Filed 12/16/25 P. v. Guevara CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. EDGAR NOLVERTO GUEVARA, Defendant and Appellant.	2d Crim. No. B336565 (Super. Ct. No. 22F-07412) (San Luis Obispo County)

Edgar Nolverto Guevara appeals his convictions by jury on 19 counts of sexual offenses against four victims between the ages of 10 and 17, as follows: seven counts of lewd act on a child under the age of 14 (Pen. Code,[1] § 288, subd. (a); counts 1-7) against victim M.; two counts of lewd act on a child under the age of 14 (§ 288, subd. (a); counts 8 and 9) against victim I.; two counts of lewd act on a child under the age of 14 (§ 288, subd. (a);

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

counts 10 and 11) and two counts of lewd act on a child under the age of 14 by force or fear (§ 288, subd. (b)(1); counts 12 and 13) against victim B.; and two counts of rape by force or fear on a minor over the age 14 (§ 261, subd. (a)(2); counts 14 and 15), two counts of sexual penetration by a foreign object on a minor age 14 or older by force or fear (§ 289, subd. (a)(1)(C); counts 16 and 17), one count of sodomy on a minor age 14 or older by force or fear (§ 286, subd. (c)(2)(C); count 18), and one count of oral copulation on a minor over the age of 14 by force or fear (former § 288a, subd. (c)(2)(C); count 19) against victim Be.

Appellant received an aggregate sentence of 645 years to life in prison. He contends the trial court erred by: (1) admitting expert testimony about medical examinations performed on victims of sexual abuse when no such examinations were performed here; (2) admitting expert testimony about child sexual abuse accommodation syndrome (CSAAS); (3) improperly instructing the jury on both CSAAS and rape trauma syndrome; and (4) imposing a sentence that constitutes cruel or unusual punishment. He also contends he was deprived of effective assistance of counsel because his attorney did not object to certain expert testimony and jury instructions. We will affirm.

FACTS AND PROCEDURAL HISTORY

Victim M. (Counts 1-7)

Appellant met M. through his nieces. He began a sexual relationship with her in 2005. He was 24 and she was 13. They had sexual intercourse about five times. Appellant performed oral sex on her twice.

Victim I. (Counts 8 and 9)

I. is appellant's niece. She was 13 at the time of trial. Appellant touched her buttocks and groin area on three occasions when she was about 12. She told her mother on the third

occasion after she awoke at 3:00 a.m. with appellant touching her in bed.

Victim B. (Counts 10 to 13)

B. was appellant's stepdaughter. She was 15 at the time of trial. Appellant molested her for several months when she was 10 or 11. She would wake up in bed with him touching her breasts and vagina. He once removed her pants and put his mouth on her vagina. Sometimes he would hold down her arms. B. feared appellant because she saw him physically abuse her mother. She told her mother about the abuse when she was 14.

Victim Be. (Counts 14-19)

Be. was a friend of appellant's niece. She was 29 at the time of trial. She first met him when she was 11 and thought of him as an older brother. Appellant would frequently come over with flowers for Be.'s mother, food for her father, and art supplies for her. Shortly before Be. turned 17, appellant grabbed her buttocks and pushed her into the wall. Appellant was about 30 at the time. He kissed her, put his hands down her pants, and touched her vagina.

Appellant visited her over the following weeks and asked to have sex. She told him "no" several times and explained she wanted to wait until marriage. She eventually stopped saying "no" because she "had given up on him ever listening to me." He had sex with her several times between the ages of 17 and 18, once sodomized her, and once forced her to perform oral sex on him. Appellant told Be. her father "would be very angry" if he found out about what happened and that she could lose "[her] whole family."

Expert Witnesses

The People called two expert witnesses to testify about sexual abuse: pediatrician Nisha Abdul Cader, M.D. and

psychologist Mindy Mechanic, Ph.D. Neither expert treated the victims in this case.

Dr. Abdul Cader testified about her experience examining victims of sexual abuse as a member of the Suspected Abuse Response Team (SART). This included acute exams (those performed within 72 hours of reported abuse) and non-acute exams (those performed 72 hours or more after reported abuse). Non-acute exams are the majority she performs. It is "very common" among children to delay disclosure of their abuse. She rarely finds traumatic evidence of sexual abuse in such cases because the tissues of the vagina and anus heal quickly. The victim's age and the length of time since the abuse might also affect her findings. It is common for abused girls to have a normal exam.

Dr. Mechanic testified about how victims respond to sexual trauma. She stated most abusers are known by the victim. The neurological response to trauma differs from individual to individual. The "prevalent expectation" is that victims will "aggressively and strenuously resist their attacker if they are being sexually assaulted." When the victim knows the abuser, however, it is more common for the victim to resist passively by "begging, pleading, asking the person to stop, saying it feels uncomfortable, or [they] don't want it." Dr. Mechanic also testified about why some victims do not disclose abuse, or only do so after many years.

Evidence of Prior Sexual Offense

The court admitted evidence of appellant's conviction for penetration of genital or anal openings by a foreign object on a person under 18 years of age between October 2006 and January 2007. (§ 1108.)

Verdict and Sentencing

The jury returned guilty verdicts on all 19 counts.[2] It found true special allegations on each count that appellant committed the offenses against multiple victims (§ 667.61, subd. (e)(4)) and that certain offenses against B. and Be. were committed on different dates or occasions (§ 667.6, subd. (d)).[3]

After a bifurcated trial, the trial court found true additional special allegations that appellant had one prior serious felony conviction for criminal threats (§§ 667, subds. (a), (d), & (e), 1170.12, subds. (b) & (c)). It found the following aggravating factors true: the offenses "involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness" (Cal. Rules of Court, rule 4.421(a)(1)); the "victim[s] [were] particularly vulnerable" (*id.*, rule 4.421(a)(3)); appellant carried out the offenses in a manner that "indicates planning, sophistication, or professionalism" (*id.*, rule 4.421(a)(8)); he "took advantage of a position of trust or confidence to commit the offense[s]" (*id.*, rule 4.421(a)(11)); he "engaged in violent conduct that indicates a serious danger to society" (*id.*, rule 4.421(b)(1)); his "prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing

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[2] The Amended Information alleged 20 counts against appellant. The People dismissed count 20 (oral copulation on a minor over the age of 14 by force or fear (former § 288a, subd. (c)(2)(C)), against Be.) after the close of evidence.

[3] The jury also found true statute of limitations allegations that victims M. and Be. were under the age of 18 and prosecution commenced prior to their 40th birthday (§ 801.1, subd. (a)(1)).

seriousness" (*id.*, rule 4.421(b)(2)); and he "served a prior term in prison or county jail" (*id.*, rule 4.421(b)(3)).

The trial court selected count 8 as the principal term and imposed a term of 25 years to life. It imposed terms of 15 years to life or 25 years to life on the remaining counts, all but one running consecutively with count 8. It then doubled the terms and added a consecutive five-year determinate term for appellant's prior serious felony conviction. This resulted in an aggregate term of 640 years to life plus five years.

DISCUSSION

Dr. Abdul Cader's Testimony

Appellant contends the trial court erred by allowing Dr. Abdul Cader to testify about how members of SART examine victims of abuse. He argues testimony on this topic was not relevant because none of the four victims were examined by SART, and that prosecutors presented the evidence "for the sole purpose of inflaming the jury." The arguments are forfeited because appellant did not object to the testimony below. (Evid. Code, § 353, subd. (a); *People v. Perez* (2020) 9 Cal.5th 1, 7.) We would reject the arguments even if raised.

Expert opinion is admissible when "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).) A "'jury need not be wholly ignorant of the subject matter of the opinion in order to justify its admission.'" (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1299 (*McAlpin*).) Expert opinion is properly excluded only when it "'add[s] nothing at all to the jury's common fund of information, i.e., when "the subject of inquiry is one of such common knowledge that [persons] of ordinary education could reach a conclusion as intelligently as the witness."' [Citation.]" (*Id.*, at p. 1300.) We review a trial

court's admission of expert testimony for abuse of discretion. (*Id.*, at p. 1299.)

No abuse of discretion occurred here. Dr. Abdul Cader's testimony prepared jurors for subsequent testimony about the investigation of appellant's case. Detective James Wyett described contacting and interviewing the four victims. The prosecutor asked whether the victims participated in SART exams. Wyett responded that M., B., and Be. were not examined because their allegations of abuse "were historical in nature." The incidents involving I. were more recent but did not involve violence, penetration, or other conduct likely to leave physical evidence. Wyett "did not believe that a potentially invasive forensic medical examination" of the victims would yield any evidence given their allegations. He reiterated these points on cross-examination.

That SART exams were not performed on the victims here does not mean Dr. Abdul Cader's expertise "added nothing" to the jury's "common fund of information." Her testimony was cited throughout Wyett's testimony to explain why physical evidence of appellant's crimes did not exist. It was well within the trial court's discretion to allow prosecutors to offer evidence supporting that explanation. We find no support in the record for appellant's argument that prosecutors used the evidence to inflame the jury's passions, or that defense counsel could have raised a meritorious objection.

Dr. Mechanic's Testimony

Appellant contends the trial court should not have permitted Dr. Mechanic to testify because the prosecutor "failed to identify a relevant myth or misconception" that "CSAAS-type evidence" could rebut; and that the evidence was not relevant because juror voir dire responses did not disclose the jurors

"harbored any myths or misconceptions about how a victim may or may not react to sexual assault." (See *McAlpin*, *supra*, 53 Cal.3d at p. 1301 [CSAAS evidence "'is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior'"].) Appellant also contends the trial court should have stricken Dr. Mechanic's testimony because it did not mention or discuss child sexual abuse accommodation syndrome and because appellant "did not attack the credibility of any of the witnesses based on . . . any . . . recognizable myths associated with CSAAS testimony."

"'[E]xpert opinion may be admitted whenever it would "assist" the jury.'" (*McAlpin*, *supra*, 53 Cal.3d at p. 1300.) The decision to admit expert testimony on CSAAS "'will not be disturbed on appeal unless a manifest abuse of discretion is shown.'" (*Ibid.*) No abuse of discretion occurred here.

First, the People's trial brief identified the myths and misconceptions they would seek to rebut. The brief stated they intended to examine Dr. Mechanic about how "victims of sexual abuse show counter-intuitive behaviors that many lay jurors are unaware of and often don't understand initially." The trial brief enumerated six "myths and misconceptions regarding victim behavior [that] often arise and become points of contention: 1) since the victims did not disclose the sexual assault immediately, some of the described incidents did not occur or they are less believable; 2) since the victim initially denied, then gradually disclosed the abuse and did not come out with each and every detail to the first adult, some of the assaults did not occur; 3) since the victim did not show obvious trauma when disclosing the molestation to adults, the molestation did not occur; 4) Since the victim did not appear frightened, upset, or traumatized by the

abuser's conduct, the sexual assault did not occur; 5) Since the victim does not know specifics regarding dates and times of the sexual assaults, the sexual assaults did not occur; and 6) The victim should have been able to do something to protect herself from being sexually assaulted." During motions in limine, the trial court agreed Dr. Mechanic could testify so long as she refrained from "presenting statistics about children don't lie about these sort of things and things of that nature . . . ."

Second, appellant fails to support his contention that jurors did not harbor any myths or misconceptions about how a victim may react to sexual assault by citing relevant portions of voir dire from the reporter's transcript of proceedings. He has, therefore, waived that claim. (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 620.)

We would disagree with the merits of the contention regardless. Appellant does not contend that potential jurors were asked if they held certain beliefs about how child sexual abuse victims should respond to the abuse. He contends jurors were asked how such a victim *would be expected to testify*. Jurors' responses to this inquiry would not suggest one way or the other whether they would benefit from CSAAS expert testimony.

Third, Dr. Mechanic explained how child sexual abuse victims commonly respond to the abuse and why they respond in that manner. This *is* CSAAS. It is irrelevant that she did not "mention[] or discuss[] the child sexual abuse accommodation syndrome (CSAAS)" by name. She was not required to instruct jurors on how they could use her testimony. The court did so adequately.

Finally, the expert testimony was relevant regardless of whether appellant attacked the credibility of the witnesses based on the common myths associated with CSAAS. Three of the four

victims delayed reporting their abuse. M. first told an adult—her older sister—three years afterward. B. did not tell her mother for several months. Be. told her mother after she turned 18 that appellant had sex with her but took "years" to disclose the details of what happened.

Other evidence of "paradoxical" or "counter-intuitive" behaviors is found throughout the record. M. testified that her sexual relationship with appellant was a "good memory," that she loved him, and that she "would have loved to be in a relationship with him." She admitted having sex with appellant in 2013—eight years after their initial encounters. Defense cross-examined her about how she initiated contact and drove from Northern California to see him. Counsel asked if appellant ever threatened her, swore, or forced her to do anything. She responded "no" to each. Be. testified that even after appellant abused her, "I still cared about him. I still trusted him. I cannot tell you why, I just did." On cross-examination, defense counsel questioned her at length about who she told between then and the year before trial, when she disclosed the abuse to investigators. In closing argument, appellant pointed out that Be. had many opportunities to report the abuse but did not.

Dr. Mechanic's testimony placed this evidence into context. Her testimony described common reactions of child molestation victims. For example, she explained that children are likely to "freeze" or disassociate as a way to adapt to the assault; that children are susceptible to a perpetrator's "grooming" resulting in the child normalizing the assault and delaying disclosure to others; and that the trauma of an assault can affect a child's ability to recall the event. She also discussed how a victim's age, their relationship with the abuser, and the presence of domestic

violence in the household commonly affect how they resist or cope with the abuse, how and when they disclose or report it.

Jury Instructions

Appellant contends the trial court improperly instructed the jury about rape trauma syndrome and CSAAS because jurors heard no evidence about those concepts. He argues the instructions "invited the jury to draw the impermissible inference that all the witnesses suffered from CSAAS and Be. also suffered from rape trauma syndrome because they displayed certain 'common characteristics' . . . ." Defense counsel did not object to these instructions when offered by the People. The issue is forfeited. Were it not, we would conclude the trial court did not err by giving them.

CALCRIM 1192 as given stated: "You have heard testimony from Dr. Mindy Mechanic regarding rape trauma syndrome. [¶] Rape trauma syndrome relates to a pattern of behavior that may present in rape cases. Testimony as to the trauma syndrome is offered to explain certain behavior of an alleged victim of rape. [¶] Dr. Mechanic's testimony about rape trauma syndrome is not evidence that the defendant committed any of the crimes charged against him or any conduct or crimes with which he was not charged. You may consider this evidence only in deciding whether or not [Be.'s] conduct was consistent with the conduct of someone who has been raped, and in evaluating the believability of the alleged victims."

CALCRIM 1193 as given stated: "You have heard testimony from Dr. Mindy Mechanic regarding child sexual abuse accommodation syndrome. [¶] Child sexual abuse accommodation syndrome relates to a pattern of behavior that may be present in child sexual abuse cases. Testimony as to the accommodation syndrome is offered only to explain certain

behavior of an alleged victim of child sexual abuse. [¶] Dr. Mindy Mechanic's testimony about child sexual abuse accommodation syndrome is not evidence that the defendant committed any of the crimes charged against him or any conduct or crimes with which he was not charged. [¶] You may consider this evidence only in deciding whether or not [I., M., B, and Be.'s] conduct was consistent with the conduct of someone who has been molested, and in evaluating the believability of the alleged victims."

As discussed above, Dr. Mechanic's testimony focused on how victims respond to sexual trauma. While Dr. Mechanic did not use the terms "Rape Trauma Syndrome" and "Child Sexual Abuse Syndrome," the language of the instructions is consistent with the substance of her testimony.

Appellant argues the trial court's instructions failed to make clear the jury should not have considered Dr. Mechanic's testimony as evidence of guilt. We previously rejected similar arguments and do so again here. (*People v. Munch* (2020) 52 Cal.App.5th 464, 473-474; *People v. Gonzalez* (2017) 16 Cal.App.5th 494, 504.) Both instructions stated her testimony "is not evidence that the defendant committed any of the crimes charged against him or any conduct or crimes with which he was not charged." We presume the jury understood and followed them. (*People v. Chhoun* (2021) 11 Cal.5th 1, 30.)

Sentence Length

Appellant contends his sentence of 640 years to life plus five years constitutes cruel and unusual punishment under the California and United States Constitutions. We disagree.

Under the California Constitution, a sentence constitutes cruel or unusual punishment if it is "'so disproportionate to the crime for which it is inflicted that it shocks the conscience and

offends fundamental notions of human dignity.'" (*People v. Dillon* (1983) 34 Cal.3d 441, 478; Cal. Const., art. 1, § 17.) Three analytical techniques aid this deferential review: "(1) an examination of the nature of the offense and the offender, with particular attention to the degree of danger both pose to society; (2) a comparison of the punishment with the punishment California imposes for more serious offenses; and (3) a comparison of the punishment with that prescribed in other jurisdictions for the same offense." (*In re Palmer* (2021) 10 Cal.5th 959, 973.)

The nature of the offenses is serious. Appellant concedes the point. He abused the four victims over two decades. Eight of his 19 offenses involved the use of force or fear. (See *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 244 [152 L.Ed.2d 403] ["The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people"].) Of course, "[t]here exists a strong public policy to protect children of tender years." (*People v. Olsen* (1984) 36 Cal.3d 638, 646.) Appellant's prior felony convictions for criminal threats in 2001 and for sexually abusing a fifth minor victim in 2007 show he poses a danger to society.

As to comparison with more serious offenses in California, "lewd conduct on a child may not be the most grave of all offenses, but its seriousness is considerable. It may have lifelong consequences to the well-being of the child." (*People v. Christensen* (2014) 229 Cal.App.4th 781, 806.) Moreover, a substantial portion of appellant's sentence stems from his prior convictions and the Three Strikes Law. The United States Supreme Court has approved recidivist statutes that "deal[] in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms

of society as established by its criminal law." (*Rummel v. Estelle* (1980) 445 U.S. 263, 276 [63 L.Ed.2d 382]; *Ewing v. California* (2003) 538 U.S. 11 [155 L.Ed.2d 108] [affirming a life sentence for grand theft under California's Three Strikes Law].) Similarly, "[w]hen faced with recidivist defendants . . . California appellate courts have consistently found the Three Strikes law is not cruel and unusual punishment." (*People v. Mantanez* (2002) 98 Cal.App.4th 354, 359.)

Appellant directs us to no jurisdiction with lesser punishment for similar offenses. Regardless, the state constitution "does not require California to march in lockstep with other states in fashioning a penal code. It does not require 'conforming our Penal Code to the "majority rule" or the least common denominator of penalties nationwide.'" (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1516.) We conclude appellant's sentence is not so disproportionately harsh as to shock the conscience or offend notions of human dignity. The punishment is not cruel or unusual under the state constitution.

Nor does appellant's sentence violate the Eighth Amendment ban on cruel and unusual punishment. (U.S. Const., 8th Amend.) The Eighth Amendment contains a "'narrow proportionality principle' that 'applies to noncapital sentences.'" (*Ewing v. California*, *supra*, 538 U.S. at p. 20 (lead opn. of O'Connor, J., joined by Rehnquist, C.J., and Kennedy, J.).) "Outside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare." (*Rummel v. Estelle*, *supra*, 445 U.S. at p. 272.) "There is considerable overlap in the state and federal approaches. 'Although articulated slightly differently . . . [t]he touchstone in each is gross disproportionality.'" (*People v. Baker* (2018) 20 Cal.App.5th 711, 733.)

The Eighth Amendment analysis begins with a comparison between the gravity of the offense and the severity of the sentence. (*Graham v. Florida* (2010) 560 U.S. 48, 60 [176 L.Ed.2d 825].) In the "'rare case'" this threshold comparison leads to an inference of gross disproportionality, "the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions." (*Ibid*.) For reasons discussed above, appellant's case is not the rare situation in which an inference of gross disproportionality arises. No Eighth Amendment violation exists.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CODY, J.

We concur:

YEGAN, Acting P. J.

BALTODANO, J.

Michael L. Duffy, Judge
Catherine J. Swysen, Judge
Superior Court County of San Luis Obispo

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