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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DIONDRE EVINS, Defendant and Appellant.	B282546 (Los Angeles County Super. Ct. No. BA434430)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen A. Marcus, Judge. Affirmed with modification.

Nancy L. Tetreault, 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, Paul M. Roadarmel, Supervising Deputy Attorney General, and William N. Frank, Deputy Attorney General, for Plaintiff and Respondent.

Diondre Evins (defendant) stands convicted of 14 counts of human sex trafficking, pimping and pandering (and one count of assault) regarding several underage women. On appeal, defendant challenges the sufficiency of the evidence underlying one count, three of the trial court's evidentiary rulings, and the trial court's refusal to award pre-sentencing conduct credits. Only the last claim has merit. Accordingly, we affirm defendant's convictions but order that the abstract of judgment be corrected to award 1,592 days of custody credits and to correct a clerical error as to the sentence imposed on one of the counts.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Generally*

Defendant was a self-proclaimed "pimp" who bragged that it was a "high pursuit" to recruit underaged women into his "stable" of "hos" and "bitches." Defendant used a variety of recruitment techniques: He ordered his current prostitutes to find girls in juvenile hall or foster homes; he approached girls who had run away from such facilities; and he urged girls who were already prostitutes to "choose up" with him as their pimp (and to pay him an initiation fee for that honor). He went by the name "Louie Red", and he was one of the more well-known pimps whose prostitutes walked the "Figueroa track" in Los Angeles. He had the words "Fig Bound" tattooed on him and would encourage his prostitutes to "brand" themselves as "his" by getting tattoos of his initials topped by a crown to signify that he was their "king". Defendant would set a minimum nightly quota for each prostitute (called a "trap"), which could vary from $500 to $2,000. He maintained his control over his prostitutes through a combination of charm, threats of physical violence, and physical

violence itself. And defendant profited richly: He slept in mansions, bought a newer Cadillac, bought and consumed drugs, and regularly filmed himself counting or displaying wads of cash.

B. *Specific victims*

1. *Rosemary K.*

Rosemary K. met defendant when she was 15 years old and was working as a "renegade" prostitute (that is, a prostitute without a pimp) on the Figueroa track. Defendant declared himself her pimp and she worked for him for the next two years. At his behest, Rosemary tried to recruit other prostitutes for defendant by giving them his number. When Rosemary indicated her desire to stop working for him, defendant threatened or beat her on four different occasions: (1) he brandished a gun and then struck her with his fist when she declared her desire to stop working for him after being raped and robbed by a "john"; (2) he ordered her into his car at gunpoint, put a gun in her mouth and threatened to kill her, and then slapped her across the face; (3) he told her, "Bitch, I'm going to kill you" when he got upset with her for socializing with one of his "pimp partners"; and (4) he punched her repeatedly in the face while she was more than seven months pregnant because she did not earn as much as he thought she should have on the "track".

2. *Maya L.*

Maya L. met defendant when she was 16 years old and was working as a prostitute on the Figueroa track. He urged her to "choose up" with him. Maya paid a $500 initiation fee and began working for defendant. Defendant set Maya's nightly quota at $500, and then increased it to $1,000. While she worked for him, defendant once threatened to "cut her" with a razor blade and

actually struck her five to eight times with either his hand or a belt.

3. *Daisha G.*

Daisha G. met defendant when she was 15 years old and had just run away from juvenile hall. Defendant befriended her at a McDonald's, bought her a jumpsuit and heels, and informed her that she was going to "sell [her] body to . . . other men" for him. He told her what to charge. She worked as a prostitute for four days and gave defendant all of her earnings. She also had sex with defendant. She did not want to have sex with defendant or to work as a prostitute, but she was "scared" because she saw a gun in defendant's car and on his person.

4. *Emoni H.*

Emoni H. met defendant when she was 14 years old and was working as a prostitute on the Figueroa track. Defendant encouraged her to "choose up" with him.

5. *Kianna P.*

Rosemary said she met Kianna P. at a time when Rosemary was recruiting girls for defendant, and Kianna P. admitted to knowing girls who worked for defendant. Kianna P. worked as a prostitute for two years after leaving a juvenile hall camp, said that she had a "trap" of $500, and understood this trap to be the amount she was "supposed to make . . . from prostitution", but nevertheless denied having a pimp. Kianna P. also said she never worked for defendant, but nevertheless picked him out of a six-photo photospread.

6. *Jonathan B.*

Jonathan B., who is known as "Miss Ariel," met defendant while working as a renegade prostitute on the Figueroa track. Defendant on a daily basis urged her to "choose up" with him and

said he would set her "trap" at $2,000 per night. She ultimately declined defendant's offer.

II. Procedural Background

A. *Charges*

In the operative, Second Amended Information, the People charged defendant with (1) human sex trafficking of a minor by force or fear (Pen. Code, § 236.1, subd. (c)(2))[1], as to Rosemary (count 1) and Maya (count 12); (2) human sex trafficking of a minor (§ 236.1, subd. (c)(1)), as to Daisha (count 9), Emoni (count 6), Kianna (count 8), and Jonathan (count 7); (3) pandering by procuring a minor under the age of 16 to be a prostitute (§ 266i, subd. (b)(2)), as to Daisha (count 19); (4) pandering by procuring a minor age 16 or over (§ 266i, subd. (b)(1)), as to Rosemary (count 13), Maya (count 23), Emoni (count 17), Kianna (count 21), and Jonathan (count 18); (5) pimping a minor under the age of 16 (§ 266h, subd. (b)(2)), as to Daisha (count 20)); (6) pimping a minor age 16 or over (§ 266h, subd. (b)(1)), as to Rosemary (count 14), Maya (count 24), and Kianna (count 22); (7) assault by means of force likely to produce great bodily injury (§ 254, subd. (a)(4)), for assaulting Rosemary with a belt (count 2); and (8) kidnapping (§ 207, subd. (a)), for ordering Rosemary into the car at gunpoint (count 3).[2]

B. *Trial and verdict*

The matter proceeded to a jury trial. At the close of evidence, the trial court granted defendant's motion for an

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

[2] This information did not allege a count 10 or 11, and the People dismissed counts 4, 5, 15 and 16 (which involved two other victims) prior to submitting the case to the jury.

acquittal on the kidnapping charge. The jury was unable to reach a verdict on two counts—namely, the human sex trafficking count involving Jonathan (count 7) and the pandering count involving Kianna (count 21). The jury returned guilty verdicts on the remaining 15 counts.

C. *Sentencing*

The trial court sentenced defendant to prison for 30 years to life. This sentence was comprised of 15 years to life on each of the human trafficking counts involving Rosemary (count 1) and Maya (count 12), to be served consecutively. The court imposed concurrent sentences on five other counts—namely, four-year concurrent sentences on the assault count against Rosemary (count 2) and the pandering count involving Jonathan (count 18); a six-year concurrent sentence on the human trafficking count involving Emoni (count 6); and eight-year concurrent sentences on the human trafficking counts involving Kianna (count 8) and Daisha (count 9). The court stayed the sentence on the remaining counts (counts 13, 14, 17, 19, 20, 22, 23, and 24) under section 654. The trial court awarded defendant 796 days for actual time served but did not award any presentence conduct credit on the theory that the court had not imposed any determinate sentences.

D. *Appeal*

Defendant filed a timely notice of appeal.

DISCUSSION

I. Sufficiency of the Evidence

Defendant argues his conviction for human sex trafficking involving Kianna (count 8) must be overturned because it rests on insufficient evidence. In evaluating the sufficiency of the evidence, we ask only whether the record contains "'substantial

evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Clark* (2011) 52 Cal.4th 856, 942 (*Clark*).) In undertaking this inquiry, we "'review the whole record in the light most favorable to the judgment below.'" (*Ibid.*)

Substantial evidence supports the jury's guilty verdict on the human sex trafficking charge involving Kianna. To convict a defendant of this charge, a jury must find that (1) defendant "cause[d], induce[d], or persuade[d], or attempt[ed] to cause, induce, or persuade" (2) a minor (3) "to engage in a commercial sex act" (4) "with the intent to effect or maintain a violation of," among other things, pimping or pandering by procuring. (§ 236.1, subd. (c).) Here, the jury heard Kianna's testimony from the preliminary hearing that (1) she worked as a prostitute for two years after leaving juvenile hall, and (2) she had a "trap" of $500 per night.[3] The jury heard from the detective who interviewed Kianna prior to that testimony that she picked defendant out of a photospread. And the jury heard evidence regarding defendant's recruitment of the victims underlying the other charges in this case, including some from juvenile hall (either directly or through an intermediary like Rosemary); that Rosemary and Kianna met when Rosemary was one of defendant's recruiters; and that defendant had a practice of setting a "trap" for his prostitutes. Such evidence is admissible to prove a defendant's common plan or scheme as well as his intent.

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[3] Kianna did not appear at trial, and the trial court ruled that the People had exercised reasonable diligence in trying to secure her appearance. Defendant does not challenge that finding on appeal.

(*People v. Kraft* (2000) 23 Cal.4th 978, 1030-1031 ["the charged offenses in this case were sufficiently similar to each other to support an inference that defendant acted according to a plan"]; Evid. Code, § 1101, subd. (b); *People v. Villatoro* (2009) 54 Cal.4th 1152, 1161 ["§ 1101(b) applies not only to evidence of uncharged misconduct . . . but also to evidence (already admitted) of charged offenses"]; cf. *People v. Mendoza* (2001) 52 Cal.4th 1056, 1094 [no limiting instruction required for other act evidence unless requested].) Taken together, the jury could reasonably infer that *defendant* was the person who set Kianna's "trap" and was the pimp for whom she worked.

Defendant raises what boil down to three arguments in response.

First, defendant asserts that Kianna, in her preliminary hearing testimony, denied that he was her pimp or even having a pimp at all. However, the jury was within its rights to accept some parts of Kianna's testimony (namely, that she worked as a prostitute, had a trap, and picked defendant out of a photospread) but reject other parts (namely, that she had no pimp, never worked for defendant, and was "trying to be convinced to pick one of the photographs"). (*Stevens v. Park, Davis & Co.* (1973) 9 Cal.3d 51, 67-68; CALCRIM No. 226.)

Second, defendant contends that we may not consider, as part of our substantial evidence analysis, Kianna's statements during her pre-preliminary hearing interview that (1) defendant was her pimp for two years, and (2) she picked him out of the photospread as the man who was her pimp. We may not consider them, defendant notes, because the trial court admitted them solely to impeach Kianna's preliminary hearing testimony, and not as substantive evidence. Defendant is right that the trial

court instructed the jury to consider the statements Kianna made during her interview only for impeachment, and that an appellate court may not consider evidence admitted for impeachment when evaluating the sufficiency of the evidence. (*People v. Lewis* (2001) 25 Cal.4th 610, 656 ["'Sufficiency of the evidence review involves assessment by the courts of whether the *evidence adduced at trial* could support any rational determination of guilt beyond a reasonable doubt'" (italics added)].) However, as the above stated analysis indicates, there is sufficient evidence without considering Kianna's interview statements.

Lastly, defendant posits that the jury's guilty verdict on the human sex trafficking count involving Kianna is irreconcilably inconsistent with the jury's inability to reach a verdict on the count alleging that defendant pandered by procuring Kianna (count 21), and thus narrows the universe of evidence we may consider in evaluating the sufficiency of the evidence. This position lacks merit because, as the United States Supreme Court has observed, "the fact that a jury hangs is evidence of nothing—other than, of course, that it has failed to decide anything." (*Yeager v. United States* (2009) 557 U.S. 110, 124-125; cf. *Mitchell v. Prunty* (9th Cir. 1997) 107 F.3d 1337, 1339-1340 [court should consider jury's "not true" finding on sentence enhancements in evaluating sufficiency of the evidence] overruled on other grounds in *Santamaria v. Horsley* (9th Cir. 1998) 133 F.3d 1242, 1248; *People v. Medina* (1995) 39 Cal.App.4th 643, 651-652 [same, as to acquittals on other counts].)

II. Evidentiary Rulings

Defendant challenges three of the trial court's evidentiary rulings. We review these rulings for an abuse of discretion. (*People v. Powell* (2018) 5 Cal.5th 921, 961.)

A. *Exclusion of Daisha's juvenile adjudication for battery*

1. *Pertinent facts*

During his cross-examination of Daisha, defendant sought to impeach her with a juvenile adjudication for simple battery against her mother that Daisha had sustained "a couple years" earlier. Those charges occurred when, after repeated beatings by her mother, Daisha "got tired of it" and "pulled her [mother's] hair." Defendant argued that this incident was relevant impeachment evidence because (1) it showed she was "a violent person" and (2) it was "inconsistent with somebody easily controlled in terms of being a prostitute."

The trial court excluded the prior adjudication under Evidence Code section 352. The court acknowledged that the adjudication was not remote in time but concluded that it was only marginally relevant for impeachment purposes because (1) simple battery was "barely" a crime of moral turpitude, and (2) the battery arose out of a "mother/daughter situation," which is different than an interaction between "stranger[s]." The court also found that introducing the prior adjudication would be time consuming and confusing to the jury because it would "open[] up the issue" as to "why [Daisha] hit [her] mother."

During Daisha's cross-examination, defendant was allowed to play Daisha's recorded interview for the jury, including her statement, "[My mother] used to beat me. And then one day I got tired of it, so I had pulled her hair and she called the cops on me, and that was it."

2. *Analysis*

Under Evidence Code section 352, a trial court "may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." In applying these considerations to the decision whether to admit a prior juvenile adjudication to impeach a witness, courts are to consider (1) "whether [the conduct] reflects on the witness's honesty or veracity," (2) "whether [the conduct] is near or remote in time," (3) "whether [the conduct] is for the same or similar conduct as the charged offense," (4) that "a misdemeanor—or any other conduct not amounting to a felony—is a less forceful indicator of immoral character or dishonesty than is a felony," and (5) that "impeachment evidence other than felony convictions entails problems of proof, unfair surprise, and moral turpitude evaluation which felony convictions do not present." (*Clark*, *supra*, 52 Cal.4th at p. 931, citing *People v. Beagle* (1972) 6 Cal.3d 441, 453, abrogated on other grounds in *People v. Diaz* (2015) 60 Cal.4th 1176, 1190; *People v. Wheeler* (1992) 4 Cal.4th 284, 296-297.)[4]

The trial court did not abuse its discretion in excluding evidence of Daisha's juvenile adjudication for battery on her mother. Juvenile adjudications are not prior convictions admissible under Evidence Code section 788 (*People v. Sanchez*

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[4] A sixth factor is "what effect . . . admission [of that conduct] would have on the defendant's decision to testify." (*Clark*, *supra*, 52 Cal.4th at p. 931.) However, this factor is not relevant here where the witness is not the defendant.

(1985) 170 Cal.App.3d 216, 218-219), but the conduct underlying those adjudications may be admissible to impeach if it involves moral turpitude (*People v. Rivera* (2003) 107 Cal.App.4th 1374, 1380-1382). Contrary to what the trial court noted, the crime of misdemeanor simple battery at issue here is not a crime of moral turpitude. (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 88; *People v. Chavez* (2000) 84 Cal.App.4th 25, 29-30.) The adjudication is also not relevant under the general rules of character evidence because evidence of a victim's character for violence is admissible only when a defendant claims self-defense. (*People v. Wright* (1985) 39 Cal.3d 576, 587; Evid. Code, §§ 1101, subd. (a), 1103, subd. (a).) At best, the adjudication is relevant as prior conduct inconsistent with her testimony that she acquiesced to defendant's demands that she work as a prostitute out of fear. But its relevance for this purpose is almost negligible because Daisha's willingness to "fight back" against her mother says little to nothing about her willingness to "fight back" against a man with easy access to a gun. And even if it did, *Daisha's* willingness to "fight back" against defendant says nothing about whether *defendant* "cause[d], induce[d], or persuade[d]" her to work for him as a prostitute (§ 236.1, subd. (c)). The trial court did not err in weighing the minimal probative value of this evidence against the time and problems of proof that would be involved in placing Daisha's incident with her mother in proper context.

The exclusion of this evidence was also not prejudicial because the jury ultimately heard that Daisha "fought back" against her mother by pulling her mother's hair.

Defendant raises two arguments in response.

First, he argues that the trial court erred in balancing the probative value of the juvenile adjudication against the other

Evidence Code section 352 factors because (1) the trial court was wrong to "minimize the significance" of Daisha's battery adjudication by calling it a "mother/daughter situation," which defendant says implicitly "presumes it is common for a female child to batter her mother", (2) introducing the juvenile adjudication into evidence would not take up undue time, as it would only lead to a few questions about Daisha's arrest, and (3) the juvenile adjudication would not confuse the jury. Defendant's first point lacks merit: The trial court was not saying that "mother/daughter" violence is somehow insignificant; rather, the court ruled that Daisha's conduct in pulling her mother's hair in response to her mother's violence shed little light on whether Daisha would resist a strange man with access to a gun. Defendant's second point ignores that the fact of an arrest is itself irrelevant to impeachment (*People v. Medina* (1995) 11 Cal.4th 694, 769 [mere arrests are usually inadmissible, whether as proof of guilt or impeachment]), and that placing Daisha's battery in its proper context would take time. Defendant's third point minimizes the confusion that can arise where a jury is confronted with what to do with evidence of a prostitution victim's prior act in pulling her mother's hair. At bottom, defendant is asking us to reweigh the various Evidence Code section 352 factors anew; this is not something we may do when reviewing a ruling for an abuse of discretion.

Second, defendant argues that the trial court's Evidence Code section 352 ruling violates due process and his Sixth Amendment right to confront witnesses. We reject this argument. A trial court's ruling that complies with the rules of evidence, as is the case here, ordinarily does not violate a criminal defendant's constitutional rights. (*People v. Boyette*

(2002) 29 Cal.4th 381, 427-428.) More specifically, a trial court's limitation on cross-examination of a witness pertaining to that witness's credibility "does not violate the confrontation clause unless a reasonable jury might have received a significantly different impression of the witness's credibility had the excluded cross-examination been permitted." (*People v. Quartermain* (1997) 16 Cal.4th 600, 623-624; see *Ortiz v. Yates* (9th Cir. 2012) 704 F.3d 1026, 1035-1036 [constitutional violation to preclude jury regarding witness's bias in favor of the prosecution due to fear of loss of custody over her children].) The omission of Daisha's juvenile adjudication did not create a "significantly different impression of" Daisha's credibility because that adjudication has only marginal relevance in impeaching her testimony and because the conduct underlying that adjudication was before the jury.

B. *Admission of cell phone video showing gun in defendant's lap*

1. *Pertinent facts*

The People introduced several video clips from defendant's cell phone. One video depicts defendant driving a car while loud music plays; the camera pans down to defendant's lap, where a gun is visible, and then around to the car's other occupants.

Defendant twice objected to playing this video because it showed him in possession of a gun. The trial court overruled both objections, concluding that defendant's possession of a gun (1) "corroborates" the testimony of the victims who saw defendant with a gun and (2) is relevant to prove the "[f]orce, coercion [and] duress" he used "to control[] the prostitute"-victims. Defendant argued that the video was undated, but the prosecutor noted that the video was dated January 5, 2015 (which was around the same time as the other charged conduct). Defendant also argued that

there was no proof the gun in the video was the same gun used to threaten Rosemary or seen by Daisha, but the court ruled that the identity of the gun did not matter because "[t]he issue is whether as part of his business, as part of the way in which he controls the prostitutes does he use a gun and if he has access to one." The court also ruled the evidence was not more prejudicial than probative under Evidence Code section 352 because the video's "panning for a brief second with a gun in [defendant's] lap is [not] going to make this an unfair trial."

The jury viewed the video. The jury was also given a written summary of the video, which read: "*Summary*: Loud music playing; [Defendant] driving; male in passenger seat, woman in rear seat. Camera pans down to gun in his lap, and then pans around the car."

2. *Analysis*

As noted above, a trial court has discretion to exclude evidence "if its probative value" is "substantially outweighed by the probability that its admission will," among other things, "create substantial danger of undue prejudice." (Evid. Code, § 352.)

The trial court did not abuse its discretion in admitting the video clip depicting defendant in a car that momentarily showed a gun in his lap. Defendant's possession of a gun is probative of his access to a gun, which is relevant to corroborate the testimony of Rosemary and Daisha, who testified that defendant used or possessed a gun as a means of coercing them to work for him as prostitutes. It is also probative of defendant's common plan or scheme for forcing young women to become and then to remain prostitutes for him. Conversely, the "undue prejudice" arising from the video clip and from the summary is relatively minor

because the gun is simply lying in his lap (rather than being used) and because Rosemary and Daisha elsewhere testified to his access to guns.

Defendant proffers two reasons why the trial court abused its discretion in admitting this evidence.

First, he argues that the trial court overvalued the probative value of the video and undervalued its prejudicial effect.

Defendant asserts that the video has less probative value because (1) the People never proved that it was the same gun defendant used to threaten Rosemary and Daisha or that it was an operative firearm at all, (2) the date of the video is unknown, (3) it is cumulative of Rosemary's and Daisha's testimony about defendant's access to a gun, and (4) Daisha's testimony about defendant's use of a gun is suspect because she did not mention any gun until she testified at trial. These assertions do not appreciably undercut the video's probative value. What matters is defendant's use of a gun or gun-like object to coerce the victims to act as his prostitutes; the gun in the video corroborates this use whether or not that gun is the same gun he used with the victims or an inoperable gun or gun-shaped object. The video clip has a January 2015 timestamp on defendant's phone, which provides some basis for dating it around the same time as the charged crimes. That the video is cumulative of Rosemary's and Daisha's testimony does not make it less probative (*People v. Smith* (1999) 20 Cal.4th 936, 973-974); to the contrary, it makes it *more* probative because the video *corroborates* their testimony, including Daisha's more recent revelation.

Defendant also argues that the video is prejudicial because seeing a gun is worse than just hearing about it and because the

written summary submitted alongside the video eliminates the possibility that an inattentive juror might not see the gun in the video. Neither argument is persuasive. The presence of the gun in the video was undoubtedly prejudicial to defendant, but "undue prejudice" within the meaning of Evidence Code section 352 is concerned with "the jurors' emotional reaction" (*People v. Valdez* (2012) 55 Cal.4th 82, 145), and the video does not invoke that impermissible type of prejudice. And the possibility that a juror might not see the gun in the panning video is not pertinent when the underlying evidentiary question assumes the visibility of the gun in the video.

Second, defendant contends that the video constitutes impermissible character evidence of his trait for carrying a gun. (Evid. Code, § 1101, subd. (a).) Although evidence that a defendant possessed a weapon unrelated to the charged crime is impermissible character evidence to the extent that it is admitted to show that a defendant is "'the kind of person who surrounds himself with deadly weapons' [citation]" (*People v. Archer* (2000) 82 Cal.App.4th 1380, 1392-1393), the evidence in this case was admitted for a different and wholly permissible purpose—namely, to corroborate the testimony of two of his victims and to prove the common scheme or plan defendant used to lure and retain his prostitute-victims.

C. *Admission of expert testimony on prostitution*

1. *Pertinent facts*

The People called Detective Satwan Johnson (Detective Johnson) as a witness.

Initially, he testified as an expert witness on the culture of prostitution based on his 10 years on a Human Trafficking Task Force, on speaking with more than 1,000 prostitute-victims, and

on his interviews with 80 to 100 pimps or human trafficking defendants. In this capacity, Detective Johnson testified to (1) the various ways in which minors become prostitutes—namely, because they (a) are "runaways" from the foster care system or from juvenile court supervision who turn to pimps to provide food, lodging and protection, (b) are recruited from group foster homes, (c) are recruited through social media, or (d) are recruited by high school friends; (2) the reasons why these young women continue to work as prostitutes—namely, because they (a) have no one else to go, or (b) their pimp cares for them by providing food and shelter; and (3) the "types" of pimps—namely, "Romeo pimps" who recruit women through their charm, "gorilla pimps" who recruit women by violence or threats of violence, or hybrids who are alternatively "Romeos" and "gorillas".

The next day, and after two other witnesses testified in the interim, Detective Johnson was recalled as a witness to testify about what he observed when interviewing Kianna prior to her preliminary hearing testimony. In this capacity, Detective Johnson testified, among other things, that Kianna "said that [defendant] was both a gorilla and a Romeo pimp, and it really depends on his mood or his situation."

2. *Analysis*

A witness may testify as an expert, if he possesses the requisite "special knowledge, skill, experience, training, or education," on any "subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact" if it is "[b]ased on matter . . . perceived by or personally known to the [expert]," and "is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject . . ." (Evid. Code, §§ 720, 801, subds. (a) & (b).)

Because the culture of prostitution is "sufficiently beyond common experience," it is an appropriate topic for expert testimony. (*People v. Leonard* (2014) 228 Cal.App.4th 465, 493 (*Leonard*).) Defendant nevertheless argues that Detective Johnson's testimony exceeded the permissible bounds of expert testimony because he (1) opined on the "mental condition" of the young women who become prostitutes without being qualified to offer such "psychological testimony", and (2) he "left [the jury] with the impression" that *he* had formed the opinion that defendant was a hybrid Romeo-gorilla pimp.

a. Impermissible psychological opinion

Detective Johnson's opinion as to the reasons why young women become, and then remain, prostitutes was based on his experience as a human trafficking investigator, including his interviews with over a thousand such women. Because expertise may come from "experience" (Evid. Code, § 720; *People v. Prince* (2007) 40 Cal.4th 1179, 1219-1220), and because experience may come from what one learns during interviews (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 324), Detective Johnson was qualified to offer this testimony. Contrary to what defendant asserts, this is not "psychological testimony." Nor did Detective Johnson impermissibly suggest, as defendant asserts, that most troubled girls become prostitutes. He said no such thing. Instead, he laid out the answers he had received from the thousand-plus young women he had interviewed as to why *they* became prostitutes. This was entirely permissible.

b. Ultimate opinion

Although an expert witness may generally opine on the ultimate issue in a case (Evid. Code, § 805), that expert may not offer an opinion on a criminal defendant's guilt or mental state

because such an opinion does not assist the trier of fact. (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.) This is why an expert witness may not offer *his* opinion on whether a person charged with pimping or human sex trafficking is a "Romeo pimp," a "gorilla pimp" or a hybrid of the two. (*Leonard*, *supra*, 228 Cal.App.4th at p. 493.) Detective Johnson did not cross this line because he never offered his opinion on what type of pimp defendant was; all he did was explain those types.

Defendant concedes that Detective Johnson did not expressly offer an opinion on what type of pimp defendant was, but he maintains that Detective Johnson "left" the "jury" "with the impression" that he was giving such an expert opinion by testifying to what *Kianna* said about defendant's "pimp type" during her interview. This impression was viable, defendant argues, because Detective Johnson testified about what Kianna said "without a break in the testimony or any indication to the jury that he had completed the expert portion of his testimony."

Defendant's argument borders on the frivolous, and rests on misstatements of the record. To begin, Detective Johnson's explanation of the types of pimps was separated from his recitation of what Kianna said during the interview by two witnesses and one entire rotation of the earth. Thus, defendant is wrong to state that the two topics followed one another "without a break in the testimony." More to the point, when Detective Johnson testified about his interview with Kianna, he expressly stated that "*she* said that [defendant] was both a gorilla and a Romeo pimp, and it really depends on his mood or his situation." (Italics added.) By this language, Detective Johnson let the jury know he was recounting what *Kianna* said, and not offering an opinion of his own. No further demarcation or

announcement was necessary. Further, Kianna's statement to Detective Johnson was admitted solely to impeach her preliminary hearing testimony, and not as substantive evidence.

III. Sentencing

A. Presentence conduct credit

Defendant argues that the trial court erred in denying him conduct credits for the days he spent in custody prior to sentencing. The trial court awarded defendant 796 days of actual conduct credit but declined to award him any good time/work time credits because "it is a life case." As the People concede, this was error. (*People v. Philpot* (2004) 122 Cal.App.4th 893, 907-908; *People v. Brewer* (2011) 192 Cal.App.4th 457, 464.) The parties agree that defendant should have been credited for 796 days of actual custody credit and an additional 796 days of conduct credit. Because the failure to properly calculate custody and conduct credit is a jurisdictional error that can be corrected at any time (*People v. Chilelli* (2014) 225 Cal.App.4th 581, 591; *People v. Goldman* (2014) 225 Cal.App.4th 950, 961), we order the judgment modified and the abstract of judgment amended to award defendant 796 days of actual custody credit and 796 days of presentence conduct credit, for a total of 1,592 days.

B. Concurrent term for human trafficking count against Emoni (count 6)

Our independent review of the record discloses a sentencing error not raised by the parties in their original briefs—namely, that the trial court orally imposed a "midterm" sentence of "six years" on the human trafficking count involving Emoni (count 6), but the human trafficking statute (§ 236.1, subd. (c)(1)) specifies that the "midterm" sentence is eight years. We sought supplemental briefing from the parties and now order the abstract of judgment corrected to reflect the imposition of an

eight-year concurrent term on count 6. (*People v. Delgado* (2010) 181 Cal.App.4th 839, 854 ["We may set aside an unauthorized sentence so a proper sentence may be imposed, even if the new sentence is harsher."].)

DISPOSITION

The judgment is modified: (1) to reflect 796 days of actual custody credit and 796 days of presentence conduct credit for a total of 1,592 days; (2) to reflect that the sentence on count 6 for human trafficking is eight years concurrent. The clerk of the superior court is directed to prepare an amended abstract of judgment and to forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ