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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.

FELIX VASQUEZ PERALTA,

Defendant and Appellant.

2d Crim. No. B269837  
(Super. Ct. No. 1448985)  
(Santa Barbara County)

Felix Vasquez Peralta appeals a judgment following conviction of aggravated sexual assault of a child that included genital penetration. (Pen. Code, §§ 269, subd. (a)(5), 289, subd. (a)(1)(B).)<sup>1</sup> We affirm.

*FACTUAL AND PROCEDURAL HISTORY*

In 2013, R.M. (“Mother”) had five children, including her son, J.E., and her daughter, Jane Doe (“Jane”) (11 years old). Peralta was Mother's live-in boyfriend and a father-figure to her children.

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<sup>1</sup> All further statutory references are to the Penal Code unless stated otherwise.

On September 27, 2013, Mother, Peralta, J.E., and Jane traveled to Santa Maria to visit relatives for several days and attend a family celebration. The sleeping arrangements provided that the family would sleep in a bedroom in the residence of Mother's brother.

Following attendance at the gathering, Mother returned the children to her brother's residence where they fell asleep on the floor of their assigned bedroom. Mother returned to the gathering, leaving the children under the care of their grandparents.

At approximately 2:00 a.m., Peralta and several of Mother's male relatives returned to the residence. The men were intoxicated and soon went to their assigned sleeping areas. Peralta went to the bedroom where Mother's children were sleeping.

Jane was asleep but awakened when Peralta pulled her underwear to her knees. She then felt his fingers "in [her] private area." She became frightened and pretended to be asleep.

Jane testified that Peralta touched her "[i]n [her] vagina," "inside and around" her vagina, and "on the top but inside" her vagina. Jane stated that Peralta "opened" her vagina with his fingers; she remembered his long fingernails. He also placed his fingers in his mouth and then resumed placing them inside her vagina. Peralta then moved over Jane and placed his penis "a little bit" inside her vagina. In response to a defense question, Jane confirmed that no "actual penetration" occurred with Peralta's penis.

The assaults ended when Jane pretended to awake and stated that she needed to use the bathroom. As Jane left the

bedroom, she noticed that the bedroom door had been locked from the inside. Jane then went to her grandmother's bedroom where she slept for the remainder of the night.

The sexual assaults frightened Jane; she also found them painful and “disgusting.” She testified that she was too frightened to scream for help during the incident.

Early the next morning, Jane awakened her mother and informed her of the assaults. Jane was “crying, shaking, and holding onto herself with her arms crossed.” Mother confronted Peralta, who requested forgiveness. Peralta admitted to Mother's brother that he had touched Jane sexually, but stated that he did not penetrate her vagina. A family member reported the assaults to Santa Maria police officers, who ultimately arrested Peralta.

#### *Jane's Videotaped Police Interview*

On September 29, 2013, Santa Maria Police Detective Michael Huffman interviewed Jane regarding the assaults. She stated that Peralta had long fingernails that “pok[ed] her vagina,” causing her pain. Jane stated that Peralta touched her “private” and placed his “private” inside her “private.” She explained that she was so frightened that she “couldn't even talk.” At trial, the prosecutor played the videotaped recording of Jane's interview.

#### *Peralta's Videotaped Police Interview*

Following his arrest and advisement of rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, Peralta spoke with Huffman. Peralta initially stated that he did not digitally penetrate Jane's vagina, but then admitted that he inserted “the tip” of his finger into her vagina. Peralta traced his left hand on paper and marked “how much of his finger went inside” Jane's vagina. He denied penetrating Jane's vagina with

his penis, however, explaining that he could not attain an erection at the time. At trial, the prosecutor played the videotaped recording of Peralta's interview. The prosecutor also presented into evidence a photograph of the tracing Peralta drew of his left hand and fingertip.

#### *Forensic Evidence*

A nurse performed a sexual assault examination on Jane and found that Jane's vagina was sensitive and tender and her hymen was extremely tender and red. The nurse did not find any tears or abrasions in Jane's vaginal area.

DNA analysis of fluids obtained from Jane's labia majora disclosed that Peralta could not be excluded as a minor contributor to the DNA collected.

#### *Conviction and Sentencing*

The jury convicted Peralta of aggravated sexual assault of a child based on genital penetration. (§§ 269, subd. (a)(5), 289, subd. (a)(1)(B).) It could not agree upon a charged count of aggravated sexual assault of a child based on rape. The trial court sentenced Peralta to a prison term of 15 years to life, imposed a \$10,000 restitution fine, a \$10,000 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$30 criminal conviction assessment; and, awarded Peralta 923 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Peralta appeals and contends that there is insufficient evidence of: 1) penetration and 2) duress or force.

## DISCUSSION

### I.

Peralta argues that there is insufficient evidence of vaginal penetration, relying upon Jane's isolated statements that he “touched” her vagina.

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. Johnson* (2015) 60 Cal.4th 966, 988; *People v. Jackson* (2014) 58 Cal.4th 724, 749.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*Johnson*, at p. 988; *People v. Watkins* (2012) 55 Cal.4th 999, 1020.) 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, disapproved on other grounds as stated in *People v. Harris* (2013) 57 Cal.4th 804, 834.) “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.) Moreover, the testimony of a single witness is sufficient to prove a fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

Section 289, subdivision (k)(1) defines “sexual penetration” as “the act of causing the penetration, however, slight, of the genital or anal opening of any person.” Moreover, section 289 requires only *slight genital*, rather than vaginal, penetration. (*People v. Quintana* (2001) 89 Cal.App.4th 1362, 1365-1367 [evidence established that defendant's finger penetrated as far as victim's hymen].) “[G]enital’ opening does not necessarily mean ‘vaginal’ opening.” (*Id.* at p. 1367.)

Here sufficient evidence supports the element of penetration. At trial, Jane testified that Peralta touched her “[i]n [her] vagina,” “inside and around” her vagina, and “on the top but inside” her vagina. She informed Huffman that Peralta “pok[ed]” her vagina. In his police interview, Peralta stated that the tip of his finger entered Jane's vagina; he drew a tracing of his hand and marked the tip of his finger. The jury received evidence of Jane's and Peralta's videotaped interviews as well as Peralta's drawing. In addition, the nurse who examined Jane testified that Jane's vagina was sensitive and tender and her hymen was extremely tender and red. This substantial evidence satisfies the requirements of section 289, subdivision (a)(1)(B).

## II.

Peralta contends that there is insufficient evidence that he accomplished the sexual assault by means of force or duress, as required by section 289. He points to the absence of evidence that he used gratuitous force against Jane or that he threatened her into submission.

Section 289, subdivision (a)(1)(B) punishes “an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate

and unlawful bodily injury on the victim or another person.” The language of the subdivision uses the words “force,” “violence,” “duress,” “menace,” or “fear” in the disjunctive. Thus, a conviction will be affirmed if there is substantial evidence that a sexual act was accomplished by any of the means stated in the statute. (*People v. Hale* (2012) 204 Cal.App.4th 961, 976.)

Here the prosecutor argued theories of duress and fear. The trial court instructed with CALCRIM No. 1045, in part defining duress: “*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something that he or she would not otherwise do or submit to. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and her relationship to the defendant.” As a factual matter, “when the victim is as young as this victim and is molested by her father in the family home, in all but the rarest cases duress will be present.” (*People v. Cochran* (2002) 103 Cal.App.4th 8, 16, fn. 6 [aggravated sexual assault of nine-year-old daughter by father], disapproved on another ground by *People v. Soto* (2011) 51 Cal.4th 229, 248, fn. 12.)

Sufficient evidence of duress supports Peralta’s conviction. He cohabited with Jane and her family and represented a father-figure to her. Mother testified that Peralta “helped [the family] out” and “helped [her] out.” The family traveled to Santa Maria to visit relatives and Jane was removed from her familiar surroundings. Peralta locked the bedroom door during the sexual assaults. Jane informed Huffman that her “Grandma tried to open the door,” but it was locked. Jane described the assaults as painful and disgusting, but submitted

because she was too frightened to even cry out. In view of “all the circumstances,” sufficient evidence of duress exists. (CALCRIM No. 1045.)

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.



John F. McGregor, Judge

Superior Court County of Santa Barbara

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Corey J. Robins, Deputy Attorney General, for Plaintiff and Respondent.