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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent, **A127223**

v. **(Alameda County Super. Ct. No. C153409)**

LEON LEE MEYERS,

Defendant and Appellant.

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A jury convicted appellant Leon Lee Meyers of assault on a police officer (Pen. Code, § 245, subd. (c)),[1] battery on a person with whom appellant had a dating relationship (§ 243, subd. (e)(1)), and resisting a police officer resulting in serious bodily injury (§ 148.10, subd. (a)). The jury found various enhancement allegations true and the trial court sentenced appellant to state prison.

Appellant challenges his conviction on six grounds. He contends the court abused its discretion by: (1) denying his request to plead not guilty by reason of insanity; (2) denying his repeated *Marsden* motions;[2] (3) admitting evidence of prior uncharged misconduct; (4) excluding evidence of police training bulletins; and (5) admitting evidence of prior domestic violence for impeachment purposes. Appellant also argues — and the People concede — the court's no-contact order should be stricken.

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1 Unless otherwise noted, all further statutory references are to the Penal Code.

2 *People v. Marsden* (1970) 2 Cal.3d 118.

We modify the judgment to strike the no-contact order. As modified, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

We provide only a brief overview of the facts here. We provide additional factual and procedural details as germane to the discussion of appellant's specific claims.

Prosecution Case

In 2006, Debra Ann Singletary was dating appellant and living at his house. On June 6, 2006, appellant drove Singletary to San Francisco so she could pick up and cash her brother's social security check for nearly $900. After Singletary cashed the check, appellant drove to what appeared to be a dead-end street and punched her in the face, demanding $200. When Singletary refused, appellant choked her and bit her arm. Singletary reached for a gun under the seat; appellant responded by throwing Singletary out of the car. As Singletary tried to walk down the street, appellant blocked her path with his car. Then appellant got out of the car and began chasing Singletary. Appellant caught Singletary and forced her back into the car.[3]

On the evening of June 6, 2006, Officer McNeely responded to a report of a Black male "that was possibly hitting" a woman in a Camaro. McNeely and another officer, Officer Diane Jim, responded to the call. McNeely stopped the car. Jim approached the passenger side of the car where Singletary was sitting and told appellant to turn off the car. He complied. Before Jim could say anything, appellant "said that he and [Singletary] had just been arguing." Appellant "was sweating and he looked really nervous." Singletary seemed "very nervous . . . or very afraid. She was very upset. And

[3] At trial, Singletary testified that she lied during a police interview on June 8, 2006 because she "had a warrant and the police officer said that if [she] was to make a written statement and testify, that they wouldn't take [her] to jail." Singletary testified appellant did not hit, choke, or bite her and that she did not scream or cry out for help. She explained she received the bite marks during a fight in a casino. The prosecutor, however, impeached Singletary with a transcript of the police interview and with a letter Singletary wrote to the police in September 2009.

she looked like she was going to cry." Singletary asked Jim if she could get out of the car, and Jim granted her request because Singletary seemed afraid of appellant.

McNeely approached appellant in the driver's seat of the Camaro. He requested appellant's identification and asked appellant whether he was on probation or parole. Appellant lied, telling McNeely that he "just got off of probation for the sales of narcotics" when he was actually still on probation. McNeely explained to appellant he was investigating a report of domestic violence and that appellant's car matched the description in the report. McNeely also explained that appellant's car did not have license plates. Appellant seemed nervous. He was sweating, his hands were shaking, and he was "stalling a little bit" when he answered McNeely's questions.

McNeely then began a records check on appellant. As he waited for the results, Jim told him that appellant had hit and bitten Singletary and that there was a gun under the driver's seat of the car. At that point, McNeely decided to arrest appellant. He approached appellant, who was still sitting in the driver's seat of the car. Appellant's arm was hanging out of the window, and McNeely thought it would be "fairly easy" to handcuff appellant. McNeely grabbed appellant's wrist and told him to put his other hand behind his back. In a calm voice, McNeely explained that appellant was being detained "for further investigation of domestic violence."

At that point, appellant tried to get out of the car, which made McNeely concerned that appellant would get the gun "to engage in a gun fight." The car door was open and McNeely was standing "pretty much in the middle of the doorway of the vehicle." McNeely grabbed appellant by the back of the neck and pushed him back into the car to "gain control of him and push his head towards the steering wheel." McNeely instructed appellant to slowly put his right hand behind his back; in response, appellant said, "'All right, [a]ll right, [a]ll right.'" But as appellant began to comply with McNeely's order, he suddenly started the ignition and put the car into drive. Appellant's car began to "accelerate[] at a high rate of speed" but McNeely was unable to get away from the door. When McNeely felt a hard tug on his gun holster, he realized he was caught in the door;

he tried to run to keep up with the car and began to yell, "Stop the car, stop the car." Appellant did not stop the car.

As the car accelerated, McNeely lost his footing and fell. McNeely continued to yell at appellant to stop the car, but appellant did not stop. Eventually, McNeely was able to free his gun holster from the frame of the door. As he dislodged the holster, he fell to the pavement as appellant accelerated to approximately 30 miles per hour. McNeely faded in and out of consciousness and awoke in the hospital.

After the incident, Jim found Singletary hiding behind a parked SUV. The officers eventually subdued appellant with a taser, arrested him, and searched him. They found a crack pipe and rock cocaine.

Defense Case

On June 6, 2006, appellant and Singletary were driving in appellant's Camaro when they got into a disagreement. Appellant decided to end his relationship with Singletary and told Singletary to get out of the car. She did not, and appellant "physically force[d] her out of the car." He did not bite or punch her; he "only forced her to get out of the car because she refused to get out." Appellant then drove to a friend's house. Singletary walked up to the house and started "yelling for [appellant] to take her to get her clothes now." Appellant and Singletary got back into the car; almost immediately thereafter, police officers stopped appellant's car. Appellant did not have a gun in his car, but he did have access to one at home.

McNeely walked up to appellant's side of the car and stood next to the door. He explained that he was responding to a domestic violence report. After he obtained appellant's driver's license and information and performed a records check, McNeely grabbed appellant's wrist, pulled it back, and opened the car door. Appellant turned away to try to alleviate the pain and said, "'You don't have to twist my arm like this. Am I under arrest?'"

McNeely grabbed appellant's neck and "slammed" appellant's head against the steering wheel.[4] Appellant saw "darkness and stars." As appellant told McNeely that he "didn't . . . deserve this," McNeely kneed him in the side several times. Appellant did not try to get out of the car, but after McNeely kneed him, appellant "slammed [his car] into gear." "The car took off. . . ." As the car accelerated, McNeely "made a quick attempt to snatch [appellant] out of the car" by grabbing appellant's jeans and the back of his shirt. Appellant was "looking straight ahead" and could hear his car's tires "screeching." He did not hear McNeely yelling at him to stop the car. Appellant drove off because McNeely "wouldn't get off me. He wouldn't let up." He explained that he did not remember dragging McNeely; he had "no idea" McNeely was running to try to keep up with the car, or that McNeely was dragging behind the car.

Appellant testified that Singletary lied to police and that the police report was inaccurate and "false." Appellant admitted suffering prior convictions for possession of a controlled substance, possession of a controlled substance for sale, second degree burglary, and escape by a convicted felon.

Verdict and Sentencing

The jury convicted appellant of assault on a police officer (§ 245, subd. (c)), battery on a person with whom appellant had a dating relationship (§ 243, subd. (e)(1)), and resisting a police officer resulting in serious bodily injury (§ 148.10, subd. (a)). The jury found various enhancement allegations true and the court sentenced appellant to state prison.

DISCUSSION

The Denial of Appellant's Motion to Change His Plea Was Not an Abuse of Discretion

In September 2006, appellant pleaded not guilty to the charges. Over three years later — on the third day of trial — appellant moved to change his plea of not guilty to a plea of not guilty by reason of insanity. The prosecutor opposed the motion, noting that appellant had entered a not guilty plea three years earlier and "[t]here has been no

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[4] In appellant's booking photograph, which was admitted into evidence, the area around appellant's eyes is swollen.

indication in the last three years, despite his obvious reference[s] to his own mental state, that he wished to proceed by not guilty by reason of insanity. We are now in a trial court, moments away from picking a jury." In response, defense counsel argued the new plea was necessitated by the court's denial of appellant's motion to admit evidence of his mental state. The court denied the motion, concluding appellant had not demonstrated good cause to change the plea.

A trial court may allow a defendant to change a plea after the commencement of trial only where the defendant demonstrates good cause for the change of plea. (§ 1016, subd. (6); *People v. Boyd* (1971) 16 Cal.App.3d 901, 908; *People v. Lutman* (1980) 104 Cal.App.3d 64, 66; 4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Pretrial Proceedings, § 284, p. 497.) A defendant demonstrates good cause by showing "a plausible reason for delay in tendering any plea." (*Lutman, supra,* 104 Cal.App.3d at p. 68.) Here, counsel for appellant conceded the court's ruling excluding evidence of appellant's mental state prompted the change of plea. As the trial court recognized, this does not constitute "good cause." Accordingly, the court did not abuse its discretion by denying appellant's motion to change his plea. (Witkin & Epstein, *supra,* § 284 at p. 497 [noting that "[t]he court's discretion in denying permission to add an insanity plea will normally be upheld" and citing cases].)

The Court Did Not Abuse Its Discretion by Denying Appellant's Marsden Motions

Appellant made 12 *Marsden* motions to discharge his appointed counsel. Appellant challenges the court's denial of nine of the *Marsden* motions he made during trial and one post-trial *Marsden* motion.[5]

On September 17, 2009, appellant complained that appointed counsel failed to prepare adequately for trial, specifically that counsel failed to contact witnesses and obtain documents relevant to his defense. During a closed *Marsden* hearing, appointed counsel explained that he had filed approximately 20 motions regarding "the areas that Mr. Meyers has concern about. . . . And those range from an argument that the detention

[5] Appellant does not challenge the court's denial of three *Marsden* motions he made in 2007.

wasn't proper, the arrest wasn't proper for a variety of reasons, and any number of issues that I have been able to satisfy myself had legal merit." Counsel conceded that he had some questions about appellant's mental state and could have obtained expert testimony about appellant's mental state notwithstanding the fact that the court had declared appellant competent. The court denied the *Marsden* motion because, among other things, appellant had not demonstrated "incompetence of appointed counsel." The court determined "there has not been a breakdown in the relationship between [appointed counsel] and Mr. Meyers which would make it impossible for [appointed counsel] to effectively represent Mr. Meyers."

On September 28, 2009, appellant filed another *Marsden* motion complaining that appointed counsel had: (1) withdrawn a meritorious *Pitchess* motion; (2) failed to file a motion in limine to exclude hearsay and other evidence; (3) failed to properly articulate the arguments in favor of entering a late plea of not guilty by reason of insanity; and (4) refused to take his telephone calls. Following a *Marsden* hearing, the court denied the motion. The court concluded appellant had not demonstrated appointed counsel was incompetent and explained that appellant's "lack of confidence in the performance of appointed counsel is not a basis for a substitution" of counsel.

Two days later, on September 30, 2009, appellant made two additional *Marsden* motions claiming that appointed counsel failed to seek appellate review of motions the trial court denied, did not contact witnesses, and "[was] not professionally articulating hi[m]self to the people," causing everyone in the courtroom "to laugh at him." Counsel conceded that his communication with appellant was not as complete as appellant would like. On October 1, 2009, appellant made another *Marsden* motion, complaining that appointed counsel had not allowed him to participate in the trial, would not communicate with him, and would not ask questions appellant proposed. Following a *Marsden* hearing, the court rejected these arguments and denied the motions. The court noted that a disagreement about "trial tactics" did not require a substitution of counsel.

On October 5, 2009, appellant made another *Marsden* motion, this time complaining about appointed counsel's refusal to cross-examine witnesses in the manner

appellant proposed. Appellant also claimed counsel failed to tell the jurors about an "uncharged offense that was refused by the District Attorney's Office." The court denied the motion. It noted the difficulty appointed counsel was having questioning witnesses when appellant was "talking, talking, talking" in counsel's ear and explained that any disagreement between counsel and appellant concerned trial strategy. The court also determined the motion was untimely.

Two days later, appellant made another *Marsden* motion. He complained that appointed counsel failed to object to certain evidence and failed to present evidence to the jury. The next day, on October 8, 2009, appellant requested a substitution of counsel because appointed counsel would not let him testify. Appellant also complained that appointed counsel failed to present certain evidence and failed to object to other evidence. On October 26, 2009, appellant made his final *Marsden* motion, restating many of the same complaints about his appointed counsel. The court denied these motions for the reasons discussed above.

"When a defendant seeks new counsel on the basis that his appointed counsel is providing inadequate representation—i.e., makes what is commonly called a *Marsden* motion [citation]—the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of inadequate performance. A defendant is entitled to relief if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. Substitution of counsel lies within the court's discretion. The court does not abuse its discretion in denying the motion unless the defendant has shown that a failure to replace counsel would substantially impair the defendant's right to assistance of counsel. [Citation.]" (*People v. Smith* (2003) 30 Cal.4th 581, 604; *People v. Gutierrez* (2009) 45 Cal.4th 789, 803; *People v. Taylor* (2010) 48 Cal.4th 574, 599.)

The trial court "did not abuse its discretion by concluding that it was unnecessary to substitute counsel." (*People v. Gutierrez*, *supra*, 45 Cal.4th at pp. 803-804.) It is well settled that disagreements over trial tactics do not warrant a substitution of counsel under

Marsden. (*People v. Welch* (1999) 20 Cal.4th 701, 728-729, overruled on other grounds as stated in *People v. Blakeley* (2000) 23 Cal.4th 82, 90-91; *People v. Williams* (1970) 2 Cal.3d 894, 905; 5 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Trial, § 159, p. 250.) Appellant's complaints that appointed counsel did not call appellant's witnesses and failed to properly investigate and present the evidence are disagreements over trial tactics. Numerous courts have upheld the trial court's denial of a *Marsden* motion where the defendant and appointed counsel disagree about how the case should be tried. (*People v. Carr* (1972) 8 Cal.3d 287, 299; *People v. Hisquierdo* (1975) 45 Cal.App.3d 397, 403; *People v. Rhines* (1982) 131 Cal.App.3d 498, 505.)

"A defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense. [Citations.] Tactical disagreements between the defendant and his attorney do not by themselves constitute an 'irreconcilable conflict.'" (*People v. Welch, supra*, 20 Cal.4th at pp. 728-729.) "There is no constitutional right to an attorney who would conduct the defense of the case in accord with the whims of an indigent defendant. [Citations.] Nor does a disagreement between defendant and appointed counsel concerning trial tactics necessarily compel the appointment of another attorney." (*People v. Lucky* (1988) 45 Cal.3d 259, 281-282.)

Nor did appellant's claims that he "did not trust" appointed counsel and "believed that counsel had not represented him properly" require the trial court to substitute counsel. A defendant's lack of confidence in appointed counsel is insufficient to warrant a substitution. (*People v. Floyd* (1970) 1 Cal.3d 694, 704-705, overruled on another point in *People v. Wheeler* (1978) 22 Cal.3d 258, 287, fn. 36.) Finally, appellant's reliance on a single case — *People v. Crandell* (1988) 46 Cal.3d 833, 854, overruled on other grounds in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365 — is misplaced. In *Crandell*, the California Supreme Court concluded that "the *Marsden* procedures were not required" because "no request for substitute counsel was made in [the trial] court." (*Id.* at p. 855.) *Crandell* has absolutely no application here.

The Admission of Prior Uncharged Misconduct Was Not an Abuse of Discretion

Before trial, the prosecution moved to admit evidence of appellant's 2002 assault on a police officer (2002 incident)[6] to negate appellant's claim that "he was reacting in self-defense to an unlawful and excessive use of forced by [] McNeely" and that "it was only a matter of accident or mistake that [] McNeely got stuck in the car and dragged." The prosecution argued the evidence was relevant to show intent, motive, and common scheme or plan. Appellant opposed the motion. After a hearing, the court admitted the evidence, determining it was relevant to prove appellant's "motive, his intent, his common scheme and plan and his knowledge, the fact that under these circumstances the police officer would, in fact, have been injured." The court also determined the probative value of the evidence outweighed any prejudice to appellant. We review the court's ruling for abuse of discretion. (*People v. Kipp* (1998) 18 Cal.4th 349, 369; *People v. Lewis* (2001) 25 Cal.4th 610, 637.)

At trial, San Leandro Police Officer Brian Anthony testified that he and his partner, Officer Derrick Schutz, were patrolling an area of San Leandro on October 10, 2002 in a marked patrol car. Both officers were dressed in uniform. The officers saw a man, later identified as appellant, driving a Lincoln Town Car with expired registration and no front license plate. The officers stopped appellant's car and Schutz told appellant "why he was pulled over." Appellant said "Yes, I am on probation" in a voice that indicated "he was bothered" by the officers' presence. Appellant was "getting kind of tensed up" and began to "raise his voice at Officer Schutz." He said, "'Just leave me alone, just leave me alone. Can't you guys just leave me alone. . . .'"

Schutz repeatedly asked appellant to turn off the ignition, but appellant refused. Schutz reached into the car to turn off the ignition so the officers could take appellant out of the car to conduct a probation search. At that point, appellant grabbed Schutz's arm with both hands and appellant's car began to move forward. Schutz had about half of his

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[6] Appellant was arrested on October 10, 2002 and charged with possession of cocaine base for sale (Health & Safety Code, § 11351.5) and resisting arrest (§ 148, subdivision (a)(1)). Appellant pled guilty to the narcotics offense.

body in the car while appellant was holding his arm. While Schutz was "trying to break free of [appellant's] grasp of his arm," appellant "was trying to put the car into drive again." Both officers yelled at appellant to turn off the car; Schutz began hitting appellant in the head with his fist "because he wanted to break free of the grasp and actually get out of the car window so he wouldn't be [dragged]." Anthony was concerned that if appellant put the car in drive, both officers would have been dragged and injured, so he sprayed appellant with pepper spray. In response, appellant released Schutz's arm and Anthony removed the keys from the ignition. Appellant scooted across the bench seat, got out of the passenger side door, and tried to run away from the officers.

Appellant contends the court "prejudicially erred" by admitting evidence of the 2002 incident because the two incidents were not sufficiently similar and because the evidence was more prejudicial than probative. Pursuant to Evidence Code section 1101,[7] evidence of other crimes or bad acts is inadmissible when offered to show a defendant had the criminal disposition or propensity to commit the crime charged. (§ 1101, subd. (a).) Evidence of other crimes or misconduct by a defendant is admissible, however, to prove a fact (i.e., motive, intent, or absence of mistake or accident) other than a disposition to commit such acts and may be admissible to negate a claim of good-faith belief or other innocent mental state. (§ 1101, subd. (b); *People v. Ewoldt* (1994) 7 Cal.4th 380, 402 (*Ewoldt*).) Evidence of an uncharged crime is admissible only if it has "substantial probative value that is not greatly outweighed by the potential that undue prejudice will result from admitting the evidence. [Citations.]" (*People v. Lenart* (2004) 32 Cal.4th 1107, 1123.)

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[7] Unless otherwise noted, all further statutory references are to the Evidence Code. Section 1101, subdivision (b) provides: "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act."

Evidence of the 2002 incident was relevant to prove the absence of mistake or accident, because appellant claimed he accidentally dragged McNeely.[8] In both incidents, appellant was uncooperative with police officers during a traffic stop. In both incidents, police officers were reaching into appellant's car to restrain him or stop him from leaving; in both incidents, appellant tried to escape by driving away with a police officer hanging from his car. The incidents are sufficiently similar to support an inference that appellant intentionally assaulted McNeely rather than mistakenly dragging him in his attempt to escape. "'[T]he recurrence of a similar result . . . tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state, and tends to establish (provisionally, at least, though not certainly) the presence of the normal, i.e., criminal, intent accompanying such an act. . . .' [Citation.] In order to be admissible to prove intent, the uncharged misconduct must be sufficiently similar to support the inference that the defendant '"probably harbor[ed] the same intent in each instance." [Citations.]'" (*Ewoldt, supra,* 7 Cal.4th at p. 402.)

Appellant argues that evidence of the 2002 incident was extremely prejudicial as a matter of law. From this premise, he reasons that the trial court prejudicially abused its discretion in finding the probative value of the evidence outweighed the prejudice under section 352. We disagree. "'In applying section 352, "prejudicial" is not synonymous with "damaging."'" (*People v. Callahan* (1999) 74 Cal.App.4th 356, 371.) "'Undue prejudice' refers not to evidence that proves guilt, but to evidence that prompts an emotional reaction against the defendant and tends to cause the trier of fact to decide the case on an improper basis: 'The prejudice which exclusion of evidence under . . . section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. "[A]ll evidence which tends to prove guilt is

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[8] The trial court admitted the evidence to prove appellant's "motive, his intent, his common scheme and plan and his knowledge . . . that under these circumstances, the police officer would, in fact, have been injured." "When the evidence is properly received the basis for the court's ruling is not material." (*People v. Williams* (1984) 44 Cal.3d 883, 911.)

prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is 'prejudicial.'"' [Citations.]" (*People v. Walker* (2006) 139 Cal.App.4th 782, 806; *People v. Killebrew* (2002) 103 Cal.App.4th 644, 650-651.)

The evidence was harmful to appellant, but it was not prejudicial in the sense that it would cause the jury to decide the case on an improper basis. Moreover, the court instructed the jury on how to evaluate the evidence of appellant's prior acts to avoid the possibility of undue prejudice. As a result, we conclude the court did not abuse its discretion by admitting evidence of the 2002 incident.

The Court Did Not Abuse Its Discretion by Excluding the Police Training Bulletins

Appellant sought to introduce Oakland Police Department Training Bulletins on handcuff techniques and high risk vehicle stops to support his claim that McNeely "used excessive force and was not acting in the performance of his duties." The prosecution objected, contending the evidence was irrelevant and would "only serve to confuse the issues and mislead the jury as to the law upon which the Court will so instruct. This case is not a civil employment action involving the adherence, or lack thereof, to an employer's handbook of policies."

The court excluded the evidence, determining the evidence was more prejudicial than probative under section 352. The court explained, "I just think that's much more prejudicial than probative because under [section] 352, it would . . . absolutely confuse the issues and mislead the jury. There would be a substantial creation of undue prejudice if I were to tell the jury that somehow these manuals, despite a modicum of probative value on training techniques, would, in fact, be something they should think about or even . . . use to decide what happened on June 6, 2009. . . . [U]nder [section] 352, I do find that the use [or] any mention of these training manuals would be more prejudicial than probative inasmuch as they do not state the law. They merely indicate the potential techniques and guidelines for . . . officers and hence, it's much more prejudicial [than] probative because it would create substantial danger of undue prejudice by confusing the issues and by misleading the jury." The court, however, permitted appellant to cross-

examine McNeely on the training he received regarding high-risk vehicle stops and to argue during closing argument that McNeely "did not follow his training."

Appellant claims the court erred by excluding the evidence because it was relevant to his defense that McNeely was using excessive force.[9] This argument misses the point. The evidence may have been relevant, but the court excluded it on the basis that it was more prejudicial than probative pursuant to section 352. In any event, the cases upon which appellant relies — ostensibly to demonstrate the evidence was relevant — are inapposite because they concern civil lawsuits where the plaintiff alleged the use of excessive force by police officers. In addition, several of the cases are from other jurisdictions and are not binding. (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 490.)

The court did not abuse its discretion by concluding the evidence was more prejudicial than probative. The bulletins, designed to guarantee officer safety, have no bearing on the impermissible use of unreasonable force and would have confused the jury. Finally, and even if we assume the court erred by excluding the police bulletins, any error was harmless because appellant cannot demonstrate it is reasonably probable a more favorable result would have been reached absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 835-836; *People v. Alcala* (1992) 4 Cal.4th 742, 790-791.) The court permitted appellant's counsel to cross-examine McNeely about his training and to suggest during closing argument that McNeely did not follow that training. In addition, the evidence at trial demonstrated appellant refused to follow McNeely's commands — just as he had done in a prior incident — and actively resisted arrest, injuring McNeely in the process.

The Court Did Not Abuse Its Discretion by Allowing the Prosecutor to Impeach Singletary with Her Prior Inconsistent Statements to the Police

After Singletary testified at trial that appellant did not hit, choke, or bite her during the incident, and that she lied to police about the incident, the prosecutor moved to impeach Singletary with a transcript of her June 8, 2006 interview with the police and with a September 20, 2009 letter Singletary wrote to the police. In her interview and in

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[9] Appellant does not contend he was denied the right to present a defense.

her letter to the police, Singletary stated that appellant beat her, chased her with a gun, shot her, and took her money. She also told the police that appellant "tears up her clothes . . . and 'always takes my money.'" The court granted the prosecutor's motion and allowed the prosecutor to introduce the transcript of the police interview and Singletary's letter to the police. We review the court's ruling for an abuse of discretion. (*People v. Alvarez* (1996)14 Cal.4th 155, 201.)

The trial court did not abuse its discretion by admitting Singletary's prior inconsistent statements to the police. "[S]ections 770 and 1235 except from the general rule against hearsay a witness's prior statement that is inconsistent with the witness's testimony in the present hearing, provided the witness is given the opportunity to explain or deny the statement or the witness has not been excused from giving further testimony in the action. [Citations.]" (*People v. Avila* (2006) 38 Cal.4th 491, 579.)[10] Singletary's prior inconsistent statements to the police were admissible pursuant to sections 770 and 1235 because they directly contravened her trial testimony that appellant was "supportive" of her, that he had never hit, choked, or beaten her, and that he had never threatened her with a gun or shot her.

Appellant "does not acknowledge the applicability of . . . sections 770 and 1235." (*People v. Avila, supra,* 38 Cal.4th at p. 580.) Instead, he contends the evidence should have been excluded because it would "surely engender great sympathy for Singletary and significantly bias any juror" against him. Again, his argument is unavailing. The prosecution had the right to rebut Singletary's trial testimony with her prior inconsistent statements to the police pursuant to sections 770 and 1235. That the statements may have

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[10] Section 770 provides in relevant part: "Unless the interests of justice otherwise require, extrinsic evidence of a statement made by a witness that is inconsistent with any part of his testimony at the hearing shall be excluded unless: [¶] (a) The witness was so examined while testifying as to give him an opportunity to explain or to deny the statement. . . ." Section 1235 provides: "Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing and is offered in compliance with Section 770."

been damaging to appellant does not render them prejudicial in the context of section 352.

The No-Contact Order Must Be Stricken

At the sentencing hearing, the court ordered appellant to "stay away from" McNeely and Singletary, specifically to "stay away from their homes, their cars, their schools, their jobs, their vehicles, if they have any of those things." The court explained that the no-contact order "means you cannot send them a letter, you cannot call them on the phone, . . . you cannot contact them in any cyberspace form of contact, you cannot send any third person to have contact with them on your behalf except your lawyer or your lawyer's agent on official business. . . ."

Appellant's final contention on appeal is the no-contact order is unlawful. The People agree. The parties assume the court issued the no-contact order pursuant to Penal Code section 136.2, which provides that a court with jurisdiction over a criminal matter may order a defendant to have no contact with the victim. Orders issued pursuant to Penal Code section 136.2 are limited to the duration of "the criminal proceeding in which the restraining order is issued . . . ." (*People v. Stone* (2004) 123 Cal.App.4th 153, 159 [restraining orders that "were not limited to the pendency of the criminal proceeding and were not a probation condition" were not authorized by Penal Code section 136.2]; *People v. Ponce* (2009) 173 Cal.App.4th 378, 381-383 [protective order issued pursuant to section 136.2 was unauthorized where the duration of the order extended beyond the pendency of the criminal proceedings]; see also *People v. Selga* (2008) 162 Cal.App.4th 113, 118-120). We agree that the trial court did not have the authority to impose the no-contact order beyond the pendency of the proceedings in this case. As a result, we must strike the no-contact order and modify the judgment accordingly.

DISPOSITION

We modify the judgment to strike the no-contact order. As modified, the judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a copy to the Department of Corrections and Rehabilitation.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.