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Court of Appeal, Fourth District, Division 2, California.

The PEOPLE, Plaintiff and Respondent,

v.

Miguel CERDA, Defendant and Appellant.

No. E041249.

(Super.Ct.No.RIF101934).

May 21, 2008.

APPEAL from the Superior Court of Riverside County. J. Thompson Hanks and [Patrick F. Magers](#), Judges. ^{FN1} Affirmed.

^{FN1}. Judge Hanks presided over defendant's trial while Judge Magers decided defendant's pretrial motion at-issue on appeal.

[Steven Schorr](#), under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Gary W. Schons](#), Senior Assistant Attorney General, Rhonda Cartwright-Ladendorf, Supervising Deputy Attorney General, and [Collette C. Cavalier](#), Deputy Attorney General, for Plaintiff and Respondent.

OPINION

[HOLLENHORST](#), Acting P.J.

*1 Following a jury trial, defendant Miguel Cerda was convicted of first degree murder ([Pen.Code](#),^{FN2} § 187, subd. (a)) and of being a felon in possession of a firearm (§ 12021, subd. (a)(1)). The jury found that the murder was committed while defendant was engaged in the commission of rape (§ 261, subd. (a)(2)) and kidnapping, within the meaning of section 190.2, subdivisions (a)(17)(B) & (C). The jury also found true the allegations that defendant personally and intentionally discharged a firearm and proximately caused great bodily injury or death to another person. (§§ 12022.53, subd. (d), 1192.7, subd. (c)(8).) On August 11, 2006, defendant was sentenced to state prison for life without the possibility of parole for the murder, a concurrent two-year term for

the possession of a firearm by a felon, and a consecutive 25-year sentence for the section 12022 .53, subdivision (d) enhancement. He appeals, contending (1) there is insufficient evidence to support both the rape and kidnapping findings, and (2) the trial court abused its discretion when it denied his request for the appointment of an expert on false confessions.

FN2. All further statutory references are to the Penal Code unless otherwise specified.

I. PROCEDURAL BACKGROUND AND FACTS.

A. The events.

During the early morning hours of Monday, February 11, 2002, Raul Guevara heard a vehicle pull up in front of his house. He looked outside and saw a girl on the sidewalk walking toward a white truck. The passenger window was open and Raul heard a girl's voice and yelling that sounded like a couple arguing. The girl on the sidewalk was wearing dark blue jeans and a pink shirt. Raul's mother, Isabel Ramirez, also heard a vehicle "peel out" in front of the house sometime between midnight and 12:30 a.m.

The police were notified about a woman lying in the gutter with blood around her head in the Ironwood and Graham area of Moreno Valley. When the detectives arrived, they saw a large pooling of blood around the woman's head from an apparent gunshot wound near her left temple. On the roadway just north of the woman's body, the police found one expended shell casing for a small caliber handgun, stamped "GFL 7.65."

The police knocked on the door of Mrs. Ramirez. She and Raul saw the body of the woman on the street. They recognized and identified the woman as Jackie Mendoza (victim), a longtime family friend who lived up the street on Parakeet Court. The police contacted victim's mother, Norma Rangel, and learned the names of the people with whom victim had last been seen and obtained a description of their vehicle, a white Ford F-150 truck, which matched the description of the truck seen at the scene.

Victim had left home on Sunday, February 10, 2002, with defendant and Janett Hernandez, a friend since her freshman year in high school. During high school, the two girls were involved romantically but remained friendly after the relationship ended. Janett moved away, began a relationship with defendant, and had a son with him. Although victim had not seen Janett for about two years, the two became reacquainted in January 2002 after Janett returned to the area. On Sunday afternoon, February 10, 2002, Janett and defendant pulled up to victim's house in a white Ford F-150 truck. Victim, who was 19 years old when she was murdered, told her mother that she was going to the Ontario Mills mall with Janett and defendant. Victim was wearing a pink shirt, a pink floral skirt, and high heels.

*2 Defendant, Janett, Janett's father (Jose DeJesus Hernandez), victim, and several of Janett's younger brothers and sisters went to the Ontario Mills mall in the truck that belonged to Jose. While the girls were shopping, defendant and Jose went to a bar. Later,

defendant, Janett, Valeria (Janett's sister), and victim went to the Cerda house.^{FN3} They ordered a pizza, watched DVD's, and defendant drank beer. While they were at the Cerda house, victim asked Janett for a tampon. Victim then changed into a pair of defendant's sweat pants, which were blue with a gray stripe. Defendant, Janett and victim left to pick up Jose.

^{FN3}. Defendant, Janett and their son were living with defendant's parents in February 2002.

After picking up Jose, they returned to the Hernandez home. Defendant continued to drink. Defendant, Janett, Valeria, Jose, and victim were “hanging out” in the kitchen, listening to music and dancing. Valeria saw defendant rubbing victim's leg with his foot. Valeria went to her room to watch a movie. Janett followed shortly thereafter and fell asleep. Valeria heard defendant call Janett, using an angry tone. Janett rejoined the group. About 10 minutes later, defendant pushed Janett, then victim, into the wall in the hallway, saying, “Let's get the fuck out of here right now.” Defendant, Janett, and victim left in the truck. Valeria later found defendant's sweat pants at the Hernandez home.

Tony Cerda, defendant's brother, saw Janett enter the Cerda house, rummage through a kitchen drawer, and then go into the bedroom she shared with defendant. She left carrying something under her arm. Tony saw her get into a white Ford F-150 truck, which had its engine running.

The next morning, defendant woke up Tony and asked for a ride so he could return Jose's white Ford F-150 truck. At no point from the time Janett left the previous evening until defendant woke Tony up, or at any time thereafter, did Tony see either defendant or Janett using the backyard grill or lighting up anything in the backyard. When Tony saw defendant and Janett in the morning, both were acting nervous, but neither said that anything had happened or mentioned any altercation with victim. Tony was following the white Ford F-150 truck for about two minutes when police pulled over both vehicles.

B. Defendant's statements to the police.

After stopping the vehicles, police immediately separated defendant, Janett and Tony and took them to the station. Detectives interviewed defendant and Janett, going back and forth between them.^{FN4} Defendant offered four versions of what happened. First, he claimed that the gun belonged to victim. Defendant said that he, Janett and victim were in the truck when victim started “talking shit” to him. She called him a “fucking faggot” and he slapped her. She jumped out of the truck and defendant said to victim, “you're a fucking bitch.” Defendant reached back and grabbed the gun that she had left behind. He pointed the gun at her to scare her and it “just popped.” It accidentally went off.

^{FN4}. A videotape of defendant's interview was played to the jury.

*3 In a second version, defendant told the police that Janett had caught him kissing victim while they were at the house. Defendant also said that he and victim had sex in the backseat of the Ford F-150 truck when they went to a nearby Ralph's grocery store. When all three left to take victim home, victim “started tripping.” Defendant told victim to take

off the pants she had borrowed. Defendant pulled over and victim was forced to remove the pants. Janett asked defendant why he was being like that. Victim came back inside the truck and put the pants back on. Later, they stopped at Graham and Ironwood. Defendant grabbed the gun and pointed it at victim. He then shot her and drove away. Defendant said that he was angry because victim wanted to tell Janett that they had sex.

In a third version, defendant told the police that Janett shot victim. Defendant said that they had stopped at the Cerda home so that victim could change. Janett went into the house alone to get victim's clothes. She was angry after seeing defendant and victim kissing and shot victim as she was getting out of the truck. However, defendant called his parents from the interrogation room and told his mother, "Everything happened too quickly and I'm going to take the load for this, just tell Janett's dad to get Janett out. I'm going to take the blame for everything. Okay? Did you hear me? I was the one, mom. I was the one, okay?" He then told the police that he shot victim.

In a fourth version, defendant changed his story again and told the police, "I hit her, (inaudible) and I said, 'I'm gonna [sic] kill the fucking bitch.' I just killed her." He denied burning victim's clothes and purse but acknowledged that they were burned. He said that Janett threw the gun into a trash can near her father's house. He said he was drunk and angry at victim, who was "being a bitch." He denied getting out of the car and slapping her. But he admitted that they stopped on the freeway and he made her take off her pants and give them to him, telling her, " 'I'm going to leave your ass here ... [i]f you don't shut the fuck up .' " Janett told victim, " 'Don't fuck with em [sic] right now; he's driving, shut up.' " Then the three went to defendant's house. He said that Janett went into the house to get the gun for him. Then they drove toward victim's house. When victim got out of the truck, she called defendant a "fucking fag[g]ot." Defendant told the police, "And I said, 'Shut the fuck up' and I went like that, and she like 'pop.' "

Defendant wrote victim's mother an apology letter. In the letter, defendant wrote, "I am sorry for what happened. It was a ... stupid game. I shouldn't have never play [sic] around with your daughter and should have taken her home and ignored her." The letter went on, "I know that there's no way for me to bring her back, but you could pray for me to rot in hell for eternity. I am really sorry."

C. The Investigation.

*4 Victim's body was found lying in the street with a large pooling of blood surrounding her head. One shoe was underneath her right hand and the other was next to her body. Blood splatter at the scene suggested that her head may have fallen at that location. One expended shell casing was found nearby. A black mark on victim's hand may have been left by a tire. Victim's shirt was torn and had dirt and plant material on it. The jeans she was wearing had dirt and debris throughout the back of the legs. There were discolored marks on the right thigh of the pants.

Forensic analysis showed that sperm cells were present in victim's vagina. The DNA profile of the sperm found matched defendant's DNA profile. A possible black hair and

some plant material were found on her left arm. Another possible strand of hair, some vegetation, and a small pink ball of fibers were found on her torso, and more vegetation was found on her right lower leg and her perianal region. No drugs were found in her system and her blood alcohol content was .04. Victim's body was scattered with pieces of dried plant material, over her torso, arms, and legs. Dried bits of plant material were found on the body, primarily on her back and the backs of her legs. She had a number of scrapes and bruises on her body and several blunt impacts to the head and neck. The forensic pathologist noted areas of small red bruising on the neck, an area of bruising along her jaw line on her left side, and a small bruise on her chin. Some of the long, linear, thin bruises were consistent with pulling or tearing a necklace off victim's neck. Other bruises found on victim's neck were consistent with strangulation. Petechial hemorrhaging of victim's eyelids was also consistent with strangulation.

More bruising was found inside her upper and lower lip, which could have been caused by a blow to the mouth or by someone placing a hand over her mouth and pressing down. The back of her head was bruised and scraped, consistent with some type of blunt impact injury. The discoloration and vital reaction suggested that the injury occurred at or near the time of death. Victim also had a bruise above her right eyebrow and an abrasion on her left cheek which likely occurred within two to three hours of her death.

Victim had two small [abrasions on the back](#) of her right elbow and several small abrasions and bruising on the back of her left hand. There was a faint bruise on her left hip and another small abrasion on her left upper thigh. The injuries on her left hand could have been caused by a vehicle tire hitting the hand indirectly or at an oblique angle.

The pathologist found vaginal bruising to the left, posterior and anterior walls of the vagina. A tampon and a small amount of blood were found at the top of the vagina near victim's cervix. The contusions found on the wall of the vagina were consistent with a sexual assault.

The gunshot wound was in front of victim's left ear. There was soot embedded in the tissue near the wound and a semicircular abrasion and contusions surrounding the wound, indicating a muzzle stamp or contact wound that would occur if the gun were placed directly against victim's cheek when it was fired. Victim's [skull was fractured](#) as a result of the gunshot wound. The bullet traveled through her brain from left to right, killing her instantly. The bullet lodged inside the skull and was removed during the autopsy. Victim also suffered a [fractured hyoid bone](#), a small horseshoe-shaped bone located underneath the jaw that is sometimes broken during manual strangulation.

*5 The lip and [jaw injuries](#) were blunt impact injuries, possibly inflicted as part of a smothering type occlusion of the mouth. The injuries along the jaw could have been caused by manual strangulation. The contusions along the neck could have resulted from manual strangulation or possibly from a ligature, or by a necklace being pulled from the neck.^{FNS} The [hyoid bone fracture](#) was most likely caused by manual strangulation, although it could occur during ligature strangulation. Based on the extent and nature of

the injuries, the pathologist concluded that victim was physically and sexually assaulted, then shot.

[FNS](#). Victim always wore a gold necklace with a charm of the Virgin Mary. She was not wearing the necklace when her body was found.

Three new pairs of women's thong underwear and \$16 in cash were found in a dresser drawer in defendant's bedroom. Also in the bedroom, the police found a .380 Lorcin semiautomatic pistol. In the trash can, they found a receipt for the Cajun Grille, a restaurant in the Ontario Mills mall, dated February 10, 2002, and a receipt from the neighborhood Ralph's grocery store, dated February 10, 2002, and time-stamped 9:54 p.m. The police collected ash and debris from the barbecue pit in defendant's backyard and a pair of defendant's denim pants that were stained below the knee but had apparently been washed, were found in defendant's bedroom. A small blood smear was found on the wall outside defendant's bedroom. A pair of women's panties were found balled up in a trash can in another bedroom. Dried plant debris and hair were found on the panties.

Tony told the police that defendant owned a .380-caliber pistol and another black handgun with rust on it and brown wood grips. A palm print belonging to victim was found on the hood of the Ford F-150.

D. The Defense.

Defendant testified that he met Janett and victim about three years before she was killed. Janett was the mother of his two children. Defendant said that he had sex with victim twice before Janett moved in with him, but that he had not seen victim for about two years prior to the night she was killed. Defendant went to the mall with Janett, victim, and others, and later on ended up at Janett's house. He and victim were drinking beer and dancing together. They went to Ralph's to get beer, and they had consensual sex in the truck in the parking lot of the grocery store. Victim was still wearing the pink skirt and did not take it off when they had intercourse. Defendant did not know she was menstruating and did not notice that she had a tampon inside her vagina. Defendant said that even though his penis is of "regular" size, he did not force her and he had no problem inserting his penis into her vagina with the tampon inside. Defendant did not know when victim changed out of the skirt and into jeans.

After returning from the store, they continued drinking. Janett was not feeling well and went back to one of the bedrooms to lie down. When she came out, Janett caught defendant and victim "making out." Janett, who was approximately four feet eleven inches tall and weighed approximately 120 or 130 pounds, became angry and put defendant in a "choke hold." Defendant stood five feet eleven inches tall and weighed 200 pounds. Janett stopped when defendant told her to "kick back." Victim tried to apologize, but Janett did not want to talk. Janett and victim were in the bathroom together talking for a short time. Defendant denied shoving the girls or yelling, "let's go" or "let's get the fuck out of here." The three left together in the white Ford F-150 truck.

*6 According to defendant, the two women were arguing and began fighting inside the truck. Because defendant almost crashed the vehicle while trying to break up the fight, he pulled over to the side of the freeway between Heacock and Perris exits and told them to “kick[]back ... otherwise get out of the truck.” Janett told victim to take off the pants she had borrowed and give them back. The two got into a physical altercation by the side of the freeway. Although Janett was much smaller than victim, she was able to gain the upper hand and beat up on victim, who had been drinking. Defendant tried to stop the fight, but he denied ever hitting victim. Although victim was not wearing any pants, she began walking away from the truck. Defendant persuaded her to get back in the truck and offered to take her home. Victim finally got back into the truck, and defendant told Janett to give victim the jeans so she could put them on. Victim asked defendant to stop at his house because she had left her purse there. Janett went in the house to get the purse while defendant waited in the truck with victim. Janett came out with the purse several minutes later.

As they were driving to victim's home, the two women started fighting again. When they reached the intersection of Ironwood and Graham,^{FN6} victim demanded to get out of the truck. Defendant pulled over and let her out. Defendant noticed that Janett still had victim's purse. He pulled over nearby and waived her over. Defendant told victim to grab her bag, and she went to the passenger window. A second or two later, defendant heard a loud pop and turned and saw Janett holding a gun. Defendant told Janett that he was sorry. She eventually put the gun on the floorboard by her feet. Defendant backed the truck up fast and thought he might have run over the curb at the corner of a driveway. Defendant and Janett went to Janett's father's house. Janett took the gun into the house. When she came out, she was carrying victim's pink skirt and her blue purse, and she had the keys to a blue Ford Bronco, which they took, leaving the Ford F-150 truck.

FN6. The reporter's transcript incorrectly says “Grand” instead of “Graham.”

Defendant testified that he did not know to whom the underwear and cash found in the dresser in his room belonged. Defendant and Janett burned victim's purse and pink skirt in the barbecue in the backyard of the Cerda house.

Defendant admitted he told police several times that he shot victim. He acknowledged writing the apology letter to victim's mother, and that the words he wrote were his. He also acknowledged the phone call he made to his parents, telling them that he was the one who shot victim. He claimed that he lied whenever he had previously said that he shot victim but was now telling the truth.

E. Rebuttal.

Cesar Castaneda shared a cell with defendant for about six months in 2002. Castaneda wrote a letter to the district attorney in 2002 containing information given to Castaneda by defendant about the rape and murder. According to Castaneda, defendant had said he was in custody because he had raped and murdered a girl. Defendant told Castaneda he had “ ‘stashed the gun in a barbecue pit on an empty swimming pool pump at Janett's mom's house or at her neighbor's.’ ” Defendant told Castaneda that he and Janett had not

seen victim in a while, and they invited her to “ ‘go and party with them.’ “ While they were drinking and partying, victim “ ‘started coming onto him.’ “ According to defendant, “ ‘That bitch wanted me to fuck her.’ “ But then, victim and Janett went into the restroom for a long time and defendant became angry and started banging on the door, saying “ ‘Get the fuck out here. What are you bitches doing? Fucking each other?’ “

*7 Victim wanted to leave, and the three left. Defendant pulled over on the freeway. Victim got out to use the bathroom and defendant pushed her down and started to rape her. Castaneda asked defendant what he meant, and defendant said he did not rape her, that she “ ‘wanted it,’ “ so he “ ‘just took the pussy.’ “ Castaneda responded, “ ‘So you raped her?’ “ Defendant replied, “ ‘If that's what you want to call it.’ “

After the rape, defendant and Janett began talking, and defendant told Janett that they could not trust victim because she would probably “go to the cops.” Janett told him that victim would not, but they decided to stop at the Cerda house, and defendant told Janett to go inside and get a gun. Defendant stayed in the truck with victim. After Janett came back with the gun, defendant started telling Janett they had to kill victim because she was going to go to the police.

Victim got out of the truck. Defendant gave the gun to Janett and told her to shoot victim. Janett tried, but the gun would not discharge. Defendant then took the gun and shot victim himself. Defendant and Janett took off, got rid of the truck, and came back in another vehicle. When they drove by, victim was still lying in the street. They just kept going. Defendant and Janett then returned to the Cerda house and had sex. Castaneda was not promised anything and received nothing in exchange for his testimony.

Detective Robert Joseph testified that in his experience, suspects are more likely to confess if they are interviewed soon after the crime. In conducting suspect interviews, police use a variety of interrogation techniques to elicit information and to test the credibility of the person being interviewed. When Detective Joseph spoke to Janett the day after the murder, he did not see any injuries. The gun used to kill victim was never recovered.

F. Surrebuttal.

Defendant testified that he shared a cell with Castaneda, but the two were not friends. Defendant claimed that whenever he met with his attorney, he would return to find that someone had gotten into his property box and gone through his personal paperwork, which included transcripts of his and Janett's statements to the police. Defendant denied ever telling Castaneda that he raped or killed victim.

II. IS THERE SUFFICIENT EVIDENCE TO SUPPORT THE RAPE AND KIDNAPPING FINDINGS?

Defendant contends the evidence does not support the findings that the murder occurred during the commission of rape. He also claims there is insufficient evidence of a kidnapping as a basis for the second special circumstance finding.

A. Standard of Review.

Our review of any claim of insufficiency of the evidence is limited. In determining the sufficiency of the evidence, we review the entire record to determine whether the evidence was reasonable, credible, and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. ([People v. Catlin \(2001\) 26 Cal.4th 81, 139](#); [People v. Bolin \(1998\) 18 Cal.4th 297, 331](#).) The standard is the same in cases where the prosecution relies primarily on circumstantial evidence. ([People v. Miller \(1990\) 50 Cal.3d 954, 992](#).) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict and indulge every reasonable inference the jury could draw from the evidence. ([People v. Autry \(1995\) 37 Cal.App.4th 351, 358](#).) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ “ ([People v. Bolin, supra](#), at p. 331.)

B. Analysis.

*8 The rape-murder special circumstance applies when a defendant is found guilty of committing first degree murder while he was “engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit,” rape. (§ 190.2, subd. (a)(17)(c); see also [People v. Kelly \(1992\) 1 Cal.4th 495, 524-525](#).) Forcible rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator against the person's will by means of force or violence. (§ 261, subd. (a)(2); [People v. Maury \(2003\) 30 Cal.4th 342, 426-427](#).)

According to defendant, there was no evidence that victim “was ever physically forced or compelled to go anywhere without her consent.” Instead, he argues that victim was friendly with him and Janett, willingly spending the day and evening with them up to the time of the shooting. Defendant points to his interview with the police regarding what happened, the lack of any evidence to support a finding that the truck ever stopped on the freeway, and Castaneda's statements which failed to show “an involuntary movement.” Thus, defendant concludes there was no evidence of a kidnapping. Regarding the rape, he argues that even if we assume it occurred on the freeway, there is no evidence that victim's murder occurred immediately thereafter or while defendant was fleeing immediately after the rape. Pointing to the location of victim's body at the time of its discovery, defendant claims it is “unreasonable to infer that the shooting occurred ‘to avoid detection’ of the rape or kidnapping.” Given the above, and the necessity of finding that the murder was committed both during the immediate flight from the kidnapping and/or rape and to avoid detection, defendant maintains that the evidence does not establish the rape-murder special circumstance. We disagree.

Overwhelming evidence showed that victim was raped by defendant. Sperm cells matching defendant's DNA profile were present in her vagina. The severity of her injuries and the other physical evidence found on her body contradict defendant's claim that the sex was consensual. Her shirt was torn and dirty, her jeans were embedded with dirt and debris, and her body was covered with dried plant material. Victim had a number of scrapes and bruises on her body, including several blunt impacts to the head and neck. She had bruises on her neck and along her jawline which were consistent with strangulation. Petechial hemorrhaging of victim's eyelids was also consistent with strangulation. Her [hyoid bone was fractured](#) near the time of her death, most likely the result of manual strangulation. She had more bruises inside her upper and lower lips consistent with a blow to the mouth or someone placing a hand over her mouth and pressing down.

According to the autopsy, there were contusions in victim's vagina consistent with a sexual assault. The pathologist noted vaginal bruising to the left, posterior and anterior walls of the vagina. A tampon with a small amount of blood was shoved to the top of her vagina near the cervix. The abrasions and injury to the vaginal wall were inflicted near the time of death. Based on the extent and nature of the injuries, the pathologist concluded that victim was physically and sexually assaulted, then shot.

*9 Castaneda testified that defendant told him that defendant pushed victim down beside the freeway and raped her. Castaneda asked defendant what he meant, and defendant said he did not rape her, that she “wanted it,” so he “just took the pussy.” In response to Castaneda's question, “So you raped her?” defendant replied, “If that's what you want to call it.” [FN7](#)

[FN7](#). In his reply brief, defendant claims that Castaneda's testimony was internally contradictory because defendant denied raping victim, claiming that “she wanted it.” Thus, defendant argues, “Since [defendant] told Castaneda that his sexual relations with [victim] were consensual, the remainder of the admission simply does not make sense.” We disagree. Defendant can continue to deny raping victim; however, the overwhelming evidence shows otherwise. Besides defendant's admission that he “just took the pussy,” victim's physical injuries confirm that she did not engage in consensual intercourse. Thus, we disagree with defendant's claim that “the theory that [he] killed to avoid detection of a rape is unsupported by solid and reliable evidence.”

Regarding the evidence showing a connection between the rape and the murder, the People correctly note there is no requirement that there be a strict causal or temporal relationship between the felony and the murder. ([People v. Prince \(2007\) 40 Cal.4th 1179, 1259](#); [People v. Coffman and Marlow \(2004\) 34 Cal.4th 1, 87](#).) In [People v. Dominick \(1986\) 182 Cal.App.3d 1174](#), the Court of Appeal affirmed a special circumstance allegation where the killing occurred while defendants were engaged in the immediate flight after having committed rape, sodomy and oral copulation of the victim. In support of its decision, the court pointed to the evidence of defendants' departure from the site of the sex crimes and transportation of the victims two and a half miles away, a 10-minute drive, in order to facilitate avoidance of the detection of the original crimes. ([Id. at pp. 1202-1203](#).) [FN8](#)

[FN8](#). In his reply brief, defendant rejects any attempt to compare this case to [People v. Dominick, supra, 182 Cal.App.3d 1174](#). Defendant argues that in this case, “even if, arguendo, a rape occurred somewhere on the side of state highway 60, [victim's] body was found in a residential neighborhood within blocks of her home.” (Italics omitted.) The relevance of the case lies in the fact of defendant's immediate departure following his assault on victim, and his transportation of her to another location where he killed her.

Here, the pathologist testified that victim's injuries occurred at or near the time of her death. Castenada testified that after defendant raped victim, he and Janett decided they could not trust victim because she would probably “go to the cops.” Thus, defendant stopped at the Cerda house and had Janett go inside and get a gun. When Janett could not get the gun to fire, defendant shot victim. Nonetheless, defendant points to the location of victim's body and argues that if he were trying to avoid detection, he would have left victim's body in a more secluded location. While such argument is possible, clearly the jury rejected it.

For kidnapping to be committed, “the victim's movement must be accomplished by force or any other means of instilling fear.... ‘... [A] taking is forcible if accomplished through fear.’ [Citation.] ... [T]he force used against the victim ‘need not be physical. The movement is forcible where it is accomplished through the giving of orders which victim feels compelled to obey because he or she fears harm or injury from the accused and such apprehension is not unreasonable under the circumstances.’ [Citations.]” ([People v. Majors \(2004\) 33 Cal.4th 321, 326-327](#) (*Majors*), quoting [People v. Hill \(2000\) 23 Cal.4th 853, 856 & fn. 2](#), and [People v. Stephenson \(1974\) 10 Cal.3d 652, 660](#).) Asportation may be accomplished by means that both fraudulently induce the victim to willingly be transported and involve force or fear. (*Majors, supra*, at p. 328.)

Defendant claims the evidence fails to show that victim was forced to go with him. However, because victim was murdered, the only evidence available to support a finding of kidnapping is circumstantial. Looking at the record, the evidence shows that victim was beaten, strangled, and sexually assaulted. At some point, defendant forced her to give him her pants and threatened to leave her half naked on the side of the freeway in the middle of the night. After being raped, victim got back into the truck. Defendant argues this was a voluntary decision; however, as the People suggest, it could also be “an indication of her desire to escape further forcible attacks by [defendant] and her hope that [defendant] and [Janett], who had been her friend for several years, might agree to return her home safely.” As the People aptly state, “the only logical inference from the evidence was that [victim] did not voluntarily accompany [defendant] to the rape site on the side of the freeway and certainly did not voluntarily agree to get back into the truck with [defendant] and [Janett] after being beaten and raped.” We agree. The evidence suggests that defendant and Janett fraudulently induced victim to get back into the truck so that they could take her home. [FN9](#)

[FN9](#). In his reply brief, defendant argues that the fact that the jury did not believe his testimony (that Janett and victim got into a fight on the side of the freeway and that defendant and victim had consensual sex) does not support a contrary conclusion that

defendant raped victim and then ordered her back in the truck. However, the case does not rest on defendant's testimony alone. An expert witness opined that victim was physically and sexually assaulted. Also, defendant talked to his cell mate, Castaneda, and acknowledged his actions. Thus, we reject defendant's claim that the People's case "amounted to little more than a speculative theory in search of evidence."

*10 The jury was instructed that to find the special circumstance of rape or kidnapping true, the People were required to prove the murder was committed during the immediate flight after the commission of a kidnapping or rape by defendant, and that the murder was committed to carry out or advance the commission of the crime of kidnapping or rape, or to facilitate the escape there from or to avoid detection. The jury found the special circumstance of rape and kidnapping to be true. Given the facts presented, we find sufficient evidence to support the jury's finding.

III. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT DENIED DEFENDANT'S REQUEST FOR THE APPOINTMENT OF AN EXPERT ON FALSE CONFESSIONS?

On December 5, 2002, defendant filed an ex parte motion for the appointment of an expert witness on false confessions. The motion sought the appointment of Dr. Richard A. Leo, "an expert in the area of police interrogation and false confessions." It detailed his professional credentials and explained why defendant needed his assistance to develop an effective defense. The motion was denied. On December 20, defendant renewed this motion and filed a supporting declaration to establish his indigent status. Defendant also moved for the appointment of a forensic pathologist and an investigator. The trial court granted the motion for the appointment of an investigator and the forensic pathologist, finding that defendant was indigent. However, it denied the request for the appointment of an expert in false confessions without comment. On appeal, defendant contends the trial court abused its discretion in denying his motion.

A. Standard of Review.

On a showing of necessity, the trial court must provide expert defense services to an indigent defendant. (*People v. Worthy* (1980) 109 Cal.App.3d 514, 521.) The defendant has the burden of showing indigency and the reasonable necessity for such services. (*Ibid.*; *Puett v. Superior Court* (1979) 96 Cal.App.3d 936, 939.) A trial court's order denying such services is reviewed for abuse of discretion. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 321 (*Corenevsky*).)

B. Analysis.

The record shows that the trial court did not abuse its discretion in denying defendant's requested ancillary services. Rather, we find that defendant has failed to establish that the requested services were reasonably necessary. In his motion, defendant alleged that he was interrogated by police officers for several hours; that detectives characterized his statement as a confession; that police told him that his girlfriend would be charged if he did not confess; and that defendant felt threatened, intimidated, and forced into a corner

to protect his girlfriend. After setting out Dr. Leo's qualifications, the motion concludes that “defendant's right to the effective assistance of counsel and a fair trial based upon all relevant evidence will be impaired in the absence of the appointment of a false confession expert to assist counsel in preparing for trial and presenting a meritorious defense to the jury.” Absent from defendant's motion were the facts showing how police engaged in coercive tactics that could have led to a false confession. If defendant's reason for confessing was that he felt forced to protect his girlfriend, the People aptly note that such explanation is easily understood by a layperson without the need for expertise. Moreover, we question what coercive tactic was used by Castaneda to force defendant to confess his actions against victim. A right to ancillary defense services arises when the defendant “demonstrate[s] the need for such services by reference to ‘the general lines of inquiry he wishes to pursue, being as specific as possible.’” [Citations.]” ([Corenevsky, supra, 36 Cal.3d at p. 320](#), fns. omitted.) But a request for services that would be merely convenient to the defense rather than reasonably necessary need not be granted. ([People v. Clark \(1992\) 3 Cal.4th 41, 113.](#))

*11 Notwithstanding the above, the People contend that, even if we assume the trial court erred in denying the motion, the error was harmless beyond a reasonable doubt. We agree. Defendant testified that he confessed in order to protect his girlfriend. Defense counsel thoroughly argued this point. Expert testimony explaining defendant's actions was not necessary.

IV. DISPOSITION

The judgment is affirmed.

We concur: [RICHLI](#) and [KING](#), JJ.

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