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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALONSO GAMEZ,

Defendant and Appellant.

G047407

(Super. Ct. No. 10WF1434)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed.

Tonja R. 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, Peter Quon, Jr., and Sharon L. Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

Alonso Gamez appeals from a judgment after a jury convicted him of attempted murder, first degree robbery, and first degree burglary. Gamez argues insufficient evidence supports his attempted murder conviction, the trial court committed judicial misconduct, and the court improperly limited cross-examination of an expert witness. None of his contentions have merit, and we affirm the judgment.

FACTS

Gamez and Armando Munoz¹ were at a friend's house when Munoz said he wanted to go for a "midnight cruise" in his father's truck. In the truck, Gamez asked Munoz if he wanted to commit a theft. Gamez directed Munoz to drive to a house where Gamez went inside. When Gamez returned to the truck, he had a black revolver with a wood handle; he stored the gun in the dashboard under the steering wheel. Gamez told Munoz to drive to Cypress where the cops would be "less hot," or in other words, less "competent." Munoz eventually turned on to Fleetwood Street where they saw an open garage.

Munoz parked the truck near but not in front of the house. Gamez grabbed the gun, and they both got out of the truck. As they walked towards the open garage, Gamez said he would hold the gun while Munoz searched the victim. Munoz refused and returned to the truck.

Samuel Wotring lived at 4062 Fleetwood Avenue in Cypress. He was cleaning the garage with his back facing the street when he heard someone say, "Get down on your knees and don't turn around." Wotring said, "I'm not getting down on my knees, and I am turning around." Wotring turned around slowly and the man, who had a black revolver in his hand, said, "Get down on your knees, turn around." Wotring

¹ At the time of trial, Munoz had been in custody for two years. Pursuant to an agreement, Munoz pled guilty to robbery and would serve two years in exchange for his testimony.

refused. The man was wearing a sweatshirt with a hood pulled over his head covering all but a very small portion of his face. The man told Wotring to give him his wallet and cellular telephone or he was going to shoot him.² Wotring replied, “All I ask you to do is look me in the eyes when you pull the trigger.” Wotring threw the cell phone and the wallet, containing \$280, on the driveway, and the man picked them up and left.

Wotring decided to follow him and as he left the garage, he picked up a brick from the sidewalk. At some point the man, who was about 60 feet away from Wotring, turned around and fired a shot at him. Wotring saw a muzzle flash and was thrown backwards through a rose bush and onto the driveway. Wotring thought he had been shot. A neighbor, Garth Mattson, heard the shot, looked out his window, saw Wotring, and went outside. As Wotring searched for the man who shot at him, he said, “Which way did he go?” and “I’ve been shot. Call 911.” As Mattson called 911, Wotring collapsed. Mattson examined him and Wotring did not appear to be bleeding. Wotring got up, walked home, got into his truck, and searched for the man who had shot at him. Meanwhile, after Munoz heard the gunshot, he drove to a nearby shopping plaza, parked, took Gamez’s cell phone, and walked towards Wotring’s house.

Wotring saw Munoz walking and drove onto the sidewalk to block his path. Wotring accused Munoz of shooting at him, and Munoz replied, “No, I wasn’t the guy that shot you. It was the other guy.” Wotring never saw Munoz with a gun. Detective Brook Marshall arrived, and Wotring still believing he had been shot, pointed at Munoz and said Munoz shot him in the chest. The paramedics arrived, examined Wotring, and determined he had not been shot. Marshall first put Munoz in a patrol car and then moved him near a fire truck to conduct an in-field lineup. Wotring cupped his

² At trial, Wotring denied the man demanded his wallet or cell phone. After the incident, Wotring told Officer Robert Rodriguez the man threatened to shoot him if he did not give the man his wallet.

hands to his eyes to recreate how he saw the man in the garage. Wotring told Marshall he was not sure Munoz was the man who shot him because the man was wearing a sweatshirt with a hood pulled partially over his face. Wotring thought the man had a mustache similar to Munoz's. The sweatshirt Munoz wore did not have a hood. Marshall arrested Munoz and took him to the police station; he did not have Wotring's wallet or cell phone.

Officers tested Munoz's hands for gunshot residue, which came back positive, and after advising him of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, questioned him. Munoz admitted he and Gamez planned the robbery, he drove to Wotring's home to commit the robbery, and they planned to split the loot. Munoz said he and Gamez walked towards the garage but he returned to the truck and waited until he heard the gunshot and drove away. Munoz said he planned to walk back to the house because he felt guilty and wanted to make sure Gamez was okay; he did not drive because he feared his father's truck would be impounded. He told officers where Gamez lived.

Later that day, Wotring identified Gamez as the man who robbed him and shot at him from a photographic lineup containing Gamez's DMV photograph; he did not cup his hands around his eyes like he did at the in-field lineup. Law enforcement officers arrested Gamez. Gamez's hands tested positive for gunshot residue. Officers questioned Gamez after advising him of his *Miranda* rights.³ Gamez denied committing the robbery or firing a gun. Gamez claimed he was with his mother and girlfriend all evening. Officers told Gamez his hands tested positive for gunshot residue and asked him when he last showered. Gamez initially said he showered the night before but then said he showered that morning. Gamez denied knowing Munoz, and when asked why Munoz

³ Transcripts of both Gamez's and Munoz's interview were admitted into evidence.

had his cell phone, Gamez said his girlfriend must have given it to him. Officers never recovered the gun.

A second amended information charged Gamez with the following: willful, deliberate, and premeditated attempted murder (Pen. Code, §§ 664, subd. (a), 187, subd. (a))⁴ (count 1); first degree robbery (§§ 211, 212.5, subd. (a)) (count 2); and first degree residential burglary (§§ 459, 460, subd. (a)) (count 3). The information alleged Gamez personally discharged a firearm as to counts 1 and 2 (§ 12022.53, subd. (c)) and personally used a firearm as to all the counts (§ 12022.5, subd. (a)). The information also alleged he suffered a prior serious and violent juvenile adjudication (§§ 667, subds. (d) & (e)(1), 1170.12, subds. (b) & (c)(1)).

Wotring testified at trial. He identified Gamez as the man who robbed him and shot at him. Again, he cupped his hands around his eyes. When Gamez's defense counsel said he had not been shot, Wotring responded, "You couldn't prove it by me." Counsel asked him if he had any gunshot wounds, and Wotring answered, "I have an indentation in my chest. I couldn't breathe. I had a hard time breathing for three or four months. Something hit me." Wotring admitted he had an X-ray.

The prosecutor also offered the testimony of Cypress Police Department crime scene investigator Ravi Perera. Perera detailed his background, training, and experience as a 19-year crime scene investigator. Perera stated he is certified to train in firearms, including administering the test for and detecting gunshot residue (GSR). He said both Gamez and Munoz tested positive for GSR on their hands, which means they could have fired a gun, handled a gun, or been near a gun. When the prosecutor asked Perera how many shootings he had investigated, Perera responded between 15 and 20 over his 19-year career in Cypress. The trial judge interrupted and the following colloquy occurred:

⁴ All further statutory references are to the Penal Code, unless otherwise indicated.

“[Trial judge]: That’s a day’s work in Santa Ana.

“[Perera]: Yes, it is.

“[Prosecutor]: So in your years in the investigations, are you also staying updated and current on the science behind investigating shootings? Did you go to classes? Do you read materials? Do you do things like that?

“[Perera]: Yes, I do. Santa Ana was mentioned. I trained with them as well.

“[Prosecutor]: Okay. Fair enough.

“[Trial judge]: Do you know Rocky Edwards?

“[Perera]: Yes, very well.

“[Trial judge]: You’re okay, then.”

Perera stated you would not find a shell casing when firing a revolver. He inspected the area and did not find a bullet, but he did find knick marks on a tree and on the concrete that were consistent with a bullet striking them, but he could not be certain. When the prosecutor asked how often he found the bullet if it did not hit an individual, Perera said, “Not very often because a bullet could travel a long, long way and the chance of finding it are pretty slim.”

On cross-examination, Gamez’s defense counsel questioned Perera about his background and continuing education. He also cross-examined Perera about GSR tests, including the possibility of false positive test results, the likelihood of contamination in testing, and the manner of testing. Perera said he is familiar with but did not read the Journal of Forensic Science (JFS), but he did read California Department of Justice (DOJ) bulletins and Federal Bureau of Investigation (FBI) bulletins on crime scene investigation when they came to the police station. When presented with a FBI bulletin on GSR (Exhibit A), Perera said he had not read it. When defense counsel attempted to question Perera concerning an article from the JFS (Exhibit C), the

prosecutor objected on foundation and hearsay grounds. After the trial court sustained the objection, there was a sidebar discussion.

At sidebar, defense counsel argued that because Perera stated the JFS was relied on in his field, counsel could cross-examine him about the contents of the article. The trial court disagreed, opining “[n]ot if he hasn’t read it, not if he hasn’t relied on it.” Counsel disagreed and asserted, “That was the old rule.” The court responded, “That’s still the rule.” After the court said counsel could submit authority to support his contention the following day, cross-examination continued.

Perera testified he had not recently read the JFS but he had in the past and relied on it “to a certain extent.” Perera repeated he read the FBI bulletins when the station would receive them, but he had not read DOJ bulletins because the station no longer received them. When defense counsel asked whether he had relied on DOJ bulletins to formulate his opinions as an expert in the field of forensic science, he answered, “Not as an expert because my job as a crime scene investigator, I keep the rest of the stuff for the scientist out in the lab.” Perera said he was familiar with the DOJ GSR collection process. When defense counsel asked whether the DOJ recommended not testing the suspect if he had washed his hands, Perera replied, “I don’t know.” When defense counsel tried to refresh his recollection with a DOJ physical evidence bulletin (Exhibit F) on its GSR collection process, Perera stated he had not read it but was familiar with some of the information in the bulletin. When defense counsel asked Perera whether the DOJ bulletin stated not to test more than four hours after the shooting, the prosecutor objected on relevancy grounds. The trial court sustained the objection based on the ground it assumed facts not in evidence. When counsel asked Perera whether the DOJ bulletin stated not to test when the suspect had washed his hands, the prosecutor objected without stating a grounds. The court sustained the objection based on the ground it assumed facts not in evidence. On redirect examination, Perera

testified he did not rely on any of the documents defense counsel showed him in forming his opinions.

During a recess the trial court explained the basis for its ruling. Relying on *People v. Hamilton* (2009) 45 Cal.4th 863, the court explained counsel may not ask an expert to offer an opinion about information contained in materials the expert did not review. Citing to Evidence Code section 721 and *McGarity v. Department of Transportation* (1992) 8 Cal.App.4th 677, the court reasoned counsel may cross-examine experts on material they referred to or relied on but not on information the expert did not rely on or that was not admitted into evidence. The court noted, however, that *People v. Doolin* (2009) 45 Cal.4th 390, 434 (*Doolin*), and *People v. Montiel* (1993) 5 Cal.4th 877, 923 (*Montiel*), authorize an adverse party to elicit testimony from an expert that the expert did not know of or consider information relevant to the expert's opinion. The court concluded by explaining it attempted to balance Gamez's right to test the credibility of Perera against the prohibition on admitting into evidence hearsay information from reports.

At the close of evidence, defense counsel withdrew Exhibit C, the JFS article, and Exhibit F, the DOJ physical evidence bulletin. The trial court sustained the prosecutor's hearsay objection to Exhibit A, the FBI bulletin.

During closing argument, as relevant here, the prosecutor repeatedly argued the GSR test was a presumptive test that did not conclusively determine who was the shooter. The prosecutor said, "That's for the jury to decide," and, "You know what the results are. Use them for what you want." During deliberations, as relevant here, the jury requested readback of Munoz's testimony regarding his confrontation with Wotring, and Marshall's testimony regarding the "time" he saw Wotring and Munoz.

The jury convicted Gamez of all counts and found true all the allegations except the jury found the attempted murder was not willful, deliberate, and premeditated. After the trial court granted the prosecutor's motion to dismiss Gamez's prior strike

conviction, the court sentenced Gamez to prison for 29 years as follows: the upper term of nine years on count 1 and a consecutive 20-year term for personally discharging a firearm. The court imposed and stayed the sentences on counts 2 and 3 pursuant to section 654.

DISCUSSION

I. Sufficiency of the Evidence

Gamez argues insufficient evidence supports his attempted murder conviction. Not so.

“In reviewing the sufficiency of evidence under the due process clause of the Fourteenth Amendment to the United States Constitution, the question we ask 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.” [Citations.] We apply an identical standard under the California Constitution. [Citation.] ‘In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court “must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.] The same standard also applies in cases in which the prosecution relies primarily on circumstantial evidence. [Citation.]’ (*People v. Young* (2005) 34 Cal.4th 1149, 1175 (*Young*)). “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*Young, supra*, 34 Cal.4th at p. 1181.)

The elements of attempted murder are specific intent to kill and a direct but ineffectual act toward accomplishing the intended killing. The prosecution must establish

the defendant acted with express malice: the defendant desires the victim's death or knows with a substantial certainty the victim's death will occur. (*Booker, supra*, 51 Cal.4th at pp. 177-178.) Express malice may be inferred from the circumstances of the offense. (*People v. Smith* (2005) 37 Cal.4th 733, 741 (*Smith*)). "The act of firing toward a victim at a close, but not point blank, range "in a manner that could have inflicted a mortal wound had the bullet been on target is sufficient to support an inference of intent to kill" [Citation.]' [Citations.] "The fact that the shooter may have fired only once and then abandoned his efforts out of necessity or fear does not compel the conclusion that he lacked the animus to kill in the first instance. Nor does the fact that the victim may have escaped death because of the shooter's poor marksmanship necessarily establish a less culpable state of mind." [Citation.]' [Citation.]" (*Ibid.*)

Here, applying these principles to the record before us, and viewing the evidence in the light most favorable to the prosecution, we conclude the evidence is sufficient to support Gamez's conviction of the attempted murder of Wotring. It is true that shooting at a person and endangering his life does not alone establish the requisite intent for the crime of attempted murder. But the circumstances of the offense here establish Gamez acted with express malice. Gamez does not dispute Wotring's testimony that when he entered the garage he threatened to shoot Wotring if he did not obey his commands. And Gamez concedes "the fact a shot was fired was corroborated[]" based on Munoz's and Mattson's testimony. Additionally, Wotring testified that as he chased Gamez with a brick in his hand, Gamez turned and fired one gun shot at him from 60 feet. Wotring explained he saw the gun muzzle flash. Based on Gamez's threat and his turning and firing the gun at a range close enough where Wotring could see the muzzle flash and could have inflicted a fatal wound, the jury could reasonably conclude Gamez intended to kill Wotring when he fired the shot "at" him.

Contrary to Gamez's contention otherwise, *People v. Perez* (2010) 50 Cal.4th 222 (*Perez*), is instructive. Although the issue in that case was whether defendant could be convicted of multiple counts of attempted murder when he fired only one shot at a group of eight people without targeting one particular individual, the Supreme Court's discussion of the evidence required to sustain *one* conviction for attempted murder is persuasive. In affirming one of the eight convictions, the Supreme Court stated that defendant acknowledged, and it held, "Consistent with these principles, a rational trier of fact could find that defendant's act of firing a single bullet at a group of eight persons from a distance of 60 feet established that he acted with intent to kill *someone* in the group he fired upon." (*Id.* at p. 230.) As we explain above, the circumstances of the offense, Gamez first threatening to shoot Wotring and then firing a gun at him from 60 feet away, supports the jury's verdict Gamez intended to kill Wotring.

Acknowledging the testimony of a single witness is sufficient evidence to support a verdict, Gamez argues Wotring's testimony was inherently improbable and is of no evidentiary value. He cites to the following portions of Wotring's testimony: (1) the bullet hit him in the middle of the chest and he flew backwards; (2) he was in incredible pain and thought he was dying; and (3) despite Wotring's complete lack of physical injury, at trial he still believed he had been shot and noted the "indentation" on his chest.

It is true portions of Wotring's testimony were peculiar. Some of his testimony could be interpreted as a belief he had superhuman powers and the bullet ricocheted off him. When the prosecutor noted he had not been shot, Wotring replied, "There was not -- no bullet hole." Later on cross-examination, when defense counsel asked him whether he had any bullet holes, he responded, "I have an indentation in my chest. I couldn't breathe. I had a hard time breathing for three or four months. Something hit me."

“““Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.”” [Citation.]” (*People v. Maciel* (2013) 57 Cal.4th 482, 519.)

Based on our review of the record, we conclude Wotring’s testimony disclosed unusual circumstances but was not inherently improbable. The record includes compelling evidence from which the jury could reasonably conclude Gamez possessed a gun, robbed Wotring, and fired the gun. Based on that evidence, and Wotring’s testimony Gamez fired the gun “at” him, it was certainly reasonable for the jury to rely on that testimony, and discount Wotring’s bizarre assertions, to conclude Gamez intended to kill Wotring.

Gamez also contends Perera did not find any physical evidence establishing Gamez fired the gun at Wotring. True, but Perera explained that unless the bullet hits the victim, it is nearly impossible to find a bullet outside. Finally, Gamez complains he fired a warning shot because Wotring chased him armed with a brick. The jury heard that testimony and rejected it. We will not substitute our judgment on the facts for that of the jury’s where supported by substantial evidence. (*Young, supra*, 34 Cal.4th at p. 1181.)

II. Judicial Misconduct

Gamez contends the trial court improperly vouched for Perera’s credibility. Alternatively, he claims that if we conclude he forfeited appellate review of this issue because his defense counsel did not object to the trial judge’s comment, he received

ineffective assistance of counsel. The Attorney General responds Gamez forfeited this claim because defense counsel did not object.

A defendant's failure to object to alleged judicial misconduct bars consideration of the claim on appeal unless the objection could not have cured the prejudice or would have been futile. (*People v. Houston* (2012) 54 Cal.4th 1186, 1220.) We agree with the Attorney General that Gamez forfeited appellate review of this issue. Gamez points to no hostility between defense counsel and the trial judge, and he cites to only one instance of alleged judicial misconduct. Gamez asserts his claim is preserved for appellate review because it involves important constitutional rights. We disagree as the California Supreme Court has rejected a similar claim. (*People v. Geier* (2007) 41 Cal.4th 555, 613, overruled on another point by *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 [rejecting defendant's claim issue is preserved for appellate review because it involves due administration of justice].) Thus, we address Gamez's ineffective assistance of counsel claim.

Gamez claims his defense counsel provided deficient performance because he did not object. “[A] court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.’ [Citation.] Prejudice is shown when there is a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’ [Citations.] If defendant fails to show that he was prejudiced by counsel’s performance, we may reject his ineffective assistance claim without determining whether counsel’s performance was inadequate. [Citation.]” (*People v. Sanchez* (1995) 12 Cal.4th 1, 40-41, disapproved on other grounds in *Doolin, supra*, 45 Cal.4th at p. 421, fn. 22.)

We agree it is improper for a judge to vouch for the credibility of a witness. (*People v. Coddington* (2000) 23 Cal.4th 529, 616, overruled on another ground in

Price v. Superior Court (2001) 25 Cal.4th 1046, 1069, fn. 13.) The trial judge's statement Perera was "okay" because he knew and apparently trained with Edwards at the very least informed the jury Perera was qualified to testify as an expert witness. The statement was better left unsaid. The trial judge should refrain from making comments that could be interpreted as an endorsement of a particular witness. However, we conclude it was not reasonably probable Gamez would have received a better result had the trial judge not made the comment.

As we explain above, Gamez concedes a gunshot was fired as both Munoz and Mattson heard a gunshot. Munoz testified Gamez had a gun, and Wotring testified that when the man entered his garage he had a gun and threatened to shoot him. Wotring also stated that as he chased the man, the man turned and shot at Wotring. Gamez spends much time discussing Wotring's erroneous identification of Munoz as the shooter on the street in the officer's presence and whether the shooter had facial hair. But Wotring explained the man who entered his garage wore a sweatshirt with a hood that was partially pulled over his face. Wotring picked Gamez's DMV photograph from a photographic lineup the day after the shooting and identified him at trial. Thus, Gamez's portrayal of Perera's testimony as the crucial part of the case is overstated.

Finally, the trial judge instructed the jury it was not to interpret anything the judge said as an indication of what he thought about the witnesses (CALCRIM No. 3550) and the jury was the sole judge of the credibility of the witnesses (CALCRIM No. 226). Based on the strong evidence of Gamez's guilt and the court's instructions, we conclude it was not reasonably probable Gamez would have received a better result had the trial judge not said Perera was "okay."

III. Cross-Examination

Gamez asserts the trial court improperly limited his cross-examination of Perera about GSR testing for the following reasons: (1) his constitutional rights were violated because the court prevented him from confronting the witnesses against him and

prevented him from presenting a defense; and (2) Evidence Code section 721 authorized cross-examination of Perera concerning the DOJ physical evidence bulletin. We will address each claim in turn, addressing the evidentiary issue first.

A. Evidence Code section 721

“An expert witness may be cross-examined about ‘the matter upon which his or her opinion is based and the reasons for his or her opinion.’ (Evid. Code, § 721, subd. (a).) The scope of this inquiry is broad and includes questions about whether the expert sufficiently considered matters inconsistent with the opinion. [Citation.] Thus, an adverse party may bring to the attention of the jury that an expert did not know or consider information relevant to the issue on which the expert has offered an opinion. [Citation.]” (*Doolin, supra*, 45 Cal.4th at p. 434.)

Evidence Code section 721, subdivision (b), provides: “If a witness testifying as an expert testifies in the form of an opinion, he or she may not be cross-examined in regard to the content or tenor of any scientific, technical, or professional text, treatise, journal, or similar publication unless any of the following occurs: [¶] (1) The witness referred to, considered, or relied upon such publication in arriving at or forming his or her opinion. [¶] (2) The publication has been admitted in evidence. [¶] (3) The publication has been established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. [¶] If admitted, relevant portions of the publication may be read into evidence but may not be received as exhibits.”

Here, Perera limits his argument to Exhibit F, the DOJ physical evidence bulletin. Perera testified that although he was familiar with some of the information in the exhibit, he had not seen the exhibit before. Thus, Evidence Code section 721, subdivision (b)(1), is inapplicable. Second, Exhibit F was not admitted into evidence, and therefore, Evidence Code section 721, subdivision (b)(2), is inapplicable.

The parties spend the majority of their time discussing Evidence Code section 721, subdivision (b)(3), and whether Perera's testimony established the DOJ physical evidence bulletin was a reliable authority. We note Gamez did not address Evidence Code section 721, subdivision (b), in his opening brief in any meaningful way. It was not until his reply brief, after the Attorney General disputed Evidence Code section 721, subdivision (b)'s elements were met, that Gamez argued Evidence Code section 721, subdivision (b)(3), was satisfied.

In any event, we cannot conclude the trial court abused its discretion when it ruled none of Evidence Code section 721, subdivision (b)'s exceptions were applicable. Although Perera testified he had reviewed DOJ bulletins in the past when they had arrived in the station, he also stated the station does not receive the DOJ bulletins anymore. More importantly, when defense counsel asked Perera whether he relied on the DOJ bulletins to formulate his expert opinions in the field of forensic science, he replied, "Not as an expert because my job as a crime scene investigator, I keep the rest of the stuff for the scientist out in the lab." We certainly do not question the reliability of DOJ bulletins in the abstract, but we cannot agree with Gamez that Perera's testimony in this case was sufficient to establish the reliability of Exhibit F as it pertained to Perera's opinions on GSR testing. Perera's testimony demonstrated he did not rely on Exhibit F as a reliable authority in his field of expertise. Thus, the trial court did not abuse its discretion in ruling Gamez could not cross-examine Perera regarding Exhibit F and its contents.

In any event, even if it was an evidentiary error, it was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Marks* (2003) 31 Cal.4th 197, 226-227.) As we explain above, there was strong evidence of Gamez's guilt, and his portrayal of Perera's testimony as crucial to the prosecution is overstated.

B. Constitutional Claims

Gamez complains the trial court prevented him from confronting the witnesses against him and prevented him from presenting a defense when the court ruled he could not cross-examine Perera concerning Exhibit F. The Attorney General contends Gamez forfeited appellate review of the issue because he did not object on due process grounds below. In response, Gamez relies on the trial court's ruling, and specifically its reliance on *Montiel, supra*, 5 Cal.4th at page 923, where that court addressed constitutional issues without objection, to argue his constitutional claims are preserved for appellate review.

First, it is the defendant's duty to specify the legal grounds for the objection to give opposing counsel a meaningful opportunity to respond and to give the trial court the ability to rule on the issue intelligently. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1172.) Second, the trial court discussed *Montiel, supra*, 5 Cal.4th at page 923, in the context of credibility of witnesses generally and not on due process grounds. Nevertheless, Gamez's contentions are meritless.

The ordinary rules of evidence generally do not infringe on a defendant's right to present a defense. (*People v. Frye* (1998) 18 Cal.4th 894, 945 (*Frye*), disapproved on other grounds in *Doolin, supra*, 45 Cal.4th at p. 421, fn. 22.) A defendant's right to confront a witness is violated when a trial court prevents a defendant from cross-examining a witness to show the witness's bias. (*Frye, supra*, 18 Cal.4th at p. 946.) A trial court may, however, limit cross-examination that is of marginal relevance. (*Ibid.*) A trial court does not violate a defendant's Sixth Amendment rights "unless the defendant can show that the prohibited cross-examination would have produced 'a significantly different impression of [the witnesses'] credibility[.]'" (*Ibid.*)

Here, Gamez cannot make that showing. Defense counsel cross-examined Perera thoroughly regarding GSR tests, the possibility of a false positive GSR test, the possibility of contaminating a GSR test, the manner of testing, and the fact Perera had not

read numerous bulletins in forming his opinion. Allowing counsel to cross-examine Perera regarding Exhibit F would not have produced a significantly different impression of Perera's testimony.

Although completely excluding evidence of a defendant's defense could violate a defendant's due process rights, excluding defense evidence on a minor or subsidiary point does not impair a defendant's due process right to present a defense. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1103.) Here, the trial court's ruling Gamez could not cross-examine Perera about Exhibit F certainly did not prevent him from presenting a defense. It was a subsidiary point in Gamez's thorough and lengthy cross-examination of Perera. Thus, the court did not violate Gamez's constitutional rights to confront the witnesses against him and prevent him from presenting a defense when it ruled he could not cross-examine Perera about Exhibit F.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

MOORE, J.