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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. EDWARD LEONARD WATKINS, Defendant and Appellant.	C067268 (Super. Ct. No. 10F00343)

Defendant Edward Leonard Watkins and acquaintance Jaquann Garrett were pimps. One underage girl who Garrett pimped was Faith. Faith would prostitute herself in Oakland and Stockton, and it was Garrett who encouraged her, dropped her off at the streets where she prostituted herself, and took half her earnings. Sometimes defendant and two other prostitutes named Kream and Cherry were with Garrett and Faith in the car. Kream and Cherry also prostituted themselves on the streets of Oakland, and they gave their earnings to defendant. On one occasion (resulting in the charged acts), they all took defendant's car to Sacramento where Faith, Kream, and Cherry

were going to prostitute themselves on Watt Avenue and defendant and Garrett and would "get [the] money." Later that day, Faith, Kream, and Cherry used a motel room defendant had rented for prostitution. Defendant and Garrett were arrested in the parking lot of the motel.

Defendant was charged with both pimping and pandering.[1] A jury found defendant guilty of pimping Faith (on a theory he aided and abetted Garrett), pandering Kream, and attempting to pimp Kream.

Defendant appeals from the resulting conviction, raising contentions relating to the instructions and his presentence credits. Finding no merit in these contentions, we affirm.

DISCUSSION

I

The Giving Of CALCRIM No. 375

Did Not Affect Defendant's Substantial Rights

The court instructed pursuant to CALCRIM No. 375, which allowed the jury to consider evidence of defendant's uncharged acts of pimping or pandering Kream and Faith in other jurisdictions to infer his intent to pimp in this case or his motive to commit the offenses in this case.[2] Defendant raises

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[1] The pimping here was getting money from Kream's and Faith's prostitution earnings. And the pandering was procuring Kream for prostitution.

[2] CALCRIM No. 375 as given here stated in full as follows:

two contentions with respect this instruction. One, he contends

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"The People presented evidence that the defendant committed other offenses of pimping that were not charged in this case.

"The People presented evidence of other behavior by the defendant that was not charged in this case that the defendants engaged in pimping and pandering of Faith . . . and [Kream] in other jurisdictions.

"You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendants in fact committed the uncharged offenses. Proof by a preponderance of evidence is a different burden of proof than proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

"If the [P]eople have not met this burden, you must disregard this evidence entirely.

"If you decide that the defendant committed the uncharged offenses, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not:

"The defendant acted with the intent to pimp in this case; or

"The defendant had a motive to commit the offenses alleged in this case.

"In evaluating this evidence, consider the similarity or lack of similarity between the uncharged offense and the charged offense.

"Do not consider this evidence for any other purpose.

"Do not conclude from this evidence that the defendant has a bad character or disposed to commit crime."

"If you conclude that the defendant committed the uncharged offense that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of pimping or pandering or that the pimping or pandering has been proved. The People must still prove each charge beyond a reasonable doubt."

the instruction was not supported by substantial evidence in violation of his federal constitutional rights because there was no evidence defendant pandered Kream in other jurisdictions. Two, he contends the instruction incorrectly implied there was prior-act evidence defendant aided and abetted Garrett's pimping of Faith, also in violation of his federal constitutional rights. Defendant's contentions lack merit because his substantial rights were not affected by this instruction.

Defendant did not object to this instruction in the trial court, so the only way he can raise these contentions on appeal is if his "'substantial rights . . . were affected thereby.' Substantial rights are affected if the error 'result[s] in a miscarriage of justice, [i.e.,] making it reasonably probable defendant would have obtained a more favorable result in the absence of error.'" (*People v. Elsey* (2000) 81 Cal.App.4th 948, 953, fn. 2.) There was no such reasonable probability here.

As to defendant's first contention, if the jury viewed the evidence in the same way as defendant does and indeed found there was no evidence that defendant pandered (as opposed to pimped) Kream on prior occasions, then there was no prejudice to defendant. The instruction itself stated as follows: "You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendants in fact committed the uncharged offenses. . . . [¶] If the [P]eople have not met this burden, you must disregard this evidence entirely." Here, if there indeed was no evidence defendant pandered Kream in other jurisdictions, then the jury would not

have formed any inference from that nonexistent evidence. (See *People v. Bramit* (2009) 46 Cal.4th 1221, 1247 ["Absent any contrary indication, we presume the jury followed the instruction"].)

As to defendant's second contention, which is the instruction incorrectly implied there was evidence he had aided and abetted Garrett's pimping of Faith on occasions prior than the charged acts, there was no such implication. The relevant part of the instruction stated as follows: "The People presented evidence of other behavior by the defendant that was not charged in this case that the defendants engaged in pimping and pandering of Faith . . . and [Kream] in other jurisdictions." From this language, defendant argues the instruction "created an improper inference that his past conduct constituted aiding and abetting Mr. Garret's pimping of Faith." However, nowhere in this instruction does the term "aided and abetted" appear. The concept of aiding and abetting was presented to the jury, but this concept did not apply to the uncharged act. The aiding and abetting instruction here specifically stated, "This instruction [i.e., the aiding and abetting instruction] applies to Counts One and Three and the lesser offenses within those counts of attempted pimping."

II

The Intent Element Of Pandering Was Correctly Articulated Here

Defendant contends the People failed to prove and the court failed to instruct on what he claims was an essential element of

pandering, i.e., he specifically intended to establish a new working relationship with Kream.[3] He bases these contentions on *People v. Zambia* (2011) 51 Cal.4th 965. As we explain, *Zambia* does not support defendant's contentions.

Zambia held that "the proscribed activity of encouraging someone 'to become a prostitute,' as set forth in [Penal Code] section 266i, subdivision (a)(2), includes encouragement of someone who is already an active prostitute . . . ." (*People v. Zambia*, *supra*, 51 Cal.4th at p. 981.) In so holding, the court explained, "Subdivision (a)(1), and (a)(3) through (a)(6), of section 266i, when harmonized and read together in context, plainly envision that any solicited 'person,' whether an active prostitute or not, may be the target of unlawful pandering. The plain intent and purpose behind all the provisions of section 266i, taken together, is to deter pimps or others from establishing new working relationships in the unlawful prostitution trade." (*Zambia*, at p. 978.)

It is from this last sentence defendant gleans that *Zambia* articulated the intent requirement that he claims was not met

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[3] The court here instructed there were two elements for pandering: "One. The defendant arranged for [Kream] to be a prostitute in either a house of prostitution or any other place where prostitution is encouraged or allowed. [¶] Two. The defendant intended to influence [Kream] to be a prostitute."

Pandering as was charged here is defined as "[p]rocur[ing] for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state." (Pen. Code, § 266i, subd. (a)(3).)

here. Defendant reads *Zambia* incorrectly. The court's sentence quoted above described the intent and purpose behind the law; it did not articulate the intent element of the crime. That occurred later in the opinion as follows: "We clarify here that pandering is a specific intent crime. Its commission requires that a defendant intend to persuade or otherwise influence the target 'to become a prostitute'" as that phrase has been interpreted here. This construction of section 266i, subdivision (a)(2) effectuates the purpose and intent of the pandering statute, which is to criminalize the *knowing and purposeful* conduct of any person seeking to encourage 'another person' to work with the panderer or another pimp in plying the prostitution trade." (*People v. Zambia*, *supra*, 51 Cal.4th at p. 980.) Consistent with this articulation of the intent requirement, the jury was correctly instructed here it had to find that "[t]he defendant intended to influence [Kream] to be a prostitute." The People therefore did not to have to provide evidence defendant intended to establish a new working relationship with Kream.

III

The Court Calculated Defendant's Credits Correctly

Defendant contends he is entitled to one more day of presentence custody credit and a corresponding two more days of presentence conduct credit. He argues the court's error in calculating his credit arose because it failed to credit him for the day of his arrest, as he was not booked into jail until early the next morning. We find no error.

Defendant is entitled to receive presentence custody credit for time spent in a jail or "similar residential institution" before the sentence is imposed. (Pen. Code, § 2900.5.) The term "custody," as that term is applied in *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694], is inapplicable in determining custody credit for time served under Penal Code section 2900.5. (See *People v. Ravaux* (2006) 142 Cal.App.4th 914, 919-921.) Here, the trial court properly awarded the credit here, because that credit commences on the day a defendant is booked into jail. (*Id.* at pp. 919-920.) We find *Ravaux* on point and decline defendant's invitation to revisit that authority.

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

DUARTE, J.

HOCH, J.