Filed 10/22/19 P. v. Velasquez CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>VINCENT JULIAN VELASQUEZ,<br><br>Defendant and Appellant. | 2d Crim. No. B292333<br>(Super. Ct. No. 2017032325)<br>(Ventura County) |

Vincent Julian Velasquez appeals a judgment following his conviction of two counts of committing a lewd act on a child under 14 years of age (Pen. Code, § 288, subd. (a)[1]); seven counts of committing a lewd act on a child 14 or 15 years of age by a person who is at least 10 years older (§ 288, subd. (c)(1)); and three counts of molesting a child (§ 647.6, subd. (a)). He was sentenced to 12 years eight months in state prison.

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

We conclude, among other things, that the trial court did not err by admitting expert testimony on the Child Sexual Abuse Accommodation Syndrome (CSAAS). We affirm.

FACTS

Velasquez's daughter V. was 13 years old in 2015. V. testified that in one incident Velasquez made a "wolf whistle" at her while he was looking at her "breasts and butt." He told her that her breasts "were getting bigger" and he said, "Dang, girl." V. testified this "just made me want to hide."

V. said she was 13 years old when Velasquez first touched her in a way that made her feel uncomfortable. Velasquez had been drinking. As she passed him in the hallway of the home, he put his hands on her chest. Both of his hands squeezed her breasts. She "batted his hands off."

When she was 13 or 14 years old, she went to the kitchen. Velasquez was making drinks. As she passed him, he patted her "butt as [she] walked by." She testified, "[I]f I was there long enough, he would just squeeze it as I walked by." He remarked that her "butt" was "nice." This made her "feel uncomfortable."

V. testified one day she got out of the shower and was naked. Before she could grab a towel, Velasquez "barged in." He stood there and "just . . . looked [at her] up and down." She had to push him away "so he would leave."

When V. was 14 years old, there was another shower incident. As she got out of the shower, Velasquez entered the bathroom drunk. While she was naked, he put his hand on her shoulder "and he tried to go down farther." He made contact with her breast "for a split second." She had to remove his hand from her body. She shoved "him out" and "closed the door."

Velasquez would often come into her room "unannounced" when he was drunk. One time he came in and talked to her about "sexual things." He put his hand inside her thigh near her "vaginal area." V. testified, "I didn't know how to deal with it. I just kept asking him to leave."

The prosecutor asked, "Did you love your dad, [V.]?" V. responded, "Yes." Prosecutor: "And do you still love him today?" V.: "Yes." V. said, "He provided me with a lot of opportunities. Like he really wanted to see me succeed in school . . . . I think that's why I didn't say anything for so long . . . . I would never get over, like, missing out on having a dad . . . ." One day Velasquez learned that V. had been talking to a school counselor. He was upset. He told her, "[W]e should keep our business to ourselves."

One time when V. asked permission to go to a friend's house, Velasquez responded, "All right. But you have to let me touch your chest." She did not know whether he meant that as a joke.

V. testified that Velasquez asked her to come to his room to watch a movie. She sat on his bed. She was wearing her pajamas and he just had "his boxers on." Velasquez put his hands under the hem of her shirt. His hands went down to the waistband of her shorts and "he'd grab [her] butt." He made contact with her skin with his hand. He would "rub and squeeze" her "butt." She felt "so hopeless, and [she] just froze up." She moved his arms away and left the room.

V. played card games with Velasquez. One time when she was in the living room next to Velasquez, he reached over and touched her inner thigh. His hand moved close to her "vaginal area." On another occasion, she had a "sleepover" with friends.

A friend became upset when she saw Velasquez "inebriated." V. told Velasquez to "[p]lease stop coming in." She said he "grabbed [her] butt and went up [her] sides and then grabbed [her] breasts."

One morning before going to school, Velasquez went into her room. V. told him, "Hey, I'm not changed. Will you please leave?" Velasquez tried to grab her breasts. He made contact with them "[f]or a second." She had to "push him out" of her room. On one occasion, he had an "explicit" discussion with her about his past "sexual conquests." He talked about "some part" of his prior girlfriend's body. In another incident, he "smacked [V.'s] butt" in the presence of V.'s friend.

V. got into a fight with her friends. She talked with Velasquez about it. She was "seeking comfort from him." At first he hugged her. Then he touched her breasts. His fingers touched "the skin of [her] butt."

V. decided to talk to a friend about the way Velasquez was "touching" her. But she decided not to contact law enforcement. A couple of days after the conversation with her friend, Velasquez touched her breasts again. V. finally decided to tell her boyfriend's grandmother about Velasquez's conduct. She convinced V. to "tell somebody" about it. V. contacted Child Protective Services and the police.

S. was V.'s friend. She testified that she went to "sleepovers" at V.'s home. On one occasion when V. was 14 years old, she saw Velasquez grab V's "butt." During one sleepover, she saw Velasquez "touching [V.'s] breasts with his hands."

X. testified that she was a friend of V.'s. She went to V.'s house on multiple occasions. She saw Velasquez touch V. "50

times." She said, "He sometimes touched her breasts, around her breasts, and her butt."

V.'s older sister testified that when she was 14 years old, Velasquez slapped her on her "butt" and said she had "an ass you can set a plate on." Velasquez called her and V. his "little hookers." He told her to "[s]tand on the street corner and make us some money."

*Expert Testimony on CSAAS*

Jody Ward, a psychologist, testified about the CSAAS theory. She said, "[Y]ou can't take any of the components of child sexual abuse accommodation and try to look back and diagnose whether or not sexual abuse occurred. . . . But if we do know that a child has been sexually abused, [CSAAS] is very helpful in understanding their reactions to that abuse." Under CSAAS, there are five categories of "observable characteristics" of abused children, including secrecy, helplessness, entrapment and accommodation, "delayed unconvincing disclosure," and "retraction or recantation."

Ward testified that "children don't have the avenues at their disposal . . . to get out of a sexually abusive situation." They learn to cope with the abuse, and they "tend to keep it secret." The child may still love the perpetrator. When children disclose abuse, they often can be "tentative and hesitant." They may delay full disclosure by withholding information and details. The child may still be motivated to keep the family together. Where there has been repeated abuse, the child may have difficulty in remembering details of various incidents. After reporting abuse, a child may be "conflicted" and may experience "pressure from the family."

Ward said her testimony was only about the common characteristics of abused children. She did not meet any complaining witness, did not read the police reports, and did not know the facts of this case. She was not in court to "diagnose whether or not sexual abuse occurred."

*The Defense Case*

Velasquez testified that he is a "drunk." He admitted that he "butt swatted" V. "two or three times." But he did not do that to "arouse himself or [V.]." He was only trying "to scoot her out of the way so [he] could go and make [a] drink" in the kitchen. He had an affectionate relationship with V. He tried to "encourage [V.] not [to] be jumping on [his] lap." He did not hug her in such a way that his hands "started sliding down towards her boob." He was asked, "[I]s it possible that you were drunk and don't recall this happening?" He responded, "[I]t could be."

Velasquez said he did not remember the incident V. testified about when they were in the hallway. He did not remember attempting to touch her breast. He was asked, "[I]f you were drinking, is it possible that you may have done that?" Velasquez replied, "I don't know. I don't know." He did not remember all of the incidents V. testified about. When he touched V., it was not with an "intent to arouse [himself] or her sexually." V. did not complain that she felt uncomfortable about "any sort of physical contact" he had with her. He would watch movies with her on the bed two or three times. He did not recall "ever rubbing her thigh up and down." He was asked, "[I]f you're drunk, isn't it possible that you don't remember?" Velasquez responded, "Yes, ma'am." He remembered the incident involving V.'s older sister. He was "just joking around with her." There was no "sexual intent."

Velasquez's wife Elena testified that she never saw Velasquez inappropriately touch V. or her older sister. She was asked, "Do you feel that any of the touchings that [Velasquez] had with [V.] were of a lewd sexual nature?" She said, "No, I do not." On cross-examination, she admitted that "for seven months, [she] had no idea what was going on in the house between [V.] and [her] husband." She was not there.

## DISCUSSION

### *CSAAS Testimony*

Velasquez contends the trial court erred by admitting expert testimony on CSAAS. He claims other jurisdictions have concluded CSAAS theory testimony, as a matter of law, is "inherently unreliable." He argues he consequently is entitled to a reversal because such evidence, as a matter of law, should have been excluded in his case. We disagree.

Our Supreme Court has rejected Velasquez's contentions. It ruled that expert testimony on "the common reactions of child molestation victims," known as CSAAS theory evidence, "is admissible to rehabilitate such witness's credibility when the defendant suggests that the child's conduct after the incident – e.g., a delay in reporting – is inconsistent with his or her testimony claiming molestation." (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300.) " 'Such expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior.' " (*Id.* at p. 1301.)

Such evidence "is not admissible to prove that the complaining witness has in fact been sexually abused." (*People v. McAlpin*, *supra*, 53 Cal.3d at p. 1300.) "The expert is not allowed to give an opinion on whether a witness is telling the truth . . . ."

(*People v. Long* (2005) 126 Cal.App.4th 865, 871.) CSAAS theory evidence has been admitted by the courts of this state since the 1991 *McAlpin* decision.

Velasquez asks us to now "exercise [our] authority to record disagreement with" the *McAlpin* decision. We will not do so. That decision of our Supreme Court is the binding law for all lower courts in this state. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) That other jurisdictions disagree with it is not relevant. (*Ibid.*)

Moreover, as the People note, "California is not an outlier in permitting CSAAS evidence." In *McAlpin*, the court recognized that California was not alone in admitting this testimony. It said, " 'The great majority of courts approve such expert rebuttal testimony.' " (*People v. McAlpin*, *supra*, 53 Cal.3d at p. 1301.) Velasquez recognizes that admission of this evidence is currently the majority line of decisional authority. He cites Justice Abramson's dissenting opinion in *King v. Commonwealth* (Ky. 2015) 472 S.W.3d 523, 535, where that justice calculated that "[a]ltogether, forty-one states recognize the admissibility of CSAAS expert testimony for some purpose." Only a handful of states have challenged its reliability and largely exclude it.

Velasquez contends most of the evidence Ward testified about on the five stages of the emotional "characteristics" of abused children was inadmissible. He claims it was not supported by scientific reliability standards. But he did not raise these objections at trial when Ward was testifying about them. He consequently forfeited these claims. (*In re Seaton* (2004) 34 Cal.4th 193, 199.)

But even had Velasquez timely raised them below, the result would not change. He relies on a few out-of-state cases.

But courts from foreign jurisdictions have a different view of the reliability and admissibility of CSAAS evidence involving abused children's emotional stages than the California courts. Our Supreme Court noted the importance of "expert testimony on common stress reactions of children who have been sexually molested" to educate the jury (*People v. McAlpin*, *supra*, 53 Cal.3d at p. 1300) because it explains " 'the *emotional antecedents* of abused children's seemingly self-impeaching behavior' " (*id.*, at p. 1301, italics added). Ward's testimony was properly admitted to show why V.'s delayed disclosure of Velasquez's crimes was not unusual for a child sexual abuse victim. (*Id.* at p. 1300.)

Velasquez notes that the New Jersey courts do not allow experts to testify about all five of the common traits of sexually abused children. But courts in 28 states permit testimony about these common traits. (*King v. Commonwealth*, *supra*, 472 S.W.3d at p. 535, fn. 15.) That courts from other states, based on different scientific evidence than the evidence presented here, have elected to impose different evidentiary rules under their state laws is not dispositive for this case. (*Auto Equity Sales, Inc. v. Superior Court*, *supra*, 57 Cal.2d at p. 455.)

Moreover, the People note that even had Velasquez shown the evidence should have been excluded, he has not shown prejudicial error. There are, of course, cases where a CSAAS expert's testimony may include such inadmissible or prejudicial evidence that a reversal is required. (See, e.g., *People v. Julian* (2019) 34 Cal.App.5th 878.) But Velasquez has made no showing that this is such a case. The trial court properly instructed the jury that Ward's testimony "is not evidence that the defendant committed any of the crimes charged against him." Ward did not vouch for truthfulness of the evidence the People introduced. She

testified she did not meet any complaining witness, did not read the police reports, and did not know the facts of this case. In her testimony she emphasized that she was not in court to "diagnose whether or not sexual abuse occurred." She testified, "[Y]ou can't take any of the components of child sexual abuse accommodation and try to look back and diagnose whether or not sexual abuse occurred." That presented a clear warning to jurors about the limits of CSAAS evidence. The trial court also instructed the jury that it alone decides the credibility of all witnesses. That includes the jury's right to disbelieve the credibility of Ward's testimony.

Moreover, the People presented strong evidence of Velasquez's guilt. Two witnesses in large part corroborated V.'s testimony. They saw Velasquez committing lewd acts on V. Velasquez admitted that he did not remember certain incidents. He admitted telling V.'s older sister that she and V. were his "little hookers." Velasquez's credibility was seriously impeached on cross-examination. The prosecutor asked him about his conflicting testimony on direct examination. He noted that Velasquez initially testified that "the first time [he] may have touched [his] daughter's breasts, [he then] said . . . no, it couldn't have happened. And then [he] said, it could be." The prosecutor asked Velasquez, "So which one is it?" Velasquez responded, "I don't know."

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur: PERREN, J. TANGEMAN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

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