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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.

WILDER ROLAND CHINCHILLA,

Defendant and Appellant.

B270014

(Los Angeles County
Super. Ct. No. BA429384)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Nicholas J. Webster, Deputy Attorney General, for Plaintiff and Respondent.

Over a six month period in 2012-2013, defendant on three occasions convinced young women to get into his car. In each instance, he told the women he was an undercover police officer, he drove into an alley, and he trapped the women inside his car by parking very close to a wall. Defendant then forced each woman to orally copulate him and engage in sexual intercourse. In 2014, defendant got a fourth young woman in his car by offering her a ride. As with the three previous women, defendant drove this fourth victim into an alley, trapped her inside the car by parking very close to a wall, and forced her to orally copulate him and engage in sexual intercourse. We consider whether the trial court abused its discretion in denying defendant's motion to sever the charges so as to try the assaults involving each woman individually.

I. BACKGROUND

A. *The Sexual Assault Of Ana U.*

On October 1, 2012, 17-year-old Ana reported she was sexually assaulted by a man claiming to be an undercover Los Angeles Police Department (LAPD) officer. Ana made the report in Long Beach, to Long Beach police officers, but because the sexual assault potentially involved an LAPD officer, LAPD personnel soon became involved in the investigation.

LAPD Sergeant Eric Martin went to Long Beach and spoke briefly with Ana. She told him the sexual assaults occurred in an alley in the vicinity of Slauson and Crenshaw, inside her assailant's vehicle. He parked the car against a wall in an alley so that she could not open the passenger-side door and then forced her to orally copulate him and to have vaginal sexual

intercourse with him. Sergeant Martin drove Ana to the Rape Treatment Center at UCLA Medical Center in Santa Monica.

At the center, a sexual assault examiner conducted an examination of Ana. As part of the examination, the examiner photographed a laceration on Ana's vagina and took swabs from Ana's breast, mouth and other areas. A DNA analyst later found sperm on the swab of Ana's mouth and foreign DNA on the swab of her breast. This DNA was later found to match defendant's DNA. The probability of a random match was one in three quintillion.

LAPD Detective Juan Gutierrez and his partner Sergeant Kevin Mason met with Ana at the rape treatment center. She appeared very tired, and they did not conduct an extensive interview. Ana described her assailant as a white male in his 30's, five feet five inches to five feet eight inches tall, heavyset, and with black hair and brown eyes. Ana also told Sergeant Mason that she had been staying at a motel on Slauson Avenue. She subsequently identified the area where she was picked up by defendant as Slauson Avenue just west of Rimpau Boulevard.

Months later, on February 2, 2013, Ana was hit by a vehicle, spent two weeks in a coma, and emerged with significant memory problems. She could not identify defendant in a 2014 photographic lineup. When asked if she saw her attacker in court during the 2016 trial of this matter, she replied, "I think." Her response was based on defendant's size and his skin and hair color.

Ana testified the person she thought was defendant pulled up next to her while she was walking with two friends. He said he was an undercover police officer and told Ana to get into his car. Ana testified that she was a runaway at the time of the

sexual assaults, having left her father in Fresno. Ana's mother lived in Long Beach, but Ana was living with her boyfriend at the time of the sexual assaults. Ana believed that defendant contacted her because she was a runaway, and possibly also because she had previously given police a false name to avoid being returned to her parents. Ana acknowledged that she had used marijuana on the day of the attack.

Ana further testified that after defendant drove into an alley and parked very close to a wall, he grabbed Ana by the back of her head and forced her to orally copulate him and lick his testicles. She told him that she did not want to do that, but he showed her his fist and told her, "Do it or you'll go to jail." After Ana orally copulated defendant, he grabbed her shirt, put her on top of him and told her to "ride" him. He put his penis into her vagina, and she physically tried to get off him, but he forced her down.

Once defendant finished, he became "nice" and offered to take Ana home. She had him drop her off near her boyfriend's house. After speaking with her boyfriend, she attempted to go to her mother's house in Long Beach, but stopped along the way and reported the assault to the police.

B. The Sexual Assault Of S.S.

In the afternoon on April 17, 2013, 21-year-old S. was working as a prostitute on Western Avenue. Defendant pulled up in a car and S. asked if he would like to "date" her, meaning have sex with her. Defendant said he had \$200. After a phone conversation with her pimp, S. agreed to go with defendant for two hours. S. got into the car and defendant gave her the money. He drove for a time and then told her he was a police officer and

was going to take her to the police station. He took back the \$200 plus another \$40 that S. had earned earlier. He also took her cell phone. Defendant drove past the police station, and S. knew he had been lying to her. He drove into an alley and parked very close to a wall, preventing S. from opening the passenger-side door.

Defendant told S. he wanted oral and anal sex. She tried to give him a condom, but he refused it. S. was afraid to have sex without a condom and told defendant she did not want to have sex without one. Defendant pulled out a knife and pointed it at her thigh. She then performed oral sex, and defendant told her to lick his testicles. S. did not want to do that, but she complied after defendant told her he would kill her slowly if she did not do what he asked. Defendant then demanded anal intercourse. He threatened to kill her if she did not comply, and defendant inserted his penis into her anus.

When defendant was done, he was “nice.” He drove her back to the area where he had picked her up. He gave her back her cell phone, but told her that if she reported him to the police he would come find her. S. called her pimp, who told her to get back to work.

That night, S. was arrested for prostitution and taken to the 77th Division police station. In response to medical questions asked during the booking process, S. disclosed she had been sexually assaulted. LAPD Officer Stefanie Fryer interviewed S., who gave an account of the assault that is substantially similar to her testimony at trial. (S. told police defendant had vaginal and anal intercourse with her, whereas at trial, she did not mention vaginal intercourse.) S. described her attacker to police as a Hispanic male about five feet four inches or five feet five

inches tall and weighing about 160 pounds, with blue eyes and a shaved head.

Police later took S. to the hospital for a sexual assault examination. She told the sexual assault examiner that her attacker forced her to have both vaginal and anal intercourse. She said he put her on his lap for the vaginal intercourse, and she mentioned he had a scar on his stomach. The examiner photographed injuries around S.'s anus and took swabs from a number of areas of her body.

At trial, S. testified only that defendant "might look like" the person that sexually assaulted her. DNA analysis, however, was more definitive. A DNA analyst found sperm on the swabs of S.'s rectal, anal, and external genital areas taken during the sexual assault examination. The DNA profile matched defendant's DNA, with a random match probability of 1 in 3.6 quintillion.

C. The Sexual Assault Of N.M.

On April 19, 2013, while 22-year-old N. was being booked at the 77th Division police station on a prostitution warrant, she reported she had been sexually assaulted. She was unsure of the date of the assault, but estimated it was in February or March of 2013. Officer Fryer interviewed N., who described her attacker as overweight with a very large "squarish" head. She estimated his weight as 250 to 300 pounds, and said he had black dots on his left eye. N. also told Officer Fryer that defendant was driving a gray Nissan Altima, and that the radio in the car worked but the station numbers did not display properly on the screen. Later, N. identified defendant as her attacker in a photographic line-up.

N. also identified defendant as her assailant at trial. She testified that on the day she was sexually assaulted, she was working as a prostitute when defendant stopped his car on the “back street of Figueroa.” Believing defendant was interested in sex in exchange for money, N. walked up to the car and offered defendant a discount in exchange for a ride to her motel. He agreed.

Defendant initially drove toward N.’s motel, but then pulled into an alley. He parked so close to a metal gate that N. could not open her door. Defendant said he was an undercover police officer. N. was skeptical, and asked where his backup was. Defendant pulled out a knife and said that he was not a police officer. Defendant told N. to orally copulate him, and she complied. As she did so, she looked around the car for a way to escape, and she noticed the screen where the clock or CD would be was broken. Defendant next told her to get on top of him and perform intercourse. N., however, was able to open the driver’s side door and escape; she ran down the alley and into a business. She told an employee of the business that she had been sexually assaulted, and the employee called 911. N. then called her pimp, who told her to leave the scene. She did as he instructed.

D. The Sexual Assault And Kidnapping Of Jessica S.

On March 8, 2014, 21-year-old Jessica walked down Western Avenue toward a bus stop on Martin Luther King Boulevard, which was located by a CVS pharmacy. As she crossed the driveway into the CVS parking lot, she heard yelling, turned around, and saw defendant in a dark four-door Toyota Corolla stopped in the driveway. He asked her if she wanted a

ride, and she agreed.¹ She got into the front passenger seat and defendant drove away. He offered her \$100 to have sex with him. When she refused, defendant pulled over, pointed a knife at her throat, and threatened to hurt and kill her if she did not do what he said. A car with lights on top then pulled up behind them. They were parked in an area between two schools, and Jessica believed that the car was school security. Defendant thought it was a police car, and he briefly displayed a gun and told Jessica if she tried to run away, he would shoot her and the police officer too. Defendant then drove away from the area.

Defendant pulled into an alley and parked so close to a wall that she could not open her door. He told Jessica to orally copulate him and to lick his testicles. She complied. He then got out of the car, had her kneel on the driver's seat, and inserted his penis into her vagina and anus. After a while, he told her that he was going to ejaculate into her mouth, and she again orally copulated him.

Once he was finished, defendant was happy and "nicer" and acted as if he and Jessica were friends. He drove her to her original destination. Along the way, he told her that he had raped other women who had given him some problems.

After defendant dropped Jessica off, she called a friend and told her what happened. She then went to the friend's house and slept. When Jessica woke up, she went to the emergency room at Hollywood Presbyterian Medical Center, and hospital personnel

¹ Jessica testified that she originally told police and the sexual assault examiner that defendant forced her to get into his car. She later admitted this was not true. She falsely claimed to have been forced into the car because she was embarrassed that she got into a stranger's car.

called police. Jessica described her attacker to police as a Hispanic male in his 30's who was about 5 feet 11 inches tall and weighed about 300 pounds, with black hair, brown eyes, and a scar on his stomach. Police took Jessica to UCLA's rape treatment center in Santa Monica for a sexual assault examination.

The sexual assault examiner took photographs of injuries to Jessica's throat, legs, vagina, and anal opening. The examiner also took swabs from a number of areas on Jessica's body. A DNA analyst found DNA on the swabs from Jessica's leg and left hand, and the DNA profile matched defendant's DNA with a random match probability of 1 in 9 trillion.

At trial, Jessica identified defendant as her assailant. She had also previously identified defendant in a photographic lineup.

E. Defendant's Arrest and Conviction

LAPD officers arrested defendant, driving a gray Nissan Altima with a cracked car radio face, in September 2014. Police recovered a folding knife that was attached to the back of the front passenger seat. When police searched defendant's house, they observed a black Toyota Corolla parked in the driveway.

In response to medical questions asked during booking, defendant told police he had a scar on his stomach from a past surgery. In addition, an LAPD Detective swabbed defendant's cheek for DNA testing purposes as he was being booked, and she observed a dark spot on the inside of defendant's left eye, close to his nose.

Trial proceeded over the course of seven days in January 2016. The jury convicted defendant of the forcible rapes of Ana

and Jessica in violation of Penal Code² section 261, subdivision (a)(2), the forcible sodomy of S. in violation of section 286, subdivision (c)(2)(a), and forcing all four women to engage in oral copulation in violation of section 288a, subdivision (c)(2)(a). The jury also convicted defendant of kidnapping of Jessica to commit a crime, a violation of section 209, subdivision (b)(1). The jury found true various sentencing enhancement allegations, including allegations that defendant used a knife and a firearm in the commission of certain of the charged sex crimes. The trial court sentenced defendant to 140 years to life for the sex offenses pursuant to section 667.61, plus two 10-year enhancement terms for the firearm enhancements alleged under section 12022.53.

II. DISCUSSION

Defendant's sole contention on appeal is that the trial court abused its discretion in denying his motion to sever the charges so as to require four separate trials for the crimes alleged in connection with each of the four victims. Although there was some conflict about certain details of the assaults at the time defendant made his motion to sever, the record establishes the trial court properly concluded there was no substantial danger of prejudice from a joint trial. Moreover, even viewing the trial court's decision in hindsight (i.e., in light of the evidence as it developed during trial rather than as briefed in connection with the severance motion), the joinder did not result in gross unfairness to defendant; indeed, there was no unfairness at all.

² Undesignated statutory references that follow are to the Penal Code.

A. *Applicable Law*

Section 954 allows the People to join charged offenses for trial where they are connected together in their commission or where they belong to the same class of crimes; the statute also recognizes trial courts retain discretion to sever the counts “in the interests of justice and for good cause shown.” (*People v. Jones* (2013) 57 Cal.4th 899, 924-925; *People v. Scott* (2011) 52 Cal.4th 452, 469.) The law prefers consolidation of charges because it ordinarily promotes efficiency. (*People v. Scott, supra*, at p. 469.) Thus, section 954 expresses the legislative preference for joint trials of similar offenses committed by a defendant. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 557.)

To warrant separate trials, a defendant must demonstrate a “substantial danger of prejudice” requiring severance. (*People v. Gonzales* (2011) 52 Cal.4th 254, 281; *People v. Catlin* (2001) 26 Cal.4th 81, 110.) Courts consider four factors in determining whether severance should be granted: (1) whether evidence of the joined crimes would be cross-admissible, (2) whether one or more of the joined crimes would be inflammatory and prejudice the jury against the defendant, (3) whether consolidation would join a weak case with another weak case or a strong case so the outcome might be biased in favor of conviction in a way it would not if tried separately, and (4) whether any of the charges carries the death penalty. (*People v. Jones, supra*, 57 Cal.4th at p. 925; *People v. Scott, supra*, 52 Cal.4th at pp. 469-470.)

We review a trial court’s decision on a severance motion for abuse of discretion in light of the record before the court at the

time of the ruling.³ (*People v. Jones, supra*, 57 Cal.4th at pp. 924-925; *People v. Scott, supra*, 52 Cal.4th at p. 469.) Where the statutory requirements for joinder are met, error in consolidating counts can be shown on appeal only upon a ““clear showing of potential prejudice.”” (*People v. Jones, supra*, at pp. 924-925.)

B. Joinder Was Proper

Defendant implicitly conceded in his motion to sever that joinder was proper. At the hearing on the motion, the trial court noted “these crimes were all of the same class.” Defendant now suggests that more was required for joinder to be proper, but that is incorrect.

Defendant was charged with forcible rape, forcible oral copulation, forcible sodomy, and kidnapping to commit rape. These offenses are all assaultive crimes against the person, and so are of the same class within the meaning of section 954. (*People v. Ochoa* (1998) 19 Cal.4th 353, 409 [sexually assaultive offenses were of the same class]; *People v. Lindsay* (1964) 227 Cal.App.2d 482, 492 [“the charges of rape, sex perversion and sodomy clearly belong to the same class of crimes”]; see *People v. Balderas* (1985) 41 Cal.3d 144, 170 [“All [charges] were of the ‘same class,’ in the statute's terminology, since they involved the common element of assaultive behavior against the person”].)

Nothing more is required to satisfy the statutory requirements for joinder. (*People v. Jones, supra*, 57 Cal.4th at pp. 924-925 [“[M]urder and attempted murder are of the same class of crimes within the meaning of section 954. [Citation.]

³ Accordingly, we refer to the facts as set forth in defendant’s motion to sever and in the prosecution’s trial brief, which contained its opposition to the severance motion.

The statutory requirements for joinder thus [are] satisfied.”]; *People v. Ramirez* (2006) 39 Cal.4th 398, 438-439 [“Murder and rape are assaultive crimes against the person and, as such, are “offenses of the same class of crimes” within the meaning of section 954 and were properly joinable. [Citations.]”].)

Defendant mistakenly relies on *People v. Madden* (1988) 206 Cal.App.3d.Supp. 14 to argue the contrary. The court in that case analyzed whether the offenses were “connected together in their commission,” an alternate statutory ground for joinder. (*Id.* at pp. 17-18.) The two offenses in *Madden* were not of the same class, and nothing in the *Madden* opinion suggests that if they were, a court would have to inquire further.

C. Severance Was Not Required

At the hearing on defendant’s severance motion, the trial court told defense counsel that the court had read the prosecution’s trial brief and had considered the factual scenario it described. The court asked defense counsel if he wished to be heard, but counsel stated he would submit on his written motion.

The court ruled: “Much of this appears to be cross-admissible, and as such severance would be possible under [*Williams v. Superior Ct.* (1984) 36 Cal.3d 441], which, [defense counsel], after you cited in the opening paragraph of your motion—in looking for prejudice, assuming—and these crimes were all of the same class. So in looking for prejudice, it does not appear that, to me, the evidence in any one count is substantially weaker than any other count, and that merely because there is a number of counts, that in and of themselves would not be any more inflammatory. Consequently, the motion to sever is denied.”

1. *Cross-admissibility*

In his motion to sever, defendant contended evidence of the assaults on the four victims was not cross-admissible because the counts pertaining to each victim were unique. He specifically asserted the assaults began differently, and took place at different times and places. On appeal, defendant again contends the assaults are dissimilar, although he makes different distinctions.

In opposition to the motion to sever, the prosecution offered two theories of cross-admissibility. First, the prosecutor argued the crimes were cross-admissible pursuant to Evidence Code section 1108, which permits introduction of propensity evidence in sexual assault cases, subject only to the dictates of Evidence Code section 352. Second, the prosecutor argued there were “similarities in the modus operandi in each of the crimes,” and so the evidence of each assault would be admissible in the trial of the other assaults pursuant to Evidence Code section 1101, subdivision (b). The term “modus operandi” can mean proof of intent, plan or identity. (*People v. Jones* (2013) 57 Cal.4th 899, 925.)

“To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual.” (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403.) “[E]vidence that the defendant has committed uncharged criminal acts that are similar to the charged offense may be relevant if these acts demonstrate circumstantially that the defendant committed the charged offense pursuant to the same design or plan he or she used in committing the uncharged acts. Unlike evidence of uncharged

acts used to prove identity, the plan need not be unusual or distinctive; it need only exist to support the inference that the defendant employed that plan in committing the charged offense.” (*Ibid.*)

In all four instances here, the victims were young women walking on the street. Defendant pulled his car up next to each of them and initially made false representations to the women to convince them to get into his car.⁴ Once in his car, defendant drove the victims to a more isolated area and parked his car close to a wall so the victims could not exit the passenger-side door. He forced all four women to orally copulate him, then raped or attempted to rape them. Three of the victims (all except Jessica) reported that defendant wanted them to sit on top of him for the intercourse and also reported that defendant claimed to be an undercover police officer. After completing the assaults, defendant drove three of the victims (all except N., who escaped) to another location and dropped them off. These common features were ample evidence on which the trial court could find defendant had a common plan for committing his sexual assaults, making the evidence of the assaults cross-admissible, a factor which weighs against severance.

Defendant argues there was no common plan because the victims were dissimilar: S. and N. were prostitutes, while Ana and Jessica were not. Defendant’s behavior with Ana and

⁴ Jessica gave conflicting accounts of whether she went with defendant voluntarily. The motion to sever focuses on her initial claim that she refused to go with defendant voluntarily and so he pulled a gun and forced her to get into his car. The prosecution’s trial brief focuses on her statement that the defendant did not appear threatening so she voluntarily got into the car.

Jessica, however, suggests that he thought they were prostitutes. Jessica stated that defendant offered her money to perform oral sex. The prosecution's trial brief indicates Ana told police that defendant accused her of being a prostitute. In addition, in a declaration in support of a concurrently filed motion to admit the prior sex acts of the victims, defense counsel stated on information and belief that Ana behaved like a prostitute by "walking the streets, hanging out and approaching vehicles" and agreed to orally copulate defendant in exchange for money. Defense counsel also declared on information and belief that Jessica was "a drug addicted prostitute and she was working that night." Thus, defendant himself emphasized the similarity of the victims.

Defendant also argues there was no common plan because the victims stated their attacker used different methods to get them into this car. While the false representations defendant made varied, defendant in each instance attempted to trick the women into his car using words alone. At the time of the motion to sever, the evidence showed defendant either offered Ana a ride or told her he was a police officer, offered S. a fairly large amount of money for sex, offered N. payment for sex plus a ride, and offered Jessica either a ride or payment for sex. Jessica was the only victim who claimed defendant used force to get her into his car, and it appears from the prosecution's trial brief that she recanted that statement before the motion to sever.

Defendant further asserts there was no common plan because "each incident implicated divergent geographies."⁵ As to

⁵ In his motion to sever, however, defendant maintained that "where and when the sexual assaults occurred" was not particularly distinctive.

the time of day, the motion to sever and the prosecutor's trial brief indicated three of the assaults took place around 4:00 p.m. Jessica was assaulted later, around 8:00 to 9:30 p.m. This is a fairly narrow four or five hour time span. As to location, three of the assaults began in fairly close proximity: near the intersections of Western Avenue and Martin Luther King Boulevard, near Western Avenue and 50th Street, and near Slauson Avenue and Crenshaw Boulevard. N.'s assault seems to have begun in a different location, near Figueroa and 110th Streets. Even so, all four assaults began in an area south of the 10 freeway and west of the 110 freeway that is often loosely described as south Los Angeles. Given the size of the Los Angeles metropolitan area as a whole, this is a relatively small area.

Defendant's conduct may not have been so distinctive or unusual that it amounted to a "calling card" or "signature" (see, e.g., *People v. Erving* (1998) 63 Cal.App.4th 652, 659-660 [evidence of other acts admissible to prove identity, which requires the greatest degree of similarity]), but it was consistent. He sought out women he believed to be prostitutes, tricked them into getting into his car, drove them to an alley, parked against a wall to trap them inside, and forced them to orally copulate him and have vaginal or anal intercourse with him. He found his victims in the same general area of Los Angeles in the late afternoon to early evening hours. This is sufficient to support a conclusion that he was acting according to a common scheme or

plan, and thus, the trial court did not err in finding the evidence cross-admissible.⁶

2. *Inflammatory potential*

Defendant contended in his motion to sever that the offenses involving Jessica and Ana were unduly inflammatory because a gun was used to force Jessica to get into the car and Ana was only 17 years old. On appeal, he characterizes Ana as a “teenage runaway” who was more sympathetic than S. and N., who were prostitutes.

Defendant did not characterize Ana as a runaway in his motion to sever, although he did mention her age. The other women were only a few years older than Ana and so her age alone was not especially inflammatory. Given defendant’s pretrial attempts to portray Ana as a prostitute, it is far from clear that she would have appeared more sympathetic than S. and N. at trial.

Assuming defendant displayed a gun to Jessica, that was not his only use of a weapon; he also displayed a knife to S. and N. Thus, any gun use in the assault on Jessica did not make that

⁶ Further, as the People alternatively argued in opposition to the motion to sever, the evidence was also cross-admissible pursuant to Evidence Code section 1108 to show propensity. On appeal, defendant argues that even if the evidence of the crimes were admitted on that basis, the evidence is substantially more prejudicial than probative such that Evidence Code section 352 would preclude a finding of cross-admissibility. This is not an argument he made in the trial court, but it fails in any event for the reasons we describe, *post*, when discussing the inflammatory potential of the charged crimes.

case unduly inflammatory compared to the assaults on S. and N., particularly because defendant did not discharge the weapon.

As we have discussed, the offenses against all four women were carried out in a strikingly similar manner. Thus, trying all the offenses together was not likely to inflame the jury. (See *People v. Marshall* (1997) 15 Cal.4th 1, 28 [evidence of other offenses is not unusually likely to inflame the jury when the offenses are similar and are perpetrated in a similar manner].) This factor does not weigh in favor of severance.

3. *Strength of the evidence*

Defendant contends the charges involving Jessica and Ana are stronger than the charges involving S. and N. He argues the Jessica and Ana-related charges are stronger because both victims promptly reported the sexual assaults and there was DNA linking defendant to the women, whereas S. and N. only reported the assaults while in custody and there was no DNA evidence. Defendant further contends S.'s identification was weak because she never identified defendant as her assailant with any degree of certainty, and because her description of her assailant was markedly different from the description given by the other three women.

Defendant mistakenly suggests there was a lack of DNA evidence concerning the assault on S. She underwent a sexual assault examination the night after the assault occurred, and sperm was recovered from her rectal area. The DNA profile from this sample matched defendant's DNA. Thus, S.'s inability to identify defendant did not significantly weaken the charges involving her.

Defendant is correct that no DNA was found on N. (she reported the sexual assault a month later). As summarized in the prosecutor's trial brief, however, N.'s description of defendant and his car was very accurate. She described defendant as overweight with a square head and black dots in his left eye. She described the car used in the assault as a Nissan Altima with a damaged radio display. At some point after defendant's arrest, N. positively identified defendant and his car. She also identified him at the preliminary hearing. Thus, the charges against defendant involving N. were not weak.

The strength of the evidence was comparable in all four cases. Thus, this factor does not weigh in favor of severance.

D. Even in Hindsight, Severance Was Not Required to Preserve Defendant's Due Process Rights

Defendant contends that even if the trial court's joinder ruling was correct when made, the joinder at trial resulted in gross unfairness depriving him of due process of law. (*People v. Rogers* (2006) 39 Cal.4th 826, 851 [reviewing court "must still determine whether, in the end, the joinder of counts or defendant for trial resulted in gross unfairness depriving the defendant of due process of law"].)

Defendant asserts there was a prejudicial spillover effect at trial, but he provides no specifics. The similarities between the assaults were strengthened at trial by the women's testimony that defendant was "nice" to them after the assaults were complete and took them wherever they wanted to go. The relative strength of the charges relating to each of the victims remained the same, with DNA evidence linking defendant to

Ana, S. and Jessica, and with N.'s identification of defendant that remained strong.

In addition, no unforeseen inflammatory evidence was introduced at trial. Ana's runaway status was highlighted, but she still did not appear significantly more innocent or vulnerable than the other victims because there was evidence that she used drugs on the day she was sexually assaulted and had previously provided false information to police. Jessica recanted her claim that defendant forced her into the car, and so the jury had no reason to view Jessica as a more traumatized victim than the other three women. In short, we see nothing in the joint trial of the four assaults that resulted in gross unfairness to the defendant.

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

TURNER, P.J.

KUMAR, J.^{*}

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