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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ALAN MATHIS,

Defendant and Appellant.

2d Crim. No. B284562  
(Super. Ct. No. 17F-02283)  
(San Luis Obispo County)

Richard Alan Mathis appeals his conviction by jury of battery with serious bodily injury (Pen. Code, § 243, subd.(d))<sup>1</sup> and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)), with special findings that he personally inflicted great bodily injury on both counts (§§ 1192.7, subd. (c)(8); 12022.7, subd. (a)). Appellant admitted four prior prison term enhancements (§ 667.5, subd. (b)) and was sentenced to six years state prison. We affirm.

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<sup>1</sup> All statutory references are to the Penal Code.

### *Facts*

On March 17, 2017, appellant, Tony Padilla (the victim), and Janet Madonich were homeless and camping out next to an abandoned Coco's restaurant in Atsacadero. Padilla drank half a fifth of vodka and blacked out before bedtime. An hour or so later, Padilla was on top of Madonich, choking her. Padilla was drunk and didn't know what was going on. Madonich told Padilla, "Tony stop, it's Jan. I'm not a guy, I'm not fighting you. It's okay. Get off me." Madonich used her feet to push Padilla back toward his sleeping bag.

A few minutes later, Madonich heard yelling and swearing. She testified that Padilla was lying on his back and urinating on appellant who was sleeping next to him. Appellant cursed Padilla, stood up, and repeatedly punched and kicked him. Padilla was too drunk to fight back. Madonich screamed, "You're going to kill him, stop."

Appellant eventually stopped, laid down, and passed out. Blood was spattered all over the campsite and on Padilla's clothing and sleeping bag. Padilla had a broken nose and his eyes were swollen shut. Padilla and Madonich spoke to Atascadero Police Officer Aaron Brown the next morning. Padilla said that appellant beat him up but could not recall how it happened.

### *Confrontation Clause*

Appellant contends that his Sixth Amendment confrontation clause rights were violated when the trial court sustained a relevancy objection to two questions during the cross-examination of Madonich:

"Q. Are you under the influence of anything this morning?"

A. [MANDONICH] No, sir.

Q. Do you take any medication? Do you take any medication?

A. I do, yes.

Q. What kind of medication?

MR. PEUVRELLE [prosecutor]: Relevance.

THE COURT: Sustained

Q. Do you suffer from any mental illnesses?

MR. PEUVRELLE: Relevance.

THE COURT: Sustained.”

Appellant did not object to the ruling on confrontation clause grounds, thereby forfeiting the error. (*People v. Redd* (2010) 48 Cal.4th 691, 730 [hearsay objection did not preserve confrontation clause claim]; *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 313, fn. 3 [error forfeited by not objecting at trial]; *People v. Chaney* (2007) 148 Cal.App.4th 772, 779 [Confrontation Clause analysis is “distinctly different than that of a generalized hearsay problem”; issue forfeited].)

It is settled that the exclusion of irrelevant evidence does not violate the Confrontation Clause or impair an accused’s due process right to present a defense. (*United States v. Scheffer* (1998) 523 U.S. 303, 308; *People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) “[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant. . . . ‘[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever

extent, the defense might wish.’ [Citation.]” (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679; *People v. Jennings* (1991) 53 Cal.3d 334, 372 [Confrontation Clause not implicated where excluded evidence had slight relevance].)

Appellant claims that the mental illness question was relevant to show that Madonich lacked the ability to perceive, recall, or describe what happened. (See, e.g., *People v. Lewis* (2001) 26 Cal.4th 334, 356-357 [evidence of mental illness is a factor in determining witness credibility].) Madonich was taking medication but appellant was not permitted to ask what type of medication. Madonich, however, stated that she was not under the influence and consumed no drugs or alcohol the night of the assault. Appellant failed to make an offer of proof that Madonich suffered from a mental illness or was taking medication that could have affected her ability to perceive and recall events. “If the evidence the defendant seeks to elicit on cross-examination is not within the scope of the direct examination, an offer of proof is required to preserve the issue. [Citation.]” (*People v. Foss* (2007) 155 Cal.App.4th 113, 127.)

Assuming arguendo, that the court erred in sustaining the relevancy objection, the error was harmless beyond a reasonable doubt. (*People v. Geier* (2007) 41 Cal.4th 555, 608.) Madonich testified that “[m]y story has been consistently the same” and that her memory of the events was “vivid.” Madonich saw appellant kick Padilla in the ribs six or eight times and punch and kick him in the face four or five times. “Tony (i.e., Padilla) wasn’t fighting back so there wasn’t progressive anger and fighting going on. It was just [appellant] on Tony.” On cross, defense counsel questioned Madonich about the length of the assault, how much she screamed, and how many

times she camped out with Padilla and appellant. The only inconsistency was Madonich's prior statement to Officer Brown that Padilla was standing when he urinated on appellant and prior statement that Padilla had "evil in his eyes" when he choked her earlier that evening. Defense counsel commented on it in closing argument and argued that Madonich was trying to protect Padilla and was not credible.

Appellant makes no showing that the evidentiary rulings denied appellant a fair trial or violated his constitutional rights. (*People v. Partida* (2005) 37 Cal.4th 428, 436.) The evidence was overwhelming and established that appellant repeatedly hit and kicked Padilla. Madonich's testimony that Padilla did not fight back was corroborated by Padilla's and Officer Brown's testimony. Appellant argued that "[y]ou cannot go and pee on someone. That's -- that's against the law. [Appellant] has a right to defend himself." The jury reasonably concluded that the right of self-defense ceases to exist when one's attacker no longer appears capable of inflicting harm. (CALCRIM No. 3474; *People v. Crandell* (1988) 46 Cal.3d 833, 873.) Absent a showing that the prohibited cross-examination would have produced a significantly different impression of Madonich's credibility, the trial court's exclusion of evidence of marginal impeachment value did not violate the Sixth Amendment. (*People v. Pearson* (2013) 56 Cal.4th 393, 455-456.)

*Disposition*

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Craig B. Van Rooyen, Judge

Superior Court County of San Luis Obispo

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