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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.

GERARDO SANCHEZ-
MURATALLA,

Defendant and Appellant.

G052066

(Super. Ct. No. 13CF3416)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dan
McNerney, Judge. Affirmed.

Doris M. LeRoy, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

* * *

A jury convicted Gerardo Sanchez-Muratalla (born in November 1957) of nine counts of committing lewd acts against two step-granddaughters. Some of the acts occurred before the girls turned 14 years old, others occurred when they were 14 or 15 years old. (Pen. Code, § 288, subd. (a) [lewd acts on a child under age 14]; all statutory references are to the Penal Code; § 288, subd. (c)(1) [lewd acts on a child 14 or 15 years old where the defendant is at least 10 years older].) The trial court imposed a prison sentence of 30 years to life. Sanchez-Muratalla appealed, and his appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, but raised no specific issues, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating she thoroughly reviewed the record. Counsel advised Sanchez-Muratalla she would file a *Wende* brief, and made a copy of the brief available to him. She also advised Sanchez-Muratalla he could personally file a supplemental brief on his own behalf raising any issues he believed worthy of consideration, and made a copy of the appellate record available to him. Counsel did not argue against her client or offer an opinion on the merits of the appeal. She informed Sanchez-Muratalla he could ask the court to relieve her as counsel. We gave Sanchez-Muratalla 30 days to file a supplemental brief, but he has not responded. We have reviewed the record, found no arguable issues, and therefore affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In February 2014, the Orange County District Attorney filed an information alleging Sanchez-Muratalla committed nine lewd acts against two children committed before and after they turned 15 years old. (§ 288, subd. (a); counts 1-4 [L.T., occurring between January 1, 2008 and March 15, 2012]; counts 6-7 [B.T., occurring between August 28, 2008 and August 27, 2010]; § 288, subd. (c)(1), count 5 [L.T., occurring

September 25, 2013]; counts 8-9 [B.T., occurring between August 28, 2010 and August 27, 2012].) The information also alleged Sanchez-Muratalla committed offenses against more than one victim (§ 667.61, subs. (b), (e)(4), § 1203.066, subd. (a)(7) [counts 1-4, 6-7].)

At trial in April 2015, B.T. (born August 1996) testified she and her younger sister L.T. lived with their parents and a younger sibling. Sanchez-Muratalla was married to her paternal grandmother. B.T. began spending time alone with Sanchez-Muratalla when she was 13 years old. Her grandmother and Sanchez-Muratalla, who lived in Tustin, took care of the children after school until the parents returned home from work.

B.T. described one occasion when she was playing on a computer in her aunt's bedroom and her sisters were outside. Sanchez-Muratalla approached and rubbed and squeezed her upper chest area. She asked him to stop and told him he was annoying her. He stopped, giggled, and then tried to do it again. On a subsequent occasion when she was 13 years old, he squeezed her breasts. She again told him he was annoying, he giggled and stopped touching her, but he resumed touching her after a minute or two. This behavior occurred approximately 15 times each year when she was between the ages of 13 and 15 years old in her aunt's bedroom and the living room. She also testified it occurred every other day, about three times a week. Sanchez-Muratalla told her she was pretty, looked like her mom, and she was growing up fast. She initially did not disclose the abuse because she was embarrassed and did not want to cause problems in the family. In October 2013, L.T. disclosed to B.T. that Sanchez-Muratalla had abused her, and B.T. disclosed to L.T. she had also been abused. B.T. told their mother.

L.T. (born March 1998) testified her grandmother and Sanchez-Muratalla babysat her and her siblings after school for about a year, and the children spent occasional days at the grandparents' home thereafter. Sanchez-Muratalla acted inappropriately with her every day during the year of after-school care. When she was 10

years old, Sanchez-Muratalla came into her aunt's bedroom and tried to hug her, but his hands went toward her "boobs." She pushed him away and left the room. On a subsequent occasion she was on the couch watching television and Sanchez-Muratalla sat next to her and touched her breasts over her clothing. She told him to stop, but he continued to touch her. He touched her breasts over her clothing more than 10 times. He also touched and squeezed her breasts under her clothing beginning about a month after touching her over her clothing. At this time, she was beginning to develop breasts and wore a training bra. She told him to stop, but he ignored her. This happened more than 10 times when she was 10 years old.

Sanchez-Muratalla also touched L.T. on the vagina. He put his hand over her clothes five to 10 times. A few times he put his hand under her clothing, and once put his hand under her underwear. She described an incident that occurred when she was 13 years old. They sat in the car at a store. He was in the driver's seat, she was in the passenger seat. He put his hand under her pajamas and underwear. She used her hands and pushed his hand away from her vagina.

On five occasions, Sanchez-Muratalla walked up behind L.T. and squeezed her "butt," the first time when she was 13. She also described an incident when she was 13 where he rubbed his erect penis against her backside while she was washing the dishes.

On approximately five occasions, Sanchez-Muratalla exposed himself and rubbed his penis in her presence. This started when she was approximately 13. One incident occurred on September 25, 2013, when L.T. was 15 years old. She was lying in her mother's bed at their Santa Ana home recovering from back surgery. Sanchez-Muratalla came into the room, touched her breasts over her clothing, and then took out his penis and began rubbing it. He also touched her vagina over her clothing. On two or three occasions he asked her to touch his penis, but she refused. L.T. told her mother about the abuse after a friend in whom she had confided threatened to reveal the secret.

She did not want to reveal the abuse because she did not want her father to lose his family.

Santa Ana Police Officer Jimmy Correal interviewed Sanchez-Muratalla in October 2013 after speaking with the girls. Sanchez-Muratalla asserted the girls' allegations he had touched their breasts was the result of a misunderstanding. He had played with and hugged the girls since they were babies "without any maliciousness" or lustful intent. He admitted making a mistake in the past five or six years by touching the girls skin-to-skin in the middle of the chest area. He touched L.T. two or three times, and B.T. once. He denied touching their breasts or "boobies." He conceded the girls "probably took it the wrong way." The last time he touched L.T. was 25 days earlier at her home in Santa Ana following her surgery. He denied L.T. pushed his hand away or told him not to touch her. He reiterated he had no lewd or lustful intent. He initially denied exposing himself or touching the girls' vaginal areas.

Later in the interview however, after the officers suggested use of a lie detector machine, he conceded an inadvertent exposure might have occurred when he "was watching the TV in . . . shorts or . . . pajamas." After further questioning, Sanchez-Muratalla admitted he did "touch their legs" and it was "mainly [L.T.]" He also stated he "did touch [his] penis and expose it" in L.T.'s presence once or twice. Both incidents occurred in the current year. Later, he admitted he touched L.T. on the inside part of the leg or upper thigh area. He also touched his penis with a "sexual feeling" during the incident with L.T. 25 days earlier. It was an "involuntary reaction." He admitted he thought the chest and leg touching was inappropriate and "sometimes one does something not thinking" He noted he "made a mistake by not thinking [the girls] are older now and that their parts have developed."

Dr. Hy Malinek, a clinical and forensic psychologist, testified as a defense witness. Malinek conducted a personality test on Sanchez-Muratalla called the Millon Clinical Multiaxial (MCMI) test. Sanchez-Muratalla had a "pretty normal profile" and

“did not test as having a criminal attitude or inherently impulsive.” He did test as “somewhat defensive” and “suggested an effort to present a socially acceptable front” and a “resistance to admitting personal shortcomings.” Based on his interview of Sanchez-Muratalla at the jail, he seriously doubted Sanchez-Muratalla was a pedophile. Malinek testified false accusations of sexual abuse do occur in many cases. But he admitted one could be a child molester without being a pedophile, and there was no “distinct profile” or test to determine whether someone is a child molester. Sanchez-Muratalla’s conduct, if it occurred, was consistent with that of an “opportunistic offender.”

Sanchez-Muratalla testified he touched B.T. and L.T. only on the center of the chest and never on the breasts and not on their bare skin under their clothing. He denied grabbing L.T.’s buttocks or touching her vagina. He also denied exposing his penis, explaining he was “readjusting” himself by “pressing on [his] underwear and [he] turned around in a natural act to straighten out [his] underwear,” and it was “an involuntary movement.” He conceded it was possible his “pajamas [or sports pants were] unbuttoned and it could have been exposed at that time.” The police interview was “scary” and “you have to tell them something maybe that they want to hear.” He denied touching L.T. inappropriately on a daily basis as she testified. He touched her on the thigh about four inches above the knee. He now realized this touching was inappropriate and naïve, but he did not do it with “any lewdness or lascivety or any evil thoughts.”

The jury convicted Sanchez-Muratalla of the charged offenses and found he committed lewd acts on a child under age 14 against more than one victim. At the sentencing hearing in May 1, the victims provided statements reflecting the abuse had caused severe and lasting emotional scars. Sanchez-Muratalla’s daughter spoke on his behalf. Defense counsel argued a life sentence would be cruel and unusual. He noted Dr. Malinek’s testimony and sex offender testing (Static-99) showed a low likelihood of recidivism, these were “crime[s] of opportunity,” and Sanchez-Muratalla did not

“represent a threat to the larger community at whole.” The court imposed a 15-years-to-life term for the lewd acts charged in count 1 (L.T.), and a consecutive 15-years-to-life term for the lewd acts conviction in count 6 (B.T.), and concurrent terms on the other counts.

DISCUSSION

Following *Wende* guidelines, we have reviewed counsel’s brief and the appellate record and discern no arguable issue. This includes counsel’s suggestion we consider whether the trial court erred by instructing “[t]he touching need not be done in a lewd or sexual manner” (CALCRIM No. 1112) and whether the court and counsel correctly concluded there were no lesser included offenses. Sanchez-Muratalla has not availed himself of the opportunity to file a supplemental brief (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding]), nor has he requested to have appellate counsel relieved. We therefore affirm the judgment. (*Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O’LEARY, P. J.

MOORE, J.