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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. GLENN CARTWRIGHT, Defendant and Appellant.	B226356 (Los Angeles County Super. Ct. No. LA062486)

APPEAL from a judgment of the Superior Court for Los Angeles County, Michael K. Kellogg, Judge. Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Paul M. Roadarmel, Jr. and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Glenn Cartwright was convicted of multiple counts arising from his sexual relationship with a minor, and was sentenced to a total of eight years in prison. He appeals, contending there was insufficient evidence to support his conviction under Penal Code[1] section 288.4, subdivision (b) (meeting a minor for lewd purposes), and that the trial court erred by not declaring a mistrial after the prosecutor, when discussing defendant's credibility during closing argument, referred to the increased gravity and "repercussions" of the charges defendant denied compared to the charges he admitted. We affirm the judgment.

PROCEDURAL BACKGROUND

In an amended information, defendant was charged with five counts of lewd acts upon a 14 or 15 year old child by a person more than 10 years older than the child (§ 288, subd. (c)(1)) (counts 1 and 4 through 7),[2] two counts of sexual intercourse with a minor more than three years younger than the defendant (§ 261.5, subd. (c)) (counts 3 and 9),[3] one count of pimping a minor over age 16 (§ 266h, subd. (b)(1)) (count 2), and one count of meeting a minor for lewd purposes (§ 288.4, subd. (b)) (count 8). With respect to count 3, the information alleged that defendant inflicted great bodily injury on the victim within the meaning of section 12022.8.

The case was tried before a jury. The jury acquitted defendant of counts 2 and 7, and found him guilty of all other counts, although it found the special

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[1] Further undesignated statutory references are to the Penal Code.

[2] The five counts were related to specific separate acts that were described by the victim. The conduct at issue occurred over the course of two years.

[3] Count 3 related to conduct that occurred between August 28, 2008 and February 18, 2009, and count 9 related to conduct that occurred between March 1, 2009 and July 8, 2009. The minor turned 17 years old in December 2008.

allegation in count 3 was not true. The trial court sentenced defendant to a total of eight years in prison. The court chose count 8 as the base count and imposed the upper term of four years, plus subordinate consecutive terms of eight months (one-third the midterm) on each of the remaining six counts. Defendant timely filed a notice of appeal from the judgment.

FACTUAL BACKGROUND

In the middle of 2006, defendant began dating Laura Pearson. They had known each other for a year and a half at that time; they met at the YMCA, where defendant taught kick-boxing. Toward the end of the summer of 2006, defendant moved into Pearson's home, where she lived with her two daughters. Her daughter P.M. was 14 years old when defendant moved in. Defendant was 30 years old.

At first, defendant's relationship with P.M. was that of a "really cool step-dad." Within a couple of months, however, he and P.M. started watching pornography together, and defendant told P.M. about a sex dream he had about her. By the end of the year (2006), they had engaged in numerous sexual acts, including oral copulation and sexual intercourse; P.M. described in detail several of those incidents at trial. After P.M.'s fifteenth birthday in December 2006, Pearson sent P.M. to stay with relatives in Mexico for a few weeks, because P.M. was acting up, ditching school and being rebellious. Pearson did not know about P.M.'s sexual relationship with defendant at that time. When P.M. returned from Mexico, she resumed her sexual relationship with defendant; at trial P.M. described some specific incidents that took place in 2007, including one she had written about in her journal.

One day in November 2007, P.M. wrote in a notebook about her relationship with defendant, and left the notebook on her bed. Pearson saw the open notebook, read what P.M. had written, and asked P.M. if what she had written was true. P.M.

told her that it was. Pearson confronted defendant (who denied the relationship) and told him to move out. Pearson contacted the police, and an investigation was commenced.

In February 2008, P.M. spoke to defendant. Defendant said that he loved her and wanted to marry her, and told her to take back what she told the police. P.M. left a voice mail message for the police detective handling her case, saying that what she had reported was not true. When Pearson learned that P.M. was no longer cooperating with the police and was talking with defendant, she sent P.M. to live with her family in Mexico.

While in Mexico, P.M. communicated with defendant almost every day, first by email, then by cell phone. Defendant told P.M. that he wanted her to come back, and that she was going to be his wife. They also talked about how she could get back into the United States, since Pearson had taken her travel documents away from her. They decided that P.M. had to report to the police that her passport or visa was stolen, and then go to the embassy to get temporary papers to allow her to leave Mexico. Once she got her temporary papers, P.M. packed her things and took a taxi to the airport without telling her relatives. When she got to the airport, she called defendant. Defendant arranged for a plane ticket for P.M. to fly to Los Angeles.

P.M. arrived in Los Angeles on August 25, 2008. Defendant picked her up from the airport and drove her to his home. When they got to his house, P.M. was mad at defendant because he did not hug her, and she did not want to have sex with him. But he told her that they were going to have sex, and said, "So put out or get out." They had sex.

One of the people who lived at defendant's house at that time was a woman named Saffire, who was a prostitute. At some point, P.M. and Saffire started doing sexual shows for clients they got through Craig's List. The clients paid Saffire,

who paid P.M., who gave the money to defendant. They stopped doing them after about seven shows, because Saffire did not want to do them anymore.

Although Pearson had been informed in late August 2008 that P.M. had left her relative's house in a taxi and had not returned, she was not aware that her daughter was back in the United States. A few weeks later, she started to get phone calls from P.M., who told her she was fine, in Mexico, and just wanted to be independent. Some time later that year, she received a phone call from a woman she did not know, who told her that P.M. was in Los Angeles and living with defendant. She went to the police and told them that her daughter was missing; she explained that she had been reported missing in Mexico, but apparently was in Los Angeles.

Sometime after her seventeenth birthday (which was in December 2008), P.M. found out she was pregnant. She told defendant, but he did not believe her. At that time, she and defendant were homeless and had no money or food, so she left defendant and went back home to her mother. Pearson took P.M. to a doctor, who confirmed P.M.'s pregnancy. Pearson took P.M. to an abortion clinic, where P.M. had an abortion on February 18, 2009. P.M. was five weeks pregnant. The physician who performed the abortion preserved a placental/fetal sample, which was turned over to the police. DNA from that sample was compared to DNA obtained from defendant. The forensic serologist who conducted the comparison concluded there was a 99.999 percent probability that defendant was the father.

P.M. stayed with Pearson for a few months after the abortion, then left to live with defendant. In July 2009, the police located P.M. and defendant, and placed defendant under arrest.

At trial, defendant testified in his defense. He testified that he did not meet P.M. until December 2006, and did not move in with Pearson until early 2007. He denied having any sexual relationship with P.M. in 2007, and was stunned when

Pearson accused him in late 2007 of having a relationship with her. He was aware that P.M. had gone to Mexico in early 2008, because she called him. He said that P.M. called him several times, asking him to help her return to the United States, but he denied arranging for a plane ticket for her. Although he did agree to pick P.M. up at the airport and let her live with him, he said he did so because she was unhappy and said she could not go to live with her mother. He testified that he was dating another woman at the time P.M. came back from Mexico, and did not help P.M. leave Mexico in order to have a sexual relationship with her, but said he eventually developed a relationship with P.M. and fell in love with her. He denied, however, having any sexual contact -- including hugging or kissing -- with her until a couple of weeks after she turned 17, in December 2008.

DISCUSSION

A. *Sufficiency of the Evidence to Support the Conviction on Count 8*

Defendant contends the evidence at trial was insufficient to support his conviction on count 8, arranging a meeting with a minor for lewd purposes in violation of section 288.4, subdivision (b). He argues that section 288.4 is "aimed at sexual predators who use computers to find vulnerable children and set up meetings with the children to satisfy their 'unnatural or abnormal' pedophile urges," and that "[defendant's] involvement in P.M.'s return from Mexico does not fit within the elements of this statute." He is incorrect.

Subdivision (a)(1) of section 288.4 provides, in relevant part: "Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished." Subdivision (b) provides terms of imprisonment if the person

described in subdivision (a)(1) goes to the arranged meeting place at or about the arranged time.

Nothing in the unambiguous language of the statute limits is applicability to persons who arrange meetings with minors using a computer. Even if the Legislature's primary focus in enacting section 288.4 was to target pedophiles who use computers to find and arrange meetings with minors for lewd purposes, the absence of language limiting the statute to those situations indicates a legislative intent to apply the statute more broadly. Because the language of the statute is unambiguous and without such a limitation, its plain meaning controls. (*People v. Albillar* (2010) 51 Cal.4th 47, 54-55.) Therefore, a violation of the statute occurs when a defendant (1) arranges a meeting with a minor or a person he or she believed to be a minor, (2) is motivated by an unnatural or abnormal sexual interest in children, (3) intends to expose or have the minor expose his or her genitals or pubic or rectal area or to engage in lewd or lascivious behavior, and (4) goes to the meeting place at or about the arranged time.

Defendant asserts that these elements were not met in this case because he did not arrange for a meeting with P.M. out of an unnatural or abnormal sexual interest in children, but instead he merely helped P.M., at her request, in her efforts to leave Mexico without her mother's knowledge. It is no defense to say that P.M. *wanted* to come back to Los Angeles to resume her sexual relationship with defendant and asked for his help to accomplish this. Indeed, even under the scenario defendant asserts was the target of section 288.4 -- a person who uses a computer to arrange a meeting with a minor for lewd purposes -- the person who arranges that meeting cannot avoid conviction by showing that the minor wanted to meet with him. The minor's purported consent in either case is irrelevant because the statute is directed entirely at the adult's conduct regardless of the minor's consent or lack thereof. (*People v. Hillhouse* (2003) 109 Cal.App.4th 1612, 1621

["our laws governing sexual contact with minors make it irrelevant, as a general rule, whether the minor consented"].)

Here, evidence was presented at trial that, after Pearson tried to protect P.M. from further sexual contact with defendant by sending her to Mexico to live with relatives and taking her travel documents to prevent her from returning to the United States, defendant advised P.M. about how she could obtain temporary travel documents, arranged for an airplane ticket back to Los Angeles, picked her up from the airport, and took her to his home, where he demanded that she have sex with him. From this evidence, a reasonable trier of fact could find that defendant arranged to and did meet P.M., a minor, for the purpose of having sexual intercourse. Therefore, we conclude there was sufficient evidence to support defendant's conviction on count 8. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1128 ["To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt"].)

B. *Trial Court's Denial of Defendant's Motion for a Mistrial*

During the prosecutor's closing argument, the prosecutor addressed the credibility of witnesses, noting there was a jury instruction about some of the things the jury could consider in assessing a witness' credibility. One of those factors that instruction included was "[t]he existence or nonexistence of a bias, interest, or other motive." After discussing the witnesses who were presented to show the chain of custody of the evidence used to conduct the DNA analysis, the prosecutor said: "The defendant Glenn Cartwright, talk about the credibility of the witnesses. He got up there and he lied. And it's obvious that he lied. And who

has the motive in this entire case, ladies and gentlemen, who has the motive to lie? The defendant. [¶] You may think, okay, then why if he lied, why if he lied did he acknowledge that when she turned 17, that that's when he engaged in sexual relations with her? No courtship, no hugging, no kissing. She turned 17 and then, bam, he was right there. [¶] The difference is -- you can probably figure this out -- there are separate charges when someone is 14, 15, 16, 17. So the gravity of the charges will increase the younger you are, the repercussions for what you did."

Defense counsel immediately objected on the ground that this was "[i]mproper argument regarding sentencing and punishment," and the trial court sustained the objection, saying it "will instruct on that as well." After stating that she would "go away from that area," the prosecutor concluded her discussion of credibility by saying, "So he acknowledges some minor -- I wouldn't call it minor things -- some of the sexual things, but what is viewed as the most egregious acts, he denies." Defense counsel did not object to that final statement.

The following morning, before the jury was called into the courtroom for defendant's closing argument, the trial court had a discussion with both counsel about whether it should give a curative instruction to the jury regarding the prosecutor's reference to the difference in punishment for the different alleged crimes. The court expressed some concern about giving such an instruction, in addition to giving the instruction as part of the concluding instructions, since it would highlight the prosecutor's comment. The court indicated, however, that it would give the curative instruction if defense counsel requested it. Defense counsel did not request that the court give the curative instruction, and instead moved for a mistrial, saying she did not believe the "bell can be unrung," and that the jury would think about punishment even though punishment should not enter into the deliberations. The court denied the motion for mistrial and did not give a separate curative instruction.

On appeal, defendant contends the trial court's denial of his motion for a mistrial was prejudicial error "because the jury was left with a correct and incorrect basis upon which to convict [defendant]." He argues that, due to the prosecutor's reference to the severity of crimes and punishment when the victim is younger, the jury was presented with two legal theories for convicting appellant -- one based on the evidence associated with each crime, and the other that invited the jury to consider the victim's age in determining the severity of the crime, which could lead the jury to base its guilt determination on the desire to harshly punish defendant rather than on a fair evaluation of the evidence.

Defendant characterizes the asserted error as the presentation of two legal theories for conviction in order to bring this case within the rule articulated in cases such as *People v. Green* (1980) 27 Cal.3d 1, in which the Supreme Court held that "when the prosecution presents its case to the jury on alternate theories, some of which are legally correct and others legally incorrect, and the reviewing court cannot determine from the record on which theory the ensuing general verdict of guilt rested, the conviction cannot stand." (*Id.* at p. 69, overruled on another ground by *People v. Martinez* (1999) 20 Cal.4th 225.) But the prosecutor did not present alternate theories of guilt in this case. Instead, she suggested a possible motivation for defendant to falsely deny having sexual contact with P.M. before she turned 17, despite his admission to having sexual intercourse with her after she turned 17, while she was discussing defendant's credibility. She did not suggest that defendant could -- or should -- be convicted of any of the charges based upon the punishment associated with the charges. She simply stated, if clumsily, a somewhat obvious point -- that a sex crime against a younger victim is more egregious than a sex crime against an older victim.

In any event, to the extent that the prosecutor's reference to the "gravity of the charges" and the increased "repercussions" for crimes involving younger

children can be construed as an improper reference to possible punishment (see *People v. Honeycutt* (1977) 20 Cal.3d 150, 157, fn. 4 [it is improper for jury to consider punishment]), it was a single isolated incident that did not rise to level of prosecutorial misconduct warranting reversal. (*People v. Kipp, supra,* 26 Cal.4th at p. 1130 [improper comment by prosecutor that was "brief, mild, and not repeated" does not require reversal].) The trial court did not abuse its discretion by denying defendant's motion for a mistrial. (*People v. Alexander* (2010) 49 Cal.4th 846, 915 ["'the trial court is vested with considerable discretion in ruling on mistrial motions'"].)

DISPOSITION

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.