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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CHIPPER ROBERT FITZPATRICK, Defendant and Appellant.	G063916 (Super. Ct. No. SWF2102206) O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Charles Jacob Koosed, Judge. Affirmed.

Carl Fabian, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Melissa Mandel and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

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"'To justify a lesser included offense instruction, the evidence supporting the instruction must be substantial—that is, it must be evidence from which a jury composed of reasonable persons could conclude that the facts underlying the particular instruction exist.'" (*People v. Souza* (2012) 54 Cal.4th 90, 115–116 (*Souza*).)

A sex offense was committed by "force" if a "defendant used 'enough physical force to overcome the person's will.'" (*People v. Thomas* (2017) 15 Cal.App.5th 1063, 1071 (*Thomas*).) The term "force" is a shorthand term that broadly encompasses an element of certain sex crimes in which a defendant overcomes "a person's will by means of *force*, violence, *duress*, menace, or fear of immediate and unlawful bodily injury." (See, e.g., Pen. Code, § 261, subd. (a)(2), italics added.) [1]

Here, defendant Chipper Robert Fitzpatrick committed various sex crimes against his girlfriend's' daughter Jane Doe. Fitzpatrick's crimes against Doe started when she was eight years old and continued until she was 18 years old. Doe testified that she repeatedly told Fitzpatrick to stop, but he continued to sexually assault her. A jury found Fitzpatrick guilty of 13 sex offenses, 10 of the crimes involved the element of force and/or duress. The trial court sentenced Fitzpatrick to an effective term of 123 years to life.

On appeal, Fitzpatrick challenges his convictions for the "forcible" sex crimes: forcible rape (four counts); forcible oral copulation (three counts); and forcible sexual penetration (three counts). Fitzpatrick argues the trial court erred by not instructing the jury sua sponte on "nonforcible" sex crimes as lesser included offenses. We disagree.

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[1] Further undesignated statutory references are to the Penal Code. We shall also omit the word "subdivision" or its abbreviation.

We find that there is not substantial evidence in the record to support any lesser included "nonforcible" instructions. That is, the evidence showed that all of the charged "forcible" sex offenses committed against Doe were accomplished by Fitzpatrick's use of force and/or duress. And as the trial court determined, there is no substantial evidence to show otherwise.

Thus, we find that the trial court committed no instructional errors, and we affirm the judgment.

I.

FACTS AND PROCEDURAL BACKGROUND

When Jane Doe was six years old, Fitzpatrick began a relationship with Doe's mother (Mother) and later moved into their home. Fitpatrick and Mother shared a master bedroom. Fitzpatrick and Mother never married, but Fitzpatrick treated Doe as his stepdaughter. When Doe was nine years old, Mother gave birth to a baby girl. At all relevant times, Doe had her own bedroom in the house.

The first time Doe remembered Fitzpatrick sexually assaulting her was when she was eight years old. This occurred in Mother's bedroom while Mother was at work. Fitzpatrick took off Doe's bottoms. Doe asked Fitzpatrick what he was doing and she asked him to stop. Once her bottoms were off, Fitzpatrick touched her breasts and put his fingers in her vagina. Doe continued to tell Fitzpatrick to stop, but he did not; Fitzpatrick then took off his clothes. Fitzpatrick put his penis into Doe's vagina, which hurt her. Doe was crying and "saying no." When he was finished, Fitzpatrick just walked away. Doe did not remember how long the sexual assault lasted or whether Fitzpatrick had ejaculated or not.

The second time Doe remembered Fitzpatrick sexually

assaulting her was when she was 10 years old. Doe was in her bedroom on the left side of the bed. Fitzpatrick again took her bottoms off, and put his penis in Doe's vagina, but this time Fitzpatrick did not put his fingers on her vagina. Doe again asked Fitzpatrick to stop, and told him no, but he still persisted. Fitzpatrick ejaculated onto the carpet.

Doe entered puberty when she was about 12 years old. Doe said Fitzpatrick at this time "would just, like, grab my butt, grab my boobs, start saying more sexual things towards me, and the sexual assaults . . . progressed." Fitzpatrick's sexual assaults typically occurred in Doe's bedroom in the morning before she went to school, when Mother was at work, and when her sister was in childcare. Fitzpatrick repeatedly put his penis in Doe's vagina, and then ejaculated on the carpet on all sides of the bed. Fitzpatrick had Doe touch his penis with her hand and her mouth. Fitzpatrick put his fingers in Doe's vagina, and put his mouth on her vagina. During these sexual assaults, Doe repeatedly told Fitzpatrick no, and continued to tell him to stop. Fitzpatrick told Doe "that if anybody found out, he would not only hurt me, he would hurt his self, and kill his self, and drive his self off a cliff." Doe said this made her feel upset and scared.

When Doe was about 14 years old, Fitzpatrick began using physical force. Doe said Fitzpatrick "would hit me and call me names and hold me down. Choke me." Fitzpatrick left bruises on her "arms, legs, and things like that." Fitzpatrick continued to put his penis in Doe's vagina and ejaculated around the bed. Fitzpatrick also still made Doe put her hand on his penis, and put his mouth on her vagina. At some point, Fitzpatrick told Doe "that he wished that we could get married and that he could have kids with me and things like that, and he wished that I could be his wife one day." These comments made Doe feel "scared because I was so little, and he's so old

compared to me. I was just kind of scared and creeped out." [2]

After taking a break, Fitzpatrick again repeated his sexual assaults when Doe was about 16 years old. Doe testified that the assaults continued to be rough. Doe was asked, "At this point, you've been saying no to him for eight years now. Are you still continuing to tell him no when this happened?" Doe replied, "Yes." Doe was asked, "Is he listening to you at any point?" Doe replied, "No." Doe photographed a bruise that occurred just after a sexual encounter with Fitzpatrick in January 2021. Doe kept the photograph just "for myself because one day it was going to come out, one way or another." Doe was "hopeful, and I just didn't know when it would come out, but I knew one day it would." Doe was crying in one photograph, which was captioned: "[S]ome day, all of the news will be out, and I'll be free. I'm so exhausted." Doe explained: "I was just tired of everything happening and just having -- I didn't tell anybody, so it was like a battle with myself."

On October 2, 2021, just after Doe had turned 18 years old, Fitzpatrick committed his last sexual assault against Doe. Doe said that while he was on her bed, Fitzpatrick put his penis in her vagina. Fitpatrick told Doe that he could tell that she felt uncomfortable, that she did not want it, that "he could tell that I didn't like it, and those kinds of remarks."

On October 21, 2021, Doe began dating G.C. (Gio), who was 19 years old. Fitzpatrick gave Doe love letters, texted her, and he repeatedly called Doe in an attempt to reinitiate sexual contact. Doe rebuffed

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[2] At trial, Doe testified that Fitzpatrick sometimes would put her in handcuffs, but not when he was having sex with her. At a later point, Doe said there were times when Fitzpatrick *would* sexually assault her while she was restrained with handcuffs. The jury ultimately did not find true allegations that Fitzpatrick engaged in tying or binding during any of the charged sex crimes.

Fitzpatrick's requests and he was upset.

In December 2021, Gio asked Doe if there was something "weird" going on between her and Fitzpatrick. Gio observed that Fitzpatrick acted strangely around Doe, and that he was "overprotective and following her around wherever she went." Doe started crying and disclosed to Gio that Fitzpatrick had been sexually abusing her. Gio was the first person Doe had ever told about Fitzpatrick's sexual assaults. Doe moved out of the house into her grandparents' house and Mother cut off all contact with her.

Police Investigation

On December 16, 2021, Gio accompanied Doe to the police station where she reported Fitzpatrick's sexual assaults. Police obtained a warrant to search Fitzpatrick's home. Police obtained carpet samples from Doe's bedroom. Fitzpatrick was present when the search was executed. The following day, police responded to a call that Fitzpatrick had attempted to commit suicide. Subsequent analysis of the carpet samples from Doe's bedroom showed the presence of semen; DNA analysis confirmed with extremely high probability that the semen was from Fitzpatrick (Gio was eliminated as a source).

After interviewing Doe, police looked at her cell phone, which showed hundreds of text messages from Fitzpatrick. Police photographed some of the texts, including the following: "Don't think about me. Just do what is ever impulse to you because you are probably not telling me already just like you probably were going out with him when I first heard his name when you were going to [Gio's] and so and so and so and so and so. I knew when you said [Gio's] name, it was a f*cking problem. He will never satisfy you like I did. Suck his d*ck. I'll give you a few more to erase when you get

here. I miss you. I love you, and I wish you love me back, but it doesn't happen every time. That means there's no love. That means there's no commitment. That means that you don't have a feelings for my feelings. That's what that means. Baby, you know that sh*t right. I'm not f*cking truthful, and I give you my world. I'm sorry I took advantage of you. You can come erase that one, too. I think if I told you I was killing myself, you would still want to come home and that's love."

Court Proceedings

The People filed an 18-count information charging Fitzpatrick with sex offenses committed against Doe when she was from eight to 18 years of age. The People alleged tying/binding allegations as to four counts. At a jury trial, after the close of the People's case, the court dismissed two counts. (See § 1118.1.) The trial court instructed the jury on the remaining 16 counts (the court's relevant jury instruction proceedings will be summarized in the discussion section of this opinion).

The jury found Fitzpatrick not guilty as to three counts, and did not find true the tying/binding allegations. The jury found Fitzpatrick guilty of 13 crimes: forcible rape of a child (four counts); forcible oral copulation of a child (three counts); forcible sexual penetration of a child (three counts); oral copulation of a child under the age of 10 (one count); lewd or lascivious acts upon a child (one count); and rape (one count when Doe was 18 years old).

The trial court sentenced Fitzpatrick to a determinate term of 48 years, followed by an indeterminate term of 75 years to life.

II.

DISCUSSION

Fitzpatrick claims the trial court erred by not instructing the jury sua sponte on "nonforcible" sex offenses as lesser included offenses to the crimes of forcible rape, forcible oral copulation, and forcible sexual penetration. We disagree because there is not substantial evidence in the record to support the lesser included offense instructions.

We review instructional error claims de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) We determine whether the trial court fully and fairly instructed the jury on the applicable law. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.)

In this discussion we will: A) review relevant principles of law; B) summarize the relevant proceedings; and C) apply the facts to the law.

A. Relevant Legal Principles

"'The trial court is obligated to instruct the jury on all general principles of law relevant to the issues raised by the evidence, whether or not the defendant makes a formal request.'" (*Souza, supra,* 54 Cal.4th at p. 115.) This duty arises even when the lesser included offense is inconsistent with the defendant's trial theories, or contrary to the defendant's wishes. (*People v. Breverman* (1998) 19 Cal.4th 142, 155, 162–163.)

A trial court's duty to instruct on its own motion "'encompasses instructions on lesser included offenses if there is evidence that, if accepted by the trier of fact, would absolve the defendant of guilt of the greater offense but not of the lesser.' [Citations.] 'To justify a lesser included offense instruction, the evidence supporting the instruction must be substantial—that is, it must be evidence from which a jury composed of reasonable persons

could conclude that the facts underlying the particular instruction exist.'" (*Souza, supra,* 54 Cal.4th at pp. 115–116.)

"Substantial evidence in this context is evidence from which a reasonable jury could conclude that the defendant committed the lesser, but not the greater, offense." (*People v. Shockley* (2013) 58 Cal.4th 400, 403.) A court is required to "instruct the jury on a lesser included offense only '[w]hen there is substantial evidence that an element of the charged offense is missing, but that the accused is guilty of' the lesser offense." (*Id*. at p. 404.)

"[A] trial court errs if it fails to instruct, sua sponte, on all theories of a lesser included offense which find substantial support in the evidence. On the other hand, the court is not obliged to instruct on theories that have no such evidentiary support." (*People v. Breverman*, *supra*, 19 Cal.4th at p. 162.) "[T]he existence of '*any* evidence, no matter how weak' will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is 'substantial enough to merit consideration' by the jury." (*Ibid*.)

There is no duty to instruct on a lesser included offense when the evidence supporting the instruction is based on mere speculation; such an instruction is only required when the lesser included offense is supported by ""evidence that a reasonable jury could find persuasive."" (*People v. Steskal* (2021) 11 Cal.5th 332, 345; see *People v. Wilson* (1992) 3 Cal.4th 926, 941 ["Speculation is an insufficient basis upon which to require the trial court to give an instruction on a lesser included offense"]; *People v. Evers* (1992) 10 Cal.App.4th 588, 596 ["minimal or insubstantial" evidence will not suffice].)

A sex crime is committed by "force" when a "defendant used 'enough physical force to overcome the person's will.'" (*Thomas, supra,* 15 Cal.App.5th at p. 1071.) The Supreme Court has held "even conduct which

might normally attend sexual intercourse, when engaged in with force sufficient to overcome the victim's will, can support a forcible rape conviction." (*People v. Griffin* (2004) 33 Cal.4th 1015, 1027.)

"'Force' includes circumstances where the victim did not want to engage in the act and the evidence does not otherwise establish the victim's positive cooperation in act or attitude." (*Thomas, supra,* 15 Cal.App.5th at p. 1071 ["It also includes the force used to accomplish 'the penetration and the physical movement and positioning of [the victim's] body in accomplishing the act'"].) The question for the jury is whether the defendant used force to accomplish the sexual acts against the victim's will, "not whether the force he used overcame [the victim's] physical strength or ability to resist him." (*People v. Griffin*, *supra*, 33 Cal.4th at p. 1028.)

The term "force" is broadly applied and includes a defendant overcoming "a person's will by means of force, violence, *duress*, menace, or fear of immediate and unlawful bodily injury on the person or another." (See, e.g., § 261 (a)(2), italics added.)

The term "duress" means "'a direct or implied threat of force, violence, danger, . . . or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted.'" (*People v. Leal* (2004) 33 Cal.4th 999, 1004.)

A jury is instructed to determine "duress" by considering the totality of the circumstances. (*People v. Veale* (2008) 160 Cal.App.4th 40, 46.) Relevant factors include the age of the victim, their relationship to the defendant, relative size and age disparities, location of the sexual abuse, the position of dominance and authority of the defendant, and past and present conduct of the defendant toward the victim, including defendant's continuous

exploitations of the victim and whether the defendant made threats of harm to the victim or physically controlled the victim when the victim attempted to resist. (*People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14, disapproved on other grounds in *People v. Soto* (2011) 51 Cal.4th 229, 248, fn. 12.)

"The very nature of duress is psychological coercion." (*People v. Cochran, supra*, 103 Cal.App.4th at p. 15.) "The fact that the victim testifies the defendant did not use force or threats does not preclude a finding of duress. [Citation.] When the victim is young and is molested by her father in the family home, duress will be present in all but the rarest cases." (*Thomas*, *supra*, 15 Cal.App.5th at pp. 1072–1073.)

B. Relevant Proceedings

At the conclusion of the evidence, there was a discussion outside of the presence of the jury. The trial court stated:

"We've been discussing jury instructions informally. We did discuss the topic of lesser included offenses. It appears neither side is asking for any, nor were there any applicable lessers that any of us could see. For the most part, the applicable lessers were attempted versions of the completed crime. There was no testimony that any of these were attempted and not otherwise accomplished. The state of the case is really whether they just believe her or not. She never talked about he tried to do these things and was not successful.

"In addition, the other possible lessers relate to things such as simple assault, which come into play, really, when the intent of the sexual act itself really is at issue. Yeah. There may have been a touching, but it wasn't of the type that is charged here. I don't see that applying here either."

After both sides declined to be heard, the trial court stated: "I'm

going to decline to give any lessers because there's nothing applicable as relates to the evidence presented in this case."

The trial court instructed the jury as to the crime of forcible rape (rape by force, fear, or threats) using CALRIM No. 1000: "Defendant is charged . . . with rape by force in violation of Penal Code section 261(a). [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant had sexual intercourse with a woman; [¶] 2. The woman did not consent to the intercourse; [¶] AND [¶] 3. The defendant accomplished the intercourse by *force, violence, duress, menace, or fear of immediate and unlawful bodily injury to the woman or to someone else*.

"*Sexual intercourse* means any penetration, no matter how slight, of the vagina or genitalia by the penis. Ejaculation is not required. [¶] To *consent*, a woman must act freely and voluntarily and know the nature of the act. [¶] It is not required that she physically resist or fight back in order to communicate her lack of consent.

"Intercourse is *accomplished by force* if a person uses enough physical force to overcome the woman's will.

"*Duress* means a direct or implied threat of force, violence, danger, or retribution that would cause a reasonable person to so or submit to something that she would not do or submit to otherwise. When deciding whether the act was accomplished by duress, consider all the circumstances, including the woman's age and her relationship to the defendant. [¶] Intercourse is *accomplished by fear* if the woman is actually and reasonably afraid or she is actually but unreasonably afraid and the defendant knows of her fear and takes advantage of it." (First italics added.)

The trial court instructed the jury regarding forcible oral copulation and forcible sexual penetration using CALRIM Nos. 1015 and

1045. These instructions generally define the force element of oral copulation and sexual penetration in the same manner as the forcible rape instruction.

The trial court also instructed the jury: "If the defendant tried to commit suicide, that conduct may show that he was aware of his guilt. If you conclude that the defendant tried to commit suicide, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant tried to commit suicide cannot prove guilt by itself." (CALCRIM No. 378 [Consciousness of Guilt].)

C. Application and Analysis

We conclude that the trial court did not err by failing to instruct the jury sua sponte on any lesser included nonforcible sex offenses (rape, oral copulation, or sexual penetration). Even assuming (without deciding) the nonforcible sex offenses identified by defendant are lesser included offenses of the challenged forcible offenses, we agree with the Attorney General that there is not substantial evidence in the record to warrant jury instructions on any nonforcible offenses.[3] (See *People v. Breverman*, *supra*, 19 Cal.4th at p. 162 [a trial does not have a sua sponte duty to instruct on lesser included offenses which have no evidentiary support in the record].)

As the record reveals, Doe unequivocally testified that she never consented or willingly engaged in *any* sexual acts with Fitzpatrick. Indeed, Doe testified that she repeatedly told Fitzpatrick from the time she was eight

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[3] The Attorney General agrees that nonforcible rape is a lesser included offense of forcible rape, but he does not agree that nonforcible oral copulation and nonforcible sexual penetration are lesser included offenses of forcible oral copulation and forcible sexual penetration. We need not resolve this legal issue given our analysis that substantial evidence does not support the giving of *any* nonforcible lesser included offense instructions.

years old until the time that she 18 years old to stop sexually assaulting her, and yet he continued to do so. (See *Thomas*, *supra*, 15 Cal.App.5th at pp. 1072–1073 ["When the victim is young and is molested by her father in the family home, duress will be present in all but the rarest cases"].)

As to the forcible rape conviction that Fitzpatrick committed when Doe was 10 years old, Doe testified that over her repeated pleas to stop, Fitzpatrick removed her bottoms and raped her. As to the forcible rape, forcible oral copulation, and forcible sexual penetration convictions that Fitzpatrick committed when Doe was 12 years old, Doe testified that over her repeated pleas to stop, Fitzpatrick raped, orally copulated, and digitally penetrated her. Doe further testified that Fitzpatrick threatened to hurt Doe and himself. As to the forcible rape, forcible oral copulation, and forcible sexual penetration convictions that Fitzpatrick committed when Doe was 14 years old, Doe testified that Fitzpatrick hit her, held her down, and choked her to the point that she could not breathe. Doe further testified that when she struggled and told Fitzpatrick to stop, he physically overcame her will. Finally, as to the forcible rape, forcible oral copulation, and forcible sexual penetration convictions that Fitzpatrick committed when Doe was 16 years old, Doe testified that Fitzpatrick continued to use physical force and that he continued to ignore her pleas for him to stop.

In short, in each instance the evidence showed that Doe did not want to engage in any sexual acts with Fitzgerald, and there was no evidence establishing Doe's "positive cooperation in act or attitude" that would have allowed a reasonable jury to conclude that Fitzpatrick somehow committed nonforcible sex offenses, rather than forcible sex offenses. (See *Thomas, supra,* 15 Cal.App.5th at p. 1071 ["'Force' includes circumstances where the victim did not want to engage in the act and the evidence does not otherwise

establish the victim's positive cooperation in act or attitude"].)

Fitzpatrick argues there was evidence in the record that he loved Doe, such as one of his text messages that stated: "'I really do love you the most I could love anything.'" Fitzpatrick argues his "messages also conveyed [his] feelings of deep regret that Doe no longer reciprocated his feelings. [Citation.] These text messages support the inference there was a point in time when Doe did reciprocate those feelings." We disagree.

Doe testified that she was "scared and creeped out" by Fitzpatrick. Further, Doe never wavered in her testimony that she did not want to engage in any sexual contact with Fitzpatrick. A contrary interpretation of the facts and the evidence would appear to be based on pure speculation. (See *People v. Wilson, supra,* 3 Cal.4th at p. 942 ["Speculation is an insufficient basis upon which to require the trial court to give an instruction on a lesser included offense"].)

In short, we conclude that all the evidence reasonably showed that if Fitzpatrick committed the sex acts that he now challenges on appeal, then he accomplished them by force and/or duress. (Compare *People v. Woods* (2015) 241 Cal.App.4th 461, 476 [finding sufficient evidence to warrant an instruction on nonforcible oral copulation where, among other things, there was evidence that the female victim regarded the defendant as her boyfriend, she did not say "no" to him or ask him to stop, she initiated some of the sexual conduct and found the sex to be fun].)

Thus, we find that the trial court did not commit the claimed instructional errors regarding lesser included nonforcible offenses, and we affirm the judgment in all respects.

In any event, even if we were to find the claimed instructional errors to have merit, we would not find the errors to be prejudicial.

"The failure to instruct on a lesser included offense in a noncapital case does not require reversal 'unless an examination of the entire record establishes a reasonable probability that the error affected the outcome.'" (*People v. Thomas* (2012) 53 Cal.4th 771, 814, fn. omitted.) "'Such posttrial review focuses not on what a reasonable jury *could* do, but what such a jury is *likely* to have done in the absence of the error under consideration. In making that evaluation, an appellate court may consider, among other things, whether the evidence supporting the existing judgment is so *relatively* strong, and the evidence supporting a different outcome is so *comparatively* weak, that there is no reasonable probability the error of which the defendant complains affected the result.'" (*Ibid*.)

"Accordingly, a determination that a duty arose to give instructions on a lesser included offense, and that the omission of such instructions in whole or in part was error, does not resolve the question whether the error was prejudicial. Application of the *Watson* standard of appellate review may disclose that, though error occurred, it was harmless." (*People v. Breverman, supra,* 19 Cal.4th at pp. 177–178.)

Given the record in this case, we find that no prejudicial error occurred even assuming that there was substantial evidence to support any lesser included "nonforcible" offense instructions. Doe provided unrefuted testimony that for over a decade Fitzpatrick committed multiple sex offenses and that they were all accomplished by force and/or duress.

A jury is instructed to determine "duress" by considering the totality of the circumstances. (*People v. Veale*, *supra*, 160 Cal.App.4th at p. 46.) Here, Fitzpatrick sexually assaulted Doe—his putative stepdaughter—starting when she was eight years old. The sexual assaults occurred in the family home, where Fitzpatrick held a position of dominance and authority.

Fitzpatrick continuously exploited Doe, he made threats of harm, and he physically controlled Doe when she attempted to resist.

Doe's testimony was corroborated by the presence of Fitzpatrick's semen throughout Doe's childhood bedroom. There was also corroboration by way of Fitzpatrick's texts and letters to Doe, which included explicit and graphic admissions. For instance, Fitzpatrick told Doe in one text message that her "p*ssy was mine first." Doe further documented some of her bruising through photographs. Moreover, once Doe disclosed Fitzpatrick's sexual offenses to the police, and they then collected DNA evidence in his home, Fitzpatrick attempted to kill himself; therefore, demonstrating his consciousness of guilt. (See CALCRIM No. 378 [Consciousness of Guilt].)

III.

DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

SANCHEZ, J.

SCOTT, J.