Filed 5/8/18 P. v. Ikeler CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. MICHAEL DAVID IKELER, Defendant and Appellant.	B281199 (Los Angeles County Super. Ct. No. YA092277)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Affirmed.

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

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephen D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Michael David Ikeler abducted two-year-old Stacie and sexually assaulted her. A jury found him guilty of one count of a lewd act on a child under the age of 14 and two counts of sexual penetration of a child 10 years old or younger. On appeal, Ikeler contends that the trial court erred by admitting statements allegedly obtained in violation of *Miranda*[1] and by imposing consecutive sentences on those counts. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background

A. *The kidnapping of Stacie*

Marisol and Jesus had two daughters, Angie, who was 10 years old at the time of these events, and Stacie, who was two years old and preverbal. Marisol and Jesus did not live together, but they continued to have sexual relations.

Defendant Ikeler worked at the Tesoro refinery in Wilmington. At 3:15 p.m. on April 2, 2015, Ikeler picked up layoff documents from Patricia Sandoval. Sandoval saw Ikeler in a white car. Just an hour later, at approximately 4:30 p.m., Marisol was at a self-serve car wash in Gardena with Angie and Stacie. The kids were outside the car while Marisol cleaned it. Marisol heard Stacie yell, "mom." When Marisol looked, Stacie was gone. Police officers did not find her.

Around the time Stacie went missing, Yolanda Outlaw and David Groce were taking a break outside, at the back of the restaurant where they worked. They saw a white Nissan Maxima or Altima with rear tinted windows drive down the alley

---

1 *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

twice in the same direction, which they thought was odd. Outlaw and Groce identified Ikeler as the driver of the car from photographic six-packs and at trial. Video surveillance showed what appeared to be a white Nissan Altima with tinted windows make two passes through the alley. The car had a front license plate the first time it passed through the alley; the second time it did not have the front license plate.

That evening at approximately 7:00 p.m., Eric Renteria was at Jim's Burgers in the City of Cudahy, which was approximately 13 miles from where Stacie had been kidnapped. Renteria saw a 2007 to 2010 white Nissan Maxima or Altima with what looked like tinted windows pull into a parking lot for no more than a minute, reverse toward a dumpster, and then go forward again. When Renteria looked again a minute later, the car was gone but something that looked like a trash bag was on the floor. A couple soon found Stacie, naked, sitting in a puddle of what appeared to be urine next to a dumpster.

B. *Forensic evidence*

Susan Barie, a sexual assault nurse, examined Stacie the same evening she was found. Stacie had dried secretions on her right armpit, left lateral lower leg and left shin. The area around Stacie's urethra and her entire hymen had "red bruising." Stacie also had multiple external anal tears, and, based on their location, something penetrating the anus likely caused them. In Barie's opinion, "sexual abuse [wa]s highly suspected."

The next day, April 3, 2015, Malinda Wheeler, conducted a follow-up examination of Stacie. Wheeler also saw bruising to Stacie's hymen, which, in Wheeler's opinion was caused by significant penetrating blunt force trauma. In addition to the external anal tears Barie had documented the day before,

Wheeler saw an internal tear at the anal opening, which was acute and fresh. Significant blunt force trauma caused the internal and external tears, both of which were consistent with someone penetrating Stacie's anus with a finger, penis or other object.

Extensive DNA evidence was admitted, the gist of which was that Ikeler's DNA was on multiple areas of Stacie's body. The DNA could have come from Ikeler touching her or from his semen or saliva. Jesus's DNA was also on his daughter's body, but a greater amount of Ikeler's DNA was on her. Indications for semen were found on 12 places on Stacie's body: right breast, left and right hand and wrist, right armpit, left thigh, left shin, left leg, mons pubis area, external oral, vulva, vestibule, and external anal.[2] DNA testing showed, for example, that Ikeler was a possible contributor to the right breast epithelial fraction, and a "statistical analysis for [Ikeler's] profile" was 1 in 658 billion. The mons pubis epithelial fraction contained a mixture of four contributors, and Ikeler was included as a contributor. A "statistical analysis" for Ikeler's profile for the mons pubis epithelial fraction was 1 out of 1.45 quadrillion.

---

[2] The sperm fraction on Stacie's right armpit came from her father, Jesus. Jesus and Marisol testified that they had sex on April 1, 2015, the day before Stacie was abducted. He wiped his ejaculate with a towel and threw it into a laundry basket, which Stacie might have played in. Marisol or Jesus also might have picked Stacie up with unwashed hands.

C. *Prior acts evidence*

Ikeler had been married twice. He and Mayely Lopez were married in 2009 and separated in 2013.[3] While they were married, she saw, on a computer Ikeler had access to, an image of naked or nearly naked young girls, approximately 12 years old and over. In 2013, Lopez found videos of naked young girls, five or six and older, orally copulating and having sexual intercourse with adult men. When she found the videos, she called Ikeler's former wife, Adrienne Ikeler.

Adrienne testified that she and Ikeler got married in 2001. During their three-year marriage, she saw a still image on Ikeler's computer of two girls between the ages of three and seven sitting next to an erect penis. In March 2015, she saw Ikeler in a white Nissan Altima.

D. *Defense evidence*

Various witnesses testified for the defense, including a DNA expert and an eyewitness and memory expert. Ikeler also testified. He denied knowing about the child pornography, and he denied abducting and raping Stacie. Rather, after getting off work on April 1, 2015, he picked up a prostitute and got high on cocaine and had sex with her in a motel room, the exact location of which he could not recall except that it was in Lomita or Carson. After, he drove around her drug-dealing cousin "Flaco," delivering drugs until the early morning hours. Ikeler then went to work on April 2 from 6:00 a.m. to 2:30 p.m. Ikeler returned to the motel room at 4:00 p.m., and, for the next four hours, he

---

[3] Ikeler told Lopez he'd had a vasectomy, which explained why DNA analysis failed to find sperm heads.

repaired "Flaco's" car. Because "Flaco's" car was out of commission, he borrowed Ikeler's car, a 2008 white Nissan Altima. "Flaco" returned after a few hours in Ikeler's car, but it was now missing the front and rear license plates. Also, the contents of a half-filled water bottle had been spilt onto the front seat. That morning, Ikeler had brushed his teeth in the car and spit into the bottle. Ikeler's work bandanas, which he used to keep the sweat out of his eyes, were also on the front seat and were wet.

II. Procedural background

On January 27, 2017, a jury found Ikeler guilty of count 1, lewd act on a child under the age of 14 (Pen. Code, § 288, subd. (a)),[4] and counts 2 and 3, sexual penetration with a child 10 years old or younger (§ 288.7, subd. (b)). As to count 1, the jury found true a kidnapping allegation (§ 667.61, subds. (a), (d)).

On March 1, 2017, the trial court sentenced Ikeler to 25 years to life on count 1, 15 years to life on count 2, and 15 years to life on count 3. The sentences were consecutive.

DISCUSSION

I. *Miranda*

Before Ikeler was arrested on April 9, 2015, law enforcement questioned him at his residence on April 7. Ikeler contends that his statements should have been excluded because he was not given *Miranda* advisements. As we explain, we disagree.

---

[4] All further undesignated statutory references are to the Penal Code.

A. *Additional background*

Ikeler moved to exclude statements he made on April 7, 2015, to Detective Oscar Quintero Lopez (Quintero). At an Evidence Code section 402 hearing, Detective Quintero testified that he and his team of four officers (a total of five people) arrived at Ikeler's house. All officers had concealed firearms. Detective Quintero and his sergeant wore raid vests with the word "police" on them, although the rest of the team wore plainclothes. The detective and his sergeant knocked on the door. Ikeler answered and stepped outside, onto the porch. Detective Quintero told Ikeler they were investigating a kidnapping and that Ikeler's vehicle matched the description provided by the news. The detective did not tell Ikeler he was a suspect. It began to rain, so the detective asked Ikeler if he wanted to go inside, and Ikeler said yes. Detective Quintero and his team went inside, to Ikeler's living room. When the detective asked if he could look at Ikeler's vehicle, Ikeler gave them permission to do so. In response to questions, Ikeler said he had bought the car from Carmax two months ago but had not yet received license plates. The officers were in the house more than 15 minutes but less than an hour. At the detective's request, Ikeler wrote a statement. Ikeler was never handcuffed, detained or arrested at any point during that encounter. Nor was he given *Miranda* advisements.

The trial court denied the motion to exclude Ikeler's statements, and Detective Quintero thereafter testified in front of the jury about his April 7, 2015 encounter with Ikeler in keeping with his testimony at the Evidence Code section 402 hearing, adding that Ikeler had said he had removed tint from the car windows on April 4, 2015.

Thereafter, in the defense case on direct examination, Ikeler testified that when the police came to his residence on April 7, he told them that on the day of the kidnapping he was hanging out with a girlfriend in a motel room and drinking. At trial, Ikeler admitted misleading the police by saying that he was at the motel all night.

B. *Ikeler was not in custody*

Ikeler contends that law enforcement should have given him *Miranda* advisements because he was in custody. We disagree.

"*Miranda* requires that a suspect be given certain advisements to preserve the privilege against self-incrimination, or to ensure its voluntary and intelligent waiver, during the inherently coercive circumstances of a 'custodial interrogation.' " (*People v. Webb* (1993) 6 Cal.4th 494, 525-526.) Absent a custodial interrogation, *Miranda* does not apply. (*People v. Mickey* (1991) 54 Cal.3d 612, 648.) The test for whether a suspect is in custody is objective; the question is whether there was a formal arrest or a restraint on the freedom of the suspect's movement to the degree associated with a formal arrest. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400 (*Leonard*); see also *Howes v. Fields* (2012) 565 U.S. 499, 508-509.) In making this determination, "[t]he totality of the circumstances surrounding an incident must be considered as a whole. [Citation.] Although no one factor is controlling, the following circumstances should be considered: '(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.' [Citation.] Additional factors are whether the suspect agreed to

the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect's freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were 'aggressive, confrontational, and/or accusatory,' whether they pressured the suspect, and whether the suspect was arrested at the conclusion of the interview." (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403-1404; *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.)

Whether a suspect was in custody for *Miranda* purposes is a mixed question of fact and law. (*Leonard*, *supra*, 40 Cal.4th at p. 1400.) "When reviewing a trial court's determination that a defendant did not undergo custodial interrogation, an appellate court must 'apply a deferential substantial evidence standard' [citation] to the trial court's factual findings regarding the circumstances surrounding the interrogation, and it must independently decide whether, given those circumstances, 'a reasonable person in [the] defendant's position would have felt free to end the questioning and leave' [citation]." (*Ibid.*; *People v. Kopatz* (2015) 61 Cal.4th 62, 80.) If a *Miranda* violation has occurred, we review the error under the harmless beyond a reasonable doubt standard in *Chapman v. California* (1967) 386 U.S. 18, 24. (*People v. Neal* (2003) 31 Cal.4th 63, 86.)

To show that law enforcement violated his *Miranda* rights, Ikeler relies on *U. S. v. Craighead* (9th Cir. 2008) 539 F.3d 1073. In that case, eight armed law enforcement officers, including FBI agents wearing raid vests, served a search warrant on Craighead, who was suspected of possessing child pornography. Some of the officers unholstered their firearms in Craighead's presence. (*Id.*

at p. 1078.) An agent told Craighead he was free to leave and was not under arrest but also "directed" him to a storage room, closed the door, and the agent and another detective questioned Craighead for 20 to 30 minutes. (*Ibid.*) Craighead later testified that he did not feel free to leave. Although the court acknowledged that an in-home interrogation is not per se custodial, the court found that an in-home interrogation becomes custodial when "the otherwise comfortable and familiar surroundings of the home" become a " 'police-dominated atmosphere.' " (*Id.* at p. 1083.) To determine whether such an atmosphere was created, *Craighead* focused on the number of law enforcement and whether they were armed, whether the suspect was restrained, whether the suspect was isolated, and whether the suspect was told he or she was free to leave. (*Id.* at p. 1084.) Weighing these factors, the court concluded that the defendant was in custody and *Miranda* warnings were required.

Craighead does not help Ikeler. Although the questioning occurred at Ikeler's residence, officers only entered his home after asking if they could come in, and there was no concurrent search pursuant to a warrant, as in *Craighead*. (See, e.g., *People v. Breault* (1990) 223 Cal.App.3d 125, 135 [totality of circumstances, including that questioning occurred in defendant's home, showed that he was not in custody].) Ikeler was not handcuffed or restrained in any way, and he was not arrested. He was not isolated. Instead, the questioning occurred in Ikeler's living room, not a small storage room with the door closed. Also, Detective Quintero did not tell Ikeler he was a suspect, which, in any event, would be of little moment, because the mere fact an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings. (*Minnesota v.*

Murphy (1984) 465 U.S. 420, 431; *People v. Linton* (2013) 56 Cal.4th 1146, 1167; *People v. Moore* (2011) 51 Cal.4th 386, 402.) The questioning did not last long, sometime between 15 minutes and an hour, and nothing in the record suggests that the officers behaved in an aggressive, confrontational or accusatory manner during the questioning. Although the officers were armed, no weapons were drawn or unholstered in Ikeler's presence. That Ikeler was outnumbered by the officers and that two of them wore raid vests is insufficient to convert the scene into a custodial one. Under the totality of these circumstances, Ikeler was not in custody and no *Miranda* advisements were necessary.

II. Consecutive sentences

The trial court ran the sentences on counts 1, 2 and 3 consecutively. Ikeler contends that the court erred in imposing consecutive sentences because there was insufficient evidence they occurred on separate occasions. This contention, however, rests on the faulty premise that section 667.6, subdivision (d), applied to Ikeler's sentence. Subdivision (d) provides that consecutive sentences shall be imposed for violations of offenses specified in subdivision (e) if, "between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. . . ." (§ 667.6, subd. (d).) However, the offenses for which Ikeler was convicted are not specified in subdivision (e). Therefore, that section is inapplicable.

Instead, whether consecutive sentences were properly imposed must be analyzed under section 654. Section 654, subdivision (a), provides that an act or omission punishable in different ways by different provisions of law shall be punished

under the provision that provides for the longest potential term of imprisonment, but not under more than one provision. The section thus bars multiple punishments for offenses arising out of a single occurrence where all were incident to an indivisible course of conduct or a single objective. (*People v. Correa* (2012) 54 Cal.4th 331, 335; *People v. Jones* (2012) 54 Cal.4th 350, 358 ["Section 654 prohibits multiple punishment for a single physical act that violates different provisions of law."]; *People v. McKinzie* (2012) 54 Cal.4th 1302, 1368, abrogated on other grounds by *People v. Scott* (2015) 61 Cal.4th 363, 391, fn. 3.) Whether a course of criminal conduct is divisible depends on the actor's intent and objective. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) If all the offenses were merely incidental to, or were the means of accomplishing one objective, the defendant may be found to have harbored a single intent and therefore may be punished only once. (*People v. Capistrano* (2014) 59 Cal.4th 830, 885.) But if the defendant harbored multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct. (*Jones*, *supra*, 103 Cal.App.4th at p. 1143.)

However, "section 654 does *not* bar multiple punishment simply because numerous sex offenses are rapidly committed against a victim with the 'sole' aim of achieving sexual gratification." (*People v. Harrison* (1989) 48 Cal.3d 321, 325; see also *People v. Scott* (1994) 9 Cal.4th 331, 347 [if multiple punishment were barred for separate lewd acts committed on the same occasion, "the clever molester could violate his victim in numerous lewd ways, safe in the knowledge that he could not be

convicted and punished for every act"]; *People v. Perez* (1979) 23 Cal.3d 545, 553-554; *People v. Alvarez* (2009) 178 Cal.App.4th 999, 1006-1007.) "In other words, section 654 does not preclude separate punishment for multiple sex offenses which, although closely connected in time and part of the same criminal venture, are separate and distinct, and which are not committed as a means of committing any other sex offense, do not facilitate commission of another sex offense, and are not incidental to the commission of another sex offense." (*People v. Castro* (1994) 27 Cal.App.4th 578, 584-585.)

Whether section 654 applies is a question of fact for the trial court, and its findings will not be reversed on appeal if there is any substantial evidence to support them. (*People v. Capistrano*, *supra*, 59 Cal.4th at p. 886; *People v. Jones*, *supra*, 103 Cal.App.4th at p. 1143.) "In the absence of an explicit ruling by the trial court at sentencing, we infer that the court made the finding appropriate to the sentence it imposed, i.e., either applying section 654 or not applying it." (*People v. Mejia* (2017) 9 Cal.App.5th 1036, 1045; *People v. McKinzie*, *supra*, 54 Cal.4th at p. 1368.)

The evidence shows that Ikeler committed multiple sexual offenses against Stacie, a child unable to verbalize or otherwise explain what he did to her. Ikeler had the child for an approximate two and a half hours. DNA evidence shows what happened during that time: Ikeler penetrated Stacie with an object at least twice, once vaginally and once anally. Those two penetrations were separate acts. (See *People v. Scott*, *supra*, 9 Cal.4th at pp. 341-348.) Further, Ikeler's DNA was all over Stacie's body, including her right breast and mons pubis. Ikeler left Stacie near a dumpster, naked. This constitutes substantial

evidence of additional lewd conduct. The trial court did not err by declining to apply section 654.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

---

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