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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAMES WILLIAM CORBIN, Defendant and Appellant.	B277948 (Los Angeles County Super. Ct. No. KA112381)

APPEAL from a judgment of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge. Affirmed.

Jeanine G. Strong, 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, Margaret E. Maxwell and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

In the underlying proceeding, appellant James William Corbin, representing himself, was convicted of indecent exposure under Penal Code section 314. Appellant's principal contention is that the trial court committed reversible error after determining during pretrial proceedings that appellant's 1983 conviction for indecent exposure was an element of the offense charged against him. Appellant maintains that due to the error, his 1983 conviction for indecent exposure was improperly disclosed to the jury. Additionally, appellant contends the trial court erred in admitting evidence of other prior acts of indecent exposure. We conclude that appellant has forfeited his contentions relating to the 1983 conviction, and that he has shown no error regarding the other prior acts of indecent exposure. We therefore affirm.

RELEVANT PROCEDURAL BACKGROUND

In June 2016, an information was filed, charging appellant with indecent exposure with a prior conviction for indecent exposure (Pen. Code, § 314, subd. 1).[1] The information alleged that he engaged in indecent exposure on April 22, 2016, and had suffered a felony conviction for indecent exposure in January 1983. Accompanying the charge was a special allegation that appellant had also

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[1] All further statutory citations are to the Penal Code unless otherwise indicated.

served a prior prison term for forgery (§§ 476, 667.5, subd. (b).) Appellant pleaded not guilty and denied the special allegation.

Prior to trial, appellant successfully sought to represent himself (*Faretta v. California* (1975) 422 U.S. 806). A jury found appellant guilty as charged, and also found true the allegation that he had suffered a prior conviction for indecent exposure in 1983. The trial court struck the special allegation regarding appellant's prior prison term for forgery, and sentenced him to a term of two years in prison, reflecting the middle term for the offense of indecent exposure with a prior conviction for indecent exposure. This appeal followed.

FACTS

A. *Prosecution Evidence*

West Covina Police Department Lieutenant Kenneth Plunkett testified that on April 22, 2016, at approximately 6:24 a.m., he was driving west on the 10 Freeway through busy traffic. On the south side of the freeway was a raised bluff with a large block wall. The bluff was approximately 20 feet above the level of the freeway and was closed to pedestrians.

When Plunkett looked at the block wall to check for graffiti, he saw appellant on the bluff, clearly visible to the passing traffic. Plunkett pulled over in order to watch appellant, who turned toward the freeway and masturbated his exposed penis. For approximately 15 minutes, while

facing the freeway, appellant masturbated continuously, pausing briefly to change hands. According to Plunkett, appellant did not urinate. Plunkett regarded appellant's conduct as offensive, as it occurred in a public place where people were driving. Plunkett made a video recording of appellant, which was played for the jury.

The parties stipulated that in January 1983, appellant suffered a prior conviction for indecent exposure (§314, subd. 1).

B. *Defense Evidence*

Appellant testified that after owning a house in Covina for more than 20 years, he lost the house through foreclosure proceedings and was compelled to live in his car. When his car was impounded, he took up residence in the area of the bluff adjoining the 10 Freeway. Because he had a back injury, was positive for hepatitis C, and suffered from depression, he received social security disability benefits. The hepatitis C injured appellant's liver and made it difficult for him to stop urinating once he began to urinate.

Appellant denied that he masturbated on the bluff. According to appellant, on April 22, 2016, at approximately 6:15 a.m. or 6:30 a.m., he awoke and walked onto the bluff in order to urinate. Because he did not intend to urinate in public, he chose an area of the bluff that drivers on the freeway did not look at as they went by. He believed that Lieutenant Plunkett noticed him only because Plunkett routinely checked the wall separating the bluff from the

freeway for graffiti. Appellant further testified that his 1983 conviction for indecent exposure was "a plea bargain arrangement."

Christopher Nicely, appellant's investigator, testified that the distance between Plunkett's parked vehicle and appellant's location on the bluff was at least 191 feet and as much as 243 feet.

DISCUSSION

Appellant asserts interrelated contentions of error based on the trial court's pre-trial ruling that his 1983 conviction constituted an element of the current offense, and argues that those errors cumulatively resulted in prejudice warranting reversal. Additionally, appellant contends the trial court erred in admitting evidence of other acts of indecent exposure. For the reasons discussed below, we conclude that he has shown no reversible error.

A. *Governing Principles*

Appellant's central contentions hinge on the application of two procedural statutes, namely, sections 1025 and 1093, to the offense of indecent exposure with a prior conviction, as defined in section 314, subdivision 1. Section 314, subdivision 1, states: "Every person who willfully and lewdly . . . : [¶] . . . [e]xposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby . . . [¶] . . . is guilty of a misdemeanor. [¶]

. . . [¶] Upon the second and each subsequent conviction . . . , . . . every person so convicted is guilty of a felony . . . ." (§ 314, subds. (1), (2).)

Sections 1025 and 1093 regulate the conduct of trial. Under subdivision (b) of section 1025, when a defendant pleads not guilty and denies an accompanying prior conviction allegation, the jury -- or the court, if a jury is waived -- must determine guilt and the existence of the prior conviction. However, in limited circumstances, the statutes permit a defendant who pleads not guilty and demands a jury trial to avoid presentation of the prior conviction allegation to the jury. Under section 1025, subdivision (e), and section 1093, if the alleged prior conviction is *not* an element of the charged offense and the defendant admits the prior conviction before trial, the prior conviction allegation may not be disclosed when the information is read to the jury, and "the matter may not be alluded to in the trial," unless permitted for other reasons.[2] (*People v. Bouzas*

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[2] Subdivision (e) of section 1025 provides: "If the defendant pleads not guilty, and answers that he or she has suffered the prior conviction, the charge of the prior conviction shall neither be read to the jury nor alluded to during trial, except as otherwise provided by law."

Subdivision (a) of section 1093 provides: "If the accusatory pleading be for a felony, the clerk shall read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant

(*Fn. is continued on the next page.*)

(1991) 53 Cal.3d 467, 471, 472 (*Bouzas*), italics omitted.) In contrast, when the fact of a prior conviction is an element of the charged offense, the prior conviction allegation must be resolved by the jury. (*Id.* at p. 472.)

In *People v. Merkley* (1996) 51 Cal.App.4th 472, 476 (*Merkley*), the appellate court concluded that under section 314, subdivision 1, "[a] prior conviction allegation is a sentencing factor . . . and not an element of the indecent exposure offense." For that reason, under sections 1025 and 1093, when a defendant charged with that offense admits the truth of the prior conviction allegation before his or her jury trial, neither the allegation nor evidence supporting it may be presented to the jury, absent circumstances we discuss further below. (See *Merkley, supra,* at pp. 476-477 & fn. 2.)[3]

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has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction."

[3] *Merkley* relied on *Bouzas, supra*, 53 Cal.3d 467, which involved a similar statute. In *Bouzas*, the defendant was charged with a prior-conviction-dependent felony, namely, petty theft with a prior theft-related conviction, as specified in section 666. (*Bouzas, supra,* at p. 471; § 666, subd. (a).) Before trial, the defendant offered to admit the alleged prior theft-related conviction, but the court declined to accept the admission, reasoning that the prior conviction was an element of the charged offense, and it permitted the prosecution to prove the prior conviction at trial. (*Bouzas*, *supra*, 53 Cal.3d at p. 471.) Our Supreme Court concluded
(*Fn. is continued on the next page.*)

The barrier created by sections 1025 and 1093 to the presentation of a prior conviction allegation and evidence supporting it is not absolute, as those statutes do not forbid the admission of evidence of a prior conviction for certain purposes. (*People v. Leyva* (1960) 187 Cal.App.2d 249, 254.) Thus, notwithstanding sections 1025 and 1093, evidence of a prior conviction may be admitted under section 1101, even though the defendant stipulated to the existence of the conviction prior to trial. (*People v. Washington* (1969) 71 Cal.2d 1061, 1081, disapproved on another ground in *People v. Green* (1980) 27 Cal.3d 1, 33 & fn. 16; *People v. Alums* (1975) 47 Cal.App.3d 654, 660, disapproved on another ground in *People v. Wheeler* (1978) 22 Cal.3d 258, 286-287 & fn. 35; see *People v. Leyva*, *supra*, at p. 254.) "[S]ection 1101, subdivision (a) generally prohibits the admission of a prior

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that section 666 fell within the scope of sections 1025 and 1093 because section 666 "is a sentence-enhancing statute, not a substantive 'offense' statute." (*Bouzas, supra,* at p. 479.) The court stated: "[T]he prior conviction and incarceration requirement of section 666 is a sentencing factor for the trial court and not an 'element' of the section 666 'offense' that must be determined by a jury. . . . [The] defendant [thus] had a right to stipulate to the prior conviction and incarceration and thereby preclude the jury from learning of the fact of his prior conviction." (*Id.* at p. 480.) Applying *Bouzas*, *Merkley* reached a similar conclusion regarding section 314, subdivision 1. (*Merkley*, *supra*, 51 Cal.App.4th at pp. 476-477.)

criminal act against a criminal defendant 'when offered to prove his or her conduct on a specified occasion.' Subdivision (b) of the statute, however, provides that such evidence is admissible 'when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge. . .).' . . . [T]o be admissible, such evidence ""must not contravene other policies limiting admission, such as those contained in . . . section 352."""[4] (*People v. Cole* (2004) 33 Cal.4th 1158, 1194 (*Cole*).)

Our inquiry into appellant's contentions also implicates the principles applicable to a defendant acting in propria persona. Generally, such a defendant is held to the same standards of knowledge of law and procedure as an attorney. (*People v. Clark* (1990) 50 Cal.3d 583, 625.) Thus,

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[4] Evidence Code section 1101 states that except as provided in Evidence Code section 1108 and other sections, "evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion." (Evid. Code, § 1101, subd. (a).)

Under Evidence Code section 352, the trial court has the discretion to exclude evidence when "the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

a self-representing defendant, like an attorney, is subject to the forfeiture doctrine. (*Id.* at p. 618.)

Under the forfeiture doctrine, "'"an appellate court will ordinarily not consider procedural defects or erroneous rulings in connection with relief sought or defenses asserted, where an objection could have been, but was not presented to the lower court by some appropriate method."'" (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590 (*Saunders*), quoting *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.) "'"[A] constitutional right," or a right of any other sort, "may be forfeited in criminal . . . cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." [Citation.]'" (*Saunders*, *supra*, at p. 590, quoting *United States v. Olano* (1993) 507 U.S. 725, 731.) The doctrine is thus applicable to procedural errors at trial under sections 1025 and 1093. (*People v. Chapman* (1947) 81 Cal.App.2d 857, 862 (*Chapman*) [defendant forfeited contention under section 1025 that despite his pretrial admission of prior conviction, the prior conviction allegation was improperly read to the jury]; *People v. Ross* (1922) 60 Cal.App. 163, 169 (*Ross*) [defendant forfeited contention under section 1025 that despite his pretrial admission of prior conviction, evidence supporting the allegation was placed before the jury]; see also *Saunders*, *supra*, at p. 590 [absence of timely objection forfeited contention of procedural error under section 1025, subdivision (b)].) The purpose of the doctrine is '"'"to encourage a defendant to bring errors to the attention of the

trial court, so that they may be corrected or avoided and a fair trial had . . . .'"'" (*Saunders, supra,* at p. 590, quoting *People v. Walker* (1991) 54 Cal.3d 1013, 1023, overruled on another ground in *People v. Villa* (2012) 54 Cal.4th 177, 183.)

B. *Underlying Proceedings*

After securing self-representation, appellant attended a pretrial hearing on procedural issues, and informed the trial court that he planned to testify. Immediately following that disclosure, the trial court discussed the charged offense, stating that the prosecution would have to prove the alleged prior indecent exposure conviction to the jurors. Appellant replied, "Isn't the evidence 352[?] It's so remote. It's 33 years old."

That objection was the sole challenge appellant raised throughout the proceedings below -- including the trial -- to references to the prior conviction allegation and the admission of evidence in support of it. In response to the objection, the trial court stated: "That's the basis for the felony charge . . . . The prosecutor has to prove that you were convicted of a prior offense . . . in order for him to meet all the elements of count 1. So either you agree that you suffered a conviction and there's a stipulation . . . or the People are going to bring in evidence of . . . that conviction . . . ." At the court's request, the prosecutor agreed to provide appellant with records of his 1983 conviction. The court further stated to appellant, "After you review [the

records], . . . if you are of the opinion [your] best interest is to agree to the prior conviction, rather than the prosecutor going on and on about the prior conviction, you can do that. But you need to let me know fairly soon; specifically, prior to opening statements."

Throughout the subsequent proceedings, appellant asserted no objection to the trial court's determination that the 1983 conviction was an element of the charged offense, or to any aspect of the trial based on that determination. Immediately after the hearing on procedural matters, jury selection commenced. Before the prospective jurors were permitted into the courtroom, the trial court asked whether the parties had agreed on a stipulation. Appellant replied, "I think I will stipulate to [the prior conviction]," but no stipulation had then been executed. The court read the information to the prospective jurors, including the prior conviction allegation, and admonished them that the information did not constitute evidence against appellant. Appellant did not object to the reading of the information.

The next day, during the selection of the jury, the parties entered into a stipulation regarding the alleged prior conviction outside the presence of the prospective jurors. Notwithstanding the stipulation, the prosecutor never referred to appellant's prior conviction in his opening statement or during his examination of Lieutenant Plunkett, the prosecution's sole witness. At the close of the prosecution's case, the stipulation was read to the jury. Appellant asserted no objection to it.

Appellant offered his own testimony in narrative form, without the assistance of counsel. After denying any intent to expose himself in an indecent manner, he stated: "My 1983 conviction, it was a plea bargain arrangement. I pled guilty to it. I was a male stripper. I worked my way through college doing that. And I was out at a bachelorette party, and that was the basis for it. It was not anything weird, whatever."

When cross-examined, appellant acknowledged that in addition to the 1983 indecent exposure conviction, he was arrested for indecent exposure in 1979, and ultimately pleaded guilty to a "degrading" and "immoral or vicious practice . . . in front of children" (see § 273g). According to appellant, the 1979 incident occurred when he left a bachelorette party with an erect penis and walked through a school ground. Appellant further acknowledged that in 1998, he was charged with indecent exposure after allegedly having an erect penis while in his car and in the presence of a woman, but stated that he was acquitted for lack of evidence. Appellant also admitted a 2013 felony conviction for fraud.

Although appellant asserted no objections during this cross-examination, following his testimony, the trial court ruled that the 1979 and 1998 acts were admissible under Evidence Code section 1101, subdivision (b) and Evidence Code section 352. The court found that the prior acts were probative regarding "intent, . . . mistake, or accident," and that their probative value outweighed any prejudice to

appellant. The court also ruled that appellant's 2013 felony fraud conviction was admissible to impeach him.[5]

During closing argument, after noting that appellant's intent was a significant issue, the prosecutor stated, "[Y]ou can see that historically since 1979 [appellant has] been going around with an erect penis, masturbating in public to the offense of lots of people." Appellant did not object to that argument.

Although the jury instructions made no reference to the 1983 conviction allegation, the verdict form -- which appellant approved -- requested that the jury determine whether appellant had suffered that conviction. The jury found appellant guilty as charged, and also found the prior conviction allegation to be true.

C. *Violations of Sections 1025 and 1093*

Appellant contends the trial court's mistaken ruling that the 1983 conviction was an element of the charged offense led to violations of sections 1025 and 1093 and thus resulted in several errors, namely, the reading of the prior

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[5] Generally, "[a] defendant who chooses to take the witness stand in a criminal action thereby subjects himself to impeachment in the same manner as any other witness, including impeachment by proof of a prior felony conviction." (*People v. Wilson* (1965) 235 Cal.App.2d 266, 281.) Here, appellant has not challenged the admission of the 2013 fraud conviction for purposes of impeachment.

conviction allegation to the jury, the admission of the stipulation regarding the conviction, appellant's testimony regarding the conviction, the prosecutor's references to the conviction in closing argument, and the verdict form's request that the jury determine the existence of the conviction. As explained below, we conclude that appellant forfeited his contentions because his sole objection -- namely, the pre-trial objection under Evidence Code section 352 -- was insufficient to preserve them. We further conclude that had appellant properly preserved his contentions, we would find no reversible error.

Generally, an objection that evidence is inadmissible under a specific provision of the Evidence Code does not preserve contentions founded on other grounds not reasonably drawn to the trial court's attention. (*People v. Partida* (2005) 37 Cal.4th 428, 435.) Thus, such an objection does not preserve contentions based on materially different statutes. (*Cole*, *supra,* 33 Cal.4th at p. 1195, fn. 6 [defendant's objection to evidence under Evidence Code sections 1101 and 352 failed to preserve challenge that the evidence was inadmissible hearsay]; *People v. Williams* (2008) 43 Cal.4th 584, 613, 619-620 [defendant's objection that witness was not unavailable under Evidence Code section 240 did not preserve challenge that witness's preliminary hearing testimony was inadmissible due to prosecution's violation of defendant's discovery rights].) Furthermore, such an objection preserves only those unasserted contentions of constitutional error that "do not

invoke facts or legal standards different from those the trial court itself was asked to apply, but merely assert that the trial court's act or omission . . . had the *additional legal consequence* of violating the Constitution." (*People v. Boyer* (2006) 38 Cal.4th 412, 441, fn. 17, italics omitted.) Thus, when a defendant objects to the admission of evidence solely on the basis of Evidence Code section 352, the defendant forfeits all contentions other than (1) that the trial court erred in applying that provision, and (2) that "the asserted error . . . had the additional legal consequence of violating due process." (*Partida*, *supra*, 37 Cal.4th at p. 435.)

Here, appellant's objection under Evidence Code section 352 was that the 1983 conviction was inadmissible due to its remoteness. Although the trial court did not examine that objection, the court effectively overruled it by determining that the prosecution was required to prove the conviction as an element of the offense charged against appellant.

As appellant neither disputed that ruling nor objected to the purported procedural errors resulting from it under sections 1025 and 1093, he has forfeited all such contentions. (See *People v. Seijas* (2005) 36 Cal.4th 291, 301-302 [defendant forfeited challenge to admission of witness's preliminary hearing testimony at trial because the challenge attacked ruling on a ground different from that asserted before the trial court].) He thus failed to preserve his contentions that the prior conviction allegation was improperly read to the jury (*Chapman*, *supra*, 81 Cal.App.2d

at p. 862), that evidence supporting the allegation was placed before the jury (*Ross*, *supra*, 60 Cal.App. at p. 169), that the prosecutor alluded to the prior conviction in closing argument (see *People v. Earp* (1999) 20 Cal.4th 826, 858), and that the verdict form required a finding regarding it (see *People v. Webster* (1991) 54 Cal.3d 411, 446 [challenge to defects in special verdict form forfeited "by defendant's persistent failure to object or seek corrective measures below"].)[6]

Appellant also forfeited any contention regarding the admission of evidence regarding the 1983 conviction directly based on his objection under Evidence Code section 352. When a party unsuccessfully seeks to exclude evidence prior to trial by means of an in limine motion, the party must renew its objection when the evidence is actually offered, unless the in limine motion satisfied Evidence Code section

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[6] Our conclusion encompasses appellant's contention predicated on the privilege against self-incrimination. He argues that the references to the 1983 conviction preceding his testimony deprived him of that privilege because they compelled him to testify regarding the conviction. However, because a self-represented defendant forfeits that privilege by failing to invoke it (*People v. Barnum* (2003) 29 Cal.4th 1210, 1215, 1224), appellant's failure to object under sections 1025 and 1093 to the references to the 1983 conviction, coupled with his decision to testify regarding that contention, worked a forfeiture of his contention on appeal.

353. (*People v. Morris* (1991) 53 Cal.3d 152, 190 (*Morris*), overruled on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) An in limine motion meets the requirements of Evidence Code section 353 only when: "(1) a specific legal ground for exclusion is advanced and subsequently raised on appeal; (2) the motion is directed to a particular, identifiable body of evidence; and (3) the motion is made at a time before or during trial when the trial judge can determine the evidentiary question in its appropriate context." (*Morris, supra,* 53 Cal.3d at p. 190.)

Appellant's objection effectively constituted an in limine motion to exclude evidence, and was thus subject to those requirements. As discussed further below (see pt. D. of the Discussion, *post*), the 1983 conviction for indecent exposure, like the other prior acts of indecent exposure by appellant shown at trial, was relevant to appellant's intent regarding the currently charged offense. Because appellant asserted his pretrial objection before he denied the intent to expose his penis to the public, the trial court confronted the objection before it could evaluate that misconduct's "'relevance in context, . . . probative value, and . . . potential for prejudice.'" (*Morris, supra,* 53 Cal.3d at p. 190, quoting *People v. Jennings* (1988) 46 Cal.3d 963, 975, fn. 3.) Appellant was thus required to renew his objection at trial. Accordingly, his failure to do so forfeited any contention of error predicated on it.

Even had appellant preserved his contentions of error, we would find no prejudice. Because the crux of those

contentions is that the jury was improperly informed of the 1983 conviction in contravention of sections 1025 and 1093, the applicable standard of prejudice is that set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836-837. (*Bouzas*, *supra*, 53 Cal.3d at p. 481; *Merkley*, *supra*, 51 Cal.App.4th at p. 477; *People v. Young* (1991) 234 Cal.App.3d 111, 115.) As appellant did not enter into a stipulation regarding the 1983 conviction before the trial court read the information to the prospective jurors, the court's conduct did not contravene sections 1025 and 1093. Independent of the evidence relating to the 1983 conviction, the jury was presented with a video recording of appellant's conduct supporting the charged offense. Furthermore, for the reasons discussed below (see pt. D. of the Discussion, *post*), notwithstanding sections 1025 and 1093, the 1983 conviction would have been admissible to demonstrate appellant's intent. Under the circumstances, there is no reasonable likelihood that appellant would have achieved a more favorable outcome had the trial court complied with sections 1025 and 1093. (*Watson*, *supra*, at p. 836.) In sum, appellant has shown no reversible error.

D. *Prior Acts of Indecent Exposure*

Appellant contends the trial court erred in admitting evidence of two prior acts of indecent exposure identified during appellant's cross-examination, namely, the 1979 conviction based on his display of an erect penis in a school ground and the 1998 indecent exposure charge. He argues

that those acts were too dissimilar to the misconduct underlying the charged offense to be admissible under Evidence Code section 1101, subdivision (b), and too remote in time to be admissible under Evidence Code section 352. As explained below, we disagree.[7]

At the outset, we note that our discussion encompasses all the prior acts of indecent exposure raised by the prosecutor during the cross-examination, including the 1983 indecent exposure conviction. On appeal, appellant targets

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[7] Respondent maintains that appellant's challenge was forfeited for want of timely and specific objections regarding the 1979 conviction and the 1998 trial. (Evid. Code, § 353). However, although appellant's sole objection was his pre-trial challenge to the admission of the 1983 conviction under Evidence Code section 352, that objection appears to have alerted the trial court to the issue of the admissibility of the 1979 conviction and the 1998 acquittal, as it conducted, sua sponte, an analysis of the admissibility of those acts under Evidence Code sections 1101 and 352, and instructed the jury regarding the evaluation of the "uncharged" prior acts of misconduct to establish intent. Under these circumstances, we decline to find a forfeiture of appellant's challenge to the admission of the 1979 conviction and 1998 trial. (*People v. Clark* (1992) 3 Cal.4th 41, 124, abrogated on another ground in *People v. Pearson* (2013) 56 Cal.4th 393, 462 [although defendant did not assert specific objection to evidence under Evidence Code section 1101, no forfeiture occurred relating to contention under that statute because the trial court instructed jury regarding evaluation of evidence so admitted].)

only the 1979 conviction and the 1998 acquittal, as the court ruled that the 1983 conviction was admissible for other reasons. However, any error regarding the 1983 conviction was harmless, as all three prior acts were admissible for the reasons set forth below. (*People v. Mason* (1991) 52 Cal.3d 909, 944 [when item of evidence was admissible, "it is irrelevant that the trial court might have had a different theory of admissibility in mind. It is axiomatic that [a court] review[s] the trial court's rulings and not its reasoning"].)

We agree with the trial court that the prior acts of misconduct were admissible under Evidence Code sections 1101 and 352. Section 1101, subdivision (b), authorizes the admission of a defendant's prior misconduct to show intent even though that misconduct does not closely resemble the offenses charged against the defendant. Our Supreme Court has explained: "To satisfy this theory of relevance, charged and uncharged crimes need only be 'sufficiently similar to support the inference that the defendant "' probably harbor[ed] the same intent in each instance.' [Citations.]"'" (*People v. Demetrulias* (2006) 39 Cal.4th 1, 15, quoting *People v. Ewoldt* (1994) 7 Cal.4th 380, 402.) The crucial inquiry is whether "there is a direct relationship" between the prior misconduct and an element of the charged offense.[8] (*People v. Daniels* (1991) 52 Cal.3d 815, 857.)

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[8] For purposes of Evidence Code section 1101, subdivision (b), prior acts of misconduct may be established by the preponderance of the evidence (*People v. Arriaga*
(*Fn. is continued on the next page.*)

Although the record discloses some differences between the prior acts and the offense charged below, the trial court did not err in admitting the prior acts. Appellant stated that the 1983 conviction was due to his work as a male stripper at bachelorette parties, and that the 1979 conviction resulted after he left a bachelorette party with an erect penis and walked through a school ground. He also acknowledged that in 1998, he was charged with indecent exposure after allegedly having an erect penis while in his car and in the presence of a woman. That evidence is reasonably regarded as probative regarding appellant's intent in exposing his penis while facing a busy freeway.

The trial court also did not err in concluding under section 352 that the probative value of the prior incidents outweighed their potential for prejudice, notwithstanding the age of the incidents. Generally, "[t]he prejudice referred to in . . . section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues." (*People v. Yu* (1983) 143 Cal.App.3d 358, 377; accord, *People v. Karis* (1988) 46 Cal.3d 612, 638.) Although the remoteness of prior misconduct is a factor to be considered under that section, it is mitigated when the defendant has

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(2014) 58 Cal.4th 950, 963), and an acquittal does not foreclose admissibility (*Mathews v. Superior Court (People)* (1988) 201 Cal.App.3d 385, 390, fn. 1).

not "led a blameless life in the interim." (*People v. Harris* (1998) 60 Cal.App.4th 727, 739, 740; *People v. Burns* (1987) 189 Cal.App.3d 734, 737-739.) As there was a conviction in 1979 based on the display of an erect penis while on a school ground, a conviction for indecent exposure in 1983, and a charge of indecent exposure in 1998, the trial court did not abuse its discretion under section 352 in admitting the prior misconduct. (Cf. *People v. Robertson* (2012) 208 Cal.App.4th 965, 992, 993-994 [under Evidence Code section 352 and Evidence Code section 1108 (which encompasses sex offenses such as indecent exposure), incidents of sexual misconduct committed 34 years before the charged offenses were admissible].) In sum, appellant has not demonstrated reversible error regarding the admission of his prior convictions for indecent exposure.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.