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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. GUILLERMO ERNESTO BARRIENTOS, Defendant and Appellant.	B234807 (Los Angeles County Super. Ct. No. VA117091)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lori Ann Fournier, Judge. Affirmed.

David H. Goodwin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant was convicted of numerous sex crimes against his two stepdaughters, B and K. In this appeal, appellant challenges the consecutive and indeterminate life sentences imposed on three of these offenses (counts 1, 3, and 5), contending there was insufficient evidence they were each committed on separate occasions, as required by Penal Code section 667.61.[1] We affirm.

SUMMARY OF FACTS

In a second amended information, appellant was charged with multiple counts of sex crimes against B and K, including one count of forcible sexual penetration (count 1 – § 289, subd. (a)(1)) and two counts of forcible oral copulation (counts 3 and 5 – § 288a, subd. (c)(2)).[2]

B was 16 years old at the time of trial, while K was 13, and their younger brother was 8. B had known appellant since she was 6 years old. He lived with B, her mother and siblings. B's mother worked during the morning and afternoons, during which times appellant would watch her and her siblings.

Appellant first acted inappropriately toward B by taking a shower with her when she was about six or seven years old. But appellant did not begin to inappropriately touch B until later. B described an incident that occurred in the family's first house in

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[1] Code references are to the Penal Code.

[2] The second amended information charged appellant with 35 counts of sexual crimes, numbered 23 through 58. Prior to trial, the trial court granted the prosecution's motion to dismiss 11 of these counts, and renumbered the remaining counts, starting with number 1. The count of forcible sexual penetration and the two counts of forcible oral copulation, originally numbered as counts 23, 25, and 27, respectively, became counts 1, 3, and 5. We will refer to these charges as counts 1, 3, and 5. As only these counts are relevant to this appeal, we restrict the recitation of the facts to these offenses as they relate to appellant's claims.

Artesia "about a year later" when she "was going to turn eight." Appellant told her to go to his bedroom and made her watch pornography with him, telling her she had to act it out. He made B lie down and started touching her breasts over and then under her clothes. He told her she was going to "develop" and her breasts would get bigger. B felt disgusted and uncomfortable, and even cried. But appellant ignored her and continued by touching her vagina.

After touching B's vagina over her clothes, appellant reached under her clothes and touched her vagina while telling her this is where people have sex. B tried to get up off the bed to get away, but appellant held her by her hands and pulled her back down. B indicated that appellant did nothing else during this incident, and there was no digital penetration of her vagina. After this incident, appellant began touching her breasts and vagina at least once per week.

B said appellant first put his fingers "into" her vagina when she was "turning eight." Appellant told her to go to his room, where the television was playing the show Sponge Bob. Appellant told her to lie down on the bed. She felt uncomfortable and was scared, so at first she would not do what he said. But appellant used a serious tone, so she stayed. Appellant touched her breasts over and then under her shirt. He took her shirt off and rubbed her vagina under her pants.

B explained that appellant then stuck his fingers "into my vagina and started rubbing his fingers around." He told her in a serious tone to not tell anyone, otherwise he would be sent to prison and she, and her pregnant mother and siblings, would all get deported. This scared B. Appellant made her promise to not tell anyone and then let her leave the room. After this incident, appellant continued to periodically put his fingers inside B's vagina, about once a week.

Appellant also made B "suck on his penis." She described the first time this happened was on appellant's bed when she was "going to turn eight." B testified, "He told me to begin touching it around his penis. And like he put my hand going up and down . . . . And then he said people have sex with that, and it goes into the vagina, and

he told me to pretend it's a lollipop and suck on it." She did not want to do it, but appellant forced her by pushing her head to his penis with his hand. B was crying because she wanted appellant to stop. Appellant made her do this about once a week.

In addition, B testified appellant would "suck on her vagina." She said this first happened "when I was eight" years old. Appellant told B to "enjoy it." B said that even though she would push appellant away, "he'd come back and bite me . . . [on] my vagina" hard enough "to sting and I would cry." When she tried to move away from appellant, he would moved her back to him. Appellant put his mouth on B's vagina about once per week.

Although appellant committed each type of sex offense against B on numerous occasions, the prosecutor asked the jury to convict appellant on count 1 for the first time he inserted his fingers in B's vagina, on count 3 for the first time he put his mouth on her vagina, and on count 5 for the first time he forced B to put his penis in her mouth.

The jury found appellant guilty of numerous sex crimes, including one count of forcible sexual penetration and two counts of forcible oral copulation committed against B. The jury found true the multiple victim allegations under section 667.61 as to counts 1, 3, and 5 committed against B. At sentencing, the trial court imposed full and consecutive indeterminate terms of 15 years to life on these three offenses. The court found "[t]he crimes and their objectives were predominately independent of each other, involved separate acts of violence or threats of violence, committed at different times, and were not a single act . . . ."

The court sentenced appellant to a total of 165 years to life, consisting of 11 consecutive terms of 15 years to life on counts 1, 3, 5, 7, 9, 11, 13, 17, 18, 20, and 23. The court stayed the sentence on the remaining counts under section 654. This appeal followed.

DISCUSSION

As we will discuss, appellant's contention that there was insufficient evidence that counts 1, 3, and 5 were each committed on separate occasions is without merit.

1. Sentencing Under the One Strike Law

Section 667.61, otherwise known as the One Strike law, sets forth an alternative and harsher sentencing scheme for certain enumerated sex crimes perpetrated by force. (*People v. Mancebo* (2002) 27 Cal.4th 735, 741-742.) A person convicted of a specified offense under specified circumstances "shall be punished by imprisonment in the state prison for 15 years to life." (§ 667.61, subd. (b).) Convictions for sexual penetration against a person's will under section 289, subdivision (a)(1) and forcible oral copulation under section 288a, subdivision (c)(2) qualify for such a sentence. (§ 667.61, subds. (b), (c)(5) & (c)(7).)

In addition, the One Strike law requires imposition of "a consecutive sentence for each offense . . . if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6." (§ 667.61, subd. (i).)[3] A finding that the defendant committed the sex crimes on separate occasions does not require a break of any specific duration or any change in physical location. (*People v. Jones* (2001) 25 Cal.4th 98, 104 [construing former § 667.6]; see also *People v. Irvin* (1996) 43 Cal.App.4th 1063, 1071 [holding "a forcible violent sexual assault made up of

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[3] Section 667.6, subdivision (d), provides, in relevant part: "In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions."

varied types of sex acts committed over time against a victim, is not necessarily one sexual encounter"].)

Once a trial judge resolves the issue of whether a defendant committed sex crimes on separate occasions, an appellate court may not overturn the result unless no reasonable trier of fact could have so found. (See *People v. Garza* (2003) 107 Cal.App.4th 1081, 1092; *People v. Plaza* (1995) 41 Cal.App.4th 377, 384.)

2. The Record Supports the Imposed Sentence

Appellant argues the prosecution did not present any evidence showing the first time he inserted his fingers in B's vagina was on a different date than the first time be put his mouth on her vagina, or that these two incidents occurred on different dates than when he first forced her to orally copulate his penis. He therefore contends a separate life term for each offense was not justified. Not true.

B specifically testified that the first digital penetration occurred when she was "almost eight years old." In other words, she was still seven years old. She described that after he finished rubbing her vagina during this incident, appellant made B promise to not tell anyone what happened or else she and her pregnant mother would get deported. Appellant then let her go and exit the bedroom.

The reasonable inference from this testimony is that no other sexual offenses occurred on this occasion. Thus, a trier of fact could reasonably decide this was a separate occasion from the first time appellant forced B to put her mouth on his penis, which similarly happened at some point before B turned eight years old (i.e., when she was "going to turn eight").

In contrast, B testified that the first time appellant put his mouth on her vagina was at a later date, when she was eight years old. This obviously was on a separate occasion than the other two offenses, which occurred when B was seven.

While the evidence of counts 1, 3, and 5 understandably did not include specific dates of appellant's criminal acts, B's testimony was sufficiently specific to support the trial court's finding that three assaults occurred on separate occasions under section

667.61, subdivision (i). The court was thus justified in imposing full and separate consecutive 15 years to life sentences for each offense.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.