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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHAN MEDINA,

Defendant and Appellant.

A125850

(Contra Costa County
Super. Ct. No. 05-080656-2)

Defendant Nathan Medina invaded the home of Beverly Rhoads, who was involved in civil litigation with defendant's mother and stepfather. He assaulted Rhoads with pepper spray, shot her son to death, tried to shoot her, and tried to shoot a family friend. The jury convicted him of murder, two counts of attempted murder, and residential burglary, all with the personal use of a firearm. Defendant contends a document he wrote describing a plan to subdue drug dealers with tear gas should not have been admitted. He also raises *Doyle* error and certain other contentions. We disagree with defendant's contentions, find no prejudicial error, and affirm.

I. FACTS

Under applicable standards of appellate review, we must view the facts in the light most favorable to the judgment of conviction, and presume in support of the judgment the existence of every fact which the jury could reasonably find from the evidence. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Neuffer* (1994) 30 Cal.App.4th 244, 247.)¹

¹ We present only those facts necessary for our resolution of the issues on appeal.

A. Background

Beverly Rhoads had been friends with Tony and Jaime Latteri for over 26 years. When Ms. Rhoads was married the two couples frequently visited each other's houses, spent holidays together, and went camping together. Defendant, Jaime Latteri's son, was almost always at the Latteri home when Rhoads visited the Latteris, and she had talked to defendant "many times."

The socialization diminished after Rhoads' divorce in 1998, but she still saw the Latteris a few times. She described her relationship with the Latteris in the beginning of 2003 as "good" and still considered them friends. In 2003, she hired Tony Latteri to do a construction project at her house, involving an 834-square-foot addition. By the fall of 2003, she had paid Tony Latteri \$60,000, but not much work had been done and she began to get frustrated. The project was behind schedule and for weeks at a time no one would show up for work. The lack of completion of the project interfered with Rhoads' ability to use her home office.

In December 2003, Rhoads needed the phone lines moved so she could continue her home business of insurance sales. Despite Rhoads' initial desire not to have defendant work on the construction project, she hired defendant to move the lines. He did not do it properly and Rhoads' daughter had to rewire it. Rhoads paid defendant for the work by check. Defendant called her claiming the check had bounced—which it had not—and he was angry and upset.

By the summer of 2004, Rhoads had given Tony Latteri about 90 percent of the contract price, approximately \$116,000. In December 2004, Rhoads arranged a site meeting with him, Jaime, and the project architect. It was "a very bad meeting." Jaime became very angry and she and Tony demanded more money. Jaime also cursed and screamed at Rhoads. Rhoads came to believe Latteri would never finish the project.

A month or two before the site meeting, Rhoads discovered defendant doing electrical work on the project, in the addition. Defendant "said something like you don't think Tony is going to finish your job." His tone was "eerie" and "scary," like a "sick joke."

Rhoads consulted an attorney in January or February 2005. She filed a claim against Tony Latteri's bond company, which refused to pay. Rhoads then consulted a second attorney, Judson Scott, Jr., who filed a lawsuit against Tony Latteri in September 2007.² Meanwhile, the addition was finished by another contractor.

Shortly after the lawsuit was filed, in October or November 2007, someone threw a rock through the front plate glass window of Rhoads' home and through the back window of her car. Rhoads suspected the vandalism had something to do with the lawsuit and defendant was a likely suspect.

B. The Offenses

At approximately 10:00 a.m. on March 20, 2008, Rhoads was at home in her office in the addition, sitting at her computer. Her 25-year-old son, Joshua, was in his bed watching television. The power went out in the back of the house, causing Rhoads' computer to go dead. She walked down the hallway toward Joshua's room and told him the power was out in part of the house. He told her to go into the laundry room and check the breaker box. She discovered that no circuit breaker had been tripped. There was power in the rest of the house because Joshua's television was still on.

Joshua joined Rhoads in the laundry room. While both of them were looking at the breaker box, the front door opened and closed. Rhoads walked toward the front door, into her living room. There stood defendant, whom Rhoads positively identified in court. She recognized him immediately. She had no problem recognizing him because she knew him so well. There was no chance the intruder was not defendant. Defendant was wearing a black beanie, sunglasses, and a dark coat.

Defendant started spraying Rhoads with pepper spray. Rhoads felt fear and began to scream. She ran toward Joshua, who was still in the laundry room. Defendant kept spraying Rhoads as she ran.³

² The trial court took judicial notice that Rhoads filed her complaint on September 26, 2007.

³ Rhoads testified she had positively identified the intruder as defendant before she was sprayed with the pepper spray, which interfered with her vision.

Rhoads ran into the laundry room behind Joshua, who said to defendant, “are you fucking kidding me” and “get the hell out of my house.” Joshua closed the laundry room door and told Rhoads to use the wall phone to call 911. Joshua held the door shut while defendant banged on it. He then turned to Rhoads and told his mother he had been shot, that defendant had a gun. “[B]ullets started pouring through the door” and Rhoads was hit in the leg by splinters. Joshua was lying in a pool of blood. The top half of the door broke off and flew against a wall.

Rhoads saw the barrel of a gun. Then defendant, who apparently did not see Rhoads concealed in the laundry room, went up and down the hallway looking for Rhoads. Rhoads called 911 and then heard a shot in the backyard.

Defendant had left the house just after killing Joshua, and had gone into the backyard. Sean Mendell, Rhoads’ family friend, was living in the guest house cottage in the backyard with his girlfriend, Mariele Longfellow. The two were lying in bed watching television when they heard the Rhoads’ family dog barking and a sound of metal clanking on metal. Mendell got out of bed and looked outside. He noticed the gate had been opened and went outside to close it. He saw a man wearing a black coat, black beanie, and sunglasses come out of the house.

The man pulled a gun and walked directly towards Mendell. Mendell identified the gun as a 9-mm. automatic. The man put the gun to Mendell’s head and kept asking him where “Sam” was. (“Sam” was Rhoads’ nickname.) Mendell responded that he did not know where Sam was. Mendell was squatting with his hands held up to his face. The man fired a shot at him, but missed. He then appeared to run out of ammunition and started to fumble in his pockets, as if looking for more bullets. The man asked Mendell for money. Mendell went to the cottage to retrieve his wallet. When he came back out, the man had left.

Mendell identified defendant in court as someone who “looks like” the man who assaulted him.

Longfellow saw the man in the yard. She identified defendant in court as that man.

Eventually, a SWAT team arrived at the Rhoads' residence. By then defendant had fled. The police discovered that someone had removed the outside circuit breaker box cover of the Rhoads home, and flipped off the breaker labeled "house sub panel."

When she returned home after medical treatment, Rhoads found a black canvas bag on her office chair. The bag contained charcoal lighter starter, an igniter, and two spray cans.

The police searched defendant's home and seized, among other things, three boxes of 9-mm. ammunition. A ballistics expert testified this ammunition had similar class characteristics to that recovered from the crime scene. In addition, eight of the rounds found at defendant's house bore chambering marks indicating they had been cycled through the same firearm as those fired and unfired rounds found at the crime scene. The police also seized a black leather jacket from defendant's bedroom. The jacket bore signs of gunshot residue, as did the interior of defendant's truck.

Defendant testified.⁴ He was 43 years old and was convicted in 1995 of grand theft auto, forgery, and possession of stolen property. He lived with his girlfriend who owned a 9-mm. Kel-Tec P-11 handgun. Defendant had access to the weapon and knew how it worked.

He testified Beverly Rhoads was a family friend. He said he worked 100 hours on the construction project, including rewiring, and was paid through Tony. He said he stopped working when Tony told him Rhoads had stopped paying him. He admitted he was familiar with the layout of the Rhoads' house, particularly the laundry room.

Defendant claimed he did not take Rhoads' lawsuit against his parents personally, but he did regard it as an injustice and a betrayal and it upset him. He did not think it would prevail. He had nothing against Rhoads or Joshua.

On March 20, 2008, defendant said he left home at 8:30 a.m. to be at a job by 9:00 a.m. When he finished that job he drove home, parked his truck in his garage and took a

⁴ We do not present a summation of all of the defense evidence. In particular, we do not discuss defendant's remarks about the alleged deficiencies in the various eyewitness identifications, *which are not at issue on appeal*.

shower. About an hour later, he returned to his truck. According to his testimony, the side garage door was open and he discovered his girlfriend's Kel-Tec handgun on the floorboard. He picked it up. It smelled like fireworks. Defendant thought someone put the gun there so it would be found.

Defendant got into his truck and drove on Highway 4 to Highway 80, "just going towards the water." He heard on the radio a report of shots fired at the Rhoads' house. He parked by either the Berkeley or Emeryville Marina and sat in his truck. He heard on the radio that a 25-year-old man had been shot dead. He was scared because someone put the gun in his truck. He picked up the gun to shoot himself because he was depressed and had lost faith in the court system. The gun was unloaded. Defendant cut his left wrist with a razor blade, but did not bleed very much. He threw the gun in the Bay, drove to Pacheco, contacted his friend's father, and turned himself in the next day in the company of an attorney.

Defendant denied going to the Rhoads' house on the day of the incident and claimed he did not hurt anyone. He also claimed he never asked anyone to harm Rhoads.

C. The Verdicts and Sentence

The jury convicted defendant of the first degree murder of Joshua (Pen. Code, § 187), the attempted murders of Rhoads and Mendell (Pen. Code, §§ 187/664), and first degree residential burglary (Pen. Code, §§ 459, 460, subd. (a)). The jury found that in committing each offense defendant personally used and personally discharged a firearm causing great bodily injury. (Former Pen. Code, § 12022.53, subds. (b), (c) & (d).) (Former Pen. Code, § 12022.53, added by Stats. 1997, ch. 503, § 3, pp. 3135–3138 and repealed by Stats. 2010, ch. 711, § 4, eff. Jan. 1, 2012.) The trial court sentenced defendant to 25 years to life on the murder conviction, with a consecutive enhancement of 25 years to life for personal use of a firearm; life in prison with a consecutive 20 years for the firearm enhancement on each attempted murder conviction; and a concurrent term of four years for the burglary.

II. DISCUSSION

A. *The “Tear Gas Letter”*

The police seized a document from defendant’s computer, and a hard copy of it from his truck, which the parties refer to as the “Tear Gas Letter.”⁵ The Tear Gas Letter, in both redacted and unredacted versions, was admitted into evidence against defendant. The primary issue on appeal is whether that admission was prejudicial error.

The Tear Gas Letter, which was apparently entitled “Working in Conjunction with Law Enforcement to Get Drugs Off the Streets,” reads as follows in its redacted version, as defendant read it into the record during his direct examination:

“I have no law enforcement background, so there will be no suspicion from dealers or any links involved in law enforcement. If anything happens to me, the law enforcement agencies will have plausible deniability. It will look like one dealer just tried to rob another. For this cause I would probably give up my life if things went wrong. I lost my biological father to heroin after I was born. And I have lost too many family and friends to matter. I also know about the drug trade from past experience. These dealers ruin people’s lives. So I can’t think of any better cause than this.

“The breaking point for me is when I heard that meth dealers are now making meth taste like candy and putting it in fruit flavored drinks and bring it to school yards. I feel that is the greatest sin. Children are innocent and are being tricked into becoming addicts, where adults at least have their own ability to make a decision to do drugs or not. These children don’t understand the ramifications or consequences. This will lead to child crimes and worse as dealers make these young addicts do things they never would have if they weren’t influenced by meth.

“I will be dedicated to this project for these reasons. I have friends on the police force for references, and I know service people who are in many different people’s homes and warehouses every day. I have many contacts that law enforcement cannot get into as

⁵ The two documents are “substantially similar, if not exactly the same.” Variations in the text of the two documents will be discussed below.

I am 42. *My plan* is to find these suspects, tear gas or use whatever other means possible, then ramp tie them hopefully without a shot fired, and leave the drugs.^{6]}

“I have friends in SWAT who could have a better plan if necessary. Then an anonymous call will be made to either supervisor or local law enforcement stating there is some kind of disturbance. They then can find the drugs, get them off the streets and arrest the suspects on possession with intent to sell. This will bypass entrapment if they were just called on a disturbance and they cannot say there was any earlier police contact that would later get them off on a technicality. And, most importantly, the drugs will be off [of] streets one house or warehouse at a time. This would expedite cleaning up the streets and getting the drugs off of them without all of the red tape. I can go in and do what would be considered a public nightmare if the police made first contact.

“I have also done home repair for 20 years, which could get me into homes and businesses to see what the layout is, where entry points are and how many people are in the location. I would need certain equipment, some training and someone to supervise me. The card in my wallet should be a business card that does not have anything to do with law enforcement. This way if anyone should go through my wallet it would not raise suspicion. However, if I have any problems with local law enforcement I can have them call a number on the card.” (Italics added.)

The saga of the admission of the Tear Gas Letter begins at the outset of trial, when defendant moved to exclude a host of various documents, including the Tear Gas Letter, as being irrelevant and prejudicial. The documents were described by the trial court as “constitutionalist,” meaning that they “relat[ed] to [defendant’s] views as to being a sovereign person unto himself and having diplomatic immunity and all that sort of thing. . . [and] may feel that he is not subject to the laws of the United States.” These documents included identification cards, machinery used to make them, a request for voluntary license cancellation to the Department of Motor Vehicles, a courtesy notice to

⁶ The prosecutor referred to the “ramp tie” procedures as using “wrap ties.” The Attorney General suggests that the reference is to the plastic handcuffs commonly called “wrist ties.”

police officers containing a *Miranda* warning, a “writ for a freeman’s right to travel,” a document from the California Secretary of State titled “apostille” and bearing defendant’s picture and an affidavit, and a document bearing defendant’s picture and identifying him as “Robert Rothman, Public Minister of Peace.”⁷

The People argued the documents “demonstrate planning, planning crimes similar to this involving the defendant going into a location where people are present, using some sort of chemical weapon to overcome resistance, to overcome them without a shot being fired . . . and the documents overall demonstrate that the defendant feels he is immune from the rules of the State of California and the federal rules . . . [and] that he has diplomatic immunity as a result of his being a minister of justice and/or peace and, therefore, not subject to detention or arrest for any crime . . .” The People also argued the evidence was relevant to premeditation and identity.

Defendant argued the “constitutionalist” evidence was irrelevant, inadmissible as evidence of prior bad acts under Evidence Code section 1101, and unduly prejudicial under Evidence Code section 352.

The trial court initially ruled the “constitutionalist” evidence referred to above, including the Tear Gas Letter, was relevant: “it is a rational theory where one who feels they are immune from the laws of this country might feel less disinhibited from committing crimes.” But the court concluded the probative value of the evidence was outweighed by its prejudicial effect. The court stated it would reconsider its ruling if anything during trial, including defendant’s testimony, made the evidence more relevant or “changes the equation.”

The next day, the trial court noted that when it excluded all the “constitutionalist” evidence it had not considered the Tear Gas Letter separately, on its own merits as

⁷ An “apostille” is a marginal notation, comment, or annotation. (Webster’s New Intl. Dict. (2d ed. 1953) p. 127, col. 3; <http://oed.com/view/Entry/9425?redirectedFrom=apostille#eid> [as of Feb. 24, 2012].)

Apparently, the evidence included an identification card stating that defendant had diplomatic immunity and could not be arrested or detained except for the commission of a grave crime.

evidence. The court concluded that the Tear Gas Letter might be admissible under Evidence Code section 1101 if certain language were redacted: (1) a reference that defendant was known as antipolice in some circles; and (2) a reference to his belief he had “diplomatic identity,” presumably meaning “diplomatic immunity.”

The People then filed a memorandum of points and authorities “in Support of Admission of Defendant’s Statement of Planning.” The People argued “defendant’s statements about how people could be incapacitated is circumstantial evidence of the defendant’s state of mind and of his premeditation, deliberation and planning.” The People argued “the defendant’s plan is a script for entering a building and incapacitating people he wants to control. The fact that the victim of the invasion contemplated in his writing is a drug dealer and the victim of the defendant’s invasion on March 20, 2008 [was not] is of no moment. The existence of a plan that can be adapted is sufficient to show the defendant’s premeditation, deliberation, motive and intent during the instant offense.” The People also argued the Tear Gas Letter was admissible under Evidence Code section 1101, subdivision (b) to show identity, motive, and intent, and was not unduly prejudicial under Evidence Code section 352.

The trial court held a hearing on the motion. The court ruled that the Tear Gas Letter (which it noted mentioned the phrase “My Plan”) was relevant. It found the Tear Gas Letter “an expression of a fairly unusual plan of attack of someone that someone wants to incapacitate, arrest or otherwise harm.” The court believed the term “tear gas” was used in a general sense to include pepper spray and other types of chemical irritants commonly available to the public. The court also concluded the reference to “hopefully without a shot [being] fired” suggests an awareness that a shot would have to be fired and defendant would be prepared to shoot if he couldn’t avoid it. The court found the Tear Gas Letter “a substantially relevant document to s[h]ow his intent, his plan, his knowledge, his preparation and so forth.” “The question is whether the plan that he is describing here is relevant in the sense that it reflects some unique or unusual intent or plan or method of operation that separates [defendant] from the rest of humanity. And I

think it does.” It also found the Tear Gas Letter would not be unduly prejudicial under Evidence Code section 352 if the diplomatic immunity references were excised.

The court ruled the Tear Gas Letter admissible under Evidence Code section 1101, subdivision (b) “to show knowledge, intent, plan, scheme and method of operation.” The court also ruled it was admissible without regard to the Evidence Code section as noncharacter evidence of knowledge and intent to use the particular method of operation. (See *People v. Olguin* (1994) 31 Cal.App.4th 1355 (*Olguin*)). The court stated it would be willing to redact the antipolice and the diplomatic immunity references, if requested by the defense. It was the redacted version defendant read into the record, as we have stated above.

Defendant contends the Tear Gas Letter should not have been admitted. We disagree. First, under the reasoning of *Olguin, supra*, 31 Cal.App.4th at pages 1372–1373, the Tear Gas Letter was circumstantial, noncharacter evidence of defendant’s knowledge and intent to use a particular method of operation: to enter someone’s home and subdue them with a chemical agent, “hopefully without a shot [being] fired.” The fact that Rhoads, Joshua and Mendell were not drug dealers, the main target of defendant’s “My Plan,” is not dispositive. Defendant had devised a plan for controlling others whom he disliked—and that included Rhoads and her family.

Second, the tear Gas Letter was properly admitted as character evidence.

Evidence of a prior criminal act is admissible “when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than [the defendant’s] disposition to commit such an act.” (Evid. Code, § 1101, subd. (b); see *People v. Daniels* (1991) 52 Cal.3d 815, 856 (*Daniels*)).

The trial court has discretion to admit such evidence if its probative value outweighs its prejudicial effect, and after considering “(1) the materiality of the fact to be proved or disproved, (2) the probative value of the other crime evidence to prove or disprove the fact, and (3) the existence of any rule or policy requiring exclusion even if the evidence is relevant.” (*Daniels, supra*, 52 Cal.3d at p. 856, citing *People v.*

Thompson (1980) 27 Cal.3d 303, 315 (*Thompson*.) The court should exclude the evidence “[i]f the connection between the uncharged offense and the ultimate fact in dispute is not clear” (*Thompson, supra*, at p. 316.) But a trial court’s ruling admitting evidence of other crimes under Evidence Code section 1101, subdivision (b), may not be overturned absent an abuse of discretion. (*People v. Hayes* (1990) 52 Cal.3d 577, 617.)

The Tear Gas Letter was relevant to the material issue of plan. “To be relevant, an uncharged offense must tend logically, naturally and by reasonable inference to prove the issue(s) on which it is offered. [Citations.]” (*People v. Robbins* (1988) 45 Cal.3d 867, 879.)

As the trial court concluded, the Tear Gas Letter was admissible to show defendant’s knowledge, plan and scheme. The Tear Gas Letter clearly shows a contemplated scheme to enter homes and subdue their occupants with a chemical agent. The distinctions between pepper spray and tear gas is of no moment. Indeed, defendant referred to using “tear gas or . . . whatever other means possible” to subdue his targets. Defendant also stressed that his 20 years of home repair experience could “get me into homes and businesses to see what the layout is, where entry points are and how many people are in the location.” Here he entered a house where he knew the layout, used pepper spray on the victim as part of a plan to get justice for his family to hurt someone whom he perceived to be a bad person.

Our conclusion that the Tear Gas Letter was admissible character evidence does not end the inquiry. A trial court admitting evidence of uncharged crimes must also conclude that the probative value of the evidence substantially outweighs its prejudicial impact, within the meaning of Evidence Code section 352. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 404.) The trial court carefully weighed the balance of probity versus prejudice and ruled in favor of probity. The court did not abuse its discretion.

In any event, any error would be harmless. Rhoads positively identified defendant, whom she had known for years. Ballistics evidence and gunshot residue linked defendant to the crimes. Defendant had an obvious motive, his being upset over

Rhoads' lawsuit against his parents. Defendant had done electrical work in the addition to Rhoads' house, the area of the house where power went out because a particular outside circuit breaker was tripped. Defendant testified with a version of events of dubious credibility, disbelieved by the jury. In sum, the evidence against defendant is more than substantial.

B. Alleged Doyle Error

The People may not elicit evidence of a defendant's postarrest silence in the wake of *Miranda* warnings. (See *Doyle v. Ohio* (1976) 426 U.S. 610, 619; *People v. Evans* (1994) 25 Cal.App.4th 358, 368.) Defendant contends the People did just that in the present case. We disagree for the following reasons.

Defendant grounds his *Doyle* argument on the following series of facts. Detective McColgin testified he rode with Rhoades to the hospital and she told him she was certain defendant was the shooter. Despite that identification, McColgin wanted "to talk to the defendant's friends and family members to get the other side of the story." He also testified there are "two sides to every story, and it's important to try to get all sides, to do a thorough investigation. Part of that is to try to get a statement from the alleged suspect to find out . . . what he has to say about what happened." But McColgin did not then know where defendant was.

When defendant turned himself in the next day, McColgin went to the police station and arrested him. McColgin then testified that in December 2008—nine months after the offenses—he had spoken to a friend of defendant's girlfriend, and the girlfriend told her friend defendant claimed he acted in self-defense.

Defendant claims these facts present an "unmistakable" chain of inferences: that McColgin wanted to talk to defendant; that defendant turned himself in and was arrested; that McColgin did not obtain an exculpatory statement about the crime until after the arrest and then only through the girlfriend; and, therefore, defendant must not have made a postarrest statement to police. Thus, defendant concludes, there was a clear inference presented to the jury that he was silent after his arrest.

We do not believe the jury was presented with such an inference. McColgin simply described his investigative technique in general terms, told the jury about defendant's arrest, and then mentioned that months after the offenses someone else said defendant claimed self-defense. There is no reasonable basis to conclude the jurors would have believed that defendant did not say anything to police upon his arrest in March 2008.

C. Admission of Evidence Regarding Diplomatic Immunity

After defendant testified, the trial court admitted the redacted portion of the Tear Gas Letter regarding defendant's belief that he had diplomatic immunity. The court also admitted testimony of Detective McColgin that defendant's friend, Warren Miller, had told the detective defendant stated that belief to Miller. Defendant contends the admission of this evidence was error.

As noted above, defendant read the redacted version of the Tear Gas Letter during his testimony on direct examination. While reading, he commented that there were two copies of the letter and some of the text he had read "doesn't really seem like what I typed." He repeated the fact that there were two versions of the letter. The prosecutor then asked that the entire letter be admitted because defendant had essentially suggested he did not write portions of it. Defense counsel indicated that if asked, defendant would deny having the letter in his truck.

The trial court ruled it was "not fair to preclude the People from cross-examining the defendant on the full context of the letter to the extent it addresses both his volunteered testimony on direct, that this letter does not appear to be in the form that he last edited it. [¶] And secondly, and to the extent that he denies the version in his car was placed there by him . . . I'm going to permit the People to examine the defendant about the full letter unredacted. . . . I don't think it's appropriate to withhold a legitimate cross-exam[ination] from the People on this ground."

Defendant had also testified about talking to Miller about Miller buying the Kel-Tec handgun. He said he did not talk to Miller about buying a concealable weapon because defendant could not own a gun because of his felony record. The prosecutor

asked for permission to impeach defendant's testimony with Miller's statement, told through McColgin, that defendant said he did not need a concealed weapons permit because he had diplomatic immunity. The prosecutor argued defendant's testimony about not being legally able to own a gun should be impeached by his statement that he was not governed by the law.

The trial court ruled the People could cross-examine defendant about his diplomatic immunity conversation with Miller. As noted, the court also permitted cross-examination on the entire unredacted Tear Gas Letter. But the court continued to exclude the other "constitutionalist" evidence.

On cross-examination, defendant said he couldn't recall the Tear Gas Letter being in his truck or recall his putting it in his truck. He agreed the unredacted letter differed slightly from the redacted one, and that the former stated he believed he had diplomatic immunity. But he claimed he believed he only had diplomatic immunity for travel, and thus could persuade drug dealers he could transport drugs without his "diplomatic baggage" being inspected by law enforcement.

Defendant denied telling Miller he did not need a concealed weapons permit because he had diplomatic immunity. Miller was recalled and testified he had talked with defendant about how to get a permit. They also talked about diplomatic immunity, but Miller had forgotten the context. Detective McColgin was recalled and testified he spoke with Miller on April 9, 2008. Miller told him he and defendant spoke on March 9, 2008—11 days before the offenses—and defendant pulled out a diplomatic immunity card and told Miller he did not need to register a gun because he had that card. The card looked homemade.

It was not error to admit this evidence. Defendant opened the proverbial door by testifying that the version of the letter he read into the record appeared to be slightly different, strongly suggesting there were two versions and perhaps he did not write one of them. He also testified he could not legally possess a weapon, painting himself as law abiding when, in fact, he manufactured false identification cards purporting to show he had diplomatic immunity, i.e., was in essence above the law. And the trial court did not

abuse its discretion by finding this evidence was more probative than prejudicial under Evidence Code section 352. And, for the reasons set forth above, any error would be harmless.⁸

D. Alleged Error Under Penal Code Section 654

Defendant contends his concurrent four-year sentence for burglary should have been stayed under Penal Code section 654, which prohibits multiple punishments for a single act or indivisible course of conduct. (See *People v. Harrison* (1989) 48 Cal.3d 321, 335.) If all of the defendant’s offenses are the means of, or incidental to, the accomplishment of one objective, he may be punished only once. (*Ibid.*) But if the defendant harbored multiple criminal objectives, independent of and not merely incidental to each other, he may be punished for each crime committed in pursuit of each objective—even though those crimes shared common acts or were part of a course of conduct otherwise indivisible. (*Ibid.*; see *People v. Perry* (2007) 154 Cal.App.4th 1521, 1525–1527.)

Defendant correctly observes the burglary was presented to the jurors as entry with the intent to commit arson. But he claims the arson was not an independent criminal objective, but tied up with the intent to murder. The trial court disagreed, finding two separate intents: the murder of Beverly Rhoads and the arson of the home, presumably to disguise the commission of the murder, destroy evidence, or impede defendant’s detection. Committing murder by firearm, and thereafter independently and separately hiding one’s culpability by fire, are two different intents. There is substantial evidence to

⁸ Defendant raises First Amendment issues regarding the admission of his “constitutionalist” views. We find no merit in those issues. While defendant correctly notes a defendant’s abstract beliefs may be inadmissible, such beliefs may be admitted if relevant to material issues. (See *Dawson v. Delaware* (1992) 503 U.S. 159, 165, 167.) Here, defendant’s “constitutionalist” beliefs came into evidence only to show he felt he was above the law—certainly a material issue on the question of guilt. And defendant’s claim he was denied the right to voir dire the jury regarding his “constitutionalist” views is of little, if any, merit. First, defendant *tried to keep those views out of evidence*. Second, the views came in only for a limited purpose material to the question of guilt.

support the trial court's finding of separate criminal objectives and as such we must uphold it. (See *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312-1313.)

DISPOSITION

The judgment is affirmed.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.