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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOMO ZAMBIA,

Defendant and Appellant.

B207812

(Los Angeles County Super. Ct.
No. LA055997)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis E. Mulcahy, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jomo Zambia was convicted of pandering in violation of Penal Code section 266i, subdivision (a)(2),¹ by encouraging Officer Erika Cruz to become a prostitute. He was sentenced to the middle term of four years in prison. In his timely appeal, defendant contends there was constitutionally insufficient evidence to support his conviction. Alternatively, he argues the evidence only supported a conviction for attempted pandering. We disagree and affirm.

STATEMENT OF FACTS

On the evening of June 8, 2007, Officer Cruz was conducting an undercover investigation in an area known for prostitution activity on Sepulveda Boulevard in Van Nuys. Defendant drove past her in a Ford pickup truck, looked in her direction, made a U-turn, and stopped next to her at the corner of Sepulveda and Valerio. In her experience, this was typical of how pimps and “johns” (prostitution customers) drive in that area. Defendant rolled down his window and asked the officer to get into his vehicle. Officer Cruz asked defendant, “what for?” and “he said that he was a pimp.” The officer told him to back up so they could talk.

Officer Cruz saw cell phones on the pickup’s center console.² Defendant again told her to get into his car. When the undercover officer asked why, defendant repeated that he was a pimp. She asked what he meant. Defendant said he would “take care of” her. Defendant asked how much money she had with her. Hearing that she had \$400, defendant told her that if she gave it to him, defendant would provide her with housing and clothing. When Officer Cruz expressed some misgivings about getting into

¹ All further statutory references are to the Penal Code.

² Officer Kathryn Paschal testified that when she arrested defendant, she found three cell phones, some condoms, and a business card on the pickup’s center console. It is common for pimps to carry condoms, which they provide to their prostitutes. Pimps will typically have more than one cell phone.

defendant's car, he said he was "a legit business man," waived a business card at her, and said he would not "strongarm" her. In her experience, pimps, prostitutes, and their customers use the term "strongarm" to mean the forceful taking of a prostitute's cash.

Defendant used a very aggressive tone of voice and demeanor during this conversation. Based on Officer Cruz's training and experience, defendant was behaving like a "gorilla pimp"—persons who used "verbal threats and violence to get their way and to scare prostitutes into working for them." Officer Cruz asked if she could continue to work in the Sepulveda area. Defendant said, "yes, and that he would just take care of [her]." At that point, Officer Cruz directed defendant to drive across the street. She signaled to her partners, who arrived and arrested defendant.

Officer Paschal testified that in her experience, pimps place their prostitutes on the street, where they perform sex acts for money. The prostitute will turn the money over to the pimp, who will provide the prostitutes with food, clothing, and other services. Sergeant Alan Kreitzman was in charge of the investigation that night. In his experience, pimps carry business cards for legitimate businesses, which they provide to their prostitutes to give the false appearance of being involved in a legal trade. Where a john will be very circumspect in approaching a prostitute, pimps typically approach them in a direct, aggressive manner.

Defense

According to defendant's mother, Barbara Zambia, her son lived at home with her and her husband at the time of the incident. The family owned a janitorial business, First Class Building Maintenance. Defendant was employed in the business as a janitor. Although his hours varied, defendant usually worked 40-hour weeks, on evenings from approximately 6:00 p.m. to 12:30 a.m. Defendant carried one working cell phone, but had a broken one in the car, along with one he had borrowed from a friend. Two of the phones found in his car were purchased by defendant's father.

Defendant had recently become engaged to Celina Payano. They have an infant daughter. Payano works for the Los Angeles County Probation Department. Payano confirmed that defendant's work hours varied along the lines described by his mother, but Payano also added that defendant often returned to the jobsite to pick up equipment in the morning hours. She recognized all three cell phones found in defendant's pickup truck. She had no reason to think defendant also worked as a pimp.

DISCUSSION

In reviewing a challenge of the sufficiency of evidence, we “consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted; *People v. Hayes* (1990) 52 Cal.3d 577, 631.) Our sole function is to determine if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Bolin* (1998) 18 Cal.4th 297, 331 (*Bolin*); *People v. Marshall* (1997) 15 Cal.4th 1, 34.) The standard of review is the same in cases where the prosecution relies primarily on circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Stanley* (1995) 10 Cal.4th 764, 792; *People v. Bloom* (1989) 48 Cal.3d 1194, 1208.) The California Supreme Court has held, “[r]eversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*Bolin, supra*, 18 Cal.4th at p. 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.)

As is relevant in this appeal, a person is guilty of pandering if he or she “causes, induces, persuades or encourages another person to become a prostitute” by “promises, threats, violence, or by any device or scheme.” (§ 266i, subd. (a)(2).) Defendant initially argues that his statements were too nebulous to be considered as encouragement under

the statute because he neither offered the undercover officer anything concrete in terms of remuneration nor detailed the scope of her prospective prostitution activities. The record shows otherwise. Defendant, who carried with him some of the accoutrements typical of a pimp, represented himself as a “pimp” to a person posing as a prostitute in a location known for prostitution activity. He repeatedly requested that the undercover officer come along with him and told her that he would provide her with housing and clothing in exchange for her cash. This is consistent with the typical pimp/prostitute relationship whereby a prostitute turns over money to the pimp, who provides the prostitute with food, clothing, and other services in return. This was substantial evidence of inducement, persuasion, or encouragement for Officer Cruz to engage in prostitution on defendant’s behalf.

“The pandering statute and Penal Code section 266h (pimping) are both designed to discourage prostitution by discouraging persons other than the prostitute from augmenting and expanding a prostitute’s operation, or increasing the supply of available prostitutes.” (*People v. Hashimoto* (1976) 54 Cal.App.3d 862, 867.) In that context, to encourage “means to urge, foster, stimulate, to give hope or help.” (*Ibid.*) “[S]uccess is not a necessary element of the offense proscribed by the word ‘encourage’ as used in subdivision (b) of section 266i.” (*People v. Bradshaw* (1973) 31 Cal.App.3d 421, 425; *People v. Hashimoto, supra*, at p. 866 [“neither success nor consummation of the proposal was a necessary element of a violation of the pandering statute”].)

Nor does pandering require proof of a remuneration scheme. “The fact that the defendant apparently was not to receive any money from the venture directly is not fatal to the conviction. The purpose of the anti-pandering statute [citation] is to ‘cover all the various ramifications of the social evil of pandering and include them all in the definition of the crime, with a view of effectively combating the evil sought to be condemned.’ [Citations.]” (*People v. Hashimoto, supra*, 54 Cal.App.3d at p. 866.) As our colleagues in Division Two of this District have explained, “we know of no statutory or case law requiring that payment be made to the person actually providing sexual favors. Neither can we conceive of any basis for so limiting the definition of prostitution. It is doubtless not

uncommon for prostitutes associated with pimps or panderers to be denied the proceeds of their labors. To permit those exploiting these individuals to escape prosecution merely by diverting the fees paid for their services would severely undermine efforts to combat commercial endeavors in which the government has been found to have a legitimate and substantial interest.” (*People v. Bell* (1988) 201 Cal.App.3d 1396, 1400.)

Defendant relies on the recent decision in *People v. Wagner* (2009) 170 Cal.App.4th 499 (*Wagner*), which held as a matter of statutory construction that section 266i, subdivision (b)(1), does not apply where the person solicited to engage in prostitution is known to be an active prostitute currently plying his or her trade for someone else. According to the *Wagner* court, the statutory “language defining the crime as occurring when a defendant induces or encourages someone else to ‘become a prostitute,’ seems fairly clear in its exclusion of efforts to importune someone currently engaged in that profession to change management.” (*Id.* at p. 509.) It therefore concluded that “the crime defined by section 266i, subdivisions (a)(2) and (b)(1), does not occur when the person being ‘induce[d], persuade[d] or encourage[d]’ by a defendant is *currently* a prostitute.” (*Id.* at p. 511.) Whatever the merits of *Wagner*’s rationale and holding might be³—and we have no occasion to assess them—that decision has no application to defendant’s appeal. The determinative and undisputed evidence in *Wagner* established “that the young woman whom Wagner was accused of encouraging to become a prostitute was already engaged in prostitution” (*Ibid.*) Here, in contrast, there was no evidence that Officer Cruz was already engaged in prostitution, and she testified on cross-examination, “I don’t have a pimp.”

³ We note, however, that the strong weight of authority is contrary to *Wagner*. (See *People v. Bradshaw*, *supra*, 31 Cal.App.3d at p. 426 [“subdivision (b) . . . covers also cases where a defendant has solicited one whom he believes to be a former prostitute to reenter the profession and a defendant who solicits one whom he believes presently to be a prostitute to change her business relations”]; *People v. Patton* (1976) 63 Cal.App.3d 211, 216-218; *People v. Hashimoto*, *supra*, 54 Cal.App.3d at p. 867.)

Nor is defendant correct in asserting he could be convicted of nothing more than the inchoate offense of attempted pandering because Officer Cruz had no intention of prostituting herself on behalf of defendant. As the plain wording of the statute makes clear, the crime of pandering is complete when, as relevant here, the accused “encourages another person to become a prostitute” by “promises, threats, violence, or by any device or scheme.” (§ 266i, subd. (a)(2).) It follows that “success is not a necessary element of the offense proscribed by the word ‘encourage’ as used in subdivision (b) of section 266i.”⁴ (*People v. Bradshaw*, *supra*, 31 Cal.App.3d at p. 425; *People v. Hashimoto*, *supra*, 54 Cal.App.3d at p. 866.) This is consistent with the statute’s policy aims: “A substantial potential for social harm is revealed even by the act of encouraging an established prostitute to alter her business relations. Such conduct indicates a present willingness to actively promote the social evil of prostitution.” (*People v. Patton* (1976) 63 Cal.App.3d 211, 218.)

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.

⁴ To the extent prior opinions such as *People v. Mitchell* (1949) 91 Cal.App.2d 214, 217-218 imply that the crime of pandering remains inchoate unless “the evidence shows that the accused has succeeded in inducing his victim to become an inmate of a house of prostitution,” we follow the *Bradshaw* and *Hashimoto* line of cases as properly effectuating the plain meaning of section 266i, subdivision (b).