Filed 11/26/12 P. v. Rawls CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SYLVESTER GENE RAWLS, Defendant and Appellant.	B239936 (Los Angeles County Super. Ct. No. YA079991)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Brandlin, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Defendant and appellant, Sylvester Gene Rawls, appeals from the judgment entered following a jury trial which resulted in his conviction of two counts of forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)),[1] during the commission of each of which he used a deadly and dangerous weapon, a knife (§ 12022.3, subd. (a), 667.61, subds. (b) & (e)). The trial court sentenced Rawls to 18 years to life in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*.

On August 28, 2003, 17-year-old R.W. (R.) was at cheerleading practice at her high school. Classes had not yet begun; school started the following week. However, the cheerleaders had started to practice.

The girls called the week before classes started "hell week." They practiced in the morning, broke for lunch, then went back to practice in the afternoon. In all, they practiced approximately eight hours each day.

That afternoon, the girls were practicing in the gymnasium. At approximately 2:15 p.m., R. asked if she could go to the restroom, which was down a long hallway, next to the girls' gym. R., who went by herself, walked to the restroom, went into the second stall on the right, locked the sliding lock and used the toilet. When she looked over, R. saw men's dark, shiny, dress shoes to the right of her.

After she finished, R. flushed the toilet, slid open the lock and began to walk out of the stall. However, as she was opening the door, "the shoes next to [her] went out, and there was a man in front of [her who] pushed the door in." The man had a knife in his hand. The knife was between four and five inches long and "looked like a cutting knife. It had . . . a sharp tip to it." He was wearing dark clothes, had a "beanie," or "cap," over his hair, dark sunglasses, a dark polo shirt and leather gloves. R. looked at the man and said, " 'Please don't.' " But as he pushed his way in, the man told R. to " 'turn around' " and he held the knife up close to her body.

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

R. turned around and the man closed the stall door, pulled down R.'s shorts, "took out his penis" and, from what R. could hear, started to masturbate. He tried to "put [his penis] in [her buttocks] a couple of times, but it wouldn't go." He then kissed R.'s buttocks.

The man told R. to turn around and, after she did so, she sat down on the toilet. The man, who was standing up, "stuck his penis in [R.'s] mouth." "He put it back and forth in [her] mouth. [When] it fell out[,] he put it back in. . . . [He] kept putting it back and forth in [her] mouth" until "he ejaculated in [her] mouth." When he had finished, R. "got up" and "spit it in the toilet."

The man told R. to count to 100 out loud. He then left the restroom. After she had counted to approximately 30, R., who was crying at the time, wiped off her mouth with toilet paper, threw the paper into the toilet, pulled up her shorts, ran over to the sink and washed out her mouth. She did not flush the toilet. In all, R. was in the bathroom for approximately 15 minutes. She was there with the man for between eight and 13 minutes.

R. started to run back to the girls' gym when she saw Carly, one of the assistant coaches, and Jackie, a team captain. R. told them that "there was a man—who was in the bathroom." Carly, the assistant coach, immediately ran out of the gym. The girls on the squad walked R. to the "dance room." As they were walking, R. was "spitting everywhere." Some of the girls tried to give R. water, but she just spit it out. Finally, she told her friend, Shannon B., and her cheerleading coach, Michelle B., what had happened.

Police officers arrived at the school approximately 15 minutes after R. had told Shannon B. and Michelle B. about the incident in the restroom. R. told the officers which toilet she had spit the semen into and described her attacker to them. She told the police that he was an African-American and that he was approximately five feet eight or five feet nine inches tall. He was in his "late 20's to maybe 40's" and he had a "large body type." R. worked with a police sketch artist who, after a time, "c[a]me up with a sketch that [R.] thought looked like the person who had attacked [her]."

Later that day, R. was given a "sexual assault exam." The nurse took a blood sample, then took swabs from R., including one from her mouth and one from the spot on her buttocks where the man had kissed her.

In 2004, police showed R. a set of six photographs, or a "six pack." R. circled a photograph of a man and wrote on the six pack, " 'The nose and the mouth are—similar—or in the similar place, and head shape is the same.' " She did not identify the man as her attacker, but indicated that the individual in the photograph looked like him.

In January 2011, R. was shown another group of six photographs. R. indicated that there was a man who looked similar to her attacker, but that she was not "a hundred percent sure." In May of 2011, R. testified at the preliminary hearing in this matter. She looked at Rawls and stated that, although he looked like the man who had attacked her, she "wasn't a hundred percent sure." She was "about . . . 92 percent sure [he was] the . . . guy."[2]

With regard to how this incident had affected her, R. stated that she had undergone "intensive counseling the first year after this all happened. And then [she] had counseling periodically throughout the years."

Shannon B. had been friends with R. since kindergarten. At approximately 2:15 p.m. on August 28, 2003, she, too, was at cheerleader practice. When R. went to the restroom, Shannon B. had considered going with her, but at that time they were going over a new dance routine and Shannon B. did not want to miss it. However, after R. had been gone for nearly 10 minutes, Shannon B. began to worry. R. had been gone a long time. Just as Shannon B. was about to go see what was taking R. so long, R. came back into the room. She looked "distressed," she was "crying" and she was "having a hard time speaking." In addition, she was "spitting" saliva and "kind of gagging." Someone told Shannon B. to call 911. She did so because she knew that "something had happened" and that it was "an emergency."

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[2] R. identified Rawls because the man sitting in court "look[ed] like him." In particular, she recognized "the nose and the mouth."

On August 28, 2003, Michelle B. was working for the high school attended by R. She was a full-time teacher and the cheerleading coach. It was "hell week" when the cheerleading squad practiced for eight hours each day.

At approximately 2:15 p.m. that afternoon, "all of a sudden absolute—pandemonium broke loose." Michelle B. "wasn't sure what [had] happened. [She] was the one in charge of a lot of girls and their well-being. And all [she] knew [was] that—[R.] had come out of the bathroom, and . . . had been hurt in some way." After putting all of the girls in one room, Michelle B. went running through the restroom, the locker room and the area outside. She did not, however, see anyone who looked suspicious.

Jan Hare is a licensed nurse specializing in forensics. At about 5:15 p.m. on August 28, 2003, she conducted a sexual assault examination on R. When she examined R., Hare did not notice "any sort of [physical] injuries at all." The only exception was to her inner cheek on the right side. She had "petechiae," or "little blood vessels that [had] rupture[d] from trauma." This sometimes occurs when an individual has been orally copulated.

Hare took swabs from inside R.'s mouth and from her buttocks. She also took blood samples "for reference for DNA."

Denise Brenner is a Redondo Beach police officer "assigned to patrol with a collateral assignment as a crime scene investigator." On August 28, 2003, she received a call directing her "to assist in the investigation of a sexual assault that had happened at [one of the local] . . . high school[s.]" Brenner went to the restroom in the girls' gymnasium and was directed to the second stall on the right hand side. Using a turkey baster, Brenner collected "samples" from that toilet. She did not see any seminal fluid at that time, but took a sample of the toilet water and put it into a glass vial. After she had collected two vials, Brenner gave the samples to CSI Officer Ron Kawasaki, who sealed them and booked them into evidence. In addition to the liquid from the toilet, Brenner collected "17 tape lifts of partial prints." She collected them from "the entrance door to the girls' restroom, the interior side of the exit door of the girls' restroom, [the] double doors on the southeast side of the building" and "the incident stall." However, when

compared with prints and partial prints in the Police Department data base, none were found to match those of Rawls. A couple of days later, a cup from Jack in the Box was recovered from "near the scene." However, the partial prints taken from the cup also did not match those of Rawls.

On August 28, 2003, Ron Kawasaki, a Redondo Beach police officer, was assigned to patrol "with a collateral assignment to CSI." In other words, "any time there was a crime scene that occurred while [he] was working on patrol, [he] would change hats . . . and do the CSI work for that crime scene." On August 28, he was called to a crime scene at a girls' restroom at a local high school. There, he joined another CSI officer.

From the second toilet on the right hand side of the restroom in the girls' gymnasium, Kawasaki collected "a milky stuff floating in the water [which] appeared to [him] to be semen." Kawasaki and his fellow officer collected two samples from the toilet, placed them in glass vials, sealed them and, after they were taken to the station, placed them in a refrigerated evidence locker. In addition to the vials of toilet water, Kawasaki booked into evidence a "black curled pubic hair," the baster used to obtain the samples from the water, the toilet tissue, recovered from the toilet, which R. had used to wipe her mouth, and paper towels from a trash can.

It was stipulated that the People's exhibit 15 was a photograph of Sylvester Rawls taken on September 6, 2000. It was further stipulated that the People's exhibit 16 was a copy of a traffic ticket received by Rawls on August 15, 2003.

Danielle Wieland is a forensic scientist assigned to the DNA section of the Orange County Crime Lab. In 2003, Wieland was assigned to a specific group within the DNA section. "It was a sexual assault backlog reduction group, where [they] primarily focused on sexual assault cases that had no suspects at the time." Once a "packet" was complete, it was reviewed for everything from "bench notes that the analyst took at the time they analyzed or examined any evidence" to "any DNA extractions that [had been] performed . . . ."

With regard to the DNA extraction, after it was examined by Wieland it was "reinterpreted by a second analyst." DNA is found within "lots of different cells in your body" and, "barring any mutations," one's DNA is the same in all of those cells. The one exception is one's reproductive cells. "Because the [mother] and the [father] pass on half of their DNA to their child, . . . individual sperm cells [and] embryo[s] . . . [contain only] half of the DNA. [¶] The reason [one] can get [a] full DNA profile from semen is [that] there's many, many sperm in the actual sample; and therefore, they[, together,] actually compris[e] the entire genetic profile of that individual." Although the vast majority of DNA is the same for each person, forensic scientists look at that portion that is "different between each of us." DNA can be "compared to crime scene samples to determine if some[one]" was the source of that particular DNA. It can also be used to "exonerate . . . or exclude [one] from being a suspect in a case."

In 2003, Wieland "examined and performed [DNA] typing [from] a rape kit from the victim" in this case. She was also able to obtain a DNA profile from sperm extracted from toilet water and she prepared a report describing her testing results. Here, the DNA appeared to be from a single, male individual. "So back in 2003, [Wieland] knew that some[one] had left sperm in [the] toilet, and that this was their DNA profile." Additional testing indicated that, when it was compared with her blood sample, there was also DNA from the victim in the water from the toilet.

Wieland then tested the saliva sample taken from R.'s buttocks. She determined that it was definitely saliva, but with regard to the DNA, she was only able to obtain partial results. In addition to R.'s DNA, Wieland found that there was DNA which was "clearly foreign to the victim." When she compared the partial results of the "foreign" DNA to the DNA profile from the sperm found in the toilet, she concluded that the "foreign contributor" had been the same person.

Wieland did not do any more testing with regard to R.'s case until 2011. At that time, she received a "buccal swabbing, or an oral swab from Sylvester Rawls."[3] After other analysts at the lab did the testing, Wieland "did the DNA interpretation." She compared the sample to the "sperm profile from the toilet water, as well as to the buttocks sample from the victim." The "DNA from the Sylvester Rawls reference sample match[ed] the sperm that [had been] found in the toilet water at every single location." The "frequency of [finding] an individual at random who could be the source of [the] sperm from the toilet water is . . . one in 642 trillion . . . ."

The swab taken from Rawls was processed with a new DNA identifier kit. The new kit "contain[s] all the same markers, plus an additional two." With regard to error in the analysis of DNA samples, Wieland indicated that they "do not calculate any sort of error rate" at the lab. "The statistics reported are the actual frequency estimates of the given profile in the population at large."

With regard to Rawls, Wieland could not indicate what the probabilities were for the additional two markers tested in 2011. Since 2003, the new system, the "Identifier Kit Online" had been developed. However, based on the testing done, Wieland indicated that she had "never observed a profile that would have matched at all the 13 core [markers] and then did not match at [the two additional markers attributed to Rawls.] [¶] And based on that, [she] would be very surprised and would not expect to get different results at [the markers] in the evidence samples compared to Rawls's [sample]." In other words, Wieland still believed the "frequency of [finding] an individual at random who could be the source of [the] sperm from the toilet water [was] . . . one in 642 trillion . . . ."

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[3] Denise Aguilar is a civilian crime scene technician who works for the Redondo Beach Police Department "documenting, collecting, [and] preserving physical evidence, crime scene investigation and latent print examinations." On January 10, 2011, a detective asked Aguilar to go to a particular hospital and collect a DNA oral swab from an individual named Sylvester Gene Rawls, the defendant and appellant in this matter. Aguilar went to the hospital and, using her DNA kit, which consisted of sterile cotton swabs, gloves, swab boxes and envelopes, confirmed Rawls's identity, then collected saliva samples from the interior of his cheek wall. The samples were then individually packaged in boxes, placed in sealed envelopes, and delivered to the crime lab.

The probability that the DNA sample obtained from R.'s buttocks was from Rawls was much smaller, one in 80. That is because, in reaching that number, Wieland took into account only two DNA markers rather than the 13 used to analyze the semen recovered from the toilet water.

Russell Baldwin is a senior forensic analyst for the Orange County Sheriff's Crime Lab. On October 2, 2003, Baldwin did the "technical review of the first [DNA] report" in Rawls's case. The report covered a collection of toilet water, a sexual assault kit and swabs from the victim. As a technical reviewer, Baldwin checked "all of the forms that [were] included in the report to make sure . . . they were filled out completely, [that] the tests [had been] run completely as far as the paperwork [was] concerned, [that] everything [was] notated with the forensic report number [and] initials, [and that] the dates [were] filled in correctly . . . ." The "case manager" on the matter was Danielle Wieland. From his technical review of the case, it appeared that Wieland had "covered the proper protocols in doing the analysis" and Baldwin had no issues regarding his technical review of it.

Six additional forensic analysts from the crime lab worked on the DNA samples from Rawls's case. All six had reviewed some portion of Wieland's work on the matter in either 2003 or 2011 and had come to the conclusion that she had followed proper protocol and reached an appropriate conclusion.

Detective Peterson was shown the traffic ticket which Rawls received on August 15, 2003. The address of Rawls's residence was only 6.99 miles from the high school where R. was attacked.

2. *Defense evidence*.

Detective Peterson, who was the investigating officer for this case, first reviewed the evidence in the matter in 2007.[4] In the course of his investigation, Peterson spoke with several officers who had worked on the case and two witnesses, Michelle B. and the

[4] The detective, who is now formally retired, works as a reserve officer investigating older, or "cold" cases which were never solved.

victim, R. In his interviews with the officers, he did not recall any of them stating that they had shown a composite drawing of Rawls to any of the witnesses who had been at the scene. In his interview with R., she had told him that the shoes she had seen in the stall next to hers were "men's dress shoes." R. had also told the detective about "the sunglasses, beanie cap [and] things of that nature." However, none of those items were ever recovered or "linked to Mr. Rawls."

Rawls was first considered a suspect in this matter in December 2010 or January 2011. At that time, Peterson obtained a search warrant for "a DNA sample from Mr. Rawls." To enable crime scene technician Aguilar to take a swab from inside Rawls's cheek, Peterson obtained a search warrant for his mouth.

Wieland, the DNA analyst, noted that "DNA typing does not give [one] an idea of the time that the stain [or sample] was deposited." In addition, DNA may be transferred from one item to another. For example, "if someone wearing gloves . . . [is] doing [the] testing, and [that individual] were to wipe [his or her] face, and then touch items, that would be [considered a secondary] transfer" which could affect the sample. At times, DNA samples can be contaminated during the testing process. If an analyst expects that that is what happened, he or she would repeat the process, using various controls. The computer software detects the chemical reactions. The analyst then, using specific standards, interprets them.

With regard to the DNA sample recovered from R.'s buttocks, Wieland assumed that there were only two donors, one of whom was the victim. Although there was "no indication that there [was] a third" donor, she could not be absolutely certain.[5]

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[5] During Wieland's testimony regarding the reading of the DNA, defense counsel asked her about errors which might occur within the lab. The prosecutor then asked if he and counsel could approach and, out of the presence of the jury, the prosecutor indicated, "Well, if it's an analyst that wasn't involved in this case, it's not relevant." Defense counsel responded, "Yes, it's both. Some she has flagged, some she's not involved in technically. [¶] My position on this, I think the forensic labs have a responsibility to produce an error rate. They don't. [¶] And this is one of the ones they avoided. They don't produce all data. It's relevant, because if you're telling us it's one in a trillion but the error rate is one in ten, which of course it's not that bad. [¶] . . . [¶] It doesn't matter

2. *Procedural history.*

Following a preliminary hearing, on October 19, 2011, an amended information was filed charging Rawls with two counts of forcible oral copulation in violation of section 288a, subdivision (c)(2) (counts 1 and 2). It was further alleged that Rawls used a deadly weapon, a knife, within the meaning of section 12022.3, subdivision (a), which caused the offenses to be considered serious felonies within the meaning of section 1192.7, subdivision (c)(23). In addition, the allegations Rawls used a weapon caused counts 1 and 2 to be charged as violent felonies which, if found true, required him to register as a sex offender pursuant to section 290, subdivision (c) and serve any time imposed for the crimes in state prison pursuant to section 1170, subdivision (h)(3).

After the trial court denied Rawls's motion to exclude any DNA evidence and granted his motion to bar the prosecution's DNA expert from stating directly that Rawls was the source of the DNA found at the crime scene,[6] Rawls made a *Marsden*[7] motion. He first asserted that his counsel hadn't shown him his own discovery and that he had been unable to "look [and] see what's going on, [to] study [his] own case." For instance, Rawls wished to find out who the "janitorial people" were who cleaned the restroom on

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if it's one in a trillion if the . . . real rate of error is one in ten. It's a bogus number giving the jury [a false impression]. And I believe it's salient to get into error rate." The prosecutor responded, "I would think if the analyst in this case . . . made errors, that might be relevant. If their analyst had nothing to do with this case, I don't see the relevance." Defense counsel then indicated, "As we just heard, there are little average test tubes as control. If . . . one is lucky enough to have contamination fall into the control, then they detect it. If it goes into evidence, they don't always detect it."

The trial court responded, "You're welcome to ask her those types of questions as to [what happens when,] . . . during the testing process[,] if the contamination falls within the sample as opposed to within one of the tubes. [¶] But as it relates to errors that are made by other analysts, I'm going to sustain the objection under both [Evidence Code section] 352 and relevance. As to the issues where she is the analyst, [it's] fair game."

[6] The witness could only testify as to the statistical evidence that the DNA found at the crime scene had come from Rawls.

[7] *People v. Marsden* (1970) 2 Cal.3d 118.

August 28, 2003. His counsel had told him that that fact was not relevant. In addition, Rawls indicated that he and his counsel never had a "full conversation" about his case and that counsel continued to simply tell Rawls that, if Rawls did not like counsel, Rawls could fire him. According to Rawls, counsel had informed him that, after studying the evidence, counsel did not believe Rawls had much of a case. It was, as stated by Rawls, counsel's opinion that Rawls was guilty and should "take whatever the prosecutor [would] give [him] that [did not] have a life sentence in [it]." Rawls indicated that he and his counsel did not "see eye to eye" and that their "communication . . . ha[d] completely broke[n] down."

Counsel stated that, although Rawls had indicated that he had not been included in discovery, just that day counsel had given Rawls a copy of a motion counsel had filed. Counsel continued, "I've provided everything that he's ever requested from me. That has included all of his motions that [the court] has read, lengthy as they are." Further, counsel indicated that he had "never said that [Rawls] was guilty, or that [counsel] thought he was guilty." Counsel had told both Rawls and his wife that he did not care if Rawls was guilty; that it made no difference whatsoever. Counsel had told Rawls that all that mattered was whether a jury believed he was guilty and that he was of the opinion that, at the end of a trial, a jury would "believe that [Rawls] did this crime . . . ." Counsel had given Rawls his opinion "in the interests of helping him, because [he'd] rather not see [Rawls] go away for the rest of his life." Counsel believed the better option was to take an offer. Counsel continued, "An offer was not made in this case. They initially started with bandying about a number in the 20's, but never came up with one. As we approached trial, I was told that 20 might be acceptable, but we had to make an offer to them. [¶] The only offer remotely discussed as being offered by us was 6 years. After telling [Rawls] it was a waste of time, but I would do it for him, I did it. And sure enough, it was a waste of time."

Counsel indicated that he met with Rawls on several occasions and had a number of lengthy conversations with him. However, counsel, after reviewing the evidence

several times, did not believe that Rawls had much of a chance. "And [Rawls] did not like [counsel's] frankness. . . ."

The trial court informed Rawls that the decision to attempt to negotiate a dissolution or to go to trial was his and "[i]f [his] desire [was] to . . . assert [his] right to a jury trial, and require the prosecution to prove its case beyond a reasonable doubt," that was certainly fine. Rawls, however, stated, "Only thing, your honor, I still – feel the same way, that I need to – have a motion for – for substitution of attorney. [¶] Because I can't . . . get a fair representation for defense. . . ."

The trial court denied Rawls's *Marsden* motion. The court commented, "I've read and considered all of [counsel's] motions he'[s] made on your behalf. On a DNA case, there[] isn't anybody I'd rather have representing me than him. [¶] I think that he is probably the preeminent expert in DNA cases in his office, and probably one of the finest DNA defense experts in the field. [¶] I recognize that he's not bringing you the information that you want to hear, either about the offer or about his view of the evidence in the case. [¶] But he can't control that. . . . [¶] . . . [¶] He is defending you."

After the *Marsden* motion was denied, defense counsel made a section 995 motion to dismiss one of the counts of forcible oral copulation, asserting that there had been only one incident. Since, however, Rawls had twice placed his penis in R.'s mouth, the trial court denied the motion.

Defense counsel then moved for a mistrial under both "federal and state [law], due process, equal protection, and assistance of counsel." The trial court denied the motion.

After the prosecution presented its case, defense counsel made a motion for an entry of a judgment of acquittal pursuant to section 1118.1. The trial court denied the motion, finding that there was "more than enough evidence for this case to go to the jury."

The trial court then addressed Rawls and stated, "This is the opportunity for the defense to put on an affirmative defense, if it chooses to do so. [¶] As part of an affirmative defense, you have an absolute right to testify in your trial, if you wish to testify. On the other hand, you have a privilege against self-incrimination. You cannot

be forced to testify if you prefer not to testify. . . ." After further explanation, the trial court asked Rawls, "Do you understand your Fifth Amendment privilege . . . against self-incrimination in this case?" Rawls responded, "Yes, your honor." The court then added, "Do you understand that you have a right to testify as part of an affirmative defense if you choose to?" Again Rawls responded, "Yes, your honor." Rawls indicated that he had decided not to testify and his counsel stated that, rather than calling additional witnesses as part of an affirmative defense, Rawls would rely on the state of the evidence at this point in the trial.

At proceedings held on February 8, 2012, the trial court instructed the jury with the law of the case and counsel presented their arguments. The jury then retired to the jury room to deliberate. That same afternoon, the jury indicated that it had reached verdicts. After the foreperson handed the forms to the bailiff and the court reviewed them, the clerk read the verdicts and findings. The jury had found Rawls guilty of the crime of forcible oral copulation, a felony (§ 288a, subd. (c)(2)), as alleged in counts 1 and 2. The jury further found that Rawls personally used a dangerous and deadly weapon, a knife, during the commission of the crimes (§§ 12022.3, subd. (a), 667.61, subds. (b) & (e)).

At defense counsel's request, the jury was polled. When individually asked if these were their verdicts, each of the 12 jurors responded, "Yes."

Sentencing proceedings were held on March 8, 2012. The trial court first indicated that it had received a request for media coverage. The court granted the request, but indicated that "it [would] be a pool camera arrangement subject to any sharing with any other media agencies." The court indicated that it would "direct the photographer not to take any closeups of the court or its staff."

The trial court indicated that it had read and considered the probation officer's report, the defendant's sentencing memorandum and "character letters" submitted on his behalf. The court had also read the prosecution's sentencing memorandum and statement in aggravation. After hearing from the victim's father, the prosecutor and defense counsel, the trial court imposed with regard to count 1, a violation of section 288a,

subdivision (c)(2) with true findings as to section 667.61, subdivisions (b) and (e), "the mandatory sentence of 15 years to life." For count 2, a violation of section 288a, subdivision (c)(2), the court imposed "the high term of 8 years, plus the high term for the allegation under [section] 12022.3[, subdivision] (a), for a total of 18 years." The trial court imposed the terms concurrently, finding that the factors in aggravation did not justify consecutive sentences. The court indicated, "In this matter, I find that it's part of the same transaction or occurrence involving the same common plan or scheme, the same victim, and the same location."

Rawls was ordered to pay a $5,000 restitution fine (§ 1202.4, subd. (b)), a stayed $5,000 parole revocation restitution fine (§ 1202.45), a $40 court security fee (§ 1465.8, subd. (a)(1)), a $30 criminal conviction assessment (Gov. Code, § 70373) and a $400 "sex crimes fee" (§ 290.3). The trial court awarded Rawls presentence custody credit for 424 days actually served and 63 days of good time/work time, for a total of 487 days.

On the same day on which he was sentenced, March 8, 2012, Rawls filed a notice of appeal.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed June 25, 2012, the clerk of this court advised Rawls to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On August 20, 2012, Rawls filed a motion in which he requested additional time within which to file a letter brief. The motion was granted, allowing Rawls to file a brief on or before September 28, 2012. However, no response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, J.

We concur:

KLEIN, P. J.

ALDRICH, J.