Filed 10/23/17 P. v. Macedo-Ibarra CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ANTONIO MACEDO-IBARRA, Defendant and Appellant.	2d Crim. No. B275374 (Super. Ct. No. 2014005512) (Ventura County)

Antonio Macedo-Ibarra appeals his conviction by jury of two counts of continuous sexual abuse of a victim under 14 years of age (counts 1 and 4; Pen. Code, §§ 288.5, subd. (a); 1203.066, subd. (a)(8))[1] and four counts of lewd conduct on a child 14 or 15 years old by a person at least 10 years older (counts 2, 3, 5 and 6; § 288, subd. (c)(1)). On counts 1 and 4, the jury found that appellant had substantial sexual conduct with the victim and there were multiple victims. (§ 667.61, subds. (b) & (e)(5).)

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

The trial court sentenced appellant to a determinate term of four years state prison plus 30 years to life. Appellant appeals his conviction on counts 1-3 on the ground that the trial court erred: (1) in admitting the victims' out-of-court reports of sexual abuse; (2) in admitting expert testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS); and (3) in giving a CALCRIM No. 1193 limiting instruction. We affirm.

Facts and Procedural History

On February 16, 2014, A.B. and D.L. told their mother and aunt that appellant had sexually abused them.[2] Appellant was A.B.'s and D.L.'s uncle and shared a condominium with the family. The sexual abuse dated back to 2005 when the families lived on Victoria Avenue in Oxnard. In 2005, appellant invited 11-year-old A.B. to his bedroom, locked the door, grabbed her breasts, and touched and licked her vagina. Appellant molested A.B. once or twice a week for two years. (Count 1.)

When A.B. was in sixth grade (about 11 or 12) she told a friend, F.D., that her uncle was abusing her. A.B. did not report the molestation because she feared it would break up the family and she would be blamed for it.

In 2008, when A.B. was 14 years old, the families moved to Jill Place (the Bolker house; counts 2-3) in Port Hueneme. Appellant molested A.B. at least once a week in his bedroom. At some point, appellant started rubbing his penis against A.B.'s vagina. When A.B. said "No" to the sexual

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[2] Counts 1 through 3 allege the molestation of A.B. at the Victoria Avenue, Jill Place (Bolker), and Joyce Street (Anchor) residences from 2005 through 2008. Counts 4 through 6 allege the molestation of D.L. at the Joyce Street (Anchor) residence from April 2010 to February 15, 2014.

advances, appellant paid her $100 to $120 once or twice a month. On one occasion, appellant molested A.B. twice the same day and bought her alcohol.

When A.B. was 15 or 16 years old, the families moved to Joyce Street (the Anchor house) in Port Hueneme. A.B. had a boyfriend and rejected appellant's sexual advances. Appellant offered $200 but A.B. refused. At age 18, A.B. moved in with her boyfriend to get away from appellant.

Appellant turned his attention on D.L., A.B.'s younger sister, and touched her breast when she was in the seventh grade. D.L. often slept with appellant's younger daughters. When appellant returned home from work, he would climb into bed and grope D.L. The molestations progressed to touching D.L.'s vagina, licking her breasts, and oral copulation. It happened more than 10 times when D.L. was 12 years old.

D.L. told M., appellant's daughter, that appellant was touching "me down there" and told her not to say anything. D.L. feared that appellant would be arrested and that M. and her sister would have to grow up without a dad.

When D.L. turned 13, appellant rubbed his penis against her vagina and progressed to sexual intercourse. Appellant molested D.L. weekly and molested her two or three times a month after she turned 14. The last incident (count 6) occurred on February 15, 2014. Appellant followed D.L. into her bedroom, pulled her pants down, and put his penis on her vagina. Appellant was interrupted when his daughter, M., tried to open the door.

On February 16, 2014, D.L. was drunk and crying, and said she could not take it anymore. D.L. told her mother (Cecilia Lopez) and aunt (appellant's wife, Rosa Guerrero) that

appellant was molesting her. The mother and aunt were skeptical at first. A.B. said they should believe D.L. because appellant did the same thing to her. The aunt (Guerrero) drove to appellant's workplace and told him not to come home.

The next day, Guerrero spoke to appellant in a van. Appellant admitted molesting D.L. Appellant's daughter, M., overheard the conversation. When appellant opened the van door and saw M., he apologized and asked for M.'s forgiveness. Later that day, A.B., D.L., and their mother went to the police station and reported the sexual abuse. A sexual assault nurse examiner performed a forensic medical exam and reported that D.L.'s hymen was missing.

Doctor Jody Ward, a forensic psychologist, testified as an expert on Child Sexual Abuse Accommodation Syndrome (CSAAS). The doctor stated that CSAAS is used by psychologists to understand how children respond to sexual abuse and that it describes a pattern of behaviors exhibited by many children who have been sexually abused. "[CSAAS] helps people understand the family dynamics that are ongoing in sexually abusive relationships and why sexual abuse can occur within a family with no one knowing and no one reporting that abuse." Dr. Ward emphasized that CSAAS is not a diagnostic tool and should not be used to determine whether a child was molested or whether a particular person sexually abused a child.

On counts 4-6, appellant's trial counsel told the jury that appellant "molested D.L. He did that. Find him guilty of that. Let him be punished for that. [¶] What he did not do is molest A.B. . . . . What was clear to A.B. is that her family did not believe her little sister [i.e., D.L.]. . . . [¶] . . . So A.B. volunteered that it happened to her, too." On counts 1-3, counsel

argued that appellant was not "guilty of the multiple-victim allegation or anything to do with A.B."

Victims' Out-of-Court Reports of Sexual Abuse

Appellant argues that the trial court erred in admitting testimony that A.B. reported the sexual abuse to her friend, F.D. and in receiving testimony that A.B. and D.L., in 2014, reported the sexual abuse to their mother (Cecilia Lopez) and aunt (Rosa Guerrero). Under the fresh complaint doctrine, the victim's prior complaints may be admitted for the nonhearsay purpose of proving that the victim made a prompt complaint and to disprove recent fabrication. (*People v. Brown* (1994) 8 Cal.4th 746, 755-756.)

Appellant argues that the victim's complaint must be *fresh*, i.e., made immediately after the victim was molested. That is not the law. In *People v. Brown*, *supra*, 8 Cal.4th 746, the court recognized that the historic rationale for the doctrine — that it was "natural" for a victim of sexual abuse to promptly disclose the abuse to others — has been largely discredited. (*Id.* at p. 759.) The "freshness" of the complaint is not a prerequisite to its admission. (*Id.* at p. 750.) "[W]hen the victim of an alleged sexual offense did not make a prompt complaint but instead disclosed the alleged incident only some time later, evidence of the fact and circumstances surrounding the delayed complaint also may be relevant to the jury's evaluation of the likelihood that the offense did or did not occur . . . . Admission of evidence of the circumstances surrounding a delayed complaint, including those that might shed light upon the reason for the delay, will reduce the risk that the jury, perhaps influenced by outmoded myths regarding the 'usual' or 'natural' response of victims of sexual

offenses, will arrive at an erroneous conclusion with regard to whether the offense occurred. [Citation.]" (*Id.* at pp. 761–762.)

Appellant contends that A.B.'s complaint to F.D. was not a fresh complaint because A.B. did not specifically identify appellant. Appellant further argues that D.L.'s and A.B.'s statements to their mother and aunt do not qualify as fresh complaints because they went to the police immediately after they reported the sexual abuse.[3]

The same argument was rejected in a pretrial motion to exclude the statements pursuant to Evidence Code sections 352 and 402. With respect to A.B.'s statement to F.D., F.D. testified that A.B. said someone in her family was hurting her. Appellant argued that the statement was vague and prejudicial under Evidence Code section 352. The trial court correctly found that the statement was admissible to show that the report of sexual abuse was not a recent fabrication. A.B. told F.D. about the molestation when appellant was continuously sexually abusing A.B.

Appellant argues that the fresh complaint may have been about another family member who was molesting A.B.[4]

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[3] In his opening brief, appellant argues that the out-of-court reports do not qualify as prior consistent statements within the meaning of Evidence Code sections 791 and 1236. We do not address this issue because the trial court admitted victims' out-of-court statements under the fresh complaint doctrine.

[4] When A.L. spoke to the police in 2014, she said that her stepfather had also molested her. The trial court ruled that the statement was not relevant because there was no offer of proof that the statement was untrue. (Evid. Code, § 782.) "It's just that she made the allegation, nothing else. There is nothing else

A.B., however, testified that she told F.D. that "my uncle was abusing me." F.D. could not recall whether A.B. named a specific family member, but there is no requirement of specificity. (*People v. Brown*, *supra*, 8 Cal.4th at p. 761.) If A.B. "did, in fact, make a complaint promptly after the alleged incident, the circumstances under which the complaint was made [could] aid the jury in determining whether the alleged offense occurred." (*Ibid.*) Consistent with *People v. Brown*, the trial court admitted the prior complaint and permitted defense counsel to argue that the statement was vague and referred to a molestation by a different family member.[5]

D.L.'s report of sexual abuse was made on February 16, 2014 the day after appellant put his penis on D.L.'s vagina. Appellant's daughter tried to open the bedroom door and it upset D.L. D.L. told her mother and aunt that she could not take it anymore and that appellant was molesting her. It satisfied all the elements of a fresh complaint. The out-of-court statement was admissible to corroborate D.L.'s trial testimony and to explain why she did not immediately report the molestation.

A.B.'s statement that she too was molested by appellant was admissible to explain why A.B. came forward. A.B. did not know that appellant was molesting her sister, was angry about it, and was concerned that her mother (Lopez) and aunt (appellant's wife) did not believe D.L. The disclosures were

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there. That doesn't seem to be admissible." Appellant does not challenge the ruling on appeal.

[5] Appellant's trial counsel argued that A.B. complained that "someone in her family was hurting her. She doesn't say anything about [appellant] specifically. And she doesn't say anything at all that it was even sexual."

admissible to show their effect on the hearers (i.e., Lopez, Guerrero, D.L., and A.B.) and to explain why the molestations were reported to the police. (*People v. Scalzi* (1981) 126 Cal.App.3d 901, 907; see, e.g., *People v. Hines* (1997) 15 Cal.4th 997, 1047.) The trial court found that A.B.'s statement that D.L. should be believed because appellant did the same thing to her was a "triggering event[] that caused all [of] this to blow up." It explained why A.B. and D.L., and their mother and aunt reported the matter to the police. The trial court ruled that A.B.'s statement that appellant had molested her in the past was not prejudicial "because it's all going to get testified to independent of [the] reports."

No abuse of discretion occurred. (*People v. Alvarez* (1996) 14 Cal.4th 155, 203.) The trial court reasonably concluded that the probative value of the prior reports substantially outweighed the possibility of undue prejudice. (Evid. Code, § 352.) Evidence is probative if it helps to establish or negate the credibility of a witness. (*People v. Doolin* (2009) 45 Cal.4th 390, 438-439.) Evidence is unduly prejudicial if it "'tends to evoke an emotional bias against the defendant as an individual and . . . has very little effect on the issues. . . .'" (*People v. Karis* (1988) 46 Cal.3d 612, 638, citation omitted.) The trial court has broad discretion in balancing these factors. (*People v. Lewis* (2001) 26 Cal.4th 334, 374.) Appellant makes no showing that the ruling was arbitrary, capricious or patently absurd and resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b); *People v. Earp* (1999) 20 Cal.4th 826, 878.)

The alleged error, if any, in admitting the prior reports was harmless in light of the other evidence which was substantial. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Appellant admitted molesting D.L. and the evidence showed that A.B. and D.L. were sexually abused in the same household. Both victims were molested in appellant's bedroom and it all began when each victim was 11 or 12 years old. Other family members, including appellant's daughters, saw appellant take A.B. or D.L. into his bedroom for 15 to 30 minutes and lock the door. Appellant concedes that A.B. told her best friend, A.M., that appellant had molested A.B. "and it had been happening a few years." Both victims testified at trial and their testimony was consistent with their out-of-court statements. "[T]he jury did not have to rely solely on secondhand statements [A.B.] made to third parties. Rather, it had the opportunity to hear from [A.B.] directly and to judge her credibility. The statements . . . were merely cumulative to [A.B.'s] testimony at trial." (*People v. Ramirez* (2006) 143 Cal.App.4th 1512, 1526; *People v. Manning* (2008) 165 Cal.App.4th 870, 881.) Out-of-court statements that repeat facts established by other means are not prejudicial. (*People v. Blacksher* (2011) 52 Cal.4th 769, 818, fn. 29.)

The jury was twice instructed during the trial and at the conclusion of the case that the fresh complaint evidence was to be considered only for the purpose of determining whether it corroborated the victims' testimony.[6] Appellant argues that the

[6] The jury was instructed that "[c]ertain statements made by [F.D.], [A.M.], [M.M.], Cecilia Lopez, and Rosa Guerrero were admitted for the limited purpose of showing a complaint was made by an alleged victim, and not for the truth of the matter stated. The evidence may be considered only for the purpose of corroborating an alleged victim's testimony, but not to prove the occurrence of the crime." Similar instructions were given when the mother, Celia Lopez, and appellant's daughter, M., testified.

fresh complaint testimony was cumulative and impermissibly bolstered the trial testimony of A.B. and D.L. The jury, however, was instructed that the out-of-court statements were not admitted "for the truth of the matter stated. This evidence may be considered only for the purpose of corroborating an alleged victim's testimony, but not to prove the occurrence of the crime." It is presumed that the jury understood and followed the instructions. (*People v. Homick* (2012) 55 Cal.4th 816, 867.) We reject the argument that the fresh complaint evidence rendered the trial fundamentally unfair or violated appellant's due process rights. (*Estelle v. McGuire* (1991) 502 U.S. 62, 73; *People v. Partida* (2005) 37 Cal.4th 428, 439.)

CSAAS Evidence

CSAAS may not be used to prove that a complaining witness was sexually abused. But it is admissible to explain the victim's behavior - such as delayed reporting of the molestation - when it is used to attack the victim's credibility. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300-1301 [CSAAS evidence admissible "to explain the emotional antecedents of abused children's seemingly self-impeaching behavior"].)

Appellant contends that the CSAAS violates *Kelly/Frye* (*People v. Kelly* (1976) 17 Cal.3d 24; *Frye v. United States* (D.C. Cir. 1923) 293 F. 1013) standards for the admission of scientific opinion evidence. *Kelly/Frye* does not apply where the CSAAS testimony is admitted "'for the limited purpose of disabusing [the] jury of misconceptions it might hold about how a child reacts to a molestation. [Citations.]' [Citation.]" (*People v. Wells* (2004) 118 Cal.App.4th 179, 188.) When introduced for that purpose, and when limited to the expert's own clinical experience and familiarity with relevant professional literature,

the CSAAS evidence does not implicate *Kelly/Frye* principles. (*People v. Harlan* (1990) 222 Cal.App.3d 439, 448-449.) "*Kelly/Frye* only applies to that limited class of expert testimony which is based, in whole or part, on a technique, process, or theory which is *new* to science and, even more so, the law." (*People v. Stoll* (1989) 49 Cal.3d 1136, 1156.) Based on principles of stare decisis, we are bound to follow California Supreme Court cases permitting the admission of CSAAS evidence. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) For that reason, appellant's reliance on non-California cases is without merit.

Appellant argues that CSAAS is a psychological syndrome similar to rape trauma syndrome. *People v. Beldsoe* (1984) 36 Cal.3d 236 (*Bledsoe*) holds that expert testimony that a complaining witness suffers from rape trauma syndrome may not be admitted to prove that the witness was raped. (*Id.* at p. 251.) The court in *Bledsoe*, however, pointed out that rape trauma syndrome evidence can be admitted for a *different* purpose, namely "*to rebut misconceptions* about the presumed behavior of rape victims" (*id.* at p. 248, italics added), such as the misconception that the victim's "delay in reporting the sexual assault -- is inconsistent with her claim of having been raped." (*Id.* at p. 247.) That is the case here. The CSAAS testimony was properly admitted on the ground that A.B.'s credibility was at issue due to her delay in reporting the molestation. (*People v. Patino* (1994) 26 Cal.App.4th 1737, 1744.)

Appellant complains that the prosecution did not identify the child molestation myth or misconception that CSAAS was designed to rebut. That is not a controlling factor. "Identifying a 'myth' or 'misconception' has not been interpreted

as requiring the prosecution to expressly state on the record the evidence which is inconsistent with the finding of molestation. It is sufficient if the victim's credibility is placed in issue due to the paradoxical behavior, including a delay in reporting a molestation. [Citations.] [¶] Admission of evidence such as CSAAS is not error merely because it was introduced as part of the prosecution's case-in-chief rather than in rebuttal. The testimony is pertinent and admissible if an issue has been raised as to the victim's credibility. [Citations.]" (*People v. Patino*, *supra*, 26 Cal.App.4th at pp. 1744-1745.) Appellant makes no showing that the CSAAS evidence was unreliable or violated *Kelly/Frye*.

Equally without merit is the argument that CSAAS is profile evidence. Profile evidence is testimony about certain characteristics typical of a person engaged in a specific illegal activity. (*People v. Robbie* (2001) 92 Cal.App.4th 1075, 1084.) Here the CSAAS testimony focused on the behavioral patterns of sexually abused children, not child molestors. Dr. Ward did not describe the profile of a molester or say that child molestors act in a certain way. The jury was instructed not to consider CSAAS as evidence that appellant committed a charged crime. (CALCRIM No. 1193.)

Dr. Ward testified that CSAAS is "thought to come from sexual abuse, but it can't be proven that it came from sexual abuse. [¶] . . . [¶] . . . [Y]ou can't use it to say, oh, a child has been abused or this person abused a child." In light of these comments, no reasonable juror would have understood Dr. Ward's testimony to mean that appellant molested A.B. or that appellant fit the profile of a child molester. The expert testimony "was couched in general terms, and described behavior common to

abused victims as a class, rather than any individual victim." (*People v. Housley* (1992) 6 Cal.App.4th 947, 959.)

Appellant further claims that he was denied a fair trial but the "introduction of CSAAS testimony does not by itself deny appellant due process." (*People v. Patino*, *supra*, 26 Cal.App.4th at p. 1747; *People v. Prince* (2007) 40 Cal.4th 1179, 1229 [application of the ordinary rules of evidence generally does not impermissibly infringe on defendant's constitutional rights].) Appellant's attempt to inflate garden-variety evidentiary questions into constitutional ones is unpursuasive. (*People v. Thornton* (2007) 41 Cal.4th 391, 443.) Appellant admitted that he sexually abused D.L. (counts 4-6) and, on counts 1-3, defended on the theory that A.B. did not exhibit behavior consistent with CSAAS. Because appellant's defense relied on CSAAS, the admission of CSAAS expert testimony could not have prejudiced appellant or denied him a fair trial.

CALCRIM No. 1193

Appellant asserts that the trial court erred in giving CALCRIM No. 1193 even though the instruction is a correct statement of law.[7] (*People v. Housley*, *supra*, 6 Cal.App.4th at pp.

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[7] The jury was instructed: "You have heard testimony from Dr. Jody Ward regarding child sexual abuse accommodation syndrome. [¶] Dr. Ward's testimony about child sexual 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 the alleged victims' conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of their testimony."

958-959; *People v. Stark* (1989) 213 Cal.App.3d 107, 115-116; *People v. Bowker*, *supra*, 203 Cal.App.3d at pp. 393-394.) CALCRIM No. 1193 states that the jury may consider CSAAS evidence "only in deciding whether or not the alleged victims' conduct was not inconsistent with the conduct of someone who has been molested, and *in evaluating the believability of their testimony*." (Italics added.)

Appellant argues that CALCRIM No. 1193 fails to warn that CSAAS assumes a molestation report is true and the instruction creates an inference of guilt that lessens the prosecution's burden of proof. CALCRIM No. 1193, however, states that CSAAS testimony "is not evidence that the defendant committed any of the crimes charged against him." The jury was instructed on the presumption of innocence and the prosecution's burden of proof (CALCRIM No. 220), and how to evaluate witness credibility (CALCRIM No. 226) and conflicting evidence (CALCRIM No. 302). It was instructed to "[p]ay careful attention to all of these instructions and consider them together" (CALCRIM No. 200), and that "certain evidence was admitted for a limited purpose," and to "consider that evidence only for that purpose and for no other." (CALCRIM No. 303.) It is presumed that the jury understood and followed the instructions. (*People v. Waidla* (2000) 22 Cal.4th 690, 725.)

As discussed, CSAAS testimony may be offered to rehabilitate the credibility of a complaining child witness when the defendant suggests that the child's conduct, i.e., a delay in reporting, is inconsistent with his or her testimony claiming molestation. (*People v. McAlpin*, *supra*, 53 Cal.3d at p. 1300.) Where the victim's credibility is attacked, CSAAS "testimony is pertinent and admissible." (*People v. Patino*, *supra*, 26

Cal.App.4th at p. 1745.) CALCRIM No. 1193 is a correct statement of the law and advises the jury it may consider CSAAS evidence in weighing A.B.'s credibility.

In *People v. Bowker*, *supra*, 203 Cal.App.3d 385 (*Bowker*), the court focused on the possibility that the jury could use CSAAS evidence as a "*predictor*" of child abuse. (*Id.* at p. 393.) To prevent the jury from misapplying CSAAS, *Bowker* required that the jury be instructed not to treat CSAAS evidence as proof that the molestation actually occurred. (*Id.* at p. 394.) CALCRIM No. 1193 does just that by warning that CSAAS is not evidence that appellant committed any of the charged offenses. (*Ante*, fn. 7.) In *Bowker*, however, the trial court failed to give such a limiting instruction and the CSAAS testimony was replete with comments designed to elicit sympathy for child abuse victims. (*Id.* at p. 394.) The CSAAS expert "expressed how frightening it was 'for a child to come into *this* courtroom, and I know they have to, and tell their story.'" (*Ibid.*) The prosecution led the CSAAS expert "on a testimonial excursion which far exceeded the permissible limits of the *Bledsoe* exception." (*Ibid.*) None of that occurred here. Dr. Ward testified that she had not spoken to A.B. or D.L., had not read the police reports, and was unaware of the facts of the case.

CALCRIM No. 1193 does not require a jury to accept CSAAS evidence or interpose a presumption that the victim's reports are true. Appellant's arguments to the contrary are based on explanatory language in *Bowker* which was not intended "to be incorporated . . . in an instruction to the jury. The instructions the trial court gave [here] were clear, accurate, and sufficient. We would consider it unnecessary, and potentially confusing and misleading, to add the [argumentative] language

[appellant] proposes." (*People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387.) We, accordingly, reject the argument that CALCRIM No. 1193 misled the jurors, that it unduly bolstered A.B.'s and D.L.'s credibility, or that it lessened the prosecution's burden of proving guilt beyond a reasonable doubt.

Appellant complains that CALCRIM No. 1193 reduced the trial to a credibility contest, but that is common occurrence in sex offense cases. (*People v. Falsetta* (1999) 21 Cal.4th 903, 918 [sex offenses usually committed secretly and result in trials that are largely credibility contests].) In child molestation cases "credibility is usually the 'true issue' [and] . . . 'the jury will either believe the child's testimony that the consistent, repetitive pattern of acts occurred or disbelieve it. . . .'" (*People v. Jones* (2990) 51 Cal.3d 294, 322.) CALCRIM No. 1193 instructed the jury not to consider Dr. Ward's testimony as evidence that appellant committed any of the charged offenses. The jury was further instructed that it was not required to accept as true or correct expert testimony and "[y]ou may disregard any opinion that you find unbelievable, unreasonable, or unsupported by the evidence." (CALCRIM No. 332.) Appellant claims the instructions are wanting but "not every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation." (*Middleton v. McNeil* (2004) 541 U.S. 433, 437; *People v. Huggins* (2006) 38 Cal.4th 175, 192.) The error, if any, in giving CALCRIM No. 1193 was harmless under both the miscarriage of justice standard (*People v. Watson*, *supra*, 46 Cal.2d at pp. 836-837) and the federal harmless beyond a reasonable doubt standard (*Chapman v. California* (1967) 386 U.S. 18, 24).

Appellant's remaining arguments have been considered but merit no further discussion.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Charles W. Campbell, Judge

Superior Court County of Ventura

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

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