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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DELFINO JAVIER  
SOLORZANO,

Defendant and Appellant.

B285169

(Los Angeles County  
Super. Ct. No. BA456413)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Craig E. Veals, Judge. Affirmed.

Andrea Keith for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant  
Attorney General, Steven E. Mercer and Michael C. Keller,  
Deputy Attorneys General, for Plaintiff and Respondent.

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Delfino Javier Solorzano was convicted following a jury  
trial of injuring a current or former cohabitant (Pen. Code,

§ 273.5, subd. (a)) with a finding he had inflicted great bodily injury under circumstances involving domestic violence (Pen. Code, § 12022.7, subd. (e)). On appeal Solorzano contends the trial court committed prejudicial error by admitting hearsay statements of the victim, Monica O., contained in the audio portion of the video from the responding police officer's body camera, as well as the victim's subsequent statements to hospital staff, a social worker and a detective. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The People's Evidence*

#### *a. Solorzano and Monica's relationship*

Solorzano and Monica met at work mid-summer 2015 and dated on and off for 18 months. Solorzano lived with Monica at her house for about a year until mid-December 2016 when she told him to leave after one of their frequent arguments.

#### *b. The 911 call and Monica's statements to responding police officers*

On December 31, 2016 Monica had dinner with Solorzano at a family gathering at his grandmother's house. After she and Solorzano had an argument, Monica drove home. However, later that night she joined Solorzano at another party.

At 4:31 a.m. on January 1, 2017 Monica called the 911 emergency operator and reported, "My boyfriend just beat me up." She identified Solorzano by name as her boyfriend and described his ethnicity, age and clothing. She said she needed an ambulance, and the emergency operator transferred the call to the fire department. Monica provided the location of the laundromat where she was parked and described the color, make and model of her car. She repeated that her boyfriend had beaten her up and said he was in her house.

Los Angeles Police Officers Frank Vidaure and James Tuck responded to the call. They approached Monica's vehicle at the laundromat, and Vidaure saw Monica in the driver's side of the car. He observed lacerations on her forehead and above her eyebrows, as well as swelling around her face and eyes, and a lot of blood in the vehicle.

As recorded by Officer Vidaure's body camera, Monica again identified Solorzano, spelled his name and provided his ethnicity, date of birth, height and a description of his clothing. She described Solorzano as bald-headed and having a lot of tattoos. When Vidaure asked Monica what Solorzano had hit her with, she replied, "Everything." Asked what caused Solorzano to "get all crazy," Monica at first said she did not know and then said Solorzano was drunk. She told Vidaure she was having trouble breathing and thought her ribs were broken.

*c. Monica's statements at the hospital*

Monica was transported by ambulance to the hospital where she arrived around 5:00 a.m. According to hospital records, Monica "remember[ed] event" and had been "assaulted with closed fists to face and all over body" and "also thrown against furniture and into a mirror." The records reported she had "multiple significant trauma," including multiple rib fractures and a collapsed lung.

Monica spoke with Artemio Rodriguez Enriquez, a clinical social worker at the hospital, around 8:00 a.m. on January 1, 2017. According to Rodriguez Enriquez, Monica explained she had been assaulted by her boyfriend, who was drunk at the time of the incident. She informed Rodriguez Enriquez she was living with her boyfriend but did not plan to return. Instead, she would stay with her mother upon discharge from the hospital while she

looked for a different place to live. She also told Rodriguez Enriquez she wanted to obtain a restraining order against Solorzano.

On January 2, 2017 Los Angeles Police Detective Sean Dempsey and his partner spoke with Monica at the hospital. Monica was initially uncooperative and refused to provide any information. After the detectives spent some time with her and gained her trust, Monica described what had happened to her.

Monica told the detectives that, after she and Solorzano returned home from a New Year's Eve party, Solorzano started beating her for an unknown reason. She said Solorzano had been in an argument with his brother earlier, but she had no idea why Solorzano was upset at her. Solorzano hit her with his fists; and, when she fell to the ground, he kicked her. She covered her face and pretended she was unconscious or dead. Eventually Solorzano stopped attacking her and went to the bathroom. As soon as he stepped out of the room, Monica grabbed her keys, reached her car, drove down the hill and called the police. Detective Dempsey showed Monica a photograph of Solorzano. She acknowledged the photograph depicted the person who beat her but refused to sign it. She also refused to memorialize a statement in writing or dictate a statement to sign.

On January 10, 2017 and again on January 17, 2017 Detective Dempsey called Monica and requested Solorzano's telephone number. She claimed she had deleted Solorzano's number from her phone.

d. *Monica's trial testimony*

At trial Monica claimed she could not recall what had happened to her because she was “very, very intoxicated at the time.” Specifically, although she at first responded affirmatively when asked if “something happened with [Solorzano] around 4:00 in the morning,” she testified she did not remember what had happened because she was intoxicated. Almost immediately she clarified she did not even remember something happening to her. Monica did not remember calling the 911 emergency operator or talking with police officers.

Monica also testified she did not remember talking with anyone at the hospital about what had happened to her. Although she recalled she met social workers at the hospital and they had given her some written materials, she said she did not recall talking with them. Similarly, she recalled seeing Detective Dempsey at the hospital but did not remember speaking with him and remembered conversations with hospital doctors about her pain but not whether they had talked to her about what happened.

2. *The Defense Evidence*

Solorzano testified he went to a barbecue at his grandmother's house in the late afternoon on New Year's Eve. Monica arrived later, had perhaps one beer at the barbecue and left alone after they had an argument about the food.

Solorzano went to a second party with his brother. Monica asked to join him at the party. When she arrived, she was “really intoxicated.” She continued to drink and had beer and whiskey at the party. While at the party, Solorzano received a text message from a woman. Monica became angry, and they argued about the text message. Monica left the second party alone.

Solorzano testified he did not see Monica again for the rest of that night or the following day. He remained at the party until 12:30 a.m. and then went to a friend's house, where he stayed overnight. He left after sunrise to go to work. He did not learn Monica had been hurt until she texted him in April accusing him of beating her.

Solorzano's friend, Vivienne Arregui, testified Solorzano arrived at her house sometime between 1:00 a.m. and 2:00 a.m. on January 1, 2017 and did not leave until after the sun was already up.

### *3. Solorzano's Hearsay Objections and the Trial Court's Evidentiary Ruling*

At trial Solorzano objected to Monica's statements on the recording from Officer Vidaure's body camera and her statements to hospital staff, Rodriguez Enriquez and Detective Dempsey as inadmissible hearsay.<sup>1</sup> The trial court overruled the objections, finding the challenged statements were admissible as both spontaneous statements (Evid. Code, § 1240) and prior inconsistent statements (Evid. Code, § 1235).

### *4. Verdict and Sentencing*

The jury found Solorzano guilty of injuring a current or former cohabitant and found true the special allegation he had inflicted great bodily injury under circumstances involving domestic violence. The trial court sentenced Solorzano to a state prison term of seven years.

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<sup>1</sup> Solorzano did not object to admission of the recording of her call to the 911 emergency operator.

## DISCUSSION

### 1. *Governing Law*

Hearsay is “evidence of 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.) Except as otherwise provided by law, hearsay is inadmissible. (*Ibid.*) Evidence Code section 1235 provides one such exception to the hearsay rule: “Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing and is offered in compliance with Section 770.”<sup>2</sup>

Inconsistency in effect, not contradiction in express terms, is required for evidence of a witness’s prior statement to fall within the scope of Evidence Code section 1235. (*People v. Homick* (2012) 55 Cal.4th 816, 859.) “[W]hen a witness’s claim of lack of memory amounts to deliberate evasion, inconsistency is implied. [Citation.] As long as there is a reasonable basis in the record for concluding that the witness’s ‘I don’t remember’ statements are evasive and untruthful, admission of his or her prior statements is proper.” (*Ibid.*; see *People v. Bryant* (2014) 60 Cal.4th 335, 415 [affirming trial court’s admission of witness’s statements as prior inconsistent statements because the trial

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<sup>2</sup> Evidence Code section 770 provides, “Unless the interests of justice otherwise require, extrinsic evidence of a statement made by a witness that is inconsistent with any part of his testimony at the hearing shall be excluded unless: [¶] (a) The witness was so examined while testifying as to give him an opportunity to explain or deny the statement; or [¶] (b) The witness has not been excused from giving further testimony in the action.” Solorzano does not contend any failure of compliance with Evidence Code section 770.

court “reasonably found” the witness’s claimed failure of recollection was “actually a deliberate evasion tantamount to a denial”].)

We review for abuse of discretion the trial court’s rulings on the admission of evidence, including the decision to admit hearsay evidence as falling within a statutory exception. (*People v. Homick*, *supra*, 55 Cal.4th at p. 859; see *People v. Mora and Rangel* (2018) 5 Cal.5th 442, 502.)

2. *The Trial Court Did Not Abuse Its Discretion in Admitting Monica’s Prior Statements*

The trial court had a reasonable basis to find Monica’s claimed memory loss constituted deliberate evasion and thus to admit her statements to the responding police officers and at the hospital as prior inconsistent statements. Indeed, overwhelming evidence supports this conclusion.<sup>3</sup>

a. *Monica’s unimpaired cognitive abilities in the immediate aftermath of the beating*

Notwithstanding Monica’s testimony she was too drunk to recall how she had suffered her injuries, she was not so intoxicated that she could not explain during the emergency call what happened to her, provide a detailed description of Solorzano, identify the color, make and model of her car or specify her location. Similarly, during her conversation with Officer Vidaure she was able to identify her attacker, spell Solorzano’s first and last names, recall his date of birth, describe Solorzano in

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<sup>3</sup> Because admission of the challenged statements under Evidence Code section 1235 was well within the trial court’s discretion, we need not address whether some or all of those statements were also admissible under Evidence Code section 1240.



great detail including his height, and provide her own address, date of birth, telephone number and driver's license number. She continued to be able to explain what happened to her and recall who beat her in her subsequent conversations at the hospital on New Year's Day as well as the following day.

Officer Vidaure testified Monica's breath did not smell of alcohol when he spoke to her outside the laundromat. Detective Dempsey testified she was alert and there was nothing in his interaction with her that indicated she was in an altered state. Rodriguez Enriquez also testified she was alert and coherent and her thought processes were intact.

Solorzano argues Monica's medical records, admitted as a trial exhibit, show a high blood alcohol content and support her testimony that her intoxicated state caused her failure of recollection. Buried at page 278 of an exhibit of well over 500 pages, the serum toxicology report indicates the ethanol (alcohol) level in Monica's blood at 6:52 a.m. on January 1, 2017. However, neither the serum toxicology report nor the reported level of ethanol in Monica's bloodstream was mentioned or explained during the trial. Moreover, Solorzano failed at trial to introduce evidence of the impact, if any, the reported level of ethanol in Monica's blood would have had on her memory or other cognitive functions. The medical records thus fail to establish the trial court erred. (See *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 78 [trial court did not err in admitting evidence of witness's prior inconsistent statements despite testimony at trial she had problems recalling what happened after taking Elavil; not only was the trial court in the best position to assess the credibility of witness's claimed inability to recall, but also no medical evidence had been

presented to the trial court to prove defendant's assertion of memory loss as a "known side effect" of the medication].)

b. *Monica's reluctance to incriminate Solorzano*

In addition to evidence that Monica's cognitive abilities were not substantially impaired in the time following the attack, the trial court had several other bases for concluding Monica's lack of memory was feigned. First, Monica admitted she wanted to protect Solorzano from criminal liability.<sup>4</sup> She testified she did not want any charges against him to move forward and did not want him to go to jail or prison. She was concerned about his children, even though they were not her own, and did not want him to be separated from them.

In fact, Monica had been an uncooperative witness and reluctant to provide information that could be used against Solorzano from shortly after her beating. Detective Dempsey testified it was difficult to extract information from her at the hospital. As discussed, although she identified Solorzano by his photograph as her attacker, she refused to sign the photograph and refused to memorialize her statement to Dempsey in writing or dictate a statement to sign. When Dempsey asked Monica for Solorzano's phone number in January 2017, she claimed she had deleted it from her phone. However, Solorzano admitted she texted Solorzano in April 2017.

Moreover, Monica disingenuously attempted at trial to minimize her relationship with Solorzano, insisting she never

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<sup>4</sup> Rodriguez Enriquez, who had studied domestic violence as part of his master's program in social work and who worked with victims of domestic violence on a weekly basis in the course of his employment as a social worker at the hospital, testified it is common for victims of domestic violence to protect the abuser.

called him her boyfriend. Her testimony was belied by the evidence she had repeatedly referred to Solorzano as her boyfriend during the call to the emergency operator and also to Rodriguez Enriquez at the hospital.

c. *Monica's emotional reaction to the recording of her emergency call and the body camera video*

Monica became upset when the audio recording from her emergency call and the video from Officer Vidaure's body camera were played to the jury. Although claiming she had no recollection of what had happened to her, she testified she did not want to hear or look at these recordings because "[i]t's . . . not something I want to reexperience"; "what [she] went through" was "traumatic"; and she did not like talking about it.

d. *Monica's evasiveness regarding her April texts*

Monica's evasiveness about her April 2017 texts to Solorzano also casts serious doubt as to the genuineness of her claim of memory loss. When asked at trial if she had talked to Solorzano since the incident, Monica acknowledged she had texted him a couple of times. She at first claimed she did not remember what her texts said. When asked if she had her phone with her, she said she had deleted the texts. When pressed to answer whether she had any idea what she had said in the texts, she responded she had texted "all kinds of crazy stuff" and "a long stream" of "stupid things," such as "a lot of . . . mean things like you should treat women the way that you would treat your daughters or you would want your daughters treated." Monica insisted she had sent the texts "mostly" because of Solorzano's cheating with other women; she made no mention of referring to Solorzano's having beaten her in the texts. Solorzano, however,

testified Monica had texted him in April accusing him of beating her.

Given the brutality of the beating she received, which resulted in a collapsed lung and broken ribs, it strains credulity that Monica could not recall she had accused Solorzano of beating her in texts sent months after the effects of any intoxication would have worn off.

e. *The selectiveness of Monica's memory*

Pointing out that Monica had provided information, including a detailed account of what she remembered at the hospital, in response to questioning during trial, Solorzano contends the trial court improperly found Monica was being evasive at trial. But Monica only selectively recalled the events of New Year's Eve and the following day, and it was entirely reasonable for the court to conclude she was deliberately refusing to testify in a way that would incriminate Solorzano. It is true Monica generally remembered events before the beating, such as the dinner at the home of Solorzano's grandmother and attending the second party, and she recalled waking up at the hospital after the beating. The selectiveness of Monica's memory, however, supports, rather than negates, a finding of deliberate evasion. (See *People v. Green* (1971) 3 Cal.3d 981, 986-989 [affirming admission of witness's extrajudicial statements, which implicated defendant in crime of furnishing marijuana to witness, as prior inconsistent statements where at trial the witness remembered events leading up to and following the crucial moment when the cannabis came into his possession, but witness "conveniently" forgot the actual transfer of the contraband and blamed his memory lapse on his LSD use].)

In sum, the trial court reasonably concluded Monica's claimed memory lapse at trial amounted to deliberate evasion. It did not abuse its discretion by admitting evidence of her prior statements under Evidence Code section 1235.

**DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

WILEY, J.\*

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\* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.