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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DAWOOD SARAEI, Defendant and Appellant.	B277123 (Los Angeles County Super. Ct. No. SA091799)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Kathryn A. Solorzano, Judge. Affirmed.

Michelle T. Livecchi-Raufi, 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, Steven E. Mercer, Acting Supervising Deputy Attorney General, and Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant Dawood Saraei guilty of making criminal threats to one victim and, in a separate incident, committing battery on a second victim, a custodial officer. On appeal, he contends the trial court abused its discretion when it denied his pretrial motion to sever the two charges against him and try them separately. We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 5, 2015, Samuel Lewis and his wife were at the Ocean Park branch of the Santa Monica library on Main Street (the library). Lewis walked across the street for a snack. When he returned minutes later, he did not see his wife in the library and thought she might have walked home.

Lewis walked down the library steps again. Defendant exited the library after Lewis, stood at the top of the stairs, and gestured to Lewis to come over. Lewis walked toward defendant, thinking he may need help. As Lewis walked toward him, defendant "glared" at Lewis and said, "'If I see you again, I'm going to [expletive] kill you.'" A stunned Lewis, who had never seen defendant before, asked, "'What are you talking about?'" Defendant repeated, "'If I see you again, I'm going to [expletive] kill [you].'" Defendant then pulled a knife out of his pocket and said, "'You've been following me around all day, and I'm going to [expletive] kill you.'" Defendant opened the knife and gestured towards Lewis.

Lewis, fearing for his safety, yelled at defendant, hoping to attract the attention of the library's security guard. As Lewis backed away from defendant, his wife walked out of the library towards him. Still fearful, Lewis intercepted her and pulled her

away. When she asked what was wrong, Lewis told her defendant "just pulled a [expletive] knife on me."

Defendant walked back into the library. Lewis, concerned other library visitors—particularly children—might be in jeopardy, returned to the library to report the incident. The librarian dialed 911 and Lewis spoke with the operator.[1] As Lewis was on the phone at the front desk, he could see defendant seated about 20 to 25 feet away, facing him.

Five Santa Monica police officers arrived within minutes. Officer Lawrence Kayondo approached defendant and asked if he had any weapons. Defendant responded he had a Swiss Army knife in his backpack. Officer Esteban Hernandez seized the backpack and removed a Swiss Army knife with a 2.5 inch blade.

The officers escorted defendant outside and conducted a patdown search. Defendant told Officer Kayondo a man had been following him, so he approached the man and asked why. Defendant admitted he had a knife in his pocket, but denied ever producing the knife during that conversation.[2]

Officer Kayondo placed defendant under arrest and walked him to a patrol car. Defendant became agitated and aggressive. He demanded Lewis also be arrested and shouted obscenities at the officers. As Officer Kayondo opened the back door of the patrol car to place defendant in the back seat, defendant spit a few inches from the officer's foot. Officer Kayondo drove defendant to the Santa Monica Police Department jail.

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[1] A tape recording of Lewis's 911 call was played for the jury.

[2] Lewis, however, subsequently identified the knife as the one defendant displayed to threaten him.

At the jail, as Officer Kayondo started to open the patrol car door, defendant kicked the door open. The officer advised defendant not to kick the door or spit again, to which defendant responded, "'What are you going to do [expletive]?'"

In the prebooking area of the jail, defendant was not cooperative when officers asked him to take off his shoes. The officers escorted defendant to the booking cell where Jailer Cornejo attempted to remove his handcuffs. Defendant was ahead of Jailer Cornejo and suddenly "spun to his right," faced the jailer, and spit in his face. Officer Kayondo assisted Jailer Cornejo in subduing defendant, and then the jailer went to clean his face.

Testimony was also elicited concerning another jail incident after defendant spit on Jailer Cornejo. Officers and jail personnel entered defendant's cell after he refused to step down from the partial wall separating the toilet from the rest of the cell. Another obscenity-laden tirade and physical altercation ensued, and a police officer struck defendant, apparently fracturing several ribs. Defendant was taken to the hospital.[3]

The Los Angeles County District Attorney charged defendant in a two-count information with criminal threats (Pen. Code, § 422, subd. (a)[4] (count 1)) and battery on a custodial officer (§ 243.1 (count 2)). Before trial, defense counsel unsuccessfully challenged the decision to charge defendant with both offenses in

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[3] It appeared defense counsel initially hoped to establish the blow to defendant's midsection came before defendant spit on Jailer Cornejo, but that was not the testimony.

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

one information and subsequently filed a formal motion to sever the charges and try them separately. The motion was denied.

The jury convicted defendant on both counts. The trial court sentenced defendant to a low term of 16 months for the criminal threats conviction and a consecutive one-third of the middle term sentence of eight months for battery on a custodial officer, for an aggregate sentence of 24 months.

DISCUSSION

Section 954 authorizes the severance of separate counts for separate trials "in the interests of justice and for good cause shown . . . ."[5] The trial court's decision to deny a defendant's motion for severance is reviewed for abuse of discretion. (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220 (*Alcala*).)

We are guided by a wealth of Supreme Court authority on this subject. We begin with "the record before the trial court when it made its ruling." (*Alcala, supra,* 43 Cal.4th at p. 1220.) Our threshold consideration is "the cross-admissibility of the

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[5] As noted, defendant initially challenged the joinder of the two counts alleged against him, arguing they were not "of the same class." He has not reprised this issue on appeal. We agree joinder was proper. (See, e.g., *People v. Ochoa* (1998) 19 Cal.4th 353, 409 ["the law prefers" consolidation of charges]; *People v. Lucky* (1988) 45 Cal.3d 259, 276 ["offenses which are committed at different times and places against different victims are nevertheless 'connected together in their commission' when they are, as here, linked by a "'common element of substantial importance"'"]; *People v. Scott* (1944) 24 Cal.2d 774, 778-779 ["the joinder of different offenses [is permitted by statute] even though they do not relate to the same transaction or event, if there is a common element of substantial importance in their commission'"].)

evidence in hypothetical separate trials." (*People v. Soper* (2009) 45 Cal.4th 759, 774 (*Soper*).)

Here, after defense counsel challenged joinder of the two counts, the trial judge engaged in a colloquy with the attorneys concerning severance before a formal severance motion was filed. The trial judge tentatively suggested evidence of the two offenses would be cross-admissible and not prejudicial. Citing *Alcala, supra,* 43 Cal.4th 1205, she added that courts take a "broad [view] as to what is connected together in the commission."

When defendant presented the motion to sever soon thereafter, the trial judge reiterated her previously announced tentative and mentioned defendant's "state of mind" in the commission of both offenses. She agreed with defense counsel, however, that she was not analyzing the motion under Evidence Code section 1101, subdivision (b):[6] "I'm not evaluating that from a [section] 1101[, subdivision] (b) standpoint at all. It's part of the operative facts in terms of the behavior or attitude of [defendant] client on the date in question." The trial court then denied the motion to sever the two counts.

Although the trial judge expressly disavowed any reliance on Evidence Code section 1101, subdivision (b), her comments suggest she focused on defendant's state of mind in committing both offenses. In other words, she concluded evidence of the two offenses would be cross-admissible at trial because defendant's

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[6] Evidence Code section 1101, subdivision (b) provides, "Nothing in this section prohibits the admission of evidence that a person committed a crime . . . or other act when relevant to prove some fact (such as motive, opportunity, intent, . . . absence of mistake or accident . . . .) other than his . . . disposition to commit such act."

conduct tended to prove intent and the absence of mistake. We agree.

Appellate counsel argues trial counsel's central theme was that defendant lacked the requisite intent to commit either offense. But defendant launched an unprovoked verbal and knife threat on victim Lewis, was belligerent with the arresting officer, and exhibited more unprovoked and belligerent behavior toward Jailer Cornejo, all within a very short time span. Defendant's conduct was inconsistent with the theory he lacked intent. Moreover, in arguing for acquittal as to count 2, defendant "voluntarily put his state of mind in issue. . . . *And evidence of other crimes is admissible if it tends logically, naturally, and by reasonable inference to establish any fact material to the people or overcome any matter sought to be proved by the defense.*" (*People v. Moody* (1976) 59 Cal.App.3d 357, 361, italics added.)

The trial court did not abuse its discretion in denying severance when the motion was made. And, as the facts developed at trial, severance was not required as a matter of law, as count 1 tended to refute the defense to count 2.

The general rule is that cross-admissibility "alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges." (*Soper, supra,* 45 Cal.4th at p. 775.) Defendant nevertheless maintains both counts were inflammatory and their combination compounded the likelihood of dual convictions. He adds there was no reason for jurors to know defendant was in custody because of the criminal threats charge. According to defendant, it would have been better if the jury were left to wonder whether defendant "was being arrested following a minor infraction, or . . . for murder."

Here, both counts arose from fairly brief incidents with the common thread being defendant's aggressive and profane behavior. Although the criminal threats count involved the brandishing of a pocket knife and threats to kill, the confrontation was over quickly. The victim walked away unscathed and returned to the library, where he knew defendant had gone, to report the crime. Similarly, the spitting incident in the jail, while unpleasant, was brief and did not involve any physical harm to the jailer. None of the facts in either count was reasonably likely to so inflame jurors that they would have convicted defendant of the other count without independently finding guilt beyond a reasonable doubt.

DISPOSITION

The judgment of conviction is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.