Filed 9/11/17 P. v. Grant CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER GRANT, Defendant and Appellant.	B270230 (Los Angeles County Super. Ct. No. YA092783)

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

Steven A. Brody, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Ilana Herscovitz and Gary Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Christopher Grant argues that, had the trial court not erroneously admitted evidence of two prior convictions and the prosecutor not committed misconduct by referring to facts not in evidence, the jury would not have convicted him of assault with a deadly weapon and assault likely to produce great bodily injury. To the extent Grant did not preserve these issues because his trial counsel failed to object, Grant contends he received ineffective assistance. We conclude that Grant forfeited his prosecutorial misconduct argument and that, even if the court committed evidentiary error and Grant's trial counsel was ineffective, overwhelming and virtually uncontested evidence supports Grant's convictions. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Fight*

One evening Grant and his friend Jonathan Jackson drove together to a nearby motel to pick up a woman named Karen. Grant had communicated with Karen online and by phone, but had never met her in person before that night, and Jackson did not know her. After picking up Karen, the three of them went to Jackson's house where Jackson made drinks. Jackson left Grant and Karen in the kitchen while he went to watch television and work on his laptop. About 45 minutes later, Karen abruptly left.

Concerned for Karen's safety, Jackson and Grant left in Jackson's car to find her. They found her and offered her a ride back to her motel, but Karen refused to get in the car. Jackson

decided to take Grant home first and then return for Karen, who was waiting inside Jackson's gated community.

By the time Jackson and Grant arrived at Grant's house, they were arguing. Grant refused to get out of the car despite having his keys in his hand, ready to open his front door. Their altercation escalated to the point that both men threw punches at each other. After the initial physical exchange, Grant punched Jackson in the face while his keys were still in his hand. Grant stabbed Jackson with a key three times, puncturing his cheek, causing a gash on his head that required 15 stitches, and injuring his eye. Jackson did not fight back after Grant stabbed him. Instead, he got out of the car to get a towel from his trunk to soak up the blood. Grant got out of the car and went inside his house.

Jackson returned to his neighborhood, picked up Karen, dropped her off at her motel, and called 911. He reported that he took Grant home because Grant "got drunk" and was "physically assaulting" Karen. He told the 911 operator he and Grant had argued in the car about Karen. Grant had accused Jackson of wanting to have sex with her. Jackson said Grant eventually put his keys between his knuckles and hit Jackson. "I have a big gash," Jackson said. "I got blood. It was gushing all over my car, all over my shirt."

Los Angeles County Sheriff's Department deputies responded to Jackson's call, and upon arrival saw Jackson covered in blood. Jackson repeated what he had told the 911 operator and gave the deputies Grant's address. Jackson went to the hospital while the deputies went to question Grant.

Grant cooperated with the deputies and told Deputy Marco Chavez he had been in a fight with a friend. Grant explained that he and Jackson, who was jealous of Grant's physical

appearance, had fought about a weightlifting and nutrition program and about Jackson's weight. Grant said "a couple of times" that "he had hit [Jackson] as hard as he could" during the fight. Deputy Chavez did not observe any injuries on Grant but smelled alcohol on him. Deputy Chavez arrested Grant, searched him, and recovered a blood-stained key.

The People charged Grant with assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and assault with a deadly weapon (*id.*, § 245, subd. (a)(1)). The People also alleged Grant personally inflicted great bodily injury in the commission of a felony within the meaning of Penal Code section 12022.7, subdivision (a).

B. *The Conflicting Trial Testimony*

Grant and Jackson both testified at trial. They gave different accounts of what happened the night of their conflict.

1. *Jackson's Version*

Jackson told the jury Grant had called him several times earlier that evening to ask Jackson to take him and his friend Karen to a strip club. Jackson initially declined because he was tired and had to go to work in the morning. He eventually relented and went to pick up Grant and Karen. Grant appeared drunk and smelled of alcohol when he got in the car.

Rather than going to the strip club, Jackson suggested they go back to his house, where Jackson made a drink for each of them and then retired to his living room where he watched television while working on his laptop. Grant and Karen remained in the kitchen talking. Suddenly Karen ran through the living room and out the front door. Jackson had not heard

what transpired between Grant and Karen, and he asked Grant what happened. Before Grant answered, Jackson said he would take Karen home and suggested Grant stay behind "because, obviously, [his] presence was a problem." Grant, however, got in the car. When they found Karen, she "looked really frightened and afraid" and refused to get in the car. Jackson decided to take Grant home first and return for Karen.

On the way, Jackson and Grant argued about Karen. Jackson again asked what happened, and Grant accused Jackson of wanting to "hook up" with Karen. Jackson told Grant he had no interest in her. When they arrived at Grant's house, Jackson asked Grant to get out of the car. Grant refused. Jackson again asked Grant why Karen had left. When Grant did not respond, Jackson told him he had to leave to take Karen home. Karen then called Grant on his cell phone, asked to speak to Jackson, and asked Jackson to take her home. Grant insisted on going with Jackson, but Jackson told Grant to get out of the car. Grant again accused Jackson of wanting to have sex with Karen.

Jackson testified he asked Grant to get out of the car several more times. After Jackson put his hand on the steering wheel and gave Grant a look that said "get out," Grant hit Jackson three times with a closed fist on the jaw and the sides of his face. Jackson struck back three times, but stopped because he felt Grant had stopped, and Jackson did not want to take advantage of Grant while he was drunk. Jackson grabbed Grant by the shirt and asked, "Why are we over here fighting? You know, this is ridiculous. Just get out of my car." Jackson said he lowered his voice to try to diffuse the situation and again asked Grant to get out of the car so he could drive Karen home. Again Grant accused him of wanting to "go hook up with the broad."

Jackson again denied the accusation. He thought Grant was going to get out of the car when he saw Grant playing with his keys and then put a key between his middle knuckles. As Jackson went to start his car, Grant hit him, puncturing his right cheek. Grant hit him again, puncturing his face just below his eye, then hit him a third time on the top of his head.

2. *Grant's Version*

Grant told a very different story. He said Jackson had called him that evening and wanted to talk about a workout regimen Grant had given him. Jackson asked Grant if he could pick him up, go to a bar, and talk. They went to the bar but did not go inside. Instead they sat in the car in the parking lot talking. Grant said he had not consumed any alcohol before Jackson picked him up.

Thirty to forty minutes later Grant suggested they pick up his friend Karen, and Jackson readily agreed. Grant introduced Jackson to Karen as Grant's brother, explaining he usually said that because they were so close. Jackson suggested they go back to his house for drinks. Grant and Karen talked in the kitchen, but when their conversation turned to religion, Karen "got upset," said "I'm out of here," and left. Grant said he never touched or physically assaulted her.

Jackson asked what happened, and Grant told him they had a disagreement about "spiritual matters." Jackson said, "Let's go get her, man," and they left to find her. They found Karen less than five minutes later, but she did not want to get into the car and seemed "mad." Jackson told Grant he would take him home. During the drive, Jackson seemed "very upset"

and started cursing at Grant. Grant speculated that Jackson was upset because Grant and Karen had "got into it at his house."

Once they parked in front of Grant's house, Grant took out his keys "because [he] was planning on getting out of the car." Grant did not get out, however, "because [Jackson] was talking to [him] like [he] was his kid or something, and it was like late in the evening, and [the] street is very quiet, and he was calling [him] all kinds of names." After Grant refused to get out of the car, Jackson continued cursing at him. Grant said, "It seemed like the more he cursed, the more I stayed. And the more I stayed, the more agitated [Jackson] got." After five to seven minutes, Jackson "blindsided" Grant twice on the left side of his face "with like two punches really hard." Grant "reacted" by hitting back. He admitted to punching Jackson three times "in a flurry" with his keys still in his hand. He said, "I didn't place my keys in my hand a certain way when I punched him. Just the keys were in my hand." Grant said he "just acted on impulse." "I was just trying to defend myself," he said, "remember, he's a friend."

Both men got out of the car. While Jackson went to the trunk, he verbally threatened Grant, and Grant thought he was going to retrieve a weapon. Grant left and went inside his house. He said Karen never called during his altercation with Jackson.

Grant said the fight left him with a swollen bruise on his head. He did not call 911 because Jackson was "like a brother." "It's not like he's an enemy. He's a friend of mine." Grant said the deputies did not ask who hit whom first. Grant also denied he was drunk that night and said he had no alcohol that day except for the drink Jackson made for him.

C. *Character and Impeachment Evidence*

Before Grant testified, the prosecutor sought permission to ask Grant about conduct underlying a 2010 conviction for spousal battery, which is a crime of moral turpitude. (See *Donley v. Davi* (2009) 180 Cal.App.4th 447, 459.) The prosecutor said he had the report describing the incident, and a police officer who had observed the crime was available to testify. Grant had also been convicted of making a criminal threat in 2012, but the prosecutor said he did not have a good-faith basis to ask Grant about the conduct underlying that conviction because he was not able to obtain the police report.

Counsel for Grant asked the court to exclude evidence concerning the 2010 spousal battery conviction as unduly prejudicial under Evidence Code section 352. She argued the jurors were "likely to get confused and think Mr. Grant is on trial for . . . the 2010 incident, when he's not." She also argued the evidence would prejudice Grant because the 2010 incident involved alcohol use, and "the jury is likely to assume, because alcohol was an issue [in that incident], that alcohol is again at issue here." Finally, counsel for Grant argued the prosecutor was attempting "to show character to prove conduct." The trial court overruled the objections and allowed the prosecutor to ask Grant about the conduct underlying the 2010 conviction and to introduce evidence of the conviction if Grant denied the conduct.

During his testimony on direct examination, Grant said he met Jackson at a club where Jackson worked as a bouncer. Grant subsequently hired Jackson to work for him as a bouncer at a club Grant was "running." Counsel for Grant asked, "When Mr. Jackson was a bouncer for you, did he ever get in any fights that you saw?" Grant answered, "Several. It's like practically

part of being a bouncer." Grant said he saw Jackson get into "over ten" such fights.

Before beginning his cross-examination of Grant, the prosecutor argued to the court that, by testifying Jackson had been in over 10 fights as a bouncer, Grant had "put on character [evidence] of the victim, showing he has [a] character for violence." The prosecutor argued the People were entitled under Evidence Code section 1103 to rebut that evidence with instances of conduct showing Grant had the same character trait. The prosecutor asked the trial court for permission to introduce evidence of Grant's 2010 conviction for spousal battery as well as his 2012 conviction for making a criminal threat. Overruling counsel for Grant's objection, the court ruled that the prosecutor could ask Grant about prior violence, and, "if he denies it, then you can impeach him with the convictions." The People argued that, "[b]ecause [Grant] opened character evidence," the convictions were also admissible. The court eventually agreed, stating that evidence of Grant's convictions "tends to show . . . conduct in conformance with character."

The prosecutor questioned Grant about the two prior felony convictions during cross-examination as follows:

"Q: Now, you had testified on direct that Mr. Jackson was a bouncer and had gotten into approximately ten fights that you saw.

"A: Yes.

"Q: Well, you're a pretty violent person too, aren't you?

"A: It's not true.

"Q: Okay. You're not a violent man?

"A: No.

"Q: You never beat your wife in 2010?

"A: No.

"Q: You weren't convicted of spousal battery?

"A: You said, 'beat my wife.' There's a difference. I didn't beat my wife.

"Q: You were convicted of spousal battery in 2010?

"A: Yeah, but that's a wide range.

"Q: And in that case, you said you didn't beat your wife, but there is a Long Beach police officer who says that he rolled up to the scene, heard your wife screaming for help, that she had a restraining order against you at the time, and that she was trying to get out, and you had jerked her head with force back from the window and prevented her from getting out of the car. Do you recall that?

"A: I recall the incident, but that's not what happened.

"Q: And based on this wife beating in 2010, you were convicted of spousal battery?

"A: Yes, I was.

"Q: But you sit here today and say you're not a violent person.

"A: I'm not a violent person.

"Q: And back in, I believe 2012, you were also convicted of a terrorist threat. Do you recall that?

"A: Yes.

"Q: But you're peaceful?

"A: Very peaceful."

In his closing argument the prosecutor reminded the jury of Grant's prior convictions, repeatedly characterizing Grant as someone who "beat his wife." For example, the prosecutor told the jury that, although the evidence did not show why Karen ran out of Jackson's house, the jurors should remember, "This is

somebody who beat his wife. So he did something to Karen." Later the prosecutor said, "This is an aggressive guy. Despite what Christopher Grant says about him being a peaceful person, he's not. It's just not true. He's beat his wife. He's committed many terrorist threats. He did something to Karen that caused her to run out of the house. He's not peaceful. He's angry, he's impulsive, he's violent, yes, but not peaceful." The prosecutor returned to Grant's prior convictions, telling the jury, "He beat his wife, who had a restraining order against him, in a car. Does that sound familiar? He's violent. 2012, even more recently, convicted terrorist threats. A violent, impulsive, dangerous individual, despite what he'll have you believe." And in his rebuttal argument, the prosecutor reminded the jury two more times that Grant "beat his wife," was subject to a restraining order, and made terrorist threats. Counsel for Grant did not object to any of these statements.

D. *The Verdict and Sentence*

The jury found Grant guilty on both counts and found not true the allegation Grant personally inflicted great bodily injury. The trial court sentenced Grant to the middle term of three years on count 1, assault by means of force likely to produce great bodily injury, and stayed under Penal Code section 654 execution of a three-year term on count 2, assault with a deadly weapon. Grant timely appealed.

DISCUSSION

Grant argues the trial court erred by admitting evidence of his prior convictions, and the conduct underlying those

convictions, because he did not "open the door" to evidence of his character for violence under Evidence Code section 1103[1] and the evidence was more prejudicial than probative.[2] Grant also argues the prosecutor committed misconduct by repeatedly telling the jury he had "committed many terrorist threats" (as opposed to one), had "beaten up" his wife, and had a restraining order against him. To the extent counsel for Grant forfeited these arguments by failing to object at trial, Grant argues he was denied his constitutional right to effective assistance of counsel.

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[1] Evidence Code section 1103, subdivision (b), provides: "In a criminal action, evidence of the defendant's character for violence or trait of character for violence (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) is not made inadmissible by Section 1101 if the evidence is offered by the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant . . . ."

[2] Grant also argues the evidence of his prior convictions was not relevant. Grant, however, forfeited this argument. Trial counsel for Grant objected, during the argument preceding Grant's testimony, on the ground the evidence was inadmissible under Evidence Code section 352, and she (arguably) objected, during the sidebar conference before his cross-examination, on the ground the evidence was inadmissible under Evidence Code section 1103. At no time, however, did counsel for Grant make a relevance objection. Appellate courts generally will not review challenges to the admissibility of evidence absent an objection on the ground urged on appeal. (See *People v. Merriman* (2014) 60 Cal.4th 1, 84; *People v. Fuiava* (2012) 53 Cal.4th 622, 670.)

To succeed on all of his arguments, however, Grant must show prejudice, which he failed to do.

A. *Any Error in Admitting Grant's Prior Convictions Was Harmless*

Even if the trial court erred in admitting the evidence of Grant's prior convictions under Evidence Code sections 352 and 1103, Grant was not prejudiced. (See *People v. Williams* (2008) 43 Cal.4th 584, 643 [assuming evidentiary error and finding no prejudice].) "Absent fundamental unfairness, state law error in admitting evidence is subject to the traditional *Watson* test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439, citing *People v. Watson* (1956) 46 Cal.2d 818, 836; accord, *People v. Williams* (2013) 218 Cal.App.4th 1038, 1072; see *People v. Sanchez* (2014) 228 Cal.App.4th 1517, 1534 [evidentiary errors under California law are prejudicial "when 'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error'"].) Because Grant does not argue the trial court's alleged errors resulted in fundamental unfairness, we apply the *Watson* standard and consider whether, absent error, it is reasonably probable Grant would have received a more favorable result.

1. *Applicable Law*

The elements of assault by means of force likely to produce great bodily injury and assault with a deadly weapon are virtually identical. (See Pen. Code, § 245, subds. (a)(1), (a)(4).) To find Grant guilty of assault by means of force likely to produce

great bodily injury, the jury had to find Grant "(1) willfully committed an act which by its nature would probably and directly result in injury to another and (2) was aware of facts that would lead a reasonable person to realize that a battery would directly, naturally, and probably result from [his] conduct." (*People v. White* (2015) 241 Cal.App.4th 881, 884.) Assault with a deadly weapon consists of the same elements except that the application of force must be achieved by using a deadly weapon other than a firearm. (See *In re Jonathan R.* (2016) 3 Cal.App.5th 963, 973, 975 [the elements of assault by means of force likely to produce great bodily injury are "necessarily included within assault with a deadly weapon," except that to be guilty of assault with a deadly weapon the defendant must have used or attempted to use an instrument "in a manner likely to produce death or great bodily injury"]; see also *In re Jose S.* (2017) 12 Cal.App.5th 1107, 1122 ["the commission of assault with a deadly weapon under Penal Code section 245, subdivision (a)(1) encompasses the commission of assault 'by any means of force likely to produce great bodily injury'"].)

Assault by means of force likely to produce great bodily injury or with a deadly weapon may be justified where the defendant has "an honest and reasonable belief that bodily injury [was] about to be inflicted on him." (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064, italics omitted.) This right of self-defense, however, is limited to the use of force that is reasonable under the circumstances. (*Id.* at pp. 1064-1065; see *People v. Casares* (2016) 62 Cal.4th 808, 846 ["defense of self-defense is established when the defendant has an honest and reasonable belief that bodily injury is about to be inflicted on him, provided he uses force no greater than that reasonable under the circumstances"].)

The test of reasonableness is objective; it is determined from the point of view of a reasonable person in the defendant's position. (*Minifie*, at p. 1065; *People v. Jefferson* (2004) 119 Cal.App.4th 508, 518.) Relevant to this determination are all the facts and circumstances a reasonable person might expect ""to operate on [the] defendant's mind."" (*Minifie*, at p. 1065; see *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083; *Jefferson*, at p. 518.)

The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense. (See *People v. Saavedra* (2007) 156 Cal.App.4th 561, 571 ["[t]ypically, the prosecution has the burden to prove a defendant did not act in self-defense, because self-defense negates an element of the offense"]; *People v. Lee* (2005) 131 Cal.App.4th 1413, 1429 ["[f]or the defense of self-defense . . . the People have the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense"].)

2. *The Evidence Was Overwhelming That, Even If Grant Acted in Self-defense, He Used Unreasonable Force*

Grant admitted he hit Jackson knowing his keys were in his fist, and he did not contest that he used his car key as a "deadly weapon" within the meaning of Penal Code section 245, subdivision (a)(1).[3] Grant's argument at trial was that he acted

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[3] Objects one can grasp while "throwing a punch" may be "instruments of the crime of assault 'with a deadly weapon'" where they are "used . . . in a manner likely to produce death or great bodily injury." (*In re David V.* (2010) 48 Cal.4th 23, 30 & fn. 5; see, e.g., *In re B.M.* (2017) 10 Cal.App.5th 1292, 1298-1299 [butter knife may be a deadly weapon]; *People v. Page* (2004) 123 Cal.App.4th 1466, 1473 [pencil may be a deadly weapon].)

in self-defense.[4] Grant testified: "I was getting ready to go into the house, and I had the keys in my hand. . . . I didn't drop my keys and punch him. I just acted on impulse. When I got hit, I reacted. So I didn't put my keys down and hit him. I just hit him with the keys in my hand." The People argued, among other things, that, even if Jackson attacked Grant first, Grant used excessive force in response. In his closing argument the prosecutor said: "You can't key your best friend in the face. Even if the victim started it. . . . The force was excessive. It wasn't necessary." Counsel for Grant argued the amount of force Grant used "was reasonable because he did not plan to have his keys in his hand in that situation."

In the circumstances of the fist fight as Grant described it—a brief fight between two sober friends over Grant's behavior toward a woman he had just met or perhaps over Jackson's

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[4] Counsel for Grant argued in passing that Grant did not "willfully" use his keys to attack Jackson because he did not use them "intentionally." There is no dispute, however, that Grant had his keys in his hands when he struck Jackson, and the People did not have to prove specific intent to inflict a particular harm. (See *People v. Chance* (2008) 44 Cal.4th 1164, 1173, fn. 10 ["'[t]he crime of assault with a deadly weapon requires no proof of specific intent to commit the offense'"]; *People v. White* (2015) 241 Cal.App.4th 881, 885 ["[t]here is no requirement that the defendant be subjectively aware of the risk that a battery might occur" to be guilty of assault with a deadly weapon].) Indeed, whether Grant meant to stab Jackson with his key is not relevant. (See *People v. Hernandez* (2011) 51 Cal.4th 733, 747 ["[a]lthough defendant testified he did not mean to throw [the victim] onto her face, or throw her down with such force, these facts do not aid his defense because assault is a general intent crime"].)

weight—Grant's use of a deadly weapon in response to Jackson's unarmed attack was excessive and unreasonable. (See *People v. Pinholster* (1992) 1 Cal.4th 865, 966 ["[t]he right of self-defense did not provide defendant with any justification or excuse for using deadly force to repel a nonlethal attack"], disapproved on another ground in *People v. Williams* (2010) 49 Cal.4th 405, 459; *People v. Enriquez* (1977) 19 Cal.3d 221, 228 ["an assault with fists . . . does not justify the use of a deadly weapon in self-defense"], disapproved on another ground in *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3; see also *People v. Ross* (2007) 155 Cal.App.4th 1033, 1056-1057 [citing cases holding the use of lethal force in response to simple assault was excessive or unreasonable].)

Moreover, even if Grant's initial attack with the key was somehow justified, Grant used excessive force by repeatedly stabbing Jackson. It is true that "'in the heat of conflict or in the face of an impending peril a person cannot be expected to measure accurately the exact amount of force necessary to repel an attack [and] that person will not be deemed to have exceeded his or her rights unless the force used was so excessive as to be clearly vindictive under the circumstances.'" (*Ross*, *supra*, 155 Cal.App.4th at p. 1057.) And Grant indeed may have thought his keys were inside his closed fist with no jagged edges poking out, as he testified. After puncturing his friend's cheek with the first punch, however, a reasonable person in Grant's position would have realized his force was excessive. (See *People v. Simington* (1993) 19 Cal.App.4th 1374, 1380 [stab wound constituting serious bodily injury "was entirely inconsistent with appellant's version depicting a minor jabbing action to simply 'ward [the victim] off'"].)

In addition, a person is entitled to pursue an assailant only until the danger of bodily injury has passed. (See *People v. Hardin* (2000) 85 Cal.App.4th 625, 634, fn. 7 [the defendant's right to use deadly force in self-defense ended the moment the defendant disarmed a frail and much older victim].) The danger posed by Jackson, an unarmed, close friend, had passed after Grant stabbed him in the cheek. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 202 ["[i]f a person attacked defends himself so successfully that his attacker is rendered incapable of inflicting injury, or for any other reason the danger no longer exists, there is no justification for further retaliation"]; see also *People v. Eulian* (2016) 247 Cal.App.4th 1324, 1334-1335 [after the defendant had punched the victim through her car window, dragging her out of the car and beating her on the ground constituted unreasonable force].) Thus, the evidence supporting Grant's self-defense claim was "markedly weak." (*People v. Hernandez* (2011) 51 Cal.4th 733, 747; *Simington*, *supra*, 19 Cal.App.4th at p. 1380 [the theory of self-defense presented by the defendant was "extremely weak" where the defendant admitted to stabbing the victim simply to "ward" him off but inflicted a wide, deep wound].) Because virtually uncontested and overwhelming evidence demonstrated Grant used unreasonable force in response to Jackson's aggression, Grant cannot demonstrate a reasonable probability that the result of his trial would have been more favorable had the trial court excluded evidence of his prior convictions. Thus, any evidentiary error was harmless. (See *People v. Covarrubias* (2016) 1 Cal.5th 838, 929 ["the error was harmless because overwhelming evidence established" the defendant's guilt]; *People v. Smith* (2015) 61 Cal.4th 18, 52 ["given the overwhelming evidence of defendant's

guilt, . . . any error would have been harmless under any standard of prejudice"]; *People v. Houston* (2012) 54 Cal.4th 1186, 1222 [errors were harmless under *Watson* "[g]iven the overwhelming evidence of defendant's guilt"].)

B. *Grant Forfeited His Prosecutorial Misconduct Argument, and His Trial Counsel Did Not Provide Ineffective Assistance*

Failure to object to a prosecutor's allegedly improper statements at trial (and to request an admonition) forfeits a contention of prosecutorial misconduct. (*People v. Clark* (2016) 63 Cal.4th 522, 577; see *People v. Winbush* (2017) 2 Cal.5th 402, 481 ["'[a]s a general rule a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety'"].) Counsel for Grant did not object to the prosecutor's allegedly improper statements that Grant "committed many terrorist threats," "beat his wife," or had a restraining order against him. Therefore, Grant forfeited his argument of prosecutorial misconduct. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 688 [defendant forfeited arguments that "the prosecutor improperly dwelled upon an inflammatory term and 'twisted' the meaning of [trial] testimony" by not objecting on those specific grounds at trial].)

Grant argues his trial counsel provided ineffective assistance by failing to object to the prosecutor's statements. To prevail on this argument, Grant must show "a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (*People v.*

Centeno (2014) 60 Cal.4th 659, 676, quoting *Strickland v. Washington* (1984) 466 U.S. 668, 694; see *People v. Benavides* (2005) 35 Cal.4th 69, 92-93 [applying the *Strickland* prejudice standard to a claim of ineffective assistance under the state constitution].)

Even if counsel for Grant's failure to object to the prosecutor's statements was deficient performance, Grant suffered no prejudice. (See *People v. Carrasco* (2014) 59 Cal.4th 924, 982 ["'a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies,'" and "'[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed'"]; accord, *People v. Gana* (2015) 236 Cal.App.4th 598, 612-613.) As noted, Grant admitted he hit Jackson three times with his keys in his hand, and the overwhelming evidence was that the force he used, even if in self-defense, was unreasonable. Thus, there is no reasonable probability that the result of the trial would have been different had counsel for Grant objected to the prosecutor's statements and asked the court to admonish the jury to disregard them.[5]

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[5] Although we do not reach the issue whether the prosecutor committed misconduct, the prosecutor's repeated arguments to the jury that Grant was a wife-beater and had been convicted multiple times of making a criminal threat were highly questionable acts of advocacy. We warn "'unnecessarily zealous prosecutors'" against engaging in improper conduct, "'thinking that appellate courts will save them by applying the harmless error rule.'" (*People v. Sanchez* (2014) 228 Cal.App.4th 1517, 1537; see *People v. Lambert* (1975) 52 Cal.App.3d 905, 911-912.) Appellate courts have reversed, and will continue to reverse,

C. *Cumulative Errors Did Not Prejudice Grant*

Grant argues the combined effect of the errors he asserts occurred at his trial prejudiced him. In light of the overwhelming evidence of his guilt, we conclude the cumulative effect of any such errors was harmless. (E.g., *People v. DeHoyos* (2013) 57 Cal.4th 79, 155 [court concluded no cumulative error after finding """each error or possible error [is] harmless when considered separately"""]; *People v. Jennings* (2010) 50 Cal.4th 616, 691 [where the court found no prejudice even assuming error, the cumulative effect of any possible errors did not warrant reversal "[i]n light of the extensive and overwhelming evidence of defendant's guilt"].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. MENETREZ, J.*

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convictions "whenever prejudicial misconduct occurs," and "[t]he Attorney General, district attorneys, and deputy district attorneys should take appropriate steps to minimize such occurrences." (*Lambert*, at p. 912.)

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