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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MICHAEL LEWIS GREEN,<br><br>Defendant and Appellant. | C057064<br><br>(Super. Ct. No. 06F05709) |

A jury found defendant Michael Lewis Green guilty of two counts of forcible rape, two counts of a lewd act with a child under 14 years of age, and one count of a lewd act with a child under the age of 14 with defendant being 10 years older than the child. The jury also found defendant had a prior strike conviction. The trial court sentenced defendant to a total of 54 years 4 months in prison.

On appeal, defendant contends the presence of a support person sitting beside two witnesses while they testified violated his confrontation right under the Sixth Amendment to the United States Constitution. Defendant also contends the

trial court erred in denying his motion to introduce evidence of prior sexual conduct of a complaining witness, which violated his right to a fair trial under the United States Constitution. Finding no error, prejudice, or constitutional violation, we will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant married Dana Miller in January 1998. The couple had a daughter, A., and a son, B.[1] A. was born in 1990, and B. was born in 1991. Dana Miller also had two daughters previous to her relationship with defendant, C. and D.

Beginning in the fall of 2003, defendant engaged in forcible sexual intercourse with A., who was 13, against her will. This conduct occurred around eight times and ceased when A. was beginning her freshman year of high school. A. did not tell anyone about these incidents because she was scared of defendant and did not want to break up the family.

In March or April 2006 and on Mother's Day that year, when A. was 15 years old, defendant forcibly had sexual intercourse with her. After the Mother's Day incident, defendant and A. picked up B. and went to meet Miller at church. A. called her friend, M. F. from church and told him what happened. She told M. F. not to tell anyone.

In June 2006, defendant again attempted to have sex with A. That morning, defendant told A. to take her pants off. A. said

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[1] For anonymity and simplicity, the children in this case will be referred to as A., B., C., and D.

“no” and ran out of the house. Sometime after this attempt A. told C., her older half-sister, about the rapes. A. then called D., her other older half-sister, and also told her. C. and D. told A. that if she did not tell Miller about the rapes within one week, they would tell her. About a week later, A. told Miller what happened by writing it down on a place mat from a restaurant that was in Miller’s car.

Miller then took A. to see their doctor, Nicole Makram. A. told Dr. Makram that defendant had sexually assaulted her. A. also said that she had a boyfriend who she had sex with but would not give the boyfriend’s name. Dr. Makram then reported the incident to the Sacramento County Sheriff’s Department. During her interview with Deputy R. Alexander, A. said that she had sex with her friend M. F. one time. She then clarified that they “started” to have sex but it “hurt too much” and then said that she and M. F. did not have sex.

Detective Brian Shortz conducted a series of “pretext”[2] phone calls with defendant. A. called defendant in the first pretext call. A. told defendant that she was not a virgin and defendant responded by saying that she was not “fully penetrated.” He also said that her hymen was not “completely gone” and “is still intact.” He apologized to A. when she told

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[2] A pretext call is a telephone call with the pretext of talking about specific things with the alleged perpetrator over the phone at a detective’s direction and with the detective listening and recording. The purpose of the call is to elicit comments from the alleged perpetrator acknowledging or admitting the crime.

him that it hurt when he penetrated her. A. told defendant that he had raped her and defendant responded that "rape is something that happens without the consent of the other person." She said she had not given consent. He asked her if she was sure that she did not give consent and she said she was. He apologized to her for what he had done. When Miller made pretext phone calls to defendant, he would not answer her questions about having sex with A. and hung up multiple times. Defendant was subsequently arrested.

A.'s two older half-sisters, C. and D., subsequently told investigators that defendant had molested them when they were younger. Three nieces of defendant also told investigators about various acts of sexual molestation that defendant committed against them. Defendant had also acknowledged these previous acts when his nieces had confronted him. These nieces testified about these acts at trial.

Defendant was charged with two counts of committing a lewd or lascivious act with a child under the age of 14, two counts of committing a lewd or lascivious act with a child 14 years of age with defendant being 10 years older than the child, two counts of forcible rape, and four counts of lewd conduct with a child 11 to 12 years of age.[3] It was also alleged that he had two prior convictions.

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[3] These latter four charges involved C. as the victim; all other charges involved A.

Prior to trial, defense counsel made a motion to allow evidence of A.'s sexual conduct. Specifically, defendant wished to question A. regarding a possible sexual relationship she had with M. F. The purpose was to use the existence of such a relationship to show a motive on the part of A. to fabricate the rape story to rid herself of defendant, who allegedly opposed a relationship between A. and M. F. The trial court denied the motion, noting the strong legislative intent behind protecting victims of sexual crimes, but also acknowledged the constitutional rights of defendant. The court noted that based on the available evidence it was "speculative" to conclude that A. and M. F. had a sexual relationship. The court felt it was sufficient to allow the defense to ask whether A. had a relationship with M. F. in order to show a possible motive to lie about defendant's conduct.

The prosecution moved to have a support person present for A. and C. when they testified.[4] Defense counsel objected, stating that there was no need for a support person in this situation. Further, defense counsel argued that the presence of such a person endorses the credibility of the witness and leads a jury to believe that there was some actual injury to the witness. The court ruled that no showing of necessity was needed for A., because of her youth; however, the court required the prosecution to make a showing as to why C. needed the

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[4] At the time of trial A. was 16 years old and C. was 23.

support person to sit with her. If the prosecution could not show need, then C.'s support person should sit in the gallery.

At trial, A. testified that during the April 2006 rape, defendant said the rape "was about to happen" because someone told him that A. had sex with M. F. A. stated that defendant would blame any bad grades she received on M. F. because defendant thought M. F. was a bad influence. A. also stated that her parents would not allow her to have a boyfriend.

Defense counsel then renewed the motion to bring in evidence of A.'s sexual conduct with M. F. The defense argued that the existence of a sexual relationship between A. and M. F., and defendant's disapproval of it, gave A. the motive to lie about the rapes in order to remove defendant from the household so the relationship between A. and M. F. could continue. The trial court denied the motion and incorporated its previous ruling. The trial court noted that M. F. had consistently denied the existence of any relationship and that when all of A.'s and Dr. Makram's comments to law enforcement were taken as a whole, the evidence did not permit an inquiry into a possible sexual relationship. The trial court went on to state that the relevant inquiry is what effect the existence of a relationship would have on defendant and if that would cause him to confront A. about the existence of a relationship, thereby giving A. a reason to lie about the rapes. The court ruled that defense counsel could inquire if there was a relationship between A. and M. F., but not the sexual nature of it, and that defense counsel could argue the relationship, if

one existed, provided A. with the motive to lie about the accusations.

A. testified at trial with the presence of a support person without objection. The court admonished the jury that the presence of the support person “has no bearing on this case” and the jury was “to draw no conclusions from it.” Before C. testified at trial, the prosecution noted that she was requesting the presence of a support person to sit next to her when she testified. The prosecution stated that C. was nervous and she would feel more comfortable with the presence of a support person. Additionally, her mother was unable to provide support since she was also a witness in the case and had not yet testified. Defense counsel did not object. The trial court also noted that the support person was “stone faced in th[e] courtroom. She shows no emotion. She shows nothing other than complete appropriate decorum and appropriateness.” C. then testified with the support person.

The jury found defendant guilty on all charges except one count of a lewd or lascivious act with A. when she was 14 years of age. Defendant was found to have one strike prior and also prior convictions. The People later moved for, and the court granted, dismissal of the four counts of lewd or lascivious acts with a child 11 to 12 years of age relating to C. Defendant was sentenced to a total of 54 years 4 months in prison. Defendant timely appealed.

## DISCUSSION

Defendant argues that the presence of the support persons violated his constitutional rights in two ways: 1) by denying him a fair and impartial jury; and 2) by violating the confrontation clause.

### I

### *Defendant's Right To A Fair And Impartial Jury Was Not Violated By The Presence Of Support Persons*

Defendant asserts his right to a fair jury trial was violated by the presence of the support person for both A. and C. because it conveyed to the jury that they were telling the truth and that they had in fact been psychologically injured. Additionally, defendant argues that the presence of the support person engendered sympathy for the witnesses, thereby violating his right to a fair and impartial jury. We disagree.

In support of his position defendant cites two United States Supreme Court cases. *Estelle v. Williams* (1976) 425 U.S. 501 [48 L.Ed.2d 126] held that a defendant's right to a fair and impartial jury and presumption of innocence was violated when he was required to wear "prison garb" at trial. (*Id*. at pp. 503-505 [48 L.Ed.2d at pp. 130-131].) Next he cites *Illinois v. Allen* (1970) 397 U.S. 337 [25 L.Ed.2d 353] which held that the presence of a defendant shackled and gagged in court can have a significant effect on the jury's feelings toward the defendant and possibly violate his constitutional rights. (*Id*. at p. 344 [25 L.Ed.2d at p. 359].) Defendant also cites a case from Hawaii, *State v. Suka* (1989) 70 Haw. 472 [777 P.2d 240]. In

*Suka*, the Hawaii Supreme Court found that the presence of a witness advocate who stood behind the 15-year-old witness with her hands on the witness's shoulders bolstered the witness's credibility and violated the defendant's right to a fair and impartial jury trial. (*Id*. at pp. 241, 243.)

The Court of Appeal for the Sixth Appellate District best rejected defendant's argument in *People v. Adams* (1993) 19 Cal.App.4th 412, which, ironically, defendant cites in support of his confrontation clause argument.

As the Court of Appeal concluded: "The presence of a support person at the stand does not necessarily rob an accused of dignity or brand him or her with an unmistakable mark of guilt. The presence of a second person at the stand does not require the jury to infer that the support person believes and endorses the witness's testimony, so it does not *necessarily* bolster the witness's testimony. Finally, the presence of a support person does not interfere with the decorum of the judicial proceedings. Consequently, in the absence of an articulable deleterious effect on the presumption of innocence, we must reject the contention that use of a support person at the stand deprives the defendant of a fair trial." (*People v. Adams*, *supra*, 19 Cal.App.4th at p. 437.)

We agree with the reasoned judgment in *Adams* and reject defendant's argument that the presence of a support person violated his right to a fair and impartial jury. Unlike shackles, prison garb, or a support person's hands on a witness,

defendant has not shown any effect on the jury that violated his constitutional rights.

II

*Defendant's Sixth Amendment Confrontation Right Was Not Violated By The Presence Of Support Persons*

Defendant also asserts that because the trial court did not make a sufficient finding of necessity for the witness advocate for both A. and C., his Sixth Amendment right to confrontation was violated. Specifically, defendant argues that pursuant to *People v. Adams*, *supra*, 19 Cal.App.4th at page 412, the trial court was required to make a finding of necessity for the support persons who were allowed to accompany A. and C. as permitted by Penal Code section 868.5.[5]

In *Adams*, the appellate court found that the presence of a witness support person at the stand affects the demeanor element

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[5] Penal Code section 868.5 provides as follows:

"(a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section . . . 261 . . . 288, [or] 288a . . . shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, . . . during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding."

of confrontation.[6] (*People v. Adams, supra*, 19 Cal.App.4th at pp. 441-442.) The *Adams* court, relying on the United States Supreme Court's opinion in *Coy v. Iowa* (1988) 487 U.S. 1012 [101 L.Ed.2d 857], found that because an element of confrontation was violated by the presence of the support person, a trial court is required to make a "showing of need" for the support person who is allowed by Penal Code section 868.5.[7] (*Adams*, at p. 444.)

However, other appellate courts that have addressed this issue have not required a finding of necessity under Penal Code section 868.5. The Court of Appeal for the Fifth Appellate District held that allowing a support person to be in the gallery in "the absence of a requirement of a case-specific showing of necessity does not . . . make th[e] statute unconstitutional per se." (*People v. Patten* (1992) 9 Cal.App.4th 1718, 1727.) The *Patten* court noted that there were procedures available in utilizing support persons that would not infringe on a defendant's confrontation rights. (*Ibid*.) The

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[6] The four elements of confrontation are: (1) face-to-face confrontation; (2) the oath; (3) cross-examination; and (4) observation of demeanor. (*Maryland v. Craig* (1990) 497 U.S. 836, 845-846 [111 L.Ed.2d 666, 678].)

[7] The *Adams* court also noted that pursuant to *Craig*, Penal Code section 868.5 furthers a compelling state interest as applied to child victims of sexual assault. (*People v. Adams*, *supra*, 19 Cal.App.4th at p. 442.) However, the court noted that no cases have recognized a compelling state interest in protecting adult victims of sexual abuse, thus calling into question, without answering, the constitutionality of the statute as applied to support persons for adult victims. (*Ibid*.)

Court of Appeal for the Fourth Appellate District found that the presence of a support person at the witness stand impacted demeanor evidence but "not significantly at that." (*People v. Johns* (1997) 56 Cal.App.4th 550, 554.) The First District Court of Appeal held that the requirement of a showing of necessity was "debatable." (*People v. Lord* (1994) 30 Cal.App.4th 1718, 1721.) The *Lord* court noted that the required showing is set forth in the statute, which requires that "the support person's attendance 'is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness.'" (*Id*. at p. 1722, quoting Pen. Code, § 868.5, subd. (b).)

We need not decide whether the presence of a support person *per se* affects demeanor and therefore violates a defendant's confrontation rights necessitating a finding of need by the trial court. Assuming a finding of need is required, we conclude the trial court made an adequate finding of need for A. to have a support person. Further, we conclude that even assuming the showing of need was inadequate for C.'s support person, any error was harmless beyond a reasonable doubt.

A

*The Trial Court Made An Adequate Finding Of Need As To "A."*

Defendant argues that pursuant to *Maryland v. Craig*, which involved testimony by closed circuit television, the court must find the emotional distress suffered by the complaining witness, necessitating the presence of a support person, is more than "'mere nervousness or excitement or some reluctance to testify.'" (*Maryland v. Craig*, *supra*, 497 U.S. at pp. 836, 856

[111 L.Ed.2d at pp. 666, 685].) As the *Lord* court observed, however, "The use of a support person, unlike testimony on one-way closed circuit television, does not deny a face-to-face confrontation, and thus does not implicate the type of constitutional showing required in [*Craig*]." (*People v. Lord, supra*, 30 Cal.App.4th at p. 1722.)

The trial court stated the request for a support person was "reasonable given the close nature between the Defendant and [A.]" The court noted that A. was 16 years old and still in high school. Also, A.'s mother was unable to act as a support person because she was a witness in the case as well. We think this showing based on the evidence was sufficient. It is certainly reasonable that a teenage girl would need a support person when testifying against her father about multiple alleged forcible rapes. The nature of such crimes could certainly arouse intense emotion in any person and the presence of a support person would likely be helpful.

Defendant argues that because A. was "unusually mature," had a 4.17 grade-point average, and was able to maintain her composure during the pretext call to defendant, these factors militate against the finding of necessity by the trial court. We believe defendant can hardly gainsay the profound effect a forcible rape can have on a teenage girl, especially a rape committed by her own father. Moreover, the assertion that a grade-point average weighs against a finding of necessity is mere conjecture and is unsupported by evidence. The scholastic ability of a person does not in any way make the traumatic event

more or less emotionally taxing on the person required to recount it in front of the perpetrator and a room of strangers. Defendant's argument also seems to be counter to his own point regarding the pretext call. It is likely A. was able to maintain her composure during the pretext call *because she had both her mother and Detective Shortz providing support*. Additionally, confronting defendant over the phone is a far cry from testifying against him face-to-face in a courtroom.

The trial court made a sufficient finding of necessity. As the court noted in *Lord*, with a child victim "it is almost given that the support person's presence is desired and would be helpful, and the statutory showing will be perfunctory." (*People v. Lord, supra*, 30 Cal.App.4th at p. 1722.) We conclude that the trial court's finding of need was sufficient given the facts and circumstances of this case. The trial court did not err and there was no constitutional violation.

B

*Defendant Was Not Prejudiced By The Presence Of A Support Person When C. Testified*

Assuming without deciding, that it was error to allow C. to have a support person when she testified,[8] we conclude any possible constitutional error was harmless.

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[8] There is no agreement whether the state has a compelling interest in protecting an adult victim of sexual assault while testifying. Here C. was 23 years old at the time of trial. (See *People v. Adams*, *supra*, 19 Cal.App.4th at p. 442.)

We analyze for prejudice under the harmless-beyond-a-reasonable-doubt standard. (*Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705, 710-711].)

In reviewing the evidence for prejudice we exclude the testimony of C. Given the weight of the remaining evidence the error was harmless. First, we note that the convictions against defendant relating to C. were later dismissed. Defendant argues that without C.'s testimony, A.'s testimony "lost significant corroboration." However, D. and three nieces of defendant's testified to similar incidents perpetrated by him. Given that A. testified that defendant raped her, defendant did not deny and indeed almost tacitly admitted to the rapes in the pretext call, and the fact that multiple other relatives of defendant's testified regarding previous incidents of molestation, we find that a jury would have found defendant guilty even in the absence of C.'s testimony. Moreover, the trial court admonished the jury to disregard the presence of the support person and we "presume the jury followed the court's instructions." (*People v. Avila* (2006) 38 Cal.4th 491, 574, citing *People v. Boyette* (2002) 29 Cal.4th 381, 436.) With or without C.'s testimony, there was ample evidence to convict defendant of the crimes. Therefore, any error was harmless.

III

*The Trial Court Properly Excluded Evidence Of A.'s Prior Sexual Conduct*

Defendant asserts the trial court erred in denying defense counsel's motion to admit evidence of A.'s prior sexual conduct.

Defendant argues that prior statements by A. evidenced an existing sexual relationship between her and M. F. and should have been allowed to establish a motive to lie in attacking the credibility of A. Specifically, defendant contends the trial court, by excluding this evidence, violated Evidence Code section 782 and his constitutional rights to a fair trial, the right to cross-examine his accuser, and his right to present a defense. We find no error and no constitutional violations.

A

*Legal Standard Relating To Admission Of Prior Sexual Conduct For Purposes Of Attacking Credibility*

"A defendant generally cannot question a sexual assault victim about his or her prior sexual activity." (*People v. Bautista* (2008) 163 Cal.App.4th 762, 781, citing *People v. Woodward* (2004) 116 Cal.App.4th 821, 831.) An exception exists when evidence of the complaining witness's prior sexual history is "offered to attack the credibility of the complaining witness as provided in section 782." (Evid. Code, § 1103, subd. (c)(5).) "Evidence Code section 782 provides for a strict procedure that includes a hearing outside of the presence of the jury prior to the admission of evidence of the complaining witness's sexual conduct. [Citations.] Evidence Code section 782 is designed to protect victims of molestation from 'embarrassing personal disclosures' unless the defense is able to show in advance that the victim's sexual conduct is relevant to the victim's credibility. [Citation.] If, after review, 'the court finds the evidence relevant and not inadmissible

pursuant to Evidence Code section 352, it may make an order stating what evidence may be introduced and the nature of the questions permitted.'" (*Bautista*, at p. 782.) "By narrowly exercising the discretion conferred upon the trial court in this screening process, California courts have not allowed the credibility exception in the rape shield statutes to result in an undermining of the legislative intent to limited public exposure of the victim's prior sexual history." (*People v. Chandler* (1997) 56 Cal.App.4th 703, 708.)

B

*The Trial Court Did Not Err In Excluding Evidence*

We review the trial court's ruling in denying the admission of A.'s prior sexual conduct for an abuse of discretion. (*People v. Chandler*, *supra*, 56 Cal.App.4th at p. 711.) We will not disturb a court's exercise of its discretion "*except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We are also mindful that the credibility exception to the inadmissibility of a complaining witness's prior sexual conduct should not "impermissibly encroach upon the rule itself and become a 'back door' for admitting otherwise inadmissible evidence." (*People v. Rioz* (1984) 161 Cal.App.3d 905, 918-919.)

On review, the trial court did not abuse its discretion in denying admission of A.'s prior sexual conduct (if any) and cross-examination on this subject. However, as the trial court noted, when A.'s statements to Dr. Makram and the police, along

with M. F.'s consistent denials, were viewed as a whole, it did not appear that A. had a sexual relationship with M. F. Additionally, defendant was allowed to ask whether A. and M. F. had a boyfriend/girlfriend relationship.

The main defense argument was that A. had an ongoing relationship with M. F. that her father tried to prevent. As a result, this gave A. a motive and bias to lie about the accusations to remove her father from the household so that A. and M. F. could continue their relationship. There are several problems with defendant's argument. First, A.'s mother also prevented her from having a relationship with M. F. Therefore, removing defendant from the household would presumably have had no effect on A.'s situation. Also, defendant was allowed to ask if there was an ongoing relationship. If A. and M. F. had a relationship that her father was standing in the way of, the sexual nature of it had little relevance. Defendant asserts that if the relationship was sexual, it provided a more powerful motive for A. to lie.[9] While that may be true, exclusion of the

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[9] It is of note that the possibility of a sexual relationship between A. and M. F. had already been brought into evidence when A. testified that was the reason defendant said he was about to rape her in the incident of March or April 2006. The trial court noted that the possibility of a sexual relationship was in front of the jury, but the relevant inquiry was that defendant was aware of a relationship between A. and M. F. and that his disapproval of it gave A. a motive and bias to lie about the rapes. (See *People v. Bautista*, *supra*, 163 Cal.App.4th at p. 783 ["It is the repercussions of the sexual conduct . . . and not the conduct itself, which ultimately is relevant to understanding [the complaining witness]'s alleged bias against defendant"].)

sexual nature of the relationship was not an abuse of discretion when he was still able to cross-examine A. about the possibility of a relationship with M. F. and then argue motive and bias to the jury to attack her credibility. A relationship between two teenagers, whether sexual or not, is still a powerful motive to lie in the instant case.

It is also of note that it was reasonable for the trial court to avoid a "trial within a trial." Because both A. and M. F. denied the existence of *any* relationship, defendant would have had to call additional witnesses to try to establish the existence of a sexual relationship. This would possibly have confused the issue when defendant could already have attempted to establish bias and a motive to lie by questioning if there was a boyfriend/girlfriend relationship between A. and M. F. (See *People v. Bautista*, *supra*, 163 Cal.App.4th at p. 783 ["The details of the relationship . . . are at best tangentially related to [complaining witness's] feelings toward defendant and to any bias or motive to lie"].)

Because defendant was not precluded from attacking A.'s credibility by other means than prior sexual conduct and because allowing such a course of examination would likely confuse the issues and cause undue delay, we find the trial court did not abuse its discretion in denying defendant's motion.

C

*There Are No Constitutional Violations*

*In Excluding Evidence Of A.'s Prior Sexual Conduct*

Defendant contends his constitutional rights to a fair trial, to cross-examine his accuser, and to present a defense were violated by the exclusion of prior sexual conduct pursuant to Evidence Code section 782. We find that the state evidentiary procedures used to exclude evidence of A.'s alleged prior sexual conduct do not rise to the level of a federal constitutional violation.

As our Supreme Court has stated, "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, citing *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 680 [89 L.Ed.2d 674, 683-684]; see also *People v. Belmontes* (1988) 45 Cal.3d 744, 781.)

Here defendant's constitutional rights were not violated. As discussed in part IIIB of the Discussion, the trial court allowed defendant to explore the existence of a relationship between A. and M. F., albeit not the sexual nature. The jury would not have received a significantly different impression of A.'s credibility had defendant been allowed to introduce evidence of A.'s previous sexual conduct. Defendant was allowed to argue his bias and motive to lie theory. Therefore, the

exclusion of A.’s prior sexual conduct did not violate his federal constitutional rights.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

DAVIS, Acting P. J.

BUTZ, J.