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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL LITTLE, Defendant and Appellant.	B259209 (Los Angeles County Super. Ct. No. BA400148)

APPEAL from a judgment of the Superior Court of Los Angeles County, George G. Lomeli, Judge. Affirmed as modified.

John A. Colucci, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Samuel Little, raises contentions of trial and sentencing error following his conviction of three counts of first degree murder with a multiple murder special circumstance (Pen. Code, §§ 187, 190, subd. (a)(3)). Little was sentenced to three consecutive terms of life without possibility of parole.

For the reasons discussed below, the judgment is affirmed as modified.

BACKGROUND

Viewed in accordance with the usual rules of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following.

1. *Prosecution evidence.*

a. *The Murder of Linda Alford.*

On July 13, 1987, Los Angeles Police Department Officer Darryl Lee and his partner responded to a call about a dead body lying in an alleyway behind a residence on East 27th Street. Upon arriving at the location, the officer observed the body of an African-American woman, naked from the waist down with her shirt pulled up over her bra. She was wearing only one sock and no shoes. None of her missing clothing was found in the alley. Lee noticed "drag marks . . . in the dirt" near the woman's feet. It appeared to Lee that the woman had been killed elsewhere and her body then dumped in the alley. The dead woman was later identified as Linda Alford by her daughter.

Dr. Irwin Golden, now retired, testified that in 1987 he was a deputy medical examiner in the Los Angeles County Coroner's Office. His autopsy revealed that the cause of death was asphyxia as a result of manual strangulation. Alford had sustained multiple bruises near her jawline, hemorrhages in and

around her eyes, and scratches and abrasions to her neck, some of which were caused by fingernails. Hemorrhaging beneath her scalp and temporal area was "characteristic of a blunt injury . . . a blow or a bump to the head," and was consistent with Alford having been punched in the head. The autopsy revealed hemorrhaging to Alford's voice box and hyoid bone, "the U-shaped bone at the base of the tongue which aids swallowing." All of these injuries had been caused prior to death. A toxicology report showed that Alford had consumed alcohol and cocaine prior to her death.

DNA analyst Amanda Mendoza from Bode Technology Laboratory testified that in 2012 she tested a sexual assault kit and clothing (a bra and a T-shirt) from Alford, which was compared to DNA from Alford's blood and DNA from a buccal swab taken from the inside of Little's cheek. Semen was detected on Alford's shirt. The epithelial fraction[1] of the shirt sample contained a mixture of DNA from Alford and Little; there was no evidence of DNA from a third person. The sperm fraction from Alford's T-shirt DNA sample matched Little's DNA. Little is African-American. Mendoza testified the odds of this match were 1 in 450 quintillion African-Americans.[2] She testified, "it would take approximately 64 billion planet earths to find[ ] this D.N.A. profile one time." The right and left cup brassiere area samples contained a mixture of three or more persons, including Alford and at least one male contributor. The male contributor's DNA profile was consistent with Little's profile.

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[1] Mendoza testified that "epithelial cells are any cells found in the body, whether it's from blood, saliva, urine, sweat, skin cells. All of that is considered epithelial cells."

[2] A "quintillion" is a one followed by 18 zeros.

b. *The Murder of Audrey Nelson*.

On August 14, 1989, former Los Angeles Police Department Detective Richard Santiago and his partner responded to a call about a homicide at a parking lot behind a nightclub and restaurant located at 2019 East 7th Street. Inside a dumpster, they found the body of a Caucasian woman, naked from the waist down with her sweatshirt pulled up around her shoulders. The back of her body had dirt and her upper shoulder had some "drag marks." A search of the vicinity recovered no identification, clothing or any other personal belongings associated with the victim, who was later identified as Audrey Nelson. Crime scene photographs showed drag marks on Nelson's back, buttocks and heels. Detective Santiago opined that Nelson had definitely been murdered elsewhere and her body subsequently dumped at the scene.

On cross-examination, Santiago testified that, at some point, he came into possession of two rings which he gave to the medical examiner for comparison with marks on Nelson's neck. Neither ring belonged to Little.

The medical examiner who performed the autopsy, Dr. Eugene Carpenter, concluded that the cause of death was strangulation. Nelson had suffered significant bruising around the front of her neck, which included fractures to the thyroid cartilage and hyoid bone, severe hemorrhaging to the throat muscles, and fingernail marks on the right side of her throat. The amount of force required to sustain such injuries was considerable and the strangulation appeared to have been done by hand. Injuries throughout her body revealed pre-death blunt-force trauma consistent with having been punched repeatedly in the head. Nelson suffered severe bruising underneath her skin;

this bruising extended into her chest muscles, stomach and abdomen. In addition, "the hard bone of [her] spine . . . was crushed during a blow to the upper central abdomen . . with deep bruising to the stomach itself," which was "a sign of considerable force." Abrasions on Nelson's back, abdomen, sides, knees and thighs were characteristic of "road burns," i.e., of having been dragged across a hard surface probably prior to death. A toxicology report revealed the presence of cocaine in Nelson's blood.

There was a severe injury to Nelson's stomach area. According to Carpenter, "this area . . . right over the hard bone of the spine . . . it was crushed during a blow to the upper central abdomen, and with deep bruising to the stomach itself." "[I]n terms of signs of blunt force, it's a sign of severe injury to the abdomen . . . . The significance lies in that it's a sign of considerable force." Based on the fracture of bones in Nelson's throat and the extensive hemorrhaging, Carpenter testified: "these signs of force are the greatest that I have seen in a 27-year practice in a county which has its share of strangulation cases." "This stands out because of the amount of hemorrhage at the throat, the fractures, and the fact that there are no petechial hemorrhages, which is a sign that even the arteries were occluded, not just the veins, which is the usual course of events."

Carpenter also testified there was "a special injury to the front part of the neck. This is a patterned injury." He explained it was "an injury . . . consisting of abrasions, but it has a pattern to it so it's consistent with a . . . belt buckle or a brass ring in a strap or something like that. [¶] It's non-specific, but it's got structure, and so it was measured just in case there would be some sort of comparison later."

In 2011 and 2012, Mollie Megahee, DNA analyst at Cellmark Forensics, received a sexual assault kit and a fingernail kit relating to the death of Nelson. The fingernail kit contained both "scrapings" and "clippings." DNA analysis of the sperm fraction taken from the sexual assault kit vaginal swab matched Nelson and an unknown male; Little was excluded as a possible contributor. DNA analysis of the fingernail scrapings was inconclusive due to an insufficient amount of DNA. The fingernail clippings from Nelson's right hand contained a mixture from Nelson and an unknown male. The fingernail clippings from Nelson's left hand, however, tested positive for blood *and* were found to contain DNA from both Nelson and Little. The odds of this male DNA profile being someone other than Little were 1 in 58.68 quadrillion.[3]

c. *The Murder of Guadalupe Apodaca.*

On September 3, 1989, Los Angeles Police Department Officer Jesse Soltero responded to a call about a homicide at an abandoned auto repair shop at 4316 South Ascot Avenue where a body had been discovered. The body was naked from the waist down and lay in the interior of the garage area among debris. There was a white shoe near the body, but no other clothing or any identification at the scene. Officer Soltero observed bruises on the dead woman's neck and abrasions on her buttocks. The victim was subsequently identified as Guadalupe Apodaca.

The medical examiner, Christopher Rogers, determined that Apodaca died as a result of manual strangulation. She had sustained abrasions and bruising to her neck and around her throat, fractures to her larynx and hyoid bone, tiny points of

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[3] A "quadrillion" is a one followed by 15 zeros.

bleeding on the eyelids and whites of her eyes, bruises around her eyes and nose, and a laceration on her lower lip. These injuries were consistent with significant pressure having been applied to her neck. Bruising on her tongue suggested that Apodaca had bitten down on it while suffering a seizure during the strangulation process. Abrasions on her neck had curvatures characteristic of fingernail marks.

Bruising on Apodaca's chest was consistent with someone having kneeled there while strangling her. Bruises and abrasions on her right leg and around her knees were consistent with her body having been dragged prior to death. Bruises to Apodaca's forehead and around her eyes were consistent with blunt force trauma having been inflicted on her face and head. She had likely suffered a sexual assault as well, based on the presence of blood in the anal cavity and perianal abrasions. A toxicology test revealed the presence of cocaine and alcohol in her blood.

Rogers testified he had also reviewed the autopsy reports from the Nelson and Alford deaths, and he noted the following similarities: "In each case, the deceased person was a woman . . . of a particular age, between 35 and 46. They had all been strangled manually. They all had blunt trauma in addition to the strangulation. Each of them was nude from the waist down when they were originally found. The decedents were all found in South Central Los Angeles. And they all had cocaine in their blood, and two of them . . . had alcohol."

Jennifer Sampson, a DNA analyst at Bode Technology, testified that Little's profile matched the major contributor to the DNA found on two shirt cuttings taken from Apodaca's body. The probability of these matches in the United States African-

American population was, respectively, 1 in 1.6 quadrillion and 1 in 450 quintillion.

2. *The Murder Investigation.*

In April 2012, Los Angeles Police Department Detective Mitzi Roberts was assigned to the cold case homicide unit. Formed in 2001, this unit was charged with investigating Los Angeles homicides that had remained unsolved for five years. At the time, there were more than 9,000 such cases. Roberts testified: "We were looking mostly at rape kits, things with biological evidence. As the years went on . . . as forensics improved, we started looking at clothing, pulling the same old cases, looking at clothing, fingernails. And it's still evolving based on the science."

Roberts testified she noticed similarities between the Alford, Nelson, and Apodaca killings: "[T]hey all appeared to be . . . what we would classify as body dumps. . . . [¶] They were all partially clothed, most of them only having clothing from the waist up. They were all women. The . . . proximity to each other, they were all very close to each other, as far as the crime scenes or where the bodies were located. [¶] . . . [T]he cause of death was manual strangulation. And they all appeared to have suffered some sort of beating." The bodies had all been found within a five-mile radius of each other; Alford and Apodaca's bodies had been discovered approximately a mile and a half from each other.

In April 2012, Roberts began to conduct a background investigation of Little. She determined that he had been living in the South Los Angeles area during the period of 1987 to 1989. When she learned that Little was presently in custody in

Kentucky, she sent detectives there to interview him and obtain oral swabs to be used for DNA comparison.

Los Angeles Police Department Detective Susan Antenucci, another member of the cold case unit, testified that she went to Louisville in September 2012 to meet with Little and obtain buccal samples for DNA testing. Little told her that during the years 1987 to 1990 he had been living in San Diego and South Central Los Angeles. Little also said "he was a boxer, middleweight prize boxer." When Antenucci showed Little photographs of Nelson and Apodaca, he "said he had never seen them in his life, and he was pretty adamant about it." Little told Antenucci "that he was impotent, and therefore he couldn't be with anybody." However, he also said that he could ejaculate and produce sperm. Little was subsequently extradited to Los Angeles.

Los Angeles Police Department Detective Jorge Morales testified that on October 19, 2012, he was one of the officers who escorted Little back to California from Dallas, Texas. Morales described Little as "a big guy, about five-eleven, and I believe 235 was the weight that we used when we booked him." While they were passing through Los Angeles International Airport, Little spotted a young Hispanic woman at the terminal and said, " 'Look at that ass. I would like to get me some of that and get in between those legs and lick that pussy.' "

3. *Uncharged Crimes Evidence.*

a. *Hilda N.*

Hilda N. testified that on July 31, 1980, she was living in Carver Village, a housing project in Pascagoula, Mississippi. Hilda worked as a prostitute to support herself and her children. Across the street from where she lived was "the Front," a strip of

night clubs, pool halls, and other businesses. She was inside one of the nightclubs when Little approached and greeted her, saying he remembered her from when she worked at the shipyard. Hilda had worked at the shipyard, but testified that she did not remember Little from working there. Hilda told Little she was looking for a date, i.e., to get paid for sex. He asked how much and she replied "$50."

After she drank a beer that he bought for her, they went to Hilda's apartment to have sex. But as soon as they got inside and Hilda closed the apartment door, Little punched her in the back of the head and started choking her. Hilda lost consciousness. She woke up lying on her bed with Little kneeling on the bed and holding her down as he continued to choke her and hit her in the face. She lost consciousness again and woke up naked in her bathtub. It was full of water and Little had tied a scarf around her neck. Little repeatedly pulled her up by the scarf and then pushed her head under the water. As Hilda tried to fight back, Little continued punching her in the face. She thought he was trying to kill her. Hilda eventually passed out for a third time. When Hilda's friend and fellow prostitute Delores knocked on her bedroom window and called out her name to check on her well-being, Little responded by saying, " 'She's taking care of business.' "

When Hilda next regained consciousness she was in the hospital. She spent three days there being treated for her injuries. Hilda had suffered numerous scratches and bruises over her face, neck, and chest area. Her throat hurt so much that she could not talk and her eyes were bloodshot. She did not tell the authorities what had actually happened, but instead told them she had been the victim of a home invasion.

In November 1982, Hilda was contacted by Pascagoula police and she then told them what had actually happened. Hilda went to the police station and wrote out a statement. They showed her a set of photographs and she identified Little. She later went to court to testify against him when she was eight months pregnant, but when she got on the witness stand and saw Little she got scared and "wet [her] pants." As a result, she did not testify and was released from her subpoena.

b. *Leila M.*

In 1981 Leila M. was living in Pascagoula, Mississippi. Leila testified that she had "two residences," one in Carver Village "where [she] was taking care of business," and one at the Regency Woods Apartments where she lived with her three children. Her business was prostitution. On November 19, 1981, Leila was walking along the street when Little parked his car, approached her and asked, " 'Do you date?' " Leila understood this to mean, " 'Do you prostitute?' " and confirmed that she did and said the price was $50. Leila said she lived right around the corner, but Little said " 'No. We going to the Shamrock Hotel.' " They got into his car. But when Leila told Little to turn around because he had driven past the hotel, Little replied, " 'I don't need to turn around for what I want to do to you.' " He suddenly punched her in the back of the head and then between the eyes. He stopped the car, continued punching her and then began "choking the life out of [her]." Leila tried to defend herself by scratching, kicking and biting him:

"Q. So you fought back?

"A. With everything I had.

"Q. Did you think that he was trying to kill you, choke you to death?

"A. Definitely. He was going to kill me."

Leila managed to escape from the car a few times, but Little caught her each time and threw her back inside. Leila testified, "[T]his man was so quick, he could catch me before I could get from here to here, from the station wagon, and drag me back. [¶] At one point, it was a guy came by on a bicycle, a little White boy come by on a bicycle, and he asked me did I need some help, and I couldn't say nothing because at this time I couldn't talk. [¶]

"Q. Because of the pressure that [Little] put on your throat?

"A. Yes, Ma'am. And [Little said to the boy] 'She drunk. That's my ol' lady.' "

Finally, Leila managed to climb through a small window in the back of Little's car and escaped by running through highway traffic wearing just a pair of shorts. Ultimately, someone took her to the hospital. The police never came to the hospital to interview her and at that time she did not go to the police.

In 1982 Pascagoula police officers took her to the station and questioned her about the incident. She told them she had been attacked by Little and identified him in a photo array. She subsequently went with Hilda to a court hearing, but they "didn't get a chance to talk to anybody because Hilda urinated all over herself." When Hilda left the court, Leila walked home with her: "When they told [Hilda] to go, I left with her because I felt like they wasn't going to do nothing, no way."

c. *Laurie B.*

Laurie B. testified that in 1984 she was living in San Diego. On the night of September 26, 1984, she was walking to her friend's apartment when Little approached from behind, put her

in a choke hold, and then dragged her into his car.[4] Little said he had purchased $150 worth of cocaine earlier that evening. He drove to a deserted lot near the freeway that people had been using as an illegal dumping site. Little pulled Laurie into the car's back seat by the neck and shoulders. When he began forcibly kissing her, Laurie tried to push him away, but that "appeared to piss him off and his right hand went around [her] neck." He began to choke her: "One hand all the way around, with his thumb right in the middle, and started controlling my ability to breathe." She asked him not to hurt her and said she would cooperate if he wanted to rape her. Little said "he didn't want to hurt [her], and to trust him, and that he loved [her]." Little pulled off Laurie's nylons, underpants, and shoes. He used the nylons to tie her hands behind her back.

Little got on top of Laurie and choked her again until she passed out. When she regained consciousness, she "was gurgling, sputtering to get some air. And I . . . asked him again . . . don't hurt me; I'll cooperate, don't hurt me." Little "ignored that request and asked me to swallow. He liked to feel it when I swallowed while his thumb was over my neck." The following colloquy ensued:

"Q. And when he asked you to swallow, do you remember specifically what he said?

"A. He loved when I swallowed, it excites him. And he had a smile on his face.

"Q. And when you would swallow, what would he do . . . ?

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[4] Laurie testified she had experimented with prostitution, but that she was not engaging in sex work that night.

"A. Oh, it became a game. Right before I would go unconscious – and I'm sure he was able to see my eyes roll back into my head, because I'd feel it – he'd lift up just enough pressure so I would not go unconscious, ask me to swallow again, press down harder so I would . . . almost go unconscious again. And it just kind of kept going until I completely went out, blacked out."

When Laurie regained consciousness, she tried to scream but no sound came out because of the pain in her throat. Little "pulled his penis out of his pants, it was erect at that time; and [he] pulled my body up toward his penis and was rubbing up against me. And then it went limp and he wasn't able to actually pull off sexual intercourse." This made Little angry again and he choked Laurie into unconsciousness. The next thing Laurie remembered was being pushed out of Little's car on to "a heap of trash." Little then got on top of her with his knees on her chest, and choked her again until she lost consciousness a final time.

When at last she awoke, Laurie discovered that her bra had been "lifted up over [her] chest." She believed Little had probably done this while she was unconscious. Laurie testified that she "sat . . . still as a board and pretended to be dead. [¶] Because I was scared to death that he was still there watching me, that he was going to come back and realize I wasn't dead and choke me some more. [¶] So I sat there for at least 30 minutes on the ground, in the exact position that [he had] left me, in the trash." Laurie then got up and walked until she found a pay phone and called a friend to pick her up. She was treated at a hospital.

During her testimony, Laurie characterized her encounter with Little this way: ". . . I really knew this wasn't about rape, it

wasn't about assault, it was about death, power and control, whether or not I was going to live."

d. *Tonya J.*

On October 25, 1984, at around 4:50 a.m., San Diego Police Department Officer Louis Tamagni and his partner Wayne Spees were on patrol in a marked police car with their lights off. They were driving near an abandoned lot known for "stolen vehicles, prostitution, narcotics use." They traveled a short distance along a dirt road and came across a vehicle matching the description of the car used in connection with attack on Laurie. They turned on all of the patrol car's lights. "Almost immediately a large Black male exited" the vehicle. Tamagni identified this man as defendant Little, who "was zipping up his pants, appeared to be very nervous. He kept looking at us, kept looking at the car, kept looking at us, kept looking at the car."

When the officers asked him to come over, Little said, "It's nothing, it's just my wife and we're fighting." The officers told him to come over and talk to them. As Little approached, Tamagni could see bloody scratches on his neck. Tamagni told Spees to stay with Little while he went to check out Little's car. When Tamagni shone his flashlight into the car, he saw a naked woman – later identified as Tonya J. – in the back seat. One "leg was up over the seat; [the other leg] was . . . on the rear passenger seat in the rear of the car. Her upper torso and her head were crammed down on the floorboard between the seat portion of the driver's seat and seat portion of the rear seat. I saw a black bra not attached but on her chest." "Her lips and her mouth were bloody" and "it looked like she had been punched or beaten." Tamagni "saw bruises on her face and her neck." Tonya

was motionless and unresponsive; her eyes "were rolled back into her head" and she was "[j]ust gulping and gasping for air."

The officers arrested Little and called for an ambulance. The officers then rendered first aid to Tonya, who told them that Little had raped her. Shortly thereafter, paramedics arrived and transported Tonya to the hospital where she was treated for her injuries. Marvin Lee Shaw, a San Diego police officer, tried to interview Tonya in the trauma unit. He testified Tonya "was in somewhat a state of shock. She was in and out of consciousness. She had difficulty speaking. There was bruising on her neck, her left arm, and chest, and face area. Her eyes . . . had broken blood vessels." She also had bruises "[o]n the inner thighs and the pelvic region," and near her vagina.

As he was being transported by the police officers to a hospital for an examination, Little stated, "That bitch didn't give me my money's worth. She's going to give it to me or else." Little said he had met Tonya at a bar in downtown San Diego where she agreed to perform a sex act for $20. He said she directed him to the location where the officers discovered them. They got into the back seat of Little's car and Tonya "started playing with it." Little told Officer Tamagni that he "wanted more and she refused. [Little] told [Officer Tamagni] that he told her that 'She wasn't going anywhere until I got my pussy.' " Little said "he grabbed her in self-defense, that she deserved it, she cheated him." While the officers were driving him to jail, Little asked several times: " 'How's the bitch? Is she going to make it[?]' "

According to Little's motion papers in the trial court, a San Diego trial arising out of the Laurie B. incident ended in a mistrial, after which Little pled guilty to aggravated assault against Laurie and aggravated assault against Tonya.

2. *Defense evidence.*

Little did not testify in his own defense.

Elizabeth Sholl, a DNA analyst with the Los Angeles Police Department, testified she had determined that Little was excluded from sperm and epithelial fractions found on the swab samples taken from Apodaca's vaginal and external genitalia areas.

3. *Trial outcome.*

Little was convicted by the jury of three counts of first degree murder with a multiple murder special circumstance (Pen. Code §§ 187, 190, subd. (a)(3)).[5] The trial court sentenced him to three consecutive terms of life without possibility of parole.

CONTENTIONS

Little contends: (1) there was insufficient evidence to prove that he was the person who committed the three murders; (2) the trial court erred by admitting other crimes evidence to establish Little's identity as the perpetrator of the three murders; (3) the trial court erred by excluding evidence of third-party culpability; (4) there was cumulative error; (5) the trial court miscalculated the amount of presentence custody credits to which Little was entitled.

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[5] All further statutory references are to the Penal Code unless otherwise specified.

DISCUSSION

1. *There was sufficient evidence to sustain the murder convictions*.

Little contends there was insufficient evidence to prove he was the person who murdered Apodaca, Nelson and Alford. We disagree.

a. *Legal principles.*

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] ' "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. ' "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also

reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." ' [Citations.]" ' [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

" 'An appellate court must accept logical inferences that the [finder of fact] might have drawn from the circumstantial evidence.' [Citation.] 'Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the [finder of fact].' [Citation.]" (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) As our Supreme Court said in *People v. Rodriguez, supra,* 20 Cal.4th 1, while reversing an insufficient evidence finding because the reviewing court had rejected contrary, but equally logical, inferences the jury might have drawn: "The [Court of Appeal] majority's reasoning . . . amounted to nothing more than a different weighing of the evidence, one the jury might well have considered and rejected. The Attorney General's inferences from the evidence were *no more inherently speculative* than the majority's; consequently, the majority erred in substituting its own assessment of the evidence for that of the jury." (*Id.* at p. 12, italics added.)

b. *Discussion.*

While conceding that the evidence demonstrated his DNA had been found on the clothing of Alford and Apodaca, and on the fingernail clippings of Nelson, Little argues: "However, the date of the DNA deposit could not be determined. According to the prosecution theory, these women were prostitutes and, therefore likely to have contact with many men. That appellant may have been a customer does not make him [the] murderer. All the DNA

shows is mere presence and opportunity, which is insufficient to sustain a conviction."

During closing argument, the prosecutor argued several inculpatory theories to the jury. She asserted the evidence demonstrated that Little was "a serial sexual predator and a killer. [¶] He is a man, as you've learned, who brutalizes and dehumanizes women, who derives pleasure from the infliction of pain and suffering of his victims." "You also learned . . . that these women, obviously, suffered from issues. They had cocaine addictions, and some of them may have even resorted to prostitution in order to be able to support their drug addictions. [¶] And you learned about four other women who were attacked and brutalized by the defendant, coming from the same situation."

Pointing just to the murders of Linda Alford, Audrey Nelson and Guadalupe Apodaca, the prosecutor asked the jury: "What are the chances in this case that you have three separate women who are all found dead, all three of them are strangled to death manually; all three of them are left naked from the waist down, with their genitals exposed; all three of them are disposed of in the same manner, dumped like trash, amongst debris, trash, dirt; no I.D. for any of these women was found at the crime scenes; no underwear is found at any of the three crime scenes, no skirt, no pants, no bottom half to their clothing; all three of them are discovered in the same general area of South Los Angeles . . . within, basically, a 5-mile radius of one another; and all three of them just happened to have the defendant's D.N.A. profile on them? [¶] *What are the chances of that*?" (Italics added.)

The prosecutor noted the similar locations where the bodies had been found,[6] the way the bodies had been posed with their genitals exposed, the similarly fractured neck bones and severe blunt-force trauma to the victims' heads, the cocaine found in their blood, and the unsurprising fact that – because of his problem maintaining an erection – the only semen-derived DNA from Little was found in semen stains on one victim's clothing (Alford's), and he was excluded as the source of sperm found in the rape kits relating to both Alford and Apodaca.[7] The prosecutor then argued, "Three of them. Three murdered victims, all extremely similar. [¶] That's just an awful lot of coincidences to have to explain away to . . . a reasonable person, given the way these victims died and the similarities between their crime scenes."

The so-called "doctrine of chances" is a seldom-used, but legitimate means of proving facts (in this case, the murderer's identity). "In *People v. Robbins* (1988) 45 Cal.3d 867, 879–880 . . . , we quoted Wigmore's explanation of the doctrine: ' ". . . *the mind applies this rough and instinctive process of reasoning,*

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[6] Alford's body had been found in an alleyway, Nelson's in a dumpster, and Apodaca's in the debris of an abandoned building.

[7] The prosecutor had argued earlier: "[A]sk yourself how come, when Detective Roberts was testifying yesterday, we didn't get anything out of the sexual assault samples, how come she was forced to look at things like the clothing and fingernail kits? [¶] That's because [Little] can't maintain an erection. You're not going to get D.N.A. semen from the areas you'd expect from someone who could not complete the act of rape because he can't maintain an erection. You don't have D.N.A. in the vaginal cavities. You don't have D.N.A. in the rectal swabs."

namely, that an unusual and abnormal element might perhaps be present in one instance, but that the oftener similar instances occur with similar results, the less likely is the abnormal element likely to be the true explanation of them." ' " (*People v. Balcom* (1994) 7 Cal.4th 414, 430.) The doctrine of chances has been used to prove intent (*People v. Steele* (2002) 27 Cal.4th 1230, 1244 ["the doctrine of chances teaches that the more often one does something, the more likely that something was intended, and even premeditated, rather than accidental or spontaneous"], actus reus (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1377-1381 [to prove the improbability that the victim committed suicide or shot herself accidentally, and the corresponding probability that defendant did the shooting], and identity (see *People v. Erving* (1998) 63 Cal.App.4th 652, 662 ["the doctrine of chances also applies to evidence of identity"].)

There is no doubt that there were many similarities among the three murders. In addition, Little told police he was a professional boxer (which would explain the severe head trauma each victim suffered) and he exhibited consciousness of guilt by denying that he had ever seen either Nelson or Apodaca.

However, we need not decide if this evidence *alone* would have been sufficient to prove Little's identity as the perpetrator, because the prosecutor also relied on other evidence that Little committed the three murders—namely, evidence of the assaults of Hilda N., Leila M., Laurie B., and Tonya J., which was admissible under Evidence Code section 1101 to show identity, a common plan, intent and motive. As the prosecutor told the jury: "[I]n addition to the D.N.A. evidence in this case, you also have a pattern, a pattern of prior crimes. You learned that the defendant previously committed several violent, sexually

motivated crimes against women." "These crimes, what they do for you, is they . . . provide you with a blueprint. They provide you with a template to follow. Because when you look at the prior crimes, they tell you exactly what happened to the victims in the current case."

Contrary to Little's argument, there were numerous similarities between the charged murders and the uncharged assaults: three of the assault victims testified Little was trying to kill them, and Little's own comments to police arguably indicated his intent to kill Tonya; all of the assault victims had been choked and three of them had been punched in the head; two of the assault victims (Hilda and Nelson) had been subjected to an obviously pre-planned torture game apparently intended to arouse Little sexually; Laurie's testimony about Little's inability to maintain an erection is particularly significant given the DNA results from the bodies of the murder victims.

All of this evidence, the prosecutor argued, pointed to a very distinctive criminal pattern in which Little achieved sexual satisfaction through torturing his victims by manually strangling them, off and on, precisely in order to watch them fight desperately to draw their next breath. "It's all about power and control. That's what it was all about, this game, as you heard from Laurie [B.]. Let's just be clear. . . . [T]his defendant, he doesn't want consensual sex. That's not how he gets off. I'm going to talk plainly to you. He wants to be able to overpower his victims. He wants to play God." "And the defendant says to [Laurie B.], as he has his hands around her throat and he's pressing down on her neck, 'I love to feel you swallow. Swallow for me.' [¶] That's how he gets sexual gratification, from

watching these women struggle to breathe, lose consciousness, and eventually die."

Having "review[ed] the whole record in the light most favorable to the judgment," we conclude that "it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez*, *supra*, 20 Cal.4th at p. 11.) Indeed, we conclude there was overwhelming evidence of Little's guilt.

2. *Trial court did not err by admitting the other crimes evidence.*

Little contends the trial court abused its discretion by admitting, as other crimes evidence, the testimony demonstrating that he had assaulted four women in the past. Little argues, "It was error to admit the uncharged crimes as they bore little other than general similarities to the charged crimes and their probative value [was] outweighed [by] the prejudice to appellant's trial." There is no merit to this contention.

a. *Legal principles.*

"The trial court has the discretion to admit evidence of crimes committed by a defendant other than the one for which he is charged, if such evidence is relevant to prove some fact at issue, and if the probative value of the evidence outweighs its prejudicial effect. [Citation.] 'When reviewing the admission of evidence of other offenses, a court must consider (1) the materiality of the fact to be proved or disproved, (2) the probative value of the other crime evidence to prove or disprove the fact, and (3) the existence of any rule or policy requiring exclusion even if the evidence is relevant. [Citation.] Because this type of evidence can be so damaging, "[i]f the connection between the uncharged offense and the ultimate fact in dispute is not clear,

the evidence should be excluded." [Citation.]' [Citation.]" (*People v. Hawkins* (1995) 10 Cal.4th 920, 951, disapproved on another ground in *People v. Lasko* (2000) 23 Cal.4th 101, 110.)

The admission of other crimes evidence is governed by Evidence Code section 1101. "Subdivision (a) of section 1101 prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion. Subdivision (b) of section 1101 clarifies, however, that this rule does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393, fn. omitted.) Subdivision (b) of section 1101 provides, in pertinent part, that "[n]othing in this section prohibits the admission of evidence that a person committed a crime . . . when relevant to prove some fact . . . such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident."

"To be relevant on the issue of identity, the uncharged crimes must be highly similar to the charged offenses." (*People v. Kipp* (198)18 Cal.4th 349, 369.) "Evidence going to the issue of identity must share *distinctive* common marks with the charged crime, marks that are sufficient to support an inference that the same person was involved in both instances. [Citation.]" (*People v. Prince* (2007) 40 Cal.4th 1179, 1271.) "Evidence of a common design or plan is admissible to establish that the defendant committed the *act* alleged. Unlike evidence used to prove intent, where the act is conceded or assumed, '[i]n proving design, the act is still undetermined . . . . ' [Citation.] For example, in a

prosecution for shoplifting in which it was conceded or assumed that the defendant was present at the scene of the alleged theft, evidence that the defendant had committed uncharged acts of shoplifting in a markedly similar manner to the charged offense might be admitted to demonstrate that he or she took the merchandise in the manner alleged by the prosecution." (*People v. Ewoldt*, *supra*, 7 Cal.4th at p. 394, fn. 2.) "To establish a common design or plan, the evidence must demonstrate not merely a similarity in the results, but ' "such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations." [Citation.]' " (*People v. Balcom* (1994) 7 Cal.4th 414, 423-424.)

In addition to common plan, " '[m]otive is an intermediate fact which may be probative of such ultimate issue[] as . . . identity [citation] . . . .' [Citation.]" (*People v. Lewis* (2001) 26 Cal.4th 334, 370.) Other crimes evidence is admissible to establish that "the uncharged act evidences the existence of a motive, but the act does not supply the motive. . . . [T]he motive is the cause, and both the charged and uncharged acts are effects. *Both crimes are explainable as a result of the same motive*." (1 Imwinkelried, Uncharged Misconduct Evidence (2009) § 3.18, pp. 3–128 to 3–129, fns. omitted, italics added.)

"There is an additional requirement for the admissibility of evidence of uncharged crimes: The probative value of the uncharged offense evidence must be substantial and must not be largely outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury. [Citation.]" (*People v. Kipp*, *supra*, 18 Cal.4th at p. 371.)

"[O]ther crimes evidence need be proven only by a preponderance of the evidence." (*People v. Steele*, *supra*, 27 Cal.4th at p. 1245, fn. 2.) " 'On appeal, we review a trial court's ruling [admitting evidence] under Evidence Code section 1101 for abuse of discretion.' " (*People v. Gray* (2005) 37 Cal.4th 168, 202.)

b. *Procedural background*.

The People filed a pretrial motion seeking to admit evidence that Little had assaulted five other women and murdered still another five women (in addition to Alford, Nelson and Apodaca) in similar circumstances. The People asserted all 13 victims were prostitutes and/or drug users. Regarding the current charges, the People asserted that in addition to the fact that all three murder victims had cocaine in their bodies, Alford had been "a known drug user and was unemployed at the time of her death," Nelson "had previously been arrested for prostitution and was homeless at the time of her death," and Apodaca "was homeless at the time of her death and had prior arrests for prostitution." The People's motion argued "the defendant chose victims who were particularly vulnerable and unlikely to report their victimization to law enforcement. His targets were among the weakest individuals in society, who were unlikely to be believed by law enforcement if they did complain. Each of his victims was beaten, sexually assaulted, and then choked into unconsciousness or strangled to death."

The trial court ruled that the People would be allowed to introduce evidence of six[8] prior incidents, concluding that "certain

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[8] Ultimately, the prosecution chose to introduce evidence of only four prior incidents.

aspects of the three murders . . . , when compared with the prior . . . acts attributed to the defendant, contain many similarities which . . . could indeed be reflective of a common perpetrator, and that goes to identity, reveal a common plan and/or scheme, as well as a common intent."

The jurors were instructed that they could not rely on the other crimes evidence to prove that Little "is a person of bad character or that he has a disposition to commit crimes," but they could only rely on the evidence "for the limited purpose of determining if it tends to show the following: [¶] A characteristic method, plan, or scheme in the commission of criminal acts similar to the method, plan, or scheme used in the commission of the offense in this case," "the existence of the intent which is a necessary element of the crime charged; [¶] the identity of the person who committed the crimes" and "a motive for the commission of the crime charged."

c. *Discussion*.

Little asserts the "similarities" relied on by the trial court are weak,[9] yet it is his asserted "differences" that are often weak or simply inaccurate. He claims the uncharged assaults were independent and apparently spontaneous, and therefore could not provide a " 'connecting link between the prior and present

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[9] For example, Little argues, "There was no evidence of cocaine in any of the uncharged crimes," and "There was no DNA evidence in any of the uncharged crimes." But this is most probably explainable by the fact that only the murders entailed autopsies and DNA and drug testing. The "state of undress" distinctions Little mentions are reasonably explained by the People's argument that Little had the opportunity to "pose" the bodies of his murder victims.

acts.' " But the opposite is true—the evidence reflects these acts were planned: Little kidnapped Laurie; he punched Hilda in the back of the head the moment she closed her apartment door; and when Leila told Little that he had driven past their destination (the Shamrock Hotel), Little replied: "I don't need to turn around for what I want to do to you," and then punched her in the head. Little asserts the uncharged assaults "do not evidence intent to kill" because all "the victims survived." But intent to kill is an element of attempted murder (*People v. Juarez* (2016) 62 Cal.4th 1164, 1170 ["Attempted murder requires the intent to kill and a direct but ineffectual act toward accomplishing the intended killing."]), and there was intent-to-kill evidence as to each uncharged assault. Hilda testified she believed Little was trying to kill her. While describing how she fought back against Little, Leila testified: "He was going to kill me." Laurie testified that she "knew this wasn't about rape, it wasn't about assault, it was about death, power and control, whether or not I was going to live . . . ." And Little himself asked the police officers who rescued Tonya , " 'How's the bitch? Is she going to make it[?]' " All seven victims exhibited the hallmarks of a severe physical beating (particularly, having been punched in the head) and manual strangulation.

The key question facing the jury in Little's trial was whether or not he had been the person who murdered these three women. We cannot say the trial court abused its discretion when it determined the other crimes evidence was admissible.

As our Supreme Court noted in *People v. Carter* (2005) 36 Cal.4th 1114, 1148, italics added: "*To be highly distinctive, the charged and uncharged crimes need not be mirror images of each other*." Hence, *Carter* concluded: "Although defendant notes

certain differences in the circumstances surrounding the victims' deaths, the combination of fatal strangulation and placement of a young woman's body in a closed bedroom closet is both highly distinctive and suggestive that the same person perpetrated the crimes involving Knoll, Mills, and Cullins." (*Ibid.*, see also *People v. Jones* (2013) 57 Cal.4th 899, 926, 931 [other crimes evidence properly admitted where series of women in prostitution area had been manually strangled, drugs were involved and the dead bodies "were treated like trash"].)

The case law relied on by Little does nothing to help his cause. In his reply brief, Little asserts: "[I]t is not enough to point to similarities which are not distinctive. For example, charged and uncharged murders, without more, would not be admissible merely because they shared the common similarity of being murders. (See *People v. Rist* (1976) 16 Cal.3d 211, 219; *People v. Fries* (1979) 24 Cal.3d 222, 230.)" But *Rist* and *Fries* are completely inapposite: they involved the reversal of convictions because the trial courts wrongly denied defense motions to exclude evidence of similar prior convictions offered for the purpose of impeaching the credibility of defendants who might otherwise have testified.

Little also relies on *People v. Sam* (1969) 71 Cal.2d 194, stating: "Here, as in *Sam*, the uncharged acts were independent of the charged acts, were at a different locale and time, and could not reasonably be considered to be linked to each other. They do not evidence a common scheme or plan." Little's reliance on *Sam* is misplaced.

In *Sam*, the defendant and his friends were socializing when Dominguez, a complete stranger, walked in and asked for a drink. Dominguez was accommodated, but then he " 'started to

get mean.' He boasted that he was a professional karate expert and began leaping around the room in a simulated karate demonstration. When he insulted [one of the hosts] he was asked to leave. [¶] Dominguez departed, but about 10 minutes later he returned and stood in the doorway calling defendant foul names and challenging him to fight. Finally defendant, who was apparently intoxicated by this time, lost his temper and chased Dominguez into the hallway." (*People v. Sam*, *supra*, 71 Cal.2d at p. 199.) A fight between the two ensued, during which the defendant threw Dominguez to the floor and stomped on his stomach. Dominguez died two weeks later.

To counter the defendant's claim that he kicked Dominguez in self-defense because Dominguez seemed about to hit him and he feared he might be hurt by a karate blow, the trial court allowed the prosecution to put on evidence "that defendant had (1) kicked his mistress during a drunken quarrel a month before the fight with Dominguez, and (2) kicked another man during a brawl more than two years earlier." (*People v. Sam*, *supra*, 71 Cal.2d at p. 205.) Reversing the defendant's conviction, our Supreme Court reasoned: "In effect, two drunken fights over the past two years, in which defendant may or may not have acted in self-defense, were introduced to suggest that a more recent altercation was not in self-defense. *If there was a concatenation of events, it was tenuous at best, whereas the prejudicial effect of the evidence is patent*." (*Id*. at pp. 205–206, fn. omitted, italics added.)

The evidence in the case against Little was far more compelling. We find that the murders and the uncharged crimes shared common features that were sufficiently distinctive to support a reasonable inference that Little committed the charged

murders. The evidence demonstrated that Little operated according to a common plan, and had the same motive and intent in each instance. It can be logically inferred from the evidence of the uncharged crimes that Little was motivated by a perverted sexual desire to beat and strangle the murder victims for his own pleasure. Therefore, we conclude the trial court did not abuse its discretion by admitting evidence of the uncharged assaults under Evidence Code section 1101.

3. *Trial court did not err by excluding evidence of third-party culpability.*

Little contends the trial court erred by excluding evidence of third-party culpability. The proposed evidence, he argues, would have raised a reasonable doubt by providing an evidentiary connection between the murder of Audrey Nelson and a man, Jack West, who was known to have physically abused her in the recent past. We disagree.

a. *Legal principles.*

" 'While the Constitution . . . prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury. [Citations.] . . . [¶] 'A specific application of this principle is found in rules regulating the admission of evidence proffered by criminal defendants to show that someone else committed the crime with which they are charged. [Citations.]' " (*People v. Gonzales* (2012) 54 Cal.4th 1234, 1259.)

"To be admissible, the third-party [culpability] evidence need not show 'substantial proof of a probability' that the third person committed the act; it need only be capable of raising a reasonable doubt of defendant's guilt. At the same time, we do not require that any evidence, however remote, must be admitted to show a third party's possible culpability. . . . [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*People v. Hall* (1986) 41 Cal.3d 826, 833.) "We review the trial court's ruling [excluding third-party culpability evidence] for abuse of discretion. [Citation.]" (*People v. Prince*, *supra,* 40 Cal.4th at p. 1242.)

b. *Procedural background.*

The People made a pretrial motion to exclude third-party culpability evidence regarding Jack West. The People's motion stated: "On September 8, 1989, Jack West was arrested for [Nelson's] murder. Witnesses told law enforcement that he lived with the victim, drank regularly, and routinely beat her. West was 73 years old and legally blind. At the time of his arrest, West initially denied knowing the victim, but then claimed that she was his cleaning lady and that he had not seen her for several months. Though a Coroner's criminalist opined that a ring belonging to West was potentially consistent with an impression found on the victim's throat, it could not positively be identified as the only possible source of the mark, nor could the criminalist give an estimate as to how many other items might also be consistent. Due to the lack of evidence against West, the District Attorney's Office rejected the case. West is now dead."

The trial court granted the prosecution motion, concluding the evidence about West was "incapable of raising a reasonable doubt as to the defendant's guilt." The court ruled that Little could introduce evidence showing that marks on Nelson's neck might have been made by a ring worn on the strangler's hand, but that when Little was arrested he was not in possession of any such ring.

During trial, the coroner who conducted Nelson's autopsy – Dr. Eugene Carpenter – acknowledged that one of Nelson's neck injuries "suggested something hard in structure." Carpenter testified that he had no recollection of having examined the rings taken from West and given to him by the investigating detectives. Carpenter testified by referring to records from that time, including a police chronological report and his own autopsy notes. The following colloquy occurred on cross-examination:

"Q. . . . The injury did suggest the possibility of a ring on the hand of the person doing the compression; correct?

"A. *No*. The injury suggested something with a pattern structure. And a certain ring, if it meets the size requirements as I measured the injury on the neck, it would be consistent with; but looking at the lesion, there is no indication that it's a ring." (Italics added.)

Carpenter opined that the patterned mark on Nelson's neck could have been the result of manual strangulation: "If there is something on the hand, on . . . a finger, . . . jewelry, or wrist watch, from an arm-bar hold that can be an explanation for the mark here. Also, there could be a leather strap or a cloth strap with a piece of metal on it, or plastic, capable of doing this, and then that could be a sign that a ligature was also used in addition to the hands." Carpenter testified that in 1989 Steve Dowell, a

toolmark analyst now retired, worked for the medical examiner's office.

The prosecutor subsequently reported to the court that Steve Dowell had told the detectives that he concluded "the ring [taken from West] could have caused the marks on the victim's neck" but "it could not be considered the only cause due to the elasticity of the skin and the variance of the underlying tissue."[10] According to the prosecutor, the rings themselves had either been released back to West or destroyed.

c. *Discussion*.

While acknowledging that, to be admissible, third-party culpability evidence must demonstrate more than mere motive and opportunity, Little argues that West's "ring was consistent with ring marks found on Nelson's neck." But Dr. Carpenter never testified there were "ring marks found on Nelson's neck." Carpenter testified only that this wound was consistent with a hard structured object such as a ring, a belt buckle, the metal clasp on a handbag handle, etc.

As the trial court pointed out, this minimal connection between West and Nelson was no closer than the cowboy bootprint found next to a murder victim in *People v. McWhorter* (2009) 47 Cal.4th 318. In that case a criminalist "initially felt the print or impression could possibly have been made by a cowboy boot. At trial, he testified the impression was caused by a smooth-soled shoe or boot, and could possibly have been made by a large limb like a thigh or a knee." (*Id.* at p. 371, fn. 21.) The

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[10] In a later update, the prosecutor indicated that after a record search, the coroner's office could find no written report from Dowell, leading her to conclude that Dowell had conveyed this information to the detectives orally only.

trial court found this evidence "insufficiently probative of identity without further evidence of a brand or size of boot that 'in a logical chain' would link the print impression at the crime scene to [the alleged third-party perpetrator]." (*Id.* at p. 372.) Our Supreme Court agreed with this conclusion. (*Ibid.*)

As the Attorney General argues, "[t]here is nothing in the proffered evidence pertaining to West that links him to the actual perpetration of Nelson's murder. Instead, the evidence pertains only to West's violent past and the coincidence that a ring he possessed may have been consistent with an injury Nelson suffered. Such evidence is not probative of Nelson's murder. There was no evidence that West actually committed the murder . . . ."

We agree and cannot find that the trial court abused its discretion by excluding the third-party culpability evidence regarding Jack West.

4. *There was no cumulative error.*

Little contends that, even if harmless individually, the cumulative effect of these claimed trial errors mandates reversal of his convictions. Because we have found no errors, his claim of cumulative error fails. (See *People v. Seaton* (2001) 26 Cal.4th 598, 639; *People v. Bolin* (1998) 18 Cal.4th 297, 335.)

5. *Little is entitled to additional presentence custody credit.*

Little contends the trial court miscalculated the amount of his presentence custody credits by awarding him only actual time spent in custody and giving him no conduct credits. The People properly concede that the trial court did err.

The trial court awarded Little credit against his prison sentence for the 624 days he had spent in presentence custody, but failed to award him any conduct credit for that time.

"Subdivision (a) of section 2933.2 prohibits any person convicted of murder from accruing any presentence conduct or worktime credit. However, the statute applies only to offenses committed after its effective date of June 3, 1998. [Citations.]" (*People v. Chism* (2014) 58 Cal.4th 1266, 1336.) Because Little committed his crimes prior to the enactment of this statute, his conduct credits should have been awarded pursuant to section 4019. (See *In re Marquez* (2003) 30 Cal.4th 14, 26 ["we take the number of actual custody days . . . and divide by 4 (discarding any remainder) . . . [and] then multiply the result by 2"].) Hence, the parties are correct that Little was entitled to an additional 312 days of presentence custody credit.·

DISPOSITION

The judgment is affirmed as modified. The judgment is modified to grant Little an additional 312 days presentence custody credit. The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

STRATTON, J.*

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