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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANUCHA SUWANNANGKUL,

Defendant and Appellant.

B285004

(Los Angeles County
Super. Ct. No. BA444535)

APPEAL from a judgment of the Superior Court of Los Angeles County, Douglas Sortino, Judge. Affirmed.

Emry J. Allen, 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, Steven D. Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Anucha Suwannangkul appeals from a judgment of conviction following a jury trial. The jury found defendant guilty of two counts of violating Penal Code section 289, subdivision (a)(1)(A), sexual penetration by a foreign object committed against two victims. Defendant received an aggregate sentence of nine years.

Defendant argues insufficient evidence supported the verdict as to Count 1. Defendant also contends he was denied due process because of prosecutorial misconduct. Finally, defendant asserts he was denied a competent interpreter. We affirm the judgment.

II. BACKGROUND

A. Prosecution Case

1. Natalia G.

On February 28, 2016, Natalia G. made an appointment for a massage at Top Thai Massage (Top Thai) in Los Angeles. She chose Top Thai based on its Yelp reviews and being close to her home. Natalia arrived at 11:00 a.m. and met defendant, a Top Thai employee. She paid for the massage. Defendant directed her to the massage area and showed her two types of massage beds. One was low, and one was high with a well for the client's face so that the client can breathe. Defendant insisted on the low bed. Natalia chose the high bed. Natalia did not hear background music while she was at Top Thai.

The bed was in a booth with three sides surrounded by curtains and the fourth side a back wall. Natalia disrobed to her underwear as was standard and covered herself with a towel. After she laid down on the bed on her stomach, defendant entered the booth and began the massage. After approximately 30 minutes, defendant directed Natalia to switch to her back. To this point, the massage had proceeded normally.

Defendant offered to massage her for an extra 30 minutes because he was not busy. Natalia told defendant maybe another five minutes and asked defendant to focus on her upper back. She turned over to a facedown position.

Defendant began massaging Natalia's upper shoulders. He then moved her underwear aside and inserted his fingers into her vagina. Natalia was in shock as defendant thrust his fingers in and out. She did not say anything, but just clamped her legs together. At some point, Natalia began to make distressed noises. Defendant put his hand on Natalia's left shoulder and told her to be quiet in a deep low voice right next to her ear. Natalia felt that defendant was going to rape her because he was pressuring her shoulder and panting. Defendant had his fingers inside Natalia for approximately two minutes.

She never yelled, but when she got louder, defendant withdrew his fingers and left the booth towards the bathroom. Natalia immediately began to dress herself. Defendant returned unannounced with a bowl of wet towels. Natalia told him to get out. After getting dressed, she parted the curtains and left the booth. Defendant handed her a water bottle because it was hot outside. Natalia took the bottle and left.

When she got home, Natalia cried and told her mother and stepfather what happened. Natalia's stepfather drove her to the

Hollywood police station where she made a statement. Natalia became aware she was in a lot of pain at the police station. Two officers took her to Top Thai to identify defendant. Afterwards, she was taken to the rape treatment center at UCLA Medical Center in Santa Monica where she was examined. Natalia suffered vaginal pain for approximately two weeks.

2. Chloe S.

Chloe went to Top Thai for a massage in August 2013.¹ She had been to Top Thai two weeks earlier for a massage from defendant without issue.

Chloe made an appointment for 8:00 p.m., defendant's last appointment. When she arrived, another woman was leaving the business. Chloe saw no other employees. Chloe undressed in the booth with her underwear on and placed a towel over her back. She laid down on her stomach. The lights went out. The business was closed and locked at this time, and only defendant and Chloe were present.

During the massage, defendant talked about his personal life. He mentioned how women would come up to him and tell him he was sexy and attractive. Chloe was uncomfortable and annoyed during this conversation. Defendant spent an unusual amount of time focusing on the back and inside of Chloe's upper thighs. Defendant moved Chloe's legs slightly apart and kept brushing his fingers against her vagina. Chloe moved slightly to indicate his touching was making her uncomfortable. Defendant told her she was ticklish and jumpy. He then moved Chloe's legs apart and inserted his fingers under the underwear into her

¹ Chloe could not recall the exact date in August 2013 when the incident occurred.

vagina. Chloe jumped up halfway while trying to hold onto the towel. She told him it was not okay. Defendant laughed and commented again about how she was so jumpy and ticklish. He told her he would stay on the outside.

Chloe was shocked at defendant's act. She decided to stay calm and act normally to get out safely. She was afraid of being raped or killed. Chloe told defendant to focus on her shoulders, which defendant did for another five minutes. Defendant left the booth, and Chloe got dressed. Chloe went to the lobby to pay for the massage so that defendant would unlock the door and let her leave.

Chloe was in shock afterwards and cried when she reached her car. She told her roommate and a friend about the sexual assault. They encouraged her to call the police. Chloe believed she reported the incident two days later. The police report was dated August 7, 2013. She identified defendant by the name of Luke. Chloe did not hear back until years later when a detective connected her in connection with the incident involving Natalia. Chloe identified defendant as the perpetrator in a photo array and at trial.

B. Defense Case

1. Saman Wiphanna

Wiphanna was the owner of Top Thai. Defendant was the manager and had been married to Wiphanna's sister. Wiphanna had known defendant since 1996, and he had worked for her since 2006. Defendant had the American nickname "Luke." Defendant liked helping people, and she had never known him to behave inappropriately with customers.

Wiphanna was at the business on February 28, 2016, and overheard Natalia's conversation with defendant. Defendant did not direct Natalia to a bed; he let Natalia choose the bed. At one point Natalia said she was ticklish. She did not hear Natalia say get out. When Natalia exited the massage booth, Wiphanna did not observe anything unusual about her. Natalia did not appear to have trouble walking. Natalia said thank you and left.

2. Nulek Suwannangkul²

Nulek is defendant's ex-wife. She is Wiphanna's younger sister and a former employee at Top Thai.

Nulek was at Top Thai on February 28, 2016. She had a client at 10 a.m. and did not finish until around 11:15 a.m. She did not hear defendant and Natalia speaking to each other. She did not hear Natalia tell defendant to get out.

3. Jack Stern

Stern had known defendant, by the name of Luke, for about 13 years. He took his mother for massages from defendant between 2002 and 2005. He had never heard anything negative about defendant. He recommended defendant for massages to his friends, both men and women, who gave glowing reviews. Stern never received a massage from defendant.

² Because this witness and defendant share a last name, we will refer to her by her first name for clarity. No disrespect is intended.

4. Defendant

Defendant was at work at Top Thai on February 28, 2016. He received a call in the morning from Natalia asking about a massage and the price. When she arrived, Natalia and defendant had a further discussion about what massage she wanted and the price. After agreeing to a price, Natalia paid him.

Defendant showed Natalia the available tables and asked which one she wanted. Natalia chose the skinny table used for Swedish massages. Defendant left the stall to allow her to undress and then asked permission to re-enter. Natalia never told him to get out. He offered her extra time because he had no customers waiting. After the massage, he gave her a hot towel, and as she was leaving he gave her a bottle of water.

Defendant did not insert any part of his body into Natalia's private areas. Defendant followed his standard routine in giving Natalia a massage. Defendant was never attracted to female clients and never flirted with clients.

5. Surveillance Video

The defense played portions of a video from Top Thai's surveillance system. Defendant testified that all of his conversations with Natalia are audible on the video if the volume is turned up. Defense counsel argued that the video demonstrated that defendant did not direct Natalia to a bed, Natalia never told defendant to get out, music can be heard playing in the background, and Natalia did not appear to have trouble walking when she left Top Thai.

III. DISCUSSION

A. *Sufficient Evidence Supports the Guilty Verdict for Count 1*

Defendant disputes the sufficiency of the evidence supporting the guilty verdict for Count 1. He argues that the prosecution's entire case as to Count 1 rested on Natalia's testimony and that her testimony is inherently unreliable because it is contradicted by the surveillance video.

"In reviewing a claim for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.]" (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639.)

Defendant contends that the surveillance video proves, contrary to Natalia's testimony: (1) defendant asked Natalia which bed she wanted; (2) Natalia did not tell defendant to get out; (3) Natalia did not have difficulty walking out of Top Thai; and (4) music was playing during her massage. However, the video is not a complete and unassailable record of what transpired during Natalia's massage. The surveillance system

did not record inside the massage booth. Nor did it capture all of defendant's and Natalia's statements. For example, the audio on the video did not record Natalia saying "it's ticklish" or defendant's offer to give Natalia additional time.

Defendant is correct that the video shows defendant asking Natalia what bed she preferred and does not reflect defendant directing Natalia to any particular bed. And the audio on the video does demonstrate that music was playing during Natalia's time at Top Thai.

The video does not support defendant's other assertions. While Natalia cannot be heard on the video telling defendant to get out, that does not necessarily undermine Natalia's credibility. The video contains a gap in recording, the audio is indecipherable at points, and the video did not record other words that Natalia or defendant indisputably said. The jury could infer that the video failed to capture Natalia saying "get out."

Likewise, the video does not necessarily contradict Natalia's testimony that she was in pain and had difficulty walking after the sexual assault. Natalia testified clearly that defendant's actions caused her pain, but she was not precise about when the pain began and whether she was aware of pain earlier than at the police station. Natalia testified that on leaving Top Thai, she did not cry because she did not want to show weakness, but that she was distressed and still processing what had happened. The jury could infer that immediately after the incident, she was not aware of pain because she was in shock or that she did not want to show defendant any sign of pain.

In sum, the video could call into question Natalia's testimony about the selection of the bed and the music. But that is not enough to make the whole of her testimony "inherently

unreliable” as defendant argues. As the trier of fact, a jury can credit some portions of a witness’s testimony and not others. (*People v. Williams* (1992) 4 Cal.4th 354, 364; *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1191; CALCRIM No. 226.) The jury could conclude that Natalia forgot about the music and misremembered how she selected the bed, while still believing the material aspects of her testimony.

We review the record to determine whether there was sufficient evidence to support the jury finding defendant committed the *essential elements* of the crime. Defendant does not explain how the video evidence was material to the verdict. Natalia testified in detail how defendant inserted his fingers into her vagina against her will. Natalia’s testimony on the material elements of the crime is sufficient by itself to support the guilty verdict for Count 1.

B. Defendant Failed to Demonstrate Prosecutorial Misconduct

Defendant contends the prosecutor committed misconduct by asking about past complaints against Top Thai and defendant. Defendant argues these questions insinuated that defendant had committed past bad acts and were so prejudicial as to render his trial fundamentally unfair.

Prosecutorial “error occurs, as a matter of state law, when a prosecutor ‘engage[s] in deceptive or reprehensible tactics in order to persuade the trier of fact to convict.’ [Citation.] Federal constitutional error occurs only when the prosecutor’s actions ‘comprise a pattern of conduct that is serious and egregious, such that the trial is rendered so unfair that the resulting conviction violates the defendant’s right to due process of law.’ [Citation.]”

(*People v. Daveggio* (2018) 4 Cal.5th 790, 854.) A defendant is entitled to relief under state law if the defendant shows “that the challenged conduct raised a reasonable likelihood of a more favorable verdict.’ [Citation.] Under federal law, relief is not available if ‘the challenged conduct was . . . harmless beyond a reasonable doubt.’ [Citation.]” (*Ibid.*)

A prosecutor may not intentionally elicit inadmissible evidence from a witness. (*People v. Trinh* (2014) 59 Cal.4th 216, 248.) “Such misconduct is exacerbated if the prosecutor continues to attempt to elicit such evidence after defense counsel has objected.” (*Ibid.*)

1. Yelp Reviews on Top Thai

On cross-examination, defense counsel asked Natalia if she had looked at Yelp reviews for Top Thai after the incident. Natalia answered that she had. When defense counsel asked why, Natalia responded: “Because I wanted to see if there was any bad reports on there that I—I wanted to see if I had missed anything when I picked that place.” Natalia testified that when she again looked at the Yelp page, this time with her brother present, she told her brother she was pointing things out “that [she] hadn’t caught the first time.”

On re-direct examination, the prosecutor followed up on these questions. She asked if Natalia had seen bad reviews about Top Thai on Yelp. Defense counsel objected on hearsay, which the trial court sustained. The prosecutor then asked if Natalia had missed anything the first time she looked at Yelp, to which Natalia responded that she had missed a lot. Defense counsel objected again on hearsay, which the trial court sustained. The trial court ordered Natalia’s answer stricken and admonished the

jury to disregard it. Later in chambers, the trial court reaffirmed its ruling that the content of Yelp reviews was hearsay.

As an initial matter, defendant objected solely on hearsay grounds, not on the grounds he argues now—that the questions insinuated defendant had committed other acts similar to those charged in this case. “As a general rule, a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety.” (*People v. Samayoa* (1997) 15 Cal.4th 795, 841.) Because defendant did not object on the ground he argues now, he has forfeited the argument.

If we consider the merits, we find no prosecutorial error. The two questions to which defense counsel objected are not enough to establish that the prosecutor intentionally sought to elicit inadmissible testimony. (*People v. Trinh, supra*, 59 Cal.4th at p. 248.) For example, this was not a situation where the trial court had already barred certain questions or the prosecutor repeatedly pursued “a form of question the trial court would not permit.” (*Id.* at pp. 248-249.)

Moreover, “[g]enerally, there is no prejudice where an objection is made and sustained.” (*People v. Trinh, supra*, 59 Cal.4th at p. 249.) “When a trial court sustains defense objections and admonishes the jury to disregard the comments, we assume the jury followed the admonition and that prejudice was therefore avoided.” (*People v. Bennett* (2009) 45 Cal.4th 577, 595.) The trial court sustained the hearsay objections and admonished the jury. The jury heard nothing about the contents of any bad reviews. Further, defense counsel’s earlier cross-examination raised the matter of bad reviews. Thus to the extent

that questions about the existence of bad reviews could be prejudicial, defense counsel is also responsible for raising the issue. Accordingly, we find no prosecutorial misconduct that resulted in reversible error.

2. Complaints Against Defendant

Later in the trial, the prosecutor asked if defendant was aware of complaints against him. Defendant said he was. The prosecutor asked: “More than a few?” Defense counsel then objected. The trial court sustained the objection and admonished the jury to disregard the question. The prosecutor next asked: “Do you remember your massage client that you had—” but was interrupted by the trial court. The trial court excused the jury and ordered both attorneys into chambers.

The prosecutor stated that she was trying to impeach the character witnesses’ credibility concerning defendant’s good moral character with the question about the number of complaints, and that the interrupted question would have asked if defendant remembered his clients on specific dates. The trial court ruled the question about defendant’s knowledge of other complaints was not relevant, but that questions about defendant’s clients on particular dates were appropriate to test defendant’s memory. Defense counsel argued that the error was “fatal” and “taint[ed]” the trial and moved to dismiss, which the trial court denied.³ When the jury reconvened, the trial court

³ Defendant’s objection was sufficient to preserve this argument for appeal. However, he did not object to the initial question whether defendant was aware of any complaints against him. Failure to object is generally a

instructed the jury that the prosecutor's questions about past complaints were improper and that any answers given should be stricken.

Defendant argues that these questions, along with those about bad Yelp reviews, improperly invited the jury to speculate about other complaints against him. We disagree. The interrupted question was not objectionable and did not ask about complaints. The earlier two questions about Yelp reviews were not specific to defendant; they asked generally about reviews of Top Thai. The question about defendant's knowledge of the number of complaints against him was "brief and isolated" and does not add up to misconduct. (*People v. Burgener* (2003) 29 Cal.4th 833, 875.)

Also, the question "was followed by a clear admonition not to consider it for any reason." (*People v. Burgener, supra*, 29 Cal.4th at p. 875.) We assume the jury followed the admonition. (*People v. Trinh, supra*, 59 Cal.4th at p. 249.) Based on the record, we do not find any question "infect[ed] the trial with such unfairness as to render the subsequent conviction a denial of due process, or involve[d] deceptive or reprehensible methods employed to persuade the trier of fact." (*People v. Avila* (2009) 46 Cal.4th 680, 711.)

C. Defendant Failed to Demonstrate Prejudicial Error by the Interpreter

Defendant contends the court-appointed interpreter was incompetent when translating for two of his witnesses, denying

forfeiture of a claim of error. (*People v. McKinnon* (2011) 52 Cal.4th 610, 638.)

him a fair trial. The right to an interpreter is based on a defendant's rights to due process, to confrontation, to effective assistance of counsel, and to be present at trial. (*People v. Romero* (2008) 44 Cal.4th 386, 410.) "An interpreter must render a true translation of the questions posed and answers given." (*People v. Shaw* (1984) 35 Cal.3d 535, 542.) "California Rules of Court, rule 2.890(b) . . . states that an interpreter must interpret accurately, without embellishing, omitting, or editing, and when 'interpreting for a witness, the interpreter must interpret everything that is said during the witness's testimony.'" (*People v. Romero, supra*, 44 Cal.4th at p. 410.) "The question of an interpreter's competence is a factual one for the trial court" (*People v. Aranda* (1986) 186 Cal.App.3d 230, 237), and "within the trial court's discretion." (*People v. De Larco* (1983) 142 Cal.App.3d 294, 306.)

Generally, an objection relating to an interpreter must be made at trial so that any error can be corrected. (*People v. Romero, supra*, 44 Cal.4th at p. 411; *People v. Aranda, supra*, 186 Cal.App.3d at p. 237 [failure to object to interpreter's competency during trial precluded raising issue on appeal].) Defendant discussed the interpreter's competence once during trial. In chambers, defense counsel said the interpreter was preventing a "fluid conversation" between the witness and the examiner and was interpreting the answer before the witness had finished. The trial court responded that any interpreter creates problems because the conversation can be stilted. While the trial court noted that the interpreter sometimes requested simple questions to be repeated, the trial court did not notice any huge discrepancies between the answers and questions. The trial court did not notice anything that did not happen regularly with

interpreters. Defense counsel then stated he was prepared to go forward. The prosecutor thought part of the issue was due to the interpreter sometimes interpreting in real time, while in other instances, the interpreter was waiting for a question or answer to finish and was having trouble retaining what was said. The trial court suggested breaking the questions down as much as possible to keep it simple for the interpreter.

At the end of trial, defendant made a motion for a new trial alleging an inadequate interpreter. The trial court denied the motion, finding that at most the interpreter was “a little rude or intimidating,” that the court “had no trouble understanding what the gist of the witnesses’ testimony was,” and that “[t]he only specific allegation of mistranslation” was a suggestion that Top Thai was “a house of prostitution,” which was not conveyed to the jury. The trial court reiterated “there is a disconnect whenever witnesses testify through an interpreter in terms of the jury’s ability to evaluate their credibility,” and concluded the record did not “suggest that anything was inadequately or incorrectly interpreted in any way that is material to any determination in this case.”

We question whether defendant preserved this issue for appeal. While defense counsel raised concerns about the interpreter during trial, the chambers discussion apparently resolved them, with defense counsel stating he was prepared to proceed. Defense counsel did not outright object to the interpreter’s competence at that time, when the interpreter could have been substituted. The motion for a new trial did not save the issue because such a motion is appropriate only if defendant had “no earlier opportunity to raise the issue,” which was not the case here. (*People v. Mayorga* (1985) 171 Cal.App.3d 929, 940.)

Assuming the issue was not forfeited, we find no abuse of discretion in the trial court's determination that the interpreter was competent. The Thai interpreter translated for Wiphanna and Nulek. Defendant contends that due to the inadequate translation: the witnesses did not understand questions; the interpreter needed questions repeated; the trial court instructed the interpreter or the witnesses; the witnesses gave nonresponsive answers; the interpreter asked the witness to wait until she had finished interpreting ; and the interpreter asked a speaker to speak louder. Most of these alleged defects are either typical of interpreted testimony or resulted from poor questions or non-responsive answers, which of course occur even without an interpreter.

For example, some questions were unclear or somewhat convoluted even in English, requiring the attorney or trial court on occasion to rephrase them to make them coherent. The interpreter was then able to elicit answers. Sometimes the witness gave non-responsive answers by answering a "yes" or "no" question with more than "yes" or "no." Or the witness answered a question that was not asked. The trial court repeatedly instructed Wiphanna and Nulek to give responsive answers. This problem is not unique to interpreted testimony. At times, the witnesses started answering before the interpreter had finished the question. This can occur when a witness knows enough English to understand the question. It is not the interpreter's fault.

Finally, even if the interpreter misinterpreted some questions or answers, defendant did not identify material misinterpretations that prejudiced his rights. On appeal, defendant points to two specific instances of confusion with

Wiphanna. The first concerned whether Natalia chose the massage bed. But the witness's testimony was clear—defendant let Natalia choose. The second was about defendant's location on the evening of August 5, 2013 (when Chloe may have had her appointment). While the record reveals some confusion during the cross-examination, Wiphanna ultimately testified that she, defendant, and family went out to dinner that evening.⁴ In sum, these two minor instances did not deprive defendant of a fair trial.

Interpreted testimony is never as smooth as testimony without an interpreter. By definition, it is more tedious as the listener must wait longer for the answer. Defendant has failed to identify any issues with the Thai interpreter that would merit reversal.

⁴ The confusion may not have been solely attributable to the interpreter. A witness on cross-examination may be wary about directly and clearly answering questions.

IV. DISPOSITION

The judgment is affirmed.

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SEIGLE, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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