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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CATHERINE ELLEN FLORES,

Defendant and Appellant.

E063506

(Super.Ct.No. RIF1205918)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.

Affirmed.

Patrick Morgan Ford for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Catherine Ellen Flores, guilty of assault with a firearm. (Pen. Code, § 245, subd. (a)(2).)^{1, 2} The jury found true the allegations that (1) defendant inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)); and (2) defendant personally used a firearm during the commission of the offense (§ 12022.5, subd. (a)). The trial court granted defendant five years of formal probation, with the condition she serve one year in the custody of the Riverside County Sheriff's Department.

Defendant raises four issues on appeal. First, defendant contends the trial court erred by finding she was not in custody when questioned by police. (*Miranda v. Arizona* (1966) 384 U.S. 436.) Second, defendant asserts the trial court erred by excluding character evidence about the victim. (Evid. Code, § 1103, subd. (a).) Third, defendant contends the prosecutor committed a *Brady*³ violation by failing to disclose information about the victim's prior crimes in the area. Fourth, defendant asserts the cumulative impact of the foregoing alleged errors violated her right to a fair trial. We affirm the judgment.

¹ All subsequent statutory references will be to the Penal Code, unless otherwise indicated.

² Defendant was also charged with attempted murder. (§§ 664, 187.) The jury was unable to reach a verdict on that count, and the trial court declared a mistrial as to the attempted murder count.

³ *Brady v. Maryland* (1963) 373 U.S. 83.

FACTUAL AND PROCEDURAL HISTORY

A. PROSECUTION'S CASE

At the time of her trial defendant was 50 years old. At the time of the offense at issue in this case, defendant resided with her parents. Defendant's parents' house was located in an industrial area. There were not many homes in the area. The property bordered the Santa Ana Riverbed. People lived on the riverbed, and those people occasionally stole items from defendant's parents' property.

On July 22, 2012, at approximately 4:00 p.m., the victim rode his dirt bike to a track to watch other people ride their dirt bikes. The track was near defendant's parents' house. The victim took his puppy with him to the track. The victim left the track while the sun was still up, at approximately 5:00 p.m. When the victim left the track, he placed the puppy on the ground, so the puppy could chase the victim as he rode his dirt bike. The victim occasionally stopped his dirt bike to let the puppy catch up.

At one point, the victim "took off, flying real fast," at which point he lost the puppy. The victim noticed a chain link fence with a gap in it, around what appeared to be a dirt lot; however, the victim knew the dirt lot was someone's backyard. There were bushes and weeds on the property, so the victim was unable to see if the puppy was on the property from outside the fence. The victim rode his dirt bike through the gap in the fence. He shut off his dirt bike and leaned it against a block wall.

The victim kept his helmet on as he looked for his puppy. The victim did not feel any urgency in leaving the property because he was familiar with the riverbed area

and explained, “there’s just not a whole bunch of, you know, people waiving signs to you and saying, ‘You can’t be here,’ and stuff like that. It just didn’t seem like a threat.” As the victim was walking on the property, he saw a large white dog, and defendant crawling on her hands and knees. Defendant was crawling toward the victim; the victim was walking toward defendant.

Eventually defendant stood up and informed the victim he was on private property. The victim apologized for being on the property and explained he was looking for his puppy. Defendant ran toward the victim’s dirt bike and “look[ed] around it.” The victim assumed defendant was looking for a license plate. The victim walked over to his dirt bike and watched defendant. The victim again apologized and told defendant he would leave.

The victim pulled the bike away from the wall, got onto the bike, and began rolling the bike away from the wall using his feet. The victim was heading toward the gap in the fence, so as to leave. Defendant jumped in front of the dirt bike and pointed a gun at the victim. Defendant was approximately two feet away from the dirt bike’s front tire. Defendant fired the gun. The victim thought defendant was trying to shoot the dirt bike’s motor, in order to stop him from leaving. The victim continued apologizing to defendant and telling her he was going to leave. Defendant continued to stand in front of the dirt bike.

With the dirt bike still turned off, the victim pushed the bike with his feet. The victim moved past defendant. Defendant shot the victim in his head. The victim fell to the ground. The victim had his helmet on when he was shot. The victim yelled, “Why?”

Why?” Defendant continued to point the gun at the victim. Defendant’s father came to where the victim was sitting. Defendant’s father also pointed a gun at the victim. The victim said, “Call 911.” Defendant’s father said, “Shut up, you son of a bitch.” The victim tried to dial 911 on his own cell phone, but defendant’s father kicked the victim six or seven times, so he was unable to call 911. The victim was unable to stand, so he could not defend himself from the kicks. After approximately five minutes, defendant called 911. The victim has not seen his puppy since July 22, 2012.

B. DEFENDANT’S CASE

Defendant was reading a book when one of her dogs began barking. Defendant looked out the window and saw the victim rattling the front gate. The victim rattled the gate for approximately one minute, while defendant watched from inside the house. The victim’s dirt bike was parked next to him. The victim got on the dirt bike and rolled downhill, with the bike off. Defendant exited the house through the backdoor, so she could see where the victim was going.

Defendant went back inside the house and watched the victim from the window. The victim went to a neighboring property, which is a business, and rattled the gate on that property. Defendant left the window to turn on a security camera. Eventually, defendant thought the victim had left, so she turned off the security camera.

Defendant armed herself with a gun, picked up her cell phone and went outside to the southern end of the property, where she saw the victim’s motorcycle leaning against the block wall. Defendant called her father, who was in the house, on her cell

phone. Defendant hung up with her father, squatted down on her knees, and was petting her dog.

After approximately 45 seconds, the victim, who was not wearing a helmet, spoke to defendant. The victim asked if defendant had seen his dog. Defendant said she had not seen the victim's dog. The victim was standing on property belonging to a trucking company—he was not on defendant's parents' property. Defendant told the victim he was trespassing. The victim responded, "I may be trespassing, but I am not trespassing on your property." Defendant asked the victim his name and if he had identification. The victim provided a first name and said he had identification, but would not show the identification to defendant. Defendant asked where the victim lived. The victim said "it was very difficult for him to picture where he lived from that location."

Defendant crawled through a barbwire fence and then walked toward the victim's dirt bike. Defendant looked for a license plate on the dirt bike. Twenty or 40 seconds later, the victim approached the dirt bike. Defendant was by the bike's rear tire, and the victim was by the front tire. The victim told defendant she "could take down all the numbers that [she] could find on his cycle." Defendant did not respond verbally, but she removed the gun from her pocket. Defendant considered shooting the dirt bike's tire so the victim would not leave, but then decided against that idea.

The victim swung his helmet at defendant. The gun fired. The victim got onto his dirt bike and walked the bike 45 or 50 feet in the direction of defendant's parents' house. Defendant backed away. The victim started the dirt bike after multiple tries.

The victim made a U-turn on the dirt bike, so he was going in the direction of defendant. When the dirt bike was inches from defendant, she moved, and the bike struck her left leg. Defendant instinctively pushed the victim's upper torso with her right hand as he went by her. The gun was in defendant's right hand. Defendant shot the victim.

The victim and the dirt bike proceeded beyond defendant, but then the dirt bike fell down. The victim approached defendant, removed his helmet, and threw it. Defendant backed away. The victim stopped. Defendant's father arrived and suggested the victim sit down. Defendant called 911.

DISCUSSION

A. MIRANDA

1. *PROCEDURAL HISTORY*

Prior to trial, defendant filed a motion to suppress statements allegedly obtained in violation of her *Miranda* rights. The trial court held an evidentiary hearing on the motion. At approximately 5:45 p.m., on July 22, 2012, defendant was handcuffed and placed in the back of a patrol car. Defendant remained handcuffed in the back of the patrol car, at her parents' house, for a minimum of one hour. Defendant was not free to leave while handcuffed in the back of the patrol vehicle.

Defendant was transported to the Sheriff's station in Jurupa Valley. Defendant was unhandcuffed and placed in a holding cell. Defendant's ankle was chained to the floor. Defendant was not free to leave while chained in the holding cell. Defendant remained in the holding cell for approximately 60 or 90 minutes, until 8:30 or 9:00 p.m.

Defendant was kept in the holding cell because Riverside County Sheriff's Deputy Carrasco was preparing to interview defendant. Carrasco was gathering his notes and speaking to deputies who assisted in the investigation.

At 8:30 or 9:00 p.m., Carrasco unchained defendant and brought her to an interview room. At that point, Carrasco thought of defendant as a witness, rather than a suspect. In the interview room, Carrasco told defendant she was not under arrest and she was free to leave. Defendant asked what would happen if she left. Carrasco responded, "If you were to leave then I would go talk to you, I would have to go uh, talk to you somewhere else." Defendant responded, "Just curious," and proceeded to participate in the interview.

Defendant and Carrasco discussed prior thefts from defendant's parents' property. In regard to the events of July 22, defendant explained her dog barked, she looked out a window and saw the victim's dirt bike, and then saw the victim leave on his dirt bike. Defendant explained that she tried to record the victim on the security camera, and then decided to check the back of the property. Defendant told Carrasco she took a gun and cell phone with her. Defendant called her father when she saw the victim's dirt bike leaning against a block wall, which was on the easement belonging to the neighboring property, approximately 150 feet away. Defendant kneeled down while calling her father.

Defendant explained that the victim asked her if she had seen his dog. Defendant said no, told the victim he was trespassing, and asked the victim his name. The victim gave a first name, and defendant asked for identification. The victim said he had

identification but would not show it to defendant. Defendant asked where the victim lived, and he said it was difficult to describe.

Defendant decided to write down the dirt bike's license plate number but could not find it. The victim then got onto the bike. Defendant "tried to shoot the tire out of the bike." Defendant then clarified that she was thinking about shooting the tire when the gun fired—she had not intended to pull the trigger; she missed the tire. Defendant explained she did not want the victim to leave before her father arrived. As to the second shot, defendant explained, "[T]here was a scuffle or something and the gun went off again and he was yelling and screaming and there was blood and"

Carrasco asked why defendant felt the need to shoot a person who asked about a lost puppy, was not on her parents' property, was approximately 150 feet away from her, and whose dirt bike was laying on the ground. Defendant responded, "[I]f there had been a license plate [or] some way to identify him I don't think shooting the tire would have entered my mind." Defendant said she did not intend to fire the gun the second time.

Carrasco asked if defendant was wearing his helmet the whole time. Defendant replied, "I don't think so." Carrasco asked if the victim provoked defendant into firing the gun. Defendant responded, "Not that I can recall" Carrasco decided to take a break. Defendant's father advised her not to speak to the deputies without an attorney. Defendant told Carrasco she did not want to speak to him without a lawyer. At that point, Carrasco arrested defendant and advised her of her *Miranda* rights.

At the hearing on defendant's suppression motion, the prosecutor argued that Carrasco told defendant she was free to leave, and defendant was not handcuffed or chained, so therefore, a reasonable person in that situation would have felt free to go. The court asked, "Well, what about the fact that as soon as [defendant] says, 'I don't want to talk to you,' having been told 'You're free to leave,'" immediately she's not free to leave. Doesn't that, sort of, undermine the credibility of the statement, 'You're free to leave?'" The prosecutor responded that the interview lasted approximately one hour, and during that interview defendant made incriminating statements that may have caused the officer to consider defendant to be a suspect.

Defense counsel asserted defendant did not make any inculpatory statements during the interview that would have caused Carrasco to change his mind about her possible guilt. The court asked, "If you don't believe they're inculpatory, why are you trying to exclude them?" Defense counsel responded, "There's things that I would prefer that the jury not hear, that's why. But they're not inculpatory as to this incident." Defense counsel asserted a reasonable person would not feel free to leave while shackled to the floor.

The court explained that the interview took place after defendant was unchained and told she could leave. Defense counsel asserted a person who had just been handcuffed in a patrol car and then chained to a floor would not feel free to leave even when she was told she could leave.

The court went through the factors that are to be considered when ruling on a motion to suppress due to an alleged *Miranda* violation. First, the court considered the

location of the interrogation. The court noted it took place in a police station, which indicates defendant was in custody. Second, as to formal arrest, the court concluded defendant had not been formally arrested because she was told she was not under arrest and told she could leave the station, which would indicate she was not in custody.

Third, in regard to objective indicia of being under arrest, the trial court found defendant had been handcuffed, transported to the sheriff's station, placed in a holding cell and shackled, but that she had also been unshackled, taken to an interview room, and advised she could leave. The court found this factor to be neutral—not indicating defendant was in or out of custody.

Fourth, the court found the length of detention was three hours, from 6:00 until approximately 9:00. The court noted the ratio of officers to defendant was one to one during the interview. The court found there was little evidence about Carrasco's demeanor during the questioning.

The court concluded that defendant was not handcuffed or restrained at the time of the interview and was told she could leave; and therefore, a reasonable person in that situation would not think they were in custody at the time of the interview. The court denied defendant's motion to suppress her statements.

2. ANALYSIS

a) Contention

Defendant contends the trial court erred by denying her motion to suppress statements allegedly taken in violation of her *Miranda* rights.

b) Law

“Because a *Miranda* warning is only required once custodial interrogation begins, the defendant must necessarily have been in custody in order to assert a violation. ‘In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation’ [Citation.] These circumstances must be measured ‘against an objective, legal standard: would a reasonable person in the suspect’s position during the interrogation experience a restraint on his or her freedom of movement to the degree normally associated with a formal arrest.’

“California courts have identified a number of factors relevant to this determination. While no one factor is conclusive, relevant factors include: ‘(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.’

“Additional factors include: ‘[W]hether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect’s freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were “aggressive, confrontational, and/or accusatory,” whether they pressured the suspect, and whether the suspect was arrested at the conclusion of the interview.’” (*People v. Bejasa* (2012) 205 Cal.App.4th 26, 35-36 (*Bejasa*).)

“In reviewing a trial court’s ruling on a motion to suppress evidence based upon a *Miranda* violation, “we accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.”” (*Bejasa, supra*, 205 Cal.App.4th at p. 35.)

c) Violation Analysis

The trial court found defendant had not been formally arrested at the time of the interview, and that conclusion is supported by substantial evidence, in that Carrasco explicitly told defendant she was not under arrest at the beginning of the interview. Thus, we turn to the other factors to determine if a reasonable person in the suspect’s position would have experienced a restraint on her freedom of movement to the degree normally associated with a formal arrest. (*Bejasa, supra*, 205 Cal.App.4th at p. 35.)

There is substantial evidence supporting the trial court’s conclusions that the length of detention was approximately three hours, it took place in a sheriff’s interview room, there was a ratio of one officer to one defendant, and there was little evidence concerning Carrasco’s demeanor during the interview. It is with regard to the additional factors that our analysis diverges from the trial court’s view.

The first additional factor is whether the defendant was told she could terminate the interview, and there is substantial evidence supporting the finding that she was thusly informed because Carrasco told defendant she was not under arrest and she was free to leave.

The second issue is whether the defendant agreed to the interview. The transcript of the interview reflects defendant asked what would happen if she left the police station, and Carrasco informed her, “If you were to leave then I would go talk to you, I would have to go uh, talk to you somewhere else.” Defendant then proceeded with the interview. There are no indications from the interview transcript that defendant was unwilling to speak to Carrasco. There came a point, after the interview, where defendant said she did not want to speak without a lawyer, but no similar statements were made prior to the interview—no affirmative indications that defendant would rather not speak to Carrasco. Instead, the indications in the interview transcript are that defendant and Carrasco had a conversation, and defendant was a willing participant in that conversation. For example, defendant asked Carrasco about the victim, which indicates a willingness to speak with Carrasco.

The third additional factor is whether there were restrictions on defendant’s freedom of movement during the interview. (*Bejasa, supra*, 205 Cal.App.4th at p. 36.) Defendant was not handcuffed or shackled, and she was told she could leave the sheriff’s station. However, when defendant asked what would happen if she left, she was informed that she would be questioned “somewhere else.” Thus, Carrasco gave the impression that wherever defendant went, the prospect of an interview would follow. As a result, defendant was not truly free to leave because Carrasco would be pursuing her in order to find her location and question her.

The fourth additional factor is whether the officer was domineering, controlling, aggressive, or accusatory. (*Bejasa, supra*, 205 Cal.App.4th at p. 36.) There is little

information in the record about Carrasco's demeanor. However, from reading a cold transcript of the interview, Carrasco seemed more curious than anything, trying to determine what caused defendant to shoot the victim. For example, Carrasco asked if the victim provoked defendant, which would arguably be a mitigating factor or defense, i.e., Carrasco asked questions that could have been helpful or beneficial to defendant—he was not accusatory.

In sum, the circumstances reflect defendant was handcuffed, transported in a patrol car to the sheriff's station, placed in a holding cell, shackled to the floor, unhandcuffed, unshackled, taken to an interview room, told she was not under arrest, told she could leave, and told that if she left then she would be questioned elsewhere. A reasonable person in defendant's situation would have experienced a restraint on her freedom of movement to the degree normally associated with a formal arrest because a person who has been handcuffed or shackled for hours, told she can leave, but then informed the deputy will merely question her "somewhere else" would feel as though she cannot free herself from the deputy's presence. A person under arrest would also feel unable to free herself from the presence of law enforcement. Accordingly, we conclude defendant's *Miranda* rights were violated, and the trial court erred by denying her motion.

At oral argument in this court, the People asserted this court's tentative opinion, which is set forth *ante* as our final opinion, violated the truth in evidence rule. The People argued (1) Carrasco told defendant she was free to leave, (2) Carrasco told defendant that if she left then he would question her "later" ("later" was used in oral

argument, not the transcript); (3) a reasonable person in that situation would feel free to leave; and therefore (4) this court is concluding admissible evidence should be excluded, which violates the truth-in-evidence-rule. The truth-in-evidence rule “was intended to eliminate judicial precedents interpreting the state Constitution to exclude otherwise admissible evidence.” (*People v. Macias* (1997) 16 Cal.4th 739, 749; *People v. Lazarus* (2015) 238 Cal.App.4th 734, 755.)

As explained *ante*, Carrasco told defendant that if she left, then he would question her “somewhere else.” A reasonable person in that situation could understand Carrasco’s comment as meaning that questioning by a law enforcement officer was inevitable—if defendant left, Carrasco would follow, and questioning would ensue. In that situation, the defendant is not free to leave the presence of law enforcement. In other words, while Carrasco told defendant she was free to leave, he also implied that leaving was futile. As a result, we are not persuaded that our conclusion would lead to the exclusion of otherwise admissible evidence.

d) Harmless Error

We now examine whether the trial court’s error was harmless.

The erroneous admission of statements obtained in violation of *Miranda* is reviewed for prejudice under the harmless beyond a reasonable doubt standard. (*People v. Villasenor* (2015) 242 Cal.App.4th 42, 68.) Under this standard, it must be shown “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (*Chapman v. California* (1967) 386 U.S. 18, 24.)

There were inconsistencies between defendant's testimony at trial and her unmirandized statements, two of which were notable. First, at trial, defendant said the victim swung his helmet at her. However, at the police station, defendant said the victim did not provoke her into shooting the gun. Second, at trial, defendant said the victim drove his dirt bike into her leg, which caused her to accidentally shoot the gun the second time. At the police station, defendant said there was "a scuffle or something" that caused the gun to be shot a second time.

The elements of assault with a firearm are: "(1) an assault, which requires the intent to commit a battery, and (2) the foreseeable consequence of which is the infliction of great bodily injury upon the subject of the assault." (*People v. Cook* (2001) 91 Cal.App.4th 910, 920.) The state's evidence reflected the victim was trying to leave, and communicated to defendant that he was trying to leave, thus not posing a threat to defendant at the time defendant blocked the victim's path and fired the first shot. The victim was again trying to leave when defendant fired the second shot.

The state's evidence reflects defendant was the aggressor in the situation, applying lethal force when the victim was trying to leave. Based upon this evidence, we conclude beyond a reasonable doubt that had the jury only been presented with the state's evidence, then the verdict would have been the same—defendant was guilty of assault with a deadly weapon. The state's evidence reflects defendant brandished the firearm and twice fired it, striking the victim in the head with the second shot. These actions reflect an assault with an intent to commit a battery, the foreseeable consequence of which is the infliction of great bodily injury, because while the first shot

could have been accidental, under the state's evidence, the second shot was fired while the dirt bike was turned off and the victim had moved past defendant—there was no struggle.

If defendant wanted to present a defense to the evidence by testifying to her version of the events, then the unmirandized statements could have been used to impeach her credibility to the extent her testimony was inconsistent with the prior statements. (*Harris v. New York* (1971) 401 U.S. 222, 225.) Thus, to the extent defendant wanted to present a defense, the jury still would have heard the unmirandized statements. As a result, the same evidence would have come in, and therefore, the error did not contribute to the verdict because the jury would have heard all of the same evidence absent the error.

In other words, the options were as follows: (1) rely solely on the state's evidence, which supports a finding of assault with a firearm because it reflects defendant was the aggressor who shot a fleeing victim; or (2) present a defense, which would require defendant to testify, since she was the only other person present when the shots were fired, which would then permit any inconsistent unmirandized statements to be used against her. Either way, the error did not contribute to the verdict, and therefore, we conclude the error was harmless beyond a reasonable doubt.

Defendant contends the error cannot be found harmless on the basis of the unmirandized statements being admissible as impeachment evidence because the state did not present that reasoning in the trial court and thus has forfeited it. Defendant also

contends the state failed to show defendant made the unmirandized statements voluntarily.

Defendant's forfeiture argument is not persuasive because we are discussing a reason for affirming, not reversing, the trial court. A correct decision will not be reversed on appeal merely because it is given for the wrong reason. If the decision is correct for any reason, it must be affirmed, regardless of the reasons that may have moved the trial court to its ruling. (*People v. Zapien* (1993) 4 Cal.4th 929, 976.) The forfeiture rule is applied in cases because a party cannot conceal a potential error from the trial court, and then come to the appellate court seeking a reversal—the party must bring the trial court's attention to the alleged error. If the party does not raise the issue at the trial court it is forfeited. (*People v. Saunders* (1993) 5 Cal.4th 580, 590.)

The state's impeachment theory is not one that needed to be called to the trial court's attention so as to avoid a potential error. Rather, the state's impeachment theory provides an alternate reason for affirming the trial court's ruling. It explains why the trial court's ruling was correct or harmless, even if the trial court's reasoning was wrong. (*People v. Zapien, supra*, 4 Cal.4th at p. 976.) Thus, we do not find defendant's forfeiture argument to be persuasive.

Next, we address whether defendant's unmirandized statements were voluntary. The law requires unmirandized statements to be voluntary if they are to be used to impeach credibility. (*People v. Neal* (2003) 31 Cal.4th 63, 67.) Voluntariness is determined by the totality of the circumstances. (*People v. Bradford* (1997) 14 Cal.4th

1005, 1041.) Statements are voluntary if the defendant freely and deliberately chose to speak with the officer. (*Id.* at p. 1042.)

As set forth *ante* in our discussion of defendant agreeing to the interview, the transcript of the interview reflects defendant asked what would happen if she left the police station, and Carrasco informed her, “If you were to leave then I would have to go uh, talk to you somewhere else.” Defendant then proceeded with the interview. It appears from the interview that defendant chose to speak to Carrasco. Defendant asked Carrasco how the victim was doing. There came a point, after the interview, where defendant said she did not want to speak without a lawyer, but no similar statements were made prior to the interview—no affirmative indications that defendant would rather not speak to Carrasco. Instead, the indications in the transcript are that defendant and Carrasco had a conversation, and defendant freely and deliberately participated in the conversation. For example, defendant asked how the victim was doing. Her question to Carrasco indicates a desire to talk with Carrasco. Accordingly, the evidence supports a finding that defendant’s unmirandized statements were voluntary, and thus could have been used for impeachment purposes. In sum, the trial court’s error was harmless.

B. CHARACTER EVIDENCE

1. *PROCEDURAL HISTORY*

After the jury was impaneled, defendant sought to introduce evidence that in 2000 the victim had used a crowbar or hammer to beat his ex-wife inside a residence; when the ex-wife fled the victim chased after her and tried to hit her with a truck.

Defendant asserted the 2000 incident was similar to the 2012 incident with defendant, because the victim swung his helmet at defendant and hit defendant with his dirt bike. Defense counsel explained that, in the 2000 case, the victim was charged with attempted murder and held to answer after a preliminary hearing; however, the victim's ex-wife did not cooperate with the prosecution and the victim ultimately pled to an unrelated drug offense.

Defendant sought to introduce the evidence to demonstrate the victim's propensity toward violence. Defendant asserted the evidence was relevant to proving she acted in self-defense. Defendant asserted the evidence would show "the way he brutalizes [women]."

Defendant planned to call one witness, the victim's ex-wife, to testify about the 2000 incident. Defendant asserted the entire testimony would take approximately 50 minutes. The trial court questioned how an attempted murder charge could be proven in less than one hour, especially if the instant attempted murder case would take "a few days." Defense counsel again asserted it would not "take that long" to prove the 2000 case.

The prosecutor asserted the evidence of the 2000 incident was not relevant because the facts of the instant case did not support a self-defense theory. Rather, the facts reflected defendant shot the victim because she did not want him to leave her parents' property. Further, the prosecutor argued the 2000 incident was a domestic violence case, which "is a very different situation" because defendant and the victim in the instant case did not know one another. The prosecutor noted the trial court had

already ruled defendant could be impeached with evidence of his prior convictions for burglary and robbery.

Next, the prosecutor asserted the 2000 case could not be proven in an hour. The prosecutor contended the victim's ex-wife's direct and cross examinations would likely take two hours; then the victim could also testify about the 2000 incident; there would also be officers who investigated the incident who need to be "track[ed] down"; as well as several witnesses who might testify. The prosecutor asserted there would need to be one day of testimony about the 2000 incident, plus a new transport order for the victim, which would require "a couple of days" and would be "dead time" during the trial—in all, the prosecutor estimated it would take four days for transporting the victim and presenting evidence. The prosecutor argued the character evidence was unduly prejudicial and would consume an undue amount of time.

The trial court sustained the prosecutor's Evidence Code section 352 objection to the evidence. The court found the evidence of the 2000 incident would "add a significant amount of time to the trial." The court was skeptical that the 2000 incident could be presented within a day, and did not believe the victim could be promptly transported from jail. Additionally, the court found the 2000 incident was a domestic violence case, and there is no indication in the current case that the victim tried to attack defendant due to defendant being weaker or being a woman. Finally, the court noted the 2000 crime was 12 years old, which the court concluded was "fairly remote." The court explained that if the victim had a propensity toward violence, it "would have come

out more th[a]n that one incident with his now former spouse.” The court concluded there was significant prejudicial value and little probative value in the evidence.

2. ANALYSIS

Defendant contends the trial court erred by excluding character evidence about the victim. (Evid. Code, § 1103, subd. (a).)

In a criminal case, evidence of a trait of the victim’s character is admissible if it is offered by the defendant to prove the victim acted in conformity with that character trait. A character trait can be proven by “specific instances of conduct.” (Evid. Code, § 1103, subd. (a)(1).) When self-defense is raised, evidence of the victim’s aggressive and violent character is admissible. (*People v. Wright* (1985) 39 Cal.3d 576, 587.)

However, the admission of such character evidence is limited by Evidence Code section 352. Evidence Code “[s]ection 352 directs ‘the trial judge to strike a careful balance between the probative value of the evidence and the danger of prejudice, confusion and undue time consumption. That section requires that the danger of these evils substantially outweigh the probative value of the evidence.’” (*People v. Wright, supra*, 39 Cal.3d at p. 587.) We apply the abuse of discretion standard of review. (*Id.* at p. 588.) An abuse of discretion is manifested when the trial court’s ruling is arbitrary, capricious, or patently absurd, such that it results in a manifest miscarriage of justice. (*People v. Russell* (2010) 50 Cal.4th 1228, 1246.)

The trial court found the domestic violence incident was not probative because it was 12 years old and involved a former spouse. The trial court reasoned that if the victim had a propensity for violence, it would have “come out more th[a]n that one

incident.” The trial court’s reasoning is logical. Evidence Code section 1103 reflects a character trait can be proven by “specific instances of conduct”—instances is plural, indicating more than one occasion. The evidence that the victim attacked his former spouse 12 years prior is not probative evidence of the victim having a character trait for violence toward women in general. The 12-year gap in time causes the domestic violence incident to appear isolated, as opposed to an ongoing character trait. Additionally, that there was a relationship between the victim and his former spouse reflects the violence was not random or directed toward women in general. As such, there was little probative value to the domestic violence incident because the domestic violence evidence sheds little light on the victim’s actions in this case, occurring 12 years later with a stranger.

The trial court also determined the domestic violence evidence would add a significant amount of time to the case, because there would be two attempted murder cases, rather than one, that would need to be tried—the instant attempted murder case and the 2000 attempted murder case. The trial court was within reason in concluding trying a 12 year old attempted murder case within the instant attempted murder case could add a significant amount of time to the trial given the age of the prior case and the various witnesses that could be needed, e.g., the police officers, witnesses, the victim, and the victim’s ex-wife.

Given the minimal probative value of the evidence, and the significant time that could be added to the trial by the presentation of the character evidence, the trial court’s

decision to exclude the character evidence was within the bounds of reason.

Accordingly, we conclude the trial court did not err.

C. BRADY VIOLATION

In a motion for new trial, defendant asserted the prosecutor committed a *Brady* violation. Defendant asserted that while the motion for new trial was being prepared, the defense discovered a newspaper article online, from December 12, 2003, reflecting the victim burglarized one residence in Murrieta and trespassed at a second residence in Lake Elsinore. In the burglary, the victim was found inside a home, wearing one of the resident's bra and panties. The victim fled after being discovered by a woman and her daughter. The following day, defendant drove his truck onto a property in Lake Elsinore and was chased away by a resident at the property. The victim was arrested by the Murrieta Police Department and the Lake Elsinore Police Department. The victim was later charged with being under the influence of a controlled substance and stealing a motorcycle.

Defendant asserted the prosecutor should have disclosed information related to the two incidents. Defendant contended the information would have been relevant “to show [the victim's] intent while on the [defendant's parents'] property and his modus operandi.”

The prosecutor responded to defendant's *Brady* violation argument. The prosecutor asserted he had disclosed the victim's CLETS CII printout (rap sheet) to the defense, which included the victim's arrests and convictions. The prosecutor further argued that the incident in the instant case occurred in Riverside, and did not involve

either the Murrieta or Lake Elsinore Police Departments. The prosecutor argued he was not responsible for disclosing information held by law enforcement agencies not affiliated with the current case.

The court held a hearing on the motion for new trial. The trial court asked if, in 2012, Lake Elsinore contracted with the Riverside County Sheriff's Department to provide law enforcement. The prosecutor confirmed Lake Elsinore contracted with the Sheriff's Department. The trial court asked why these two incidents, or one of the incidents, was not disclosed in the CLETS printout. The prosecutor responded, "We don't know, but it was—on those dates there are no entries for those kinds of arrests. And, again, I double-checked that with [defense counsel]. So, again, to this day, I don't know that those [arrest] reports exist."

The court asked defense counsel if he had more information about why the arrests were not reflected in the CLETS printout. Defense counsel said, "We assume, your Honor, that there were no reports if police made arrests in both situations. We assume probably that they have notes, probably then wrote a report based on those notes. Perhaps they destroyed the notes because—my understanding is that officers destroy the notes because they know they have to provide them to defense counsel."

The trial court asked, "[E]ven if I assume that the reports got written, and I suspect reports got written, that's what the police usually do. But even if I make those assumptions, why do we think that this would be admitted?" Defense counsel asserted it did not matter if the evidence was admissible because the evidence could have led the defense to find other admissible evidence. Defense counsel then asserted it was

reasonably probable the evidence would have led to a different result at trial because the jury could have heard the victim was arrested for being under the influence of a controlled substance and stealing a motorcycle. The trial court pointed out the jury had heard of the victim's methamphetamine use and moral turpitude convictions.

The prosecutor argued that while the Riverside County Sheriff's Department has contracted with various cities within the county to provide police services, that does not make the Sheriff's Department operating out of the Jurupa Valley station the same law enforcement agency as the Lake Elsinore Police Department. Next, the prosecutor asserted the victim's intent was not relevant, so the evidence at issue would have been relevant to impeach the victim, but the victim was "thoroughly impeached" at trial with multiple felonies, so the evidence at issue would not have led to a different result.

The trial court asked if, in 2003, Lake Elsinore contracted with the Riverside County Sheriff's Department. The prosecutor did not know the answer to the court's question. The court concluded "there were probably police reports prepared" and "that the Riverside County Sheriff's Office had access to them. They should have been produced to the defense, but they weren't material. I can't imagine how I would have admitted any of the evidence at all." The court remarked that the arrests at issue did not result in convictions and remarked, "I can't imagine that we would have admitted that evidence. And as a result, it's not going to affect even the determination of one juror."

2. ANALYSIS

Defendant contends the prosecutor committed a *Brady* violation by failing to disclose information about the victim's prior crimes in the area.

“We independently review the question [of] whether a *Brady* violation has occurred, but give great weight to any trial court findings of fact that are supported by substantial evidence.” (*People v. Letner* (2010) 50 Cal.4th 99, 176.) “In *Brady*, the United States Supreme Court held ‘that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.’ [Citation.] The high court has since held that the duty to disclose such evidence exists even though there has been no request by the accused [citation], that the duty encompasses impeachment evidence as well as exculpatory evidence [citation], and that the duty extends even to evidence known only to police investigators and not to the prosecutor [citation]. Such evidence is material “‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” [Citation.] In order to comply with *Brady*, therefore, ‘the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.’

“‘[T]he term “*Brady* violation” is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence—that is, to any suppression of so-called “*Brady* material”—although, strictly speaking, there is never a real “*Brady* violation” unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict. There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence

must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.’ [Citation.] Prejudice, in this context, focuses on ‘the materiality of the evidence to the issue of guilt and innocence.’ [Citation.] Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible [citation], that the absence of the suppressed evidence made conviction ‘more likely’ [citation], or that using the suppressed evidence to discredit a witness’s testimony ‘might have changed the outcome of the trial’ [citation]. A defendant instead ‘must show a “reasonable probability of a different result.”’” (*People v. Salazar* (2005) 35 Cal.4th 1031, 1043.)

For the sake of addressing defendant’s argument, we will assume, without deciding, that (1) arrest reports exist concerning the incidents in 2003; (2) the Riverside County Sheriff’s Department had access to the 2003 arrest reports; and (3) evidence concerning the 2003 arrests would have been admissible for impeachment purposes (see *People v. Wheeler* (1992) 4 Cal.4th 284, 296-297 [caution should be exercised when using evidence other than a felony conviction for impeachment]). With these assumptions in place, we address the issue of materiality.

At defendant’s trial, the jury learned that the victim, on July 21, 2012, at approximately 7:00 p.m. (the night before the incident at issue in this case), consumed alcohol and methamphetamine because it was his birthday. The victim explained that he was an addict and the methamphetamine was a birthday gift. It was also revealed that the victim had lied at a deposition wherein he testified that he had never used methamphetamine.

The victim admitted at trial that he was facing criminal charges in two or three separate cases, which could result in a “very lengthy prison term.” The charges concerned possession of methamphetamine. Additionally, the victim admitted he had suffered prior convictions for burglary, robbery, receiving stolen property, stealing a vehicle, and evading police.

Given that the jury learned (1) the victim lied at his deposition; (2) was facing charges in two or three separate cases; and (3) had a variety of theft-related prior convictions, it is not reasonably probable that information about two prior arrests in 2003 would have caused the jury to view the case differently such that a different result would have occurred had arrest information been disclosed to the defense. The arrest information was simply more of the same impeachment information that had already been given to the jury. The arrest information was perhaps weaker than the information the jury already had, since the jury had information about convictions, whereas the evidence at issue concerned arrests with apparently no filed charges. In sum, it is not reasonable to conclude a different result would have occurred if the arrest information, assuming it exists, had been disclosed to the defense.

D. CUMULATIVE ERROR

Defendant asserts the cumulative impact of the foregoing alleged errors violated her right to a fair trial. We have found only one error, related to the *Miranda* violation, and have concluded that error is harmless. Because there is only one harmless error, there is nothing to cumulate, and therefore we find defendant’s cumulative error

argument to be unpersuasive. (See *People v. Duff* (2014) 58 Cal.4th 527, 562 [“nothing to cumulate”].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.