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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JASON DANA PAUL, Defendant and Appellant.	B235151 (Los Angeles County Super. Ct. No. LA 064489)

APPEAL from a judgment of the Superior Court of Los Angeles County, Martin Larry Herscovitz, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Louis W. Karlin, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Jason Dana Paul was convicted of 10 counts of violent felonies. The substantive offenses were attempted first degree murder, assault on a peace officer with a semiautomatic firearm, possession of a machine gun and possession of an assault weapon, importing a large capacity magazine, two assaults with a firearm and mayhem. The sole contention on appeal relates to his conviction for the possession of a sap, which he claims violated his Second Amendment rights. The jury found true multiple firearm enhancements that are not necessary to detail. The trial court designated the assault on a peace officer as the principal term and imposed a six-year middle term sentence plus a 25-year-to-life firearm enhancement for this offense. Given a concurrent life term for the attempted murder count, the gist of it is that appellant will spend the rest of his life in prison.[1]

FACTS

The violence that spawned these convictions began between appellant and his fiancée, Wendy Rector, during the night hours of February 10, 2010, when appellant returned home, intoxicated and angry, to the condominium they shared in Tarzana. In light of the limited nature of the contention on appeal, we limit our account of the facts to the essentials. The assault on Rector began with pushing her to the floor, banging her head against the floor and kicking her and continuing with this until Rector managed to flee to a neighboring unit, where a neighbor, Lawrence Hill, had already called 911. Appellant pursued Rector to Hill's unit, kicked in the door, and began to fire a handgun, hitting Rector twice, once in the pelvic area. The latter proved to be a very serious wound. Hill's testimony confirmed Rector's account of how appellant broke into Hill's condominium and started shooting.

Police Officers Majors and Haro arrived on the scene and found that appellant had barricaded himself in his condominium. Appellant shot at the officers, who were trying to escort fire department personnel into Hill's condominium to take charge of Rector.

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[1] Appellant was 40 years old at the time of sentencing; the trial court calculated that he would have to live to 103 before becoming eligible for parole.

The officers found Rector lying on the ground in Hill's condominium, unable to rise. In the meantime, appellant was in his unit, firing gunshots and yelling at the police, challenging them to come get him. The standoff finally ended after approximately four hours.

A search of appellant's unit yielded two Glock handguns, a loaded .45-caliber semiautomatic and other rifles, shotguns and loaded firearms. In the home office of appellant's unit, the officers found a sap, which one of the officers described as follows: "To put it in layman's terms, it's a bludgeoning tool. It's used for blunt force trauma. Basically police back in the day, long before my time, used to use it basically to knock people out."

Appellant testified in his defense, essentially corroborating the sequence of events, but attempting to soft-peddle these dire events.

DISCUSSION

Appellant acknowledges that Penal Code former section 12020, reenacted in 2010 as section 22210, prohibits the possession a "weapon of the kind commonly known as a billy, blackjack, sandbag, sandclub, sap, or slungshot." He contends, however, that under *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*), the decision that struck down an ordinance prohibiting handguns in the home, the prohibition of possession of a sap violates his rights under the Second Amendment.

We agree with respondent that appellant's failure to assert this contention in the trial court forfeits this issue in this court. As respondent points out, constitutional claims must be raised in the trial court to preserve the claim for appellate review. (*People v. Smith* (2001) 24 Cal.4th 849, 852.) *Heller* was decided on June 26, 2008, and appellant's case was tried in May 2011 so there is no question that the principles appellant seeks to vindicate in this appeal were public knowledge when he was tried. We note that appellant's effort in his reply brief to resuscitate his claim is marginal at best, as we find unconvincing that the question is one of law involving undisputed facts. If this were dispositive, few constitutional claims would ever be forfeited.

It is also true that the claim, forfeited as it is, lacks anything to recommend it. While we appreciate appellate defense counsel's able presentation of the claim, the idea that the Congress that promulgated the Bill of Rights and the states that ratified it would have given a sap constitutional protection is simply bizarre. And even if one takes a more forgiving approach to constitutional interpretation, we doubt that anyone could be found today who thinks that a sap should be protected by the Second Amendment. Be that as it may, we base our decision in this appeal on the fact that appellant's claim is forfeited.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.