

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ALEXANDER BOYD,

Defendant and Appellant.

E060560

(Super.Ct.No. RIF10002905)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING

[CHANGE IN JUDGMENT]

THE COURT:

The opinion herein, filed on November 24, 2015, is modified as follows:

1. On page 1, Affirmed should be changed to Affirmed with directions.
2. On page 18, immediately preceding the disposition, add:

We note an apparent clerical error. Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made

by a clerk, by counsel, or by the court itself. (*Ibid.* [judge misspoke].) A court “has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.” (*In re Candelario* (1970) 3 Cal.3d 702, 705.)

The abstract of judgment notes that defendant was convicted by plea agreement; however, the record reflects defendant was convicted by jury trial. We therefore direct the superior court to amend the abstract of judgment to show that defendant was convicted by jury.

3. On page 18, the paragraph under the disposition heading is deleted and replaced with the following:

The superior court is directed to amend the abstract of judgment to show that defendant was convicted by jury and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment, as modified, is affirmed.

The appellant’s petition for rehearing is denied.

The judgment is changed.

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RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

KING  
J.

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Defendant and Appellant.

E060560

(Super.Ct.No. RIF10002905)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,  
Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Deputy  
Attorney General, for Plaintiff and Respondent.

A jury found defendant and appellant Charles Alexander Boyd guilty of spousal abuse (Pen. Code, § 273.5, subd. (a), count 1);<sup>1</sup> assault by force likely to cause great bodily injury (§ 245, subd. (a)(1), count 2), false imprisonment (§ 236, count 3); criminal threats (§ 422, count 4); and grand theft (§ 487, subd. (c), count 5). The jury also found true that in the commission of counts 1 and 2, defendant inflicted great bodily injury on the victim within the meaning of section 12022.7. As a result, defendant was sentenced to a total term of eight years four months in state prison with credit for time served. On appeal, defendant argues (1) there was insufficient evidence to support the true finding that he had inflicted great bodily injury on the victim; and (2) the trial court erred in admitting a prior incident of domestic violence unrelated to the current charges. We reject these contentions and affirm the judgment.

## I

### FACTUAL BACKGROUND

#### A. *Current Incident*

The victim, J.U., dated defendant for approximately three years. Defendant and the victim lived together at his residence in Oceanside for about 18 months. The victim also spent time at defendant's Sun City property and Aguanga property. The victim's relationship with defendant ended in June 2010 or shortly before the incident on June 3, 2010.

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

In June 2010, the victim went to defendant's Sun City property to assist him in renovating the house and spent the night with defendant at the property. The following morning, on June 3, 2010, an argument ensued between the two after the victim told defendant that she was seeing another person and she did not want to have a relationship with defendant. Defendant became extremely upset, began yelling, and flaying his hands. The victim, concerned by defendant's reaction, grabbed her purse and tried to leave the house. Defendant grabbed the victim by her hair, stated he was going to kill her, and punched her in the face. Defendant also grabbed the victim by her neck, slammed her against the wall, and choked her until she became unconscious. When the victim reached for her cellular phone, defendant took it, turned it off, and threw it, preventing her from calling for help. Defendant then continued to punch the victim and choke her.

During the assault, defendant suffered an asthma attack; and in an attempt to calm defendant down and get him to stop hitting her, the victim assisted defendant with his asthma medication. After defendant recovered, defendant continued to assault the victim, punching her multiple times above her eye and repeatedly stating he was going to kill her. Defendant punched the victim in her face at least 10 times with his fists.

The victim eventually escaped defendant's attack, exited the house, and began running until she encountered a mailman. At that point, the victim's eye was almost swollen shut and the whole left side of her face was in pain. The victim asked the mailman to call 911. The victim sat down on the curb because she felt dizzy and was not feeling well. The mailman observed that the victim was upset, appeared lethargic, and

had swelling and bruising to her eyes. When the victim spoke to the 911 operator, she stated that her boyfriend beat her up, but refused to provide defendant's name because she feared defendant.

Paramedics arrived at the scene and observed that one of the victim's eyes was almost swollen shut. She appeared to have some scratch marks around her neck and was very upset. The victim informed the paramedics that the injuries had occurred about two blocks away; and that she had been struck multiple times and choked unconscious by her boyfriend.

Riverside County Deputy Sheriff Kenneth Guilford responded to the area and spoke with the victim. Deputy Guilford observed an injury to the victim's eye, bruising on her arm, and redness on her neck. It was clear to the deputy that the victim had been assaulted, but, when he asked the identity of the person who had assaulted her, the victim refused because she feared her boyfriend would kill her if she revealed his identity. When the deputy asked the victim if her boyfriend was defendant, the victim did not respond but had a "visible reaction to his name."

An emergency room physician treated the victim at the hospital on June 3, 2010. The physician noted significant swelling to the victim's upper and lower eyelid and left temple, and the victim felt pain when the physician touched her. The victim also had visible blood on the inside of her eye. In addition, the victim had a nasal fracture and significant soft tissue swelling.

The victim also underwent a CAT scan on June 3, 2010 by a radiologist. The scan disclosed a minimally displaced left nasal bone fracture. The radiologist also observed blood and soft tissue swelling around the victim's eye. The radiologist noted that bone fractures of this type take four to six weeks to heal for an average, healthy adult, and the nose displacement was not likely to have long term issues.

*B. Prior Incidents of Domestic Abuse against the Victim*

The victim related a rocky relationship with defendant that involved a number of prior incidents of domestic abuse. She recalled an incident that occurred on February 20, 2008, at defendant's residence in Oceanside. In that incident, defendant struck the victim in the stomach, punched her in the face, and choked her. An Oceanside police officer responded to a domestic violence call and spoke with the victim. The officer noticed that the victim had an injury to her right eye. The victim reported that defendant had struck her left eye, which caused her to fall into a coffee table and hit her right eye. The officer searched the residence and found defendant asleep on a bed. The victim asked for assistance in retrieving her clothing from the residence. No charges were filed in that incident.

The victim described another incident that occurred on October 9, 2008, also at defendant's residence in Oceanside. In that incident, defendant was yelling at the victim and threatening her with a straight razor. Defendant had the victim detained in the garage against her will for hours and suggested that she should cut her own throat. Defendant told the victim that if she did not slice her own throat, he would do it for her, and forced

her to hold the razor to her neck for about 30 minutes. At one point, when the victim fell asleep, defendant punched her in the face. Oceanside officers arrived following a 911 call in which a woman was whispering she needed help and a male was yelling in the background. When the officers arrived, they observed the victim was distraught, shaking, and having a difficult time standing. The officers found defendant inside the residence lying on a bed, and placed handcuffs on him.

The victim further related a number of other incidents occurring between 2008 and 2009. One of the incidents took place in 2009 at defendant's ranch property in Aguanga. In that incident, defendant chased the victim outside, and once he caught her, choked her until she became unconscious. When she awoke, defendant took her into the garage, and choked her again until she became unconscious. When she again awoke, her whole body was shaking uncontrollably. Defendant then dragged the victim to another side of the garage, tied her wrist and feet with a wire, placed her in a container, and told her he was going to bury her in a hole outside he had dug.

*C. Prior Incidents of Domestic Violence Involving another Victim*

C.J. was dating defendant in 2005. They have one child together. On November 26, 2005, C.J. called the police to get defendant out of her house. At trial, C.J. testified she was not scared of defendant and denied telling the police she was scared of him or that defendant had threatened to hit her. C.J. admitted that, prior to calling the police on that date, she and defendant had an argument.

An Oceanside police officer, who responded to C.J.'s call on November 26, 2005, testified that when he contacted C.J., C.J. appeared scared, excited, and agitated. C.J. had also informed the officer that she had been in an argument with her boyfriend—defendant; that defendant had repeatedly stated he was going to hit her; and that she feared for her life because she believed defendant would carry out his threats.

D. *Defense*

A friend of defendant's for nearly 14 years testified that she drove the victim to defendant's Sun City property in early June 2010 after defendant had called her and asked her to pick up the victim and bring her to the property. Defendant's friend believed the victim was upset that defendant did not personally pick her up. Defendant's friend also testified that the victim worked with defendant doing odd jobs at his properties; that the victim had told her that she was going to drop the prosecution of defendant if the case did not move along more quickly; and that the victim wanted her to lie and say that she had an ongoing relationship with defendant in June 2010.

Defendant's sister, who lived with defendant at a residence in Vista in June 2010, testified that on June 3, 2010, she and her husband were at the Sun City property in the early afternoon, and there was no one else present at the property. Defendant's sister also stated, contrary to the victim's testimony, that there was nothing in the home but a few items stored in the garage; and that defendant was not there when she and her husband left the Sun City property around 3:00 p.m.

The responding officer was recalled and testified that he had gone to the Sun City property at approximately 5:00 p.m. and noted a Ford F250 was parked in the backyard. The victim had stated defendant owned a green F150 truck.

## II

### DISCUSSION

#### A. *Sufficiency of the Evidence*

Defendant contends that there is insufficient evidence to support the jury's finding that the victim suffered great bodily injury within the meaning of section 12022.7. We disagree.

When determining whether the evidence was sufficient to sustain a conviction, “our role on appeal is a limited one.” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “[T]he test of whether evidence is sufficient to support a conviction is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (*People v. Holt* (1997) 15 Cal.4th 619, 667.) “We draw all reasonable inferences in support of the judgment.” (*People v. Wader* (1993) 5 Cal.4th 610, 640.) Reversal is not warranted unless it appears “ ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

“ ‘Whether the harm resulting to the victim . . . constitutes great bodily injury is a question of fact for the jury. [Citation.] If there is sufficient evidence to sustain the

jury's finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding." ' ' ( *People v. Escobar* (1992) 3 Cal.4th 740, 750, fn. omitted (*Escobar*).)

Section 12022.7, subdivision (a), provides for a three-year enhancement for personally inflicting great bodily injury in the commission or attempted commission of a felony. Great bodily injury is defined as "a significant or substantial physical injury." (§ 12022.7, subd. (f).) In *Escobar, supra*, 3 Cal.4th 740, the court held that a "significant or substantial physical injury" does not need to meet any particular standard of severity or duration, but must be a "substantial injury *beyond* that inherent in the offense." (*Id.* at pp. 746-747, 750.) The court also held that a victim need not suffer " 'permanent,' 'prolonged' or 'protracted' disfigurement, impairment, or loss of bodily function" for a jury to conclude that a victim suffered great bodily injury within the meaning of the sentence enhancement. (*Id.* at pp. 749-750, disapproving *People v. Caudillo* (1978) 21 Cal.3d 562 (*Caudillo*).) Proof that a victim's injuries are significant or substantial "is commonly established by evidence of the severity of the victim's physical injury, the resulting pain, or the medical care required to treat or repair the injury." (*People v. Cross* (2008) 45 Cal.4th 58, 66, citing *People v. Harvey* (1992) 7 Cal.App.4th 823, 827-828.)

Abrasions, lacerations, and bruising can constitute great bodily injury. (*Escobar, supra*, 3 Cal.4th at p. 752; *People v. Washington* (2012) 210 Cal.App.4th 1042, 1047.) In *Escobar*, the court upheld the great bodily injury enhancement where the victim suffered extensive bruises and abrasions, as well as injuries to her neck and vaginal area, which

impaired her ability to walk. (*Escobar*, at p. 750.) In *People v. Le* (2006) 137 Cal.App.4th 54, 59, the court declined to find that “ ‘mere soft tissue injury’ ” could not be significant and substantial within the meaning of section 12022.7. In *People v. Bustos* (1994) 23 Cal.App.4th 1747, 1755, the court found that lacerations, contusions and abrasions suffered by a victim who was punched in the face and knocked to the ground supported a great bodily injury finding.

While *Escobar* disapproved of the permanent, prolonged or protracted disfigurement standard set forth in *Caudillo*, the court noted that numerous decisions applying the more stringent *Caudillo* standard have upheld findings of great bodily injury based on injuries “of a degree and severity similar to those inflicted on [the victim herein].” (*Escobar*, *supra*, 3 Cal.4th at p. 752; see, e.g., *People v. Jaramillo* (1979) 98 Cal.App.3d 830 [great bodily injury finding upheld where six-year-old victim suffered multiple contusions, bruises, swelling and discoloration over various parts of her body]; *People v. Sanchez* (1982) 131 Cal.App.3d 718, 732, 734, disapproved on other grounds in *Escobar*, at p. 752 [court upheld a finding of great bodily injury where the victim suffered multiple abrasions, bruises, and swelling of her eye and cheek]; *People v. Corona* (1989) 213 Cal.App.3d 589 [great bodily injury finding upheld where victim suffered a swollen jaw, sore ribs, and multiple bruises and lacerations].) Thus, even under the more stringent standard in *Caudillo*, victims with injuries of a degree and severity less than or comparable to the victim’s injuries here were found to have suffered great bodily injury within the meaning of section 12022.7.

We recognize that not all lacerations meet the threshold for a finding of great bodily injury. In *People v. Martinez* (1985) 171 Cal.App.3d 727, a great bodily injury enhancement was stricken on appeal for an injury sustained by one victim who was wearing a jacket, a sweater, and a shirt, and suffered only a minor laceration on his back after he was stabbed by the defendant. (*Id.* at pp. 735-736.) The victim did not seek medical treatment for his injury. (*Id.* at p. 735.) During trial, a witness described the victim's stab wound as like a pinprick. (*Id.* at p. 736.) The prosecutor asked that the allegation be stricken, indicating that there was no evidence of great bodily injury, citing the witness's testimony. (*Ibid.*)

In the instant case, substantial evidence supports the jury's finding that the victim suffered great bodily injury within the meaning of section 12022.7. Defendant caused the victim to momentarily lose consciousness when he repeatedly punched her, grabbed her by the neck, slammed her against the wall, and choked her. This evidence alone was sufficient for the jurors to reasonably conclude defendant inflicted great bodily injury upon the victim. (See *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1477, 1489 [court concluded there was substantial evidence of great bodily injury when the victim momentarily lost consciousness from a blow to the head].) Despite the loss of consciousness, defendant's attack on the victim also caused the victim to suffer a nasal fracture, significant swelling to her eye, and bruising to her arm and neck. Considering the seriousness of the victim's injuries, the medical care required to treat her injuries, as

well as the resulting pain, we find that the evidence supports the jury's finding of great bodily injury.

Defendant's arguments to the contrary were credibility questions to be resolved by the trier of fact. In determining whether substantial evidence exists, "we do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses." (*People v. Cortes* (1999) 71 Cal.App.4th 62, 71.) In addition, the testimony of a single witness is sufficient to uphold a judgment, even if it is inconsistent or contradicted by other evidence. (*People v. Scott* (1978) 21 Cal.3d 284, 296.) Only if a witness's testimony is physically impossible or inherently improbable may it be discounted by the reviewing court. (*Ibid.*) Defendant does not contend that the victim's testimony relating to her injuries was either physically impossible or inherently improbable.

Viewing the evidence in a light favorable to the judgment, as we must, we conclude there was sufficient evidence to support the jury's finding that the victim sustained great bodily injury.

**B. *Admission of Prior Uncharged Act of Misconduct***

Defendant also argues that the trial court erred in admitting evidence of the November 26, 2005 incident involving C.J. because that incident was remote and unrelated to the current charges. He further asserts that "even under Evidence Code section 1109, while arguably admissible, the testimony created undue prejudice causing the jurors to believe [defendant] was a person of bad character making the testimony as to the current charges more likely to be true."

Evidence Code section 1109 provides an exception to the general rule codified in Evidence Code section 1101, subdivision (a), that prior acts may not be used to prove a defendant's conduct on a specified occasion. Under Evidence Code section 1109 prior acts of domestic violence are admissible when the defendant is charged with a criminal offense "involving domestic violence . . . if the evidence is not inadmissible pursuant to [Evidence Code] Section 352." (Evid. Code, § 1109, subd. (a)(1).) If evidence is admitted under Evidence Code section 1109, a trier of fact may infer from the evidence that the defendant had a disposition or propensity to commit other offenses involving domestic violence and may infer that the defendant was likely to commit and did commit the current domestic violence offense. (*People v. Ogle* (2010) 185 Cal.App.4th 1138, 1143; *People v. Johnson* (2010) 185 Cal.App.4th 520, 528.)

Under Evidence Code section 352, the trial court has discretion to exclude 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." "In applying section 352, "prejudicial" is not synonymous with "damaging." " (*People v. Karis* (1988) 46 Cal.3d 612, 638.) Instead, prejudice under Evidence Code section 352 refers to evidence " 'which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.' " (*Ibid.*; see *People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119.)

Evidence Code section 1109, subdivision (a), creates a presumption in favor of admissibility. (*People v. Johnson, supra*, 185 Cal.App.4th at p. 537.) However, evidence of acts of domestic violence “occurring more than 10 years before the charged offense is inadmissible . . . unless the court determines that the admission of this evidence is in the interest of justice.” (Evid. Code, § 1109, subd. (e).)

We apply an abuse of discretion standard to a trial court’s admission of prior acts of domestic violence under Evidence Code section 1109 and its refusal to exclude the evidence under Evidence Code section 352. (*People v. Johnson, supra*, 185 Cal.App.4th at p. 539; *People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.)

Here, we note that the incident of domestic violence involving C.J. was within 10 years from the date of the charged offenses. The trial court was aware of the timing of the past incident of domestic violence but ruled to admit this prior act by defendant because the probative value outweighed the prejudicial impact. We conclude the trial court properly exercised its broad discretion when it concluded the prior incident of domestic violence by defendant was admissible under Evidence Code sections 1109 and 352. (See Evid. Code, § 1109, subd. (e); see also *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125 [a trial court has broad discretion in determining whether the probative value of evidence is substantially outweighed by the probability the evidence will consume an undue amount of time or create a substantial danger of undue prejudice, confusion of issues, or mislead the jury].)

First, the record shows the evidence of the prior act by defendant involving C.J. did not take an undue amount of time. Second, despite defendant's contentions otherwise, the probative value of the prior act of domestic violence involving C.J. was substantially similar because the prior act and the charged offenses were all of the same general character and tended to involve arguments and threats of violence against a former partner. (Cf. *People v. Harris* (1998) 60 Cal.App.4th 727, 738.) The principal factor affecting the probative value of an uncharged act is its similarity to the charged offense. (*People v. Johnson, supra*, 185 Cal.App.4th at pp. 531-532.) Similar acts of domestic violence are “ ‘uniquely probative’ ” of guilt in a later accusation because domestic violence is “ ‘typically repetitive’ ” in nature. (*Id.* at p. 532.)

Third, the prior act of domestic violence involving C.J. was not more inflammatory than the charged conduct, which included defendant choking and beating the victim in the current incident. The prior act of domestic violence involving C.J. was also not more inflammatory than the prior acts of domestic violence involving the victim as the charged offenses and which included defendant beating and choking the victim on one occasion; defendant holding the victim against her will and threatening her with a razor on another occasion; and defendant chasing, choking, binding the victim with a wire, and placing her in a container on another occasion. (See *People v. Rucker, supra*, 126 Cal.App.4th at p. 1119 [relevant factors in determining prejudice under Evidence Code sections 1109 and 352 include whether the prior acts of domestic violence are more inflammatory than the charged conduct].)

“The stronger the evidence, the more it is “prejudicial.” The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, “prejudicial” is not synonymous with “damaging.” ’ ’ ( *People v. Karis* (1988) 46 Cal.3d 612, 638.) Here, the trial court instructed the jury with CALCRIM No. 852, which cautioned the jury that it could not consider the evidence of defendant’s prior act of domestic violence unless it found by a preponderance of the evidence that defendant committed that offense, and it also instructed the jury that it could, but was not required to, conclude that defendant was disposed or inclined to commit domestic violence. CALCRIM No. 852 also cautioned the jury that even if it found that defendant committed the prior act, the evidence as a whole must persuade it beyond a reasonable doubt that defendant was guilty of the current crimes. The evidence offered in light of the prior bad acts was sanitized as to the particular facts involved and, thus, did not evoke the emotional bias defendant contends it did.

Moreover, there is no evidence the jury was confused. It was properly instructed regarding Evidence Code section 1109 evidence. The jury was properly instructed regarding the People’s burden to prove the charges beyond a reasonable doubt. Specifically, as noted *ante*, the court advised the jury it could (but was not required to) conclude that evidence of the uncharged acts demonstrated in defendant a propensity toward domestic violence and that Evidence Code section 1109 evidence could not be

used, by itself, to convict defendant. (E.g., *People v. Falsetta* (1999) 21 Cal.4th 903, 920 [cautionary instruction concerning admission of uncharged sex offense evidence under Evidence Code section 1108 “will help assure that the defendant will not be convicted of the charged offense merely because the evidence of his other offenses indicates he is a ‘bad person’ with a criminal disposition”].) And, the difference between the aggressive argument involving C.J. and beating the victim in the present case was so great that there was no chance the jury would unfairly punish defendant in this trial for his acts involving C.J.

On this record, we cannot say that the trial court erred or abused its discretion under Evidence Code section 352 in admitting defendant’s act of prior domestic violence involving C.J. as propensity evidence under Evidence Code section 1109.

Assuming arguendo the prior acts evidence was more prejudicial than probative, any error in admitting the evidence would not rise to a due process violation. The Courts of Appeal have repeatedly held it is precisely the trial court’s discretion to exclude evidence under Evidence Code section 352 that saves Evidence Code section 1109 from a due process challenge. (See, e.g., *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334.) An erroneous exercise of discretion under Evidence Code section 352 generally does not rise to a problem of constitutional magnitude. The “routine application of state evidentiary law does not implicate [a] defendant’s constitutional rights.” (*People v. Brown* (2003) 31 Cal.4th 518, 545, fn. omitted.) In this case, the trial court acted well within its discretion in admitting the challenged evidence. Its determination was neither

arbitrary, capricious, nor patently absurd. Its determination did not exceed the bounds of reason. Since the evidence was admitted for a permissible purpose and its exclusion was not compelled by Evidence Code section 352, defendant's due process rights were not violated. (See, e.g., *Estelle v. McGuire* (1991) 502 U.S. 62, 70; *People v. Falsetta, supra*, 21 Cal.4th at pp. 912-913.)

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

KING

J.