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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ERIC ANDREW WARFIELD, Defendant and Appellant.	B277726 Los Angeles County Super. Ct. No. SA089593

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark E. Windham, Judge. Affirmed.

Carl M. Hancock for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Heather B. Arambarri, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The People charged defendant Eric Andrew Warfield with 14 counts arising out of his sexual abuse of six children. The jury convicted defendant of nine of the counts and found multiple-victim allegations true for three of the counts. The court sentenced defendant to 33 years to life in state prison. On appeal, defendant contends: (1) his defense counsel was ineffective for failing to move to sever the charges involving two of the children from the charges involving the other four children; (2) the manner in which the court conducted voir dire rendered defendant's trial fundamentally unfair; and (3) there is insufficient evidence to support the convictions for two of the counts. We affirm.

PROCEDURAL BACKGROUND

In a 14-count information, the People charged defendant with the following sexual offenses: three counts of misdemeanor sexual battery (Pen. Code,[1] § 243.4, subd. (e)(1); counts 1 through 3 [Gabriela D.]); one count of forcible sexual penetration (§ 289, subd. (h); count 4 [Gabriela D.]); one count of misdemeanor annoying or molesting a child under 18 years of age (§ 647.6, subd. (a)(1); count 5 [Gabriela D.]); one count of sexual intercourse or sodomy with a child 10 years old or younger (§ 288.7, subd. (b); count 11 [Natalie G.]); and eight counts of committing a lewd act on a child younger than 14 (§ 288, subd. (a); counts 6 and 13 [Jaclyn V.], 7 and 14 [Lauren T.], 8 and 9 [K.C.], 10 [Y.W.], and 12 [Natalie G.]). As to counts 6 through 14,

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1 All undesignated statutory references are to the Penal Code.

the People alleged defendant committed the offenses against more than one victim (§ 667.61, subds. (b), (e)).

Defendant pled not guilty to all of the counts and denied the allegations. A jury found defendant guilty of counts 1 through 6, and 10 through 12; it acquitted him of counts 7 through 9, 13, and 14. The jury found true the multiple victim allegations as to counts 6, 10, and 12.

The court sentenced defendant to a total term of 33 years to life in state prison. Defendant was ordered to pay various fines, fees, and assessments, and the court awarded him a total of 48 days of pretrial custody credit. Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

1. The Girls in Defendant's Neighborhood

The following events occurred around 2009 or 2010, when Jaclyn, Lauren, Y.W., and K.C. lived in defendant's neighborhood. At the time, Jaclyn, Lauren, and K.C. were around eight or nine years old, and Y.W. was around 12 years old.

On one occasion, Jaclyn was playing with defendant's son in the living room of defendant's apartment when she smelled something burning in the kitchen. After she opened the oven, she called out to defendant to let him know that the food was done cooking. Defendant then walked up behind Jaclyn and tapped her rear end with his hand. As Jaclyn stiffened her body, defendant reached out and touched her chest with his hand. Jaclyn left defendant's apartment immediately after he touched her.[2]

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[2] Defendant had also surreptitiously recorded video footage of Jaclyn from his apartment. After he was arrested, the police recovered a handheld video camera from defendant's apartment. The camera

On a different occasion, defendant touched Y.W. Defendant took Y.W., K.C., Lauren, and his son to a water park. On the way to the park, Y.W. sat in the front passenger seat while the other children sat in the rear passenger compartment. As he was driving, defendant started poking and tickling Y.W. around her chest. As he was poking and tickling her, defendant touched Y.W.'s left breast more than once. Defendant's touching made Y.W. feel "weird," so she put her hands up to block defendant's hands.

Defendant also touched K.C.'s and Lauren's rear ends several times.[3] On the ride home from the water park, Y.W. asked Lauren to switch seats because Y.W. did not want to sit next to defendant. As Lauren was climbing into the front passenger seat, defendant tapped her rear end. On a different occasion, Lauren was standing on the front landing of defendant's apartment waiting for her friends to arrive. As defendant walked into the apartment, he touched Lauren's rear end. K.C. testified that defendant would often pat her rear end when he greeted her at his apartment. On one occasion, defendant called K.C. into his bedroom to look at something in his closet. When K.C. walked into the room, defendant grabbed her rear end with his hand.

The girls did not report defendant's conduct until after discovering he had been arrested for the offenses involving Natalie G. and Gabriela D.

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contained three recordings that appeared to be filmed from inside defendant's kitchen looking outside and that focused on Jaclyn as she walked down the street.

[3] As we noted above, the jury acquitted defendant of the charges arising out of his touching Lauren and K.C. (counts 7 through 9, and 14).

2. Natalie G.

Defendant met Natalie's mother, Alicia, while shopping in November 2010, when Natalie was five years old. Defendant and Alicia exchanged numbers and soon started dating.

One evening in March 2011, Alicia brought Natalie to defendant's apartment. After dinner, Alicia asked defendant if he had any pain relievers for children because Natalie was not feeling well. Defendant gave Natalie children's Advil and some juice. Alicia then put Natalie to bed in a spare bedroom and went with defendant to his bedroom.

After defendant and Alicia had sexual intercourse, defendant left his bedroom, telling Alicia he didn't feel well. After defendant had been gone for a long time, Alicia went looking for him. Alicia found defendant in the spare bedroom, kneeling in front of the bed with his head and hands near Natalie's genitals. According to Alicia, defendant had exposed Natalie's vagina and was penetrating it with his fingers and licking it with his tongue. Alicia grabbed Natalie, left defendant's apartment, and drove the child to the hospital.

3. Gabriela D.

Gabriela was 17 years old in November 2014. At the time, defendant was dating her mother, Claudia.

On November 12, 2014, Gabriela and Claudia stayed at defendant's apartment. When Gabriela arrived, she went to the living room and played video games while Claudia made dinner and drank cocktails with defendant.

After dinner, Claudia and defendant went to defendant's bedroom. Gabriela went to defendant's spare bedroom, where she changed into pajamas and watched Netflix in bed. A little while

later, Gabriela went to the bathroom to brush her teeth. When she returned to the spare bedroom, she saw defendant lying naked on the bed. Gabriela got scared, went back to the bathroom, and waited for defendant to leave.

When Gabriela returned to the bedroom about 10 minutes later, defendant was gone. Gabriela locked the door and started watching Netflix again. As she was trying to fall asleep, Gabriela heard the bedroom door unlock and saw defendant walk in naked. Defendant got on the bed and laid next to Gabriela, who was lying on her side with her back to defendant.

Defendant started to rub and kiss Gabriela's back. He also put his hands inside Gabriela's pants, underneath her underwear. He moved his hands back and forth, alternating between touching the skin of Gabriela's vagina and her rear end, once penetrating her vagina with his finger. Defendant also exposed Gabriela's breasts and touched them with his hands and mouth.

Once defendant left the room, Gabriela ran out of the apartment, got inside Claudia's car, and called Claudia's cell phone several times. According to Gabriela, Claudia sounded confused and looked like she had been drugged. As she drove Gabriela home, Claudia couldn't keep the car straight, so Gabriela had to control the wheel. When they got home, Gabriela told Claudia's roommate what had happened at defendant's apartment. The roommate drove Gabriela to the hospital.

After Gabriela was interviewed by law enforcement at the hospital, she was transferred to a rape treatment center for a sexual assault examination. A forensic examiner swabbed Gabriela's back, breasts, anus, mouth, and genitals, and took blood and urine samples. Three of the swabs—the ones taken

from Gabriela's left breast, right breast, and back—were later tested for foreign DNA. The swab taken from Gabriela's right breast contained foreign DNA and was tested against swabs taken from defendant. The major contributor of DNA on that swab matched defendant's DNA to a certainty of 1 in 16.6 quintillion.

DISCUSSION

1. Ineffective Assistance of Counsel – Severance of Charges

Defendant contends his counsel was ineffective for failing to move to sever the counts involving Natalie and Gabriela (counts 1 through 5, 11, and 12) from the counts involving the four other girls (counts 6 through 10, 13, and 14). We disagree. Even if we were to assume that a reasonably competent attorney would have moved to sever the two groups of charges, defendant did not show he was prejudiced by counsel's omission. That is, defendant cannot demonstrate the trial court likely would have granted a motion to sever the two groups of charges.

1.1. Standard of Review

To establish a claim for ineffective assistance of counsel, a defendant must satisfy two requirements. (*Strickland v. Washington* (1984) 466 U.S. 668, 690–692 (*Strickland*).) First, the defendant must establish his attorney's conduct fell "outside the wide range of professionally competent assistance." (*Id.* at p. 690.) Second, the defendant must show there is a reasonable probability that but for his attorney's conduct, the result of the trial would have been more favorable to the defendant. (*Id.* at p. 694.) " ' "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ' [Citation.] If a claim of

ineffective assistance of counsel can be determined on the ground of lack of prejudice, a court need not decide whether counsel's performance was deficient." (*In re Crew* (2011) 52 Cal.4th 126, 150.)

1.2. Defense counsel's failure to move to sever the two groups of charges did not prejudice defendant.

Under section 954, the prosecution may charge in the same accusatory pleading "two or more different offenses connected together in their commission, ... or two or more different offenses of the same class of crimes or offenses... ." (§ 954; *People v. Kraft* (2000) 23 Cal.4th 978, 1030.) "The legislative preference for consolidation under either of the two circumstances set forth in section 954 is intended to promote judicial efficiency." (*People v. Landry* (2016) 2 Cal.5th 52, 75 (*Landry*).)

A defendant must make a " 'clear showing of prejudice to establish that the trial court abused its discretion' " in permitting the charges to be joined. (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220, italics omitted (*Alcala*).) A court's decision to join multiple charged offenses or deny a motion to sever those offenses "amounts to a prejudicial abuse of discretion if the ' "trial court's ruling ' "falls outside the bounds of reason." ' " ' [Citation.] In making that assessment, we consider the record before the trial court when it made its ruling. [Citation.]" (*Ibid.*) " 'The state's interest in joinder gives the court broader discretion in ruling on a motion for severance than it has in ruling on admissibility of evidence.' [Citations.]" (*Id.* at p. 1221.)

We consider the following factors when reviewing a court's decision to allow the prosecution to join multiple charged offenses: " '(1) the cross-admissibility of the evidence in separate trials; (2) whether some of the charges are likely to unusually

inflame the jury against the defendant; (3) whether a weak case has been joined with a strong case or another weak case so that the total evidence may alter the outcome of some or all of the charges; and (4) whether one of the charges is a capital offense, or the joinder of the charges converts the matter into a capital case.' [Citations.]" (*Alcala*, *supra*, 43 Cal.4th at pp. 1220–1221.)

"Joinder is generally proper when the offenses would be cross-admissible in separate trials, since an inference of prejudice is thus dispelled." (*People v. Arias* (1996) 13 Cal.4th 92, 126.) That is, if the offenses are cross-admissible, then we may affirm a court's ruling denying a severance motion without considering the remaining factors. (See *People v. Merriman* (2014) 60 Cal.4th 1, 42–43 (*Merriman*).) The absence of cross-admissibility, however, does not by itself establish prejudice. (*People v. Mendoza* (2000) 24 Cal.4th 130, 161, superseded by statute on other grounds as stated in *People v. Brooks* (2017) 3 Cal.5th 1, 63, fn. 8.) Thus, to establish prejudice, " 'defendant must show more than the absence of cross-admissibility of evidence.' [Citation.]" (*People v. Grant* (2003) 113 Cal.App.4th 579, 587.)

In this case, defendant concedes that the threshold requirements for joining the charges involving Natalie and Gabriela with the charges involving Jaclyn, Y.W., Lauren, and K.C. were met because all of the charges involve the same class of crimes: sexual offenses. And as we explain below, the court would have acted well within its discretion to deny any severance motion defendant may have brought because the evidence of his charged sexual offenses would have been cross-admissible in separate trials to establish defendant's propensity to commit sex crimes under Evidence Code section 1108.

Generally, evidence of prior criminal acts is inadmissible to prove the defendant's conduct on a specific occasion. (See Evid. Code, § 1101, subd. (a); see also *People v. Cole* (2004) 33 Cal.4th 1158, 1194 (*Cole*).) In a criminal action where the defendant is charged with a sexual offense, however, evidence of the defendant's commission of other sexual offenses is admissible to prove the defendant's propensity to commit crimes of a sexual nature if such evidence is not inadmissible under Evidence Code section 352. (See Evid. Code, § 1108, subd. (a); *People v. Christensen* (2014) 229 Cal.App.4th 781, 795–796.) Evidence of the defendant's commission of other sexual offenses should be excluded under Evidence Code section 352 "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

"To determine whether section 1108 evidence is admissible, trial courts must engage in a 'careful weighing process' under section 352. [Citation.] 'Rather than admit or exclude every sex offense a defendant commits, trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding

the offense. [Citations.]' [Citation.]" (*People v. Daveggio and Michaud* (2018) 4 Cal.5th 790, 823–824.)

With these principles in mind, we conclude that evidence of defendant's commission of sexual assaults against the six girls would have been cross-admissible in separate trials based on factual similarities between all of the charges. For example, all six girls were under the age of 18 at the time of the assaults, and all except one of the incidents (defendant touching Y.W. and Lauren on the way to and from the water park) occurred in the same location—defendant's apartment. (See *Merriman*, *supra*, 60 Cal.4th at p. 41 [similarities between victims and circumstances surrounding the crimes increases the evidence's probative value].) Each incident involved a child who was completely defenseless against, or particularly vulnerable to, defendant's conduct. Natalie, Jaclyn, Lauren, and K.C. all were around or under the age of 10 when defendant targeted them, and Natalie was "developmentally delayed" and sleeping when defendant assaulted her. Y.W. was sitting in the front seat of defendant's car and, as a result, unable to avoid defendant's hands. And, at the time defendant assaulted Gabriela, she was alone in one of his bedrooms while her mother was sleeping and under the influence of alcohol or drugs.

In addition, defendant had established a level of trust and familiarity with each of the girls before assaulting them. He either got to know them by dating their mothers (Natalie and Gabriela) or by befriending them through his son (Jaclyn, K.C., Y.W., and Lauren). And because all of the assaults occurred within a four or five year period, they were not remote in time. (See *Merriman*, *supra*, 60 Cal.4th at p. 41 [the fact that sexual

assaults occurred within three years of the murder increased the probative value of the sexual assaults].)

Further, the cross-admission of evidence involving the two groups of offenses would not have unduly prejudiced defendant. Although the incidents involving Gabriela and Natalie were more aggravated than those involving the four other girls, they did not involve violence. It also is not likely that cross-admitting the evidence in separate trials would have confused, misled, or distracted the jury. The evidence relating to both sets of charges was straightforward. In five out of the six incidents, each of the girls was able to clearly, simply, and succinctly describe the nature of defendant's assaults, and, in Natalie's case, the child's mother was able to do the same. Although multiple witnesses were called to testify in support of the counts involving Natalie and Gabriela, such as medical technicians and forensic investigators, the salient facts establishing the assault in each of those incidents were presented by a single witness.

In sum, evidence of the sexual assaults from the two groups of charges would have been cross-admissible in separate trials. Because evidence of the sexual assaults was cross-admissible, "that circumstance alone is sufficient to dispel any potential of prejudice arising from the joinder of [those] counts." (*Merriman*, *supra*, 60 Cal.4th at pp. 42–43.) Accordingly, defendant cannot establish prejudice stemming from his counsel's failure to move to sever the two groups of charges.

2. Voir Dire

Defendant argues he was deprived of a fair trial because, while questioning prospective jurors during voir dire, the court and the prosecutor put too much emphasis on the portion of CALCRIM No. 301 that instructs the jury that the testimony of a

single witness is sufficient to prove any fact. Defendant complains that the court's and the prosecutor's focus on that part of the instruction, "unaccompanied by equal emphasis on the cautionary instructions intended to guide and temper the jury's evaluation," "effectively diluted the reasonable doubt standard." As we explain below, the court properly conducted voir dire in this case.

2.1. Relevant Proceedings

Before voir dire began, defendant filed a "Proposed Prospective Juror Question[n]aire", which included several questions that defendant proposed the court should use to survey prospective jurors. Relevant here, question number 27 in defendant's proposed questionnaire states, "The testimony of a single witness may be sufficient to prove any fact if the jury believes that witness. [¶] ... Would you be able to follow this law?"

The court discussed the parties' proposed questions with defense counsel and the prosecutor before summoning the prospective jurors: "Generally, I don't really want to question about factual issues, per s[e], in the trial, but the ability to follow instructions certainly goes to cause, and that's the appropriate function of voir dire, since *both* parties want me to examine the question of ability to accept testimony of a single witness. The reason I am reluctant on that one is I typically have an incomplete rendition of that instruction in asking the jurors if they can vote based on a single witness, and the part that is omitted is a paragraph that you should carefully review all the testimony under such circumstances. So, nevertheless, *as you both have phrased it*, it is an appropriate question, I think." (Italics added.)

When the court addressed the first group of prospective jurors, it read and explained several jury instructions, including instructions on reasonable doubt, a defendant's right not to testify, and how to evaluate the credibility of witnesses. The court then read the entirety of CALCRIM No. 301[4] to the jurors, explaining the instruction as follows: "So that will be up to you whether testimony is—if you … believe it, under the circumstances, such that you ought to believe it or not. That's your call, but, you can't automatically discount testimony without a reason simply because there is only one witness to a point. It's just something for you to consider along with all the other evidence when determining whether or not a charge has been proved beyond a reasonable doubt, and the defendant cannot be convicted unless any charge is proved beyond a reasonable doubt."

After the court and defense counsel questioned the first group of prospective jurors, the prosecutor asked the jurors: "If a witness testifies and convinces you of all the elements of the offense beyond a reasonable doubt which is the standard, and no further evidence is presented, would you have a problem convicting someone in regard to a sexual offense if you believed that witness beyond a reasonable doubt that there is no additional evidence. Does anybody have issues with that?"

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[4] CALCRIM No. 301 provides: "[Unless I instruct you otherwise,] (T/the) testimony of only one witness can prove any fact. Before you conclude that the testimony of one witness proves a fact, you should carefully review all the evidence."

Three prospective jurors expressed concern about whether they would be able to follow the single witness testimony instruction. After the court clarified the instruction, one of those jurors explained that he would not be able to follow the law that a defendant is presumed to be innocent and that the prosecution must prove the defendant's guilt beyond a reasonable doubt. Defendant and the prosecutor agreed to dismiss that prospective juror for cause.

After the court called three new prospective jurors into the box, the prosecutor asked them if they would be able to follow the single-witness instruction that the court had read earlier that morning. The prosecutor and defense counsel discussed the instruction with three of the prospective jurors, none of whom expressed concern about being able to follow the instruction.[5]

As new prospective jurors were called into the box, the prosecutor and the court asked them about the single-witness instruction. On one occasion, a prospective juror expressed concern about convicting a defendant based on the uncorroborated testimony of a single victim. The court asked the prospective juror, "This victim for whom you have empathy, let's say that nobody saw that crime take place, and she identifies a perpetrator, and the perpetrator is on trial. You'd let him go to do it again because there was no corroboration?" The prospective juror responded, "I think in our system that you're innocent until

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[5] One of the prospective jurors raised a different issue concerning conflicting testimony of two witnesses. He stated that if he heard the testimony of two witnesses, both of whom provided conflicting but equally credible accounts of an incident, such as whether a traffic light had been red or green before two vehicles collided in an intersection, he would find reasonable doubt as to the defendant's guilt.

proven guilty. [¶] ... [¶] So given that it's better to have maybe guilty people that haven't been proved guilty yet rather than have someone innocent, you know, based on emotional stories being put into prison." The court replied, "Right. I mean as a value I think everyone actually agrees with that, and that's why we do presume people innocent and we place the burden of proof on the prosecutor and we have a reasonable doubt standard. [¶] But the rules are reasonable in order to protect the community of social order. And if you believe a witness beyond a reasonable doubt and for whatever reason there isn't a videotape or there isn't D.N.A. but—and it's up to you whether the evidence is sufficient. [¶] But there might be a case where it's a really pretty compelling case. The victim knows the perpetrator perhaps and describes what happened and there's every reason to believe—[.]" The court and that prospective juror continued to discuss the juror's opinions about the criminal justice process.

When the prosecutor later questioned the same prospective juror about being able to follow the single witness testimony instruction, the juror responded, "No." The prosecutor later used one of her peremptory challenges to excuse that juror.

Throughout the rest of voir dire, the prosecutor and the court continued to discuss CALCRIM No. 301. On two occasions, the prosecutor read the entire instruction, and on four occasions, the prosecutor summarized the concept that a single witness's testimony may be sufficient to prove any fact. After both sides rested, the court read the jury CALCRIM No. 301 in its entirety: "The testimony of only one witness can prove any fact. Before you conclude that the testimony of one witness proves a fact you should carefully review all the evidence." Defendant never objected to the court's or the prosecutor's questions or statements

concerning CALCRIM No. 301 during voir dire or at any point during trial.

2.2. Analysis

As a preliminary matter, defendant has forfeited any claim of error arising out of the manner in which the court conducted voir dire. To preserve such a claim, a defendant must object to the manner in which voir dire was conducted. (*People v. Foster* (2010) 50 Cal.4th 1301, 1324.) A failure to object to the court's or the prosecutor's questioning during voir dire results in a forfeiture of any challenge to that questioning on appeal. (*Ibid.*; see also *People v. Sanchez* (1995) 12 Cal.4th 1, 61–62 ["defendant failed to preserve his claim of improper voir dire by objecting to the court's questioning during trial"], disapproved of on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390.) By failing to object to the court's or the prosecutor's questioning of prospective jurors during voir dire, defendant has forfeited any claim on appeal that such questioning was inappropriate or rendered his trial fundamentally unfair. (See *Foster*, at p. 1324.) In any event, defendant's argument lacks merit.

"Trial courts possess broad discretion over both '[d]ecisions concerning the qualifications of prospective jurors to serve' [citation] and the manner of conducting voir dire [citation]." (*People v. Whalen* (2013) 56 Cal.4th 1, 29–30, disapproved of on other grounds by *People v. Romero and Self* (2015) 62 Cal.4th 1.) Consequently, " 'the trial court has wide latitude to decide the questions to be asked on voir dire [citation], and to select the format in which such questioning occurs [citation].' " (*People v. Landry*, *supra,* 2 Cal.5th at p. 83.) The applicable standard of review is, therefore, "a demanding one: 'Unless the voir dire by a court is so inadequate that the reviewing court can say that the resulting trial was fundamentally unfair, the manner in which

voir dire is conducted is not a basis for reversal.' " (*People v. Carter* (2005) 36 Cal.4th 1215, 1250.)

The court acted well within its discretion when it questioned, and allowed the prosecutor to question, prospective jurors about the single witness testimony instruction. The court and the prosecutor read the instruction correctly,[6] and they discussed the entire instruction on multiple occasions. The court and the prosecutor never claimed that the testimony of a single witness was any more important than any other form of evidence that may be admitted at trial, nor did they suggest that the jury could use the testimony of a single witness for any improper purpose.

Defendant argues the court and the prosecutor focused too much attention on the first sentence of the instruction, without always discussing the second sentence instructing the jury to carefully consider all other evidence. According to defendant, the court's and the prosecutor's questioning created a "false narrative which, through the court and [the] prosecutor['s] continual 'correction,' placed undue emphasis on only one part of the instruction." Defendant points to no authority that requires a court give equal attention to every instruction, or every portion of an instruction, that may be used at trial during voir dire. Rather, the law gives the court considerable discretion to decide what questions to ask, and what issues to focus on, during voir dire. (See *People v. Romero* (2008) 44 Cal.4th 386, 423 [The court's focus on certain legal principles during voir dire was proper

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[6] Although the prosecutor misspoke once when describing the instruction, stating that a single witness's testimony *is* sufficient to prove any fact, the court immediately corrected the prosecutor's mistake, clarifying that a witness's testimony *may* be sufficient to establish a fact.

because its comments were not intended to be a substitute for instructions at the end of trial].) Indeed, the California Supreme Court has recognized in a similar context the importance of informing jurors of the rule that a single witness's testimony about a sexual assault requires no corroboration, and it acknowledged that "no harm is done in reminding juries of the rule." (See *People v. Gammage* (1992) 2 Cal.4th 693, 701 [approving the use in the same trial of the general single witness testimony instruction and the instruction that the testimony of a complaining witness in a sexual assault case need not be corroborated].)

3. Evidence of Sexual Intent

Finally, defendant contends insufficient evidence supports the jury's findings that he violated section 288 when he touched Jaclyn (count 6) and Y.W. (count 10). Specifically, he argues there was insufficient evidence to support a finding that he had the specific intent to arouse his sexual desires when he touched the two children. As we explain, substantial evidence supports both convictions.

When a defendant challenges the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether any rational trier of fact could have found the evidence proved the elements of the crime beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We draw all reasonable inferences in favor of the judgment and do not resolve credibility issues or evidentiary conflicts. (*Ibid.*)

Under section 288, subdivision (a), " 'any touching' of an underage child accomplished with the intent of arousing the

sexual desires of either the perpetrator or the child" is a felony.[7] (*People v. Martinez* (1995) 11 Cal.4th 434, 452 (*Martinez*).) Because intent is rarely "proven by direct evidence, it may be inferred from the circumstances." (*People v. Villagran* (2016) 5 Cal.App.5th 880, 891.)

The nature of the touching is relevant in ascertaining a defendant's intent. (*People v. Smith* (1998) 64 Cal.App.4th 1458, 1469.) " ' "[I]ntent is inherently difficult to prove by direct evidence. Therefore, the act itself together with its surrounding circumstances must generally form the basis from which the intent of the actor may legitimately be inferred." [Citation.]' [Citation.]" (*Ibid*.) Accordingly, " '[T]he trier of fact looks to all the circumstances, including the charged act, to determine whether it was performed with the required specific intent.' " (*Martinez*, *supra*, 11 Cal.4th at p. 445.) Other relevant factors the jury may consider include: (1) "the defendant's extrajudicial statements"; (2) "the relationship of the parties"; and (3) "any coercion, bribery, or deceit used to obtain the victim's cooperation or to avoid detection."[8] (*Ibid*.)

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[7] Section 288, subdivision (a), provides in relevant part: "[A]ny person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years."

[8] Generally, the jury may also consider other acts of lewd conduct the defendant has admitted or been charged with in the case in determining whether he possessed the requisite sexual intent. (See *Martinez*, *supra*, 11 Cal.4th at p. 445.) But because the court did not

Here, the jury had sufficient evidence from which it could conclude defendant had the requisite sexual intent when he touched Jaclyn. Defendant approached her from behind, tapped her rear end, and then reached out and touched her chest as she stiffened her body in response to him touching her rear end. Jaclyn testified that defendant's touching made her uncomfortable and that she could not perceive any non-sexual reason why defendant would have needed to touch her rear end and chest. Further supporting an inference that defendant had a sexual intent when he touched Jaclyn is the fact that he *only* touched Jaclyn's rear end and chest, two intimate parts of her body. (See *In re Shannon T.* (2006) 144 Cal.App.4th 618, 622 (*Shannon T.*) [the location of the touch itself can support an inference that the defendant possessed the requisite specific intent].) In addition, there was evidence that defendant had surreptitiously recorded at least three videos of Jaclyn walking in front of his apartment, which would support an inference that defendant had a sexual interest in Jaclyn, and that he acted on that interest when he touched her rear end and chest.

For similar reasons, the jury had sufficient evidence from which it could conclude that defendant had the requisite sexual intent when he touched Y.W. As with Jaclyn, defendant touched only an intimate area of Y.W.'s body—her breast—and he did so

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instruct the jury with CALCRIM Nos. 375, 1191A, 1191B, or similar instructions that address the admissibility and manner in which a jury may consider evidence of other charged and uncharged offenses committed by the defendant (see Evid. Code, §§ 1101, 1108), we do not consider the evidence of other charged acts of sexual misconduct in evaluating defendant's claim that insufficient evidence supports the jury's verdicts on counts 6 and 10.

several times. Y.W. testified that defendant's conduct made her feel uncomfortable, and she had to shield herself with her hands to prevent defendant from continuing to touch her. Based on the fact that defendant touched only an intimate part of Y.W.'s body, that he did so more than once, and that Y.W. tried to prevent defendant from touching her, the jury reasonably could have inferred that defendant intended to arouse his sexual desires when he touched Y.W.

Defendant argues insufficient evidence supports the jury's findings that he possessed the requisite sexual intent when he touched Jaclyn and Y.W. because the jury acquitted him of the counts involving Lauren and K.C. Specifically, defendant insists that because the only difference between the incidents involving the two groups of girls is the fact that he touched Jaclyn's and Y.W.'s breasts, while he only touched Lauren's and K.C.'s rear ends, the jury necessarily must have decided to punish defendant based only on the location of the touching, not on his intent. In other words, defendant argues the jury "erroneously believe[d] that touching Jaclyn's and [Y.W.]'s chest[s] was illegal simply because of the location, regardless of intent."

Defendant's argument lacks merit. First, the fact that the jury acquitted defendant of the counts involving Lauren and K.C. is irrelevant to our analysis of whether substantial evidence supports the jury's findings on the counts involving Y.W. and Jaclyn. (See § 954 ["An acquittal of one or more counts shall not be deemed an acquittal of any other count."]; see also *In re Joe R.* (1970) 12 Cal.App.3d 80, 85–86 ["An acquittal on one count does not automatically require an acquittal on another even though the evidence adduced as to all the counts may be the same and the findings logically inconsistent"], disapproved of on

another ground by *In re Robert G.* (1982) 31 Cal.3d 437.) Second, even if we were to assume the jury drew a distinction based on where the victim was touched, that does not mean the jury must have punished defendant based *only* on the nature of the touching, not defendant's intent. As we discussed above, the part of the body where a defendant touches a person *is* a relevant factor in ascertaining specific intent. (See *Shannon T.*, *supra*, 144 Cal.App.4th at p. 622.) Thus, the jury reasonably could have inferred defendant had the requisite sexual intent based on the parts of the body where he touched Y.W. and Jaclyn.[9]

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[9] Because we conclude substantial evidence supports defendant's convictions for counts 6 and 10, we need not reach defendant's cumulative error argument.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.