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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GLORIA LYNNE BRYSON,

Defendant and Appellant.

B239992

(Los Angeles County
Super. Ct. No. MA051954)

APPEAL from a judgment of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Defendant and appellant Gloria Lynne Bryson appeals from the judgment entered following jury trial which resulted in her conviction of two counts of committing a lewd act upon a child under the age of 14 years (Pen. Code, § 288, subd. (a)),¹ sexual penetration by a foreign object on a child under the age of 14 years and more than 10 years younger than the defendant (§ 289, subd. (j)), continuous sexual abuse of a child under the age of 14 years (§ 288.5, subd. (a)), and the aggravated sexual assault of a child under the age of 14 years and who is seven or more years younger than the defendant (§ 269, subd. (a)(5)). The trial court sentenced Bryson to 37 years to life in prison.² We affirm.

FACTUAL AND PROCEDURAL HISTORY

1. Facts.

The first time Bryson sexually molested her, Savannah A. was approximately five years old and spending the night at her aunt's house. Savannah A. was sleeping with her grandmother, the defendant and appellant Bryson, in Bryson's bed. When Savannah A. woke up in the night, her pajama bottoms and underwear had been removed and Bryson was touching Savannah A.'s vagina with her finger. Bryson then penetrated Savannah A.'s vagina and, to Savannah A., it felt as though Bryson's finger went "all the way" inside. Savannah A. asked Bryson to stop "because it hurt." Bryson, however, continued to penetrate Savannah A.'s vagina and told Savannah A. that she was doing so because "God wanted her to." Savannah A. lay in the bed crying until, at some point, Bryson stopped.

Bryson then grabbed Savannah A.'s hand and placed her fingers inside Bryson's vagina. After Savannah A. moved her fingers around for awhile, Bryson took Savannah A.'s hand from her vagina and had Savannah A. touch her on her breasts.

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

² Prior to trial, the People offered Bryson a term of 12 years in prison for a plea of guilty or no contest to count 4, the continuous sexual abuse of a child under the age of 14 years. Bryson rejected the offer, insisting that she wished to have the matter tried by a jury.

When Bryson was finished, she told Savannah A. that, if she told anyone what had happened, Bryson would kill Savannah A.'s mother. Savannah A. believed Bryson and this made her extremely sad. At that time, Savannah A. thought that her mother was "the only person [she] had."

The following day, Savannah A. did not tell anyone what had happened. She was "ashamed and scared, and [she] felt it was [her] fault."

Approximately two years later, when Savannah A. was seven years old, Bryson moved into the apartment in which Savannah A. lived with her mother, brother and younger sister. Savannah A.'s brother had his own room, her mother and sister slept in the living room and Savannah A. shared a room with Bryson. Savannah A. slept in the bottom of a bunk bed and Bryson slept in another bed right next to the bunk bed. No one slept in the top bunk as there was no mattress for it.

About a month after Bryson moved into the apartment, Bryson again began to touch Savannah A. between her legs. As time went on, Bryson began to undress Savannah A. and, while Savannah A. stood beside the bed, Bryson, who was sitting on the edge of her bed, penetrated Savannah A.'s vagina with her fingers. At the same time, Bryson made Savannah A. penetrate Bryson's vagina with her hand. Bryson told Savannah A. that "God wanted her to . . . do" this and that if she did not do it, she was Satan's child and would go to hell.

While they were living in the apartment, Bryson penetrated Savannah A.'s vagina, and had Savannah A. penetrate hers, approximately four times a week. It tended to happen more frequently when Savannah A.'s mother was out with friends or on a date. Savannah A. never told anyone about it because she "was scared and ashamed."

When Savannah A. was nine or ten years old, she began to physically resist Bryson's advances. However, when she would refuse to do what Bryson asked, Bryson would hold her down, then grab her hand and force Savannah A. to touch Bryson's vagina. Savannah A. started to refuse Bryson's demands because, as she was getting older, she realized that "it wasn't right to do." Before that time, Savannah A. "thought [this] was happening to everyone."

When Bryson was molesting her, Savannah A. would cry “silently.” The only noise being made was Bryson’s breathing. When Savannah A. finally told Bryson to stop touching her, she said it softly. “[I]t wasn’t loud enough for everyone to hear.”

In addition to the almost nightly abuse, Bryson would say things to Savannah A. At times Bryson would “preach the Bible,” tell Savannah A. that she “ ‘need[ed] to do this,’ ” then “quote scripture from the Bible.” In addition, Bryson told Savannah A. that she “had to respect [her] elders.”

While they were living together, Bryson would “[t]ease [Savannah A.] about liking other girls” and called Savannah A. “gay.” Although she “didn’t really know what [that] meant,” Savannah A. “felt like it was something negative.” Savannah A. felt that Bryson treated her differently from the way she treated her other grandchildren and this upset Savannah A. Bryson would tell Savannah A. that she “wasn’t a good child.” In addition, Savannah A. would occasionally not tell Bryson the truth “about things” and Bryson would tell her that she was a “bad child.”

There were many times when Savannah A. was with her mother or her siblings and Bryson was not around. Savannah A., however, chose not to tell her family what Bryson had been doing to her.

When Savannah A. was 11 years old, the family, including Bryson, moved from the apartment into a house. At the house, Savannah A. no longer shared a room with Bryson and Bryson’s abuse stopped.

Savannah A. was approximately 16 years old when she finally told someone about the abuse she had undergone at the hands of her grandmother. In her sophomore year of high school, Savannah A. told her best friend, Marissa, in a text message. She told Marissa because they were telling each other secrets and Savannah A. trusted Marissa. However, the two girls never really talked about it.

At the time Savannah A. told her friend Marissa about the molestation, Bryson was living in New Mexico. Savannah A. wrote letters to Bryson, fearing that if she did not write to her grandmother “people would know.” At the time, Savannah A. was aware of the fact that “people who . . . are molested often feel scared of being judged[.]” In one

letter, Savannah A. wrote that she “hoped that [Bryson] ha[d] a good night[s] sleep, that she ha[d] sweet dreams, not to let the bed bugs bite, and [that she] love[d] her very much[.]”

When she was a junior in high school, Savannah A. began to hurt herself. She cut herself on her arms and wrists with a razor. Savannah A. indicated that she was feeling “emotional pain at that time” and she was just trying to make it go away. Savannah A. was suffering from a great amount of stress. She, her mother and her sister had moved back in with her “abusive”³ father and she was having “boyfriend issues.” As one example, she and her boyfriend had gone to a party. While they were there, they had sex. It had been Savannah A.’s first sexual experience with a man and after it occurred, he stopped talking to her. The situation brought back feelings Savannah A. had for Bryson; “[i]t made [her] feel disgusting, and . . . just dirty to even have been with him because [she] had flashbacks of [Bryson].”

Savannah A. decided to tell her best friend, Marissa, about the cutting. Marissa reacted by telling Savannah A. that she wanted Savannah A. to “get some help and counseling.” Savannah A. decided to go to one of her teachers, Miss L. Her friend, Marissa, went with her and told the teacher what was happening with Savannah A. because Savannah A. was “too scared” to tell the teacher herself. After Marissa told Miss L. Savannah A.’s story, Savannah A. asked Miss L. if she could set up a parent-teacher conference so that Savannah A. could tell her mother what had happened. Miss L. agreed and, a few days later in Miss L.’s classroom, Savannah A. told her mother about Bryson’s sexual abuse. Savannah A.’s mother told Savannah A. that she thought Savannah A. should report the incidents to the sheriff’s department, but that it was Savannah A.’s choice whether or not to do so. After thinking about it for a few days, Savannah A. decided to make a report. When she went to the sheriff’s station, she spoke

³ Savannah referred to her father as “abusive” because he “would hit [her] and scream at [her] and yell at [her].” He was even more abusive to her mother and her brother. The family stayed with him for only five months, from August 2009 to December 2009.

to a Sergeant Czarnocki. She gave to Sergeant Czarnocki a history of the situation and Sergeant Czarnocki made a report.

Although she had started going to counseling, in January 2010 Savannah A. tried to commit suicide. She took an overdose of pills and “ended up going to the hospital.” Savannah A. tried to kill herself because she “felt like [she] didn’t belong on this earth.” She felt “ashamed” of “what had happened to [her].”

After attempting suicide, Savannah A. continued going to counseling and did not attempt to hurt herself again. At the time of trial, she was 18 years old and in college.

When she went to the sheriff’s station, in addition to speaking with Sergeant Czarnocki, Savannah A. spoke with a Deputy Little. According to Little’s report, Bryson molested Savannah only about once a week, not three or four times a week.

Savannah A. indicated that she understood that the allegations she was making were serious and that, if shown to be true, carried serious consequences. Savannah A. understood that it was “a crime to make a false report to the police.”

Natisha H. is Bryson’s daughter and Savannah A.’s mother. For a period of several years, Natisha H., Bryson, Savannah A. and Natisha H.’s other two children lived together in an apartment. At the apartment, Savannah H. and Bryson shared a bedroom while Natisha H. and her younger daughter slept in the living room. Natisha H.’s son slept in the second bedroom. In March 2005, the family moved out of the apartment and into a house and Savannah A. was no longer required to share a room with Bryson.

While they were living in the apartment, Savannah A. never told Natisha H. what Bryson was doing to her. Natisha H. found out about the abuse on October 20, 2009. She had received a call from Savannah A.’s school indicating that one of her teachers, Miss L., needed to speak with her. Natisha H. went to the school and went to Miss L.’s room. When Savannah A. showed up a short time later, she sat across from Natisha H., next to Miss L., and told Natisha H. that she had been molested. Savannah A. was “shaking and crying” as she told Natisha H. what Bryson had done to her. Natisha H. took Savannah A.’s hands and began rubbing them and her wrists. Natisha H. had not

noticed scars on Savannah A.'s wrists before and it was at that time that she discovered Savannah A. had been cutting herself.

Natisha H. told Savannah A. that whether she wished to make a report of the incidents to law enforcement was her choice. A few days later, Savannah A. decided she wished to report the molestations and Natisha H. took her to the sheriff's department.

At the time Savannah A. told Natisha H. about the molestation, she did not tell Natisha H. about other "stresses in her life." She did not tell Natisha H. that she was "feeling stressful about moving in with her father" or that she had sex with her boyfriend and that he had not spoken to her since.

While they were living together at the apartment, Bryson had told Natisha H. that she had caught Savannah A. "touching [and kissing] a [female] friend and her own sister." Natisha H. was concerned about where Savannah A. had learned this behavior so, on two occasions, she asked Savannah A. if "she had been touched inappropriately by anybody." On both occasions, Savannah A. told Natisha H. that no one had inappropriately touched her on her private parts.

During the time between 1998 and 2008, Natisha H. did not believe that Savannah A. had seen any television shows, news articles or stories "that had to do with females touching each other or molestation."

Marissa and Savannah A. were friends and had been friends in 2008 and 2009. They attended the same school, although Savannah A. was in a grade below Marissa. One evening during the fall of 2008, Marissa and Savannah A. were text messaging. The two girls "got into a deep conversation." Marissa told Savannah A. "[t]hat [she] had feelings for her." Savannah A. then told Marissa that "she needed to tell [Marissa] something." Marissa knew that "it was something serious because [Savannah A.] told [her] that she didn't want to be judged by it; so [Marissa] told [Savannah A. that] it was okay to tell [her], and [Savannah A.] . . . stated that she [had been] molested by her grandmother [Bryson] when she was a child." Marissa encouraged Savannah A. to tell someone about the molestation, but Savannah A. said that "she wasn't ready."

On a later occasion when the two were text messaging, Savannah A. told Marissa that she “was hurting herself.” Marissa told Savannah A. that “she needed to stop or else [Marissa] was going to tell somebody.” Although she had promised to stop, in October 2009, Marissa saw cuts on Savannah A.’s arm. At that time, Marissa told Savannah A. that they were going to let somebody, a teacher or counselor, know what Savanna A. was doing.

Marissa and Savannah A. approached their chemistry teacher, Miss L., who agreed to talk with them. When they went to her classroom after school and Miss L. asked what was going on, Savannah A. “broke down in tears, . . . was shaking” and “couldn’t say anything.” Since Savannah A. could not speak, Marissa told Miss L. that Savannah A. had been sexually molested as a child and that she was hurting herself.

In October 2009, Miss L. was a high school Chemistry teacher. Both Savannah A. and Marissa were students in one of her classes. One day, in the early morning, Marissa came to Miss L.’s classroom and told her that “Savannah [A.] needed an adult to talk to, and [asked] if [Miss L.] would be willing to do that since Savannah [A.] [had] said [that Miss L.] was one [person] she would be comfortable talking [with].” The two girls went to Miss L.’s “classroom later on that day and both talked to [her]. Savannah [A.] was very upset and very emotional about everything she needed to talk to [Miss L.] about, and she told [Miss L.] she was having trouble at home and a little trouble in school because of everything going on at home[.]” Savannah A. told Miss L. that “she had been molested by her grandmother.” “[B]ecause of Savannah [A.’s] emotional state[,] she was having a hard time expressing everything she needed to express” and Marissa “was kind of filling in the blanks for her.”

Miss L. told Savannah A. that she needed to talk with her mother and let her know what had been going on and that if Savannah A. wanted to use her classroom to speak with her mother, she could. Miss L. also told Savannah A. that if she wished her to be present while she spoke with her mother, Miss L. would do that. Later that day, Miss L. went and spoke with the head counselor at school about the situation.

The following morning, Savannah A. came by and told Miss L. that she would like to use her classroom to speak with her mother. A couple of days later, Savannah A. and her mother came in. Savannah A. again became very emotional and had a difficult time speaking, “but she did tell her mother what had happened and that her grandmother had molested her. She [indicated that she] wasn’t comfortable at home and that . . . she wanted her mom to know.” Although her mother was upset and crying by the end of the conversation, she told Miss L. that she was glad Savannah A. had told her.

The first time Miss L. spoke with Savannah A., she had not noticed any marks or scars on her arms. However, the second time they spoke, when Savannah A.’s mother was present, Miss L. saw them.

In 2009, Los Angeles County Sheriff’s Department Sergeant Maria Czarnocki was working on cases involving both sexual and physical child abuse. The sergeant had been working in that department for 11 years and had handled approximately 85 cases each year. She was assigned as the investigating officer in Savannah A.’s case. One relevant fact discovered during the sergeant’s investigation was that Bryson had been born on August 7, 1944.

The sergeant spoke about “delay[ed] disclosure.” This occurs “[w]hen the victim of child abuse does not disclose that they have been victimized right away, they wait a period of time, sometimes years.” Delayed disclosure is extremely common. According to the sergeant, it happens in nearly 80 percent of all child molestation cases and increases to between 90 and 95 percent when the perpetrator is someone who is related to the victim. Some of the reasons a child might not disclose molestation include “[f]ear of retaliation, [particularly] if it involves [a] family member; fear of ruining the family or feeling it’s their fault the family is going to fall apart; fear of not being believed” as well as “being ashamed or embarrassed about what happened, feeling like it’s their fault” and “their own feelings of guilt, even though they should never feel guilty[.]” The sergeant indicated that “[t]he number one problem” with cases involving delayed disclosure is “the inability to [obtain] physical evidence.” One cannot rely on evidence of D.N.A or “fresh injuries.”

In addition, the sergeant testified that, in cases where children are molested at “a fairly young age,” it is “typical or common for those children to act out sexually.” The reason this occurs is because “that’s what they know. That’s what they have learned.” The sergeant also indicated that it is “common or typical for victims of molestation to later on in life either inflict self injury or attempt suicide[.]” She indicated that “[i]t’s a coping mechanism for them[.] . . . [They] hurt themselves [with] a pain that they are in control of to try to make the pain that they are not in control of go away.”

In the present case, Sergeant Czarnocki spoke on the telephone with Marissa on or about July 19, 2011. Marissa told the sergeant that she had seen injuries on Savannah A.’s arms. She had then told Savannah A. that, if she saw new injuries, she was going to tell someone. Not long after that, Marissa noticed more cut marks on Savannah A.

2. Procedural history.

Following a preliminary hearing, on April 6, 2011 an information was filed charging Bryson with: on or between May 31, 1998 and May 30, 2000, twice committing the felony of a lewd act upon a child under the age of 14 (§ 288, subd. (a)) (counts 1 & 2); that on or between May 31, 1998 and May 30, 2000, committing the felony of sexual penetration by a foreign object upon a child under the age of 14 and more than 10 years younger than she was (§ 289, subd. (j)) (count 3); that on or between May 31, 2000 and May 30, 2005, committing the felony of continuous sexual abuse with a child under the age of 14 years, while she resided with and had recurring access to the child (§ 288.5, subd. (a)) (count 4); and that on or between May 31, 2002 and May 30, 2006, committing the felony of aggravated sexual assault of a child under the age of 14 years when she was seven or more years older than the child (§ 289, subd. (a), § 269, subd. (a)(5)) (count 5).

On April 13, 2011, Bryson entered pleas of not guilty to each of the five counts, denied all of the special allegations and rejected the People’s offer of 12 years in state prison. Although a jury trial was set for June 2, 2011, the trial court granted Bryson’s motion to continue the matter until July 18, 2011. On July 18, after Bryson waived statutory time, trial was continued to November 1, 2011 so that, in accordance with

Bryson's request and the trial court's order, Bryson could be interviewed by an expert, Dr. Haig J. Kojian, who had been appointed pursuant to Evidence Code sections 730, 731 and 952. The court ordered that Dr. Kojian be allowed to bring his laptop into the jail facility in order to evaluate Bryson.

At proceedings held on January 10, 2012, the trial court ordered the matter continued to January 17 as "a stipulated day 7 of 10 for jury trial." In 2010, Bryson had failed a polygraph test, then confessed to sexually abusing Savannah A.⁴ On January 17, 2012, defense counsel made an Evidence Code section 402 motion "seek[ing] to exclude . . . Bryson's confession under the due process clause of the U.S. Constitution because it was an involuntary statement that [had been] a product of psychological coercion." Defense counsel argued that the trial court should exclude Bryson's oral and written statements because "she was deceived into believing in the validity of [a] polygraph," she was manipulated by the detectives when they referred to her "memory problems" and "religion," and misled when the detectives told her that she would be "lying to the judge if she did not admit the conduct." Bryson's statements and letter were excluded at trial.

⁴ Since the alleged incidents, Bryson had moved to New Mexico. On December 27, 2010, Sergeant Czarnocki had spoken with Bryson on the telephone. During their conversation, Bryson denied ever having done anything "sex[ual] or inappropriate" to Savannah A. and had agreed to take a polygraph test to prove her innocence. Bryson met with Sergeant Czarnocki and polygraph examiner, Deputy Scott Mitchell. Although Bryson denied having had any sexual contact with Savannah A., she failed the test. The test showed " 'deception indicated.' " After being told that she had failed the examination, Bryson admitted having participated in approximately 30 incidents of sexual misconduct with Savannah A. Bryson told Deputy Mitchell that she was sorry she had molested Savannah A. and had put her through such " 'torture.' " Bryson loved Savannah A. and hoped that she would forgive Bryson. Bryson indicated that the "driving force behind her actions [had been] loneliness, frustration, curiosity and sexual motivation." When Sergeant Czarnocki had asked Bryson if she wished to write a letter of apology to Savannah A., Bryson indicated that she did and agreed to be fairly specific about her conduct in the letter. Later, Bryson indicated that "she did not recall doing these things to Savannah [A.] and it was only because the test showed it that she was admitting to it."

After the People presented their case, defense counsel made a motion for acquittal of the offenses pursuant to section 1118.1, arguing that the People had failed to provide evidence adequate to support them. The trial court denied the motion.

On January 25, 2012, the trial court instructed the jury on the law of the case and the parties made their arguments. At 2:30 p.m. the following day, the jurors indicated they had reached verdicts. The jury found Bryson guilty of both count 1 and count 2, each of which alleged the felony of committing a lewd act upon a child under the age of 14 years (§ 288, subd. (a)); guilty of count 3, committing the felony of sexual penetration by a foreign object on a child under the age of 14 years (§ 289, subd. (j)); guilty of the felony alleged in count 4, the continuous sexual abuse of a child under the age of 14 years (§ 288.5, subd. (a)); and guilty of count 5, the felony of aggravated sexual assault of a child under the age of 14 years (§ 269, subd. (a)(5)).

After Bryson waived time, sentencing in the matter was set for March 2, 2012. In the meantime, the trial court ordered a probation report, a “Static 99” report and that each party file points and authorities with regard to Bryson’s sentence. On March 1, 2012, it was determined that the court was not available to sentence Bryson on March 2, so, with Bryson’s and both counsel’s consent, the matter was set for March 7, 2012. The trial court indicated that it had received all of the requested reports as well as the sentencing memoranda from the parties and was reviewing the documents. In addition, the trial court indicated that it would make its “best effort to accommodate all the family and witnesses” who wished to make comments.

Bryson was sentenced on March 14, 2012. After reviewing the probation and Static 99 reports, reading each party’s sentencing memoranda, reviewing letters from family and friends and listening to witnesses, the trial court determined the factors in aggravation far outweighed those in mitigation. Accordingly, it imposed the high term of 16 years as the base term for Bryson’s conviction of count 4, continuous sexual abuse in violation of section 288.5, subdivision (a). For her convictions of committing lewd acts upon a child in violation of section 288, subdivision (a) as alleged in counts 1 and 2, the court imposed consecutive terms of one-third the mid-term, or two years as to each count.

With regard to count 3, sexual penetration by a foreign object in violation of section 289, subdivision (j), the court imposed a consecutive term of one-third the mid-term, or two years. Finally, as to count 5, the aggravated sexual assault of a child in violation of section 269, subdivision (a)(5), the court imposed a consecutive, indeterminate term of 15 years to life. In total, Bryson was sentenced to 37 years to life in prison.

Bryson was given presentence custody credit for 365 days actually served and 54 days of good time/work time, for a total of 419 days. The trial court ordered Bryson to pay a restitution fine in the amount of \$7,000 (§ 1202.4, subd. (b)), a stayed parole revocation restitution fine in the amount of \$7,000 (§ 1202.45), a \$200 court security fee (§ 1465.8, subd. (a)), a \$150 criminal conviction assessment (Gov. Code, § 70373) and a \$300 sexual habitual offender fine.

Bryson filed a timely notice of appeal and request for appointment of appellate counsel on March 14, 2011.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed September 20, 2012, the clerk of this court advised Bryson to submit within 30 days any contentions, grounds of appeal or arguments she wished this court to consider. At her request, Bryson was granted an extension of time to November 9, 2012 within which to file her brief. On April 16, 2012, Bryson submitted a letter in which she stated that her accuser was a liar and that she was “without a doubt innocent.” In addition, she claimed that her counsel had been ineffective for failing to show her innocence at trial.

Bryson’s contentions are without merit. Initially, Bryson has failed to show that her trial counsel was not a competent advocate and failed to argue “ ‘all issues that [were] arguable.’ ” (*In re Spears* (1984) 157 Cal.App.3d 1203, 1210.) Moreover, after hearing all the testimony, the jury, the trier of fact in this matter, determined Bryson was guilty of all the crimes charged. (See *Rockwell v. Superior Court* (1976) 18 Cal.3d 420, 425, fn.1

[The general law applying to the conviction of a crime is that “ ‘the trier of fact shall be a jury unless a jury is waived by the defendant . . . ’ ”].)

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P.J.

KITCHING, J.