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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.

CHRISTOPHER CLAY,

Defendant and Appellant.

E054535

(Super.Ct.No. RIF147684)

OPINION

APPEAL from the Superior Court of Riverside County. W. Charles Morgan,  
Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

**INTRODUCTION**

On October 7, 2010, an amended information charged defendant and appellant  
Christopher Clay with (1) counts 1 and 2—rape upon a child under 14 years of age and

10 or more years younger than defendant (Pen. Code,<sup>1</sup> §§ 269, subd. (a)(1) & 261, subd. (a)(2)); (2) counts 3, 4 and 5—aggravated sexual assault of a child under 14 years of age and 10 or more years younger than defendant (§§ 269, subd. (a)(5) & 289, subd. (a)); and (3) counts 6 and 7—lewd act upon a child (§ 288, subd. (a)).

Defendant waived his right to a jury trial. After a bench trial, the trial court found defendant not guilty of counts 1 through 5, but guilty of the lesser included offenses of misdemeanor battery as to counts 1 through 5; and guilty of counts 6 and 7.

The trial court sentenced defendant to 10 years in state prison as follows: the upper term of eight years as to count 6, plus one-third the middle term of six years (two years) as to count 7, plus 180 days county jail as to counts 1 through 5, to run concurrently with count 6.

On September 16, 2011, defendant filed a timely notice of appeal.

### **STATEMENT OF FACTS**

Jane Doe was born in July of 1993. In 2006, when she was 13 years old, she moved to Las Vegas with her mother and defendant. Defendant and Doe's mother married on July 5, 2006. Prior to moving to Las Vegas, they lived together in Moreno Valley. Doe's mother and defendant met in October of 1999 when defendant was an owner of a hair salon in Upland. Defendant was born in 1957.

The first time defendant touched Jane Doe was when they lived in the same house in Moreno Valley. Jane Doe slept in bed with defendant when her mother was at work.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

Defendant touched Jane Doe's vagina while she was sleeping; Doe was not sleeping, she was pretending to be asleep. Jane Doe did not tell anyone about the touching because she was scared. Defendant placed his finger inside her vagina and touched her breasts more than 10 times while they lived in Moreno Valley. Jane Doe was under 14 years old.

Defendant also touched Jane Doe's vagina with his hand and penis at defendant's house in Ontario when she was under 14 years old. Defendant tried to insert his penis into her vagina, and he put the tip of his penis into her vagina. Defendant drove Jane Doe to Ontario Mills when Doe was under 14 years old. There, he touched her in the car in the parking lot. Defendant placed his finger and the tip of his penis in her vagina. Jane Doe never initiated the sexual touching. She never pushed defendant's hands away.

In May 2007, Jane Doe reported the sexual abuse to her school. She had cuts on her arms. Jane Doe was cutting herself while she was in middle school. After the report of sexual abuse, Detective Sayoko Fay interviewed defendant and Jane Doe. A video of the interview was played for the court. Initially, defendant denied touching Doe on her vagina. Later, however, defendant stated that he put his hand on Jane Doe's vagina while they lived in California.

### **ANALYSIS**

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of

the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

**DISPOSITION**

The judgment is affirmed.

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MCKINSTER  
J.

We concur:

HOLLENHORST  
Acting P.J.  
MILLER  
J.