Court of Appeal, First Appellate District, Division One - No. A165779

S292726

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

LUIS ALBERTO LLAMAS-VENEGAS, Defendant and Appellant.

The petition for review is denied.

GUERRERO

Chief Justice

Filed 8/1/25

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LUIS ALBERTO LLAMAS-VENEGAS, Defendant and Respondent.	A165779 (Contra Costa County Super. Ct. No. 05-192500-7)

After a joint trial, a jury convicted Luis Alberto Llamas-Venegas of 41 felony sex offenses committed over a period of four and a half years while his stepdaughter Jane Doe (Jane) was nine to 13 years old, and one felony sex offense committed against his cellmate John Doe (John) while Llamas-Venegas awaited trial on his crimes against Jane. Under the "One Strike" law (Pen. Code,[1] § 667.61), the trial court imposed consecutive sentences of 25 years to life on each of Llamas-Venegas's 17 convictions for forcible lewd acts against Jane (§ 288, subd. (b)(1)) and of 15 years to life for his single conviction of forcible sodomy against John (§ 286, subd. (c)(2)(A)). It also imposed a consecutive, non-One Strike sentence of 15 years to life for trafficking a minor for a sex act (§ 236.1, subd. (c)(2) (trafficking)), yielding a total sentence of 455 years to life.

[1] Undesignated statutory references are to the Penal Code.

Llamas-Venegas contends the court abused its discretion in denying his motion to sever, for trial, his offenses against Jane from that against John. He also claims his sentence is excessive for three reasons: (1) the part of the One Strike law requiring a court to impose life sentences on anyone convicted of committing qualifying offenses "against more than one victim" (§ 667.61, subd. (e)(4)) authorizes at most one life sentence per victim; (2) executing more than one life sentence per victim punishes the same act multiple times, in violation of section 654; and (3) the aggregate sentence is unconstitutionally cruel and/or unusual (U.S. Const., 8th amend.; Cal. Const., art. I, § 17). We disagree on all claims and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Facts and Evidence Regarding Crimes Against Jane Doe

In about 2013, Llamas-Venegas moved in with M.B. (whom he later married) and her children: Jane, who was eight or nine, and A.B., who is one year younger.

Llamas-Venegas began sexually abusing Jane when she was nine years old, touching her vagina and breasts when they shared a bed on a trip. When they returned home, the abuse worsened. Several times a week, while M.B. was at work, Llamas-Venegas would send A.B. to another room and physically force Jane to take his penis in her mouth. He also lay Jane down and thrust his penis between her thighs, sometimes touching her labia. Jane felt she had to submit because Llamas-Venegas said that if she reported the abuse, no one would believe her, and he would kill her mother and brother. She believed him because he often hit her and A.B., and sometimes their mother.

When Jane was 11 years old, she testified, she told her mother and her friend H.R. about the abuse. At trial, H.R. confirmed that Jane had told her of being sexually abused by her stepfather.

When Jane told her mother about the abuse, she testified, it "led to a week-long discussion" that was "like a fight," and M.B. "eventually quit her work so that she could watch over us every day." But M.B. later returned to work, and Llamas-Venegas resumed abusing Jane. He began by groping her, then laying her down and thrusting his penis between her thighs four to five times a week, and then, when she was in seventh grade, penetrating her vagina. After that, about six times per week, Llamas-Venegas either had intercourse with Jane or had her orally copulate him, compelling her to submit by threatening to kill her family. "I told my mom once and nothing really happened," she explained, "so I was scared that what he was saying when he told me that if I told someone no one would believe me [was true]."

Llamas-Venegas also tried to penetrate Jane anally. He first tried when she was in seventh grade but stopped when she screamed, fearing the neighbors upstairs would hear. He penetrated her anus on a trip to Mexico. At trial, Jane described only those two instances of anal penetration. She also described a time he penetrated her vagina with a dildo and tried to insert his penis, stopping after she cried in pain.

Llamas-Venegas later began having Jane wear clothes to make her look older, such as thong underwear, and touch herself while he filmed her on the camera of his laptop, which was connected to a website with a chat window. While Jane was on camera, he had her touch her breasts or vagina and sometimes inserted his fingers in her vagina or had her stroke his penis. He did this several times a week for about six months.

That period ended when Jane, then 13, reported the abuse to a teacher. After "a really bad day at home," Jane testified, she was crying and "a big mess" at school. Seeing "that I was really upset about something," the teacher gave Jane her number and said to text or call "if I needed something." The next day, Jane texted that she "was being sexually abused at my home and . . . needed some help." As she described at trial, the teacher reported the abuse.

Police officers went to Jane's house. A responding officer testified that when he pulled Jane aside, she began to cry and said Llamas-Venegas was sexually abusing her. After Llamas-Venegas was handcuffed, the officer testified, Jane's mother began screaming at Jane, who yelled back that she had already told her several times about the abuse. M.B. told Jane to be quiet lest the neighbors hear.

The next day, Jane described the abuse in a recorded interview at the Children's Interview Center (CIC), which the jury viewed. Her interview largely accorded with her testimony, as summarized above, but included details she did not relate at trial. In fifth grade, Jane told the interviewer, she also told A.B. of the abuse, and they informed M.B. together. She said Llamas-Venegas anally penetrated her if she misbehaved; that he did so about eight times; and that when she told him how much it hurt, he deemed it punishment. She also identified the website for which he filmed her as "stripchat.com" and recalled that, in one streaming session, he had her put a dildo in her vagina.

A detective and a crime technician recovered Llamas-Venegas's laptop, two dildos from the master bedroom, and "childlike" thong underwear from the children's bedroom. A criminalist described testing two DNA samples from a dildo and finding they matched Llamas-Venegas's and Jane's DNA,

with an astronomically small chance of having come from other persons. A sexual assault response team (SART) nurse who examined Jane found no injuries but testified that, given her stated history of undergoing intercourse for years, a lack of injury was unsurprising.

Data extracted from Llamas-Venegas's laptop showed he had an account with stripchat.com, where users pay participants to perform sex acts on livestreamed video. Records from his stripchat.com account included photos of Llamas-Venegas and a girl whose face was not visible but whom Jane identified as herself. And they included messages between Llamas-Venegas and other users in which he referred to a "girl"—e.g., "girl is here," "come girl is ready," and "girl wants you to come play with her"—and to sex toys, such as "come private, see toy on my ass."

Search histories for Llamas-Venegas's e-mail accounts showed many Spanish language searches for pornography, often referring to sex with a stepdaughter or daughter while her mother was absent.

The People called M.B., Jane's mother, to testify. When asked if Jane had, in fifth grade, told her about Llamas-Venegas sexually abusing her, she said no, adding, "We had a conversation but she did not say that it was sexual abuse." M.B. testified the conversation involved Jane not liking the way Llamas-Venegas hugged her while she "was on her growth period," "like smashing her chest." In response to Jane's concerns, the three (M.B., Llamas-Venegas, and Jane) agreed "the best solution for this would be so that [Jane] wouldn't be around [Llamas-Venegas]." M.B. stopped working to be around Jane more and because she "ended up pregnant." M.B. denied Jane ever otherwise told her of a problem with Llamas-Venegas.

M.B. spoke to the police when they arrested Llamas-Venegas. Asked at trial if, at that time, she gave a different account of what Jane had told her

than the one she had just given, she said she did not remember. M.B. acknowledged that she was arrested as well, and alluded to her children having been detained, but denied she was concerned about losing custody or facing other consequences if she admitted having known of the abuse. Asked if Llamas-Venegas abused *her*, M.B. testified that only once, when drunk, he had pushed her against a wall during an argument.

When questioned by defense counsel, M.B. testified that around the time Jane was 11, Llamas-Venegas had surgery that made intercourse painful for him, so he bought dildos for them to use. She also testified that she bought Jane thong underwear at her request.

Jane's brother A.B. testified that Jane never told him that Llamas-Venegas was abusing her, and the two never jointly approached M.B. to tell her so. Asked how certain he was about the latter answer, he gave an answer transcribed as "like 7—about 10."[2] He also recalled a period when only his mother worked, and he sometimes went to a nearby store at her or Llamas-Venegas's request. He could not recall if Llamas-Venegas and Jane spent time alone away from him. At first, he testified that his relationship with Llamas-Venegas had been "pretty decent," and Llamas-Venegas had not hit him. But he acknowledged giving an interview at the CIC soon after the arrest, and when asked if he recalled telling the interviewer about Llamas-Venegas hitting him and his family members, he said, "Sort of, yeah." Similarly, when asked if Llamas-Venegas "would do things like that when he would be mad at you," he answered, "Probably like once or twice. I kind of forgot." A.B. believed he had told the truth in his CIC interview and agreed that his memory then was fresher than at trial, "nearly four years" later.

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[2] In response to a question, asked moments earlier, about how well he recalled a certain period, Angel had answered, "On a scale of 1 to 10, like a 5."

A.B. further acknowledged a time when he returned from the store to find Jane crying, and she said she had been hit in the face by a phone. As to his mother, A.B. first testified that he recalled only one incident when Llamas-Venegas hurt her during an argument, but when reminded of his CIC interview, A.B. acknowledged he "[p]robably" recalled more than one incident.

Llamas-Venegas testified. He denied having touched Jane sexually or disciplined her physically, though he acknowledged an incident shortly before his arrest when he threw her phone in anger, upon realizing she had lied about it being connected to the house Wi-Fi, and the phone "ricocheted [off] the kitchen cabinet and . . . hit her in the head." Regarding the dildo, Llamas-Venegas testified that hernia surgery in 2017 made intercourse painful for him, leading him to focus on finishing quickly, so he bought sex toys to use with M.B. A week and a half before his arrest, he testified, they fell asleep after using a dildo and it fell to the floor, where it remained the next day when he asked Jane to help clean the house.

Llamas-Venegas acknowledged watching pornography on his laptop but said he searched only for videos of sex between adults. He used Spanish search terms meaning, "I fuck my daughter in the ass" because he was seeking a specific video on which he had once stumbled in jumping from link to link. He liked it and similar videos because the girls were pretty, he testified, but they were adults; he did not seek videos of anal sex between an adult and a child. He had searched on "[c]hild pornography," he testified, after reading a news item about a priest accused of pedophilia; he was not seeking child pornography to watch. He denied being sexually attracted to Jane.

Regarding stripchat.com, Llamas-Venegas testified that he used the site to show himself in his underwear fondling himself. He testified he made comments like "the girl is here" only to attract viewers to his page. He testified he uploaded videos of himself having sex with M.B., a prostitute, and a woman in Mexico.

B. Facts and Evidence Regarding the Crime Against John Doe

After his arrest, Llamas-Venegas shared a jail cell with John in May 2019. John, who had been facing charges of rape and forcible oral copulation, testified he told Llamas-Venegas he was in jail for an "incident with a woman but we were just kissing." Llamas-Venegas responded that he had "seen people get beat up in there . . . up to death" and would "sell [John] to some other cell mate" unless he submitted to an act of anal penetration. John testified he was "scared" and "didn't know who to trust"; if someone were to "snitch" about the charges against him, he feared, he would "[g]et beat up," and guards would not protect him. Asked about an inmate known as Loco, John said, "that's the guy [Llamas-Venegas] threatened me with."

John thus submitted to an act of anal penetration. Llamas-Venegas used "lotion," which John also described as "a toothpaste thing." The penetration "hurt," so John told Llamas-Venegas to stop, and he did; he then masturbated into the cell toilet. On a later day, Llamas-Venegas asked to penetrate him again, but John pressed the cell's emergency button, summoning a guard who removed him.

On cross-examination, John testified he had been in custody for about a month when Llamas-Venegas sodomized him, and he was released about four weeks later. He pled no contest to an offense not requiring him to register as a sex offender, receiving a sentence of time served. The court asked John, "[W]hen you entered the plea in the other case, did it require that you testify

here in this case or in your mind are they two unrelated cases?" He answered, "Unrelated."

Deputy Sheriff Christopher Burnthorne, who worked on May 11, 2019, as a guard in the jail, corroborated much of John's account. He responded to the emergency button in the cell Llamas-Venegas and John shared, finding John "visibly upset and distraught." After asking to speak privately to Burnthorne, John accused Llamas-Venegas of sexual assault. Burnthorne reviewed records showing John and Llamas-Venegas were housed in the cell on May 8, and he photographed a drawer in the cell that held "a lotion cream" for hemorrhoids.

Llamas-Venegas acknowledged he was John's cellmate for a time that encompassed May 8, 2019. He denied having learned what charges John faced. He stated that he is heterosexual and denied having ever engaged in sexual activity with John, including masturbation in his presence, or having verbally threatened him.

C. Charges, Verdict, and Sentence

Llamas-Venegas was charged with 41 sex offenses against Jane and one against John.[3] As to 19 counts—the 18 for lewd or forcible lewd acts on a

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[3] Setting aside the trafficking count based on stripchat.com activity (count 41), the operative information alleged 18 sets of counts involving Jane (counts 1–40); each set comprised two or three charges that could have arisen from a single incident. All but one set comprised (*i*) one count of forcible lewd act on a child under 14 (§ 288, subd. (b)(1) (forcible lewd act); counts 5, 8, 11, and even Nos. 14 to 40) and (*ii*) one or two counts of either sexual intercourse or sodomy with a child under 10 (§ 288.7, subd. (a); counts 4, 7); oral copulation on such a child (*id.*, subd. (b); counts 10, 13); or aggravated sexual assault of a child, by means either of rape (§ 269, subd. (a)(1); counts 3, 6, 19, 21, 31, 33), oral copulation (*id.*, subd. (a)(4); counts 9, 12, 15, 17, 27, 29), sodomy (*id.*, subd. (a)(3); counts 23, 25, 35, 37), or sexual penetration (*id.*, subd. (a)(5); count 39). The exception was the first pair of counts for sexual

child (§ 288, subds. (a), (b)(1)), and the one forcible sodomy count as to John (§ 286, subd. (c)(2)(A); count 42)—the information alleged that he committed the offenses against more than one victim (§ 667.61, subds. (b), (e)(4)).

The jury found Llamas-Venegas guilty on all 42 counts and found true the multiple-victim allegations. The trial court imposed consecutive One Strike sentences of 25 years to life on the 17 counts of forcible lewd acts against Jane (§ 667.61, subds. (a), (c)(4), (e)(4), (i), (j)(2)) and 15 years to life for the single count of forcible sodomy against John (*id.*, subds. (b), (c)(6), (e)(4), (i)); a concurrent One Strike sentence of 25 years to life on the one count for a nonforcible lewd act (*id.*, subds. (a), (c)(8), (e)(4)); and a consecutive, non-One Strike sentence of 15 years to life for trafficking, yielding a total sentence of 455 years to life.[4]

II. DISCUSSION

A. The Trial Court Did Not Abuse Its Discretion in Declining To Sever the Counts Against Jane and John for Trial

Llamas-Venegas claims the court abused its discretion in denying his motion to sever for trial the count involving John from those involving Jane.[5]

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intercourse or sodomy with a child under 10 (§ 288.7, subd. (a)) and lewd act on a child under 14 (§ 288, subd. (a)) (i.e., nonforcible lewd act).

[4] On the other 22 counts, the court also imposed sentences of 15 or 25 years to life, but it stayed their execution pursuant to section 654, as the jury could have based its verdicts on those counts on the same acts that underlay the forcible lewd act convictions.

[5] The joint trial resulted from two rulings: one granting the People's motion to consolidate the initial pleading charging offenses against Jane with the later-filed pleading involving John, and one denying a subsequent defense motion to try the charges separately. Llamas-Venegas does not challenge the initial ruling under section 954, which allows consolidation of pleadings charging "two or more different offenses of the same class." (§ 954.) We thus consider only whether the court abused its discretion in declining to sever, for trial, the properly joined offenses.

The principles governing our review are settled: "The law favors the joinder of counts because such a course of action promotes efficiency. [Citation.] Nonetheless, . . . a trial court has discretion to order that properly joined charges be tried separately. (§ 954; [citation].) . . . [¶] In exercising its discretion in this regard, the court weighs 'the potential prejudice of joinder against the state's strong interest in the efficiency of a joint trial. [Citation.]' [Citations.] To succeed on a claim that the trial court abused its discretion in denying severance . . . , the defendant must make a ' "clear showing of prejudice" ' and establish that the ruling fell ' " ' " 'outside the bounds of reason.' " ' " ' [Citations.] . . . [¶] If the evidence underlying the joined charges would have been cross-admissible at hypothetical separate trials, 'that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges.' " (*People v. Merriman* (2014) 60 Cal.4th 1, 37–38.) Beyond that crucial factor, a court must consider whether "some of the charges are unusually likely to inflame the jury" and whether "a weak case has been joined with a strong case so that the total evidence on the joined charges may alter the outcome." (*People v. Marshall* (1997) 15 Cal.4th 1, 27–28.) Finally, while we assess the denial of a motion to sever in light of the showings made to and facts known by the trial court when it ruled (*Merriman*, at p. 37), a defendant whose motion was properly denied, viewed from that perspective, can still show on appeal that the actual joint trial, as it played out, entailed such prejudice as to deny them due process (*People v. Mendoza* (2000) 24 Cal.4th 130, 162).

Llamas-Venegas failed to demonstrate the trial court abused its discretion by denying his motion to sever, or that the ensuing trial violated his due process rights. On the key issue of whether evidence in each case would have been cross-admissible in separate trials, he argues it would not

because "any slight probative value" pertaining to the victim in one case was "outweighed by the great danger of prejudice" to the other. Specifically, he contends that cross-admissibility would have been improper under section 1108 of the Evidence Code. We disagree. That statute permits the admission of evidence, at a trial of a sexual offense, that the defendant committed "another sexual offense or offenses," if the evidence is not significantly more prejudicial than probative. (Evid. Code, § 1108, subd. (a), referring to *id.*, § 352; see *People v. Falsetta* (1999) 21 Cal.4th 903, 917; *People v. Yovanov* (1999) 69 Cal.App.4th 392, 405 [in enacting Evid. Code, § 1108, "the Legislature decided evidence of uncharged sexual offenses is so uniquely probative in sex crimes prosecutions [that] it is presumed admissible without regard to the limitations of Evidence Code section 1101" and with "[t]he only restrictions on the admissibility of such evidence [being] those contained in Evidence Code section 352"].)

Noting Jane's and John's age and gender differences, Llamas-Venegas contrasts his case with *People v. Cordova* (2015) 62 Cal.4th 104. There, in finding past offenses sufficiently similar to charged offenses that the trial court had discretion to admit them, the court noted, "All were sex offenses committed late at night inside a home against young children of similar age." (*Id.* at pp. 133–134.) But *Cordova* did not suggest such a level of similarity as a minimum threshold to satisfy Evidence Code section 1108. To the contrary, it noted that " ' "charged and uncharged crimes need not be sufficiently similar that evidence of the latter would be admissible under Evidence Code section 1101," ' " for then section 1108 " ' "would serve no purpose. It is enough the charged and uncharged offenses are sex offenses as defined in section 1108." ' " (*Cordova*, at p. 133.) The evidence in this case thus satisfied Evidence Code section 1108 unless its prejudicial effect significantly

outweighed its probative value, so as to trigger section 352. To explain why section 1108's incorporation of Evidence Code section 352 helps ensure its constitutionality, our Supreme Court observed that, "Rather than admit or exclude every sex offense a defendant commits, trial judges must consider such factors as its nature, relevance, and possible remoteness, . . . its similarity to the charged offense, [and] its likely prejudicial impact on the jurors." (*People v. Falsetta, supra*, 21 Cal.4th at p. 917.)

The evidence as to each victim here was similar. As to both, Llamas-Venegas took advantage of vulnerabilities to extort them, by making threats targeting those vulnerabilities, to cause them to acquiesce in unwanted sexual conduct, including anal sex. Jane was a child living under Llamas-Venegas's authority and subject, along with her family, to violence at his hands, while John was a man on the autism spectrum,[6] facing charges that subjected him to harm from other inmates, who felt unable to defend himself from a threat presented by Llamas-Venegas.

As for prejudice, Llamas-Venegas stated in his motion to sever that the count as to John was weaker than the 41 counts as to Jane, creating a risk "that the jury is going to use a conclusion on counts [1–41] and bootstrap the weaker case." On appeal, however, he acknowledges that all the charged offenses were heinous and inflammatory, conceding the evidence was not significantly stronger or more inflammatory as to either victim. But "[e]ven if neither case was more inflammatory than the other," he claims, introducing "inflammatory . . . evidence regarding each set of charges posed a great

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[6] While neither party offered evidence at trial that John is on the autism spectrum, the prosecutor represented as much at the hearing on the motion to sever and defense counsel did not dispute it, so it is a "fact[] known by the trial court at the time of the court's ruling" (*People v. Merriman, supra*, 60 Cal.4th at p. 37); Llamas-Venegas treats it as such on appeal.

danger of prejudicing the jurors in the trial of the other set of charges; the jurors would have had to be 'almost saintly not to be aroused by such evidence.' " (*Calderon v. Superior Court* (2001) 87 Cal.App.4th 933, 941.) But in *Calderon*, the Court of Appeal found an abuse of discretion in denying severance not because a joint trial of equally inflammatory charges would be prejudicial but because one crime was much *more* likely to arouse outrage: "The crimes committed in both episodes are heinous. But the [first] episode, bad as it is, arose out of exchanged insults [implying] a challenge. The second involved . . . [an] execution-style murder . . . [by shooting the victim], who was kneeling, in the back of his head." (*Ibid.*)

Finally, asserting that "[e]ach case had weaknesses which could have prevented conviction in separate trials," Llamas-Venegas cites *Williams v. Superior Court* (1984) 36 Cal.3d 441, 453–454 (*Williams*),[7] for the proposition that severance may be required if both cases are weak, and a jury might "aggregate all of the evidence, though presented separately in relation to each charge, and convict on both charges in a joint trial; whereas, at least arguably, in separate trials, there might not be convictions on both charges." (*Williams*, at p. 453.) Yet while *Williams* did state that severance can be required if two weak cases might bolster each other (*ibid.*), *Williams* was a very different case: it did not involve Evidence Code section 1108; the evidence of the two gang-related murders at issue was *not* cross-admissible; and Williams's identity as the shooter in each was disputed. (*Williams*, at pp. 449–450.)

Stressing that prejudice inquiries are case specific, the court expressed concern that because Williams belonged to the gang implicated in each

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[7] Superseded by statute on another ground as stated in *Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1229.

shooting, a jury might "cumulate the evidence and conclude that [he] must have participated in some way in the murders or, alternatively, that involvement in one shooting necessarily implies involvement in the other." (*Williams, supra,* 36 Cal.3d at p. 453.) In that context, joinder could "make it difficult not to view the evidence cumulatively," so the cases might "become, in the jurors' minds, one case which would be considerably stronger than either viewed separately." (*Id.* at pp. 453–454.) In effect, the gang would be on trial, not Williams. (*Ibid.*) In *Williams*, the murders undoubtedly occurred; the question was whether Williams was the perpetrator of both, one, or neither. This case, in contrast, did *not* involve crimes that definitely happened with uncertainty whether Llamas-Venegas committed them against both victims, or one, or neither. Here, if the jury believed Jane's and John's testimony, it could have no reasonable doubt that it was Llamas-Venegas who abused them.

Nor do we agree with Llamas-Venegas that, as the trial played out, the evidence in each case proved so weak that joinder might have denied him due process. He notes, as to Jane, that her mother and brother (partly) contradicted her, her SART exam found no signs of injury, and she assertedly had a motive to lie to get her mother to leave an abusive husband; as to John, Llamas-Venegas asserts that he was unsure Llamas-Venegas was his cellmate, and he had had a motive to lie to secure reduction of his then-pending charges. These arguments are unpersuasive.

We view the trial evidence differently and in a manner that does not implicate due process as a result of the failure to sever a weak case from a strong one, or two weak cases from one another. (Cf. *Williams, supra,* 36 Cal.3d at p. 453.) Here, the evidence to which Llamas-Venegas points to argue weakness in the prosecution case bears little resemblance to the

concerns identified in the cases finding prejudice. (See, e.g., *Coleman v Superior Court* (1981) 116 Cal.App.3d 129 [sex crime charges against minors should have been severed from murder charge where identity of murderer was at issue and depended on circumstantial evidence].) As to Jane, the testimony of M.B. and A.B. that Llamas-Venegas argues as contradictory was, in fact, equivocal. When confronted with his CIC interview, A.B. admitted that several of his initial denials of wrongdoing by Llamas-Venegas were inaccurate, that his memory of events was better at the time, and that he was only 70 percent confident in denying that he and Jane had reported the abuse to their mother. M.B. denied Jane had reported Llamas-Venegas's abuse. She testified that Jane had only complained about a hug from him that "smash[ed] her chest" during her "growth period" and which resulted in a conversation involving her, Jane, and Llamas-Venegas, and a solution that Jane "wouldn't be around" Llamas-Venegas and would be closer to M.B. Additionally, that the SART exam revealed no recent injury was not probative given the ongoing sexual activity alleged. And defense counsel never stated at the severance hearing or during his closing argument that Jane might have fabricated her claims in a scheme to separate her mother from Llamas-Venegas.

As for John, his initial inability, at the start of his testimony, to recognize Llamas-Venegas, who was wearing a mask because of the COVID-19 pandemic, is of no consequence: John unhesitatingly identified Llamas-Venegas once he lowered his mask, and Llamas-Venegas admitted in his testimony that they had shared a cell and that John had accused him of sexual abuse. No juror could have had a reasonable doubt based on a risk of mistaken identity. As for John's asserted motive to lie, the court asked in the severance hearing if he had been "promised something in exchange for his

testimony," and counsel agreed the prosecutor had instead offered him a deal "based upon a perceived weakness in their case." Neither counsel suggested the deal included John testifying here, and Llamas-Venegas's speculation to the contrary—and implication that the prosecution may have committed a gross violation of due process (see *Napue v. Illinois* (1959) 360 U.S. 264 [allowing false testimony that witness received no consideration for testifying])—is not a weakness in the case.

Even if we view the charges involving Jane as more inflammatory, it is not enough to tip the balance to require reversal, given the dominance of the cross-admissibility factor and correctness of the court's ruling in that regard. Considering the evidence adduced at trial, Llamas-Venegas failed to establish that the denial of his severance motion resulted in gross unfairness amounting to a denial of due process or a fair trial.

B. Section 667.61 Does Not Limit a Court To Imposing One Life Sentence Per Victim Based on the Multiple-victim Circumstance

Raising an argument concededly rejected by every court to consider it, Llamas-Venegas contends the trial court erred in construing the One Strike law (§ 667.61) to require it to impose life sentences on 19 of his 42 convictions[8] because the jury found, as to each, that he "has been convicted in the present case or cases of committing [a qualifying] offense . . . against more than one victim" (§ 667, subd. (e)(4)), when in fact the statute, in his view, authorizes only *one* life sentence per victim. (See *People v. Andrade*

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[8] As noted, the court imposed but stayed execution of another 22 One Strike sentences. It imposed a non-One Strike sentence of 15 years to life for trafficking (count 41), for while the One Strike law does not list that offense (§ 667.61, subd. (c)), the trafficking statute itself requires a life sentence if, as here, an offense involved coercion or threats (§ 236.1, subd. (c)(2)). The trafficking sentence is thus not subject to the claim of sentencing error.

(2015) 238 Cal.App.4th 1274, 1305–1308 (*Andrade*) [rejecting argument]; *People v. Valdez* (2011) 193 Cal.App.4th 1515, 1522–1524 (*Valdez*) [same]; *People v. Murphy* (1998) 65 Cal.App.4th 35, 40–41 (*Murphy*) [same].) Like the courts in those cases, we disagree.

The One Strike law applies to several listed sex offenses. (§ 667.61, subd. (c).) They include, as relevant here, forcible lewd act on a child under 14 (*id.*, subd. (c)(4)), lewd act on such a child (*id.*, subd. (c)(8)), and sodomy by force (*id.*, subd. (c)(6)). If a defendant commits a listed offense subject to any one (or, in some cases, two) of various listed circumstances, a court must impose a sentence of 15 or 25 years to life. (*Id.*, subds. (a)–(b).) One circumstance is that the defendant "has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim." (*Id.*, subd. (e)(4).) The jury found that circumstance true as to the 17 forcible lewd act counts and single nonforcible lewd act count involving Jane and the sodomy count involving John. The court concluded it was thus required to impose consecutive sentences of 25 years to life on each of the 17 forcible lewd act counts and of 15 years to life on the single forcible sodomy count, as well as a sentence of 25 years to life, which it made concurrent, on the single nonforcible lewd act count.[9] (§ 667.61, subds. (b), (e)(4), (j)(2).)

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[9] The statute mandates a sentence of 25 years to life for an offense committed under two or more of the circumstances in subdivision (e), which include the multiple-victims circumstance (§ 667.61, subd. (e)(4)), and a sentence of 15 years to life if, as here, only one such circumstance is found—unless the victim was under age 14, in which case a sentence based on even one circumstance must be 25 years to life (*id.*, subd. (j)(2)). Accordingly, here, the court imposed terms of 25 years to life for each offense involving Jane but 15 years to life for that involving John.

Llamas-Venegas contends that, in a case involving only the multiple-victim circumstance, the text of section 667.61 is ambiguous as to whether it authorizes more than one life sentence per victim, so the rule of lenity compels us to construe it to allow only one. Thus, he argues, we must vacate 16 of his 17 life sentences for forcible lewd acts on Jane (and his concurrent life sentence for the nonforcible lewd act), leaving in place one life sentence per victim. The issue is purely one of statutory interpretation, so Llamas-Venegas cannot distinguish the cases rejecting his argument on their facts. Nor does he identify a supervening change in the law that undermines those decisions' analyses, or a persuasive reason for us to disagree with them.

In *Murphy*, *supra*, 65 Cal.App.4th 35, the defendant committed a single One Strike offense against Victim One and six such offenses, on one occasion, against Victim Two. (*Id.* at pp. 40–41.) As here, the multiple-victim circumstance was the only basis to apply the One Strike law. (*Murphy*, at p. 40.) The Second Appellate District held that, "in sentencing a defendant convicted of committing violent sex offenses against different victims on different occasions[,] the one strike law requires the trial court to impose one indeterminate life term per victim *per occasion*." (*Id.* at p. 38, italics added.)

Murphy's reasoning depended on a provision of the original One Strike law later removed by amendment—but whose text makes clear that the law has *never* required courts in cases like this to restrict the number of life sentences *per victim*. The provision, section 667.61, former subdivision (g) (former subdivision (g)), served to ensure that a defendant "shall be sentenced to one life term per victim per occasion no matter how many [qualifying] offenses . . . the defendant committed against a particular victim

on a particular occasion." (*Murphy, supra*, 65 Cal.App.4th at p. 40.)[10] Under the original section 667.61, former subdivision (g) was the "only limitation on the number of life sentences which [could] be imposed" when offenses against multiple victims were jointly tried. (*Murphy, supra*, 65 Cal.App.4th at p. 40.) Put simply, it imposed a per-*occasion* cap—not the per-*victim* cap that Llamas-Venegas advocates.

In *Murphy*, former subdivision (g) authorized only one life sentence as to Victim Two—but only because Murphy committed all six crimes against her *on one occasion*. (*Murphy, supra*, 65 Cal.App.4th at p. 40.) Given his convictions of six qualifying offenses against Victim Two and one against Victim One, the court noted that, "Absent subdivision (g)"—i.e., under the statute as it now exists—"Murphy would be sentenced to seven life terms." (*Murphy*, at p. 40; accord, *People v. Jones* (1997) 58 Cal.App.4th 693, 719 ["Were it not for subdivision (g), . . . *subdivision (a)* would permit the trial court to impose a separate indeterminate term for each qualifying sexual offense, *regardless* of the number of victims or occasions."].)

Some 13 years after *Murphy*, the Second Appellate District rejected precisely the same argument Llamas-Venegas now makes. (*Valdez, supra*, 193 Cal.App.4th at pp. 1521–1523.) A jury found Valdez guilty of qualifying offenses against three victims, and the trial court relied on the multiple-victim circumstance to impose four life sentences—two for offenses against

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[10] In full, former subdivision (g) stated: "The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable." (Stats. 1993–1994, 1st Ex. Sess., ch. 14, § 1.)

the same victim on separate occasions. (*Id.* at p. 1518.) Valdez contended that the law "must be interpreted so that [a life sentence based on] the multiple victim circumstance can be imposed only once for each crime victim, regardless of whether the crimes were committed on separate occasions." (*Id.* at pp. 1521–1522.) But his theory "contradict[ed] the statute's legislative intent as determined by the usual and ordinary meaning of [its] words." (*Id.* at p. 1522.)

The *Valdez* court also rejected a specific argument raised by Valdez—and now raised by Llamas-Venegas: "[Valdez] contends the multiple-victim circumstance is different in kind from the other enumerated circumstances because all of the others refer to aggravating factors, such as kidnapping or the use of a dangerous weapon, occurring in the commission of the present offense." (*Valdez, supra,* 193 Cal.App.4th at p. 1522.) The distinction between offense-specific circumstances and the multiple-victim circumstance "makes no difference in terms of the statute's application." (*Ibid.*) The statute's intent was " 'not difficult to discern' ": If a circumstance based on the nature of the offense applies, section 667.61 mandates a life sentence, but even absent such a circumstance, as in *Valdez* or here, " 'if a qualifying offense has been committed against more than one victim, the criminal conduct is considered equally severe.' " (*Valdez,* at p. 1522.)

The court also relied on the negative inference drawn in *Murphy* from former subdivision (g). (*Valdez, supra,* 193 Cal.App.4th at p. 1523.) That provision set the " 'only limitation on the number of life sentences which can be imposed' " under the One Strike law, allowing only " 'one life term per victim per occasion no matter how many [qualifying] offenses . . . the defendant committed against a particular victim on a particular occasion.' " (*Valdez,* at p. 1523, quoting *Murphy, supra,* 65 Cal.App.4th at p. 40.) Valdez's

sentences did not violate that limit, for none of his offenses "arose out of multiple acts against the same victim on the same occasion." (*Valdez*, at p. 1523.)

While the same is true here, the inference drawn by *Murphy* is now immaterial, given the 2006 amendment eliminating former subdivision (g). (Stats. 2006, ch. 337, § 33, pp. 2165–2167.) The Second Appellate District examined that amendment's effect in *People v. Rodriguez* (2012) 207 Cal.App.4th 204. Rodriguez committed six sex offenses against one victim on one occasion; the circumstances triggering the One Strike law were kidnapping and use of a deadly weapon. (*Rodriguez*, at pp. 210–211.) The trial court, applying former subdivision (g), imposed a single One Strike sentence, as "all of the sex offenses were committed against a single victim on a single occasion." (*Rodriguez*, at p. 212.) This was error given the removal of former subdivision (g). "As the Legislature eliminated subdivision (g), which the courts had interpreted to limit the number of One Strike sentences properly imposed on multiple offenses against a single victim on a single occasion," the court held, "we infer that the Legislature intended to abrogate this restriction." (*Rodriguez*, at pp. 213–214.)

Before 2006, in sum, former subdivision (g) set the sole limit on the number of One Strike sentences in a case—a limit that would not apply here, even were it still in effect, since Llamas-Venegas committed his offenses against Jane on separate occasions. By barring the imposition of multiple life sentences for offenses against the same victim *on the same occasion*, former subdivision (g) made clear, by negative implication, that the law did not bar the imposition of multiple life sentences *per victim*. The sole limit was *per occasion*. When the Legislature removed even that limit, it made only clearer its view that "persons convicted of sex crimes against multiple victims

. . . 'are among the most dangerous.' " (*People v. Wutzke* (2002) 28 Cal.4th 923, 929, 930–931; see also *Andrade, supra,* 238 Cal.App.4th at pp. 1307–1308 [upholding 13 One Strike sentences based on multiple-victim circumstance because plain language of One Strike law "does not support a limitation of [a] single life term per victim"].)

Here, Llamas-Venegas's invocation of the rule of lenity fails, for that rule comes into play only if a statute's text is ambiguous (*People v. Whitmer* (2014) 59 Cal.4th 733, 768–769), and the text of section 667.61 is not.

C. Section 654 Did Not Require the Court To Stay Execution of All But One Life Sentence Per Victim[11]

Even if section 667.61 authorized the *imposition* of 18 life sentences for offenses against Jane, Llamas-Venegas contends, section 654 required the court to stay *execution* of all but one. On this view, once the court ordered execution of a life sentence for *one* offense against Jane, based on the multiple-victim circumstance, executing 17 more life sentences based on the same circumstance entailed punishing him 18 times for the same act—the

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[11] We note a split of authority as to whether section 654 can *ever* require a stay of execution of a sentence mandated by section 667.61, given a provision in the latter stating that "[n]otwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, a person who is subject to punishment under this section." (§ 667.61, subd. (h); compare *People v. Caparaz* (2022) 80 Cal.App.5th 669, 689 [§ 654 cannot apply] with *People v. Govan* (2023) 91 Cal.App.5th 1015, 1032–1035 [§ 654 can apply].) Because we conclude that section 654 *does* not in any event apply here, we need not address the predicate question whether it *can* ever apply to a One Strike sentence. We assume without deciding that it can but conclude that, here, it does not.

We similarly note that, before the trial here, the Legislature amended the part of section 654 governing how a court chooses *which* sentence(s) to stay if multiple sentences trigger section 654. (Stats. 2021, ch. 441, § 1; see *People v. Jones* (2022) 79 Cal.App.5th 37, 45.) Because the sentences here do not trigger section 654, we need not address that amendment.

offense against John that made the multiple-victim circumstance apply to his offenses against Jane. As Llamas-Venegas concedes, courts that have addressed this argument have rejected it. (*Andrade, supra*, 238 Cal.App.4th at pp. 1308–1309; *Murphy, supra*, 65 Cal.App.4th at p. 41.) We do as well.

Under section 654, "[a]n act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).)[12] In *Murphy, supra*, 65 Cal.App.4th 35, the court rejected a claim that section 654 required a stay of one of two life sentences based on the multiple-victim circumstance. Murphy claimed the sentences "constitute double punishment for the 'same act' i.e., the act of committing a violent sex offense against two different victims. In other words, each sex offense is punished by life imprisonment because of the other." (*Murphy*, at p. 41.) But "in making multiple convictions for violent sex offenses punishable by multiple life sentences," the court noted, the Legislature "express[ed] the view that multiple violent sex offenses deserve more severe punishment than a single violent sex offense *because of the predatory nature of the perpetrator*." (*Ibid.*, italics added.)

People v. Garnica (1994) 29 Cal.App.4th 1558, 1562–1563 (*Garnica*) rejected the same "double punishment" theory in the context of the "multiple-murder special circumstance" by applying an analysis that is helpful here. In *Garnica*, the defendant "argued the trial court violated section 654 in

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[12] Typically, disputes over section 654 turn on whether multiple crimes are parts of an indivisible course of conduct incident to one objective, and so cannot all be punished, or are divisible acts that can all be punished. (*Neal v. State of California* (1960) 55 Cal.2d 11, 19, disapproved on other point in *People v. Correa* (2012) 54 Cal.4th 331, 334. 341.) There is no such dispute here: Llamas-Venegas undisputedly committed the offenses on separate occasions.

sentencing him to two concurrent [life sentences] because he was being punished twice for the same act, which he defined as the act of committing two murders. The Court of Appeal held the two sentences were not an impermissible double punishment. [It] reasoned: 'The multiple-murder special circumstance is a legislative choice to treat as deserving of the most severe punishment a murderer convicted of *more than one murder*. In any one proceeding in which such a finding is made, the fact that the murder is one of multiple murders applies equally to *all* the murders of which the defendant is convicted. *Each* of the murders is deemed more heinous because it is one of ***multiple*** killings. We cannot gainsay this legislative determination.' " (*Murphy*, *supra*, 65 Cal.App.4th at p. 41, quoting *Garnica*, at p. 1563.) We think a similar analysis applies here.

To avoid *Murphy* and *Garnica*, Llamas-Venegas argues that our Supreme Court's subsequent opinion in *People v. Ahmed* (2011) 53 Cal.4th 156 (*Ahmed*) has superseded their analyses. *Ahmed* holds that section 654 bars execution of multiple-sentence enhancements that rest on "the same *aspect* of a criminal act." (*Ahmed*, at p. 164, italics added.) But section 667.61 is an alternative sentencing scheme, not an enhancement. (*People v. Acosta* (2002) 29 Cal.4th 105, 118 [" 'the One Strike law is not . . . a sentence enhancement' "; it sets forth " 'an *alternate* penalty for the underlying felony itself "].)

Conceding as much, Llamas-Venegas contends that section 667.61 is nonetheless "analogous to an enhancement for purposes of section 654," citing *People v. Alvarado* (2001) 87 Cal.App.4th 178, 197 (*Alvarado*) and *People v. Palmore* (2000) 79 Cal.App.4th 1290, 1297–1298 (*Palmore*). Those courts drew that analogy while *denying* section 654 challenges to One Strike sentences, at a time before *Ahmed* when many Courts of Appeal thought

section 654 did not apply to enhancements—or at least not to *conduct-based* enhancements. (See *Alvarado*, at pp. 196–197 [§ 654 permitted execution of sentence for robbery during burglary and of One Strike sentence for rape based on circumstance that it was committed during burglary]; *Palmore*, at pp. 1297–1298 [same].) Llamas-Venegas urges us to accept the analogy drawn by *Alvarado* and *Palmore* between One Strike sentences and enhancements, but to use that analogy to reach the opposite *result* from those decisions, now that the Supreme Court has clarified that section 654 *can* apply to bar the execution of multiple enhancements based on the same aspect of a criminal act. (*Ahmed*, *supra*, 53 Cal.4th at p. 164.)

The enhancement analogy does not aid Llamas-Venegas. Unlike the circumstance that triggered the One Strike law in *Palmore* and *Alvarado*—i.e., that the defendant committed a sex offense *during a burglary* (§ 667.61, subd. (e)(2))—the circumstance triggering the law here did not turn on any act Llamas-Venegas committed during the offenses against Jane, in a way analogous to the conduct-based enhancement at issue in *Ahmed, supra,* 53 Cal.4th at page 164.

As the *Alvarado* court noted in 2001, the Supreme Court had at that time "held that section 654 does not apply to *status* enhancements—e.g., enhancements for prior felony convictions—but [had] not [yet decided if it] applies to conduct enhancements." (*Alvarado*, *supra*, 87 Cal.App.4th at p. 197, citing *People v. Coronado* (1995) 12 Cal.4th 145, 157 (*Coronado*).) *Coronado* distinguished "two types of sentence enhancements: (1) those which go to the nature of the offender; and (2) those which go to the nature of the offense." (*Coronado*, at p. 156.) "Prior prison term enhancements . . . fall into the first category and are attributable to the *defendant's status* as a repeat offender. [Citations.] The second category of enhancements, . . .

exemplified by those [for firearm use or infliction of great bodily injury], arise from the *circumstances of the crime* and typically focus on what the defendant did when the current offense was committed." (*Id.* at pp. 156–157, fn. omitted.)

In *Ahmed, supra*, 53 Cal.4th at page 161, the court reaffirmed that section 654 does not apply to status-based enhancements and then resolved the question left open in *Coronado*—whether section 654 applies to *conduct*-based enhancements, which "focus on *aspects* of the criminal act that are not always present and that warrant additional punishment" (*Ahmed*, at pp. 163–164). When "applied to multiple enhancements for a single crime," the court held, "section 654 bars multiple punishment for the same *aspect* of a criminal act." (*Id.* at p. 164.)

Llamas-Venegas's analogy between a One Strike circumstance and an enhancement thus fails to aid him, for the circumstance that here triggered the One Strike law—i.e., his convictions of sex offenses against more than one victim (§ 667.61, subd. (e)(4))—is more analogous to a *status* enhancement, not a *conduct* enhancement. Being convicted of a sexual offense against John was not an act Llamas-Venegas "did when the current offense [against Jane] was committed," like using a firearm, inflicting great bodily injury, or burgling a building. (*Coronado, supra*, 12 Cal.4th at p. 157.) The circumstance rested on "the predatory *nature* of the perpetrator." (*Murphy, supra*, 65 Cal.App.4th at p. 41, italics added; see *Coronado*, at p. 156 [distinguishing enhancements going "to the nature of the offender" from those going "to the nature of the offense"].) Indeed, in his own argument that section 667.61 did not permit *imposition* of the multiple life sentences, Llamas-Venegas asks us "to differentiate between the multiple victim circumstance and all of the other aggravating circumstances listed in

section 667.61," noting that "[a]lmost every other aggravating circumstance pertains to the defendant's aggravated conduct in committing each separate offense." We agree with that distinction, which forecloses his section 654 argument.

D. The Aggregate Sentence Is Not Cruel and/or Unusual

Llamas-Venegas contends that his sentence of 455 years to life is unconstitutionally cruel and/or unusual. (U.S. Const., 8th amend.; Cal. Const., art. I, § 17.[13]) But as he concedes, courts have rejected similar challenges to One Strike sentences. (See *Andrade*, *supra*, 238 Cal.App.4th at pp. 1309–1310 [195 years to life for offenses against five victims]; *People v. Retanan* (2007) 154 Cal.App.4th 1219, 1231 (*Retanan*) [135 years to life for 16 offenses against four minors]; see also *People v. Reyes* (2016) 246 Cal.App.4th 62, 80–90 [life without possibility of parole for sex offenses against minor]; see generally *People v. Martinez* (1999) 76 Cal.App.4th 489, 494 ["Only in the rarest of cases could a court declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive."].) In this context as well, we agree with the line of authority foreclosing Llamas-Venegas's claim.[14]

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[13] While the federal and California provisions differ in barring punishments that are "cruel *and* unusual" (U.S. Const., 8th amend., italics added) and "[c]ruel *or* unusual" (Cal. Const., art. I, § 17, italics added; *People v. Carmony* (2005) 127 Cal.App.4th 1066, 1085), in practice, analyses under the two provisions "considerabl[y] overlap," sharing a touchstone of " 'gross disproportionality' " (*People v. Baker* (2018) 20 Cal.App.5th 711, 733).

[14] The People contend that Llamas-Venegas forfeited this issue by not objecting below on this basis. We choose to address the issue on the merits "to show counsel was not constitutionally ineffective by failing to make a futile or meritless objection." (See *People v. Reyes, supra*, 246 Cal.App.4th at p. 86.)

Analysis of such a claim has three steps: considering "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society" (*In re Lynch* (1972) 8 Cal.3d 410, 425, superseded in other part by statute as stated in *In re Palmer* (2021) 10 Cal.5th 959, 975); comparing the punishment to those "prescribed in the *same jurisdiction* for *different offenses* which . . . must be deemed more serious" (*id.* at p. 426); and comparing it to those "prescribed for the *same offense* in *other jurisdictions*" (*id.* at p. 427). (Accord, *Graham v. Florida* (2010) 560 U.S. 48, 60 [similar federal approach].)

On the first factor, there is a "strong public policy to protect children of tender years." (*People v. Olsen* (1984) 36 Cal.3d 638, 646; accord, *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 244 ["sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people"].) Llamas-Venegas engaged in escalating heinously callous sexual abuse of his stepdaughter Jane, a child under his control, when she was ages nine through 13; ensured her submission by threats to harm her and her family; and then, when arrested, turned his predatory attention to a vulnerable cellmate for exploitation.

Llamas-Venegas does not compare his sentence to those for similar offenses in other jurisdictions, which we take as a concession that he cannot bear his burden of establishing disproportionality and that the sentence withstands such scrutiny. (*Retanan*, *supra*, 154 Cal.App.4th at p. 1231.) As to other crimes in California, he notes only that his sentence "greatly exceeds the 25-to-life sentence he would have received for first-degree murder," the most "serious" crime. But he did not receive his sentence for one crime; he received it for 19 crimes against two victims.

Finally, Llamas-Venegas contends that a sentence that cannot be served in a human lifetime is "per se 'cruel or unusual' punishment," furthers no valid purpose, and undermines public confidence that the penal system rests on rational principles. (See *People v. Deloza* (1998) 18 Cal.4th 585, 600 (conc. opn. of Mosk, J.); Mosk, *State's Rights—and Wrongs* (1997) 72 N.Y.U. L.Rev. 552, 558.) No California court has adopted these views as a basis for exercising the power to declare a legislatively mandated sentence unconstitutional— "a solemn power to be exercised sparingly only when, as a matter of law, the Constitution forbids what the sentencing law compels." (*People v. Mora* (1995) 39 Cal.App.4th 607, 616.) We decline to do so here.

III. DISPOSITION

The judgment is affirmed.

SMILEY, J.

WE CONCUR:

HUMES, P. J.

LANGHORNE WILSON, J.