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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE FLOYD BEASLEY,

Defendant and Appellant.

2d Crim. No. B281078
(Super. Ct. No. 2016018350)
(Ventura County)

Lawrence Floyd Beasley appeals a judgment following conviction of assault with the intent to commit rape, and forcible oral copulation, with findings that he suffered a prior serious felony and strike conviction and served a prior prison term. (Pen. Code, §§ 220, 288a, subd. (c)(2), 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.71.)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2014, K.D. lived in a one-bedroom apartment in Oxnard. She was in a dating relationship with her girlfriend, A.H., who

¹ All statutory references are to the Penal Code unless stated otherwise.

would stay in the apartment from time to time. One day in November 2014, K.D. returned to her apartment and found A.H. and Beasley sitting in the living room.

A.H. introduced Beasley as her friend and asked K.D. if Beasley could stay at the apartment. Beasley appeared "[v]ery polite" and "friendly" and, because A.H. "vouched" for him, K.D. permitted Beasley to stay. K.D. was concerned, however, because Beasley wore "an ankle bracelet."

Beasley stayed at K.D.'s apartment for several nights but he did not have an apartment key. During Beasley's visit, he and K.D. used methamphetamine together. K.D. did not see Beasley again until December 4, 2014, when she locked herself out of her apartment and saw Beasley with a female neighbor. Beasley "pried the door open" for K.D., and he, the neighbor, and K.D. went inside and visited. After the neighbor left, K.D. and Beasley used methamphetamine and Beasley slept on the living room sofa that evening. K.D. had no romantic interest in Beasley because she "[didn't] like men."

Beginning on December 5, 2014, Beasley became "more personal" by offering to massage K.D. She declined Beasley's overtures and informed A.H. that she no longer wanted him in her apartment. When K.D. returned home that evening, Beasley was lying across her bed in his underwear. K.D. instructed him to dress and return to the living room. K.D. fell asleep, but awoke to sounds of an argument between A.H. and Beasley in the living room. A.H. accused Beasley of having a sexual relationship with K.D. The argument ended when K.D. denied having a relationship with Beasley.

When K.D. returned home from her employment on December 6, 2014, Beasley was sitting on her porch. He asked to go inside and retrieve some of his personal papers. Beasley also

stated that he required his "food stamp card" which A.H. held for him. K.D. called A.H. and asked her to bring the card because she wanted Beasley to leave the apartment.

Inside the apartment, Beasley followed K.D. He fastened the door's security chain and then watched a pornographic videotape. K.D. turned off the television and demanded that Beasley leave the apartment. Beasley's personality "started to change" and he became "verbal" and "physical" with K.D. Beasley stated that he was "in charge," not K.D. Beasley asked whether she wanted "to live or die" and stated that he was an emissary of God. Beasley then forced K.D. onto the bed, removed her clothing, and directed her to shower. Following the shower, he ordered her to consume alcohol that he provided.

For the next six or seven hours, Beasley forced K.D. to perform acts of oral copulation with "breaks" where she fell asleep. Beasley struck her in her left shoulder when he could not obtain an erection. He also threatened to rape and kill A.H. Beasley ordered K.D. to take additional showers. He also attempted to place his penis in her vagina, but he did not have an erection.

During the evening, A.H. came to the door several times, but Beasley blocked the door and threatened to harm A.H. if K.D. responded to the door. At approximately 5:00 a.m., Beasley dressed and then fell asleep. K.D. then dressed and went to a neighbor's apartment where she summoned police assistance.

Oxnard police officers arrived and K.D. later received a sexual assault examination at the Safe Harbor facility. Face and neck DNA samples from K.D. collected by the examination nurse were later tested and found to include Beasley as a major contributor.

Meanwhile, Beasley locked the door inside K.D.'s apartment and would not respond to police officers. During a 90-minute standoff, Beasley made suicidal statements and stated that he turned on the gas inside the apartment. The fire department then responded and shut down the gas supply to the apartment complex. Eventually, Beasley surrendered.

Previous Rape Conviction

Jessica G. testified that Beasley sexually assaulted her in 2000. On November 16, 2000, she met him through her friend Mark Harness. The three were in a vehicle when Beasley and Harness began arguing. Harness demanded that Beasley drive him home. As Harness left the vehicle, he struck Beasley in the face with a bottle, causing Beasley to bleed profusely.

Beasley drove away and parked in a parking lot. He grabbed Jessica G. by her hair and pulled her across his lap. He threatened that if she left the vehicle, he would be at her home before her. Jessica G. perceived his statement as a threat against her 10-year-old daughter.

Beasley then drove to a dark alley and ordered Jessica G. to disrobe. He choked her and ordered her to orally copulate him. Beasley could not maintain an erection, however. He then twice attempted to have intercourse with Jessica G. but was unable to maintain an erection.

Police officers arrived and Beasley drove away. Within minutes, his vehicle ran out of gasoline, and he stopped. Beasley left the vehicle and informed police officers that Jessica G. had been raped by assailants. Beasley was either partially dressed (his penis exposed) or nude, and Jessica G. was nude. Jessica G. initially lied to protect Beasley but later informed police officers that Beasley raped her and forced her to perform oral copulation.

In 2001, Beasley pleaded guilty to forcible rape. (§ 261, subd. (a)(2).)

Oxnard Police Report – November 16, 2000

Oxnard Police Officer Brian Bishop responded to the incident against Jessica G. and documented the circumstances of the crime in a police report. Bishop read portions of the police report at the present trial because he had no memory of the circumstances of the crime as reported by Jessica G. or of Beasley's arrest. Bishop created the police report several hours following Beasley's arrest. The police report was redacted and the only portions read were Beasley's and Jessica G.'s statements to police officers and Bishop's observations, but not statements or observations made by others. The trial court permitted this reading as a past recollection recorded pursuant to Evidence Code section 1237.

Conviction and Sentencing

In the current case, the jury convicted Beasley of assault with the intent to commit rape, and forcible oral copulation. (§§ 220, 288a, subd. (c)(2).) In a separate proceeding, the trial court found that Beasley suffered a prior serious felony and strike conviction and served a prior prison term. (§§ 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b), 667.71.) The court denied Beasley's motion to strike the prior strike conviction. It then sentenced Beasley to a prison term of 67 years to life, consisting of an upper six-year term, then doubled, for assault with the intent to commit rape (count 1); a consecutive 50 years-to-life term for forcible oral copulation (count 2); and a five-year term for the prior serious felony conviction. The court struck the prior prison term finding. It also imposed various fines and fees, ordered victim restitution, and awarded Beasley

888 days of presentence custody credit for count 1 and 773 days of presentence custody credit for count 2.

Beasley appeals and contends that the trial court erred by: 1) admitting evidence of his sexual offenses committed against Jessica G., and 2) permitting a police officer to testify regarding statements and observations contained in a 2000 police report. He asserts that the errors compel reversal.

DISCUSSION

I.

Beasley argues that the trial court abused its discretion by admitting evidence of the sexual offenses committed against Jessica G. because the prejudicial effect of that evidence substantially outweighs its probative value. (Evid. Code, §§ 1108, 352.)² He contends that the court improperly admitted evidence of his 2000 sexual offense because that offense is too dissimilar from the charged offenses and is inflammatory. (§§ 1108, subd. (a)], 352; *People v. Harris* (1998) 60 Cal.App.4th 727, 740 [prior offense involved mayhem and was dissimilar to charged offense of sexual fondling].) Beasley adds that the evidence was unduly time consuming and its emphasis at trial resulted in jury prejudgment of his character.

Section 1108, subdivision (a) provides: "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352." Section 1108 provides a limited exception to the rule against propensity evidence in sexual offense prosecutions. (*People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 822-823; *People v. Williams* (2016)

² All further statutory references are to the Evidence Code.

1 Cal.5th 1166, 1196.) The other-crimes evidence is presumed admissible and is to be excluded only if its prejudicial effect substantially outweighs its probative value in showing the defendant's disposition to commit the charged sexual offense. (*Daveggio*, at p. 823; *Williams*, at p. 1196.)

In exercising its discretion to admit evidence of a prior sexual offense pursuant to sections 1108 and 352, the trial court must consider such factors as the nature, relevance, and possible remoteness of the prior offense; the degree of certainty of its commission; the likelihood of confusing, misleading, or distracting jurors from their main inquiry; similarity to the charged offenses; any likely prejudicial effect upon the jurors; the burden on defendant to defend against the prior offense; and the availability of less prejudicial alternatives to its outright admission, such as a defendant admitting that he committed the prior offense or the exclusion of irrelevant, inflammatory details regarding the prior offense. (*People v. Loy* (2011) 52 Cal.4th 46, 61.) The court must engage in a "careful weighing process." (*People v. Daveggio and Michaud*, *supra*, 4 Cal.5th 790, 823.) The "prejudice" referred to in section 352 refers to prejudice that tends to evoke an emotional bias against the defendant, i.e. prejudging him based upon extraneous factors. (*Id.* at p. 824.)

Our Legislature has determined that prior sexual offense evidence is particularly probative, and there is a presumption in favor of its admission. (*People v. Loy*, *supra*, 52 Cal.4th at pp. 61, 63; *id.* at p. 62 ["Section 1108 assists the jury's task by allowing the accused's sexual misconduct history to be considered for whatever light it might shed"].) We review the court's ruling pursuant to sections 352 and 1108 for an abuse of discretion. (*People v. Daveggio and Michaud*, *supra*, 4 Cal.5th 790, 824.)

The trial court did not abuse its discretion in permitting evidence of Beasley's sexual offenses against Jessica G. because those crimes had similarities to the crimes against K.D. Beasley became acquainted with the two victims and committed the crimes at night in a dark, secluded alley or a locked apartment. The crimes involved forcible oral copulation and intercourse with Beasley becoming frustrated when he could not maintain an erection. In each incident, Beasley threatened to harm his victim's loved one if the victim did not cooperate. The crimes against Jessica G. were 14 years earlier than the crimes against K.D., and Beasley pleaded guilty to forcible rape of Jessica G. The court also instructed with a limiting instruction regarding the jury's use of the Jessica G. evidence.

Beasley's reliance upon *People v. Harris, supra*, 60 Cal.App.4th 727 is misplaced. There, the prior offense was forcible and violent in the extreme, involving mayhem of the victim with an ice pick. By contrast, the charged offenses in *Harris* involved breach of trust and non-forcible sexual fondling. (*Id.* at p. 738.) Although some circumstances of the crimes against Jessica G. and K.D. may differ, the crimes exist on a continuum. The trial court could reasonably conclude that this is the type of disposition evidence that section 1108 deems relevant.

II.

Beasley contends that the trial court erred by permitting Officer Bishop to read portions of the police report that he dictated in 2000 regarding the sexual offenses committed against Jessica G. He asserts that the evidence violated the hearsay rule because Bishop did not satisfy the prerequisites of section 1237 regarding past recollection recorded, i.e., Bishop did not review the report for accuracy following its transcription. Beasley also argues that this testimony abridged his constitutional right to

confront witnesses because Bishop had no memory of the incident and Jessica G. could not recall certain details.

Jessica G. recalled many of the circumstances of her sexual assault, but due to the passage of time (16 years) and her intermittent drug use, she did not remember the precise words used. Bishop had no memory of Beasley's arrest, Jessica G.'s statements, or her later interview. Moreover, reading the police report did not refresh his recollection.

Pursuant to any standard of review, any error in permitting the reading of portions of the 2000 police report was harmless. Many of the statements in the report were also testified to by Jessica G. at the trial regarding the current offense. In addition, Oxnard Police Sergeant Jeffrey McGreevy testified concerning the circumstances leading to Beasley's arrest, including the vehicle parked in a dark alley, Beasley's statement when stopped, and Beasley's and Jessica G.'s state of nudity. Moreover, Beasley's attorney informed the trial court that he had reviewed a transcript of Jessica G.'s interview and the police report did not contain any material misstatements of her interview. Finally, the trial court took judicial notice of Beasley's guilty plea to forcible rape. The plea form also indicates that Beasley agreed that the police report, among other documents, provided a factual basis for his 2001 plea.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Matthew P. Guasco, Judge
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