

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LORENZO VERDIN,

Defendant and Appellant.

D058580

(Super. Ct. No. SCS215992)

APPEAL from a judgment of the Superior Court of San Diego County, Stephanie Sontag, Judge. Affirmed.

In this multiple-victim child molestation case, a jury found Lorenzo Verdin guilty of three counts (counts 1-3) of committing a lewd act upon Juan V. (hereafter the victim), a minor, in violation of Penal Code section 288, subd. (c)(1) (hereafter § 288(c)(1)) (undesignated statutory references will be to the Penal Code) and two counts (counts 4 & 5) of committing a lewd act upon Alberto V., a child under the age of 14 years, in violation of section 288, subdivision (a) (hereafter § 288(a)). As to the latter two counts (counts 4 & 5), the jury found true allegations that Verdin committed substantial sexual

conduct with Alberto (§ 1203.066, subd. (a)(8)), and that he committed more than one offense described in section 667.61, subdivision (c) against more than one victim (§ 667.61, subds. (b), (c), & (e)).¹ The court sentenced Verdin to an aggregate prison term of 12 years.

Of particular importance in this appeal, the amended information (hereafter the information) specifically charged Verdin in count 1 with committing a lewd act upon the victim by having "contact with *defendant's penis*" (italics added) with the specific intent of "arousing, appealing to[,] and gratifying the lust, passions and sexual desires of [Verdin]." The count 1 verdict form incorporated the "contact with defendant's penis" language contained in count 1 of the information.²

Verdin appeals his conviction of count 1, contending the evidence is not sufficient to support that conviction because there is no substantial evidence to support a finding beyond a reasonable doubt that the victim had "contact with defendant's penis" as alleged in the information and as presented on the count 1 verdict form. We conclude substantial evidence supports Verdin's conviction of count 1 and affirm the judgment.

¹ The jury found Verdin not guilty of a third count of committing a lewd act upon Alberto V. (count 6: § 288(a)), and not guilty of two counts (counts 7 & 8) of committing a lewd act upon a third child, Matthew V., in violation of section 288(a). The jury deadlocked as to count 9, which had charged Verdin with committing a lewd act upon a fourth child, Ricardo V., in violation of section 288(a), and the court declared a mistrial as to that count.

² The count 1 verdict form stated: "We, the jury in the above entitled cause, find the defendant, Lorenzo Verdin, [Guilty/Not Guilty] of the crime of LEWD ACT UPON A CHILD 14 OR 15 YEARS OF AGE, to wit: [The victim] (contact with *defendant's penis*), in violation of [section] 288(c)(1), as charged in Count One of the [Information]." (Italics added.)

FACTUAL BACKGROUND³

A. The People's Case

The victim testified he was born in late 1992. Verdin is the victim's father's uncle.

One morning in July 2007, the victim was walking to a bus stop near a Walgreens Pharmacy while on his way to summer school when Verdin drove up to him in Verdin's van and offered him a ride. The victim entered the van and sat in the front passenger seat. Verdin tried to reach down the victim's pants and begged the victim to let him touch the victim's penis as the victim was saying, "No.". The victim, who was scared, complied with Verdin's request and went into the back of the van; Verdin went with him. Verdin opened the victim's pants and orally copulated him. Verdin fondled his own penis until he climaxed. They both returned to the front seat of the van and Verdin dropped the victim off near the Walgreens.

The next day, Verdin again drove his van up to the victim as he was walking and drove the victim, who felt scared, to the empty parking lot of a Carl's Jr. restaurant. Verdin unzipped the victim's pants, grabbed the victim's hand, and pulled it toward Verdin's erect penis, but the victim pulled away. The victim started crying as Verdin continued trying to get the victim to touch Verdin's penis. Verdin told the victim to go to the back seat and the victim complied. Verdin told the victim he wanted him to put his penis inside Verdin. Verdin removed the victim's pant and sat on the victim's lap, and the

³ In light of the narrowness of the issue presented on appeal, we limit our summary of the factual background of this case to the evidence pertaining to count 1 that is central to the analysis and arguments in the parties' appellate briefs.

victim's penis entered Verdin's anus. Verdin kept saying in Spanish, "Hazme tuya," which, according to the courtroom interpreter, means "make me yours" in the feminine sense. The victim testified he "froze" and did not know what to do.

The victim testified that when Verdin again approached him in his van the next day,⁴ the victim, who was scared, flagged down a police officer who told him to go to a nearby fire station. After taking the victim's statement, the officer took him to the police station in National City and contacted his parents.

At the request of a police officer, the victim made two recorded telephone calls to Verdin: the first on August 30, 2007, and the second on September 13 of that year. A recording of the September 13 call was played for the jury. The following translated excerpt from the Spanish conversation between the victim and Verdin during that telephone call is pertinent to this appeal:

"[Victim]: Well, [d]o you remember when we went, around here in Na[t]ional City, to Walgreens?"

"[Verdin]: Around what?"

"[Victim]: Around Walgreens.

"[Verdin]: Uh-huh.

"[Victim]: When you grabbed me?"

"[Verdin]: Uh-huh. [¶] . . .

"[Verdin]: Oh. Very good. So you want to be with me again?"

"[Victim]: Did you like it when I put it inside you?"

⁴ The officer testified this occurred on August 1, 2007.

"[Verdin]: Yes, and more when you put it all the way in. And I like it when I sucked on you. Eh?

"[Victim]: Yes?

"[Verdin]: And more when you threw it in my mouth. And I drank all of it. What did you like?

"[Victim]: Yes.

"[Verdin]: And what did you like?

"[Victim]: Well, the same.

"[Verdin]: What?

"[Victim]: When you drank it and when I put it inside you all the way.

"[Verdin]: Yeah?

"[Victim]: Yes.

"[Verdin]: Did you feel good?

"[Victim]: Yes.

"[Verdin]: Good.

"[Victim]: And when you sucked me.

"[Verdin]: Well yes. *And when I licked your balls. Right?*

"[Victim]: *Yes. And when I did it to you.*" [¶] . . .

"[Victim]: Did you like it?

"[Verdin]: Yes. Clearly. . . ." (Italics added.)

After the jury heard the recording, the victim indicated his licking of Verdin's genitals took place the first time he was in the van with Verdin. Specifically, the following exchange occurred between the prosecutor and the victim:

"[Prosecutor]: [W]hen you were discussing these incidents in the tape, were you discussing what happened inside the van?"

"[Victim]: "Yes.

"[Prosecutor]: "Now, there was one thing mentioned in the second phone call about -- I['m] late to do this, but *licking of some parts was mentioned in the phone call*. And we didn't go over that. *Did that happen during one of the times you were in the van?*"

"[Victim]: *Yes.*"

"[Prosecutor]: Which one?"

"[Victim]: I am not quite sure. I think it might [have] happen[ed] the first time." (Italics added.)

B. *The Defense Case*

Verdin testified he did not molest or assault the victim. Verdin's nephew, Jaime Torres, testified to his opinion that Verdin is an honest person who is not of a character to molest children. Verdin's wife also testified she did not believe he is of a character to molest children.

STANDARD OF REVIEW

When assessing a challenge to the sufficiency of the evidence, we apply the substantial evidence standard of review, under which we view the evidence "in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a

reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

The uncorroborated testimony of a single witness is sufficient to sustain a conviction or true finding on an enhancement allegation, "unless the testimony is physically impossible or inherently improbable." (*People v. Scott* (1978) 21 Cal.3d 284, 296.) We do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

DISCUSSION

We reject Verdin's contention that his conviction of count 1 must be reversed on the ground the sexual contact expressly alleged in count 1 of the information, as reflected in the corresponding verdict form, was "contact with defendant's *penis*" (italics added), but the evidence shows the victim had contact with Verdin's scrotum, not his penis; and, thus (he maintains), the evidence is insufficient to support his conviction. In convicting Verdin of count 1, the jury found him guilty of committing a lewd act upon the victim in

violation of section 288(c)(1).⁵ The court had properly instructed the jury under CALCRIM No. 1112 that to prove Verdin was guilty of a violation of section 288(c)(1), the People were required to prove beyond a reasonable doubt that (1) he "willfully touched any part of a child's body either on the bare skin or through the clothing"; or he "*willfully caused a child to touch his own body, the defendant's body, or the body of someone else, either on the bare skin or through the clothing*"; (2) he "committed the act with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child"; (3) the child was 14 or 15 years of age when the act occurred; and (4) when Verdin acted, the child was at least 10 years younger than he was.

The victim's testimony indicating he licked Verdin's scrotum for Verdin's sexual gratification—as corroborated by the recording of the telephone conversation between Verdin and the victim in which Verdin admitting licking the victim's "balls," the victim acknowledged he "did it to [Verdin]," and Verdin indicated he "like[d] it"—is substantial evidence from which a rational jury could reasonably find beyond a reasonable doubt that Verdin committed a lewd act in violation of section 288(c)(1), the substantive offense charged in count 1. It is common knowledge that a male human being's genitalia are the penis, scrotum, and testes. Here, the prosecutor could have moved to amend count 1 according to proof to allege the sexual contact the prosecution was required to prove was

⁵ Section 288(c)(1) provides in part: "Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year."

"contact with defendant's *genitalia*," and the court would have been required to grant such a motion because the prosecution presented substantial evidence that supported a factual finding the victim had contact with Verdin's genitalia. Verdin has not shown, and cannot establish, he was prejudiced by the prosecution's failure to make such a motion. Accordingly, we affirm Verdin's count 1 conviction.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.