Filed 12/29/25 P. v. Legaria CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. VICTOR VILLANUEVA LEGARIA, Defendant and Appellant.	2d Crim. No. B333586 (Super. Ct. No. 2021022504) (Ventura County)

Victor Villanueva Legaria appeals the judgment after a jury convicted him of committing a lewd act on a child 15 years of age (Pen. Code,[1] § 288, subd. (c)(1)), and two counts of lewd act on a child under 14 years of age (§ 288 subd. (a)). The jury also found true allegations that the victim, L.V., was particularly vulnerable and that Legaria took advantage of a position of trust or confidence. (Cal. Rules of Court, rule 4.421, subds. (a)(3) & (11).) The trial

[1] Unless otherwise noted, all further statutory references are to the Penal Code.

court sentenced Legaria to state prison for a total term of 10 years, 8 months.

Legaria contends the trial court erred in instructing the jury with CALCRIM Nos. 1191A and 1193 and that his counsel was ineffective. We affirm.

FACTS AND PROCEDURAL HISTORY

Background

Legaria is the boyfriend of L.V.'s mother. L.V.'s parents separated when she was ten years old, and thereafter, she lived with Legaria, her mother, and two siblings. From the age of ten to thirteen, L.V. and her siblings slept in the same room as Legaria and her mother either on a separate bed or on the floor next to them. When L.V. was fourteen years old, they moved to a one-bedroom apartment, and she and her siblings slept in the living room.

Charged Offenses

Count 1

On June 15, 2020, 15-year-old L.V. awoke to a substance on her left cheek and mouth. It felt like saliva, but she knew it could not be since she was sleeping on her back. L.V. wiped her face with her blanket and then went to the restroom to wash her face. She heard Legaria in the kitchen and saw his shadow. He was peeking out and looking at L.V. and then hiding from her. Legaria was moaning and L.V. could hear "wet noises" which led her to believe he was masturbating. Based on his behavior, L.V. believed Legaria put semen on her face. L.V. texted her aunt and father and the police were called. Swabs taken from L.V.'s mouth area and blanket revealed the presence of semen, and that Legaria was likely the contributor.

Count 2

L.V. was 12 years old when Legaria first touched her breasts. He reached his hand underneath her pajamas while she slept and moved his hand all over her breasts. Legaria stopped when she woke up and returned to his bed. L.V. did not disclose this incident to anyone.

Count 3

L.V. was 13 years old when Legaria touched her breasts for the final time. She awoke to Legaria standing over her, touching her breasts with his hand. L.V. told him to stop, but Legaria kept going. She sat up and Legaria stopped and returned to his bed. L.V. disclosed this incident to her aunt and cousin who in turn told her mother. L.V.'s mother did not believe her, and Legaria kept living with them. Legaria stopped touching L.V. after this incident.

Uncharged Acts

L.V. could not remember every occasion Legaria touched her breasts, but estimated he did it less than five times. After the first incident, she started wearing long sleeves and hoodies to prevent him from touching her, but the extra clothing did not help. She did not tell anyone about these incidents.

L.V. testified Legaria also touched her legs and thighs underneath her pajamas while she slept. Legaria moved his hand from the bottom of her legs up towards her thighs. When she woke up, Legaria stopped and returned to his bed. This type of touching happened more than ten times and occurred throughout sixth and seventh grades. At the time, L.V. did not tell anyone about these incidents.

CSAAS Expert

Dr. Lauren Maltby testified as an expert in Child Sexual Abuse Accommodation Syndrome (CSAAS). She did not know any details of this case. Dr. Maltby explained she was there to help the

jurors understand the behaviors of child abuse victims. These behaviors include accommodation, delayed disclosure, secrecy, helplessness, entrapment, and recantation. Dr. Maltby stressed that a child's symptoms or behaviors alone cannot lead to a conclusion that the child was sexually abused. She had no opinion whether L.V. had been sexually abused and said it was the jury's job to determine if the information applied to the case.

DISCUSSION

CALCRIM No. 1191A

Pursuant to CALCRIM No. 1191A, the trial court instructed the jury:

"The People presented evidence that the defendant committed the crimes of Lewd Act Upon a Child . . . that were not charged in this case. These crimes are defined for you in these instructions.

"You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offense. Proof by a preponderance of the evidence is a different burden from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

"If the People have not met this burden of proof, you must disregard this evidence entirely.

"If you decide that the defendant committed an uncharged offense, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit and did commit Counts One, Two, and Count Three, as charged here. If you conclude that the defendant committed an uncharged offense, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of Counts

One, Two, or Three. The People must still prove each charge beyond a reasonable doubt."

Legaria contends the instruction was erroneous and lowered the prosecution's burden of proof because it was impossible for the jury to apply a lesser standard of proof to one aspect of L.V.'s testimony but another standard in determining his ultimate guilt. We disagree.

In *People v. Reliford* (2003) 29 Cal.4th 1007 (*Reliford*), our Supreme Court considered a similar challenge. In that case, the defendant argued that instructing the jury with CALJIC No. 2.50.01, the predecessor to former CALCRIM No. 1191, was " 'likely to mislead the jury concerning' . . . 'the prosecution's burden of proof.' " (*Reliford*, *supra*, 29 Cal.4th at p. 1012.) CALJIC No. 2.50.01 is similar in all material respects to CALCRIM No. 1191A in its explanation of the law on permissive inferences and the burden of proof. Focusing on the plain language of the instruction, the *Reliford* court concluded: "We do not find it reasonably likely a jury could interpret the instructions to authorize conviction of the charged offenses based on a lowered standard of proof. Nothing in the instructions authorized the jury to use the preponderance-of-the-evidence standard for anything other than the preliminary determination" about whether the defendant committed an uncharged sex crime. (*Reliford*, *supra*, 29 Cal.4th at p. 1016.) We are in no position to reconsider our Supreme Court's holding in *Reliford*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455).

Legaria's contention was also rejected by this court in *People v. Gonzales* (2017) 16 Cal.App.5th 494 (*Gonzales*). *Gonzales* interpreted former CALCRIM No. 1191 and evidence of the defendant's charged and uncharged acts coming from the victim's own testimony. Citing to *Reliford*, *supra*, 29 Cal.4th 1007, the

majority opinion explained that CALCRIM No. 1191 would not result in the jury misapplying the burden of proof for the charged offenses even when the victim also testifies to the uncharged offenses. (*Gonzales*, *supra*, 16 Cal.App.5th at p. 502.) CALCRIM No. 1191 "instructs that the uncharged offenses are only one factor to consider; that they are not sufficient to prove by themselves that the defendant is guilty of the charged offenses; and that the People must still prove the charged offenses beyond a reasonable doubt." (*Gonzales*, at p. 502; See also *People v. Panighetti* (2023) 95 Cal.App.5th 978, 996-1000 [finding no error in the admission of the victim's testimony about the defendant's uncharged offenses in determining the ultimate question of guilt].)

L.V. testified about the uncharged offenses in this case, which consisted of Legaria touching her legs and thighs, and other instances of touching her breasts. The jury was instructed it could believe all, part, or none of this testimony. (See CALCRIM No. 105.) We presume jurors are intelligent persons, capable of understanding and following all jury instructions given. (*People v. Yoder* (1979) 100 Cal.App.3d 333, 338.) CALCRIM No. 1191A correctly conveyed the law as it applied to both charged and uncharged offenses, and the jurors were consistently told that the People must prove each charged offense beyond a reasonable doubt. There was no error.

CALCRIM No. 1193

Pursuant to CALCRIM No. 1193, the trial court instructed the jury: "You have heard testimony from Dr. Lauren Maltby regarding child sexual abuse accommodation syndrome. [CSAAS] relates to a pattern of behavior that may be present in child sexual abuse cases. Testimony as to [CSAAS] is offered only to explain certain behavior of an alleged victim of child sexual abuse. Dr. Lauren Maltby's testimony about [CSAAS] is not evidence that

[Legaria] committed any of the crimes charged against him or any conduct or crimes with which he was not charged. You may consider this evidence only in deciding whether or not [L.V's] conduct was consistent with the conduct of someone who has been molested, and in evaluating the believability of [L.V.]."

Legaria contends this instruction allowed the jury to use CSAAS testimony as evidence L.V.'s testimony was true and that he was guilty. We previously rejected similar arguments regarding this instruction and do so again. (See *People v. Munch* (2020) 52 Cal.App.5th 464, 473-474 (*Munch*); *Gonzales*, *supra*, 16 Cal.App.5th at p. 504.).

In *Munch*, *supra*, Cal.App.5th 464, the defendant claimed that CALCRIM No. 1193 " 'effectively instructs the jury that they may take [the expert's] testimony as evidence of the defendant's guilt' " because "instructing jurors that they may use it 'in evaluating the believability' of the child's testimony means they will improperly use it to find the defendant is guilty." (*Munch*, *supra*, 52 Cal.App.5th at p. 474.) In rejecting this claim, we reasoned that " '[t]he purpose of CSAAS is to understand a child's reactions when they have been abused. [¶] A reasonable juror would understand CALCRIM No. 1193 to mean that the jury can use [the expert's] testimony to conclude that [the child's] behavior does not mean she lied when she said she was abused. The jury also would understand it cannot use [the expert's] testimony to conclude [the child] was, in fact, molested. The CSAAS evidence simply neutralizes the victim's apparently self-impeaching behavior. Thus, under CALCRIM No. 1193, a juror who believes [the expert's] testimony will find both that [the child's] apparently self-impeaching behavior does not affect her believability one way or the other, and that the CSAAS evidence does not show she had been molested. There is no conflict

in the instruction.' " (*Ibid.*, italics omitted, quoting *Gonzales*, *supra*, 16 Cal.App.5th at p. 504.)

The same rationale applies here. A reasonable juror would understand CALCRIM No. 1193 to mean that L.V.'s behavior in response to the abuse, for example, attempting to protect herself from Legaria's advances instead of seeking help, her delayed disclosures, and continuing to behave normally around Legaria, did not mean her reports about the abuse were a lie; nor did it mean that she was, in fact, abused. As Dr. Maltby testified, the purpose of CSAAS is to disabuse jurors of common misconceptions about child sexual abuse and the abused child's response. It cannot be used to prove the defendant committed any of the charged crimes.

Legaria also claims CALCRIM No. 1193 allowed the jury to use CSAAS to find L.V.'s behavior "was consistent with" the behavior of an actual abuse victim and therefore, conclude she had been abused. We are not persuaded.

CALCRIM No. 1193 does not instruct the jury to use CSAAS to determine the victim's claims *must* be true. Instead, it instructs the jury to consider CSAAS evidence only in deciding "whether or not" the victim's conduct was consistent with the conduct of someone who has been molested. Dr. Maltby testified she had no knowledge about the facts of this case, was not giving an opinion as to the veracity of L.V.'s disclosures, and that it was up to the jury to determine if the information applied to the case. The CSAAS evidence left the parties free to argue and the jury to determine the meaning of L.V.'s conduct – including whether it was indicative of falsehood. Additionally, the trial court instructed jurors that they "alone must judge the credibility or believability of the witnesses" and that they could "disregard any [expert] opinion that [they found] unbelievable, unreasonable, or unsupported by the evidence." (See CALCRIM Nos. 105, 332.) Again, we presume the

jury understood and followed these instructions. (*Yoder*, *supra*, 100 Cal.App.3d at p. 338.) The trial court did not err in instructing the jury with CALCRIM No. 1193.

Ineffective Assistance of Counsel

With respect to both jury instructions, Legaria contends his counsel was ineffective for failing to object. We disagree.

Legaria's counsel requested both instructions. Having determined there was no error in either instruction, we also conclude that any objection would have been properly overruled. As such, Legaria cannot meet his burden of proving ineffective assistance. (See *People v. Price* (1991) 1 Cal.4th 324, 387.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

HIPPACH, J.*

We concur:

YEGAN, Acting P. J.

BALTODANO, J.

* Judge of the Santa Barbara Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Maureen M. Houska, Judge

Superior Court County of Ventura

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