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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC MANFREDI,

Defendant and Appellant.

F062306

(Super. Ct. No. VCF160436)

**OPINION**

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Cliff Gardner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Eric Manfredi was convicted of dozens of counts of child molestation and related charges. His appeal is based on the refusal of three jurors to leave the jury room while the other nine jurors went to the courtroom for a second viewing of a video

Manfredi made of himself sodomizing one of his victims. Manfredi contends that the three jurors' refusal to attend the second viewing denied him the right to a unanimous jury verdict. He also argues that the court abused its discretion when it did not investigate the three jurors to determine whether their behavior was misconduct. We affirm.

**FACTUAL AND PROCEDURAL HISTORIES**

The Tulare County District Attorney filed an information on October 2, 2009, charging Manfredi with 68 counts involving six minor victims, as follows:

| <b>Victim</b> | <b>Count</b>      | <b>Date</b>     | <b>Offense</b>                                      | <b>Pen. Code §§</b> |
|---------------|-------------------|-----------------|---|---------------------|
| L.R.          | 1-15              | 1/1/02-2/23/06  | lewd act with child under 14                        | 288, subd. (a)      |
| J.K.          | 21, 23            | 1/1/95-12/31/98 | oral copulation of child under 16 by person over 21 | 288a, subd. (b)(2)  |
| J.K.          | 22                | 1/1/95          | sexual penetration against victim's will            | 289, subd. (a)(1)   |
| J.K.          | 24-25             | 1/1/95-12/31/98 | lewd act with child of 14 or 15                     | 288, subd. (c)(1)   |
| J.K.          | 26-27             | 1/1/95-12/31/96 | sodomy with child under 16                          | 286, subd. (b)(2)   |
| J.K.          | 28                | 1/1/94-12/31/97 | lewd act with child of 14 or 15                     | 288, subd. (c)(1)   |
| C.A.          | 29, 31, 33, 47-50 | 1/1/94-12/31/97 | lewd act with child under 14                        | 288, subd. (a)      |
| C.A.          | 30                | 1/1/94-12/31/97 | attempted sodomy with child under 14                | 286, subd. (c); 664 |
| C.A.          | 32                | 1/1/94-12/31/97 | attempted sexual penetration with child under 14    | 289, subd. (j); 664 |
| C.A.          | 34                | 1/1/94-12/31/97 | aggravated sexual assault on child under 14         | 269, subd. (a)(3)   |
| Z.K.          | 16-20, 52         | 1/1/95-12/31/96 | lewd act with child under 14                        | 288, subd. (a)      |
| Z.K.          | 51, 53            | 1/1/95-12/31/96 | oral copulation with child under 14                 | 288a, subd. (c)(1)  |
| Z.K.          | 54                | 1/1/95-12/31/96 | sexual penetration with child under 14              | 289, subd. (j)      |
| Z.K.          | 55-56             | 1/1/95-12/31/96 | attempted sodomy with child                         | 286, subd. (c);     |

|      |       |                 |   |                    |
|------|-------|-----------------|---|--------------------|
|      |       |                 | under 14  | 664                |
| Z.K. | 57-58 | 12/1/95-1/31/98 | oral copulation with person under 16  | 288a, subd. (b)(2) |
| J.A. | 59    | 1/1/89-12/31/90 | lewd act with child under 14  | 288, subd. (a)     |
| J.A. | 60    | 1/1/89-12/31/90 | sexual penetration with child under 14  | 289, subd. (j)     |
| J.A. | 61-65 | 1/1/89-12/31/90 | sodomy with child under 14  | 286, subd. (c)     |
| D.A. | 66-67 | 1/1/87-12/31/87 | lewd act with child under 14  | 288, subd. (a)     |
| D.A. | 68    | 1/1/87-12/31/87 | sexual penetration with child under 14  | 289, subd. (j)     |
| —    | 35-45 | 3/1/06          | sexual exploitation of child by making a video of child engaged in sexual conduct | 311.3, subd. (a)   |
| —    | 46    | 3/1/06          | possession of child pornography   | 311.11, subd. (a)  |

The information included the following special allegations:

| <b>Allegation</b>                                    | <b>Pen. Code §</b>         | <b>Count</b>                                   |
|--|----------------------------|--|
| substantial sexual conduct with a child under 14     | 1203.066, subd. (a)(8)     | 1-20, 29-34, 47-56, 59-68                      |
| multiple victims                                     | 667.61, subds. (b), (e)(4) | 1-20, 22, 26, 29, 31, 33, 47-50, 52, 59, 61-67 |
| statute of limitations extended                      | 803, subd. (f)(1)          | 16-34, 47-68                                   |
| statute of limitations tolled by pending prosecution | 803, subd. (b)             | 39-46  |

The prosecution presented evidence that Manfredi molested minor boys many times over many years. The victims Z.K., C.A., J.A., and D.A. all testified about their experiences. The jury watched clips of videos made by Manfredi and found in Manfredi's apartment, showing Manfredi engaged in acts of molestation with C.A. and Z.K. The victims J.K. and L.R. did not testify, but the jury was shown videos found in Manfredi's apartment that showed both of them being molested by Manfredi. The jury also saw videos of two unidentified minor male victims.

During its deliberations, the jury sent a note to the judge asking for a second viewing of one of the video clips. The note said, "We would like to view CD 105-001

for Count 9 where defendant allegedly sodomizes victim.” This video was the People’s exhibit 4A-2, which showed Manfredi with a victim who had been identified as L.R.

The bailiff brought nine jurors into the courtroom for the second viewing of this exhibit. He announced that the other three jurors “are not going to participate in this.” The video was played for the nine jurors. The jurors went back to the jury room and shortly afterward a verdict was reached. At that point, defense counsel objected:

“During the last viewing of the evidence only nine of the jurors participated, the other three stayed in the jury room and I’m putting that on the record because I don’t think that’s an appropriate way for a jury to evaluate evidence.”

The prosecutor replied that “they all saw it together the first time so that’s maybe why the three didn’t want to come out.” The court overruled the objection:

“[M]y take on that is that 9 of the 12 jurors still had a question on that particular count. They needed that clarified. There [were] no discussions going on so no deliberations took place so your comment is noted.”

The jury found Manfredi guilty as charged, except that it failed to return a verdict on count 46.

The court sentenced Manfredi to a determinate term of 58 years plus an indeterminate term of 330 years to life, calculated as follows: 22 consecutive terms of 15 years to life for counts 1-20, 34 and 52; eight years for count 22; eight months consecutive for each of counts 21, 23-28, 57 and 58; one year consecutive for each of counts 29, 32, 55 and 56; and two years consecutive for each of counts 30, 31, 33, 47-51, 53, 54, and 59-68. For counts 35-46, Manfredi was sentenced to time served.

## **DISCUSSION**

### ***I. Right to a unanimous jury verdict***

Manfredi argues that the court violated his constitutional right to a unanimous jury verdict by allowing nine jurors to take a second look at an exhibit while the other three jurors remained in the jury room. We disagree.

Manfredi cites no authority stating that if any of the jurors takes a second look at an exhibit, all the jurors must do so. Instead, he cites cases standing for other propositions and would have us conclude that they are similar enough to cover this situation.

First, Manfredi cites *People v. Collins* (1976) 17 Cal.3d 687, 693, in which our Supreme Court held that if an alternate juror is substituted during deliberations, then deliberations must begin anew with the new juror. The court stated that the right to a jury trial “requires each juror to have engaged in all of the jury’s deliberations” and that “[t]he requirement that 12 persons reach a unanimous verdict is not met unless those 12 reach their consensus through deliberations which are the common experience of all of them.” The court summarized its remarks on this issue by saying: “By this we mean that a defendant may not be convicted except by 12 jurors who have heard all the evidence and argument and who together have deliberated to unanimity.” Manfredi also cites *Ballew v. Georgia* (1978) 435 U.S. 223 and *Allen v. United States* (1896) 164 U.S. 492, in which the United States Supreme Court emphasized the importance of jurors deliberating together.

The viewing of an exhibit for a second time by nine jurors in this case did not contravene the principle that a jury verdict must be based on deliberations in which the jurors all participated. There is nothing in the record to indicate that the three jurors who remained in the jury room refused to deliberate on any issue, or that the two groups of jurors deliberated separately. The manifest purpose of the nine jurors was to be more sure of what they had seen. The natural conclusion to be drawn about the other three was that they already felt sufficiently sure and therefore had no need to repeat what likely was an unpleasant experience. These facts do not cast doubt on the jurors’ fidelity to their duty to deliberate together.

Next, Manfredi cites *People v. Cleveland* (2001) 25 Cal.4th 466 (*Cleveland*), in which our Supreme Court listed examples of refusal to deliberate:

“Examples of refusal to deliberate include, but are not limited to, expressing a fixed conclusion at the beginning of deliberations and refusing to consider other points of view, refusing to speak to other jurors, and attempting to separate oneself physically from the remainder of the jury.” (*Cleveland, supra*, 25 Cal.4th at p. 485.)

Manfredi says the three jurors who remained behind were “not examining the evidence with the rest of the jury” and were separated from the other jurors.

The examples in *Cleveland* do not show that the three jurors were refusing to deliberate in this case. All 12 jurors had already examined the evidence together. We do not consider the nonparticipation of some jurors in a *second* viewing to be a failure to deliberate. Similarly, the three jurors were not “attempting to separate” themselves from the others. They merely remained behind in the jury room while the others left for the second viewing. The separation that resulted did not, under these circumstances, indicate any likelihood that there was a rift among the jurors that would interfere with their deliberating together.

In his reply brief, Manfredi cites a recent Supreme Court decision in a death penalty case, *People v. Allen* (2011) 53 Cal.4th 60 (*Allen*). In *Allen*, two jurors conducted a separate meeting between themselves to discuss a third juror’s behavior. They believed the third juror had made up his mind about the case before deliberations started. (*Id.* at p. 66.) The court investigated, found the juror committed misconduct, and decided to replace the juror with an alternate. (*Id.* at p. 68.) The Supreme Court held that the record did not support the trial court’s finding and that the removal of the juror was an abuse of discretion. The guilt and penalty phase judgments were reversed. (*Id.* at pp. 71, 78-79.) In a footnote, the Supreme Court agreed with the Attorney General’s concession that the separate meeting between the two jurors who brought the matter to the trial court’s attention was misconduct. The trial court had also found that this meeting was misconduct but did not discharge the two jurors. (*Id.* at p. 69, fn. 7.)

*Allen* does not support Manfredi's position. The three jurors who remained in the jury room in this case did not conduct a meeting to discuss anything separately from the other jurors. They merely remained in the jury room when the other jurors left. In sum, there is no law requiring all jurors to participate when evidence is viewed a second time at the request of some jurors. The court did not err when it allowed the three jurors to remain in the jury room while the other nine reexamined People's exhibit 4A-2.

Manfredi also contends that the court erred because it did not give the jury the admonition required by Penal Code section 1128 when the nine jurors came into the courtroom and the three stayed in the jury room. Section 1128 states: "If the jurors are permitted by the court to separate, the court shall properly admonish them as provided in subdivision (b) of Section 1122." Section 1122, subdivision (b), provides:

"The jury shall also, at each adjournment of the court before the submission of the cause to the jury, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to conduct research, disseminate information, or converse among themselves, or with anyone else, on any subject connected with the trial, or to form or express any opinion about the case until the cause is finally submitted to them. The court shall clearly explain, as part of the admonishment, that the prohibition on research, dissemination of information, and conversation applies to all forms of electronic and wireless communication."

Assuming for the sake of argument that the court should have called the three jurors into the courtroom, given them this admonition, and sent them back to the jury room, we conclude that the failure to do this was not prejudicial. In its charge to the jury, the court said, "You must discuss the case only in the jury room only when all jurors are present." Later, during a break in deliberations, the court told the jury, "Remember you cannot discuss this case with anyone when you're not deliberating not even with each other. If you go to lunch together, you can only discuss the case when all 12 of you are in the jury room ...." We presume jurors understand and follow the court's instructions. (*People v. Holt* (1997) 15 Cal.4th 619, 662.)

***II. Investigation of potential juror misconduct***

Manfredi argues that the court was required to conduct an investigation to determine whether the three jurors who remained in the jury room were engaged in a refusal to deliberate.

A trial court should conduct “an inquiry sufficient to determine the facts” when it is “put on notice that good cause to discharge a juror may exist.” (*People v. Burgener* (1986) 41 Cal.3d 505, 519, overruled on other grounds by *People v. Reyes* (1998) 19 Cal.4th 743, 756.) The court’s decision on whether or not to conduct a hearing is reviewed under the abuse of discretion standard. (*Burgener, supra*, at p. 520.)

There was no abuse of discretion. As we have said, the jury’s behavior is easily explained by legitimate considerations: Nine jurors felt a need to reexamine the video to be sure of what it showed, while three jurors were satisfied with the first viewing. The court could, within the bounds of reason, conclude that the facts did not amount to notice that good cause to find misconduct might exist.

**DISPOSITION**

The judgment is affirmed.

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Wiseman, Acting P.J.

WE CONCUR:

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Poochigian, J.

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Franson, J.