

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR HIGUEROS, JR.,

Defendant and Appellant.

2d Crim. No. B276709
(Super. Ct. No. 14C-32821)
(San Luis Obispo County)

A jury convicted Oscar Higueros, Jr. of seven counts of forcible rape (Pen. Code § 261, subd. (a)(2),¹ counts 1-7); six counts of forcible oral copulation (§ 288a, subd. (b)(1), a lesser included offense of counts 19-24); forcible sodomy (§ 286, subd. (c)(2)(C), count 25); dissuading a witness by force or threat (§ 136.1, subd. (c)(1), count 28); two counts of trafficking of a minor for a sex act (§ 236.1, subd. (c)(1), counts 29 and 30); possession of marijuana for sale (Health & Saf. Code, § 11359,

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

count 34) and possession of cocaine (*id.*, § 11350, subd. (a), count 35). As to the rape and forcible oral copulation counts, the jury found that each count was committed on a separate occasion. (§ 667.6, subd. (d).) The trial court sentenced Higueros to 167 years 8 months to life in prison. We affirm.

FACTS

Jane Doe turned 17 years old in June 2014. She lived with her mother. In July 2014, her mother took a two-week trip and left her home alone. While home alone, Jane met Richard Brooks. Brooks told Jane he wanted her to have sex with men for money. He would be her pimp and she would be his prostitute. Brooks advertised Jane's availability on Craigslist as someone who had just turned 18 years old.

On July 27, 2014, Higueros responded to the advertisement. He met Jane the next day. He paid Brooks \$150 and had vaginal and oral sex with Jane. Higueros took a video of himself having sex with Jane. Afterwards he asked Jane for her phone number. She gave it to him because she found him attractive. Higueros sent a still picture of himself having sex with Jane to Brooks.

On July 30, 2014, Jane and her mother got into an argument. Jane left the house and asked Higueros if she could stay with him. He welcomed her into his home. They had sex that night.

The next morning Meghan Doe arrived at Higueros's home. Meghan and Higueros had been dating for about 18 months. Meghan was upset to see Jane in Higueros's bed. Higueros pushed Meghan and told her to leave.

At first Higueros was nice to Jane. Soon, however, he began making demands. He assigned her household chores and

demanded that she perform them to exacting specifications. If she did not perform the chores to his specifications, he berated her and threatened to harm her and her family. She feared he would harm her if she did not comply.

Higueros commanded Jane to call him “Daddy.” He called her “Kitty” and “Bad Kitty” if she did something wrong. Higueros wanted Jane to find other women for him to have sex with. He called the other women “mice.”

After the first few days living together, Jane told Higueros that she was only 17 years old. He said he did not believe she was 18 years old to begin with.

Higueros and Jane had sex at least twice a day and sometimes up to five times. When Jane complained of vaginal pain, Higueros replied, “Daddy didn’t care. Daddy gets what he wants.” Jane felt she could not say no to sex.

On August 12, 2014, Jane’s friend, Erick Ramos, visited Jane at Higueros’s house. Higueros was not home. Jane texted Higueros to ask if she could have sex with Ramos. The request angered Higueros.

When Higueros got home, he called Jane a slut and told her she deserved to be punished. He ripped off her clothes and lifted her arms above her head. He grabbed her wrist so hard that it broke. He strangled her. She could barely breathe and feared he was killing her. He pushed her to the floor and had violent vaginal intercourse with her while restraining her arms above her head. She did not want to have sex with Higueros. She referred to the incident as the “hate rape.” A sex video filmed after the hate rape shows Jane’s wrist wrapped in a bandage.

The next morning Jane sent Higueros a message that included an attachment regarding sexual offenses against minors

in California. Higueros conducted a number of Internet searches on whether an emancipated minor can date someone over 18 years old.

After the “hate rape,” Higueros continued to have both vaginal and oral sex with Jane two to five times a day. Jane believed she could not say no. When she did say no, Higueros would reply, “Daddy gets what Daddy wants.” On at least one occasion, Higueros slapped Jane’s face and left bruises on her neck and buttocks. These injuries occurred during sex while Higueros held Jane down.

When Jane threatened to leave, Higueros threatened to kill her. Higueros told Jane that he murdered his father. This frightened Jane. She was aware his father had been murdered and the perpetrator had never been found.

Higueros wanted to make videos of Jane performing sex acts with him. She had no job and they needed money. Higueros told her she could make money by selling marijuana and making “our own porn.” He wanted to sell the videos on a website called Chaturbate, which permits users to pay to view sexually explicit video. Higueros frequently logged onto Chaturbate under the username “magicmike832.” He made several videos with Jane. She felt she would be hurt if she did not comply. One of the videos showed Higueros sodomizing Jane.

Over time the videos became violent. Higueros placed a belt around Jane’s neck to control her during sex. He also used a belt to spank her on the buttocks, leaving marks.

On August 25, 2014, a professor at Cuesta College contacted the sheriff’s department. He reported that he had heard a juvenile might be in trouble. After some investigation, Deputy Sheriff Peter Cramer called Jane on August 27, 2014, and

left a message asking her to return his call. Higueros listened into Jane's return call, telling her what to say. Cramer could hear his voice in the background. Jane agreed to meet with Cramer at the sheriff's station that afternoon. Higueros told Jane to say she was in a lesbian relationship and Higueros was her roommate.

At the sheriff's station, Jane initially told Cramer the story as instructed by Higueros. Eventually she told Cramer the truth.

The same day, Dr. Nisha Abdul Cader examined Jane. Cader found bruises on Jane's arm where she was grabbed, an abrasion on her knee and bite marks on her thigh. Cader also found swelling and irritation on Jane's lower back and abdomen, swelling and tenderness in her left wrist, shoulder and clavicle, and inflammation inside Jane's mouth.

Nurse practitioner Elizabeth Ramirez conducted a forensic examination of Jane. Ramirez found fluorescence on Jane's breasts and labia majora. She also found lacerations on Jane's labia minora and hymen. A DNA test of a sample from Jane's breasts showed strong evidence that Higueros was the donor.

Pursuant to a search warrant executed on Higueros's residence, sheriff's deputies found marijuana, baggies, a scale and a pay and owe sheet. An expert testified the marijuana was possessed for sale. Deputies also found a small container of cocaine.

Propensity Evidence
Evidence Code Section 1108²

(a) April Doe

April was 23 years old in 2004 when she met Higueros. In October 2004, April told Higueros she was not interested in having a relationship with him anymore. Higueros told April he wanted to be physical with her one more time. April said no. Higueros picked her up and placed her on the bed. He took off her pants, performed oral sex on her, and had vaginal sex with her. April cried and said no multiple times. Higueros told her “Let it happen. We’re going to be together and then I’ll leave.”

(b) Laura Doe

For 12 or 13 years, beginning when Laura was 21 years old, she had an intermittent sexual relationship with Higueros. Initially the relationship was consensual. That changed in the fall of 2012.

Higueros invited Laura to his house. After she orally copulated him, he pushed her down and told her to crawl. He dragged her by her hair into the bedroom. He pulled her onto the bed and had sex with her. Then he tied his belt around her neck. Laura said no and tried to fight him off. He told her, “You don’t tell me no. You owe me.”

With one hand Higueros held Laura’s hands above her head and tightened the belt around her neck with the other hand. He pulled down the top of Laura’s dress and bra and whipped her bare breasts with the tip of the belt. He raped her. Laura said no multiple times and cried. He asked if she was crying. When she said yes, he said “good.”

² All further statutory references are to the Evidence Code unless otherwise stated.

(c) Meghan Doe

Meghan met Higueros in April 2013 when she was 34 years old. In the beginning they had sex two or three times a day. Higueros wanted Meghan to call him “Daddy.” He called her “Kitty.” He had her do domestic chores to his exacting specifications. If she did something wrong, he gave her a look of hatred.

Higueros was violent with Meghan on at least seven or eight occasions. He pulled her hair, hit her, dragged her and threw her on the floor. On one occasion, he grabbed her by the hair and threw her face down on the carpet. He pulled down her pants and “shoved” his penis into her anus. He was rough and abusive. She tried to get away but eventually succumbed because it was easier to obey.

Higueros showed interest in underage girls. When high school age girls walked by, he made vulgar gestures. He told Meghan there was a virgin on Craigslist who wanted to have sex with him. He said he would give the person on Craigslist an “amazing experience” and would save her from losing her virginity to a predator.

Meghan ended the relationship when she went to Higueros’s house one morning and found Jane in his bed. He pushed Meghan and told her to leave.

(d) Janica Doe

Janica met Higueros at the beach when she was 16 years old. She told him she was 16. He said he was 27. After meeting four or five times, they touched each other’s genitals in his truck.

On one occasion they went behind the dunes. Higueros exposed his erect penis and guided her head toward it. Janica

resisted. She said, “Aren’t you worried; I’m not 18.” Eventually he put his penis back in his pants and they left the dunes.

On another occasion Higueros invited Janica to his house. Higueros blocked the door so she could not leave and pressured her into going into the bedroom. She did not want to have sex with him. She tried to play it as “cool” as possible to prevent the situation from escalating into violence.

Higueros took out his erect penis and asked Janica to perform oral sex. She told him someone was waiting for her and left the house. She feared that if she told him she did not want to have sex with him, he would rape her.

(e) Mary Doe

Mary was in her early 20’s in 2013 when she was dating Higueros. They had consensual sex on three or four occasions.

In March 2013, Mary and Higueros attended Mary’s roommate’s birthday party. Mary had three glasses of wine. She lost consciousness and suspected she had been drugged. She remembers being on her bed with Higueros. He put her roommate’s dog leash on her neck and began tightening it. He wanted her to put pornography on her laptop computer. When she refused, he became angry and began choking her with the leash. He hit her face several times.

The next thing Mary remembered is waking up naked alone in her bed, the dog leash still around her neck. Her vaginal area was sore. She felt something bad had happened. Bruises developed on her ankles, wrists, inner thigh and face. Her roommate had to help her walk around the house for two days.

Higueros sent Mary a picture of herself lying on the bed naked, her left wrist handcuffed to her left ankle. Mary had no memory of the picture having been taken.

(f) K. Doe

K. was 26 years old when she met Higueros. They had consensual sex on the night they met. Later, as with the other women, he demanded that she perform household chores to his exacting specifications. If she failed to perform the chores properly, he would call her names and require her to engage in forceful sex. They typically had sex multiple times a day. If K. did not do what he wanted sexually, he would punish her by engaging in more violent sex and pull her hair out.

On one occasion, after they had sex four or five times, K. told Higueros to stop because it hurt. He kept penetrating her for several more minutes before stopping. He inspected her vagina, and it was torn.

K. realized the relationship was abusive and tried to stop seeing Higueros. He threatened her that if she did not come back, he would place naked photographs of her and videos of them having sex on-line.

K. went to Higueros's home to ask him not to put the photographs and videos on-line. Higueros asked to see her phone. He saw pictures of K. and her boyfriend having sex. He became angry. He grabbed her and choked her. She rolled over on her side in the fetal position. He used both of his hands to open her knees. She did not want her knees spread apart and was trying to prevent it from happening. She was crying and shaking. He told her to stop crying. He had violent sex with her. She decided that just letting it happen would be easier than saying no. She did not want to have sex with him. She was afraid that if she even moved it would get worse.

Afterwards K. tried to leave. Higueros grabbed her and took her back into the bedroom. He threatened more sexual

violence if she did not sleep with him that night. She slept with him and left in the morning.

Sexual Trafficking Expert

Sharon Cooper, M.D., is a developmental and forensic pediatrician. She described the various stages of human trafficking. First the trafficker befriends or romances the victim. The victims are often vulnerable children. Then the trafficker demands that the child bring in money. Thereafter, the relationship is about business and violence.

Cooper also testified about Child Sexual Abuse Accommodation Syndrome (CSAAS), including why children cannot leave a sexually abusive relationship.

Defense

Higueros testified on his own behalf. He said he met Jane through Craigslist. The listing said she was over age 18. Jane told him she was 18. He had no reason to doubt her.

Higueros denied he paid Brooks to have sex with Jane. Brooks only wanted to watch them having sex. He did not ask for money.

Later Jane texted Higueros to say her mother punched her. She asked if she could move in with him. He told her to go to his house. Jane spent the night. The next morning Meghan arrived. Meghan began yelling and ripped the sheets off the bed where Jane was sleeping. He told Meghan in a stern voice to leave. He did not threaten Meghan or physically push her.

Jane was involved in an automobile accident on August 8, 2014. She hurt her arm. Higueros wrapped an ACE bandage around her wrist.

On August 12, 2014, Higueros and Jane got into an argument. Jane asked his permission to have sex with a male

friend. Higueros hurt Jane “a little emotionally,” but he denied he forced her to have sex.

Jane punched a cabinet earlier that day and complained her wrist was sore. He wrapped it in an ACE bandage. Later that day they made a sex video. That is the bandage seen in the video. He denied he grabbed Jane or hurt her.

Higueros used his cell phone to research the law on statutory rape and emancipation. He did so to find out whether he was a mandatory reporter about an incident that occurred with Jane before June 30, 2014, about a month before they met and the date on which Higueros believed she turned 18 years old.

Higueros found out Jane was a minor on August 22, 2014, when he overheard Jane’s friend ask her if Higueros knew she was under 18 years old. Higueros said he would never have had sex with Jane if he knew she was a minor.

Higueros denied that he ever hit, kicked or otherwise assaulted Jane. She never said no during sex. He denied that Janica told him her true age.

Jane called Higueros at the direction of law enforcement. A recording of the call was played during the defense case. Jane said she was in protective custody. She had been telling them that she is his roommate, but they do not believe her. Higueros said, “Wait, like my name’s out?” Jane asked Higueros what she should say. He replied, “Baby, just say Shayla’s your girlfriend I met you on the beach with your dog when you were having a bad day and didn’t have a place to stay.” Higueros told Jane that they probably monitored the phone. She asked, “[W]hat’s gonna to happen to us?” He replied, “Just like we said, we’re gonna wait . . . a year.” Jane denied he ever said that. Higueros told her nothing has gone on. He said she has to be

Careful about what she says. He accused her of lying to him about being under age and about filling out emancipation papers. Jane denied lying to him about anything. They argued about whether she lied to him about her age.

Higueros denied that he threatened Jane or any other woman. He also denied choking or raping anyone. He admitted being attracted to Janica but said she did not tell him her true age.

DISCUSSION

I

Higueros contends the trial court erred in admitting the testimony of other victims pursuant to Evidence Code section 1108.³

Section 1101, subdivision (a) provides that evidence of a person's character or trait of character is inadmissible to prove his or her conduct on a specified occasion.

Section 1108, subdivision (a) provides: "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352."

Section 352 gives the trial court the discretion to exclude evidence if the probative value of the evidence is substantially outweighed by a substantial danger of undue prejudice. (See *People v. Loy* (2011) 52 Cal.4th 46, 62.) Here the trial court admitted the evidence over Higueros's section 352 objection.

On appeal, Higueros challenges only four of six propensity witnesses: Mary, Janica, K. and Meghan. He does not challenge

³ All statutory references in section I are to the Evidence Code.

the testimony of April and Laura. But all six witnesses supported Jane's testimony.

Higueros's argument is based on a view of the evidence most favorable to himself. But that is not how we view the evidence. We view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Higueros claims Meghan did not testify to any sexual acts that were not consensual. But Meghan testified that on one occasion Higueros grabbed her by the hair, threw her face down on the carpet, pulled down her pants, and "shoved" his penis into her anus. She said she tried to get away but could not. That she eventually succumbed does not mean the sex was consensual.

K. testified that on one occasion after they had sex four or five times she told him to stop because it hurt. Nevertheless, he continued to penetrate her for several more minutes. On another occasion, Higueros grabbed her and choked her. She rolled over in a fetal position, crying and shaking. He used both hands to force her knees apart. He told her to stop crying and had violent sex with her. She just let it happen because she was afraid if she moved he would become more violent. Letting the rape continue for fear of further violence does not constitute consent.

Mary testified she had been drinking at a party. Higueros wanted her to put pornography on her computer. When she refused, he began choking her with a dog leash. He hit her face several times. The next thing Mary remembered was waking up naked. Her vaginal area was sore and she had bruises on her face, ankles, wrists and inner thigh. Later, Higueros sent her a picture of herself lying naked on the bed with her left wrist handcuffed to her left ankle. It was obvious Higueros had violent sex with her while she was unconscious.

In each case the testimony of the witnesses showed Higueros had a propensity to commit violent non-consensual intercourse or sodomy. The testimony was highly probative of his guilt on the charged offenses. The trial court acted well within its discretion in finding the probative value of the evidence is not outweighed by the danger of undue prejudice.

Janica did not testify to forcible rape or sodomy. She did testify that Higueros knew she was under 18 years of age. Knowing she was under age, he touched her genital area and asked her to orally copulate him. This shows his propensity to engage in sexual acts with girls, knowing the girls are under age. It is highly probative of his guilt on the charged offenses. The trial court did not abuse its discretion in admitting the evidence.

Higueros argues that section 1108 violates his constitutional rights to due process and equal protection. The argument has been rejected by our Supreme Court. (*People v. Falsetta* (1999) 21 Cal.4th 903, 918, 922.)

II

Higueros contends the trial court erred in admitting expert opinion on human trafficking.

A person with special knowledge, skill, experience, training or education in a particular field may give testimony in the form of an opinion related to a subject that is sufficiently beyond common experience that the opinion of an expert may assist the trier of fact. (Evid. Code, §§ 720, 801, subd. (a).)

Human trafficking is inducing or persuading or an attempt to induce or persuade a minor to engage in a commercial sex act. (§ 236.1, subd. (c).)

Higueros argues there is nothing about human trafficking in this case that is beyond the comprehension of the average

juror: Brooks offered Jane's sexual services and Higueros accepted; Higueros had Jane perform sex acts in videos that he could in theory have exchanged for consideration. But the average juror is not so experienced in human trafficking that expert opinion would not be helpful.

Higueros argues Dr. Cooper's testimony went beyond what is permitted of an expert. He claims Cooper vouched for Jane's credibility. Of course, the testimony supported Jane's credibility. It would be irrelevant if it did not either support or impeach her testimony. But it did not vouch for her credibility. Cooper testified in generalities about human trafficking. She did not specifically discuss Jane's situation.

III

Higueros contends the trial court erred in refusing to instruct on the *Mayberry* mistake-of-fact defense.

In *People v. Mayberry* (1975) 15 Cal.3d 143, 155, our Supreme Court determined that a defendant's reasonable and in good faith belief in a person's consent to sexual intercourse is a defense to rape.

Counts 1 through 12 charged Higueros with forcible rape. The trial court instructed the jury with CALCRIM No. 1000, which provides in part: "The defendant is not guilty of rape if he actually and reasonably believed that the woman consented to the intercourse and actually and reasonably believed that she consented throughout the act of intercourse. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman consented. If the People have not met this burden, you must find the defendant not guilty." That is an adequate *Mayberry* instruction.

The trial court also instructed the jury with CALCRIM No. 3406, which provides in part: “If you find that the defendant believed Jane Doe was age 18 or older and if you find that belief was reasonable, he did not have the specific intent or mental state required for [oral copulation with a person under age 18, sodomy with a person under age 18, furnishing a controlled substance to a minor].”

During deliberations, the jury sent the trial court the following inquiry:

“[1.] If, hypothetically, the defendant, being ignorant of the law, believes that a minor can give her consent, must the defendant [*sic*] be found not guilty of a charge if . . . he reasonably and actually believes that the victim is 17 years of age and consents to the intercourse; in spite of the fact that she does not and cannot give consent? . . .

“[2.] Does the reasonable and actual belief of the defendant [*sic*] fall under the admonition in Instruction 3406 concerning the defendant’s [*sic*] intent or mental state?”

The trial court discussed a response with counsel. During the discussion, the trial court stated that from the beginning the defense was that all of the sexual acts were in fact consensual; the defense did not rely on mistaken belief. Defense counsel disputed that.

The trial court gave the following response to the jury’s inquiry:

“1. Rape by force requires that the People prove, among other elements, that the woman did not consent to the intercourse, as opposed to ‘could not’ legally consent based on her age. Age is not an element of rape by force. The People have the burden of proving beyond a reasonable doubt that the defendant

did not actually and reasonably believe that the woman consented. Please carefully review Instruction 1000 in its entirety. [¶] . . .

“2. Instruction 3406 relates to the defendant’s reasonable and actual belief about Jane Doe’s age only as to the following crimes: oral copulation with a person under the age of 18 (as a lesser crime of oral copulation by force or fear); sodomy with a person under the age of 18 (as a lesser crime of sodomy by force or fear); and furnishing a controlled substance to a minor”

Here the trial court properly instructed the jury on the *Mayberry* defense both prior to and during deliberations. The trial court’s discussion with defense counsel as to whether Higueros was relying on the defense is irrelevant.

IV

Higueros contends his convictions on counts 29 and 30, human trafficking of a minor, must be reversed for failure to instruct sua sponte on the lesser-included offense of contributing to the delinquency of a minor.

Section 236.1, subdivision (c) provides in part: “A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section . . . 311.1 . . . is guilty of human trafficking.”

Section 311.1 involves production or distribution of obscene matter knowing the matter showed a person under age 18 participating in or simulating sexual conduct.

Section 272, subdivision (a)(1) provides in part: “Every person who commits any act . . . which . . . causes or tends to cause or encourage any person under the age of 18 years to come

within the provisions of Section 300 . . . of the Welfare and Institutions Code . . . is guilty of a misdemeanor”

Welfare and Institutions Code section 300, subdivision (b)(2) provides that a child is subject to the jurisdiction of the juvenile court whose parent or guardian failed to or is unable to protect the child from being commercially sexually exploited.

There are two tests for determining whether an uncharged offense is necessarily included in the charged offense. (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.) Under the “elements test,” the statutory elements of the greater offense include all of the statutory elements of the lesser offense. (*Ibid.*) Under the “accusatory pleading test,” the facts alleged in the accusatory pleading include all of the elements of the lesser offense. (*Id.* at pp. 1227-1228.)

Contributing to the delinquency of a minor is not a lesser included offense of human trafficking. Human trafficking does not include the element of proving the child comes within Welfare and Institutions Code section 300. Thus it fails under the “elements test.” Nor did the accusatory pleadings in this case refer to a parent or guardian’s failure or inability to protect the child. Thus it fails under the “accusatory pleading test.”

The trial court did not err in failing to instruct sua sponte on contributing to the delinquency of a minor.

V

Higueros contends his convictions for human trafficking (counts 29 and 30), forcible rape (counts 2-7), and forcible oral copulation (counts 14-18) are not supported by substantial evidence.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the judgment. (*People v.*

Johnson, supra, 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime beyond a reasonable doubt. (*Johnson*, at p. 578.)

(a) Human trafficking

Higueros argues there is no substantial evidence he made sex videos with Jane with the intent to use them commercially.

Count 29 alleged that Higueros committed the offense of human trafficking on July 28, 2014. That was the date he paid Brooks so that he could have sex with Jane. He took a video of the sex acts on his cell phone and sent a still photograph from the video to Brooks. Thus there is substantial evidence from which a reasonable trier of fact could determine that Higueros induced Jane to engage in a commercial sex act with the intent to distribute a photograph of obscene matter in violation of section 311.1.

Moreover, Higueros later told Jane that he wanted to use videos of them having sex to make money. A trier of fact could reasonably conclude that he took the video on July 28, 2014, for the same purpose.

Count 30 alleges that between July 30 and August 28, 2014, Higueros committed the offense of human trafficking. Jane testified that he made other sex videos with her to broadcast on the Internet. She testified that “[h]e wanted to broadcast it for money.”

Higueros argues that there is no evidence he ever followed through with his plan to commercially exploit the videos. But section 236.1, subdivision (c) does not require a completed commercial transaction. It is violated by an “attempt” to induce a minor to engage in a commercial sex act.

(b) Forcible rape and forcible oral copulation

These counts are based on the “hate rape” of August 12, 2014, and sexual acts that occurred thereafter. The People’s theory was that the hate rape constituted a demarcation line. The sex acts occurring thereafter were not consensual. Higueros contends there is no substantial evidence that the acts were not consensual.

Jane testified that after the hate rape they continued to have both vaginal and oral sex, two to five times a day. She felt she could not say no. She testified, “There were times when I had said no to him, and it happened anyways.” Higueros would tell her “Daddy gets what Daddy wants.” She had bruises on her arms from him holding her down during sex. When Jane threatened to leave, Higueros threatened to kill her. He told her he killed his father. Jane’s injuries disclosed during forensic physical examinations were consistent with forcible sex. Finally, other women testified that Higueros raped them.

There is more than ample evidence to support Higueros’s convictions for forcible rape and forcible oral copulation.

VI

Higueros contends the trial court erred in refusing to permit a full investigation into juror misconduct.

The jury rendered its verdict on March 4, 2016. Juror No. 11 sent a letter to the court postmarked March 15, 2016, stating she had not wanted to vote guilty on the rape counts. Defense

counsel and the prosecutor were given copies of the letter. Defense counsel made a motion asking the court to disclose identifying information for the other jurors so that he could prepare a motion for a new trial. The trial court denied the motion for juror information.

A juror's identifying information in a criminal case is sealed. (Code Civ. Proc., § 237, subd. (a)(2).) After the verdict, however, the defendant may petition the court for access to the information upon a showing of good cause. (*Id.*, § 206, subd. (g).) Good cause exists where the defendant makes a sufficient showing to support a reasonable belief that jury misconduct occurred and that further investigation is necessary for a motion for a new trial. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 990.) Denial of the motion for juror information is reviewed for abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 317.)

Much of Juror No. 11's letter describes the effect of statements or events on the mental process of a juror. Such evidence is inadmissible to impeach the verdict. (Evid. Code, § 1150, subd. (a).) Other matters referred to in the letter do not show misconduct.

Juror No. 11 stated that "[i]mmediately upon entering the deliberation phase," one juror "fervently" proclaimed her belief that Higueros is guilty. Stating an emphatic opinion on the defendant's guilt early in the deliberations, although inadvisable, is not misconduct. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1352.)

Juror No. 11 complained other jurors refused to allow a discussion about whether Jane was "responsible for her own decisions." But Higueros cites no authority for the proposition that the broad topic of whether Jane was "responsible for her own

decisions” was an issue in the case. It is not misconduct for the jury to refuse to consider irrelevant matters.

Juror No. 11 complained that two male jurors demanded that she repeatedly watch one of Jane and Higueros’s sex videos. But the videos were in evidence. Insisting that a juror review the evidence multiple times, no matter how distasteful, is not misconduct.

Juror No. 11 complained that after she argued the evidence did not support a guilty verdict, one juror replied, “He (Mr. Higueros) is dangerous and who knows what he will do if we release him.” Such a statement is not enough to require an investigation. We are certain that a similar thought crosses the mind of every juror who sits on a case in which multiple serious or violent felonies are charged.

In *People v. Riel* (2000) 22 Cal.4th 1153, the defendant moved for a new trial of the penalty phase of a death penalty case on the grounds of juror misconduct. A juror was alleged to have said, ““If we give him the death penalty, the judge will just commute it to life in prison anyway.”” (*Id.* at p. 1218.) In affirming the trial court’s denial of a new trial, our Supreme Court stated: “Not all comments by all jurors at all times will be logical, or even rational, or, strictly speaking, correct. But such comments cannot impeach a unanimous verdict; a jury verdict is not so fragile. ‘The introduction of much of what might strictly be labeled “extraneous law” cannot be deemed misconduct. The jury system is an institution that is legally fundamental but also fundamentally human. Jurors bring to their deliberations knowledge and beliefs about general matters of law and fact that find their source in everyday life and experience. That they do so is one of the strengths of the jury system. It is also one of its

weaknesses: it has the potential to undermine determinations that should be made exclusively on the evidence introduced by the parties and the instructions given by the court. Such a weakness, however, must be tolerated. “[I]t is an impossible standard to require . . . [the jury] to be a laboratory, completely sterilized and freed from any external factors.” [Citation.] Moreover, under that “standard” few verdicts would be proof against challenge.” (*Id.* at p. 1219.)

Like the comment in *Riel*, the comment here is not sufficient to show prejudicial misconduct has occurred.

Here, in addition to finding that Juror No. 11’s letter failed to show good cause for disclosing juror information, the trial court also considered that the jury deliberated for a week and produced both guilty and not guilty verdicts. Higueros argues the court erred in considering the length and result of jury deliberations. He claims the only question is whether he showed a prima facie case for disclosure of juror information. But Higueros cites no authority that compels the trial court to ignore reality.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Scott A. Taryle, Supervising Deputy Attorney
General, Ilana Herscovitz, David W. Williams, Deputy Attorneys
General, for Plaintiff and Respondent.