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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JORDAN KOZIOL et al., Defendants and Appellants.	B284960 (Los Angeles County Super. Ct. No. BA448970)

APPEALS from a judgment of the Superior Court of Los Angeles County. Norman J. Shapiro, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant Jordan Koziol.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant Benjamin Koziol.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jonathan M. Krauss and Heather B. Arambarri, Deputy Attorneys General, for Plaintiff and Respondent.

The Los Angeles County District Attorney's Office charged defendant and appellant Benjamin Koziol[1] (Benjamin) with pimping (Pen. Code, § 266h, subd. (a); count 2),[2] and both Benjamin and his codefendant and wife Jordan Koziol (Jordan) with pandering by procuring (§ 266i, subd. (a)(1); count 3). A jury convicted defendants on both charges and found true, as to count 3, the allegation that defendants caused, induced, persuaded, or encouraged the victim, Jessica V. (Jessica), to become a prostitute through promises, threats, violence, a device, or a scheme. Jordan was sentenced to the low term of three years for count 3; Benjamin was sentenced to concurrent terms of four years for each count.

Defendants timely appealed. Benjamin argues: (1) The trial court erred in admitting evidence that he had nonconsensual sex with Jessica, and (2) The trial court improperly denied his motion for a new trial. Jordan joins in his arguments.

We affirm.

FACTUAL BACKGROUND

In 2016, Jessica was receiving treatment for an eating disorder and for alcoholism at a residential treatment facility. Her insurance coverage for the treatment ran out at the end of July, and she was forced to leave the facility. After living on the streets for two weeks, she began looking at listings on Craigslist for a free place to live. She found defendants' advertisement,

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1 Because the two defendants share the same last name, we refer to them by their first names for clarity. No disrespect is intended.

2 All further statutory references are to the Penal Code unless otherwise indicated.

which offered a free room in exchange for helping defendants' "business."

Jessica responded to the advertisement and, pursuant to defendants' instructions, included a photograph of herself in her response. She arranged to meet Jordan, who identified herself as "Brittany," in front of an apartment building in Beverly Hills. When she arrived at the building, Jordan helped Jessica carry her belongings up to a one-bedroom apartment and introduced Jessica to Benjamin, who identified himself as "Cory." Another young woman was also in the apartment, but she left shortly after Jessica arrived.

Jessica drank beer with defendants and eventually became drunk. Defendants told Jessica that Jordan made money by providing "nude massages" and suggested that Jessica could make some money herself by helping with the massages. Benjamin instructed Jessica to pose for a photograph, wearing only a bra and underwear and holding a placard with a telephone number on it. Defendants also had Jessica pose for another photograph, wearing one of Jordan's dresses. Although the photographs made Jessica uncomfortable, she allowed defendants to take them because she was desperate to make money.

Defendants posted an advertisement on Backpage.com with Jessica's photographs and the words "call me for fun, that will make you explode with happiness, in call and out call." Shortly after the posting, men began responding to the advertisement and going to defendants' apartment to receive massages and sexual services. Defendants had a massage table set up in the living room and would wait in the bedroom while Jessica serviced the customers. Over the course of three days, Jessica provided massages and performed sexual acts on four to five men per day.

Jessica did not want to participate, but she did so because she was desperate for money and did not have anywhere else to live. Defendants charged the customers that Jessica serviced $190 for masturbation and $225 for sexual intercourse, but they never gave Jessica any of the money they collected.

Jessica drank alcohol when she was not with customers, and she would often pass out on the couch. When Jordan was not at the apartment, Benjamin would have sex with Jessica. Jessica did not want to have sex with him, but she did not stop him because she did not want to upset him.

One day, Benjamin grabbed her by the shoulder and left a bruise when she refused to have sexual intercourse with a client, and she had seen Benjamin be verbally abusive to Jordan. She was scared of being homeless and "just went with whatever would keep [her] there."

A few days after Jessica started working for defendants, she moved with them to another apartment. She continued to engage in commercial sexual acts and give all of the money she collected to defendants. At one point, she left the apartment to meet a customer and while she was out, she asked friends if she could stay with them. Jessica's friends told her that she could not stay with them until she stopped drinking.

On August 3, 2016, Los Angeles Police Department (LAPD) Officer Matthew Stickney was working as part of an undercover operation focused on prostitution-related activities. Officer Stickney, who was familiar with Backpage.com as a source for prostitution advertisements, responded to defendants' advertisement to meet with Jessica. By way of text messages, he arranged to meet Jessica at the Roosevelt Hotel later that night

and agreed to pay $400 "for everything," which he understood to mean oral sex and intercourse.

Later that night, Benjamin woke Jessica and told her that she was going to meet a customer at a hotel. At approximately 11:15 p.m., defendants took Jessica to the Roosevelt Hotel. Jessica met Officer Stickney in the lobby and the two of them went up to a hotel room. Officer Stickney gave Jessica $150, and she told him that he was supposed to pay her $400. Officer Stickney then asked Jessica if she had any condoms; when she told him that she did not, he told her that he was going to get some. He then left the hotel room and instructed fellow LAPD officers who were waiting nearby to arrest Jessica. After arresting Jessica in the hotel room, the officers located defendants in a vehicle parked near the hotel and arrested both of them.

Officer Stickney interviewed Jessica at the police station. She told him that, although she was not afraid of Benjamin, she did not believe that she could refuse to have sexual intercourse with him. When Officer Stickney noted a bruise on her shoulder, she told him that Benjamin had left the bruise when he grabbed her after she refused to have sex with a customer. Officer Stickney believed that Jessica had been a victim of human trafficking and pimping and thus, pursuant to LAPD policy, Jessica was not criminally charged.

Officer Stickney also interviewed Jordan. She admitted that she had given "nude massages," but denied that she had performed any sexual acts for customers. She also admitted that she taught Jessica how to give massages, but denied that she or Benjamin forced Jessica to perform any sexual acts on customers.

Jordan claimed that Jessica kept all of the money that she collected from customers.

DISCUSSION

I. *Evidence that Benjamin had nonconsensual sex with Jessica*

Defendants argue that the trial court erred by admitting evidence of Benjamin's forced sex acts on Jessica, pursuant to Evidence Code section 1101, subdivision (b).

A. Background

Prior to trial, Benjamin's defense counsel moved to exclude evidence that Benjamin forced Jessica to have sexual intercourse with him. Defense counsel argued that because Benjamin had only been charged with pimping, which did not require any showing of violence or duress, the evidence would be irrelevant and inflammatory.[3] The prosecutor then moved to amend the information to add a pandering charge against Benjamin, and the trial court granted the motion. The information was amended to charge both defendants with pandering by procuring.

Jordan's defense counsel never objected at any point in the proceedings to the admission of the evidence of nonconsensual sex. Benjamin's defense counsel did not object to the admission of this evidence after the information was amended to charge Benjamin with pandering.

B. Defendants' claim is forfeited

To preserve a claim for appeal that a trial court erroneously admitted evidence at trial, the defendant must make a clear, specific, and timely objection at trial. (Evid. Code, § 353; *People v. Zapien* (1993) 4 Cal.4th 929, 979.) Where an objection is made on one ground, the defendant cannot appeal on another ground.

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[3] Jordan had been charged with pandering prior to Benjamin's motion.

(See, e.g., *People v. Alexander* (2010) 49 Cal.4th 846, 912; *People v. Doolin* (2009) 45 Cal.4th 390, 437 ["Because defendant objected only that the evidence was irrelevant and unduly prejudicial under Evidence Code section 352, he has forfeited his claim that the trial court admitted this evidence in violation of Evidence Code sections 1101 and 1102"].) A defendant may not complain for the first time on appeal that a trial court improperly admitted evidence unless he objected and stated the specific reason or reasons the defendant believes the evidence should be excluded. A failure to make a specific and timely objection at trial on the ground asserted on appeal renders the claim not cognizable. (*People v. Partida* (2005) 37 Cal.4th 428, 434.) "A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct." (*Id.* at p. 435.)

On appeal, defendants assert that the admission of this evidence was highly prejudicial. But, defendants never objected to Jessica's testimony on the grounds that it was not relevant to a charge of pandering.[4] The trial court was never asked to analyze the relevance of her testimony to a pandering charge or weigh her testimony's probative value against its prejudicial nature. As such, they have forfeited this claim on appeal.

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[4] In fact, once the information was amended to charge Benjamin with pandering, defense counsel dropped his objection, presumably because the testimony was relevant to the offense of pandering.

C. Evidence was relevant

Even if defendants had not forfeited their challenge on appeal, their claim still lacks merit because the evidence was relevant to an element of the offense of pandering.

1. *Relevant law*

Under Evidence Code section 1101, subdivision (a), evidence of a person's character or trait of character is generally inadmissible "when offered to prove his or her conduct on a specific occasion." Evidence Code section 1101, subdivision (b), however, clarifies that evidence of uncharged misconduct may be admissible if relevant to establish facts, such as motive, opportunity, intent, preparation, common plan or scheme, knowledge, identity, absence of mistake or accident, or whether the defendant believed a victim consented to a sex act. (*People v. Walker* (2006) 139 Cal.App.4th 782, 795–796.) Any fact that must be proven as an element of an offense is material under Evidence Code section 1101, subdivision (b). (See *People v. Hendrix* (2013) 214 Cal.App.4th 216, 239.) To prove intent, the conduct and the charged offense need only be sufficiently similar to support the inference that the defendant probably harbored the same intent in each instance. (*People v. Davis* (2009) 46 Cal.4th 539, 602.) A trial court's admission of evidence under Evidence Code section 1101, subdivision (b), is reviewed for abuse of discretion. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 405.)

In determining whether evidence of uncharged based acts or conduct is admissible, the trial court must also determine, under Evidence Code section 352, whether the probative value of the act is substantially outweighed by the danger of undue prejudice, undue consumption of time, confusing the issues, or misleading the jury. (*People v. Ewoldt*, *supra*, 7 Cal.4th at

p. 404.) "'[P]rejudicial' is not synonymous with 'damaging.'" (*People v. Kipp* (2001) 26 Cal.4th 1100, 1121.) Instead, "'[e]vidence is substantially more prejudicial than probative [citation] if . . . it poses an intolerable "risk to the fairness of the proceedings or the reliability of the outcome" [citation].'" (*People v. Lindberg* (2008) 45 Cal.4th 1, 49.)

2. *Analysis*

Here, Jessica's testimony was relevant to the pandering charges leveled against defendants. At subdivisions (a)(1) and (a)(2), section 266i provides that a person is guilty of pandering if he or she procures another person for the purpose of prostitution by "promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute." Jessica's testimony showed that defendants used forced sexual intercourse with Benjamin as a way to convince Jessica to think of herself as defendants' sexual object, and thereby persuade her to work as a prostitute.

In his reply brief, Benjamin asserts that because his sexual relationship with Jessica began after she started prostituting for him, there was no facilitative nexus between the two that proved anything about his pandering of her. We disagree. Benjamin's forced sexual intercourse of Jessica was evidence of duress—forcing Jessica to continue to prostitute herself for the benefit of defendants.

D. Harmless error

Even if the trial court had erred in admitting Jessica's testimony, which it did not, any error would have been harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Welch* (1999) 20 Cal.4th 701, 749–750.)

In light of the evidence presented at trial, "there is no reasonable probability [that] the error of which the defendant[s] complain affected the result." (*People v. Breverman* (1998) 19 Cal.4th 142, 177.) Jessica testified that although she was uncomfortable being photographed for the Backpage.com advertisement and did not want to provide sexual acts for defendants' customers, she did what defendants told her to do because she was desperate for a place to live. She further testified that because she had allowed herself to become homeless, she felt like she deserved to be in the situation she was in with defendants and that she owed defendants for giving her a place to stay. And, she testified that when she had refused to have sexual intercourse with a customer, Benjamin had grabbed her shoulder so hard, he left a bruise; she had also seen him be verbally abusive to Jordan. Taken together, this evidence shows that defendants used promises, threats, or violence to induce and encourage Jessica to engage in prostitution. Because Benjamin's nonconsensual sex with Jessica was just one of many tactics defendants used to procure Jessica for prostitution, defendants cannot demonstrate that they would have received a more favorable outcome had that evidence not been presented at trial. Thus, any error in admitting the evidence was harmless.

II. *Motion for New Trial*

Defendants argue that the trial court erred in denying their motion for a new trial.

A. Standard of review

We review the trial court's order for abuse of discretion. (*People v. Davis* (1995) 10 Cal.4th 463, 524; *People v. Lewis* (2001) 26 Cal.4th 334, 364.) An exercise of discretion must not be disturbed on appeal except on a showing that the court exercised

its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

B. Background

Prior to the jury's verdicts, Jordan's defense counsel made a motion for a new trial on the ground that the prosecution had not presented sufficient evidence of procuring Jessica for prostitution. Benjamin's counsel joined in the motion. The trial court denied the motion, reasoning: "If the jury should convict either one or both of the defendants, I think there is sufficient evidence in the record for an appellate court to find that there is sufficient evidence to base that conviction on so I will let it go at that." Defense counsel did not comment on the standard of review employed by the trial court; nor did it object to the trial court's ruling.

After the jury rendered its verdicts, defendants made a second motion for a new trial, again arguing that there was insufficient evidence to support the verdicts. The trial court again denied the motion, stating: "I feel that there were 12 jurors that heard this case. [¶] It was an, I will say, a different type of case, and I thought it was well defended. [¶] I thought it was well prosecuted. [¶] The jury heard everything. [¶] They were a tentative jury. [¶] They rendered a verdict. [¶] I don't feel it would be appropriate for the court to step in and upset that verdict." Again defense counsel did not comment on the standard of review used by the trial court or otherwise object to the trial court's ruling.

C. Trial court applied correct legal standard

Defendants assert that the trial court did not apply the right standard of review in evaluating their motion for new trial.

The appellate record shows otherwise. When the trial court denied the first motion for new trial, it specifically stated that it believed that there was sufficient evidence to support a conviction. Although the trial court did not specifically address the sufficiency of the evidence when it denied the second motion, its comments indicate that it applied the same legal principles as it did when it denied the first motion. The trial court noted that both sides had presented their cases well and that the jury had "heard everything." We can infer that the trial court believed that there was "sufficient credible evidence to support the verdict." (*People v. Robarge* (1953) 41 Cal.2d 628, 633.) It follows that the trial court did not abuse its broad discretion in denying defendants' motion for a new trial.

D. Any error would have been harmless

Even if the trial court did not apply the correct standard in ruling on defendants' motion for a new trial, any such error would have been harmless as a matter of law. (*People v. Braxton* (2004) 34 Cal.4th 798, 820.) Like the jury, the trial court heard all of the evidence and defendants' challenges to Jessica's credibility; it also heard the evidence and argument connecting defendants to the charged offenses. Like the jury, the trial court found the evidence against defendants to be sufficient. It follows that there is no reason for remand for reconsideration under some other standard of review than the one employed by the trial court.

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT