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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SOLOMON MICHAEL BROOKS, Defendant and Appellant.	B283558 (Los Angeles County Super. Ct. No. NA104340)

APPEAL from a judgment of the Superior Court of Los Angeles County. James D. Otto, Judge. Affirmed.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Mary Sanchez and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Solomon Michael Brooks (defendant) of two misdemeanor counts of resisting, delaying, or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)),[1] and a trial court sentenced him to a 364-day jail term. In this appeal, defendant challenges his convictions on a variety of grounds. None of his claims has any merit, so we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

On a Friday night in June 2016, defendant was riding a bicycle along a street lined with houses and restaurants in Long Beach, California. It was after dark, and defendant's bicycle did not have a light. Riding a bicycle without a light is an infraction. (Veh. Code, § 21201, subd. (d).)

Two uniformed Long Beach Police Department officers in a marked police car saw defendant on the bicycle, and decided to stop him to give him a citation or a warning. To get defendant's attention, the officers turned on the car's overhead lights and "chirped" its siren. Defendant kept riding. The officers chirped the siren a second time, and one of them called out, "Person on the bike, stop!" Defendant turned his torso to face the police car; flipped off the officers; shouted, "Fuck you, I'm not going to stop"; and kept riding. The officers then pulled the car into a driveway to block defendant's path, but he steered around the car and kept riding.

Officer Brady Vriens (Officer Vriens) got out of the passenger's side of the patrol car and started following defendant on foot. Seeing this, defendant called out, "All right, let's do this," dismounted the bicycle in the front yard of a residence, and

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1 All further statutory references are to the Penal Code unless otherwise indicated.

turned to face Officer Vriens. Defendant picked up the bicycle and threw it at Officer Vriens. The bicycle struck the officer's lower leg, causing some redness. Defendant then "square[d] his body towards" Officer Vriens and got into a "fighting stance" with fists raised. Officer Vriens removed his baton from its sheath and ordered defendant to get on the ground, but defendant ignored the order, proclaimed, "I'm going to fuck you up," and swung his fist at Officer Vriens. Defendant's punch missed. Officer Vriens swung the baton at defendant's arm and also missed. Defendant turned and ran, and Officer Vriens gave chase. Officer Leticia Newton (Officer Newton), the patrol car's driver, got out and joined the foot chase.

Over the next several minutes, defendant led the officers in a chase as he ran up, down, and into the street. At times, he stopped to confront the officers; when he did, he sometimes resumed a fighting stance with his fists up, other times balled his fists at his sides, and still other times threw a wild punch. Defendant would then run away. During these confrontations and the ensuing flight, Officer Vriens repeatedly ordered defendant to stop running and to get on the ground. Defendant did not comply. To secure defendant's compliance and to keep him out of the traffic-heavy street, Officer Newton used her Taser on defendant four separate times, although it never had any effect. Officer Newton also sprayed defendant with pepper spray on two occasions, again to no effect. Officer Vriens swung his baton at defendant on five separate occasions, striking him in the forearm at least four times. Officer Newton Tased defendant a fifth time, and he fell to the ground. Because defendant kicked his legs and flailed his arms, it took several officers—Officer Vriens, Officer Newton, and other officers who responded to the

officers' call for assistance—to subdue and handcuff defendant. Portions of defendant's subdual were caught on cell phone video by patrons at the restaurants lining the street.

Following his arrest, defendant was transported to a hospital, where he was treated for a scrape and for bruising on his forearm. A few weeks later, doctors noted that defendant's wrist had suffered a "single fracture" that may have occurred within the past four weeks, but they were unable to determine when or how defendant sustained that injury.

II. Procedural Background

The People charged defendant with: (1) two counts of resisting an executive officer (§ 69), one for each Officer Vriens and Officer Newton; and (2) assault upon a peace officer with a deadly weapon or force likely to produce great bodily injury (§ 245, subd. (c)), for throwing the bicycle at Officer Vriens. The People further alleged that defendant's two 2007 Nevada convictions for robbery and battery constituted strikes within the meaning of our "Three Strikes" law (§§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)) and constituted prior "serious" felonies (§ 667, subd. (a)).

The matter proceeded to trial. The trial court instructed the jury on the charged crime of resisting an executive officer as well as the lesser included misdemeanor offense of resisting, delaying, or obstructing a peace officer. The court also instructed the jury on the charged assault crime as well as the lesser included misdemeanors of assault on a peace officer (§ 241, subd. (c)) and simple assault (§ 240).

The jury found defendant guilty of two counts of misdemeanor resisting, delaying, or obstructing a peace officer

(§ 148, subd. (a)(1)). The jury acquitted him of the crime of resisting an executive officer and of any assault crime.

Immediately after the verdicts, the trial court sentenced defendant to 364 days in county jail for each misdemeanor count, to run concurrently. Because defendant's custody credits exceeded that jail term, he was immediately released.

Defendant filed a timely notice of appeal.

DISCUSSION

I. Motion to Suppress

Defendant argues that the trial court erred in denying the motion he filed to suppress his arrest. We independently review a trial court's ultimate ruling on a suppression motion, but review any subsidiary factual findings for substantial evidence. (*People v. Weaver* (2001) 26 Cal.4th 876, 924.)

A. *Pertinent Background*

Prior to trial, defendant filed a "Motion to Dismiss, Or In The Alternative, To Suppress." In that motion, defendant argued that Officer Vriens's and Officer Newton's use of force was excessive and "so outrageous" as to warrant dismissal as a matter of due process. He also argued that the officers' "excessive assault . . . exceeded the amount of force permitted by the Fourth . . . Amendment[]," warranting "suppress[ion of his] arrest." The trial court denied the motion "without prejudice to [defendant] renewing [the motion] after the officers testify." Defendant did not renew the motion.

B. *Analysis*

The Fourth Amendment (and its equivalent in the California Constitution) bars unreasonable searches and seizures. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1224; U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.) A defendant

may move to suppress "any tangible or intangible thing obtained as a result" of an unreasonable search or seizure. (§ 1538.5, subd. (a)(1)(A).)

By styling his motion as a motion to suppress, the logical question becomes: Suppress *what*? There is no tangible evidence to suppress because the police obtained no such evidence from defendant's arrest. And the only intangibles—the arrest itself or eyewitness testimony about the arrest—are not suppressible where, as here, the arrest occurred in public. (Cf. *Kirby v. Superior Court* (1970) 8 Cal.App.3d 591, 595 [officer's testimony about observations he made in location where defendant had reasonable expectation of privacy subject to suppression].) At bottom, defendant is asserting that the alleged unlawfulness of his arrest is a bar to his subsequent prosecution. But the United States Supreme Court has long rejected that argument. (*United States v. Crews* (1980) 445 U.S. 463, 474 ["An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction"].)

Defendant cites a number of cases in support of his argument, but none of them is relevant. Most of them involve the suppression of physical evidence following the use of excessive force. (*People v. Jones* (1989) 209 Cal.App.3d 725, 729-731 [suppressing drugs obtained when police choked defendant to prevent him from swallowing them]; *People v. Trevino* (1977) 72 Cal.App.3d 686, 691-692 [same]; *Rochin v. California* (1952) 342 U.S. 165, 166-172 [suppressing drugs obtained when police pumped defendant's stomach]; *People v. Bracamonte* (1975) 15 Cal.3d 394, 397, 404-406 [suppressing drugs obtained when police forcibly removed them from defendant's mouth].) One of

the other cases simply holds that a blanket strip-search policy of arrestees may violate the Fourth Amendment. (*Fuller v. M.G. Jewelry* (9th Cir. 1991) 950 F.2d 1437, 1446.) And the final case, *People v. White* (1980) 101 Cal.App.3d 161, holds that the use of excessive force is a defense to a charge of misdemeanor resisting arrest that, if supported by substantial evidence, must be presented to a jury. (*Id.* at pp. 166-167.) Here, the jury was so instructed and, as discussed below, its partial rejection of that defense is supported by substantial evidence.[2]

II. *Batson/Wheeler* Challenge

Defendant argues that the trial court erred in overruling his objection that the prosecutor's use of peremptory strikes to remove two African-American jurors violated *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), overruled in part in *Johnson v. California* (2005) 545 U.S. 162. We independently review the trial court's ruling. (*People v. Harris* (2013) 57 Cal.4th 804, 834.)

A. *Pertinent Facts*

1. *Questioning of Juror No. 23*

As voir dire proceeded, the trial court questioned Juror No. 23. Juror No. 23 was an African-American man who worked as a computer programmer for the Los Angeles Air Force Base. In response to the court's standard questions, Juror No. 23 explained that he had once been "detained and questioned [by law enforcement] for being black in the wrong part of town at the wrong part of the day." Juror No. 23 told the court that the

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2 In light of our conclusion on the merits, we have no occasion to decide whether defendant forfeited his right to challenge the suppression ruling by not renewing his motion after the officers testified.

incident would not affect his ability to be impartial. The prosecutor asked a few follow-up questions about the incident, including whether the juror would "bring in some of [his] own personal experiences" in evaluating this case. Juror No. 23 replied that he "would, but not to the detriment of the case itself." The prosecutor concluded by asking if Juror No. 23 could "still be a fair juror on my side?" Juror No. 23 said, "Again, based strictly on the evidence, I can do the job."

2. *Prosecutor's use of peremptory challenges*

The prosecutor exercised his first two peremptory challenges on white female jurors, and his third on a white male juror. The prosecutor used his fourth peremptory challenge to excuse Juror No. 23.

3. *Questioning of Juror No. 39*

Juror No. 39 was an African-American man who worked as a pastor and for the City of Los Angeles as a project coordinator. He had previously served on a jury in a criminal case that was unable to reach a verdict. The juror also stated that "everyone on [his] wife's side of the family is in law enforcement," that he would "always get into heated debates" with them, and that he would "stand [his] ground." He told the trial court that it was "questionable" whether police have a right to use reasonable force and that citizens could lawfully resist law enforcement in certain circumstances. The prosecutor asked the juror a follow-up question about what caused the hung jury.

4. *Batson/Wheeler challenge*

When the prosecutor excused Juror No. 39, defendant made a *Batson/Wheeler* objection on the ground that the prosecutor had excused the only two African-American males in the jury box. Two African-American women remained in the jury box.

The trial court overruled the *Batson/Wheeler* objection on two grounds. First, the court ruled that defendant had not established a "prima facie case" that the strikes against Juror Nos. 23 and 39 had a discriminatory purpose. The court explained that "the reason[] . . . for striking Juror [No.] 23" was "clear in the record"—namely, "[h]is arrest" based simply on his race. Equally clear was the reason for striking Juror No. 39—namely, "having previously been on a hung jury." Second, the court invited the prosecutor to state his reasons for each peremptory strike on the record. As to Juror No. 23, the prosecutor cited (1) the juror's past experience in being "detained for being in the wrong part of town while black," and (2) the juror's "extremely strong and extroverted . . . demeanor" in affirming the right to resist arrest more emphatically than the right of police to use reasonable force. As to Juror No. 39, the prosecutor cited (1) the juror's service on a hung jury, (2) the juror's "heated debates" with his wife's family members in law enforcement, and (3) the juror's hesitant answer that it was "questionable" whether police could use reasonable force. The court found these reasons to be "valid" and that the strikes were not "exercised . . . for [any] discriminatory purpose[]."

5. *Ultimate jury composition*

The prosecutor went on to exercise another four peremptory challenges. Of the 12 jurors who ultimately served, four were African-American, two were "Hispanic," and two were "Asian."

B. *Analysis*

Although a prosecutor may exercise a peremptory challenge to strike a prospective juror "'for any reason, or no reason at all'" (*People v. Scott* (2015) 61 Cal.4th 363, 387 (*Scott*)), he or she may

not use a peremptory challenge to "'strike prospective jurors on the basis of group bias—that is, bias against "members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds."'" (*People v. Bell* (2007) 40 Cal.4th 582, 596 (*Bell*), overruled in part in *People v. Sanchez* (2016) 63 Cal.4th 665, 686.) Doing so violates a defendant's right to equal protection set forth in *Batson*, *supra*, 476 U.S. at page 88, and his right to a trial by a jury drawn from a representative cross-section of the community under article I, section 16 of the California Constitution set forth in *Wheeler*, *supra*, 22 Cal.3d at pages 276 to 277. (Accord, *People v. Gutierrez* (2017) 2 Cal.5th 1150, 1157.)

Because "'[t]here is a rebuttable presumption that a peremptory challenge is being exercised properly'" (*People v. Parker* (2017) 2 Cal.5th 1184, 1211 (*Parker*)), a defendant bears the ultimate burden of showing a constitutional violation (*People v. Lenix* (2008) 44 Cal.4th 602, 612-613 (*Lenix*)). Courts employ a three-step, burden-shifting mechanism in assessing whether a *Batson/Wheeler* violation has occurred. The defendant must first "make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose in the exercise of peremptory challenges." (*Scott*, *supra*, 61 Cal.4th at p. 383.) If the trial court finds that the defendant has established this prima face case, the prosecutor must then "explain adequately the basis for excusing the juror by offering permissible, nondiscriminatory justifications." (*Ibid.*) Lastly, the court must make "'a sincere and reasoned effort to evaluate the nondiscriminatory justifications'" (*People v. Williams* (2013) 56 Cal.4th 630, 650), and "decide whether" the prosecutor's proffered reasons are subjectively genuine or instead a pretext for

discrimination. (*Scott*, at p. 383; *People v. Duff* (2014) 58 Cal.4th 527, 548; *People v. Jones* (2013) 57 Cal.4th 899, 917 (*Jones*).)

In assessing whether a defendant has made out "a prima facie case," courts must "consider[] . . . the entire record of voir dire as of the time the [*Batson/Wheeler* challenge] was made." (*Scott*, *supra*, 61 Cal.4th at p. 384.) In so doing, courts examine several factors: (1) whether the prosecutor has "struck most or all of the members of the identified group from the venire"; (2) whether the prosecutor "has used a disproportionate number of strikes against [that] group"; (3) whether the prosecutor has "failed to engage these jurors in more than desultory voir dire"; (4) whether the defendant belongs to the same identifiable group as the excused juror(s); (5) whether the crime victim belongs to the same identifiable group as a majority of the remaining jurors; and (6) whether other "nondiscriminatory reasons for a peremptory challenge . . . are apparent from and 'clearly established' in the record." (*Scott*, at p. 384; *Parker*, *supra*, 2 Cal.5th at pp. 1211-1212; *Bell*, *supra*, 40 Cal.4th at p. 597; *People v. Taylor* (2010) 48 Cal.4th 475, 516.)

On the record before us, defendant did not establish a prima face case of discrimination at the time the prosecutor exercised peremptory challenges against Juror Nos. 23 and 39. To be sure, defendant and two excused jurors were African-American, and the prosecutor at that point in time had used two of his five peremptory challenges against African-Americans. But the remaining factors counsel against an inference of discrimination. Juror No. 23 had a very negative and race-charged experience with law enforcement, and Juror No. 39 previously served on a hung jury. Each is a valid, nondiscriminatory reason to exercise a peremptory challenge.

(*Lenix*, *supra*, 44 Cal.4th at p. 628 ["'We have repeatedly upheld peremptory challenges made on the basis of a prospective juror's negative experience with law enforcement'"]; *People v. Manibusan* (2013) 58 Cal.4th 40, 78 ["The circumstance that a prospective juror has previously sat on a hung jury is a legitimate, race-neutral reason for exercising a strike"].) What is more, the prosecutor asked follow-up questions of each juror on precisely these grounds. Further, the prosecutor did *not* exercise peremptory challenges on the two African-American women who were in the jury box at the time (and who ultimately served on the jury).

Defendant's chief objection is that each Juror No. 23 and Juror No. 39 said they could be fair, and answered other questions in a way that lent credence to their ability to be fair and impartial. However, the ability of the jurors to be fair is of no moment because we are addressing peremptory challenges, not challenges for cause. (*People v. Mills* (2010) 48 Cal.4th 158, 176 ["A party's justification for exercising a peremptory challenge "'need not support a challenge for *cause*'"'].)

III. Evidentiary Challenges

Defendant raises several evidentiary and constitutional challenges to the trial court's evidentiary rulings. We review these challenges for an abuse of discretion. (*People v. Clark* (2016) 63 Cal.4th 522, 590 (*Clark*).) If the court's rulings accord with the rules of evidence, those rulings do not offend a defendant's constitutional rights. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.)

A. *Admission of $30,000 Arrest Warrant*

The trial court took judicial notice of the fact that there was an outstanding $30,000 arrest warrant for defendant at the time

of the charged incident. The court ruled that the outstanding warrant was "probative and relevant and under [Evidence Code section] 352 it's admissible."

Defendant argues that the trial court erred because the warrant was not relevant and was more prejudicial than probative under Evidence Code section 352.

The trial court did not abuse its discretion in finding the outstanding warrant to be relevant because it provided a motive to explain why defendant refused to stop for the officers—namely, he feared getting picked up on the warrant. "[M]otive is relevant, and a strong motive provides powerful evidence." (*People v. Moore* (2016) 6 Cal.App.5th 73, 85; *People v. McKinnon* (2011) 52 Cal.4th 610, 655.) And the desire to avoid arrest for a prior crime is "highly probative to show a motive to flee apprehension for the current crime." (*People v. Scheer* (1998) 68 Cal.App.4th 1009, 1020, fn. 2.) The prosecutor asked the court to admit the outstanding warrant for precisely these reasons—that is, to show the "defendant's intent and mindset." The prosecutor then argued to the jury that the warrant explained "why he didn't want to stop the bike." The trial court also did not err in concluding that the high probative value of this motive evidence was not "substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice." (Evid. Code, § 352; cf. *People v. Anderson* (1978) 20 Cal.3d 647, 650-651 [error to admit evidence of prior arrests of defendant and witness to show "close affinity" between them]; *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1248 [not error to exclude evidence of the victim's outstanding arrest warrant for prostitution].)

Defendant raises three arguments as to why the trial court nevertheless abused its discretion.

First, defendant asserts that the outstanding warrant is not relevant to prove Officer Vriens's and Officer Newton's reason for stopping defendant because the officers were not aware of the warrant until *after* they took defendant into custody. Defendant is right, but his observation is irrelevant because the warrant was never admitted for this purpose and, contrary to what defendant asserts, the prosecutor argued only that the warrant cast light on *defendant's* motive (and not the officers'). Defendant suggests that the jury might have nevertheless on its own misused the evidence, but this suggestion is not supported by the record and is for that reason wholly speculative.

Second, defendant posits that the outstanding warrant was not relevant to show his motive to flee because there was no proof he was aware of the warrant at the time of the incident. There was no *direct* evidence of his knowledge, but there was *circumstantial* evidence—namely, his conduct in ignoring and then actively refusing to comply with the officers' instructions. The jury also heard evidence that a person who flees and resists typically does so because "there's probably something more than just a bicycle violation."

Lastly, defendant contends that the trial court erred in not allowing the jury to hear that the charges that prompted the $30,000 arrest warrant were misdemeanor charges that were later dismissed. However, these additional facts are irrelevant to defendant's motive to flee. At the time of the flight, defendant had no way to know what might happen with the charges in the future. And the misdemeanor status of the crime did not matter: The officers testified they would have arrested him on the warrant no matter what the status of the crime, and defendant

offered no evidence that he had any expectation that he would be arrested only if the warrant were for a felony.

B. *Admission of "Starbucks" Incident*

1. *Pertinent facts*

In October 2015 (approximately eight months before the incident charged in this case), defendant walked into a Starbucks in Hollywood with a wooden stick that, from a distance, looked to have a sharp point. Defendant walked out without incident, but concerned witnesses alerted police dispatch. A few hours later, a police officer saw a man matching defendant's description with a spear. The officer tried to get defendant's attention three times and, when he touched defendant's elbow, defendant pulled away, walked into the middle of Hollywood Boulevard, and started waiving the stick back and forth toward the officer. The officer told defendant to put the stick down and to stop where he was. Instead, defendant knelt on his knees with the stick between his legs. Defendant ignored the officer's repeated requests to step away from the stick. Eventually, other officers arrived and surrounded defendant; defendant physically resisted the arrest. Upon closer inspection, the end of the stick was not a point but a crystal and a feather.

The prosecutor sought to admit this uncharged incident, pursuant to Evidence Code section 1101, subdivision (b), as proof of defendant's "common plan" to evade police. The trial court admitted the incident for this purpose, and instructed the jury that the incident was admitted for the "limited purpose of deciding whether . . . [t]he defendant had a plan or scheme to commit the offenses alleged in this case," and was not to be considered "for any other purpose." Curiously, however, before the officer who testified about the incident began to testify, the

court seemed to misspeak, telling the jury that the testimony was "admitted for a limited purpose to show the officer's state of mind and actions in interacting with the defendant" (rather than *defendant's* common plan or scheme).

2. *Analysis*

Evidence Code section 1101, subdivision (b) authorizes the admission of uncharged acts to "prove some fact"—including "motive" and common scheme or "plan." (Evid. Code, § 1101, subd. (b).) When admitted to prove motive or intent, the uncharged and charged acts need only have "'sufficient similarities to demonstrate that in each instance the perpetrator acted with the same intent or motive.'" (*People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 827, quoting *People v. McCurdy* (2014) 59 Cal.4th 1063, 1097.) When admitted to prove a common scheme or plan, the acts "'must share common features that are so distinctive as to support an inference that the same person committed them.'" (*People v. Armstrong* (2016) 1 Cal.5th 432, 456-457.)

To be admissible as so-called "1101(b) evidence," a court must find that (1) the purpose for which the uncharged act is offered is relevant to the pending case (*People v. Daniels* (1991) 52 Cal.3d 815, 857-858 (*Daniels*)), (2) the uncharged act has the requisite degree of similarity (as delineated above), which ensures that it has a tendency to prove the purpose for which it is offered (*People v. Lindberg* (2008) 45 Cal.4th 1, 22 (*Lindberg*); *People v. Ewoldt* (1994) 7 Cal.4th 380, 402-403, superseded on other grounds by Evid. Code, § 1108), and (3) the probative value of the evidence is not substantially outweighed by the "substantial danger of undue prejudice, of confusing the issues, or

of misleading the jury" (Evid. Code, § 352; *Lindberg*, at pp. 22-23).

The trial court did not abuse its discretion in admitting evidence regarding the so-called "Starbucks incident." Defendant's intent to resist the officer(s) who encountered him in Hollywood was relevant to show defendant's general intent to resist, delay, and obstruct the officers during the incident charged in this case. What is more, the Starbucks incident and the current incident had a concurrence of "common features": In both incidents, defendant repeatedly ignored the commands of the peace officers, he walked into traffic, he "squared off" against the officers (with the stick in the Starbucks incident and with his fists in the charged incident), and physically resisted being handcuffed once he was on the ground. And the probative value of this evidence was not outweighed by substantial dangers of undue prejudice, confusing the issues, or misleading the jury because the trial court admitted only the evidence bearing on defendant's interaction with law enforcement (and excluded evidence of what happened inside the Starbucks, the subsequent charges, and the ultimate disposition of those charges). The court also gave a limiting instruction, although its misstatement in the mid-trial instruction diluted the clarity of the purpose for which it was admitted; the court nevertheless consistently told the jury the Starbucks incident was *not* to be considered as evidence of defendant's propensity.

Defendant makes four arguments in response.

First, he argues that the trial court's ruling was inconsistent with *People v. Hendrix* (2013) 214 Cal.App.4th 216. Defendant is wrong. *Hendrix* held that the trial court erred in admitting, as 1101(b) evidence, two prior incidents where the

defendant resisted arrest by police for the purpose of disproving the defendant's defense that he was resisting police in the charged case because he mistook the police officers for private security guards. *Hendrix* reasoned that the prior incidents might have been relevant if they had also involved security guards, but they did not, and thus were not sufficiently similar. (*Id.* at pp. 243-244.) Here, there is sufficient similarity.

Second, defendant contends that the Starbucks incident was more inflammatory than the charged incident, leading to unfair prejudice under Evidence Code section 352. A pointed spear, defendant reasons, is a more dangerous weapon than his fists or the bicycle he threw. Any danger of unfair prejudice melts away, however, once we consider that the jury heard that what the officer thought at first was a pointed spear was, in actuality, a stick with a feather and crystal on the end. Relatedly, defendant argues that the incident occurred far too long ago to indicate a similar intent. The time gap was eight months; this is not too great a gap, particularly in light of the similarity of defendant's conduct in each incident. Conversely (and somewhat inconsistently), defendant argues that the Starbucks incident was *too* similar (and thus too prejudicial). As explained above, we disagree.

Third, defendant posits that the prosecutor "suggested" defendant was a "convicted repeat offender." The prosecutor suggested no such thing.

Lastly, defendant asserts that the charges involving the Starbucks incident were later dismissed. This is true, but irrelevant because section 1101(b) evidence may include acts underlying dismissed charges. (*People v. Leon* (2015) 61 Cal.4th 569, 596-597 (*Leon*).)

C. *Admission of Defendant's Prior Statements*

1. *Pertinent facts*

a. Preliminary hearing

Defendant was represented by counsel at the preliminary hearing for the crimes charged in this case. His attorney called him to testify. While being administered the oath, defendant stated that his name was "King Solomon Sekhemre El Neter," but added that "in corporate America[,] they refer to me as Solomon Michael Brooks." The defense attorney told the court that defendant wished to "make a statement," and the court explained that defendant "can't make a statement" because, as a witness on direct examination, that would be an impermissible "narrative." When defendant nevertheless launched into a narrative, the court explained, "Sir, we have to follow courtroom procedure. There is strict protocol that we must follow, and that requires that you not give a narrative and that the lawyer ask questions and you respond to the questions pursuant to rules of the Evidence Code." Defendant proceeded to cite "Article 6 of the Confederation which actually states that all debts and all engagements prior to the adoption of the Constitution should be acknowledged and upheld as in the Confederation." The court interrupted, explaining, "I don't know what that is. In this courtroom, what we follow is the Constitution of the United States and the State of California as administered through the Code of Civil Procedure and the Evidence Code. Those are going to be the rules that govern questioning this morning." Defense counsel conferred with defendant, and then announced defendant would not be testifying.

b. Letter of Credence

A few weeks later, defendant knowingly and intelligently waived his right to counsel and began representing himself. He thereafter filed a "Letter of Credence" with the court. In the letter, defendant invoked "the International Treaty of Peace and Friendship 1787," "the Articles of Confederation Concerning the Moorish American estate," and the "Supreme Laws of our Universe." He indicated that he had "jurisdictional status as an eloheem yahuda moor 'jus regium' of birthright within the United Native American Moorish Society," and stated that the "lack of rH genes found in [his] DNA . . . implie[d] the lineage of a tribal priesthood" for which there had been no "waiver of tribal immunity." He signed the letter as "King Solomon 999," with the title "Advance Paramount."

c. Hearing regarding Letter of Credence

At a pretrial hearing two weeks later, defendant—while still representing himself—told the trial court that it had "no subject matter jurisdiction" over him. He explained that he, as "King Solomon Sekhemre El Neter," only came under the jurisdiction of "the United Moorish Empire of America." He further stated that he "lack[ed] rH genes within [his] bloodline"; that he was "not a part of the 3/5 compromise that the Constitution talks about"; and that "all engagements and debts prior to the adoption of the Constitution" remained valid under the Articles of Confederation as well as "the International Treaty of Peace and Friendship." Defendant additionally said that he was "of a natural person" and "not of a corporation," such that he has "never knowledgeably and even in any form or fashion signed [his] right to [him]self over to corporate America."

d. Admission of these statements

By the time of trial, the court had revoked defendant's self-represented status when it declared a doubt about his competency. After defendant was assessed and determined to be competent, the court denied defendant's request to resume self-representation.

At a pretrial hearing, the court granted the prosecutor's motion to admit, under Evidence Code section 1101, subdivision (b), the above detailed portions of the transcripts as well as the Letter of Credence to prove defendant's "intent, motive [etc.]." The court explained that "it's proper evidence to those issues, and it is not unduly prejudicial or a consumption of time given its probative value under [Evidence Code section] 352." The court reaffirmed that any comments about defendant's religion were not admissible, but indicated that this ruling about religion did not bar admission of defendant's "conduct saying [the] law does not apply to him."

During trial, the prosecutor read the portions of the transcripts outlined above, and the court admitted the Letter of Credence.

2. *Analysis*

The trial court did not abuse its discretion in admitting the portions of the transcripts and the Letter of Credence as evidence of defendant's intent to resist the lawful authority of the police or as part of a common scheme or plan to resist such authority. As explained above, these uncharged acts are relevant to show defendant's general intent to resist, delay, and obstruct the police officers, as charged in this case. Further, defendant's uncharged acts of asserting that the laws do not apply to him in court are sufficiently similar to his charged acts of acting as if the laws do

not apply to him when he is out and about in public. Although the uncharged acts involve challenges to the court's jurisdiction rather than disobedience of a peace officer's commands and physical resistance, the uncharged acts are relevant for the intent or common plan those acts reflect—namely, that the law does not apply to defendant. And for the purpose of establishing that intent or that common plan, the acts are sufficiently similar and have the requisite concurrence of common features. The uncharged acts are also not unduly prejudicial and do not risk confusing the issues or the jury. (See generally *Daniels*, *supra*, 52 Cal.3d at pp. 857-858; *Lindberg*, *supra*, 45 Cal.4th at pp. 22-23.)

Defendant raises seven categories of challenges to the admission of this evidence.

First, he argues that (1) the Letter of Credence, (2) his statements at the pretrial hearing while he was representing himself, and (3) the trial court's statements explaining court procedure to defendant are not "evidence" at all. Defendant is wrong that statements a defendant makes while representing himself are somehow no longer "evidence" and must be excluded in all subsequent proceedings. That argument was rejected in *People v. Kiney* (2007) 151 Cal.App.4th 807, 814-815 (*Kiney*). And whether or not the trial court's statements were evidence (*In re Calvin S.* (2016) 5 Cal.App.5th 522, 529 [indicating that a juvenile court's statements are not evidence that can support an adjudication]), they were admitted solely to give context to defendant's statements, not as evidence unto themselves. And to the extent it was error not to redact them, that error was harmless given the mild and neutral nature of those comments.

Second, defendant contends that his prior statements were not properly admitted as Evidence Code section 1101, subdivision (b) evidence because his statements were made in November and December 2016, five and six months *after* the charged incident. They are too temporally remote, he reasons, to shed light on his intent at the time of the charged incident. They are not, particularly when viewed in conjunction with the Starbucks incident occurring eight months *before* the charged incident. Together, all of this evidence demonstrates a consistent intent and common plan to resist lawful authority, which is relevant to prove a key element of the offense of resisting, delaying, or obstructing a peace officer.

Third, defendant asserts that this evidence was "extremely prejudicial" and should have been excluded under Evidence Code section 352 because his statements—which he now labels as "unconventional" and "far-fetched"—were likely to encourage the jury to prejudge him based on those statements and to confuse the issues. This danger was largely negated by the trial court's limiting instruction, which told the jury only to consider this evidence for the purpose of assessing defendant's motive and the existence of a common plan or scheme, and for no other purpose.

Fourth, defendant posits that his prior statements were hearsay and should have been excluded on that basis. This position is incorrect for two reasons. First, hearsay is defined as statements that are (1) "made other than by a witness while testifying," and (2) "offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) The prosecutor was not admitting defendant's claims about the International Treaty of Friendship and Peace, the Articles of Confederation, his rH genes, or his connection to a Moorish empire to prove they were

true. Instead, the prosecutor introduced them as evidence of defendant's state of mind, and *that* is not a hearsay purpose. (*People v. Brackett* (1991) 229 Cal.App.3d 13, 19; *People v. Ortiz* (1995) 38 Cal.App.4th 377, 389.) Second, defendant's statements would in any event be admissible for their truth when introduced by the prosecutor because they are the statements of a party opponent. (Evid. Code, § 1220.)

Fifth, defendant argues that use of his statements while he was representing himself (that is, the Letter of Credence and the post-Letter hearing) violate his privilege against self-incrimination. They do not. (*Kiney*, *supra*, 151 Cal.App.4th at pp. 814-815 [so holding].) Defendant cites *People v. O'Connell* (1984) 152 Cal.App.3d 548, but *O'Connell* simply applied the long-standing rule under the Fourth Amendment that a defendant's statements during a suppression hearing cannot be admitted as substantive evidence at the subsequent trial. (*Id.* at pp. 553-554.) The decisions allowing a defendant's prior statements while representing himself to be used in subsequent proceedings expressly distinguish the Fourth Amendment rule. (*Kiney*, at p. 814.)

Sixth, defendant contends that his prior statements are inadmissible under Evidence Code section 789 because they constitute "[e]vidence of his religious belief," which that rule makes "inadmissible to attack or support the credibility of a witness." (Evid. Code, § 789.) This contention lacks merit. Even if we assume that defendant's statements refer in some way to a religious belief, his statements were admitted to prove defendant's intent, motive, and a common scheme or plan—not to "attack or support" his credibility. As such, their admission does not violate Evidence Code section 789. (Accord, *People v. King*

(2010) 183 Cal.App.4th 1281, 1311-1312 [no violation where evidence is "not admitted to attack [a] witness's credibility"].)

Lastly, defendant asserts that the court's explanations of court procedure during the preliminary hearing "created the impression the trial court disbelieved [defendant]" and were otherwise so biased as to taint the jury. These assertions find no support in the record or in the law. The trial court's statements were about trial procedure (accord, § 1044 [noting trial court's "duty . . . to control all proceedings"]); they had no bearing whatsoever on defendant's credibility. The statements were also measured and neutral. Contrary to what defendant argues, the statements were nothing like the statements in *People v. Sturm* (2006) 37 Cal.4th 1218, where the trial court repeatedly "belittled defense witnesses" and told the jury that the defendant's guilt of first degree murder was "a gimme." (*Id.* at pp. 1231, 1233.)

D. *Exclusion of FBI Investigation, Internal Affairs Investigation, and Citizen Complaints of Officers*

The trial court excluded evidence that the charged incident gave rise to an internal affairs investigation of, and citizen complaints against, Officer Vriens and Officer Newton. After Officer Vriens and Officer Newton indicated that they were unaware of any FBI investigation regarding their use of force during the charged incident, the court also excluded any evidence regarding the FBI investigation. The court found that the investigations and complaints "ha[d] no relevance to the facts of this case" and, under Evidence Code section 352, "would result in und[ue] consumption of time" and would be "so remote that it would be more than outweighed by the undue prejudice."

Defendant argues that the trial court erred in excluding this evidence because it was relevant (1) to show the officers' use of excessive force, and (2) to show that the officers had a motive

to lie to protect themselves from adverse consequences in the pending investigations and as reported by the citizen complaints.

The trial court did not abuse its discretion in excluding this evidence. Contrary to defendant's assertion, the existence of the FBI and internal affairs investigations and citizen complaints did not show any use of excessive force because they were yet to be completed. What is more, any conclusions from those investigations would be inadmissible for invading the province of the jury (*Jones*, *supra*, 57 Cal.4th at p. 950 [evidence may not encompass "legal conclusions"]; *People v. Lowe* (2012) 211 Cal.App.4th 678, 684 [evidence may not "express[] a general belief as to how the jury should decide the case"]; see also *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1088 (*Haggerty*) [evidence of conclusions of internal affairs investigation are not *discoverable*]), and at least some of the citizen complaints about the incident came from defendant's mother. Nor did the pending investigations give the officers a motive to lie that was not otherwise already before the jury. The officers did not know whether the FBI was investigating them; Officer Vriens testified that a police officer could "get in trouble internally" if he or she used excessive force; and the jury was already aware that defendant was asserting that the officers used excessive force. The trial court also did not err in concluding that admission of the investigations and complaints would only shed light on the officers' motive if they were adjudicated, and that adjudication of those matters would entail a trial within a trial.

Defendant makes two further arguments. First, he cites *Haggerty*, *supra*, 117 Cal.App.4th 1079, for the proposition that evidence of an internal affairs investigation was "relevant" to a criminal case. (*Id.* at pp. 1087-1088.) However, *Haggerty* was

assessing whether evidence of such an investigation was discoverable under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*), which *Haggerty* acknowledged uses a different—and broader—definition of relevance than the definition used to determine admissibility. (*Haggerty*, at p. 1087; Evid. Code, § 1045.) Second, defendant declares that admission of this evidence would not result in an undue consumption of time because it could be handled with three "yes" or "no" questions. Defendant does not spell out what those questions would be, or how they would elicit sufficient information to make the answers relevant and admissible. Accordingly, defendant has not carried his burden of showing an abuse of discretion.

IV. Prosecutorial Misconduct

Defendant contends that the prosecutor committed misconduct by (1) eliciting false testimony, implying, and arguing to the jury that the officers stopped defendant because of the outstanding $30,000 warrant, and (2) mocking defendant's religious beliefs. Neither the record nor the law supports these contentions. As explained above, the prosecutor in no way elicited false testimony or implied that the officers stopped defendant *because of* the outstanding warrant; to the contrary, the fact that the officers were unaware of the warrant was elicited at trial, and the prosecutor was careful to argue that the warrant was relevant to show defendant's motive to flee. Nor did the prosecutor at any point ridicule defendant's comments about tribal priesthood or connections with a "Moorish" state. More to the point, the trial court specifically ruled that the outstanding warrant was admissible to prove defendant's motive, and that defendant's in-court comments and Letter of Credence were not religion-based attacks on defendant's credibility. Because a

prosecutor does not commit misconduct by referring to properly admitted evidence (*Clark*, *supra*, 63 Cal.4th at pp. 577-578; *People v. Medina* (1995) 11 Cal.4th 694, 776), the prosecutor committed no misconduct in this case.

V. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to convict him of resisting, delaying, or obstructing a peace officer. In assessing the sufficiency of the evidence, we ""review the whole record in the light most favorable to the [verdict] to determine whether it discloses . . . evidence that is reasonable, credible, and of solid value . . . from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt."" (*People v. Salazar* (2016) 63 Cal.4th 214, 242.) In undertaking this task, we may not "'reweigh[] evidence nor reevaluate[] a witness's credibility.'" (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.)

The crime of resisting, delaying, or obstructing a peace officer has three elements: ""(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties."" (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 894-895, citing *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329 (*Muhammed C.*).) It is "a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or achieve a future consequence." (*Muhammed C.*, at p. 1329.)

Substantial evidence supports defendant's convictions. Officer Vriens, Officer Newton, and two restaurant patrons

testified that defendant did not stop when the officers chirped their siren and ordered him to stop; instead, these witnesses testified, defendant ignored their orders and continued riding away. The jury was specifically instructed that defendant's act in "failing to stop when told to do so" and "fleeing" could constitute resisting, delaying, or obstructing a peace officer. Those same acts constitute resisting, delaying, or obstructing a peace officer under the law. (*Muhammed C.*, *supra*, 95 Cal.App.4th at pp. 1329-1330 ["running away from a police officer" or "refusing the officer's repeated requests" are actionable]; *In re J.C.* (2014) 228 Cal.App.4th 1394, 1400 ["not comply[ing] with the officer's order to sit down and calm down" is actionable].) The officers were engaged in the performance of their duties at the time because they were attempting to enforce the Vehicle Code. And defendant knew or should have known that they were, because they were in a marked patrol car and in uniform.

Defendant makes five arguments against this conclusion.

First, he argues that the evidence does not support a finding that the officers were "engaged in the performance of their duties" because they used excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 44 [use of "excessive force by a police officer . . . is not within the performance of the officer's duty"].) Although the testimony from the officers and restaurant patrons indicated that one officer used his baton and the other used her Taser and pepper spray, we need not decide whether that use of force was excessive because (1) that use of force came after defendant's acts of refusing to comply with the officers' orders to stop and after defendant's flight, and (2) a "subsequent use of excessive force" does not invalidate the lawful conduct that preceded it (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689,

696). Defendant points to the testimony of the restaurant employee he called as a witness (and who came forward to defendant's mother but not to the police); that employee testified that an officer struck defendant from behind while he was still on his bicycle. Even if we completely ignore the applicable standard of review and credit this testimony over the officers' and other witnesses' testimony, even that use of force would have come *after* defendant's refusal to comply with the officers' commands to stop and his flight.

Second, defendant contends that the officers were not engaged in the performance of their duties because both witnesses called by the defense said it was "still light outside," such that the officers had no right to stop him for riding his bicycle *at night* without a light. However, both officers and one of the restaurant patrons testified that it was "dark" or "completely dark" outside. Because, as noted above, we must credit the testimony that supports the verdicts, we decline defendant's invitation to disregard the standard of review by reweighing the evidence.

Third, defendant asserts that his convictions are infirm because (1) he has a First Amendment right to express himself by flipping off the police and telling them to "fuck off," and (2) Officer Vriens was not severely injured by the bicycle defendant threw at him. Because defendant's convictions are independently valid based upon defendant's refusal to stop and his continued flight, it does not matter whether they are *also* supported by the two acts defendant complains about here.

Fourth, defendant posits that the jury's acquittal of the two felony counts of resisting an executive officer means that the jury did not believe *all* of the officers' testimony, which in his view

means that *none* of their testimony is credible (and thus his misdemeanor convictions are invalid). This argument is inconsistent with the law and the facts. It is legally flawed because it has long been the law in California that jurors may believe all, part, or none of a witness's testimony. (*People v. Clark* (1920) 183 Cal. 677, 682; CALCRIM No. 226.) It is factually flawed because the jury's guilty verdicts on the misdemeanor counts are proof that the jury believed at least part of the officers' testimony (even if just the portion corroborated by the restaurant patrons).

Lastly, defendant cites the comments of the judge at the preliminary hearing, who stated that "[t]he accounts we heard from the [testifying] officer [who was Officer Newton] and from the witness [who was the restaurant employee defendant's mother found] are diametrically opposed. If this were a trial and evidence were received such as it was, the defendant would be found not guilty by the court." Defendant asserts that the judge's comments necessarily precluded any finding of guilt by a subsequent jury. This assertion is wrong. Legally, "[t]he jury is a new fact finder, and its view of the evidence is not constrained by the view of a judge considering a different question." (*Leon*, *supra*, 61 Cal.4th at pp. 596-597.) Consequently, and as the trial judge correctly observed, the preliminary hearing judge's comments were both "gratuitous" and "irrelevant." Factually, the preliminary hearing judge's comments were explicitly premised on hearing from just two witnesses—not the larger universe of witnesses who testified at trial, which included the two restaurant patrons who corroborated various portions of the officers' testimony. Further, the preliminary hearing judge's

comments pertained to the *felony* charges of which defendant was acquitted, not the *misdemeanor* charges we are reviewing.

VI. *Pitchess* Motion

A. *Pertinent Facts*

Defendant filed two motions asking the trial court to review the personnel records of Officer Vriens and Officer Newton under *Pitchess*, *supra*, 11 Cal.3d 531. In these motions, defendant sought information relating to prior complaints of: (1) acts constituting "misconduct, including threatening and/or coercive behavior, dishonesty, false imprisonment or arrest, improper search and seizure, fabrication of charges and/or evidence, improper tactics and/or abuse or mistreatment . . . or acts constituting a violation of the statutory or constitutional rights of others"; (2) "aggressive behavior, acts of violence and/or attempted violence, or acts of excessive force and/or attempted excessive force"; (3) "racial or ethnic prejudice"; and (4) acts involving "morally lax character," in violation of California law (Cal. Const., art. I, § 28, subd. (f); Evid. Code, § 1045, subd. (a)), as well as any witness statements made during the internal affairs investigation of defendant's case.

After conducting an in camera hearing, the trial court partly denied and partly granted the requests. The court found no material information regarding Officer Newton and no exculpatory evidence discoverable under *Brady v. Maryland* (1963) 373 U.S. 83, 88. But the trial court ordered disclosure of information relating to complaints of false arrests and fabrication of evidence made against Officer Vriens.

B. *Analysis*

The "personnel records" of law enforcement officers and "complaints by members of the public" are conditionally

privileged under California law. (§§ 832.5, 832.7, 832.8.) Those records are not wholly immune from disclosure however, and may be disclosed if a trial court (1) determines there is "good cause" to conduct an in camera review of the records; and (2) after such review determines which records are "relevant to the subject matter involved in the pending litigation." (Evid. Code, § 1045; *People v. Mooc* (2001) 26 Cal.4th 1216, 1226.) If the court determines than an in camera hearing is warranted, the custodian of the records must bring "all 'potentially relevant'" materials to the court, and the trial court must review those materials and order any relevant records disclosed. (*Id*. at pp. 1228-1229.) On appeal, we are to independently review the sealed records of the in camera hearing, and to review a trial court's assessment of what is relevant for an abuse of discretion. (*Id*. at p. 1228.)

We have conducted this review and conclude that the trial court complied with the requirements for conducting such a hearing. There was no error.

VII. Cumulative Error

Defendant finally argues that even if the individual errors in the trial court proceedings do not warrant reversal, their cumulative effect does. Because we conclude that each of the 24 arguments defendant raises on appeal lacks merit, there is no error to cumulate. (*People v. Melendez* (2016) 2 Cal.5th 1, 33.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ