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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE LEE WANDICK,

Defendant and Appellant.

C069390

(Super. Ct. No. 11F01454)

A jury convicted defendant Eddie Lee Wandick of felony false imprisonment (count one; Pen. Code,<sup>1</sup> §§ 236, 237), misdemeanor sexual battery (count two; § 243.4, subd. (e)(1)), and misdemeanor annoying or molesting a child under the age of 18 years (count three; § 647.6, subd. (a)). Defendant admitted that he had served two prior prison terms. He was sentenced to state prison for the upper term of three years plus two years for the prior prison terms. Defendant was awarded 191 days' custody credit and 94 days'

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<sup>1</sup> Further undesignated section references are to the Penal Code.

conduct credit.<sup>2</sup> The trial court declined to impose any time for the misdemeanor convictions.

On appeal, defendant contends his count three conviction of annoying or molesting a child under age 18 is not supported by sufficient evidence of an unnatural or abnormal sexual interest in children or the child victim. We shall affirm the judgment.

## FACTS

### *Prosecution Case-in-Chief*

When she testified at trial, victim H.D. was 16 years old and was about to start her junior year in high school. She was a foster child and had been in the foster care system since she was 14 years old. She also was the mother of a one-year-old boy.

In February 2011, H.D. and her son were placed with foster mother R.W. and went to live with R.W. in her apartment. R.W. had three children: S.D., a 13-year-old girl, and two boys who were younger than S.D. The apartment had two bathrooms and three bedrooms. H.D. and her son shared a bedroom with S.D., the boys shared a bedroom, and R.W. had her own bedroom. H.D. had her own bed in the room she shared with S.D.

Defendant is the brother of R.W.'s father. On February 21, 2011, defendant came to R.W.'s house and was introduced to H.D. as "Uncle Eddie." Around 1:00 p.m. that day, while H.D. and S.D. were watching television, R.W. left the apartment to visit her boyfriend. Defendant and the girls watched movies until approximately 11:00 p.m., when H.D. decided to go to bed. When she went to her bedroom, defendant was still in the living room.

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<sup>2</sup> The relevant 2010 amendment to section 2933 does not entitle defendant to additional conduct credit because he was ordered to register as a sexual offender. (§ 2933, former subd. (e)(3), as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.)

When H.D. started “to close [her] bedroom door, [defendant] barged into the room.” She was in her pajamas and had just turned off the lamp. Defendant pushed H.D. down onto her bed, which consisted of a mattress on the floor. She was then lying on her back. She felt trapped in the room. Defendant grabbed H.D.’s wrist and got on top of her. He held both of her wrists over her head.

While defendant was holding her down, H.D. tried to get up. She testified: “I’m trying to kind of squirm from under him, kind of push him at the same time, but he’s pretty heavy.” She asked him to get off of her, but he did not comply. Instead, he started to kiss her neck. At one point, he asked her “if he could lay with” her. H.D. testified, “I didn’t know what exactly he meant. I just know I wanted him to get off of me.”

H.D. continued to squirm and try to free herself from defendant’s grasp. Then, as he held her wrists with one hand, he used his free hand to touch and squeeze her breasts several times. She asked him several more times to get off of her, but he did not respond. Finally, after a few moments, he returned to the living room without saying anything. After defendant had gone, H.D. sat on her bed and cried.

H.D. and S.D. left R.W.’s apartment and went to the nearby apartment of R.W.’s sister. Their attempts to telephone R.W. were not successful.

Realizing that defendant was the uncle, not only of R.W. but of her sister as well, H.D. believed it would not be safe to remain with the sister. Ultimately H.D. and her son went to the home of her godmother, P.H.. H.D. ended up staying with P.H. for a few weeks.

On the night of the incident, H.D. spoke to a Sacramento County Sheriff’s deputy by telephone; she told the deputy what had happened. At trial, H.D. denied that she had made up a story in order to justify leaving R.W.’s apartment.

S.D. testified that after H.D. had left the living room and had gone into the bedroom, defendant got up from the couch he had been laying on and went down the hall.

S.D. testified that, after defendant returned to the living room, H.D. called for S.D. H.D. told S.D. that defendant had “pushed her down on the bed and tried to feel all over her.”

### *Defense*

T.M. is P.H.’s son; he lives with her at her residence. T.M. testified that H.D. had telephoned him one night in February 2011. He said she “sounded paranoid . . . like something just happened to” her. According to T.M., H.D. “was trying to explain to [him] that somebody had her pinned down. She was trying to tell him to get off of her and leave her alone.” T.M. testified that H.D. had “said somebody was trying to sexually touch her or molest her or something like that.” T.M. told P.H. that H.D. needed help; P.H. then left to go get her.

T.M. testified that he and H.D. have never dated and he is not the father of her child.

R.W. testified that, while H.D. was residing with her, H.D. was expected to do chores, abide by a curfew, and attend school. On two occasions, H.D. “didn’t come home at all. And other times, it was -- she was just late.”

R.W. opined that T.M. was H.D.’s boyfriend, although R.W. admitted that she had never met him. H.D. resided with R.W. for just three weeks.

R.W. testified that on February 21, 2011, defendant had asked her if he could spend the night at her apartment because he had just come to town and needed a place to stay. She gave him permission to spend the night at her apartment. R.W. said she did not expect defendant to babysit the children that night.

When R.W. returned home, she talked to defendant. She told him that H.D. had “accused him of trying to rape her.” He said that she “was lying,” that “it was all just a misunderstanding,” and that “he was just playing around with her.”

R.W.’s sister, N.P., testified that on the night of February 21, 2011, H.D. telephoned her using S.D.’s cellular telephone. H.D. told N.P. that defendant was “hitting on” her. N.P. was confused at first because she thought that H.D. was describing

a physical altercation. A short while later, H.D. and her son arrived at N.P.'s apartment. H.D. told N.P. that defendant was "trying to feel on her and kiss on her."

Defendant did not testify.

## DISCUSSION

Defendant contends his conviction of annoying or molesting a child under age 18 is not supported by sufficient evidence of an unnatural or abnormal sexual interest in children or the child victim. He argues "[t]here was no evidence that [he] had an abnormal sexual interest in children in general, and the evidence of this incident did not demonstrate an abnormal sexual interest in [H.D.], as she was a sexually-mature teen only a year and a half from adulthood." Defendant relies on evidence that (1) he was not told H.D.'s age, (2) he was not told that H.D. was in a foster placement, (3) he had no history of unnatural or abnormal sexual interest in children, and (4) there was evidence that H.D. was in a sexual relationship with a 22-year-old man. The claim has no merit.

"On appeal, the test of legal sufficiency is whether there is substantial evidence, i.e., evidence from which a reasonable trier of fact could conclude that the prosecution sustained its burden of proof beyond a reasonable doubt. [Citations.] Evidence meeting this standard satisfies constitutional due process and reliability concerns. [Citations.] [¶] While the appellate court must determine that the supporting evidence is reasonable, inherently credible, and of solid value, the court must review the evidence in the light most favorable to the [judgment], and must presume every fact the jury could reasonably have deduced from the evidence. [Citations.] Issues of witness credibility are for the jury. [Citations.]" (*People v. Boyer* (2006) 38 Cal.4th 412, 479-480.)

"If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Albillar* (2010) 51 Cal. 4th 47, 60, citing *People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Section 647.6, subdivision (a)(1), provides that "[e]very person who annoys or

molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.”

“[A] violation of . . . section 647.6, subdivision (a) requires proof of the following elements: (1) the existence of objectively and unhesitatingly irritating or annoying conduct; (2) motivated by an abnormal sexual interest in children in general or a specific child; (3) the conduct is directed at a child or children, though no specific child or children need be the target of the offense; and (4) a child or children are victims. [Citations.]” (*People v. Phillips* (2010) 188 Cal.App.4th 1383, 1396, fn. omitted.) The jury was instructed on these elements of the offense.

“Early case law interpretations of this offense focused on describing the statutory purpose of the law, defining the type of proscribed conduct—specifically the definition of the term ‘annoy or molest.’ For example, in *People v. Pallares* (1952) 112 Cal.App.2d Supp. 895, 901, the defendant was accused of molesting and annoying a four-year-old child. The defendant argued, among other contentions, that the term ‘annoys or molests’ in . . . former section 647a rendered the section impermissibly vague. The Appellate Department of the Fresno County Superior Court rejected that argument, concluding ‘[w]hen [these words] are used in reference to offenses against children, there is a connotation of abnormal sexual motivation on the part of the offender. . . . [T]he acts forbidden are those motivated by an unnatural or abnormal sexual interest or intent with respect to children.’ The court in *Pallares* opined the statute was not concerned with the subjective concerns of the child. The court further concluded . . . former section 647a was to be construed as establishing an objective test for annoyance or molestation—that is, if the conduct of the defendant was so lewd or obscene that a normal person would unhesitatingly be irritated by it, such conduct would annoy or molest within the meaning of the statute. [Citation.] [¶] Numerous Courts of Appeal cited and followed *Pallares*. [Citations.]” (*People v. Phillips, supra*, 188 Cal.App.4th at pp. 1389-1390; see *People v.*

*Carskaddon* (1957) 49 Cal.2d 423, 426 [following *People v. Pallares* (1952) 112 Cal.App.2d Supp. 895]; *In re Gladys R.* (1970) 1 Cal.3d 855, 868, fn. 24.)

It is undisputed that “[t]here was no evidence [suggesting] that [defendant] had an abnormal sexual interest in children in general.” Thus, the issue is whether there was sufficient evidence that defendant had the requisite interest *with respect to H.D.* Defendant claims the evidence was insufficient, because the record contains evidence that H.D. “was a sexually-mature teen only a year and a half from adulthood.” The claim fails because it disregards our standard of review.

We assume for purposes of argument that the premise of defendant’s argument is sound. We thus assume a 16 and one-half-year-old female who has given birth to a child *could* outwardly appear to persons to whom she is introduced to be a sexually mature adult as opposed to an immature child. We further assume that, if a person takes a sexual interest in the female under those circumstances, the person’s sexual interest would not be “unnatural” or “abnormal” within the meaning of *People v. Pallares, supra*, 112 Cal.App.2d Supp. 895 and *People v. Phillips, supra*, 188 Cal.App.4th 1383.)

However, the parties did not litigate the issue of whether H.D. outwardly appeared to be an adult rather than her actual age of 16 and one-half years. Instead, the defense theorized that H.D. fabricated the allegation against defendant as an excuse to leave her foster placement and go to the residence of her boyfriend. As a result, nothing in the appellate record demonstrates *as a matter of law* that H.D. appeared to be an adult rather than her actual age of 16 years. Nor do the factors defendant cites on appeal, i.e., his not being told H.D.’s age, his not being told she was in a foster placement, and H.D.’s possible sexual relationship with a 22-year-old man, demonstrate as a matter of law that H.D. appeared older than her actual age.

Under these circumstances, the jurors who saw H.D. and heard her testify were not compelled to resolve the present issue in defendant’s favor by concluding that his sexual interest in H.D. was neither unnatural nor abnormal. Because this court must “review the

evidence in the light most favorable to the [judgment], and must presume every fact the jury could reasonably have deduced from the evidence” (*People v. Boyer, supra*, 38 Cal.4th at p. 480), we must presume that the jurors who watched and heard 16-year-old H.D. deduced that her appearance *would not have* misled defendant into believing, incorrectly, that she was an adult. Reversal of the judgment is not warranted simply because the jury *could have resolved* the issue in defendant’s favor, i.e., by finding that H.D. “was a sexually-mature female with a year-old child and dating a 22-year-old man.” (*People v. Albillar, supra*, 51 Cal.4th at p. 60; *People v. Lindberg, supra*, 45 Cal.4th at p. 27.) Defendant’s conviction is supported by substantial evidence. (*People v. Boyer, supra*, 38 Cal.4th at pp. 479-480.)

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

BUTZ, J.