

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTONIO ROJASBARRIGA,

Defendant and Appellant.

2d Crim. No. B275639
(Super. Ct. No. 14C-36733)
(San Luis Obispo County)

Jose Antonio Rojasbarriga appeals a judgment following conviction of 29 counts of lewd act upon a child, and one count of forcible lewd act upon a child, with a finding that he committed the criminal acts upon more than one victim. (Pen. Code, §§ 288, subds. (a) & (b)(1), 667.61, subds. (e)(4) & (j)(2).)¹ We affirm.

¹ All further statutory references are to the Penal Code unless stated otherwise.

FACTUAL AND PROCEDURAL HISTORY

This appeal concerns lewd acts committed by Rojasbarriga upon Erick Doe (counts 1 through 19) and Jose Doe (counts 21 through 31). At the time of the offenses, Erick, Jose, their families, and Rojasbarriga were neighbors. Rojasbarriga committed the lewd acts against Erick beginning on March 1, 2013, through September 21, 2014; he committed the lewd acts against Jose beginning in January, 2010, through August 28, 2013.

Criminal Offenses Upon Erick Doe (Counts 1 through 19)

In March 2013, nine-year-old Erick Doe, his siblings, and his parents lived in San Miguel. Rojasbarriga lived nearby and became friendly with Erick and Erick's family. Rojasbarriga was a frequent dinner guest at Erick's home, and was friendly with Erick, stating that Erick reminded him of his young son in Mexico.

Erick visited Rojasbarriga three or four times a week at Rojasbarriga's home. Rojasbarriga took Erick to the movies and to eat, bought him birthday gifts, and gave him money. Rojasbarriga asked Erick to refer to him as "Tio," uncle in the Spanish language.

At trial, Erick testified that Rojasbarriga touched his penis over and under his clothing more than 10 times. Erick demonstrated the touching with a "cupping motion." On two occasions, Erick touched Rojasbarriga's penis when Rojasbarriga grabbed Erick's hand and forced the touching. Eventually, Erick became fearful of Rojasbarriga, and would hide behind his father when Rojasbarriga visited.

On Sunday, September 21, 2014, Erick asked his father for permission to accompany Rojasbarriga to a store. With his father's permission, Erick and his brother went with Rojasbarriga. Erick testified that "nothing sexual happened" with Rojasbarriga on September 21 because he ceased "hanging out" at Rojasbarriga's home during weekends.

During many weekends, Rojasbarriga would leave his home to recycle materials that he had collected. Sometime during the September 20-21, 2014, weekend, Rojasbarriga attended to his recycling. Erick's mother testified that Rojasbarriga would "come and go" during weekends: "He would go in the morning. He would come back. He would go and be off."

On Monday, September 22, 2014, Erick's mother noticed a change in Erick and expressed concern. Erick cried and informed her that Rojasbarriga had been touching him inappropriately. Erick's mother then reported Erick's complaint of sexual abuse to police officers. Several months later, Erick and his family moved from the neighborhood.

On September 25, 2014, and October 29, 2014, Tracy Nix, a forensic interviewer with the San Luis Obispo District Attorney's Office, interviewed Erick. He informed Nix that the last time he saw Rojasbarriga was on Sunday, September 21, 2014. They went to a Staples store, and upon returning home, Rojasbarriga asked Erick to remove his pants and underwear. Erick refused and ran home.

Later in the interview, Erick related that on Saturday, September 20, Rojasbarriga forced him to touch his (Rojasbarriga's) penis. Erick used a prop to demonstrate how Rojasbarriga forced his hand movement.

Erick testified at trial that his memories were better when he spoke with Nix, than at trial. Erick also stated that questions at trial regarding dates were confusing and the many incidents of sexual abuse “mesh[ed]” together.

Following his mother's report of the sexual abuse, Erick informed two sheriff's deputies who were investigating the incidents that he last saw Rojasbarriga on September 21, 2014.

Rojasbarriga presented evidence that he had a good reputation in the community and that he behaved appropriately with children of neighbors and friends. He also presented evidence that he suffers from many serious medical conditions, including erectile dysfunction.

Criminal Offenses Upon Jose Doe
(Counts 21 through 31)

When Jose Doe was 11 years old, he and his family lived near Rojasbarriga. Jose testified that Rojasbarriga touched his (Jose's) penis over and under his clothing many times. Rojasbarriga touched Jose inappropriately at times inside or outside Rojasbarriga's residence and also in Rojasbarriga's vehicle.

Conviction, Sentencing, and Appeal

The jury convicted Rojasbarriga of 29 counts of lewd act upon a child and one count of forcible lewd act upon a child. (§ 288, subds. (a) & (b)(1).) It also found that he committed the criminal acts upon multiple victims. (§ 667.61, subds. (e)(4) & (j)(2).) The jury could not agree upon a charged count of sodomy upon a child, and the trial court declared a mistrial regarding that count (count 20, Erick Doe).

The trial court sentenced Rojasbarriga to 750 years to life in prison, consisting of 30 consecutive 25-year-to-life terms.

(§ 667.61, subds. (e)(4) & (j)(2).) The court also imposed a \$10,000 restitution fine, a \$10,000 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$900 criminal conviction assessment, and awarded Rojasbarriga 589 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

At sentencing, the trial judge described the evidence at trial as “absolutely overwhelming.” In selecting consecutive terms, the judge stated: “[Rojasbarriga] took advantage of these young boys for an extended period of time. On many, many different occasions.”

Rojasbarriga appeals and contends that insufficient evidence supports his conviction of count 19.

DISCUSSION

Rojasbarriga argues that insufficient evidence supports his conviction of count 19 because evidence established that he had no contact with Erick on September 20 or 21, 2014. He asserts that the improper conviction denies him due process of law.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1212; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 [“Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the

trier of fact"].) We must accept logical inferences that the jury might have drawn from the evidence although we would have concluded otherwise. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) "If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Albillar*, at p. 60.)

Sufficient evidence and all reasonable inferences therefrom support the conviction of count 19, forcible lewd act upon a child under the age of 14 years. (§ 288, subd. (b)(1).) During a recorded interview with Nix, Erick stated that Rojasbarriga forcibly grabbed his hand and forced Erick to "squeeze" his (Rojasbarriga's) penis and moved his hand up and down. When Rojasbarriga removed his hand from Erick's hand, Erick hit Rojasbarriga, and then ran home. Later in the interview, Erick confirmed that the incident occurred on Saturday, September 20, 2014. Although Erick testified at trial that he did not see Rojasbarriga on Saturday, September 20, 2014, he also testified that his memory of events was better when he spoke with Nix shortly after the incident. Erick's father also corroborated that Erick visited at Rojasbarriga's home that particular weekend.

Moreover, Rojasbarriga had but a partial alibi for the weekend. Although Rojasbarriga attended to recycling on weekends, Erick's mother testified that Rojasbarriga would come and go to complete the task. Erick also testified that he went to a Staples store with Rojasbarriga on Sunday, September 21, 2014, further evidence that recycling tasks did not occupy Rojasbarriga's entire weekend.

Conflicts and inconsistencies in Erick's testimony and interviews tending to undermine his credibility only affect the weight the trier of fact gives the evidence. (*People v. Scott* (1978) 21 Cal.3d 284, 296-297.) We do not reweigh the evidence or reassess witness credibility; that is the exclusive province of the trier of fact. (*People v. Albillar, supra*, 51 Cal.4th 47, 60.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

John A. Trice, Judge

Superior Court County of San Luis Obispo

Vanessa Place, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Senior
Assistant Attorney General, William H. Shin, Deputy Attorney
General, for Plaintiff and Respondent.