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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. FELIPE MEDINA, Defendant and Appellant.	B272299 (Los Angeles County Super. Ct. No. ZM013980)

APPEAL from the judgment of the Superior Court of Los Angeles County. Terrance Lewis, Commissioner. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

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In April 2016, defendant and appellant Felipe Medina was tried and adjudged a sexually violent predator (SVP) under the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.; hereafter the Act). He was committed to Coalinga State Hospital (Coalinga) for an indefinite term in accordance with the Act.

Defendant challenges his commitment as an SVP and contends the trial court erred in allowing the People to present, through its expert witnesses, hearsay evidence which he contends was inadmissible under *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*).

We affirm.

PROCEDURAL HISTORY

In November 2008, the People filed a petition pursuant to Welfare and Institutions Code section 6600 requesting that defendant be declared an SVP and committed to a secure facility for treatment. The petition alleged defendant had suffered three qualifying offenses under the Act: a violation of Penal Code section 288a, subdivision (b)(2), a violation of Penal Code section 207 in case No. A8027257 (hereafter the 1982 offenses), and a violation of Penal Code section 207, subdivision (a) in case No. LA003540 (hereafter the 1990 offense). The petition further alleged defendant suffered from a mental disorder that predisposed him to engage in acts of predatory sexual violence.

Following a probable cause hearing, defendant was held to answer and committed to Coalinga pending trial.

Defendant waived his right to trial by jury and stipulated to a bench trial. Trial proceeded in April 2016. Defendant moved in limine to exclude the police reports pertaining to the 1982 offenses and the 1990 offense, and also to preclude expert witnesses from testifying to any hearsay statements on which they relied, unless such hearsay was independently admissible under an exception to the hearsay rule. The court denied defendant's motion regarding the police reports, concluding they were admissible. The court declined to

rule on the motion in limine, advising counsel instead to object to specific questions during the expert witnesses' examination.

After several days of testimony, the court issued its written ruling on May 13, 2016. The court found, beyond a reasonable doubt, that defendant met the criteria for commitment as an SVP. The court found true that defendant had committed a sexually violent offense, that he suffered from a currently diagnosed mental disorder, and that he is likely to engage in sexually violent predatory criminal behavior. The court ordered defendant committed to a secure facility in accordance with Welfare and Institution Code section 6604.

A little over a month later, the Supreme Court issued its decision in *Sanchez*, clarifying the permissible use of hearsay to explain the basis for an expert opinion.

Defendant timely appealed.

FACTUAL BACKGROUND

1. The People's Evidence

The People presented two expert witnesses, Dr. Mark Miculian and Dr. Doug Korpi, both of whom are clinical psychologists. The People also presented the percipient testimony of Derek Faraldo, defendant's parole officer in 2008, and 16 exhibits.

Dr. Miculian stated he has performed SVP evaluations for the California Department of State Hospitals (DSH) for several years.

Dr. Miculian first performed an evaluation of defendant in March 2012. Defendant refused to speak with Dr. Miculian at that time, so his initial evaluation was based only on a document review. Dr. Miculian updated his evaluation in 2014 and again in 2015, and for both of those evaluations, defendant consented to interviews.

Dr. Miculian reviewed various records, including the criminal and court records pertaining to the predicate offenses alleged in the petition. With respect to the 1982 offenses, Dr. Miculian reviewed the felony complaint, the abstract of judgment, two police reports, and the probation officer's report. He attested to the facts of the offenses in

which defendant approached a 14-year-old boy, who was a stranger to him, and asked for help in moving a box. After the boy agreed and followed him, defendant grabbed the boy. When the boy attempted to flee, defendant grabbed him by the hood of his sweatshirt and threw him to the ground. Defendant forced the boy to orally copulate him, and then sodomized the boy. He also threatened the boy with harm if he told anyone about what had happened.

With respect to the 1990 offense, Dr. Miculian reviewed the information, the abstract of judgment, the probation officer's report and two police reports. Dr. Miculian attested to the facts of the incident in which defendant approached a nine-year-old girl near the back of her apartment complex. Defendant was a stranger to her, but she recognized him as someone who had been hanging around the trash cans at the back of her building for a few days. Defendant told the girl to come with him, but she refused. He picked her up and carried her across the street behind a grocery store. She struggled and started to scream. When she began to scream, defendant grabbed her by the throat and told her to stop or he would kill her. Defendant then put the girl down, kissed her, placed two $1 bills in her pocket, and fled.

Dr. Miculian diagnosed defendant as suffering from pedophilic disorder. Dr. Miculian said the "linchpin" for the diagnosis was defendant's admission of an attraction to young girls.

Dr. Miculian explained it was also particularly significant that defendant had been found, on several occasions, to be in possession of photographs of young children. The most significant of these incidents was defendant's parole violation in July 2008. Dr. Miculian noted that defendant had clipped numerous photographs of young girls from catalogues or magazines, placed them within the pages of a sexually explicit adult magazine and kept them hidden under his mattress. In some of the photographs, the girls were in bathing suits. Defendant was also found with a robe that had Superman logos on it.

Defendant admitted to Dr. Miculian that the Superman robe was his, explaining that it was a robe he had obtained from general relief. Defendant said he had not done anything wrong by collecting and keeping the photographs of the girls because they were clothed.

Dr. Miculian also pointed to an incident in December 2013 while defendant was committed and receiving treatment at Coalinga. Defendant was found to be in possession of photographs of young children clipped from magazines that he kept under his bed. Dr. Miculian said defendant initially denied the photographs were his, but later told Dr. Miculian during one of his interviews that the photographs were his and he had previously claimed that a roommate had planted them on him. Defendant told Dr. Miculian that he was going to throw them out because he was in treatment and he knew he should not have them, but he had not yet thrown them away.

Dr. Miculian further noted defendant violated parole in 2001 by failing to register as a sex offender. Dr. Miculian understood defendant had similar pictures of young girls clipped from magazines in his backpack at that time.

During his 2015 interview, defendant admitted to Dr. Miculian that he had other sexual-related incidents in his past. Defendant told him that when he was 15 years old, he touched a seven- or eight-year-old girl on the leg. The girl was a friend of his niece. He later reported to a doctor that he felt "sexual" at the time and started to "get sick thoughts" around that time. Dr. Miculian stated that, standing alone, such an incident at the age of 15 would not support a pedophilic diagnosis, because it is customary to look only at incidents that begin after the age of 16. However, Dr. Miculian felt it was consistent with the rest of the behaviors that manifested later in life. Defendant also admitted he had been convicted of statutory rape in 1965 when he was 19, but he explained that it was a consensual relationship with a 15-year-old girlfriend whom he later married. The marriage was brief and ended in divorce.

In addition to pedophilic disorder, Dr. Miculian diagnosed defendant as suffering from antisocial personality disorder. Dr. Miculian explained that such a diagnosis requires evidence the individual disregards the rights of others and societal norms, and that such conduct begins while the individual is a minor. An individual with antisocial personality disorder will often have a history of deceitfulness, irritable and impulsive behavior, and show little or no remorse for causing pain or upset to others. Dr. Miculian testified he believed defendant met these criteria, having first been arrested for theft as a minor, along with a lifelong history of criminal behavior, deceitfulness (including the use of multiple aliases), and aggressive or impulsive behavior.

Dr. Miculian explained that the last criterion in determining SVP status is whether the individual presents a serious and well-founded risk of reoffending. Dr. Miculian opined that the combination of defendant's pedophilic disorder and antisocial personality disorder made him a serious risk for reoffending. Defendant, even while confined at Coalinga for treatment, continued to collect photographs of young children which is indicative of his lack of control over the behaviors triggered by his mental disorders.

Dr. Miculian said he rested his conclusion that defendant presents a serious risk of reoffending on the Static-99, which is the widely accepted diagnostic tool for assessing future risk of sexual recidivism.[1] The Static-99 is an actuarial instrument in which 10 factors are assessed and scored.

Dr. Miculian scored defendant a 6. Defendant had both sexually violent offenses, as well as nonsexual violent offenses in his criminal history. The victims in both the 1982 offenses and the 1990 offense

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[1] Penal Code section 290.04 designates the Static-99 as the authorized risk-assessment tool for evaluating adult males required to register as sex offenders.

were strangers. It was not clear he ever had a significant adult relationship for longer than two years, and he had a history of impulsive, combative behavior. A score of 6 placed defendant at an 18 to 23 percent risk of reoffending within five years.

Dr. Miculian stated that age is one of the Static-99 factors, and that older age (over 60) is normally indicative of a low risk of offending. However, because defendant continued to collect pictures of young children, despite the personal consequences, Dr. Miculian believed defendant's risk remains high.

Dr. Miculian explained that in addition to the Static-99 factors, it was important to evaluate dynamic factors personal to the individual. One of those factors is sexual preoccupation. Dr. Miculian found defendant's inability to stop collecting pictures of children, often intermixed with adult pornography, indicative of sexual preoccupation. Defendant's personal history also exhibits a lack of stable emotional relationships with adults, and "life-style impulsivity." Defendant exhibits poor problem-solving and an inability to follow rules, often responding to situations with hostility.

On cross-examination, Dr. Miculian said that during his interviews of defendant, he explained his personal history, including that he was the youngest of 12 children. Defendant said his older brothers were involved in gangs and criminal activity, his family was poor and moved around a lot because his parents were migrant workers, and he quit school in the seventh grade. Defendant admitted to his criminal history, including multiple arrests for burglary and assault. He said he was married briefly to a woman named Margaret (the statutory rape victim), and also lived for awhile with a woman named Linda with whom he had a son.

Dr. Miculian testified that defendant, while being treated at Coalinga, has been assessed as having "borderline intelligence." Dr. Miculian confirmed that defendant's participation in sex-offender

treatment at Coalinga has improved since 2014, particularly once his cognitive deficits were better addressed.

Derek Faraldo, a parole officer with the Department of Corrections and Rehabilitation, identified defendant in court and stated he was one of the parolees under his supervision in July 2008. On July 9, Officer Faraldo performed a "surprise compliance" search of defendant's room in the sober living facility at which he was then living.

During the search, Officer Faraldo found various items that violated the terms of defendant's parole. Under defendant's mattress, Officer Faraldo found a magazine containing sexually explicit adult advertisements. In between two pages of the magazine, Officer Faraldo found multiple photographs, clipped from other magazines or catalogues, depicting young children. Officer Faraldo also found some balloons and a robe with the Superman logo in defendant's room.

Officer Faraldo said defendant admitted the photographs of the children were his, but denied any wrongdoing because the children were not naked. Officer Faraldo said defendant also admitted to having an attraction to young girls.

Dr. Korpi is under contract with the DSH to perform SVP evaluations, and has performed such evaluations for many years. Dr. Korpi evaluated defendant in December 2015, which included interviewing him for over two hours. He reviewed defendant's records from Coalinga, as well as various records pertaining to the predicate offenses and defendant's criminal history.

Dr. Korpi largely echoed the opinions of Dr. Miculian. Dr. Korpi concluded that defendant currently suffers from pedophilic disorder and antisocial personality disorder. Dr. Korpi conceded he originally diagnosed defendant as suffering from paraphilic disorder. He explained that he felt defendant showed a "perverse" sexual interest in not just prepubescent children, but in nonconsensual sex generally. However, he reviewed the materials again, including an earlier report

by Dr. Fox and the photographs related to the 2008 parole violation which he had not previously seen, and modified his opinion to a diagnosis of pedophilic disorder, with antisocial personality disorder.

Dr. Korpi rested his conclusion primarily on the relatively brazen nature of the 1990 offense (in public, in broad daylight, against a nine-year-old girl whom he did not know), defendant's collecting of photographs of young children on multiple occasions, and defendant's admission he has an attraction to young girls.

Dr. Korpi opined defendant has a high risk of reoffending demonstrated by his continued lack of volitional control. Despite knowledge of parole conditions and Coalinga policy, "he can't help but keep the pictures of the kids." Dr. Korpi assessed defendant using the Static-99, as well as the revised version known as the Static-2002R.

Using both actuarial instruments, Dr. Korpi scored defendant a 7, which is a high risk for reoffending on the Static-99 and a moderate-high risk for the Static-2002R. In addition to the two actuarial instruments, Dr. Korpi assessed other specific dynamic risk factors, including that defendant's predicate offenses involved stranger victims, early onset of criminal history, supervision noncompliance, poor problem solving, and intimacy deficits. In his interview of defendant, defendant discussed his personal history with Dr. Korpi, including his upbringing and the fact he was engaged in criminal activity since the age of 14.

Dr. Korpi acknowledged defendant's age is a significant factor against reoffending, but, like Dr. Miculian, he opined that defendant's continued behavior in collecting photographs and showing lack of control, despite the negative consequences, weigh more heavily than age in the analysis.

2. Defense Evidence

Dr. Mary Jane Alumbaugh, a clinical psychologist, testified as an expert for the defense.[2] Dr. Alumbaugh reviewed defendant's hospital records from Coalinga and interviewed him on three separate occasions.

Dr. Alumbaugh also reviewed records related to the 1982 offenses and the 1990 offense. Dr. Alumbaugh acknowledged defendant had a long criminal history, beginning when he was a minor. She believed the 1982 offense pertaining to oral copulation of a minor boy to be a sexually violent offense. Dr. Alumbaugh acknowledged the victim testimony pertaining to the 1990 offense as reflected in the transcript of the preliminary hearing. She stated the 1990 offense was a "frightening" and "horrible" thing to do to a nine-year-old girl, but it nonetheless raised some issues as to whether it qualified as a sexually violent offense. However, she erred on the side of caution and considered it a qualifying predicate offense. She summarized the same facts attested to by Dr. Miculian about the nature of the incidents.

Dr. Alumbaugh agreed with Dr. Miculian that defendant suffers from antisocial personality disorder. She also believes he has significant cognitive deficits, and suffers from alcohol abuse disorder. Dr. Alumbaugh conceded defendant has consistently engaged in antisocial behavior and criminal behavior throughout his life, but did not believe there was sufficient evidence to diagnose him as suffering from a pedophilic or a paraphilic disorder that would predispose him to commit predatory sexual crimes. Given his age (69 at the time of trial), and the well-documented decline in criminal activity when one ages, she did not believe there was a basis to diagnosis him with a current mental disorder that met the SVP criteria.

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[2] Because of scheduling issues, Dr. Alumbaugh testified second, just after the completion of Dr. Miculian's testimony.

Dr. Alumbaugh explained that in order to properly evaluate and diagnose defendant, it was necessary to review his complete developmental, personal and sexual history. She recounted factors relevant to defendant's personal history gleaned largely from her interviews of him. She said defendant had a "very difficult upbringing," minimal education, multiple family members involved in criminal activity, and a spotty work history interrupted by having "been in and out of institutions since he was 15."

Dr. Alumbaugh noted defendant's long history of nonsexual criminal activity, starting at the age of 15, including assault, theft, and burglary, as well as multiple parole violations. The parole violations included failing to register as a sex offender and possession of adult pornography. She said he also had a significant number of both minor and major disciplinary violations during his periods of incarceration.

As for sexually based offenses, defendant admitted to her that when he was 15, he touched the friend of his niece "under her dress," on "her buttocks" and hugged her, and admitted he got into "trouble" for it. As for the statutory rape charge when he was 19, he said the 15-year-old girl was a runaway who he ultimately married and their relationship was consensual. Defendant also told Dr. Alumbaugh that in 1974 he was accused of rape by an adult female but the charges were dismissed.

Defendant denied anything improper occurred in the 1982 offenses, claiming it was a consensual encounter and that the boy's parents must have pressured him into contacting the police. He also completely denied the 1990 offense, claiming the girl simply followed him to the grocery store and he gave her money.

Dr. Alumbaugh noted that in addition to defendant's brief marriage as a 19-year-old, he also had a relationship with a woman in the 1980's with whom he had a son. He no longer had a relationship with either of them.

With respect to defendant's 2008 parole violation, Dr. Alumbaugh did not find the possession of the photographs of children particularly significant because they were not pornographic. None of the children was naked and the photographs were "fairly innocuous." She stated that defendant did admit the pictures were his and that he was the one who had placed them inside the sexually explicit adult magazine. Dr. Alumbaugh agreed his collecting of the photographs of children was "worrisome," as was his admission that he liked young girls, but she did not believe that was enough to assign a diagnosis of pedophilic or paraphilic disorder. She was aware that in 2013, defendant was again found in possession of clippings of young children, this time by the staff at Coalinga. However, it did not change her opinion that he did not have a qualifying mental disorder.

Dr. Alumbaugh explained that defendant's records from Coalinga indicated he had a "stormy" relationship with staff and his peers, but it did not include sexually inappropriate conduct. Defendant was more often verbally abusive, contentious, and resistant to following rules. However, in the past year, defendant had begun to make progress with his treatment plan. The "explosions [in behavior] have really declined markedly." Dr. Alumbaugh believed much of his explosive behavior was triggered by his cognitive deficits. His behavior had improved recently because that issue was being specifically addressed as part of his treatment plan. She admitted defendant is a "very poor historian" and tells a different story to every evaluator. However, she believed he had made recent progress in developing insight, being able to admit mistakes, and learning to control his behavior. Defendant had also been addressing his alcohol abuse issues with programs at Coalinga.

Dr. Alumbaugh opined that defendant did not present a significant risk of reoffending. Applying the Static-99 risk factors, Dr. Alumbaugh scored defendant a 6, placing him in the category of high risk (the same score given by Dr. Miculian). However, like

Drs. Miculian and Korpi, she also considered dynamic risk factors. The most important factor to Dr. Alumbaugh was defendant's age because of the widely accepted principle that recidivism declines with age. She relied in part on an FBI study indicating that criminal recidivism over the age of 70 is below one percent. Dr. Alumbaugh said defendant presented a "complicated assessment" but she believed he primarily acted out throughout his life because of his cognitive deficits, and he was an "aging criminal," but not a sexual predator.

DISCUSSION

1. Background Law Related to SVP Proceedings

The purpose of the Act is the confinement and treatment of "a select group of convicted sex offenders whose mental disorders predispose them to commit sexually violent acts if released following punishment for their crimes." (*Moore v. Superior Court* (2010) 50 Cal.4th 802, 814-815.) Under the Act, an SVP is confined and treated "until their dangerous disorders recede and they no longer pose a societal threat. SVP trials are ' "special proceedings of a civil nature," ' wholly unrelated to any criminal case." (*Id.* at p. 815.)

Under the Act, as amended in 2006, an SVP is defined as "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

The Act defines "sexually violent offense" to include the offenses of which defendant was convicted in 1982 and 1990, when such offenses are "committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity . . . ." (Welf. & Inst. Code, § 6600, subd. (b).)

"If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14, the offense shall constitute a 'sexually violent offense' for purposes of Section 6600." (Welf. & Inst. Code, § 6600.1.)

"Diagnosed mental disorder" is defined as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." (Welf. & Inst. Code, § 6600, subd. (c).)

2. Expert Testimony After *Sanchez*

After the bench trial in this case, our Supreme Court issued its decision in *Sanchez*, *supra*, 63 Cal.4th 665. *Sanchez* held, "When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth." (*Id.* at p. 686.) An expert may no longer relate as true case-specific facts asserted in hearsay statements, "*unless they are independently proven by competent evidence or are covered by a hearsay exception*." (*Ibid.*, italics added.)

Sanchez did *not* alter the rule or "call into question the propriety of an expert's testimony concerning background information regarding his knowledge and expertise and premises generally accepted in his field." (*Sanchez*, *supra*, 63 Cal.4th at p. 685.) "Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. Because the jury must independently evaluate the probative value of an expert's testimony, Evidence Code section 802 properly allows an expert to relate generally the kind and source of the 'matter' upon which his opinion rests. . . ." (*Sanchez,* at pp. 685-686.)

"Although *Sanchez* was a criminal case, the court stated its intention to 'clarify the proper application of Evidence Code

sections 801 and 802, relating to the scope of expert testimony,' generally [citation]." (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 405, fn. 6 (*Burroughs*); see also *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 34 [*Sanchez* applies to civil cases].)[3]

3. The Evidence Below

In order to discharge its burden on the SVP petition, the People offered the testimony of Drs. Miculian and Korpi, as well as the percipient testimony of Officer Faraldo, and 16 exhibits.

In this appeal, defendant challenges the admission of certain exhibits, including his Penal Code section 969b prison packet, the police reports and probation officer reports for the 1982 and 1990 offenses, the two-page report of the July 2008 parole search, the certified CLETS report, the criminal history sheet from the Department of Justice, and the preliminary hearing transcript for the 1990 offense.

Defendant further challenges portions of the testimony of Dr. Miculian, Dr. Korpi, and Dr. Alumbaugh, his own defense expert. Defendant only challenges portions of Dr. Alumbaugh's testimony on cross-examination, despite the fact that much of her testimony on direct examination rested on the same sources of information on which the prosecution experts relied. Defendant objects on appeal to the prosecution experts relying on what he describes as hearsay, but his own expert relied on the same information. Defendant concedes the People's experts were entitled to rely on hearsay evidence, including the documents presented below as exhibits, in forming their opinions. However, defendant argues that, under *Sanchez*, they were not allowed to attest to case-specific hearsay facts contained within

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[3] We assume without deciding that *Sanchez* applies to a court trial. Because the state and federal confrontation clauses do not apply in SVP proceedings, we need not discuss that aspect of *Sanchez*. (*People v. Otto* (2001) 26 Cal.4th 200, 214 (*Otto*).)

those exhibits, unless those facts were admissible under an exception to the hearsay rule.

We apply "the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the hearsay nature of the evidence in question." (*People v. Waidla* (2000) 22 Cal.4th 690, 725.) We find defendant forfeited in the trial court any objection to the admission of several of the exhibits he now challenges on appeal, and that, in any event, all the exhibits were properly admitted. We find the expert testimony was admissible under *Sanchez*, except for some relatively trivial testimony that could not possibly have prejudiced defendant's right to a fair trial.

a. The exhibits

The Penal Code section 969b "prison packet" includes a chronological history; an abstract of judgment regarding defendant's incarceration on a parole violation for failure to register as a sex offender; the abstracts of judgment for the 1982 and 1990 offenses; fingerprint cards and a photograph of defendant.

The abstracts of judgment related to the predicate offenses were admissible to prove defendant's convictions of those offenses. (*Burroughs, supra,* 6 Cal.App.5th at p. 403; accord, *People v. Dean* (2009) 174 Cal.App.4th 186, 196.)[4] In any event, defendant concedes he did not object to the prison packet and any claim of error has

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[4] Defendant contends the 1990 offense may not, as a matter of law, be considered a predicate offense because it was a conviction under subdivision (a) of Penal Code section 207 (simple kidnapping). We reject defendant's contention. Section 207 is enumerated in the Act (not merely certain of its subdivisions), and documentary evidence may properly be admitted to demonstrate the offense qualified as a "sexually violent offense" with the requisite intent within the meaning of the Act. (*Burroughs*, *supra*, 6 Cal.App.5th at p. 403.) Defendant's contention does not merit further discussion.

therefore been forfeited. (*People v. Abel* (2012) 53 Cal.4th 891, 924 (*Abel*).)

Defendant did not preserve a hearsay objection to the probation reports, arguing, in essence, only that their contents were more prejudicial than probative. It is well established the probation reports were admissible to prove the predicate offenses, and defendant's claim of prejudice has no merit. Welfare and Institutions Code, "section 6600(a)(3) expressly permits the use of probation and sentencing reports to show '[t]he details underlying the commission of an offense.' This provision implicitly authorizes the admission of hearsay statements in those reports. The Legislature is undoubtedly familiar with the typical contents of such reports, which include '[t]he facts and circumstances of the crime' and 'the victim's statement or a summary thereof, if available.' (Cal. Rules of Court, rule 4.411.5(a)(2), (5)(i) . . . .) The source of the details of the prior offense is not the author of the report, but the victims. Rule 4.411.5 contemplates that police reports will be used as a source of information for summarizing the crime in the presentence report." (*Otto*, *supra*, 26 Cal.4th at p. 207.)[5]

Otto explained that "[b]y permitting the use of presentence reports at the SVP proceeding to show the details of the crime, *the Legislature necessarily endorsed the use of multiple-level-hearsay statements that do not otherwise fall within a hearsay exception*." (*Otto*, *supra*, 26 Cal.4th at p. 208, italics added.) "[T]the Legislature

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[5] Welfare and Institutions Code section 6600, subdivision (a)(3) provides, in relevant part: "The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals."

apparently intended to relieve victims of the burden and trauma of testifying about the details of the crimes underlying the prior convictions. Moreover, since the SVP proceeding may occur years after the predicate offense or offenses, the Legislature may have also been responding to a concern that victims and other percipient witnesses would no longer be available. Given these purposes, the only reasonable construction of section 6600(a)(3) is that it allows the use of multiple-level hearsay to prove the details of the sex offenses for which the defendant was convicted." (*Ibid.*)

In his pretrial motion in limine, which was denied by the court, defendant argued the police reports were hearsay and prejudicial. We find that the police reports, which largely contained details related to the predicate offenses (and similar to those stated in the probation reports), were reliable and admissible evidence. (See, e.g., *Burroughs*, *supra*, 6 Cal.App.5th at pp. 408-409; see also Couzens & Bigelow, Sex Crimes: Cal. Law & Procedure (Aug. 2017) § 14:3, p. 14-86 ["the predicate offenses may be established by documents traditionally considered hearsay, such as probation reports and police reports"].)

Defendant initially argued in the trial court that the two-page report related to the July 2008 parole search should be excluded because Officer Faraldo had testified to the same facts. Defendant eventually withdrew his objection and did not state any other objection to its admission, hearsay or otherwise. He has forfeited any claim of error on appeal. (*Abel*, *supra*, 53 Cal.4th at p. 924.)

Defendant did not object to the certified CLETS report or the criminal history sheet from the Department of Justice. Any objections to the admission of these documents were forfeited. (*Abel*, *supra*, 53 Cal.4th at p. 924.)

As for the preliminary hearing transcript for the 1990 offense, Welfare and Institutions Code section 6600, subdivision (a)(3) specifically enumerates preliminary hearing transcripts as one type of admissible documentary evidence to establish predicate offenses.

Defendant contends that the argument of counsel, and the testimony related to the identification and arrest of defendant two days after the incident, should have been redacted as unrelated to proving the predicate offense.

The great bulk of the transcript consists of admissible victim testimony related to the 1990 offense, as well brief testimony (one page) from the officer who spoke with the minor victim. There is also brief testimony (two pages) from defendant's parole officer at the time who confirmed that defendant was on parole at the time of the offense.

Defendant only objected in the trial court to the transcript on the grounds of lack of foundation and relevance. Neither objection has merit.

b. The expert witnesses

Respondent argues defendant did not object on hearsay grounds to the expert testimony he now challenges on appeal, and should therefore be deemed to have forfeited those claims.

The record of the discussions between counsel and the court on defendant's motion in limine, as well as some of the documentary evidence, demonstrates defendant preserved his hearsay objections to the experts' testimony regarding the facts upon which their opinions were based. We therefore consider defendant's claims of error as to the expert witness testimony.

Drs. Miculian and Alumbaugh (and to a lesser extent Dr. Korpi) attested to the facts pertaining to the 1982 offenses and the 1990 offense. This was permissible testimony as those predicate offenses were established by admission of the certified copy of defendant's Penal Code section 969b packet containing the abstracts of judgment, as well as the probation reports and police reports containing the victim statements related to those offenses. The experts were therefore allowed to relate those facts to the court in connection with attesting to their opinions. (*Burroughs*, *supra*, 6 Cal.App.5th at p. 403; *People v. Roa* (2017) 11 Cal.App.5th 428, 450 (*Roa*).)

The experts also attested to other sexual-related offenses in defendant's history, including the incident when he touched, at the age of 15, a young friend of his niece, and the statutory rape conviction he suffered at the age of 19. The experts testified that defendant admitted these incidents to them. Accordingly, the statements were admissible as party admissions under Evidence Code section 1220.

The same is true for much of defendant's nonsexual criminal history and personal background information. The experts attested to the fact that defendant made various statements, during their respective interviews of him, about his criminal activity, starting at the age of 14. He also discussed with them his upbringing and family life. They could therefore properly relate the facts encompassed by those admissions in attesting to their opinions.

Defendant relies, in part, on *Burroughs* and *Roa* in arguing that a discussion of nonpredicate or uncharged offenses by an expert is improper after *Sanchez*. However, in both *Burroughs* and *Roa*, the defendant refused to speak to the People's experts as part of the evaluation process. (*Burroughs*, *supra*, 6 Cal.App.5th at pp. 384, 391, 395; *Roa*, *supra*, 11 Cal.App.5th at pp. 434, 437, 439-440.) Therefore, those experts could only relate hearsay facts based on the review of records in discussing the defendant's criminal history. Unlike here, there were no party admissions, nor other applicable hearsay exceptions.

Some insignificant case-specific facts were attested to by the experts that were not independently established or otherwise admissible under a hearsay exception, but that testimony was mostly duplicative of other admissible evidence or meaningless. Indeed, defendant concedes that much of it was "meaningless." For instance, the experts discussed defendant's record of combative conduct at Coalinga with staff and peers, and defendant's progress or lack thereof

in treatment, among other things. We find the testimony was inconsequential and in no way prejudiced defendant.

4. Prejudice

We evaluate a claim of prejudice from the allowance of expert testimony in violation of *Sanchez* under the state law standard set forth in *People v. Watson* (1956) 46 Cal.2d 818. (*People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 510.) Under that standard, reversal is not warranted unless it is reasonably probable defendant would have obtained a more favorable outcome had the inadmissible hearsay been excluded. (*Watson,* at p. 836.)

In arguing prejudice, defendant relies heavily on *Burroughs* and *Roa*. As explained above, that reliance is misplaced, as those cases are distinguishable, not only factually, but because both defendants in those case were tried and convicted by juries. In *Burroughs*, for example, the jury heard "in lurid detail, numerous sex offenses that appellant was not charged with or convicted of committing," and the experts described "bizarre and even 'lethal' behavior appellant engaged in," which the court considered "exceedingly inflammatory." (*Burroughs*, *supra*, 6 Cal.App.5th at p. 412.) This was a bench trial, not a jury trial. There was no exceedingly inflammatory expert testimony, and in any event, in a bench trial, we assume the trial judge will remain dispassionate and apply the law correctly, unless the record proves otherwise. Defendant has not persuaded us the court was unfavorably prejudiced by the inconsequential hearsay attested to by the experts in this case.

There was substantial admissible evidence demonstrating that the 1982 offenses and the 1990 were sexually violent offenses, committed against two children only nine and 14 years old, who were both strangers to defendant. Officer Faraldo attested as a percipient witness to defendant's parole violation in 2008 for collecting photographs of young children and secreting them away, under his mattress, in between the pages of a sexually explicit adult magazine.

Officer Faraldo also attested to defendant's admission, at that time, to an attraction to young girls.

Defendant stipulated to the admission of the exhibit concerning the 2013 incident at Coalinga in which he was found to be in possession of photographs of young children that he had hidden in his room.

There were multiple admissions by defendant confirming his lifetime of criminal activity dating back to the age of 14. Defendant's criminal history was admitted in the form of a CLETS report and a Department of Justice criminal history sheet, without objection from defendant.

Dr. Alumbaugh, the defense expert, testified extensively on direct examination about admissions made by defendant to her regarding his personal history, and his criminal history, including the other sexual-based offenses. She also discussed at length defendant's combative, impulsive behavior at Coalinga.

Because we find harmless any error in admitting the few insignificant facts that defendant claims were inadmissible hearsay under *Sanchez*, we also conclude there is no basis for defendant's contention his due process right to a fair trial was violated.

5. Ineffective Assistance of Counsel

To establish ineffective assistance of counsel, a defendant must demonstrate that counsel's representation failed to meet an objective standard of professionalism, and that such failures caused him prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 678-688.) We have already concluded defendant was not prejudiced by the admission of the inconsequential hearsay attested to by the experts. Defendant has also not shown that counsel's representation was deficient. Objecting to evidence is an inherently tactical decision. Defendant concedes that many of the exhibits were admissible, but contends that portions should have been objected to and redacted. However, some of the allegedly objectionable exhibits concerned issues

attested to by defendant's own expert, Dr. Alumbaugh. Dr. Alumbaugh attested to much of the information to support her conclusion that defendant should not be viewed as a sexual predator, but rather, just an "aging criminal." We cannot say, on this record, that defense counsel's performance was deficient for not interposing additional objections to the exhibits, many of which contained information that supported the defense.

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.