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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ALLEN GARNER,

Defendant and Appellant.

B237598

(Los Angeles County
Super. Ct. No. KA094116)

APPEAL from a judgment of the Superior Court of Los Angeles County, George Genesta, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On August 1, 2011, a jury convicted Michael Allen Garner of one count of felony attempted kidnapping to commit oral copulation of a person under the age of 18 years, in violation of Penal Code sections 664 and 209, subdivision (b)(1), and three misdemeanor counts of child molesting, in violation of Penal Code section 647.6, subdivision (a)(1). On September 15, 2011, the trial court sentenced Garner to five years in state prison. Garner filed a timely appeal.

Garner's conviction was based on four separate incidents near Charter Oak High School in Covina. Testimony during the prosecution's case at trial established that around 2:50 p.m. on April 18, 2011, a gold four-door car slowly drove by 16-year-old Jane Doe No. 1, who was walking from school to her uncle's house. Jane Doe No. 1 identified Garner as the driver. Garner asked her if she wanted a ride; when she did not respond, he circled the block, pulled next to her, and said, "Suck my dick, bitch." Garner stopped the car, got out, and made a motion as if to grab her. Jane Doe No. 1 walked quickly across the street, and then ran to her uncle's house. Her uncle called the police. On a later occasion she saw the same car across the street from the high school, she wrote down the license plate number and gave it to the police.

Around 3:30 p.m. that same day, April 18, 2011, Jane Doe No. 4, who was 14 at the time, was walking home from the high school with a friend, Jane Doe No. 3, then age 15. She saw a man in a tan car staring at them. Jane Doe No. 4 identified Garner as the driver. She saw the car again stopped in the middle of the street three or four doors from her house, and the man said in a sexual tone, "'You guys are fucking hot,'" making her uncomfortable. Jane Doe No. 3 said, "'Um, thanks,'" sarcastically, and they rushed into Jane Doe No. 4's house. They looked out the window and saw him leave. Jane Doe No. 4's mother called the police. Later, the police took Jane Doe No. 4 to a football field at the school, where she identified Garner as the driver.

Jane Doe No. 2 testified that a week earlier, on April 11, 2011 (when she was 17 years old), she was walking home from school when a gold car pulled alongside, and the man inside said she was fucking hot and had a nice ass. She identified Garner as the driver. She ignored him and kept walking. Jane Doe No. 2 saw him again stopped near a

trailer park, and he asked her if she wanted a ride. She said, “no” and gave him the middle finger, and he said, “How much for a blow job? \$300? \$600? Name your price.” About a week later, sometime after dark, Jane Doe No. 2 was walking with a friend who was wearing a Charter Oaks High School sweatshirt. The same man made a U-turn and asked her if they needed a ride. She said no, and he drove away. On April 25, 2012 at about 8:30 p.m., Jane Doe No. 2 saw Garner in the car yet again. He told her he thought she was fucking hot and asked her if she needed a ride, passing by twice. She called a friend to walk her home and got a partial license plate number. She had reported the incident to the police at school.

On April 25, 2011, at 3:15 p.m, Jane Doe No. 5, then 15 years old, was walking to school with three friends for drama practice. A gold car drove alongside them at the same rate of speed, and from about two feet away a man asked in a seductive tone, “How much for a B.J.?” and “\$300?” Jane Doe No. 5 was in shock, but she and her friends kept walking. They told the man to go away, and he followed them and then drove away, sticking out his tongue and moving it up and down. Jane Doe No. 5 was shocked and thought it was “gross.” Her guardian called the police that evening and they came to her home to interview her.

A school resource officer (who knew a similar car had been involved in several incidents, had a partial license plate number, and knew a white male in his 20’s was involved) saw a gold or tan sedan make a U-turn toward Charter Oak High School on April 29, 2011. The officer made a traffic stop. The driver was Garner, and he did not have his license with him. He explained that he made the U-turn to return home for his wallet, so that he could go buy some fast food.

In his defense, Garner presented character witnesses who testified that it would be out of character for him to behave inappropriately with minors. Garner also testified in his own defense. He graduated from Charter Oak High School and later graduated from college summa cum laude. He lived with his parents less than two blocks from the high school. Garner worked as a restaurant manager, and was involved in his church. When questioned by police, he did not admit that he committed any crime.

Garner admitted at trial, however, that he had made the comments described by the Jane Doe witnesses (although he denied getting out of the car during his encounter with Jane Doe No. 1 or having any intent to take her away). He did this because he was frustrated by his lack of success with women, and he decided to follow a book called “*The Game*,” which maintained that women responded positively to offensive remarks. His comments such as ““suck my dick”” were rude but not meant in a sexual way. He thought all the Jane Doe witnesses were over 18. Until his trial testimony, he had denied all the incidents, knowing that he was lying.

Garner admitted that he had seen pornography on his computer, and he had an interest in women orally copulating men. He had graduated from Charter Oak High School, but it did not enter his mind that the girls were high school students, because they were also close to his house and the encounters occurred at different times of day.

In rebuttal, one of the character witnesses testified that Garner’s admissions conflicted with the Garner he knew, and Garner’s mother stated that the first time she heard Garner admit that he had contacts with the victims was when he testified. The jury viewed and heard a DVD of Garner’s interview with the police on the day of his arrest.

An additional Jane Doe witness was unavailable to testify because she was hospitalized, and as a result the court dismissed two counts on the prosecution’s motion. The trial court denied a defense motion under Penal Code section 1118.1 to dismiss the remaining counts.

We appointed counsel to represent Garner on this appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On April 17, 2012, we advised Garner he had 30 days in which to submit personally any contentions or issues he wished us to consider. To date, we have received no response.

We have examined the entire record and are satisfied that Garner’s attorney has fully complied with her responsibility, and no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441–442.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.