Filed 8/30/18 P. v. Quevedo CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. HERIBERTO QUEVEDO, Defendant and Appellant.	B281296 (Los Angeles County Super. Ct. No. PA086176)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hilleri G. Merritt, Judge. Affirmed.

Quinn Law and Stephane Quinn, 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, Assistant Attorney General, Idan Ivri and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

An information charged Heriberto Quevedo with one count of assault with intent to commit rape. (Pen. Code, § 220, subd. (a)(1).)[1] A jury found Quevedo guilty of the lesser offense of simple assault. (§ 240.) The trial court sentenced Quevedo to three years of probation and ordered him to register as a sex offender under the discretionary registration provisions of section 290.006. On appeal, Quevedo contends the trial court abused its discretion in imposing the registration requirement because the trial court failed to make the necessary findings to support the requirement and to state them on the record. Quevedo also challenges the sufficiency of the evidence supporting the registration requirement.

We hold that the trial court made the necessary findings, those findings were supported by the record, and Quevedo forfeited his challenge to the adequacy of the court's statement of findings by failing to object on that basis during sentencing. Accordingly, we affirm.

BACKGROUND

1. Prosecution evidence

On December 31, 2013, Quevedo was living on the second floor of a small structure located behind the home of his aunt, uncle, and cousins. There was a small New Year's party that day at the home, which Quevedo, his uncle and aunt, his mother, and his female cousin, A.Q., attended. At some point, the party moved to the kitchen, where everyone was sitting at the table drinking. A.Q. consumed four to five shots of tequila.

---

[1] All further statutory references are to the Penal Code unless otherwise indicated.

When Quevedo began washing the dishes, A.Q. approached him and struck up a conversation. After he finished washing the dishes, Quevedo invited A.Q. to come up to his room. A.Q. replied, "[s]ure."

Once they were in his room, Quevedo shut the door and pushed A.Q. on to his bed. Quevedo got on top of A.Q., grabbed her hands, held them above her head, and forced himself between her legs. After a struggle, Quevedo pulled A.Q.'s pants and underwear down to her hips. A.Q. told him to stop, bit him, and was able to get one hand free before she grabbed an object from the floor and hit Quevedo on the head. A.Q. could not identify the object she picked up off the floor to hit Quevedo. Once free, A.Q. ran outside, through the residence, and into her room. On the way, she walked past everybody sitting at the kitchen table but did not tell any of them what happened. Once in her room, A.Q. locked the door and windows, and cried herself to sleep.

A few hours later, A.Q. heard a knock on the window. Quevedo was outside, telling her to open the window. When A.Q. refused, Quevedo broke the window. Shortly thereafter, Quevedo went into the residence and rushed into A.Q.'s room. He approached A.Q., who was standing in a corner, and placed his hands against the wall on each side of her head, effectively pinning her against the wall. Quevedo told A.Q. not to say anything about what had happened. Quevedo then left A.Q.'s room and ran out of the house.

The next morning, A.Q. told her mother and father what had happened. A.Q. went to the police station to get a restraining order; the police referred her to the Van Nuys courthouse. A.Q. never filed a report with the police, nor did she file the restraining order. When asked by the People how she felt

about the idea of having sex with a family member, A.Q. replied, "[i]t's nasty. It's disgusting. You don't do that with a family member."

A.Q.'s mother testified that she observed Quevedo attempting to hug and kiss A.Q. and that A.Q. told him to leave her alone.

2. Defense evidence

M.H., Quevedo's stepmother, testified that she has known Quevedo since he was very little. She testified that while she, her husband, A.Q., and Quevedo were sitting at the kitchen table on the day of the party, A.Q. stood up, went behind Quevedo, and started slipping her hands down the front of his body toward his groin area. She then stated, "You are not a man." A.Q. did this twice before on the same day, following Quevedo in the direction of his room.

Defense counsel read a stipulation to the jury that a district attorney investigator had interviewed A.Q.'s mother on August 19, 2016 about the event. A.Q.'s mother told the investigator that she observed Quevedo and A.Q. walking from the rear of the property and talking. Both were acting normally, and neither was yelling or appeared upset. Quevedo and A.Q. walked into the main house together and shortly thereafter, Quevedo left and went to his room in the back house.

3. Verdict and sentence

In the midst of deliberations, the jury asked the trial court if it could "convict on assault only." After hearing argument from both sides, the court concluded that it had a sua sponte duty to instruct on the lesser included offense of simple assault and did so. The jury then inquired whether "there are other charges

between simple assault and the charge of assault with intent to rape, like sexual assault." The trial court responded that the jury would be "additionally instructed on simple assault" only. The jury subsequently acquitted Quevedo of assault with intent to commit rape but found him guilty of simple assault.

At sentencing, the trial court imposed a three-year term of summary probation and required Quevedo to register as a sex offender pursuant to section 290.006 for the duration of probation. Quevedo's counsel objected to the registration requirement "because the defense believes it violates Mr. Quevedo's due process." The trial court stated, "I heard the facts of the case, and the court is quite concerned that there are elements at play that go above and beyond a mere assault. [¶] The record speaks for itself in the trial. I am not going to reiterate it here. But I do believe that [requiring registration] is appropriate and necessary for the safety of people in the community."

Quevedo timely appealed.

DISCUSSION

I. Legal Principles

Section 290 makes sex offender registration mandatory for persons convicted of certain crimes. (§ 290.) The parties agree that simple assault is not a crime that requires registration.

Section 290.006, however, provides: "[a]ny person ordered by any court to register . . . for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification." In order to support the

imposition of this discretionary requirement, the court "shall state on the record the reasons for its findings and the reasons for requiring registration."[2] (§ 290.006, subd. (a).)

II. Analysis

As noted above, Quevedo argues that the trial court abused its discretion in imposing a sex offender registration requirement because it failed to make the findings required by section 290.006 and to state those findings on the record. Quevedo further argues that there was insufficient evidence to support the registration requirement.

The record indicates that the trial court made the necessary findings. The court stated that "there are elements at play that go above and beyond a mere assault." Given that the trial court made this statement in the context of imposing a registration requirement pursuant to section 290.006, those "elements" could only refer to the evidence that the offense was committed "as a result of sexual compulsion or for purposes of sexual gratification." (§ 290.006, subd. (a).) The trial court also expressed its "reasons for requiring registration" (*ibid.*), namely that registration was "appropriate and necessary for the safety of people in the community."

The trial court's findings are supported by substantial evidence in the record. A.Q. testified that Quevedo got on top of her, held her hands over her head, and forced himself between

---

[2] The parties do not challenge the trial court's authority to impose a registration requirement for the probationary period only, as opposed to the lifetime registration requirement described in section 290, subdivision (b). Accordingly, we do not address this issue.

her legs. He then pulled her pants and underwear down. It is a reasonable inference that he did so with the intent to perform a sexual act of some kind, thus supporting a finding that he assaulted A.Q. "for purposes of sexual gratification." (§ 290.006, subd. (a).) The sexually motivated assault, along with Quevedo later breaking A.Q.'s window, pinning her to the wall and threatening her not to tell anyone what had happened, supported the trial court's finding that Quevedo was dangerous and thus registration was "necessary for the safety of people in the community." This evidence supplied the "reasons for requiring registration." (§ 290.006, subd. (a).)

Quevedo argues that the trial court's ruling ignored the jury verdict, which acquitted Quevedo of the charged sex crime. The trial court, however, was not bound by the jury's verdict for purposes of exercising its discretion under section 290.006. In *People v. Mosley* (2015) 60 Cal.4th 1044 (*Mosley*), our Supreme Court upheld a registration requirement imposed under section 290.006 even though the jury had acquitted the defendant of committing a lewd act on a child under the age of 14 and instead had convicted him of simple assault. (*Mosley*, at pp. 1049, 1070.) Because the sex offender registration statute is not a penalty or punishment, and instead serves the legitimate nonpunitive governmental objective of protecting the public from sex offenders, a trial court may require registration without jury findings in support of that registration. (*People v. Picklesimer* (2010) 48 Cal.4th 330, 343-344.) In light of *Mosley* and *Picklesimer*, the trial court did not err in requiring registration even though the jury acquitted Quevedo of the sex-related crime.

The trial court's ruling, moreover, was not inconsistent with the verdict. The jury acquitted Quevedo of assault with

intent to commit rape, an offense that requires, among other things, an intent to commit "an act of sexual intercourse." (§ 261, subd. (a).) If the jury had been convinced that Quevedo assaulted A.Q. with intent to commit some form of sex act but was not convinced beyond a reasonable doubt that the intended sex act was intercourse, acquittal was proper. Because section 290.006 applies broadly to any act a trial court finds was "committed as a result of sexual compulsion or for purposes of sexual gratification," and not just acts of intercourse, the registration requirement ordered here did not conflict with the acquittal on the charge of assault with the intent to commit rape.[3]

Quevedo further argues that the trial court ignored evidence indicating "no sexual assault occurred, and that any sexual contact that may have occurred was consensual." Quevedo identifies the testimony of his stepmother, M.H., who testified that she had seen A.Q. move her hands towards Quevedo's groin. Quevedo also points to his probation report, which stated that Quevedo's score on "an actuarial measure of risk for sexual offense recidivism" indicated he was in a "low-moderate risk category for being convicted of another sexual offense."

These arguments misconstrue our standard of review under which "we review the whole record in the light most favorable to the judgment below" (*People v. Snow* (2003) 30 Cal.4th 43, 66), and " 'neither reweigh[ ] evidence nor reevaulate[ ] a witness's credibility' " (*People v. Albillar* (2010) 51 Cal.4th 47, 60). Applying that standard, there was substantial evidence

---

[3] It was evident that the jury struggled with finding merely simple assault given its request for an instruction on an offense "between simple assault and . . . assault with intent to rape, like sexual assault."

supporting the trial court's implied finding that the assault was for purposes of sexual gratification.

Quevedo contends the trial court could not require registration absent a finding that Quevedo was likely to commit another sex offense, and the record did not support such a finding. Quevedo's cited cases, however, do not hold that a trial court *must* find a likelihood of reoffending before requiring registration, only that the trial court consider this factor in exercising its discretion whether to order registration. (See *People v. Thompson* (2009) 177 Cal.App.4th 1424, 1431 (*Thompson*) [remanding to trial court to determine whether discretionary registration was appropriate, and stating, "Most importantly, the trial court must consider the likelihood defendant will reoffend"]; *People v. Garcia* (2008) 161 Cal.App.4th 475, 485 (*Garcia*) [directing trial court, upon remand to assess need for discretionary registration, to consider evidence of rehabilitation after the offense was committed, stating "Where registration is discretionary, . . . one consideration before the court must be the likelihood that the defendant will reoffend"].)[4]

Moreover, a finding that Quevedo was likely to reoffend was implicit in the trial court's conclusion that registration was necessary to protect the community. Again, this finding was supported by evidence that Quevedo had committed a violent, sexually motivated crime and then further assaulted and threatened his victim to obtain her silence.

---

[4] Both *Thompson* and *Garcia* were disapproved of on other grounds by *People v. Picklesimer*, *supra*, 48 Cal.4th 330 and *Johnson v. Department of Justice* (2015) 60 Cal.4th 871 (*Johnson*).

Quevedo cites *Lewis v. Superior Court* (2008) 169 Cal.App.4th 70 (*Lewis*) in support of his argument that registration is inappropriate in this case, but *Lewis* is unavailing. Lewis was convicted in 1987 of two counts of oral copulation with a minor under the age of 18 (§ 288a, subd. (b)(1)) and ordered to register as a sex offender under section 290. (*Lewis*, at p. 73.) At the time of the offense, Lewis was 22 and the victim was 17. (*Id.*) In 2006, the California Supreme Court invalidated the mandatory registration requirement for violations of section 288a, subdivision (b)(1). (*Lewis*, at p. 74, citing *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1192-1193 (*Hofsheier*).)[5] In light of that ruling, Lewis filed a motion to set aside the order requiring him to register. The trial court denied the motion, finding that even absent a mandatory registration requirement under section 290, registration nonetheless was appropriate under section 290.006. (*Lewis*, at p. 75.)

The Court of Appeal reversed, finding the facts did "not suggest that Lewis was likely, in 1987, to prey upon young girls or to commit registerable sex offenses" given the lack of evidence "that Lewis had used force upon the victim, that he had threatened her, or that the victim's age and relationship to Lewis was such that she was coerced into doing something she would not otherwise have done." (*Lewis*, *supra*, 169 Cal.App.4th at p. 79.) Further, it was undisputed that Lewis had not committed any registerable offenses in the 20 years since his conviction. (*Ibid.*) "Thus, the only possible basis for imposing a discretionary registration requirement in 2008 would be a finding

---

[5] *Johnson*, *supra*, 60 Cal.4th 871 later overruled this aspect of the Supreme Court's decision in *Hofsheier*.

that it is likely Lewis will *start* committing such offenses now. There is nothing in the record to support such a finding." (*Ibid.*)

Lewis has no application here, where registration under section 290.006 was ordered at sentencing, not 20 years after the fact, and there was substantial evidence that Quevedo used both force and threats against an unwilling victim. Quevedo argues that, regardless of the facts, *Lewis* supports the proposition that a trial court may not order registration absent the findings required by section 290.006. As we have explained, however, the trial court made those findings and the record supports them.

To the extent Quevedo argues that the trial court did not state on the record "the reasons for its findings and the reasons for requiring registration" (§ 290.006, subd. (a)), Quevedo has forfeited that argument by not objecting on that basis during sentencing. (See *People v. Bautista* (1998) 63 Cal.App.4th 865, 868 [general objection to registration requirement insufficient to preserve challenge to trial court's "failure to provide a more complete statement of reasons for its findings and for requiring registration"].) "This routine defect could easily have been prevented and corrected had it been brought to the [trial] court's attention." (*Ibid.*) Moreover, even had Quevedo raised such an objection, we conclude there would not have been a different outcome given the strength of the evidence of sexual motivation before the trial court.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.