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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.

JAMACEEO JAMON EDWARDS,

Defendant and Appellant.

E078554

(Super.Ct.No. FMB21000019)

OPINION

APPEAL from the Superior Court of San Bernardino County. Joseph T. Ortiz, Judge. Affirmed.

Mark Alan Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, and Arlene A. Sevidal and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jamaceeo Jamon Edwards of two sex offenses and found true several enhancements. On appeal, Edwards argues there was insufficient evidence of asportation to support one of the enhancements for aggravated kidnapping. We affirm.

BACKGROUND

In September 2020, sometime after 8 p.m., victim Jane Doe decided to walk home from a casino because she could not contact her parents to pick her up. Doe walked along the side of a street, avoiding at least one street she thought was too dark. As she was walking, Edwards ran up behind her and began trying to talk to her. Doe told Edwards she did not need any help and she was trying to walk home. Doe eventually ran through a parking lot to the side of a highway. She tried to walk on the paved portion of the highway but moved into the dirt alongside it because she was afraid a car would hit her. She later told police she was about five feet from the highway, and that she was trying to stay close to it because there was very little lighting the further she got from the highway.

Doe eventually started running away from Edwards. However, Edwards caught up, grabbed, her, pulled her away from the highway to a darkened area next to it, and threw her into the dirt. He placed his knee on Doe's chest and choked her. He pulled out a knife, placed it against her neck, and told her not to scream or he would kill her. He then removed the knife from her neck, put his hand in her underwear, and digitally penetrated her vagina. Doe blacked out at some point.

When Doe awoke she was at another location, and Edwards was trying and failing to stick his penis in her mouth. Edwards then bent her over, pulled her underwear to the side, and anally penetrated her with his penis.

Doe was eventually able to run away and ran into the middle of the highway. A passing driver stopped to help her. He asked her to get out of the highway, but Doe refused to do so until police arrived because she was afraid to go back in the dirt.

Doe showed the police where each of the assaults took place, and police took pictures of the areas. These pictures were introduced at trial, including a detailed image of the area at the side of the highway where Edwards first assaulted Doe. The People also introduced an overhead image of the entire area, and at trial a testifying officer identified and circled the two locations of the assaults in that image.

After trial, a jury convicted Edwards of sodomy by use of force (Penal Code, § 286, subd. (c)(2)(A)),¹ and sexual penetration by use of force (§ 289, subd., (a)(1)(A)). The jury also found true multiple enhancements, including aggravated kidnapping enhancements (§ 667.61, subds. (a), (d)) as to both convictions and a personal infliction of great bodily injury enhancement (§ 667.61, subd. (d)(6)) as to the sexual penetration conviction. Afterward, Edwards admitted to a serious prior felony and a prior strike. The court sentenced Edwards to an indeterminate term of 100 years to life—composed of 25 years to life for both convictions, doubled due to the prior strike—and a determinate term of five years for the serious prior.

¹ Unlabeled statutory citations refer to the Penal Code.

ANALYSIS

Edwards argues there is insufficient evidence to support the kidnapping enhancement attached to the sexual penetration conviction because there is insufficient evidence of asportation before he digitally penetrated her next to the highway.

When reviewing a sufficiency of the evidence claim, we must determine “ “whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” ’ ” (*People v. Smith* (2005) 37 Cal.4th 733, 738-739; *People v. Johnson* (1980) 26 Cal.3d 557, 578.) We view the evidence in a light most favorable to the judgment and “resolve all evidentiary conflicts and questions of credibility ‘in favor of the verdict.’ ” (*People v. Brady* (2018) 22 Cal.App.5th 1008, 1014, quoting *People v. Cardenas* (2015) 239 Cal.App.4th 220, 226-227.) We may not reverse the judgment “unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Under section 667.61, subdivision (d)(2), the punishment for a specified sexual offense is 25 years to life if the People prove the “ ‘defendant kidnapped the victim . . . and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense.’ ” (*People v. Adams* (2018) 28 Cal.App.5th 170, 183.) This enhancement thus has two elements. “The first element requires the victim be kidnapped. The second element requires that victim’s movement substantially increase the risk of harm to him or her

above that level of danger necessarily inherent in the sex offense.” (*Id.* at p. 189, italics omitted.) “To establish the asportation element for the aggravated kidnapping enhancement, the prosecution must show . . . the movement was substantial in character, and not merely incidental to the commission of the sex crime.” (*People v. Perkins* (2016) 5 Cal.App.5th 454, 466.)

Our Supreme Court has set out various factors to determine whether the movement is enough to satisfy the asportation element, including “whether the movement decreases the likelihood of detection, increases the danger inherent in a victim’s foreseeable attempts to escape, or enhances the attacker’s opportunity to commit additional crimes.” (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1152 (*Dominguez*)). It has also warned courts not to “focus[] too narrowly on a subsidiary aspect of the analysis, measured distance, rather than considering how all the attendant circumstances related to the ultimate question of increased risk of harm.” (*Ibid.*) “[N]o minimum distance is required to satisfy the asportation requirement [¶] . . . In some cases a shorter distance may suffice in the presence of other factors, while in others a longer distance, in the absence of other circumstances, may be found insufficient.” (*Ibid.*)

Dominguez dealt with a similar situation to this one. In that case, the “[d]efendant forced the victim in the middle of the night from the side of the road to a spot in an orchard 25 feet away and 10 to 12 feet below the level of the road.” (*Dominguez, supra*, 39 Cal.4th at p. 1153.) The court concluded this was sufficient evidence for a jury to find the asportation element met, because “[t]he movement . . . changed the victim’s

environment from a relatively open area alongside the road to a place significantly more secluded, substantially decreasing the possibility of detection, escape or rescue.” (*Ibid.*) The court distinguished this movement from the movement in another case, *People v. Daniels* (1969) 71 Cal.2d 1119 (*Daniels*). In *Daniels*, the defendants moved “robbery victims between six and 30 feet within their home or apartment,” which the court found “merely incidental to the commission of the robbery and thus insufficient to satisfy the asportation requirement of aggravated kidnapping.” (*Dominguez*, at p. 1152.) The court in *Dominguez* found that though the distances were similar in the two cases, in *Dominguez* “an aerial photograph of the scene confirm[ed] the victim was moved to a location where it was unlikely any passing driver would see her,” and therefore “unlike the brief and trivial movements of the robbery victims around a room, as in *Daniels* Here defendant’s movement of the victim down an embankment and into an orchard cannot be said to have been merely incidental.” (*Id.* at pp. 1153-1154.)

Here, there is some evidence the jury could have relied on to conclude both that Edwards substantially moved the victim, and that this movement substantially increased her risk of harm. The responding officer testified that “further away from the highway, there’s low lighting, very dark,” and Doe told the responding officer Edwards “pulled her away from the highway into the dark area.” She also told the officer she was walking close to the highway precisely because she was afraid of the dark area, and she was afraid Edwards would come out of the dark.

The photos corroborate these accounts. The overhead photo shows the area was not well populated and likely not well lit, while the photos of the first scene show that the area was very dark. Indeed, the only illumination in the photos taken that night seems to come from flashlights.

Finally, Doe's actions after the series of assaults suggest she believed the area next to the highway was not safe. When Doe finally escaped, she refused to leave the highway because she was afraid of the dirt area next to the highway. Doe's actions therefore suggest that she felt the risk of being hit by a car was worth avoiding the dark area next to the highway, where she feared another assault.

This evidence was enough for a jury to conclude both that Edwards moved Doe, and that he moved her to a more secluded and concealed place where detection or rescue were less likely. Doe testified she was trying to stay where it was illuminated. However, the photos show an area with almost no lighting. This suggests Edwards did, in fact, move Doe from an area with at least some lighting to an area with none. This also increased the risks to Doe, since it made passing motorists—likely the only people in the area—much less likely to see her and be able to intervene or help. Therefore, like in *Dominguez* and unlike in *Daniels*, the relatively small movement here removed the victim from public view, elevating the risk she would suffer physical harm.

Edwards argues the evidence supporting any movement is not substantial, and that in any case the movement was so slight as to not meet the criteria for asportation. We agree with Edwards that Doe's testimony does not suggest a great deal of movement.

However, as explained above, there was still some evidence to allow a jury to conclude Edwards moved the victim, that this movement was substantial, that it was not incidental to the crime, and that it increased the risk of harm to the victim. “If the circumstances reasonably justify the jury’s findings, the reviewing court may not reverse the judgment merely because it believes that the circumstances might also support a contrary finding.” (*People v. Ceja* (1993) 4 Cal.4th 1134, 1139.)

Edwards also points to several cases he argues show the movement was not sufficient to meet the asportation requirement. Each is distinguishable. In *People v. Stanworth* (1974) 11 Cal.3d 588 (*Stanworth*), our Supreme Court concluded that moving a victim 25 feet from a road to an adjacent open field before raping her did not constitute asportation. However, the events considered in *Stanworth* happened in the early evening, suggesting the movement did not significantly conceal either the defendant or victim. Indeed, the court concluded this movement did not meet the asportation requirement because it did not “remove[] [the victim] from public view or in any other manner substantially increase[] the risk, beyond that inherent in the underlying crimes, that she would suffer physical harm.” (*Id.* at p. 598.) Here, Edwards moved the victim from a lit roadside into the darkness, which concealed them both and which a jury could conclude increased the risk of harm to the victim.

Edwards next cites *People v. Diaz* (2000) 78 Cal.App.4th 243 (*Diaz*). In that case, the defendant initially moved the victim to a grassy strip next to the sidewalk where she was walking. However, a passerby interrupted the attack, and the defendant then moved

the victim to the back of a building in a nearby park, which was at least 150 feet away from the initial attack. (*Id.* at p. 248.) The court held this second movement was enough to support an aggravated kidnapping finding, but that the original movement on to the grassy strip was merely incidental to the crime and would not have supported such a finding on its own. (*Id.* at p. 249.) In particular, the evidence showed that “[u]nlike the street area, the park was ‘completely dark.’ ” (*Id.* at p. 248.) Thus, the court concluded “[t]he movement from the sidewalk to the grassy strip could easily be characterized as incidental,” because “it effected no substantial change in the surroundings.” (*Id.* at p. 249.)

Once again, then, *Diaz* is distinguishable from the facts here. Though the initial attack in *Diaz* and the initial attack here share many of the same characteristics—an arguably slight movement from a road to an unpaved area nearby—this is where the similarities end. In *Diaz* the evidence suggested, and the court agreed, that movement from the sidewalk to the grassy area did not meaningfully change the surroundings, likely in part because the area was still well lit and populated. Indeed, it was apparently well enough lit and populated that a passerby could interrupt the attack. Here, the location to which Edwards moved the victim was much darker than the area near the highway. Therefore, there was sufficient evidence for a jury to conclude this movement did effect a substantial change in the surroundings, unlike the initial movement in *Diaz*.

Accordingly, we conclude sufficient evidence supported the jury's true finding on the aggravated kidnapping enhancement attached to the sexual penetration conviction.

We therefore affirm Edwards's conviction.

DISPOSITION

We affirm.

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RAPHAEL
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.