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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. EARL D. WILLIAMS, Defendant and Appellant.	B269049 (Los Angeles County Super. Ct. No. MA064979)
In re EARL D. WILLIAMS, on Habeas Corpus.	B280742 (Los Angeles County Super. Ct. No. MA064979)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa M. Chung, Judge. Affirmed.

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Lisa M. Chung, Judge. Petition denied.

Kieran D. C. Manjarrez, 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, Shawn McGahey Webb and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Earl D. Williams challenges by appeal and petition for writ of habeas corpus a judgment of conviction entered after a jury found him guilty of aggravated kidnapping and of making criminal threats. Williams contends insufficient evidence supports the aggravated kidnapping conviction because no evidence suggested either that he moved the victim a substantial distance or intended that the kidnapping facilitate another, separate crime. He further contends the trial court made several evidentiary and instructional errors. We affirm the conviction and deny the petition.

BACKGROUND

A. Abduction

In the late morning on December 20, 2014, Jazmyne G., age four, was playing outside her home in Lancaster, at the top of a 55-foot long driveway going from her garage to the street. Her brother, Anthony G., age 13, was in the front yard scraping a furrow in the dirt with a shovel. With him were three younger children and Caryn G., his and Jazmyne's mother.

Williams drove in his RV to a vacant lot approximately 100 feet away from the house, exited the vehicle, and walked to the property directly across the street from Jazmyne's house, where he paced back and forth on the sidewalk for about 15 to 20 minutes, watching the children.

When Caryn went inside the house to use the restroom, Williams crossed the street, paced for a moment on the sidewalk

in front of the house, then walked up the driveway toward Jazmyne. Anthony asked what he was doing but Williams ignored him and walked the length of the driveway to Jazmyne, to whom he said, "Come here, little girl." When Jazmyne moved toward Anthony, Williams grabbed her, gave her a "side hug," kissed her on the top of the head, picked her up, and began walking with her toward the street. While Jazmyne squirmed and screamed, Anthony grabbed her hand and Williams's clothing, but he jerked away and said, "Get the fuck off me." Williams carried Jazmyne down the driveway while Anthony ran in the house to get Caryn.

Just before Williams reached the street, Caryn ran out of the house, chased him down, and shouted at him to let Jazmyne go. Williams put the girl down and began walking toward his RV. Caryn confronted him in the middle of the street, and he said, "Bitch, you don't know who I am. You don't know what I am capable of." He threw a beer can at her, then went to his vehicle.

Anthony testified Williams had taken Jazmyne approximately 26 feet down the driveway, from his front door (which Caryn had entered) to within approximately 10 feet of the road.

The family alerted Los Angeles County Sheriff's Deputy Amber Leist, who happened to be passing in her patrol car, and she detained Williams and placed him in the back seat of her patrol car. Williams told her, "What the fuck am I being arrested for? I thought I knew her. I just asked her name." He stated he had heard talking in the yard and thought he recognized voices. He walked toward Jazmyne, picked her up, kissed her on the head, and took her toward the street because he was worried for her safety. He said, "I was trying to keep her safe because they

are digging holes and shit in the yard to bury kids." Williams then became aggressive and irate, and yelled at the family from the back of the patrol car, "I will fucking come back and fuck you all up," and, "I'm coming back. I'm coming back for you."

Williams was later interviewed by Los Angeles County Deputy Sheriff Detective Claudia Rissling. He denied kissing the top of Jazmyne's head but admitted he had picked her up. According to him, Jazmyne "was glad" he picked her up, and "felt happy."

B. Trial

Williams was charged with simple and aggravated kidnapping, committing a lewd act involving a child, and making criminal threats (Pen. Code, §§ 207, subd. (a), 208, subd. (b), 209, subd. (b)(1), 288, subd. (a), 422, subd. (a)),[1] and it was alleged he had a prior "strike" conviction and a serious felony conviction and had served six prior prison terms (§§ 667, subds. (a)(1) & (b)-(j), 1170.12, subd. (b), 667.5, subd. (b)).

At trial, Caryn G. testified she did not know when Williams was detained whether police would arrest or release him, and she was concerned he would return even if he was arrested. She testified, "because I am a single mother and I was the sole provider for both households at the time, I was very scared." She said, "I didn't know what was going to happen with him, if they were going to release him or take him. But it is always scary when something happens to your child. You completely black out and just go with what you know. And when you are hearing [his threats], you don't know who—who his family members are, who

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

he is really. And if he can come back if he gets out of custody; so yes, I was in fear."

Williams testified that on the day in question he heard a child crying loudly for 15 to 20 minutes. He walked toward the sound to see if there was something wrong. When he saw Anthony digging, he said to him, "Come on. Let's go back and find whatever the child was hollering." Anthony agreed, and they went to the back of the driveway, where Jazmyne was underneath an SUV with another child. Jazmyne came out, and Williams knelt down and leaned over and asked how she was doing. He picked Jazmyne up and placed her next to Anthony, who ran inside the house. When Caryn approached him in the street and accused him of trying to take the child, Williams said only, "You know what, lady. Go on. I am going to walk back down . . . the street." He then walked away, having no intent to kidnap Jazmyne or threaten anyone.

The jury found Williams guilty of kidnapping with intent to commit a lewd act involving a child and making criminal threats, but acquitted him of committing a lewd act. In bifurcated proceedings the court found true that he had a prior strike conviction and had served six prior prison terms. He was sentenced to an aggregate term of 26 years to life.

Williams timely appealed.

DISCUSSION

I. Sufficiency of the Evidence

A. Kidnapping

Williams contends insufficient evidence supported his conviction for aggravated kidnapping because no evidence suggested either that he intended to involve Jazmyne in a lewd act or that he moved her a substantial distance.

1. Lewd Intent

The crime of simple kidnapping is defined in section 207, subdivision (a) of which provides in pertinent part: "Every person who forcibly, or by any other means of instilling fear, steals or takes . . . any person . . . and carries the person [to another place] is guilty of kidnapping."

The crime of aggravated kidnapping for the purpose of enumerated sexual offenses is set forth in section 209, subdivisions (b) and (d). Subdivision (b)(1) of section 209 provides in pertinent part: "Any person who kidnaps or carries away any individual to commit . . . [a lewd or lascivious act involving a child] . . . shall be punished by imprisonment in the state prison for life with the possibility of parole." Subdivision (b)(2) of that section provides: "This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense."

A section 209 kidnapping requires that the perpetrator have the specific intent when the kidnapping begins to commit the underlying offense. (*People v. Davis* (2005) 36 Cal.4th 510, 565-566.) The underlying offense in this case is commission of a lewd or lascivious act involving a child, a violation of section 288.

Section 288, subdivision (a), provides in relevant part that "[A]ny person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony . . . ." "[S]ection 288 is violated by 'any touching' of an

underage child accomplished with the intent of arousing the sexual desires of either the perpetrator or the child." (*People v. Martinez* (1995) 11 Cal.4th 434, 452.) The basic purpose of section 288 is "to provide children with 'special protection' from sexual exploitation. [Citation.] . . . [Citation.] The statute also assumes that young victims suffer profound harm whenever they are perceived and used as objects of sexual desire. [Citation.] . . . [¶] For this reason, the courts have long indicated that section 288 prohibits *all* forms of sexually motivated contact with an underage child. Indeed, the 'gist' of the offense has always been the defendant's intent to sexually exploit a child, not the nature of the offending act. [Citation.] '[T]he purpose of the perpetrator in touching the child is the controlling factor and each case is to be examined in the light of the intent with which the act was done. . . .' " (*Id*. at pp. 443-444.) "The trier of fact must find a union of act and sexual intent [citation], and such intent must be inferred from all the circumstances beyond a reasonable doubt." (*Id*. at p. 452.)

Circumstances relevant to determining whether a defendant acted with lewd intent include the nature of the charged act, "the relationship of the parties [citation], and any coercion . . . used to obtain the victim's cooperation or to avoid detection [citation]." (*People v. Martinez*, *supra*, 11 Cal.4th at p. 445.)

We review the record in the light most favorable to the judgment below. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) " 'The test is whether substantial evidence supports the [verdict], not whether the evidence proves guilt beyond a reasonable doubt.' " (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) That circumstances can be reconciled with a contrary

finding does not warrant reversal of the judgment. (*People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

Here, Williams spied on Jazmyne G., a four-year-old girl to whom he was a stranger, from across the street for several minutes. He waited until her mother went into the house, then entered the property, kissed and hugged Jazmyne, picked her up, and carried her struggling and screaming toward his nearby RV. Williams had no legitimate reason to approach the child, no history with her that would normalize a kiss or hug, and no innocuous reason to carry her away against her wishes. The jury could reasonably conclude from his deviant interest in and abduction of Jazmyne that he planned to involve her in a lewd act when he had her farther away from her home.

Williams argues the evidence was insufficient because he had evinced no morbid or excessive interest in Jazmyne in the past, and no evidence suggested he frequented places where children were present or had ever stalked anyone. He argues his kissing Jazmyne was itself not overtly sexual in nature, because "It is common knowledge that children are routinely cuddled, disrobed, stroked, examined, and groomed as part of a normal and healthy upbringing" (*People v. Martinez*, *supra*, 11 Cal.4th at p. 450), and "[k]issing is a kind of touch that has as much range as a big-city orchestra. It can be a perfunctory peck on the cheek, so asexual that balding Communist Party apparatchiks aren't ashamed to do it on TV" (*In re R.C.* (2011) 196 Cal.App.4th 741, 751). He argues that "[i]n the present case, [his] alleged forehead kiss was an empty variable. Where the act itself is sexually neutral, "the only way to determine whether [the] particular touching is permitted or prohibited is by reference to the actor's intent as inferred from all the circumstances." (*Martinez*, at p.

450.) Williams argues the evidence allowed no inference of such an intent, and his acquittal of a charge of lewd conduct involving a minor necessarily means the jury found he harbored no lewd intent.

We flatly reject the arguments. That a kiss between relatives or apparatchiks may be innocuous is irrelevant here, as Williams was neither. And the jury's not-guilty verdict for lewd conduct says in the first instance nothing specifically about Williams's intent, as a violation of section 288 involves several elements, for lack of any one of which the jury would have been compelled to acquit. In any event, it would be irrelevant even if Williams had no lewd intent when he kissed Jazmyne, a four-year-old with whom he had no prior relationship. The question is what he planned to do with her once he had her farther away from her home. On this issue Williams offers no innocent explanation, and we can conceive of none. A stranger does not approach a very young girl and kiss her, pick her up, and carry her struggling and screaming away for innocuous reasons.

2. Asportation

To establish a kidnapping the prosecution must prove " '(1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person's consent; and (3) the movement of the person was for a substantial distance.' [Citation.]" (*People v. Bell* (2009) 179 Cal.App.4th 428, 435.) To establish a section 209 kidnapping, the prosecution must prove that the movement of the victim "was more than incidental and increased the risk of harm above that inherent in the enumerated sexual offense itself." (*People v. Robertson* (2012) 208 Cal.App.4th 965, 978.)

Any kidnapping requires that the perpetrator move the victim a substantial rather than slight or trivial distance. (*People v. Arias* (2011) 193 Cal.App.4th 1428, 1434-1435.) But nothing in the asportation element of kidnapping "limits the asportation element solely to actual distance." (*People v. Martinez* (1999) 20 Cal.4th 225, 236.) The focus is on the quality of the movement, not its quantity, i.e., whether the movement is "substantial in character," not substantial in terms of distance. (*Id.* at p. 237; *People v. Caudillo* (1978) 21 Cal.3d 562, 573.) "[W]here movement changes the victim's environment, it does not have to be great in distance to be substantial." (*People v. Robertson*, *supra*, 208 Cal.App.4th at p. 986.)

Thus in determining whether a victim was moved a substantial distance, the focus is not on a "specified number of feet or yards," but on "such factors as whether that movement increased the risk of harm above that which existed prior to the asportation, decreased the likelihood of detection, and increased both the danger inherent in a victim's foreseeable attempts to escape and the attacker's enhanced opportunity to commit additional crimes." (*People v. Martinez*, *supra*, 20 Cal.4th at p. 237.) The jury must also consider whether the movement was merely incidental to an associated crime committed by the defendant. (*Ibid.*)

In *People v. Jones* (1999) 75 Cal.App.4th 616, the Court of Appeal affirmed a conviction of kidnapping for robbery where the defendant moved the victim 40 feet across a parking lot to her car. (*Id.* at pp. 629-630.) In *People v. Shadden* (2001) 93 Cal.App.4th 164, the defendant dragged the victim nine feet from an open area to a closed room. The court held that the distance was substantial because it changed the victim's environment.

(*Id*. at p. 169.) In *People v. Arias*, *supra*, 193 Cal.App.4th 1428, the appellate court held that movement of a kidnapping victim 15 feet from outside to inside his apartment "increased his risk of harm in that he was moved from a public area to the seclusion of his apartment," and made it "less likely defendant would have been detected if he had committed an additional crime. These factors support the asportation requirement for kidnapping." (*Id*. at p. 1435; see *People v. Shadden*, *supra*, 93 Cal.App.4th at pp. 168-169 [movement of nine feet to the back of a store meets the asportation requirement of kidnapping]; *People v. Smith* (1995) 33 Cal.App.4th 1586, 1594 [movement of the victim from a driveway "open to street view" to an RV increased the risk of harm to the victim].)

Here, the record amply supports the jury's kidnapping verdict. Williams picked up Jazmyne near her front door, after her mother had gone inside, and carried her 26 feet, to within approximately 100 feet of his RV, with as yet no one to stop him. The child was thus moved (struggling and screaming) from a relatively private and protected position deep in her yard to beyond where she could easily dart into the house should she break free. Although Williams carried Jazmyne only 26 feet, never quite reaching the end of her driveway, he had essentially escaped with the child because even if her mother had come out immediately and given chase, he had a 26-foot head start and conceivably could have reached his RV with the girl. Williams was in control at that point, free to assault Jazmyne again on the sidewalk or to run with her to his RV, with no one to stop him but several small children already in his wake. Had Caryn been impeded by circumstances in the house (she had gone in to use the restroom after all), or had she or Anthony been slower

runners, Williams would likely have been driving away with Jazmyne in seconds, placing her beyond reasonable hope of quick rescue. His movement of the child from deep in her front yard almost to the street, and nearer to his RV, thus increased the likelihood that his assault would be uninterrupted and further assaults undetected.

Thus, the 26 feet Williams carried Jazmyne G. from her front door to the street—before Caryn G. came out and intervened—were substantial for purposes of kidnapping. Absent Caryn's intervention those feet meant the difference between freedom and severe peril.

B. Threats

Williams contends insufficient evidence supported his conviction for making threats. We disagree.

To establish the crime of making threats, the prosecution "must prove '(1) that the defendant "willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person," (2) that the defendant made the threat "with the specific intent that the statement . . . be taken as a threat, even if there is no intent of actually carrying it out," (3) that the threat . . . was "on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat," (4) that the threat actually caused the person threatened "to be in sustained fear for his or her own safety or for his or her immediate family's safety," and (5) that the threatened person's fear was "reasonabl[e]" under the circumstances.' " (*In re George T.* (2004) 33 Cal.4th 620, 626.)

1. Post-Detention Statements

Here, Williams shouted to Caryn G. and her family from within a police car, "I will fucking come back and fuck you all up," and "I'm coming back. I'm coming back for you." He made the statements shortly after entering Caryn's property and carrying away one of her children. Caryn was in no position to know whether police would arrest or release Williams, and she was afraid that even if he was arrested he would return later. The jury could reasonably conclude from this evidence that Williams made these statements willfully, intending them to be taken seriously; that they carried a gravity of purpose and an immediate prospect of execution; and that Caryn G. actually sustained a reasonable fear for her or her children's safety.

Williams argues Caryn's fear could have been neither reasonable nor sustained, as he was shortly thereafter arrested and taken to jail, and did not return. The argument is without merit. Williams's statements and their context suggested he was not averse to bold action and would not scruple to attack a woman or her young children, and it was not then apparent that he would not shortly be free to attack the family. Caryn's fear that Williams would return was eminently reasonable, as she had just come within seconds of losing a child on his first visit, and would have if not for a timely warning from Anthony G. If Williams was willing to attack the family with no provocation, Caryn could reasonably fear he would do so now that her actions had caused him to be taken into custody.

2. Pre-Detention Statement

At trial, the prosecution's theory was that Williams's first statement to Caryn G. also constituted a criminal threat. Before police arrived, Williams told Caryn, "Bitch, you don't know who I

am. You don't know what I am capable of." Williams argues this statement was so ambiguous as to convey no threat, and in any event did not cause Caryn to fear him, as after it was made she continued to berate him for having taken Jazmyne. We disagree.

Williams had just taken Caryn's daughter, then menaced Caryn, then continued to menace her from the police car. The statement before he was detained cannot be parsed from the activity surrounding it and held to be innocuous in isolation. Williams's conduct, including both statements, created an atmosphere steeped in danger to Caryn and her family. To parse one statement from the next and call it innocuous would be to ignore its context and the gestalt of the situation.

Williams argues his threats were protected by the First Amendment. He is incorrect. (*People v. Toledo* (2001) 26 Cal.4th 221, 233 [threats made in violation of section 422 are not protected speech].)

We conclude substantial evidence supported the convictions for both section 209 kidnapping and making threats.

II. Jury Instructions

A. Attempted Kidnapping

Williams contends the trial court erred by failing to instruct on attempted kidnapping because there was evidence that any kidnapping was thwarted before he could move Jazmyne G. a substantial distance.

" 'Under California law, a lesser offense is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser.' " (*People v. Breverman* (1998) 19 Cal.4th 142, 154, fn. 5.)

A trial court errs if it fails to instruct "on all theories of a lesser included offense which find substantial support in the evidence. On the other hand, the court is not obliged to instruct on theories that have no such evidentiary support." (*Id*. at p. 162.) The "existence of '*any* evidence, no matter how weak' will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is 'substantial enough to merit consideration' by the jury. [Citations.] 'Substantial evidence' in this context is ' "evidence from which a jury composed of reasonable [persons] could . . . conclude" ' that the lesser offense, but not the greater, was committed." (*Ibid*.)

A trial court has no duty to instruct the jury on a lesser included offense if the evidence is such that the defendant, "if guilty at all, was guilty of the greater offense." (*People v. Kelly* (1990) 51 Cal.3d 931, 959.)

Attempted kidnapping is a lesser included offense of kidnapping. (*People v. Mullins* (1992) 6 Cal.App.4th 1216, 1221.) A conviction for kidnapping requires proof the movement of the victim "is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in," the underlying crime. (§ 209, subd. (b)(2).) A conviction for attempted kidnapping requires proof "the defendant had the specific intent required for kidnapping . . . and that the movement, if completed as the defendant intended, would have been more than merely incidental to the underlying crime . . . and would have substantially increased the risk of harm over and above that necessarily present in the" underlying crime. (*People v. Mullins*, *supra*, 6 Cal.App.4th at p. 1221.) A conviction for attempted kidnapping is proper, for example,

where the defendant's "intent was to move [the victim] much farther and that he was prevented from doing so only by her successful escape." (*Id*. at pp. 1220-1221.)

Here, the trial court instructed the jury on section 209 kidnapping and also the lesser included offense of simple (section 207) kidnapping. Williams did not request instructions on attempted kidnapping, and the court did not instruct the jury on this crime.

There is no substantial evidence in the record that Williams moved Jazmyne only an insubstantial distance. It was undisputed that at the time of the kidnapping, Caryn G. was in the house, and 12-year-old Anthony, after Williams shrugged him off, had run in to get her. Thus with no one around except for three small children, Williams moved Jazmyne 26 feet beyond her front door, from the safety of her yard almost to the street—and 26 feet nearer to his nearby RV. His vacuous explanation that he did so to protect her merited no consideration by the jury, as it could not reasonably have led them to conclude Jazmyne faced no more danger of sexual abuse near the street than she had at her front door. Even if it is conceivable the jury could have credited Williams's explanation in theory, there is no reasonable probability it would have done so. (*People v. Watson* (1956) 46 Cal.2d 818, 836 [conviction may be reversed for error only where it is reasonably probable the defendant would have achieved a better outcome].)

B. Attempted Threats

An attempted criminal threat is a lesser included offense to making a criminal threat. (See *People v. Toledo*, *supra*, 26 Cal.4th at pp. 227-230.) Williams argues the trial court erred in failing to instruct on the lesser included offense of attempting to

make criminal threats because there was evidence that when Caryn G. confronted him she was not actually frightened by his first statement: "Bitch, you don't know who I am. You don't know what I am capable of." This is so, he argues, because she appeared calm on her 911 call, and dared to brace him in the street even after the statement.

We reject the argument out of hand. First, that a mother fights for her children is not substantial evidence that she is unafraid. Under the circumstances here, the jury could not reasonably conclude Caryn had no fear of Williams. Second, as discussed above, Williams's first statement cannot be separated from his second. The totality of his actions created and fed upon a situation ripe with fear. No element of his conduct was discrete, and the jury could not reasonably parse one statement from the next and conclude this one was fearful but that one was not. Even if it could, no purpose would be served because Williams faced only one count of making criminal threats, and no evidence indicated his statement made from the police car left Caryn unmoved. That statement alone supported his conviction. Third, even if the jury could parse Williams's two statements into threatening and nonthreatening categories, there is no probability it would have done so. His first statement was designed to create distance between him and Caryn. It had the desired effect, as she then permitted him to leave and return to his RV. There is no reasonable probability the jury would conclude the statement did not induce fear, much less that it could be taken out of context and declared nonthreatening.

III. Character Impeachment Evidence

During bifurcated proceedings on allegations that Williams had suffered a prior conviction and served prior prison terms, the

prosecution sought permission to admit during the trial in chief evidence that in 2001 Williams exposed his penis to two women and threatened one of them, and suffered misdemeanor convictions for disorderly conduct, loitering for prostitution, and uttering offensive words in public. (§§ 415, subd. (3), 647f, 653.22, subd. (b).) The prosecution requested leave to use this evidence if Williams testified himself or called character witnesses.

Williams objected to admission of the evidence for any purpose, and the trial court provisionally excluded the evidence.

After the prosecution rested, Williams asked for clarification as to what impeachment evidence would be admissible in response to his upcoming character witnesses' testimony. The trial court stated that if the witnesses limited their testimony only to Williams's veracity, then they could be impeached using only his prior felony convictions. But if the witnesses testified Williams was "a good guy" or "not sexually deviant," the court indicated it would have to reassess what evidence would be admissible in rebuttal.

Williams's counsel called as character witnesses only Williams's sister and his former employer, Fahad Atshanm. Atshanm, when asked, "was there any time in which you asked [Williams] to do personal errands involving your family?" replied, "Yes. Such as dropping off stuff at my house, picking up my family. Because I had my family visiting . . . in the summer of 2014, so I had him picking up furniture, dropping off furniture, picking up my little brothers." Williams's counsel then asked, "And based on the time that you knew him, do you have an opinion whether [Williams] is honest in regard to veracity and

honesty?" Atshanm replied, "He is, absolutely. He is a very honest man."

In light of this testimony, the trial court permitted the prosecution to ask Atshanm during cross-examination if he knew that Williams had previously exposed his penis to two "females" and had suffered felony convictions for assault with a deadly weapon and resisting arrest. Atshanm testified that he was unaware of these facts, but they did not change his opinion of Williams.

Williams argues the trial court erred in permitting the prosecution to ask Atshanm a question about his indecent exposure to two females on a prior occasion because the question went beyond the scope of Atshanm's testimony and, in the context of his testimony about his "little" brothers, suggested incorrectly to the jury that Williams's prior misconduct reflected pedophilic tendencies.

We need not determine whether the court erred because any error was harmless. "Absent fundamental unfairness, state law error in admitting evidence is subject to the traditional *Watson* test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439, referring to *People v. Watson*, *supra*, 46 Cal.2d 818.) Here, by the time Atshanm testified, the jury already knew on overwhelming and mostly undisputed evidence that in 2014 Williams went into four-year-old Jazmyne G.'s yard, kissed her, picked her up, and carried her away. This conduct itself ineluctably established his deviant propensity, as there can simply be no cogent, innocuous explanation for it. Williams neither offered one below nor suggests one here. There is no

reasonable probability that some added modicum of deviance established by one nonspecific question about indecent exposure to two females at some time in the past tipped the scales against Williams in the jury's mind.

IV. Sixth Amendment Right to Present a Defense

Williams contends the trial court's admission of impeachment evidence chilled his opportunity to present good character evidence as guaranteed under the Fourteenth Amendment. (*Webb v. Texas* (1972) 409 U.S. 95, 98.) We disagree.

The Sixth and Fourteenth Amendments guarantee state criminal defendants " 'a meaningful opportunity to present a complete defense.' " (*Crane v. Kentucky* (1986) 476 U.S. 683, 690.) A violation of confrontations rights may be shown when foreclosed testimony would have produced a significantly different impression with respect to the defendant's conduct or mental state. (See *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 680.) For example, in *Webb v. Texas*, *supra*, 409 U.S. 95, the Supreme Court held that the trial court committed reversible error when it dissuaded the sole defense witness from testifying by warning him that anything he said could be used against him, and by stating that if the witness lied under oath, the court would personally see that the grand jury would indict him for perjury. (*Id*. at p. 98.) The Court explained that the trial court's unnecessarily intimidating warning effectively "drove that witness off the stand" and thus deprived the defendant of due process of law. (*Ibid*.)

Here, Williams fails to explain what witnesses he would have called but for the trial court's ruling, or what they could have said. Therefore, nothing in the record suggests the trial

court's allowing witnesses to be questioned about Williams's prior indecent exposures dissuaded anyone from testifying about any matter.[2]

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

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[2] In the related petition for a writ of habeas corpus Williams repeats arguments he makes on appeal, makes further arguments regarding other matters, including sentencing, and contends he received ineffective assistance of counsel. We have considered the arguments.

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