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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.

GREGORY ARTHUR ERWIN,

Defendant and Appellant.

2d Crim. No. B275365
(Super. Ct. No. F488376001)
(San Luis Obispo County)

Appellant Gregory Arthur Erwin was convicted by jury of committing violent felonies against two young women he solicited for sexual services. He was sentenced to 177 years 8 months to life in state prison. Appellant denied raping and robbing the two women and claimed that the encounters were consensual. We independently reviewed the record on appeal, and appellant's supplemental brief, but found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441-442, fn. 3.) We affirm.

Crimes Against M.O.

M.O. is an escort who advertises her services on websites. On January 22, 2013, appellant arranged to meet her at a hotel room in Pismo Beach. Appellant pushed his way into the room, held a gun to M.O.'s head, told her to undress, and forced her to orally copulate him while he sat on the toilet. He also tried to have intercourse with her. Appellant threatened to kill M.O. if she made noise. M.O. was terrified and crying, but did as she was told, against her will. Meanwhile, appellant's masked accomplice ransacked M.O.'s room, looking for money. M.O. testified that appellant's face was uncovered and he wore a New York Yankee's baseball cap.

After M.O. performed oral sex on him, appellant threw her onto the hotel room bed and put his gun into her vagina. He took M.O.'s car keys from her purse and stole \$3,000 to \$5,000 of her earnings, some from the car's glove box and some from the hotel room. He also took her cell phone.

Before leaving, appellant and his cohort bound and gagged M.O., and warned her that they had her home address from her driver's license. M.O. freed herself and called the police. One of the officers described M.O. as "extremely upset" and traumatized. As a result of the attack, M.O. attempted suicide and was involuntarily hospitalized.

A few months later, appellant was detained. His interview with police was disjointed because he had been on a cocaine binge. Appellant stated that he has been with over 150 prostitutes, and always brings a gun for protection. He initially denied meeting M.O. in Pismo Beach. Later, appellant told police that he met M.O. but complained that she did not provide the sexual services he wanted. He described M.O.'s hotel room, her

pet dog, having sex with her in the bathroom, and his accomplice, Ismael Ramos. Appellant claimed that he was concerned for M.O.'s safety and blamed Ramos for threatening M.O. with a gun. After appellant admitted to seeing M.O. in Pismo Beach, the police conducted a photo lineup. M.O. identified appellant as her assailant.

Appellant testified that he was with his neighbor Ismael Ramos when he received a message from M.O. The two men drove to her hotel, where appellant got out and told Ramos that he would be done soon. Ramos departed. Appellant entered M.O.'s room alone. When M.O. told him that she would only have oral or anal sex with him, appellant asked for his money back, because he does not enjoy either of those sexual acts. M.O. refused to refund his money, so he agreed to have her perform oral sex. Afterward, M.O. said, "Call me again" and appellant left the room.

Back in Ramos's car, appellant decided that he had been ripped off, and did not get the services he wanted. They drove back to the hotel, and Ramos went upstairs with appellant because he wanted to meet M.O. M.O. let both men into her room. Appellant complained that he only received 10 minutes of service for \$200, and wanted more. M.O. refused, and appellant threatened to email her photo to local hotels. Appellant left the room to smoke; when he came back, Ramos and M.O. were in bed and using drugs. Appellant surreptitiously took from the table the \$200 he had given to M.O., without her noticing it. They all said goodbye and parted.

The jury found appellant guilty of four felony counts for crimes committed against M.O.¹

Crimes Against K.M.

K.M. is an escort who advertises her services on websites. On March 14, 2013, she arranged to meet appellant at a hotel room in San Luis Obispo. Appellant was wearing a New York Yankees baseball cap. When K.M. asked for a “donation” and began to unwrap a condom, appellant reached into his back pocket, pulled out a silver gun and held it to her head. K.M. tried to call for help on the hotel room phone, but appellant snatched it from her hand and disconnected the call.

K.M. was very scared and, at gunpoint, complied with appellant’s demand that she orally copulate him. He threatened to kill her and told her she deserved it. She was crying and

¹ Appellant was sentenced for his crimes against M.O. as follows (unlabeled statutory references are to the Penal Code):

Count 1: Assault with the intent to commit rape during commission of a burglary, with an enhancement for personally using a gun. (§§ 220, subd. (b), 12022.53, subd. (b).) His sentence is seven years to life plus ten years for the firearm enhancement.

Count 2: Forcible oral copulation, with enhancements for personally using a gun; committing a residential burglary; and having more than one victim. (§§ 288a, subd. (c)(2)(A), 667.61, subd. (d)(4), 12022.53, subd. (b).) His sentence is 25 years to life, plus 10 years for the gun enhancement, to be served consecutively to all other indeterminate terms.

Count 3: Attempted forcible rape, with a personal gun use enhancement. (§§ 664/261, subd. (a)(2), 12022.53, subd. (b).) His sentence of three years was stayed. (§ 654.)

Count 4: First degree residential robbery, with a personal gun use enhancement. (§§ 211, 12022.53, subd. (b).) His sentence is the upper term of six years, plus ten years for the firearm enhancement.

hysterical, telling him to stop. Appellant engaged in intercourse without climaxing. He then had K.M. get on her hands and knees and penetrated her with his penis while saying degrading things to her. The attack went on for four hours, and appellant held a gun the entire time. K.M. saw appellant's name, "Erwin," tattooed on his back. He told her he couldn't kill her because she was "a cry baby."

Afterward, appellant directed K.M. to go into the bathroom and close the door. She refused, but went to stand in a corner. He took \$700 that K.M. had hidden inside of a Bible in a drawer, telling her he did this "for fun to girls" and made lots of money from it. When she heard the hotel room door close, K.M. followed appellant outside, saw the vehicle he was driving, obtained his license plate number, and called 911. The police found K.M. frantic, afraid, shaking and traumatized.

The police detained appellant on suspicion of rape and robbery. Appellant "immediately responded that [it] was no crime, that he was trying to educate the girl." He admitted that he had a gun during his encounter with K.M., and she became so upset and tearful that he was unable to maintain an erection. He told police that he read Bible verses to her. Appellant was wearing a baseball cap with the New York logo when detained. A police search of appellant's residence uncovered five grams of cocaine, plus a loaded and cocked silver revolver on his bed.

Appellant testified that he brought a gun with him, told police that he always carries a gun, and conceded that his name is tattooed on his back. K.M. panicked when she saw that he was carrying a gun and asked if he was going to kill her. To calm her down, appellant proposed to read her some Bible verses. He did not point a gun at her. She orally copulated him,

willingly, and did not tell him to leave. Appellant demanded his money back because K.M. had a large scar on her stomach, deflated breasts and poor hygiene. She refunded half of his money, then called the police on him.

The jury found appellant guilty of five felony counts for crimes committed against K.M.²

² He was sentenced for his crimes against K.M., as follows:

Count 5: Assault with intent to commit a rape during commission of a burglary, with a personal gun use enhancement. (§§ 220, subd. (b), 12022.53, subd. (b).) His sentence is the middle term, stayed. (§ 654.)

Count 6: Forcible rape, with enhancements for personally using a gun; committing the crime during a burglary; and having more than one victim. (§§ 261, subd. (a)(2), 667.61, 12022.53, subd. (b).) His sentence is 25 years to life, consecutive to the other indeterminate terms, plus 10 consecutive years for the firearm enhancement.

Count 7: Forcible rape, with enhancements for personally using a gun; committing the crime during a burglary; and having more than one victim. (§§ 261, subd. (a)(2), 667.61, 12022.53, subd. (b).) His sentence is 25 years to life, consecutive to the other indeterminate terms, plus 10 consecutive years for the firearm enhancement.

Count 8: Forcible oral copulation, with enhancements for personally using a gun; committing the crime during a burglary; and having more than one victim. (§§ 288a, subd. (c)(2)(A), 667.61, 12022.53, subd. (b).) His sentence is 25 years to life, consecutive to the other indeterminate terms, plus 10 years for the firearm enhancement.

Count 9: First degree residential robbery, with a gun use enhancement. (§§ 211, 12022.53, subd. (b).) His sentence is one-third of the middle term of 4 years (1 year, 4 months), plus one-third of the middle term of 10 years (3 years, 4 months) for the firearm enhancement, consecutive.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and advising appellant of his right to file a supplemental brief. On March 1, 2017, appellant filed an 87-page supplemental brief. He lists his claims as: jury pollution; *Brady* and *Pitchess* violations; Fourth Amendment violations; unreliable witness testimony; failure to suppress evidence; failure to sever the cases; failure to instruct with lesser included offenses; *Miranda* violation; hearing impairment during trial; improper identification procedures; and insufficiency of the evidence.

We have reviewed the entire record and find that none of the claims listed in appellant's supplemental brief present an arguable issue for review or require further briefing. We offer some examples below.

Appellant speculates that the jurors were not impartial (or were "polluted") because (a) some were not identified by number, and (b) a prospective juror was once a victim of assault but denied that the experience would affect his or her impartiality. Appellant fails to show how the assignment of juror numbers or the questions asked of the prospective juror caused him harm.

Appellant's severance claim was fully litigated, first in 2013, and a second time in 2015. The amended information included both victims. Consolidation is proper in cases with the

Count 11: Assault with a firearm. (§ 245, subd. (a)(2).) His sentence is three years, stayed. (§ 654.)

Count 14: Making criminal threats that would result in death and great bodily injury. (§ 422.) His sentence is two years, stayed. (§ 654.)

Appellant pleaded no contest to count 12, possession of a firearm by a felon. (§ 29800, subd. (a)(1).)

same class of crimes against two victims, where the facts underlying the joined offenses share common elements of substantial importance. (§ 954; *People v. Lucky* (1988) 45 Cal.3d 259, 276 [separate incidents of armed robbery may be joined as they are all “assaultive crimes against the person”].) Evidence of sex crimes committed by a defendant against other victims is cross-admissible, particularly when it shows a common plan or scheme and shows that the victims did not consent to the charged sex acts. (Evid. Code, §§ 1101, subd. (b), 1108.) Here, only months apart, appellant solicited young women on the Internet; arranged to meet them in hotel rooms; threatened to kill them; forced them to perform sex acts at gunpoint; degraded them; then stole their money. The cases were properly joined. (*People v. Capistrano* (2014) 59 Cal.4th 830, 848 [cases involving robbery and sexual offenses are of the same class].)

The reliability of the witnesses cannot be retried on appeal. Resolving conflicts in the testimony—here, the victims’ descriptions of their encounters with appellant versus appellant’s descriptions—and the credibility of the witnesses, is the exclusive province of the jury. (*People v. Maury* (2003) 30 Cal.4th 342, 403 [the jury alone assesses witness credibility and the truth or falsity of the facts].) The jury believed the complaining witnesses and did not credit appellant’s contrary testimony.

The evidence of appellant’s guilt is overwhelming. In recorded interviews with police and at trial, appellant admitted that he solicited women for sex on websites, met the victims in their hotel rooms, was carrying a gun, and engaged in sexual acts with them. The jury disbelieved appellant’s claims that he never threatened to kill the women, never forced them to perform sexual acts at gunpoint, nor stole their property. The victims

positively identified appellant, who was wearing a Yankees baseball cap in both attacks and when he was arrested, and as K.M. testified, his name is tattooed on his back. The silver revolver described by K.M. was found, loaded and cocked, on appellant's bed, and she was recorded in a 911 call giving his license plate number as he left the crime scene.

We do not discuss the other issues appellant raises in his brief, as none of them have merit. The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

John A. Trice, Judge

Superior Court County of San Luis Obispo

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

No appearance for Plaintiff and Respondent.