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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH KENNETH CORNETT, Defendant and Appellant.	B275173 (Los Angeles County Super. Ct. No. MA065982)

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry J. Hall, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Joseph Kenneth Cornett on 19 criminal counts, including several sexual offenses against two unrelated 15-year-old girls on separate occasions, Jane Doe 1 and Jane Doe 2. Appellant contends the convictions on the sexual offenses relating to Jane Doe 2 should be reversed because the trial court erred in excluding evidence of her "unstable mental condition and bad acts." We disagree and affirm the judgment.

PROCEDURAL HISTORY

Appellant was charged with 31 counts. The trial court dismissed 10 counts in the furtherance of justice, and the jury convicted appellant on the following 19 counts:

As to Jane Doe 1— count 1, kidnapping to commit rape (Pen. Code, § 209, subd. (b)(1));[1] count 2, assault with intent to commit rape of a person younger than 18 years (§ 220, subd. (a)(2)); count 4, lewd act upon a child (§ 288, subd. (c)(1)); count 6, sexual penetration by a foreign object (§ 289, subd. (a)(1)); count 8, assault by force likely to produce great bodily injury (§ 245, subd. (a)(4)); count 10, possession of phencyclidine (PCP) (Health & Saf. Code, § 11377)); counts 15, 16 and 17, resisting a peace officer (§ 148, subd. (a)(1)); counts 27, 28, 29 and 30, resisting an executive officer (§ 69); and count 31, assault with the intent to commit sodomy (§ 286, subd. (c)(2)).

As to Jane Doe 2—count 18, kidnapping to commit rape (§ 209, subd. (b)(1)); count 21, lewd act upon a child (§ 288, subd. (c)(1)); counts 23 and 24, rape (§ 261, subd. (a)(2)); and count 26, furnishing marijuana to a minor (Health & Saf. Code, § 11361, subd. (b)).

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

Appellant was sentenced to a total of 101 years eight months, plus two life terms that were stayed pursuant to section 654. In sentencing appellant, the trial court called him a "monster" and stated that "the way [appellant] comported himself after [the crimes] has made them among the most brutal sex crimes that I've seen in nearly 40 years in the criminal justice system."

FACTUAL BACKGROUND

Prosecution Case

A. Jane Doe 2

On April 12, 2015, Jane Doe 2 got into an argument with her grandmother, with whom she lived, and ran away from home. Her grandmother was planning to call the Department of Children and Family Services. Taking only a duffle bag with her, Jane Doe 2 went to her ex-boyfriend J.F.'s home. He was not there, and his family members told her to return later. Jane Doe 2 next tried going to her friend Joseph B.'s home, but he also was not there. Jane Doe 2 waited outside for him for a couple of hours until it began to get dark. She ended up going back and forth between the two homes.

Around 10:00 p.m., on her way to Joseph B.'s home, Jane Doe 2 believed she was being followed by a man. She saw an open garage and three men seated inside, one of whom was appellant, who was 41 years old. To avoid the man she thought was following her, Jane Doe 2 sat down with the three men. They asked how old she was, and she told them she was 15. They also asked her if she smoked marijuana, and she said she did. Because her grandmother had taken away her cell phone, Jane Doe 2 asked to use appellant's phone. It would not connect to the Internet, so she gave it back to him.

Appellant asked her if she needed a ride. Because she was afraid of being followed again, Jane Doe 2 told appellant that she needed a ride down the street. She got in his car, but appellant drove in the opposite direction she had requested. She asked him if he needed directions, but he said he was going to a liquor store. At the liquor store, located in Lancaster, California, Jane Doe 2 remained in the car, while appellant purchased alcohol. When appellant returned to the car, he started drinking and told Jane Doe 2 he was going to take her home. She told him that she did not want to go home. At that point, Jane Doe 2 began to suspect that appellant was an undercover police officer because of the way he was speaking to her about taking her home.

Appellant drove Jane Doe 2 to someone else's home and parked in the driveway. The two smoked marijuana together, and appellant asked Jane Doe 2 if she wanted some alcohol. She said no, and asked him to drive her to a friend's house. Again, appellant drove in the wrong direction. She asked him to turn around, but he drove into the desert. While driving, appellant said that he went by the name of "Kush King." Jane Doe 2 had conversed on Facebook with someone who went by that name. She told him her Facebook name, and he said, "Oh, Facebook Queen." She then believed he knew who she was, and she was not as scared anymore. On cross-examination, Jane Doe 2 admitted that she and "Kush King" had discussed through Facebook and text messages the exchange of oral sex for marijuana.

After appellant stopped the car in the desert, he told Jane Doe 2 he would take her back in a minute. When Jane Doe 2 looked over at him, appellant had removed his penis from his pants and was masturbating. He asked her to remove her pants

and lift up her shirt so that he could see her vagina and breasts. Jane Doe 2 said no, and became scared again. She tried to get out of the car, but the passenger-side door would not open. She kicked the windshield and started screaming "rape." Appellant grabbed her legs, but she managed to get out of the car. She fell onto her stomach. Appellant flipped her over, and then raped her. Jane Doe 2 is five feet three inches and weighed 120 pounds at the time. She estimated that appellant was six feet four inches and weighed around 250 pounds. She continued to scream "rape" and threw dirt at appellant. Appellant asked, "How is it rape?" and "Was that really necessary?" Jane Doe 2 was crying and scared.

Afterward, appellant said that he would take her home. Jane Doe 2 got back in the car with him because he had driven her so far from home. She changed into a pair of pajama pants that she had with her. Appellant told her, the "most important thing about rape is that you can't have anybody to tell." He then dug around in his pocket, and she believed he was looking for something to kill her with.

After they drove a bit, appellant stopped the car and said, "Let's do it the right way now." Jane Doe 2 knew she could not fight appellant off. He then raped her again.

Appellant eventually dropped Jane Doe 2 off at Joseph B.'s home. There, Joseph B.'s father asked Jane Doe 2 why it looked as if she had been beaten up. She stated that she had been raped. Joseph B.'s father woke up his son and told Joseph B. to walk Jane Doe 2 to school. His father told Jane Doe 2 to report the rape to someone at her school. She then walked to school with Joseph B. after she used the bathroom at his house to wash appellant's semen off her leg and pants.

At school, students asked Jane Doe 2 what happened because she had bruises, was dirty, and was wearing her pajama pants. Her teacher, Christopher Deloach, asked her why she had "stuff" in her hair. He testified that she had "vegetation" and "sticks and little sticky things that you might find in the desert in her hair." Jane Doe 2 did not tell him what happened until after he spoke to her grandmother. She then told her counselor, and her grandmother came to school. The police were called, and Jane Doe 2 was taken to the hospital where she underwent a Sexual Assault Response Team (SART) exam. During the exam, a nurse identified injuries on Jane Doe 2 that were consistent with her account of the first rape. Jane Doe 2 did not mention the second rape. The nurse also noticed that Jane Doe 2 had scars on her arm, stomach, and leg. Jane Doe 2 told the nurse that the scars were from self-inflicted cutting. Jane Doe 2 told the nurse she had never had sexual intercourse before, but she admitted that was a lie. Semen found in the vaginal sample taken from Jane Doe 2 during the SART exam matched appellant's DNA.

Jane Doe 2 texted J.F., "I got raped yesterday when I was walking from my house." She also texted that appellant spit on her after the first rape.

Detective Scott Woods of the Los Angeles County Sheriff's Department interviewed Jane Doe 2. He also reviewed surveillance footage from the liquor store that showed appellant. Detective Woods searched the car appellant had been driving and saw a crack in the windshield, which was consistent with Jane Doe 2's account of trying to kick her way out. Detective Woods prepared a photographic six-pack from which Jane Doe 2 identified appellant as her attacker. Although Jane Doe 2

initially told the detective she was a virgin before the rapes, she later admitted in the same interview that was not true.

B. Jane Doe 1

We only briefly summarize the facts regarding Jane Doe 1 for the sole reason that appellant does not challenge his convictions pertaining to the crimes he committed against her.

On May 6, 2015, less than a month after he raped Jane Doe 2, appellant came across Jane Doe 1 walking home from school. Pretending to be an undercover police officer, appellant told her he would have to report her for jaywalking. He eventually coaxed her into his car, telling her he would drive her home. Instead, appellant drove her into the desert, and forced her into an abandoned trailer near the Lancaster Baptist Church. After a struggle, he removed her clothing and eyeglasses, left the trailer with her clothing, and quickly returned drinking alcohol. After Jane Doe 1 hit appellant and screamed, appellant flipped her over onto her stomach and tried to insert his penis into her anus. He then inserted his fingers into her vagina. When he stopped, Jane Doe 1 ran out of the trailer half naked, trying to cover herself with an undershirt. She ran to a parked car and asked for help, saying she had been raped. Appellant ran after Jane Doe 1, yelling that she was a prostitute. The driver of the car called 911 and described appellant as weighing 250 pounds.

Appellant tried to flee from multiple sheriff's deputies. When his car got stuck, appellant tried to accelerate and the deputies kicked in his windows and tazed him. The tazing did not subdue appellant, who continued to resist arrest. Appellant punched, kicked and grabbed the deputies, spit at them, swore at them and threatened them. Additional tazing had no affect on

appellant. The deputies placed a spit-mask on appellant's face. Appellant was in possession of PCP.

With her eyeglasses back on, Jane Doe 1 identified appellant as her attacker in a field lineup. She was taken to a hospital and underwent a SART exam. A nurse found injuries on Jane Doe 1 that were consistent with her account of the sexual assaults. DNA recovered from appellant's right hand matched Jane Doe 1's DNA. DNA from the external genital sample from Jane Doe 1 matched appellant's DNA, and he was a possible contributor of DNA from her rectal sample.

Defense Case Regarding Jane Doe 2

Appellant met Jane Doe 2 when she approached him while he was drinking and smoking with other men outside of a garage. She asked if she could use one of their phones, and appellant handed her his phone. She typed something on the phone, and then told him that she ran away from home and had nowhere to stay. She also smoked marijuana with appellant and the other men.

Appellant walked to his car so that he could purchase more liquor at the liquor store. Jane Doe 2 caught up with him and asked for a ride. He told her he was headed to the liquor store, but she still wanted a ride. They drove to the liquor store, and she said she would drink whatever he was having. Appellant then drove them to his mother's nearby house and parked in the driveway. He and Jane Doe 2 sat in the car and drank alcohol and smoked more drugs. When Jane Doe 2 asked what his name was, he responded, "Kush King." Jane Doe 2 acted as if she knew appellant from Facebook or Instagram.

Appellant told Jane Doe 2 that he could get her a hotel for a couple of days and give her some money in exchange for sex. She

said, "Cool," and they left appellant's mother's house. Appellant drove to a nearby alley and parked the car. Jane Doe 2 asked to use his phone again, and she showed him photos of herself from Facebook. In some of the photos, she was wearing lingerie; in others, she was naked.[2] Jane Doe 2 then told appellant that she liked "baby daddies" and "dating older dudes."

She next took her pants and underwear off. They had sex and she laughed at the size of his penis, saying it was small. They did not have sex again. Jane Doe 2 began to cry. She told appellant to drop her off at a park, which he did.

DISCUSSION

Appellant contends the trial court erred when it excluded evidence of Jane Doe 2's "unstable mental condition and bad acts," and therefore his convictions on counts 18 through 25 must be reversed. Specifically, he argues that he should have been permitted to introduce evidence that Jane Doe 2 "actively solicited sexual encounters via Facebook; that she affirmatively described herself as 'crazy' and 'psychotic' on social media; that she was on probation for sending sexually explicit photos over social media; that she had significant disciplinary and academic issues at school and at home; [and] that the personae she was cultivating on social media was entirely at odds with the personae she and the prosecution had presented at trial."

A. Relevant Proceedings

The trial court and the parties discussed at length the issue of Jane Doe 2's probation status. It was undisputed that Jane Doe 2 was on juvenile probation in Nevada for six months as a result of sending naked photos of herself to a classmate. Under

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[2] Jane Doe 2 testified that she never showed pictures of herself to appellant.

the terms of her probation she was not permitted to use social media or her cell phone. Both defense counsel and the prosecutor had seen Jane Doe 2 using her cell phone during the trial. The prosecutor informed the court that he would agree to stipulate that Jane Doe 2 was placed on juvenile probation in Nevada and that she had violated probation by using Facebook. Defense counsel argued, "I think it's important to know the fact that the underlying conduct in the juvenile adjudication is a crime of moral turpitude." The trial court disagreed, saying, "She took a naked selfie and faxed it or sent it to somebody else. How is that a crime?" Defense counsel had no further information on the charges. The court appointed an attorney for Jane Doe 2. After consultation with Jane Doe 2, the appointed attorney indicated that Jane Doe 2 would heed his advice not to answer any questions that might result in a potential probation violation. The court ultimately informed the jury that it was taking judicial notice of two facts: "The first of these is that I'm going to find that Jane Doe Two was under order from the Clark County, Nevada, Department of Juvenile Justice Services to not engage in the use of social media and not to use a cell phone. [¶] . . . [¶] And that order was made on January 12, 2016. [¶] I'm also going to find that in relation to this case Ms. Jane Doe Two has violated that order on numerous occasions and continues to violate that to this day."

The trial court and the parties also addressed whether defense counsel could impeach Jane Doe 2 with evidence of her text and Facebook messages about the instant case. The court warned defense counsel that if he impeached Jane Doe 2 about her Facebook posts, the court would allow the prosecutor to ask why she sounded so angry in her posts, and would allow her to

explain that appellant had been saying for the last two years that he was HIV positive, despite the lack of such evidence. Defense counsel then stated that he would limit his questions to posts where Jane Doe 2 referred to herself as "crazy and psychotic." The court ruled that such evidence was excluded under Evidence Code sections 352, 782 and 1103, and also lacked foundation. The court added, "The fact that a kid refers to herself that way . . . has very little probative value."

Defense counsel also asked to present screen shots from a five-minute live video that Jane Doe 2 posted on Facebook during the trial. Defense counsel explained that the video was "posted 51 minutes before she is set to resume testifying and she's pulling down her sweater showing her cleavage, grabbing her breasts, flipping what appears to be a cell phone [near] her breasts and then takes a picture of herself dressed very professionally outside the courthouse minutes later and then comes to court and testifies. [¶] So I think it's entirely inconsistent with the individual that the People have presented to the jury and in stark contrast or contradiction to her testimony and the presentation of her testimony." Defense counsel stated that he did not think the evidence had anything to do with the issue of whether Jane Doe 2 consented to sexual intercourse.

The trial court disagreed, stating that "is exactly why it is being proffered." The court continued that contrary to defense counsel's position, the evidence already presented did not portray Jane Doe 2 as a "wholesome all-American teenager," but as "troubled teenager," who cut herself, ran away from home numerous times, and had been expelled from school. The court also noted it was undisputed that Jane Doe 2 had lied about having sex in the past when she spoke with the police, and the

jury was already aware that she had violated her probation. The court ruled the evidence was inadmissible under Evidence Code section 352 as cumulative, prejudicial and having little, if any, impeachment value, and was also inadmissible under Evidence Code sections 1101 and 1103, as it did not deal directly with Jane Doe 2's character trait for honesty, but was essentially "an attempt to dirty up Jane Doe Two."

B. Relevant Law

A trial court's exercise of discretion in excluding evidence will not be overturned on appeal absent the showing of an abuse of discretion resulting in a miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10; *People v. Raley* (1992) 2 Cal.4th 870, 895.) As a general proposition, the ordinary rules of evidence do not infringe on a defendant's right to present a defense. (*People v. Rodriguez, supra,* at p. 10, fn. 2.) Accordingly, the judgment may be reversed only if it is reasonably probable the appellant would have obtained a more favorable result absent the error. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1103–1104.)

Under the rape shield law, "evidence of specific instances of the complaining witness' sexual conduct . . . to prove consent by the complaining witness" is inadmissible. (Evid. Code, § 1103, subd. (c)(1).) Such evidence may still be admissible "to attack the credibility of the complaining witness as provided in [Evidence Code] Section 782."[3] (Evid. Code, § 1103, subd. (c)(5)). But these statutes "reaffirm[ ] the role of Evidence Code section 352 in authorizing [a] trial court to exclude relevant evidence which is

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[3] Evidence Code section 782 sets forth the procedures for admitting evidence of sexual conduct of the complaining witness (the alleged victim of the crime charged) when offered to attack the credibility of the complaining witness.

more prejudicial than probative." (*People v. Casas* (1986) 181 Cal.App.3d 889, 896; see also *People v. Fontana* (2010) 49 Cal.4th 351, 362.) Under Evidence Code section 352, a trial court "may exclude evidence 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."

C. Analysis

Appellant does not individually address each piece of evidence he sought to have admitted. Instead, he broadly concludes that the proffered evidence was relevant to Jane Doe 2's credibility and was "probative of her psychological ability or capacity to falsely accuse someone of rape for a bartered-for sexual encounter."

We disagree. The trial court properly excluded the evidence.

1. Facebook Video and Details of Probation Offense

This evidence was properly excluded for four reasons.

First, evidence of Jane Doe 2's sexually provocative behavior on Facebook and her sending nude photos of herself to a classmate is not admissible under Evidence Code section 1103, subdivision (c)(1), which provides that "evidence of specific instances of the complaining witness'[s] sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness." (See *People v. Casas, supra,* 181 Cal.App.3d at p. 895 ["The Legislature added section 782 and amended section 1103 to prevent a rape victim from being questioned extensively about any prior sexual history

without a showing such questioning was relevant"].) These statutes cover the activity in question because "sexual conduct, as that term is used in Evidence Code sections 782 and 1103, encompasses any behavior that reflects the actor's or speaker's willingness to engage in sexual activity. The term should not be narrowly construed." (*People v. Franklin* (1994) 25 Cal.App.4th 328, 334, fn. omitted, cited by *People v. Casas, supra*, at p. 895.) While defense counsel stated that he was not seeking to have the evidence admitted on the issue of consent, the trial court was properly concerned that the evidence would, in fact, speak directly to that issue. In *People v. Rioz* (1984) 161 Cal.App.3d 905, 918–919, the court cautioned that "[g]reat care must be taken to insure that this exception to the general rule barring evidence of a complaining witness' prior sexual conduct, . . . does not impermissibly encroach upon the rule itself and become a 'back door' or admitting otherwise inadmissible evidence." In enacting the rape shield laws, the Legislature reasoned that "the fear of personal questions deterred victims from filing complaints and resulted in a low percentage of reported rapes." (*People v. Casas, supra,* at p. 895.) We agree with the People that "[i]f adolescent victims of forcible sex acts, like Jane Doe 2, knew they could be questioned, without limitation, with respect to all the sexual innuendo and fantasies that might be found on their cell phones or traced to them on social media, they would obviously be deterred from reporting those forcible acts."

Second, the evidence was not relevant to Jane Doe 2's credibility. While the evidence would have shown that Jane Doe 2 was a sexually sophisticated and provocative teenager, it did not speak to her propensity to lie about being forcibly raped. Indeed, the jury heard Jane Doe 2 admit that she already had

sexual intercourse before meeting appellant. There was no evidence to suggest that she would lie about being forced to have sex without her consent.

Third, even if the evidence could be considered minimally relevant, it was unduly prejudicial to Jane Doe 2, in that it had the propensity to tarnish her in the minds of one or more of the jurors. As the trial court put it, the objective of the evidence was to "dirty up" Jane Doe 2.

Fourth, the evidence was cumulative and would consume undue time. The jury already heard Jane Doe 2's testimony, which revealed her sexual sophistication and familiarity with sexual terminology. And the evidence would have required her to explain the video and photos and why she posted and sent them.

2. Self-references as "Crazy and Psychotic"

Evidence that Jane Doe 2 described herself as "crazy and psychotic" on social media lacked probative value and was cumulative.

Such self-references on social media by a young teenager do not indicate that Jane Doe 2 was, in fact, mentally unstable. Such a conclusion would have required an expert opinion by a mental health expert. Contrary to appellant's assertion, the fact that a teenager used words many people commonly throw about in daily conversations says nothing about her "capacity to falsely accuse someone of rape."

Additionally, the evidence was cumulative of other evidence demonstrating that Jane Doe 2 was a troubled teenager living a chaotic and unstable life. For example, the jury heard Jane Doe 2 admit that she had used marijuana before she was raped by appellant. Jane Doe 2 also admitted that she was discussing with "Kush King" on Facebook the exchange of oral sex for

marijuana. Jane Doe 2 admitted that she engaged in self-mutilation, i.e., cutting, which left such visible scarring on her body that she had to explain it to the SART nurse. Her grandmother intended to contact the Department of Child and Family Services regarding her, which prompted Jane Doe 2 to run away from home. The trial court informed the jury that Jane Doe 2 was on probation and had violated its terms multiple times. Thus, the challenged evidence's probative value paled in comparison to the evidence the court admitted.

3. Disciplinary and Academic Issues

Likewise, evidence of Jane Doe 2's "significant disciplinary and academic issues at school and at home" was also properly excluded. The evidence that Jane Doe 2 had been expelled from school and had run away from home was cumulative of other evidence that Jane Doe 2 was not a wholesome teenager without any problems. Contrary to appellant's assertion, this point was not in dispute. Moreover, the evidence would have consumed undue time in that Jane Doe 2 would have been required to explain the reasons for her expulsion from school and the difficulties she had at home, including any trauma in her life that may have related to or caused her disciplinary and academic problems.

4. Harmless Error

Any error in excluding the proffered evidence was harmless in that there was no reasonable probability that the jury would have reached a different result had the evidence been admitted. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Contrary to appellant's assertion, this case was *not* "a paradigmatic credibility contest between appellant and two teenage girls." The overwhelming evidence supported appellant's

convictions. Jane Doe 2's testimony was corroborated by her teacher's testimony that she had debris in her hair, consistent with having been in the desert, after the rapes. Joseph B.'s and his father's testimony also corroborated Jane Doe 2's account of having been raped. The crack in appellant's car's windshield was corroborative of Jane Doe 2's account of her efforts to escape from appellant. Appellant's semen was found in the DNA samples obtained from Jane Doe 2's vaginal swabs, and the SART nurse testified that Jane Doe 2's injuries were consistent with her account of the sexual assault.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.