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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.

ALONZO CLAYTON PHILLIPS,

Defendant and Appellant.

B259008

(Los Angeles County  
Super. Ct. No. BA405048)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Monica Bachner, Judge. Affirmed.

Donna L. Harris, 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, Michael R. Johnson and Wyatt E.  
Bloomfield, Deputy Attorneys General, for Plaintiff and  
Respondent.

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## INTRODUCTION

Alonzo Clayton Phillips appeals from the judgment after a jury convicted him of attempted premeditated murder (Pen. Code §§ 664, 187, subd. (a))<sup>1</sup> with related gang and firearm enhancements (§§ 186.22, subd. (b)(1)(C), 12022.53, subds. (b), (c), (d)). He argues the trial court violated his constitutional rights to due process, to present a defense, and to a fair jury trial by permitting the prosecutor to redact certain statements from a videotaped, jail-cell conversation between Phillips and a confidential informant that referenced how much time in custody Phillips might receive as a sentence if he were convicted. Phillips argues the redacted statements showed the pressure Phillips was under during his conversation with the confidential informant. Phillips also argues that the court abused its discretion under Evidence Code section 352 by admitting “cumulative and extremely prejudicial” gang evidence from social media websites. Because the trial court did not abuse its discretion in allowing the redactions or in admitting the gang evidence, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Courtney Cooks, Dushawne Smith, and Tyler W. Are Shot on a Crowded Street in Hollywood*

At approximately 10:00 p.m. on October 31, 2012, more than 100 people were celebrating Halloween on Hollywood Boulevard near the intersection with Cherokee. Officers Edwin Marron and Patrick Farrell were patrolling the area. They saw a

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

fight break out in a group of more than 40 people. Officer Marron heard “a series of gunshots.”

Three people were shot—Courtney Cooks, Dushawne Smith, and 14-year-old Tyler W. Cooks was shot seven times (in the right torso, right arm, and right thigh) and spent almost a month in the hospital. Smith was shot once in the left buttock. Tyler W. was shot once in the foot. A police firearms analyst determined the same gun fired the eight cartridge casings recovered from the area. Both the prosecution and the defense theorized that there was just one shooter.

At the hospital, Cooks told Detective Bill Wilson, the lead investigator on the case, that the shooter was from the Nickerson Gardens housing project in Watts and was affiliated with the Bounty Hunter Bloods criminal street gang. The main rival of the Bounty Hunter Bloods is the Grape Street Crips criminal street gang, which claims territory in the area around the Jordan Downs housing project in Watts. Cooks was from the Jordan Downs housing project. Although Cooks denied any gang affiliation, he told Detective Wilson that the Bounty Hunter Bloods were “rivals of the people in Jordan Downs housing projects.”

Cooks told Detective Wilson that, after he had been shot and had fallen to the ground, “the shooter stood over him and continued to fire shots at him.” Cooks described the shooter as a black man with short hair, 18 to 21 years old, 5 feet 9 inches to 5 feet 11 inches tall, and wearing all black clothing. Phillips was a black man with short hair, 18 years old at the time, 5 feet 9 inches to 5 feet 10 inches tall, and appeared on a nearby motel’s surveillance video wearing a black jacket and red shirt. The following day, Detective Wilson showed Cooks a six-pack photographic lineup that included a picture of Phillips. Cooks

immediately identified Phillips as the shooter. He said he was “positive” Phillips was the shooter, but he did not want his name mentioned in police reports and he would not testify in court.<sup>2</sup>

Cooks ultimately did testify at trial, but said he did so only because the People threatened to have him arrested if he did not testify. He stated he was on morphine at the hospital that left him “dizzy and drowsy.” He denied making many of the statements about the shooting that Detective Wilson attributed to him, denied giving a description of the shooter, denied he knew who shot him, and denied identifying Phillips in the photographic lineup.

Like Cooks, Smith was from the Jordan Downs housing project. He was also interviewed by Detective Wilson at the hospital. He said that the shooter was a 16- or 17-year-old black male who was 5 feet one or 5 feet two inches tall, wore a gray and red sweater, and had a chrome revolver that he fired “randomly.” Although Smith did not express any reluctance or fear about identifying the shooter at the hospital, at trial he denied providing Detective Wilson with a description of the shooter or of the gun and said he did not see who shot him. Smith testified he has been a member of the Grape Street Crips since he was “a little kid,” and, right after he was shot, he displayed a Grape Street hand sign to “let my people know I was cool.”

At the crime scene, Tyler W. was not “forthcoming” about what had happened. He testified he heard a fight break out on the opposite side of the street from where he was standing, he

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<sup>2</sup> In gang culture, testifying against any gang member, even a rival gang member, is considered “snitching.”

heard someone say “oh shit,” and then he heard a gunshot. He testified that he did not see who shot him.

B. *Phillips Talks to a Confidential Informant in Jail*

Detective Nathan Khouri arranged to place a confidential informant in Phillips’s jail cell. Detective Khouri was investigating an unrelated murder case—the shooting of a Grape Street gang member in Watts on November 6, 2012. Khouri hoped Phillips would know something about the murder case he was investigating because of Phillips’s gang affiliation. Although he had no information linking Phillips to the murder, in order to stimulate conversation with the confidential informant Detective Khouri told Phillips his name had come up in connection with the case. The police recorded the conversation between Phillips and the confidential informant, and the prosecution played the video at trial.

During the conversation, Phillips consistently denied having any knowledge about or involvement in the murder Detective Khouri was investigating. But Phillips did make some potentially incriminating statements related to the Hollywood shootings. He told the confidential informant, “They got pictures. The picture is blurry as fuck. You can’t see nothing. I told them I don’t know who that is. . . . [Y]ou can’t tell that it’s me. . . . You can’t see nothing but what I had on.” He said he was “from Bounty Hunters” and his group was outnumbered by Grape Street gang members. When the confidential informant asked if the Hollywood crime was “just like a solo type shit,” Phillips answered, “Yeah.” When the confidential informant asked if Phillips told anyone about the Hollywood crime, Phillips said, “Hell no.” Later, the confidential informant asked whether the victim “didn’t get a look at you before you popped him,” and

Phillips answered, “Positive.” Phillips also said that the “burner” (gun) from that night was “gone, gone, gone,” and “long gone.”

C. *The Prosecutor Redacts Certain Statements from the Conversation Between Phillips and the Confidential Informant*

The prosecutor redacted certain statements from the transcript of the conversation between Phillips and the confidential informant. Phillips objected to the redaction of four statements by the confidential informant: (1) Phillips would “do like 20 years, 20 years, 25,” (2) those sentences would be “consecutive—so they’ll give you 20 years for that and then fuck around and, and give you like, give you 20 more years for that other thing, maybe 25 years for that other thing too,” (3) “like when you like woke up this morning [you] never thought you’d be fighting for the rest of your life,” and (4) “[they’re] trying to get you all washed up with two life sentences and shit.” The prosecutor argued the court should approve these redactions because the four statements “speak to an issue that the jury has been instructed not to consider, and that’s potential sentencing or punishment for this type of charge. It is not relevant, and it is also prejudicial, because it points the jury directly to the very issue that they’re not supposed to be considering. And there is no probative value that would outweigh what I think would be, for most jurors, a very inflammatory concern.”

Counsel for Phillips argued the references to potentially long sentences were part of an effort to “put Mr. Phillips under a lot of stress in the hopes that he would make incriminatory statements.” Counsel explained, “The confidential informant is using these numbers of potential sentences to really rev up the stress that Mr. Phillips was feeling so that he could then come in,

gain the trust of Mr. Phillips.” “The reason why [the discussion is] 45 minutes long is because that informant is using pressure techniques like indicating to Mr. Phillips how high his bail is, the fact that the charges are very serious, that he’s looking at a lot of time, and those are things that I need to address to the jury in my closing argument about the reason why Mr. Phillips ends up making incriminatory admissions.”

The trial court initially indicated it was not inclined to allow the redactions, but would give a limiting instruction, “including that punishment is not an issue for [the jury], [and] that they’re not to assume what the informant said about punishment is correct.” After listening to the entire conversation, however, the court determined the statements were not “in any way . . . coercive” and should be redacted because “the jury is not to know what the possible sentence is, and those portions are overly suggestive in that area.” The court ruled “the probative value [of the redacted statements] is outweighed by the prejudicial effect.”

D. *The Trial Court Admits Social Media and Other Gang Evidence*

The prosecution introduced what Phillips admits was “[e]xtensive and uncontroverted” evidence of Phillips’s membership in the Bounty Hunter Bloods and the Bounty Hunter Bloods’ rivalry with the Grape Street Crips. One of the prosecution’s gang experts, Detective Daniel Pearce, testified that the “utmost sign of commitment” to a gang is to try to kill rival gang members. Another gang expert, Officer Francis Coughlin, testified that the Bounty Hunters’ “number one rival by far is the Grape Street Crips,” and that the war between the Bounty

Hunters and Grape Street “has probably taken more lives than any other feud in the Watts area.”

Officer Coughlin also testified about “Relly Nation,” a “musical group comprised of Bounty Hunter Blood gang members who were writing songs . . . against the Grape Street Crips.” Relly Nation “devolved into a clique of the Bounty Hunter Bloods.” There had been a truce between the Bounty Hunter Bloods and the Grape Street Crips during the year before the Halloween shooting, but Relly Nation videos “encourage[ed] youngsters specifically to take action against Grape Street Crips” and “inflame[d] the rivalry.”<sup>3</sup> Phillips posted on a social media site a photographic montage entitled “It’s My Rellys.” On the day of the shooting, Phillips posted, “Hollywood night is a Relly night.”

At times, Phillips used on his social media sites the names “GKlonzo Phillips” and “Alonzo Duceline Phillips,” where “GK” stands for “Grape Killer” and “Duceline” is a set of the Bounty Hunter Bloods. Phillips also posted a picture of himself on his social media site that he titled “Burrerrderrrrr!!!”<sup>4</sup> Another one of Phillips’s social media names was “Lonzotherelly.”

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<sup>3</sup> In fact, Cooks told Detective Wilson he had seen Relly Nation rap videos posted on the internet, and the videos were part of the feud between the Bounty Hunter Bloods and the Grape Street Crips.

<sup>4</sup> Officer Coughlin testified that “to show . . . allegiance to the gang” the Bounty Hunter Bloods will use the letter “B” to replace other letters. “For example, the Bounty Hunter Bloods, instead of saying “cool,” will say, “bool.”



On October 21, 2012, less than two weeks before the shooting, Phillips's status on his social media site included, "It's always going to be fuck Fake Street and everything you all stand for. Period. CK, GK." "Fake Street" is a derogatory name for "Grape Street," and "CK" stands for "Crip Killer." On January 6, 2012, two months after the shooting, Phillips's social media status included, "I'm the opposite of good. I'm bad. Fake Street murderer."

The People also introduced—over Phillips's objections that the evidence was more prejudicial than probative, not relevant, and cumulative—five pieces of evidence from social media that form the basis for Phillips's second argument on appeal. First, in October and November 2011 (one year before the shooting) Phillips posted on his social media site statements the People argued related to an incident of gang violence at Knott's Berry Farm. Phillips wrote, "I am from Duceline Bounty Hunnas. We run up on you where you're from and check the tats under yo clothin. Hunnas go hard, make sure mah knots swollen, fuck it. Say the wrong thing, bullets explodin"; "Knotts going to go up tomorrow. I'm banging on everything"; "On hunnas, we got into it with the fakes last night at Knotts"; and "Knotts was the shit with all my Rellys." And Phillips wrote a private message to

another user, “Man I pulled a gun out on yo homies. I was finna kill them niggahs. I kan’t kome over der.”<sup>5</sup>

Second, the day of the shooting, Phillips “liked” three social media statuses posted by other users. These postings read, “Whoever is going to Hollywood tomorrow, you all be safe. I just heard some shit, and I just want to warn you all to be careful. Real shit.”; “Might slide through Hollywood? So I can show the enemies I’m present!”; and “[b]am bam bam open up the door. Looks like the bitch.”

Third, Phillips and another social media user with the name “FreakooRico” had a private, written conversation on November 2, 2012 (just after the shooting). FreakooRico began, “Aye, you popped the homies. Weird stupid rellyk ass niggah. As a matter of fact, it [doesn’t] even matter. Just know you all got something coming.” Phillips responded, “Man get your weird scary ass out of my in-box shit.” FreakooRico then said, “Just know you got it coming.” Phillips said, “You do too bitch.” FreakooRico wrote, “Yup, all that Jordan Down Grape Street Beezy gang bitch pulled up on Wayne and had his face missing.” And then Phillips said, “Koo.” Officer Coughlin testified that Wayne was a Bounty Hunter Bloods gang member who was shot

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<sup>5</sup> Trial counsel for Phillips argued it was not clear that the private message on November 29, 2011 was related to the Knott’s Berry Farm incident on October 31, 2011. The court overruled Phillips’s objection to the admission of the private message, but ruled that it “would be speculative” to “link[ ] [the message] back to an incident a month before.” The court allowed the prosecution’s expert witness to “interpret what the words, themselves, mean” but not “to speculate that this relates to the Knott’s Berry Farm [incident].”

in the face by a Grape Street Crips gang member about a decade ago. Before the jury heard the Phillips-FreakooRico exchange, the court admonished the jury, “Regarding the communications that appear to be authored by FreakooRico, those are not offered for the truth; however, they’re offered and received for the effect on the recipient of the communication.”

Fourth, Phillips had a written conversation on a social media site with his girlfriend on November 3, 2012 (also just after the shooting). She said, “Be careful Lonzo. They know where you stay.” He responded, “How do you know?” She said, “He told me.” Phillips said, “[They need to] come tonight.” She responded, “Noo, yall need to chill on God before somebody else get hurt.” He said, “Man, they know where I live. I’m telling my momma to spend the night at Nene House. My boys coming over. I’m ready.” She said, “OMG. You all stupid. This Shit is crazy. Yall need to chill for real. And I don’t know when they coming. They probably trying to see what’s up with Cooks.” He said, “Well I’m ready.” And then she said, “I hope don’t nothing go wrong. Just know I love you.”

Finally, the court admitted a redacted version of a Relly Nation rap video posted on the internet.<sup>6</sup> In the video, Phillips and other gang members dance and flash gang signs as the singer, Cola Kash, sings lyrics like “Fuck Crips bitch.” At one point in the video, other gang members (but not Phillips) appear with their faces covered in ski masks with the eyes cut out, while Kash simulates shooting with a rifle. At another point, Phillips

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<sup>6</sup> The prosecutor redacted the video in “an effort to remove the references to violence against women,” after counsel for Phillips argued the video should be excluded because “violence against women . . . is not relevant [to this case] at all.”

points his hand in a “gun-like motion’ at least three times.” Officer Coughlin testified that one way to show allegiance to a gang is to “openly associate[ ] with other gang members,” and that the Relly Nation video was an example of this. Phillips posted a link to the video on one of his social media accounts. Officer Coughlin also testified that the video was an example of “dressing down,” where Bounty Hunter Bloods gang members “align themselves with the color red with the [Blackhawks] Jersey.” In the video, Phillips wore a red Blackhawks jacket and hat.

Counsel for Phillips argued the video was “extremely prejudicial” and “the only real relevance to this is that the defendant associates with these individuals, and he’s there at the time of the recording. We can do that with one still photograph. And I believe that the gang officer will be able to establish everything else that the district attorney is going to say and what this video depicts.” The prosecutor argued the video was “incredibly probative” because “the defendant putting himself in a position where he can point his hand at the screen in the motion of a gun while a narrator, who is a fellow gang member, is talking about them committing violence in the context of gang rivalries,” is “perhaps the most relevant, most pertinent example that can be given to a jury about this particular defendant’s affiliation with this particular ideology.” The court found “that the probative value outweighs the prejudicial effects” and overruled Phillips’s objection.

E. *The Jury Convicts Phillips of the Attempted Premeditated Murder of Courtney Cooks*

The People tried Phillips for the attempted premeditated murders of Smith, Tyler W., and Cooks. At the first trial the jury

found Phillips not guilty of the attempted premeditated murders of Smith and Tyler W., and could not reach a verdict on the count of attempted premeditated murder of Cooks. At the second trial, which gives rise to this appeal, the jury found Phillips guilty of the attempted premeditated murder of Cooks, and found true the allegation he committed the crime for the benefit of, at the direction of, or in association with a criminal street gang.

The trial court sentenced Phillips to 40 years to life. Phillips filed a timely notice of appeal.

## DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Allowing Redaction of Sentence-Related Statements from the Conversation Between Phillips and the Confidential Informant*

Phillips argues “[t]he trial court’s order to redact the interview between [Phillips] and the confidential informant was erroneous because the evidence of the circumstances surrounding [Phillips’s] admissions was necessary to show the admissions were unreliable.” In particular, Phillips argues “[t]he informant made many statements with the goal of increasing [Phillips’s] level of stress, including repeated statements about the many, many years [Phillips] would be spending in prison.” Because, according to Phillips, the statements were relevant and more probative than prejudicial, their exclusion violated Phillips’s “constitutional rights to due process, to present a defense and to a jury determination of all material issues.”

The People argue the excluded statements about potential punishment were not relevant to whether the confidential informant caused Phillips to make his arguably damaging

admissions because many of those admissions came before the first redacted statement about possible sentences. Thus, the People contend, Phillips’s argument “is belied by the conversation itself.” The People also argue that, even if the redacted statements were relevant, they were more prejudicial than probative because the jury may not consider sentencing at the guilt phase. And, the People argue, the court did not violate Phillips’s constitutional rights because Phillips “had a meaningful opportunity to present a complete defense” and “cannot show that the exclusion of the redacted statements rendered his trial fundamentally unfair.”

“Only relevant evidence is admissible.” (*People v. Clark* (2016) 63 Cal.4th 522, 597; see Evid. Code, § 350.) Relevant evidence is evidence that has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210; see *People v. Cowan* (2010) 50 Cal.4th 401, 482 [“[t]he test of relevance is whether the evidence ‘tends ‘logically, naturally, and by reasonable inference’ to establish material facts such as identity, intent, or motive’”].) “The trial court has broad discretion to determine the relevance of evidence [citation], and we will not disturb the court’s exercise of that discretion unless it acted in an arbitrary, capricious or patently absurd manner.” (*People v. Jones* (2013) 57 Cal.4th 899, 947.)

Many of Phillips’s admissions occurred before the confidential informant made any of the statements about possible punishment that the prosecutor redacted. Thus, the redacted statements were not relevant to whether the confidential informant pressured Phillips into making these admissions because Phillips made the admissions before the confidential informant made any statements about possible sentences. For

example, prior to the confidential informant's first redacted statement, Phillips had already said "you can't see nothing [in the surveillance video] but what I had on," he was "[p]ositive" that nobody had seen him commit the crime, he had committed the crime alone, and the "burner" was "[g]one, gone, gone." Nothing the confidential informant said in the redacted portion of the transcript had any effect on Phillips in making these statements. Notably, Phillips does not address this flaw in his argument.

Phillips did make some admissions after some of the statements by the confidential informant that the court redacted. For example, Phillips said that his "name was being run across" social media in connection with the Halloween shooting, people were saying on social media "hope that nigga . . . is alright, if [he] . . . wasn't, Alonzo we going to kill you," the gun was "long gone," and "I just wish there weren't so many snitches in this motherfucking world." The redacted statements by the confidential informant could have been relevant to Phillips's state of mind when he made these admissions.

The trial court, however, did not abuse its discretion in excluding pre-admission statements by the confidential informant under Evidence Code section 352. (Cf. *People v. Brooks* (Mar. 20, 2017, S099274) \_\_ Cal.5th \_\_, \_\_ [2017 WL 1046456, p. 19] ["even if the court mistakenly characterized the evidence as completely lacking in relevance, the court did not abuse its discretion in excluding it under Evidence Code section 352"].) Under Evidence Code section 352, "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (See *People v. Lee* (2011) 51 Cal.4th 620,

643 [even relevant evidence may be excluded under Evidence Code section 352].) “An exercise of discretion under Evidence Code section 352 will be affirmed unless it was arbitrary, capricious, or patently absurd and the ruling resulted in a miscarriage of justice.” (*People v. Winbush* (2017) 2 Cal.5th 402, 469.)

The court found the probative value of the redacted statements was minimal because, after listening to the recording, the court concluded the conversation “did not appear in any way . . . coercive” and “[t]he whole tone of the conversation [was] non-coercive.” Phillips does not challenge this finding. Instead, Phillips argues the statements were probative because they “increas[ed] [Phillips’s] level of stress” and were thus “critical to explain why [his] admissions were unreliable.”

The record supports the trial court’s exercise of discretion. In addition to the fact that Phillips made several of the admissions prior to the confidential informant’s statements (suggesting the confidential informant’s statements did not cause Phillips to make his admissions and therefore had minimal probative value), there were many other indicia of “stress and anxiety” that the prosecutor did not redact. Even on the subject of potential sentencing, the prosecutor did not redact the confidential informant’s statement, “That’s fucked up, man. Yeah that shit . . . life for that shit, man . . . you’re too young though. Hmm.” Nor did the prosecutor redact Phillips’s statement to the confidential informant that the police had arrested him “and right before I can even leave school they’re fitting to fuck around and try to give me life.” The confidential informant also made statements that were not redacted regarding the seriousness of the charges Phillips was facing. He told Phillips he was “in some serious, like, you know” trouble



because “your shit is multiple, you feel me you got multiple people,” and “[t]hat’s a whole lot young’n. That’s a whole lot.” Later, the confidential informant reiterated, “That’s a whole lot youngin, that’s a whole lot. That’s three bodies plus, you feel me?” He also told Phillips “[y]our shit fucked” because his bail was set at \$1.4 million. Thus, even with the redactions, there was plenty of evidence from which Phillips could argue to the jury the confidential informant was increasing Phillips’s stress level, which caused him to make unreliable admissions. (See, e.g., *People v. Hendrix* (2013) 214 Cal.App.4th 216, 244 [where evidence is cumulative, the probative value of that evidence is diminished; *People v. Holford* (2012) 203 Cal.App.4th 155, 178, fn. 14 [evidence may “have a lower probative value if it is merely cumulative of other evidence [citations] and there is a substantial danger of confusing or misleading the jury or a substantial danger of necessitating an undue consumption of time”].)

In addition, while the probative value of the redacted statements was small, the court was properly concerned about the substantial danger of undue prejudice, confusion of the issues, and consumption of time. “At the guilt phase, ‘[a] defendant’s possible punishment is not a proper matter for jury consideration.’” (*People v. Martinez* (2010) 47 Cal.4th 911, 958; see *Shannon v. United States* (1994) 512 U.S. 573, 579 [“providing jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion”].) Although the trial court could have instructed the jury not to consider the confidential informant’s statements about potential sentences for their truth but rather solely for their effect on Phillips (see, e.g., *People v. Foster* (2010) 50 Cal.4th 1301, 1332), the court did not abuse its discretion by instead

redacting those statements from the transcript. (See, e.g., *People v. Hendrix*, *supra*, 214 Cal.App.4th at p. 248 [limiting instruction did not cure the prejudice from cumulative, inflammatory evidence]).

Finally, the trial court's evidentiary rulings did not violate Phillips's constitutional rights. (See *People v. Thompson* (2016) 1 Cal.5th 1043, 1116 [““routine application of state evidentiary law does not implicate [a] defendant's constitutional rights””]; *People v. Blacksher* (2011) 52 Cal.4th 769, 821 [rejecting “defendant's contention that, despite the rules of evidence, the federal constitutional right to present a defense prevails over state evidentiary rules to invalidate the court's rulings”].) Because the court did not abuse its discretion in approving the prosecutor's redaction of portions of the Phillips-confidential informant transcript, the court did not violate Phillips's constitutional rights to due process, to present a defense, and to a fair jury trial. (See *People v. Peoples* (2016) 62 Cal.4th 718, 742 [“rejection, on the merits, of a claim that the trial court erred on the issue actually before that court necessarily leads to rejection of the newly applied constitutional “gloss” as well”].)<sup>7</sup>

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<sup>7</sup> Although “[i]n general, the “[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense,”” “Evidence Code section 352 must yield” where the probative value of the evidence the defendant seeks to present is significant. (*People v. Cunningham* (2001) 25 Cal.4th 926, 998-999.) “Although the complete exclusion of evidence intended to establish an accused's defense may impair his or her right to due process of law, the exclusion of defense evidence on a minor or subsidiary point does not interfere with that constitutional right.” (*Id.* at p. 999; see *People v. Loker* (2008) 44 Cal.4th 691, 730 [the exclusion of cumulative and

B. *The Trial Court Did Not Abuse Its Discretion in Admitting Social Media Gang Evidence*

Phillips argues “the trial court erred by admitting into evidence a Relly Nation rap video[,] and [certain] posts, messages and photographs from [Phillips’s social media] accounts that [were] substantially more prejudicial than probative.” Specifically, he argues that, because “[t]he evidence establishing [Phillips’s] gang membership and the ill will he and other Bounty Hunters harbored toward Grape Street was overwhelming and unchallenged by the defense,” “[t]he [social media] posts were cumulative to that evidence and their language and content served only to inflame the jury.” The People argue that “the evidence was highly relevant to show the gang motive for the shooting, the truth of the gang allegation, and to explain the testimony of recanting witnesses at trial.”

“Prejudice for purposes of Evidence Code section 352 means evidence that tends to evoke an emotional bias against the defendant with very little effect on issues, not evidence that is probative of a defendant’s guilt.” (*People v. Valdez* (2012) 55 Cal.4th 82, 133.) When “gang evidence [is] central to [a] case involving gang members committing gang murders for gang motives, broad admissibility of gang evidence [is] appropriate.” (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1169; see *id.* at p. 1168 [““[b]ecause a motive is ordinarily the incentive for criminal behavior, its probative value generally exceeds its prejudicial effect, and wide latitude is permitted in admitting

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tangential evidence does not deny a defendant due process of law].) As noted, the probative value of the redacted statements was not significant.

evidence of its existence”].) “[G]ang evidence is ‘relevant and admissible when the very reason for the underlying crime, that is the motive, is gang related.’” (*People v. Franklin* (2016) 248 Cal.App.4th 938, 953.) “[T]he prosecution’s purported ability to establish the disputed matters with other evidence [does not] render the gang evidence irrelevant.” (*People v. Valdez*, at p. 134.) “[T]he decision on whether evidence, including gang evidence, is relevant, not unduly prejudicial and thus admissible, rests within the discretion of the trial court.” (*People v. Albarran* (2007) 149 Cal.App.4th 214, 224-225.)

Some of the gang-related evidence may have been cumulative. Given that “[t]rial courts should carefully scrutinize evidence of a defendant’s gang membership because such evidence ‘creates a risk the jury will improperly infer the defendant has a criminal disposition and is therefore guilty of the offense charged’” (*People v. Melendez* (2016) 2 Cal.5th 1, 28-29; see *People v. Williams* (1997) 16 Cal.4th 153, 193), the trial court probably should have excluded some of the gang evidence in this case. Nevertheless, the trial court painstakingly scrutinized each piece of evidence before deciding whether to sustain Phillips’s objection to that evidence, and we cannot say the trial court’s evidentiary rulings amounted to an abuse of discretion.

Phillips’s social media references to “g[etting] into it” with Grape Street members while “bullets exploding,” one year before the shooting, was probative on the issue of Phillips’s commitment to and participation in the feud the prosecution argued was the motive for the 2012 Halloween shooting. The private message, “Man I pulled a gun out on yo homies. I was finna kill them niggahs. I kan’t kome over der” (where “homies” can mean rival gang members, and Phillips replaced the Crip’s letter, “c,” with “k”) showed, as the prosecutor argued, that Phillips was a

dedicated gang member “who has been willing to put in work for the gang.” Liking social media statuses on the day of the shooting about “[r]eal shit” happening in Hollywood and “show[ing] the enemies I’m present” was also relevant to Phillips’s motive for shooting Grape Street Crips gang members.<sup>8</sup> The FreakooRico exchange was relevant because, after FreakooRico accused him of being the shooter, Phillips did not deny his involvement in the shooting, and any potential undue prejudice was cured by the court’s limiting instruction. (See *People v. Capistrano* (2014) 59 Cal.4th 830, 869 [“the general rule [is] that juries are presumed to follow limiting instructions”].) The conversation between Phillips and his girlfriend showed he was preparing for retaliation soon after the shooting. None of this evidence was “unduly” prejudicial given the plethora of gang evidence to which Phillips did not object. (See *People v. Valdez*, *supra*, 55 Cal.4th at p. 134 [“[g]iven the extensive other evidence of defendant’s . . . gang membership and of [the gang’s] activities, defendant’s claim that the handful of gang-related exhibits he now challenges created ‘a substantial danger of undue prejudice’ within the meaning of Evidence Code section 352 . . . is untenable”].)

The Relly Nation video, even in its redacted form, created the greatest risk of undue prejudice, and, in light of all the other gang evidence, the prosecution did not need it to prove gang

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<sup>8</sup> Phillips did not object to the admission of a third status posted by another user and liked by Phillips the day of the shooting that read: “Bam bam bam open up the door. Looks like the bitch.” A “defendant’s failure to make a timely and specific objection” on the ground asserted on appeal makes that ground not cognizable.” (*People v. Jackson* (2016) 1 Cal.5th 269, 328.)

affiliation or motive. The court's decision to admit it, however, was within the trial court's discretion. In *People v. Zepeda* (2008) 167 Cal.App.4th 25, a case that also involved the shooting of a rival gang member, the trial court admitted two songs from a gangster rap CD the defendant wrote. (*Id.* at p. 28.) The court held the trial court did not abuse its discretion in admitting the tracks because "[t]hese lyrics, coupled with the other evidence of defendant's gang membership and his animosity towards [the victim's gang], go beyond mere fiction to disclosing defendant's state of mind, his motives and intentions, and his fealty to furthering his criminal gang's activities." (*Id.* at p. 35.) The same rationale applies here.

Phillips contends *Zepeda* is distinguishable because Phillips "was not the rapper singing the lyrics in the [Relly Nation] video and there was no evidence elicited to establish that [he] was the author of the lyrics." The court in *Zepeda*, however, did not rely on the fact that Zepeda authored the lyrics. To the contrary, the court noted that "lyrics and poems do not often establish their author's true state of mind." (*People v. Zepeda, supra*, 167 Cal.App.4th at p. 35.) Nevertheless, because "the gang expert . . . testified that gangs communicate through music," "[t]he evidence was probative of defendant's state of mind and criminal intent, as well as his membership in a criminal gang and his loyalty to it." (*Ibid.*) The prosecution's gang expert in this case similarly testified that Relly Nation was a musical group as well as a clique of the Bounty Hunter Bloods, and that the Bounty Hunter Bloods used the Relly Nation videos to inflame the rivalry with the Grape Street Crips. Phillips admits he appeared in the video "dressed in attire associated with the Bounty Hunters, [and] was visible in the background dancing and throwing up gang signs as Cola Kash 'narrated' the lyrics."

Although Phillips did not simulate holding a gun while wearing a ski mask, his appearance in the video making a gun hand motion and displaying gang signs supports the inference that he stood behind the violent message. Therefore, the evidence did not unfairly prejudice Phillips. (See *People v. Cortez* (2016) 63 Cal.4th 101, 128-129 [“relevant, probative evidence” is not prejudicial under Evidence Code section 352 unless it is “unduly prejudicial”].)

### DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

SMALL, J.\*

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