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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.

PEDRO LOPEZ,

Defendant and Appellant.

E052901

(Super.Ct.No. SWF025995)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Peterson, Judge.

Affirmed with directions.

Steven A. Torres, 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, Assistant Attorney General, Lise S. Jacobson, and Kristine A. Gutierrez, Deputy Attorneys General, for Plaintiff and Respondent.

## I

### INTRODUCTION<sup>1</sup>

During an altercation, defendant Pedro Lopez stabbed Vladimir Rodriguez in the eye with a knife. A jury convicted defendant of aggravated mayhem and assault with a deadly weapon, including enhancements for use of a deadly weapon on both counts and for personal infliction of great bodily injury on count 2. (§§ 205; 245, subd. (a)(1); 12022, subd. (b)(1); and 12022.7, subd. (a).) The court sentenced defendant to a prison term of seven years to life plus a consecutive term of one year.

On appeal, defendant argues the court erred by limiting his cross-examination of the victim, Rodriguez, about his immigration status. Defendant also asserts several arguments about the abstract of judgment, defendant's sentence, and the calculation of custody credits. We agree with the parties that the abstract of judgment should be corrected. Otherwise, we reject defendant's contentions and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2008, defendant and two other men visited the El Toro Market about 15 or 20 minutes before it closed at 10:00 p.m. Defendant and his friends were drunk and smelled like alcohol. Defendant threatened to kick open the store's back door.

Rodriguez, a store employee, refused to sell the trio any beer because the men were drunk. He asked them to leave the store so he could set the alarm and lock up. The

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

men began insulting Rodriguez and he warned them if the alarm was triggered the police would respond. The men left but stayed near the store front.

When Rodriguez and the other employees, including Ricardo Caro, left the store, defendant and his friends began following them and swearing at them. One of defendant's friends tried to punch Rodriguez and Rodriguez hit back. Defendant's friend struck a wall and passed out.

Defendant asked Rodriguez why he had hit his "primo." Defendant pulled a shiny object, a small knife, from his pocket and motioned as if opening it. Defendant approached Rodriguez, threatening to "fuck [him] up." Defendant thrust forcefully at Rodriguez, who tried to kick defendant. Defendant stabbed Rodriguez in the eye.

Rodriguez suffered a fractured eye socket and two lacerations to his left eye, requiring surgery. He permanently lost sight in his eye.

### III

#### CROSS-EXAMINATION OF THE VICTIM

Defendant and Rodriguez are not United States citizens and they were present in the country illegally. As an illegal alien who is a victim of a crime, Rodriguez applied for a temporary U-Visa to allow him to live and work lawfully in the United States during the criminal proceedings.<sup>2</sup> Defendant sought to introduce Rodriguez's U-Visa as

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<sup>2</sup> Under federal immigration regulations (8 C.F.R. § 214.14 (2012)), an illegal alien who is the victim of certain crimes can apply for a "U-Visa" providing temporary relief from deportation, and acquire temporary non-immigrant legal status if local law enforcement authorities certify that the alien would be of assistance in an investigation or prosecution. (<http://www.usimmigrationsupport.org/visa-u.html> [as of May 30, 2012].)

evidence of his purported bias favoring the prosecution. The prosecution objected to admitting evidence about the U-Visa because of irrelevance and the potential prejudice against illegal aliens. The court prohibited evidence about the U-Visa on the grounds that it was irrelevant and prejudicial under Evidence Code section 352.

On appeal, defendant argues the trial court erred because any evidence regarding the victim's credibility was relevant to the issue of whether defendant committed simple or aggravated mayhem. Defendant asserts that the exclusion of the evidence violated his right of confrontation. (*People v. Quartermain* (1997) 16 Cal.4th 600, 623.) The People counter that the proffered evidence was irrelevant, and further that defendant's constitutional claim fails on the merits. We conclude the trial court's ruling was not an abuse of discretion and did not violate defendant's right of confrontation.

#### A. *Relevance and Bias*

Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) "The trial court has broad discretion in determining the relevance of evidence [citations] but lacks discretion to admit irrelevant evidence." [Citation.] (*People v. Thornton* (2007) 41 Cal.4th 391, 444, citation omissions in original.) "The test of relevance is whether the evidence tends "logically, naturally, and by reasonable inference" to establish material facts such as identity, intent, or motive. [Citations.] [Citation.]" (*People v. Scheid* (1997) 16 Cal.4th 1, 13, final citation omission added. We review a trial court's ruling on the admissibility of evidence for abuse of discretion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113, disapproved in part on another ground

in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) “Under this 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. [Citation.]” (*Guerra*, at p. 1113.) “When the trial court excludes relevant, admissible evidence over the defendant’s objection, the proper standard of review is whether there is a reasonable probability that there would have been a different result had the evidence been admitted. [Citations.]” (*People v. Husted* (1999) 74 Cal.App.4th 410, 422.)

As defendant argues, bias on the part of a witness is a statutory basis for cross-examination. (Evid. Code, § 780, subd. (f).) Further, “[a]s a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias. [Citations.]” (*People v. Brown* (2003) 31 Cal.4th 518, 544; *People v. Phillips* (1985) 41 Cal.3d 29, 46-48.) Although “[c]ross-examination to test the credibility of a prosecuting witness in a criminal case should be given wide latitude’ [citation], such latitude does not ‘prevent the trial court from imposing reasonable limits on defense counsel’s inquiry based on concerns about harassment, confusion of the issues, or relevance’ [citations].” (*Brown*, at p. 545, only citation omissions added.)

We agree with the trial court that the proffered evidence was irrelevant and therefore inadmissible. Evidence is irrelevant if it invites speculation: “*[i]f the inference of the existence or nonexistence of a disputed fact which is to be drawn from proffered evidence is based on speculation, conjecture, or surmise, the proffered evidence*

*cannot be considered relevant evidence.”* (*People v. Louie* (1984) 158 Cal.App.3d Supp. 28, 47.) The inference that defendant sought to present to the jury—that Rodriguez had a bias because he received immigration assistance—was based on mere speculation. We conclude such conjecture is insufficient to establish error in limiting cross-examination. There was no evidence of prosecutorial inducement for the victim’s cooperation. No offer of proof was made that actual assistance or benefits of any sort were actually provided to Rodriguez. (See *People v. Dyer* (1988) 45 Cal.3d 26, 50 [absence of proof of some agreement furnishing possible bias or motive to testify].) The trial court did not abuse its discretion in excluding the evidence.

Moreover, even if the trial court erred in precluding defendant from questioning Rodriguez regarding his immigration status, the error was not prejudicial. Rodriguez did not display bias in his testimony. Instead, he testified credibly and consistently about what happened and his testimony was generally supported by the second employee, Caro. The only distinction to be made was that Caro did not testify that defendant had threatened to “fuck [Rodriguez] up.” Defendant did not present any witnesses to contradict the People’s case. Substantial evidence supported the jury’s verdict for aggravated mayhem. (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 833; *People v. Park* (2003) 112 Cal.App.4th 61, 63.)

Furthermore, regardless of how he testified, Rodriguez would have to leave the country after he testified. Accordingly, on this record, it is not “reasonably probable that a result more favorable to [defendant] would have been reached” if the proffered

evidence had been admitted. (See *People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Husted*, *supra*, 74 Cal.App.4th at p. 422.)

### *B. Right of Confrontation*

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to confront the prosecution's witnesses. (*Davis v. Alaska* (1974) 415 U.S. 308, 315.) The right of cross-examination includes exploration of bias and ulterior motives of the witness. (*Id.* at p. 316.) "Evidence showing a witness's bias or prejudice or which goes to his credibility, veracity or motive may be elicited during cross-examination." [Citation.] (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1054.) "[A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby, "to expose the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" [Citations.]" (*People v. Frye* (1998) 18 Cal.4th 894, 946, disapproved in part on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

However, "the right to confront and to cross-examine is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. [Citation.]" (*Chambers v. Mississippi* (1973) 410 U.S. 284, 295; accord, *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1138-1139.) Trial judges retain wide discretion under the confrontation clause to impose reasonable limits on cross-examination based on concerns such as "harassment, prejudice, confusion of the issues . . . or interrogation that is repetitive or only marginally relevant." (*Delaware v. Van*

*Arzdall* (1986) 475 U.S. 673, 679; *People v. Carpenter, supra*, 21 Cal.4th at p. 1051.)

“California law is in accord. [Citation.] Thus, unless the defendant can show that the prohibited cross-examination would have produced ‘a significantly different impression of [the witnesses’] credibility’ (*Van Arzdall, supra*, 475 U.S. at p. 680), the trial court’s exercise of its discretion in this regard does not violate the Sixth Amendment.

[Citation.]” (*People v. Frye, supra*, 18 Cal.4th at p. 946.)

As discussed above, in light of the evidence presented, the jury would not have received a significantly different impression of Rodriguez had the defense been permitted to question him about his immigration status. (See *Delaware v. Van Arzdall, supra*, 475 U.S. at p. 680; *People v. Frye, supra*, 18 Cal.4th at pp. 946-947.) Accordingly, there was no constitutional error.

#### IV

#### CUSTODY CREDITS

Defendant was in custody from June 6, 2008, until June 19, 2008, and from July 28, 2008, to December 10, 2010, entitling him to 1,014 days of custody credits. He continued in custody from December 10, 2010, until his sentencing on January 14, 2011, entitling him to additional credits for a total of 1,054 days. Defendant’s claim that he is entitled to 1,095 days of custody credit is based on defendant being in custody from July 28, 2008, to January 14, 2011, without considering the days defendant was not in custody from June 20, 2008, to July 27, 2008. We reject defendant’s argument for additional custody credit.

V

DISPOSITION

We agree with the parties that the abstract of judgment should be corrected. Defendant's four-year sentence on count 2 for assault with a deadly weapon should be corrected to show it was stayed under section 654 as ordered by the court.

The abstract of judgment should also be corrected to show that defendant was sentenced to an indeterminate term of life on count 1 for aggravated mayhem, with a minimum parole eligibility of seven years, plus a determinate term of one year for the weapon enhancement.

The trial court is directed to prepare an amended abstract of judgment reflecting these modifications. The court shall forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P.J.

MILLER  
J.