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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER LEE HOSLEY,

Defendant and Appellant.

D063417

(Super. Ct. No. SCE314350)

APPEAL from a judgment of the Superior Court of San Diego County, Allan J. Preckel, Judge. Affirmed.

Law Office of Kurt David Hermansen and Kurt David Hermansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Charles C. Raglund and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Walter Lee Hosley appeals the judgment sentencing him to prison after a jury found him guilty of one count of robbery and two counts of burglary. Hosley complains the trial court erroneously precluded him from cross-examining the People's key witness about his reputation for honesty. We disagree and affirm the judgment.

I.

FACTUAL BACKGROUND

A. *The People's Case-in-chief*

John Conely owns and operates a motorcycle repair shop. Conely described his tools as his "livelihood." He kept them in his shop and did not loan them out to anyone. He marked "a good majority" of his tools with his initials.

Hosley did an "internship" at Conely's shop during which Conely taught Hosley how to rebuild engines and perform other repairs in exchange for Hosley's labor. Conely did not pay Hosley money for his labor. In early July 2011, Conely and Hosley had a "falling out" when Conely discovered Hosley had stolen an exhaust pipe. The two men had a "heated discussion" in which Hosley told Conely, "[You] don't know what stealing is like. [I]'ll show [you] what stealing is like." After that discussion, Hosley never again reported to work at Conely's shop.

On July 19, 2011, an acquaintance rented a U-Haul truck for Hosley. Hosley's telephone number and e-mail address were listed on the rental application. After paying for the rental, Hosley drove off in the truck. The U-Haul records indicated the truck was rented at 5:19 p.m. and returned two days later.

At approximately 8:00 p.m. on July 19, 2011, as Conely was working in his shop, a man with a gold tooth whom Conely had never seen before entered the shop; pointed a gun at Conely; and told him to get on the floor and not move, or else he would be shot. Conely then saw a U-Haul truck back into the shop. He recognized Hosley as the driver. The gold-toothed gunman tied Conely up and moved him into the office. While Conely was in the office, he saw the gold-toothed gunman, Hosley, and two other persons in the shop and heard them loading tools, parts, and other items into the truck. The robbers also stole Conely's wallet, mobile telephone, and other personal property.

After the robbers departed in the U-Haul truck, Conely freed himself and pursued the truck on a motorcycle. As Conely neared the truck, he spotted a patrol car pulling into a sheriff's station, broke off his pursuit, and went to the station to report the robbery.

The day after the robbery, Conely received a telephone call from Hosley. Hosley said he heard Conely had accused him of robbery. Conely said, "I want my stuff back." Hosley responded, "You'll get your stuff back when you give me my stuff." Conely had borrowed but not returned some motorcycle parts from Hosley.

On July 21, 2011, Hosley entered a pawn shop and pawned several tools. Two days later, Hosley returned to the pawn shop and pawned three more tools. One of the pawned tools had Conely's initials on it, and three others had serial numbers that matched items that Conely bought. Video surveillance captured Hosley pawning the items, and he signed forms stating he owned them.

Approximately six weeks after the robbery, police executed a search warrant at Hosley's house. Conely identified several tools, motorcycle parts, and other items that

had been stolen from his shop. Some of the items bore Conely's initials, and others had serial numbers that matched items Conely had bought.

B. *Hosley's Case*

Hosley presented an alibi defense. His self-described "significant other," Stephanie Edwards, testified she and Hosley lived together and were at home watching television at the time Conely was robbed at his motorcycle shop. Edwards testified Hosley rented a U-Haul truck earlier in the day to move items from his ex-wife's house, but he returned the truck before the robbery occurred. Edwards also testified Conely compensated Hosley for his labor by giving him tools and motorcycle parts rather than money. According to Edwards, Conely is not honest and has a reputation in the motorcycle community for not being honest.

Hosley's business partner, Kevin Schoep, also testified on Hosley's behalf. Before starting a motorcycle repair business with Hosley, Schoep worked at Conely's repair shop. Schoep testified Conely paid him in cash "under the tables," but paid Hosley with parts and tools. According to Schoep, Conely "doesn't keep his word," and his reputation in the motorcycle community is "not good" because "he lies and he doesn't do good work."

Finally, Hosley's son testified that on the day of the robbery, he helped his father move furniture, tools, and personal items in a U-Haul truck from Hosley's ex-wife's house to Hosley's house. According to Hosley's son, he and his father started moving items at approximately 2:00 p.m. and finished when "[i]t was getting dark."

C. *The People's Rebuttal Case*

In rebuttal, the People called Hosley's ex-wife. She testified that in the month in which Conely was robbed, she saw Hosley and his son move items out of her garage using a Ford pickup truck, but never saw them using a U-Haul truck.

II.

PROCEDURAL BACKGROUND

A jury found Hosley guilty of robbery of Conely (Pen. Code, § 211), burglary of Conely's motorcycle shop (*id.*, § 459), and burglary of the pawn shop (*ibid.*). In a separate bench trial, the court found true allegations that Hosley had two prior serious felony convictions that triggered five-year enhancements (*id.*, § 667, subd. (a)(1)) and constituted strikes for purposes of the "Three Strikes" law (*id.*, §§ 667, subds. (b)-(i), 1170.12). At the sentencing hearing, the court dismissed the allegations concerning one of the prior convictions and sentenced Hosley as a second-strike offender to an aggregate prison term of 21 years four months.

III.

DISCUSSION

Hosley contends the judgment must be reversed because the trial court committed evidentiary error and violated his constitutional rights by preventing his trial counsel from cross-examining Conely about his reputation for honesty. Hosley also contends the cumulative effect of the trial court's errors deprived him of a fair trial. We shall address, and reject, these contentions in turn.

A. *The Trial Court Did Not Prejudicially Err by Precluding Cross-examination of Conely About a Disparaging Magazine Article or His Reputation in the Motorcycle Community*

Hosley argues the trial court erred by precluding cross-examination of Conely about his reputation in the motorcycle community and a magazine feature that identified him as a dishonest businessman. According to Hosley, "this case rested on credibility," and there is a reasonable chance he would have obtained a more favorable result at trial had the precluded cross-examination been allowed. After setting forth additional background and the standard of review, we shall explain why these contentions lack merit.

1. *Additional Background*

The People moved in limine for an order requiring Hosley to disclose any impeachment evidence he planned to introduce regarding the People's witnesses, and asked the court to conduct the balancing test under Evidence Code section 352 to determine the admissibility of such evidence.¹ At the hearing on the motion, Hosley's trial counsel stated that he planned to cross-examine Conely about his inclusion in Full Throttle magazine's "Hall of Shame" for shady business practices. Since Conely's "business dealings and the truthfulness with which he conducted them are very much central to his credibility," counsel argued, cross-examining Conely about the magazine

¹ Evidence Code section 352 gives a trial court discretion to exclude relevant 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."

article would help "the jury to determine whether or not he can be believed as to the event he's describing."

The court ruled Conely was "subject to impeachment by otherwise admissible character evidence. If somebody wants to pop in and say, 'Hey, I've dealt with Mr. Conely, and . . . he's a snake-oil salesman in the low desert,' so be it." But the court was "not going to permit the kind of inquiry that goes along the lines of, 'Well, you've been in this business for some time, and you're familiar with this publication that I'm holding in my hand, and it lists you as a member of the Hall of Shame, does it not, Mr. Conely?' That is a type of inquiry that I would not permit, upon a[n Evidence Code section] 352 balancing analysis, and otherwise deeming it to lack proper foundation." The court further ruled that the "business dealings" between Hosley and Conely were "proper fodder" for the jury and that Conely was "subject to impeachment like any other witness. But it's not going to be . . . some unnamed people have inputted information to some magazine, which has prompted some magazine, as a sales tool or otherwise, to place Mr. Conely in a bad light."

Hosley's trial counsel cross-examined Conely extensively about his relationship with Hosley, his prior statements to law enforcement and preliminary hearing testimony, and his recollection of the details of the robbery. Counsel pointed out discrepancies between Conely's trial testimony and previous statements to law enforcement regarding the type of firearm the gold-toothed gunman pointed at him, the level of certainty of his identification of Hosley as the driver of the U-Haul truck, the descriptions of the gold-toothed gunman and the other robbers, and whether any customers' motorcycles were

stolen in the robbery. Counsel also identified discrepancies between Conely's trial and preliminary hearing testimony regarding whether Hosley wore shoes or boots during the robbery and the value of certain motorcycles stolen in the robbery.

Toward the end of Conely's cross-examination, Hosley's trial counsel asked, "Do you know if you have a reputation in the motorcycle community?" Conely responded, "As far as I know, yeah." Counsel then asked, "Do you know what that reputation is?" The prosecutor objected the question called for speculation and information that was not relevant. The trial court sustained the objections. Hosley's trial counsel did not ask Conely any more questions about his reputation.

2. *Standard of Review*

We review the challenged evidentiary rulings for abuse of discretion. (See, e.g., *People v. Fuiava* (2012) 53 Cal.4th 622, 663 [Evid. Code, § 352]; *People v. Howard* (2010) 51 Cal.4th 15, 31 [relevance]; *People v. Guerra* (2006) 37 Cal.4th 1067, 1120 [foundation].) "Under the abuse of discretion standard, 'a trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.) "Because the court's discretion to admit or exclude impeachment evidence 'is as broad as necessary to deal with the great variety of factual situations in which the issue arises' [citation], a reviewing court ordinarily will uphold the trial court's exercise of discretion[.]" (*People v. Clark* (2011) 52 Cal.4th 856, 932.)

3. *Analysis*

a. *Magazine Article*

Hosley argues the trial court erroneously precluded cross-examination of Conely about his being listed as a member of Full Throttle's Hall of Shame. He asserts there was a proper foundation for the proposed cross-examination, and it was an abuse of discretion to exclude it under Evidence Code section 352. We disagree.

The trial court properly ruled the proposed cross-examination about the magazine article was lacking in foundation. As the proponent of the evidence, Hosley had to establish a sufficient foundation concerning the relevance of the magazine article, the content of the statements made in the article, and the personal knowledge of the person who made the statements. (Evid. Code, § 403, subd. (a).) The record, however, contains nothing but Hosley's trial counsel's representation that Full Throttle included Conely in its Hall of Shame based on his shady business practices. The record does not indicate whether Conely was included because he did shoddy repair work, cheated his customers, treated his employees badly, or for some other reason. Nor does the record reveal what sources of information the magazine relied on, whether those sources had any personal knowledge of Conely or his reputation for honesty, or what the magazine's motivations were for including Conely in its Hall of Shame. As the trial court remarked, all Hosley represented was that "some unnamed people have inputted information to some magazine, which has prompted some magazine, as a sales tool or otherwise, to place Mr. Conely in a bad light." In these circumstances, the court would not permit Hosley to use the cross-examination of Conely as a backdoor to admit what in effect would have

been testimony from unknown witnesses (the magazine article author and sources) that Conely's reputation was bad. In so ruling, the court did not abuse its discretion. (See *People v. Mendoza* (1974) 37 Cal.App.3d 717, 723-724 (*Mendoza*) [no error in excluding testimony about victim's reputation when no showing witness knew victim or his reputation for honesty and veracity]; *People v. Carnavacci* (1953) 119 Cal.App.2d 14, 17 [no abuse of discretion in excluding testimony about victim's reputation when sufficient foundation was not laid].)

Hosley contends there was a proper foundation for cross-examination of Conely about the Full Throttle article, because a witness may be impeached by evidence of his "character for honesty or veracity or their opposites" (Evid. Code, § 780, subd. (e)), and because evidence of a person's general reputation "is not made inadmissible by the hearsay rule" (*id.*, § 1324). We disagree. Hosley's "failure to raise this theory of admissibility at trial forfeited the claim on review." (*People v. Pearson* (2013) 56 Cal.4th 393, 470, fn. 10.) Even had Hosley preserved the claim for review, it would fail on the merits. In seeking to introduce the content of the Full Throttle article through Conely's cross-examination, Hosley effectively sought to introduce testimony from the person who wrote the article, but Hosley did not show the writer knew Conely or his reputation for honesty. From all that appears in the record, the statements in the article were "not given by persons who knew [Conely's] reputation, but by witnesses who inquired of others as to [his] reputation. The rule is that evidence of reputation when relevant may not be shown by witnesses conducting an inquiry, but must be given by persons having knowledge thereof." (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 739; see *People v. Cord*

(1910) 157 Cal. 562, 572 [to be competent to testify about person's reputation, witness must know person or his reputation]; *Mendoza, supra*, 37 Cal.App.3d at pp. 723-724 [same].)

Even if Hosley had laid a proper foundation to cross-examine Conely about the Full Throttle article, the trial court properly could, and did, exclude the cross-examination under Evidence Code section 352. That statute gives courts discretion to exclude relevant evidence whose probative value is substantially outweighed by the probability that its introduction will take too much time, cause undue prejudice, confuse the issues, or mislead the jury. (*Ibid.*) Here, the probative value of the proposed cross-examination on the issue of Conely's credibility was entirely speculative because Hosley provided no information about what criteria or sources of information Full Throttle used to include Conely in its Hall of Shame. Moreover, at the preliminary hearing, Conely testified he had hired an attorney to sue the magazine. Hosley's proposed cross-examination thus could have led to a mini-trial on a libel claim, with redirect examination designed to rehabilitate Conely and testimony from the writer of the magazine article and her sources designed to establish the truth or falsity of the statements in the article. Such testimony would have interjected collateral issues necessitating undue consumption of time and distracting the jury from its primary task of deciding Hosley's guilt of the charged crimes. (See *People v. Contreras* (2013) 58 Cal.4th 123, 152 (*Contreras*) ["a matter is 'collateral' if it has no logical bearing on any material, disputed issue"].) Evidence Code section 352 "empowers courts to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues" (*People v. Wheeler* (1992) 4 Cal.4th 284, 296),

and " 'the trial court's exclusion of collateral matter offered for impeachment purposes has been consistently upheld' " (*People v. Redmond* (1981) 29 Cal.3d 904, 913 (*Redmond*)). We uphold the trial court's ruling here as "both reasoned and reasonable." (*People v. Mills* (2010) 48 Cal.4th 158, 196.)

We reject Hosley's argument, based exclusively on *People v. Taylor* (1986) 180 Cal.App.3d 622, that the trial court abused its discretion by relying on Evidence Code section 352 "to exclude brief testimony regarding a key witness's reputation for honesty or dishonesty where credibility [was] a critical issue." In *Taylor*, unlike here, "[t]here [was] no indication in the record that section 352 was even considered." (*Taylor*, at p. 633.) The *Taylor* court nonetheless went on to state, in dictum, that it would be an abuse of discretion to exclude evidence relating to the defendant's credibility when the jury heard "extensive" evidence about a rape victim's credibility, the defendant's "proposed evidence consisted of brief statements by several witnesses concerning [his] reputation for credibility," there was "minimal" risk of undue consumption of time, the "risk of confusing the jury was even smaller," the "primary task facing the jury was assessing credibility," and the defendant's proposed evidence "could only assist the jury in this determination." (*Ibid.*) Here, by contrast, Hosley's credibility was not at issue because he did not testify, and the jury did not hear "extensive" evidence about Conely's credibility. Also, unlike the proposed evidence in *Taylor*, the proposed cross-examination of Conely would not necessarily have assisted the jury in assessing his credibility, given the lack of information in the record about the content, accuracy, and reliability of the Full Throttle article. To provide that missing information would have

required devotion of substantial time and diversion of the jury's attention to collateral credibility issues. *Taylor* is therefore materially distinguishable and does not support Hosley's argument that the trial court abused its discretion under section 352.

b. *Reputation in the Motorcycle Community*

Hosley also argues the trial court erred by preventing his trial counsel from cross-examining Conely about his reputation in the motorcycle community. As we noted earlier, during cross-examination Conely testified he knew he had a reputation in the motorcycle community. Hosley's trial counsel then asked, "Do you know what that reputation is?" The court sustained the prosecutor's objections that the question called for speculation and matter that was not relevant. Hosley has not established any error in this evidentiary ruling.

The question posed by Hosley's trial counsel was objectionable on relevance grounds. Only relevant evidence, i.e., evidence tending to prove or disprove a disputed fact of consequence to the determination of the action, is admissible. (Evid. Code, §§ 210, 350.) Although evidence bearing on the credibility of a witness is relevant (Evid. Code, §§ 210, 780; *People v. Lavergne* (1971) 4 Cal.3d 735, 742), evidence of a witness's reputation is admissible to attack credibility only to the extent the reputation is for honesty or veracity or their opposites (Evid. Code, §§ 780, subd. (e), 786; *Mendoza, supra*, 37 Cal.App.3d at p. 724). The question asked by Hosley's trial counsel was not limited to Conely's reputation for honesty or veracity or their opposites, however. The question asked about Conely's more general reputation "in the motorcycle community." That reputation could concern such irrelevant matters as Conely's popularity among

motorcycle riders, knowledge of trends in the motorcycle industry, prowess as a motorcycle rider, skill in repairing motorcycles, or success in running a motorcycle business. Where, as here, a question is phrased in such vague, overbroad, or imprecise terms that it may elicit a response beyond the scope of the issues of consequence in the trial, the question is susceptible to a relevance objection. (*People v. Linton* (2013) 56 Cal.4th 1146, 1188-1189 (*Linton*); *People v. Honig* (1996) 48 Cal.App.4th 289, 349.)²

Even if the trial court erred in sustaining the relevance objection, such error would provide no basis for reversal. An appellate court may not reverse a judgment based on erroneous exclusion of evidence unless the error "resulted in a miscarriage of justice *and it appears of record that: [¶] . . . [t]he substance, purpose, and relevance of the excluded evidence was made known to the [trial] court by the questions asked, an offer of proof, or by any other means.*" (Evid. Code, § 354, subd. (a), italics added.) Although this offer-of-proof requirement does not apply to cross-examination that is within the scope of direct examination, the requirement does apply where, as here, the evidence sought to be elicited on cross-examination was not within the scope of the direct examination. (*Id.*, § 354, subd. (c); *People v. Foss* (2007) 155 Cal.App.4th 113, 127.) The requirement of an offer of proof "serves two important purposes where, as here, an appellant complains that questions he asked . . . at trial were wrongly disallowed on relevance grounds." (*People v. Whitt* (1990) 51 Cal.3d 620, 648 (*Whitt*).)

² Our conclusion the trial court properly sustained the relevance objection makes it unnecessary for us to decide whether the court also properly sustained the objection that the question called for speculation. We therefore express no opinion on that issue.

"First, the 'offer-of-proof' requirement gives the trial court an opportunity to change its ruling in the event the question is so vague or preliminary that the relevance is not clear." (*Whitt, supra*, 51 Cal.3d at p. 648.) Because the question posed by Hosley's trial counsel that provoked the prosecutor's objections was vague and overbroad, the trial court was "entitled to be apprised of the direction of counsel's inquiry." (*People v. Coleman* (1970) 8 Cal.App.3d 722, 729.) But counsel made no attempt to inform the court where he was going (e.g., by rephrasing the question or making an offer of proof) and instead moved on to another topic. " 'Where the question does not show on its face whether or not it is material, the questioner, in order to claim error in sustaining an objection thereto, must reframe it or make offer of proof to show its materiality.' " (*People v. Rivers* (1959) 171 Cal.App.2d 335, 340.)³ " 'A contrary rule would enable a party secretly to reserve a means of reversal in case the judgment went against him.' " (*Coleman*, at p. 730.)

"Second, even where the question is relevant on its face, the appellate court must know the 'substance' or content of the answer in order to assess prejudice." (*Whitt, supra*, 51 Cal.3d at p. 648, italics omitted.) Hosley contends his trial counsel's question about Conely's reputation in the motorcycle community "was relevant because [his] reputation for dishonesty was unquestionably the reputation elicited," and we know Conely would

³ We note that when Hosley's trial counsel later asked Edwards and Schoep about Conely's reputation in the motorcycle community, the trial court overruled objections and admitted testimony once counsel rephrased his questions so as to limit them to Conely's reputation for honesty.

have "denied being a disreputable and dishonest businessman" based on the following exchange at the preliminary hearing:

"Q. Well, . . . are there a lot of people that have disputes with you about the fact that they think you have been less than forthright in dealing with them and their motorcycles?"

"A. I have had two customers that, in the whole time I've been in business, I've had a dispute with.

"Q. Are you familiar with the magazine called Full Throttle or something or —

"A. Yep.

"Q. Are you aware of the fact that in this magazine you're listed in the Hall of Shame for being a disreputable businessman?"

"A. I'm also aware that I just gave my attorney \$3,500 to sue her."

Conely's acknowledgment of disputes with two customers and with a magazine that published a disparaging article about him hardly constitutes an acknowledgement he has a reputation for dishonesty in the motorcycle community. Customers can be dissatisfied for many reasons unrelated to a shopkeeper's dishonesty (e.g., shoddy goods, slow service, exorbitant prices, discourteous treatment), and we have no idea what criteria Full Throttle used for inducting Conely into its Hall of Shame. Given this uncertainty in the record, we do not know what, if anything, Conely would have said about his reputation *for honesty and veracity* in response to the broad question about his reputation "in the motorcycle community." Hence, "[w]e cannot conclude the trial court abused its discretion by sustaining the objection to this question when [Hosley] made no offer of proof at trial explaining why [Conely] should have been permitted to answer the question." (*People v. Lightsey* (2012) 54 Cal.4th 668, 727.)

B. *The Trial Court's Limitations on the Cross-examination of Conely Did Not Violate Hosley's Constitutional Right to Confront Adverse Witnesses*

Hosley complains the trial court violated his federal constitutional right to confront adverse witnesses (U.S. Const, 6th & 14th Amends.) when it "unreasonably limited [his] cross-examination of Conely by preventing [Hosley's trial counsel] from confronting Conely with evidence of his reputation for dishonesty." Hosley asserts he "should have been allowed to *confront his accuser* with evidence of his reputation" and "was denied the right to have [the] jury observe and judge Conely's demeanor when confronted with evidence of his dishonest reputation." According to Hosley, "[i]f Conely responded with the same curt answers he gave during the preliminary hearing, the jury might have disbelieved [his] testimony." We are not persuaded.

As a threshold matter, Hosley did not preserve his constitutional argument for appeal. He concedes his trial counsel did not raise the argument at trial. Ordinarily, the failure to raise at trial a claim of federal constitutional error, including violation of the confrontation clause, forfeits the issue on appeal. (*People v. Riccardi* (2012) 54 Cal.4th 758, 797, 801 (*Riccardi*); *People v. Redd* (2010) 48 Cal.4th 691, 730; *People v. Tafoya* (2007) 42 Cal.4th 147, 166; *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1524-1525.) Hosley asserts no forfeiture occurred here, however, because raising the constitutional argument at trial "would have been futile given the trial court's rulings on the evidence's admissibility." We disagree. The confrontation clause involves considerations different from those involved in the court's prior evidentiary rulings. (Cf. *McCoy*, at p. 1526 [rejecting futility argument when prior ruling "had nothing to do with the requirements of

the confrontation clause"].) Nevertheless, we exercise our discretion to address the constitutional issue on the merits to forestall Hosley's claim that his trial counsel provided constitutionally ineffective assistance by not raising the issue at trial. (See, e.g., *People v. Williams* (2009) 170 Cal.App.4th 587, 621; *People v. Scaffidi* (1992) 11 Cal.App.4th 145, 151.)

The Sixth Amendment guarantees a criminal defendant the right "to be confronted with the witnesses against him." (U.S. Const., 6th Amend.) The United States Supreme Court has held the confrontation right is "fundamental" and "is made obligatory on the States by the Fourteenth Amendment." (*Pointer v. Texas* (1965) 380 U.S. 400, 403.) "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." (*Davis v. Alaska* (1974) 415 U.S. 308, 315-316, italics omitted.) "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. . . . [T]he cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, *i.e.*, discredit, the witness." (*Id.* at p. 316.) Hence, the "constitutional right of confrontation includes the right to cross-examine adverse witnesses on matters reflecting on their credibility" (*People v. Szadziejewicz* (2008) 161 Cal.App.4th 823, 841-842), and " 'cross-examination to test the credibility of a prosecution witness is to be given wide latitude' " (*Redmond, supra*, 29 Cal.3d at p. 913).

Nevertheless, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns

about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679 (*Van Arsdall*)). "A trial court's limitation on cross-examination pertaining to the credibility of a witness does not violate the confrontation clause unless a reasonable jury might have received a significantly different impression of the witness's credibility had the excluded cross-examination been permitted." (*People v. Quartermain* (1997) 16 Cal.4th 600, 623-624; accord, *Contreras, supra*, 58 Cal.4th at p. 152; *Linton, supra*, 56 Cal.4th at p. 1188; *People v. Dement* (2011) 53 Cal.4th 1, 52 (*Dement*); *People v. Whisenhunt* (2008) 44 Cal.4th 174, 208 (*Whisenhunt*)). "As long as the cross-examiner has the opportunity to place the witness in his or her proper light, and to put the weight of the witness's testimony and credibility to a reasonable test which allows the fact finder fairly to appraise it, the trial court may permissibly limit cross-examination to prevent undue harassment, expenditure of time, or confusion of the issues." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1386.)

Under these standards, the trial court did not violate Hosley's confrontation clause rights by precluding cross-examination of Conely about his inclusion in Full Throttle's Hall of Shame or about his reputation in the motorcycle community. As we have explained, the magazine article was "virtually irrelevant and wholly collateral to the case" (*Contreras, supra*, 58 Cal.4th at p. 153); and the question about Conely's reputation in the motorcycle community was "only marginally relevant" (*Van Arsdall, supra*, 475 U.S. at p. 679), and "was not obviously probative on the question" of his reputation for honesty or veracity or their opposites (*Dement, supra*, 53 Cal.4th at p. 52). Further, neither line of

inquiry bore on whether Conely saw the robbers or the robbery, accurately recalled the robbery at trial, or had a reason falsely to implicate Hosley in the robbery. Rather, each precluded line of cross-examination "merely constituted an attempt to collaterally impeach [Conely] on an irrelevant matter." (*Contreras*, at p. 153.)

Moreover, Hosley "otherwise had 'ample opportunity' to impeach [Conely]." (*Contreras, supra*, 58 Cal.4th at p. 153.) As we noted earlier, cross-examination revealed numerous discrepancies among Conely's testimony at trial, testimony at the preliminary hearing, and statements to law enforcement. (See pt. III.A.1., *ante*.) Hosley's trial counsel also cross-examined Conely about his relationship with Hosley, including their cross-accusations of theft; Conely's limited ability to perceive Hosley and the other robbers during the robbery; and Conely's ability to remember the details of the robbery at the time of trial. Additionally, in the defense case, Hosley called two witnesses (Edwards and Schoep) who testified Conely had a reputation for dishonesty in the motorcycle community, testimony that Hosley points out was "undisputed at trial." Given this state of the evidence on Conely's reputation for dishonesty and the jury's opportunity to observe Conely during both direct and cross-examination about Hosley's involvement in the robbery, we reject Hosley's assertion, unsupported by any citation of authority, that cross-examining Conely on the collateral issue of his reputation in the motorcycle community "likely would have altered the outcome because the jury would have benefitted from seeing his reaction." We thus hold "the additional impeachment value of the excluded evidence was minimal in relation to the major areas of impeachment already raised by the admitted evidence, and a reasonable jury would not have received a

significantly different impression of [Conely's] credibility even if the excluded evidence had been admitted." (*Whisenhunt, supra*, 44 Cal.4th at p. 208.)

We are not persuaded to hold otherwise by *Slovik v. Yates* (9th Cir. 2009) 556 F.3d 747, on which Hosley exclusively relies. In that case, Michael D. Slovik, who had been convicted of assault with a deadly weapon, sought "a writ of habeas corpus, contending that his confrontation rights . . . were violated when a California trial court prevented him from asking questions on cross-examination that would establish that one of the prosecution's key witnesses had likely lied under oath." (*Id.* at p. 749.) The witness, Mark Featherstone, had testified Slovik threw two billiard balls at him during a barroom brawl. (*Id.* at p. 750.) When Featherstone was cross-examined, he falsely denied he was on probation, and the trial court sustained the prosecutor's objection to any further questioning about Featherstone's probation status. (*Ibid.*) The court held this constituted a violation of Slovik's confrontation clause rights because "the jurors might have formed a significantly different impression of Featherstone's credibility if they had heard cross-examination showing that Featherstone was willing to lie under oath and that he had a motive for lying because of the terms of his probation status." (*Id.* at p. 753.) Here, by contrast, the excluded cross-examination about the magazine article and Conely's reputation in the motorcycle community would not have shown Conely lied under oath or had a motive to lie about Hosley's involvement in the charged crimes. Also unlike *Slovik*, where the impeachment evidence did not come in through other means, in this case both Edwards and Schoep testified Hosley had a reputation for dishonesty. *Slovik* is thus not on point and does not support reversal of the judgment.

In sum, we conclude Hosley "ha[d] the opportunity to place [Conely] in his . . . proper light, and to put the weight of [his] testimony and credibility to a reasonable test which allow[ed] the fact finder fairly to appraise it." (*In re Ryan N.*, *supra*, 92 Cal.App.4th at p. 1386.) Although Hosley was not able to introduce all of the impeachment evidence he desired, "the 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." (*Delaware v. Fensterer* (1985) 474 U.S. 15, 20; accord *Riccardi*, *supra*, 54 Cal.4th at p. 810.) In making the rulings challenged on appeal, the trial court did not violate Hosley's confrontation clause rights.

C. *There Was No Cumulative Error That Requires Reversal*

Finally, Hosley claims he was denied a fair trial and reversal is required because the trial court's multiple errors "cumulatively altered" the jury's assessment of Conely's credibility. We have determined, however, that none of Hosley's claims of error has merit. "Having found no legal error, we reject [his] claim that the cumulative effect of all errors requires reversal." (*People v. Jones* (2013) 57 Cal.4th 899, 981; accord, *People v. Williams* (2013) 58 Cal.4th 197, 291 [rejecting cumulative error claim when "there was no error to accumulate"].)

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.