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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ANDREW JORDAN, Defendant and Appellant.	B279664 (Los Angeles County Super. Ct. No. NA104241)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark C. Kim, Judge. Affirmed as modified.

George L. Schraer for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Human trafficking is the use of force or fear to restrict another's liberty and obtain labor or services. To protect trafficking victims, evidence that the forced services involved commercial sexual activity is inadmissible to prove the victim's criminal liability for that activity. Further, and as relevant to this case, evidence of a victim's *history* of commercial sexual activity is inadmissible to impugn the victim's character or impeach his or her credibility in a trafficking trial.

Andrew Jordan appeals from his conviction for human trafficking, aggravated assault, willful infliction of corporal injury to a cohabitant, pimping, and pandering by procuring. He contends the trial court erred by excluding evidence that his two victims engaged in commercial sexual activity prior to becoming trafficking victims. He further contends the court erred by imposing consecutive prison terms for aggravated assault and infliction of corporal injury to a cohabitant, which he argues were crimes indivisible from the human trafficking.

We reject the first contention but accept the second, and thus modify the judgment and affirm it as modified.

BACKGROUND

A. N.F.

In 2009, Jordan began a relationship with N.F. and persuaded her to work for him as a prostitute. Jordan would drive N.F. to San Fernando, where she worked under rules he set. She had to remain in a certain area and could not speak with African-American males, and had to text Jordan before and after each sex act and charge specified amounts depending on how much time she spent with a customer. Jordan required that N.F. make $400 a day, after which he would pick her up. Jordan threatened to hurt N.F., her family, or her dog if she disobeyed,

sometimes making good on those threats by beating her. For example, he once hit N.F. with a screwdriver when she looked at African-American males, purportedly a violation of one of his rules. Jordan coerced N.F. into chopping off her hair, and she had his name tattooed on her neck and wrist. He sometimes kicked her out of their residence or left her on the streets, often after beating her and taking her possessions. The relationship ended in 2014.

B. Julie T.

In December 2014, Jordan answered Julie T.'s ad on Craigslist seeking a "sugar daddy," and they exchanged emails and began a relationship, eventually moving in together. Jordan forced Julie to work as a prostitute. He drove her to working locations and dictated where she could walk, what text messages to send when she engaged a customer, what hotel rooms to use, how much time to spend with each customer, and how much to charge for each sex act. He would drive back and forth while she worked, monitoring her. Jordan forced Julie to work until she made $400. If she did not, or if she broke one of his rules, he beat her. On one occasion, Jordan struck Julie several times with a wooden brush, causing her to sustain a black eye and scratches on her forehead. On several other occasions he hit Julie in the face, leaving marks and bruises. Jordan coerced Julie to have his name tattooed on her chest and wrist, and demanded that she give him her income tax refunds and the financial aid money she received for attending technical school. Julie complied with his demands out of fear that he would beat her and destroy the ashes of her father and brother, which she kept in urns.

C. Arrest and Conviction

Jordan was arrested and charged with human trafficking (Pen. Code, § 236.1, subd. (b)), aggravated assault (§ 245, subd. (a)(4)), infliction of corporal injury to a cohabitant (§ 273.5, subd. (a)); pandering by procuring (§ 266i, subd. (a)(1)), and pimping (§ 266h, subd. (a)).

Before trial, the People moved in limine to exclude evidence that N.F. and Julie T. worked as prostitutes before they met Jordan. The court granted the motion on the ground that subdivision (b) of Evidence Code section 1161 (hereafter subdivision (b)) precludes admission of evidence of a human trafficking victim's history of commercial sexual conduct. During trial, the court several times sustained prosecution objections aimed at excluding similar evidence.

N.F. testified that she and Jordan were in a relationship for five years, living in various motels. The relationship was good at first, and she loved him and agreed to work as a prostitute because they needed money. When asked whether she wanted to work as a prostitute, she testified, "Yes and no."

Julie testified she had posted ads on Craigslist.org asking for a "sugar daddy," which she claimed was a man who would pay a young woman for nonsexual companionship. She stated in the ad that she was a "good kisser" and "drug and disease free." She posted these ads on the "casual encounters" board at Craigslist, where, "the working girls post, . . . like prostitutes." Julie admitted she used false names to obtain motel rooms for her and her "clients."

The jury found Jordan guilty on all counts, and he was sentenced to a principal term of 14 years in prison for human trafficking, plus two consecutive eight-month terms for

aggravated assault and infliction of corporal injury to a cohabitant, plus six consecutive years for the other crimes, for a total sentence of 21 years 4 months. He timely appealed.

DISCUSSION

I. Admissibility of Victims' Sexual History

A. Interpretation of Evidence Code Section 1161

Jordan contends the trial court erred in excluding evidence of N.F.'s and Julie T.'s commercial sexual conduct before they became Jordan's trafficking victims. He argues subdivision (b) precludes only evidence of commercial sexual conduct that occurs during human trafficking, not prior to it. We disagree.

Interpretation of a statute and application to an undisputed set of facts is a question of law subject to de novo review on appeal. (*Rudd v. California Casualty Gen. Ins. Co.* (1990) 219 Cal.App.3d 948, 951-952.) When interpreting a statute we attempt to ascertain the intent of its authors so as to effectuate its purpose. (*Select Base Materials, Inc. v. Board of Equal.* (1959) 51 Cal.2d 640, 645.) To determine that intent we first examine the words of the statute itself, giving them their usual and ordinary meaning. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Ibid.*)

Human trafficking is the violation of "the personal liberty of another with the intent to obtain" prostitution services. (Pen. Code, § 236.1, subd. (a).)

Evidence of a victim's past sexual conduct is generally admissible to impeach the victim's credibility, unless an

exception applies. (Evid. Code, § 1103, subd. (c)(5); *People v. Chandle*r (1997) 56 Cal.App.4th 703, 708.) In November 2012, California voters provided such an exception by approving the Californians Against Sexual Exploitation Act (CASE Act or Act), the intent and purpose of which were to strengthen human trafficking laws and "[t]o recognize trafficked individuals as victims and not criminals, and to protect the rights of trafficked victims." (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 35, p. 101, hereafter Text of Proposition 35.) The CASE Act made various changes to California's human trafficking law, including the addition of Evidence Code section 1161.

Evidence Code section 1161, subdivision (b), provides that "[e]vidence of sexual history or history of any commercial sexual act of a victim of human trafficking . . . is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding."[1]

By its plain meaning, subdivision (b) precluded evidence of N.F.'s and Julie T.'s "history" of commercial sexual acts—i.e., acts occurring before they became Jordan's trafficking victims—if offered to impeach their credibility or impugn their character. Such evidence was therefore properly excluded.

Jordan argues that subdivision (b) precludes evidence only of commercial sex acts that occurred during the trafficking, not

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[1] Evidence Code section 1161 provides: "(a) Evidence that a victim of human trafficking . . . has engaged in any commercial sexual act as a result of being a victim of human trafficking is inadmissible to prove the victim's criminal liability for the commercial sexual act. [¶] (b) Evidence of sexual history or history of any commercial sexual act of a victim of human trafficking . . . is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding."

prior to it. He argues this conclusion flows from the language of the subdivision itself, because history of "a victim" of human trafficking means history of acts occurring *while* the witness is a victim, not before. If the voters had intended to preclude evidence of acts occurring before the witness became a human trafficking victim, he argues, they would have replaced the phrase "victim of human trafficking" with "person *who later becomes* a victim of human trafficking." The argument is without merit.

Jordan's construction would read the word "history" right out of subdivision (b). But "[t]he function of the court in construing a statute 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . .'" (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 492, superceded by statute on another ground as stated in *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674, 692, fn. 14.) Subdivision (b) precludes evidence of the "history of any commercial sexual act of a victim of human trafficking." The word history in that phrase cannot be omitted.

Jordan argues the word "history" in subdivision (b) refers only to a "series" or "cluster" of acts, not to past acts. But such a construction, aside from being ungrammatical—supposedly precluding evidence of any *series* or *cluster* of "any commercial sexual *act*," would gratuitously truncate the reach of "history" and in any event fail to cure the word's superfluity, as preclusion of "any commercial sexual act" would already subsume preclusion of a series or cluster of such acts.

Jordan argues his interpretation of subdivision (b) flows from the language of Evidence Code section 1161 as a whole, and from the purpose and intent of the CASE Act. The argument is without merit.

Evidence Code section 1161 contains only two subdivisions, (a) and (b). Subdivision (a) provides: "Evidence that a victim of human trafficking . . . has engaged in any commercial sexual act *as a result of being* a victim of human trafficking is inadmissible to prove the victim's criminal liability for the commercial sexual act." (Italics added.) The phrase "as a result of being a victim" restricts the exclusion to events connected to human trafficking. (*In re Aarica S.* (2014) 223 Cal.App.4th 1480, 1487-1488 [exclusion in subdivision (a) applies "only when there is a specific causal connection between the victim's status as a victim of human trafficking and the particular commercial sex act at issue"].)

In essence, Jordan argues that because subdivision (a) insulates a trafficking victim from prosecution for conduct related to the trafficking but not for pre-trafficking conduct, subdivision (b) likewise insulates the victim from impeachment only for conduct connected to the trafficking. He argues that evidence of past commercial sex acts should be admitted to impeach a trafficking victim because to exclude such evidence would falsely portray the victim as an "innocent," conceal evidence relevant to the victim's veracity, and forego an opportunity to discourage prostitution.

But nothing in subdivision (a) suggests that the word "history" in subdivision (b) similarly refers only to events during human trafficking. On the contrary, the language in subdivision (a) limiting its exclusion to acts occurring "as a result" of

trafficking shows that when the voters wanted to limit the exclusion to trafficking conduct they knew how to do so. The lack of similar language in subdivision (b) suggests no such limitation was intended.

Jordan argues his interpretation of subdivision (b) comports with public policy and with the purpose of the CASE Act. But he identifies no supporting statement of purpose in the Act itself (none exists), and in any event, having discerned the meaning of subdivision (b) from plain wording that permits only one reasonable interpretation, we need not examine secondary indicators of legislative intent or public policy. (*Lungren v. Deukmejian*, *supra*, 45 Cal.3d at p. 735 ["If the language is clear and unambiguous there is no need . . . to resort to indicia of the intent of the . . . voters"]; cf. *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166 ["If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy"].)

In any event, one of the stated purposes of the CASE Act is to "recognize trafficked individuals as victims and not criminals." To impeach a trafficking victim with his or her history of commercial sexual activity would do the opposite.

At oral argument, Jordan's counsel suggested that our interpretation of subdivision (b) as excluding the prostitution history of a human trafficking victim from "any civil or criminal proceeding" would insulate the victim from liability for misconduct even in a non-trafficking case. We do not believe this result necessarily follows. And, in any case, it is unnecessary to decide the issue in this case.

In sum, the evidence of Julie T.'s and N.F.'s commercial sexual history was properly excluded under subdivision (b).

B. Constitutionality of Subdivision (b)

Jordan argues that even if subdivision (b) excludes evidence of N.F.'s and Julie's T.'s past commercial sexual history, his Sixth Amendment right to confront and cross-examine was violated by exclusion of that evidence. The argument is without merit.

The confrontation clauses of the federal and state Constitutions guarantee a criminal defendant the right to confront the prosecution's witnesses. (U.S. Const., 6th Amend.; Cal. Const. art. I, § 15.) The right to confrontation includes the right of cross-examination. (*Alford v. United States* (1931) 282 U.S. 687, 691.) The right is not absolute, however, and guarantees only an opportunity for effective, not unlimited, cross-examination. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678-679; *United States v. Owens* (1988) 484 U.S. 554, 559 [an accused has no Sixth Amendment right to cross-examine a witness "in whatever way, and to whatever extent" he might wish].) The right to confront and cross-examine a witness "may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." (*Chambers v. Mississippi* (1973) 410 U.S. 284, 295.) The confrontation clauses allow "reasonable limits" on cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." (*Delaware v. Van Arsdall*, *supra*, 475 U.S. at p. 679.) Any "significant diminution" of the right to cross-examine a witness "requires that the competing interest be

closely examined." (*Chambers v. Mississippi*, *supra*, 410 U.S. at p. 295.)

In Proposition 35, the voters recognized that human trafficking manifests "through the exploitation of another's vulnerabilities." (Text of Prop. 35, p. 101.) Here, any willingness on the part of N.F. and Julie T. to engage in commercial sexual activity left them vulnerable to exploitation by Jordan. "[T]o combat the threats posed by human traffickers . . . seeking to exploit women . . . for sexual purposes," the voters declared as an initial matter that trafficked individuals should be recognized "as victims and not criminals." (*Ibid.*)

Evidence of N.F.'s and Julie's T.'s history of commercial sexual activity was excluded to protect them from further victimization and encourage them to testify without fear of harassment or condemnation. Although the evidence was arguably relevant to their credibility (see, e.g., *People v. Clark* (2011) 52 Cal.4th 856, 931), the trial court could reasonably conclude the evidence would have led to confusion.

The danger of such confusion was patent, as evidenced by Jordan's arguments on appeal, where he argues that evidence of N.F.'s and Julie T.'s commercial sexual history was relevant to counter the inference that he "corrupted two innocent women," and "countered the inference that [they] engaged in prostitution only because of pressure from" him. But the women's "innocence" (whatever that means) was irrelevant. Human trafficking is the "[d]eprivation or violation of the personal liberty" of "another" with the intent to effect prostitution. (Pen. Code, § 236.1, subd. (h)(3).) The law gives no attention to the victim's pre-trafficking conduct. (See *People v. DeSantis* (1992) 2 Cal.4th 1198, 1248 [evidence of specific instances of a complaining witness's sexual

conduct is inadmissible to prove consent by the complaining witness on the instant occasion].) And we flatly reject any suggestion that a person who engages in prostitution does not deserve the protection of anti-trafficking statutes.

In a similar vein, at oral argument Jordan's counsel argued that the prosecution suggested incorrectly at trial that N.F. and Julie T. had *not* engaged in prostitution before they met Jordan. Therefore, he argued, evidence of their history of prostitution was necessary to counter this misimpression. The record contains no such suggestion by the prosecution in the first instance. From our reading, any resistance to the idea that N.F. and Julie T. had engaged in prostitution came only as pushback to Jordan's repeated and improper insinuations that they had. As just one example, when defense counsel asked Julie T. whether she knew that the Craigslist board where she posted her ads was also used by prostitutes, she denied that her ads were offers of prostitution. A defendant may not by improper insinuation create circumstances necessitating—as rebuttal to the pushback—otherwise improper evidence.

Jordan's confrontation rights were not violated.

II. Consecutive Terms under Penal Code Section 654

Penal Code section 654 provides that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

Jordan argues that the consecutive terms imposed for his convictions for infliction of corporal injury to a cohabitant and aggravated assault must be stayed pursuant to Penal Code

section 654 because both crimes were committed as indivisible parts of the primary crime of human trafficking. We agree.

Penal Code "section 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor. [Citation.] If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one. . . . [¶] On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for the independent violations committed in pursuit of each objective even though the violations were parts of an otherwise indivisible course of conduct." (*People v. Perez* (1979) 23 Cal.3d 545, 551-552.)

The purpose of Penal Code section 654 is to "insure that defendants' punishment [is] commensurate with their culpability." (*People v. Louie* (2012) 203 Cal.App.4th 388, 391.) Whether section 654 applies is a question of fact for the trial court. We will reverse a trial court's application of section 654 only if no substantial evidence supports it. (*People v. Vang* (2010) 184 Cal.App.4th 912, 915-916.)

Aggravated assault occurs when a person uses "force likely to produce great bodily injury" upon another person. (Pen. Code, § 245, subd. (a)(4).) Jordan committed aggravated assault by hitting Julie T. with a wooden brush when she broke the rules he had imposed to govern her prostitution.

Infliction of corporal injury to a cohabitant occurs when a person "willfully inflicts corporal injury resulting in a traumatic condition," such as a wound, to a cohabitant or former cohabitant. (Pen. Code, § 273.5, subds. (a), (b) & (d).) Jordan inflicted corporal injury to a cohabitant by beating Julie T. to force her to submit to his demands, including his demand that she work as a prostitute for his benefit.

Human trafficking is the "deprivation or violation of the personal liberty of another with the intent to effect" pimping, pandering, or procuring. (Pen. Code, § 236.1, subd. (h)(3).) Jordan committed human trafficking by forcing Julie T. to stay with him and make money through prostitution or else risk beatings and the destruction of her family members' ashes.

Jordan assaulted and battered Julie T. to force her to submit to him and follow rules he had established for her prostitution, which the jury found constituted human trafficking. No evidence suggests Jordan beat Julie T. for any other reason. The objective of the lesser crimes was to effect the greater. (*People v. Perez*, *supra*, 23 Cal.3d at p. 551.) Therefore, the lesser crimes were indivisible from the greater, and separate punishment was improper.

DISPOSITION

The judgment is modified to reflect that the eight-month sentences imposed for crimes against Julie T.—infliction of corporal injury to a cohabitant and aggravated assault (counts 5 and 6)—are stayed. In all other respects the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment to reflect the judgment as modified and forward a copy thereof to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.