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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ALFREDO TRUJILLO,

Defendant and Appellant.

B282616

(Los Angeles County
Super. Ct. No. LA077034)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joseph A. Brandolino, Judge. Affirmed in part, reversed in part and remanded with directions.

Edward H. Schulman, 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, Assistant Attorney General, Scott A. Taryle and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Luis Trujillo of five counts of committing a lewd act upon a child, three counts of sexual intercourse with a child 10 years old or younger, two counts of oral copulation with a child 10 years old or younger, and one count of molesting a child. On appeal, Trujillo contends: (1) the trial court erred in permitting testimony from an expert on child sexual abuse; (2) the court gave a flawed limiting instruction related to the expert testimony; and (3) the charge for molesting a child was facially barred by the statute of limitations. We agree the molestation charge was barred by the statute of limitations, and vacate that conviction and sentence. We affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the evidence in accordance with the usual rules on appeal. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263.)

Allegations Related to Janet G.

Janet G. lived in the same apartment building as Trujillo and his family, and Janet was friends with Trujillo's daughter. One day when Janet was between 8 and 10 years old, she was at Trujillo's apartment to watch a movie with his daughter. Janet went to the kitchen to get popcorn, and Trujillo followed her. In the kitchen, Trujillo told Janet to "look," and then pulled down his pants and exposed his penis. A few months later, when Janet was in Trujillo's apartment to get a scooter, Trujillo forcefully kissed her, pulled up her shirt, and put his penis against her stomach. Trujillo later offered Janet money and told her he would hurt her parents and sister if she told anyone.

Janet did not immediately tell anyone about these incidents because she was afraid Trujillo would hurt her family and she was concerned people would think she was lying.

When she was in high school, Janet wrote an essay about being raped as part of an assignment for her Spanish class. The essay prompted a police investigation of Trujillo.

Allegations Related to Alejandra P., D.P. and Angela P.

In 2007, Trujillo began a relationship with a woman named Jamie. The next year, Jamie gave birth to twin daughters, and Trujillo moved into her apartment. At the time, Jamie lived with her three daughters from a prior relationship, Alejandra P., D.P., and Angela P.

When Alejandra was 13 years old, Trujillo pinched her breasts over her clothes. Another day, she was in a bedroom using a computer when Trujillo entered the room and shut the door. Trujillo got on his knees and started rubbing and licking Alejandra's bare legs. Alejandra did not immediately tell anyone what happened because she was scared and Trujillo told her not to tell her mother.

When Angela was around six or seven years old, Trujillo touched her vagina over her clothes while he was driving her home from school. Later that day, he took her into a bedroom, performed oral sex on her, and inserted his penis into her vagina. Trujillo inserted his penis into Angela's vagina on another occasion while she was in elementary school. Trujillo also showed Angela pornography and asked her if she would like to try what was depicted in it. Another time, Trujillo gave Angela a piggyback ride and touched her buttocks. Angela did not immediately tell her mother what happened because she was scared and did not want to ruin her mother's relationship with Trujillo.

When D.P. was 10 years old, she was alone in the apartment with Trujillo. Trujillo laid her on the living room couch, touched her breasts under her clothes, performed oral sex on her, and partially inserted his penis into her vagina. Another day, Trujillo followed D.P. into her bedroom, where he again touched her breasts and inserted his penis into her vagina. Another time, Trujillo showed D.P. a pornographic video before touching her breasts, performing oral sex on her, and inserting his penis into her vagina. On another occasion, while D.P. was on the couch, Trujillo came up behind her, lowered her pants, and rubbed her buttocks. Initially, D.P. did not tell her mother because she was afraid she would be taken away from her family and her sisters would grow up without a father.

Around June 2009, Alejandra, D.P., and Angela told their mother what Trujillo had done to them, and their mother contacted the police. The girls were interviewed by the police multiple times, and they gave inconsistent accounts of the abuse. During a June 2009 interview, for example, Alejandra told police she fabricated her allegations because she was upset with Trujillo for not letting her use a computer. In September 2009 interviews, D.P. and Alejandra stated they lied in their prior police interviews because they were afraid of being taken away from their mother and that their sister would be harmed. Angela initially did not tell the police what happened with Trujillo, but eventually said Trujillo touched her private part. She did not disclose all of Trujillo's abuse because it made her uncomfortable.

Criminal Case

The case was tried to a jury in April 2016. The People submitted evidence establishing the facts summarized above. Trujillo testified on his own behalf, and denied any sexual

misconduct with the victims. Trujillo called several witnesses who testified they had never seen him act inappropriately with the victims or other children. He also introduced evidence that Alejandra's and D.P.'s hymens were intact as of 2009.

The jury convicted Trujillo of five counts of committing a lewd act upon a child (Pen. Code,¹ § 288, subd. (a); counts 1, 2, 4, 5, 8), three counts of sexual intercourse with a child 10 years old or younger (§ 288.7, subd. (a); counts 9, 10, 11), two counts of oral copulation with a child 10 years old or younger (§ 288.7, subd. (b); counts 6, 12), and one misdemeanor count of molesting a child (§ 647.6, subd. (a); count 13).² The jury also found true multiple victim allegations (§ 667.61, subds. (b) & (e)) as to counts 1, 2, 4, 5 and 8.

The court sentenced Trujillo to an aggregate term of 155 years to life.³ It awarded Trujillo 1,246 custody credits, and imposed various fines and fees. Trujillo timely appealed.

DISCUSSION

I. The Trial Court Did Not Abuse its Discretion in Allowing Expert Testimony

Trujillo argues the court erred in allowing expert testimony related to the behavior of sexually abused children. We disagree.

¹ All further section references are to the Penal Code.

² Counts 1 and 13 related to Janet, counts 2, 11, and 12 related to D.P., count 4 related to Alejandra, and counts 5, 6, 8, 9, and 10 related to Angela.

³ The court imposed consecutive sentences of 15 years to life on counts 6 and 12, 25 years to life on counts 10 and 11, and 15 years to life on counts 1, 2, 4, 5, and 8 pursuant to section 667.61, subdivision (b). The court also imposed concurrent sentences of 25 years to life on count 9 and 364 days in jail on count 13.

A. Background

Before trial, the People indicated they intended to call Susan Hardie, who is a nurse and psychologist, to testify as an expert on child sexual abuse accommodation syndrome (CSAAS). The People anticipated Trujillo would attack the victims' credibility based on their delayed disclosures, inconsistent statements, and recantations, and argued Hardie's testimony would address common misconceptions about child victims of sexual abuse relevant to such credibility attacks. Trujillo objected and sought to exclude Hardie's testimony on the basis that it was irrelevant, would educate the jurors on how to view the evidence, and would provide an excuse for the victims' recantation of their allegations.

The court determined Hardie's testimony was admissible. The court ordered that Hardie not provide specific opinions as to any particular victim, and indicated it would give a limiting instruction to the jury.

At trial, Hardie testified that sexually abused children often do not immediately report the abuse, and she provided various explanations for their delayed reporting.⁴ Hardie further explained why it is not uncommon for abused children to make

⁴ Hardie explained that a child may delay reporting abuse because the child does not want to get the abuser in trouble, the child fears he or she will not be believed, the child worries that the non-offending parent will not be able to protect him or her, the child is fearful because the abuse occurred in secrecy, or the child feels guilty and believes he or she will be blamed for the abuse.

inconsistent statements or recant.⁵ She also testified that an abused child may tell some adults more information than others.

Hardie stated her testimony was based entirely on her background, training, and experience with sexual-assault victims. In response to questioning by the prosecutor, Hardie clarified that she had not interviewed the victims and was not familiar with the facts of the case.

B. Analysis

Expert testimony on the common reactions of child victims of sexual abuse—often referred to as CSAAS—is not admissible to show the child has been abused. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300 (*McAlpin*).) However, “it has long been held that . . . CSAAS is admissible evidence for the limited purpose of disabusing the fact finder of common misconceptions it might have about how child victims react to sexual abuse.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 418; see, e.g., *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744 (*Patino*); *People v. Housley* (1992) 6 Cal.App.4th 947, 955–956 (*Housley*); *People v. Bowker* (1988) 203 Cal.App.3d 385, 394 (*Bowker*).) For example, such evidence may be used to rehabilitate a “witness’s credibility when the defendant suggests that the child’s conduct after the incident—e.g., a delay in reporting—is inconsistent with his or her testimony claiming molestation.” (*McAlpin, supra*, 53 Cal.3d at p. 1300; see *Patino, supra*, 26 Cal.App.4th at p. 1746 [CSAAS

⁵ According to Hardie, a child may recant because the experience of frequent interviews can be very confusing and the child wants it to stop. She further explained that some children may recant because they do not like the consequences of their allegations, such as having to change schools or go into foster care.

evidence admissible to show why victim acted as she did and explain her state of mind].) “[T]he decision of a trial court to admit expert testimony ‘will not be disturbed on appeal unless a manifest abuse of discretion is shown.’” (*McAlpin, supra*, 53 Cal.3d at p. 1299.)

Trujillo asserts Hardie’s testimony was unnecessary because each victim was able to sufficiently explain her conduct to the jury, including her reasons for not immediately reporting Trujillo’s abuse. He further suggests CSAAS testimony is admissible only if the victims are in their formative years and unable to fully articulate the reasons for their conduct. Here, each victim was a teenager at the time of trial, which Trujillo suggests obviated the need for expert testimony.

Trujillo, however, overlooks that the primary purpose of Hardie’s testimony, and of CSAAS testimony in general, was to disabuse the jury of misconceptions about abused children so it could properly evaluate the victims’ credibility. Without Hardie’s testimony, there was a risk that the jury would unjustifiably reject the victims’ testimony, including their explanations for their behavior, based on such misconceptions. The victims’ testimony alone, no matter how articulate and persuasive, simply could not serve this purpose. Indeed, it would be impossible for the victims to disabuse the jury of misconceptions about abused children without the jury first determining they were, in fact, abused. The court did not abuse its discretion in allowing Hardie to testify.

We also reject Trujillo’s passing suggestion that the court should have excluded Hardie’s testimony under Evidence Code section 352 given the risk the jury would use it for an improper purpose. Evidence Code section 352 allows the court to exclude

evidence “if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code, § 352.) We review a trial court’s decision to admit or exclude evidence under Evidence Code section 352 for abuse of discretion. (*People v. Thomas* (2011) 51 Cal.4th 449, 485.)

Contrary to Trujillo’s suggestions, the probative value of Hardie’s testimony was substantial. Each victim’s credibility was placed at issue by conduct that was arguably inconsistent with having been abused. All four victims, for example, delayed reporting the abuse. In addition, Alejandra recanted her allegations, Alejandra and D.P. gave inconsistent accounts of the abuse, and Angela withheld information from the police.⁶ These are precisely the sort of credibility issues for which testimony from an expert such as Hardie is relevant and helpful. (See *Bowker*, *supra*, 203 Cal.App.3d at p. 394.)

The trial court also took care to ensure the jury did not use Hardie’s testimony for an improper purpose. The court, for example, ordered that Hardie not give an opinion specific to any victim. The prosecutor abided by this order and, in fact, elicited from Hardie that she had not interviewed any of the victims and was not familiar with the facts of the case. The court also gave a limiting instruction delineating the only purposes for which Hardie’s testimony could be used, and we presume the jury followed this instruction. (*People v. Doolin* (2009) 45 Cal.4th 390, 443.) The trial court acted within its discretion in determining

⁶ Trujillo explored some of these issues on cross-examination of the victims and in closing.

the probative value of Hardie’s testimony was not substantially outweighed by the risk of prejudice, confusing the issues, or misleading the jury. We discern no error.⁷

II. The Court Properly Instructed the Jury with CALCRIM No. 1193

Trujillo argues the court erred in instructing the jury as follows: “You have heard testimony from Susan Hardie regarding child sexual abuse accommodation syndrome. [¶] Susan Hardie’s testimony about child abuse accommodation syndrome is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not each alleged victim’s conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of each alleged victim’s testimony.” Trujillo contends this instruction—which is based on CALCRIM No. 1193—improperly conveyed to the jury that Hardie’s testimony could be used to corroborate the victims’ allegations. We find no error.

In assessing a claim of instructional error, we consider the instructions as a whole to determine whether there is a reasonable likelihood the jurors were misled as to the controlling law. (*People v. Tate* (2010) 49 Cal.4th 635, 696; *People v. Kelly* (1992) 1 Cal.4th 495, 525–526.) We presume the jurors were able to understand and correlate all of the instructions given. (*People v. Sanchez* (2001) 26 Cal.4th 834, 852 (*Sanchez*).)

⁷ In perfunctory fashion, Trujillo contends CSAAS testimony is unreliable and misleading because it assumes a child is a legitimate sexual abuse victim. Trujillo provides no analysis for this argument, nor does he cite any meaningful authority. Accordingly, we decline to consider it. (*People v. DeSantis* (1992) 2 Cal.4th 1198, 1240, fn. 18.)

We do not think it is reasonably likely that the jury understood the instruction in the manner suggested by Trujillo. The instruction was explicit that Hardie's testimony "is not evidence that [Trujillo] committed any crimes charged against him." It further delineated the only permissible uses for the testimony, which were to determine whether the victims' conduct was inconsistent with a sexually abused child, and to evaluate the believability of their testimony. This provided a clear and correct statement of the law. (See *McAlpin*, *supra*, 53 Cal.3d at p. 1300.)

Trujillo relies on *Housley*, *supra*, 6 Cal.App.4th 947, for the proposition that CSAAS testimony could be easily misconstrued by the jury as corroboration of a victim's claims, and he suggests the trial court's instruction exacerbated this risk. The *Housley* court's solution to this problem, however, was to instruct the jury that "(1) such evidence is admissible solely for the purpose of showing the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested; and (2) the expert's testimony is not intended and should not be used to determine whether the victim's molestation claim is true." (*Id.* at p. 959.) This is precisely what the court did in this case by instructing the jury with CALCRIM No. 1193.

Trujillo further contends the trial court should have instructed the jury with CALJIC No. 10.64—which also concerns CSAAS evidence—rather than CALCRIM No. 1193. Although not entirely clear, he seems to suggest the CALJIC instruction is preferable because it includes the admonition that the "People have the burden of proving guilt beyond a reasonable doubt."

We do not find it reasonably likely the jury was confused as to the proper burden of proof, despite it not being referenced in CALCRIM No. 1193. The court separately instructed the jury that “[a] defendant in a criminal case is presumed to be innocent, and this presumption requires that the People prove the defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt unless I specifically tell you otherwise.”⁸ We presume the jurors were able to correlate all the instructions given (*Sanchez, supra*, 26 Cal.4th at p. 852), making it unnecessary to restate the People’s burden in CALCRIM No. 1193.

III. The Misdemeanor Charge of Molesting a Child was Barred by the Statute of Limitations

Trujillo contends, and the Attorney General concedes, the misdemeanor charge of molesting a child (§ 647.6, subd. (a); count 13) was barred by the statute of limitations. We agree.⁹

Generally, prosecution of a misdemeanor violation of section 647.6 must be commenced within one year of the offense if the minor is 14 years of age or older, or within three years if the minor is under the age of 14. (§ 802, subds. (a) & (b).)

⁸ The court referred to the People’s burden in other instructions as well.

⁹ Although Trujillo did not directly raise this issue below, a “defendant may not inadvertently forfeit the statute of limitations and be convicted of a time-barred charged offense.” (*People v. Williams* (1999) 21 Cal.4th 335, 338.) There is nothing in the record to indicate Trujillo intended to waive the statute of limitations. Therefore, we may consider the argument for the first time on appeal.

The amended information, which is the first charging document containing the section 647.6 charge, alleged Trujillo molested Janet sometime between January 1, 2006 and December 31, 2007. The information was filed on April 5, 2016, more than three years after it alleged Trujillo committed the offense. Accordingly, the charge was barred by the statute of limitations, and the conviction and sentence on count 13 must be vacated.

DISPOSITION

We modify the judgment to vacate the conviction and sentence for molesting a child (§ 647.6, subd. (a); count 13). The judgment is affirmed as modified.

On remand, the trial court shall dismiss the molesting a child charge and prepare an amended abstract of judgment consistent with this opinion. The trial court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.