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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

CHARUS RYCE,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, et al.,

Defendants and Respondents.

B288507

(Los Angeles County  
Super. Ct. No. BC515173)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. John J. Kralik, Judge. Affirmed.

Law Offices of Gabriel H. Avina and Gabriel H. Avina for  
Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant  
City Attorney, and Shaun Dabby Jacobs, Deputy City Attorney  
for Defendants and Respondents.

Plaintiff and appellant Charus Ryce (Ryce) appeals from the judgment entered in favor of defendants and respondents City of Los Angeles (the City) and Nicholas Owens (Owens),<sup>1</sup> an officer in the Los Angeles Police Department (LAPD), following a jury trial in this action concerning claims of excessive force and biased policing during a traffic stop. Ryce contends the judgment must be reversed, and a new trial granted, because prejudicial misconduct by defendants' trial counsel resulted in a miscarriage of justice.

We affirm the judgment.

### **FACTUAL BACKGROUND**

On July 18, 2012, Owens was working in the property crimes detail of the LAPD's Topanga Division. Also working in the property crimes detail that day were officers Javier Avila, Jorge Esquivel, and Sergeant James Merle. Officers in this detail wear plain clothes and drive unmarked vehicles as part of a proactive policing effort to stop property crimes such as vehicle thefts and burglaries.

On July 18, 2012, Owens was driving near the intersection of Winnetka and Roscoe Boulevards. An Arco gas station is located at that intersection, as is a Bank of America, the Paradise Lodge motel, and a bar known to be a place where Hell's Angels members regularly congregate. The area has a high level of criminal activity, and Owens had made numerous arrests at or near that intersection for vehicle thefts and robberies.

Owens drove into the Arco gas station at approximately 10:30 a.m. and saw an older model Ford Explorer with a paper

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<sup>1</sup> The City and Owens are collectively referred to as defendants.

license plate on the back of the vehicle. Owens saw a metal license plate on the front of the vehicle but saw no registration papers on the front windshield. The absence of registration papers and license plates on both the front and rear of the Ford led Owens to suspect that the vehicle occupants might be attempting to conceal the identity of the vehicle for some reason.

Owens saw Ryce sitting in the driver's seat and a woman, later determined to be Ryce's wife, outside the driver's side window and leaning into the car. Neither Ryce nor his wife appeared to be using the gas station facilities. Owens notified Avila and Esquivel by radio of his observations of the Ford and its occupants and then left the gas station to check on other locations, intending to return to conduct a further investigation.

Owens returned to the Arco station approximately 10 minutes later and observed the Ford Explorer still parked there. Both Ryce and his wife were seated in the front seat of the vehicle. Owens informed Esquivel and Avila that he was going to conduct a traffic stop on the Ford and its two occupants. He put on his LAPD raid jacket and ensured that his badge, which he wore on a chain around his neck, was visible.

Owens approached the Ford and for the first time saw Ryce's four minor children and a dog in the back of the vehicle. Owens had not seen the children during his earlier viewing because the car windows, which were tinted, had been closed.

Ryce was using his cell phone and Owens heard Ryce say, "There's a police officer here. I got to go. I'll call you back." Ryce then addressed Owens, stating, "What do you want? I didn't do anything." Owens identified himself as an LAPD officer and asked Ryce for his license, registration, and proof of insurance. Ryce refused to give Owens the requested information, insisting

that he had done nothing wrong, and repeatedly instructed his wife to “call Big Steve” on her cell phone. Owens did not know who “Big Steve” was, and concerned for his safety, instructed Ryce’s wife not to make any phone call.

Owens informed Ryce that he was being stopped for the paper license plate on the rear of the vehicle and for loitering in the gas station parking lot. He asked Ryce to exit the vehicle and Ryce complied. Owens again asked Ryce to provide his identification, and Ryce responded that he had already done so. Owen said that Ryce had not, and explained that if Ryce did not provide identification, Owens would have to place him in handcuffs. Ryce then became combative, stating “you’re not putting your hands on me” and assumed a “fighting stance,” by spreading his legs, lowering his center of gravity, and clenching his fists. Owens believed Ryce was going to attack him and stepped back, distancing himself from Ryce. Owens then decided to handcuff Ryce to prevent him from causing harm to Owens or others.

Consistent with his training, Owens placed his hands on Ryce’s right shoulder and arms to move Ryce’s hands behind his back. Ryce, however, dropped his body weight further and actively resisted. Officers Esquivel and Avila arrived on the scene and assisted Owens in handcuffing Ryce.

After Ryce was handcuffed, he continued to yell to his wife to call “Big Steve.” Owens escorted Ryce to the rear of the vehicle to stop Ryce from yelling to his wife. Owens then went to the passenger side of the vehicle and took Mrs. Ryce’s phone from her to prevent her from calling “Big Steve.” Ryce then stopped resisting, and Owens patted him down for weapons and found

none. Sergeant Merle arrived at the scene while Owens was conducting the pat down.

Owens showed Ryce the paper license plate at the rear of the vehicle, and Ryce told Owens that the vehicle belonged to Ryce's mother. Owens again asked Ryce for his identification, and Ryce responded that he had already provided it. When Owens said Ryce had not done so, Ryce said the I.D. must be in one of his pockets and turned his body toward Owens to allow Owens to check both pockets. Owens found the identification in Ryce's left pocket.

Sergeant Merle, thinking that Ryce was not fully complying with all of Owen's directives, instructed Esquivel to escort Ryce to Merle's patrol car until completion of the investigation. As Esquivel was doing so, Merle saw Ryce chewing on something and believed Ryce might be trying to swallow narcotics. Merle searched Ryce's mouth and found no narcotics. After Esquivel placed Ryce in Merle's patrol car, Ryce complained that the handcuffs were too tight, and Esquivel loosened them.

Ryce waited in Merle's patrol car for approximately 20 minutes while Avila ran a check on Ryce's driver's license and the Ford's vehicle identification number. Avila determined that Ryce's driver's license was not valid, that the Ford was registered to Ryce's mother, and that the vehicle registration was current. Behind the paper plate at the rear of the Ford, however, was a metal license plate with an expired registration tag.

After the investigation was completed, Owens returned Mrs. Ryce's phone to her and explained the reason for the stop. Mrs. Ryce then told Owens for the first time that Big Steve was a deputy sheriff with the Los Angeles County Sheriff's Department. Owens informed Mrs. Owens there would be no police report

because no one had been arrested. In response to her request, Owens gave Mrs. Ryce a business card with the names of the officers, the incident number, and a short summary of the reason for the stop.

Owens took Ryce out of the police car and removed the handcuffs. Owens told Ryce that he learned the Ford belonged to Ryce's mother and that although the registration was current, the license plates had expired, as had Ryce's driver's license. Owens advised Ryce to take care of these outstanding issues. Ryce then shook hands with all the officers. While doing so, Ryce told the officers that his "Beverly Hills attorney was going to have a field day with this."

Later that same day, Ryce arrived at the LAPD Topanga station and told Merle he had been injured during the incident with Owens that morning. Ryce did not complain of racial discrimination or racial basis. Merle conducted a Use of Force investigation and interviewed Ryce, Owens, Avila, and Esquivel that day. Merle interviewed Mrs. Ryce a day or two later. Merle also photographed Ryce and his alleged injuries and returned to the Arco station to take photographs, search for additional witnesses, and obtain the surveillance video of the incident.

### **PROCEDURAL HISTORY**

Ryce filed this action against Owens and the City in July 2013. The case proceeded to a jury trial on claims for violation of the Bane Act (Civ. Code, § 52.1), battery by a police officer, negligence, false imprisonment, and violation of the Ralph Act (Civ. Code, § 52, subd. (b).)

### **Motions in limine**

Ryce filed two motions in limine. The first motion sought to exclude testimony, evidence, and argument that the incident

occurred in a high crime area, which alone could not be the basis for a traffic stop. The second motion sought to exclude testimony, evidence, and argument that paper license plates are indicative of stolen vehicles or other criminal activity. The trial court denied both motions.

### **Jury verdict and judgment**

After a 10-day trial, the jury returned a unanimous verdict in favor of the City and Owens on all causes of action. Judgment was entered in favor of defendants on November 30, 2017.

The trial court denied Ryce's motion for a new trial. This appeal followed.<sup>2</sup>

## **DISCUSSION**

### **I. General legal principles**

The law prohibits an attorney from pandering to the prejudice, passion, or sympathy of the jury. (*Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559, 566.) "In more concrete terms, attorneys cannot make appeals based on irrelevant financial aspects of the case such as the hardship that would be visited on a defendant from a plaintiff's verdict [citation] . . . . An attorney representing a public entity commits misconduct by appealing to the jurors' self-interest as taxpayers. [Citations.] [¶] The rule also manifests itself by prohibiting irrelevant ad hominem attacks." (*Ibid.*)

Misconduct by counsel during trial can constitute prejudicial error entitling the opposing party to reversal of the judgment and a new trial. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 802 (*Cassim*)). Failure to timely object, however, forfeits any appellate challenge premised on such misconduct.

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<sup>2</sup> Ryce appealed only from judgment after jury trial.

(*Horn v. Atchison, T & S.F.R. Co.* (1964) 61 Cal.2d 602, 610 (*Horn*); *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 598-599.) “A party ordinarily cannot complain on appeal of attorney misconduct at trial unless the party timely objected to the misconduct and requested that the jury be admonished. [Citation.]” (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1411-1412.) An objection to one act of alleged misconduct will not preserve claims with respect to acts as to which there was no objection, “unless a proper admonition [would be] ineffectual to cure the misconduct because it was irreparable and prejudicial. [Citation.]” (*Hilliard v. A. H. Robins Co.* (1983) 148 Cal.App.3d 374, 407 (*Hilliard*).)

It is not enough for a party to show attorney misconduct. To justify a new trial, the party must also demonstrate that the misconduct was prejudicial. (*Garcia v ConMed Corp.* (2012) 204 Cal.App.4th 144, 149.) To determine whether the misconduct was prejudicial, a reviewing court makes an independent determination as to whether it is reasonably probable the appellant would have achieved a more favorable result in the absence of the challenged attorney conduct. (*Cassim, supra*, 33 Cal.4th at p. 802.)

## **II. Alleged misconduct**

### ***A. Loss of police services***

Ryce cites the following examples of alleged misconduct by defendants’ trial counsel in which counsel appealed to the jurors’ personal interests as taxpayers and their fear of losing police services:

---During opening statement, describing the intersection at which the traffic stop occurred as a “high crime” area “frequented by parolees, people on probation,” and on “the border of rival



gang territory” at which frequent arrests, robberies, and auto thefts have occurred, and at which officers “have been attacked and have even been killed”;

---During closing argument, telling the jury: that Ryce’s lawsuit was sending the message “don’t investigate, just stay back, don’t do anything. Because if you investigate, and the suspicion that you had isn’t liked, you know, you deserve to be sued and found liable”;

---“If we were to listen to [Ryce’s counsel] the way he wants the police to do, I guess they would just drive around with a bag on their head all the time. They’re not supposed to look or do anything. They’re just supposed to sit there and wait for someone to call them, and they wouldn’t be doing their job and the City wouldn’t be safe”; and

---“These officers are trained for about six months, and they’re put out on the streets to deal with all the problems that we have in the City. They risk their lives every day to do their job and to protect all of us. . . . I wouldn’t recommend anybody going into police work for this reason. They’re not going to get rich, but the community depends on their job, and without them, you know, our City would be chaos.”

The record shows that Ryce failed to object to all but one of the alleged instances of misconduct -- counsel’s statement that Ryce’s lawsuit was sending the message “don’t investigate, just stay back, don’t do anything. Because if you investigate, and the suspicion that you had isn’t liked, you know, you deserve to be sued and found liable.” Ryce’s failure to timely object forfeits his challenge to the other alleged instances of attorney misconduct. (*Horn, supra*, 61 Cal.2d at p. 610; *Hilliard, supra*, 148 Cal.App.3d at p. 407.)

The statements to which Ryce objected do not constitute misconduct. They do not appeal to the jurors' self-interest as taxpayers, nor do they state that police services or protection will be lost if the jury enters a verdict for Ryce. The case on which Ryce relies, *Du Jardin v. City of Oxnard* (1995) 38 Cal.App.4th 174 [attorney committed misconduct by arguing that public services would disappear and that taxpayers would bear the burden of a jury verdict for the plaintiff], is therefore inapposite.

The record shows, moreover, that the challenged statements were made in response to arguments by Ryce's counsel that it was not normal for an officer in plain clothes to conduct a traffic stop under the circumstances presented, and that the paper license plate on the rear of Ryce's vehicle did not support a reasonable suspicion to further investigate. "In conducting closing argument, attorneys for both sides have wide latitude to discuss the case." "Only the most persuasive reasons justify handcuffing attorneys in the exercise of their advocacy within the bounds of propriety." [Citation.] [Citation.]" (*Cassim, supra*, 33 Cal.4th at p. 795.) Defense counsel's arguments did not exceed the bounds of propriety.

***B. Appeal to jury's economic prejudices and sympathies***

**1. Food stamps**

Ryce contends defense counsel committed misconduct by asking Ryce during cross-examination if he received food stamps or "cash aid from the government" after Ryce had stipulated he was making no claim for economic damages and the parties had agreed to exclude collateral source evidence. Ryce's counsel objected to the question as argumentative and the subject of a motion in limine, and the trial court sustained the objection.

During a subsequent sidebar conference, the trial court agreed to a request by Ryce's attorney to admonish the jury and to strike the statements.

Ryce's counsel then proceeded to raise the issue of food stamps twice during his closing argument. Ryce's counsel told the jury that "when it comes to going through all of those facts, there's a few things you have to ask yourselves. What does food stamps have anything to do about this case? Isn't that the defense telling you let's decide this case on bias and prejudice?" The trial court overruled defense counsel's objection to this statement as an ad hominem attack, but cautioned Ryce's counsel to "be careful." Ryce's counsel then subsequently argued to the jury: "Who cares if Mr. Ryce was on food stamps after this for two years? What does that have to do with anything?"

In response, defense counsel told the jury during closing argument that Ryce's punitive damages claim "is not to compensate Mr. Ryce for the things that he says have been caused by this incident. It's not to make up for -- oh, by the way, food stamps. Okay. They want to -- they want you to -- he's trying to demonize me because I asked about that."

The trial court subsequently admonished the jury that the financial condition of the parties was irrelevant and struck remarks by counsel for either side on that subject. Given the trial court's admonition, defense counsel's question during Ryce's cross-examination and his subsequent remarks during closing argument, even if misconduct, were not prejudicial. We consider the ameliorating effect of that admonition and presume the jury followed the trial court's direction. (*Cassim, supra*, 33 Cal.4th at pp. 803-804.)

## **2. Financial impact of a jury verdict**

Ryce claims defense counsel improperly appealed to the jury's sympathy by arguing about the financial impact of a jury verdict:

“If we were to do what the plaintiff wants, I don't think officers would want to do their job. You can't do anything. If you investigate something, and then they don't like it, you get sued, you lose your house, whatever. They can't do their job, and that's not fair to the officers.”

Ryce further contends defense counsel improperly argued about irrelevant financial repercussions on the other testifying officers:

“You really think that all three of these officers, all of which have a good amount of time, as we say at LAPD, on the job, would put their career in jeopardy by getting up here and perjuring themselves, putting their career, their job, their livelihood, their homes, their pensions at risk to lie to help Officer Owens?”

Ryce raised no objection to either of these arguments and forfeited any appellate challenge based on them. (*Horn, supra*, 61 Cal.2d at p. 610.) Despite the absence of a timely objection, the trial court nevertheless admonished the jury that the financial condition of either party was not relevant.<sup>3</sup> We presume

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<sup>3</sup> Ryce's counsel argued during rebuttal that defense counsel “asked for sympathy when he raised issues like pensions and the homes of the officers.” The trial court then interjected and admonished the jury: “Okay. I'm going to stop that because there have been various allusions to the financial condition of both parties, Mr. Owens, Mr. Ryce. At this stage of the

the jury followed that admonition. (*Cassim, supra*, 33 Cal.4th at pp. 803-804.)

### ***C. Racial bias***

Ryce claims defense counsel improperly argued that Ryce wanted the jury to find that Owens was a racist. Ryce's own counsel, however, argued that defendants had based their defense on "racist" notions of an "angry black man" myth: "[O]ne of the other themes of the defense is the angry black man defense. . . . It's this racist notion that a black man is somehow more violent or more aggressive than every other type of man." "Does this malarkey about paper plates, about a high crime area, still make sense? This is the power of the black, angry black man myth." "You also are being asked in determining what a reasonable officer would do is whether Ryce reasonably appeared to pose an immediate threat. . . . It explains the officers' testimony as to why we're dealing with this myth of the angry black man who needs to be subdued in handcuffs . . . ."

In response, defense counsel made the following statements during closing argument:

"[Y]ou heard for nearly an hour a spew of hatred about how Officer Owens is a racist."

Ryce did not object to this statement.

"I'm pretty confident that you are not going to find him to be the racist monster that the plaintiff has made him out to be. And it's fundamentally unfair for you to just assume that because he's white

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proceeding the financial condition of Mr. Ryce, Officer Owens, the City of L.A., is irrelevant to the questions before you. So whatever those remarks were on either side, they're stricken."

that he's racist. That's just not fair, and that's what they're asking you to do."

Ryce did not object to this statement.

"That's just something that they're using to try to manipulate you, to try to build on this Officer Owens is an evil racist monster."

Ryce did not object to this statement.

"[T]he Ralph Act, which is just -- I don't -- I've said it so many times, I don't know what to say. That's basically they're asking you to find as a matter of law that Officer Owens acted the way he did because of racism. That's what it is."

Ryce did not object to this statement.

"Was Nicholas Owens'[s] perception of Charus Ryce's race a substantial motivating reason for Nicholas Owens'[s] conduct. There is not one shred of evidence about that and [Ryce's counsel] had the nerve to get up here and say to you . . . ."

Ryce objected to this argument as improper, and the trial court sustained the objection, stating, "We're not going to attack [Ryce's counsel]." Defense counsel then continued: "He said to you, 'he is not a racist.' I don't believe he's a racist. But what is he asking you to do? . . ." The trial court interrupted, stating, "I said we're not going to attack [Ryce's counsel]. Phrase your argument in some other way." Defense counsel then stated:

"All right. You're being asked to answer this question yes by the plaintiff, that his -- Nicholas Owens's perception of Mr. Ryce's race was a substantial motivating reason for his conduct. That's racism, folks."

Ryce did not object to this statement.<sup>4</sup>

The record shows that Ryce failed to object to all but one of the challenged statements and accordingly forfeited appellate review of the other statements. His lone objection, sustained as an ad hominem attack on defense counsel, did not preserve the argument he asserts on appeal -- that defense counsel misstated the law and improperly pandered to the prejudice and passion of the jury.

***D. Other alleged misconduct***

Ryce failed to object, and therefore forfeited his appellate challenge to defense counsel's remarks during opening statement that Ryce had told the officers that his "Beverly Hills lawyer will have a field day with this" and to defense counsel's description of "Big Steve" (Ryce's brother-in-law, a Los Angeles County Sheriff's Deputy) as the "godfather" of this lawsuit. (*Horn, supra*, 62 Cal.2d at p. 610.)

**III. Prejudice**

Ryce fails to demonstrate how he was prejudiced by the challenged attorney misconduct, citing only the jury's findings and verdict in respondents' favor. We conclude, based on our review of the entire record, that it is not reasonably probable that Ryce would have achieved a more favorable result in the absence of the challenged attorney conduct. (*Cassim, supra*, 33 Cal.4th at p. 802.)

The trial court did not err by denying the motion for a new trial.

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<sup>4</sup> The record does not support Ryce's claim that he objected to this last statement.

### **DISPOSITION**

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT