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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MARK JOSEPH HAWES,

Defendant and Appellant.

C068519

(Super. Ct. No.  
10F05538)

An accused child molester denied he asked his girlfriend and then wife to wear ponytails, dress and behave like a little girl, and call him "Daddy"; denied that his own daughter saw him with his head between his stepdaughter's legs and his face in her crotch; and denied he raped, molested, orally copulated, and sodomized his stepdaughters for approximately eight years. A jury rejected his testimony and returned guilty verdicts on all 17 counts.

Defendant Mark Joseph Hawes now tries to shift blame to his court-appointed lawyer. But the record does not support

defendant's claims that the representation he received was constitutionally deficient or that he suffered prejudice as a result. His challenges to the admissibility and sufficiency of the evidence are equally without merit. We affirm.

#### **FACTS**

Defendant was in law enforcement from 1990 to 2001, then went to work for United Parcel Service. When he married the victims' mother, she had three small children: two little girls and a boy. He took charge of the family, and the children complied with his orders. For the girls, this meant years of subjugation and sexual abuse. Their testimony at trial was harrowing.

#### **The Victims**

M. was 17 when she testified. The abuse began when she was nine. She was lying in her bed when defendant began rubbing her leg and then her vagina. The prosecutor asked her to chronicle the molestations -- oral, vaginal, and anal sex -- that occurred during the two-year period that preceded her disclosure.

As for the molestations, she estimated that defendant would rub her leg and vagina as he tucked her in at night at least twice a week. He threatened her, telling her she would never see her mother again if she ever told anyone. If she said no, he would stomp off, slam the door, retreat to his room, and not speak to anyone for days. He molested her while the family watched television or went swimming. On four occasions, he instructed her to pretend she was sick and unable to go to church with her mother. When the family was gone, he would

molest her. On another occasion he jumped out of the closet in her room while other family members were outside swimming, and touched her vagina underneath her clothes.

M. estimated that she had put her mouth on defendant's penis 8 to 10 times, and he put his mouth on her vagina 10 to 15 times. The oral copulation occurred in both her bed and his. On one occasion, he came into her room, pulled down his pajama bottoms, began rubbing his penis, and then, holding the bars on her bed, thrust his penis into her mouth. When she tried to turn her head, he moved it back and held it there. On other occasions, he would kneel beside her bed or get on the bed on his knees, hold the bars, and put his mouth on her vagina and lick it.

During the same two-year period, defendant had sexual intercourse with M. 10 to 15 times. If she grimaced, he made her smile. If she cried, he made her stop. Sometimes he made her masturbate in front of him before sexual intercourse because, he said, it made him hard and got him in the mood. On one of the mornings when he made her pretend to be sick, he went into her bedroom and instructed her to come into his room. When she walked into the room, he was lying naked on the bed. He made her sit on him, and eventually he penetrated her vagina.

Defendant put his fingers inside M.'s vagina about 30 times over those two years. She described one incident when the rest of the family was in the backyard swimming: she and defendant were in the living room with the blinds closed, and he started

kissing her neck and forehead. Eventually, he placed his hands down her shorts and his fingers in her vagina.

Frequently, defendant asked M. to wear a skirt with no underwear. Once, he ordered her downstairs to try something different. He put her on the couch with her buttocks up to him. Standing, he put his penis in her "butt." She told him to stop because it hurt, but he assured her the pain would only last a few minutes. On another occasion, he put his penis in her anus and she bled.

Although during this time defendant was having very little sex with his wife, he was having sex regularly with not only M., but her younger sister K. as well. Following a back injury, defendant had difficulty sustaining an erection. Although he told his wife he had discontinued the medication he was taking for this condition because of the side effects, in fact he refilled the prescription many times. Empty and near-empty bottles were found among his things.

K. was only four or five years old when defendant began exploiting her. Her account, like that of her sister, is gut wrenching. She was 12 at the time of trial. When she was four or five she would pretend to be a princess by taking off all of her clothes and wrapping herself in a Mickey Mouse blanket as her gown. Defendant would kiss her neck and put his finger "in my private." She testified that defendant put his finger in her private every time her mother left the house. She estimated it was more than 100 times. Defendant also made her grab on to his penis, and he licked her vagina several times.

When K. was in about the third grade and under 10 years old, defendant had her take off her pants and underwear and sit on his shoulders with his face towards her vagina. He shoved her against the wall and started licking her vagina. She remembered that this incident occurred in defendant's bedroom.

The many other incidents were equally sordid. While her aunt was out of town, defendant and K. went to her house, and on multiple occasions, he made her give him a "big kissy," licked her vagina, and put his finger in her vagina. While K. was naked, defendant would "spank" her by rubbing her bare buttocks and putting his fingers in her vagina. He made her look at his penis, even though she told him she did not want to see it.

K. described some of the things her father said to her when she was doing things he made her do, such as, "[Y]ou didn't think this was creepy a few years ago and now you are all freaked out." Referring to her ability to make his penis hard, he said, "[O]h, [K.], baby you are making me feel so good." After every encounter, he warned her never to tell anyone.

On one occasion, defendant made K. get on her hands and knees like a dog, placed his penis in her vagina, and went back and forth with it. He instructed her to "[l]et it go." When he finished, he made her "pinky promise" not to tell anyone.

Defendant's charade all fell apart before a family pizza and movie night on Friday, August 20, 2010. K. testified that after she arrived home from school, defendant instructed her to wear a skirt without shorts on underneath. He signaled to her to come into his bedroom, and he locked the door. He made K.

kiss him on the mouth and get on the bed. He put a vibrator inside K.'s vagina and started moving it around, all the while instructing her to "[l]et it go" and to just "go crazy." He put his fingers in her vagina and touched her buttocks and breasts. He orally copulated her. Before leaving, defendant made K. give him another "big kissy."

M. accompanied her mother to pick up the pizza. En route, M. encouraged her mother to divorce defendant. When her mother resisted, M. told her that defendant had touched her. Her mother was horrified and shocked. She dropped M. off at a family friend's house and went home to confront her husband. He denied having any inappropriate physical contact with M.

M. was interviewed and defendant was arrested. As her mother explained to her why defendant had been arrested, K. blurted out that defendant had "been doing that to me for years." K. was later interviewed at a special assault forensic evaluation (a SAFE interview). The video of the SAFE interview was played for the jury.

#### **Other Women Step Forward**

The victims were not the only ones to testify to defendant's creepy behavior. Kr., his daughter from a previous marriage, lived with defendant and his new family for a couple of years. She testified she had observed seven- or eight-year-old M. on the top bunk of her bed with her legs dangling over the side and with each of her legs on defendant's shoulders. She saw her father's face between M.'s legs, and M. was giggling. When he realized Kr. was there, he angrily ordered

her to go downstairs. She also testified that on another occasion she observed her father supervising her younger siblings and cousins, all running through the sprinklers naked. He was the only adult present, and although Kr. told him it "was not right," he told her he thought it was funny.

In the early 1990's defendant had a sexual relationship with Angela B. She testified that before and during her brief marriage to defendant, he had her act like a little girl during sex. He had her wear short clothing and put her hair in pigtails. Then they would play-act. He would have her get into bed. While she pretended to sleep, he would quietly crawl into bed behind her and rub his penis against her back and bottom. He referred to her as "daddy's little girl" and asked her questions like, "Has daddy's little girl been bad?"

#### **Defendant Testifies**

Defendant categorically denied all the testimony offered by M., K., Kr., and Angela. He proclaimed his innocence of all charges.

M., he claimed, had come on to him several times the week before she accused him of sexually abusing her. Each time he rebuffed her advances. He never told her mother because he did not want to destroy his family. He explained that he had told M. she might have to be home schooled again because of the strain her schedule had on the family. He believed she was angry with him and lied so she could remain in public school. She was unhappy because her mother would not divorce him.

Defendant speculated that M. might be responsible for K.'s stories. He put a different spin on many of the accounts K. had provided. He insisted he would never sexually abuse a child.

Defense counsel attempted to discredit both Kr. and Angela. Kr. admitted she had been unhappy living with her father as a teenager and wanted to return to Alabama to live with her mother. During a heated and protracted custody battle, she ultimately stated she did not believe her father had done anything inappropriate.

During cross-examination of Angela, defense counsel exposed her mental health history, including two hospitalizations and a diagnosis of depression as well as attention deficit and obsessive-compulsive disorders. Angela assured the court and jury that her diagnoses did not impact her ability to recall the events she had described.

## **DISCUSSION**

### **I**

Defendant complains on appeal, as he did before trial, that his lawyer did not provide him constitutionally adequate representation. (*Strickland v. Washington* (1984) 466 U.S. 668 [80 L.Ed.2d 674] (*Strickland*).) He asserts first that the trial court abused its discretion by failing to substitute counsel at his request before trial began. (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).) He also contends his lawyer was incompetent for failing to follow the procedural prerequisites to admission of evidence challenging the credibility of a victim of sexual abuse, and for failing to assert his confidential

marriage privilege. On the record before us, his challenges fail.

"When a defendant seeks new counsel on the basis that his appointed counsel is providing inadequate representation--i.e., makes what is commonly called a *Marsden* motion [citation]--the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of inadequate performance. A defendant is entitled to relief if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. Substitution of counsel lies within the court's discretion. The court does not abuse its discretion in denying the motion unless the defendant has shown that a failure to replace counsel would substantially impair the defendant's right to assistance of counsel."

(*People v. Smith* (2003) 30 Cal.4th 581, 604 (*Smith*).)

Recently, the United States Supreme Court has reminded us that an appellate court plays an exceedingly deferential role when reviewing inadequacy of counsel claims. "'Surmounting *Strickland's* high bar is never an easy task.' [Citation.] An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve. [Citation.] Even under *de novo* review, the

standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.' [Citations.] The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom. [Citation.]" (*Harrington v. Richter* (2011) \_\_\_ U.S. \_\_\_ [131 S.Ct. 770, 778, 178 L.Ed.2d 624, 642-643].)

**A. Marsden Ruling**

Defendant was given the opportunity to vent his complaints about his lawyer as justification for his request for a new one. He does not suggest otherwise. He recognizes that a criminal defendant is not the boss when it comes to trial tactics. Nor can he complain about conflicts he manufactures. (*Smith, supra*, 30 Cal.4th at p. 606.) Yet he insists he was entitled to substitute his lawyer because he was embroiled in such an irreconcilable conflict with her that ineffective representation was likely to result. (*People v. Abilez* (2007) 41 Cal.4th 472, 488.)

At his *Marsden* hearing, defendant listed his grievances. In short, he complained that his lawyer did not spend enough time with him, did not follow his directions about securing witnesses, did not watch a videotape of K.'s SAFE interview with

him, did not answer his questions, and did not subpoena the medical records about his prescription for Levitra.

Defendant's lawyer was an experienced advocate, and more than half of her caseload involved sexual abuse cases. She disputed some of defendant's allegations and explained others. She assured the court she had spent much more time with defendant than he represented. She provided defendant with copies of discovery, including witness statements and a summary of K.'s SAFE interview. Jail policies prevented a viewing of digital recordings. Her investigator had worked closely with defendant, followed his leads although they did not bear fruit, visited defendant although he did not get paid for jail visits, and had investigated matters at defendant's request that the investigator believed were irrelevant.

That is not to say that the relationship was without friction. Defendant's lawyer explained that defendant did not trust her and accused her of lying to him. Often the visits became confrontational. Because defendant would not believe her, she conceded there was a lack of communication.

The trial court thus was confronted with a rather garden-variety credibility contest. The court believed defendant's lawyer. The court further found that she had properly represented defendant and would continue to do so throughout the course of the trial. The court concluded, "I find that there has not been a breakdown in the relationship between Mr. Hawes and Ms. Franco and [sic] such a kind that would make it impossible for counsel to properly represent Mr. Hawes."

Discounting, if not ignoring, the exceedingly deferential scope of appellate review, defendant insists the irreconcilable conflict in the relationship entitled him to a new lawyer. We disagree. We can find no abuse of discretion in this record.

From the trial court's up close vantage point, defense counsel met her professional responsibilities to her client and provided proper representation. To the extent the court believed the lawyer and not defendant, we must defer to the court's credibility determinations. Defense counsel spent adequate time with defendant, respected his suggestions, and directed her investigator to work closely with him. Yet she remained in charge and was not obligated to succumb to his every wish and desire, or to adopt his ill informed trial strategy.

Moreover, we must also defer to the court's assessment that the relationship had not deteriorated to the point that adequate representation was in jeopardy. Everyone recognized that communication between lawyer and client was strained. But we reject defendant's assertion that his demands, accusations, and reprisals entitled him to a new lawyer. There is certainly ample evidence here to suggest that he alone had manufactured the conflict. The trial court did not abuse its discretion by shielding the lawyer and the justice system from defendant's manipulation.

**B. Procedure to Attack the Victim's Credibility**

The trial court aborted defense counsel's attempt to discredit M., suggesting she had lied to a police officer about her sexual history. On its own motion, the trial court

interrupted cross-examination and pointed out that defense counsel had failed to follow the procedures set forth in Evidence Code section 782 as a condition precedent to introducing evidence of a victim's prior sexual conduct. Defense counsel declined an invitation to comment. The trial court struck M.'s answer to defense counsel's question and admonished the jury to disregard the question and answer. Defendant asserts his lawyer provided inadequate representation, and denied him his right to effective cross-examination and confrontation of M. in violation of the Sixth Amendment to the United States Constitution.

A criminal defendant must demonstrate not only that counsel's performance was deficient but that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland, supra*, 466 U.S. at p. 694.) Prejudice is a prerequisite to defendant's claim, a hurdle he is unable to surmount.

Defendant exaggerates the weaknesses in M.'s testimony and ignores the strength of the corroboration offered by other witnesses. He suggests that the number of alleged episodes kept dribbling out and growing over time. He asserts she had the motive to lie to encourage her mother to divorce him and to thwart his threat of home schooling. Had the jurors known that she did not tell the whole truth to the investigating police officer about having had any sex with someone other than

defendant, in defendant's view they would have disregarded her account entirely. Defendant's speculation is implausible.

It is not surprising that a teenager would deny or minimize her past sexual conduct when confronted by a police officer. Her adolescent prudishness seems trite when compared to the strength of her testimony describing the innumerable sexual episodes initiated by defendant. She described, in convincing and shocking detail, how defendant forced himself on her repeatedly for many years and how, defenseless as a little girl, she was forced to engage in oral copulation, sexual intercourse, and sodomy in addition to enduring years of molestation. We reject defendant's contention that the jury would have ignored or discounted her testimony because, at the time of her initial interview, she was not immediately forthcoming.

Moreover, even if the jury had learned she lied, it is not reasonably probable they would have discounted K.'s, Angela's, and Kr.'s testimony, all of which soundly corroborated M.'s accounts. Indeed, K. testified that she remembered one night when she still shared a room with M. that defendant came into the room, climbed up on the top bunk, and the bunk rocked back and forth. K. blurted out her account that defendant had sexually abused her consistently since she was four or five years old as soon as her mother explained what had happened and without the opportunity to discuss the allegations with M. Any minor inconsistencies in her testimony pale in comparison to the specificity she provided and the grim reality that defendant

victimized her on such a regular basis over such a long period of time.

Of course, Angela's testimony established defendant's proclivity for having sex with young girls, since he made his young girlfriend, and later wife, dress like a little girl with pigtails and play-act that he was her daddy. Given K.'s and Angela's testimony, there is no reasonable probability that the jury would have disbelieved all of M.'s testimony even if she had had another sexual relationship and lied about it.

And finally, defendant's own daughter corroborated M.'s testimony that something very unseemly had occurred. Arriving in M.'s bedroom unannounced, she observed her father's face close to M.'s crotch and M.'s legs perched on his shoulders. It is true that defendant took every opportunity to impeach Angela and Kr. by attacking their mental health and their motives to lie. The jury was made well aware of any liabilities they had. But in considering the testimony cumulatively, the evidence is consistent and overwhelming that defendant preyed on M. and K. in a manner consistent with his long-standing attraction to young girls. For all these reasons, there is simply no reasonable probability that the result of the proceeding would have been any different even if counsel had complied with Evidence Code section 782, and even if, however unlikely, the trial court had admitted the evidence to discredit M.

### **C. The Marital Privilege**

Finally, defendant complains that his lawyer did not assert his marital privilege to keep out the testimony of his ex-wife

about his deviant sexual practices before and during marriage. His claim fails again because he cannot demonstrate the requisite prejudice.

The Attorney General does not dispute that oral and written confidential communications between spouses are privileged. (Evid. Code, § 980; *People v. Cleveland* (2004) 32 Cal.4th 704, 742-743.) The problem with defendant's argument, however, is that the record discloses the same play-acting occurred both before and during the marriage. Thus, even if defendant's lawyer had asserted the privilege and successfully excluded evidence that defendant told his wife to dress up like a little girl, put her hair in pigtails, and crawl into bed and pretend she was asleep so he could sneak in and rub his penis on her back and buttocks, the same evidence would have been admitted that he made those statements before they were married. The privilege does not apply to descriptions of sex acts or communications between defendant and Angela before they were married. (*Rubio v. Superior Court* (1988) 202 Cal.App.3d 1343, 1347; *People v. Dorsey* (1975) 46 Cal.App.3d 706, 717.)

We disagree with defendant's representation of the record. He insists that the evidence that he asked, suggested, directed, or ordered Angela to play-act before they were married is minimal. Not so. Angela testified that she had dated defendant on and off for about a year before their brief, nine-month marriage. The prosecutor specifically asked: "During the time that you were indicating Mr. Hawes on and off again for a year and married to him for approximately nine months, do you have a

recollection of how many times you play acted this situation being a little girl?" Angela responded, "A lot. I don't -- I can't say how many times. It was a lot." She then described the acts again in some detail.

Regarding the time during which they were dating and not married, the prosecutor asked: "And then what were your instructions? What were you to do, Ms. Bryant, when Mr. Hawes snuck into the bed like that and did that to you?" She testified: "He would ask me questions, 'Has daddy's little girl been bad?' You know, 'Does daddy's little girl like this?' Those kinds of things. And I was supposed to say yes and call him daddy while we were having sex." To emphasize the point that it was defendant who communicated these instructions, the prosecutor clarified: "And these responses that you gave him saying yes, were these at his direction?" She replied, "Yes, ma'am." Leaving no room for doubt, the prosecutor again emphasized: "He told you to say these things?" Again she responded, "Yes ma'am."

Whether or not defendant communicated the same instructions during the marriage as he did before is of little, if any, significance. The power of the testimony is not when it occurred, but the fact that defendant demonstrated his obsession for sex with young girls many years before he acted on his obsession with M. and K. Since the record demonstrates that this behavior occurred while he was dating Angela, the privilege would not have kept the damaging testimony from the jury. As a result, defendant fails to demonstrate it is reasonably probable

that his lawyer's failure to invoke the marital privilege would have changed the outcome.

## II

According to defendant, if his lawyer is not to blame for allowing the jury to hear the evidence of his play-acting a dad having sex with his little girl, then the trial court is to blame for allowing evidence of prior conduct that is far more prejudicial than probative. He argues that admission of the evidence rendered the trial fundamentally unfair. The essence of his argument is that his play-acting with a consenting adult is not illegal and not indicative of an intent to act out the fantasy on a real child.

We review the trial court's admission of the evidence pursuant to Evidence Code sections 1101, subdivision (b) and 352 for an abuse of discretion. (*People v. Frazier* (2001) 89 Cal.App.4th 30, 42.) The trial court explained that the evidence should be admitted under section 352 because its probative value substantially outweighed the prejudice emanating from disclosure to the jury. Moreover, it was also admissible pursuant to section 1101, subdivision (b), as the court explained: "On an intent analysis, I find that the information is relevant in that the obvious nature of the sexual offenses alleged in the current case involves allegations of the defendant [engaging in] sexual activity with young girls ranging in age from, I think, as young as 5 or 6, up to their early to mid teens.

"Consequently, engaging in sexual activity with an adult who is herself portraying a young child both, physically in terms of the nature of her dress and visually in terms of the manipulation of her hair into pig tails, to include verbal references to calling her sexual name daddy is highly relevant and probative on the issue of intent necessary to commit the alleged offenses."

We can add little to the court's apt analysis. We reject defendant's suggestion that because the conduct was legal and involved a 22-year-old woman, it was not probative of his intent with respect to young girls. His suggestion ignores the obvious significance of the fact that he had his young girlfriend dress like she was a little girl, pigtails and all. All the more more damaging is the evidence that he made her call him "daddy" during the sexual encounters, thereby drawing an even stronger parallel between his prior play-acting and his later predatory behavior. We certainly cannot say the trial court abused its discretion by admitting evidence that defendant engaged in conduct with such a high degree of similarity to the conduct alleged against him. Its probative value is unassailable; that a man who would pretend to crawl into bed with a little girl actually did so many years later may reasonably be inferred.

### **III**

Defendant's final challenge is to the sufficiency of the evidence that he orally copulated K. as charged. She testified that when she was in the third grade and not yet 10 years old, defendant made her take her pants and underwear off and sit on

his shoulders. With his face in her vagina, he shoved her up against a wall and started licking her. At trial she did testify that the oral copulation took place in the master bedroom, but she did not identify in which of the houses they had lived that it occurred.

Defendant, however, points to excerpts from her SAFE interview in which K. had also described defendant's putting her up against the wall in his bedroom and orally copulating her vagina by "licking it and sucking on it and everything." She thought she was in the third grade. During the interview, she stated she was "pretty sure" it happened when they lived at a particular address, but she also stated that it happened at the other house, too, and "I'd have to say like a hundred or more times." Because her mother testified they lived at the address K. named between July 2008 and July 2009, and the information charged that one act of oral copulation occurred between August 1, 2007, and June 1, 2008, defendant contends there is insufficient evidence to support the conviction.

Defendant is well aware of the limited scope of appellate review of a challenge to the sufficiency of the evidence. We review the evidence in the light most favorable to the prosecution and presume every fact the jurors could have reasonably deduced from the evidence in support of the judgment. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1028.)

The Supreme Court has provided additional guidance when reviewing the sufficiency of the evidence of a child's generic testimony. In *People v. Jones* (1990) 51 Cal.3d 294, 315

(*Jones*), the court explained: “[I]n determining the sufficiency of generic testimony, we must focus on factors other than the youth of the victim/witness. Does the victim’s failure to specify precise date, time, place or circumstance render generic testimony insufficient? Clearly not. As many of the cases make clear, the particular details surrounding a child molestation charge are not elements of the offense and are unnecessary to sustain a conviction. [Citations.] [¶] The victim, of course, must describe *the kind of act or acts committed* with sufficient specificity, both to assure that unlawful conduct indeed has occurred and to differentiate between the various types of proscribed conduct (e.g., lewd conduct, intercourse, oral copulation or sodomy). Moreover, the victim must describe the *number of acts* committed with sufficient certainty to support each of the counts alleged in the information or indictment (e.g., ‘twice a month’ or ‘every time we went camping’). Finally, the victim must be able to describe *the general time period* in which these acts occurred (e.g., ‘the summer before my fourth grade,’ or ‘during each Sunday morning after he came to live with us’), to assure the acts were committed within the applicable limitation period. Additional details regarding the time, place or circumstance of the various assaults may assist in assessing the credibility or substantiality of the victim’s testimony, but are not essential to sustain a conviction.” (*Id.* at pp. 315–316.)

K.’s testimony satisfies the *Jones* criteria. She described the kind of act with sufficient specificity; that is, she

described how defendant licked her vagina. She described the general time period as being when she was in third grade. She described one particular incident of being thrust up against the wall in defendant's master bedroom with particular specificity. Although there was some ambiguity as to whether that incident occurred in one master bedroom or another, the precise location was not essential to sustain the conviction. K. provided sufficient information that it occurred when she was in third grade, and from that testimony the jury could infer that defendant orally copulated her within the time period alleged in the information. His challenge to the sufficiency of the evidence fails.

Because none of defendant's arguments withstands scrutiny, we need not remand this case to the trial court. As a consequence, we also need not consider his objection to remanding the case to the same trial judge.

**DISPOSITION**

The judgment is affirmed.

\_\_\_\_\_ RAYE, P. J.

We concur:

\_\_\_\_\_ BUTZ, J.

\_\_\_\_\_ MURRAY, J.