

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALJAMAIR RAYMOND WALKER and  
BRANDON DASHAWN WALKER,

Defendants and Appellants.

A126317

(Contra Costa County  
Super. Ct. No. 5-090137-1)

Brothers Brandon and Aljamair Walker were convicted of obstructing a peace officer with force and violence and assaulting a peace officer with a deadly weapon. Each count was enhanced due to the infliction of great bodily injury. Each moved for a new trial on grounds that included jury misconduct during deliberations. Those motions were denied, and both defendants were sentenced to three years of probation with the condition that they serve one year in county jail. Because the fairness of the trial was undermined by prejudicial juror misconduct, we must reverse. In light of our holding on the jury misconduct claim, we will not address defendants' other arguments.

**BACKGROUND**

**Prosecution Case**

This case began with an interaction at the Bayo Vista housing project in Rodeo involving defendants and their mother, Robbie Luckey, and Contra Costa County Sheriff's Deputy Anna Kornblum.

Deputy Kornblum was the resident deputy at Bayo Vista. Her duties included dispersing groups who violated the loitering rules at Bayo Vista and occasionally arresting non-resident trespassers. While on patrol at the development on the afternoon of December 29, 2008, Kornblum saw a group of eight to ten people, including Brandon, hanging out with open containers of alcohol near defendants' apartment on Trigger Court.<sup>1</sup> She backed into a parking spot and sat for about ten minutes, hoping that her presence would encourage the group to disperse. When that didn't work, she pulled her car closer and radioed dispatch that she was going to contact some subjects for loitering.

As Deputy Kornblum walked toward the group, a number of the individuals started to walk away. Kornblum spoke with Travis Williams, who was holding an alcoholic drink and whom she knew was not a Bayo Vista resident. She asked Williams to leave and he complied. Most of the others, including Brandon, moved off towards 1230 Trigger Court.

Because the other people appeared to be Brandon's guests, Deputy Kornblum approached him and reminded him that the housing authority rules allowed entertaining only in his home or backyard. Brandon replied that the people were not his guests. He was yelling, using profanity and making aggressive gestures. At that point Luckey came outside. She was upset and did not want Kornblum to interact with her son. Kornblum again tried to explain the anti-loitering rules, but Luckey was unreceptive and voices were raised.

Kornblum decided to leave and follow up with the housing authority rather than allow the situation to escalate. As she started back toward the parking area she saw Aljamair with his fiancée Brittney Roberson and another woman. She approached to tell them to disperse, but when she was closer to them she saw that Aljamair appeared to be intoxicated. There were alcohol bottles scattered around the area. Aljamair's speech was

---

<sup>1</sup> Because they share a common last name, we will refer to the Walker brothers by their first names. We intend no disrespect thereby.

slurred, his eyes were red and watery, he was unsteady on his feet, and he seemed unable or unwilling to follow Kornblum's instructions.

Concerned that Aljamair was unable to care for himself in public and that children would soon be arriving home from school, Deputy Kornblum told him to go inside or leave the area. He was angry and refused to comply, even when Kornblum threatened to arrest him. Kornblum then told Aljamair he was under arrest and tried to take his left arm into a control hold and handcuff him. Aljamair resisted and pulled away. Deputy Kornblum was holding his arm when Luckey started yelling, came between Kornblum and Aljamair and tried to push them away from each other. Brandon, on Kornblum's left, started punching her on the upper torso, left arm and shoulder. It was painful. Everyone was yelling at her to let Aljamair go.

Deputy Kornblum let go of Aljamair, pulled out her radio and called for emergency backup. Brandon, Luckey and Robeson were still standing there yelling at her while Kornblum repeatedly commanded them to get back and get down on the ground. Concerned for her personal safety, Kornblum pulled out her baton and stepped back into a "ready" position, while continuing to give them verbal commands to get back and down. When they did not comply she pulled out her pepper spray and sprayed Aljamair.

At that point Deputy Kornblum was standing closest to Luckey. The deputy tried to take Luckey into custody for resisting an officer, but when she grabbed Luckey's left arm Brandon yelled, "Let go of my mom." Both defendants started punching Kornblum in the face, head and chest. While they were hitting her, Kornblum performed a bar arm takedown with a leg sweep move to get Luckey down to the ground and out of the fight. Kornblum had performed this same maneuver over a hundred and maybe in the thousands of times and had never fallen while doing it.

While she was attempting to subdue Luckey, Kornblum felt an "incredibly hard impact" on the left side of her cheek. Unlike the other impacts, this was "a very hard, solid blow" with "no give in it at all." It felt much harder than a fist. The next thing Kornblum knew she was getting up off the ground, with no idea how she got there.

Kornblum believed she had briefly lost consciousness. Her vision was blurry, she felt dizzy, her cheek and right knee hurt, and she felt nauseous. Her baton and pepper spray were gone. Aljamair was running across the courtyard and the others were running toward 1230 Trigger Court.

Luckey and Roberson were arrested after additional officers arrived in response to Kornblum's call for back-up. Officers found five empty whiskey bottles and Kornblum's pepper spray nearby. Aljamair and Brandon turned themselves in four days later.

Deputy Kornblum was taken to the emergency room, where she was diagnosed with acute concussion syndrome, a contusion of the left cheek, a right upper lip abrasion and a right knee sprain and contusion. Dr. Thomas Tighe, the treating physician, testified on cross-examination that he could not tell from Kornblum's injuries whether they resulted from being hit with a hard object or from striking her face against a hard object. The prosecution did not ask Dr. Tighe whether Kornblum's injuries were inconsistent with her falling onto a car or the pavement.

### **Defense Case**

Four witnesses, including Aljamair, testified in support of the defense theory that Kornblum's injuries were caused, not by defendants' fists, but in an accidental fall while she attempted to subdue Luckey.

Aljamair testified that he never laid hands on Deputy Kornblum. On the afternoon of the incident he was upstairs in his house with Roberson and their infant son. Roberson's mother, LaTonja Owens, pulled up in her car, and Aljamair went outside to talk to her through her driver's side window. Travis Williams and some other people were hanging out in the area, drinking alcohol. While Aljamair was talking with Owens, Kornblum pulled up in her patrol car and spoke briefly to Williams, who then left the area. Kornblum then approached Aljamair and, using profanity, said he needed to either leave with Owens or go inside. When he asked why, she told him to take his hands out of his pockets and grabbed him.

Aljamair yanked his arm away and backed up, but Kornblum kept coming toward him. Meanwhile Luckey got between Aljamair and Kornblum and asked what the

problem was. She was not pushing Deputy Kornblum, but may have touched her as Kornblum tried to grab Aljamair. Kornblum kept coming at him while he kept backing up, and Luckey stayed between them.

Kornblum was holding her baton while she continued trying to reach around Luckey to grab Aljamair. When Luckey turned to face Aljamair, Kornblum grabbed her around the neck and tripped her. It all happened very quickly. Kornblum's left foot was on the edge of the curb and she lost her balance. As Luckey fell face first to the ground, Kornblum also fell and hit her face on the car as she went down. Luckey stayed down, but Kornblum got up immediately.

Brandon approached and tried to grab Aljamair and get him to go inside. Aljamair tried to help his mother, but Deputy Kornblum sprayed him in the chin with pepper spray.

Aljamair and Luckey retreated to the house. Later he and Brandon fled the area. Aljamair was afraid that Kornblum would lie about what happened and the other officers would back her up. He had previous bad experiences with police, as he was once wrongly accused of a crime and had also seen Roberson's cousin brutally beaten by police officers.

Brittney Roberson's testimony essentially corroborated Aljamair's. Aljamair had not been drinking that day and he did not look or act intoxicated. They were napping with their baby at Aljamair's house when Owens arrived. Roberson and Aljamair went outside to talk to Owens in the parking lot. There were about half a dozen people drinking out in front, but Aljamair was not talking to them.

Kornblum approached and said "you guys are getting drunk this early?" and told Brandon to take his company inside. People scattered. Kornblum told Aljamair to leave or go inside. He was walking towards the house when Kornblum ordered him to take his hands out of his pockets and told him he was going to jail. Luckey came out of the house and asked what was going on. At that point Roberson went inside to check on the baby. From the upstairs window she saw Kornblum put her arm around Luckey's neck. Both Kornblum and Luckey fell to the ground between the sidewalk and the car. Aljamair and Brandon were a couple of feet away and did not hit Kornblum. Roberson did not see

Kornblum hit her head on anything as she fell; nor did she see anyone punch the deputy in the face.

Owens gave similar testimony. Aljamair did not appear drunk to her. He was not a heavy drinker, and she had never seen him drunk or under the influence. She was parked outside the Walker house talking to Aljamair when Deputy Kornblum drove up and spoke to Williams. Williams left and the other people ran away. Kornblum approached and told Owens to get Aljamair “the F out of here.” She said he would be arrested if he didn’t get in Owens’s car or go in the house. When Aljamair protested that he hadn’t done anything wrong, Deputy Kornblum grabbed his shoulder or arm. The crowd of people whom Kornblum had dispersed started to reassemble.

Luckey came outside and asked what was going on. Aljamair was pulling away from Kornblum and Luckey stood between the two. Kornblum pulled out her baton and told Luckey to get back. She released Aljamair, took Luckey by the shoulder and performed a leg sweep, flipping her to the ground. Both women fell to the ground between the curb and the car. Owens saw Kornblum’s knees hit the ground, but she could not see whether Kornblum’s head hit the ground or the car.

Le’Andre Bradford was one of the people in the parking lot that afternoon and gave similar testimony. Brandon came out of the house as Kornblum was holding Aljamair and telling the crowd to disperse. Kornblum said Aljamair was drunk and told him to go in the house or be arrested. Then she grabbed his wrist and put it behind his back. Kornblum ordered Brandon to go inside but he remained where he was, asking others in the crowd what his brother had done. Bradford did not see Brandon, Aljamair or anyone else strike Kornblum.

At that point Luckey came outside and asked Kornblum what Aljamair had done. Kornblum said he was drunk and was going to jail. Luckey became agitated. She said she would call the police and housing authority to report harassment, pulled out her phone and urged others in the crowd to call the police. Kornblum released Aljamair and put her right arm around Luckey’s neck and her right foot around Luckey’s legs. Both

Luckey and Kornblum fell face first to the ground, and Kornblum landed on Luckey's back.

Kornblum was the first to get up. She took out her baton and swung it to get everyone to back up. Luckey was struck in the face with the baton as she tried to get up.

### **Verdict and Sentencing**

The jury returned guilty verdicts against both defendants and found the great bodily injury enhancements proven. Defendants moved unsuccessfully for a new trial. The court suspended imposition of sentence as to both defendants, granted them each three years' probation, and imposed jail terms of 365 days and various fines. Defendants filed this timely appeal.

## **DISCUSSION**

### **I. Factual Background — Juror Misconduct**

The jurors were instructed during voir dire, after they were sworn, and again before opening statements to disregard any evidence outside the evidence presented at trial. Defendants' new trial motions were based, in part, on their claim that the jury disobeyed those instructions. Supported by declarations from four jurors, they argued that Jurors No. 7 and 12 improperly brought their own specialized experience and expertise into deliberations and shared that expertise with the other jurors.

#### **A. Juror No. 12's Statements**

The new trial motion was supported, in part, by a declaration from Juror No. 10 who recounted that the jurors examined and discussed the evidence regarding Deputy Kornblum's injuries, including photos and medical testimony. During the deliberations, Juror No. 12 said that he was a boxer in the Navy, and that based on his experience he knew that the injuries to Kornblum's face were definitely caused by a fist and not by falling to the pavement. Juror No. 8 also offered a declaration that stated Juror No. 12 shared his personal experience as a boxer and said that, based on that experience, the only way Deputy Kornblum could have sustained her facial injuries was by being hit by a fist — not by falling to the pavement. Juror No. 3, the foreperson, confirmed that Juror No. 12 made the statements described by Jurors No. 8 and 10, and that Juror No. 12's opinion

confirmed his own opinion based on his personal experience as an ambulance attendant and driver. Juror No. 12 acknowledged in a declaration that he shared his personal experience as a boxer during the jurors' discussion of Kornblum's injuries, and that he told the jurors that as a boxer he knew that Kornblum's injuries could only have been caused by being hit, not by a fall.

### **B. Juror 7's Statements**

Juror No. 10's declaration added that Juror No. 7 said during deliberations that he had done the same takedown move as Kornblum described many more times than Kornblum had and he had never fallen. Juror No. 12 confirmed that Juror No. 7 made this statement. According to Juror No. 3, Juror No. 7 said he had personal experience in the Army Special Forces regarding takedown techniques and that, based on that experience, he believed Deputy Kornblum's injuries were caused by a blow and not by falling to the ground.

### **C. The Trial Court Ruling**

The trial court denied the new trial motions. With respect to Juror No. 12's statements, the court reasoned that comments such as "it might have been a fist . . . are simply common-life experiences, not specialized knowledge," and likened them to comments by someone who got into fist fights in his youth. The court added that it viewed the statements as harmless because the fall scenario was "never very credible on its own evidence" and he did not believe the jury was buying it.

The court agreed with defense counsel that Juror No. 7's comment about doing the takedown move could not be described as nonspecialized life experiences, but found it was harmless because "it duplicated the testimony of two different police witnesses" and because the fall scenario was not credible.

## **II. Analysis**

### **A. Juror Misconduct**

The juror declarations were undisputed, and there was no claim they were untruthful. As the court's ruling did not require it to resolve conflicting evidence, we review de novo whether the juror declarations demonstrate misconduct. (*People v.*

*Nesler* (1997) 16 Cal.4th 561, 582 (*Nesler*); *People v. Vigil* (2011) 191 Cal.App.4th 1474, 1483 (*Vigil*).

*In re Malone* (1996) 12 Cal.4th 935 (*Malone*) discusses the legal standards for assessing the particular type of juror misconduct that defendants say occurred here, i.e., a juror's expression during deliberations of views on a critical issue based on his or her own professional experience. "It is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial. Jurors' views of the evidence moreover, are necessarily informed by their life experiences, including their education and professional work. A juror, however, should not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror's own claim to expertise or specialized knowledge of a matter at issue is misconduct." (*Id.* at p 963.)

In *Malone, supra*, a juror committed misconduct during deliberations when she expressed her opinion that, based on her own professional study as a psychologist, polygraph evidence was unreliable. (*Id.* at p. 963, 944–945.) The Court observed that statements by this juror that merely reflected the evidence and argument presented at trial were "less egregious," but her assertion that her views were "drawn from her own professional knowledge . . . was an improper injection of extrajudicial specialized information into the deliberation." (*Id.* at p. 963, fn. 16.)

This case presents the same sort of injection of specialized information. We disagree with the trial court's conclusion that Juror No. 12's statements about Kornblum's facial injuries were a matter of common knowledge rather than based on specialized experience. While anyone with even passing familiarity with popular entertainment or contact sports knows that a fist to the face can produce a shiner, it is another matter to be able determine from looking at a bruise (or a picture of a bruise) that it could *only* have been caused by a fist. Indeed, Dr. Tighe, the only medical professional to testify here, was unable to say what caused Deputy Kornblum's injuries. But Juror No. 12, no less than Juror No. 7 (whose similar statements the court acknowledged were

improper), advised his fellow jurors that he knew from his own experience as a Navy boxer that the only possible cause of Kornblum's head injuries was a blow from a fist. Under *Malone*, that was misconduct. (*Malone, supra*, 12 Cal.4th at p. 963.)

The People argue that Jurors No. 7 and 12 simply used their personal life experiences to analyze the evidence, and that their opinions were not explicitly based on specialized information obtained from outside sources. We disagree. The Supreme Court has noted that “[a] fine line exists between using one’s background in analyzing the evidence, which is appropriate, even inevitable, and injecting ‘an opinion explicitly based on specialized information obtained from outside sources,’ which we have described as misconduct.” (*People v. Steele* (2002) 27 Cal.4th 1230, 1266.) *Steele* is instructive. There, the defendant claimed to suffer psychological dysfunction caused by traumatic experiences in the Vietnam War. During deliberations, some of the jurors said they had attended the same military schools as the defendant and did not “learn how to kill in them,” while others opined that a neurological test was flawed by an inadequate control group. The majority of the Court held that the juror declarations “do not so clearly show that the jurors crossed the line into misconduct as to have required the court to conduct an evidentiary hearing,” but rather came within the range of permissible interpretations of the evidence introduced at trial on the nature, extent and effect of defendant’s military experience and the validity of the neurological testing.<sup>2</sup> (*Id.* at pp. 1265–1266.)

Here, in contrast, the line was crossed. There was no evidence, expert or otherwise, to show or dispute that Kornblum’s injuries could only have been caused by a fist, not a fall. Jurors No. 12 and 7 thus did not simply use their experience to evaluate and interpret properly introduced evidence; they expressed opinions based on asserted

---

<sup>2</sup> In a concurring opinion, Chief Justice George concluded the comments were misconduct under the *Malone* standard but that the record rebutted the presumption of prejudice. (*Id.* at pp. 1280–1281, conc. opn. of George, J.)

personal expertise that ventured beyond any opinion evidence offered in the trial.<sup>3</sup> *Steele*, as well as *Malone*, teaches that this was misconduct.

*People v. Leonard* (2007) 40 Cal.4th 1370, 1414, is a closer case, but ultimately does not support the People's position. One defense theory was that the defendant suffered continuous tremors that made it difficult for him to shoot accurately — in essence, he was a lousy shot — and therefore could not have been the perpetrator of multiple murders. (*Id.* at p. 1381.) There was testimony that two of the victims were shot twice in the head, once from more than 18 inches away and once from less than two inches, while a third was shot from over 18 inches away. (*Id.* at p. 1377.) During deliberations, a juror mentioned that he had experience firing handguns and that it did not require expertise to shoot the murder weapon accurately at close range. The Court decided that this fell on the permissible side of *Steele*'s fine line. It observed that jurors are permitted to rely on their own experiences in evaluating the evidence — presumably referring to evidence about the defendant's poor marksmanship and the distances from which the victims were shot. (*Id.* at p. 1414.) But the same cannot be said here. No testimony or other evidence was introduced to show that Kornblum's facial bruises were or were not only caused by a fist. To the contrary, Juror No. 12's opinion based on his outside experience as a boxer was the only "evidence" the jury received on that critical point.

In *People v. Yeoman* (2003) 31 Cal.4th 93, the jurors discussed their own experiences with drugs in evaluating defendant's drug use, and one juror who was a nurse explained the term "sociopath" (and possibly other medical terms) and "how it might apply" to the defendant. (*Id.* at pp. 160, 161.) The Court noted that the effects of drug use are common knowledge to lay persons, thus precluding misconduct on that score. As to the nurse's comments, the juror affidavits did not show that her explanatory comment

---

<sup>3</sup> The trial court's statement at the hearing on the new trial motion that Juror No. 7's comments about the takedown maneuver duplicated testimony from two other police witnesses was mistaken. Kornblum testified that she had performed the maneuver many times and had not fallen, but no other officers or expert witnesses testified on this issue.

offered any basis for deciding the case other than on the evidence presented at trial. (*Id.* at p. 160.) Nonetheless, the court went on to conclude the nurse’s comments were nonprejudicial because they were “not inherently and substantially likely to indicate bias on her part or to have influenced any juror” and it was not substantially likely that any juror was actually biased against the defendant. (*Id.* at pp. 161–162.) Here, as we have observed, the juror comments at issue were not about matters of common knowledge, and they offered the jurors a nonevidentiary basis to find that Kornblum’s version of events, not that of Aljamair and the other witnesses, was the true story.

### **B. Prejudice**

Having determined that there was jury misconduct, we consider whether the record rebuts the presumption of prejudice. (*Vigil, supra*, 191 Cal.App.4th at p. 1487.) “ ‘Jury misconduct raises a presumption of prejudice, and “ ‘unless the prosecution rebuts that presumption . . . , the defendant is entitled to a new trial.’ ” ’ [Citation.] The presumption of prejudice may be rebutted by an affirmative evidentiary showing that prejudice does not exist or “ ‘by a reviewing court’s examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party.’ ” ’ ” (*Ibid.*) Factors relevant to whether the presumption has been rebutted are the strength of the evidence of misconduct, its nature and seriousness, and the probability that actual prejudice may have ensued. (*McDonald v. Southern Pacific Transportation Co.* (1999) 71 Cal.App.4th 256, 265.) “If we find a substantial likelihood that a jury was actually biased, we must set aside the verdict, no matter how convinced we might be that an unbiased jury would have reached the same verdict, because a biased adjudicator is one of the structural trial defects that compel reversal without application of a harmless error standard.” (*Nesler, supra*, 16 Cal.4th at p. 579.)

The prejudicial effect of juror misconduct is a mixed question of law and fact that we review independently on appeal from the denial of a new trial motion. (*Nesler, supra*, at p. 582; compare *People v. Ault* (2004) 33 Cal.4th 1250, 1255 [abuse of discretion review of *grant* of new trial on juror misconduct grounds].)

This case required the jurors to determine whether to believe Deputy Kornblum's testimony or the conflicting version of the key events described by Aljamair, Roberson, Owens and Bradford.<sup>4</sup> The evidence that jurors interjected their own personal expertise into the deliberations was undisputed and consistent. It was also highly relevant to that determination. The jurors' improper comments directly concerned a critical and hotly contested issue — whether Kornblum's injuries were caused by defendants' blows or by falling when she did the takedown maneuver. The declarations show that the jurors' deliberations focused in part on the cause of Kornblum's injuries. Both Juror No. 7 and Juror No. 12 told their fellow jurors that, based on their respective areas of professed expertise, the incident could only have happened the way Kornblum described it, thus filling a void left by the lack of expert or other testimony on the point. Furthermore, the jury made several requests during their deliberations, including for significant portions of Aljamair's trial testimony and Deputy Kornblum's preliminary hearing testimony. These requests, and the fact that the jurors spent almost seven hours deliberating over a two-day span, strongly suggest that deciding between the two competing versions of the altercation was neither easy nor straightforward.

The record in this case, far from rebutting the presumption of prejudice arising from juror misconduct, evidences a substantial likelihood that the misconduct by Jurors Nos. 7 and 12 influenced the verdict. Reversal is required.

Defendants' motion for an order to prepare a settled statement is denied as unnecessary to the resolution of this appeal.

#### **DISPOSITION**

The judgment is reversed.

---

<sup>4</sup> As we have noted, the trial court's view on the issue of prejudice seems to have been occluded by his erroneous recollection that two other police officers had given testimony consistent with Kornblum's.

---

Siggins, J.

We concur:

---

Pollak, Acting P.J.

---

Jenkins, J.