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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN RAMIREZ,

Defendant and Appellant.

B279984

(Los Angeles County
Super. Ct. No. BA439322)

APPEAL from an order of the Superior Court of Los Angeles County, Beverly L. Bourne, Judge. Affirmed.

Vanessa Place, 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, Mark A. Kohm and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Jonathan Ramirez appeals from his conviction for assault with intent to commit rape, arguing insufficient evidence supported the jury's conclusion that he intended to rape his victim when he assaulted her. We affirm.

BACKGROUND

About 10:30 on the night of August 25, 2015, W.H., a server and manager at a restaurant, left work and walked across the street to a deserted parking lot. She got into her car and had turned to place her purse on the passenger side of the bench seat when Ramirez, wearing a bandana over his face, pushed in beside her and shoved her toward the passenger side. W.H. flailed at him and tried to scream, but he covered her mouth with his hand and laid on top of her, pinning her down. Ramirez groped W.H.'s whole body over her clothes, including her vagina, put his hand down her V-neck shirt and under her bra, and fondled her breasts, all while she flailed and fought and tried to scream. When W.H. was finally able to break her face away from Ramirez's hand, she screamed what she described at trial as a "visceral, guttural scream of no words." Ramirez released her, exited the car, and ran away.

Justin Baraglia, a restaurant patron and former army military police officer, was sitting in his car in the restaurant parking lot when W.H. ran "screaming and screaming" into the lot. She cried, "He tried to rape me. Oh my god. Oh my god." Baraglia and several restaurant employees quickly caught Ramirez and held him for police. When Baraglia, holding Ramirez on the ground, asked W.H., "Is this the guy who tried to rape you," she replied, "Yes." Ramirez remained silent. Before police arrived, a passing car stopped and the occupants asked

what was happening. Baraglia said, “This guy tried to rape this girl.” Ramirez said, “You got me. You got me. You got me.”

Ramirez was convicted of assault with intent to rape W.H., and assault with intent to commit sexual penetration of an earlier victim in the same evening, and was sentenced to eight years in prison. (Pen. Code, §§ 220, subd. (a)(1), 288, subd. (a)(1).) He timely appealed.

DISCUSSION

Ramirez contends insufficient evidence established his intent to rape W.H. We disagree.

The crime of assault with intent to commit rape requires proof that the defendant intended to have sexual intercourse with his victim and used force to overcome her resistance. (*People v. Nye* (1951) 38 Cal.2d 34, 37, abrogated on another ground by *People v. Rincon-Pineda* (1975) 14 Cal.3d 864.) Specific intent to commit an act may be inferred from circumstances surrounding the act. (*People v. Holt* (1997) 15 Cal.4th 619, 669.)

“When a strange man enters a woman’s bedroom, covers her mouth with his hand, grasps her wrist while she screams and kicks, releases her when she bites his hand, and makes no effort to take any property, it is reasonable to infer that he intended to commit rape.” (*People v. Nye, supra*, 38 Cal.2d at p. 37; *People v. Dobson* (1970) 12 Cal.App.3d 1177, 1180-1181 [sufficient evidence of intent to rape where “the assailant pushed the victim down onto an automobile seat, . . . made no attempt to steal the victim’s purse or any other property, and . . . attempt[ed] to choke the victim into unconsciousness”]; *People v. Craig* (1994) 25 Cal.App.4th 1593, 1596 [sufficient evidence where the assailant grabbed the victim by the hair, pushed her back into the driver’s seat of her car, then shoved his free hand up inside her shirt and

placed his hand flat against her chest, touching both of her breasts outside her bra]; *People v. Padilla* (1962) 210 Cal.App.2d 541, 544 [sufficient intent where assailant entered victim's bedroom and placed a handkerchief over her face, then ran away when the victim fought and screamed].)

Here, Ramirez entered W.H.'s car, covered her mouth with his hand, laid on top of her to pin her on the bench seat while she fought and tried to scream, and fondled her breasts under her shirt. He made no effort to take her purse, and released her only when she freed her mouth and screamed. Under these circumstances it is reasonable to infer that Ramirez intended to rape W.H..

Ramirez argues there is insufficient evidence of intent to rape because he made no attempt to remove W.H.'s pants, he made no statement of intent to rape, he did not attempt to spread W.H.'s legs or turn her over or otherwise place her in some prefatory position for intercourse, and there was no penile involvement.

Although lack of such conduct might have justified an inference that Ramirez did not intend to rape W.H., that inference was for the jury, not us, to draw. Our review is only to determine if substantial evidence supported the jury's inferences. The jury could reasonably infer that Ramirez intended to rape W.H. when he first assaulted her, and abandoned his objective only after the cost of the effort became too high.

DISPOSITION

The trial court's order is affirmed.

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CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

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