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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. VICTOR H. ZAMORA, Defendant and Appellant.	B275298 (Los Angeles County Super. Ct. No. TA137546)

APPEAL from a judgment of the Superior Court of Los Angeles County. H. Clay Jacke, II, Judge. Affirmed.

Theresa Osterman Stevenson, appointed by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Victor Zamora guilty of 11 criminal charges related to domestic violence. On appeal Zamora contends multiple evidentiary errors resulted in cumulative prejudice requiring reversal. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The May 28th Incident*

Zamora is married to Magali Tinoco, with whom he has five children. The family initially lived together. However, in February 2015, after an incident where Zamora hit Tinoco, she moved in to her parents' house with the children.

On the night of May 28, 2015, Tinoco woke up to find Zamora standing outside her open bedroom window. Zamora asked Tinoco to give him her car keys and she refused. Zamora then reached inside the room, ripping the window screen. He grabbed a lotion bottle, threw it at Tinoco, and said, "You know me, and I am going to fuck things up for you." Before leaving, Zamora scratched Tinoco's father's truck with a stick.

After Zamora had left, the police responded to the scene. Zamora called Tinoco on her phone while the police were with her. An officer answered the phone and asked to speak with Zamora in person. Zamora refused and said he had not done "anything wrong besides hit the vehicle."

Approximately one month later, the police received a disturbance call from Tinoco's parents' house. Zamora was arguing with Tinoco's brother in the front yard. Tinoco said Zamora was "not welcome there," and the police told him to leave the premises. He did, but twenty minutes later Tinoco called the police again about Zamora. The police responded and found Zamora one block from Tinoco's parents' address. They arrested him.

Shortly thereafter, a criminal protective order was issued restraining Zamora from contacting Tinoco or coming within 100 yards of her. An information was filed based on the May 28, 2015 incident, charging Zamora with burglary of Tinoco's parents' house and vandalism to the truck and window screen.

Between July and October 2015, Zamora called Tinoco from jail on a daily basis. On July 7, 2015, Tinoco told Zamora, "they want me to go testify against you." Zamora said, "say nothing," "don't go," and, "say 'He, look, he did nothing, nothing bad.' " On July 27, 2015, Tinoco told Zamora she was not going to testify, and he said "Don't tell 'em too much information, say *nothing,* that you know nothing." During these jail calls, Zamora told Tinoco he was "second striker" and was facing ten years in prison. Tinoco said that made her feel worried and sad.

2. *The November 17th Incident*

Tinoco bailed Zamora out in October 2015. His trial was set for November 17, 2015. He did not show up. On that day, Zamora called Tinoco and asked for money to flee to Arizona. When Tinoco refused, Zamora got angry and said he was going to come to Tinoco's home and "start some drama." He texted her a picture of a gun. Tinoco was afraid he would come to her house and shoot her.

3. *The December 9th Incident*

On December 9, 2015, Tinoco was taking the trash out with her four-year-old daughter when Zamora drove up the alley. He exited the car, accused her of infidelity, and slapped and punched her while the child was standing next to her. Tinoco picked up the child and ran into the house while yelling for help. Zamora was arrested two days later.

4. *The Trial and Judgment*

An amended information was filed charging Zamora with burglary (Pen. Code, § 459)[1] and vandalism (§ 594, subd. (a)) based on the May 28, 2015 incident; criminal threats (§ 422, subd. (a)) based on Zamora's phone contact with Tinoco the day of his initial trial, November 17, 2015; battery (§ 243, subd. (e)(1)) and child endangerment (§ 273a, subd. (b)) based on Zamora's use of force against Tinoco when he encountered her on December 9, 2015 in the alley; stalking in violation of a protective order (§ 646.9, subd. (b)) based on Zamora's harassment of Tinoco between May 28, 2015 and December 9, 2015; and two counts of attempting to dissuade a witness based on Zamora's July 7 and July 27, 2015 phone calls to Tinoco (§ 136.1, subd. (a)(2)). Zamora was also charged with four violations of the protective order (§ 166, subd. (c)(1)).[2] As to the criminal threats and stalking charges, it was alleged that Zamora had been released on bail when he committed those offenses (§ 12022.1).[3]

Zamora pled not guilty and denied the special allegations. At the close of the prosecution's case-in-chief, the trial court granted Zamora's motion to dismiss the burglary charge. A jury

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[1] All further statutory references are to the Penal Code unless otherwise stated.

[2] There was also a misdemeanor vandalism charge (§ 594, subd. (a)) based on the allegation that Zamora tagged a wall with graffiti outside of Tinoco's parents' house on December 9, 2015. Zamora pled guilty to this charge.

[3] The information also charged Zamora with a prior prison allegation which the prosecution later dismissed.

convicted Zamora on the remaining charges. In a bifurcated proceeding, the court found the out-on-bail allegations true. The court denied Zamora's motion to reduce the dissuading a witness convictions to misdemeanors under section 17.

Zamora was sentenced to seven years in state prison and 724 days in local custody. He timely appealed.

DISCUSSION

1. *The Court Did Not Abuse its Discretion in Admitting Zamora's Statement That He Was a "Second Striker"*

Zamora contends the trial court abused its discretion under Evidence Code section 352 by admitting his statement that he was a "second striker." Respondent argues the statement's probative value outweighed its prejudicial effect. We conclude the court did not abuse its discretion.[4]

The trial court initially ordered Zamora's "second striker" statement redacted from potential exhibits. During Tinoco's cross-examination, she was asked whether her phone conversations with Zamora while he was in jail "just kind of circl[ed] around [] preserv[ing] your family?" Tinoco said yes.

The prosecutor then sought to impeach Tinoco with Zamora's statement that he was a "second striker." The prosecutor argued that the defense had opened the door to this evidence by eliciting testimony that Tinoco and Zamora had only talked about preserving the family during their phone calls. The court found that the statement was relevant to the dissuading a

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[4] Since we conclude the evidence was properly admitted we do not reach Zamora's contention the admission of evidence violated due process, or respondent's argument that Zamora forfeited this claim.

witness charges, and allowed the prosecutor to question Tinoco about it.

The court then instructed the jury as follows: "[Y]ou heard testimony regarding Mr. Zamora's maximum sentence and that he had a strike. It is to be considered as possible evidence of attempting to dissuade a witness and not for any other purpose."[5]

Evidence Code section 352 provides that the "court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." "The weighing process under section 352 depends upon the trial court's consideration of the unique facts and issues of each case, rather than upon the mechanical application of automatic rules. [Citations.] We will not overturn or disturb a trial court's exercise of its discretion under section 352 in the absence of manifest abuse, upon a finding that its decision was palpably arbitrary, capricious and patently absurd. [Citations.]" (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.)

Here, Zamora was charged with two counts of dissuading a witness which required the prosecution to prove that he "knowingly and maliciously attempt[ed] . . . [to] dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law." (§ 136.1, subd. (a)(2).) The trial court correctly found that Zamora's statement to Tinoco that he was a "second striker" was relevant to the charge he had

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[5] Based on a colloquy in the trial court and the positions taken in the parties' briefs, it appears Zamora did not, in fact, suffer a strike.

attempted to dissuade Tinoco from testifying against him. The jury could reasonably infer that Zamora was attempting to engender sympathy with Tinoco by underscoring the penalties he faced.

Zamora argues the statement was of minimal probative value because there was other evidence he told Tinoco not to testify against him. Zamora is correct that, to a certain extent, the statement was cumulative of other evidence showing that Zamora attempted to dissuade Tinoco from testifying. On the other hand, the statement tended to show that Zamora had engaged in a manipulative scheme to dissuade Tinoco from testifying, and, thus, provided additional support for the malice prong of the statute. (Cf. § 136.1, subd. (a)(3) ["For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice."].)

Zamora's statement he had suffered a strike was prejudicial because it was evidence he had previously been convicted of a serious or violent felony. It is well-established that evidence of a prior conviction risks prejudicing a jury against a defendant. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.) On the other hand, the jury was not informed of any inflammatory details about the unspecified crime. Although the risk of prejudice was substantial, we do not find the court's conclusion that it was outweighed by the evidence's probative value unreasonable.

Finally, the jury was properly instructed that it should only consider Zamora's statement as possible evidence supporting the attempt to dissuade a witness charges. We presume the jury

followed the court's instructions. (*People v. Boyette* (2002) 29 Cal.4th 381, 436.)

Zamora also argues the statement was improper character evidence under Evidence Code section 1101. Evidence Code section 1101 limits the admission of character evidence to prove a party's conduct on a specific occasion but does not "prohibit[] the admission of evidence that a person committed a crime . . . when relevant to prove some fact (such as . . . intent . . .)." (*Id.*, subd. (b).) Here, the statement was not inadmissible character evidence because it was relevant to show Zamora's intent to dissuade Tinoco from testifying.

Lastly, Zamora contends his counsel was ineffective in failing to request that the court instruct the jury that he had not, in fact, suffered a strike conviction. Zamora argues the court's admonition as to his "second striker" statement implied the statement was true and defense counsel should have acted to correct this misimpression. We cannot say based on this record that there was no rational tactical purpose for counsel's omission. Counsel may have reasonably decided that the court's admonition was sufficient to correct any prejudice caused to Zamora. Counsel may have also reasonably chosen not to highlight Zamora's statement by addressing it again before the jury. Accordingly, Zamora has not met his burden in this appeal of affirmatively showing that counsel's omission was not based on a knowledgeable choice of tactics. (See *People v. Stanley* (2006) 39 Cal.4th 913, 954 [" ' "Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a 'strong presumption that counsel's conduct falls within the wide range of professional assistance.' " [Citation.]' "].)

Zamora also has not shown that, had counsel requested a "corrected admonition" informing the jury he did not have a strike, there is a reasonable probability the result of trial would have been more favorable for him. (*People v. Dennis* (1998) 17 Cal.4th 468, 540.) Zamora argues only "it is reasonably probable the court would have addressed the issue further with the jury." This argument does not establish prejudice—that the *result of trial* would have been more favorable—but only suggests that the issue would have further discussed. Zamora has not met his burden of establishing ineffective assistance. (*Ibid.*)

2. *Prior Bad Acts*

Zamora argues the trial court erred in admitting uncharged acts of domestic violence under Evidence Code section 1109 because the prejudicial effect of the evidence outweighed its probative value. We find no abuse of discretion.

Evidence of prior criminal acts is ordinarily inadmissible to show a defendant's disposition to commit such acts. (Evid. Code, § 1101.) However, Evidence Code section 1109 provides for an exception to this rule in a criminal action in which the defendant is accused of an offense involving domestic violence. (Evid. Code, § 1109, subd. (a)(1).) In such an action, evidence of the defendant's commission of other acts of domestic violence is not inadmissible character evidence if admissible under section 352.

Evidence Code section 352 gives a trial court discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) The probative value of evidence of uncharged acts is "increased by the relative

similarity between the charged and uncharged offenses, the close proximity in time of the offenses, and the independent sources of evidence (the victims) in each offense." (*People v. Falsetta* (1999) 21 Cal.4th 903, 917 [applying Evid. Code, § 352 to the parallel Evid. Code, § 1108 exception for uncharged sexual offenses]). Similarity of the uncharged acts to the charged offense is "the principal factor affecting the probative value of an uncharged act." (*People v. Johnson* (2010) 185 Cal.App.4th 520, 531.) We review the trial court's decision to admit evidence under Evidence Code section 352 for abuse of discretion. (*People v. Branch* (2001) 91 Cal.App.4th 274, 282.)

Here, the trial court admitted evidence that Zamora had used force against Tinoco in 2011 and early 2015. In the 2011 incident, Tinoco accused Zamora of infidelity, poured beer on her head, slapped her, and then left. Tinoco called the police. An emergency protective order was issued against Zamora. The prosecution informed the jury that Zamora was acquitted of charges arising out of that incident. In the early 2015 incident, Zamora accused Tinoco of infidelity, struck her on the head with his fist, shoved her to the ground, and then left. She called the police and told them he had a gun. The court instructed the jury it could consider both incidents with regard to the stalking charge which was based on Zamora's harassment of Tinoco between May 28, 2015 and December 9, 2015.

Zamora argues this evidence had "limited probative value" because it was "cumulative of the pattern of behavior reflected in the evidence of the incidents presented by the prosecution as to the charged events." In fact, the similarity of the uncharged acts to the current charges is what makes this evidence so probative. In the uncharged acts, Zamora displayed the same behavior as he

did on December 9, 2015: arguing with Tinoco over infidelity, hitting her on the head, and then leaving. Nor did the uncharged acts involve inflammatory details that would increase the risk of prejudice to Zamora. (See *People v. Harris* (1998) 60 Cal.App.4th 727, 737–738 [the "inflammatory and speculative nature of the evidence weighs sharply in favor of exclusion" in the prior uncharged bad acts context].) Rather, the current charge of stalking—which included Zamora's threatening texts in which he sent her a picture of gun—was more grave.

Zamora argues the uncharged acts were unduly prejudicial in part because a deputy testified that, in the early 2015 incident, Zamora said to Tinoco, " 'I'm gon' kill you.' " After the deputy gave this testimony, he immediately acknowledged that, in fact, Zamora had said, " 'I'm tired of you.' " The court then struck the inaccurate testimony and suggested the parties stipulate that Zamora had never made the statement, which the parties did. That the deputy made this spontaneous statement on the witness stand does not support Zamora's argument as to uncharged acts. This statement, while inflammatory, was not part of the evidence of uncharged acts that the court admitted. There was no indication the deputy would fabricate such a statement before he took the stand, thus, it was not relevant to the court's determination as to the prejudicial nature of the uncharged acts.

Zamora contends evidence of the 2011 incident was speculative because he had been acquitted of charges arising from that incident. However, "evidence of a prior act may be introduced as propensity evidence even if the defendant was acquitted of criminal charges based upon that act. [Citation.]" (*People v. Brown* (2011) 192 Cal.App.4th 1222, 1233.) As explained by the court in *People v. Mueller*, evidence that a

defendant was acquitted of a prior offense "does not mean that the crime did not happen or that the defendant did not commit that offense; it means 'only that the state did not prove every element of the crime beyond a reasonable doubt' [citation.] . . . 'Because of the requirement of proof of guilt beyond a reasonable doubt, evidence of an acquittal is not, of course, as convincing of innocence as a judgment of conviction is convincing of guilt; but this fact goes to the weight not the admissibility of the evidence.' [Citation.]" (*People v. Mullens* (2004) 119 Cal.App.4th 648, 668.) Here, the jury was informed that Zamora had been acquitted of charges arising out of the 2011 incident. The jury, therefore, was properly tasked with weighing evidence in light of the acquittal. The acquittal did not render that evidence inadmissible.

Zamora also argues that neither uncharged act was "relevant" to the stalking charge because, at the time of the uncharged acts, he was not violating any protective order when he used force against Tinoco. The stalking statute, section 646.9, prohibits the willful and malicious harassment of another person when the accused "makes a credible threat with the intent to place that person in reasonable fear for his or her safety" in violation of a restraining order. (§ 646.9, subd. (b).) Here, although there was no evidence that the uncharged acts were committed in violation of a restraining order, the evidence was still probative of Zamora's propensity to harass Tinoco.

3. *Zamora Forfeited His Objection to the Court's Ruling as to the Scope of Impeachment*

At the close of the prosecution's case, defense counsel sought a ruling that, should Zamora testify as to the burglary and criminal threats charges, the prosecutor would not be permitted to question him about his gang involvement. The trial

court ruled the prosecution could present relevant gang evidence if Zamora were to testify about his intent in sending the November 17, 2015 text messages. It further ruled the prosecutor could cross-examine Zamora about all the charges in this case.

Zamora contends the trial court erred by ruling the prosecutor could cross-examine him about his gang membership and all charges. He argues the court's ruling deprived him of his right to testify. Zamora did not, in fact, testify. "It is well established that the denial of a motion to exclude impeachment evidence is not reviewable on appeal if the defendant subsequently declines to testify. [Citation.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 731.) Accordingly, Zamora's claim of error is forfeited.

4. *Substantial Evidence Supported the Child Endangerment Conviction*

Zamora contends there was insufficient evidence he violated section 273a, subdivision (b)—misdemeanor child endangerment—because his four-year-old daughter was not physically injured during the December 9, 2015 incident, and the only evidence the child was in emotional distress was the deputy's observation she was "scared." We conclude there was substantial evidence.

Section 273a, subdivision (b) provides, "Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering . . . or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor." The People charged

Zamora with willfully causing and permitting his daughter to be injured or placed in a situation that her person and health may be endangered.

The record shows that, on December 9, 2015, Tinoco was taking the trash out with her daughter when Zamora drove up. He accused her of infidelity, then slapped and punched her in the head. The child was standing next to Tinoco while this happened. Tinoco picked up the child and ran into the house yelling for help. The deputy who responded to the scene testified the child appeared "scared."

Zamora's conviction rests on whether the evidence is sufficient that he inflicted unjustifiable mental suffering on his daughter or put her in danger. The evidence showed that the four-year-old was standing next to her mother when her father slapped and punched the mother. The attack was vicious enough to cause the mother to yell for help and run away with the child in her arms. The child was of tender years—only four years old—when she witnessed this attack. Based on this evidence, it was reasonable for the jury to infer the child experienced mental distress, and the deputy's testimony confirmed this. This was substantial evidence Zamora inflicted unjustifiable mental suffering on the child or placed her mental health in danger. (See *People v. Burton* (2006) 143 Cal.App.4th 447, 450 [A "parent may be convicted of misdemeanor child endangerment under section 273a, subdivision (b) by engaging in serious domestic violence against the other parent while aware that his or her child is at the scene."].)

5. *The Court Did Not Abuse Its Discretion in Declining to Reduce the Dissuading a Witness Convictions to Misdemeanors*

Zamora contends the trial court abused its discretion in denying his motion to reduce the dissuading a witness counts to misdemeanors under section 17, subdivision (b) (section 17(b)). We disagree.

Dissuading a witness in violation of section 136.1 is a "wobbler" offense that may be sentenced either as a felony or a misdemeanor. (§ 136.1, subd. (b).) Section 17(b) "authorizes the reduction of 'wobbler' offenses—crimes that, in the trial court's discretion, may be sentenced alternately as felonies or misdemeanors—upon imposition of a punishment other than state prison (§ 17(b)(1)) or by declaration as a misdemeanor after a grant of probation (§ 17(b)(3))." (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 974 (*Alvarez*).)

Section 17(b) "read in conjunction with the relevant charging statute, rests the decision whether to reduce a wobbler solely 'in the discretion of the court.' . . . 'The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.' [Citation.]" (*Alvarez*, *supra*, 14 Cal.4th at pp. 977–978.)

The factors that inform the exercise of section 17(b) discretion include " 'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and

demeanor at the trial.' [Citations.] When appropriate, judges should also consider the general objectives of sentencing . . . ." (*Alvarez*, *supra*, 14 Cal.4th at p. 978.)

Zamora argues the trial court did not consider the individualized circumstances of his case. He also argues the court disregarded factors weighing in his favor: he did not threaten Tinoco when he told her not to testify, his prior felony conviction was nine years old, he did not severely injure anyone or cause serious damage to property, and he supported his family with his wages.

We first address Zamora's claim that the trial court did not consider the necessary factors. At the sentencing hearing, the trial court listened to defense counsel and the prosecutor's arguments on the motion. It noted it had considered the probation officer's report and sentencing memorandum. The court then listed individualized circumstances in this case: "we have a vulnerable victim in terms of the wife," Zamora "involved himself in conduct which continued to fracture their relationship," he had served a prior prison term, he had been working and supporting his family, and he had "stayed out of trouble for over five years." The court denied Zamora's motion to reduce the dissuading a witness counts to misdemeanors because "the conduct herein was not -- as to those counts, was not misdemeanor conduct."

Although the trial court did not detail its reasoning for concluding the counts did not involve "misdemeanor conduct," this does not mean the court did not analyze the relevant factors under section 17(b). Rather, the record suggests, and we must presume, the court carefully considered those factors. (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564

[" ' "All intendments and presumptions are indulged to support [the order] on matters as to which the record is silent, and error must be affirmatively shown." ' "].)

Second, the court acted within its discretion considering the nature and circumstances of the offense, Zamora's appreciation and attitude toward the offense, and the general objectives in sentencing. On May 28, 2015, Zamora threatened Tinoco when she refused to give him her car keys—he said "I am going to fuck things up for you," and then damaged her father's car. Shortly thereafter, he was served with a criminal protective order and then arrested. He was charged with burglary and vandalism. While he was in local custody for these charges and in violation of the restraining order, he called Tinoco and tried to convince her not to testify against him. He told her not to testify, to tell her mother—another percipient witness—"to say that, to, like it's just nothing," that if her mother did not testify the prosecution would drop the case, that he was facing severe penalties if convicted, and that testifying "doesn't benefit you at all." He also bragged about his track record of avoiding law enforcement saying, "I never got caught for the shit I used to do. . . . Your family . . . hate[s] that I won't get caught when I do my things."

Zamora attempted to dissuade Tinoco from testifying while he was in custody and in violation of the protective order. While doing so, he boasted about previously evading law enforcement. This evidence suggested that reducing his offenses to misdemeanors would not deter him and encourage him to lead a law-abiding life. (Cal. Rules of Court, rule 4.410(3).) His repeated flouting of the law and threat to Tinoco that he would "fuck things up for" her also supported a finding that his incarceration would protect society and prevent him from

committing new crimes. (Cal. Rules of Court, rule 4.410(1) & (5).) Zamora has not demonstrated the court abused its discretion in denying the motion to reduce the felony convictions to misdemeanors.

6. *The Court Did Not Err in Imposing Consecutive Sentences on the Dissuading a Witness Counts*

Zamora argues the sentences for the dissuading a witness convictions should have been stayed pursuant to section 654 because he made the July 7 and July 27, 2015 phone calls with the singular intent and objective of dissuading Tinoco from testifying at the preliminary hearing. He also contends the trial court erred in imposing consecutive sentences on these convictions. We disagree.

Section 654 provides, in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (*Id.,* subd. (a).)

Zamora argues that section 654 bars the imposition of multiple sentences for the dissuading a witness convictions. The Supreme Court has rejected a similar contention holding that "[b]y its terms, section 654 applies only to '[a]n act or omission that is punishable in different ways by *different* provisions of law . . . ." (*People v. Correa* (2012) 54 Cal.4th 331, 341.) As section 654 does not bar multiple punishment for violations of the same provision of law, the court did not err in declining to stay one of the dissuading a witness sentences under section 654.

Zamora next argues that the trial court was unaware of its discretionary authority to impose concurrent sentences for these

convictions. At the sentencing hearing, defense counsel argued for the imposition of concurrent sentences only as to misdemeanor counts. The trial court, prior to issuing its ruling, said "to the extent there is a consecutive sentence, it is because they were separate acts and with different objectives."

"Absent an express statutory provision to the contrary, section 669 provides that a trial court shall impose either concurrent or consecutive terms for multiple convictions." (*People v. Rodriguez* (2005) 130 Cal.App.4th 1257, 1262.) "A trial court's decision to impose a particular sentence is reviewed for abuse of discretion and will not be disturbed on appeal 'unless its decision is so irrational or arbitrary that no reasonable person could agree with it.' [Citation.]" (*People v. Jones* (2009) 178 Cal.App.4th 853, 860–861.) Here, the parties agree the trial court had discretion to impose either concurrent or consecutive terms for the section 136.1 convictions.

Zamora cites to *People v. Woodworth* (2016) 245 Cal.App.4th 1473 (*Woodworth*) in support of his argument that remand is necessary to allow the trial court to exercise its sentencing discretion. In *Woodworth*, the trial court explained at the sentencing hearing that it was required by statute to impose a full consecutive sentence on the dissuading a witness count. (*Id.* at p. 1478.) On appeal, the parties agreed that, in fact, the trial court had discretion to impose a concurrent term for the dissuading a witness felony. (*Id.* at p. 1476.) The Court of Appeal held that since "the trial court did not realize it had discretion to impose a concurrent sentence for the dissuading a witness felony, we will remand the matter for resentencing." (*Ibid.*)

Unlike *Woodworth*, here, the record does not show the trial court acted on the erroneous assumption it lacked discretion. When the court stated it was imposing consecutive terms where counts involved "separate acts with different objectives," we presume the court was addressing the multiple other consecutive terms.

Nor did the court abuse its discretion, as Zamora argues, simply because the dissuading a witness counts involved the same objective. Only one aggravating factor is required to support a consecutive sentence. (*People v. Davis* (1995) 10 Cal.4th 463, 552.) The criteria affecting the decision to impose consecutive rather than concurrent sentences include the following: "Facts relating to the crimes, including whether or not . . . the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior." (Cal. Rules of Court, rule 4.425(a).) Here, the crimes were committed at different times. There were also other factors in aggravation: Zamora had served a prior term in prison and he committed the crimes while in local custody. (Cal. Rules of Court, rule 4.421(b)(3) & (b)(4).) Once a defendant attempts to dissuade a witness, he may not thereafter make further attempts to achieve the same objective with impunity. We find no abuse of discretion.

7. *There Was No Cumulative Error*

Zamora argues the cumulative effect of the evidentiary errors compels reversal. Because we conclude the trial court did not err, however, there is no cumulative error. (See *People v. Covarrubias* (2016) 1 Cal.5th 838, 910 ["[b]ecause defendant has

failed to demonstrate any error, there is no prejudicial cumulative effect"].)

DISPOSITION

The judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.