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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRONE PAGE,

Defendant and Appellant.

C067885

(Super. Ct. No. 10F06027)

A jury convicted defendant Tyrone Page of possessing a firearm as a convicted felon (former Pen. Code, § 12021, subd. (a)(1), repealed by Stats. 2010, ch. 711, § 4, operative on Jan. 1, 2012),¹ and possessing a short-barreled shotgun (former § 12020,

¹ Undesignated statutory references are to the Penal Code.

The cited sections were effective at the time defendant committed the charged offenses, and defendant raises no argument attacking their validity or applicability.

subd. (a), repealed by Stats. 2010, ch. 711, § 4, operative on Jan. 1, 2012).² The trial court found defendant had four prior serious felony convictions (§ 667, subds. (b)-(i)) and had served three prior prison terms (§ 667.5, subd. (b)). The trial court dismissed three of the prior serious felony convictions as well as one of the prior prison terms. The trial court sentenced defendant to six years in state prison.

On appeal, defendant argues (1) this court must independently examine the sealed portion of the hearing on his motion to disclose the identity of an anonymous informant to assess whether the trial court erred in denying defense counsel's motion to disclose the informant's name, (2) the trial court erred by admitting testimony about circumstances of the police encounter with defendant prior to his arrest, (3) the admission of testimony about the anonymous informant's tip violated the Confrontation Clause, (4) his motion for mistrial should have been granted after a police officer testified defendant had previously been convicted of burglary, and (5) the cumulative prejudice of these errors compels reversal of the judgment.

We have examined the sealed portion of the record and find no error in the denial of defense counsel's motion to disclose the identity of the anonymous informant. We conclude the trial court did not commit evidentiary error in allowing testimony about how the police encountered defendant or evidence about the anonymous tip regarding defendant's possession of a shotgun. The trial court did not err in denying defendant's motion for mistrial because the testifying officer's brief mention of defendant's burglary conviction was cured by instructions given to the jury. Having found no error, we reject

² The abstract of judgment erroneously lists defendant's conviction for possession of a short-barreled shotgun as a violation of section 12021, subdivision (a) (which prohibited possession of a firearm by a convicted felon and also has been repealed; Stats. 2010, ch. 711, § 4, operative Jan. 1, 2012), instead of section 12020, subdivision (a). We order the clerk of the superior court to correct this clerical error.

defendant's claim of prejudice as a result of multiple errors at trial. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Around 5:00 p.m. on September 12, 2010, Sacramento Police Officers Matt Armstrong and Edward Macaulay arrived at an apartment complex located at 375 El Camino Avenue in Sacramento. The officers planned to serve a warrant on someone believed to live in apartment 4. While standing in front of apartment 4, the officers saw defendant leaning out the window of apartment 1. The officers decided to investigate because no one was supposed to be in apartment 1 after the occupants had been arrested on the previous day.

As a result of their investigation, the officers detained defendant in the back seat of the patrol vehicle and discovered he was on parole. The officers placed defendant under arrest at the request of his parole officer. One of the police officers then received an anonymous tip that defendant "was in possession of items that he was prohibited from owning."

Later that evening, officers searched a residence on Beaumont Street that defendant had listed as his current address. Defendant's parole agent had been to this one-bedroom apartment on Beaumont Street three days earlier and had contacted defendant there.

During the search of the Beaumont Street apartment on September 12, 2010, police officers found an illegal, short-barreled shotgun and an unfired shotgun shell under the bed. In the same room, the officers found a picture of defendant and his wife, defendant's parole identification card, and several more identification cards for defendant.

No fingerprints were discovered on the shotgun or the shotgun shell.

At trial, the parties stipulated defendant had previously been convicted of a felony.

DISCUSSION

I

Motion to Disclose the Identity of the Anonymous Informant

Defendant contends we must examine the sealed portion of the hearing on his motion to disclose the identity of the anonymous informant to determine whether the motion was properly denied. The People agree that we may examine the sealed record as requested by defendant. We conclude the sealed portions of the hearing establish no error in the trial court's denial of the motion to disclose.

A.

Defendant's Motion to Disclose

Prior to trial, defense counsel moved to disclose the identity of the anonymous source of the tip that defendant possessed items that violated conditions of his parole. The People opposed the motion. After conducting an in camera hearing, the trial court denied the motion to disclose. In doing so, the court stated:

“Based on the hearing, the Court is denying the request. [¶] And getting a rather thorough walk through as to the chain of events [on the day of the search], including the day prior and the other apartment complex, there is no singular individual that is being in law enforcement on this sort of search for a shotgun at different — at each of those locations, so, instead, convinced that this is a situation where the person relied on by law enforcement does fall under the [sic] merely pointed a finger of suspicion against [defendant]. [¶] I don't think that the person rises to the level of a material witness as envisioned under Evidence Code Section 1041. As for those reasons that the Court — and given obviously concerned [sic] about an informant's well-being when providing information to law enforcement in a confidential fashion that the Court is denying the motion at this time.”

At trial, Officer Macauley testified he personally received a tip from “a person who wished to remain anonymous” that defendant “was in possession of items that he was prohibited from owning.” Officer Macauley explained the police sometimes receive anonymous tips from “someone [who] will call the police department or inform an officer of some information, and they wish to totally be anonymous, not be written down, not be mentioned by identifying information.” In this case, “the anonymous source was someone [Officer Macauley] spoke with” but whose identity he did not record.

B.

Analysis

The California Supreme Court has explained, “the prosecution must disclose the name of an informant who is a material witness in a criminal case or suffer dismissal of the charges against the defendant. (*Eleazer v. Superior Court* (1970) 1 Cal.3d 847, 851.) An informant is a material witness if there appears, from the evidence presented, a reasonable possibility that he or she could give evidence on the issue of guilt that might exonerate the defendant. (*People v. Borunda* (1974) 11 Cal.3d 523, 527.)” (*People v. Lawley* (2002) 27 Cal.4th 102, 159-160.)

“Where the evidence indicates the informer was an actual participant in the crime alleged or was a nonparticipating eyewitness to that offense, ipso facto it is held he [or she] would be a material witness on the issue of guilt and nondisclosure will deprive the defendant of a fair trial.” (*People v. Lee* (1985) 164 Cal.App.3d 830, 835–836.) Otherwise, disclosure is compelled “only if the defendant makes an adequate showing that the informant can give *exculpatory* evidence.” (*Davis v. Superior Court* (2010) 186 Cal.App.4th 1272, 1277, italics added.) Moreover, “[a]n informant is not a ‘material witness’ nor does his [or her] nondisclosure deny the defendant a fair trial where the informant’s testimony although ‘material’ on the issue of guilt could only further implicate rather than exonerate the defendant.” (*People v. Alderrou* (1987) 191

Cal.App.3d 1074, 1080.) Thus, when the evidence adduced at an in camera hearing fails to show a “reasonable possibility that a particular percipient eyewitness-informer could give evidence on the issue of guilt which might result in a defendant’s exoneration. [Citation.] [T]he witness would not be material under the test for materiality established by the California Supreme Court.” (*People v. Lanfrey* (1988) 204 Cal.App.3d 491, 502–503.)

With these principles in mind, we have reviewed the transcript of the in camera hearing held on February 8, 2011. We conclude the trial court properly conducted the hearing in order to determine whether defendant’s right to a fair trial and confrontation of material witnesses required disclosure of the anonymous informant’s identity. The court questioned Officers Armstrong and Macauley before concluding the motion to disclose should be denied and the transcript of the in camera hearing be sealed. Based on our review of the in camera hearing, we conclude the trial court did not err in reaching these conclusions.

II

Evidence Regarding the Events at 375 El Camino Avenue

Defendant contends the trial court erred in allowing the police officers to testify about the circumstances leading to defendant’s arrest at 375 El Camino Avenue. Specifically, defendant argues the evidence should have been excluded under Evidence Code section 352 (Section 352). He further argues the officers’ testimony was improperly admitted as character evidence under Evidence Code section 1101. We reject the contentions.

A.

Motion to Exclude Evidence

Before trial, the defense moved to exclude any testimony regarding the circumstances of defendant’s detention and arrest at 375 El Camino Avenue. Defense

counsel argued that evidence regarding the events on the day before the shotgun's discovery was irrelevant to the charges against defendant. The trial court ruled on the motion to exclude as follows:

“Motion in limine . . . to exclude details of the defendant's arrest for parole violation prior to the discovery of the gun at the residence will be granted in part and denied in part.

“The People again contend and [the] court understands this evidence is offered to give context and background as to why the officers ultimately wound up conducting a search at the defendant's residence.

“Under [section] 352 analysis, the Court finds that the substantial danger of undue prejudice in allowing the jury to hear the specific details that the defendant fled from the police and was arrested trying to climb over a fence outweighs the probative value . . . this evidence might have for setting the context for why the search at issue ultimately occurred.

“On the other hand, as we again discussed . . . , the Court will allow the officers to generally testify along the lines of while executing an unrelated warrant at apartment four, they observed an individual in apartment one, which they believed to be unoccupied and decided to investigate. As part of that investigation, the defendant was . . . detained and determined to be on parole.

“As sanitized, the probative value of this evidence is not substantially outweighed by the probability that its admission would create a substantial danger of undue prejudice as it will allow the People to present their background and context evidence while avoiding having the jury specifically hear that defendant fled from the police and was arrested.”

B.

Evidence Code Section 352

Section 352 excludes unduly inflammatory evidence by providing that a “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.”

As this court recently explained, “““[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant’s case. The stronger the evidence, the more it is “prejudicial.” The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual *and which has very little effect on the issues.*” (*People v. Karis* (1988) 46 Cal.3d 612, 638; see *Vorse v. Sarasy* (1997) 53 Cal.App.4th [998,] 1009.)’ (*People v. Escudero* (2010) 183 Cal.App.4th 02, 312, italics added (*Escudero*).)” (*People v. Holford* (2012) 203 Cal.App.4th 155, 167 (*Holford*).)

Thus, “[e]vidence is not inadmissible under section 352 unless the probative value is ‘substantially’ outweighed by the probability of a ‘substantial danger’ of undue prejudice or other statutory counterweights. Our high court has emphasized the word ‘substantial’ in section 352. (*People v. Tran* (2011) 51 Cal.4th 1040, 1047 [‘But Evidence Code section 352 requires the exclusion of evidence only when its probative value is *substantially* outweighed by its prejudicial effect’]; cf. *People v. Geier* (2007) 41 Cal.4th 555, 585.)” (*Holford, supra*, 203 Cal.App.4th at p. 167.)

In reviewing a determination of whether to exclude or admit evidence under section 352, we are mindful that “[t]rial courts enjoy “broad discretion” in deciding whether the probability of a substantial danger of prejudice substantially outweighs probative value. (*People v. Michaels* (2002) 28 Cal.4th 486, 532 (*Michaels*); *People v.*

Perry (2006) 38 Cal.4th 302, 318; *People v. Memro* (1995) 11 Cal.4th 786, 866 (*Memro*.) A trial court’s exercise of discretion ‘will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’ (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)” (*Holford, supra*, 203 Cal.App.4th at pp. 167-168.)

Here, the trial court admitted the testimony of Officers Armstrong and Macauley regarding the events at 375 El Camino Avenue. The court did not abuse its discretion under section 352 by determining that the probative value of the admitted portion of the evidence was not overshadowed by potential prejudice to the defendant’s right to a fair trial. Although the police encounter with defendant on El Camino Avenue was not itself the basis for the charges in this case, it did provide the jury with the context for the search of defendant’s listed address on Beaumont Street. By disallowing testimony about defendant running away from the police, the trial court prevented the jury from drawing unwarranted inferences of guilt due to flight. Defendant’s status as a parolee and his presence in an apartment that should have been empty explained why the police decided to search both the apartment and then his listed residence on Beaumont Street.

The officers’ testimony about background for the search of defendant’s residence was not inflammatory and did not invite the jury to convict him for reasons unrelated to actual guilt or innocence. Even evidence of uncharged conduct may be admitted over an objection based on section 352 when it illuminates the context within which the charged offenses were committed. (See *People v. McKinnon* (2011) 52 Cal.4th 610, 655 [allowing evidence to provide context for defendant’s statements that tended to show motive and intent for murder].) Although the events on El Camino Avenue set the stage for the arrest of defendant and subsequent search of his listed residential address, the evidence was not of a sort to inflame passions or prejudice against defendant.

Contrary to defendant's assertion, the evidence did not portray him as burglarizing apartment 1 at 375 El Camino Avenue. The evidence did not suggest defendant was engaging in a theft-related offense. Rather, the officers' testimony established that defendant's arrest was made at the direction of his parole officer. Thus, the evidence did not portray defendant as a burglar at 375 El Camino Avenue.

The trial court did not abuse its discretion under section 352 by admitting evidence about how the police encountered defendant on El Camino Avenue. Instead, the court properly weighed the evidence and determined his flight should be excluded from the evidence. The remaining evidence was not prejudicial to defendant's right to a fair trial.

C.

Admission of the Officers' Testimony as Character Evidence

Defendant contends the police officers' testimony regarding the events at 375 El Camino Avenue was improperly admitted as character evidence under Evidence Code section 1101.³ The People counter that the claim was forfeited for failure of the defense to object on this ground at trial. We agree with the People that this evidentiary challenge has not been preserved for appellate review.

Evidence Code section 353 precludes evidentiary challenges from being cognizable on appeal unless an objection on the same grounds was first made in the trial court. As we previously explained, "[s]ection 353 provides in pertinent part, 'A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears

³ Evidence Code section 1101 provides that, with exceptions not relevant here, "evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion."

of record an objection to or a motion to exclude or to strike the evidence that was timely made and *so stated as to make clear the specific ground of the objection or motion. . . .*’ (Italics added.) In accord with this statute, our high court has consistently held that a “‘defendant’s failure to make a timely and *specific* objection’ on the ground asserted on appeal makes that ground not cognizable. [Citation.]” (*People v. Partida* (2005) 37 Cal.4th 428, 434, italics added (*Partida*)). “‘The reason for the requirement is manifest: a specifically grounded objection to a defined body of evidence serves to prevent error. It allows the trial judge to consider excluding the evidence or limiting its admission to avoid possible prejudice. It also allows the proponent of the evidence to lay additional foundation, modify the offer of proof, or take other steps designed to minimize the prospect of reversal.’” (*Partida, supra*, 37 Cal.4th at p. 434.) “[T]he objection must be made in such a way as to alert the trial court to the . . . basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility.” [Citation.] What is important is that the objection fairly inform the trial court, as well as the party offering the evidence, of *the specific reason or reasons* the objecting party believes the evidence should be excluded, so the party offering the evidence can respond appropriately and the court can make a fully informed ruling. If the court overrules the objection, the objecting party may argue on appeal that the evidence should have been excluded for the reason asserted at trial, but it may not argue on appeal that the court should have excluded the evidence for a reason different from the one stated at trial. *A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct.*’ (*Id.* at p. 435, italics added.)” (*Holford, supra*, 203 Cal.App.4th at pp. 168-169.)

In this case, defense counsel objected on grounds of relevance to the testimony of the officers regarding the events on El Camino Avenue. However, the defense did not object on grounds the evidence should be excluded as improper character evidence.

Accordingly, defendant may not raise for the first time on appeal the issue of evidentiary error based on improper character evidence. The issue has been forfeited.

III

Admission of Evidence Regarding the Anonymous Tip

Defendant contends the trial court erred in admitting evidence of the anonymous tip because it violated the rule against the admission of hearsay evidence. We disagree. The People counter that the issue has been forfeited for review because the defense failed to renew an in limine evidentiary objection again at trial. We need not resolve whether the trial court's in limine ruling was sufficiently final to excuse further objection by the defense on the same grounds (see *People v. Crittenden* (1994) 9 Cal.4th 83, 127) because we exercise our discretion to resolve the issue on the merits in order to forestall a claim of ineffective assistance of counsel for lack of renewed objection. (See, e.g., *People v. Smith* (2003) 31 Cal.4th 1207, 1215; *People v. Williams* (2009) 170 Cal.App.4th 587, 628.) On the merits, we reject defendant's argument.

A.

Hearsay Objection by the Defense

Prior to trial, the defense moved to exclude the evidence of the anonymous tip about defendant possessing the shotgun on grounds that it constituted "inadmissible hearsay." Defense counsel pointed out he was unable to cross-examine the anonymous informant and asserted defendant's confrontation rights would be violated by the evidence of the anonymous tip.

After the police officers testified, the court on its own motion instructed the jury about the testimony regarding the anonymous tip as follows:

"Ladies and gentlemen, you have heard evidence that law enforcement officers had received an anonymous tip that the defendant was in possession of [an] item or items that he was prohibited from possessing. [¶] You may not consider this tip as being true,

nor may you speculate as to the informant's personal observation or knowledge. You may not consider the tip for the purpose of finding that the defendant either possessed the alleged weapon or had knowledge of the weapon at 2355 Beaumont Street apartment A. This evidence is only relevant to explain why the officers went to that address.”

At the close of evidence, the trial court repeated the admonition in nearly verbatim form.

B.

Admission of an Out-of-court Statement for Nonhearsay Purposes

Hearsay evidence is defined as “a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200.) However, as the California Supreme Court has explained, “[a]n out-of-court statement is properly admitted if a nonhearsay purpose for admitting the statement is identified, *and* the nonhearsay purpose is relevant to an issue in dispute. (*People v. Armendariz* (1984) 37 Cal.3d 573, 585; *People v. Bunyard* (1988) 45 Cal.3d 1189, 1204–1205; see *People v. Scalzi* (1981) 126 Cal.App.3d 901, 907 [“one important category of nonhearsay evidence — evidence of a declarant’s statement that is offered to prove that the statement imparted certain information to the hearer and that the hearer, believing such information to be true, acted in conformity with that belief. The statement is not hearsay, since it is the hearer’s reaction to the statement that is the relevant fact sought to be proved, not the truth of the matter asserted in the statement”].)” (*People v. Turner* (1994) 8 Cal.4th 137, 189, overruled on another ground in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5.)

Here, the jury was apprised of the nonhearsay purpose for introducing the evidence regarding the anonymous tip about defendant’s possession of items he was prohibited from possessing. Ultimately, the trial court twice admonished the jury it could consider the evidence regarding the anonymous tip for no purpose other than to explain

why the police went to the Beaumont address to conduct a search. We presume jurors understand and follow instructions given by the trial court. (*People v. Morales* (2001) 25 Cal.4th 34, 47.) The trial court’s admonitions were clear and straightforward in explaining the anonymous tip could only be used to explain why the police went to Beaumont Street.

Defendant asserts the jury could not have disregarded the incriminating nature of the anonymous tip because it “needed no inferential leap to conclude that the tip was talking about the firearm.” To credit defendant’s argument would require us to conclude any potentially incriminating evidence lies beyond the ability of a limiting instruction to keep the jury from using the evidence in an impermissible manner. This is not a case in which the evidence subject to the limiting instruction was powerfully incriminating — such as with the confession of a codefendant. (See, e.g., *People v. Aranda* (1965) 63 Cal.2d 518, 530, superseded by statute on another ground as recognized in *People v. Fletcher* (1996) 13 Cal.4th 451, 465.) The anonymous tip in this case is properly subject to “the almost invariable assumption of the law that jurors follow their instructions” that the United States Supreme Court has “applied in many varying contexts.” (*Richardson v. Marsh* (1987) 481 U.S. 200, 206 [95 L.Ed.2d 176].) We adhere to the rule that presumes jurors have understood and followed the instructions given by the trial court.

Defendant next contends his federal constitutional right to confront witnesses against him was violated. In support, he relies on *Crawford v. Washington* (2004) 541 U.S. 36 [158 L.Ed.2d 177]. He argues his inability to cross-examine the anonymous source of the tip regarding the shotgun violated his right to confront witnesses against him. We disagree.

Here, the anonymous tip was admitted for the nonhearsay purpose of explaining why the police went to the Beaumont Street address to conduct a search of defendant’s residence. By contrast, “*Crawford* was concerned with the substantive use of hearsay

evidence that was admitted within an exception to the hearsay rule. It did not suggest that the confrontation clause was implicated by admission of hearsay for nonhearsay purposes. In fact, *Crawford* expressly stated that the confrontation clause ‘does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.’ (*Crawford, supra*, 541 U.S. at p. 59, fn. 9.) ‘*Crawford* does not undermine the established rule that experts can testify to their opinions on relevant matters, and relate the information and sources upon which they rely in forming those opinions.’ (*People v. Thomas, supra*, 130 Cal.App.4th at p. 1210.) The reason is clear; if hearsay is admitted for a nonhearsay purpose, it does not turn upon the credibility of the hearsay declarant, making cross-examination of that person less important. The hearsay relied upon by an expert in forming his or her opinion is ‘examined to assess the weight of the expert’s opinion,’ not the validity of their contents.” (*People v. Cooper* (2007) 148 Cal.App.4th 731, 747.)

We conclude the admission of the anonymous tip did not violate the rule against hearsay evidence given the trial court’s limiting instructions. Moreover, defendant’s confrontation rights were not violated by the admission of the anonymous tip.

IV

Denial of Motion for Mistrial

Defendant contends the trial court erred in denying his motion for mistrial after Officer Armstrong testified defendant was on parole for burglary at the time of his arrest. The officer’s testimony violated the trial court’s in limine ruling that excluded mention of defendant’s prior criminal convictions. Defendant asserts his due process rights required the trial court to declare a mistrial after the officer’s errant testimony.

A.

Defendant’s Motion for Mistrial

During the People’s case-in-chief, Officer Armstrong testified as follows:

“Q [By the prosecutor]: At the time that you contacted [defendant], did you attempt to gain information about who he was?”

“A He identified himself as Tyrone Page, then we ran him in our police computer. Our computer will tell us everything about him —

“[Defense counsel]: Objection, nonresponsive.

“THE COURT: Sustained. Ask a follow-up question.

“Q [Prosecutor]: Once you learned the name Tyrone Page, what did you do with that information?”

“A Run his name, birthday. It will run everything about him related to the City of Sacramento or the State of California. And in this instance, it tells us — it confirms he’s on parole for burglary in California.

“THE COURT: I’ll strike that last part. Why don’t you reask the question. I’ll strike the entire answer.

“The jury should disregard it.

“Q [Prosecutor]: Did you learn that he was on parole?”

“A I did.

“Q . . . was he placed under arrest at that time?”

“A He was placed under arrest because he got in touch with his parole agent who wanted him violated and arrested.”

Shortly thereafter and outside the presence of the jury, defense counsel moved for a mistrial. The prosecutor responded that he had advised the officer and did not “know exactly why Officer Armstrong said that.” The trial court denied the motion for mistrial, noting: “The jury has been instructed not to consider it. The jury will be instructed that the fact he’s on parole is not to be considered. [¶] Not to excuse the officer’s misstatement, but it is a felon in possession trial.” The defense asked to examine the officer about whether he had been advised to avoid mentioning prior convictions, but the

trial court denied the request. The court did not find the officer's testimony to be in bad faith. However, the court admonished the People that "further slip ups by the witnesses gets us [*sic*] closer to where we need to start [trial] all over again."

After the close of evidence, the trial court instructed the jury to disregard testimony that had been stricken. The court further instructed that evidence of defendant's status as a parolee was to be considered for no other purpose than to explain why the officers went to Beaumont Street to conduct a search. The jury was admonished that evidence of defendant's prior conviction was relevant only to prove he was a felon in possession of a firearm. The court instructed the jury that defendant's prior conviction was not evidence of guilt in the present case.

B.

Analysis

The California Supreme Court has explained, "A trial court should grant a motion for mistrial 'only when "'a party's chances of receiving a fair trial have been irreparably damaged'" (*People v. Ayala* (2000) 23 Cal.4th 225, 282), that is, if it is 'apprised of prejudice that it judges incurable by admonition or instruction' (*People v. Haskett* (1982) 30 Cal.3d 841, 854). 'Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.' (*Ibid.*) Accordingly, we review a trial court's ruling on a motion for mistrial for abuse of discretion. (See *People v. Valdez* (2004) 32 Cal.4th 73, 128.)" (*People v. Avila* (2006) 38 Cal.4th 491, 573.)

Here, defendant's prior burglary conviction was mentioned only once in a case in which the jury had been properly informed he was a convicted felon. The trial court struck the problematic answer and immediately admonished the jury to disregard it. Again after the close of evidence, the trial court instructed the jury to disregard stricken testimony. Moreover, the court told the jury that defendant's prior felony conviction did

not constitute evidence of guilt in the present case. As we explained in part III B., we generally presume the jury has heeded the admonishments and instructions of the trial court. The presumption applies here because the mention of the exact nature of the prior conviction did not constitute inflammatory or prejudicial evidence in a case in which the jury already knew he had been convicted of a felony.

In *People v. Avila, supra*, 38 Cal.4th 491, the California Supreme Court affirmed the denial of a motion for mistrial after a prosecution witness violated an order not to mention defendant's parole status. (*Id.* at pp. 571-572.) The *Avila* court held the errant testimony was cured by the trial court's admonishment that the jury was to disregard the testimony that defendant had just been released from prison. (*Id.* at p. 572.) The actual answer given by the witness was that, prior to the charged murders, he had been told: "Keep cool. Keep — kick back, because — don't do nothin', 'cause [defendant] barely got out of prison. And he's crazy. He'll kill you." (*Id.* at p. 572.) The *Avila* court found this statement was capable of being cured by the trial court's instruction that the jury ignore the reference to defendant's recent release from incarceration. (*Id.* at pp. 573-574.) As did the *Avila* court, we also presume the jury followed the instruction to disregard stricken testimony. Accordingly, we conclude the trial court did not err in denying the motion for mistrial.

V

Cumulative Error

Defendant contends the cumulative effect of errors committed at trial violated his right to due process of law under the 14th Amendment to the United States Constitution. We have not found any error occurring during trial. Consequently, there are not multiple errors to cumulate to defendant's prejudice. (*People v. Sanders* (1995) 11 Cal.4th 475, 565; *People v. Cudjo* (1993) 6 Cal.4th 585, 630.)

DISPOSITION

The judgment is affirmed. The superior court clerk is directed to prepare a corrected abstract of judgment to reflect defendant's conviction, in Count 2, of former Penal Code section 12020, subdivision (a), and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

HOCH, J.

We concur:

RAYE, P. J.

MAURO, J.