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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. VERNON LENZELLE EVANS et al., Defendants and Appellants.	B261899 (Los Angeles County Super. Ct. No. BA386827)

APPEAL from judgments of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant Vernon Lenzelle Evans.

John A. Colucci, under appointment by the Court of Appeal, for Defendant and Appellant Nessane Tereso Cacho.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi, Connie H. Kan, and

David Glassman, Deputy Attorneys General, for Plaintiff and Respondent.

This case arises from the gang-related murder of Troy Morris on February 16, 2006. Following a prolonged investigation, defendants Vernon Lenzelle Evans and Nessane Tereso Cacho were jointly charged with one count of murder (Pen. Code, § 187, subd. (a))[1] including several firearm and gang enhancement allegations (§§ 12022.53, subds. (b)-(e), 186.22, subd. (b)(1)(C)). Defendants' first and second trials both ended in mistrials as a result of hung juries. On November 6, 2014, following their third jury trial, defendants were convicted of first degree murder with true findings as to the firearm and gang enhancement allegations. The trial court sentenced each defendant to a total term of 50 years to life in state prison

On appeal, defendants contend: (1) the trial court abused its discretion by excluding the proposed testimony of an eyewitness identification expert; (2) the court erred by admitting a police detective's testimony regarding the reliability of a prosecution witness; (3) the evidence was insufficient to support the jury's true findings on the gang enhancement allegations; (4) the court erroneously admitted evidence that defendants had possessed firearms; (5) the court improperly told jurors not to take a "strong stand" during deliberations; and (6) cumulative error denied their rights to due process and a fair trial. Finding no error, we affirm the judgments.

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

FACTUAL AND PROCEDURAL SUMMARY

An information filed by the Los Angeles County District Attorney on August 20, 2013 charged defendants with one count of murder (§ 187, subd. (a); count 1). The following also was alleged: (1) the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by the gang members (§ 186.22, subd. (b)(1)(C)); (2) a principal personally and intentionally discharged a firearm which proximately caused great bodily injury and death (§ 12022.53, subds. (d) & (e)(1)); (3) a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c) & (e)(1)); and (4) a principal personally used a firearm (§ 12022.53, subds. (b) & (e)). Defendants pleaded not guilty and denied all special allegations.

The first trial commenced on August 28, 2013. Dr. Mitchell Eisen, an expert on eyewitness identification, testified for the defense. After the jury announced it was hopelessly deadlocked, the court declared a mistrial. At the second trial, on February 24, 2014, the court excluded the testimony of Evans's proposed eyewitness identification expert. For a second time, the jury announced that it was deadlocked, indicating there was a holdout juror. The court declared a mistrial and continued the matter for retrial, which commenced on October 22, 2014.

A. *Prosecution Case*

1. *The Murder of Troy Morris*

At approximately 6:30 a.m. on February 16, 2006, Morris was fatally shot near the intersection of Western Avenue and 38th Place in Los Angeles. Morris suffered 10 bullet wounds, one of which was fatal. Los Angeles Police Department (LAPD) officers recovered 33 bullet casings from the crime scene.

Ballistics analysis of the casings indicated that three firearms were used in the shooting: one nine-millimeter and two .45-caliber semiautomatic handguns. Other than several items of Morris's clothing and his backpack, no other physical evidence was presented at trial.

According to the victim's sister, Nicola Morris, Morris was shot as he was walking to a bus stop on his way to Santa Monica College (SMC), where he was a student. She said Morris often wore headphones and listened to music on the bus. At the time of his death, Morris was a member of a gang known as the "Rolling 30's" or the "Harlem Crips." She testified that Morris was proud of his gang affiliation, often wore blue clothing associated with the Crips, and had several gang-related tattoos. Morris was known by the moniker "Andy Mac."

2. *Eyewitness Testimony*

Ms. C. Gomez was the only percipient witness to the shooting who testified at trial. She lived in an apartment half a block from the intersection where Morris was killed. On the morning of the shooting, she heard several gunshots and opened the blinds covering her window to peek outside. She saw a man standing in the street with his arms extended and hands clasped together, pointing at the victim. She heard additional shots and saw the victim fall to his knees before she ducked down. When she took another look, the shooter was still firing as he walked away from the victim, and then fled through an alley. Gomez testified the shooter was wearing a ski mask that covered most of his face, with an opening around his eyes. She said the shooter had light skin and light- or hazel-colored eyes, and identified Evans in the courtroom as having similar features.

Gomez called 911 just after the shooting, and the recording

of that call was played for the jury. In it, she told the 911 operator that she could not see whether the shooter was white, black, or Hispanic because he was wearing a mask. That same day, Gomez described the shooter to the police as possibly an Hispanic male.

On June 29, 2006, several months after the shooting, two detectives interviewed Gomez and showed her a six-pack of photographs, one of which was of Evans. Gomez was surprised because she thought the shooter was Hispanic, but all the individuals depicted in the six pack were African American. When Gomez described the ski mask, the detectives partially covered each photograph with their fingers. Gomez circled Evans's photograph and wrote that he looked "similar" to the shooter. At trial, Gomez could not recall if she was read a standard cautionary admonition before identifying Evans.

When Gomez testified at the preliminary hearing on December 1, 2011, she stated that she circled Evans's photograph in the six-pack because one of the detectives "said he was the suspect." However, at trial, she testified that what she had said during the preliminary hearing was false, and that she had lied under oath in an effort to avoid testifying because she was scared and did not want to be involved in the case.

3. *The Fight at Santa Monica College*

Rory Barnett was an assistant coach at SMC. On February 15, 2006, the day before the shooting, he was walking on campus when he heard a commotion, screaming and swearing. He saw Evans with three to four other individuals, all wearing red clothing, attacking Morris and several others wearing blue. Barnett knew Morris by name and recognized Evans from around campus. He heard Evans saying things to Morris such as, "I'm

going to get you, motherfucker" and "I know where you live." Barnett intervened, broke up the fight, and then called campus police. In September 2008, LAPD detectives interviewed Barnett and showed him a book of mug shots. From a six pack, Barnett picked out photographs of several persons who were involved in the fight.[2]

Laura Morales, who was a student at SMC with Morris, also knew both defendants. She spoke to Cacho the day Morris was killed, but was reluctant to testify and said she could not recall the conversation. A recording of her interview with LAPD detectives in October 2008 was played for the jury. In it, she told the detectives she was not at SMC when the fight occurred, but heard that Cacho and Evans were involved. The next day she saw Cacho and his friends all "flamed up," that is, wearing red clothing. Not knowing that Morris had been killed, she said to Cacho, "you guys need to stop all this," and "don't fight him." Cacho replied, "fuck Andy Mac" (referring to Morris's gang moniker).

4. *Rachel Thorpe's Testimony*

At the time of the shooting, Rachel Thorpe lived in an apartment on 23rd Street and 10th Avenue, and knew both defendants from her neighborhood. She met Evans through her informally adopted son, Ryan James, who was known by the moniker "Baby CK." James was attending classes at SMC, where Evans worked. Evans was a friend of Thorpe's son, Quaishawn, and her daughter, Tranisha, and he came to her apartment often.

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[2] At trial, Barnett testified that he picked out Evans's mug shot; however, the record does not indicate which photographs were selected, and one of the detectives who testified did not specifically recall Barnett identifying Evans.

Cacho also was a friend of James, Quaishawn, and Tranisha; they were members of a Blood gang called the "Black P. Stones" (BPS). Cacho went by the monikers "Little Lunch" and "Infant Geek." Thorpe's apartment was a regular hangout for BPS gang members. Evans was a member of a different Blood gang, the "Rolling 20's," and was known by the moniker "B-Down."

Evans, Cacho, James, and two other BPS gang members came to Thorpe's apartment on the day of the fight at SMC, and she overheard them talking about "Andy Mac." Thorpe heard Evans say that he was going to "get his ass," "kill his ass," "gun his bitch ass down," or words to that effect. The next morning, Thorpe was lying in bed when she heard her front door open and people entering the living room. She overheard Evans say, "We got that crab ass nigger." She knew the slang term "crab" to refer to a Crip gang member. She then heard Cacho ask, "Did you see how that nigger's body was motioning when we were shootin' him[?]" She heard James tell everyone to be quiet, and then heard distinctive "clicking noises" of bullets being removed from guns and guns being placed on the glass-top table in her living room. She also heard Evans telling the others to hurry up so they could get to school and sign in to make it look like they were on their way when the shooting occurred.

Sometime later, Thorpe overheard Evans talking about the Morris shooting during a social gathering at her apartment. He was out on her balcony chatting with members of several Blood gangs including BPS and the Rolling 20's. She heard someone say, "I heard that you all dealt with the nigger from Santa Monica College." Evans responded, "Yeah," and made some disparaging remarks about the "crab ass nigger." Thorpe heard Evans say something like Morris "was walking through an alley

on his way to the bus stop on Western and he had headphones on . . . he never saw it coming and they started shootin'."

Detective Charles Geiger interviewed Thorpe on June 30, 2011. Thorpe decided to cooperate after she and Tranisha were arrested. Police officers had searched her apartment and seized drugs and firearms. She agreed to provide Detective Geiger with information on multiple homicides, including the Morris murder, in exchange for his assistance on her pending drug charge. Geiger testified that she provided "reliable" information related to other gang-related murder investigations. Numerous individuals, including her son Quaishawn, confronted and threatened Thorpe for cooperating with the police. She was reluctant to testify at the first trial, and Quaishawn was shot at twice on the day she took the stand. Thorpe ultimately was relocated for safety reasons.

5. *DeWayne Jenkins's Testimony*

DeWayne Jenkins had been a friend of Cacho since high school. Sometime in February 2006, Jenkins asked Cacho about the fight at SMC. Cacho said he went to the campus and saw a Rolling 30's gang member wearing all blue. Cacho sat down across from him, started arguing, and then "whipped his ass." Cacho also told Jenkins, "we roll up on him . . . we shot him. He didn't see it coming. He had his headphones on." Jenkins testified that several months before this conversation, he had seen Cacho in possession of a rifle and two handguns, including a nine-millimeter. Jenkins, who was a citizen of Belize, subsequently pleaded guilty to robbery charges and was placed in immigration detention. He agreed to cooperate with law enforcement in return for assistance in his removal proceedings.

6. *Marlon Boland's Testimony*

Marlon Boland knew Cacho from SMC and was present on campus the day of the fight. He did not witness the fight, but saw a group of people, possibly including Cacho, running away after it was broken up. Several days later, Boland was speaking with Morales and Cacho in front of the SMC library, and Cacho said "we shot him 17 times." Cacho also mentioned to Boland that Morris was walking on the sidewalk and listening to music on his headphones when he was shot. Boland spoke to detectives about the fight in September 2008. He was hesitant to cooperate for fear of retribution, and was a reluctant witness at the first two trials.

7. *Raheem Moorehead's Testimony*

Raheem Moorehead was an active BPS gang member when Morris was killed. On March 30, 2006, police apprehended Moorehead on a probation violation. He agreed to be interviewed by detectives at the police station, not realizing that their conversation was being videotaped. At trial, Moorehead repeatedly stated he did not recall what he had said in the interview. The recording was played for the jury. Moorehead told the detectives that "B-Down and Baby CK" (Evans and James) killed Morris. He described Evans as having "light skin[]" like an "albino." Moorehead said Evans "got into it" with Morris at SMC, and followed Morris home to find out where he lived. Moorehead said Evans told him that he "served . . . [t]he nigger from Barlem . . . on Western and 38th," referring to Morris's affiliation with the Harlem Crips. He told the detectives that Evans said he shot Morris 17 times using two guns, "a nine and a 4-5," and bragged about the murder.

Detective Vincent Carreon testified that Moorehead

provided information regarding a separate gang-related murder that proved to be accurate. Moorehead failed to appear in court to testify on two prior occasions because he was concerned about gang retaliation for "snitching." Moorehead saw BPS gang members at the preliminary hearing, and denied having made any statements to the police when he took the stand. Moorehead later told detectives that he was threatened at gunpoint by BPS gang members. Moorehead said that several BPS members had confronted him before he testified at the second trial and called him a "snitch ass nigger." Moorehead admitted he had a long-standing substance abuse problem that affected his memory.

8. *Gang Expert Testimony*

Detective Kenneth Sanchez testified as an expert on the BPS gang. He described his training and years of experience working in a gang enforcement detail, where he was assigned to monitor BPS. He described the history of BPS, the territory controlled by the gang, and noted that the main rival gangs of BPS include the Rolling 30's Crips. He testified that the primary activities of BPS include attempted murder, murder, robbery, bank robberies, home invasions, assaults with deadly weapons, vandalism, narcotics possession, and weapons possessions. Based on Cacho's gang-related tattoos, a letter from Cacho referring to his BPS affiliation, and his gang monikers, Sanchez opined that Cacho was a member of BPS. In answering the prosecutor's hypothetical question based on the facts of the case, Sanchez stated his opinion that the Morris shooting was for the benefit of and was in association with a criminal street gang.

Officer Jose Campos testified as a gang expert on the Rolling 20's. He described his training and experience working with a gang enforcement detail that investigated the Rolling 20's.

He noted that the Rolling 20's have strong associations and affiliations with other Blood gangs including BPS, and that the gang's rivals include the Rolling 30's Crips. He testified that the Rolling 20's primary activities included property crimes, thefts, burglaries, grand theft auto, narcotics sales, assaults, assaults with deadly weapons, and murders. Given a hypothetical based on the facts of this case, Officer Campos opined that Morris's murder was committed for the benefit of and in association with a criminal street gang.

Officer Campos also opined that, based on prior encounters and evidence introduced at trial, Evans was a member of the Rolling 20's. Photographs seized from Evans's computer depicted him "throwing" gang signs and wearing T-shirts that read "stop snitching" and "snitches get stitches." Campos testified that he detained Evans during a traffic stop in April 2007,during which Evans had acknowledged that he was a Rolling 20's gang member. Campos also testified that, in May 2007, he stopped Evans and a BPS member in Rolling 40's Crips gang territory, searched Evans's vehicle, and discovered a fully loaded .22-caliber revolver.

B. *Defense Case*

1. *Leonard Crawford's Testimony*

At the time of the Morris shooting, Leonard Crawford was SMC's athletic director and the director of a student aid office where Evans worked part-time as a counseling aid. Crawford testified that Evans typically wore clothing featuring the UCLA logo when he was on campus. He denied that Evans wore a red sweat suit, which would not have been appropriate attire for an employee. Because Crawford also was the chair of the student discipline committee, he expected that he would have been made

aware of any altercation such as the fight involving Morris. Crawford testified that he was not notified of any fight on campus in February 2006.

2. *Evans's Testimony*

Evans denied killing Morris, denied being present at the scene of the crime, and denied fighting Morris or anyone else the day before the shooting. He admitted that he was a Rolling 20's gang member and that he carried a .40-caliber Glock in February 2006. Evans also admitted he had a criminal record including felony convictions in 2006 and 2007 for possession of illegal ammunition and being a felon in possession of a firearm. However, he had no gang tattoos because he did not want to limit himself to the gang lifestyle. After being released from the California Youth Authority, he immediately enrolled at SMC and eventually earned a degree from UCLA.

Evans testified that he was a good friend of James and helped him enroll at SMC. Evans occasionally had seen Morris on campus and knew he was a Crip gang member. In late 2005, Evans witnessed an argument between Morris and James, and urged them both to calm down. On the day of the fight at SMC, Evans saw Cacho and Morris exchange blows but denied being involved. He also saw James and other gang members fighting. He heard someone say, "he has a gun," and saw Morris reaching for his waistband, so he started running. Later that day, Evans met up with James and drove to Thorpe's apartment where they met with several gang members. Contrary to Thorpe's testimony, Evans denied expressing any intention to kill Morris.

Evans testified that on the morning of the shooting, he woke up at around 6:30 a.m. and drove to Thorpe's apartment to pick up James and take him to SMC. He found James and

several gang members in the living room, and overhead them talking about shooting Morris. Evans denied saying anything about Morris or anything like "we got that crab ass nigger," but he did hear James and others making similar statements. At that time, Evans had known Thorpe for a few months but their relationship was "rocky." Before Evans was arrested in connection with this case in 2011, he got into a "huge argument" with Thorpe after Evans insulted her daughter, Tranisha.

Evans testified that in February 2006 he knew Moorehead as a "little kid" who was only 15 or 16 years old and a member of BPS. Contrary to Moorehead's statements to police detectives, Evans denied having any contact with Moorehead the day after the shooting, and denied telling Moorhead that he shot Morris. However, Evans testified that he did see Moorehead at a park several weeks after the shooting, and warned him to arm himself and to "be on guard," anticipating that the Rolling 30's might try to avenge Morris's killing.

3. *Cacho's Testimony*

Cacho was a student at SMC in February 2006. On the day of the fight, he arrived on campus with a friend and walked past Morris, who was wearing all blue clothing. Cacho saw Morris and James exchange gang signs and then start arguing. Fighting broke out and Cacho participated, but he ran away when he heard James say, "he got a gun." Cacho denied that he had spoken with either Boland or Jenkins about the fight at SMC. He remembered speaking with Morales about the fight and told her he was involved. However, Cacho testified that he never spoke to Boland, Jenkins, or Morales about a shooting, and denied any involvement in Morris's murder.

C. *Closing Arguments*

In her closing argument, the prosecutor acknowledged that some of the evidence, particularly Moorehead's statement to the police, indicated that James may have been involved in the shooting. However, she emphasized that James's potential involvement did not detract from the culpability of either Evans or Cacho given that three firearms were used in the shooting. The prosecutor also emphasized that Gomez's testimony was not being presented as a positive eyewitness identification.

Evans's attorney attacked Gomez's credibility and the reliability of her prior photographic and in-court identifications. He argued it was a "crock of baloney" that Gomez could have identified the shooter's eye color from her apartment window. He noted that Gomez admitted to lying under oath during the preliminary hearing. He also argued that her testimony was inconsistent, and that she was improperly influenced by LAPD detectives when she identified Evans in the six-pack photographic array.

D. *Jury Deliberations, Verdict, and Sentencing*

During jury deliberations, the court received a note requesting clarification on the instructions regarding reasonable doubt and witness credibility. The court reread and clarified several instructions, and asked the jury to "consider everyone's opinion" and "to be open minded." It added, "We always hate to hear about situations where someone takes a strong stand in jury deliberations and refuses to consider others' opinions. That makes it very difficult, and the system breaks down if people take very strong stands." The jury found defendants guilty as charged and found all the allegations to be true.

The trial court sentenced each defendant to a total term of

50 years to life in state prison, calculated as follows: 25 years to life for the murder charge (§ 187, subd. (a); count 1) plus a consecutive term of 25 years to life for the most serious firearm enhancement (§ 12022.53, subds. (d) & (e)(1)). The sentence for the gang enhancement was stayed. The court also imposed various fines and assessments.

This appeal followed.

DISCUSSION

I

Evans first contends the trial court abused its discretion by precluding him from presenting expert testimony on psychological factors affecting eyewitness identification. Cacho purportedly joins in this claim.[3] Because we find the identifications at issue were substantially corroborated by the testimony of other prosecution witnesses, we find no abuse of discretion. And even assuming the trial court erred in excluding

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[3] Cacho joins in "all issues, and all factual statements supporting them," raised by Evans "which may accrue to [his] benefit" pursuant to California Rules of Court, rule 8.200(a)(5). Evans also joined in several claims made by Cacho. However, Cacho has not provided particularized arguments in support of his entitlement to relief on any of the grounds raised by Evans. (See *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363-364 ["strongly disapprov[ing] of this seriously improper tactic" and noting that failure to provide legal argument and citation to authority on each claim raised may result in waiver].) Because Cacho has no colorable argument regarding the exclusion of eyewitness identification expert testimony, we consider any argument on this claim forfeited. (See *ibid.*) However, for the sake of clarity and convenience, we treat the remaining claims as properly raised by both defendants where applicable.

the proposed testimony, we conclude the error was not prejudicial.

Evans proposed to introduce the testimony of Dr. Eisen, an expert on eyewitness identification who testified at the first trial. In a pretrial motion, Evans argued there were numerous psychological factors relating to the eyewitness identifications made by Gomez and Barnett that were not within the common knowledge and experience of the jury and necessitated the assistance of an expert. He argued that Dr. Eisen provided "highly relevant" testimony at the first trial relating to suggestibility, pre-lineup admonitions, the effect of disguises, the tendency for eyewitnesses to strive for consistency, the reconstructive nature of human memory, and the post-identification feedback effect.

At a hearing on the motion, the trial court indicated that it did not "see this as an eyewitness expert case" because there were "no positive identifications from any of the witnesses," and there was other evidence of defendants' involvement in the murder. The court noted that case law had "fairly well limited" expert testimony to "unique" situations where there was no evidence corroborating the eyewitness identification. The court also was concerned about the possibility of "subtly misdirecting the jury from the issues [at] trial." It found Evans had not demonstrated this was an "appropriate case" for an eyewitness identification expert, and excluded the proposed testimony.

In the leading case on this issue, *People v. McDonald* (1984) 37 Cal.3d 351 (*McDonald*), overruled on another ground in *People v. Mendoza* (2000) 23 Cal.4th 896, 914, the Supreme Court stated: "[T]he decision to admit or exclude expert testimony on psychological factors affecting eyewitness identification remains

primarily a matter within the trial court's discretion . . . . We expect that such evidence will not often be needed, and in the usual case the appellate court will continue to defer to the trial court's discretion in this matter. Yet deference is not abdication. When an eyewitness identification of the defendant is a key element of the prosecution's case but is not substantially corroborated by evidence giving it independent reliability, and the defendant offers qualified expert testimony on specific psychological factors shown by the record that could have affected the accuracy of the identification but are not likely to be fully known to or understood by the jury, it will ordinarily be error to exclude that testimony." (*Id.* at p. 377, fn. omitted.)

In *McDonald*, the only evidence connecting defendant to the crime was equivocal testimony by six eyewitnesses. A seventh prosecution witness unequivocally testified that defendant was not the perpetrator; and defendant presented six alibi witnesses. (*McDonald*, *supra*, 37 Cal.3d at pp. 355-360.) Under these circumstances, the Supreme Court determined that the trial court had abused its discretion in excluding the expert testimony. The court reasoned that the prosecution's case hinged on the reliability of the eyewitnesses' testimony, that testimony was equivocal, the proposed expert testimony would have assisted the jury in resolving a crucial issue, and its exclusion undercut defendant's main line of defense. (*Id.* at pp. 373-376.) The court further held that the error was prejudicial because the issue affected by the ruling was crucial, no other evidence connected defendant to the crime, and the evidence on that issue was close. (*Id.* at p. 376.)

In *People v. Jones* (2003) 30 Cal.4th 1084, 1112 (*Jones*), the Supreme Court clarified that *McDonald*'s holding is not limited

"to cases in which, apart from the eyewitness identification, there is no other evidence whatever linking defendant to the crime," rather "[e]xclusion of the expert testimony is justified only if there is other evidence that substantially corroborates the eyewitness identification and gives it independent reliability." (*Ibid.*, italics omitted.) In *Jones*, the eyewitness identification of defendant was corroborated by the testimony of five witnesses. All five witnesses could have been impeached by proof of bias or prior inconsistent statements, and three of the witnesses may have been accomplices whose testimony required corroboration to support a conviction. However, the court found that the "cumulative corroborative effect" of this testimony was "sufficient to give independent reliability to the eyewitness identification." (*Ibid.*)

In this case, we conclude the trial court did not abuse its discretion in excluding the proposed expert testimony because both Gomez's and Barnett's eyewitness identifications were substantially corroborated by the testimony of other prosecution witnesses, giving them independent reliability. (See *Jones*, *supra*, 30 Cal.4th at p. 1112.) Barnett's identification of Evans as a participant in the fight at SMC was corroborated by Moorehead's interview with police detectives, during which he stated that Evans "got into it" with Morris at SMC. In addition, Thorpe testified that she overheard Evans talking with Cacho and James about the fight at her apartment, and specifically heard Evans say that he was going to kill Morris. Significantly, Evans himself testified that he was present at the fight and had gone to Thorpe's apartment afterwards with Cacho and James.

Gomez's identification of Evans also was substantially corroborated by the testimony of both Thorpe and Moorehead.

Most significantly, Moorehead told detectives that Evans admitted shooting Morris with "a nine and a 4-5," a statement independently corroborated by physical evidence showing that nine-millimeter and .45-caliber handguns were used in the shooting. In addition, Thorpe testified that she heard Evans make incriminating statements on three separate occasions. As mentioned, during a conversation at her apartment after the fight at SMC, she overheard Evans say that he was going to kill Morris. On the following morning, she heard Evans say "[w]e got that crab ass nigger," and subsequently tell the others to hurry up so they could get to school and sign in to establish an alibi. Finally, Thorpe testified that she later overheard Evans say Morris was ambushed as he was walking through an alley with his headphones on.

Evans contends this evidence was insufficient to corroborate the identifications. He notes there was no physical evidence directly linking him to the crime. He argues that Thorpe's testimony may have been inaccurate because it was based on group conversations she had overheard and first reported to detectives more than five years after the shooting. He also argues that Moorehead's statements were inherently unreliable because he was merely repeating various rumors and boasting by fellow gang members. He asserts that both Thorpe and Moorehead were "highly motivated" to provide police with information to get themselves out of legal trouble. However, Evans fails to account for the fact that Moorehead's statement regarding the kind of weapons used in the shooting was corroborated by the physical evidence. There are other indicia of reliability as well. The record indicates that both Thorpe and Moorehead offered the information at risk to their own safety,

and were subsequently threatened for cooperating with police. Moreover, detectives testified that the information Thorpe and Moorehead provided regarding other gang-related murders proved to be accurate and reliable.

People v. Walker (1986) 185 Cal.App.3d 155 (*Walker*), relied upon by Evans, does not convince us otherwise. In that case, defendant was charged with one count of attempted robbery and three counts of robbery. He admitted committing one of the robberies, but denied the other charges. The four victims, all of whom had their purses taken at knifepoint, and two other eyewitnesses positively identified defendant. (*Id.* at pp. 158-161.) The trial court excluded the proposed expert testimony, reasoning that defendant's admission and evidence of his modus operandi substantially corroborated the eyewitness identifications. The court of appeal disagreed, concluding that "independently reliable evidence sufficient to satisfy *McDonald*'s substantial corroboration requirement must be something other than the inference drawn from defendant's commission of similar 'other crimes.'" (*Walker*, *supra*, at p. 165.) The court held that since the modus operandi was not "signatorally unique," the court erred in excluding defendant's proposed expert testimony. (*Id.* at p. 166.)

Evans argues that because both the eyewitness identifications and the corroborating evidence in this case were weaker than their respective counterparts in *Walker*, it was similarly an abuse of discretion to exclude the proposed expert testimony in this case. But *Walker* is factually inapposite. The evidence corroborating the identifications made by Gomez and Barnett was not dependent on an inference of Evans's identity or his modus operandi. Rather, two unrelated witnesses, each of whom personally knew Evans, provided testimony that

independently corroborated the eyewitness identifications. We find this evidence to be sufficiently corroborative such that it provides independent reliability to the identifications, and accordingly find no abuse of discretion. (See *Jones*, *supra*, 30 Cal.4th at p. 1112.)

Even were we to find that the court should have admitted the expert testimony, we cannot say that it is reasonably probable that a result more favorable to Evans would have been reached in the absence of its exclusion. (*People v. Sanders* (1995) 11 Cal.4th 475, 510; *People v. Watson* (1956) 46 Cal.2d 818, 836.) The trial court's decision did not prevent defense counsel from vigorously cross-examining the eyewitnesses to attack the reliability of their identifications. Defense counsel also argued during closing arguments that Gomez's testimony was contradictory, unreliable, and the product of her "suggestibility." Indeed, the prosecutor conceded that Gomez could not make a positive identification. Defense counsel also argued that Barnett embellished his testimony and was improperly influenced by the prosecution. Furthermore, the jury was instructed with CALCRIM No. 315, which identifies various factors that could affect the accuracy of an eyewitness's identification.[4] (See

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[4] The trial court instructed: "In evaluating identification testimony, consider the following questions: Did the witness know or have contact with the defendant before the event? How well could the witness see the perpetrator? What were the circumstances affecting the witness's ability to observe, such as lighting, weather conditions, obstructions, distance, and duration of observation? How closely was the witness paying attention? Was the witness under stress when he or she made the observation? Did the witness give a description and how does that description compare to the defendant? How much time

McDonald, *supra*, 37 Cal.3d at p. 377, fn. 24 [noting similar instructions would focus the jury's attention toward any reliability issues regarding eyewitness identification]; see also *People v. Goodwillie* (2007) 147 Cal.App.4th 695, 725 [finding no error in exclusion of eyewitness expert testimony where similar CALJIC No. 2.92 was given].) In light of the foregoing, we do not find it reasonably probable that a different result would have occurred had the expert been permitted to testify. (See *People v. Sanders*, *supra*, at p. 510.)

II

Defendants jointly contend the trial court erroneously admitted Detective Geiger's testimony that Thorpe had provided reliable information about several other gang-related murders. They argue that Geiger's testimony was irrelevant, lacked proper foundation, likely contained inadmissible hearsay, and that its probative value was substantially outweighed by its prejudicial effect. We disagree. Geiger's testimony was relevant to Thorpe's credibility as a witness and was properly admitted.

Evidence must be relevant to be admissible. (Evid. Code, § 350.) "'Relevant evidence' means evidence, including evidence

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passed between the event and the time when the witness identified the defendant? Was the witness asked to pick the perpetrator out of a group? Did the witness ever fail to identify the defendant? Did the witness ever change his or her mind about the identification? How certain was the witness when he or she made an identification? Are the witness and the defendant of different races? Was the witness able to identify other participants in the crime? Was the witness able to identify the defendant in a photographic or physical lineup? Were there any other circumstances affecting the witness's ability to make an accurate identification?"

relevant to the credibility of a witness . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Under Evidence Code section 352, the trial court may exclude otherwise relevant evidence "if its probative value is substantially outweighed by the probability that its admission will . . . (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Because trial courts have "wide discretion in assessing whether in a given case a particular piece of evidence is relevant and whether it is more prejudicial than probative," we review the court's decision for abuse of discretion. (*People v. Duff* (2014) 58 Cal.4th 527, 558.)

People v. Reyes (2008) 165 Cal.App.4th 426 is instructive. In that case, defendant objected to a police detective's testimony that one of the trial witnesses provided critical information relating to five other murder investigations. (*Id.* at pp. 436-437.) Defendant argued that the detective's testimony constituted inadmissible opinion about the witness's credibility. The court disagreed, reasoning that "the detective did not offer or state an opinion about the witness's credibility. . . . The testimony was relevant and admissible, not as an opinion about [the witness's] credibility, but as evidence of conduct supporting it." (*Id.* at p. 437; citing *People v. Harris* (1989) 47 Cal.3d 1047, 1080-1082 [evidence of informant's prior reliability properly admitted for the purpose of proving his credibility as a trial witness].)

Similarly, here Geiger's testimony that Thorpe provided reliable information about other murders was relevant to her credibility as a witness. Although Cacho notes that this type of testimony is not included within Evidence Code section 780, which provides a list of factors that the court or jury may

consider in determining witness credibility, the list is not exhaustive.[5] Defendants also have not demonstrated that the admission of Geiger's testimony created a substantial danger of undue prejudice. (Evid. Code, § 352; see also *People v. Crittenden* (1994) 9 Cal.4th 83, 134 [undue prejudice is that which "uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues"].) Further, defendants forfeited their arguments that Geiger's testimony lacked proper foundation and constituted inadmissible hearsay by failing to object below. (See *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 726.) We find no abuse of discretion in the trial court's decision to admit Geiger's testimony.

III

Defendants jointly argue the evidence was insufficient to support the jury's true findings on the gang enhancement allegations. Specifically, they argue the gang expert testimony failed to establish that the "primary activities" of BPS and the Rolling 20's included the commission of one or more enumerated felonies, as required under section 186.22, subdivision (f). We disagree and conclude substantial evidence supports the jury's findings.

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[5] "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, *including but not limited to* any of the following: [¶] (a) His demeanor while testifying and the manner in which he testifies. . . . [¶] . . . (k) His admission of untruthfulness." (Evid. Code, § 780, italics added.)

Under section 186.22, subdivision (b)(1), a defendant is subject to additional punishment when convicted of a felony "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." The statute defines a "criminal street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the [enumerated] criminal acts . . . ." (§ 186.22, subd. (f).) The enumerated acts include, among others, felony vandalism, assault with a deadly weapon, robbery, grand theft of a vehicle, unlawful homicide or manslaughter, possession of narcotics for sale, and unlawful firearm possession. (§ 186.22, subd. (e).)

"Evidence of past or present conduct by gang members involving the commission of one or more of the statutorily enumerated crimes is relevant in determining the group's primary activities." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323.) "The phrase 'primary activities,' as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes is one of the group's 'chief' or 'principal' occupations. [Citation.] That definition would necessarily exclude the occasional commission of those crimes by the group's members." (*Ibid.*) "Sufficient proof of the gang's primary activities might consist of evidence that the group's members *consistently and repeatedly* have committed criminal activity listed in the gang statute." (*Id.* at p. 324.) "The testimony of a gang expert, founded on his or her conversations with gang members, personal investigation of crimes committed by gang members, and information obtained from colleagues in his or her

own and other law enforcement agencies, may be sufficient to prove a gang's primary activities. [Citations.]" (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1465.)

Here, the prosecution presented "primary activities" evidence through the testimony of two gang experts. Detective Sanchez testified as an expert on BPS. He joined the LAPD in 2005 and since 2008 had served in a gang enforcement detail where he was assigned to monitor BPS. He conducted numerous search warrants, pedestrian stops, consensual encounters, and detentions, and he spoke to gang members on a daily basis. He testified that some of BPS's "primary activities" included attempted murders, murders, robberies, bank robberies, home invasions, assaults with deadly weapons, vandalism, narcotics possession, and weapons possessions. When asked what "primary activities" meant to him, Sanchez replied, "Some of the activities that I personally have investigated or that this gang often commits, or some of the crimes that I'm often investigating." He also testified about two predicate offenses, each involving convictions of BPS gang members for murder and attempted murder committed in 2008 and 2009 respectively.

Officer Campos testified as an expert on the Rolling 20's. He had been a police officer for more than 13 years and was assigned to a gang enforcement detail from April 2004 to October 2007. He targeted the Rolling 20's by investigating crimes committed by its members and gathering intelligence on the gang and its activities. He came into contact with gang members on a daily basis in both informal and custodial settings. Campos testified that the Rolling 20's "primary activities" included property crimes, thefts, burglaries, grand theft auto, narcotics sales, assaults, assaults with deadly weapons, and murders. He

also testified regarding two predicate convictions for murder and attempted murder committed by Rolling 20's gang members in 2004 and 2005 respectively.

In arguing this testimony was insufficient, defendants rely on *In re Alexander L.* (2007) 149 Cal.App.4th 605. In that case, the expert was asked about a gang's primary activities, and responded: "'I know they've committed quite a few assaults with a deadly weapon, several assaults. I know they've been involved in murders. [¶] I know they've been involved with auto thefts, auto/vehicle burglaries, felony graffiti, narcotic violations.' No further questions were asked about the gang's primary activities on direct or redirect examination." (*Id.* at p. 611.) The court noted that the expert did not directly testify that criminal activities constituted the gang's primary activities. And even if it reasonably could be inferred that the expert meant the gang's primary activities were the crimes to which he referred, his testimony lacked adequate foundation because information establishing reliability was never elicited at trial. (*Id.* at p. 612.) "Without any foundation for his knowledge," the expert simply testified that he knew members of the gang had been involved in certain crimes. (*Id.* at p. 614.)

By contrast, in this case, both Detective Sanchez and Officer Campos directly testified that the primary activities of BPS and the Rolling 20's included several of the statutorily enumerated criminal acts. Further, the prosecutor elicited information which established the reliability of their testimony, including their years of experience assigned to gang enforcement details targeting BPS and the Rolling 20's, participation in investigations and searches, and their frequent contacts with BPS and Rolling 20's gang members in a variety of settings. This

testimony provided an adequate foundation for their knowledge of the gangs' "primary activities." We therefore conclude sufficient evidence supported the findings. (See, e.g., *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330 [sufficient evidence of gang's primary activities provided by an expert with eight years of experience dealing with the gang, including "regular investigations of its activity and interaction with its members"].)

IV

Both Evans and Cacho contend the trial court abused its discretion by admitting evidence they had possessed various firearms before and after the Morris shooting. They argue that this evidence was irrelevant to the charged crime and constituted unduly prejudicial character or propensity evidence under Evidence Code section 1101, subdivision (a).[6] We find no abuse of discretion.

Generally, "[w]hen the prosecution relies on evidence regarding a specific type of weapon, it is error to admit evidence that other weapons were found in the defendant's possession, for such evidence tends to show not that he committed the crime, but only that he is the sort of person who carries deadly weapons. [Citations.]" (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1056.) In other words, "[e]vidence of possession of a weapon not used in

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[6] Evidence Code section 1101, subdivision (a) "prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion. Subdivision (b) of section 1101 clarifies, however, that this rule does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393, fn. omitted.)

the crime charged against a defendant leads logically only to an inference that defendant is the kind of person who surrounds himself with deadly weapons—a fact of *no relevant* consequence to determination of the guilt or innocence of the defendant. [Citations.]" (*People v. Henderson* (1976) 58 Cal.App.3d 349, 360.)

However, evidence that the defendant possessed a weapon may be admitted if the weapon used in the crime is unknown, or if the proposed evidence is relevant to some issue other than the defendant's propensity to possess weapons. (See *People v. Cox* (2003) 30 Cal.4th 916, 956-957, disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) For example, in *People v. Carpenter* (1999) 21 Cal.4th 1016, 1052, the Supreme Court held it was proper for a witness to testify that the defendant told her he kept a gun in his van. "Although the witnesses did not establish the gun necessarily was the murder weapon, it might have been. . . . The evidence was thus relevant and admissible as circumstantial evidence that he committed the charged offenses." (*Ibid*.) More recently, in *People v. Nguyen* (2015) 61 Cal.4th 1015, 1073 (*Nguyen*), the Supreme Court held evidence that firearms discovered during the search of a vehicle and a house linked to the defendant but not linked to the shootings was properly admitted as relevant to prove defendant "was a gang member at war with a rival gang." (*Ibid*. citing *People v. Hill* (2011) 191 Cal.App.4th 1104, 1122, fn. 9 [evidence of an ongoing gang war was relevant to establish defendant's motive for possessing firearm].)

Here, Evans challenges evidence elicited during the direct examination of Officer Campos, who testified as a gang expert on the Rolling 20's. Campos testified that Evans had been detained

in rival Rolling 40's Crip gang territory while accompanied by a BPS gang member in May 2007, and that a search of Evans's vehicle resulted in the discovery of a fully loaded .22-caliber revolver. Cacho challenges testimony elicited from Jenkins, who stated that he had seen Cacho with an M1 rifle, a .40-caliber Glock, and a compact nine-millimeter handgun within a year prior to their conversation about the Morris shooting.

The undisputed physical evidence showed that three firearms were used in the shooting: one nine-millimeter and two .45-caliber semiautomatic handguns. There is no evidence that any rifle, .22-caliber, or .40-caliber rounds were fired. Accordingly, the only firearm mentioned in the challenged testimony that could possibly have been a murder weapon is the nine-millimeter handgun allegedly possessed by Cacho. We therefore find Jenkins's specific testimony about the nine-millimeter handgun relevant as circumstantial evidence that Cacho committed the charged crime. (See *People v. Carpenter*, *supra*, 21 Cal.4th at p. 1052.) However, testimony regarding all of the other firearms—none of which could have been a murder weapon—is admissible only if relevant to an issue other than defendants' propensity to possess deadly weapons.

The People argue that the firearms evidence was relevant to the gang enhancement allegation, which requires proof that the crime was "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).) They contend that evidence of Evans's possession of a firearm in rival gang territory while accompanied by a BPS gang member tended to prove he was an active gang member. They argue that Cacho's possession

of firearms tended to prove both his gang membership and that he was "ready to promote, further, and assist gang members in criminal conduct" and to "intimidate rival gangs." They note that Detective Sanchez testified the primary activities of BPS included assaults with a deadly weapon and weapons possessions.

Because the trial court has broad latitude in determining the relevance of evidence, we cannot say the court abused its discretion. (See *Nguyen*, *supra*, 61 Cal.4th at p. 1073.) The firearms evidence had some "tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action" (Evid. Code § 210), namely, that Evans and Cacho were active gang members, and by extension, that the murder was "committed for the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subd. (b)(1).)

We also find no abuse of discretion in the trial court's determination that the probative value of the evidence was not outweighed by undue prejudicial effect. (Evid. Code, § 352.) Although firearms evidence always has the potential to be prejudicial, gang-related gun violence pervaded the facts of this case. There was a significant amount of other testimony indicating that Evans and Cacho possessed firearms. Indeed, Evans himself testified that he possessed a .40-caliber Glock at the time of the murder; and Cacho admitted that he "occasionally" carried firearms. Thus, admission of evidence that defendants possessed firearms unconnected to the charged crime was not unduly prejudicial. (See *Nguyen*, *supra*, 61 Cal.4th at p. 1073.) For the same reason, even if we were to find the trial court abused its discretion, we would conclude that any error was

harmless. (See *People v. Malone* (1988) 47 Cal.3d 1, 22; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

V

Defendants jointly argue the trial court erred when it told jurors not to take a "strong stand" during deliberations. They maintain this statement impermissibly intruded on the jury's deliberative process in violation of their state and federal constitutional rights to a fair jury trial. We conclude that the trial court's statement, taken in context, was not improper.

After one full day of deliberations and readback of testimony, the court received a note asking for clarification on the jury instructions regarding reasonable doubt and witness credibility. In answering the question regarding reasonable doubt, the court directed the jury to the third paragraph of CALCRIM No. 220 and read it verbatim.[7] The court added, "I'm sure you read that over and over. The law does not allow me to add much to that. It's dangerous, frankly, for a judge to try to further define reasonable doubt. . . . And I can tell you that the key thing to me is, . . . this is the high standard of proof, but it's not to a scientific or absolute proof. Just keep that in mind. And the reason for that is these are affairs of men as it is so called. An abiding conviction means a lasting conviction." The court further instructed jurors to "bring your own personal experiences to bear on evaluating the evidence," to "keep an open mind," to "listen to what others have to say" and not to "have any

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[7] The instructions stated: "Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt." (CALCRIM No. 220.)

preconceived notion or ideas." It added, "hopefully you can come to a decision. If you can, you can. If you can't, you can't."

The court also reread and clarified several instructions relating to witness credibility. In doing so, the court remarked, "And again, we're trusting you folks to use your experience . . . to collectively analyze the evidence. We always hate to hear about situations where someone takes a strong stand in jury deliberations and refuses to consider others' opinions. That makes it very difficult, and the system breaks down if people take very strong stands. We implore you to consider everyone's opinion, to give everyone a chance to express heir opinion, and to make your decision based on the evidence and not . . . things outside the evidence." It added, "We don't want people to come to jury duty with any hidden agenda of some kind. We want you to be open minded, to be a judge of the facts. That's what jurors are designed to do, and to judge those facts fairly, without regard for bias, sympathy, emotion or prejudice."

The jury continued its deliberations, and following a recess, sent a note asking if it could convict on a lesser charge, and also indicated it had reached a verdict regarding Cacho but was hung on Evans. Because one of the jurors was about to be excused for cause, the court decided to take the verdict for Cacho and then seat an alternate so the jury could continue deliberations regarding Evans. However, when the jury was brought out, it had come to an agreement on both defendants and issued the guilty verdicts.

Defendants argue the trial court's extemporaneous statement that jurors should not take a "strong stand" improperly dissuaded individual jurors from holding out for acquittal even if they were left with a reasonable doubt. Because

the jury had deliberated for a full day, requested readback of testimony, and asked for clarification on reasonable doubt and witness credibility, defendants contend that the remark "could only be understood as telling minority jurors to abandon their strongly held independent views in favor of the views of the majority." We disagree.

"A trial court may properly advise a jury of the importance of arriving at a verdict and of the duty of individual jurors to hear and consider each other's arguments with open minds, rather than to prevent agreement by obstinate adherence to first impressions. [Citations.]" (7 Witkin, Cal. Proc. (5th ed. 2008) Trial, § 337, p. 394, quoting *Cook v. Los Angeles Ry. Corp*. (1939) 13 Cal.2d 591, 594.) CALCRIM No. 3550, which was given in this case, specifically instructs jurors to "[k]eep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion."

We conclude that the trial court's comments about taking a "strong stand," viewed in context, were not improper and were entirely consistent with CALCRIM No. 3550. By taking a "strong stand," the court explicitly referred to "refus[ing] to consider others' opinions." The court encouraged the jurors to "consider everyone's opinion" and "to be open minded." Nothing in these remarks reasonably can be construed as an attempt to improperly influence or coerce the jury into returning a verdict. Indeed, the court told the jurors, "hopefully you can come to a decision. If you can, you can. If you can't, you can't."

The Supreme Court has upheld similar additional instructions even after a jury declares it is deadlocked. (See, e.g.,

People v. Bell (2007) 40 Cal.4th 582, 617, overruled on other grounds in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13 [court's order for further jury deliberations so that jurors could come "'to understand fully each other's viewpoint'" did not impliedly suggest that holdout juror should change her mind]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1121 [no error where court instructed jurors that they should not hesitate to reexamine or change their views or ask other jurors to do so].) We find no impropriety here and accordingly reject defendants' claims.

VI

Finally, defendants jointly contend that cumulative error requires reversal. "Under the cumulative error doctrine, the reviewing court must 'review each allegation and assess the cumulative effect of any errors to see if it is reasonably probable the jury would have reached a result more favorable to defendant in their absence.' [Citation.]" (*People v. Williams* (2009) 170 Cal.App.4th 587, 646.) "The 'litmus test' for cumulative error 'is whether defendant received due process and a fair trial.' [Citation.]" (*People v. Cuccia* (2002) 97 Cal.App.4th 785, 795.) We have found no error that, either alone or in conjunction with others, prejudiced defendants and denied their rights to due process and a fair trial.[8]

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[8] Because we reject defendants' claims of state law error on the merits, we necessarily reject their claims of federal constitutional error. "'No separate constitutional discussion is required in such cases, and we therefore provide none.' [Citation.]" (*People v. Homick* (2012) 55 Cal.4th 816, 856, fn. 25.)

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.