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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARANJIT SANDHU,

Defendant and Appellant.

C075854

(Super. Ct. No. 10F08031)

A jury convicted defendant Charanjit Sandhu of committing lewd and lascivious acts by force against two of his three nieces after his older brother abandoned them in India and his sister-in-law turned to him for refuge in Sacramento. On appeal, he contends he was denied his constitutional right to effective assistance of counsel because his lawyer failed to request an instruction on voluntary intoxication. We conclude that a voluntary intoxication instruction would have been inconsistent with defendant's claim that he never touched the girls inappropriately and counsel made a reasonable tactical decision to forego the instruction. We order the abstract of judgment to be corrected as discussed herein. In all other respects, the judgment is affirmed.

FACTS

The jury heard the testimony of an immigrant mother and her two daughters who were physically, verbally, and emotionally abused by defendant. They also heard defendant deny all of their allegations and describe how he assumed a father role in the family. With the exception of one count, the jury found defendant guilty as charged and found the multiple victim allegation true.

The mother testified her marriage to defendant's older brother had been arranged. The brother fathered her three daughters but abandoned them in India. The mother had previously lived in the United States. She returned with her daughters to Georgia, where they lived with an uncle. She filed for divorce. When the uncle also went through a divorce, he could no longer help her and she moved to Sacramento with the help of defendant. She began a sexual relationship with him, and they lived together for many years as she learned to drive, got a job, and established credit.

The mother testified that defendant was very strict and controlling. She and her daughters lived in fear. Defendant yelled frequently, particularly when he was drinking. On several occasions, he became physically violent. He slapped her more than once and tried to stab her with a knife. She threatened to, and did, move out at least twice but gave in to his pleas to return.

What the mother did not know was that defendant was sexually molesting two of her daughters. The two oldest daughters testified at trial. The younger of the two testified first. She recalled that on a night her mother and older sister were shopping and she and her younger sister burned the rice while cooking, defendant summoned her to his room and began hugging and kissing her. She resisted, began crying, and went into the bathroom. But when she complied with his order for her return, he kissed her, hugged her, and put his finger inside her vagina. On other occasions, he put his hand under her shirt and tickled her chest, or walked by and flicked her in the face. Once, he slapped her

face and it started to bleed. She testified that when he drank, his yelling and threats increased.

Defendant's primary target, however, was the older sister. She testified at length about how defendant had forcefully molested and raped her from when she was 9 until she was 13 years old. It began, she explained to the jury, when she was 9 years old, defendant was drinking, and her mother was at work. Defendant instructed her sisters to go to bed and told her to sit on his lap on the sofa. He put his hands on her chest over and under her clothes, pulled down her pants and panties, and digitally penetrated her vagina. He became angry when she told him she did not like it and threatened to kill her if she told her mother. He warned her that her mother would hate her.

Defendant had given her good reason to fear him. Sometimes for minor infractions and at other times with no provocation, defendant slammed her head against the garage, slammed her against the hallway wall, and repeatedly hit her with a hockey stick.

She testified to other specific instances of molestation and rape, including the next time it occurred when she was 9, defendant put on a condom, and tried to put his penis in her vagina; another time when her grandparents were visiting when he took her to his room and put his penis into her vagina; and the last time it happened when she was 13 and he raped her in their prayer room after dropping her mother off at work. She testified that defendant drank Scotch and whiskey with club soda almost every night. He told her he would chop her up into little pieces and bury her in the backyard if she told someone.

Defendant denied having any sexual contact with the girls or physically abusing them in any way. He testified he was joking when he threatened to break their noses and drop them off in the jungle. He admitted he had slapped them gently on the back to discipline them for not doing their homework, cleaning the house, or watering the plants. He also admitted he was a strict disciplinarian, he yelled at them, and he enjoyed a nightcap. But he insisted he assumed the role of a father figure, sought to teach and

protect them, and did not allow them to participate in school or social activities or wear any makeup, high heels, or short skirts because he did not trust other people who might harm them. He boasted of times he took the girls to see the Globetrotters, to Disneyland, the circus, and water parks, and he insisted the girls loved to dance and play with him.

Defendant testified to a very bizarre story involving the older daughter when she was 14. He told the jury that after her mother left for work, the oldest daughter came into his bedroom while he was in bed wearing a T-shirt and shorts. She complained of being cold, so he invited her to take her mother's blanket. Then, according to defendant, she took off her pajamas and got into the bed. In order to preserve her self-esteem, he pretended to be snoring and not notice that she was naked. He did not touch her and she eventually left.

DISCUSSION

I

Defendant faults his lawyer for failing to request an instruction explaining to the jury that voluntary intoxication can negate the specific intent element of the charged offenses. (*People v. Williams* (1997) 16 Cal.4th 635, 677; *People v. Warner* (2006) 39 Cal.4th 548, 557.) He recognizes that the court had no sua sponte obligation to instruct on a defense at odds with his defense at trial. (*People v. Saille* (1991) 54 Cal.3d 1103, 1120-1121.) But he insists there was a sufficient evidentiary basis to necessitate a request for the instruction by his lawyer. We agree there was ample testimony to support the instruction based on testimony by the mother and daughters that defendant drank regularly, was often drunk, and that when he was inebriated, the violence in the household escalated. The question thus posed on appeal is whether his lawyer was ineffective by failing to request a voluntary intoxication instruction where defendant had taken the stand and denied raping and molesting the girls.

A defendant claiming he was denied his federal and state constitutional right to effective assistance by counsel must demonstrate that his lawyer's performance was

deficient when measured by an objective standard of reasonableness and that the lawyer's errors were prejudicial. (*People v. Hernandez* (2012) 53 Cal.4th 1095, 1105.) A lawyer is not constitutionally ineffective because she chooses one defense theory over another. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1007.) Thus, we must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' [Citation.]" (*Strickland v. Washington* (1984) 466 U.S. 668, 689 [80 L.Ed.2d 674, 694-695].) Indeed, "[b]ecause it is inappropriate for a reviewing court to speculate about the tactical bases for counsel's conduct at trial [citation], when the reasons for counsel's actions are not readily apparent in the record, we will not assume constitutionally inadequate representation and reverse a conviction unless the appellate record discloses 'no conceivable tactical purpose' for counsel's act or omission." (*People v. Lewis* (2001) 25 Cal.4th 610, 674-675 (*Lewis*).)

Defendant insists that there was no conceivable tactical purpose to justify foregoing a voluntary intoxication defense. We disagree. Had she requested the instruction, his lawyer would have been put in the unenviable position of having to argue that defendant, based on his testimony, did not commit the lewd and lascivious acts, but alternatively, if he did, he was too drunk to have done so with the specific intent to arouse, appeal to, or gratify his or the girls' "lust, passions, or sexual desires." (Pen. Code, § 288, subd. (a).) Counsel decided to follow the innocence defense rather than the voluntary intoxication defense. The decision not to present conflicting defenses could have been a wiser choice than pursuing a "fallback" defense. "The presentation of conflicting defenses is often tactically unwise because it tends to weaken counsel's credibility with the jury." (*People v. Jones* (1991) 53 Cal.3d 1115, 1138.) We conclude defendant's lawyer made a reasonable tactical choice and therefore rendered effective assistance of counsel. (*Lewis, supra*, 25 Cal.4th at pp. 674-675.)

II

The Attorney General concedes the trial court imposed an unauthorized no visitation order as to the oldest daughter, who was over the age of 18 when defendant was sentenced. (Pen. Code, § 1202.05, subd. (a); *People v. Scott* (2012) 203 Cal.App.4th 1303, 1323.) We agree. The abstract of judgment must be corrected to prohibit visitation with only A.K., the second-oldest daughter.

DISPOSITION

The trial court is directed to correct the abstract of judgment to prohibit visitation with only A.K. In all other respects, the judgment is affirmed.

RAYE, P. J.

We concur:

HULL, J.

RENNER, J.