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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DARREN LEE PATTON,

Defendant and Appellant.

D059213

(Super. Ct. No. SCD229069,
SCD221139)

APPEAL from a judgment of the Superior Court of San Diego County, Esteban Hernandez, Judge. Affirmed.

A jury convicted Darren Lee Patton of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1); count 1), forcible rape (Pen. Code, § 261, subd. (a)(2); count 2) and assault with the intent to commit rape (Pen. Code, § 220, subd. (a); count 3). The jury found true allegations that as to count 1, Patton personally inflicted great bodily injury on the victim (Pen. Code, §§ 12022.7, subd. (a), 1192.7, subd. (c)(8)); as to counts 2 and 3 he personally inflicted great bodily injury on the victim

as defined by Penal Code section 12022.8 and, as to count 3 only, for purposes of "One Strike" sentencing under Penal Code section 667.61, subdivisions (b), (c) and (e). Patton later admitted he had sustained a prior robbery conviction that subjected him to a "Three Strikes" sentence (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and a five-year enhancement (Pen. Code, §§ 667, subd. (a)(1), 668, 1192.7, subd. (c)). The court sentenced him to a 30-year-to-life plus 10 years state prison term, revoked Patton's probation in another case, awarded custody credits and imposed a concurrent two-year sentence in that case, along with certain fines.¹

Patton contends the trial court prejudicially erred and violated his constitutional rights to present a defense and confront adverse witnesses by excluding evidence that another man's sperm was found on the victim's underwear. He further contends the court abused its discretion and violated his Sixth and Fourteenth Amendment rights by excluding third party culpability evidence regarding the victim's relationship with another person. Patton contends the trial court's evidentiary errors cumulatively require reversal of his convictions. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of July 25, 2010, then 22-year-old A.C., who was homeless, went to her friend Joe Rock's apartment to shower. Afterwards, A.C. changed, putting on men's boxer shorts for underwear and clothes she had gotten from a thrift store: a bra, black pants with a studded belt, and a black and yellow shirt. At about 10:30 p.m., A.C.

¹ The probation revocation proceeding in the other case (*People v. Patton* (Super. Ct. San Diego County, 2009, No. SCD221139) is not at issue in this appeal.

told Rock she was going to look for cigarettes, left the apartment and walked to another apartment complex to see if any of her friends had cigarettes. When she arrived, she encountered Patton, who she had seen before. A.C. had shared a slice of pizza with Patton about a week before the incident.

Patton asked A.C. if she wanted to smoke methamphetamine, and A.C. told him that she did. They began walking back to Rock's apartment, but ended up at an abandoned house where A.C. and her other homeless friends frequently slept. After they entered, A.C. asked Patton if he had the drugs, but he responded that he wanted to have intercourse. A.C. told him, "No," and Patton shoved her to the floor, began punching her in the face, knocked out one of her front teeth, and started choking her. Though she screamed for help, A.C. was overpowered and lost consciousness. She awoke to find her boxer shorts around her knees and Patton raping her. She grabbed his hair, swung at him and pushed him off her, allowing her to escape.

A.C. ran back to Rock's house, screaming for help. She collapsed on the floor in the bedroom, and hysterically told Mark Smith, another person staying at Rock's house, that she had been raped and beaten up, and that the assailant told her he was going to kill her. Smith observed she was crying and covered in blood, and he called police. During the ambulance ride to the hospital, A.C. told police she had been raped, and described her assailant as a black male in his 20's with an "Afro." A.C. later identified Patton as her assailant in a photographic lineup.

Police were alerted to the abandoned house by a neighbor in an adjacent house, Craig Tamble, who heard a woman screaming, " 'Stop. Stop. Get off me. . . . [D]on't.' "

Officers found a black pair of pants with a belt on the steps leading to the home's rear entrance. There was fresh blood on the belt buckle. A trail of blood led from the pants to a bedroom inside the house, where more fresh blood was found on the carpet, some cushions in the bedroom and on the wall.

A.C. underwent a sexual assault exam, and allowed the nurse to collect swabs from her mouth, neck and breast area, as well as blood samples. A.C. testified at trial that she was scared and "standoffish," and did not want to talk to anybody. A.C. also explained at trial that she refused to undergo a vaginal examination or swab insertion because after what had happened, she was not comfortable being examined. The nurse observed marks and injuries to A.C.'s face and neck, burst blood vessels indicating strangulation, abrasions and bruising inside A.C.'s ears and mouth, and broken and chipped front teeth.

The day after A.C.'s rape, Kevin Smith, a friend of A.C.'s, noticed that Patton fit A.C.'s description of her assailant and called police. When police later contacted Patton, they observed he had a swollen hand with a puncture or slice-type wound. He claimed the wound was from a dog bite. In a police station interview, he denied knowing A.C. on a personal level, and denied ever having a sexual relationship with her or raping her.

DNA from the blood on the belt buckle matched Patton's DNA, and his DNA was also found on A.C.'s shirt. Patton was a major contributor of DNA found on A.C.'s left bra cup and a minor contributor of DNA found on her right bra cup. The predominant DNA profile found on the swab from A.C.'s right breast matched Patton. However,

Patton's semen was not found on the boxer shorts, and there was no DNA matching Patton on those shorts.

DISCUSSION

I. *Exclusion of Evidence of Nonmatching Semen on A.C.'s Boxer Shorts*

Patton contends the trial court prejudicially abused its discretion by granting the prosecution's motion in limine to exclude evidence that semen from another man was found on the boxer shorts A.C. was wearing after the assault. He maintains the error violated his Sixth Amendment and state statutory rights to confront the witnesses against him, particularly A.C., to see how she responded to the evidence, and also violated his due process right to present a complete defense. Patton points out the jury never learned that A.C. was "known for trading sex for drugs" and did not hear other evidence concerning A.C.'s boyfriend "Red" and the fact Red had a negative reaction to A.C.'s interactions with other men. He argues the court improperly applied Evidence Code section 352 and California's statutory rape shield law to exclude evidence critical to his defense, analogous to the error committed by the trial court in *Chambers v. Mississippi* (1973) 410 U.S. 284.

A. *Background*

Before trial, the prosecutor moved in limine to exclude DNA evidence that semen from another man identified as Damon Campbell was found in the crotch area of the boxer shorts A.C. was wearing on the date of the incident. In connection with that motion, she represented that Campbell was in custody on the date A.C. was raped, and stipulated that Patton's semen was not found on the boxer shorts. The prosecutor argued

it was permissible to introduce the latter fact into evidence, as well as the fact that semen can be deposited on such a garment after recent sexual contact. However, she argued evidence of the presence of foreign DNA was irrelevant, unduly prejudicial under Evidence Code section 352, and violated rape shield laws, and was an improper attempt to introduce inadmissible third party culpability evidence.

Defense counsel sought to distinguish the rape shield law, arguing he did not intend to argue A.C.'s promiscuity or chastity. He also denied seeking to introduce the evidence for third party culpability. He argued the evidence was relevant to A.C.'s credibility concerning whether she had sexual relations with Patton, to explain why she declined a genital examination after the incident, and to show A.C. was not raped. Defense counsel maintained that if A.C. had had sexual relations with Patton, his DNA would have been found on the boxer shorts.

The trial court granted the motion, ruling the evidence was irrelevant and unduly prejudicial. It explained, "[I]n coming to this conclusion, the Court finds that because the defense is not offering it as third-party culpability evidence but simply in relation to [A.C.'s] credibility, it seems much more attenuated, especially given the fact that if it were introduced, then we would have a situation of having to lengthen the trial time in this case substantially to show a number of things: That Damon Campbell was in fact in custody on the date in question and have evidence with regard to how long semen lasts in clothing. There would be the issues of the rape shield law, where prior sexual conduct, if there was any, between Campbell and [A.C.] would be implicated. There are a great number of issues that are implicated that would be very time consuming and distracting

to the jury. And the Court has conducted [an Evidence Code section] 352 balancing analysis and finds that the prejudice outweighs the probative value. And therefore the People's motion to exclude the foreign DNA, that is, Damon Campbell's DNA found on the boxer shorts, will be granted."

B. *Legal Principles*

Generally, a defendant may not question a witness who claims to be the victim of sexual assault about his or her prior sexual activity. (Evid. Code, § 1103, subd. (c)(1); *People v. Woodward* (2004) 116 Cal.App.4th 821, 831.) Evidence Code section 782, however, provides a limited exception to this general rule if the victim's prior sexual history is relevant to the victim's credibility. (See *People v. Bautista* (2008) 163 Cal.App.4th 762, 781-782; *People v. Chandler* (1997) 56 Cal.App.4th 703, 707-708; *People v. Tidwell* (2008) 163 Cal.App.4th 1447, 1454.) Evidence Code section 782 has a strict procedure that includes a hearing outside of the presence of the jury prior to the admission of evidence of the complaining witness's sexual conduct, requiring that a defendant file a written motion accompanied by an affidavit containing an offer of proof concerning the relevance of the proffered evidence. (Evid. Code, § 782, subd. (a)(1), (2), (3); *Bautista*, at pp. 781-782.) The trial court is vested with broad discretion to weigh a defendant's proffered evidence before its submission to the jury "and to resolve the conflicting interests of the complaining witness and the defendant." (*People v. Rioz* (1984) 161 Cal.App.3d 905, 916.)

If, after review, " 'the court finds the evidence relevant and not inadmissible pursuant to Evidence Code section 352, it may make an order stating what evidence may

be introduced and the nature of the questions permitted.' " (*People v. Bautista, supra*, 163 Cal.App.4th at p. 782.) "[T]he trial court need not hold a hearing unless it first determines that the defendant's sworn offer of proof is sufficient." (*People v. Rioz, supra*, 161 Cal.App.3d at p. 916.; see Evid. Code, § 782, subd. (a)(2).) "[E]ven after a hearing outside the presence of the jury at which the complaining witness is questioned about the defendant's offer of proof, the statute specifically reaffirms the trial court's discretion, pursuant to Evidence Code section 352, to exclude relevant evidence which is more prejudicial than probative." (*Rioz*, at p. 916; see *People v. Chandler* (1997) 56 Cal.App.4th 703, 708; see Evidence Code, § 782, subd. (a)(4).)²

" 'A trial court's ruling on the admissibility of prior sexual conduct will be overturned on appeal only if appellant can show an abuse of discretion.' " (*People v. Bautista, supra*, 163 Cal.App.4th at p. 782; *People v. Chandler, supra*, 56 Cal.App.4th at p. 711.) We apply the same standard of review to any ruling by the court on the admissibility of evidence. (*People v. Waidla* (2000) 22 Cal.4th 690, 717.) We may not

² In *People v. Rioz, supra*, 161 Cal.App.3d 905, the court further explained: "An example serves to demonstrate the wisdom of this statutory framework: A defendant charged with forcible rape makes the requisite written motion, supported by a sworn affidavit, offering to prove that the complaining witness, a convicted prostitute, agreed to have sex with the defendant for money and charged him with rape to get even with him when he refused to pay her. However, not only has the complaining witness denied that the sexual activity with the defendant was consensual [*sic*], but other evidence establishes without contradiction that the complaining witness was beaten in connection with the event. Given the potentially prejudicial impact of a prostitution conviction on the victim's testimony that she did not consent, the trial court, in the exercise of its discretion, may determine that the injuries suffered by the victim are wholly inconsistent with the defendant's offer of proof and either reject the sufficiency of the offer of proof in the first instance or exclude evidence of the prostitution conviction, after a hearing, pursuant to Evidence Code section 352." (*Id.* at pp. 916-917.)

disturb the trial court's ruling unless the court exceeded the bounds of reason, exercising its discretion in an " 'arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.' " (See *People v. Gutierrez* (2009) 45 Cal.4th 789, 828.)

C. *Analysis*

Though Patton offered the sperm evidence as to A.C.'s credibility, there is no indication in the record that his defense counsel submitted a written motion or sealed affidavit as to relevance, requested a hearing, or otherwise attempted to comply with the strict requirements of Evidence Code section 782. (Evid. Code, § 782; *People v. Fontana* (2010) 49 Cal.4th 351, 362.) Indeed, Patton maintains the rape shield law was inapplicable, arguing he did not seek to introduce the evidence as to A.C.'s consent or promiscuity.

However, the plain import of evidence of nonmatching DNA in A.C.'s boxer shorts was that A.C. had recently engaged in consensual sexual conduct with another man, particularly, Campbell. Further, Patton complains about being prevented from presenting evidence suggesting A.C. engaged in trading sex for drugs, or had a habit of spending the night with other men. This is the sort of sexual conduct evidence broadly covered by the rape shield law. (See *People v. Tidwell, supra*, 163 Cal.App.4th at pp. 1454, 1456 [sexual conduct in Evidence Code section 782 is interpreted broadly to include evidence of prior solicitation of prostitution or evidence that a victim had been earlier molested, but evidence that a victim made false statements, specifically, a false complaint of rape, is not evidence of sexual conduct falling within the rape shield law].)

Accordingly, we reject Patton's challenge to the extent he argues the trial court improperly based its ruling on the rape shield law. Setting aside Patton's failure to comply with the statutory requirements of a sworn affidavit and written motion, we agree with the trial court's implicit conclusion that Patton had not made a sufficient proffer of the relevance of this evidence to A.C.'s credibility. In *People v. Chandler*, *supra*, 56 Cal.App.4th at p. 708, the court observed that "California courts have not allowed the credibility exception in the rape shield statutes to result in an undermining of the legislative intent to limit public exposure of the victim's prior sexual history. [Citations.] Thus, the credibility exception has been utilized sparingly, most often in cases where the victim's prior sexual history is one of prostitution." (*Ibid.*) Evidence that A.C. may have recently had intercourse with another individual had only marginal relevance, if any, to her credibility pertaining to the instant crime. Such evidence was not relevant to her credibility in general, as having consensual sexual activity generally does not make one more or less likely to lie on the witness stand. (See *Chandler*, at pp. 708-709.) The evidence did not directly contradict A.C.'s trial testimony concerning her squeamishness in undergoing a sexual assault exam or prove a character trait of dishonesty.

Even assuming there was some relevance of this evidence to A.C.'s credibility, the trial court found under general Evidence Code section 352 principles it was outweighed by its prejudicial impact, and the undue consumption of time it would take to explain the evidence. The trial court was entitled to conclude, and did not abuse its discretion in finding, that the "minitrial" necessary to establish the fact that the DNA from A.C.'s

boxer shorts was from Campbell, determine Campbell's whereabouts on the date of the incident, and explore the nature of A.C.'s relationship with Campbell, would consume an unreasonable amount of time and possibly confuse the issues or mislead the jury. (Accord, *People v. Geier* (2007) 41 Cal.4th 555, 582 [admission of evidence that another man had been with the victim on the night of a murder "would have necessitated a minitrial on the question of [that man's] whereabouts on the night of the murder thus creating the possibility 'of confusing the issues, or of misleading the jury' "].) Further, the potential prejudice of the evidence was substantial: "For some jurors, the fact that the victim has engaged in sexual conduct outside of marriage automatically suggests a receptivity to the activity or is proof that the victim got what she deserved—neither of which is a rational or permissible inference. [Citation.] In addition, the Legislature has determined that victims of sexual assault require greater protections beyond those afforded other witnesses against surprise, harassment, and unnecessary invasion of privacy [citation], and [Patton's] inquiry would have violated those interests, particularly the state interest 'to encourage reporting by limiting embarrassing trial inquiry into past sexual conduct.' " (*People v. Fontana, supra*, 49 Cal.4th at p. 370.) The trial court did not abuse its wide discretion in concluding undue time consumption and substantial prejudice of this evidence outweighed any relevance as to A.C.'s credibility regarding whether she was raped, and whether Patton was her assailant.

Having concluded that the trial court properly excluded the evidence in question and did not abuse its discretion, we necessarily hold Patton was not denied his right to confrontation under the Sixth Amendment to the federal Constitution and article I,

section 15 of the California Constitution or his right to present a defense under the Fifth Amendment to the federal Constitution. (*People v. Fontana, supra*, 49 Cal.4th at p. 370; *People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103 [application of the ordinary rules of evidence does not impermissibly infringe on a defendant's right to present a defense]; *People v. Hall* (1986) 41 Cal.3d 826, 834 [same].) Nevertheless, we observe that contrary to Patton's claim he was unable to effectively cross-examine A.C. about the presence of nonmatching semen in the crotch of her underwear, he had ample opportunity to, and did, challenge A.C.'s credibility. Specifically, defense counsel elicited from A.C. the fact she had bipolar disorder, that she was not taking medications for that disorder in July 2010, and that she had been hospitalized after the incident and was much better after having received treatment. He pointed out she had given inconsistent testimony during the preliminary examination about who was present at Smith's apartment before the incident. He elicited from A.C. that she was smoking crystal methamphetamine around the time of her rape. He questioned A.C. about inconsistent statements she made to detectives about how she encountered Patton and her response to Patton's request for intercourse. Defense counsel questioned A.C. about the fact she had earlier testified her boxer shorts were off during the rape and she had to crawl around to find them next to her. The jury considered all of these matters to judge A.C.'s credibility concerning whether Patton had raped her.

Nor was Patton foreclosed from presenting a defense. In closing argument, defense counsel pointed out Patton's DNA was not found on A.C.'s boxer shorts. He argued A.C. had a mental illness and was a drug abuser, and he emphasized there was no

evidence Patton's DNA was recovered from her vagina. We reject Patton's argument that the exclusion of the proffered evidence was an error analogous to that addressed by the U.S. Supreme Court in *Chambers v. Mississippi*, *supra*, 410 U.S. 284. *Chambers* involved the combined application of a state "voucher" rule that limited cross-examination to adverse witnesses and Mississippi's hearsay rules, which did not recognize a hearsay exception for statements against a declarant's penal interest. (*Id.* at pp. 294-296.) In that case, in which the defendant was charged with murder, the trial court applied that rule to preclude cross-examination of a witness, McDonald, who had signed a sworn confession to the murder and made inculpatory statements to others, but who at trial denied involvement in the homicide and repudiated the confession. (*Id.* at pp. 291-294.) Further, due to Mississippi's hearsay rule, the defendant was unable to present other witnesses who would have testified that McDonald had admitted to the murder. (*Id.* at pp. 289, 292.) The U.S. Supreme Court explained the evidence bore persuasive assurances of trustworthiness and was well within the basic rationale of the exception for declarations against interest, and also was critical to the defendant's defense. (*Id.* at p. 302.) Thus, it held "under the facts and circumstances of this case" the trial court's rulings deprived the defendant of a fair trial. (*Ibid.*) But "Evidence Code section 352 is unlike the 'voucher' rule, which *Chambers* noted 'has been condemned as archaic, irrational, and potentially destructive of the truth-gathering process.'" (*People v. Anderson* (2012) 207 Cal.App.4th 1440, 1471, mod. Aug. 23, 2012 [2012 Cal.App. Lexis 913].) Here, there " ' ' 'was no refusal to allow [defendant] to present a defense, but only a rejection of some evidence concerning the defense.' " ' ' " (*Id.*, quoting *People v. Boyette*

(2002) 29 Cal.4th 381, 428; see also *People v. Espinoza* (1992) 3 Cal.4th 806, 818 [distinguishing *Chambers* and other cases from situations where a defendant was "not foreclosed from effectively challenging the prosecution's case or from presenting crucial exculpatory evidence"].)

Finally, even if we were to conclude the trial court erred in its evidentiary ruling, the evidentiary error was harmless because, viewing the entire record, it is not reasonably probable the error affected the verdict. (*People v. Chandler, supra*, 56 Cal.App.4th at pp. 711-712.) This is particularly so in view of the DNA evidence linking Patton to A.C.'s rape and beating and other evidence of injuries to both A.C. and Patton. A.C.'s version of events was supported by evidence recovered from the abandoned home where the sexual assault occurred; the observations of her condition immediately after the incident; records taken at the hospital which showed evidence of injuries consistent with her being beaten; Tamble's testimony; and Mike Smith's testimony about A.C.'s appearance, her claim of having just been raped and beaten, and her highly emotional state when she arrived back at Rock's apartment. Patton "makes no attempt at explaining away the physical evidence of assaultive conduct" (*id.* at p. 712) or the evidence of his DNA present on A.C.'s breast, bra cups, belt buckle, and shirt. There is no reasonable probability of a more favorable result had the jury heard the evidence that Campbell's DNA was present on A.C.'s borrowed boxer shorts.

II. *Exclusion of Asserted Third Party Culpability Evidence*

On cross-examination, defense counsel asked if A.C. had a friend named "Red." The prosecutor objected and sought an offer of proof. Outside of the presence of the jury,

defense counsel stated: "I believe that the witness would say that she had a friend at the time named Red, that she would hang around with him. She would—out in public in front of others, that she would sit on his lap and drink substantial quantities of beer, specifically 40-ounce beers, that Red would get mad at her when she was together with her friend Mark, suggesting that—and also when she was staying in Kevin Smith's van." Responding to the court's question concerning the relevance of the evidence, defense counsel further explained that the evidence suggested "someone else could have beaten her up. She had this friend that was angry with her for spending time with other men."

The prosecutor responded that there was no evidence "Red" was anywhere near the scene of the crime, and that under defense counsel's theory, any person who A.C. interacted with on the street could have beaten her up. Defense counsel stated that the evidence about the person named Red was developed from the prosecution's discovery, which showed Red would get angry at A.C. because she spent the night with other men. He represented that the general time frame that Red got angry was "July of last year, the general time frame of this event." Defense counsel pointed out some men who spent time with A.C. were prosecution witnesses in the case.

The trial court ruled based on Patton's offer of proof that the evidence was inadmissible under Evidence Code section 352, stating it was "more prejudicial than probative, and it would tend to be very distracting and potentially time-consuming to put it in a context."

Patton contends this ruling constituted an abuse of discretion, depriving him of the right to present relevant evidence, particularly evidence suggesting a third party was

culpable for the crime. He maintains the evidence circumstantially linked Red to the actual perpetration of A.C.'s beating, which distinguishes the circumstances from cases such as *People v. Hall, supra*, 41 Cal.3d 826 and *People v. Yeoman* (2003) 31 Cal.4th 93 in which the reviewing court held third party culpability evidence was properly excluded as establishing "mere motive." According to Patton, the evidence suggested A.C. and Red were romantically involved, that Red became angry with A.C. for spending nights with different men, and "[i]t is likely that A.C. told the prosecution about her relationship with Red in response to questions about other people who might be suspected of beating her up."

All evidence having any tendency in reason to prove or disprove a disputed fact is admissible. (Evid. Code, § 210.) "In general, third party culpability evidence is admissible if it 'rais[es] a reasonable doubt of defendant's guilt.' [Citation.] This does not mean, however, that no reasonable limits apply. Evidence that another person had 'motive or opportunity' to commit the charged crime, or had some 'remote' connection to the victim or crime scene, is not sufficient to raise the requisite reasonable doubt. [Citation.] Under [*People v. Hall, supra*, 41 Cal.3d 826] and its progeny, third party culpability evidence is relevant and admissible only if it succeeds in 'linking the third person to the actual perpetration of the crime.' " (*People v. DePriest* (2007) 42 Cal.4th 1, 43.) " [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. Vines* (2011) 51 Cal.4th 830, 860, quoting *Hall*, at p. 833.)

Hall further explains that "courts should . . . treat third-party culpability evidence like any other evidence: if relevant it is admissible ([Evid. Code,] § 350) unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion ([Evid. Code,] § 352.)" (*People v. Hall, supra*, 41 Cal.3d at p. 834.)

Applying these principles, the California Supreme Court in *People v. Gutierrez* (2003) 28 Cal.4th 1083 affirmed the exclusion of purported third party culpability evidence intended to show that a drug dealer named "Pablo" had committed a murder of a woman. (*Id.* at p. 1135.) The defendant offered to prove the victim dealt in marijuana and other narcotics, and owed a large sum of money to a drug dealer. (*Ibid.*) The defendant also proffered that the victim had asked him to provide armed protection for her during a drug transaction planned for the night before her murder, she had purchased ammunition for this purpose, and on the night before the murder, he and the victim met a man named Pablo to consummate the drug deal. (*Ibid.*) The court concluded the trial court did not err in excluding this evidence because "there was no direct or circumstantial evidence to link Pablo or any other identifiable third party with [the victim] in the hours before her death, or indeed on the date of her death. Although defendant's testimony may have raised a suggestion that Pablo or some other third party involved in drug trafficking had a motive or possible opportunity to murder Jones, additional direct or circumstantial evidence was required to link Pablo or some other third party to the actual perpetration of the crime." (*Id.* at pp. 1136-1137.)

In *People v. Yeoman, supra*, 31 Cal.4th at p. 140, the California Supreme Court held properly excluded evidence that a murder victim's car was burglarized by two men, including a man named Jerry Huebner, one week before his murder, and that Huebner called another person to say that if the murder victim did not withdraw the burglary charges testimony, he would go to jail for 12 years. (*Ibid.*) The defendant's counsel theorized that the burglar was responsible for the later murder, but admitted he had no additional evidence connecting him to the crime. (*Ibid.*) The high court explained that evidence that a third person actually committed a crime is relevant, but subject to exclusion at the court's discretion under Evidence Code section 352. (*Yeoman*, at p. 141.) It held the defendant's offer of proof showed motive only, and was thus insufficient. (*Id.* at p. 141; see also *People v. Geier, supra*, 41 Cal.4th at pp. 581-582 [evidence that third party was seen with victim at restaurant on night of her murder properly excluded; while it could be generously construed as possible evidence that third party had opportunity to commit the crimes, evidence of mere opportunity is inadmissible as third party culpability evidence].)

Contrary to his arguments, Patton's so-called third party culpability evidence suffers from the same fatal flaws as in *Gutierrez* and *Yeoman*, namely, the evidence does not raise a reasonable doubt as to Patton's guilt. Specifically, we conclude Patton's proffer demonstrates no circumstantial link between the person named Red and A.C. on the night in question or the hours before her death, and thus no link to the " 'actual perpetration of the crime.' " (*People v. Vines, supra*, 51 Cal.4th at p. 860; *People v. Gutierrez, supra*, 28 Cal.4th at pp. 1136-1137.) Patton points out A.C. told the

prosecution during its investigation of the case that she was involved with Red during the time frame of the incident. But this does not establish Red was present or had the opportunity to commit the crime on July 25, 2010. Any inference that Red may have accompanied A.C. on the night of the incident or had beat her that night is speculative at best. " 'Speculative inferences that are derived from evidence cannot be deemed to be relevant to establish the speculatively inferred fact in light of Evidence Code section 210, which requires that evidence offered to prove or disprove a disputed fact must have a tendency in reason for such purpose.' " (*People v. Babbitt* (1988) 45 Cal.3d 660, 681-682.) That Red may have had a motive to beat A.C. because he disapproved of her conduct with other men is insufficient. (*Vines*, at p. 860; *People v. Hall*, *supra*, 41 Cal.3d at p. 833.)

Patton complains that the exclusion of such evidence violated his federal constitutional rights to due process and a fair trial by disallowing him the opportunity to present a defense. We disagree. "As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense." (*People v. Hall*, *supra*, 41 Cal.3d at p. 834.)

III. *Cumulative Error*

Patton contends the cumulative impact of the trial court's errors requires reversal of his convictions. Our rejection of Patton's claims of substantive error, and conclusion that any assumed error was harmless, necessarily disposes of his claim of cumulative error. (*People v. Boyer* (2006) 38 Cal.4th 412, 475; *People v. Garcia* (2008) 168 Cal.App.4th 261, 295, fn. 18.)

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

McDONALD, J.