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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.

HUEY PIERCE RELIFORD III,

Defendant and Appellant.

E063536

(Super.Ct.No. FSB1405043)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael M. Dest, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, and Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Huey Pierce Reliford III and several other people were found in a motel room with two underage prostitutes. Defendant had brought the girls from Las Vegas to California. The girls both told police that they gave defendant some of the money that they made. A search warrant for defendant's Facebook account revealed messages in which he said he was a pimp and he gave one of the girls advice on how to conduct prostitution.

After a jury trial, defendant was found guilty on two counts of human trafficking of a minor for purposes of commercial sex (Pen. Code, § 236.1, subd. (c)(1)), two counts of pimping a minor 16 or older (Pen. Code, § 266h, subd. (b)(1)), two counts of pandering a minor 16 or older (Pen. Code, § 266i, subd. (b)(1)), one count of pimping a minor under 16 (Pen. Code, § 266h, subd. (b)(2)), and one count of pandering a minor under 16 (Pen. Code, § 266i, subd. (b)(2)). He was sentenced to a total of 14 years 8 months in prison.

Defendant's sole appellate contention is that the investigating officer, who testified as an expert on pimping and pandering, was improperly allowed to opine that defendant was guilty. We will hold that none of the expert's challenged opinions rose to the level of an impermissible opinion on guilt; and in any event, those opinions were harmless in light of the overwhelming evidence that defendant was, in fact, guilty.

I

FACTUAL BACKGROUND

A. *The Initial Investigation.*

On the night of May 12-13, 2014, in the course of a “follow-up investigation,” a sheriff’s deputy went to a motel room in Hesperia. He found six or seven people in the room, including defendant and two girls — D.M. and J.C.¹ Defendant was giving someone a haircut.

At the time, both D.M. and J.C. were 16 years old. They were both wearing heavy makeup and “very tight . . . form-fitting dress[es].”

J.C. admitted that she was working as a prostitute. She said that defendant had brought her from Las Vegas to California. She gave most of the money she made to defendant, keeping only “a very small percentage.”

¹ The prosecution referred to one alleged victim as Jane Doe No. 1 and to the other by her real first name. We cannot tell why they were treated differently.

A victim is not supposed to be referred to by a fictitious name unless the trial court so orders, based on a finding that a fictitious name “is reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense.” (Pen. Code, § 293.5, subd. (a).) It does not appear that the trial court here ever made such an order or finding.

In the absence of such an order by the trial court, this court is not ordinarily supposed to refer to a person as John or Jane Doe. (See Cal. Style Manual (4th ed. 2000) § 5.9.) However, we can provide protective nondisclosure to the victim of a sex offense by using that person’s initials. (*Ibid.*)

Accordingly, we will designate the victim who was referred to by her first name at trial by her initials, D.M. For the sake of consistency, we will likewise designate the victim who was referred to at trial as Jane Doe No. 1 by her real initials, J.C.

D.M. denied being a “ho” but admitted going on “dates” during which she would have sex in exchange for money. She would give some of the money to defendant, “as gifts to help him out,” because he was her friend.

B. *J.C.’s Testimony at Trial.*

J.C. testified that as of April 2014, she lived in Las Vegas. She was friends with defendant’s long-time girlfriend, Camille Musgrove. Musgrove “led [J.C.] in to” prostitution. According to J.C., if anybody was her pimp, it was Musgrove.

While still in Las Vegas, J.C. met D.M. At one point Musgrove, J.C. and D.M. “walk[ed] the [S]trip” together, trying to find customers, but they were stopped by the police. Defendant rented an apartment, but it was the three women who came up with the idea of using it for prostitution.

Around the end of April 2014, at Musgrove’s suggestion, they all went to California. J.C. worked as a prostitute in various cities, including Victorville, Temecula, Ontario, and Fontana. Musgrove posted an ad for J.C. on Backpage.com. Musgrove also showed her how to set up her phone so she could get messages responding to her ad. J.C. gave most of the money she made to Musgrove, keeping only a small portion for herself.

When the police showed up at the motel room, one of the people present was defendant’s brother Darrin. Darrin was J.C.’s boyfriend and the father of her child. However, she denied that he was ever her pimp. She also denied naming defendant as her pimp to protect Darrin.

C. *D.M. 's Testimony at Trial.*

D.M. testified at a conditional examination, a video of which was played for the jury. D.M. denied being a prostitute. However, she admitted posting ads on Backpage.com. She also admitted that she charged people \$100 for 15 minutes, \$140 for 30 minutes, and \$220 for 60 minutes. However, she claimed that all she did with them was hang out with them and talk to them. She denied giving any of the money she made to defendant. Defendant made a living by cutting hair and making music.

D. *Testimony of Detective Adam Salsberry.*

Detective Adam Salsberry, the investigating officer, was also an expert on prostitution, pimping, and pandering. He testified that the “track” or “blade” means the area where prostitution occurs. A “john” means a man who will pay for sex. A “date” means an exchange of sexual services for money. The participants refer to the money as a “donation[.]” A prostitute may ask a john to show her his penis so she can be sure he is not a police officer. A “bottom bitch” is the one prostitute that a pimp can rely on the most. “She will recruit and she will collect the money from the other girls.”

Both prostitutes and escorts advertise on websites such as Backpage.com and MyRedbook.com. Such ads are frequently paid for using a Green Dot card, a kind of prepaid credit card that is not traceable.

According to Detective Salsberry, an online ad can be identified as an ad for prostitution by its terminology. “In-call” means the john will come to the prostitute. “Out-call” means the prostitute will come to the john. “GFE” stands for “girlfriend experience,” which means a date in which the prostitute will act as if she is the john’s

girlfriend. If an ad says “No Black men,” that “most likely” means that the prostitute already has a pimp and does not wish to be recruited by other pimps.²

Ads from Backpage.com featuring D.M.’s photos and phone number were admitted into evidence. In them, she used the name “Anna.” They were dated between February 6, 2014 (when D.M. was 15) and May 18, 2014 (when D.M. was 16).

One ad from Backpage.com featuring J.C.’s photo and cell phone number was also introduced into evidence. In it, she used the name “Erika.” It was dated May 10, 2014, when J.C. was 16 years old.

In Detective Salsberry’s opinion, these ads indicated that J.C. and D.M. were involved in prostitution and not just escorting. He relied on the following facts: The ads showed them in provocative clothing, topless, or nearly nude; they indicated that they expected “[d]onations” for their “time”; they used the terms “[f]etish friendly,” “[i]ndependent,” “[n]o blacks,” “unrushed” and “GF experience”; they offered “in-calls” and “out-calls”; and they specified, “By contacting me you agree you are not affiliated with any law enforcement.”

Detective Salsberry had interviewed J.C. She told him that she gave the money she made to Musgrove, and Musgrove gave it to defendant. That would be consistent with Musgrove acting as defendant’s bottom bitch.

J.C. also told him that defendant talked about “izzum” and “putting people up on game.” “Izzum” meant pimping and the “game” meant prostitution.

² J.C. and D.M. both testified that “no blacks” is specified for safety reasons.

Detective Salsberry had executed a search warrant for defendant's Facebook account. Facebook messages between defendant and D.M. were admitted into evidence.³ In Detective Salsberry's opinion, many of these messages referred to prostitution.

In one, D.M. said, "The dude with 500\$ wanted to see me but you took to long."

In another, she said, "I was ready to do dates and all."

In another message, D.M. said, "Ima bout to start some dates."

At one point, D.M. said, ". . . I'm on some money tonight." Defendant replied, "No u not u always playing." "U ain't going hard tonight." According to Detective Salsberry, "That's just him trying to encourage her to work more, make more money."

In one exchange of messages, D.M. told defendant, "I got this lil bitch tryna do dates we got money on the card already." Defendant replied, "Send me some pics then." According to Detective Salsberry, D.M. was trying to act as a bottom bitch by recruiting for her pimp.

In a series of Facebook messages, D.M. said, "Babe I walked." "I made 300\$ off the blade." "Oh my shit it's easy." "On Sepulveda." "In the valley No pimps bothered me." Defendant replied, "That's good and it is easy b carefull don't hope in the car without the money 1st." He told her, "Play the corners and make them pull to the side streets" He added, "U are taking a big risk but it feels like ur ready" D.M. then messaged, "I ask them if they affiliated with any law enforcement I made him show his dick." Defendant warned her, "U better have 300\$ worth of shit when I see u." "U

³ D.M. testified that her Facebook account had been hacked.

bet[ter] not give nobody money b smart Foreal.” In Detective Salsberry’s opinion, you could not make \$300 off the blade solely by escorting. Also, a legitimate escort would never ask a customer to show his penis.

All of the messages between defendant and D.M. quoted above were sent while D.M. was 15 years old. In addition, in a Facebook message sent after D.M. turned 16, defendant told her, “Post in hutunie beach hermosa beach and relondo beach put just your email and only outcalls.”

Facebook messages in which defendant appeared to be trying to recruit other women (and one gay man) as prostitutes were admitted into evidence. In one, defendant said, “I don’t play games ima real Mac.” Detective Salsberry explained that Mac means pimp.

In another Facebook message, defendant said “. . . I do music tattoos business a lil pimping and trapping” In several Facebook messages, defendant described himself as a “p.” Detective Salsberry testified that this means pimp.

Defendant did not present a case-in-chief. In closing argument, however, his trial counsel argued that J.C. was implicating defendant falsely to protect her boyfriend Darrin. He also argued that someone else could have been using defendant’s Facebook account. Finally, he argued that if defendant was a pimp, he would not have had to cut hair for a living.

II

THE TESTIMONY OF THE PIMPING AND PANDERING EXPERT

A. *Additional Factual and Procedural Background.*

The prosecution filed a motion in limine to admit expert testimony on pimping and pandering. In response, the trial court held a hearing pursuant to Evidence Code section 402 at which Detective Salsberry testified.

At the end of the hearing, defense counsel objected, “[H]e doesn’t qualify as an expert. And we don’t need expert opinion to say what does, for instance, a blow job mean? Or what it might mean if . . . she asks the guy for \$200 for a blow job. I think the jury can figure out what that type of communication means without an expert saying that sounds like pimping and pandering or human trafficking. [¶] So I think it’s kind of stepping on the jury’s toes”

The prosecutor argued: “[T]his is an area for expert opinion, specifically with respect to the language that’s used, the terminology that’s used.” She added, “I think in this particular case, the expert testimony is extremely relevant and will aid the jury in the assessment of this case, specifically because [D.M.] testified she actually never worked as a prostitute, she worked as an escort. And the language that’s used in this case is very specific to . . . the field of prostitution.”

The trial court overruled the objection. It stated: “I think the officer has some expertise well beyond the average person. And . . . I think it would be helpful for the jury to understand what the language and the terminology is.”

When Detective Salsberry testified, defense counsel objected to his testimony only once, on a ground unrelated to defendant's contention in this appeal.

B. *Forfeiture.*

Preliminarily, the People argue that defense counsel forfeited defendant's present contention by failing to raise it below. As they appear to concede, defense counsel did raise the same argument as defendant is raising on appeal — i.e., that the expert would be testifying that pimping, pandering, or human trafficking had occurred instead of leaving that up to the jury. However, they claim the trial court did not address that objection; rather, it ruled only that the expert could testify regarding language and terminology, and defense counsel “did not push for a specific ruling.”

In our view, however, the trial court's ruling addressed defense counsel's objection. This is particularly apparent when both are viewed along with the prosecutor's argument. The prosecutor argued that an expert was needed to explain the terminology that the jury would have to understand in order to decide whether a crime was committed. The trial court then agreed with the prosecutor's argument. Thus, it squarely rejected defense counsel's objection. It would have been futile for him to object again when Detective Salsberry testified.

In any event, defendant also argues that, if defense counsel failed to preserve his contention, that failure constituted ineffective assistance of counsel. Assuming the contention is meritorious, we cannot imagine any sound tactical reason for failing to raise it. Accordingly, we would still have to discuss the contention on the merits, if only to decide whether defense counsel rendered ineffective assistance.

C. *Merits.*

“An expert may give opinion testimony ‘[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.’ [Citation.] ‘That is not to say, however, that the jury need be wholly ignorant of the subject matter of the expert opinion in order for it to be admissible. [Citation.] Rather, expert opinion testimony ““will be excluded only when it would add *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 [those with] ordinary education could reach a conclusion as intelligently as the witness”” [citation].” [Citation.]’ [Citation.] ‘The trial court has broad discretion in deciding whether to admit or exclude expert testimony [citation], and its decision as to whether expert testimony meets the standard for admissibility is subject to review for abuse of discretion.’ [Citation.]” (*People v. Brown* (2014) 59 Cal.4th 86, 101.)

“A witness may not express an opinion on a defendant’s guilt. [Citations.] The reason for this rule is not because guilt is the ultimate issue of fact for the jury, as opinion testimony often goes to the ultimate issue. [Citations.]” (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.) “[A]n expert’s opinion that a defendant is guilty is both unhelpful to the jury — which is equally equipped to reach that conclusion — and too helpful, in that the testimony may give the jury the impression that the issue has been decided and need not be the subject of deliberation.” (*People v. Prince* (2007) 40 Cal.4th 1179, 1227.)

Regarding pimping, the jury was instructed, in part:

“To prove that the defendant is guilty of pimping[,] the People must prove that[:]

“1. The defendant knew that [the victim] was a prostitute; [¶] and

“2. The money proceeds that [the victim] earned as a prostitute supported

defendant in whole or in part” (CALCRIM No. 1150; see Pen. Code, § 266h.)

Regarding pandering, it was instructed, in part:

“To prove that the defendant is guilty of pandering, the People must prove that:

“1. . . . [T]he defendant persuaded/procured [the victim] to be a prostitute; [¶] and

“2. The defendant intended to influence [the victim] to be a prostitute”

(CALCRIM No. 1151; see Pen. Code, § 266i.)

And regarding human trafficking, it was instructed, in part:

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant caused, induced, [or] persuaded or attempted to cause, induce, or persuade another person to engage in a commercial sex act;

“2. When the defendant acted, he intended to commit [pimping or pandering]”⁴ (CALCRIM No. 1244; see Pen. Code, § 236.1, subd. (c).)

⁴ Human trafficking for sexual purposes must be committed “with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518” (Pen. Code, § 236.1, subd. (b).)

The written jury instruction required the jury to find that defendant “intended to commit a felony violation of PC266h” — i.e., pimping.

The instruction, as read to the jury, however, required it to find that defendant “intended to commit a felony in violation of Penal Code [s]ection 266” Penal Code section 266, which defines the crime of enticement, was irrelevant to this case, and the jury was not instructed on it.

[footnote continued on next page]

Defendant has no problem with Detective Salsberry’s “expert opinion[s] about the terminology of pimps and prostitutes” He takes issue, however, with Detective Salsberry’s testimony that J.C and D.M. were, in fact, prostitutes. However, an expert can testify that one element of a crime has been satisfied; this does not rise to the level of impermissible testimony that the defendant is guilty.

For example, in a drug trafficking case, an expert can testify that the defendant was not a “blind mule” — i.e., that he was aware of the presence and the nature of the drugs. (*People v. Romo* (2016) 248 Cal.App.4th 682, 685-686, 697.) Similarly, “[e]xpert opinion that particular criminal conduct benefited a gang’ is not only permissible but can be sufficient to support the Penal Code section 186.22, subdivision (b)(1), gang enhancement. [Citation.]” (*People v. Vang, supra*, 52 Cal.4th at p. 1048.) Indeed, “[t]here are some crimes a jury could not determine had occurred without the assistance of expert opinion as to an *element* of the crime” (*People v. Torres* (1995) 33 Cal.App.4th 37, 47), such as an expert’s opinion that the victim of an alleged rape was incapable of giving consent due to a mental disorder (*id.* at p. 47, fn. 3).

The fact that J.C. and D.M. were prostitutes was relevant to certain elements of the charged crimes. However, the fact that they were prostitutes was insufficient, standing

[footnote continued from previous page]

Defendant has not claimed that this was error. Any error in the oral instruction was obviated by giving the jury the correct written instruction. (*People v. Grimes* (2016) 1 Cal.5th 698, 728.) In any event, the jury would have understood “Penal Code [s]ection 266” to mean either Penal Code section 266h, defining pimping, or Penal Code section 266i, defining pandering. It was instructed on both. Moreover, the intent to commit either would suffice for human trafficking.

alone, to prove that defendant was guilty of pimping, pandering, or human trafficking. Thus, Detective Salsberry could testify that J.C and D.M. were prostitutes.

Defendant also argues that Detective Salsberry improperly testified that defendant was, in fact, a pimp. However, the portions of the record that defendant cites contain no such testimony. Detective Salsberry testified that in one text message from D.M. to defendant, D.M.'s conduct was "similar to what a bottom [bitch] might try to do," because she was "trying to recruit for her pimp." He interpreted another text message saying, "Put her up on game" as meaning that D.M. should "introduce[]" a new recruit to the ways of "pimps and prostitutes." He interpreted other text messages as defendant giving D.M. advice on best practices for a street prostitute, including how to avoid pimps. In yet another text message, D.M. told defendant that a female she was recruiting had a bank account; Detective Salsberry explained that they were planning to control her by taking her money. Finally, he opined that a text message in which defendant said that D.M. was "holding him down" was typical of the way a pimp tries to manipulate a prostitute. All of this was permissible expert testimony about the business practices of pimps and prostitutes. It did tend to prove that defendant was a pimp, but only by helping the jurors understand the text messages and come to their own conclusions; Detective Salsberry did not simply opine that defendant was a pimp.

Finally, defendant also argues that Detective Salsberry improperly testified that defendant encouraged D.M. to work as a prostitute. In his view, such testimony would be essentially equivalent to an opinion that he was guilty of both pandering and human

trafficking for commercial sex.⁵ In the portions of the record that defendant cites, we find only two instances of testimony that even come close to such an opinion. First, Detective Salsberry was shown a series of text messages in which defendant told D.M., “[U] always playing.” “U ain’t going hard tonight.” He testified, “That’s just him trying to encourage her to work more, make more money.” Thus, he permissibly construed a slang-laden message for the jury. Second, Detective Salsberry was shown a text message in which defendant told D.M. “it feels like ur ready” He testified, “Again, he’s just encouraging her here.” Admittedly it required no special expertise to construe this message. In both instances, however, the fact that defendant was encouraging D.M. did not necessarily mean that he was encouraging her to work as a prostitute. For example, if the jury believed D.M.’s claim that she was just an escort, then he was encouraging her to work as an escort. The jury had to ask itself if it agreed with Detective Salsberry’s opinion regarding the messages; then it had to put that opinion together with all of the other facts in the case to decide if defendant was guilty.

Defendant cites *People v. Leonard* (2014) 228 Cal.App.4th 465. There, a police officer who qualified as an expert on pimping and pandering testified that “[s]ome pimps are ‘finesse pimps,’ who use promises of money, jewelry, travel, and love as tools of control. Other pimps are ‘gorilla pimps,’ who rely on violence and threats.” (*Id.* at p. 492.) In his opinion, defendant Leonard started off as a finesse pimp but developed

⁵ We note that even if defendant is correct, the claimed error would be harmless as to his convictions for pandering and human trafficking of J.C. (counts 1 and 3).

into a gorilla pimp. (*Ibid.*) He also testified that another witness's testimony showed a pattern of "manipulation and control of women" characteristic of successful pimps.

(*Ibid.*)

The court did not decide whether the expert's testimony about Leonard should have been admitted. (*People v. Leonard, supra*, 228 Cal.App.4th at p. 493.) It stated, "[the expert's] testimony regarding what type of pimp Leonard was and what 'patterns of behavior in pimping' were shown . . . *could reasonably be interpreted* as unhelpful comments on Leonard's guilt or innocence on the charge of pimping. [Citation.] The jury was as qualified as [the expert] to determine whether the evidence showed Leonard was acting as a 'gorilla pimp' or 'finesse pimp,' for example, after [the expert] had explained those terms. [Citations.]" (*Id.* at p. 493, italics added, fn. omitted.) After "*assuming* the trial court abused its discretion in admitting this testimony," the court held the error harmless. (*Id.* at pp. 493-494, italics added.)

Thus, *Leonard* tells us nothing about whether particular expert testimony oversteps its proper bounds. In any event, Detective Salsberry's testimony was not like the expert testimony in *Leonard* because, as already discussed, Detective Salsberry never testified that defendant was in fact a pimp.

Defendant also cites *People v. Spence* (2012) 212 Cal.App.4th 478, in which the prosecutor asked a medical expert the purportedly hypothetical question, "[I]f someone by the name of [the victim's name] says that she is sexually assaulted by someone by the name of [the defendant's name], is there any evidence that you tested in this case that contradicts that story?" (*Id.* at p. 488.) The appellate court noted that the question

“essentially asked whether [the defendant] had any meritorious defense in the evidence, or was guilty.” (*Id.* at p. 510.) It declared, “[W]e disapprove of this form of questioning.” (*Ibid.*) However, it concluded “that any error in allowing it was harmless. [Citation.]” (*Ibid.*) *Spence* is not controlling here because, once again, Detective Salsberry did not simply opine that defendant was guilty.

Separately and alternatively, the challenged testimony was harmless. A violation of state law does not require reversal unless it is reasonably probable that, in the absence of the error, the defendant would have enjoyed a more favorable result. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

First, any testimony that J.C and D.M. were prostitutes was harmless. J.C. admitted that she worked as a prostitute; she added that, at least in Las Vegas, D.M. also worked as a prostitute. Although D.M. denied working as a prostitute, she admitted to the police that she had sex for money. Moreover, her Backpage.com ads showed her topless and said, “Sweet, Tight & Tasty,” “Incalls & Outcalls,” and “Fetish Friendly.” In her messages, she said she “made 300\$ off of the blade,” adding “I ask them if they affiliated with any law enforcement I made him show his dick.” In sum, there was overwhelming evidence that they were prostitutes.

Next, any testimony that defendant was a pimp was also harmless. J.C. and D.M. both told police that they gave some of the money they made to defendant. Defendant advised D.M. not to hop in the car until she got the money first, to solicit on the corners and to make her customers pull into the side streets, and to post ads in various beach cities. When she said she had made \$300, he told her, “U better have 300\$ worth of shit

when I see u.” Defendant identified himself as a “Mac” and a “p.” He said that his business ventures included “a lil pimping” Messages in which he attempted to recruit other women were in evidence. Defendant argues that Detective Salsberry should only have been allowed to give the jury the background information that it needed to come to its own conclusions. In that event, however, the jury would still have concluded that defendant was guilty.

Finally, any testimony that defendant encouraged D.M. to work as a prostitute was harmless. Even without such testimony, the messages between defendant and D.M. spoke for themselves.

Defendant argues that the admission of the evidence violated due process and therefore the federal constitutional harmless error standard applies. “[T]he admission of evidence in violation of state law may also violate due process, but only if the error rendered the defendant's trial fundamentally unfair. [Citation.]” (*People v. Merriman* (2014) 60 Cal.4th 1, 70.) For the same reasons that lead us to conclude that the error was harmless under state law, we also conclude that it did not result in a fundamentally unfair trial.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

MILLER

J.

CODRINGTON

J.