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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRANE LEE WHITE,

Defendant and Appellant.

2d Crim. No. B278758
(Super. Ct. No. 2013018287)
(Ventura County)

Tyrane Lee White appeals a judgment following conviction of forcible rape, with findings that he kidnapped the victim, personally inflicted great bodily injury on the victim in the commission of the offense, personally used a dangerous or deadly weapon in the commission of the offense, and served a prior prison term. (Pen. Code, §§ 261, subd. (a)(2), 667.61, subds. (a), (d)(2) & (6), (e)(3) [“one strike” law], 667.5, subd. (b).)¹ We affirm.

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

FACTUAL AND PROCEDURAL HISTORY

This appeal involves the rape and savage beating of R.L., a massage studio employee. R.L. and two bystanders identified White in separate field identifications held shortly thereafter. DNA evidence collected from White and R.L. further corroborated R.L.'s account of the crimes. In addition, a surveillance videotape from inside the massage studio captured the kidnapping, beating, and rape. At trial, the prosecutor played the videotape during argument and presentation of evidence.²

At approximately 10:00 a.m. on June 8, 2013, Danette Barron sat in her parked van near the intersection of Main and Fir Streets in Ventura. She noticed White walk past her van and the nearby massage studio, stop, return back, and then enter the massage studio. After a few minutes, she heard the exterior massage studio door close with "clicking" sounds, suggesting that the door then was locked.

Massage therapist R.L. was standing at the reception counter when White entered the studio. The studio had three massage rooms along an interior, darkened hallway, approximately 17 feet from the interior reception area door. The third massage room had a back door, but the door was blocked from the outside to prevent access into an adjoining business.

R.L. is a Chinese citizen whose native language is Mandarin. Her knowledge of the English language is limited, but she speaks and understands English language words and phrases related to her massage employment.

White stated that he wanted to use the restroom. R.L. escorted him toward the restroom which was at the end of the

² The surveillance videotape, exhibit 14 at trial, has been transmitted to this court. We have reviewed the videotape.

hallway. White stopped in the middle of the hallway, however, outside the second massage room. R.L. pointed to the restroom, but White did not move. R.L. then became frightened, stated “no massage,” and walked toward the reception area. White blocked the door to the office and reception area, however, and demanded money. R.L. said no. White then pushed R.L. approximately 17 feet into the second massage room and closed the door.

Inside the room, White began to throw R.L. against the wall, the floor, and the massage table.³ R.L. believed that White was “beating [her] to death.” R.L. briefly lost consciousness. When White then left the room, R.L. ran to the third massage room and tried the back door. The door remained blocked, however, and she could not escape.

White then returned, pushed R.L. back into the second massage room, and beat and stabbed her with a pair of pliers he obtained from his pants pocket. He also threw her against the wall. White then removed R.L.’s pants and underwear and raped her against the massage table. R.L. did not resist because she feared for her life and White was “big and strong.” R.L.’s face and nose were bleeding and several of her teeth were broken.

White then turned away and sprayed a disinfectant on his penis. R.L. used this opportunity to flee. Barron was parked outside the studio and saw R.L., partially nude and bleeding, run outside. Barron rendered assistance to R.L. and telephoned the police emergency dispatcher. Meanwhile, White left the massage studio, adjusted his clothing, and walked away. Barron gave a physical description of White to the police dispatcher.

³ The probation report describes White as 6’1” tall and weighing 240 pounds.

A second bystander, Scott Noble, left his parked vehicle as he heard “a blood curdling scream . . . high pitched terror.” He saw R.L. covered in blood and he too telephoned for police assistance. Noble also saw White casually walk away from the massage studio.

Ventura Police Officer Cody Uebelhardt soon located White at a nearby park. As Uebelhardt approached White from behind, he noticed women’s underwear near White and blood on White’s shoes and hands. Uebelhardt detained White who repeatedly refused to identify himself. In three separate field identifications, R.L. and the two bystanders identified White as the man in the massage studio. Although police officers searched the massage studio, as well as the path White took to the park, they did not find the pliers he used to assault R.L.

During the beating, R.L. saw a tattoo across White’s clavicle area that read “Trust no bitch.” Following White’s arrest, police officers took photographs of his body, including this tattoo.

R.L. suffered many facial bruises, fractured teeth, injuries to her head and neck consistent with being struck by a metal object, and multiple facial and nasal fractures. Following emergency medical treatment, R.L. received a forensic sexual assault examination, including swab collection for DNA samples.

Suzette Sanders, a forensic scientist at the Ventura County Sheriff’s Department crime laboratory, performed DNA testing on samples collected from R.L. and White. Sanders opined that White was the major contributor of the sperm DNA collected during R.L.’s sexual assault examination. White’s DNA profile occurs among randomly selected unrelated people at a frequency of 1 in 18 quintillion African-Americans. The DNA collected from

the swab of White's penis reflected that R.L. was a major contributor.

The jury convicted White of forcible rape and found that he kidnapped the victim, personally inflicted great bodily injury on the victim in the commission of the offense, and personally used a dangerous or deadly weapon in the commission of the offense. (§§ 261, subd. (a)(2), 667.61, subds. (a), (d)(2) & (6), (e)(3).) In a separate proceeding, White admitted that he served a prior prison term. (§ 667.5, subd. (b).) The trial court sentenced White to a prison term of 26 years to life, imposed various fines and fees, ordered victim restitution, and awarded White 1,169 days of presentence custody credit.

White appeals and contends that: 1) there is insufficient evidence to support the one strike kidnapping special circumstance of section 667.61, subdivision (d)(2); 2) the trial court abused its discretion by preventing cross-examination of R.L. regarding her bias; 3) the trial court abused its discretion and denied him a fair trial by permitting the prosecutor to replay the surveillance videotape during summation; 4) the prosecutor misstated the law of infliction of great bodily injury during summation; and 5) the trial court did not adequately advise or obtain a sufficient waiver of rights prior to accepting his prior prison term admission.

DISCUSSION

I.

White argues that insufficient evidence supports his conviction for the kidnapping special circumstance because R.L.'s movement was trivial, insubstantial in character, and did not increase her risk of harm beyond that inherent in rape. (*People v. Perkins* (2016) 5 Cal.App.5th 454, 470 [movement of victim 10 to

30 feet from bathroom to bedroom insubstantial for aggravated kidnapping[.]) He asserts that the conviction denies him due process of law pursuant to the state and federal Constitutions.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) Our review is the same in a prosecution primarily resting upon circumstantial evidence and to review of special circumstance findings. (*Johnson*, at p. 988; *People v. Watkins* (2012) 55 Cal.4th 999, 1020.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 [“Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact”].) We must accept logical inferences that the jury might have drawn from the evidence although we would have concluded otherwise. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*Albillar*, at p. 60.) Moreover, the testimony of a single witness is sufficient to prove a fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

Aggravated kidnapping, pursuant to section 667.61, subdivision (d)(2), applies where 1) the defendant is convicted of an enumerated sexual offense; 2) the defendant kidnapped the victim of the sexual offense; and 3) movement of the victim

substantially increased the risk of harm to the victim above that necessarily inherent in the underlying offense. (*People v. Kelly* (2016) 245 Cal.App.4th 1119, 1129.) To prove the offense of kidnapping, the prosecutor must establish that 1) the victim was moved a substantial distance, referred to as asportation; 2) the movement was accomplished by physical force or fear; and 3) the movement was not consensual. (*Ibid.*) The statute does not refer to any particular distance the victim must be moved. (*People v. Brooks, supra*, 3 Cal.5th 1, 68.) Our Supreme Court has long recognized, however, that the movement or asportation must be substantial in character and not slight or trivial. (*Ibid.*)

In *People v. Martinez* (1999) 20 Cal.4th 225, 235, our Supreme Court abandoned exclusive reliance on the actual distance that the victim was moved to determine whether the movement was substantial in character. (*People v. Brooks, supra*, 3 Cal.5th 1, 68.) *Martinez* adopted a totality of the circumstances standard that takes into account the scope and nature of the movement and any increased risk of harm to the victim. (*Brooks*, at pp. 68-69.) “Thus, in a case where the evidence permitted, the jury might properly consider not only the actual distance the victim is moved, but also such factors as whether that movement increased the risk of harm above that which existed prior to the asportation, decreased the likelihood of detection, and increased both the danger inherent in a victim’s foreseeable attempts to escape and the attacker’s enhanced opportunity to commit additional crimes.” (*Martinez*, at p. 237.) Thus, measured distance alone is not determinative.

The evidence here sufficiently establishes the asportation element of kidnapping pursuant to the “totality of the circumstances” standard. (*People v. Brooks, supra*, 3 Cal.5th 1,

69.) The 17 feet that White moved R.L. was substantial in character because it increased her risk of harm by moving her from the interior reception and office door to a closed hallway and closed-door massage room. (*People v. Shadden* (2001) 93 Cal.App.4th 164, 169 [victim dragged nine feet into back room of a store].) “[W]here a defendant moves a victim from a public area to a place out of public view, the risk of harm is increased even if the distance is short.” (*Ibid.*) Where movement changes the victim’s environment, it does not have to be great in distance to be substantial. (*Ibid.*)

The movement of R.L. also was not merely incidental to the rape. “Where a defendant drags a victim to another place, and then attempts a rape, the jury may reasonably infer that the movement was neither part of nor necessary to the rape.” (*People v. Shadden, supra*, 93 Cal.App.4th 164, 169.) Here the movement of R.L. decreased the likelihood of detection, attenuated the sounds of R.L.’s cries, and enhanced White’s opportunities to commit other crimes, such as the second beating he inflicted on R.L. (*People v. Robertson* (2012) 208 Cal.App.4th 965, 984-985 [victim moved from back of garage near a door to front of garage near a tub of water].) “[A] rape victim is certainly more at risk when concealed from public view and therefore more vulnerable to attack.” (*Id.* at p. 985.)

White also increased the risk of psychological harm to R.L. by locking the front door, secluding her in the second massage room, and then beating and stabbing her with pliers. (*People v. Nguyen* (2000) 22 Cal.4th 872, 886 [increased risk of harm may be emotional or psychological]; *People v. Power* (2008) 159 Cal.App.4th 126, 138 [same].) Although another reasonable inference may be drawn from the evidence, we do not substitute

our views for those of the trier of fact. (*People v. Streeter, supra*, 54 Cal.4th 205, 241.)

II.

White asserts that the trial court abused its discretion by preventing his cross-examination of R.L. regarding any immigration application she might make for asylum based upon her status as a rape victim in this prosecution. (Evid. Code, § 780, subd. (f) [credibility of a witness may be tested by considering “existence or nonexistence of a bias, interest, or other motive”].) This restriction, he argues, denied his constitutional rights to a fair trial and to due process of law, including his rights to confront witnesses and present a defense. He points out that his defense at trial was that the sex was consensual and the beatings concerned a money dispute.

During cross-examination, White inquired if R.L. was “seeking immigration asylum when this case is over.” R.L. responded affirmatively, explaining that as a sex crime victim, she had lost “face to go back to China.” The trial court sustained the prosecutor’s objection, pursuant to Evidence Code section 352, to the question, “Are you seeking to use any of the facts of this case in your request for asylum?”

Relevant evidence is evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) The trial court is vested with wide discretion to determine the relevance of evidence. (*People v. Alexander* (2010) 49 Cal.4th 846, 904.) In reviewing a relevancy contention, we consider whether the challenged evidence satisfied the requirements of Evidence Code section 210, and whether the trial court abused its discretion pursuant to Evidence Code section 352

by a finding that the probative value of the evidence was not substantially outweighed by the substantial danger of undue prejudice. (*Alexander*, at pp. 903-904.)

As a general rule, a defendant has no constitutional right to present all relevant evidence in his favor. (*People v. Guillen* (2014) 227 Cal.App.4th 934, 1019.) Application of the ordinary rules of evidence does not impermissibly infringe on the defendant's right to present a defense. (*People v. Lucas* (2014) 60 Cal.4th 153, 270, overruled on other grounds by *People v. Romero and Self* (2015) 62 Cal.4th 1, 53-54, fn. 19; *People v. Gonzales* (2012) 54 Cal.4th 1234, 1258.) Thus, constitutional principles are not offended by rulings that exclude evidence that is repetitive, marginally relevant, or that poses an undue risk of prejudice or confusion of the issues. (*Gonzales*, at p. 1259.) In order for a defendant's constitutional rights to override the application of the ordinary rules of evidence, the proffered evidence must have more than slight relevancy to the issues and must be of substantial and significant value. (*Guillen*, at p. 1019.)

Here further evidence of R.L.'s intent to apply for asylum based upon her victim status was irrelevant and cumulative. R.L. testified that she hoped to apply for asylum because she could not return home to China. Evidence of the importance of the outcome of White's criminal case to R.L. would not have produced a significantly different impression of her credibility. (*People v. Lucas, supra*, 60 Cal.4th 153, 272 [evidence of witness's financial interest in defendant's conviction would not have produced a significantly different impression of witness's credibility where jury was aware he had significant incentive to testify against defendant].)

Moreover, the trial court's ruling here was not a "blanket exclusion" that stripped White of his defense of attacking R.L.'s credibility. (*People v. Page* (1991) 2 Cal.App.4th 161, 185.) The court permitted White to inquire if R.L. intended to seek immigration asylum "when this case is over." R.L. responded that she would "definitely seek asylum. . . . If there is a law that allows me to do this, then I will definitely apply for it." "Generally speaking, the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (*Delaware v. Fensterer* (1985) 474 U.S. 15, 20.)

III.

White argues that the trial court abused its discretion by permitting the prosecutor to replay the surveillance videotape, over defense objection, during summation. He asserts that the replay (the fourth) exceeded the permissible scope of closing argument, placed undue emphasis on this evidence, and was unduly inflammatory and prejudicial. White contends that he was denied due process of law and a fair trial for this reason pursuant to the state and federal Constitutions.

The surveillance videotape was played at trial and received into evidence. The trial court properly permitted the prosecutor to replay the videotape during summation. (*People v. Homick* (2012) 55 Cal.4th 816, 862 [prosecutor replayed videotape of police interview during summation].) In rejecting a similar argument, our Supreme Court concluded that "the prosecutor is entitled to refer to the evidence in his summation." (*Ibid.*; see also *People v. Coontz* (1953) 119 Cal.App.2d 276, 281-282

[prosecutor may read any part of the testimony during summation].)

The videotape was damaging to White because it was an accurate and shocking visualization of his crime. (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1150, overruled on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) “‘The photographs at issue here are gruesome because the charged offenses were gruesome, but they did no more than accurately portray the shocking nature of the crimes.’ [Citation.] The jury must be protected from sensationalized illustrations of a crime, ‘but the jury cannot be shielded from an accurate depiction of the charged crimes that does not unnecessarily play upon the emotions of the jurors.’” (*Ibid.*) Any revulsion the videotape caused is attributable to White’s crimes, not to any sensationalism of the videotape. (*People v. Cage* (2015) 62 Cal.4th 256, 284.)

In any event, White did not object to the replaying of the videotape on the ground that it was an appeal to the jury’s sympathy. His claim of undue prejudice is forfeited for that reason. (*People v. Pearson* (2013) 56 Cal.4th 393, 441 [failure to object to argument that prosecutor improperly appealed to jury’s sympathy for victim forfeited claim].)

IV.

White contends that, during summation, the prosecutor misstated the law regarding the great bodily injury circumstance of sections 12022.7 and 667.61, subdivision (d)(6). He asserts that the prosecutor stated incorrectly that the law does not require that the great bodily injury be inflicted at the same time as the rape. White points out that he argued at trial that the assaults on R.L. occurred either pre-rape or post-rape as reflected

in the surveillance video. We reject White’s hairsplitting arguments.

Section 667.61, subdivision (d)(6) includes as a circumstance of a mandatory life sentence that defendant “personally inflicted great bodily injury on the victim . . . in the commission of the present offense in violation of Section . . . 12022.7.” Section 12022.7, subdivision (a) provides: “Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony . . . shall be punished . . .” CALCRIM No. 3160, as instructed here, provides that the great bodily injury allegation requires a finding that “the defendant personally inflicted great bodily injury on R.L. in the commission of that crime.”

The prosecutor did not commit misconduct because infliction of great bodily injury “in the commission of a felony” occurs “if it occurred *before, during, or after* the technical completion of the felonious sex act.” (*People v. Jones* (2001) 25 Cal.4th 98, 110 [interpreting statutory phrase within meaning of section 12022.3], superseded by statute on other grounds as stated in *People v. Andrade* (2015) 238 Cal.App.4th 1274, 1307; *People v. Canela* (2014) 224 Cal.App.4th 703, 710 [application to section 12022.7].) The phrase “in the commission of” is given an expansive, not a tailored meaning. (*Canela*, at p. 710.) “[I]n the commission of” is not the same as “while committing,” or “while engaged in,” or “in pursuance.” (*People v. Frausto* (2009) 180 Cal.App.4th 890, 902.) “Temporal niceties are not determinative and the discharge of a gun before, during, or after the felonious act may be sufficient if it can fairly be said that i[t] was a part of a continuous transaction.” (*Ibid.* [interpreting section 12022.53 firearm use].)

People v. Arzate (2003) 114 Cal.App.4th 390 does not assist White. *Arzate* involved the crime of carrying a concealed firearm in a vehicle – a “single passive act.” (*Id.* at pp. 400, 399-401.) *Arzate* concluded that it is “logically inconsistent” to be found guilty of both using the gun and inflicting injury while concealing the same gun within a vehicle. (*Id.* at p. 392.) Here the acts of rape and inflicting great bodily injury are affirmative acts, not passive offenses. The law does not require a finding that White was “beating [R.L.] to death” while, at the same time, raping her.⁴ Thus, the prosecutor’s statements were not misconduct and were in accord with the properly given jury instruction (CALCRIM No. 3160).

V.

White asserts that the trial court erred by accepting his admission of the prior prison term allegation without fully advising him of his constitutional and statutory rights and accepting a waiver thereof. (*People v. Cross* (2015) 61 Cal.4th 164, 170.) He argues that his admission was not knowing, intelligent, or voluntary pursuant to the totality of circumstances.

An accused must be given “express and specific admonitions as to the constitutional rights waived by an admission” in the same manner as in the case of a guilty plea. (*In re Yurko* (1974) 10 Cal.3d 857, 863.) “Ideally, a defendant admits a prior conviction only after receiving, and expressly waiving, standard advisements of the rights to a trial, to remain

⁴ In any event, as the prosecutor pointed out during summation, White’s arms were “moving around” and “[h]e may still be beating” R.L. during the rape as reflected in the videotape.

silent, and to confront adverse witnesses.” (*People v. Mosby* (2004) 33 Cal.4th 353, 365, fn. 3, cited with approval by *People v. Farwell* (2018) 5 Cal.5th 290, 299.) Proper advisements and waivers thereof establish a defendant’s voluntary and intelligent admission of the prior conviction. (*Mosby*, at p. 356.)

The absence of express admonitions and waivers, however, does not require reversal regardless of prejudice. (*People v. Mosby, supra*, 33 Cal.4th 353, 361.) If the transcript of the proceeding does not reveal complete advisements and waivers, the reviewing court must examine the entire record to determine whether the defendant’s admission of the prior conviction was intelligent and voluntary in light of “the totality of circumstances.” (*Ibid.*) Moreover, the failure of the trial court to advise an accused of the penal consequences of an admission is error that requires that the admission be set aside only if the error is prejudicial to the accused. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022-1023, overruled on other grounds by *People v. Villalobos* (2012) 54 Cal.4th 177, 183.)

Here, following his jury trial and verdict, the trial court advised White that he was entitled to a jury trial regarding the prior prison term allegation. White indicated that he wished to waive the jury trial and have a court trial. Then immediately defense counsel stated, “One moment. Your Honor, my client is actually changing his mind. He will admit the prior” The court then advised White of his right to a jury trial and inquired if he was waiving that right. White responded affirmatively, but stated that other documents indicated that he has served four prior prison terms. The court responded that only one has been alleged in the present prosecution. It then accepted White’s admission. The court did not advise White of his privilege

against self-incrimination, his right to confront witnesses, or the one-year penal consequence of his admission.

Our review of the record reflects that White's admission was intelligent and voluntary pursuant to the totality of the circumstances. He admitted the prior allegation immediately following his jury trial at which he remained silent and confronted his accusers. (*People v. Mosby, supra*, 33 Cal.4th 353, 364-365 [defendant voluntarily and intelligently admitted prior conviction although he was advised of and waived only his right to jury trial].) White also has a lengthy criminal history, including convictions where he was found guilty after trial or pleaded guilty. (*Id.* at p. 365.)

Although the trial court did not explain the penal consequence of White's admission of the prior prison term allegation, White has not established that the error is prejudicial or that he would not have admitted the allegation had he been informed regarding the one-year enhancement. (*People v. Walker, supra*, 54 Cal.3d 1013, 1023.) Moreover, although White points out that he has been found incompetent to stand trial at times and asserts that he may have misunderstood the penal consequences of the prison term allegation ("[I]t won't affect my life sentence"), the third and final competency evaluation found that White was malingering and has an antisocial personality disorder.

People v. Cross, supra, 61 Cal.4th 164, does not assist White. *Cross* is a "silent record" case, devoid of any admonitions or waiver. (*People v. Farwell, supra*, 5 Cal.5th 295, 299.) Early in the trial, Cross stipulated through counsel to the existence and date of a prior conviction. The court accepted the stipulation without informing Cross of his trial rights or the penal

consequences of the stipulation. Cross gave no personal waiver. Based on the stipulation, the jury found the prior conviction allegation true. (*Ibid.*)

Although the better practice would have been to give full advisements to White and obtain express waivers, reversal is not required under the circumstances. (*People v. Mosby, supra*, 33 Cal.4th 353, 365, fn. 3; *People v. Walker, supra*, 54 Cal.3d 1013, 1023.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

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