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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND LESEAN NELSON,

Defendant and Appellant.

E052341

(Super.Ct.No. RIF152910)

OPINION

APPEAL from the Superior Court of Riverside County. Patrick F. Magers, Judge.

Affirmed.

David McNeil Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Felicity Senoski, and Barry Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Raymond Lesean Nelson appeals after he was convicted of the sexual assault of one victim and simple assault on another. He contends that the trial court erred in admitting other-crimes evidence, which prejudiced the jury's determination in his case. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Carlotta S.

Carlotta S. was a student from Italy. She arrived in Southern California on September 11, 2009. She was to attend the University of California at Riverside (UCR) for the coming academic year. She would be living in a university-owned apartment complex for students, the University Plaza Apartments. Her advisor gave her a key and walked her to her apartment.

About 10:00 p.m. she went outside her apartment to look around. She met defendant standing by some stairs. Defendant was wearing shorts and a gray T-shirt. They fell into conversation, and defendant told Carlotta that he was visiting a friend at the apartment complex. After they had chatted for 15 minutes or so, defendant asked Carlotta if she would like to have a drink. She accepted, and he said he would go purchase some drinks and return. She waited for him by the stairs.

Defendant returned a short time later with some wine and beer. Carlotta drank a little wine, and they decided to go sit in the pool area. It was dark, but some lamps were lit in the pool area. Defendant sat on the deck with his feet in the Jacuzzi, while Carlotta sat on a lounge chair about four feet away. Defendant invited Carlotta to get into the

Jacuzzi with him. Carlotta, feeling uncomfortable, declined, but defendant got into the water. At some point he took off his shorts and underwear and placed them in a pile on the deck.

A short while later, defendant emerged from the Jacuzzi and sat, naked, on the lounge next to Carlotta. He started touching his penis with his hand. Carlotta, frightened, stood up to leave, but defendant grabbed the belt loop on the back of her pants and pulled her back. Three times Carlotta got up, and each time defendant pulled her back down; Carlotta repeatedly stated, "Let me go," but defendant tried to persuade her to stay, saying, "[N]o, it's normal in America. These things happen. It's normal in America." Finally, however, he did let her go. Carlotta ran out of the pool area and went to her apartment.

The next day, after Carlotta met her roommate and told her what had happened, her roommate brought a police officer to speak with Carlotta. Police were already in the vicinity, because of another attack that had taken place at the apartment complex the night before.

Katherine C.

Katherine C. had been a student at UCR; she graduated in 2008. She continued to visit the campus, however, to see her boyfriend who lived at the University Plaza Apartments.

At 8:00 p.m. on September 11, 2009, Katherine went to visit her boyfriend. They got some food ready to barbecue and drank some rum. After a bit, they walked down to

the pool area where they barbecued their food. No one was inside the pool area, but they did see some people walking outside the pool fence. About 9:30 p.m., they finished their meal, picked up their belongings and returned to the boyfriend's apartment. They watched television for a while and drank more rum.

At 10:30 or 11:00 p.m., Katherine realized that she did not have her wallet. Thinking that she may have left it in the pool area, she went to look for it. She drove her car a short distance from where she had parked, near her boyfriend's apartment, to a spot next to the pool. She opened the gate with her key and retrieved her wallet, which she had left near the barbecue grill. She then decided to use the bathroom adjacent to the pool. She did not see anyone near the Jacuzzi before entering the bathroom.

There was one stall in the bathroom. Katherine closed and latched the stall door. As she finished using the toilet, the bathroom door opened and someone came in; through a crack in the stall divider, Katherine saw defendant. She called out to him that he was in the women's bathroom and told him to get out. Defendant stood for a few seconds and said, "No." Defendant rattled the stall door and demanded her wallet and keys. He also ordered her to lift her skirt and turn around. She asked if defendant was joking. He said he was not. She looked in her purse for her cell phone, but she had left it at her boyfriend's apartment. Defendant threatened to kill her if she called the cops. Katherine feared that defendant was going to attack her and rape her.

Katherine did not recall how the stall door was opened, but at some point the door was opened. The next thing she recalled was coming to, lying on the couch in her

boyfriend's apartment. Her boyfriend asked her what had happened; Katherine was bleeding from some cuts around her eyes. By morning her face had swollen considerably, and her left eye was swollen nearly shut. She also had trouble chewing and swallowing.

When Katherine started remembering the events of the night before, she called police, who arrived at the apartment at approximately 9:00 a.m. Katherine also went to the hospital for examination. She did not believe she had been sexually assaulted, because she was still wearing the clothes she had had on, and because she still had her wallet and keys with her. She believed that she was physically assaulted, however; since she is the type of person that would defend herself, she believed that she had fought to get away.

Katherine's boyfriend testified that she had been gone from the apartment for about 10 minutes. At first, he did not notice anything wrong when she returned. However, after about 10 or 15 minutes, he noticed that she had cuts and was bleeding around her left eye. He thought she might have fallen on the stairs, but did not find anything when he went to check the stairs. He did notice that her car was parked in a loading zone, however, with the door cracked open. He re-parked her car in a one-hour zone.

Police Investigation

Detective Michael Andert undertook the investigation of the report of a possible sexual assault on Katherine C. He found blood spatter evidence in the women's bathroom, indicating that someone may have been struck or punched.

About 50 yards from the pool, Detective Andert found some discarded gray men's boxer briefs, and a partially rolled sock. The boxer briefs were dry on top, but damp underneath, next to the concrete. He also found glass from a broken light fixture, and saw blood on the ground, as if someone had stood still for a period of time. In his experience, criminals will break light fixtures to conceal themselves in the darkness. He followed a blood trail, which continued on the other side of a fence, between two portable buildings. (The blood was later matched to defendant.) The trail led to the grounds of a mosque, where he found a discarded wine container and a beer can. The items had price stickers on them, and a bag found nearby had a time-stamped receipt. After inquiring at a number of liquor stores, Detective Andert found that one store carried the same brands of beer and wine, at the same prices, and similar labels to the items found on the grounds of the mosque. The store's surveillance video showed a man, wearing dark shorts and a gray T-shirt, purchasing the beer and wine. The video showed the man leaving in a red Ford pickup truck. The man purchased the items with a debit card, which police were then able to trace to defendant.

In the course of the investigation, defendant made three statements to police. Detective Andert and his partner first went to defendant's place of employment, a few

weeks after the assaults. They found the red pickup truck in the parking lot. The truck was registered to defendant. A beer can like the one found on the grounds of the mosque was in the back of the truck. The detectives met defendant in the parking lot where they talked to him for five or 10 minutes. They asked whether defendant had ever been around the university apartments, and if the truck was his. Defendant admitted that the truck was his, and disclaimed any knowledge of the assault on September 11. He also said that he often met women in the UCR area and dated them, but denied doing anything wrong.

The police continued to watch defendant over the next few days, and went to the home where defendant lived with his ex-wife and his son. When defendant came home, the police again talked to him. This time, they showed him some flyers showing still pictures of the man in the surveillance video at the liquor store. Defendant agreed that the man looked like him, and that the truck looked like his. The flyers asked for citizens to be on the lookout for the person in the picture and to call police with any information.

Finally, on October 16, 2009, the police arrested defendant. He waived his constitutional rights and agreed to be questioned. The interview was recorded. At first, defendant was noncommittal about whether he had ever been to the University Plaza Apartments, or had bought liquor at the liquor store in question. However, at one point he asked the detectives to turn off the digital recorder (another recording device continued to record the conversation, however), and he then admitted that he had been at the apartment complex on September 11. He described how he had met a young woman

who said she had just arrived in the United States. After talking for a short while, defendant left to buy some wine for her at the store. They continued their conversation when he returned, and eventually they went to sit in the pool area. Defendant suggested getting into the Jacuzzi, which he proceeded to do; the young woman said she would think about it, but finally decided that she did not want to get in. After more talk, she decided to call it a night, and left.

Defendant then went into a nearby bathroom to dry off and put on his clothes. He apparently mistakenly went into the wrong bathroom; suddenly, he heard a woman yelling, “Who are you? What’s going on?” at him. She came out of the toilet stall. Defendant panicked, hit the woman, and ran away. Defendant had a prior conviction for sexual assault, and he feared that no one would believe his story, so he just kept running.

Additional Evidence at Trial

Defendant was charged by information with one count of assault with intent to commit rape as to Katherine C. (count 1), assault by means of force likely to cause great bodily injury as to Katherine C. (count 2), and one count of assault with intent to commit rape as to Carlotta S. (count 3). He was also charged with one count of indecent exposure (count 4). The information further alleged that defendant had committed great bodily injury on Katherine C. in connection with count 2, and that he had both a prior strike conviction, and a prior serious felony conviction.

At trial, the prosecutor presented evidence concerning defendant’s prior conviction offense. In August 1996, 18-year-old Athena W. was waiting at a bus stop, when

defendant drove up in his car. He offered her a ride, which she refused, but he returned momentarily, saying that he had a knife and a gun. He then forced her into his car. He drove to an apartment complex near UCR, where he dragged Athena by the hair into the pool area, which was surrounded by a fence. Defendant threw Athena over the fence and jumped over the fence himself. He dragged her over to the pool, and commanded her to undress and get into the water. She refused. Defendant undressed himself and jumped into the pool. Athena tried to leave, but defendant grabbed her leg, causing her to fall on the cement deck. She began to bleed. Defendant took off Athena's clothing, leaving her dressed only in her underwear. He grabbed her hair and threw her into the pool.

Defendant pushed Athena's head under water and then fondled her, penetrating her with his fingers. He let her out of the pool, saying he would let her go, but he then pushed her to the ground and tried to force her to orally copulate him. She resisted, gagged, and vomited. Defendant, angry that she had thrown up, grabbed her by the throat and began calling her names. All the while, defendant also apologized and said he did not mean to hurt Athena.

They got dressed, and defendant walked Athena to his car, holding her elbow and gripping the belt loop on the back of her pants. Athena tried to escape from defendant's car, but he pulled her back inside. Defendant drove to an isolated area by some orange groves, and told Athena that she could leave. She got about 10 feet away when defendant chased her down, grabbed her, and slammed her onto the hood of his car. He told her that he knew she "wanted it," and told her to stop resisting. Defendant ripped her clothes

off and tried to penetrate her from behind, but she fought and kicked. Defendant became angry and punched her, pushed her around, slapped her, pulled her hair, and choked her. He used his hands to penetrate her again. He finally agreed to take her home, again saying that he had not meant to hurt her. He allowed her to get dressed and they got in the car once more. Athena was crying and begged defendant to let her go home. When defendant stopped not far from her house, Athena jumped out of the car and ran home. Defendant followed her. He parked his car and yelled for her to come outside, saying he was sorry. Athena told her roommate to call the police. By the time the police arrived, defendant had left.

Defense Evidence

Defendant testified on his own behalf at trial. He admitted meeting Carlotta S. at the University Plaza Apartments. After they chatted for a bit, he went to the store and returned with beer and wine. They went to the pool area, where Carlotta sat on a lounge while defendant sat on the edge of the spa, with his feet in the water. For “no particular reason,” defendant decided to take off his clothes and get into the spa. He denied having any sexual interest or intent with respect to Carlotta. When Carlotta said she was going to leave, defendant claimed he could not remember pulling on her belt loop, but he did try to convince her not to leave. Nevertheless, Carlotta left. It did not occur to defendant until afterward that he might have offended her.

Defendant gathered his clothes and went into a bathroom nearby to dry off and get dressed. He did not read the sign outside the bathroom and was shocked when he heard a

woman say that it was the women's bathroom. He apologized, gathered up his things, and prepared to leave, when the woman came out of the toilet stall. He felt a tug and heard her saying, "Who are you? What are you doing in here?" He turned and hit the woman with his fist, so he could get away. He had no intent to force her to have sex with him.

Defendant threw the wine bottles and beer cans over a wall as he fled. He ran to a fast-food restaurant a mile or so away and called his wife to come pick him up. He decided to flee in part because of his past experience of being imprisoned for kidnapping and attempted rape, although he claimed that his sexual contact with Athena W. had been consensual.

Defendant's wife and son testified, corroborating defendant's story that he called them from the fast-food restaurant. Defendant told his wife that he had hit a woman in a bathroom and was afraid that no one would believe him. He wanted to report the matter to police to check on the woman he had hit, but his wife advised him not to.

The jury found defendant guilty of assault with intent to commit rape as to Katherine C., and assault by means of force likely to produce great bodily injury. The jury found true the allegation that defendant had inflicted great bodily injury on Katherine C. The jury found defendant not guilty of assault with intent to commit rape as to Carlotta S., but convicted him of a misdemeanor battery and indecent exposure. The court, in a separate proceeding, found the prior conviction and prior strike allegations true, and sentenced defendant to a total term of 17 years in state prison.

Defendant now appeals, raising as the sole issue that the trial court erred in admitting evidence of his prior offense.

ANALYSIS

I. Standard of Review

Prior acts may be used, in cases of charged sex offenses, to prove propensity to commit such acts. (Evid. Code, § 1108.) In addition, evidence of prior acts may be admissible, in any case, to prove identity, intent, plan, lack of mistake, and so on. (Evid. Code, § 1101, subd. (b).) Under either provision, such prior acts evidence is admissible only if the trial court assesses that its probative value outweighs its prejudicial value; “prejudice” in this context refers to the evocation of an undue emotional bias, or an inflammatory emotional effect on the jury. (See *People v. Branch* (2001) 91 Cal.App.4th 274, 286.) The trial court conducts this evaluation of prejudicial and probative effects under Evidence Code section 352. The trial court’s ruling on the issue of admissibility of such evidence will not be disturbed on appeal in the absence of an abuse of discretion. (*Branch*, at p. 282.)

II. The Trial Court Did Not Abuse Its Discretion in Admitting Evidence of Defendant’s

Prior Conduct

Defendant relies on *People v. Harris* (1998) 60 Cal.App.4th 727, to argue that the other-crimes evidence here was prejudicial and should have been excluded. In *Harris*, the defendant was a nurse in a psychiatric facility. He was accused of fondling two patients. The other-crimes evidence involved a 23-year-old prior burglary conviction, in

which the defendant had apparently used keys in his possession, as the manager of his apartment building, to enter a woman's apartment, and to rape and beat her to unconsciousness; he also used a sharp implement to rip muscles from her vagina to her rectum, and finally stabbed her in the chest with an ice pick. For these acts, he was ultimately convicted of burglary, but not rape. Under a five-part analysis, the Court of Appeal concluded that the admission of the other-crimes evidence in that case was prejudicial, and its admission was an abuse of discretion. The court considered (1) how inflammatory the prior incident was, (2) how likely the evidence was to confuse the jury, (3) how remote the earlier crime was, (4) how much court time would be taken by the evidence and instructions concerning the prior crime, and (5) how probative the evidence was.

In Harris's case, the current charged offenses were relatively mild, involving inappropriate touching. The defendant had formerly had a consensual sexual relationship with one of the victims, and he remained on speaking terms with both afterward. The evidence of the earlier crime involved a great breach of trust and was extremely violent. The prior offense involved a stranger. The prior offense was also remote in time, having taken place 23 years earlier. The other-crimes evidence as admitted was restrictively redacted, which might well have caused the jury to speculate about the true nature of the offense (i.e., the jury was told only that the defendant had been convicted of burglary and inflicting great bodily injury, leaving the jury to wonder what had happened to the apparent rape). Most tellingly, the court found that the other-crimes evidence was not

very probative, because it involved circumstances which were wholly different from the charged offenses. (*People v. Harris, supra*, 60 Cal.App.4th 727, 741.)

The *Harris* analysis does not aid defendant in this case. The prior incident was somewhat inflammatory, in that it involved a more extended sexual assault and more prolonged violent acts against the victim, Athena W. However, the current charged offense as to Katherine C. also involved violence, and defendant appeared to have inflicted more actual bodily injury against Katherine than against Athena. This was not a case, as in *Harris*, in which the other-crimes evidence was markedly different from the charged crimes. All involved sexual assaults against strangers. All involved defendant's use of the student apartment complex facilities as a preying ground for carrying out his sexual assaults (even though the initial contact with Athena W. did not begin at the apartment complex, defendant took her there, into the same pool area as he used for the assaults on Carlotta S. and Katherine C.). For these and other reasons (e.g., the similarity of controlling victims by grabbing their belt loops, the similarity of hitting victims Athena W. and Katherine C. with his fists, defendant's attempt to ply both Athena W. and Carlotta S. with alcohol), the other-crimes evidence was highly probative as to defendant's intent and his modus operandi. The other-crimes incident had taken place approximately 13 years earlier. He was convicted of the crime in 1998, 11 years earlier, and sentenced to 16 years in state prison. He was paroled in 2005, only four years before the current charged offenses. Thus, the conduct was not actually remote in time, as defendant had been segregated from the opportunity to commit more offenses for a

significant number of the intervening years. The evidence of the sexual assault on Athena W. was straightforward and understandable, and was not likely to confuse the jury or to consume too much time.

Defendant essentially admitted being in the places and times, and engaging in some of the behaviors as testified by the victims. He admitted accosting Carlotta S., buying her drinks, inviting her into the spa in the secluded pool area, taking off his clothes, and getting out of the water to sit, naked, by Carlotta. He admitted restraining her by her belt loops when she became uncomfortable and rose to leave.

Defendant admitted entering the women's bathroom, still unclothed, and confronting Katherine C. He admitted punching her with his closed fist.

The core issue was whether defendant harbored a sexual intent when he did these things, and whether he said and did certain additional acts (touching his penis while sitting with Carlotta S., or ordering Katherine C. to turn around and lift up her skirt) consistent with the intent to commit a sexual assault. The evidence of his attack on Athena W. was relevant to counter defendant's denials, and his insistence that sex was the furthest thought from his mind during his encounters with the victims.

The other-crimes evidence was far more probative than prejudicial. The trial court did not abuse its discretion in admitting the evidence of defendant's past criminal acts.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.