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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DANIEL ANTHONY GARCIA, Defendant and Appellant.	B269470 (Los Angeles County Super. Ct. No. KA109326)

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

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General,

Michael C. Keller and Steven E. Mercer, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Daniel Anthony Garcia (Garcia) of assault likely to produce great bodily injury and found true a special allegation that Garcia did in fact personally inflict great bodily injury on the victim, Edward Gomringer (Gomringer). Specifically, the jury found that shortly after a tavern had closed, Garcia assaulted Gomringer and left him unconscious in the middle of the street.

On appeal, Garcia argues that the trial court abused its discretion when it excluded evidence regarding Gomringer's purported character (Evid. Code, § 1103[1])—evidence that one month before the charged offense, Gomringer was involved in an allegedly similar incident outside another nearby bar. We do not agree. The proffered character evidence was inadmissible because its probative value, if any, was outweighed by its likely prejudicial effects. Accordingly, we affirm the judgment.

BACKGROUND

I. The assault

On March 21, 2015, between 7:00 p.m. and 8:00 p.m., Gomringer went to O'Donovan's, a pub in downtown Pomona, for dinner. While at O'Donovan's, Gomringer consumed no more than two beers.

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

After dinner, Gomringer went across the street to another drinking establishment, Fox's Bar, to attend a going-away party for one of the bar's managers. That evening, another patron of the Fox Bar, Henry Angel (Angel), observed Gomringer and noted that he was "pretty drunk" and, at times, "loud" and "obnoxious." Although Angel saw Gomringer "getting loud and out of control" and "yelling obnoxious things" to "random people," he did not see Gomringer get into a confrontation with any of the bar's other customers.

Later that evening, about 2:40 a.m., while looking out a window in Fox's Bar, Angel saw Gomringer standing in the crosswalk with two other men, one of whom was Garcia. To Angel, it appeared that the men were talking. Then, "out of [no] where," Angel saw Garcia punch Gomringer in the head, causing Gomringer to "collapse" in the middle of the street. After witnessing the attack, Angel rushed out of the bar and stood near Gomringer so that he did not get run over by a passing car.

Concurrently, a resident of the area, Matthew Quiggle (Quiggle), was at his fourth floor bedroom window smoking a cigarette. As Quiggle watched Garcia, Gomringer and a third man cross the street, he saw Garcia with his left arm around Gomringer's shoulder, as though he was Gomringer's "buddy." After what appeared to be an "exchange of words" between Garcia and Gomringer, Quiggle saw Garcia punch Gomringer in the back of the head. Quiggle did not see Gomringer make any threatening actions before Garcia

punched him. After Gomringer "dropped to the floor," Quiggle did not see him move. As Gomringer lay motionless on the ground, Garcia punched him twice more with a "closed fist." Then Garcia "took off" down an alley.

When the police arrived, they found Gomringer face down in the street, unconscious and bleeding. The police requested medical assistance and subsequently a helicopter airlifted Gomringer to a hospital where he received treatment for multiple broken nasal bones, swelling above his right eye and abrasions to his face, nose and forehead.

Shortly after the police arrived at the scene, Garcia emerged from the alley. After Quiggle, Angel, and other witnesses identified Garcia to the police as Gomringer's assailant, the police detained Garcia. Garcia told the police officer detailed to transport him to the city jail that the incident with Gomringer occurred because Gomringer followed him out of the bar and said, "Do you have a problem?"

II. The trial

On June 4, 2015, the People filed an information charging Garcia with one count of assault likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and specially alleging that Garcia did in fact personally inflict great bodily injury on Gomringer (Pen. Code, § 12022.7, subd. (a)). On August 13, 2015, Garcia pleaded not guilty.[2]

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[2] On that same day, Garcia rejected the People's settlement offer of three years of formal probation with 180 days of jail time and a strike or three years of formal

On November 17, 2015, during jury selection, the People moved to exclude, inter alia, "[a]ny evidence or mention of an incident involving Edward Gomringer, on February 1, 2015" (the prior incident) The People argued that any such evidence was either irrelevant or unduly prejudicial.

After learning that that defense intended to produce evidence of the prior incident through the testimony of Christopher Lewis (Lewis), a Pomona police officer who had responded to both the prior incident and to the charged incident, the trial court held a section 402 hearing.

On November 19, 2015, after Gomringer and another witness had already testified the previous day, Lewis testified outside the presence of the jury as to the prior incident. On February 1, 2015, about 1:00 a.m., while on patrol, Lewis noticed a "small disturbance"—Gomringer and another man were in front of O'Donovan's pub arguing with a group of men and women. Lewis focused his attention on Gomringer because "he seemed to be the one who didn't want to disengage." Lewis observed Gomringer to be "very confrontational, making some threats," while the other people appeared to be trying to "diffuse the situation." When it became clear that Gomringer was drunk and not going to leave, Lewis detained him. Although Gomringer was both intoxicated and argumentative, Lewis "never observed any

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probation with one year in county jail and no strike. On the eve of trial, Garcia rejected a similar settlement offer.

acts of violence" by Gomringer. In fact, there was not even the threat of violence—Lewis testified that none of the other people involved were preparing to attack Gomringer or defend themselves from an attack by him. Lewis testified further that Gomringer, despite being intoxicated and argumentative, complied with all of his requests.

The trial court granted the motion to exclude evidence of the prior incident, finding that because Gomringer had "not engage[d] in an act of violence," the prior incident was not admissible to show that he had a violent character, or that he acted in conformity with that character on the night of the charged assault. The trial court further ruled that even if the prior incident was admissible character evidence, the court would disallow it under section 352. As the court explained, "the probative value of that evidence is nominal because we don't have the entire surrounding circumstances but only a part of the disagreement between [Gomringer] and that other group." Consequently, "the probative value is outweighed by the prejudicial effect and the lack of information regarding what precipitated that could tend to mislead the jury."

At trial, Garcia testified in his own defense. According to Garcia, before the crosswalk incident, he and Gomringer had an earlier run-in that evening. At one point during the evening, as Garcia was entering the bar's small restroom, Gomringer was walking out; as a result, they "rubbed shoulders." In an "aggressive" tone, Gomringer asked, "What's your problem?" Garcia calmly replied, "Look, dude.

I'm just here to have a good time. It's nothing big." Later, after Garcia returned to the bar area he noticed Gomringer pacing nearby and at one point Gomringer yelled, "Fuck you" in the general direction of Garcia, who did not respond.

As to the crosswalk incident, Garcia testified that Gomringer walked up to him, leaned against his shoulder and said, "What the fuck are you going to do?" Gomringer "squared up" to Garcia and then swung at him, but missed. Garcia countered by hitting Gomringer once and then walked away. Garcia testified that he believed his actions were "justified" because they were taken in self-defense: "I was in fear for my life for that situation because—being this guy's way bigger than me." On cross-examination, Garcia admitted that he never told any of the police officers—either at the scene or at the jail—that Gomringer had thrown the first punch.

On November 23, 2015, after deliberating for less than two hours, the jury returned a guilty verdict on the lone count and found true the special allegation.

Garcia moved for a new trial on the ground that the trial court erred by refusing to admit the proffered evidence regarding the prior incident. The trial court denied the motion and placed Garcia on four years of formal probation. As one of the conditions of probation, the trial court ordered Garcia to serve one year in county jail.

Garcia timely appealed.

DISCUSSION

Garcia challenges the trial court's decision to exclude the proffered character evidence on two grounds. First, Garcia contends that the trial court abused its discretion because the proffered evidence was admissible as character evidence and that its probative value outweighed any danger of undue consumption of time, undue prejudice or confusion. Second, Garcia argues that the trial court's purported abuse of discretion "violated [his] federal constitutional right to present a defense and, thus, his due process right to a fair trial." We are unpersuaded by either argument.

I. The trial court did not abuse its discretion by excluding the proffered character evidence

A. GUIDING PRINCIPLES AND THE STANDARD OF REVIEW

Evidence of a person's character is generally inadmissible to prove that person acted in conformity with his or her character, or trait of character, on a given occasion. (§ 1101, subd. (a).) Section 1103, subdivision (a)(1) states an exception to this general rule: "In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is: [¶] (1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character." (§ 1103, subd. (a)(1).)

In other words, a defendant being prosecuted for homicide or an assaultive offense, and who asserts self-defense, may introduce evidence of specific violent acts by the victim on a third person to show that the victim has a violent character and was the aggressor in the current offense. (*People v. Wright* (1985) 39 Cal.3d 576, 587 (*Wright*); *People v. Shoemaker* (1982) 135 Cal.App.3d 442, 446–447 (*Shoemaker*); *People v. Rowland* (1968) 262 Cal.App.2d 790, 797 (*Rowland*).)

The admission of evidence pursuant to section 1103, however, is not without bounds and is subject to the dictates of section 352. (*Wright*, *supra*, 39 Cal.3d at p. 587; *Shoemaker*, *supra*, 135 Cal.App.3d at p. 448.) A trial court may exclude otherwise admissible evidence if admitting the evidence would confuse the issues at trial, unduly consume time, or be more prejudicial than probative. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 827–828.) " 'The "prejudice" referred to in . . . section 352 applies to evidence which uniquely tends to evoke an emotional bias against . . . [one party] as an individual and which has very little effect on the issues.' " (*Wright*, *supra*, 39 Cal.3d at p. 585.)

As our Supreme Court has explained: "Section 352 permits the trial judge to strike a careful balance between the probative value of the evidence and the danger of prejudice, confusion and undue time consumption. That section requires that the danger of these evils substantially outweigh the probative value of the evidence. This balance is particularly delicate and critical where what is at stake is

a criminal defendant's liberty." (*People v. Lavergne* (1971) 4 Cal.3d 735, 744; *People v. Holford* (2012) 203 Cal.App.4th 155, 168.) Accordingly, "section 352 must bow to the due process right of a defendant to a fair trial and his right to present all relevant evidence of *significant* probative value to his defense. [Citations.] Of course, the proffered evidence must have *more than slight relevancy* to the issues presented." (*People v. Burrell–Hart* (1987) 192 Cal.App.3d 593, 599 (*Burrell–Hart*), italics added.)

As *Burrell-Hart*, *supra*, 192 Cal.App.3d 593, illustrates, the proffered character evidence must be directly relevant to the facts of the charged crime. In that case, the defense wanted to prove that the complaining witness had a history of making false allegations of rape or attempted rape. The complaining witness alleged that sometime after she had a disagreement with defendant at the bar where they both worked, she gave defendant a ride to his apartment where he beat her and raped her. (*Id.* at p. 596.) The accusation against the defendant was strikingly similar to an accusation the witness had made to a coworker about another man just a few days or weeks before. (*Ibid.*) Given the similarity between the two allegations, the appellate court considered the evidence "highly relevant": "[t]he evidence . . . could support a finding that [the victim], having previously made a false accusation of . . . threatened sexual abuse against a man with whom she had fought would under similar circumstances herein have a motive to testify falsely

against defendant with whom she admittedly had a prior disagreement or fight." (*Id.* at pp. 597–598, 600.)

We review the trial court's evidentiary ruling under section 352 using the deferential abuse of discretion standard. (*Wright*, *supra*, 39 Cal.3d at p. 588; *People v. Pollock* (2004) 32 Cal.4th 1153, 1171.) "A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)

B. THE TRIAL COURT PROPERLY EXCLUDED THE PROFFERED CHARACTER EVIDENCE

The trial court properly excluded the proffered character evidence because it lacked the requisite relevancy and, as a result, its probative value, if any, was outweighed by the risk of undue prejudice or confusion of the issues.

A victim's violent or aggressive character may be relevant in two ways. First, it may prove that the victim acted in conformity with that character in a confrontation with the defendant, whether or not the defendant was previously aware of this character. (*Rowland*, *supra*, 262 Cal.App.2d at p. 797; *Shoemaker*, *supra*, 135 Cal.App.3d at pp. 446–447.) Second, regardless of how the victim acted during their confrontation, the defendant's awareness of a victim's violent tendencies is probative of the reasonableness of the defendant's fear of the victim. (*People v. Davis* (1965)

63 Cal.2d 648, 656–657.) Because there was no evidence that Garcia was aware of the prior incident, the proffered character evidence was potentially relevant only to show that Gomringer was a person prone to physical violence.

Here, the proffered character evidence did not show Gomringer to be a violent person or otherwise suggest that in the incident with Garcia he was the aggressor. In fact, the proffered evidence did not establish any violence whatsoever by Gomringer. The proffered evidence showed only that on one prior occasion an intoxicated Gomringer had become argumentative outside a bar. The proffered evidence showed that even though Gomringer was both intoxicated and argumentative, he was not violent; at the section 402 hearing, the police officer testified that he "never observed any acts of violence" by Gomringer. Indeed, there was not even the imminent prospect of violence—the police officer testified that none of the other people involved in what the officer described as a "small disturbance" were preparing to attack Gomringer or defend themselves from an attack by him. Moreover, the police officer testified further that Gomringer, despite being intoxicated and argumentative, nonetheless complied with all of the officer's requests. Finally, the proffered evidence was incomplete in a number of critical respects; among other things, the evidence did not establish why Gomringer became argumentative on that prior occasion—that is, whether he provoked the argument or was instead provoked by others. In short, unlike the situation in *Burrell-Hart*, *supra*, 192

Cal.App.3d 593, the proffered character evidence differed significantly from the facts at issue, and thus could not support a finding by the jury that the prior incident was prologue for the charged incident.

Contrary to Garcia's argument that the proffered evidence would have given the jurors a "full picture" such that they could determine whether he was justified in punching Gomringer, the proffered character evidence would have had the exact opposite effect—it would have given the jury a very incomplete picture of Gomringer's character and his alleged propensity toward physical violence. The relevancy and probative value of the proffered character evidence proved, at best, slight and as admission of that incomplete evidence would have tended to evoke an emotional bias against Gomringer (and, by extension, the People's case) thereby misleading the jury, the trial court acted, not in an arbitrary, capricious or patently absurd manner, but in a well-reasoned and eminently reasonable manner by excluding such evidence.[3] There was, in other words, no abuse of discretion.

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[3] Due to its incompleteness, admission of the proffered evidence would have also unduly prolonged the trial. In response to the character evidence, the People, in all likelihood, would have been compelled to recall Gomringer and have him (and potentially other witnesses) testify about the prior incident, thus creating a mini-trial on the prior incident within the trial.

II. The trial court's exclusion of the proffered character evidence did not prevent Garcia from presenting a defense

"The United States Constitution guarantees criminal defendants a meaningful opportunity to present a defense." (*People v. Cash* (2002) 28 Cal.4th 703, 727 (*Cash*).) More specifically, a defendant has a due process right to "present all relevant evidence of *significant* probative value to his or her defense." (*People v. Cunningham* (2001) 25 Cal.4th 926, 998–999 (*Cunningham*).) However, the defendant "has no constitutional right 'to present all relevant evidence in his favor, no matter how limited in probative value such evidence will be so as to preclude the trial court from using . . . section 352.' " (*Shoemaker*, *supra*, 135 Cal.App.3d at p. 450.) "Although the *complete* exclusion of evidence intended to establish an accused's defense may impair his or her right to due process of law, the exclusion of defense evidence on a minor or subsidiary point does not interfere with that constitutional right." (*Cunningham*, at p. 999, italics added.) Thus, a trial court's "application of ordinary rules of evidence—including the rule stated in . . . section 352—generally does not infringe upon this right [to present a defense]." (*People v. Cornwell* (2005) 37 Cal.4th 50, 82, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) "Accordingly, such a ruling, if erroneous, is 'an error of law merely,' which is governed by the standard of review announced in *People v. Watson* (1956) 46 Cal.2d 818, 836." (*Cunningham*, at p. 999.) Under the

People v. Watson standard, we may reverse for evidentiary error only if a different result was reasonably probable. (*Watson*, at p. 836; *Burrell-Hart*, *supra*, 192 Cal.App.3d at p. 600.)

Here, the exclusion of the proffered evidence on the prior incident did not prevent Garcia from presenting other evidence from which the jury could have concluded that he acted in self-defense. Garcia testified in detail at trial to the circumstances giving rise to his punching Gomringer, including evidence that Gomringer had acted with some belligerence toward him in the restroom at the Fox Bar and thereafter. In addition to his testimony, Garcia supported his claim of self-defense through the testimony of other witnesses, such as Angel (another Fox Bar patron on the night of the charged incident), who testified about Gomringer's intoxication and his loud and obnoxious conduct, as well as the emergency room doctor, who testified that Gomringer's blood alcohol level measured at 0.30 percent. In short, the trial court's exclusion of the proffered evidence of the prior incident did not prevent Garcia from presenting a defense. (*Cash*, *supra*, 28 Cal.4th at pp. 727–728.) Instead, Garcia "merely was precluded from proving it with . . . character evidence that was not particularly probative on the question." (*People v. Jones* (1998) 17 Cal.4th 279, 305.)

Critically, a different result in this case was not reasonably probable because Garcia's self-defense theory was undermined by numerous factors, including his own

testimony. At trial, Garcia conceded that he could have been "a little more than buzzed" when he left Fox's Bar. He admitted further that he never told police officers that Gomringer had "squared up" on him and threw the first punch. In addition, Garcia admitted that after knocking Gomringer unconscious, he left him face-down in the street even though there was "heavy traffic that night" and that he (Garcia) "wanted to get out of the way of traffic." Such admissions are in direct conflict with a theory of self-defense—if Garcia was truly a righteous victim of an unprovoked attack by Gomringer, then he presumably would not have just walked away and left Gomringer unconscious in the middle of a busy street; nor would he have failed to mention to the police that Gomringer was the aggressor. Rather, he would have stayed and rendered assistance to Gomringer and would have told the police immediately—not waited until trial—that he had been forced to defend himself.

In addition to Garcia's suspect and self-interested testimony, the jury had the benefit of hearing the testimony of two disinterested eyewitness, both of whom stated that they saw Garcia attack Gomringer in what appeared to be a wholly unprovoked manner. Given the short time that they spent deliberating, it is evident that the jurors found the testimony of those two disinterested witnesses to be both more trustworthy and more compelling than that offered by Garcia. Consequently, if there was an abuse of discretion, it was a harmless error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.