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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CARLOS CRUZ GONZALEZ, Defendant and Appellant.	G045967 (Super. Ct. No. 11CF1126) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Stanford, Jr., Judge. Affirmed.

Barbara A. Smith, 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, Lilia E. Garcia and Raquel M. Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Carlos Cruz Gonzalez guilty of two counts of Penal Code section 288, subdivision (a)[1] by willfully touching a minor "with the intent of arousing, appealing to, or gratifying [his or the minor's] lust, passions, or sexual desires" between March 1, 2011 and April 28, 20011. The trial court denied his motions for a new trial and his requests the court waive section 290 registration and to reduce the felony convictions to misdemeanors. The court granted Gonzalez formal probation for five years under various terms and conditions, including one year of incarceration in the county jail. He challenges the sufficiency of the evidence to prove he twice touched the minor with lewd intent during the relevant time period. We affirm.

FACTS

In 2011, Gonzalez lived in a home in Santa Ana with several other people, including his two children, ages one and four, the mother of his two children, Lizeth, her teenage sister, Yesenia, and their mother. Anna and her parents rented a room in the house.

Anna had no problems with Gonzalez before she turned 13 years old, but after her 13th birthday, Anna noticed Gonzalez looking at her and noticing her appearance. His hugs seemed different and he started to whisper in her ear things like "when are we going to be together alone?" Anna noticed Gonzalez occasionally gave Yesenia the same type of attention, but he did not hug her in the same way he had started to hug Anna.

In early April 2011, Gonzalez hugged Anna from behind while the two of them were in the living room with one of Gonzalez' young children. Anna said she "felt weird and surprised" by Gonzalez' conduct. He hugged Anna in this manner once or twice that week and on other occasions later in the month. In each instance, Gonzalez would come up behind Anna, grab and hug her, and kiss her on the neck. He held her

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1 All further statutory references are to the Penal Code.

close enough to his body that Anna could feel his torso and flaccid penis. While Anna initially appreciated Gonzalez' attention because it made her feel pretty, she grew to dislike it because Gonzalez made her feel uncomfortable and it seemed like he wanted to have sex with her.

Within a couple of weeks, Anna confided in Yesenia about Gonzalez' behavior, but she did not tell her parents or anyone else. She especially feared reprisals from Lizeth. The day after Anna told Yesenia what Gonzalez had been doing, Yesenia told Lizeth. Lizeth purchased two video cameras and placed one in the living room and the other in the kitchen. She used the cameras for about two weeks and reviewed the recordings every night.

On April 15, the video captured Gonzalez hugging and kissing Anna while both of them were alone in the kitchen. Gonzalez also held up two fingers, pointed at Anna and then himself, and nodded his head. Anna thought this meant Gonzalez "wanted to do something with [her]." He had made these gestures before, but only when other people were not around.

After Lizeth saw the video, she was very upset and decided to leave Gonzalez. She blamed him and Anna for what had happened. On April 28, Lizeth went to a help center and showed them the video. Someone from the center called the police and Gonzalez was arrested later that day.

Gonzalez testified at trial. He admitted touching Anna, but claimed he was just "fooling around" and did not touch her with any lewd intent. He acknowledged the accuracy of the video recording. He also testified he gave Anna a hug on April 26 while she was at the kitchen sink.

DISCUSSION

The information alleged two counts of section 288, subdivision (a). Count 1 described the alleged lewd act as "the first time." Count 2 referred to the lewd act as

"the last time." The prosecutor argued the first time occurred when Gonzalez first hugged Anna from behind and the last time occurred when he hugged her in the kitchen.

The court instructed the jury with CALCRIM No. 1110, which, in pertinent part, instructs the jury that in order to find a defendant guilty of violating section 288, subdivision (a), it must find (1) the "defendant willfully touched any part of a child's body, either on the bare skin or through the clothing[,]" and "defendant committed the act with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child."

Gonzalez contends the prosecution failed to prove lewd intent with either of the alleged improper acts, and he argues under no plausible scenario could the alleged acts have occurred within the time period specified. We disagree.

"In assessing a sufficiency-of-evidence argument on appeal, we review the entire record in the light most favorable to the prevailing party to determine whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] We draw all reasonable inferences in support of the judgment. [Citation.]" (*People v. Wader* (1993) 5 Cal.4th 610, 640.) "Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the jury. [Citation.] [¶] As stated in *People v. Hillery* (1965) 62 Cal.2d 692, 702, 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" (*People v. Hicks* (1982) 128 Cal.App.3d 423, 429.)

Anna testified she had no problems with Gonzalez before she turned 13. After her 13th birthday, she noticed a change in Gonzalez' behavior toward her. He started to notice how she dressed for family parties. She said he "would check [her] out, or whistle." Anna said this did not bother her, but she was bothered when Gonzalez

started to hug her, whisper in her ear, and suggest they be alone together in her bedroom. Then, in early April, Gonzalez came up behind Anna, grabbed and hugged her to his body, which made her feel "weird" and surprised. He hugged her in the same way a couple of times in the same week and on other occasions before she told Yesenia what had been happening. It was this type of behavior that was caught on videotape on April 15.

Despite the vagaries of Anna's testimony, there is nothing implausible about her testimony. (See *People v. Young* (2005) 34 Cal.4th 1149, 1181 [unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction].) Therefore, under the applicable standard of review, substantial evidence supports two convictions of section 288, subdivision (a).

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.