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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.

JOSE TRINIDAD ALVAREZ,

Defendant and Appellant.

B236430

(Los Angeles County
Super. Ct. No. BA373302)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Kathleen Kennedy, Judge. Affirmed.

Bernstein Law Office and Bob Bernstein; Alison Minet Adams for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

Jose Trinidad Alvarez appeals from the judgment following his conviction for sexually abusing two family members. We affirm.

FACTS AND PROCEEDINGS

Oscar and Manuel are fraternal twins born in June 1993. When the boys were eight years old, appellant Jose Trinidad Alvarez married their older sister, Patricia, thus becoming the twins' brother-in-law. Appellant and Patricia moved into the front house of a two-house lot on which Oscar and Manuel lived in the rear house with their parents and other family members. When Manuel was 8 or 10 years old, appellant showed him a pornographic movie. As they watched the movie, appellant reached into Manuel's pants and fondled him, asking him how it felt. Other times, appellant masturbated Manuel or performed oral sex on him. Appellant also sodomized Manuel repeatedly until he was 13 or 14 years old. Manuel did not tell anyone about the molestation because it embarrassed him.

When Oscar was about 11 years old, he visited appellant's house. Appellant turned on a pornographic movie and asked Oscar if he had ever had oral sex. Oscar said no. Appellant took Oscar to a bedroom, removed Oscar's pants, and put his mouth on Oscar's penis. Oscar felt uncomfortable, but did not stop appellant. Over approximately the next three years, appellant engaged in multiple acts of oral and anal sex with Oscar.

When Oscar and Manuel were 14 years old, appellant and Patricia moved into the house on the back of the lot to live with Oscar, Manuel, their parents, and other family members. Appellant's molestation of the boys continued. In addition to abusing the boys at home, appellant assaulted them at other locations, including his employer's parking lot, a Starbucks in Sacramento, a truck stop gas station in Las Vegas, and a parking lot in Malibu. Appellant abused the boys until sometime in 2008 or 2009 when they were 15 or 16 years old.

On July 6, 2010, Manuel and appellant had a physical altercation in an upstairs room in their house. Immediately following the fight, Oscar told his mother for the first time about the molestation. Oscar's mother summoned Patricia, to hear Oscar's

accusations. Patricia disbelieved that appellant molested her younger brothers, and told Oscar to call the police if he were telling the truth. Oscar called 911 and reported the abuse.

Los Angeles Police Officers Sharon Kim and Alex Abundis responded to the 911 call. Oscar recounted for them appellant's history of molesting him. He told them the abuse started when he was nine or ten years old and stopped about one year earlier in 2009.

The officers spoke separately with Manuel. He admitted to being molested but resisted describing what happened. He asked the officers to take him to the police station, where he would feel more comfortable. At the station, Manuel told police that appellant had started molesting him when he was 10 years old. Over the years, appellant performed several dozen acts of oral and anal sex on Manuel. The next day during interviews with police detectives, the boys repeated their accusations of years' long sexual abuse by appellant.

The People charged appellant by information with four counts. Two counts alleged lewd and lascivious acts between June 2003 and June 2005 upon Oscar who was under 14 years old at the time, and of continuous sexual abuse of Oscar between June 2005 and June 2007 while appellant lived with him. Two more counts alleged lewd and lascivious acts between June 2003 and June 2004 upon Manuel who was under 14 years old at the time, and of continuous sexual abuse of Manuel between June 2004 and June 2007 while appellant lived with him. A jury convicted appellant on all four counts. The court sentenced appellant to state prison for 54 years to life. This appeal followed.

DISCUSSION

1. *Sufficiency of the Evidence*

Appellant denied abusing his brothers-in-law Oscar and Manuel, and contends on appeal that the record contains insufficient credible evidence to sustain his convictions. According to appellant and Patricia, the boys falsely accused appellant of molesting them

in order to get him out of their house in retaliation for his helping their mother discipline them. Claiming the evidence showed his innocence, appellant testified that the boys never spent time alone with him in the front house when he and Patricia lived there. And following his and Patricia's move to the back house to live with the boys and other family members, he notes the seeming implausibility of no family member in a household of eight people ever noticing continual molestation within the confined quarters of a two-bedroom, one-bathroom house. Implausibility, he argues, made greater by the fact that the boys' mother, who did not work outside the home and rarely left the house, never detected any abuse before the boys leveled their accusations. To the contrary, she encouraged the boys to spend time with appellant whom she trusted, and appreciated his help as her son-in-law with raising and disciplining them. Finally, appellant notes, several of the boys' family members considered the boys untrustworthy. Their father did not believe their accusations because he considered the boys to be liars, and he was not alone in that assessment. Indeed, even Oscar conceded his parents and several of his siblings considered him a liar.

Appellant also cites the absence of forensic evidence of molestation. The People offered no evidence from witnesses reporting the boys complaining of injury or discomfort during the years appellant is accused of repeatedly sodomizing them. And when a forensic nurse examined the boys in July 2010 after they reported appellant's crimes, the nurse found no evidence of anal scarring or trauma (although she did testify that the absence of scars was consistent with the events the boys had reported).

Our review of a claim of insufficiency of the evidence is limited. (*People v. Akins* (1997) 56 Cal.App.4th 331, 336.) We do not reweigh the evidence, and we do not assess credibility of witnesses. The law charges the jury with weighing the evidence, and makes the jury the sole judge of witness credibility in resolving conflicts in the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181; *People v. Holt* (1997) 15 Cal.4th 619, 668-669; *People v. Osband* (1996) 13 Cal.4th 622, 690.) The test on appeal is whether a rationale trier of fact could have found beyond a reasonable doubt that appellant committed the crimes for which he was convicted. (*People v. Earp* (1999) 20 Cal.4th

826, 887.) The test is not whether the evidence convinces us beyond a reasonable doubt. (*People v. Bean* (1988) 46 Cal.3d 919, 933.) The testimony of one witness, even if inconsistent or contradicted by other evidence, is sufficient to support a conviction. (*People v. Leigh* (1985) 168 Cal.App.3d 217, 221.) We reject evidence only if it is physically impossible or its falsity is obvious without resort to inference or deduction. (*People v. Sanchez* (1995) 12 Cal.4th 1, 31-32, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *People v. Mayberry* (1975) 15 Cal.3d 143, 150.)

Here, the People offered sufficient evidence from the boys' testimony – which we summarized under "Facts and Proceedings," above – to support appellant's convictions. The boys testified to repeated acts of molestation occurring in various locales. Weaknesses or inconsistencies in the evidence cited by appellant were for the jury to weigh and resolve. The jury believed the boys. Thus appellant's evidence about the lack of privacy in the house and the boys' alleged lack of trustworthiness and inconsistencies in their testimony does not defeat the boys' molestation claims, and does not require reversal of appellant's convictions.

2. *Expert Testimony on Child Sexual Abuse Accommodation Syndrome*

The People offered expert psychological testimony about Child Sexual Abuse Accommodation Syndrome. Not truly a syndrome in a psycho-medical sense, the syndrome is a model to help others understand the ways in which behavior of sexually abused children often differs from what laypeople often expect. The syndrome has five stages. "Stage one is secrecy . . . where a child understands certain things should not be disclosed. Stage two is helplessness, the absence of power a child has in a relationship with a parental figure or trusted adult. The first two stages are present in every child and establish a child's potential to become a victim of sexual abuse. Stages three through five occur as the result of abuse. Entrapment and accommodation, the third stage, occurs after the child fails to seek protection. Stage four, delayed disclosure, occurs when the child tells someone about the sexual abuse. In retraction, the final stage, the child denies abuse

has occurred.” (*People v. Bowker* (1988) 203 Cal.App.3d 385, 389 (*Bowker*).) Evidence of Child Sexual Abuse Accommodation Syndrome is admissible to show a child’s reactions, such as delayed disclosure, are not inconsistent with abuse. (*People v. Housley* (1992) 6 Cal.App.4th 947, 955.) Signs of the syndrome are not, however, evidence of abuse and are not admissible to show abuse occurred. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300-1301.)

The People’s expert, Dr. Jayme Jones Bernfeld, described the syndrome’s stages for the jury. She explained that *secrecy* arises because molestation typically occurs in private, which signals to the child that the child should not discuss the molestation with anyone. *Helplessness* arises because a child victim of molestation is ordinarily physically smaller and weaker than the adult molester. *Accommodation* occurs because a child typically cannot successfully resist the molestation, and thus adopts defensive behaviors and mechanisms to reduce the trauma, such as descending into a state of denial to pretend the molestation is not happening. And finally *delayed and conflicted disclosure* of the molestation arises from the secrecy and the child’s likely fear, shame, and accommodation to the molestation.

Appellant contends the court erred in admitting Dr. Bernfeld’s testimony.¹ Appellant asserts the testimony lent an unjustified aura of credibility to the boys’ testimony. According to appellant, the testimony permitted the jury to gloss over inconsistencies in the boys’ testimony as symptomatic of the syndrome, instead of viewing the inconsistencies as undermining the boys’ credibility and accuracy. Moreover, according to appellant, the boys exhibited none of the behaviors the syndrome aims to explain. (*Bowker, supra*, 203 Cal.App.3d at pp. 393-394 [to be admissible, testimony about Child Sexual Abuse Accommodation Syndrome “must be targeted” to evidence the child exhibited signs, such as delayed disclosure, of the syndrome].)²

¹ Appellant moved to bar Dr. Bernfeld’s testimony, but the court denied the motion.

² “[A]t a minimum the evidence must be targeted to a specific ‘myth’ or ‘misconception’ suggested by the evidence. [Citation.] For instance, where a child

We review admission of expert testimony for abuse of discretion. (*People v. Hill* (2011) 191 Cal.App.4th 1104, 1122.) Dr. Bernfeld's testimony covered only 12 pages (four of which involved her qualifications). In her time on the stand, she denied any personal knowledge about the boys and the evidence against appellant. She had not interviewed the boys and did not express an opinion about whether abuse occurred, explaining that manifestation of the syndrome was not evidence of abuse. She testified only in generalities about the syndrome, and did not tie it to the particulars of this case. Additionally, the court instructed the jury that Dr. Bernfeld's testimony was admitted for the limited purpose of explaining the boys' conduct and was not evidence appellant had committed the charged offenses.³

Furthermore, the record warranted admission of evidence about the syndrome. (*Bowker, supra*, 203 Cal.App.3d at pp. 393-394 [testimony about syndrome admissible only if child shows syndrome's behaviors].) Each boy testified that appellant molested him only when he was alone with appellant, thus reinforcing the syndrome's secrecy component. Manuel testified appellant's anal penetration of him hurt but he was too weak to stop appellant, which is pertinent to the syndrome's component of weakness.

delays a significant period of time before reporting an incident or pattern of abuse, an expert could testify that such delayed reporting is not inconsistent with the secretive environment often created by an abuser who occupies a position of trust. Where an alleged victim recants his story in whole or in part, a psychologist could testify on the basis of past research that such behavior is not an uncommon response for an abused child who is seeking to remove himself or herself from the pressure created by police investigations and subsequent court proceedings. In the typical criminal case, however, it is the People's burden to identify the myth or misconception the evidence is designed to rebut. Where there is no danger of jury confusion, there is simply no need for the expert testimony." (*Bowker, supra*, 203 Cal.App.3d at pp. 393-394.)

³ The court instructed the jury: "You have heard testimony from Jayme Jones Bernfeld regarding child sexual abuse accommodation syndrome. [¶] Such 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 Oscar G's or Manuel G's conduct was not consistent with the conduct of someone who has been molested, and in evaluating the believability of his testimony."

And the boys delayed telling anyone about the molestation, which comports with delayed disclosure under the syndrome. Thus Dr. Bernfeld's testimony did not go beyond that permitted by case authority allowing expert testimony about the syndrome. (*People v. McAlpin, supra*, 53 Cal.3d at pp. 1300-1301; *People v. Housley, supra*, 6 Cal.App.4th at p. 955.) Accordingly, the court did not abuse its discretion in admitting her testimony.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.