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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. MAURICE LATEICH HARPER, Defendant and Appellant.	B288133 (Los Angeles County Super. Ct. No. MA071582)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank M. Tavelman, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Kristen J. Inberg, Deputy Attorney General, for Plaintiff and Respondent.

Maurice Lateich Harper (defendant), an adult, gave a sexually-explicit letter to a 12-year-old girl, Leah B. (Leah). Among other things, the letter expressed defendant's desire to "take [her] under [his] wing to lead [her] to success" and alluded to "a method that can make that ass huge in which most guys like." Defendant referred to himself as "daddy" and promised that "[b]y the time [she is] 18, [Leah will] be making lots of money." Defendant challenges his conviction for pandering by procuring a minor under age 16; his claim is that the letter did not expressly encourage Leah to engage in prostitution as opposed to modeling, dancing, or some other non-prostitution activity. We consider whether, under the deferential substantial evidence standard of review, any rational jury could find proven the charged pandering by procuring offense.

I. BACKGROUND

Defendant was charged with contact with a minor for a sexual offense in violation of Penal Code section 288.3, subdivision (a)[1] and pandering by procuring a minor under the age of 16 in violation of section 266i, subdivision (b)(2). During a three-day trial, a jury heard testimony from Leah, her mother, and defendant, as well as two women employed by a mental health services provider to whom defendant had previously sent unwanted text messages, Myshay White (White) and Bethany Zeller (Zeller).

Leah testified she was 12 years old in July 2017. She had been living at a community shelter in Lancaster with her mother

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[1] Undesignated statutory references that follow are to the Penal Code.

and brothers for approximately two months. Defendant had been living at the same shelter for approximately one month. Leah did not know defendant, but she had seen him around the shelter. She also noticed him staring at her once on a bus.

One morning, Leah was in the shelter's lobby when her mother stepped away to get water. Leah testified defendant knocked on the shelter's glass front door, which had to be opened from the inside. She opened the door. Defendant entered, crouched down, and gave her a letter. As he did so, defendant told Leah "that after [she] read it . . . [she] needed to rip it up and throw it away and not tell anyone." He then walked away quickly.[2]

Leah gave the letter to her mother without opening it. Leah's mother read the letter, which stated: "Hey Leah[,] I been checkin you out since I been here. I dig you a lot[.] I wanna take you under my wing to lead you to success. You most certainly have a nice ass but I know of a method that can make that ass huge in which most guys like. I know I like women with big asses[.] Stick by me[.] I'll run it down to you[.] [R]emember keep this between us[,] me and you. By [the] time you['re] eighteen you['ll] be makin lots of money[.] Do me a favor on the real Leah[.] Do not wear any panties[.] Please do that for daddy[.] I'm gonna show you all there is about life to be independent[.] You['re] my girl[.] I chose you for a reason[.] And yes I have a very big dick[.] I will teach you about sex in the comfort of our own home[.] Write me back[.] Tell me how you['re] feeling."

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[2] During his testimony at trial, defendant denied writing the letter and giving it to Leah.

White and Zeller testified about unwanted text messages of a sexual nature they received from defendant—before he gave the aforementioned letter to Leah. Some of these text messages made reference to "success," "business," and "work." For instance, defendant asked White if she could help defendant with his "journey to success." A little over a month later, defendant texted, "How u doin myshay? Dont be shy girl I wit the business if you know what i mean." Separately, when Zeller told defendant she would only discuss work-related matters with him, he texted her: "These are work-related matters. Im very ambitious and would like to let you in on some of my secrets but it has to be face to face nobody has to know i wont tell if you dont. Dont forget i am a very large member!"[3]

The jury convicted defendant on both charges filed against him. Defendant admitted a prior strike conviction. The trial court sentenced him to sixteen years in prison on the pandering count, i.e., eight years doubled pursuant to sections 667, subdivisions (b)-(i) and 1170.12, subdivisions (a)-(e). Pursuant to section 654, the court stayed the four-year sentence it imposed for the contact with a minor charge.

II. DISCUSSION

Defendant contends there is insufficient evidence to sustain his pandering conviction because the letter did not encourage Leah to engage in prostitution. He suggests the letter can be read to encourage Leah to make "lots of money" through modeling, dancing, and/or pornography. A reasonable jury,

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[3] Defendant testified he sent these messages because he was interested in dating White and Zeller.

however, could reject defendant's proposed construction as implausible. Defendant referred to himself as "daddy" and Leah as "[his] girl," he urged Leah to keep the letter a secret (suggesting awareness of its illegality), and his defense at trial was not that the letter had some other relatively innocuous meaning but rather that he did not write the letter or give it to Leah at all. On these facts, the jury's verdict on the pandering count must stand.

A. Legal Standards

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] Our review must presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] . . . . [T]he relevant inquiry on appeal is whether, in light of all the evidence, '*any* reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Zaragoza* (2016) 1 Cal.5th 21, 44.)

A person is guilty of pandering if he or she, "[b]y promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute." (§ 266i, subd. (a)(2).)[4] Pandering is a specific intent crime, and

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[4] If, as here, the person pandered to is under 16 years of age, the offense is punishable by three, six, or eight years as opposed to three, four, or six years. (§ 266i, subd. (b)(2).)

"[i]ts commission requires that a defendant intend to persuade or otherwise influence the target 'to become a prostitute' . . . ." (*People v. Zambia* (2011) 51 Cal.4th 965, 980.) "[P]rostitution occurs when the person has the specific intent to engage in either sexual intercourse or lewd acts in exchange for money or other consideration for the purpose of sexual arousal or gratification and takes some step in furtherance of that act." (*People v. Dell* (1991) 232 Cal.App.3d 248, 264.) California courts have clarified that pandering involves encouraging another person to "become a prostitute *for others*." (*People v. Dixon* (2011) 191 Cal.App.4th 1154, 1158-1160, italics added.)

B. Substantial Evidence Supports the Challenged Conviction

The issue before us is whether a reasonable trier of fact could conclude, beyond a reasonable doubt, that an adult man who refers to himself as "daddy" and who offers to take a 12-year-old girl living in a shelter "under [his] wing," teach her a "method" to make her "ass huge" in a way that "most guys like," and help her make "lots of money"—all in secret—intends to persuade her to become a prostitute. Defendant contends he "could have meant" to encourage Leah to engage in some other "licit" form of "sexual objectification and sexual conduct."

None of the alternatives to prostitution hypothesized on appeal by defendant undermine the soundness of the jury's verdict. There is no evidence—despite defendant's decision to testify at trial—that defendant had anything to offer (apart from his unspecified "method") to launch a career in adult entertainment, much less a career in modeling or dancing for which Leah would not have to be 18. Nor is there evidence

defendant wanted Leah to start working when she turned 18—more than five years in the future—as opposed to starting immediately and positioning herself to be "making lots of money" when she turned 18. Rather, defendant's position at trial was that he had never seen the letter given to Leah and it was "not even [his] handwriting." There being no actual evidence supporting the theories defendant now advances, there is no basis to question the jury's pandering verdict, which rests on a sound inference that defendant's insistence on secrecy and his reference to himself as "daddy" meant he was intent on procuring Leah to work as a prostitute to "be makin lots of money."[5]

Defendant suggests, however, that "[w]hat seems to have happened in this case is that the prosecution *sub silencio* advanced a view that a black man who suggestively solicits a minor and references sex in that solicitation must either be or want to be a pimp." He decries this as "racism dressed up as law" and proposes several alternative constructions of "daddy" as used in the letter: "'Daddy' may mean male protector, may mean older caring man, or may mean 'sugar' as in one who will support another financially for sexual favors for oneself."

This argument is a bridge too far—much too far. Leah was 12 years old. It is eminently reasonable to infer, regardless of race, that a man who refers to himself as the "daddy" of a young girl he is not related to and with whom he has never previously had a conversation is not referring to himself as a "male protector." All the more so when we consider the context of the

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[5] In making this inference, the jury properly could have relied, as well, on defendant's statement in the text message sent to White that he was "wit[h] the business if you know what i mean."

"daddy" reference in the letter, namely, a request that Leah wear no underwear—not to mention the statements about what "most guys like" and "making lots of money" (which obviously refer to men other than defendant himself).

On the evidence presented at trial, a reasonable trier of fact could conclude, beyond a reasonable doubt, defendant encouraged Leah to become a prostitute.

DISPOSITION

The judgment is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.