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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL RAMOS,

Defendant and Appellant.

2d Crim. No. B275963
(Super. Ct. No. YA092274)
(Los Angeles County)

A jury convicted Miguel Ramos of three counts of forcible lewd acts with a child under the age of 14 (Pen. Code, § 288, subd. (b)(1)¹; counts 1, 3, and 4) and one count of aggravated sexual assault of a child (§ 269, subd. (a)(3); count 2). The trial court sentenced Ramos to 3 five-year consecutive terms for counts 1, 3, and 4, and a consecutive 15-year to life term for count 2 for an aggregate term of 30 years to life in state prison.

¹ Unspecified statutory references are to the Penal Code.

Ramos contends there is insufficient evidence of force or duress to support the convictions for forcible lewd conduct (counts 1, 3, and 4). We affirm.

FACTS

Ramos lived with his girlfriend and her 13-year-old daughter, A. He was “practically” a father to A.

In October 2014, when A.’s mother was not home one night, Ramos went into A.’s room, told her she was pretty, and touched her breasts under her clothes. She tried to push him away, but he stopped her by grabbing her arms and pushed her down on the bed. He tried to touch her butt, but she resisted and tried to kick him in the crotch. He stopped and walked away. He told her not to tell her mother.

A. was scared that Ramos was going to enter her room again and touch her. She began locking her bedroom door every night, but her mother had the lock removed.

In November 2014, Ramos went into A.’s bedroom again. He sat on her bed and touched her breasts and butt. He reached into his shorts and began masturbating. She was frightened.

Later the same night when A. was face down on her bed, Ramos took off her pants and underwear. He put his penis partially in her anus, and she felt pain. She elbowed him and ran to the front door, but the door was locked. He grabbed her by the waist, and she tried to fight him off. He pushed her down on the bed. She elbowed him in the face and escaped outside until her mother came home. She was afraid to tell her mother what had happened because she thought her mother would accuse her of lying.

After that night, Ramos touched A.'s breasts and butt on several different occasions (counts 1, 3, and 4). She tried to fight back every time he touched her.

In March 2015, Ramos went into A.'s room and tried to touch her. She stabbed him with a pencil, ran into her bathroom, and locked the door. He told her not to tell her mother. She told her mother about the November incident, but her mother did not believe her and told her not to tell anyone.

Because she wanted "the whole thing to stop," A. told a school staff member about the molestations. A police officer was called and interviewed A. She told the officer she was touched by Ramos "multiple" times, and she described the first incident when he came into her room and touched her breasts and butt. She described the second incident when he came into her room, pulled down his shorts and "exposed himself," pulled down her pajama pants, and penetrated her anus with "his part." She said she tried to run, but "he grabbed her by the waist and threw her on a bed."

When A. was examined by a nurse, she told the nurse Ramos "put his penis in her butt." She said she felt "warm or wet slimy stuff" on her body after he played with himself. She said Ramos told her not to tell her mother.

During a police interview, Ramos admitted he went into A.'s bedroom when the two of them were alone in the apartment. He said A. was lying face down on the bed when he started hugging her from behind. He unzipped his pants and partially pulled her pants down. He admitted touching her butt with his penis, but he denied penetration. A. stabbed him in the chest with a pencil.

A social worker interviewed A., her mother, and Ramos. During his interview, Ramos admitted, “Yes, it happened. But it was not like she said.” He said he went into A.’s bedroom and lay down next to her. He said she turned over onto her stomach, and he got on top of her with his arms embracing her. He unzipped his pants, withdrew his erect penis, and pulled down her pants and underwear “just a little bit.” He said he “rubbed” against her, but he “never put it in like she said.”

DISCUSSION

Ramos contends that insufficient evidence supports a conviction under section 288, subdivision (b)(1), which requires the use of force or duress. We review for substantial evidence. In doing so, we view the record in the light most favorable to the judgment and presume the existence of every fact the jury could reasonably deduce from the evidence in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not reweigh the evidence or reassess the credibility of the witnesses. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.)

Duress means ““a direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted.” [Citation.] [Fn. omitted.] Because duress is measured by a purely objective standard, a jury [can] find that the defendant used threats or intimidation to commit a lewd act without resolving how the victim subjectively perceived or responded to this behavior.” (*People v. Soto* (2011) 51 Cal.4th 229, 246, italics omitted (*Soto*).)

Relevant factors in determining whether there was duress include the age and size of the victim, the victim's relationship to the defendant, threats to harm the victim, physical control of the victim when the victim attempts to resist, and warnings to the victim that revealing the molestation would result in jeopardizing the family. (*People v. Veale* (2008) 160 Cal.App.4th 40, 46.) A rational trier of fact can find duress where there is an "inherent imbalance of power in an encounter between a child and an adult bent on sexual conduct" and where the exploitation of the victim was continuous. (*Soto, supra*, 51 Cal.4th at pp. 245-246; see also *People v. Schulz* (1992) 2 Cal.App.4th 999, 1005 ["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' [are] relevant to existence of duress"].)

Ramos took advantage of a position of dominance and authority over A. He was an adult man and a father-like figure to A., who was 13 years old. The molestations occurred when they were alone in their apartment, and he repeatedly told her not to tell her mother. His exploitation of her was continuous—five or six times within a period of four months. These acts occurred after two prior incidents of molestation, one of which involved sodomy. She fought back each time he molested her, but he overcame her resistance. These circumstances show that Ramos exerted psychological and physical control and fear over A. A. stated that she was scared and tried locking her door after the first time he touched her. She also feared being disbelieved or taken away from her mother, which was why she avoided telling anyone. Substantial evidence supports the jury's finding of duress.

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Scott T. Millington, Judge

Superior Court County of Los Angeles

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