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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. TREAUNA TURNER, Defendant and Appellant.	B231352 (Los Angeles County Super. Ct. No. BA355456)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rand S. Rubin, Judge. Affirmed.

Chris R. Redburn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Chung L. Mar and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Treauna Turner was convicted of the murder of Yolanda Kennard (Pen. Code,[1] § 187). She appeals her conviction on multiple grounds. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

During a public altercation in 2009 Turner stabbed Yolanda Kennard,[2] who subsequently died of her wounds. Turner was charged with Yolanda's murder, and Turner's mother Pamela Johnson was charged with assaulting Yolanda's mother Denise Kennard with a deadly weapon (§ 245, subd. (a)(1).)

A. Prosecution Case

At trial, witnesses for the prosecution told of a conflict between Turner and Denise over a man, Frederick Reddix. Reddix had been dating Denise for nine years but had a sexual relationship with Turner on and off for the past four or five years. Denise and Turner had known each other for many years and were friendly until Reddix began seeing Turner. At that time, Turner began to act angry with Denise. As of April 2009 Reddix and Denise had broken off their relationship and Reddix and Turner were in a relationship.

On April 12, 2009, Reddix was with Turner when he received a call on his mobile phone from a female caller. Turner became angry and broke Reddix's phone in half, then asked him to leave. Reddix refused to leave and Turner called the police. Reddix was escorted away by the police. Later that day, he returned to Turner's home. He was again asked to leave; refused to depart; and the police again removed him from Turner's apartment.

On April 14, 2009, Turner expressed to Ivan Williams her hostility toward the Kennard family: she said "[S]he didn't like no bitches, she didn't want them bitches at

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1 Unless otherwise indicated, all further statutory references are to the Penal Code.

2 Multiple members of the Kennard family were involved in the incident or testified at trial. For clarity, we refer to them by their first names.

her house, [and] for [Ivan] to never let them come over there." Turner also said that she was going to "kill them bitches." She said the Kennards were the devil. Williams warned the Kennards of what Turner had said.

Later that day, a fight broke out between the families. Yolanda's sister Britney Kennard and her friend Christina Pye were engaged in an altercation with Turner and her daughter, Breauna Clay. Prosecution witnesses described Clay as initiating the violence at Turner's urging. Neither Britney nor Pye had threatened or attacked Turner or Clay prior to the fight.

The following morning, April 15, 2009, Turner came to Denise's home while Denise, her daughters Teresa and Britney, and Reddix were there. According to Denise, Turner was "outside the house on the sidewalk on our street in front of my building, hollering my name, ['']Denise, come outside, bitch, come outside right now. I'm out here by myself, bring your ass outside.['']" Turner was upset and very angry. Reddix went outside to speak with Turner. She called out, "Denise, bitch, come outside, that's okay, I'm going to kill everybody in your family one by one. . . ." Teresa recounted that Turner sounded mad and yelled loudly that she would kill everyone in the house. Reddix testified that Turner left after shouting that she would kill all of them, one by one.

Jason Sykes testified that he saw Turner on the morning of April 15, 2009. She was very angry, and said, "'These motherfuckers got me fucked up. I'm going to come back and kill somebody.'"

Later that day, while Denise, Yolanda and Teresa were at home, their neighbor Williams called out to Yolanda that his niece had been attacked or was in a fight on a bus. Williams headed down the street, followed by Yolanda, who was friends with the niece. Teresa followed immediately, and the group grew to include Denise, Reddix and at least seven other people, some of whom arrived by car. The group went to the bus stop but did not find Williams's niece. They did, however, encounter Turner, Johnson, and two other women.

Yolanda and her party stopped when they saw Turner and her companions. Turner, who used a wheelchair, approached the group, rolling herself rather than being

pushed. As Turner and her companions approached, they were making gestures that suggested, "Come on." When Turner was approximately three feet away from Teresa, Yolanda asked Turner, "Treauna, where is your daughter?" Yolanda was standing still. She did not attack, threaten, hit, or make a hostile motion toward Turner. Turner said nothing and immediately lunged at Yolanda, stabbing her with a knife.

Yolanda told her mother, "That bitch stabbed me," and then collapsed. Turner turned her wheelchair and began to wheel away. Reddix stopped Turner and pushed her from the wheelchair. The knife fell from the wheelchair. Turner scooted her body toward the fallen knife. She beat Reddix to the knife; he took the wheelchair and hit her with it twice. People surrounded Turner so she could not leave.

A knife recovered from the scene had Yolanda's blood on the blade and Turner's DNA on the handle.

B. Defense Case

Turner admitted stabbing Yolanda but claimed to have acted in self-defense. The defense presented evidence that she had reason to fear Yolanda and others in her group and that Yolanda was the aggressor prior to the stabbing.

Turner testified that she and Reddix were intermittently intimate. She knew he was in a relationship with Denise but he had said in 2009 that he was not with Denise anymore. On April 12, Reddix came to Turner's home smelling of liquor. They argued, and Reddix called Turner a bitch. She told him he was drunk and "trippin'" and he had to leave. Reddix refused to leave. As Turner started to move herself from a couch to her wheelchair, Reddix grabbed the wheelchair from her. Turner slipped and landed on her hand, hurting it. She began to call 911 but Reddix pulled the cord from the wall, preventing her from calling. Turner eventually called the police and the police escorted Reddix out.

Turner testified that Reddix returned to her home later that day and forced his way in. Reddix again refused to leave and was again removed by police. According to

Turner's daughter Breauna Clay, Reddix threatened them: "He stated, 'I'm going to get you, Blood, I'm going to get you bitches.'"

The defense presented evidence that on April 10 Britney came to Turner's apartment when Turner and Reddix were there. Although Turner told Britney not to return, Britney came back on April 14 with Pye. Turner told Britney, "'Didn't I tell you not to come back to my house? Frederick Reddix do not live here.'" According to Turner, Britney responded, "'Bitch, you can't tell me where to come. This is my 'hood.'" Clay told Britney not to speak to her mother disrespectfully, and Britney attacked Clay. Turner and Pye became involved in the fight, Turner trying to end the conflict. The women were swearing and "saying all garbage" at each other. Turner was not injured; Clay had scratches and bruises on her face.

After the fight Turner was outside when two cars drove by. Denise was a passenger and was "hanging out" of the car, saying to Turner, "'You crippled bitch, he love me, don't love you, you crippled bitch.'" Other occupants of the car were calling Turner a "crippled bitch" as well, and they threatened Turner. Clay testified that Denise yelled, "'I'm going to get you, bitch.'" Turner feared the car would stop and its occupants would start a fight, so she went indoors. Britney was in the car with Denise, and Reddix was a passenger in the other vehicle.

The defense presented the encounter between Turner and Denise on the morning of the stabbing as an effort by Turner to de-escalate the tensions between the families and to make Denise aware of her daughter Britney's conduct. Turner testified that she went to Denise's house "to talk to her and, you know, let her know what's going on with her daughter coming to my house." Turner felt things were "getting too out of hand" with Britney coming over and calling her names. She testified, "I just wanted to go talk to her and see what's going on and tell her—tell her daughter to stop coming to my house. She done jumped on my daughter. My daughter is a child. Two grown women came over and jumped on my daughter, and it's just getting out of hand." Turner described her emotional state that morning: "I was pissed, no lie. I was pissed. I slept on it, woke up, thought about it, and I wasn't—I wasn't mad no more, but I wanted—I wanted to tell

Denise what's going on with her daughter and what's going on, why is she coming to my house, are you sending her? I just wanted to know. I needed to talk to her because this was her child."

As she approached Denise's home, she saw Reddix outside. He went inside the apartment when he saw her. Turner stopped at the front gate and began yelling Denise's name. Denise responded, "'What, that cripple bitch outside?'" Turner said, "'Denise, come outside, come outside, I want to talk to you.'" Reddix left the apartment. Turner called Denise's name again, and Denise refused to come outside. Turner told Denise to "'come to the motherfucking . . . top of the stairs and talk to me.'" Denise was "cussing and hollering." Turner told Denise that she was there to talk with her about Britney: "I need to talk to you about your motherfucking daughter coming to my house. Tell your daughter stop coming to my motherfucking house. She jumped on my daughter yesterday, her and her homegirl." Denise told Turner, "'Fuck you, bitch. I ain't got shit to say to you.'" Turner left. She did not threaten Denise or any member of her family.

Both Turner and Latonya Hicks, one of the people with Turner at the time of the confrontation, testified about the stabbing later that day. Hicks testified that she, Turner, Johnson, and a family friend were walking to the store. She saw a group of people as they walked. Her attention was drawn to the group because of "[t]he colors, the yelling, people." She heard a woman yell, "'There go those bitches.'" There were a lot of people in the group and they approached, walking quickly. Hicks heard people say, "'F' them bitches up,'" and "'Knock her out of her wheelchair.'"

Hicks testified that one person in the approaching group drew her attention, a person she described as "[p]igtails, baggy clothes, dark, a little taller than me, about my height." At first she thought it was a boy but then realized that it was a girl. The group approached Johnson first. A lady walked up to Johnson, called her a bitch and hit her, and they started fighting. Johnson had done nothing before being hit.

According to Hicks, the person she had first thought was male but then realized was female "ran in and out the crowd to [Turner]. When she first ran upon [Turner], I heard her saying, ['W]here are [*sic*] your daughter?['] And then she ran back in the

crowd. She came back to [Turner] and said, [‘]I’ll take that fate with your daughter.[’] Then she ran back in the crowd and came back up [to Turner], and that’s when I took off focus because to get Pamela Johnson from fighting with the lady because they’re fighting with the lady while this is happening.” The girl had been agitated and excited when she addressed Turner. Turner did not respond.

Hicks testified that she saw the girl grab Turner by her shirt and pull her from her wheelchair with the help of three others. Turner had not moved except to tip from her chair. Turner fell on her face on the ground. After Turner fell from her chair, the girl jumped up and ran. Hicks said that she stumbled and appeared to be injured. Hicks saw nothing in Turner’s hand.

Hicks tried to break up the fight and to help Turner back into her wheelchair. Turner kept reaching behind her, which confused Hicks, but then she turned and saw that two women and two men, one of whom was Reddix, were kicking and socking Johnson. Turner told Hicks not to leave Johnson. After Turner was back in her wheelchair, Reddix attempted to attack her. He threw a bottle and a brick at her.

Turner testified that on the afternoon of the incident, she was on the way to the store for milk. She took a knife with her when she left because, she said, “It was [*sic*] been a lot of friction between me and Denise with Britney coming jumping on my daughter with her friend. It’s—it was just a lot of friction, so I knew that we was [*sic*] going to end up probably bumping into them because that was around the time everybody [was] hanging out after school hours.” Turner ordinarily carried a pocketknife and pepper spray. She took a kitchen knife because she could not find her pepper spray or pocketknife. She concealed the knife in her wheelchair.

As they crossed the street on the way to the store, Turner saw a lot of people standing at the corner. Turner continued to “roll and talk, laughing” with her mother and her sister. She heard Denise say, “‘There go them bitches, there go that cripple bitch right there.’” She had not felt threatened before Denise spoke, but Denise’s words caught Turner’s attention and she began to focus on the crowd. She saw Reddix and Britney in the group.

Turner and her companions stopped, and the crowd began to approach them. A lady wearing baggy clothes came forward in front of the group. The people were walking quickly. The person in front "was the one, you know, doing all the fighting motion, and she was coming faster, walking, like going back and forth and jumping up and, you know, doing all this." Turner did not know her, but she later learned it was Yolanda.

Turner testified that Yolanda "just came to us like walking and she doing all of this, and we stopped. And my mom on the side of us, she approached my mom first, like she got in my mom's face doing with her fist balled up and asking my mama, '[W]here you all motherfucking daughter at? I want that fate with that bitch. Where your daughter at?'" Turner said that Johnson just looked at Yolanda, and then the woman turned to Turner and "got in my face." Yolanda asked, "'Where y['a]ll motherfucking daughter at?'" and "'What up with you, bitch, fucking with my man?'" Her fists were balled up and in Turner's face, and she was moving them in a circular motion. Yolanda took off her shirt and threw it. Turner testified that "when she took off her shirt, I was like, I know you going to put the jump on me and my motherfucking mama."

Yolanda got angrier when Turner and Johnson said nothing. Turner kept her hand on her knife because she was scared. Turner was frightened by the way Yolanda came toward them, how she was in their faces talking loudly and with balled fists. Turner believed that she was going to try to hurt her. Yolanda grabbed at Turner's sweater or hoodie. Turner testified, "I had my knife right here, and I had my hand on it at all times when I seen the crowd coming toward. I had my hand on it at all times. And when she went to grab—when she went to grab at me (indicating), I stuck her and dropped it. And when I realized I stuck her, I dropped the knife (indicating)." Turner described Yolanda as being "in a rage" and explained, "When she grabbed me, I stuck her." Turner stabbed Yolanda because "she put her hands on me and she—she went to hurt me, and I was protecting myself." Turner denied intending to kill Yolanda.

Denise, who had moved behind Turner, grabbed the back of Turner's wheelchair and tipped Turner out. Turner curled into a fetal position because she was being kicked and hit. Reddix threw her wheelchair into the street. He did not hit her with it.

Turner lied to the police when she denied that she had a knife. She did not tell them that she acted in self-defense; she lied because she was scared. She knew she had knifed Yolanda and she did not want to admit it. She also lied to the police about her relationship with Reddix and her relationship with Denise and claimed not to know that someone had been injured. She lied because she did not trust them with her "real testimony on what happened even though I know that I was protecting myself to my best ability and I was attacked."

Turner testified that she was not Denise's rival over Reddix. Reddix had told her he was no longer with Denise and she had believed him "a little bit," but he lied so often that she did not know what to believe from him. She claimed she was not angry about his relationship with Denise. When asked whether it bothered her if he was sexually intimate with Denise, she responded that Reddix "ha[s] women all over Los Angeles. He loves—he don't love none of us."

Turner reported that she did not have friction with the Kennard family or dislike them as of April 12, but that she was dating Reddix and did not feel comfortable with members of the Kennard family coming to her door. She had not told Britney that she did not like her mother or her. She claimed that even after the fight among Clay, Britney, and Pye, she was not angry with Denise. When she went to speak with Denise, they spoke disrespectfully to each other, but she had nothing against Denise even then. She had nothing against Denise for calling her a crippled bitch. She maintained she had no anger at all toward Denise. Turner said she was angry at Britney about the fight, "but I didn't hold it against her." She admitted being angry at Reddix "for lying and kicking up a gang of mess."

The jury was instructed on first degree murder, second degree murder, voluntary manslaughter based on imperfect self-defense, and justifiable homicide in self-defense or defense of another. Turner was convicted of second degree murder.

DISCUSSION

I. Failure to Declare a Mistrial After the Spectator Outburst

During the first day of testimony, a male spectator who was believed to be Teresa's boyfriend interrupted Teresa's testimony, shouting, "Murderer. You're a murderer. You killed that baby girl. You killed that little girl. Murderer—." The court immediately ordered the jury into the jury room and called for a break. When court resumed outside the presence of the jury, the court immediately granted Turner's counsel's request that the spectator be excluded from the courtroom. The court advised the parties that it planned to discuss with the jury that individuals can become emotional during a trial, that this was not evidence, and that jurors need to concentrate on the evidence in the case. The court said, "And then we'll see if there's a problem with anyone. The only thing is that means that the people that don't want to be here can say[, 'Y]eah, I have a problem now.['] But I think we have to inquire." The prosecutor agreed, Johnson's counsel said, "Okay," and Turner's counsel said, "Thank you."

The court advised the jury, "Ladies and gentlemen, I just want to tell you, this is a homicide trial and it's a very emotional homicide trial for both sides, for the family of the lost member and the family that's in court charged with the crime. But whatever happens out there in the audience is not evidence in the case. . . . You need to decide the case based on the evidence. That's what you hear from the witnesses on the witness stand. That's the documents marked and admitted. Does anyone have a problem with that, because we had an outburst in the courtroom? And that person is gone and will not be back in this courtroom. But is there anyone that has a problem deciding this case based on the evidence, on what you hear from witnesses, on documents marked and admitted, because someone had an outburst in the courtroom?" Each juror and alternate juror denied that the outburst would interfere with judging the case based on the evidence. The trial resumed without objection. The following morning, Turner moved for a mistrial. The court found the motion untimely and denied it.

Turner argues that the court should have granted her mistrial motion. "A spectator's misconduct constitutes ground for mistrial only if the misconduct is of such a character as to prejudice or influence the jury. [Citation.] '[T]he mere fact that a spectator is guilty of some misconduct . . . does not mandate the declaration of a mistrial, . . . especially where the judge takes immediate action to avert possible juror prejudice." [Citation.] Moreover, the trial court has wide discretion in determining whether the spectator's conduct is prejudicial and the court's determination will not be overturned in the absence of an abuse of discretion. [Citations.]" (*People v. Miranda* (1987) 44 Cal.3d 57, 114 (*Miranda*), disapproved on another ground in *People v. Marshall* (1990) 50 Cal.3d 907, 933, fn. 4.)

Here, the trial court did not abuse its discretion in denying the motion for a mistrial. Although dramatic, the outburst was brief and the court's response prompt and thorough. The court acknowledged the emotional intensity of the trial but admonished the jurors to decide the case only on the evidence presented. The court then questioned each juror individually as to whether the outburst would interfere with the juror's ability to judge the case based on the evidence alone. Each juror denied that the outburst would prevent him or her from carrying out his or her duty to judge the case based on the evidence, and only then did the trial resume. As the brief misconduct was promptly remedied by admonition and polling, and there is no indication in the record that the outburst could have possibly affected the verdict, the court did not abuse its discretion in denying the motion for a mistrial. (*Miranda*, *supra*, 44 Cal.3d at p. 114.)

Turner argues, however, that this case is akin to *Parker v. Gladden* (1966) 385 U.S. 363, and that a mistrial was constitutionally required. In *Parker*, the bailiff told one member of a sequestered jury in the presence of other jurors that the defendant was guilty and that any error would be corrected by an appellate court. (*Id*. at pp. 363-364.) The Supreme Court found these comments prejudicial because the speaker was a court and state officer who carried great weight with the jury by virtue of his official role and his attendance upon the sequestered jury for eight days, as well as because one juror testified to being influenced by the bailiff's comments. (*Id.* at p. 365.) *Parker* is factually

inapposite. Here, the speaker was not a court officer in charge of the jury attempting to influence jurors outside the courtroom with private talk, but a stranger sitting in the court audience who was immediately removed from the courtroom after his interjection. Moreover, when the court inquired of the jurors here, each juror denied being influenced by the outburst. *Parker* does not govern this case.

II. Evidentiary Issues

A. Adoptive Admission

Teresa Kennard, Yolanda's sister, testified that after Turner had been arrested for stabbing Yolanda, she (Teresa) had said to Turner, "'Tree-Tree, what if that was your daughter?'" Teresa testified that in response, Turner said nothing, but "sat there with a smirk on her face." Over relevance and Evidence Code section 352 objections, the trial court admitted the evidence of this exchange.

The trial court erred when it analyzed the admissibility of Turner's smirking silence under the adoptive admission framework, but the evidence was nonetheless properly admitted. The adoptive admission exception to the hearsay rule did not apply here because none of this evidence was hearsay. Teresa's question to Turner how she would feel if that had been her daughter was not an out of court statement offered for its truth. (Evid. Code, § 1200.) Turner's silence or smirk cannot therefore be interpreted as manifesting the adoption of or belief in the truth of any statement, as required for an adoptive admission, because Teresa had not made any factual assertion or accusation. While no direct accusation is necessary in order for a silence to constitute an adoptive admission, Teresa's statement was not "a statement in the presence of a party to an action under circumstances that would normally call for a response if the statement were untrue." (*People v. Jennings* (2010) 50 Cal.4th 616, 661.) Nothing could be true or untrue about Teresa's statement, for the question about how Turner would feel if it was her daughter who had been stabbed was designed not to convey factual information or to

present any kind of scenario to which she would be expected to respond. Instead, it was an attempt to confront Turner with what it would be like to be the mother of the victim.

Turner's silent smirk in response to Teresa's question, however, was admissible as conduct probative of her state of mind shortly after the incident. Turner contends that "the only reason" the evidence was admitted was to make her "look bad" and that it was not probative of any disputed fact, but this is not the case. Turner's apparent self-satisfaction soon after the stabbing was relevant to the state of mind she had during the incident, which was the central issue in the case. Turner's smirk in response to the question of how she would feel if it had been her daughter who was injured or killed tends to suggest that she was not displeased with what had happened, suggesting that Turner acted with malice when she stabbed Yolanda.

B. Turner's Prior Convictions

Prior to Turner's testimony her counsel asked the trial court to sanitize Turner's 2007 convictions for grand theft person and resisting arrest with violence. The court ruled that both offenses could be used for impeachment because they reflected on Turner's honesty or veracity and they were so recent that Turner remained on probation; additionally, the conduct involved was not substantially similar to the conduct at issue in the present case. Turner contends that the court erred by not sanitizing her prior offenses; asserts that the jury should simply have been informed that she had been convicted of felonies of moral turpitude; and contends that the damage to her credibility from this evidence was compounded by the fact that the records of two prosecution witnesses were sanitized.

In exercising its discretion to determine whether prior criminal conduct evidence is more prejudicial than probative so as to be excluded under Evidence Code section 352, the trial court considers the factors identified by the California Supreme Court in *People v. Beagle* (1972) 6 Cal.3d 441, 453 to determine the admissibility of prior convictions: "(1) whether the prior conviction reflects adversely on an individual's honesty or veracity; (2) the nearness or remoteness in time of a prior conviction; (3)

whether the prior conviction is for the same or substantially similar conduct to the charged offense; and (4) what the effect will be if the defendant does not testify out of fear of being prejudiced because of the impeachment by prior convictions. [Citation.]" (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 925 (*Mendoza*).)

The record shows that the trial court performed the balancing of factors required by Evidence Code section 352. Applying these factors in our review, we conclude that the trial court did not abuse its discretion by refusing to sanitize Turner's prior convictions. Theft-related offenses and resisting a police officer are both offenses that reflect adversely on honesty. (*Mendoza, supra,* 78 Cal.App.4th at p. 925 [theft offenses]; *People v. Williams* (1999) 72 Cal.App.4th 1460, 1462-1465 [resisting a police officer].) The offenses were very recent. Grand theft person and resisting an officer are not similar to homicide, so the prior crimes did not involve similar conduct to the conduct alleged here. The final *Beagle* factor, the effect if the defendant does not testify, is not present here, for Turner did testify at trial. There was no abuse of discretion.

C. Exclusion of Evidence

Turner argues that the court excluded a great deal of probative evidence that ultimately left the jury with an incomplete understanding of what occurred and improperly enhanced prosecution witness credibility. She identifies nine separate types of evidence that she contends created these misimpressions. We consider each in turn, reviewing the trial court's evidentiary rulings for an abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 201.)

1. Exclusion of "Gang Overtones"

Prior to the commencement of testimony, the prosecutor advised the court that Turner, Reddix, and Williams were members of a criminal street gang called the Black P-Stones but that he did not believe the matter to be a gang case, and he asked the court to clarify what references to gangs could be made during trial.

Co-defendant Johnson's attorney believed gang membership to be relevant to "the fear that both the [defendants] fought" and why they would have been carrying knives at the time of the incident. She explained that although the dispute had generally been thought to concern two women fighting over a man, a gang-related statement had been made during the incident: they asserted that the phrase "crab bitch" had been called out and that this phrase referred to a member of the Crips gang (although the gang the three were alleged to have been affiliated with here was a Bloods-related gang). Also, gang membership was relevant because Turner and Johnson had called the police to have Reddix removed from their home, and "in certain areas you don't call the police on other people in those areas, especially when you know who they are. And once you do that, it puts you in a dangerous position." The court ruled that the evidence that Turner, Reddix, and Williams were affiliated with a gang would not be admitted "unless you [defense counsel] want to provide me at some point in time with some prior bad acts that would indicate that your client knew something about this victim that would cause her to arm herself."

During the defense case, Hicks testified that Yolanda's group had been speaking as the two groups neared each other. She heard the Kennard group say, "'F' them bitches up, knock her out of her wheelchair, so what, fuck that Blood'—they start talking gang stuff." The prosecutor objected and the court struck the testimony.

A police officer testified that the name of the neighborhood in which the events occurred and the participants resided was "The Jungle." Turner's counsel asked the significance of the name, and he responded, "It's what the gang within that neighborhood calls that area." The prosecutor objected and the court struck the answer. On redirect examination, the prosecutor elicited testimony that the name "The Jungle" originated in the 1950s or 1960s because the area had been planted with many bushes and palm trees and looked tropical.

Turner asserts that with these rulings the court excluded evidence that the Kennard group made gang threats immediately before the knifing and that the area in which the events occurred had a gang name, and she contends that those facts would have supported

Turner's reasonable belief that she was in danger as well as showing that it was reasonable for her to have left her home armed.

The trial court did not abuse its discretion. There was no evidence or offer of proof of inter-gang rivalry here—the evidence before the court was that Turner, Williams, and Reddix were all members of the same Bloods gang. At the start of trial defense counsel asserted that the Kennard group called Turner a "crab bitch," supposedly a reference to a Crips gang, but the evidence at trial was that they called her a "crippled bitch," which carried no gang associations. As the defense made no offer of proof sufficient to demonstrate that gang membership was relevant to the dispute, the trial court properly excluded the references to gangs during trial.

2. Exclusion of Denise's Police Interview

Prior to Denise taking the stand, the prosecutor advised the court of the existence of a poor-quality recording of Denise being interviewed by the police. The prosecutor told the court that there was no transcript and that he had been unable to understand much of it, but "apparently the defense attorneys heard during the interview her say something about her daughter in the 'hood, something about fighting or something about breaking someone's jaw." The prosecutor asked that the defense not be permitted to examine Denise about the "'hood" or about breaking jaws. The court observed that without a transcript, the interview could not be used in court, and asked what relevance the purported jaw-breaking would have if it occurred two or three years earlier. The court reminded the defense attorneys that trial was not the time for a fishing expedition, and asked, "You tell me, when has she busted jaws?" The prosecutor noted that Yolanda had no arrest record. The court ruled that under Evidence Code section 352 no questions could be asked about "busting jaws and [being] loved by the 'hood" unless a witness opened the door to them.

During the defense case, counsel sought to recall Denise to testify about her police interview. According to counsel, Denise had told the police that Yolanda "is in the 'hood and shit and is trying to do too much, she is trying to be a gangbanger, trying to do too

much, but she can hold her own, nobody's going to mess with her, and she has grown people scared of her." Defense counsel offered to omit the gang-related part of that statement but wanted the statement that grownups were scared of Yolanda to be presented to the jury. The court responded, "I don't think it matters. It's that this person is scared of her. Isn't that what matters?" Turner's attorney conceded that the court was correct, and the court continued, "If you want to call her and ask her how her daughter acted toward your client, that's fine. If you want to try and bring in that she broke someone's jaw and grownups—it doesn't matter what anyone thinks. It matters what your client thinks, and your client just testified and she didn't testify about any of that."

Defense counsel maintained that statement was relevant to self-defense, because it related to fear. The court countered that Yolanda's conduct was relevant only if Turner knew about it, and because Turner had testified she did not know Yolanda and had never seen her before, Yolanda's past acts were irrelevant. The court said, "What you need [Denise] for is you want to show [that Yolanda was] a bad person" and that the defense was attempting to put on evidence that "she's a bad person, very aggressive in the past." The court ruled excluded the evidence as irrelevant to the issue of self defense.

The trial court did not abuse its discretion. How Yolanda behaved in other instances was not relevant in the absence of any information that Turner was aware of it. Turner claimed not to know who Yolanda was, so Yolanda's behavior and reputation were not relevant to and could not have informed Turner's state of mind.

Turner argues that the evidence was admissible "to show that Yolanda Kennard approached appellant aggressively on the street on April 15, 2009," but the statements Turner sought to introduce did not pertain to Yolanda's conduct on April 15, 2009. She also contends that "Evidence that appellant knew or feared that the person who approached her was associated with someone who wished her harm, be it Reddix or Denise Kennard, was admissible whether or not there was evidence that she knew Yolanda Kennard was dangerous." but the excluded evidence did not tend to demonstrate that Turner "knew or feared that the person who approached her was associated with someone who wished her harm." Yolanda's presence leading a group of people that

Turner had reason to believe wished her ill tended to show Yolanda's association with them, but that evidence was admitted, and the excluded evidence did not pertain to association. Turner also claims that the evidence that Yolanda had broken an unidentified person's jaw at an unspecified time in the past was admissible as evidence of her motive, intent, and plan when she approached Turner, but the fact of one violent act at an undetermined date under unknown circumstances is not sufficient to permit a conclusion that she approached Turner with the intent to harm her. Turner has not demonstrated any abuse of discretion.

3. Exclusion of Williams's Testimony Concerning Yolanda's Shorts

Uncontroverted evidence at trial demonstrated that Yolanda was wearing baggy clothing at the time of the incident. Turner, however, complains that the court, while permitting her to testify to Yolanda's clothes, did not allow a prosecution witness to do so. Williams had testified that Yolanda had been wearing a t-shirt, basketball shorts, and basketball shoes on the day she was killed. Turner's counsel asked whether the shoes and the shorts were oversized or large, but the prosecutor's objection was sustained to both questions. Even assuming that the court erred in prohibiting this inquiry, Turner cannot establish any prejudice from the ruling because she was able to present evidence that Yolanda wore baggy clothes that sagged "real low."

4. Evidence of Denise's Criminal History

During cross-examination, Denise said that she did not know where Turner lived in April 2009 because she (Denise) had just been released from jail. On redirect examination, the prosecutor questioned Denise about the incarceration she had mentioned. Denise testified that she had been in county jail for drug possession. Johnson's counsel asked the court at sidebar for permission to ask further questions about Denise's criminal history, contending that the prosecutor had made it appear as though the only thing Denise ever had been imprisoned for was drug possession, when that was not accurate. The prosecutor explained that he was not asking broad questions about her

criminal history but only asking a specific question about the particular incarceration Denise had mentioned so as not to "leave it open." The court denied permission to inquire more broadly into Denise's criminal history, concluding that the prosecutor had merely cleared up an answer and had not opened up her criminal history overall.

The trial court did not abuse its discretion. One specific instance of incarceration was mentioned during Denise's testimony, and the prosecutor elicited the nature of the offense that had led to that incarceration. Denise never denied other incarcerations, and neither her testimony nor the prosecutor's questions left the impression that this drug offense was the only offense she had ever committed. Accordingly, no presentation of additional criminal history was required to clear up a misimpression. Moreover, at the time the issue was raised with the trial court, defense counsel failed to present evidence to the court to permit it to assess the admissibility of the four battery offenses it sought to introduce: defense counsel did not know whether Denise had been convicted. Turner's counsel acknowledged that Denise's record did not appear to contain any battery convictions. For each of these reasons, individually and together, Turner has not demonstrated any error here.

5. Evidence of Reddix's Criminal History

Prior to Reddix's testimony the court addressed his prior criminal history. Reddix had been convicted in 2010 of possessing PCP for sale (Health & Saf., § 11378.5); in 1997 of vehicle theft (Veh. Code, § 10851, subd. (a)); in 1995 of spousal abuse (§ 273.5); and in 1993 of robbery (§ 211). The court concluded that the 1993 and 1995 convictions were too remote but authorized impeachment with the 1997 and 2010 offenses "so the jury doesn't think that this is a person that's completely crime-free."

Johnson's counsel informed the court that Reddix also had four misdemeanor convictions for violating court orders (§ 166). The court asked for the dates of the convictions, and Johnson's counsel characterized them as recent. Johnson's counsel advised that these convictions arose from disobeying a gang injunction. The court said, "The problem is, on the gang injunction, I understand it's disobeying a court order, but

the purpose of the prior convictions are really two groups. One, dishonesty, like a vehicle theft, you know, and readiness to do evil, which is the Health and Safety Code [section] 11378.5 [conviction], possession for sale of PCP. Once served with a gang injunction, your conduct can be standing on the street corner."

Arrest reports on the violations of court orders revealed, according to counsel, that two of the disobedience incidents involved associating outdoors, while the third one was connected to a drug arrest and involved Reddix being in an area where he was not supposed to be. Johnson's counsel argued that these convictions "go[] toward his credibility, that he doesn't listen to court orders, he continues to violate, so I think it kind of shows how serious[ly] he's taking this."

The court observed that the conduct involved was "standing on the street that his girlfriend lives on." "[W]e also have to look at this in regard to [Evidence Code section] 352 and I think there is a risk of undue prejudice because it's going to infuse gangs into this case. Do you want the jury to know that this is an individual that's violating a gang injunction . . . ? The court found that the offenses did not evidence dishonesty or a readiness to do evil; that their probative value was minimal; and that the evidence would have prejudicial impact.

Turner contends the court erred by excluding the oldest two convictions because they were admissible and because they reflected Reddix's "lifetime of criminal behavior." She complains that the sanitization of Reddix's criminal history gave the jury a false view of Reddix's record and credibility.

We find no abuse of discretion. The trial court reasonably determined that the convictions dating from 1993 and 1997 were too remote in time to be particularly probative. The court concluded that the use of his two more recent felony offenses for impeachment would be sufficient to convey to the jury that Reddix was a convicted felon. As far as the misdemeanor convictions, the court reasonably concluded that Reddix's wrongful conduct was minimal and that the negligible probative value of those convictions was outweighed by the danger of undue prejudice from introducing gang-related matters into the trial. Turner has not established any abuse of discretion here.

6. Evidence of Reddix's Abuse of Turner

Turner testified that on April 12, Reddix had come to her home unannounced and smelling of liquor. They argued, with Reddix calling Turner a profane name and Turner telling him to leave. Reddix refused, and he grabbed Turner's wheelchair, causing her to slip and hurt her hand. She screamed at Reddix to leave and threatened to call the police. Turner tried to call 911 but Reddix prevented her from calling. Turner eventually reached the police and the police escorted Reddix from her home.

Turner's counsel attempted to elicit testimony pertaining to Reddix's violence, but the prosecutor's objections were sustained. When Turner's counsel asked whether Turner had ever had to call the police on Reddix, the court conferred with counsel at sidebar. The court authorized inquiry about the days leading up to the incident, but not broad questions about the entire history of the couple's relationship. Turner's counsel wanted to show that Reddix was violent when he had been drinking and that he was drunk that day, and so Turner had asked him to leave based upon how he treats her when he drinks.

The court responded, "If you want to get into, well, there have been 50 times in the past when he drinks—I don't want to go into 50 times. I think under [Evidence Code section] 352 it's too much, and if it's less than that, if it's just once or twice—I'm sure there's times he's been drunk that he doesn't get violent. I think under [Evidence Code section] 352 it's just too much. But the bottom line is, I think what you want is she asked him to leave and he wouldn't leave. She called the police, police got him out of there, and he came back."

Turner argues on appeal that evidence of "Reddix's treatment of appellant was highly relevant to her state of mind when she saw the crowd of people" before the incident and that Reddix was among them. "Evidence that he had abused her previously," she contends, "would heighten her fear and render her response to the crowd reasonable." Therefore, she concludes, the evidence was wrongly excluded. Turner's conclusory argument ignores the fact that the court did not exclude all evidence of

Reddix's conduct toward Turner. The court reasonably limited the testimony to events in the days leading up to the incident while prohibiting broad inquiries covering the entire history of the lengthy relationship. Turner was permitted to testify to the details of the April 12 incident, including that he pulled the wheelchair from her, causing her to fall and be hurt; pulled the phone from the wall; and was removed from her home twice by the police in a single day. To the extent that Reddix's treatment of Turner impacted her state of mind, Turner was not precluded from presenting that to the jury. Turner has not demonstrated any abuse of discretion here.

7. Evidence that Hicks Thought Someone Passed an Item to Yolanda

During her testimony, Hicks testified that when Yolanda walked back to the group, then approached Turner again, Yolanda's back and forth movements made her think that "somebody probably would have passed [her] something." The court struck this testimony because Hicks's state of mind was irrelevant, and what she thought "probably" occurred was pure speculation. Hicks was permitted to testify that when she saw Yolanda moving back and forth, it caused her fear or concern for her well-being.

Although Turner argues that Hicks's assertion that Yolanda had probably been handed something was not speculative "because it explained why Hicks was frightened by Yolanda Kennard's movements between the two groups," Hicks's assessment as to what had "probably" happened was speculation. While the court properly observed that Hicks's state of mind was not at issue at trial, to any extent that her state of mind could be considered relevant to Turner's state of mind, Turner was permitted to establish Hicks's state of mind by eliciting her testimony that Yolanda's back and forth movements made her fear for her life. There was no error here.

8. Evidence that Turner Said She Had Been Jumped

On redirect examination, Turner's counsel sought to introduce evidence that after the stabbing and once the police arrived and arrested her, Turner telephoned Clay and told her that she had been attacked or jumped and was being taken to jail. Counsel

claimed that this statement qualified as an exception to the hearsay rule under Evidence Code section 1240 as a spontaneous statement. The court found that the statement was not a spontaneous utterance under Evidence Code section 1240, stating, "I take it that she would protect her daughter in any way she can. I agree, I don't see it as a spontaneous statement, and I don't see a lot of relevance to it since it's afterwards."

Turner now argues that the court abused its discretion when it rejected her argument that the statement was admissible as a spontaneous utterance. The trial court did not abuse its discretion. Turner's offer of proof did not permit the conclusion that her statement to her daughter about the stabbing was made spontaneously while she was under the stress of the excitement caused by the stabbing. Turner made her statement well after the stabbing. After the stabbing, the California Highway Patrol arrived and took charge of the scene. Then the Los Angeles Police Department responded to the scene and the Highway Patrol left. Ultimately the Los Angeles Police Department arrested Turner, and as she was being removed from the scene she made the telephone call in question.

Turner also asserts on appeal that the statement should have been admitted as a prior consistent statement. As she did not argue in the trial court that the statement was admissible on that ground, she has forfeited this contention.[3] (*People v. Fauber* (1992) 2 Cal.4th 792, 854 [defendant who fails to specifically raise a ground for admissibility of evidence is precluded from raising issue on appeal].)

9. Impact of Alleged Evidentiary Errors

In three separate subdivisions of her opening brief, Turner argues that evidentiary errors here require reversal. First, she contends that the "sheer quality and quantity" of

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3 Although Turner alleges ineffective assistance of counsel in conjunction with her contentions of reversible error in the court's evidentiary rulings, this ineffectiveness argument is limited to the allegation that counsel was ineffective for failing to object to the admission of inadmissible evidence. As this forfeited issue does not concern the failure to object to the admission of inadmissible evidence, Turner has not argued ineffective assistance of counsel with respect to this particular evidentiary claim.

these alleged evidentiary errors deprived her of due process and rendered the trial fundamentally unfair. Next, Turner argues that when considered cumulatively, the evidentiary errors were not harmless beyond a reasonable doubt. As we have only found one of Turner's arguments of evidentiary error to have any possible merit, these cumulative error arguments necessarily fail.

Finally, Turner argues that "[t]o the extent that appellant's counsel did not make a proper objection to the inadmissible evidence, he provided constitutionally ineffective assistance of counsel." As we have not held any of Turner's evidentiary challenges to have been forfeited based on a failure to properly object to inadmissible evidence, this argument is inapplicable and Turner has not demonstrated ineffective assistance of counsel.

III. Late Discovery of Prosecution Witness Jason Sykes

During trial, on Monday, November 22, 2010, Turner's counsel advised the court that the late the prior Friday the prosecution had identified a new witness, Jason Sykes. Sykes had been interviewed telephonically on Wednesday, November 17, and police had tried to contact him the prior day. During the interview Sykes related an account of Turner's threats to Denise on the morning of the stabbing; how he came to be at the site of the stabbing; that Turner had said, "I'm going to kill somebody" the morning of the killing; that gestures may have been made right before the stabbing; that he (Sykes) attempted to remove the knife from Johnson's hand; and that someone had recorded the incident.

Turner's counsel claimed not to be aware of this witness, but the court noted that "Well, all knew there was a Jason there. The name Jason's come up throughout the trial." Turner's counsel said that knowing about Jason Sykes as early as the prosecution had reason to know about him would have impacted his cross-examination of previous witnesses. He claimed that the prosecution should have alerted the defense to Sykes the prior Tuesday, November 16, and asked for a mistrial based upon the late discovery.

The prosecutor gave a lengthy explanation of the events relating to Sykes and his statement. First, he said, the prosecution had no recording of the incident and did not know whether it existed. Sykes first came up when a member of the Kennard family told the police "[v]ery recently" that there was another person present and that his name was Jason. He had been referred to as "Jay Breezy" earlier. Denise disclosed that she knew where he lived, and the prosecution had been trying to find him. The prosecutor learned of the interview on Friday morning and immediately telephoned Johnson's attorney, who promised to contact Turner's attorney. "This wasn't late discovery," the prosecutor said. "And, in fact, this wasn't anything withheld and, in fact, the defense was aware for a while that there was this additional person there. We learned during the trial that this person, in fact, got involved, disarmed Ms. Johnson, stepped on her hand to get the knife away from her and in fact, that's what Jason says he did. He says he saw this. He pulled over and he stepped on her hand and he got involved in it. And so, yes, we found an additional witness in the course of our investigation during the trial."

During his testimony, Sykes said that the first time he spoke to detectives about the case was in the summer of 2009. Denise brought detectives to his home and they spoke about the incident. After that he had not spoken to the police until a few days earlier when he was interviewed.

Outside the presence of the jury, Sykes related that in 2009 Denise brought three plain clothes officers to his apartment. The officers asked questions about the stabbing incident. It was a brief conversation; at least one of the officers was writing something down during the interview. He did not remember their names. The court asked, "Are you sure that you were told they were police detectives and not investigators? These are possibly investigators?" Sykes responded, "It could have been investigators. Ain't they all the same, detective and investigators?" "Not to me," replied the court. Sykes said they were wearing holsters and had badges at their waistbands.

Defense counsel moved for a mistrial based on the failure to disclose interviews of Sykes to the defense. The court observed that there was some question about who the men were who spoke to Sykes in the past; observed that Sykes added very little to the

existing evidence; and said, "I don't see what knowing this witness's name or address would have been something different. I don't see it in this case. So the witness was pretty much consistent with everyone else in the case. You had a chance to talk . . . to him. You cross-examined him. I think there's certainly other remedies besides mistrial." The court denied the mistrial motion.

Turner contends that the court should have granted a mistrial based on the late disclosure of Sykes to the defense. The court, however, found that there was no discovery violation. It was not convinced that Sykes had spoken to law enforcement in 2009 and concluded that Sykes's identity and the interview with him had been turned over promptly once the prosecution located him. Even assuming a late disclosure, however, mistrial is not the only remedy for late discovery (*People v. Ayala* (2000) 23 Cal.4th 225, 299) and Turner has not demonstrated that a mistrial was required under the circumstances here, where the court concluded that the prosecutor had not committed misconduct; the existence and general identity of the witness was known all along to both sides; the prosecutor had not tried to gain any advantage; the prosecutor had promptly disclosed the witness and the interview once the witness had been located and interviewed; and the witness's information was largely corroborative. The trial court gave defense counsel time to speak with Sykes before he took the witness stand, and Turner has not shown that this was insufficient to cure any harm that resulted from any delayed discovery. (See, e.g., *People v. Verdugo* (2010) 50 Cal.4th 263, 289-290 [trial court need not grant mistrial for a discovery delay when there is no showing that a less severe remedy is insufficient to cure any harm].) Turner has not demonstrated that her chances of receiving a fair trial were irreparably damaged by any discovery delay here (*Ayala*, at p. 282), and she has therefore not demonstrated that a mistrial should have been granted.

IV. Failure to Instruct on Heat of Passion

The jury was instructed on the lesser included offense of voluntary manslaughter based on imperfect self-defense. Turner did not request that the trial court instruct the jury on the lesser included offense of voluntary manslaughter based on sudden quarrel or heat of passion but contends on appeal that the trial court should have so instructed the jury sua sponte. She argues that the stabbing was the result of a sudden, unexpected quarrel and that this case is similar to *People v. Breverman* (1998) 19 Cal.4th 142, 164 (*Breverman*), in which the California Supreme Court found that on the facts of that case the trial court should have instructed the jury on voluntary manslaughter based on heat of passion in addition to the instruction given on manslaughter based on imperfect self-defense.

Breverman, supra, 19 Cal.4th 142, however, concerned a very specific circumstance in which there was evidence of heat of passion beyond the perceived need for self-defense, and the Supreme Court has subsequently rejected the interpretation that *Breverman* requires that heat of passion instructions be given whenever a jury is instructed on imperfect self-defense. As the California Supreme Court explained in *People v. Moye* (2009) 47 Cal.4th 537, 555, "Nothing in *Breverman* suggests an instruction on heat of passion is required in every case in which the *only* evidence of unreasonable self-defense is the circumstance that a defendant is attacked and consequently fears for his life." In *Breverman*, the *Moye* court noted, "there was affirmative evidence that the defendant panicked in the face of an attack on his car and home by a mob of angry men and had come out shooting, and continued shooting, even after the group had turned and ran." (*Ibid.*) In *Moye*, in contrast, the evidence was that the defendant "acted deliberately in seeking to defend himself from each successive advance from the victim, who, defendant claimed, turned and attacked him once defendant chased him down and cornered him," so *Breverman* was inapplicable and no heat of passion instruction was required. (*Ibid.*)

This case is much more akin to *Moye*, *supra*, 47 Cal.4th 537, than to *Breverman*, *supra*, 19 Cal.4th 142. Turner's fear for her safety was the only passion or strong emotion demonstrated by the evidence at trial. By the defense account, Yolanda approached and spoke aggressively and profanely; her fists were balled up and in Turner's face, and she moved her hands in circles. Yolanda took off her shirt and threw it, causing Turner to believe that she was going to attack. Turner was frightened by Yolanda's approach, her fists, and her aggressive and loud voice. She believed that Yolanda was going to try to hurt her. When Yolanda grabbed at Turner's sweater or hoodie, Turner struck her once because Yolanda "went to do harm to me." Turner then dropped the knife. Turner said, "I was protecting myself to my best ability and I was attacked." At no time did Turner describe any passion or any violent, intense, high-wrought or enthusiastic emotion beyond the specific fear that Yolanda was going to harm her. There was no evidence of panic or a continuous, chaotic response to events, as in *Breverman*; instead the evidence here of heat of passion or any strong emotion was limited to the circumstance that Turner was attacked and feared for her life, as in *Moye*. Accordingly, we conclude that under *Moye*, no heat of passion instruction was required.

Even if it were error to fail to instruct the jury on a heat of passion theory of voluntary manslaughter, moreover, any error would be harmless under the test set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 because it is not reasonably probable that Turner would have obtained a more favorable outcome if the jury had been so instructed. (*Moye*, *supra*, 47 Cal.4th at pp. 555-556.) In performing the harmless error analysis, we "assume the jury considered all of the defense evidence bearing on defendant's state of mind and the question of whether [s]he harbored malice when it entertained *and rejected* h[er] claims of reasonable and unreasonable (or imperfect) self-defense." (*Id*. at p. 556.) Here, the jury rejected Turner's account that she stabbed Yolanda out of either an actual or perceived need to defend herself. Once the jury had rejected Turner's claims of reasonable and imperfect self-defense, there was nothing else before the jury to support a finding of heat of passion. As the court in *Moye* explained on similar facts, "Once the jury rejected defendant's claims of reasonable and imperfect self-defense, there was little

if any independent evidence remaining to support h[er] further claim that [s]he killed in the heat of passion, and no direct testimonial evidence from defendant [her]self to support an inference that [s]he *subjectively* harbored such strong passion, or acted rashly or impulsively while under its influence for reasons unrelated to h[er] perceived need for self-defense." (*Moye*, at p. 557.) Moreover, "having rejected the factual basis for the self-defense claims, it was not reasonably probable that the jury would have found the requisite objective component of a heat of passion defense (legally insufficient provocation) even if it had been instructed on that theory of voluntary manslaughter." (*Ibid.*) Therefore, even if a voluntary manslaughter instruction on heat of passion should have given, the failure to give it was harmless.

V. Alleged Error in Instruction on Imperfect Self-Defense

During deliberations, the jury sent multiple notes to the court. In one, the jury asked whether jurors are "suppose[d to] go off of the evidence provided (or) shou[l]d a [j]uror place his/herself [*sic*] in the defendant[']s shoes[?] [¶] Explanation is [v]ery needed." The court ascertained from the jury that this question related to the instructions about self-defense, cautioned the jury to base its decision on the evidence in the case, and then read a portion of CALCRIM No. 505: "Belief in future harm is not sufficient no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of great bodily injury to herself. Defendant's belief must have been reasonable and she must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified."

Turner complains that the court "did not explain that the jurors could consider the defendant's perspective if there were evidence of it in the record." However, the court did just that when it instructed the jury that it was to determine whether Turner believed that there was imminent danger of great bodily injury to herself. This instruction was consistent with previously-given instructions, including CALCRIM No. 222, which

advised the jury to decide the case only on the evidence presented in the courtroom; CALCRIM No. 571, which defined imperfect self-defense and instructed the jury that in evaluating the defendant's beliefs, it should consider all the circumstances as they were known and appeared to the defendant; and CALCRIM No. 505, which told the jury that in considering justifiable homicide based on self-defense, the jury should "consider all the circumstances as they were known to and appeared to the defendant" and to consider "what a reasonable person with similar knowledge would have believed." The court's response was a proper statement of the law and did not diverge from the standard jury instructions given in the case. Turner has not demonstrated any instructional error here.

Turner also complains that the prosecutor misled the jury into believing that it could not consider the appellant's "situation." The record does not demonstrate any error by the prosecutor. In additional argument permitted by the court in response to the jury's questions, the prosecutor advised the jury that for both self-defense and imperfect self-defense, "Miss Turner[] had to have actually believed that she was in imminent danger of death or great bodily injury, and she had to actually believe that the use of deadly force that she used was necessary to stop it . . . ." The prosecutor told the jury that its question about jurors putting themselves in the defendant's shoes was a good one and that it was tempting to ask oneself what one would have done. However, he continued, "that's not what you do. You don't put yourself in the shoes of anybody other than yourself. You don't put yourself in Miss Turner's shoes, and it's also inappropriate to put yourself in the victim's shoes." The reason for this, the prosecutor argued, was that when identifying with someone, one could decide based on sympathy. Instead, the prosecutor argued, "it's based purely on the evidence, and what does the evidence show? Now, yes, it's about what she believed. All crimes, by the way, are. Every single crime requires some mental state for the crime, and that's something we have to prove, part of our burden of proof. But it's the evidence you base that on. It's not—so don't be tempted to say, well, you know, what would I have done; or, you know what, let me try to imagine myself in that situation, you know. On the other hand, similarly, what you shouldn't do, is, well, what

might she have believed? It's not what she might have believed. A person could believe anything. It's based on what the evidence showed."

The prosecutor argued, "Well, she might have believed she was in danger. She might have believe[d] Martians landed. She might have believed—who knows what she might have believed, but that's not what you do. You say, look, what does the evidence show? More specifically, what are we able to prove about what Treauna Turner did on April 15th and about the intent she had, what she believed and what she intended to do. What did we prove about that? Now, I will submit to you that what we proved about that was this: what we proved is that she did not and could not have actually believed, based on what the evidence shows occurred that day, that she was in actual danger of death or great bodily injury. She could not have believed it."

Turner's contention that the prosecutor misled the jury is not supported by the record. The prosecutor advised the jury that it was required to use the evidence at trial to determine what Turner actually believed at the time of the incident about whether she was in danger of death or great bodily injury. This was an accurate representation of the law. His reference to basing the decision on the evidence did not tell the jury that it could not consider "appellant's own situation," or that her "situation" was not part of the evidence in the case. The prosecutor reinforced to the jury only that its conclusions about Turner's beliefs were to be based on the evidence submitted at trial rather than on hypothetical considerations of what she might have believed or what they personally could or would have done.

VI. Other Instructional Issues

A. Corpus Delicti Rule

The trial court did not instruct the jury on the corpus delicti rule, which requires the prosecution to prove that a crime actually occurred by evidence other than the defendant's own out-of-court statements. Turner contends that because the jury was instructed that Turner's silent smirk in response to Teresa's question, "Tree-Tree, what if

that was your daughter?" could be considered an adoptive admission, the corpus delicti instruction should have been given sua sponte. Turner notes that other out-of-court statements were introduced against her and claims that these too support the giving of this instruction. Even if the court should have given the corpus delicti instruction, the failure to do so was harmless because there was no reasonable probability that the jury would have reached a more favorable result if the instruction had been given. (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1181.) Turner admitted the stabbing and many witnesses testified to both the events leading up to the stabbing and the stabbing itself. No reasonable jury could have concluded that there was insufficient evidence to support a reasonable inference that a crime was committed.

B. Late Discovery

The court refused Turner's proposed instruction, CALCRIM No. 306, which would have advised the jury that the prosecution had failed to timely disclose Sykes as a witness and that this failure could be considered in evaluating the weight and significance of Sykes's testimony. The court based its decision on the fact that everyone knew of Sykes's existence from the beginning of the case and that anyone who had spoken to Denise Kennard would have been able to have found him. The court found that the People disclosed his identity promptly upon locating him, and it rejected the concept that he was a surprise to the defense: "The defense knew about Jason, and Jason basically came in and said the same thing[] he said in the police report, information the defense has."

Turner complains that Sykes had been interviewed years earlier by law enforcement and that there was no earlier disclosure of this interview or of Sykes's identity. Sykes had described having been interviewed, but he did not know who his interviewers were and did not appreciate the distinction between private investigators and law enforcement. The court had not been convinced that Sykes had spoken with law enforcement rather than investigators in the past, and it concluded that the relevant information about Sykes and the interview itself had been disclosed promptly once the

prosecution had located him. These conclusions are supported by the record. The court found no discovery violation and no reason to give the requested jury instruction, and we find no error in failing to given CALCRIM No. 306 under these circumstances.

C. Imperfect Self-Defense

In a brief, conclusory argument, Turner asserts that the trial court improperly omitted from CALCRIM No. 571 the following language: "If you find that Yolanda Kennard threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs." Her argument is devoid of citations to the record or to authority to support her contention that the court erred, in violation of California Rules of Court, rule 8.204 (a)(1). Turner, moreover, fails to identify any evidence before the jury that would have supported the inclusion of this language in the instruction. Accordingly, she has not established any error in the omission of this language from CALCRIM No. 571.

D. CALCRIM No. 357

Over Turner's objection, the trial court instructed the jury with CALCRIM No. 357 on adoptive admissions. As we have concluded that the evidence of Turner's smirk when asked, "What if that was your daughter?" was not an adoptive admission, we agree with Turner that this instruction was not warranted by the evidence. Turner, however, has not established any prejudice from the instruction. Turner argues that the instruction encouraged the jury to give the question and Turner's smirk "a meaning that was contrary to the interchange and to at least consider whether that response was in some way an admission." Turner does not explain, nor can we imagine, how the instruction caused the jury to give the exchange a meaning contrary to the interaction: whether considered as an adoptive admission or simply as nonhearsay evidence of Turner's actions, the evidence of the smirk was detrimental to Turner's case because it tended to suggest that Turner was satisfied with herself after having stabbed Yolanda.

Application of the adoptive admission instruction would at most have directed the jury to conclude that Turner admitted that the question "What if that was your daughter?" was "true" when she failed to deny it. This nonsensical result of deeming a question to be admitted demonstrates that the evidence was not properly admitted on an adoptive admission basis, but it also shows that application of the rule added nothing to the jury's analysis. An admission that the question was true, which at best could be taken as an implicit admission to having stabbed Yolanda, contributed nothing to the jury's resolution of the facts because there was no dispute as to who stabbed Yolanda, only the reason for the stabbing. To the extent that, as Turner argues, the instruction directed the jury to consider whether Turner's smirk "was in some way an admission," the jury was entitled to consider the meaning of Turner's post-stabbing smirk regardless of this instruction. Turner has not demonstrated that the giving of this instruction was prejudicial or that it required reversal.

E. CALCRIM No. 371

Turner contends that CALCRIM No. 371, concerning attempts to suppress evidence, was not supported by the evidence and should not have been given. Turner claims that "here the only evidence was that she dropped or threw the knife on the sidewalk where it was immediately found." Turner misrepresents the record. Sykes testified that after the stabbing Turner "was trying to hide the knife." She tried to sit on it, tried to put it in her sock, attempted to stuff it along her side, and then threw it into a grassy area. Another witness testified that Turner "threw the knife in the bushes over a fence." CALCRIM No. 371 was warranted by the evidence.

F. CALCRIM Nos. 3471 and 3472

Turner complains that CALCRIM Nos. 3471 and 3472 were given to the jury. CALCRIM No. 3471 concerns the right to self-defense in the context of mutual combat, and CALCRIM No. 3472 states that a person does not have a right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force. As there

was evidence that Turner approached Yolanda and that Turner and her companions were making gestures, the court believed it possible that the jury would consider Turner the aggressor. The evidence would permit this conclusion. There was no error in giving these instructions.

Turner also argues that the court omitted the definition of mutual combat when it gave CALCRIM No. 3471. Although there was no discussion of this on the record, it appears that the trial court left out the definition of mutual combat because the issue was whether Turner was the initial aggressor. The definition of mutual combat was not relevant here, as Turner implicitly acknowledges when she claims that a definition of mutual combat would have "assisted the jury in concluding that there was no mutual combat here." Turner has not demonstrated any error here.

G. Cumulative Effect of Instructional Errors

Turner contends that the many instructional errors she has asserted deprived her of her heat of passion "defense"; suggested that she had been engaged in mutual combat, suppressed evidence, and made an adoptive admission; and prejudiced the jury, denying her a fair trial. At most, however, she has established that the court should have given the corpus delicti instruction and that it should not have given the adoptive admission instruction, but neither independently nor jointly did these deprive her of a fair trial. Turner has not established cumulative error requiring reversal.

VII. Failure to Declare a Mistrial Based on Deadlock

The jury sent multiple notes to the court during deliberations. First, the jury advised that it was "even" on whether the offense was murder or manslaughter. Then the jury communicated that the jurors could not come to a unanimous decision on count 1, the murder charge. The court asked the jury, "Without telling me how the votes are going, I want you to give me a breakdown, whether it's for murder or manslaughter. I'd like to get a breakdown, like 6-6 or, you know . . . 7-5. Can you tell me what the breakdown was at the last vote?" The foreperson told the court the jury was divided 10

to 2. The court asked if the vote was "for murder or for manslaughter," and the foreperson asked, "The majority?" "No, no, no," the court responded. "I'm saying, that was a vote for what, for murder or for manslaughter?" "For murder," the foreperson answered.

Multiple jurors thought that they could reach a verdict with the court's help. The court asked the jurors to advise the court of the areas in which they needed further explanation. The jury responded with a note specifying three areas of difficulty. The court responded by directing the jury's attention to some specific instructions, and then asked whether further argument by counsel would assist the jury. Five jurors responded in the affirmative, one said maybe, and six said no. Counsel delivered additional argument. The following day, the jury reached a verdict.

A trial court may ask deadlocked jurors to continue deliberating when, in the exercise of its discretion, it finds there is a reasonable probability that the jury will be able to agree on a verdict. (*People v. Pride* (1992) 3 Cal.4th 195, 265.) Turner complains that the court abused its discretion when it ordered further deliberations without any evidence that they would be fruitful. The record supports the trial court's implicit conclusion that there was a reasonable possibility that the deadlock could be broken: several jurors believed that they could reach a verdict with the court's help, and, accordingly, the court asked for a specific statement as to the areas in which the jury needed further explanation. Upon receipt of the jury's note identifying its areas of difficulty, the court refocused the jurors' attention to specific portions of the jury instruction packet responsive to their questions then and permitted counsel to make supplemental argument. Turner appears to argue that because the court did not depart from the language of the jury instructions it had to declare a mistrial, but she offers no authority to support the proposal that if a jury requests further assistance and expresses its difficulty with application of the jury instructions, a court must either jettison the jury instructions or declare a mistrial. The trial court did not abuse its discretion in ordering further deliberations when multiple members of the jury believed further instructions and further argument could assist them.

Turner also contends that the court coerced a verdict by directing jurors to keep deliberating, "subject[ing]" them to further argument, and inquiring into the numerical division among the jurors. As we have discussed, however, the court sent the jury back for deliberations only after attempting to respond to its statement of its difficulties, and the court did not send the jury to deliberate without a reasonable expectation that it could reach a verdict. The court ordered further argument only after inquiring of the jurors whether they believed it would aid them and receiving an affirmative response from several jurors. With respect to the inquiry on voting, Turner alleges that the court forced the jurors to disclose how they stood on the ultimate issue of guilt, coercing the minority jurors. The record, however, shows that the court never asked for a specific breakdown of votes for guilt or innocence, only that when the foreperson described the vote the court asked what crime the jury was voting on. The record is devoid of any indication that jurors were coerced into reaching a verdict.

Finally, separately from the allegedly coercive impact of the additional argument, Turner argues that the court abused its discretion by permitting further argument. The court may inquire whether additional argument by counsel or instruction of the law would be of assistance to the jury, and may permit further argument if the jury is at an impasse. (*People v. Ardoin* (2011) 196 Cal.App.4th 102, 129, fn. 10; *People v. Young* (2007) 156 Cal.App.4th 1165, 1171-1172.) The court so inquired, and six of the jury members responded that further argument might assist them. The court did not abuse its discretion by permitting additional argument by counsel under these circumstances.

VIII. Cumulative Error

Turner argues at length that each of her claimed errors requires reversal independently and together they "formed a juggernaut which assured a conviction despite compelling evidence that appellant's actions were justified in the eyes of the law." There is no basis for a finding of cumulative error here, and the record contains no compelling evidence that Turner was legally justified in stabbing Yolanda.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.