Filed 5/22/17 P. v. Kelso CA2/4
Received for posting 5/23/17

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RICHARD MICHAEL KELSO, Defendant and Appellant.	B270395 (Los Angeles County Super. Ct. No. MA061894)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Carlos J. Perez for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Richard Michael Kelso appeals his conviction of three counts of communicating with a minor with the intent to commit a sexual offense, two counts of committing a lewd and lascivious act on a minor, and one count of inducing a minor to engage in a lewd act. Appellant contends: (1) the court lacked territorial jurisdiction over the latter three offenses because they occurred in Oregon; (2) the court erred in admitting into evidence a recording surreptitiously made by the minor's father; (3) the court erred in failing to redact inadmissible or irrelevant matter from the recording; (4) a document containing a printout of the text messages between appellant and the minor was not properly authenticated; and (5) the sentence imposed was excessive. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Information and Amended Informations*

In the original information, filed in 2014, appellant was charged with two counts of having contact with a minor in Los Angeles County for purposes of committing a sexual offense in violation of Penal Code section 288.3, subdivision (a).[1] The counts stated that appellant communicated with a

---

[1] Penal Code section 288.3 provides that "every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4, or 311.11 involving the minor

(Fn. continued on the next page.)

minor ("J.D.") on two different dates (July 5, 2013 in count one and on July 7, 2013 in count two) "with the intent to commit an offense specified in Penal Code Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4, and 311.11."

In July 2015, just prior to trial, the information was amended to add three additional counts.[2] New counts three and four alleged that between June 1 and June 30, 2013 appellant committed "a lewd and lascivious act upon and with the body of [J.D.] . . . with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of [appellant]" in violation of section 288, subdivision (c)(1). New count five alleged that between June 1 and June 30, 2013, appellant committed the crime of "inducing a child to engage in a lewd act" in violation of section 266j.

During trial, the court asked the prosecutor to revise the information to specify which Penal Code section appellant allegedly intended to violate by engaging in the proscribed communications with the minor alleged in counts

---

shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense." Undesignated statutory references are to the Penal Code.

[2] The trial court may permit an amendment of an information at any time during the proceedings provided it is supported by evidence introduced at the preliminary hearing and does not prejudice the defendant's substantial rights. (§ 1009; *People v. Birks* (1998) 19 Cal.4th 108, 129; *People v. Arevalo-Iraheta* (2011) 193 Cal.App.4th 1574, 1580-1581.)

one and two.[3] The prosecutor amended those counts to specify that appellant initiated the communications with the intention to violate section 288.[4] At the same time, the prosecutor amended counts three through five and added an additional count. As amended, counts three and four alleged that the offenses occurred "between June 28, 2013 and July 3, 2013." New count six alleged that "[o]n or about July 8, 2013, in the County of Los Angeles," appellant committed the crime of contact with a minor for purposes of committing a sexual offense in violation of section 288.3, subdivision (a), with the intent to commit an offense specified in section 288.

B. *Evidence at Trial*

In May 2013, 15-year old J.D. began dating appellant's stepdaughter A.A., who was 14 at the time. Both families attended the same Catholic church in northern Los Angeles County. Appellant was well-known to J.D., as he was in charge of a youth program at the church and was the leader of J.D.'s confirmation group. Appellant also had assisted

---

[3] We observe the original information simply listed the same 14 crimes specified in section 288.3, which range from kidnapping (sections 207 and 209) and forcible rape or sexual penetration (section 261, 261.4, 289) to producing or owning child pornography (sections 311.1, 311.2, 311.4 and 311.11).

[4] Section 288, subdivision (a) forbids "any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child . . . with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child . . . ."

J.D.'s family by volunteering to drive his siblings to school when J.D.'s mother became ill. Prior to J.D.'s becoming involved with appellant's daughter, appellant had given gifts to J.D.'s family members, including an annual Disneyland pass to J.D.

Shortly after J.D. began dating A.A., J.D. received permission from his parents to accompany appellant and his family on a trip to Oregon. J.D. decided he did not want to go and informed appellant by text. Appellant talked to J.D.'s father, "Jay," about J.D.'s decision. Appellant seemed "devastated" and "emotional" and told Jay he counted on J.D.'s being there. After J.D. was convinced to change his mind, appellant sent the boy a text message stating: "I'm glad you are going. Believe me when I say you and [A.A.] need some time together."

Appellant, A.A., appellant's wife Jenny, their son, and J.D. began the drive to Oregon on June 28, 2013, arriving the next day. They all stayed together in a rental house. At some point during the trip, appellant discovered J.D. and A.A. on the couch kissing or "making out." They stopped when they saw appellant, but appellant said it was "okay" and encouraged them to continue before going upstairs. Appellant returned 15 minutes later and again found the couple kissing. Appellant placed J.D.'s hand on top of A.A.'s vaginal area and put A.A.'s hand on top of J.D.'s zipper. Appellant left and returned a few minutes later. This time, he placed J.D.'s hand inside A.A.'s underwear and his fingers into her vagina. He then placed A.A.'s hand inside J.D.'s

underwear in contact with his penis.[5] After that incident, appellant told J.D. that A.A. had "freaked . . . out" because J.D. had pubic hair and offered the boy a razor.

After J.D. shaved, appellant asked to examine the area, claiming to have a medical background. While doing so, he touched the boy's penis.

On another occasion during the Oregon trip, appellant, A.A. and J.D. were parked at a Walmart. Appellant said he wanted the two of them to "trust" him and "get closer" to him. He encouraged them to make out in the back seat of the car. They refused. During a subsequent trip to the movies, appellant said "I really think we need [to make] this relationship . . . the three of us, we'll trust each other more." The couple made out in the back seat of the car, and appellant once again guided their hands to each other's genital areas.

On June 30, J.D. received a text from appellant's number saying: "Are you okay, dude?" J.D.'s response suggested he and A.A. should "take a break." Appellant responded: "She loves you and wondered if you guys should wait until you're ready, which I know you are. We have

---

[5] The day before this incident, appellant had asked J.D. about his "comfort zone" and said J.D. needed "to get outside of [his] comfort zone to be in a relationship." Appellant also told J.D. that A.A. did not "feel like she's in a relationship" because J.D. was not "doing things."

talked a lot and I know she wants to be with you. You guys just need to turn it up."[6]

Appellant encouraged J.D. not to tell anyone else what had happened. On June 30, he sent J.D. a text that stated: "I want you guys to work out. Don't hesitate to talk to me about things or ask for help. It's between us." J.D. asked appellant whether he should tell his parents. Appellant said "no . . . . You don't need to tell them" because it was "no big deal" and "they wouldn't care."

At some point during the Oregon trip, appellant proposed giving J.D. and A.A. a "tour" of their bodies after

---

[6] Between June 30 and July 2, appellant sent multiple other texts that were not the basis for separate charges, as they had been sent from and received in Oregon, but provided support for the charges that he had engaged in inappropriate conduct with J.D. In one, appellant asked J.D. how he was feeling and if "everything [went] well last night?" When J.D. responded that he and A.A. had not "do[ne] much," appellant said: "I don't mind. I want you to gain experience. [A.A.] and I are close enough that it doesn't bother me." Appellant also sent texts saying: "I want to help you guys and make sure you last. It's an odd relationship and definitely not a part of the norm, but it worked well with [A.A.'s sister and boyfriend] and it stays between us"; "Let me know if there is anything in particular you want me to check out before you leave . . . besides [A.A.]"; and "After getting to know you these last few days I can honestly say I am so very impressed with you. Be proud of who you are. You are an amazing young man who is going to go very far. I'm happy that you are with [A.A.] and you both deserve the world. Thank you for being so open and allowing me to be part of your life/relationship. I promise not to let you down."

they returned to California to show them "how it worked," "how to use everything," "where it was," "how to use each other," and "how to touch each other."[7] J.D. left Oregon July 3, flying to the Bay Area to visit another friend. Two days later, on July 5, appellant texted J.D. saying: "I'll give you a tour next week. You will be very well educated." Appellant also wrote: "[A.A.] told me that you guys really needed it and you finally feel like her boyfriend. She seems excited about a tour. She's okay with me showing you where everything is and teach you how to work it." Appellant asked J.D. if he was "comfortable" if appellant did "the same" for A.A. J.D. responded affirmatively, and appellant said: "Cool. I didn't know how comfortable you were with me."

On July 7 and 8, texts to J.D. from appellant continued in the same vein. On July 7, appellant texted: "I thought maybe I could see what you did and if you are more comfortable -- if you are comfortable you could show me how it works. . . . I'll do the same with [A.A.] and Tuesday we can all get together." J.D. admitted needing some "instruct[ion]." Appellant responded: "Sounds like a plan. You will be a professional when we are done." He later added: "[Y]ou still have a long way to go. I think once you know where everything is and what is what you will be great. [¶] . . . [¶] Working on that stuff needs to be the exception, not the

---

[7] J.D. believed this conversation took place in Oregon but could not recall precisely.

norm. It almost killed [A.A.'s sister and boyfriend's] relationship, but I think if it's done in a controlled way it can be healthy and beneficial.[8] [¶]. . . [¶] It already has been beneficial. You both seem a lot more comfortable and you seem a lot more sure of yourself."

On July 7, appellant and J.D. also had a text discussion about whether J.D. should continue to shave his pubic hair. Appellant said "I value how much you trust me," and offered to "check . . . out" what J.D. had already done "for no other reason than getting closer to you." On July 8, appellant offered J.D. advice for treating razor burn and asked for and received a picture of a rash that had developed. That same day, J.D. sent appellant information about the size of his penis and appellant "thank[ed]" him for his "trust," and said: "It will pay off. I promise." In addition, because appellant had asked J.D. to tell him if he and A.A. had done anything sexual, J.D. texted him about touching her while they were watching a movie at appellant's home. Appellant responded that A.A. already had told him.

In September, J.D. decided to break up with A.A. In talking to his parents about that, he informed them of what had happened in Oregon. J.D.'s father, Jay, and mother,

---

8 Appellant previously had told J.D. he had "helped" A.A.'s sister and her boyfriend "in the same way he was trying to help [A.A. and J.D.]." Appellant also had been the confirmation group leader for the sister's boyfriend.

Suzanne, confronted appellant and his wife Jenny in appellant's home. Jay secretly recorded the conversation. The recording was played to the jury. In the recording, Jay accused appellant of having J.D. and A.A. make out in front of him. Appellant said he had "walked downstairs," that "[J.D.] got scared," and that appellant said "'that's okay'" because "'they were gonna take it to the next level or whatever. But they were in the house.'" After hearing the accusations, appellant's wife Jenny asked: "Why? Rick, why?" and appellant responded: "Because they asked for help." Jenny also asked: "Do you know what you've done to our family now?" and appellant responded: "I know."[9] In response to questioning by Jay, appellant initially denied placing J.D.'s hand on A.A. or A.A.'s hand on J.D., claiming J.D. initiated the touching on his own, but later said "yes" when asked if he "touched [J.D.'s] hand . . . and guided it into [A.A.'s] pants." Appellant also admitted touching J.D.'s penis, saying it occurred because J.D. asked about trimming his pubic hair.[10]

---

[9] In the audiotape, appellant's wife can be heard saying: "You have ruined our family." After appellant admitted touching J.D. inappropriately, Jenny said: "You need to get out of my house. [¶]. . . [¶] [Y]ou need to get far away, because I'm gonna kill you [¶]. . . [¶] right now." She later said: "[W]ho does that? Unless you're a pervert" and "You don't help kids make out." She can also be heard crying in the background at one point.

[10] Apart from the recording, Jay and Suzanne both testified that appellant admitted touching J.D.'s penis and guiding J.D.'s hand to touch A.A.

The day after the confrontation, Suzanne received a text from appellant's phone that stated: "There is no excuse for my actions. At the time I didn't feel what I was doing [was] wrong. I realize that it was very wrong. More than anything I'm upset that [J.D.] was uncomfortable. I care about your whole family very much. Please let [J.D.] know that I apologize with everything that I have done. I will talk to Father Eben [their priest] today and let him know that I will not be at Spy [a church youth group]. If there is anything I can do to try and fix this with you, please let me know. And we'll also resign from confirmation so [J.D.] doesn't have to feel uncomfortable. Again, I am truly sorry."

A few days later, the two couples went to their church to talk to the priest, Father Eben MacDonald.[11] After the parents talked to the priest, he spoke with J.D. and A.A., first separately and then together. After speaking with the two minors, Father Eben, a mandated reporter, reported suspected inappropriate conduct to the Sheriff's Department.

On September 15, 2013, Dmitriy Kolker, a social worker for the Department of Children and Family Services, interviewed appellant, J.D. and A.A.[12] Appellant told Kolker that he watched A.A. and J.D. make out two or three times, and that he had told A.A. it was okay to make out, "have

---

[11] The witness referred to himself as "Father Eben" and we will do the same.

[12] After the interviews, appellant agreed to move out of the family home.

fun," and "enjoy" J.D. In addition, J.D. reportedly asked appellant about "hygiene" and "trimming," and appellant agreed to show J.D. how he trimmed himself. Appellant said "if" he touched J.D.'s penis, it was to check his trimming. Appellant admitted receiving a picture of J.D.'s razor burn. He denied placing the minors' hands on each other.

Los Angeles County Sheriff's Deputy Susan Velazquez testified she was assigned to investigate the charges. After learning appellant had texted J.D., she connected his cell phone to a Cellebrite device. The machine withdraws stored data from a cell phone and generates a report stored onto a flash drive, which Deputy Velazquez downloaded and provided to the prosecution. The report included text messages to and from J.D., which she had preliminarily reviewed by scrolling through them on J.D.'s phone screen.

2. *Defense Evidence*

A.A. testified for the defense. She stated that when appellant caught her and J.D. making out on the couch at the rental house in Oregon, they stopped. Appellant said it was okay, and spoke to them about setting emotional and physical boundaries. A.A. denied that appellant caused them to place their hands on each other, or that they touched each other in his presence on their own. She denied that she and J.D. made out, with or without appellant's encouragement, in the car when they went to Walmart. She testified that during that trip she was in the passenger seat, not sitting next to J.D., who was in the back. She also

denied that appellant had placed their hands on each other the night the three of them went to see a movie or at any other time. J.D. told her he had shaved or trimmed his pubic hair, but did not tell her why. A.A. denied having told the social worker or Father Eben that she and J.D. had touched each other with appellant's encouragement. A.A. further testified that she sometimes texted J.D. using appellant's cell phone.

A.A.'s sister, Juliana A., testified that she had a normal father-daughter relationship with appellant. He told her sex was never an option before marriage, and that she needed to communicate boundaries and be respected by her boyfriends. Appellant never suggested to Juliana that she and her boyfriend engage in mutual touching of intimate body parts. He did not participate in having them touch each other or attempt to watch them engage in such activity. Juliana did not recall telling a social worker that appellant had talked to her boyfriend about "hygiene" or trimming his pubic hair.

3. *Rebuttal Evidence*

The prosecution re-called Father Eben and Kolker to counter the defense witnesses. Father Eben testified that A.A. had confirmed J.D.'s report that appellant had assisted them in touching each other when he saw them kissing on the couch at the rental house in Oregon.

Kolker testified that Juliana told him her boyfriend had gone to appellant for advice about "hygiene," and she

believed J.D. had done the same. Juliana also told Kolker that appellant gave her and her boyfriend advice about their sexual relationship and that they felt comfortable talking to him about it. A.A. told Kolker that appellant said it was okay for J.D. and her to touch each other when he caught them kissing on the couch. A.A. also said she and J.D. had kissed and touched each other in the car while appellant was driving, with appellant's encouragement.

C. *Pertinent Argument*

The prosecutor argued that appellant's text to J.D. about him and A.A. needing time together indicated he formed the intent to engage in improper conduct prior to leaving California for Oregon. He informed the jury that count one was based on the texts of July 5, count two was based on the texts of July 7 and count six was based on the texts of July 8. Counts three, four and five were based on appellant's actions in Oregon in touching J.D.'s penis and causing the minors to touch each other.[13]

Defense counsel argued that the texts may have been authored by someone other than appellant, pointing to A.A.'s testimony that she sent messages to J.D. using appellant's

---

[13] During deliberations, the jurors asked the court to clarify the activities that comprised counts three and four. The court clarified that count three was based on the allegation that appellant touched J.D.'s penis, and that count four was based on the allegation that appellant directed J.D.'s hand to touch A.A. or A.A.'s hand to touch J.D. in the car on the way to the movies.

cell phone. Counsel also questioned Detective Velazquez's qualifications and the accuracy of the Cellebrite report.

D. *Verdict and Sentence*

The jury found appellant guilty of all six counts. At the sentencing hearing, the court found in mitigation that appellant had no prior criminal history. In aggravation, the court found that the manner in which the crimes were carried out indicated planning, sophistication and professionalism, that the victim was vulnerable because he had been taken out of state and isolated from his parents and support system, and that appellant had taken advantage of the trust J.D.'s parents placed in him. The court sentenced appellant to a term of eight years, four months consisting of the mid-term of six years on count five, four months each on counts one, two and six (one-third the mid-term), and eight months each on counts three and four (one-third the mid-term), all to run consecutively. Appellant also was required to register as a sex offender and to pay various fines. Appellant noticed an appeal.

DISCUSSION

A. *Territorial Jurisdiction*

Appellant contends the California court lacked jurisdiction over counts three through five because the

crimes occurred in Oregon.[14] For the reasons discussed, we disagree.

1. *Background*

J.D. testified at the preliminary hearing. When the prosecutor began asking J.D. about the trip to Oregon, defense counsel objected on the ground that appellant had not been charged with any crime in Oregon.[15] The court "accept[ed] the People's representation" that there was a "correlation" between the Oregon incidents and "the subsequent communications" that were the basis of counts one and two. J.D. described the incident in which appellant placed J.D.'s and A.A.'s hands on each other after he caught them kissing on the couch at the rental house in Oregon, and the incident in which appellant touched J.D. after J.D. shaved himself. The prosecutor's questioning of J.D. established that on July 5, 7 and 8, 2013, after he arrived back in California, J.D. received the texts from appellant's cell phone (described in greater detail above) discussing the

---

[14] Appellant's brief identifies the extraterritorial counts as "1 through 4." As discussed, counts one and two were for communications within California. Counts three, four and five were based on touching J.D. or causing J.D. and A.A. to touch each other, which occurred during the Oregon vacation.

[15] As discussed, the original information had two counts based on appellant's communications with J.D. on July 5 and 7, 2013.

"tour," "educating" J.D., his penis size and whether he should continue shaving.[16]

Prior to trial, appellant moved to vacate or set aside the information, contending the prosecution had not established at the preliminary hearing the location from which the alleged July 5 and 7 communications were sent or the location at which they were received. He specifically contended: "No evidence whatever was taken placing the alleged victim, [appellant], or the cell phone in question inside the geographical/territorial jurisdiction of Los Angeles County. [¶] Therefore, jurisdiction to prosecute this matter in Los Angeles County has not been established, and the complaint must be vacated/set aside."

At the hearing, the prosecutor contended the alleged failure to question J.D. about his location when he received the texts was at most a harmless omission. (See § 995a, subd. (b)(1) [trial court has discretion to deny motion to set aside information when motion is based on "minor errors of omission, ambiguity, or technical defect which can be expeditiously cured or corrected without a rehearing of a substantial portion of the evidence"].) He offered to cure any omission the court found significant by calling J.D. to say where the communications were made or received. He stated that although California arguably had jurisdiction

---

[16] The messages on July 7 included a back and forth asking J.D. to "come hang out" with A.A., indicating all parties were back in Los Angeles County by that date.

over certain violations that occurred in Oregon, "I haven't even charged those yet." Defense counsel argued that it was clear from the preliminary hearing that J.D. did not recall where he was when he received the texts sent July 5 and 7, 2013.

The court denied the motion, observing that J.D. had testified he was back in California on July 3, and that "the various text messages back and forth, presumably from [appellant] to the victim, occurred after that July 3rd demarcation . . . [¶] so I do find that it was in the State of California." As discussed above, the prosecutor thereafter amended the information twice, adding counts three to five, based on appellant's touching J.D. and encouraging and assisting J.D. and A.A. to touch each other in Oregon.[17]

---

[17] Defense counsel did not object to the amendment or ask the court to revisit jurisdictional or venue-related issues. Respondent contends appellant's contention is forfeited because he failed to raise a territorial jurisdiction challenge in the trial court with respect to counts three through five. This type of jurisdictional challenge cannot be forfeited. (See 4 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Jurisdiction and Venue, § 17 p. 129 ["[A] court that is not competent to try a defendant for [the] violation [of a state criminal statute], or a competent court that seeks to apply the statute to activities of a defendant that occurred wholly outside the territorial jurisdiction of the state, lacks judicial jurisdiction of the subject matter, and its judgment is void"].)

2. *The trial court had territorial jurisdiction over the crimes charged in counts three through five*

Section 778a, subdivision (a) provides that if a person "with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely within this state." "Under this provision, California has territorial jurisdiction over an offense if the defendant, with the requisite intent, does a preparatory act in California that is more than a de minimis act toward the eventual completion of the offense." (*People v. Betts* (2005) 34 Cal.4th 1039, 1047; see also 4 Witkin & Epstein, Cal. Criminal Law, *supra*, Jurisdiction and Venue, § 22, p. 134 ["Whenever a person, with intent to commit a crime, does an act in execution of that intent within California that culminates in the commission of a crime either within or without California, that person is punishable for the crime in California in the same manner as if the crime had been committed entirely within this state"].)

Appellant contends the pertinent rule can be found in *People v. Buffum* (1953) 40 Cal.2d 709, in which the Supreme Court stated that provisions affording jurisdiction over interstate crimes such as section 778a "apply where the acts done within the state are sufficient to amount to an attempt to commit a crime but not otherwise." (*Id*. at p. 716.) The *Buffum* rule was applied to a defendant

charged with conspiracy. As the Supreme Court subsequently explained, it was never intended to apply to substantive offenses. (*People v. Morante* (1999) 20 Cal.4th 403, 438-439 (*Morante*).)[18] Appellant was not charged with conspiracy, but with personally committing lewd and lascivious acts on a minor and inducing a minor to engage in a lewd act.

Section 778a was applied to a situation analogous to the present one in *People v. Brown* (2001) 91 Cal.App.4th 256, 266-267. There, the court held California had jurisdiction to prosecute the defendant, a doctor whose

---

[18] In *Morante*, the defendant had hired a courier in California to travel to Texas to receive a large quantity of cocaine. She drove him to the airport, paid for his ticket, and coordinated all his meetings telephonically from California. The courier did not return to California, but transported the drugs to other states for sale, and was arrested in possession of the drugs in Michigan. The defendant was charged with both conspiracy to possess and transport cocaine for sale, and possession and transportation for sale under an aiding and abetting theory. Although the court found "the overt acts . . . performed inside the state did not . . . amount to an attempt to commit the offenses," it concluded that "the[] preparatory acts (coupled with the requisite intent) clearly constituted more than de minimis acts toward the eventual completion of the offenses," and when considered with the offenses completed in other states, "afforded our state jurisdiction to punish defendant." (*Morante, supra,* 20 Cal.4th at pp. 409, 433, 436, 438.) Accordingly, the court reversed the conspiracy conviction, but affirmed the defendant's conviction of the substantive offense under the aiding and abetting theory. (*Id.* at p. 415.)

medical license had been revoked, where the defendant had met with the victim in California to discuss the removal of his leg, the operation occurred in Mexico, and the victim died after returning to California with an infection. The court explained: "[J]urisdiction to prosecute in California a crime completed elsewhere is not dependent on the commission in this state of an attempt to commit the offense. Rather, it is necessary only that in this state there be non de minimis preparatory acts done with the intent of completing the crime." (*Id*. at p. 266.)

To the same effect is the holding in *People v. Anderson* (1961) 55 Cal.2d 655, where the defendants met the victim in California and convinced him to withdraw funds from his bank to bet on a "sure proof" roulette system in Las Vegas. The theft was consummated at a casino in Nevada, where the defendants took the victim's money under the ruse of getting chips from the cashier's window. The court held that "California has a legitimate interest in applying its penal sanctions to those who by misrepresentations in this state lure persons and their property from this state to another jurisdiction for the purpose of there appropriating the property." (*Id*. at pp. 658, 662.)

People v. Renteria (2008) 165 Cal.App.4th 1108, 1111-1112, 1116 also offers guidance. There, the defendant, while driving a stolen car, saw a highway patrol officer behind him and turned onto a federal military base before the officer activated his lights and siren. The Court of Appeal affirmed his conviction of felonious flight from a peace officer. The

court found that although "the acts of evasion" -- "flight from a peace officer with wanton disregard for the safety of persons and property when pursued by a marked police vehicle, driven by a uniformed officer, displaying a forward facing red light" -- all occurred on the military base, there was sufficient evidence that the defendant "while still in California, formed the intent to evade, willfully flee or otherwise attempt to elude a pursing officer and did acts in execution or partial execution of such intent within this state." (*Id.* at pp. 1116-1117.) The court explained that the question whether this state has a legitimate interest in a criminal act such that it is reasonable to convict a defendant of its commission here "can only be answered by a review of all the particular facts and circumstances of a case and is not solely dependent on concepts like attempt or preparation, concepts that may in some circumstances do more to cloud rather than illuminate the relevant-interest analysis. The ultimate question is whether given the crime charged there is a sufficient connection between that crime and the interests of the State of California such that it is reasonable and appropriate for California to prosecute the offense." (*Id.* at p. 1118.)

Here, the evidence demonstrated more than de minimis preparatory acts on appellant's part and ample connection between the crimes charged in counts three through five and this state. Appellant gained J.D.'s trust and affection by leading their church's youth group and J.D.'s confirmation group, by helping J.D.'s parents in their

time of need, and by giving generous gifts to J.D. and other family members. He invited J.D. to accompany the family on the trip to Oregon and secured the permission of J.D.'s parents in California. When J.D. expressed hesitation about going, appellant spoke to the boy's father to seek his assistance in changing J.D.'s mind. When J.D. came around, appellant texted him directly and assured him of "time together" with A.A. After the group returned to California, appellant used the incidents that occurred there to continue to intrude into J.D.'s most intimate decisions about his personal life and to set up an even more sordid interaction between himself and the minors. It is reasonable and appropriate for California to protect young people from predatory behavior that begins and is consummated in California, even where some acts are perpetrated out of state.

B. *Admission of Recording*

Appellant contends the trial court erred in admitting the recording made by J.D.'s father of the confrontation with appellant.

1. *Background*

Prior to trial, the defense moved to suppress the recording made by J.D.'s father when he confronted appellant. Appellant contended the recording was made in

violation of section 632, subdivision (a)[19] and was rendered inadmissible by section 632, subdivision (d), which provides: "Except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding."

The court denied the motion to suppress, concluding the exception under section 633.5 applied because the crime involved violence.[20]

2. *The trial court did not err in admitting the recording*

a. *The recording was admissable under the Truth-in-Evidence provision of the California Constitution*

There is no dispute that the recording made by J.D.'s parents of their discussion of J.D.'s allegations with

---

[19] Section 632, subdivision (a) precludes the use of a "recording device" to capture "confidential communication" without the consent of all the parties to the communication.

[20] Section 633.5 provides: "Nothing in Section . . . 632 . . . prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of . . . any felony involving violence against the person . . . . Section[] . . . 632 . . . do[es] not render any evidence so obtained inadmissible in a prosecution for . . . any felony involving violence against the person . . . ."

appellant and his wife was made without appellant's knowledge and consent or that section 632, subdivision (d) requires exclusion of such recordings. Respondent contends that the trial court correctly found that the crime fit within the "violence against the person" exception of section 633.5, and that we should construe any violation of section 288, subdivision (c) -- a lewd act upon a child age 14 or 15 -- as an act of violence. As respondent acknowledges, however, the Legislature did not include violations of section 288, subdivision (c) within its definitions of "violent felon[ies]." (See § 667.5, subd. (c); § 1170.12, subd. (c)(2)C)(iv).) Moreover, respondent identifies no evidence of actual violence on appellant's part. We conclude, however, that the recording was admissible because the exclusionary rule of section 632, subdivision (d) was abrogated by the Truth-in-Evidence provision of the California constitution, and affirm its admission on that theory. (See *People v. Mason* (1991) 52 Cal.3d 909, 944 [in determining the admissibility of specific evidence, "it is axiomatic that we review the trial court's rulings, and not its reasoning"].)

Proposition 8, "an initiative measure designed to make significant substantive and procedural changes in California criminal law," was adopted by the voters in 1982. (*People v. Wheeler* (1992) 4 Cal.4th 284, 291 (*Wheeler*).) Among other things, it added section 28(d) to article 1 of the California Constitution, the "'Truth-in-Evidence' amendment." (See *Wheeler*, *supra*, at p. 291.) Section 28(d) provides that unless a two-thirds majority of the Legislature enacts legislation

that states otherwise, or unless the matter is covered by existing statutory rules of evidence relating to privilege or hearsay or Evidence Code, sections 352, 782 or 1103, "relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court." The provision was intended to permit courts to exclude relevant, but unlawfully obtained evidence, "only if exclusion is required by the United States Constitution . . . ." (*In re Lance. W.* (1985) 37 Cal.3d 873, 890 (*Lance W.*).) It applies to both judicially created rules of exclusion (*In re Demetrius A.* (1989) 208 Cal.App.3d 1245, 1247) and to statutory evidentiary restrictions (*Lance W.*, *supra*, at p. 893; *People v. Ratekin* (1989) 212 Cal.App.3d 1165, 1169 (*Ratekin*)). In other words, "section 28(d) requires the admission in criminal cases of all 'relevant' proffered evidence unless exclusion is allowed or required by an 'existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, [s]ections 352, 782 or 1103,' or by new laws passed by two-thirds of each house of the Legislature." (*Wheeler*, *supra*, 4 Cal.4th at p. 292, italics omitted.)

In *Ratekin*, the appellate court examined a provision closely related to section 632 -- section 631 -- and concluded that Proposition 8 abrogated the exclusionary rule of section

631.[21] (*Ratekin, supra,* 212 Cal.App.3d at p. 1169.) The court specifically found that section 631 had not been enacted by a two-thirds vote of the membership in each house of the Legislature. (*Ratekin, supra,* at p. 1169.) We are confronted with an issue not resolved in *Ratekin*. In 1985, the Legislature enacted the Cellular Radio Telephone Privacy Act of 1985 (the 1985 Act), adding section 632.5, which prohibits the interception of cellular telephone communications absent specified circumstances. (Stats. 1985, ch. 909, pp. 2900-2904.) In adding section 632.5, the Legislature amended section 632 and related statutes to reflect the addition of a new statutory provision, without making substantial changes to the working of the exclusionary rule set forth in subdivision (d) of section 632. At least two-thirds of the members of each house of the Legislature voted in favor of the 1985 Act.[22] The question is whether the Legislature's 1985 enactment revived the

---

[21] Sections 631 and 632 are part of the Invasion of Privacy Act (§ 630 et seq.). Section 631 bars wiretapping without the consent of all parties to the communication, and similarly prohibits evidence obtained in contravention of the statute from admission in a judicial proceeding. (§ 631, subds. (a) & (c).)

[22] The legislative basis of the 1985 Act was Senate Bill No. 1431 (1985-1986 Reg. Sess.). (Sen. Final History, (1985-1986 Reg. Sess.) p. 965.) Regarding that bill, the Assembly vote was 64 ayes and 7 noes, and the Senate vote was 27 ayes and 4 noes. (*Ibid.*) As the Assembly has 80 members and the Senate has 40 members (Cal. Const., art. IV, § 2, subd. (a)), the affirmative votes constituted at least two-thirds of each house's membership.

exclusionary rule in subdivision (d) of section 632, abrogated by Proposition 8.

We conclude the exclusionary rule was not revived. The 1985 Act added a new provision that protected cellular phone communications and provided a declaration of legislative intent that focused exclusively on the need to protect such communications. (Stats.1985, ch. 909, § 2, pp. 2900-2901.) The declaration stated: "[T]his act is intended to provide a legal recourse to those persons whose private cellular radio telephone communications have been maliciously invaded by persons not intended to receive such communication." (*Id.*, § 2, p. 2900.) The Legislature said nothing about existing exclusionary rules, such as the one found in subdivision (d) of section 632, and established no new exclusionary rules. Accordingly, we conclude the Legislature did not intend to revive the exclusionary rule of subdivision (d) of section 632.

We find support for our conclusion in *Lance W.*, in which the Supreme Court addressed subdivision (a) of section 1538.5, which states, inter alia, that a criminal defendant may seek suppression of evidence obtained through a search or seizure in violation of "state constitutional standards." After Proposition 8 abrogated that provision, the Legislature amended it twice, once by a two-thirds majority in both houses of the Legislature. (See *Lance W.*, *supra*, 37 Cal.3d at pp. 893-896.) The Supreme Court determined that the amendments did not reinstate the abrogated provision, as there was no evidence of legislative

intent to do so. (*Ibid.*) The only mention of section 1538.5 referred to its amendment as a "noncontroversial 'clean-up' amendment." (*Lance W.*, *supra*, at p. 894.) The changes to section 632 were similarly made to clean up section 632 and ensure its language reflected the addition of a new provision. We conclude the 1985 Act had neither the intent nor effect of reviving an exclusionary rule abrogated by Proposition 8. Accordingly, the trial court did not err in admitting the recording.

b. *Assuming admission of the recording was error, it was not prejudicial to appellant*

Even had the court erred in admitting the recording, its admission caused appellant no prejudice. Jay and Suzanne were present when appellant made the statements, and both independently testified that appellant admitted touching J.D. and causing J.D. to touch A.A. Thus, the recording was merely cumulative. Moreover, the day after the confrontation, appellant texted Suzanne, stating there was "no excuse" for his actions, that he was "upset" about making J.D. "uncomfortable," and that what he had done was "very wrong," corroborating that he had admitted to a culpable act. Further, J.D. testified extensively concerning appellant's actions in Oregon. His testimony was corroborated by the texts appellant sent him, referencing the shaving incident and otherwise indicating that appellant had been inappropriately involved in J.D.'s and A.A.'s physical relationship. On this record, there was no

reasonable probability that appellant would have obtained a more favorable result had the recording not been admitted. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.)

C. *Admission of Recording Without Redaction*

Appellant contends the trial court erred in permitting the entire recording to be admitted into evidence because portions were irrelevant or contained inadmissible hearsay.

1. *Background*

In a discussion of the recording occurring toward the end of trial, after the recording had been played to the jury, defense counsel raised an objection to its admission, stating it contained hearsay and improper commentary.[23] The court stated that the time to litigate the contents of the recording was "prior to the playing of the tape [to the jury]." The court stated: "I've asked repeatedly throughout this trial, asked whether there are any 402 motions, and my assumption is when everybody has copy of the tape and everyone has a copy of the transcript, then if there are portions that need to

---

[23] Appellant also suggests the court erred by not reviewing the tape before allowing the jury to hear it. As defense counsel had heard the recording and raised no objection to its being played to the jury based on its content, the court was not required to review the tape sua sponte. (See *People v. Spencer* (1963) 60 Cal.2d 64, 80, fn. 9 [no requirement that court review recording to assess completeness or intelligibility where "none of the parties who had heard the tape voiced any objections on those grounds"].)

be excised out, that they're handled pretrial, not after it's been played in front of the jury and they've received the evidence." After concluding the objection was untimely, the court overruled the hearsay objection, stating: "I think that all of this goes into the context of the statements and/or the silence of your client. Whether they're relaying [J.D.'s] accusations or [appellant's] wife is screaming at him that he's ruined the family, I think that all falls under the adoptive admission when people are accusing you of such things and you have certain responses or don't have responses that comes in as admissions."

2. *The trial court did not err in admitting the unredacted recording*

A verdict or finding will not be set aside or reversed on appeal by reason of erroneous admission of evidence unless the appellant made a timely and specific objection during trial. (Evid. Code, § 353; see, e.g., *People v. Boyette* (2002) 29 Cal.4th 381, 423 [where defense counsel allowed prosecutor to show photographs of victims when questioning witnesses, and objected only when prosecutor moved to admit the photographs into evidence, court found objection was not "sufficiently timely to preserve the issue [on appeal]"]; *People v. Virgil* (2011) 51 Cal.4th 1210, 1247 [same].) Here, appellant waited until after the recording had been played to the jury, objecting to its admission on the grounds asserted on appeal only when it was thereafter offered into

evidence.[24] The trial court properly found the objection was untimely.

Moreover, there was little, if anything, in the recording that would have been inadmissible on hearsay or any other ground, even had an objection been timely raised.[25] During the conversation, appellant's responses, or failure to respond, to his wife's questions and comments were highly pertinent and constituted admissions or adoptive admissions. When first confronted by J.D.'s parents with J.D.'s description of appellant's inappropriate behavior in Oregon, appellant's wife Jenny questioned why he would have done such things. Appellant claimed the minors had asked for his help. His affirmative response when Jenny asked if he knew what he had done to the family was further evidence of his guilt, as was his failure to respond when Jenny said he needed to move out of their house, that his conduct in "help[ing] kids make out" was "pervert[ed]," and that he had ruined their family.[26] Accordingly, the trial

---

[24] Appellant's pre-trial motion to exclude the recording was based solely on the ground that it had been made in violation of section 632.

[25] There were brief comments between Jay and Suzanne heard in the beginning of the recording about how J.D. was feeling and at the end about what appellant had said that would likely have been redacted had a timely objection been made. Appellant raises no specific objection to those comments.

[26] As respondent points out, appellant's brief misidentifies the speaker as Suzanne.

court would not have abused its discretion in admitting the tape in its entirely even had an objection been timely made. (See Evid. Code, § 1221 ["Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth"]; *People v. Riel* (2000) 22 Cal.4th 1153, 1189 [where defendant fails to speak after having been accused of a crime or makes an "'evasive or equivocal'" reply, "'both the accusatory statement and the fact of silence or equivocation may be offered as an implied or adoptive admission of guilt'"; "'a direct accusation in so many words is not essential'"].)

Appellant also claims the court should not have played the portion of the recording where J.D.'s parents related what J.D. said to them. When a recorded interview is admitted into evidence, questions and statements from the interviewer are properly admitted, not for their truth but to give context to the defendant's responses. (*People v. Maciel* (2013) 57 Cal.4th 482, 524.) Without that context, appellant's affirmative responses to questions asking whether he guided J.D.'s hand to A.A. and touched J.D. inappropriately would have made no sense. There was no error in permitting the accusations and questions raised by J.D.'s parents into evidence.

D. *Admission of Text Messages*

Appellant contends the texts on J.D.'s cell phone should not have been admitted because the document generated by the Cellebrite device containing the retrieved text messages was not properly authenticated, and that the qualifications of the operator, Deputy Velazquez, were not properly determined by the court.

1. *Background*

Prior to trial, the defense moved to exclude the document on which the texts retrieved from J.D.'s cell phone were printed out. Defense counsel stated that he had requested, but not received, training records for the person who retrieved the texts and maintenance records for the device used to extract the texts, and that he had not received all the pages of the report generated by the device. He contended: "The prosecution used a person . . . to operate the [device] whose qualifications are unknown; there is no authentication of the device from which the data was retrieved; these two facts, coupled with the missing pages of the report must favor exclusion of the text and data information." He also contended the defense had "no way to authenticate what [cell phone] was analyzed" or "where the purported evidence in the form of text messages came from . . . ." He further asserted that the court should determine prior to the introduction of the document whether the technology used to extract the texts from the cell phone was reliable and had gained general acceptance in the field.

In a report attached to the motion, the defense expert stated he had been given a document marked pages 116 of 187 through 137 of 187. He stated: "The format of the report is consistent with that of a report generated by Cellebrite's Universal Forensic Extraction Device (UFED), a forensic tool used to retrieve data from mobile devices. The authenticity of the document cannot be verified, however, because there are significant portions of the report that are missing. A report generated by the UFED contains information documenting the version and serial number of the UFED device as well as data contained on the mobile device that enables the examiner to positively associate the mobile device with data contained in the report." The defense expert acknowledged that "[t]he Cellebrite tool used by the examiner is an industry standard tool . . . ." However, he claimed there was "no way to authenticate the [cell phone] from which the data was retrieved" or to determine whether "exculpatory evidence ha[d] been excluded." In addition, he found "no documentation of the examiner's qualifications" and "no way to evaluate whether proper procedures were followed" or whether "the equipment used was properly updated and maintained."

At the hearing on the motion to exclude, defense counsel acknowledged having received the missing pages from the report. Defense counsel stated he still had questions about the qualifications and training of the operator of the Cellebrite device, and whether it was operated correctly. The court stated: "I don't think that's a

proper motion for [an Evidence Code section] 402 [hearing]. I believe that is a foundational issue. If the prosecution [calls] a witness[,] before that witness can testify as to the documents that were retrieved, that witness would have to lay a foundation that they are qualified to use the machine and extract the information, and certainly that is subject to cross-examination.[¶] But in terms of the 402, . . . your own expert says that this is a standard industry tool." The court further stated: "Certainly [J.D.] can say I received this text message on the screen, it was from this number, or on the screen it came up 'Richard Kelso,'" and the jurors could "draw whatever inferences they want from there." If the defense believed appellant's cell phone "was spoofed or stolen or in someone else's possession," the court observed, it could "put on whatever relevant evidence [it had]. But that doesn't preclude a witness from saying I received text messages from this number . . . ."

During trial, Deputy Velazquez testified she had received special training to learn to use the machine, and had used it hundreds of times in the past. The machine was regularly used in her investigations and she relied on it to be accurate.

The prosecutor did not attempt to put the Cellebrite-generated document into evidence on its own. Instead, each text to and from appellant's number was shown to J.D. at trial. J.D. testified that the document shown to him by the prosecutor accurately set forth the texts he received from and sent to appellant's number.

2. *The trial court did not err in admitting the document containing a printout of the texts sent between appellant and J.D. during the relevant period*

As even the defense expert acknowledged, the Cellebrite device used to extract the texts from J.D.'s cell phone was the "industry standard tool." By the time of trial, appellant's counsel had been provided a complete copy of the report generated, alleviating the majority of his and his expert's concerns about its accuracy. Moreover, Detective Velazquez was examined about her qualifications and attested to using the device hundreds of times and having cross-checked its accuracy by scrolling through J.D.'s text message screen. However, we need not rely on this evidence to support the admission of the document containing the printout of the text messages stored on J.D.'s phone -- or the texts themselves --because the prosecution met its burden of establishing that it was an authentic and accurate representation of those text messages through other means.

All writings must be authenticated before they may be received into evidence. (Evid. Code, § 1401.) "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by

law." (*Id.,* § 1400.)[27] ""[L]ike any other material fact, the authenticity of a [document] may be established by circumstantial evidence."" (*People v. Valdez*, *supra*, 201 Cal.App.4th at p. 1435; see Evid. Code, § 1420 ["A writing may be authenticated by evidence that the writing was received in response to a communication sent to the person who is claimed by the proponent of the evidence to be the author of the writing"]; Evid. Code, § 1421 ["A writing may be authenticated by evidence that the writing refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing"].) Moreover, although the original is the best evidence of the contents of a writing, "[a] printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent." (Evid. Code, § 1553.) The trial court's decision that a writing has been sufficiently authenticated is reviewed under an

---

[27] As explained in *People v. Valdez* (2011) 201 Cal.App.4th 1429: "'[T]he fact that the judge permits [a] writing to be admitted in evidence does not necessarily establish the authenticity of the writing; all that the judge has determined is that there has been a sufficient showing of the authenticity of the writing to permit the trier of fact to find that it is authentic.' [Citation.]" (*Id*. at pp. 1434-1435.) "'The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility. [Citations.]'" (*Id*. at p. 1435.)

abuse of discretion standard. (*People v. Lucas* (1995) 12 Cal.4th 415, 466.)

The document containing the printout of the texts was adequately authenticated by J.D. The prosecutor showed J.D. each text message on the printout before showing it to the jury and asked whether it was an accurate reproduction of a text he had sent to or received from appellant's cell phone. As the owner of the phone on which the texts were stored and a party to the communications, J.D.'s testimony was sufficient to authenticate the accuracy of the document's portrayal of the texts. That the texts were from appellant was supported by the content and timing of the messages, as well as the fact that they came from the number given to J.D. by appellant. Appellant was free to attempt -- as he did -- to persuade the jury that the texts were written by someone else. But the document containing the printout of the texts was sufficiently authenticated to place it before the jurors and to allow them to draw the reasonable inference that the document accurately portrayed the content of the texts between appellant and J.D. during the relevant period.

E. *Length of Sentence*

Appellant contends the sentence imposed was excessive.[28] He contends the evidence does not support the court's findings that the manner in which the crimes were

---

[28] As respondent points out, appellant's contention that he received a sentence of "49 years to life" is erroneous.

carried out indicated planning, sophistication and professionalism, claiming he "chanced upon the minors making out" and that "[h]e did not groom them." We disagree.

A trial court has "'broad discretion to impose consecutive sentences when a person is convicted of two or more crimes.'" (*People v. Leon* (2010) 181 Cal.App.4th 452, 467.) The court may consider such factors as whether the victim was particularly vulnerable, whether the manner in which the crime was carried out indicated planning, sophistication or professionalism, and whether the defendant took advantage of a position of trust or confidence to commit the offense.[29] (Cal. Rules of Court, rule 4.421(a)(3), (8), & (11); see rule 4.425(b).) "In the absence of a clear showing of abuse, the trial court's discretion in this respect is not to be disturbed on appeal." (*People v. Bradford* (1976) 17 Cal.3d 8, 20.)

Appellant failed to raise this objection at the sentencing hearing and therefore he has forfeited it. (*People v. Gonzalez* (2003) 31 Cal.4th 745, 751-755; *People v. Scott* (1994) 9 Cal.4th 331, 356.) Moreover, we would reject it

---

[29] Appellant contends there was no evidence he threatened J.D. to induce him to conceal the crime, a factor that may be used to impose a consecutive sentence. (See Rules of Court, rule 4.421(a)(6).) We see no evidence the court relied on the evidence that appellant made statements to J.D. indicating that there was no need to tell his parents what happened in Oregon in making sentencing determinations.

were we to consider it. Ample evidence supported the court's findings that appellant had planned his actions for some time, having ingratiated himself with J.D. and his family by providing gifts and helping out in their time of need and by volunteering to be J.D.'s confirmation leader. Appellant's dismay when J.D. attempted to back out of the trip and his text indicating that J.D. and A.A. would have the opportunity for some "time together" further supported the inference that he had something in mind other than an innocent family trip. There also was evidence that appellant had a pattern of intruding into his minor children's physical relationships with their romantic partners. Finally, the court found, and appellant does not dispute, that J.D. was particularly vulnerable, being away from his own family, and that appellant took advantage of the trust J.D.'s parents placed in him. As only a single aggravating factor is required to impose the sentence selected (*People v. Osband* (1996) 13 Cal.4th 622, 728), we would find no abuse of discretion in sentencing appellant consecutively even were we convinced the crime did not involve planning.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.