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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DEANGELO STALLWORTH, Defendant and Appellant.	B283525 (Los Angeles County Super. Ct. No. NA105921)

APPEAL from judgment of the Superior Court of Los Angeles County, James D. Otto Jr., Judge. Affirmed as modified.

Mark S. Devore, 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, Susan Sullivan Pithey, Supervising Deputy Attorney General, Nikhil Cooper, Deputy Attorney General, for Plaintiff and Respondent.

The jury found defendant and appellant Deangelo Stallworth guilty of domestic violence with a prior conviction in violation of Penal Code section 273.5, subdivision (f)(1) (count 2). Stallworth admitted that he suffered two prior strikes (Pen. Code, §§ 667, subd. (d) & 1170.12, subd. (b)), and two prior convictions within the meaning of Penal Code section 667, subdivision (a)(1), and served two prior prison terms within the meaning of Penal Code section 667.5, subd. (b).[1]

Stallworth moved to have one of his strikes stricken under *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497. The trial court granted the motion and sentenced Stallworth to a term of 10 years in state prison comprised of the upper term of 5 years in count 2 doubled pursuant to the three strikes law.

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[1] Count 3 was dismissed on the prosecution's motion. (Pen. Code, § 136.1, subd. (b)(1) [misdemeanor harassing or dissuading a witness].) The jury found Stallworth not guilty in counts 1 and 4. (Pen. Code, §§ 422 [criminal threats] and 236 [false imprisonment by violence], respectively.)

Stallworth's sole contention on appeal is that the trial court abused its discretion by admitting evidence of prior incidents of domestic violence under Evidence Code section 352,[2] because the evidence was more prejudicial than probative. The Attorney General contests Stallworth's challenge and additionally asserts that he was incorrectly awarded one additional day of actual custody credit.

We conclude that the trial court acted within its discretion in admitting the evidence of Stallworth's prior acts of domestic violence, but agree with the Attorney General that the court miscalculated Stallworth's actual custody credit. We order the abstract of judgment modified to reflect that Stallworth is entitled to 230 days of actual custody credit, for a total of 460 days presentence custody credit. We affirm the judgment as modified.

FACTS

Prosecution

Prior Acts of Domestic Violence

Melanie M.

Stallworth and Melanie M. dated for approximately two years and have a young daughter. Melanie M. paid for

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[2] All future statutory references are to the Evidence Code unless otherwise indicated.

most of her daughter's expenses. The couple frequently argued about Stallworth not contributing financially.

On November 9, 2014, Stallworth texted Melanie M. and asked her to give him $10. They began arguing over text messages and the fight escalated. Stallworth texted that he was going to kill Melanie M. Later that night, Stallworth came to her house unannounced and asked to speak to her outside. She agreed, and the two began screaming profanities at each other. Stallworth called Melanie M. a "stupid bitch." Melanie M. walked away but Stallworth chased her. He pushed her up against a wrought iron gate, pulled her to the ground by her hair, shoved her against a S.U.V., pinned her to the ground, and grabbed her arms hard and shook her. Melanie M. tried to fight him off unsuccessfully. A neighbor, Carolyn Rodgers, yelled for Stallworth to leave Melanie M. alone. The two continued to scream at each other until Melanie M.'s mother came outside and Stallworth left. Melanie M. called 911 and officers responded.

Melanie M.'s back was scratched and scraped where Stallworth had pushed her up against the wrought iron gate. Her tricep was scraped and red where Stallworth had grabbed her arms and shaken her. Melanie M. secured a protective order against Stallworth.

Long Beach Police Department Detective Gary Lawson interviewed Stallworth in custody. The detective testified that Stallworth said he and Melanie M. had texted "some crazy shit" back and forth during their argument.

Stallworth admitted to arguing with Melanie M., but denied that he physically injured her. He said Melanie M. got in his face. He raised his hands with his palms up and Melanie M. walked into them. He did not know how Melanie M. got her injuries, but he said he saw her fall down. Stallworth had a scratch on his neck, but no other visible injuries.

Ivory V.

In the afternoon on July 21, 2015, Signal Hill Police Department Officer Raul Ramirez and his partner responded to a 911 call. The caller stated that a black man was dragging a woman by her hair near a 7-Eleven store. When the officers arrived, they encountered Stallworth leaning up against a car talking to Ivory V., who was in the driver's seat. Ivory V. looked worried and fearful. The couple were the only people in the area who matched the 911 caller's description.

Stallworth and Ivory V. told officers everything was fine. Ivory V.'s demeanor changed when they separated her from Stallworth—she crouched, spoke softly, and looked over nervously at him. Stallworth yelled "stupid ass bitch," and "fucking bitch" at Ivory V. Ivory V.'s forearm was freshly bruised, an injury consistent with someone strongly grabbing her by the arm. Stallworth admitted they argued, but denied that he physically harmed her. He did not claim that he was injured. Stallworth attributed Ivory V.'s behavior to pregnancy and hormones. He was arrested.

The Charged Offense

The victim, Michelle M., testified at two preliminary hearings and at trial. Her testimony became more favorable to Stallworth as the proceedings progressed.

Michelle M. was in a relationship with Stallworth prior to his arrest. They had been dating for approximately four months when Stallworth was arrested on November 10, 2016, and had lived together for about two months.

Approximately two weeks before his arrest, Stallworth hit Michelle M. on the arm with a Bluetooth speaker and bruised her.

On October 30, 2016, Stallworth and Michelle M. argued. Stallworth called Michelle M. on the phone and threatened her: "Yeah, bitch, I saw you drive up. I'm gonna fuck you up. Fuck you."[3] Michelle M. recorded the call. After Stallworth threatened her, Michelle M. was so afraid of him that she slept outside in her car rather than in her apartment. At the first preliminary hearing, Michelle M. testified that the voice in the recording was Stallworth's, but in later testimony she said that she was not sure whose voice was on the recording.

On November 8, 2016, Stallworth grabbed Michelle M. by the neck and pushed her up against a wall.

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[3] A recording of the phone call was played for the jury.

Stallworth and Michelle M. argued in the evening on November 9, 2016. Stallworth pushed Michelle M. to the ground. She escaped and ran into the bedroom, but he caught up with her, pushed her against the wall and then shoved her onto the bed. Michelle M. tried to call the police repeatedly, but Stallworth knocked the phone out of her hand and took it from her. She tried to get out of the apartment, but Stallworth blocked her. Stallworth slapped her. The fight ended soon afterward and they went to bed.

The next morning Michelle M. noticed red marks on her face and became upset. She drove to work, but instead of getting out of the car she drove back to a parking lot near her house and called the police. Against the police's advice, she went home and waited for Stallworth to come back. When he returned, she called the police to alert them that Stallworth was there.

Long Beach Police Department Officer Jeffrey Garcia and his partner responded to the call. When they arrived Michelle M. showed Officer Garcia where she and Stallworth were when he hit her in the face. She described the other two times Stallworth attacked her. After Stallworth was arrested, Michelle M. requested a restraining order.

Long Beach Police Department Detective Kevin Ong spoke with Stallworth after he was taken into custody. Stallworth admitted he and Michelle M. had a relationship and that they had argued, but denied that any of the fights turned physical. Stallworth told the detective he tended to meet "controllable women" who dislike his independence,

like Ivory V. and Melanie M. Stallworth had no visible injuries. He claimed the red marks on Michelle M.'s face were the result of bad skin and narcotics use.

When Detective Ong called Michelle M., she told him Stallworth slapped her across the cheek. In his experience, victims of domestic violence sometimes change their stories about what happened and otherwise minimize the events.

On November 24, 2016, Stallworth called his sister from jail. He asked his sister if she had talked to "her." He told his sister, "Yeah, just keeping telling her don't come to no -- none -- none of the courts, no hearings, no nothing."

On December 14, 2016, Stallworth called his sister from jail again. She said Michelle M. had been subpoenaed. Stallworth replied, "If she plead the fifth tomorrow because tomorrow is preliminary hearing. She just plead the fifth. I just need you to tell her that; just plead the fifth."

After Stallworth's arrest, Michelle M. spoke with or text messaged with Stallworth's sister between 5 and 50 times. Stallworth called Michelle M. from jail and told her he loved her.

Michelle M. smiled at Stallworth during the second preliminary hearing. At trial, she explained that she smiled because they had "always had a connection." Michelle M. testified that she was also at fault for Stallworth slapping her, "[b]ecause [she had] a temper too."

Defense

The defense called Carolyn Rodgers, who testified regarding the November 9, 2014 incident between Stallworth and Melanie M. Rodgers was awoken by screaming and cursing and looked out of her window to see Melanie M. and Stallworth walking down the street. Melanie M. told Stallworth, "Hit me. Just hit me, b-i-t-c-h, and you'll never, ever see your daughter again in your life." Rodgers told Stallworth not to put his hands on Melanie M. and saw Melanie M. tumble to the ground and Stallworth try to lift her back up.

DISCUSSION

Prior Acts of Domestic Violence

Stallworth concedes that evidence of his prior conduct against Melanie M. and Ivory V. was relevant under section 1109 because it involved domestic violence, but argues that the trial court erred in admitting the evidence under section 352. He specifically argues that presentation of the evidence consumed an excessive amount of time at trial, and that he was prejudiced because the jury was never informed that he was convicted for the prior conduct, which would motivate the jury to convict him in the instant case to punish him for that past conduct. We conclude that the trial court acted within its discretion in admitting the evidence.

Proceedings

Prior to trial, the prosecution filed a written motion seeking to admit evidence of Stallworth's prior conduct against Melanie M. and Ivory V. pursuant to sections 1101, subdivision (b), and 1109, subdivision (a). The prosecution argued that the evidence was highly probative because it showed that Stallworth had a history of domestic violence episodes accomplished through physical violence and threats against women with whom he had romantic relationships.

The defense opposed the motion. It argued that the admission of character evidence was a violation of Stallworth's state and federal constitutional rights to due process. The opposition conceded the evidence was relevant under section 1109, but argued that it was inadmissible under section 352 because it was more prejudicial than probative. The prior acts involved different women, different actions by Stallworth, and "conduct devolved from children/pregnancies common to the parties." Admission of the evidence would force Stallworth to defend against a "mini-trial," which would cause undue consumption of time, confuse the issues, and mislead the jury.

The trial court noted that both instances of domestic violence were recent and that although they involved different victims they were admissible under section 1109, subject to section 352 and the hearsay rules.

Stallworth's counsel argued, "[I]t's quite obvious, the prejudicial effect, when jurors hear that a person has been involved in domestic violence incidents or arrests or convictions with prior people and prior relationships, that they would jump to the conclusions of -- that is the harmful character conclusion, of course, he did it this time. [¶] So the prejudicial effect is absolutely extremely high and the probative value in this case is very, very limited." He asserted that presentation of the evidence would require undue consumption of time and would force Stallworth to defend himself against crimes that were not charged in the instant case. The evidence was not particularly probative because he had impregnated the women involved in those incidents, and thus the nature of those relationships was different from the relationship he had with Michelle M.

The prosecutor argued that Stallworth would suffer some prejudice, but only because of the high probative value of the evidence. The legislature had made the determination that in these cases evidence of prior crimes was so probative that it created an exception for its admission. Presentation of the evidence would not require an undue consumption of time. The People only planned to call a handful of witnesses.

The defense responded that the legislature required the court to weigh the probative value of the evidence against the potential prejudice under section 352—it did not intend blanket admission of qualifying prior acts. Defending against the prior acts evidence would require significant time, because Stallworth would have to cross-examine

witnesses thoroughly and call other witnesses to rebut the incidents.

The court agreed that a section 352 analysis was required. It found that in both cases the probative value of the incidents outweighed any prejudice to Stallworth, and that although some time would be required to present evidence of the two incidents, it was not unreasonable given the small number of witnesses the prosecution intended to call. The court ruled the evidence admissible under section 352.[4]

Law

Evidence of a person's character or predisposition to act in a certain way is generally inadmissible to prove that the person acted in conformance with that character trait on a given occasion. (§ 1101, subd. (a); *People v. Villatoro* (2012) 54 Cal.4th 1152, 1159.) "'Such evidence "is [deemed] objectionable, not because it has no appreciable probative value, *but because it has too much*." . . . [Citations.]' [Citations.]" (*People v. Falsetta* (1999) 21 Cal.4th 903, 915 (*Falsetta*).) In domestic violence cases, section 1109 permits proof of a defendant's character in the form of evidence of a defendant's commission "of other domestic violence . . . if the evidence is not inadmissible pursuant to Section 352." (§ 1109, subd. (a)(1).)

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[4] The trial court did not rule on the admissibility of the evidence under section 1101.

Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." We review relevancy and section 352 rulings for abuse of discretion. (*People v. Branch* (2001) 91 Cal.App.4th 274, 282; see also *People v. Brown* (2000) 77 Cal.App.4th 1324, 1337.)

"'"'"The principal factor affecting the probative value of an uncharged act is its similarity to the charged offense."'" ([*People v.*] *Johnson*[(2010)] 185 Cal.App.4th [520,] 531 [(*Johnson*)], quoting *People v. Hollie* (2010) 180 Cal.App.4th 1262, 1274.) 'Thus, the statute reflects the legislative judgment that in domestic violence cases, as in sex crimes, similar prior offenses are "uniquely probative" of guilt in a later accusation. [Citation.] Indeed, proponents of the bill that became section 1109 argued for admissibility of such evidence because of the "typically repetitive nature" of domestic violence.' (*Johnson*, *supra*, 185 Cal.App.4th at p. 532.)" (*People v. Kerley* (2018) 23 Cal.App.5th 513, 536.)

"Other factors affecting the probative value include the extent to which the source of the evidence is independent of the charged offense, and the amount of time between uncharged acts and the charged offense. The factors affecting the prejudicial effect of uncharged acts include whether the uncharged acts resulted in criminal convictions and whether the evidence of uncharged acts is stronger or

more inflammatory than the evidence of the charged offenses." (*People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

"""[T]he prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. "[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is 'prejudicial.' The 'prejudice' referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues."""" ([*People v.*] *Holford*[(2017)] 203 Cal.App.4th [155], 167, italics omitted.)" (*People v. Fruits* (2016) 247 Cal.App.4th 188, 205.)

Analysis

The evidence of Stallworth's prior acts of domestic violence was highly probative to the issue of whether he committed domestic violence in this case. In each of the prior instances, Stallworth engaged in an altercation with a romantic partner that escalated to physical violence and threats. Stallworth behaved similarly in all three cases, terrorizing the women with his physical strength by shoving, pushing, or pulling them. He referred to all of the victims as "bitches" during the confrontations. All three women

suffered bruising to their arms. Stallworth admitted to arguing with all three women but denied that he physically harmed any of them. (See *Johnson*, *supra*, 185 Cal.App.4th at p. 533 [affirming trial court's admission of two prior incidents of domestic violence under sections 1109 and 352. "The common factors in all three crimes strongly suggest defendant has a problem with anger management, specifically with regard to female intimate partners, and specifically when he feels rejected or challenged by such a partner."].)

The probative value of the evidence of Stallworth's acts against Melanie M. and Ivory V. was increased by the fact that the evidence derived from two separate incidents. With crimes that are of a repetitive nature, as this one, cumulative evidence is particularly probative. (See *People v. Cabrera* (2007) 152 Cal.App.4th 695, 706 [the probative value of two prior acts of domestic violence against two different women was "principally in its cumulative nature," and "far outweighed any potential prejudice"].) The evidence showed a pattern of violence that the Legislature has recognized as typical of domestic violence crimes.

Stallworth does not contest that the prior acts, which took place within two years of the charged offense, were recent. Evidence of the prior acts also originated from different sources—other victims and officers were involved. These factors weigh in favor of admission. Stallworth does not argue that the prior acts were more inflammatory than the charged offense. In our assessment they were roughly

equivalent in nature and severity, which also favors admission.

Presentation of the evidence did not require an undue consumption of time. Neither of the incidents required an excessive number of witnesses to present. With respect to the domestic violence against Ivory V., the prosecution called an officer to authenticate the anonymous 911 call describing the violence that occurred, and an officer who responded to the scene. With respect to the domestic violence against Melanie M., the prosecution called Melanie M. herself and two detectives who responded to the scene. Presenting evidence of the two incidents combined required roughly the same amount of time as presenting evidence of Stallworth's abuse of Michelle M. The defense called only one witness in rebuttal, a neighbor who was a percipient witness to the incident involving Melanie M., and her testimony was brief. In light of the highly probative nature of evidence that Stallworth engaged in repeated acts of domestic violence, it was not unreasonable for the trial court to conclude that the testimony of a few witnesses would not be unduly time consuming.

The jury was not likely mislead or confused. The parties' arguments made clear that the prior acts evidence could only be used if it found that they occurred by a preponderance of the evidence. The jury was properly instructed on this point and instructed that the prior acts evidence was admitted only for the limited purpose of determining whether Stallworth was disposed or inclined to

commit domestic violence. (CALCRIM Nos. 303, 852.) It was also admonished that with respect to the prior acts, the People were required to prove that Stallworth did not act in self-defense. (CALCRIM No. 3470.) We presume the jury understood and followed these instructions. (*People v. Morales* (2001) 25 Cal.4th 34, 47.)

Finally, we are not persuaded by Stallworth's argument that he was prejudiced because the jury was not aware that he had been convicted of the prior crimes, and would therefore be tempted to punish him for his prior acts. Although the lack of evidence of conviction may have had some prejudicial effect, this was more than balanced by the opportunity for a defense that the ambiguity afforded Stallworth. Defense counsel argued that none of the incidents involved actual domestic violence—in every instance officers jumped to conclusions and arrested Stallworth, who was unfortunate enough to be involved in a series of complicated relationships. The existence of two convictions for domestic violence would have been difficult to overcome given this theory of innocence. Absent proof of convictions, the jury was more likely to find that the incidents were merely heated verbal confrontations and conclude that Stallworth's proffered defense was supported.

In light of the weight of the factors supporting admission, it was reasonable for the trial court to conclude the evidence was more probative than prejudicial. The trial court did not abuse its discretion by admitting the prior acts evidence.

Actual Custody Credits

At sentencing, the trial court awarded Stallworth 231 days of actual custody credit. However, Stallworth was arrested on November 10, 2016, and sentenced on June 27, 2017, which results in a total of 230 days actual custody. (*People v. Jacobs* (2013) 220 Cal.App.4th 67, 77–78 [defendants are entitled to one day of actual custody credit for each day spent in custody, including partial days].) "The failure to properly calculate . . . conduct credit is a jurisdictional error that can be corrected at any time." (*People v. Chilelli* (2014) 225 Cal.App.4th 581, 591 (*Chilelli*).) We order the abstract of judgment modified to reflect that Stallworth is entitled to a total of 230 days actual custody credits.[5]

[5] We note that the number of conduct credits awarded is unaffected by this error, because conduct credits are calculated at a rate of two credits per every two days in actual custody, and may not be rounded for single days in custody. (*Chilelli*, *supra*, 225 Cal.App.4th at p. 588.)

DISPOSITION

The judgment is modified to reflect 230 days of actual custody credit and 230 days of conduct credit for a total presentence custody credit of 460 days. The judgment is affirmed in all other respects. Upon remittitur issuance, the superior court clerk is to prepare an amended abstract of judgment and deliver a copy to the Department of Corrections and Rehabilitation.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.