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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL B. BURCH, Defendant and Appellant.	B230493 (Los Angeles County Super. Ct. No. VA110835)

APPEAL from a judgment of the Superior Court of Los Angeles County. Philip H. Hickok, Judge. Affirmed as modified.

Richard D. Miggins, 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, Lawrence M. Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Michael B. Burch of three counts of lewd acts on a child in violation of Penal Code section 288, subdivision (a)[1] (counts 1, 2, & 7); three counts of oral copulation of a person under 14 in violation of section 288a, subd. (c)(1) (counts 3, 4, & 8); and three counts of forcible rape in violation of section 261, subdivision (a)(2) (counts 5, 6, & 9).

Defendant admitted eight prior serious felony convictions of section 288, subdivision (a), within the meaning of sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i).

The trial court sentenced defendant to a total term of 675 years to life. The sentence consisted of 25 years to life as to all nine counts pursuant to section 667.61, with each sentence tripled to run consecutively pursuant to the Three Strikes law. The trial court granted defendant 600 days of presentence custody credits and 90 days of conduct credits.

Defendant appeals on the grounds that: (1) the evidence was insufficient to support the verdicts of forcible rape, since the victim's testimony failed to establish an essential element of the offense; (2) the trial court abused its discretion under Evidence Code section 1108 by admitting defendant's prior convictions and by allowing the prosecutor to read to the jury defendant's admissions; and (3) defendant is entitled to two more days of presentence custody credits.

FACTS

Prosecution Evidence

T. was 18 years old at the time of trial. Defendant is her biological father. Until she was 16, T. lived with her father, her mother Je., two older sisters, and a brother in Whittier. T. was contacted by detectives when she was sent to a mental hospital after trying to kill or hurt herself. T. reported that her father had touched her inappropriately.

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[1] All further references to statutes are to the Penal Code unless stated otherwise.

At the time of trial, T. was in foster care and her mother and sisters did not talk to her anymore.

T. remembered that when she was 11, 12, and 13, defendant touched her vagina. He would rub it and stick his finger inside. Defendant also had T. rub his penis when she was 11, 12, and 13. Defendant would finish and make himself ejaculate. T. did not know how many times this happened but he touched her vagina at least twice when she was 11, 12, and 13. There was no routine to the occurrences. They occurred at random times in the house and mainly in T.'s parents' room.

Defendant also put his penis inside T.'s vagina when she was 11, 12, and 13. This happened more than twice a year, and defendant ejaculated. Defendant put his mouth on T.'s vagina when she was 11, 12, and 13. That happened at least twice each year. These two acts usually occurred on the same occasions. At least twice each year, defendant put T.'s mouth on his penis when she was 11, 12, and 13.

When asked whether she ever tried to fight off defendant, T. said she was weak and did not know really what was going on. She did not call 911 because she was too scared that her family would separate and stop talking to her. T. was "just scared overall."

Defendant never hit T. or threatened to do so. He told her not to tell anyone the first time. She was scared of physical violence and of "everything." She only told a couple of her friends that she was afraid of physical violence. She was afraid it would "get to that point."

T. had thoughts of suicide and would cut herself. Her mother saw the cuts but did not ask why T. did it. No one else saw it because T. wore long sleeves and pants. T. did not tell anyone about the incidents until someone saw a note at school that said T. wanted to kill herself. T. was taken to the school psychologist, who had her go to the mental hospital.

T.'s mother was kind of strict in not allowing T. to go many places. Both parents were pretty lenient in what they allowed T. to wear. T. wore make-up in high school, which her mother did not object to, but defendant did.

When asked how she remembered the things that happened when she was 11, T. replied that she wrote in a diary every day. She no longer had the diary because she threw it away two weeks before trial. In high school, T. had a cell phone that was supposed to be used for emergencies only. T. also used it to talk to friends, however. She did not recall her parents telling her that her phone bills were costing hundreds of dollars a month.

Detective Doreen Evans read defendant his rights prior to his interview. Defendant initially denied T.'s allegations. After some time, Deputy Jeffrey Sweet took over the interview, which Detective Evans observed. In answer to Deputy Sweet's question as to whether defendant had ever placed his mouth on T.'s vagina, defendant said there was an incident where he fell on top of T., who was wearing a bathing suit, and his mouth was almost on her vagina. Defendant denied having T. stroke his penis at first but then recalled a game they played with other people where they were grabbing each other, and T.'s hand was on defendant's penis.

When Detective Evans took over the interview again, defendant eventually admitted to touching T.'s vagina with his mouth and tongue for no more than five minutes. Defendant said that he touched T.'s vagina and rubbed the outside. Defendant masturbated when he did this. He denied ever inserting his finger. Defendant admitted he had T. touch his penis. Sometimes he would ejaculate. This happened less than 100 times.

T. told Detective Evans that defendant molested her from age 11 to 13. Later she said the molestation started when she was 11 and ended when she was 12, lasting about 18 months. During T.'s interviews with Detective Evans, T. gave different answers at different times. According to Evans this was very typical, and the victims sometimes become confused.

The prosecutor and defense counsel stipulated that defendant had previously pleaded guilty to monthly oral copulation with his daughter S., age 11, between October 1982 and May 1983 and to monthly sexual intercourse with his daughter J. , age 14, during the same period.

Defense Evidence

Je., defendant's wife, had five children with defendant. They married in 1985. Je. was aware of defendant's prior convictions, and they were a couple at that time.

Je. did not consider herself and defendant to be strict parents, although they had certain rules that other families did not have. The children were not to get piercings or tattoos, not to date until age 16, and they had to keep their bedrooms clean. They had to do their homework and get good grades.

T.'s attitude changed during her sophomore year in high school. She made new friends and had boyfriends. She was more active in theatre. During the summer T. wore shorts and tank tops often. Je. and T. often argued about T. wearing things that were too revealing for school. All the kids received cell phones for Christmas one year, and they were for emergencies only. T. did not follow the rules and ran up the bills. One time it was over $600. T. had her phone taken away twice. T. was very upset and told her mother she would get back at her mother and father "any way she [could]."

At one point, T.'s boyfriend, Michael M., moved into the home for a little over a week. Je. asked him to leave. T. and Michael M. had loud arguments over the phone. Je. never saw any scars on T.'s arms from cuttings, and T. wore lots of short-sleeved shirts.

Je. testified that there were people in the family home all of the time. Je. could not recall a time when T. would have been alone with her or with defendant. T. never told her mother that something was going on with her father or that she did not feel comfortable with him. Je. and T. did things together and the family always did activities together. After T. moved out, she had her ears pierced and then her tongue. T. said she was going to have her nose pierced.

Tr. is defendant's oldest daughter with Je. She shared a bedroom with her two sisters. Tr. got along well with T. but they had the usual arguments as sisters. According to Tr., her parents were very strict and wanted the girls to be conservative. T. did not wear long sleeves in high school but liked tank tops and short shorts to show off her body. T. became very angry when her cell phone was taken away because of the bills. T. yelled at her parents and said she would do whatever she wanted and they could not stop her.

T. did not like the fact that her parents did not want the girls to get tattoos or piercings until they were 18 and out of the house. When T. was told this, she stormed out of the room slamming doors. On another occasion, T. became very upset with her parents and her siblings and said, "You guys can't do this. You're not allowed to do it. I'm going to do anything I can to make sure I make what I want happen, no matter what it takes. No matter who it hurts." Tr. was not aware of T. cutting herself and never saw scars or long sleeves on T.. T. was very active in sports and everything that allowed her to show her skin.

T. had a lot of friends in high school. She dated Michael M., who lived with the family for about a week. Tr. thought they were serious. T. wanted to end the relationship because Michael M. was physically and emotionally abusive. T. was upset about it.

Tr. was never uncomfortable around her father. T. never indicated that she was uncomfortable either. Tr. did not believe there was ever a time when T. was alone with defendant in the house. There was always someone else around.

DISCUSSION

I. Sufficiency of the Evidence of Forcible Rape

A. Defendant's Arguments

Defendant contends that T.'s testimony failed to establish that the act of penetration was accomplished by force, violence, duress, menace, or fear of bodily injury. In the absence of proof of that element, the convictions in counts 5, 6, and 9 must be reversed.

B. Relevant Authority

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) "The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) Thus, "our opinion that the evidence could reasonably be reconciled with a finding of innocence or a lesser degree of crime does not warrant a reversal of the judgment." (*People v. Hill* (1998) 17 Cal.4th 800, 849.) Reversal is only warranted where it clearly appears "'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin*, at p. 331.)

C. Evidence Sufficient

As the jury was instructed, among the elements the prosecution had to show in order to prove that defendant committed a violation of section 261, subdivision (a)(2), was that the act of sexual intercourse was committed "by means of force, violence, *duress*, menace, or fear of immediate and unlawful bodily injury to that person or to another person. . . ." (CALJIC No. 10.00; § 261, subds. (a)(2).) "'Duress'" was defined for the jury as "a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which she would not otherwise have performed, or acquiesce in an act to which she otherwise would not have submitted. The total circumstances, including but not limited to the age of the alleged victim, his or her relationship to the perpetrator defendant, threats to harm the victim, physically controlling the victim when the victim attempts to resist, and warnings to the victim that revealing the perpetrator's conduct would result in jeopardizing the safety of the victim or the victim's family, are factors to consider in appraising the existence of the duress." (CALJIC No. 10.00; § 261, subd. (b); see *People*

v. Cochran (2002) 103 Cal.App.4th 8, 13-14; accord, *People v. Leal* (2004) 33 Cal.4th 999, 1004-1006, 1009-1010.)

"Duress can arise from various circumstances, including the relationship between the defendant and the victim and their relative ages and sizes. [Citations.] 'Where the defendant is a family member and the victim is young, . . . the position of dominance and authority of the defendant and his continuous exploitation of the victim' is relevant to the existence of duress. [Citation.]" (*People v. Schulz* (1992) 2 Cal.App.4th 999, 1005; see also *People v. Hale* (2012) 204 Cal.App.4th 961, 979.)

In the instant case, when the prosecutor asked T. if she ever tried to fight off defendant, T. replied, "At that time I was—only was weak. I didn't know really what was going on or anything." She said she was scared. When asked why she did not call 911 when she was 11 years old, T. replied, "Because I was too scared my family was going to separate and not talk to me anymore. I was just scared overall." When defense counsel asked her why she did not tell anyone, T. answered, "Because I was scared." She acknowledged that defendant never hit her or threatened to hit her. She remembered him telling her not to tell anyone the first time he molested her. Defense counsel asked, "So when these things happened, you weren't—you weren't scared of any physical violence. You just didn't want it to happen you say?" T. replied, "I was actually scared of physical violence. I was scared of everything." She repeated that defendant did not threaten her with physical violence, she "was just scared that it would get to that point."

"The fact that the victim testifies the defendant did not use force or threats does not require a finding of no duress; the victim's testimony must be considered in light of her age and her relationship to the defendant. Thus, in *People v. Pitmon* [1985] 170 Cal.App.3d 38, 47-48, 51, the court found sufficient evidence of duress despite the victim's testimony the defendant did not use force or violence and never threatened to hurt her. The court stated that 'at the time of the offenses, [the victim] was eight years old, an age at which adults are commonly viewed as authority figures. The disparity in physical size between an eight-year-old and an adult also contributes to a youngster's

sense of [her] relative physical vulnerability.' (*Id*. at p. 51; see also *People v. Sanchez* (1989) 208 Cal.App.3d 721, 747-748 [duress found where defendant molested eight-year-old granddaughter repeatedly over a three-year period and victim viewed defendant as a father figure]; *People v. Superior Court (Kneip)* (1990) 219 Cal.App.3d 235, 239 ['Where the defendant is a family member and the victim is young, . . . the position of dominance and authority of the defendant and his continuous exploitation of the victim' is relevant to determining duress].)" (*People v. Cochran* (2002) 103 Cal.App.4th 8, 14, disapproved on another point in *People v. Soto* (2011) 51 Cal.4th 229, 248.)

Thus, when the defendant is a family member, he can hold a special position of dominance and authority over a child, making the child especially susceptible. (*People v. Schulz*, *supra*, 2 Cal.App.4th at p. 1005.) T. testified that she had lived with her father her whole life. T.'s testimony also made it clear that she was under duress because she felt there was an implied threat of violence in the situation, which she did not really understand due to her young age. Defendant told her not to tell anyone before he molested her for the first time. She told defense counsel she "was actually scared of physical violence." T. also believed there was a threat of retribution in that her family would break up and no one would talk to her anymore. Such fear of being cast aside by her entire family was another implied threat. T.'s testimony about her fear of isolation was a reflection of the "inherent imbalance of power in an encounter between a child and an adult bent on sexual conduct." (*People v. Soto*, *supra*, 51 Cal.4th at pp. 245-246.) When T. stated she was scared of everything, the jury was entitled to believe she did not mean everything in the world, but that she meant everything related to the situation she found herself in. T. said she was weak, indicating that as a child she knew defendant's physical strength was greater than her own. The implied threat of violence and retribution that caused her fear were sufficient for any reasonable juror to find that the sexual acts were committed by means of duress, and the evidence was sufficient to support appellant's convictions for rape.

II. Evidence Admitted Under Evidence Code Section 1108

A. Defendant's Argument

Defendant contends that the trial court erroneously admitted evidence of his prior convictions for sexual offenses when these crimes occurred 27 years before trial. They were so remote in time that they lacked any probative value and they were likely to confuse, mislead, and inflame the jury.

In addition, defendant argues, the trial court abused its discretion in allowing the prosecutor to read the factual admissions attributed to defendant for the prior convictions, as opposed to merely advising the jury of the fact of the convictions. The prejudicial effect of this evidence far outweighed any probative value under Evidence Code section 352. According to defendant, the error deprived him of due process and a fair trial.

B. Proceedings Below

Prior to trial, the prosecutor filed a written motion to introduce evidence of defendant's 1983 convictions and his factual basis plea entered in Orange County. At the hearing on the motion, defense counsel did not oppose the introduction of the prior convictions, stating that the case law was clear, but "It's just how it's used. And that the court is going to decide." The prosecutor stated that he planned on using the convictions in his case-in-chief for propensity evidence under Evidence Code section 1108. He pointed out that in Orange County "they have them write out a factual basis plea in their handwriting and sign it, which is also something I would like to inform of [sic] jury." Defense counsel objected to the documents from Orange County coming into evidence as a People's exhibit, citing Evidence Code section 352. Counsel stated that they were willing to stipulate to the prior, but the rest of the information was not necessary for the jury and was very prejudicial.

The trial court stated it was inclined to allow the evidence to come in, but it would limit the prosecutor to reading the factual basis portion of the plea, and the prosecutor could not reveal the number of counts. The prosecutor would be permitted to read that defendant admitted to engaging on a monthly basis in oral copulation and sexual

intercourse with his daughters. Defense counsel reiterated that stipulating to the prior and what the offense consisted of was more than sufficient.

The trial court disagreed, stating that the legislative history of Evidence Code section 1108 showed that the rationale for the statute was to reveal previous dispositions, and this was important for a jury to hear. Defense counsel argued that there was no case law allowing for the kind of specific writing (the factual basis) that the prosecutor wished to introduce, and it was prejudicial. The trial court asked defense counsel if he would rather have the prosecutor read all of the separate counts, and defense counsel said he would not. The trial court stated that this was the only alternative. The trial court allowed the prosecutor to read the factual basis for the plea, but the plea documents were not permitted in the jury room.

At the close of evidence, the prosecutor read the factual basis for defendant's former plea as a stipulation in pertinent part as follows: "On a monthly basis between October 1982 and May 1983, in Orange County, California, I engaged in oral copulation with my daughter [S.], age 11. On a monthly basis between October 1982 and May 1983, in Orange County, California, I had sexual intercourse with my daughter [J.], age 14." Defense counsel stipulated that these were the words in the document.

C. Relevant Authority

Evidence Code section 1108 provides in pertinent part, that "[i]n a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352." (Evid. Code, § 1108, subd. (a).)

In *People v. Falsetta* (1999) 21 Cal.4th 903 (*Falsetta*), the court explained that in weighing the probative value of "'propensity' evidence" under Evidence Code section 1108 against its prejudicial effect, the court "must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its

similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense." (*Falsetta*, at p. 916.)

The import of Evidence Code section 1108 is that a jury may now consider evidence of prior sex crimes "'*for any relevant purpose*' [citation], subject only to the prejudicial effect versus probative value weighing process required by [Evidence Code] section 352." (*People v. Britt* (2002) 104 Cal.App.4th 500, 505-506; *Falsetta*, *supra*, 21 Cal.4th at pp. 912, 917-919; *People v. Reliford* (2003) 29 Cal.4th 1007, 1013.) A determination under Evidence Code section 352 is entrusted to the sound discretion of the trial court and will not be overturned except upon a finding of manifest abuse, i.e., a conclusion that the decision was "palpably arbitrary, capricious and patently absurd." (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.) Evidence is substantially more prejudicial than probative if it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome (*People v. Waidla* (2000) 22 Cal.4th 690, 724), and uniquely tends to evoke an emotional bias against the defendant without regard to relevance (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 650).

D. No Error or Abuse of Discretion

"Evidence of a prior sexual offense is indisputably relevant in a prosecution for another sexual offense." (*People v. Fitch* (1997) 55 Cal.App.4th 172, 179.) This was especially true in the instant case, where defendant's defense to the charged crimes was that "it didn't happen" and "It's not true. It just isn't." Moreover, the evidence of the crimes against defendant's two other daughters was not more prejudicial than probative. When enacting Evidence Code section 1108, the Legislature declared, "'the willingness to commit a sexual offense is not common to most individuals; thus, evidence of any prior sexual offenses is particularly probative and necessary for determining the credibility of the witness.' [Citation.]" (*People v. Soto* (1998) 64 Cal.App.4th 966, 983;

People v. Callahan, *supra*, 74 Cal.App.4th at p. 367.) As the California Supreme Court reiterated in *People v. Reliford*, *supra*, 29 Cal.4th at page 1012, "[p]rior to the enactment of Evidence Code section 1108, evidence showing the defendant's [propensity to commit sex crimes] was excluded '"'not because it has no appreciable probative value, but because it has too much.'"' [Citation.]" (Italics omitted; *Falsetta*, *supra*, 21 Cal.4th at p. 915; *People v. Fitch*, *supra*, 55 Cal.App.4th at p. 179.)

Although defendant's prior offenses were remote in time, this is just one of several factors that *Falsetta* suggested the trial court should consider. The incidents with defendant's first family were no more inflammatory than the charged crimes. Arguably, they were less so, since the daughter with whom he committed sexual intercourse was older than T., and the age of the victim is one factor to consider. (See *People v. Soto*, *supra*, at pp. 990, 991-992; *People v. Ewoldt* (1994) 7 Cal.4th 380, 405; *People v. Branch* (2001) 91 Cal.App.4th 274, 283-284; *People v. Callahan* (1999) 74 Cal.App.4th 356, 371.) In addition, the crimes were very similar and therefore had great probative value. (*People v. Yovanov* (1999) 69 Cal.App.4th 392, 406.) The jury was informed that defendant had pleaded guilty to the offenses, thus decreasing the likelihood that it would convict to punish defendant for his prior offenses. (*People v. Callahan*, at p. 371; *People v. Yovanov*, at p. 406.) There was little likelihood the jury would become confused or distracted by the straightforward stipulation read by the prosecutor. And clearly the evidence of the prior incident did not consume a great deal of time. (Cf. *People v. Branch*, at pp. 285-286; *People v. Callahan*, at p. 371.) On balance, we cannot say the trial court abused its discretion.

Nor did the trial court abuse its discretion with respect to the reading of the factual basis of defendant's 1983 guilty plea. Indeed, the trial court sought to limit the prejudicial effect of the prior-conviction evidence by not allowing the prosecutor to reveal that defendant had admitted to eight counts of a lewd act upon a child and eight counts of sexual intercourse (incest). Also, the jury was merely read the stipulation rather than being given the full details of the plea to contemplate in the jury room. Ordinarily,

the victim of the prior offense testifies and describes in great detail the crimes committed against him or her. (See, e.g., *People v. Lewis* (2009) 46 Cal.4th 1255, 1276-1277; *People v. Wilson* (2008) 44 Cal.4th 758, 795; *People v. Yovanov*, *supra*, 69 Cal.App.4th at pp. 397-399.) In this case, defendant's jury did not hear all of the facts of his crimes against his other young daughters from their own testimony, which would have been a great deal more prejudicial. The trial court offered defendant a less damaging alternative, thus allowing him to avoid having the jury hear inflammatory information about his prior offenses. (See *Falsetta*, *supra*, 21 Cal.4th at p. 917.) On the other hand, the jury was entitled to know the similarities between the ages and relationship to defendant in the prior crimes and the current ones, since Evidence Code section 1108 is used to establish propensity. "In enacting Evidence Code section 1108, the Legislature decided evidence of uncharged sexual offenses is so uniquely probative in sex crimes prosecutions it is presumed admissible without regard to the limitations of Evidence Code section 1101." (*People v. Yovanov*, at p. 405.)

Moreover, the jury was instructed with CALJIC No. 2.50.01 that, if it found defendant had committed a prior sexual offense, it might, but was not required to, infer that he had a disposition to commit sexual offenses. The jury was also told that this was not sufficient by itself to prove beyond a reasonable doubt that he committed the charged crimes. Any inference was simply one item for the jury to consider along with all the other evidence. *Falsetta* discussed this instruction and noted that it would help assure that a defendant will not be convicted of an offense merely because the evidence of a prior offense indicates he is a "'bad person' with a criminal disposition." (*Falsetta*, *supra*, 21 Cal.4th at p. 920.)

Finally, the admission of this testimony under ordinary rules of evidence did not implicate the federal Constitution. (*People v. Marks* (2003) 31 Cal.4th 197, 226-227.) And, since there were permissible inferences to be drawn from evidence of defendant's prior crimes, no due process violation can be found. (See *People v. Steele* (2002) 27 Cal.4th 1230, 1246.)

III. Credits

Defendant contends the trial court erred in its award of conduct credits. It inadvertently awarded credits beginning on the day of defendant's arraignment rather than the day of his arrest.

The probation report confirms that defendant was arrested on June 3, 2009, as his trial counsel stated. His sentencing occurred on January 25, 2011. Defendant is entitled to presentence custody credit from the date of his arrest up to and including the date of sentencing. (*In re Allen* (1980) 105 Cal.App.3d 310, 313.) Defendant spent 602 days in custody, and he is entitled to the same number of days as credit days.

Defendant is also entitled to 15 percent of the actual days as conduct credit, which results in 90 days of conduct credit. Therefore, defendant is entitled to 692 days total credit days in lieu of the 690 days he was granted, and the abstract of judgment must be amended accordingly.

DISPOSITION

The judgment is modified to grant defendant two additional days of conduct credit, for a total of 692 days of credits. In all other respects, the judgment is affirmed. The superior court is directed to amend the abstract of judgment to reflect the correct number of credit days and to forward an amended abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, P. J.

BOREN

We concur:

_____, J.

ASHMANN-GERST

_____, J/

CHAVEZ