia and Aaron both testified that after the fight, they saw blood on one of appellant's arms. Aaron also testified that appellant regularly carried a red-handled knife and that after the night of the stabbing he never saw it again. There was also surveillance video, presented by the defense, showing appellant's role in the altercation. It follows that the trial court did not err in failing to instruct on the corpus delicti rule.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ