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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JARED M. WILLIAMS,

Defendant and Appellant.

B232930

(Los Angeles County  
Super. Ct. No. PA066103)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Beverly R. O'Connell, Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Michael  
Katz, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Jared M. Williams challenges his criminal convictions of assault and battery arguing that the court should have granted him a continuance to secure the live testimony of the deputy sheriff who interviewed the victim and eyewitnesses. Appellant also argues the court committed evidentiary error. Finding no prejudice from these alleged errors, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant, a self-admitted white supremacist with tattoos signifying “white power,” assaulted T.S. on May 31, 2010, after appellant and his friend Troy Ramsey hurled antisemitic words and signs toward T.S. and his wife S.S. Appellant was charged with assault likely to produce great bodily injury, assault with a deadly weapon, and battery along with hate crime enhancements. It was alleged appellant suffered a prior conviction for battery with serious bodily injury within the meaning of the “Three Strikes” law and Penal Code section 667.5.

Appellant was tried by a jury. At trial, appellant did not dispute that he assaulted and battered T.S. His attorney argued, “I don’t think there’s any doubt that an assault was committed.” His attorney also argued, “The battery. It happened. It’s there.”

The evidence at trial showed appellant struck T.S. on May 31, 2010, knocking T.S. to the ground. When T.S. was lying on the ground, appellant kicked his face one or more times. Appellant’s offenses occurred near the S.’s community pool where the S.’s hosted a barbeque. Appellant attended another barbeque hosted by other residents. Appellant was there with Ramsey, and he and Ramsey insulted people throughout the afternoon. S.S. saw appellant and Ramsey ask four men to fight them. S.S.’s sister heard appellant and Ramsey make derogatory remarks directed at her African-American friends attending the barbeque.

Just prior to the assault, T.S. and three friends were playing “beer pong,” when they either accidentally hit a ball in appellant’s vicinity or appellant took their ball. Appellant refused to return the ball despite requests from T.S.’s teammates and from S.S. After T.S.’s teammates approached appellant and unsuccessfully attempted to retrieve the ball, S.S. walked over to where appellant and Ramsey were standing. She was wearing a

necklace with Hebrew letters, and Ramsey called her a “fucking Jew” and a “dirty kike.” After Ramsey made these remarks, appellant pretended to salute Hitler three times.

T.S. then walked over to where appellant, Ramsey, S.S., and T.S.’s teammates were and led his wife and friends away from appellant and Ramsey. Ramsey called T.S. a “fat Jew.” Appellant then hit T.S. from behind as T.S. was walking away, striking T.S. in the head. Appellant caused T.S. to fall to the ground and suffer a chipped tooth. When he was on the ground, appellant kicked T.S.’s head. T.S.’s friend asked if things were okay, and Ramsey tried to attack him. Another friend, M.B., overheard Ramsey say, “[W]e would have won that fight . . . if it wasn’t for you 40 fucking niggers.”

S.S. spoke to a 911 operator and deputy sheriffs came to the scene and arrested appellant and Ramsey. Los Angeles County Sheriff Deputy Juan Miralles interviewed T.S. and S.S. at the scene of the incident. S.S. testified that while appellant and Ramsey were in the patrol car, she overheard one of them say, “I can’t believe we just beat up on all these niggers and Jews. That’s a successful day.” S.S. did not tell Miralles that she heard this comment, and there was no evidence that anyone else heard it. S.S. also testified that appellant and Ramsey threatened to return with knives, and she told the 911 operator that they had knives. But there was no evidence they had knives, and even S.S. acknowledged at trial that they did not.

In his defense, appellant presented evidence that, at age six, he was diagnosed with Tourette’s syndrome and expert testimony that a person with Tourette’s syndrome is more “conflict prone” and more impulsive than an individual who does not suffer from the disorder.

One critical issue at trial was whether appellant wore boots when he stomped on T.S.’s face. Jurors concluded that appellant was not wearing boots.

The parties disputed whether the force used during the assault was sufficient to constitute assault likely to cause great bodily injury. Appellant argued that T.S. suffered only minor injuries, suggesting that the assault was not likely to cause great bodily injury. T.S. required dental treatment but did not obtain medical treatment. T.S. testified that he

had severe headaches for a few days, and a police report indicated that his face was swollen. Jurors found that appellant used force likely to cause great bodily injury.

The parties also disputed whether appellant acted in concert with Ramsey arguing that Ramsey was not at appellant's side when appellant struck T.S. Yet, appellant also argued, "[Y]ou have all kinds of evidence that throughout the day Mr. Williams and Mr. Ramsey were being aggressive with everybody, not just people who were Jewish or Black or whatever. . . . [¶] . . . All of these events have nothing to do with race that we know of. They all have to do with the innate aggressiveness of Mr. Williams and Mr. Ramsey to everybody." Jurors found appellant acted in concert with Ramsey.

Deputy Miralles was scheduled to testify at trial and the prosecutor promised he would be available to testify in the defense case. Miralles ignored the prosecutor's phone calls and did not appear. Defense counsel sought a continuance to secure Miralles's attendance, but the court denied the requested continuance. In denying the continuance, the court balanced appellant's need for live testimony with the fact that no alternate jurors remained.

Deputy Miralles's preliminary hearing testimony was read to the jury, and the parties stipulated as to the contents of his police report. According to Miralles's preliminary hearing testimony, S.S. told him that appellant pretended to salute Hitler while declaring "white power." S.S. told him she accidentally hit appellant with a ball (a fact S.S. denied at trial). S.S. reported appellant kicked T.S. only once and did not mention whether appellant was wearing boots. T.S. also said appellant stomped on his face once. Miralles did not observe any cuts, bruises, or abrasions on T.S.'s body. T.S. refused medical treatment. Miralles did not note in the description of appellant's property that appellant was wearing boots, and Miralles would have done so if appellant had been wearing boots. The parties stipulated as to the contents of Miralles's police report, which repeated several of the foregoing facts and also indicated T.S. reported appellant called him a "fat Jew." The parties stipulated that (1) Miralles had no independent recollection whether appellant was wearing boots; (2) M.B. told Miralles he

heard someone say “fuck you, Jew”; (3) M.B. saw Ramsey try to bite someone who helped T.S.; and (4) M.B. did not say anything about boots.

Deputy Miralles’s partner Deputy Christopher Craft testified during rebuttal that Miralles was not able to write his police report describing the incident between appellant and T.S. immediately after conducting the interviews because of an unrelated incident occurring at the police station. Appellant’s attorney objected to the admission of the evidence, but the court found that the evidence supported a reasonable inference Miralles was under stress at the time he wrote the report.

Jurors convicted appellant of assault by means likely to produce great bodily injury and simple battery, and found that both were hate crimes. Jurors found appellant not guilty of assault with a deadly weapon to wit, shod feet, but guilty of misdemeanor assault and found the offense to be a hate crime. The court dismissed the latter offense, finding it duplicative. The court found appellant suffered a prior conviction as pled. The court sentenced appellant to a 10-year prison term.

## **DISCUSSION**

### ***1. Continuance***

Appellant argues that the court abused its discretion in denying his requested continuance to secure Deputy Miralles’s live testimony.<sup>1</sup> Appellant argues that the live testimony would have assisted him more than the preliminary hearing testimony because evidence was presented at trial that was not present during the preliminary hearing. Specifically, appellant points out that (1) S.S. testified that she overheard appellant and Ramsey say “I can’t believe we just beat up on all these niggers and Jews. That’s a successful day”; and (2) M.B. testified he overheard Ramsey say that he would have won

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<sup>1</sup> Appellant also filed a motion for a new trial on this ground. The court denied the motion, finding it was based on speculation.

the fight except for “40 fucking niggers.”<sup>2</sup> Appellant also argues he suffered prejudice because without live testimony he could not identify inconsistencies in the prosecution witnesses’ testimony and because Deputy Craft was permitted to testify in rebuttal.

Assuming the court should have granted the continuance, appellant fails to show prejudice and therefore fails to show that reversal of his conviction is required. (*People v. Riccardi* (2012) 54 Cal.4th 758, 810 [reversal of conviction not warranted when defendant fails to show prejudice from the denial of a continuance].) The so-called new evidence at trial was not material. Although appellant purported to dispute that he acted in concert with Ramsey, the evidence overwhelmingly showed that he and Ramsey acted together during the incident as well as prior to the incident. Even appellant’s counsel acknowledged as much during closing argument. Appellant and Ramsey tried to fight people near the pool, collectively insulted S.S. based on her religion, and while only appellant assaulted T.S., Ramsey tried to bite one of T.S.’s friends right after T.S. fell to the ground.

Contrary to appellant’s argument, he was not prevented from identifying inconsistencies based on Deputy Miralles’s preliminary hearing testimony and did exactly that. Appellant’s counsel argued with respect to S.S., “I went back to what she initially told the police, Officer Miralles. I consistently went back to what she testified at the preliminary hearing” and her testimony changed at trial. “At her initial interview with Officer Miralles, she said ‘my husband was hit one time, . . . and kicked or stomped one time.’” “When she gets in front of you, she talks about multiple times being kicked.” Counsel argued when T.S. spoke to Miralles he did not mention appellant wore boots. At trial, T.S. testified he did not know if appellant was wearing boots. Contrary to appellant’s argument, the denial of a continuance did not undermine his ability to show inconsistencies in the S.’s testimony.

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<sup>2</sup> Jurors asked for readback of S.S.’s testimony concerning the conversation between appellant and Ramsey after they were placed in the patrol car, but later withdrew their request.

Deputy Craft's rebuttal testimony does not show appellant suffered prejudice from the denial of a continuance. Craft testified that Deputy Miralles did not immediately write his police report. That evidence is not probative of the disputed issues at trial as it does not tend to show appellant was wearing boots, appellant used force likely to cause great bodily injury, or appellant acted in concert with Ramsey. In short, appellant fails to show he suffered prejudice from the denial of a continuance to secure Miralles's live testimony in lieu of the readback of his preliminary hearing testimony.

Finally, appellant was not denied the opportunity to present a defense or the right to due process as he states. Although appellant was not permitted to secure Deputy Miralles's live testimony, he was able to present his testimony from the preliminary hearing and reached an extensive stipulation with the prosecutor. Appellant had the opportunity to cross-examine Miralles at the preliminary hearing. Appellant has not shown that Miralles would have testified to anything materially helpful to appellant's defense that was not included in the stipulation or preliminary hearing transcript. Even assuming appellant could demonstrate federal constitutional error, the error was harmless beyond a reasonable doubt because as explained above appellant demonstrates no prejudice.

## ***2. Rebuttal Testimony***

Appellant argues that it was error to allow Deputy Craft to testify because he testified as to the subjective and personal feelings of Deputy Miralles. Appellant's argument is based on an incorrect premise: Craft did not testify as to Miralles's subjective or personal feelings. Craft testified that there was a delay in writing Miralles's report. Although that fact arguably was irrelevant, it could not have prejudiced appellant. There is no support for appellant's speculation that Craft's testimony led jurors to doubt Miralles's report. Sheer speculation does not support appellant's claim of prejudice. Moreover, the record supports just the opposite as Miralles's report did not include boots in the description of appellant's clothing and jurors found that appellant was not wearing boots. Absent prejudice, appellant fails to show that his conviction must be reversed, as he argues.

Finally, appellant states that the admission of Deputy Craft's testimony violated his right to due process and a fair trial. Appellant did not raise these grounds in the trial court, but even assuming the issue were preserved, appellant's argument lacks merit. Appellant fails to present any argument showing that the admission of the evidence rendered his trial fundamentally unfair. "Ordinarily, even erroneous admission of evidence does not offend due process unless it is so prejudicial as to render the proceeding fundamentally unfair." (*People v. Esayian* (2003) 112 Cal.App.4th 1031, 1042.) Evidence that Deputy Miralles delayed in writing his report was not material to any critical issue at trial and could not have affected the verdict.

**DISPOSITION**

The judgment is affirmed.

FLIER, J.

We concur:

RUBIN, Acting P. J.

GRIMES, J.