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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. ROBERT BAILEY, Defendant and Appellant.	2d Crim. No. B277446 (Super. Ct. No. 15PT-00628) (San Luis Obispo County)

A jury determined that Robert Bailey meets the criteria for designation as a sexually violent predator (SVP) under the Sexually Violent Predators Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.) The trial court ordered him committed to the Department of State Hospitals. Bailey contends the judgment should be reversed because: (1) the court admitted case-specific hearsay in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*); (2) the prosecution lacked authority to file the commitment petition; (3) counsel provided ineffective assistance when he did not object to irrelevant testimony; (4) counsel was ineffective when he did not object to a prosecution

exhibit; (5) the tolling provision of Penal Code section 3000 violates equal protection guarantees; and (6) the tolling provision violates the prohibition against ex post facto laws. We affirm.

FACTUAL AND PROCEDURAL HISTORY

In June 2016, a jury determined that Bailey meets the criteria for SVP commitment because he: (1) has a qualifying prior conviction,[1] (2) has a diagnosed mental disorder, and (3) is likely to engage in sexually violent criminal behavior. (Welf. & Inst. Code, § 6600, subd. (a)(1).) Our Supreme Court issued its decision in *Sanchez* one week later.

The victim of Bailey's SVP-qualifying offense, B.V., testified that she and a friend left a high school football game to go to Bailey's house to have him buy alcohol. When he returned, he handed B.V. an already-open beer. After taking a few drinks, she felt "weird" and "really, really drunk." Bailey kissed B.V. and tried to convince her to have sex with him. She refused. B.V. was 13 years old at the time.

B.V. alternated in and out of consciousness. She could not move or scream. Bailey was raping her. He also orally copulated her and digitally penetrated her vagina. Afterward, B.V. felt violated and vulnerable. Bailey "act[ed] normal, like nothing happened." He did not appear to think that anything was wrong.

B.V. did not tell anyone about the incident, but did write about it in her diary. About a year later, B.V.'s mother read her diary and confronted her. B.V. ran away from home. She still struggles with intimate relationships to this day.

Three forensic psychologists testified for the prosecution. All three interviewed Bailey and reviewed police

[1] Bailey stipulated to the SVP-qualifying conviction.

and probation reports, Bailey's rap sheet, prison records, and medical and psychological files. All three concluded that Bailey meets the criteria for SVP designation.

Dr. Douglas Korpi testified that Bailey has a neurocognitive disorder that renders him impulsive, sexually preoccupied, and predisposed to commit criminal sexual acts. Records show that Bailey has engaged in sexually deviant behaviors and was unsuccessful during his placements in disability regional centers. He talked about masturbating several times a day, and was eventually removed from his treatment program. He has substance abuse problems. His doctors do not consider him amenable to treatment.

Records also show that Bailey has been arrested 12 times, including five times for sexual misconduct toward females. After his qualifying offense, he sexually battered a woman by pulling up her shirt and sucking on her breasts. In 2014, he grabbed a woman's breasts through the open window of her car.

Dr. Korpi based his opinion that Bailey is likely to reoffend, in part, on the Static-99R and Static-2002R. On both tests, Bailey scored in the 93rd percentile. The records Dr. Korpi reviewed support these results: Bailey's victims were strangers, he had not lived with a romantic partner for two or more years, and he engaged in sexual crimes after his qualifying offense. He has a history of parole and probation violations. He failed sex-specific treatments. He grew up in a broken, abusive family. He has had few long-term relationships. He is sexually preoccupied, but does not believe he has a problem. He has difficulty securing and maintaining employment. He has no support network, and his family will not speak with him.

During his interview with Dr. Korpi, Bailey denied responsibility for his crimes. He stated that his sexual acts were consensual or that his victims lied about them. He does not believe he needs treatment.

Dr. Christopher Matosich testified that Bailey has committed sexual offenses in addition to that against B.V.: He suffered a misdemeanor child molestation conviction after he invited an 11-year-old girl to his apartment, gave her a beer, and asked her to orally copulate him. She refused and ran away. She later told police that Bailey was known in the apartment complex for exchanging marijuana for oral sex.

While on probation on that offense, Bailey suffered a sexual battery conviction for sucking on a woman's breasts. He committed another sexual battery in 2014 when he groped a woman's breasts and kissed the back of her neck. Later that year he failed to register as a sex offender.

Dr. Matosich diagnosed Bailey with "other specified paraphilic disorder," a form of sexual deviancy that involves fantasizing about sexual activity with children and other nonconsenting individuals. When Dr. Matosich told Bailey of his diagnosis, Bailey became irritable. He denied or minimized his prior conduct. He claimed he had been molested by an uncle and had other "unusual" sexual experiences as a teenager. He said he did not have a sexual disorder and did not need treatment.

Dr. Matosich concluded that Bailey is a moderate psychopath and is likely to reoffend in a sexually violent manner. According to the Static-99R, he is 7.3 times more likely to reoffend than the average person. His score on the Static-2002R places him in the moderate to high range for reoffending. His

score on the Structured Risk Assessment (SRA) places him in the high range for reoffending.

Dr. Wesley Maram agreed that Bailey meets all three criteria to qualify as an SVP. He diagnosed Bailey with antisocial personality disorder and three substance abuse disorders. The disorders render Bailey impulsive, reckless, and remorseless.

Dr. Maram opined that Bailey is likely to reoffend in a sexually violent manner. During his interview, Bailey denied committing the incident with B.V. He told B.V.'s friend to tell B.V. to "stop telling lies about [him]." He said that the incident was consensual. When he was arrested, he said B.V. "spread her legs apart and wanted him." He denied orally copulating B.V.

Dr. Maram determined that Bailey scored just below the level for severe psychopathy on the Hare Psychopathy Checklist. His score on the Static-99R showed a high risk of reoffending. The SRA showed a high risk of reoffending because of Bailey's disinterest in treatment.

Records confirm Dr. Maram's opinion. Bailey acted out in school. He has a long history of sexual offenses. His longest romantic relationship lasted eight months. He is manipulative, and claims that "nobody's going to arrest [him], do anything to [him], because [he's] disabled."

Forensic psychologist Christopher North testified for Bailey. Dr. North opined that Bailey meets the first two criteria for designation as an SVP, but he is not likely to reoffend in a sexually violent manner. His qualifying conviction is 21 years old. His subsequent sexual offenses were nonviolent. He is not a psychopath. His Static-99R score puts him at an above-average risk of reoffending.

Carolyn Murphy, another forensic psychologist, also testified for Bailey. Dr. Murphy opined that Bailey does not have a diagnosable mental disorder and is not likely to reoffend in a sexually violent manner. Bailey's brain injury functions as a developmental disability rather than a mental disorder. Bailey is not a psychopath. He scored in the moderate to high range for reoffending on the Static-99R and Static-2002R.

On cross-examination, Dr. Murphy testified that Bailey told B.V.'s friend to tell her to "stop lying and telling people what [he] did." She said that Bailey told a neighbor that he was "going to get away with [the child molestation charge] because [he is] developmentally disabled." She also said that hospital reports indicate that Bailey became sexually involved with a 14-year-old girl and her mother after his discharge from a regional center, and that police reports indicate that Bailey chased one of the women and sexually assaulted her.

DISCUSSION

Sanchez *error*

Bailey contends the trial court erred when it permitted the forensic psychologists to testify to case-specific hearsay. (*Sanchez*, *supra*, 63 Cal.4th at p. 686.) The Attorney General argues Bailey forfeited his contention because he did not object at trial. We conclude that Bailey did not forfeit his contention, and that it was error for the psychologists to relate case-specific hearsay to the jury. But the error was harmless.

Although the failure to object to expert testimony or hearsay at trial generally forfeits claim of error on appeal (*People v. Stevens* (2015) 62 Cal.4th 325, 333), "[r]eviewing courts have traditionally excused parties for failing to raise an issue at trial where an objection would have been futile or wholly unsupported

by substantive law then in existence" (*People v. Welch* (1993) 5 Cal.4th 228, 237-238). Because the law in existence at the time of Bailey's trial permitted an expert to testify to case-specific hearsay as the basis of an opinion (see *People v. Gardeley* (1996) 14 Cal.4th 605, 618-619, disapproved by *Sanchez*, *supra*, 63 Cal.4th at p. 686, fn. 13), an objection to the psychologists' hearsay testimony would have been futile.[2] (*People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 507-508 (*Jeffrey G.*).) There was no forfeiture.[3]

The trial court committed *Sanchez* error. First, it erroneously permitted the forensic psychologists to relate case-specific facts contained in hospital, probation, police, and prison records. (*Sanchez*, *supra*, 63 Cal.4th at p. 686.) Second, it permitted Dr. Korpi to testify to details about Bailey's past drug use and relationships. The Attorney General argues, without citation to the record, that Bailey told this information to Dr. Korpi, rendering it admissible under Evidence Code section 1220. But because there is no indication in the record that Bailey was the source of this information, we reject this argument. (*People v. Livaditis* (1992) 2 Cal.4th 759, 778-779 [proponent of hearsay has burden of showing it is admissible].) Finally, the court permitted Drs. Maram and Murphy to testify about out-of-court statements others said Bailey made about his crime against B.V. and his

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[2] We disagree with the contrary conclusion reached in *People v. Perez* (2018) 22 Cal.App.5th 201.

[3] Because Bailey has not forfeited his *Sanchez* contentions, we do not reach his claim that trial counsel provided ineffective assistance when he did not object to the testimony. (*Jeffrey G.*, *supra*, 13 Cal.App.5th at p. 508, fn. 5.)

child molestation conviction. Such statements are hearsay. (Evid. Code, § 1200, subd. (a).)

But the *Sanchez* errors were harmless. The erroneous admission of hearsay does not require reversal unless "it is reasonably probable that a result more favorable to [Bailey] would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) Commitment under the SVPA requires the prosecution to prove that a person: (1) has committed a sexually violent offense, (2) has a diagnosed mental disorder, and (3) is likely to """engage in sexually violent criminal behavior""" if released. (*In re Lemanuel C.* (2007) 41 Cal.4th 33, 42.) The first two of these elements are not at issue: Bailey stipulated to the first, and one of his own experts testified to the second. (*People v. Marshall* (1990) 50 Cal.3d 907, 931 [doctrine of invited error prevents challenge to hearsay testimony by one's own witness on direct examination].)

As to the third, Drs. Korpi, Matosich, and Maram based their opinions that Bailey is likely to reoffend in a sexually violent manner, in part, on case-specific hearsay that they relayed to the jury. They told the jury about Bailey's behavior and lack of success in treatment programs. They testified to the facts underlying his arrests and convictions. They discussed his substance abuse problems and his lack of a support network. All of this testimony was inadmissible under *Sanchez*.

But the prosecution presented strong evidence to support the third factor: Bailey told the psychologists he did not need sex offender treatment and would not participate in such treatment if ordered. Those statements were properly admitted at trial. (*People v. Landau* (2016) 246 Cal.App.4th 850, 866-867; see Evid. Code, § 1220.) And they were "relevant to the ultimate

determination whether [Bailey] is likely to engage in sexually violent predatory crimes if released from custody." (*People v. Roberge* (2003) 29 Cal.4th 979, 988, fn. 2.) Bailey's refusal to cooperate in any phase of treatment is "a sign that [he] is not prepared to control his untreated dangerousness by voluntary means if released unconditionally to the community." (*People v. Superior Court* (*Ghilotti*) (2002) 27 Cal.4th 888, 929.)

Because Bailey has a diagnosed mental disorder that renders him impulsive and makes it difficult for him to control his sexual urges, his refusal to participate in treatment to control these urges supports the conclusion that Bailey would likely reoffend. (*People v. Sumahit* (2005) 128 Cal.App.4th 347, 354-355.) Based on this evidence, it is not reasonably probable the jury would have reached a different conclusion absent the erroneously admitted hearsay. (*People v. Martinez* (2001) 88 Cal.App.4th 465, 487, fn. 8.)

This case is unlike *People v. Roa* (2017) 11 Cal.App.5th 428 and *People v. Burroughs* (2016) 6 Cal.App.5th 378 (*Burroughs*), on which Bailey relies. In both of those cases, the juries heard highly inflammatory evidence about violent sexual offenses the appellants allegedly committed, which "invited the jury to punish [them] for [their] past offenses." (*Burroughs*, at p. 412; see also *Roa*, at pp. 454-455.) Here, in contrast, Bailey was convicted of the offenses described to the jury, reducing the danger the jury would punish him again. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 917.) And the misdemeanor conduct described is much less serious than the violent rape of B.V., reducing its inflammatory and prejudicial nature in the context of this case. (*People v. Sapp* (2003) 31 Cal.4th 240, 263 (*Sapp*).)

Authority to file SVP petition

Bailey contends the prosecutor lacked authority to file the petition because he was neither in custody nor under a hold pursuant to Welfare and Institutions Code section 6601.3 at the time of filing. Bailey forfeited his contention when he did not object at trial. (*People v. Taylor* (2009) 174 Cal.App.4th 920, 937-938 (*Taylor*).)

Bailey claims this forfeiture demonstrates ineffective assistance of counsel. To establish this claim, Bailey must show that counsel's performance was deficient and resulted in prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; see *In re Wright* (2005) 128 Cal.App.4th 663, 674 (*Wright*).) As to the first requirement, we will not find deficient performance unless no conceivable reason for counsel's actions appears on the record. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1003.) As to the second, Bailey establishes prejudice by showing "'a probability sufficient to undermine confidence in the outcome.' [Citations.]" (*Ibid.*) We independently review whether Bailey has demonstrated ineffective assistance of counsel. (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.)

He has not. It is conceivable that counsel did not object because Bailey may have been subject to a Welfare and Institutions Code section 6601.3 hold. Subdivision (a)(1) of section 6601 contemplates that the Department of Corrections and Rehabilitation (CDCR) will refer a prisoner for SVP evaluation six months before their release date. If the evaluations cannot be timely completed, the Board of Parole Hearings (Board) may order the person held for up to 45 days for completion of the evaluations. (Welf. & Inst. Code, § 6601.3, subd. (a).) Here, CDCR did not begin its SVP evaluation until 13

days before Bailey's scheduled release, so it is conceivable that the Board requested a hold to complete the evaluation. And it is conceivable that counsel knew a hold had been placed. Accordingly, Bailey has not demonstrated deficient performance.

He also has not demonstrated prejudice. The unlawfulness of his custodial status would not divest the trial court of jurisdiction to proceed on the petition. (*Taylor*, *supra*, 174 Cal.App.4th at p. 934.) "[T]hat one or more periods . . . may have elapsed prior to filing of the petition for commitment does not ipso facto invalidate the petition and require its dismissal." (*People v. Paniagua* (2012) 209 Cal.App.4th 499, 506 (*Paniagua*).) Even if it did, the court could permit the prosecution to refile it. (*Wright*, *supra*, 128 Cal.App.4th at p. 674.) Under these circumstances, Bailey cannot demonstrate prejudice. (*Ibid.*)

Counsel's failure to object to B.V.'s testimony

Bailey contends counsel was ineffective when he did not object to B.V.'s testimony about the effects his molestation had on her life, including her hesitation to report the crime and her relationship with her mother. We disagree.

Bailey has not shown that trial counsel performed deficiently because the testimony was relevant to B.V.'s credibility. Relevant evidence includes "evidence relevant to the credibility of a witness." (Evid. Code, § 210.) B.V.'s credibility was at issue because it took more than one year before Bailey's crime was reported to police. Her testimony about the impacts Bailey's molestation had on her life was relevant to the reasons for that delay. (*People v. Adams* (2014) 60 Cal.4th 541, 571-572.)

But even if the testimony were irrelevant, Bailey has not shown prejudice. B.V's testimony on the impacts of Bailey's crime consisted of less than two pages in a trial transcript more

than 600 pages long. (*People v. Johnson* (2010) 185 Cal.App.4th 520, 533.) And it was less likely to evoke an emotional response than her testimony about Bailey's assault. (*People v. Loy* (2011) 52 Cal.4th 46, 62.)

This case is unlike *Paniagua*, on which Bailey relies. There, the prosecution introduced unreliable evidence that Paniagua lied about traveling to Thailand. (*Paniagua*, *supra*, 209 Cal.App.4th at p. 522.) Admission of the evidence was unduly prejudicial because it painted Paniagua as a pedophile. (*Id.* at pp. 520-522.) And the prosecutor "took every opportunity to have his experts mention" it at trial. (*Id.* at p. 522.)

Here, Bailey concedes that B.V.'s testimony about the impacts of Bailey's crime was reliable. It was limited to the impact of the crimes on her. It did not describe unrelated conduct by him. And it was mentioned only twice. It was not unduly prejudicial.

Counsel's failure to object to Exhibit 3

Bailey contends counsel was ineffective when he did not object to inadmissible portions of Exhibit 3, which detailed the repercussions of his misdemeanor conviction for exposing himself to an 11-year-old girl.[4] We are not persuaded.

Trial counsel performed deficiently when he did not object to evidence of Bailey's child molestation conviction.

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[4] Bailey also appears to challenge the admission of case-specific facts underlying Dr. Maram's Static-99R score. But he does not detail how counsel's failure to object to this evidence constituted deficient performance or was prejudicial. We do not consider the issue. (*People v. Hardy* (1992) 2 Cal.4th 86, 150 [failure to provide legal argument or citation to relevant authority forfeits issue].)

(*Burroughs*, *supra*, 6 Cal.App.5th at p. 411.) We can conceive of no tactical reason not to object to this evidence. (Cf. *People v. McAlpin* (1991) 53 Cal.3d 1289, 1322 [emphasizing rigorous observance of the rules of evidence for child molestation convictions].) But admission of the evidence was not prejudicial. The trial court informed the jury that Bailey's sole qualifying offense was the offense against B.V. We presume the jury followed the court's instructions. (*People v. Edwards* (2013) 57 Cal.4th 658, 746.) Moreover, the child molestation conviction was minor compared to Bailey's crime against B.V., minimizing any potential prejudice. (*Sapp*, *supra*, 31 Cal.4th at p. 263.)

Equal protection

Bailey contends the provision in Penal Code section 3000, subdivision (a)(4)(A), that tolls SVPs' parole terms until discharge from commitment violates equal protection because the parole terms of similarly situated mentally disordered offenders (MDOs) run during their commitments. Bailey forfeited his contention when he did not raise it below.[5]

Although the failure to challenge an erroneous ruling at trial generally forfeits the right to raise the claim on appeal (*In re Sheena K.* (2007) 40 Cal.4th 875, 880 (*Sheena K.*)), an appellate court has discretion to consider a facial challenge to the constitutionality of a statute raised for the first time on appeal (*id.* at p. 885). That discretion "'should be exercised rarely'" (*id.* at p. 887, fn. 7), however, and only when the challenge "does not require scrutiny of individual facts and circumstances but instead

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[5] After briefing was complete, our colleagues in the Fourth District issued *People v. Bocklett* (2018) 22 Cal.App.5th 879, which held that Penal Code section 3000's tolling provision does not violate equal protection guarantees.

requires the review of abstract and generalized legal concepts" (*id.* at p. 885). When "a constitutional defect may be correctable only by examining factual findings in the record or remanding to the trial court for further findings" (*id.* at p. 887), normal objection and waiver principles apply (*id.* at p. 889).

We decline to exercise our discretion to consider Bailey's equal protection claim because it is a challenge that requires scrutiny of individual facts and circumstances. In *People v. McKee* (2010) 47 Cal.4th 1172, 1203 (*McKee I*), our Supreme Court determined that SVPs are similarly situated to MDOs for purposes of terms of commitment. It remanded the case for an evidentiary hearing to permit the People to justify imposing a greater burden on SVPs than MDOs to obtain release. (*Id.* at pp. 1208-1209.) After "a 21-day evidentiary hearing, the trial court concluded the People met their burden to justify the disparate treatment of [SVPs] under the standards set forth in [*McKee I*]." (*People v. McKee* (2012) 207 Cal.App.4th 1325, 1330 (*McKee II*).) The Court of Appeal affirmed. (*Id.* at p. 1350.)

Evidence similar to that discussed in *McKee II* would be required here. We therefore decline to exercise our discretion to remand the case for consideration of Bailey's equal protection claim. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 885, 887.) The issue is forfeited.

And counsel did not provide ineffective assistance by not raising the issue below. Our Supreme Court has "repeatedly stressed 'that "if the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation," the claim on appeal must be rejected.' [Citations.]" (*People v.*

Mendoza Tello (1997) 15 Cal.4th 264, 266, alterations omitted.) Here, we do not know why counsel did not raise an equal protection challenge below. Perhaps he could not find experts who would support Bailey's claim. Or perhaps he concluded that the People would be able to justify the differential treatment between SVPs and MDOs, as occurred in *McKee II*.

But even if Bailey established deficient performance, he has not shown prejudice as a demonstrable reality. (*Williams*, *supra*, 44 Cal.3d at p. 937.) Though the People had a high burden to meet after the remand in *McKee I*, they were able to meet that burden in *McKee II*. It would be speculative for us to conclude that the People could not do so again. Bailey's ineffective assistance of counsel claim therefore fails.

Ex post facto violation

Bailey contends the Legislature's 2012 addition of a tolling provision to Penal Code section 3000 violates the federal and state constitutions' prohibitions against ex post facto laws. The contention is forfeited because it was not raised below. (*People v. Huggins* (2006) 38 Cal.4th 175, 236.)

But even if it were not, it would fail on the merits. Nearly 150 years ago, our Supreme Court explained that "'a law is not objectionable as ex post facto which, in providing for the punishment of future offenses, authorizes the offender's conduct in the past to be taken into the account, and the punishment to be graduated accordingly. Heavier penalties are often provided by law for a second or any subsequent offense than for the first, and it has not been deemed objectionable that in providing for such heavier penalties the prior conviction authorized to be taken into account may have taken place before the law was passed. In such cases it is the second or subsequent offense that is punished,

not the first.'" (*Ex parte Gutierrez* (1873) 45 Cal. 429, 432, italics omitted.) Here, it is Bailey's 2014 failure to register as a sex offender that is punished under the amended statute, not his 1999 conviction for lewd acts on a child. (See, e.g., *People v. Helms* (1997) 15 Cal.4th 608, 615.) Because the Legislature amended Penal Code section 3000 in 2012—before Bailey failed to register as a sex offender—there was no ex post facto violation.

The cases Bailey cites do not suggest otherwise. In *In re Thomson* (1980) 104 Cal.App.3d 950, 953, and *In re Bray* (1979) 97 Cal.App.3d 506, 509, the Legislature amended Penal Code section 3000 to extend parole terms from one to three years while the defendants were incarcerated. In both instances, the extensions violated ex post facto principles because they increased the punishments previously imposed on the defendants. (*Thomson*, at p. 954; *Bray*, at pp. 513-514.)

Here, the Legislature has not amended Penal Code section 3000 since Bailey's conviction as a sex offender in 2014. Because there has been no increase in Bailey's punishment following that offense, there is no ex post facto violation. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 638.) Counsel thus did not provide ineffective assistance by not raising the issue below. (*People v. Marlow* (2004) 34 Cal.4th 131, 144.)

Cumulative error

Finally, Bailey contends the errors below cumulatively violated his due process rights and deprived him of a fair trial. (See *People v. Hill* (1998) 17 Cal.4th 800, 844-845.) Here, we found two errors: the admission of case-specific hearsay testimony, in violation of *Sanchez*, and the admission of Exhibit 3 concerning Bailey's child molestation conviction. But each error individually was nonprejudicial. And Exhibit 3 was largely

cumulative. "Under these circumstances, we find there is no reasonable possibility of a more favorable . . . verdict in the absence of the errors." (*People v. Malone* (1988) 47 Cal.3d 1, 56.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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