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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.

OSCAR MACIEL LEMUS,

Defendant and Appellant.

E080037

(Super.Ct.Nos. BAF2101125 &  
BAF2101153)

OPINION

APPEAL from the Superior Court of Riverside County. Joshlyn R. Pulliam,  
Judge. Affirmed.

Daniel J. Kessler, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## I.

### INTRODUCTION

A jury convicted defendant and appellant Oscar Maciel Lemus of numerous sexual offenses against his transgender daughter Jane Doe. As a result, he was sentenced to a total term of 82 years in state prison. Defendant appeals from an order after judgment. Based on our independent review of the record, we find no error and affirm the judgment.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### *A. Factual Background*

From June 2020 until August 2021, Jane lived with her great-grandparents, her grandmother, and her mother. When Jane was 16 years old, her father (defendant) also moved into the home and shared a bedroom with Jane's mother. Defendant had an "on and off" relationship with Jane's mother. At the age of 14, Jane, who was still a male at the time, come out as gay, and later began transitioning to a female.

In June 2020, while her mother was at work, defendant asked Jane to go to his bedroom with him. When Jane went with defendant to his bedroom, defendant grabbed Jane around the waist and began kissing her on her mouth, neck, and chest underneath her pajamas. Another sexual incident occurred in June 2021. Defendant was watching a pornographic video depicting "a father and son role playing" when he said to Jane, "[this] could be us." Jane, who was sitting next to defendant, responded that she did not want to do that. Defendant, however, got on top of Jane and started kissing her. He then turned

Jane over onto her stomach, pulled down her pajamas, and began groping her penis and buttocks. Defendant also held Jane down and penetrated her anus with his penis. Jane told defendant “No” and that she did not want to do it. Defendant stopped after he ejaculated.

Between June 2020 and August 2021, defendant also made Jane orally copulate his penis approximately 45 times, usually until he ejaculated. Defendant often initiated the sexual encounters with Jane by asking her to go with him to his bedroom or to the bathroom and then forcefully pushing Jane’s head down to his penis. Defendant occasionally forcefully sucked Jane’s penis as well.

Defendant sodomized Jane about 10 times. Jane remained quiet during these incidents, but often told defendant that she did not want to do these things. Jane was scared of defendant because of what he did to her. At times, defendant forcefully pinned Jane down on her back with her stomach up. If she tried to move, defendant “tighten[ed] his grip” and used his body weight on her, “trying to be passionate with it.” Defendant also asked Jane to send him texts with nude images of her putting her finger in her anus. Law enforcement later found a video of Jane doing this on Jane’s cell phone.

Defendant often abused Jane whenever she was by herself or whenever defendant had the opportunity. Jane’s mother normally worked from 10:00 p.m. to 6:00 a.m. Defendant compelled Jane to submit to his sexual demands by making threats, such as threatening to break Jane’s valued items or preventing her from seeing her friends. Defendant also told Jane’s mother lies about Jane to get her into trouble. Jane’s mother

grounded Jane based on defendant's false accusations. Defendant often communicated with Jane by sending text messages to her cell phone. In his text messages, defendant often used code words to ask Jane if she wanted to engage in sexual activities or to say he wanted to engage in the sexual activity with Jane. Jane felt disgusted and scared. During this time, Jane secretly hoped that her mother would find the text messages and put an end to what was going on. Defendant, however, had multiple phones with different phone numbers. Jane did not tell anyone about what defendant was doing to her because she was afraid that she would lose her family. Defendant told Jane that he had Jane's mother, grandmother, and aunts "wrapped around his finger," and that he could manipulate them. Eventually, in August 2021, Jane's mother and aunt discovered defendant's text messages on Jane's phone and the photograph of Jane's naked buttocks. Jane's aunt contacted the police. In total, between June 1, 2020, and August 22, 2021, defendant's phone number appeared on Jane's cell phone 2,799 times.

A police investigator interviewed defendant on August 23, 2021. Defendant admitted that he had sent Jane the text messages but claimed they were just jokes. He denied having sex with Jane but later claimed that Jane would climb into bed with him and they would just hug. He also stated that Jane touched his penis. Ultimately, defendant conceded that he had performed oral sex on Jane twice and that he tried to have anal sex with her but he did not penetrate her. Defendant claimed that Jane had initiated the sexual activity. Nonetheless, defendant wrote an apology letter to Jane, stating "I'm sorry that I raped you." Law enforcement found graphic sexual text

messages from defendant to Jane on Jane's cell phone. These messages began on July 29, 2021, and continued until August 20, 2021.

At trial, defendant denied threatening Jane, claiming Jane's mother yelled at and punished Jane by taking away Jane's cell phone. He acknowledged that he had sexual contact with Jane but denied forcing Jane to do anything. He claimed the sexual encounters were consensual and that it was Jane who initiated the sexual activity by sending him text messages. He, however, admitted to initiating the oral sex with Jane and attempting to sodomize her but not penetrating her. Defendant denied ever asking Jane to send him nude pictures of herself to him.

#### *B. Procedural Background*

On August 3, 2022, during the jury selection process and over defendant's objection, the People filed a first amended information that added six additional sexual offense charges to the information and changed the name of the alleged victim from "John Doe" to "Jane Doe." Specifically, the first amended information alleged that defendant committed four counts of sodomy by force (Pen. Code, § 286, subd. (c)(2)(A); counts 1, 4, 5 & 6); 12 counts of oral copulation by force (Pen. Code, § 287, subd. (c)(2)(A); counts 2, 3, 7-16); one count of using, persuading, inducing, or coercing a minor to engage in sexual conduct for the purpose of preparing images of sexual conduct (Pen. Code, § 311.4, subd. (c); count 17); one count of unlawfully contacting or attempting to contact a minor for the purpose of committing a sexual offense (Pen. Code, § 288.3, subd. (a); count 18); two counts of sodomy against a minor (Pen. Code, § 286,

subd. (b)(1); counts 20 & 21); three counts of oral copulation against a minor (Pen. Code, § 287, subd. (b)(1); counts 22, 23, & 24).

On August 11, 2022, again over defendant's objection, the trial court allowed the People to file a second amended information that changed the dates that certain offenses allegedly occurred.

On August 15, 2022, the jury found defendant guilty of four counts of assault with the intent to commit sodomy (Pen. Code, § 220), the lesser-included offense of sodomy by force as alleged in counts 1, 4, 5, & 6; oral copulation by force as alleged in counts 2, 3, and 7 through 16; two counts of attempted sodomy with a minor (Pen. Code, §§ 664/286, subd. (b)(1)), the lesser-included offense of sodomy against a minor as alleged in counts 20 and 21; three counts of oral copulation with a minor as alleged in counts 22, 23, and 24. The jury found defendant not guilty of count 17.

On October 18, 2022, defendant was sentenced to a total term of 82 years in state prison with 446 days' credit for time served as follows: consecutive terms of six years on counts 3, and 7 through 16; a concurrent term of six years on count 2; consecutive terms of four years on counts 1, 4, 5, and 6; and concurrent terms on counts 18, and 20 through 24. Defendant was also ordered to pay a \$300 restitution fine and a \$300 parole revocation fine, the second which was stayed, as well as various court fees. Defendant timely appealed.

### III.

#### DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Upon examination of the record, counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (*Anders*) (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 conduct an independent review of the record. Counsel identifies the possible issues as (1) whether there was substantial evidence to support the jury's findings; (2) whether the trial court erred by instructing the jury with CALCRIM No. 1191B (Evidence of Charged Sex Offense) over defense objection; (3) whether the trial court properly sentenced defendant; (4) whether the trial court erred by permitting the prosecutor to amend the information twice during defendant's trial; and (5) whether the trial court prejudicially erred by overruling defendant's objection to the prosecutor's closing argument that appealed to the passions and prejudices of the jurors.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*Wende, supra*, 25 Cal.3d at pp. 441-442;

*People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV.

DISPOSITION

The judgment is affirmed.

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CODRINGTON  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.