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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LORENZO ROSAS ROMERO,

Defendant and Appellant.

B236572

(Los Angeles County
Super. Ct. No. VA118833)

APPEAL from a judgment of the Los Angeles Superior Court, Michael L. Schuur, Judge. Affirmed.

Edward H. Schulman, 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, Marc A. Kohm and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

Lorenzo Rosas Romero was convicted following a jury trial on multiple counts of committing lewd acts, several by force, upon a child under 14 years old. On appeal Romero contends his conviction on one count of committing a forcible lewd act (count 1) was not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Romero was charged in an information with two counts of committing forcible lewd acts upon a child under 14 years old (Pen. Code, § 288, subd. (b)(1))¹ (counts 1 & 5), three counts of committing lewd acts upon a child under 14 years old (§ 288, subd. (a)) (counts 2, 3 & 4) and one count of aggravated assault upon a child by means of sexual penetration (§§ 269, subd. (a)(5); 289, subd. (a) (count 6)). Romero pleaded not guilty to all charges.

2. The Trial

a. Cristal's testimony

Romero lived with his girlfriend, Marina G., and Marina's three children, Cristal, Cassandra and Ricardo, who viewed Romero as a father figure. Cristal, who was 15 years old at the time of trial, was 11 years old when the offenses were committed against her. She testified to the following:

i. Count 1

Romero came into her bedroom while she lay on her bed watching television. He stood in front of her and placed his hands on the bed on either side of her to trap her between his arms. Romero leaned in to kiss Cristal on the lips. She turned her head away, and Romero ended up kissing her on her neck. Cristal slapped Romero, pushed him away and left the room.

¹ Statutory references are to the Penal Code.

ii. *Count 2*

When Cristal was in bed preparing to go to sleep, Romero knelt at the side of her bed and offered her \$100 if she would let him sleep with her. Cristal refused, telling him he was crazy. Romero put his hands under the bed covers and touched Cristal's breasts over her night shirt. He tried getting on top of the bed, but Cristal continued to push him off. Romero left the room.

iii. *Counts 3 and 6*

While Cristal was on the bed watching her brother and sister play video games, Romero walked in the room, sat next to Cristal on the bed, reached under the bedcovers and touched Cristal's breast over her pajamas. (Count 3.)

After she pushed his hand away, he moved his hands under Cristal's pajama pants. Cristal kept moving his hand away and whispered to him to stop. (She did not talk loudly because she did not want her younger brother and sister to know what was happening.) Romero persisted, this time, reaching under her pajama bottoms and underwear and inserting his finger in her vagina, causing Cristal pain. (Count 6.)

iv. *Count 4*

On another occasion when Cristal was on her bed playing video games with her siblings, Romero walked in, put his hands under the bedcovers and tried, unsuccessfully, to put his hands down Cristal's pajama bottoms. Cristal stopped him, but Romero responded by moving his hands under her shirt and fondling her breasts. (Count 4.)

v. *Count 5*

While Cristal and her siblings were watching television in the living room, Romero sat next to Cristal, grabbed her hand and pulled it toward his crotch area, forcing her hand to touch his penis over his pants. Cristal eventually was able to pull her hand away.

b. *Romero's statements to police*

During his interview with police, Romero admitted he had touched Cristal's breasts and vaginal area a few times over her clothing but denied penetrating her vagina

or forcing her to touch his crotch over his clothes. He explained his behavior was the result of temptation and insisted Cristal had allowed him to touch her in this way.

c. Romero's testimony

Romero testified on his own behalf and denied ever touching Cristal inappropriately. He acknowledged confessing to police he had touched Cristal inappropriately, but explained his statements were the result of police pressure; he believed if he admitted to some of the conduct he would be released. Romero emphasized that he had only a fourth grade education and was unfamiliar with the legal system.

3. The Verdict and Sentence

The jury convicted Romero on counts 1 through 5. On count 6 (aggravated assault on a child by means of sexual penetration), the jury found Romero guilty of the lesser included offense of battery.

The trial court sentenced Romero to an aggregate state prison term of 18 years: Three full consecutive sentences of six years (the middle term) for counts 1, 2 and 5 (see § 667.6, subds. (c), (d) [mandating full-term consecutive sentences for designated offenses if committed on separate occasions or on separate victims]). The court also imposed concurrent terms of six years each on counts 3 and 4 and a concurrent term of six months on count 6.

DISCUSSION

1. Standard of Review

When considering challenges to the sufficiency of the evidence, we “review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., 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. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably

have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury’s verdict.’” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

2. Substantial Evidence Supports the Jury’s Verdict on Count 1

Section 288, subdivision (a), proscribes lewd conduct upon a child under the age of 14 years. When the offense is committed by force or duress, it is an aggravated form of lewd conduct punished under subdivision (b) of section 288.

The elements of a section 288, subdivision (b), offense are: (1) physical touching of a child under 14 years old; (2) for the present and immediate purpose of sexually arousing or gratifying the defendant or the victim; and (3) the touching was accomplished by use of force, violence, duress, menace or fear of injury. (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1171.) Force in this context means physical force that is “‘substantially different from or substantially greater than that necessary to accomplish the lewd act itself.’” (*People v. Soto* (2011) 51 Cal.4th 229, 242; accord, *People v. Griffin* (2004) 33 Cal.4th 1015, 1027.)

Romero contends there is insufficient evidence to support the jury’s verdict on count 1 because he did not exert any force other than that which was necessary to accomplish the lewd act of kissing Cristal on the neck: He simply put both arms on the bed to brace himself as he leaned in to kiss Cristal. Thus, he asserts, the verdict on count 1 should be modified to reflect a conviction under section 288, subdivision (a).

Contrary to Romero’s contention, there is ample evidence from which a reasonable jury could have found Romero used force different from, or in excess of, that required to accomplish the lewd act itself: Romero used both arms to trap Cristal,

preventing her from being able to move away from him as he moved to kiss her. Cristal testified she felt trapped; the only thing she could do under the circumstances to stop him from kissing her on the lips was to turn her head away. Although the evidence may also permit the interpretation Romero advances, we cannot say as a matter of law that a reasonable jury could not have found Romero placed his arms on the bed to restrain Cristal rather than simply to keep his balance. (See, e.g., *People v. Alvarez* (2009) 178 Cal.App.4th 999, 1004-1005 [force includes “acts of grabbing, holding and restraining that occur in conjunction with the lewd acts themselves”]; *People v. Stark* (1989) 213 Cal.App.3d 107, 112 [substantial evidence supported conviction under § 288, subd. (b), where defendant lay on top of child “who was rendered unable to move away because of the weight of the adult on top of him,” and ignored the child’s request to get off him; this restraint constituted physical force substantially different from and substantially greater than that necessary to fondle the child].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.