Filed 10/11/12 P. v. Corona CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. RAFAEL CORONA, Defendant and Appellant.	B232757 (Los Angeles County Super. Ct. No. PA064636)

APPEAL from a judgment of the Superior Court of Los Angeles County, Harvey Giss, Judge. Affirmed.

David H. Goodwin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Linda C. Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Rafael Corona of the following 13 counts, arising from a home invasion attack: two counts of forcible rape (counts 1 & 2; Pen. Code, § 261, subd. (a)(1))[1], three counts of forcible oral copulation (counts 3-5; § 288a, subd. (c)(2)), and one count of sexual penetration by foreign object (count 6; § 289, subd. (a)(1)). In each, the jury found true that Corona personally used a firearm in the commission of the offense (§ 12022.3, subd. (a)), and under the "One Strike" law that tying or binding was used, the offense was committed during a burglary, and that Corona personally used a firearm. (§ 667.61, subds. (e)(2), (4) & (6).) Corona was also convicted of three counts of robbery, each with true findings that the offense was committed in an inhabited dwelling, and that Corona personally used a firearm in the commission of the offense (counts 7-9; §§ 211, 213, subd. (a)(1)(A), 12022.53, subd. (b)). He was further convicted of conspiracy to commit bribery (count 11; § 182, subd. (a)(1)); bribery of a witness (count 12; § 137, subd. (a)); offering to bribe a witness (count 13; § 138, subd. (a)); and intimidating a witness from prosecuting a crime (count 14; § 136.1, subd. (b)(2)).

The trial court sentenced Corona to an indeterminate term of 25 years to life as to count 1 (rape) under the One Strike law, plus 10 years for the firearm enhancement. The court imposed and stayed the same sentence as to counts 2 through 6 (the remaining sex crimes). The trial court imposed a determinate, aggregate term of 26 years as to counts 7 through 9 (the robberies), and counts 11 through 14 (the bribery-related crimes).[2]

We affirm the judgment.

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1 All further section references are to the Penal Code.

2 We note a clerical error on the abstract of judgment. As to counts 7 through 9, and 11 through 14, the aggregate term on these determinate sentences should total 9 years 4 months, not the 9 years listed on the abstract. The total time imposed then, with the enhancements, should amount to 26 years, not 25 years 8 months.

FACTS

The Home Invasion Crimes

In May 2004, Y. P. — the sex crimes victim — lived in an apartment complex in Panorama City. Y. lived with her two daughters, Carla (then one year old) and Rosario (then four years old), and her cousins, Eduardo and Gabriel V. Y. worked at her family's restaurant near downtown Los Angeles.

On May 28, 2004, Y. worked until about 8:00 p.m., when the restaurant closed. Y. stayed at the restaurant for about 40 minutes while one of the waitresses waited for a ride home. Shortly before Y. left, the telephone rang. When Y. answered the phone, she heard only laughing. She hung up. While Y. was waiting, she saw a four-door, brown Altima parked outside with two or three people inside. After the waitress's ride came, Y.'s brother, Jose P., drove Y. home. On the way, they went by their mother's home to pick up Y.'s children. Since Carla was already asleep, Y. only picked up Rosario.

Jose dropped Y. and Rosario by the gate to her apartment building's parking lot. When Y. walked into the parking lot, two men were there, talking in Spanish. As Y. walked past the men, they began to follow her, and one of the men, who was talking on a cell phone said, "I call you later because the broad is here." One of the men was short, dark complexioned, and wearing a black leather jacket. The other man, whom Y. identified at trial as Corona, was lighter complexioned, with acne "pockmarks," and was wearing a white shirt and a baseball cap. Y. never saw Corona or the other man before the day of the attack.

As Y. neared her apartment, one of the men grabbed her by the hair and put his hand over her mouth. The two assailants entered the apartment, closed and locked the door, and closed the window blinds. Both were armed with handguns. The assailants gathered Y., Rosario, Eduardo, and Gabriel in the living room. After looking upstairs to determine no one else was there, the man with the black leather jacket began to put duct tape on all four victims. The assailants taped Y.'s hands behind her back. When they began putting duct tape on Rosario's mouth, she started crying. Corona put his handgun to the child's head and told her that if she did not shut up, they would kill her. Gabriel

and Eduardo both had their hands tied behind their backs, their feet bound, and their mouths taped.

The invaders ordered Gabriel and Eduardo lie face down and then removed wallets and money from their pockets. They also took a chain from Gabriel, and Y.'s purse and cell phone. Corona's accomplice went upstairs again, and returned saying he could not find anything. One of the men put a gun to Y.'s head, and threatened that if she did not give him everything he would kill her daughter and then her. Y. told him all of the money she had from the restaurant sales was in her purse. Corona then instructed Y. to go upstairs with him.

Upstairs, Corona rummaged through drawers and closets, then told Y., "For the last time, give me the stuff you have or I'm going to go downstairs and I will kill your daughter." Y. retrieved a "safe box" from the closet. When Corona failed to open the safe, he forced Y. to open it. Corona grabbed everything that was inside the safe and put the items in his pocket.[3] When Corona stated, "You have more things," Y. handed over money that her brother had been saving, about $2,000. Corona then took Y. downstairs and told his accomplice that he did not find anything, after which he told the other man "you go and see if you're able to find something." Corona stayed downstairs with the victims while the other man went upstairs.

While his cohort was upstairs, Corona grabbed Y. by the hair and took her toward the kitchen saying he was not going to leave until he did something he wanted to do to her. Her daughter was watching and crying. Once inside the kitchen, Corona put the gun to Y.'s head, started to touch her face with his mouth, and put his hand under her blouse touching her breast. He then pushed Y. down, unzipped his pants, and put his penis in her mouth, and forced her to orally copulate him. He grabbed Y.'s hair and made her stand up. He unbuttoned her pants, began to fondle her vagina, and pulled down her panties. He asked her if she liked it, then put his penis in her vagina, removed it, and reinserted his penis several times. He also made Y. grab his penis and put it in her

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[3] Inside the safe was a ring, a bracelet, a chain belonging to Y.'s daughter, and rent money in the approximate amount of $1,200.

vagina. He told her, "If you call the police, I know where you work." As Y. and her attacker returned to the living room, the other man came from upstairs. Shortly thereafter, the two home invaders left.

Once the men left, Y. helped unbind the other victims, and a 911 call was made to the police.

The Initial Investigation

On May 29, 2004, at about 12:45 a.m., Los Angeles Police Department (LAPD) Detective Steve Castro responded to the location of a reported rape and home invasion. There was duct tape on the living room floor, and the upstairs bedrooms were ransacked. Y. had already been transported to a local hospital. A criminalist collected evidence from the crime scene, including duct tape from the living room and an opened "coin safe" from the upstairs bathroom.

Detective Castro interviewed Y. at the hospital. She relayed facts in line with those summarized above. More specifically, she had been working that evening at a restaurant in South Los Angeles, the phone rang, she answered, there was a male voice laughing. She observed a man looking inside the restaurant from outside and she felt this was "a little odd." When she closed the restaurant and left with her brother, there was a brown Nissan outside with its engine running. They picked up her daughter, who was at their mother's home, and then drove to Y.'s home.

As Y. exited the car and walked to her apartment, she saw the brown Nissan again with two men standing by it. Near her front door, someone grabbed her from behind, put a hand over her mouth, and put a gun to her head. Once inside, they told everyone in Spanish, including Y.'s daughter and two cousins, to not move. The men duct taped the hands and mouths of her two cousins and informed them that they were there to rob them. One suspect went upstairs. The other suspect told Y. to come to the kitchen and that if she did not comply, he would kill her daughter. When Y. entered the kitchen, he told her to remove her pants and panties. The man approached her from behind, fondled her breast, and inserted his penis into her vagina. Y. said the sexual assault took about 10

minutes. She was in tears and distraught as she was relaying this information to Detective Castro.

When the other suspect returned from upstairs, he had Y.'s white purse with $1,200 inside, which was the rent money, and said that was all he found. The other suspect asked Y. for the bracelet she had been wearing that evening at the restaurant. When she replied that she did not have it, he told her to get it or he would kill her daughter. Y. went upstairs with the suspect and directed him to a safe. She opened the safe and he removed all of the jewelry from inside. Back downstairs, the man grabbed her black purse, in which she had $1,000, a bag that contained a bottle of Mexican wine, and a picture frame with the Virgin Mary on it. Shortly thereafter, the suspects fled. As they departed, one of the men threatened, "Do not call the police. If you call the police, I'll come back and kill you."

Sandra Wilkinson, an experienced certified nurse practitioner and sexual assault nurse examiner, saw Y. at the hospital at approximately 4:00 a.m. on May 29, 2004. Y. said a Hispanic man who appeared about 33 years old, had raped her, fondled her breast, and penetrated her vagina twice. Y. was not sure if he ejaculated. Wilkinson examined Y.'s vagina, and observed "grayish mucosy stuff." She collected it with a syringe, looked at it under a microscope, and observed sperm. She also used an ultraviolet, black light, which with amber glasses causes semen on the body to become "a bright yellow streak." She saw semen on three areas of Y.'s left buttock. Wilkinson also conducted an external genital exam of Y. She found a laceration on the perineum, the area between the vagina and anus. This was significant because Y. reported that when her vagina was penetrated, it was painful. The tear was consistent with blunt force trauma.

Detective Castro retrieved the rape kit from the hospital and booked it into evidence in June 2004. In August 2005, Detective Castro made a request for DNA analysis of Y.'s vaginal swab, and of a blood sample. In September 2005, Michael Mastrocovo, a criminalist working in the DNA unit of the LAPD crime laboratory, was assigned to oversee DNA tests. Those tests disclosed a mixture of DNA from Y. and from an unknown male on the vaginal swab obtained from Y.'s rape examination. In

November 2005, Mastrocovo entered the DNA profile of the unknown male into the California Department of Justice's DNA database.

Detective Castro was unable to locate the suspects at the time of the initial investigation.

The Renewed Investigation

In March 2009, the California Department of Justice sent a letter to the LAPD's crime laboratory indicating there had been a "possible hit," a match, for the DNA profile submitted to the DNA database by LAPD criminalist Mastrocovo in 2005 in connection the sex crimes case involving Y. The laboratory, in turn, generated a letter to the robbery/homicide division to alert the officers who were involved in the initial investigation. Carla Zuniga, a detective supervisor with LAPD's Robbery Homicide Division, became involved in the case in 2009, after receiving the investigative lead from the Department of Justice. On April 23, 2009, Detectives Zuniga and Oscar Gamino interviewed Corona, "the person who was identified from the notice [the LAPD] received in the DNA match." Corona was then at the George Bailey Detention Facility in San Diego. The detectives also served a search warrant on Corona and collected saliva samples for a more complete comparison with the DNA evidence in this case. Detective Zuniga also asked the authorities at the detention center to begin recording all phone calls that Corona made, as well as the visits he received.[4]

The Bribery-related Offenses

On April 27, 2009, Corona called Miriam Ceja and asked her to look for "Onza." Corona wanted Onza to find "Chino," who would assist Onza in locating the victim. Corona wanted his brother to pay $10,000 to the victim not to testify. Later the same day, Corona called Miriam again and asked her to call Onza because his calls to Onza were not going through. Miriam complied, and Corona spoke with Onza. He asked Onza

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[4] San Diego Sheriff's Deputy Torsak subsequently provided Detective Zuniga with four CD recordings. At trial, Detective Gamino testified regarding what was said on the CD's because they were in Spanish. After Detective Gamino's testimony, the CD's were played for the jury. The jurors were provided an English transcript.

to have Chino go where the victim worked, and ask her how much money she wanted not to go to court.

Yadira M. is Y.'s sister-in-law. In May 2009, Yadira was working at the family owned restaurant when a woman, two men, and two or three kids came into the restaurant. When Yadira served them, the younger man asked whether she was the one who got robbed. Yadira replied, "No," realizing that they were referring to Y. They asked for the victim's phone number or address, but Yadira would not provide it. The man then took a business card and wrote his name and number on it as well as the name and number of the woman and requested that Yadira give it to the victim. The woman said her name was Miriam and that her husband was in jail. She wanted to talk to the victim and wanted to give the victim $10,000 not to go to court. Miriam thereafter called Yadira two or three times at the restaurant asking if she had given the card to the victim, and asking Yadira to help her. Yadira told Miriam that she (Yadira) sent the business card to the victim.

On May 2, 2009, Miriam called Corona and told him that she and Onza had gone to the business where they believed the victim worked. She said the victim was not there but they left a business card with her sister-in-law with two phone numbers on it, and they had told the sister-in-law that they were trying to find the victim so she would not go to court.

On May 5, 2009, Corona called Miriam twice. In both calls, he asked Miriam to go back to the restaurant to talk to Yadira. He also asked Miriam to take the children with her so that Yadira would see his children and be sympathetic towards him.

On May 9, Corona called Miriam again and told her to go back to the restaurant to convince Yadira to meet with the victim. He also asked Miriam if his mother had sold "what his Mom wanted to sell in Mexico" so that money could be given to the victim. Miriam told Corona that she did not want to get involved.

On May 14, 2009, Miriam visited Corona. He asked Miriam if she had gone to Los Angeles. She replied that she had not. She said that Onza would be going on a

particular day to see Yadira. Corona insisted that Miriam arrange a meeting with the victim through Yadira.

Meanwhile, Yadira contacted Y., and told her about the people who came into the restaurant. Y., in turn, spoke to Detective Gamino. On June 10, 2009, he arranged to have Y. call the number on the card that Miriam had left with Yadira. Miriam identified herself as Corona's wife and wanted to know what she could do for them. Y. asked why they were looking for her. Miriam said that it was Y.'s fault that her husband was in jail. She offered to pay Y. $10,000 and give her a Tahoe truck not to show up to court. Y. said she would think about it. Shortly thereafter, on June 15, 2009, acting upon the directions of Detectives Gamino and Zuniga, Y. called Miriam and said she would accept the money and the Tahoe. Y. and Miriam made arrangements to meet at a Denny's restaurant. Y., accompanied by undercover officers went to the meeting site, but Miriam did not appear. Y. called Miriam a couple of times, but got no answer. Y. eventually spoke to Miriam again, who said she did not have all of the money. Both calls between Y. and Miriam were recorded.

The Criminal Case

In February 2010, the People filed an information charging Corona with the 13 counts detailed at the outset of this opinion.[5] The charges were tried to a jury in the fall of 2010.

Y. testified regarding the home invasion. She identified Corona as her attacker. Her cousin, Eduardo, testified and confirmed Y.'s testimony regarding the nature of the home invasion; he could not identify Corona. Besides the eyewitnesses, the investigating officers and criminalists and the laboratory personnel involved in the investigation also testified. Charlotte Word, a laboratory director at Orchid Cellmark, testified that Cellmark, at the request of LAPD, looked at three different items of evidence collected from Y. — a swab from the left buttock, an external genital swab, and a vaginal swab.

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[5] The information also included a count 10: kidnapping to commit another crime. That count was alleged to have occurred on the date of the home invasion in May 2004. Count 10 was not submitted to the jury and is not involved in the current appeal.

Jason Befus was the analyst who performed the testing of these items. Befus prepared a report dated June 3, 2005; his analysis was further reviewed by Kathryn Colombo. The analysis disclosed spermatozoa on the vaginal and external genital swabs, but none on the swab from the buttocks. There were also nucleated cells on all three pieces of evidence. The finding of nucleated cells means that "there were non sperm type cells present that contained a nucleus." Nick Sanchez, an LAPD criminalist, took DNA samples from Corona and compared them to the DNA analysis that LAPD criminalist Mastrocovo had done from the vaginal swab taken from Y. Sanchez concluded that the DNA profile that Mastrocovo found on the vaginal swabs came from Corona, with a certainty of 1 in 5.6 quadrillion individuals. During his testimony, Mastrocovo agreed the DNA profile done by Sanchez matched the DNA profile that Mastrocovo had done — they were from the same person. Finally, Amy Adams, a forensic print specialist for the LAPD, testified as to latent prints lifted off duct tape and a red metal safe. When she compared the latent prints with Corona's known fingerprints, she concluded that Corona's right middle finger matched the print lifted from the duct tape, and his left thumb matched the print lifted from the inside of the safe.

Corona testified in his own defense. His story was that he and Y. had an intimate relationship for about seven months in 2004.[6] Once, Y. got a phone call from her brother. Corona thought it was from another man and he got jealous, which soured their relationship, causing him to break up with her. Corona offered that Y. got mad at him because he ended their relationship, and that she made up the story about him raping her.[7] According to Corona, Y. received a phone call one evening when they were together. They were upstairs, and Y. went downstairs to answer the phone. When Corona went

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[6] Corona was not specific about when, by date, the relationship began, or when, by date, the relationship ended. On cross-examination, Corona testified that he did not recall the date he last had sex with Y.

[7] We see no evidence in the record to indicate that in 2004, at the time of the home invasion sex crimes, Y. identified Corona as her attacker. She only said that she had been attacked by a Hispanic male, about 33 years old. Corona was first identified as a possible suspect in 2009 by the DNA evidence.

downstairs to see who she was talking to, she was talking into the phone in a very low voice. Corona asked her why she was talking into the phone that way and she became angry, telling him to shut up because it was an important call. Corona thought she was talking to another man and that she was cheating on him. They exchanged words. Corona admitted that he had asked Miriam to try to get Y. not to testify.

On rebuttal, Y. denied she ever had a relationship with Corona.

On November 24, 2010, the jury returned verdicts finding Corona guilty as detailed at the outset of this opinion. The trial court thereafter sentenced Corona as noted above.

DISCUSSION

I. CALCRIM No. 361

Corona contends all of his convictions must be reversed because the trial erred in instructing the jury with CALCRIM No. 361. We disagree.

As used at this trial, CALCRIM No. 361 instructed the jury:

> "If the defendant failed in his testimony to explain or deny *evidence against him*, and if he could reasonably be expected to have done so based on what he knew, you may consider his failure to explain or deny in evaluating that evidence. Any such failure is not enough by itself to prove guilt. The People must still prove the defendant guilty beyond a reasonable doubt. [¶] If the defendant failed to explain or deny, it is up to you to decide the meaning and importance of that failure." (Italics added.)

CALCRIM No. 361 should not be given when a defendant testifies and "explains or denies matters within his or her knowledge, no matter how improbable that explanation may appear." (*People v. Kondor* (1988) 200 Cal.App.3d 52, 57 [addressing CALJIC No. 2.62, the precursor to CALCRIM No. 361].) CALCRIM No. 361 is properly given when the defendant testifies "but fails to deny or explain inculpatory evidence." (*People v. Sanchez* (1994) 24 Cal.App.4th 1012, 1029-1030 [also addressing CALJIC No. 2.62].) Contrary to Corona's assertions, the cases he cites do not support the rule that a defendant's testimony precludes the use of CALCRIM No. 361 even when

his or her testimony explains or denies only some matters within his or her knowledge, but not other matters. Instead, CALCRIM No. 361 is improper only when a defendant has explained "all the facts within his knowledge." (*Kondor, supra*, at p. 57; *People v. Peters* (1982) 128 Cal.App.3d 75, 85-86 [defendant argued "there was absolutely nothing he failed to explain or deny"]; *People v. Saddler* (1979) 24 Cal.3d 671, 683 ["Since there were no facts or evidence . . . which defendant failed to explain that were in his particular knowledge to explain," it was error to instruct with CALJIC No. 2.62].)

For purposes of this discussion, we will accept Corona's foundational argument that his testimony about a relationship with Y. explained why his DNA was found on her vaginal swab. We depart from Corona when he argues that this made instruction with CALCRIM No. 361 improper. Corona's testimony about a relationship with Y. did not explain how his fingerprints were found on a piece of duct tape used to gag and bind the victims. Corona's testimony did not explain how his fingerprints were found inside a safe at Y.'s home. There was no error in instructing with CALCRIM No. 361 here.

Moreover, assuming instruction with CALCRIM No. 361 was an error, we would not reverse. Under Supreme Court precedent, we review the CALCRIM No. 361 error under the harmless error standard articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836. (See *People v. Saddler*, *supra*, 24 Cal.3d at p. 683.) Under this standard, our task is to determine whether it is "reasonably probable that a result more favorable to [Corona] would have been reached in the absence of the error." (*People v. Watson, supra*, at p. 836.) We find CALCRIM No. 361 did not affect the result in Corona's trial.

The evidence against Corona was exceedingly strong. During her testimony, Y. identified Corona as the man who raped and robbed her during the home invasion. Her testimony was verified by the evidence that showed Corona's DNA was found on a vaginal swab taken from Y. during her rape exam. The statistical comparison of the DNA results was a virtual certainty. Further, Corona's fingerprints were found on a piece of duct tape, which was used to gag and bind all of the robbery victims, and also inside the red metal safe. Y.'s cousin testified regarding the general nature of the home invasion, mirroring Y.'s testimony. Corona's defense that he had a sexual relationship

with Y. did not even address that two eyewitnesses testified there had been a home invasion, or the bribery evidence. Corona admitted trying to bribe Y. If it was true, as Corona suggested at trial, that Y. made up the rape charge because she was mad at him for breaking off their relationship, why had not Y. given his name to police as the rapist at the time of the initial investigation in 2004?

To the extent Corona contends the instructional error resulted in constitutional error because it may have lowered the prosecution's burden of proof in the eyes of the jury, we are certain beyond all doubt that the result of Corona's trial would have been the same had the trial court not instructed with CALCRIM No. 361. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

II. Excluded Evidence

Corona contends all of his convictions must be reversed because the trial court erred in excluding evidence which he says would have buttressed his story that he had an intimate relationship with Y. We disagree.

The Trial Setting

Immediately before defense counsel began cross-examination of Y., the trial court addressed a prosecution motion out of the presence of the jury. The prosecution wanted to exclude a particular line of questioning. Corona's counsel proffered what was intended: "I would like to inquire of [Y.] whether she had . . . during the period of [2004] or in the months immediately preceding [2004] an adult male relative who was in prison. We happen to know [it] was her husband. I don't need to get into evidence that it was her husband. I simply need to get into evidence that there was an adult male relative of hers who was in prison at that time. [¶] . . . [¶] . . . [I]f Mr. Corona were to testify[,] I expect him to say that he was aware that [Y.] had an adult male relative who was in prison at that time. It's Mr. Corona's understanding it was a brother. The fact appears to be that it was her husband." When the trial court asked the relevance of the evidence, Corona's defense counsel continued: "[It is relevant to show that] he knows her and knew her at the time personally. [¶] . . . [¶] . . . It tends to establish that he knew her, that they personally knew each other at that time. [¶] . . . [¶] . . . The fact that

Mr. Corona is in possession of personal knowledge about [Y.] that he would not otherwise possess if they didn't know each other is what I'm trying to get at. . . . [¶] [H]e has a piece of information that is personal to her that he knows, wouldn't have any other way of knowing it besides having known [Y.]."

The prosecutor objected that the line of inquiry was "premature" in that Corona had not yet testified, and that the issue could be "revisit[ed]" if and when Corona took the stand. The prosecutor further objected that the proffered evidence was not relevant to prove the desired proposition in any event, and that it was "just an attempt to dirty up the victim." The trial court excluded the line of inquiry about a male relative in prison, citing Evidence Code section 352.

As noted above, Corona later testified on his own behalf, saying he was involved in an intimate relationship with Y. for seven months sometime around May 2004. During a break in Corona's testimony, the lawyers and the trial court had another discussion out of the presence of the jury regarding the issue of whether Corona knew, around the time of May 2004, that Y.'s brother was in prison. Corona testified that what caused their relationship to begin souring was a phone call Y. received about five months into their relationship. According to Corona, when the phone rang, Y. answered it and began talking in a "low voice." Corona became suspicious that it might have been another man asking her out. Y. told Corona that the call was from prison in Arizona from her brother "Coyo." The court ruled that the proposed questions to Corona about Y.'s relative in prison would not be permitted, finding that "it [did not] tend to establish [the] proposition" that Corona had known Y. in 2004. As the court explained: "He can get that information through investigation of her background . . . ." Further, the court continued: "I'm ruling that establishing the specific fact that you want to establish is irrelevant. Even if it were relevant, it's so remote and so on the extreme of relevancy that under [Evidence Code section] 352 I would keep it out because it's going to add additional time to the trial and create confusion. It is also being brought out, I think, to dirty up the victim, to show guilt by association; you have a dirty husband or brother in prison."

Analysis

A trial court's decision to exclude evidence pursuant to Evidence Code section 352 is reviewed for abuse of discretion. (*People v. Riggs* (2008) 44 Cal.4th 248, 290.) Under this standard, we will not find error unless Corona demonstrates that the trial court's ruling was "arbitrary, whimsical, or capricious as a matter of law." (*People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1614.)

We find no error. First, Corona is wrong that his testimony about Y. having a male relative in prison, whether her brother or her husband, would have had a strong tendency to show Corona knew Y. *prior* to the home invasion. We agree with the trial court that information disclosing that Y. had a relative in prison could have been obtained from a source other than Y. We also agree that such information did little to show that Corona was having a consensual sexual relationship with Y. prior to the date of the crimes. Evidence showing a person shared information with another person does not show the two were engaged in a sexual relationship. Second, assuming we were to accept that the proffered evidence had marginal relevance, the trial court did not rule irrationally in finding the evidence inadmissible under Evidence Code section 352. We agree with the trial court that any probative value was outweighed by its prejudicial effect. Indeed, evidence that may tend to "dirty" a witness by association is the type of "undue prejudice" with which that section 352 is concerned. Evidence may be excluded as unduly prejudicial when it is of such nature as to motivate jurors to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish. (*People v. Doolin* (2009) 45 Cal.4th 390, 439.)

Here, we find the trial court reasonably concluded that if the marginally relevant evidence was admitted, there was a probability that the jurors would have used it for an illegitimate purpose — to infer that Y. was a "bad person" because she had a relative in prison. The trial court properly precluded Corona from admitting this evidence.

We reject Corona's claim that he was denied his right to present a defense by the trial court precluding this information. He testified, and was not denied the opportunity

to present his "consensual sexual relationship" defense. The exclusion of a single item of marginally relevant evidence that may have buttressed his defense does not mean that he was precluded from presenting his defense. Rulings under Evidence Code section 352 do not ordinarily implicate due process. (*People v. Falsetta* (1999) 21 Cal.4th 903, 919-922; *People v. Fitch* (1997) 55 Cal.App.4th 172, 183.)

Finally, assuming the trial court erred by not admitting this evidence, any error was harmless. The erroneous exclusion of evidence does not require reversal unless it is reasonably probable appellant would have obtained a more favorable outcome had the evidence been admitted. (Evid. Code, § 353, subd. (b); *People v. Earp* (1999) 20 Cal.4th 826, 878; see *People v. Watson, supra,* 46 Cal.2d at p. 836.) We find no possibility that the result of Corona's trial would have been different had he been permitted to testify that Y. had a brother in prison in May 2004. We see no possibility that Corona's testimony in this regard would have negated the strong evidence of his guilt. It would not explain why his fingerprints were found on a piece of the duct tape used to gag and tie up the victims in this case or inside the metal safe recovered from Y.'s residence. Nor would it explain why his DNA was found on Y.'s vaginal swab taken right after the rape and robberies, particularly inasmuch as Corona concedes he never specifically testified that he had sex with her on the night in question. Y. identified Corona as her rapist and as one of the robbers. She testified that she had not seen Corona before the incident. Further, while Corona testified that he had spent significant time with Y. at her apartment, he admitted he had never met her daughters or cousins, who lived there with her. Corona never referred to Y. by name during any of the jail recordings to Miriam. Under this state of the evidence, it is not remotely probable that a better result would have occurred if Corona had been permitted to testify about Y.'s male relative who was in prison in May 2004. (*People v. Watson, supra,* at p. 836.) Our conclusion would be the same under a more rigorous constitutional harmless error analysis. (*Chapman v. California*, *supra*, 386 U.S. at p. 24.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.