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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL BENJAMIN RECORDS,

Defendant and Appellant.

E053628

(Super.Ct.No. RIF151415)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,
Judge. Affirmed with directions.

David Andreasen, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, William M. Wood, Marvin E.
Mizell, and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Paul Benjamin Records appeals from his conviction by a jury under Penal Code section 288, subdivision (c)(1)¹ for attempted lewd act on a child aged 14 or 15.² Defendant challenges the admission of his statements made during police interrogation. Defendant also urges us to reject the constructive touching doctrine.

The court sentenced defendant to three years of probation, including 180 days of custody, and required him to register as a sex offender. The parties agree defendant's probation conditions should be modified to include a knowledge requirement.

We find there was *Miranda*³ error but we conclude the error was harmless beyond a reasonable doubt. (*People v. Neal* (2003) 31 Cal.4th 63, 86-76.) Subject to modifying defendant's probation, we reject defendant's contentions and affirm the judgment.

II

FACTUAL BACKGROUND

A. Defendant's Contacts with Jane Doe in June 2009

In June 2009, Jane Doe was 15 years old and a student at Centennial High School in Corona. Defendant, using the name "Joe Nyce," initially contacted her on MySpace on June 15, 2009. On June 20, 2009, defendant told Jane Doe he was 26 years old and

¹ All statutory references are to the Penal Code.

² Two other counts were dismissed.

³ *Miranda v Arizona* (1966) 386 U.S. 436.

she said she was 15. Some of their conversations were recorded on MySpace and some occurred by telephone. For several days, they engaged in a series of messages with “Joe” complimenting Jane Doe on her photographs. On June 23, 2009, defendant talked about being “horny” and “hard” and introduced the subject of masturbation into their conversations. At defendant’s request, Jane Doe sent him photographs in which she wore pajamas and lingerie. Defendant also requested topless photographs. On June 23, 2009, they also exchanged telephone numbers for texting. During their telephone conversations, defendant asked Jane Doe to touch her genitals and masturbate. But she refused to do so because “it was weird.”

B. Defendant’s Contacts with the Police in July 2009

When Jane Doe’s mother found some of the recorded messages between defendant and her daughter, she called the police. In July 2009, a Corona police detective, posing as Jane Doe, engaged in a series of conversations with defendant. On July 8, 2009, during an exchange of text messages between 2:44 p.m. and 11:24 p.m., defendant communicated salaciously with the detective, posing as Jane Doe. Defendant gave detailed and explicit instructions to the fake Jane Doe about how to masturbate while he himself purportedly masturbated and ejaculated.

C. The Custodial Interrogation

The police arrested defendant at his home and executed a search warrant, seizing his computer.

Detective Dan Neagu gave defendant his *Miranda* rights orally and defendant signed a written waiver. During the police interview, defendant said that he had a

bachelor's degree from California State University, San Bernardino and he was working for the Corona-Norco school district as a substitute instructional aide for special needs children. Defendant was a member of a Norco Catholic church where he was a Eucharistic minister, involved in the food pantry, Knights of Columbus, and other activities.

Defendant described how he browsed the Internet, looking for people to contact based on zip codes and location. Defendant admitted contacting Jane Doe, whom he first claimed he thought was 16 or older. He believed if she had listed her age as younger than 16, her MySpace profile would have been blocked. He ultimately admitted she told him she was 15.

Defendant conceded having sexual conversations with Jane Doe. Defendant claimed she made the sexual overtures except he may have asked her for a topless photograph and engaged in mutual masturbation although he did not find her to be physically attractive. Defendant acknowledged asking for sexual pictures from her and other female contacts for prurient reasons. He solicited sexual photographs from other underage girls.

Defendant confessed to having a problem with pornography. He also admitted to instructing Jane Doe about masturbation during a telephone conversation. Finally, defendant said, "I had conversations on line [where] females are under 18 and some of the conversations ended up sexually, it was extremely wrong and I need help." He wrote a letter of apology to Jane Doe's family, expressing that he had acted wrongly and deserved to be punished.

III

DEFENDANT’S CUSTODIAL STATEMENTS

“Under California law, issues relating to the suppression of statements made during a custodial interrogation must be reviewed under federal constitutional standards. (*People v. Lessie* (2010) 47 Cal.4th 1152, 1163-1164 (*Lessie*)). . . .

“Under the Fifth Amendment to the federal Constitution, as applied to the states through the Fourteenth Amendment, “[n]o person . . . shall be compelled in any criminal case to be a witness against himself” (U.S. Const., 5th Amend.) “In order to combat [the] pressures [of custodial interrogation] and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights” to remain silent and to have the assistance of counsel. (*Miranda*, at p. 467.) “[I]f the accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial” [citation], at least during the prosecution’s case-in-chief [citations].’ (*Lessie, supra*, 47 Cal.4th at p. 1162.) ‘Critically, however, a suspect can waive these rights.’ (*Maryland v. Shatzer* (2010) 559 U.S. ___, ___ [175 L.Ed.2d 1045, 130 S.Ct. 1213, 1219].) To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary. (*People v. Saucedo-Contreras* (2012) 2012 WL 326996, p. 10; *People v. Williams* (2010) 49 Cal.4th 405, 425 (*Williams*); see *Lessie*, at p. 1169.)

“Determining the validity of a *Miranda* rights waiver requires ‘an evaluation of

the defendant's state of mind' (*Williams, supra*, 49 Cal.4th at p. 428) and 'inquiry into all the circumstances surrounding the interrogation' (*Fare v. Michael C.* (1979) 442 U.S. 707, 725 [61 L.Ed.2d 197, 99 S.Ct. 2560 (*Fare*))." (*People v. Nelson* (2012) 53 Cal.4th 367, 374-375.)

During the police interview, Detective Neagu effectively told defendant that he could not have a lawyer representing him unless he paid for it. The interview began with some innocuous conversation. Then Detective Neagu read defendant his rights and asked if he understood them. Defendant asked, "how long would it take for me to get a lawyer in the room with us?" Neagu responded he did not know. Defendant repeated the question, "how long do you think a lawyer would take to get here?" Neagu answered, "I couldn't tell you. I mean, do you have a lawyer in mind?" Defendant explained he did not have any money and would need a public defender. Neagu then said, "I can tell you right now, public defender's not gonna show up here and talk to you. [¶] . . . [¶] Public defender would be, when you go to court. [¶] . . . [¶] And represent you there."

Defendant sought additional clarification in the following exchange:

"RECORDS: But to, for someone to, to help me out with questions here I mean, who . . .

"NEAGU: Right. You'd have to hire an attorney.

"RECORDS: Okay. So I would, there wouldn't be any, uh, if it says, 'cause in the *Miranda* rights it says, if one, if you can't afford one, one can be . . .

"NEAGU: Well, represent you, but at the time when you're at court.

"RECORDS: Okay. Gotcha."

Neagu then asked defendant again if he understood his rights and gave defendant the written waiver to sign.

In a pretrial motion, the prosecution argued that Neagu “honestly and accurately” explained his *Miranda* rights to defendant and defendant “never invoked his right to counsel by a clear, express and unambiguous request for an attorney.” In the pretrial hearing, the court relied upon *Alvarez v. Gomez* (9th Cir. 1999) 185 F.3d 995, and decided that the present case was distinguishable because defendant had executed the written waiver. Therefore, the court ruled defendant had waived his *Miranda* rights. “We accept a trial court’s factual findings, provided they are supported by substantial evidence, but we independently review the ultimate legal question.” (*People v. Scott* (2011) 52 Cal.4th 452, 480.) We disagree with the trial court for the reasons stated below.

In *Alvarez*, the court held there had been a *Miranda* violation even when there was a subsequent waiver. Alvarez had asked three questions: “(1) ‘Can I get an attorney right now, man?’ (2) ‘You can have attorney right now?’ and (3) ‘Well, like right now you got one?’” The appellate court stated: “A review of the relevant authority reveals that Alvarez’s thrice-repeated questions, when considered together, constituted an unequivocal request for an attorney. [Citations.] Moreover, we disagree with the district court’s conclusion that the officers ‘clearly believed that Petitioner was merely asking clarifying questions regarding his right to counsel,’ and answered those questions in ‘good faith.’ The correct answer to each of Alvarez’s three questions, after all, was a simple unambiguous ‘yes.’

“Alvarez made the requisite ‘expression of a desire’ for the help of a lawyer if one were available. (*Davis [v. United States]* (1994) 512 U.S. 452,] 459, 114 S.Ct. 2350.) Accordingly, the police should have discontinued the interview at that point and not subjected Alvarez to any further questioning until after he had had an opportunity to consult with a lawyer or until he, on his own initiative, resumed the conversation. See *Edwards [v. Arizona]* (1980)] 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378. Because Alvarez’s subsequent *Miranda* waivers in the recorded interviews were in response to further police initiated questioning, these waivers are without effect. A valid waiver ‘cannot be established by showing only that [the accused] responded to further police-initiated custodial interrogation’ even after being newly advised of his rights. [Citations.] Accordingly, the statements recorded during those interviews should have been suppressed.” (*Alvarez v. Gomez, supra*, 185 F.3d at p. 998.)

A recent California Supreme Court case distinguished *Alvarez* in circumstances where defendant had first waived his *Miranda* rights and then failed to assert his rights sufficiently in the subsequent interrogation. In *Williams, supra*, 49 Cal.4th 405, “Knebel [the officer] inquired whether defendant understood the rights that had been explained to him, and received an affirmative response. Knebel asked: ‘Do you wish to give up your right to remain silent?’ Defendant answered: ‘Yeah.’ Knebel asked: ‘Do you wish to give up the right to speak to an attorney and have him present during questioning?’ Defendant answered with a question: ‘You talking about now?’ Knebel responded: ‘Do you want an attorney here while you talk to us?’ Defendant answered: ‘Yeah.’ Knebel responded: ‘Yes you do.’ Defendant returned: ‘Uh huh.’ Knebel asked, ‘Are you sure?’

Defendant answered: ‘Yes.’ Salgado [another officer] stated: ‘You don’t want to talk to us right now.’ Defendant answered: ‘Yeah, I’ll talk to you right now.’ Knebel stated: ‘Without an attorney.’ Defendant responded: ‘Yeah.’

“Knebel then explained: ‘OK, let’s be real clear. If you . . . if you want an attorney here while we’re talking to you we’ll wait till Monday and they’ll send a public defender over, unless you can afford a private attorney, so he can act as your . . . your attorney.’ Defendant responded: ‘No I don’t want to wait till Monday.’ Knebel repeated: ‘You don’t want to wait till Monday.’ Defendant replied: ‘No.’ Knebel clarified: ‘You want to talk now.’ Defendant replied: ‘Yes.’ Knebel inquired: ‘OK, do you want to talk now because you’re free to give up your right to have an attorney here now?’ Defendant responded: ‘Yes, yes, yes.’

“In our view, the foregoing recitation of facts demonstrates defendant’s knowing and voluntary waiver of his right to counsel. At the outset of the interrogation, defendant properly was admonished, answered in the affirmative when asked whether he understood his rights, and evinced willingness to waive his right to remain silent. When the interrogating officers asked whether defendant would waive his right to have an attorney present, defendant responded with a question—‘you talking about now?’ He already had agreed to waive his right to remain silent, and his question suggests to us that his willingness to waive the assistance of counsel turned on whether he could secure the presence of counsel immediately. This suggestion is reinforced by his answers to the officers’ requests for clarification. Also supporting this conclusion as to defendant’s state of mind is Knebel’s testimony that at the outset of the interrogation, defendant appeared

confused concerning when counsel could be provided but, upon learning that counsel would not be available immediately, seemed eager to speak with the officers, acknowledging an understanding that his decision to speak constituted a waiver of his right to have an attorney present. Defendant's final and impatient 'yes, yes, yes' confirms our conclusion that, once the question whether counsel could be provided immediately had been resolved, defendant had not the slightest doubt that he wished to waive his right to counsel and commence the interrogation. Under the totality of the circumstances, defendant—who had prior experience with police interrogation—knowingly and voluntarily waived his right to counsel.” (*Williams, supra*, 49 Cal.4th at pp. 426-427.)

The holding in *Williams* was reaffirmed in the recent case of *People v. Saucedo-Contreras, supra*, 2012 WL 3263996 in which the court again held that an officer was justified in seeking clarification of a defendant's response to the question of whether defendant would speak to a detective “right now.” In the present case, the detective did not seek clarification of defendant's understanding of the waiver of the right to counsel or *Miranda* rights. Instead, the detective expressly informed defendant he would need to hire a private lawyer for the interrogation and that a public defender would not come to the jail but instead would be present in court.

Defendant asked for an attorney at least four times. Detective Neagu answered that a public defender would not attend the interrogation and defendant would have to hire a lawyer. The detective may have spoken correctly but he also spoke incompletely. Although a public defender may not have been available immediately, defendant was still

entitled to have a lawyer during all stages of the criminal proceedings, even during interrogation. It was misleading and wrong for the detective to tell defendant he had to hire an attorney in order to have one during the interrogation. As the *Alvarez* court directed, when defendant made the requisite expression of a desire for the help of a lawyer, the police should have discontinued the interview and not subjected defendant to any further questioning until after he had had an opportunity to consult with a lawyer or until he, on his own initiative, resumed the conversation. Following defendant's invocation of *Miranda* rights, his subsequent execution of the written *Miranda* waiver was ineffective and his statements should have been suppressed. (*Alvarez v. Gomez, supra*, 185 F.3d at p. 998.)

IV

HARMLESS ERROR

After determining there was a *Miranda* violation, we nevertheless conclude the error was not prejudicial because the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18; *People v. Neal, supra*, 31 Cal.4th at pp. 86-87.) Our analysis focuses first on the issue of sufficiency of the evidence and then on the question of whether the verdict was “surely unattributable” to the error. (*Neal*, at pp. 86-87.)

Defendant's statements, made during the course of the interrogation, were comprehensive and detailed and ended with him asking to be punished. Defendant contends that admitting his statements infected the trial and distorted the defenses he was able to offer. (*People v. Stritzinger* (1983) 34 Cal.3d 505, 520-521.) Defendant asserts

that, without his confession, he might have raised viable defenses about Jane Doe's age and whether he truly intended to touch Jane Doe indirectly by soliciting her to masturbate or whether it was all "dirty talk" and part of an elaborate role-playing fantasy. In his appellate brief, defendant focuses on four areas of prejudice: the victim's age; defendant's subjective purpose in contacting Jane Doe; defendant's contacts with other underage girls; and his written apology, asking to be punished. In our view, although parts of defendant's statement may have been prejudicial, some of it could be construed as favorable to the defense.

One of the most significant issues in the case involved whether defendant knew Jane Doe was 15, an element of liability under section 288, subdivision (c)(1). Jane Doe told defendant she was 15 in their first conversation. Defendant admitted in his police interview that Jane Doe told him she was 15 but he thought she might have been older. As such, he admitted a key element of the charged offense, as well as demonstrating a consciousness of guilt. (*People v. Crandell* (1988) 46 Cal.3d 833, 871.) Defendant argues that, absent his confession, he might have offered evidence casting doubt on whether he knew Jane Doe was 15 because it is well known that people misrepresent their age, gender, and other aspects of their identity on the Internet. In this respect, admission of defendant's statements, rather than being prejudicial, actually supported defendant because it allowed the jury to hear defendant's explanation that he thought Jane Doe may have been older while pretending to be younger. Similarly, defendant's conflicting statements about whether he intended to touch Jane Doe indirectly allowed the jury to hear his explanation that he had pretended to masturbate and he thought Jane

Doe might also be pretending.

The most damaging part of defendant's statement was his admission that he had contacted other underage girls for similar purposes. The evidence of defendant's conduct with other girls was both probative and prejudicial. (Evid. Code, § 1108; *People v. Fitch* (1997) 55 Cal.App.4th 172, 178-179.) His apology to Jane Doe's family may also have been damaging in its effect. But, independent of such evidence, Jane Doe's testimony and the recorded conversations with defendant, as discussed below, were entirely sufficient to establish that defendant had attempted to commit a lewd act by proposing masturbation to Jane Doe, who was 15 years old. (*People v. Stritzinger, supra*, 34 Cal.3d at pp. 520-521.)

We acknowledge defendant's argument, relying on the detailed analysis offered by the California Supreme Court in *Neal*, that sufficient evidence is not usually enough to overcome the *Chapman* harmless error standard, but *Neal* actually supports a finding of harmless error here. In *Neal*, the court found prejudicial error when a detective deliberately violated defendant's constitutional rights in order to elicit a confession. The *Neal* court explained:

“The beyond-a-reasonable-doubt standard of *Chapman* ‘requir[es] the beneficiary of a [federal] constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’ (*Chapman, supra*, 386 U.S. at p. 24.) ‘To say that an error did not contribute to the ensuing verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.’ (*Yates v. Evatt* (1991) 500 U.S. 391, 403.) Thus,

the focus is what the jury actually decided and whether the error might have tainted its decision. That is to say, the issue is ‘whether the . . . verdict actually rendered in *this* trial was surely unattributable to the error.’ (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 279.) [¶] . . . Indeed, in *People v. Cahill* [(1993)] 5 Cal.4th 478, we expressed a ‘recognition that confessions, “as a class,” “[a]lmost invariably” will provide persuasive evidence of a defendant’s guilt [citation], . . . that such confessions often operate “as a kind of evidentiary bombshell which shatters the defense’ [citation], . . . [and therefore] that the improper admission of a confession is much more likely to affect the outcome of a trial than are other categories of evidence, and thus is much more likely to be prejudicial’ (*Id.* at p. 503.) We acknowledged, however, that the erroneous admission of any given confession ‘might be found harmless, for example, (1) when the defendant was apprehended by the police in the course of committing the crime, (2) when there are numerous, disinterested reliable eyewitnesses to the crime whose testimony is confirmed by a wealth of uncontroverted physical evidence, or (3) in a case in which the prosecution introduced, in addition to the confession, a videotape of the commission of the crime’ (*Id.* at p. 505.) But we emphasized that although the erroneous admission of a confession might be harmless in a particular case, it nevertheless is ‘likely to be prejudicial in many cases.’ (*Id.* at p. 503.)” (*People v. Neal, supra*, 31 Cal.4th at p. 86.)

Applying the foregoing principles, we conclude the erroneous admission of defendant’s confession was harmless beyond a reasonable doubt. First, defendant fits within at least two of the exceptions identified by the *Neal* court. Defendant’s transcribed MySpace messages with Jane Doe from June 2009 were admitted as an

exhibit at trial, offering recorded evidence, like a videotape, to support the commission of defendant's crime. Additionally, defendant was apprehended by the police while attempting to commit lewd acts when he engaged in text messaging about masturbation in July 2009 with the Corona detective posing as Jane Doe. The written transcript of those text messages was also admitted as an exhibit at trial. Not only was there unrefutable recorded evidence of defendant's crime but Jane Doe, and the detective posing as Jane Doe, testified in detail about their interactions with defendant in which he repeatedly proposed masturbation to Jane Doe. Even without defendant's confession, based on the record, we can affirmatively say that the verdict actually rendered in this trial was "surely unattributable" to the confessions. (*People v. Neal, supra*, 31 Cal.4th at p. 86.) In summary, we conclude it was harmless error to allow defendant's statements to be admitted into evidence at trial.

V

CONSTRUCTIVE TOUCHING

Under section 288, subdivision (a), "[a]ny person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony" Defendant argues a fair reading of section 288, subdivision (a), is that to violate the law requires actual touching by the defendant, rather than indirect touching as occurred here.

Defendant concedes the constructive touching doctrine has been widely accepted,

but points out that the California Supreme Court has not directly addressed its validity. The issue of whether a defendant could be convicted for violating section 288 without actually having touched the child arose first in *People v. Austin* (1980) 111 Cal.App.3d 110. There, the defendant ordered the child to pull down her pants to expose herself and then gave her a dollar after she complied. Relying on the common law rule of agency, the court stated, “a person who causes . . . an innocent child to do the touching is a principal [Citation.]” (*Id.* at p. 114.) Thus, the court concluded the defendant “was responsible for the touching and removal of the child’s pants as surely as if he had done it himself.” (*Id.* at p. 115.)

In *People v. Meacham* (1984) 152 Cal.App.3d 142, abrogated on another ground in *People v. Brown* (1994) 8 Cal.4th 746, the court adopted the holding in *Austin*, but applied a different rationale. “We hold the children’s touching of their own genitalia at the instigation of appellant was a ‘constructive touching’ by appellant himself.” (*Meacham*, at p. 153.) The court derived the “constructive touching” theory from the analogous theory of “‘constructive breaking’ by which an essential element of common law burglary is supplied. . . . ‘[U]nder certain circumstances the opening of a door by the owner or his servant, having been occasioned by the criminal plan or scheme of the wrongdoer, ‘is as much imputable to him as if it had been actually done by his own hands,’ and is deemed a constructive breaking.’ [Citations.]” (*Id.* at p. 154.) We find this analogy aptly applies to lewd and lascivious acts committed upon a child by him or herself at the defendant’s direction.

Although the California Supreme Court has not directly addressed the issue, it has

recognized without a hint of disapproval that the constructive touching doctrine is one of the theories under which a person may be found guilty of violating section 288. (See *People v. Martinez* (1995) 11 Cal.4th 434, 445; *People v. Scott* (1994) 9 Cal.4th 331, 343.) In *Martinez*, the Supreme Court noted “courts have long indicated that section 288 prohibits *all* forms of sexually motivated contact with an underage child. Indeed, the ‘gist’ of the offense has always been the defendant’s intent to sexually exploit a child, not the nature of the offending act. [Citation.]” (*Martinez*, at p. 444.) Thus, the court explained, while the statute requires the victim must be touched and that the touching must be accompanied by an intent to sexually gratify either the perpetrator or the victim, “the form, manner, or nature of the offending act is not otherwise restricted.” (*Ibid.*)

The constructive touching doctrine is not inconsistent with the actual text of section 288. As the court pointed out in *Martinez*, the statute has been amended on numerous occasions, yet “the basic elements of the offense have remained the same. . . . The Legislature has never expressed dissatisfaction with this approach or otherwise attempted to restrict the acts that can be found ‘lewd or lascivious’ under the statute. . . . [W]e can only assume that the Legislature is aware of the manner in which the offense has been judicially construed and that it has refrained from modifying the substantive terms because it accepts the prevailing view.” (*People v. Martinez, supra*, 11 Cal.4th at pp. 445-446.) This court approved the constructive touching doctrine in *People v. Lopez* (2010) 185 Cal.App.4th 1220, 1230-1231 [Fourth Dist., Div. Two.]

We also reject defendant’s new argument on appeal that if section 288 can be violated by a constructive touching it violates the First Amendment. Similar arguments

were raised and rejected in *People v. Garelick* (2008) 161 Cal.App.4th 1107, 1122-1124, citing *People v. Hsu* (2000) 82 Cal.App.4th 976. In supplemental briefing, defendant alerts this court to recently-enacted Tennessee statutes, making sex education educators subject to a \$500 fine and civil liability if the provider encourages “gateway sexual activity,” defined as “non-abstinent behavior.” (Tenn. Code Ann., Section 49-6-1301 et seq.) The Tennessee statutes governing “family life instruction” in an educational setting are irrelevant to the constitutional validity of California’s doctrine of constructive touching. A compelling interest in protecting minors against criminal sexual exploitation outweighs any of the implausible constitutional violations conjured up by defendant.

VI

DISPOSITION

In accordance with the parties’ agreement, we order the trial court to modify defendant’s probation conditions that defendant not associate with any unrelated female minor without a chaperone or with any unrelated person on probation or parole to include a knowledge requirement. We direct the trial court to deliver a corrected abstract of judgment to the Department of Corrections and Rehabilitation. We affirm the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.