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

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRELL ENOSH HARRIS,

Defendant and Appellant.

C077557

(Super. Ct. No. SF127434A)

A jury found defendant Terrell Enosh Harris guilty of numerous crimes against children, all committed on March 12, 2014, in a community park. On appeal, defendant contends the People failed to present sufficient evidence to sustain two of his convictions for false imprisonment (Pen. Code, § 236),¹ and two of his convictions for molesting children (§ 647.6). In a supplemental brief, defendant also contends the trial court erred

¹ Undesignated statutory references are to the Penal Code.

in convicting him on four counts of violating section 647.6 because, he argues, his conduct on March 12, 2014, constituted only a single violation.

We conclude sufficient evidence was presented to support defendant's convictions for false imprisonment and molestation. We also conclude the trial court correctly convicted defendant on four counts of molestation. We shall affirm the judgment.

I. BACKGROUND

In February 2014, defendant was convicted of sexual battery in case No. SF125431A. His victim was a 16-year-old girl. Defendant was released on a five-year grant of probation in March of 2014.

On March 12, 2014, defendant was "booked" for a "drunk kickout" and released from jail on the same day. Prior to leaving the jail, defendant was fitted with a "GPS monitoring device." Defendant left the jail and went to Conway Park in violation of the probation that was granted after his conviction for sexual battery (case No. SF125431A), which prohibited defendant from visiting any community parks or loitering within 100 yards of specified areas where children were regularly present. Several children were playing in the park. Among those children were A. (15 years old) and her younger sisters, E. (13 years old) and Aleena (about four years old). The girls were sitting on a bench in the park when defendant approached them and asked A. her name and age. A. ignored defendant but he set his jacket down between A. and E. and told them to watch it. Defendant then went to play catch with other children in the park, including A.'s friend Marlee (13 years old).

Aleena needed to use the bathroom, so the three sisters walked with Marlee to Marlee's house across the street from the park. Defendant followed the girls to Marlee's house. Scared, the girls went inside and locked the door. While the girls were inside, defendant tried to open the locked door, then he sat on the front porch.

Sitting on the porch, defendant repeatedly asked A. to come outside, then he asked Marlee if he could use her phone. Scared, Marlee told him the phones were not working.

E. called out to him that A. was too young. Defendant said “he didn’t care, he was boss-man and all” and he could “do whatever he wants.” E. tried to call her mother, but her mother’s phone was not working.

The girls left Marlee’s home through the back door to avoid defendant, who was still in front of Marlee’s house, but defendant followed them back to the park. At the park, defendant sat down on a bench and watched A. While he was watching A. defendant licked his lips and, over his clothes, rubbed his penis in a circular motion. E. heard defendant say that he wanted to “lick [A.]’s pussy.” Marlee heard defendant say “you’re fine, little girl,” while looking at A., and that he wanted to “get [A.’s] pussy wet.” A. heard defendant say that she was “hella thick” and that he wanted to “fuck [her] pussy.” E. was uncomfortable and disgusted; A. was scared and on the verge of tears.

A. and E. both wanted to go home but were afraid defendant would follow them home. Looking for safety, the girls approached Martha Salazar. A. and Salazar did not know each other well but they had seen each other in the park before. Salazar saw that A. was upset; she asked if the girls were okay. A. told her defendant was following them. Salazar told the girls to sit next to her on the bench and if defendant continued to bother them, Salazar would take them home. The girls sat down and defendant immediately approached and asked if he could sit down with them. Salazar told the girls to ignore defendant and she put her leg on the bench so he could not sit down. Nonplussed, defendant asked the girls three more times if he could sit with them. Defendant also took change out of his pocket and said to the girls, “let’s go buy something at the store.”

One of the girls again told defendant to leave them alone. Salazar started talking with the girls, hoping it would deter defendant. Defendant walked away but soon returned and continued asking the girls to go to the store. Salazar overheard defendant tell A. he was going to “get her.” A. started to cry. Salazar told the girls to follow her to her car, which was parked across the street, and she would take them home. The three girls walked with Salazar to her car and locked the doors; Salazar went inside the house

to get her keys. Defendant followed them across the street and approached the car. He knocked on A.'s window, told E. to "unlock the door," and repeatedly tried to open her locked door. When Salazar came out of the house with her keys, she told defendant to back off and she drove the girls home. When they got home, A. was scared and crying.

That same day, Ke. (eight years old) and Ka. (nine years old) were also playing at Conway Park. While she was playing, Ke. heard defendant tell another little girl, "I'll rape you." Ka. saw defendant take his shirt off, claim to be a "gang-banger," and announce that "he'll rape little kids." Ka. also heard defendant say that little kids were safe with him because he grew up in church. Although defendant appeared to be talking to himself, Ka. was scared and she ran away.

Before the day was over, defendant harassed at least two more young girls: Jocelyn (five years old) and T. (14 years old).

Defendant was subsequently arrested and the People charged him with 15 separate crimes, including two counts of false imprisonment (identifying A. and E. as the victims), and four counts of annoying or molesting a child (identifying A., E., Ke., and Ka. as the victims). The People also alleged defendant served four prior prison terms.

Jury trial began on July 11, 2014. On August 28, 2014, defendant was found guilty as charged on eight counts, guilty of a lesser included offense on two counts, and not guilty on the five remaining counts. The trial court later found true the alleged prior prison terms, and found defendant in violation of his probation in San Joaquin County case No. SF125431A.

At sentencing, the trial court revoked defendant's probation in case No. SF125431A, sentenced him to four years in state prison, awarded him 365 days of custody credit, and ordered him to pay various fines and fees. In the present case, the court sentenced defendant to five years in state prison, to be served consecutively to the term imposed in case No. SF125431A. The court gave defendant credit for time served, awarded him 416 days of custody credit, and ordered him to pay various fines and fees.

II. DISCUSSION

Defendant contends his convictions for falsely imprisoning A. and E. and for molesting Ka. and Ke. were not supported by substantial evidence. He also contends the trial court erred in convicting him on four counts of molestation when, based on the evidence, he could lawfully only be convicted of one.

We find none of defendant's arguments persuasive.

A. *Sufficiency of the Evidence*

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] 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. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility. [Citation.]” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

1. *False Imprisonment: A. and E.*

Defendant contends there is insufficient evidence to support the false imprisonment convictions because: (1) he did not compel A. and E. to get into Salazar's car; (2) he did not compel the girls to remain inside Salazar's car; and (3) there is no evidence he “had any intent to confine the girls in [Salazar's] car.”

“False imprisonment is the unlawful violation of the personal liberty of another.” (§ 236.) “The essential element of false imprisonment . . . is restraint of the person.” (*People v. Fernandez* (1994) 26 Cal.App.4th 710, 717.) False imprisonment does not require “confinement in some type of enclosed space.” (*Id.* at p. 718.) “ “ “Any exercise

of force, or express or implied threat of force, by which in fact the other person is deprived of his liberty or is compelled to remain where he does not wish to remain, or to go where he does not wish to go, is false imprisonment. The wrong may be committed by acts or by words, or both, and by merely operating upon the will of the individual or by personal violence, or both” ’ ’ (*People v. Zilbauer* (1955) 44 Cal.2d 43, 51, quoting *People v. Agnew* (1940) 16 Cal.2d 655, 659; see also *People v. Bamba* (1997) 58 Cal.App.4th 1113, 1123 [“Any exercise of express or implied force which compels another person to remain where he does not wish to remain, or to go where he does not wish to go, is false imprisonment”].)

Here, defendant directed a campaign of harassment at A. and E. After the girls ignored his initial effort to engage them in conversation, defendant followed them around the park and across the street. When they attempted to escape from him inside the house, defendant refused to leave the porch, repeatedly asking A. to come outside. When they left the house, he followed them again to the park where he stared at Ahelya while he licked his lips and rubbed his penis.

In addition to directing explicit sexual comments at her, defendant told A. he would “get her.” Defendant was relentless in his pursuit. The girls were scared and uncomfortable; they wanted to go home but were afraid defendant would follow them home. The girls sought refuge with Salazar, an adult with whom they were familiar, but defendant continued to harass the girls, asking them to go to the store with him. Scared, the girls followed Salazar to her car and locked themselves inside. Even then, defendant refused to leave the girls alone; following them to the car, trying to open the door, knocking on the car window, and asking A. to get out of the car.

Presented with this evidence, a reasonable trier of fact could conclude the girls were so afraid of defendant, their will was overcome to the point where they felt compelled to seek refuge in Salazar’s car, a place they did not intend to go, in order to

protect themselves from defendant. Accordingly, we conclude the People presented sufficient evidence to support defendant's convictions for false imprisonment.

2. *Molestation: Ka. and Ke.*

Defendant also contends there is insufficient evidence he molested Ka. and Ke. because whatever offensive comments he made, they were not directed at either of these girls, nor were they directed at a group of children. Defendant misunderstands the law.

Penal Code section 647.6 provides in relevant part: "Every person who annoys or molests a child under 18 years of age [is guilty of a crime]." (§ 647.6, subd. (a)(1).) "[A] violation of Penal Code 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." (*People v. Phillips* (2010) 188 Cal.App.4th 1383, 1396 (*Phillips*), fn. omitted.) "The intent to be observed while engaging in the offensive conduct is subsumed in the element that the offender 'directs' his conduct toward a child." (*Id.* at p. 1394.) The intent to be observed can be proved by circumstantial evidence surrounding the defendant's conduct. (*Id.* at p. 1395.)

Defendant violated his probation and went to a park where there were a number of children playing. He devoted his day to following young girls around the park and harassing them by saying offensive, sexual, and threatening things. A reasonable trier of fact could conclude from such circumstantial evidence that defendant intended his conduct to be observed by the children in the park, even if he was only talking to himself and not directing his offensive remarks at a particular person. (See *Phillips, supra*, 188 Cal.App.4th at p. 1397 [that the defendant parked outside a high school when the school day was over and masturbated in a way that students who passed by would see him was sufficient evidence to show intent to be observed].)

Moreover, Ke. and Ka. were not required to be the target of defendant's offensive comments in order for them to be his victims. "Penal Code section 646.7, subdivision (a)(1) criminalizes the offensive conduct, whether or not a particular child was the perpetrator's target. To conclude otherwise—to find that a defendant can (without violating section 647.6, subdivision (a)(1)) annoy or molest any child simply because he has not focused his actions on any particular child—makes no sense and would undermine the purpose of the statute to protect *all children* from sexual predators." (*Phillips, supra*, 188 Cal.App.4th at p. 1396.)

Accordingly, we conclude the People presented sufficient evidence to support defendant's convictions for molestation.

B. Penal Code section 647.6

Defendant further contends he could not lawfully be convicted of four counts of molesting children (A., E., Ka., and Ke.) because section 647.6 is "not a crime of violence against the person," and his offensive conduct was continuous, constituting "a single criminal act." Thus, he contends, he could only be convicted of a single count of violating section 647.6, subdivision (a)(1). Defendant is wrong.

"[A] charge of multiple counts of violating a statute is appropriate only where the actus reus prohibited by the offense—the gravamen of the offense—has been committed more than once." (*Wilkoff v. Superior Court* (1985) 38 Cal.3d 345, 349.) The actus reus prohibited by section 647.6 is conduct that is objectively annoying or molesting and is directed at a child or group of children. (*Phillips, supra*, 188 Cal.App.4th at pp. 1395-1396.)

Here, defendant committed four separate acts of annoying or molesting a child. A. heard defendant say she was "hella thick" and he wanted to "fuck [her] pussy." Separately, E. saw defendant lick his lips, open his legs, and rub his penis while staring at A. E. also heard defendant say that he wanted to "lick [A]'s pussy." Each of these are separate acts of offensive conduct, with separate victims.

Ke. and Ka. also observed separate acts of offensive conduct. Ka. overheard defendant tell another little girl, "I'll rape you." Separately, Ke. saw defendant take off his shirt, claim to be "gang-banger," then say "he'll rape little kids." Though these offensive acts were committed on the same day and in the same park, they each are separate acts of offensive conduct directed at children and observed by children. Therefore, they each are separate violations of section 647.6, subdivision (a)(1), and defendant was properly convicted on all four counts.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

NICHOLSON, Acting P. J.

/S/

MURRAY, J.