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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL EDWARD HARRIS,

Defendant and Appellant.

B267248

(Los Angeles County
Super. Ct. No. LA074129)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Jesic, Judge. Affirmed as modified with directions.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising

Deputy Attorney General, David W. Williams, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Michael Edward Harris (defendant) was convicted of battery with serious bodily injury (Pen. Code, § 243, subd. (d)).¹ On appeal, defendant contends: (1) the trial court abused its discretion in denying his petition to unseal juror identifying information; (2) the trial court erred by sentencing him to state prison rather than county jail; and (3) the abstract of judgment should be amended to reflect that defendant is entitled to receive two additional days of actual custody credit and one additional day of conduct credit. The Attorney General agrees that the abstract of judgment should be amended to reflect the requested custody credits and also contends the abstract of judgment should be amended to reflect that defendant was convicted by a jury and not pursuant to a guilty plea.

We hold the judgment should be modified, and the minute order and abstract of judgment should be amended, to reflect that defendant is entitled to receive 41 days of actual custody credit and 40 days of conduct credit, and the abstract of judgment should be amended to reflect that defendant was convicted by jury verdict (not following a guilty plea). We otherwise affirm the judgment.

¹ All subsequent statutory citations are to the Penal Code unless otherwise indicated.

BACKGROUND

Defendant was charged in an information with one count of battery with serious bodily injury in violation of section 243, subdivision (d) (count 1), and one count of assault by means likely to produce great bodily injury in violation of section 245, subdivision (a)(4) (count 2).

The charges arose from an altercation between defendant and victim Scott Chamberlain on February 17, 2013. At trial, the prosecution introduced evidence that, while Chamberlain was walking his two dogs, one of his dogs bit at the dog defendant was walking. Defendant and Chamberlain then exchanged words, and ultimately defendant punched Chamberlain several times in the head, knocking him unconscious.

Chamberlain suffered a fractured hip, a laceration on his eyebrow, a possible subdural hematoma, and a possible contusion on his liver. While in the hospital, he was unable to walk. He was bedridden for a month and a half after being released from the hospital. For about three or four months thereafter, Chamberlain began using a wheelchair, transitioning into using a walker and then a cane. He was not able to walk unassisted for about six months after his encounter with defendant.

Defendant testified at trial and admitted that he punched Chamberlain's face several times. Defendant, however, contended that did so only in self-defense and claimed that Chamberlain did not lose consciousness during the fight.

The jury found defendant guilty on count 1, and not guilty on count 2. Thereafter, alleging juror misconduct, defendant filed a motion for new trial and a petition for the disclosure of juror information. The trial court denied both requests.

The trial court sentenced defendant to state prison for a term of two years. The trial court awarded defendant 78 days of custody credit, consisting of 39 days of actual custody credit and 39 days of conduct credit.

Defendant filed a timely notice of appeal.

DISCUSSION

I. Petition for Disclosure of Juror Information

Defendant argues that juror misconduct may have occurred during trial and that the trial court therefore abused its discretion in denying his petition to unseal juror identifying information to allow further investigation. The trial court did not err.

A. *Applicable Law*

After a jury's verdict in a criminal case is recorded, jurors' identifying information (names, addresses, and telephone numbers) is sealed. (Code Civ. Proc., § 237, subds. (a)(2)-(3).) Discovery of jurors' identifying information "is a sensitive issue which involves significant, competing, public-policy interests." (*People v. Rhodes* (1989) 212 Cal.App.3d 541, 548; *People v. Tuggles* (2009) 179 Cal.App.4th 339, 380.) To protect those interests, there are procedures in place by which a defendant may "petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose." (Code Civ. Proc., § 206, subd. (g); *People v. McNally* (2015) 236 Cal.App.4th 1419, 1430 (*McNally*). Such a petition "shall be

supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information.' Absent a showing of good cause for the release of the information, the public interest in the integrity of the jury system and the juror's right to privacy outweighs the defendant's interest in disclosure." (*McNally, supra*, 236 Cal.App.4th at p. 1430 [quoting Code Civ. Proc., § 237, subd. (b)].)

"Good cause, in the context of a petition for disclosure to support a motion for a new trial based on juror misconduct, requires 'a sufficient showing to support a reasonable belief that jury misconduct occurred. . . .' [Citations.]" (*People v. Johnson* (2015) 242 Cal.App.4th 1155, 1161-1162.) "Good cause does not exist where the allegations of jury misconduct are speculative, conclusory, vague, or unsupported." (*People v. Cook* (2015) 236 Cal.App.4th 341, 346 (*Cook*).) Furthermore, the misconduct alleged must be "of such a character as is likely to have influenced the verdict improperly [citation]" (*People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1322.)

We review the denial of a petition to disclose juror identification information under the deferential abuse of discretion standard. (*Cook, supra* 236 Cal.App.4th at p. 346; *People v. Jones* (1998) 17 Cal.4th 279, 317.)

B. Relevant Proceedings

Defendant was convicted on July 24, 2015. On August 3, 2015, the day before he was scheduled for sentencing, defendant's girlfriend, Mariam Sprong, told defendant's counsel that she might have witnessed juror misconduct during the trial. On August 4, 2015, defendant's counsel brought the matter to the

trial court's attention and asked that Sprong be allowed to describe what had occurred.

Sprong testified during the August 4, 2015, hearing, and claimed that an incident with a juror occurred “weeks ago”—the day of, but after, Sprong testified during defendant's trial (i.e., July 23, 2015). She said that, while crying in a courthouse bathroom after completing her testimony, a woman approached her. The woman told Sprong: “Don't cry. You are too pretty to cry.” According to Sprong, the woman also said that she “should not let a bad man into [her] life.” The woman also told Sprong to think with her head rather than with her heart. Sprong said the woman had “like a work tag” on her chest.

Sprong further testified that, later that same day (i.e., July 23, 2015), she and defendant were in an elevator and someone was behind them. When Sprong started to speak, defendant told Sprong to stop talking. After Sprong and defendant exited the elevator, defendant explained that he told Sprong to stop talking because there was a juror in the elevator. Sprong asked defendant how he knew the person was a juror, and he explained that, “because he had a thing here. . . ,” referring to a juror identification badge worn on the chest. Sprong testified that “I ended up figuring this person in the bathroom was a juror because the person in the elevator had a tag.”

Sprong also claimed that, on that same evening, a friend told her that speaking with a juror during trial “could be a felony on [her] part.” Scared, Sprong wanted to speak with a lawyer immediately. Sprong said she tried to contact defense counsel “continuously,” but was unable to reach him. Instead, she spoke with an attorney named Mia Yamamoto sometime before 3:00

p.m. the following day, July 24. Yamamoto told Sprong to speak with defendant about the purported juror misconduct.

When questioned further during the August 4th hearing, Sprong contradicted her earlier testimony that she spoke to Yamamoto on July 24. Instead, Sprong stated that she did not speak with Yamamoto until July 28—four days after the jury’s verdict. Sprong also admitted that she confronted some jurors after the guilty verdict was returned against defendant and spoke to them “in a stern voice.” Sprong asserted that she knew it was permissible to confront the jurors because she knew communication with a juror after a verdict was treated differently from communication before a verdict. Sprong also said that, prior to speaking with Yamamoto, she did speak with defendant’s counsel on July 24, but Sprong did not mention her concern about the purported juror misconduct.

The trial court expressed skepticism over the changing sequence of events described by Sprong and questioned why she did not mention her concerns to defense counsel when she spoke with him on July 24. The trial court indicated that it found Sprong “completely, utterly lacking in credibility.” Nevertheless, the trial court continued sentencing so that defendant could file a motion for new trial and petition to release juror information.

Thereafter, defendant filed a motion for new trial, accompanied by Yamamoto’s declaration,² and a petition for disclosure of juror information, supported by a declaration from defendant’s counsel. In both the motion and petition, defendant claimed the basis for relief was the purported juror misconduct

² Contrary to Sprong’s testimony at the August 4th hearing, Yamamoto stated in her declaration that she spoke with Sprong on July 30, 2015.

involving Sprong. At the hearing on the motion and petition, the trial court stated:

“It’s not about whether [Sprong] got the dates right or wrong. It’s about whether she got the whole sequence of events right or wrong. That’s my concern.

“[¶. . . .¶]

“[D]id it ever happen? And if it happened, was this a juror in this courtroom? That’s my issue. . . . Her credibility is so suspect after the way she testified. I’m not sure this ever happened. But even if it did, I’m not sure that this is a juror who was even part of our case. She never identified anyone from our case. She never said this is a juror from our case. . . .

“. . . She testified numerous times [and] she looked at the jurors and talked to them. She was in and out of the courtroom. She never once said that she recognized the person as a juror. [Regarding whether the woman in the bathroom as even a juror,] I find it a little ridiculous that even someone who’s never been in a courthouse—I mean, it’s pretty clear that [the juror’s badge] says ‘JUROR,’ on it that she wouldn’t notice that was a juror I.D. And it was really unclear what she saw in the bathroom[; it may have been] a court employee who had an insignia. We don’t know because we don’t know if that was really a juror.

“[¶. . . .¶]

“. . . I guess part of the problem is she changed her story or her testimony so many times, it’s kind of hard to follow what happened. . . .

“[¶. . . .¶]

“. . . I’m going to assume that it actually did happen. . . . I’ll give the defendant the benefit of assuming that it did happen; that there was an encounter in the restroom with some

individual. We don't know whether that individual was a juror in our case. She has never said that she recognized the badge as a juror I.D. badge at the time. . . . I find it hard to believe the way our juror badges are that she wouldn't have recognized it immediately as a juror badge.

“And there are people on floors and other floors in this building for trial. It doesn't even shock me to think that a person who had nothing to do with this trial would approach a crying woman in a criminal courthouse and assume she was crying over an incident with a man. There's so much speculation in this that there's no way I can find good cause to release juror info and their personal information to the defense based on the very speculative information that I received from Ms. Sprong, which I find completely lacking in credibility. But even if I believed that it was true, there's nothing to indicate that it was a juror in our case. And so the [petition] to release juror indentifying information is denied.”³

C. Analysis

The trial court did not err in denying defendant's petition to unseal juror identifying information.

To begin with, the trial court explicitly found that Sprong's “credibility was suspect,” that her inability to tell whether the woman in the bathroom was a juror was “a little ridiculous,” that “it was really unclear what she saw in the bathroom,” that Sprong “changed her testimony so many times,” that it was “kind of hard to follow what happened,” and that the information Sprong provided was “completely lacking in credibility.” Sprong's

³ The trial court also denied defendant's motion for new trial. Defendant does not challenge that ruling in this appeal.

meandering, confusing, and often contradictory testimony amply supports the trial court's conclusions that she was a non-credible and unreliable witness. Because that testimony is the only evidence upon which defendant relies in support of his petition to unseal juror identifying information, we conclude that the trial court was well within its discretion to reject that testimony out of hand and deny defendant's petition as "speculative, conclusory, vague, or unsupported." (*Cook, supra* 236 Cal.App.4th at pp. 346.)

But even assuming, as the trial court did, that the incident occurred as Sprong described it, defendant still failed to make a sufficient showing to support a reasonable belief that any juror misconduct occurred. Defendant has not established that the woman in the bathroom who spoke to Sprong was even a juror. Sprong merely stated that the woman with whom she spoke had "like a work tag" on her chest. As the trial court observed, a juror's badge clearly says "JUROR" on it, and Sprong never said that she recognized the badge on the woman as a juror badge. Moreover, even though Sprong was in an elevator with a man wearing a tag apparently identifying him as a juror, Sprong's testimony did not establish that the man's tag was the same as the "work tag" worn by the woman in the bathroom. Indeed, there is no evidence that Sprong saw the man's tag, because he stood behind Sprong and defendant while they were in the elevator.

As the trial court also observed, Sprong's ambiguous testimony was just as consistent with the woman in the bathroom being a badge-wearing court employee or some other good Samaritan reaching out to console a crying and upset woman. Similarly, the woman's generic reference to a "bad man" may

very well have been a reference to some unknown man whom the woman assumed had caused Sprong such grief.

Furthermore, even if one were to speculate that the woman in the bathroom was a juror, one must further speculate that she was a juror for defendant's case in order for Sprong's testimony to have any meaning. But, as the trial court noted, Sprong never said that she recognized the person as a juror in defendant's case, even though Sprong was "in and out of the courtroom" during the trial; testified at trial; and had the opportunity to look at, observe, and speak to the jury while testifying and while confronting some of them after the trial.

Thus, even if we were to fully credit Sprong's testimony as truthful, defendant's allegations of jury misconduct remain speculative and unsupported. Accordingly, we hold that the trial court did not abuse its discretion in concluding that defendant failed to establish a reasonable belief of possible juror misconduct to justify unsealing the jurors' personal identifying information. (*Cook, supra*, 236 Cal.App.4th at pp. 345-346.)

II. Defendant's Sentence to Serve Time in State Prison

Defendant contends that the trial court erred by sentencing him to state prison rather than county jail. He argues that his conviction under section 243, subdivision (d), does not constitute a "serious felony" under section 1170, subdivision (h), and therefore does not automatically exclude him from a county jail sentence. The trial court did not err.

Defendant was convicted of battery with serious bodily injury pursuant to section 243, subdivision (d).⁴ Subdivision (d)

⁴ "Serious bodily injury" for purposes of section 243 is defined as "a serious impairment of physical condition, including, but not

of that section provides in relevant part that battery with serious bodily injury “is punishable by . . . imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.” (§ 243, subd. (d).) Section 1170, subdivision (h), in turn, provides that, where the defendant’s conviction is for “a serious felony described in subdivision (c) of Section 1192.7,” the sentence “shall be served in state prison.” (§ 1170, subd. (h)(3).) Subdivision (c)(8) of section 1192.7 defines a “serious felony” as, *inter alia*, “any felony in which the defendant personally inflicts great bodily injury.”

Because defendant was found guilty of battery with *serious bodily injury*, he necessarily inflicted *great bodily injury* and thus committed a serious felony that mandated custody in the state prison. (*People v. Moore* (1992) 10 Cal.App.4th 1868, 1871 [“[T]he element of ‘serious bodily injury,’ as required for felony battery, is essentially equivalent to or synonymous with ‘great bodily injury’ for the purpose of a ‘serious felony’ sentence enhancement pursuant to . . . section[] . . . 1192.7, subdivision (c)(8).”]; see also *People v. Sloan* (2007) 42 Cal.4th 110, 117 [noting “serious bodily injury” is the “essential equivalent” of “great bodily injury” for section 12022.7 sentencing enhancement]; *People v. Knoller* (2007) 41 Cal.4th 139, 143, fn. 2 [same]; *People v. Hawkins* (1993) 15 Cal.App.4th 1373, 1375 [“The terms ‘serious bodily injury’ and ‘great bodily injury’ have substantially the same meaning.”].) Moreover, we note that the evidence at trial established that the injuries defendant inflicted upon the victim unquestionably rose

limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing; and serious disfigurement.” (§ 243, subd. (f)(4).)

to the level of great bodily injury.⁵ Defendant knocked the victim unconscious, and the victim suffered a fractured hip, severely impaired mobility, a possible subdural hematoma, possible liver contusion, and a laceration to the face.

Accordingly, the trial court did not err by imposing a sentence that included custody time to be served in state prison.

III. Abstract of Judgment

Defendant contends, and the Attorney General agrees, that defendant is entitled to three additional days of custody credit, consisting of two days of actual custody credit and one day of conduct credit.

The trial court stated, and the minute order and abstract confirm, that defendant was awarded 39 days of actual custody credit and 39 days of conduct credit. The parties now agree, however, defendant was in actual custody for 41 days, and he should have received 40 days of conduct credits.

Therefore, the judgment should be modified, and the minute order and abstract of judgment should be amended, to reflect that defendant is entitled to a total of 81 days of custody credit, consisting of 41 days of actual custody credit and 40 days of conduct credits.⁶

⁵ Although section 1192.7 does not provide a definition of “great bodily injury,” the similarly worded sentencing enhancement for inflicting great bodily injury under section 12022.7 defines “great bodily injury” as “a significant or substantial physical injury.” (§ 12022.7, subd. (f).)

⁶ Defendant filed an ex parte application seeking this same relief in the trial court. The record on appeal does not reflect that

In addition, the abstract of judgment must be amended because it states that defendant was convicted following a guilty plea. There is no dispute defendant was convicted by a jury at trial, and the abstract of judgment should so reflect. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [trial and appellate courts may correct clerical errors in records “so as to make these records reflect the true facts”].)

the trial court ever ruled on this application, and the parties have not advised us to the contrary.

DISPOSITION

The judgment is modified, and the minute order and abstract of judgment is amended, to reflect that defendant should receive 41 days of actual custody credit and 40 days of conduct credit, and the abstract of judgment is amended to reflect that defendant was convicted by jury (not following a guilty plea). In all other respects, the judgment is affirmed. Upon remittitur issuance, the clerk of the superior court is to amend the abstract of judgment consistent with this opinion, and is to deliver the amended abstract of judgment to the Department of Corrections and Rehabilitation. The trial court is to actively and personally ensure that the clerk accurately prepares a correct amended abstract of judgment which reflects the modifications we have ordered. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Chan* (2005) 128 Cal.App.4th 408, 425-426.)

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KIN, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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