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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. DONALD HALE, Defendant and Appellant.	B281805 (Los Angeles County Super. Ct. No. ZM018109)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terrance T. Lewis, Judge. 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, Supervising Deputy Attorney General, and Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

Donald Hale appeals a judgment recommitting him to a state hospital following a bench trial at which he was found to be a sexually violent predator within the meaning of the Sexually Violent Predator Act. (See Welf. & Inst. Code, §§ 6600 et seq.)

On appeal, Hale contends the trial court committed evidentiary error by admitting documentary evidence that contained hearsay statements, and allowing expert witnesses to relate case-specific hearsay in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). Hale further contends that to the extent he forfeited any of his evidentiary claims by failing to properly object at trial, he received ineffective assistance of counsel. We affirm.

OVERVIEW OF THE SVPA

"The [Sexually Violent Predator] Act [SVPA] allows for the involuntary civil commitment of certain offenders following the completion of their prison terms who are found to be sexually violent predators [SVP]. [Citation.] An alleged SVP is entitled to a jury trial, at which the People must prove three elements beyond a reasonable doubt: (1) the person has suffered a conviction of at least one qualifying 'sexually violent offense,' (2) the person has 'a diagnosed mental disorder that makes the person a danger to the health and safety of others,' and (3) the mental disorder makes it likely the person will engage in future predatory acts of sexually violent criminal behavior if released from custody." (*People v. Yates* (2018) 25 Cal.App.5th 474, 477 (*Yates*); see also Welf. & Instit. Code, §§ 6600, 6603, 6604[1]; *People v. Shazier* (2014) 60 Cal.4th 109, 126.)

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[1] Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

Section 6600, subdivision (b) defines "sexually violent offense" as any one of several enumerated offenses, including, among others, rape and lewd acts on a child, "when 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. . . ." Section 6600, subdivision (a)(3) permits the People to prove "the existence and details underlying the commission of the predicate offense[s] . . . 'by introducing "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."' [Citations.]" (*Yates*, *supra*, 25 Cal.App.5th at p. 477; see also *People v. Roa* (2017) 11 Cal.App.5th 428, 443 (*Roa*).)

"The [SVPA] defines the diagnosed mental disorder required for the second element 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.' [Citations.] To establish this element, the People will have one or more experts evaluate the person, review documentary evidence (such as state hospital records, police and probation reports, and prison records), and render a diagnosis. [Citations.]" (*Yates, supra*, 25 Cal.App.5th at p. 478.)

"For the third element, the People must show that, if released, the alleged SVP will likely engage in sexually violent criminal behavior due to the diagnosed mental disorder. [Citations.] The Act requires proof of a clear link between the second and third elements; that is, the finding of future dangerousness must be shown to derive from 'a currently

diagnosed mental disorder characterized by the inability to control dangerous sexual behavior.' [Citations.]" (*Yates, supra,* 25 Cal.App.5th at p. 478.)

"Expert testimony is admissible regarding the dangerousness of the defendant and the likeliness of the defendant to reoffend. [Citation.] Such testimony is typically based on diagnostic tools that are used to predict future violent sexual behavior. A common diagnostic tool for predicting violent sexual behavior is the STATIC-99, 'an actuarial instrument that allows an evaluator to place sexual offenders in different risk categories based on historical (static) factors such as age, marital status, the number of prior offenses, the relationship of the offender to the victims and the gender of the victims.' [Citation.]"[2] (*Roa, supra*, 11 Cal.App.5th at p. 445.)

FACTUAL BACKGROUND

A. The Commitment Petition and Probable Cause Hearing

In 2011, the District Attorney for Los Angeles County filed a petition to recommit Hale as a SVP. The petition alleged that in 1990, Hale was convicted of committing a lewd act with a child under the age of 14 in violation of Penal Code section 288, subdivision (a) (Case No. MA015458), and suffered a second conviction of that same statute in 1998 (Case No. SC041169). The petition further alleged that two experts had evaluated Hale,

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[2] "Penal Code section 290.04, subdivision (b) designates the STATIC-99 as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) for adult males required to register as sex offenders." (*Roa*, *supra*, 11 Cal.App.5th at p. 445, fn. 8.)

and concluded that he met the criteria for commitment under the SVPA.

The trial court found probable cause to believe Hale was likely to engage in sexually violent predatory criminal behavior upon his release. (See § 6602 ["A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release"].) After making its determination of probable cause, the trial court repeatedly continued the commitment proceeding at the request of defense counsel.

In February 2017, Hale waived his right to a jury trial, and the parties stipulated to a bench trial.

B. Witnesses for the People

1. Casey B.

Casey B. testified that on February 9, 1979, she was babysitting a one-year-old baby when Hale unexpectedly entered the home. Casey, then 12 years old, "felt really uncomfortable" that Hale had come inside the home. As Casey was playing with the baby, Hale approached Casey, pinned her to the floor and held her arms back. He then pulled up Casey's blouse and started "sucking on [her] breasts." After several minutes of struggling with Hale, Casey was able to get away. At the time of the incident, Casey had not started menstruating; she had not developed pubic hair and did not yet wear a bra.

Casey remembered being interviewed by the police regarding the incident, and confirmed that she had told the police the truth.

2. Dr. Mark Miculian

Mark Miculian, a licensed psychologist, testified that he regularly conducted SVP evaluations for the Department of State Hospitals (DSH). Miculian interviewed Hale in April 2015. He also reviewed several documents related to the two criminal cases referenced in the district attorney's SVP petition: Case No. SC 041169, which involved a seven-year-old victim named Shayleen, and Case No. MA015458, which involved Hale's then three-year-old daughter Amber. The criminal documents that Miculian reviewed included five police reports, two probation reports, two criminal complaints and the abstracts of judgment and commitment. Miculian also reviewed Hale's state hospital records.

a. Summary of the predicate offenses

Miculian was asked to describe the elements of Hale's crime against Shayleen that had informed his diagnosis. Miculian stated that between October and December of 1989, Hale had molested Shayleen by "rubbing his hand on her vagina"; "[attempting] to digitally penetrate her vagina"; "rub[bing] his penis against her vagina"; and "[having] her fondle his erect penis while he fondled her." Miculian testified that he believed Hale's conduct was "predatory" in nature because Shayleen and her mother had been living with Hale at the time of the molestation: "To me that is a predatory offense because he is using his relationship with his mother to gain access to her daughter in order to sexually offend against her."

Miculian further testified that he had asked Hale how he became sexually attracted to Shayleen. In response, Hale stated that he "became sexually aroused by [the child's] vagina, but not because of her age." Hale also told Miculian he became "sexually

excited" when sitting near Shayleen, and then "thought about heightening his sexual excitement and [Shayleen] was there to do that." Hale told Miculian he had molested Shayleen two to three times a week, and admitted that the police reports' descriptions of his crimes were "accurate."

Miculian also testified that one of the police reports stated that Hale told law enforcement he had molested Shayleen "because he believed that she came on to him when" she touched his leg. Miculian asserted that this statement was "typical of what someone who has a pedophiliac disorder says," explaining that pedophiles commonly "sexualize children's behavior. . ., giving them kind of sexual connotations that somehow they're being provocative or wanted sexual activity."

Miculian also described the circumstances of the crime Hale had committed against his daughter Amber. Miculian stated that Hale's former wife Linda brought their daughter to Hale's apartment for an overnight visit. When Linda picked Amber up the next morning, the child was "cranky and crying." While changing Amber's diaper, Linda noticed that Amber's vagina was "unusually red." Linda tried to wipe Amber, but the child told her to stop because it hurt. Amber then told Linda that Hale had put his finger in "her hoochie," and had "wiggled her butt."

Miculian asked Hale how the molestation with Amber had started. Hale stated that after putting Amber into her bed, he decided to get into the bed with the child. Hale said he started "getting sexually aroused, but he wasn't getting sexually aroused by Amber." He then started touching her "to help his excitement." Hale said he "put his hand over her diaper and

touched her vagina. Then he stuck his hand underneath her diaper and touched her vagina briefly once."

Miculian further testified that a police report detailing the incident with Amber stated that Hale had admitted to a detective that he touched the child's vagina on multiple occasions. Hale promised the detective he would not engage in such conduct again, and said he knew it was "not the right thing to do. . ., and that he was screwing up by doing something like that." The police report also stated that Linda informed law enforcement that Hale had told her he molested children. Linda also said Hale "always wanted [her] to shave her pubic hair and that during sex he would often talk to her in . . . baby talk similar to how he talked to Amber."

Miculian testified that he had also considered Hale's prior incident involving Casey B. Miculian believed this incident was "significant" because it was another event that demonstrated "Hale's [sexual] interest in prepubescent children."

b. Diagnosis of pedophilic disorder

Miculian testified that Hale met the criteria for pedophilic disorder set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders because: (1) over a period of at least six months, Hale had "recurrent intense, sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child . . . under the age of 13"; (2) Hale acted on these urges; and (3) Hale was at least 16 years old, and at least five years older than the child or children in the first criteria.

Miculian also believed Hale's pedophilic disorder caused him to suffer "volitional impairment," meaning that it "impaired" his "ability to resist the urge . . .to molest a child." In support of

this conclusion, Miculian noted that Hale had suffered a conviction for committing lewd acts on a child in 1990, and then perpetrated the same offense against his own daughter several years later.

Miculian testified that his diagnosis was also informed by Hale's "institutional conduct" during his commitment in the state hospital. According to Miculian, Hale's "behavior in the hospital [showed Hale presented a] . . . serious and well-founded risk." Miculian explained that Hale's hospital file included 23 interdisciplinary notes that had been entered between May 2012 and June 2015. The behaviors described in those notes included, among other things, demanding more pain medication; throwing a trash can; spreading trash on the floor; breaking a fire cover after being told he would not be receiving any pain medication; knocking medication cups off a counter; and throwing hot liquid onto a staff member. Miculian asserted that Hale's conduct demonstrated he was unable to "control his anger," and raised the "problem of a possible substance abuse problem" that might "impair his judgment and . . . lower his ability to control his inhibitions."

Miculian also expressed concern that the hospital records showed Hale had refused to participate in sex offender treatment. Although Hale had repeatedly participated in "treatment readiness," a necessary prerequisite to the treatment program, Hale had never actually progressed to the treatment stage.

Miculian testified that he had also diagnosed Hale with "alcohol abuse disorder . . . in institutional remission." The diagnosis was based on "several D.U.I.'s in the mid 1980s," and multiple prior "arrest[s] for fighting." Hale told Miculian he had stopped using alcohol in the mid-1980s, but then "relapsed

around . . . the time of his breakup with Linda, and then around the time he molested Amber." Hale also indicated that alcohol contributed to his molestation of Amber. Miculian noted that Hale had also been involved in several alcohol-related incidents while in the hospital, the last incident occurring in January 2017, when Hale told a staff member he was drunk.

c. Likelihood of future sexual offenses

Miculian believed Hale's pedophilic disorder was current, that Hale was a future risk to reoffend and that any future sexual offense was likely to be predatory in nature.

Miculian explained that he had initially assigned Hale a score of 5 on the STATIC-99 test, but because Hale had recently turned 60 years old, the score was adjusted downward to a 3, which corresponded to an "average risk level" of reoffending among sexual offenders. Miculian, however, did not actually believe Hale's age lowered his risk of reoffending because the records showed he continued to be angry and violent, continued to abuse alcohol and did not appear to be "maturing or mellowing."

3. Testimony of Dr. Robert Owen

Robert Owen, a licensed clinical psychologist, also evaluated Hale. Owen stated that his evaluation was based on his review of documents relating to Hale's criminal cases (police reports, probation reports, the complaints and abstracts of judgment), and Hale's hospital records. Owen had also requested to interview Hale, but Hale declined.

Owen diagnosed Hale with pedophilic disorder and alcohol use disorder. Owen believed Hale met the criteria of pedophilic disorder because the records showed he had engaged in "19 years

of [substantial sexual conduct] with children ranging in age from 12 years down to three years," and had "fail[ed] to be deterred by consequences, indicating persistence in his sexual offending with children." Owen also believed Hale's disorder was severe, explaining: "Just the sheer duration, the multiple victims, the descending age from 12 to . . . three years old, certainly accords with a rather serious pedophilic disorder. Most pedophilic men are not focused on three-year olds. . . . To have a sexual interest in a child that young is unusual, even amongst pedophiles. To reoffend with a child—your own child—in a sexual way after experiencing consequences again indicates kind of this persistence of behavior that's characteristic of pedophilia." Owen further concluded that Hale appeared to be in denial about his condition as evidenced by the fact that he had blamed his seven-year old victim for "coming on to him by rubbing his thigh." Owen also noted that the hospital records documented several "serious incidents" of misconduct, which included using alcohol to the point of intoxication, screaming inflammatory threats at staff and damaging property. Owen explained that this conduct suggested Hale had not yet resolved his "underlying anger problems."

Owen testified that there was a "serious and well-founded risk" that Hale would reoffend in a sexually violent and predatory manner if released into the community. In support of this opinion, Owen emphasized Hale's recidivism, explaining that "most sex offenders don't get arrested a second time for sexual crimes." According to Owen, Hale's 20-year period of abuse showed he had an "enduring problem" that would present "a risk in the community." Owen also stated that his concerns regarding Hale's future dangerousness were affected by Hale's diagnosis of

hepatitis C, a sexually-transmitted disease. Owen explained that the records showed Hale had "rubbed his penis on [his seven-year-old victim's] vagina, and the risk of transmitting a disease like this increase with that kind of intimacy."

Owen testified that although Hale's STATIC-99 test score indicated that he presented an average risk of reoffending, the test failed to account for several relevant "dynamic" factors that increased Hale's overall future risk, including his refusal to engage in treatment, his attitude toward his prior offenses, his substance abuse issues and his repeated and ongoing failure to cooperate with supervision. As with Miculian, Owen did not believe Hale's age decreased his risk of reoffending because he had not taken any steps to treat his condition or make any substantial changes to his life.

C. Defense Witness Dr. Christopher Fisher

Hale's sole witness at the trial was Christopher Fisher, a forensic psychologist who had evaluated Hale under the standards set forth in the SVPA. As part of the evaluation, Fisher had conducted a two-hour interview of Hale in February of 2016, and reviewed the same categories of criminal and hospital records that Miculian and Owen had identified in their testimony.

Fisher did not believe Hale "should be diagnosed with any kind of mental disorder at this point in his life." Although Fisher acknowledged Hale had molested three prepubescent girls, he asserted that research had shown only about 50 percent of men who molest children qualify for pedophilic disorder. Fisher further asserted that Hale's molestation appeared to be the result of "emotional deregulation," explaining that Hale had molested Shayleen as his relationship with Shayleen's mother was

deteriorating, and had molested Amber shortly after separating from Linda. Fisher also testified that the records suggested drugs and alcohol had contributed to Hale's offenses by lowering his "inhibitions" and "contributing . . . to his spiral of negative emotionality."

Fisher did not believe a pedophilic disorder diagnosis was appropriate because there was no data or information in the hospital records indicating that Hale was currently experiencing "intense sexually arousing urges and fantasies about prepubescent children. . . . " Fisher explained that although Hale's hospital records showed he had "no problem breaking the hospital rules," the records contained no evidence of any sexual misconduct, suggesting that Hale was no longer experiencing any improper sexual urges. Fisher further asserted that the range of ages of Hale's victims, three, seven, and 12, suggested his behavior was not driven by a "focused preferential interest" in a particular age group, but rather reflected his "hypersexual behavior as a younger man."

Fisher also disagreed with a diagnosis of alcohol use disorder, explaining that while the diagnosis might have been appropriate "when [Hale] was in the community, . . . regularly abusing alcohol and drugs," his alcohol use in the hospital was "isolated" and inconsistent, which was not sufficient to support a diagnosis of alcohol use disorder. Fisher further stated that even if Hale had alcohol use disorder, that diagnosis would not predispose him to commit sexually violent acts.

Fisher discounted the significance of Hale's misconduct during his hospital commitment. Fisher explained that most of the outbursts appeared to involve not receiving enough pain medications. Fisher opined that Hale may have become addicted

to the medications, noting that withdrawal from some types of pain medications could cause increased irritability and hostility. Fisher did not believe that any of the hospital incidents were suggestive of a future risk of committing a sexually violent act because none of the misconduct was sexual in nature.

Fisher testified that Hale's STATIC-99 score suggested only an average risk of reoffending. He further asserted that Hale's age and the amount of time since his last offense (20 years) lessened the risk of re-offense.

D. The Trial Court's Ruling

The court found the allegations in the SVP petition to be true, concluding that the People established beyond a reasonable doubt that Hale had a currently diagnosed mental disorder that made him likely to engage in sexually-violent, predatory criminal behavior.

DISCUSSION

Hale raises numerous hearsay-based evidentiary claims that fall into three general categories. First, he contends the trial court should have excluded five police reports that described the predicate offenses he committed against Shayleen and Amber. Second, he argues the court erred by failing to redact several hearsay statements contained in the documentary evidence. Third, he asserts the expert witnesses violated *Sanchez*, *supra*, 63 Cal.4th 665, by relating case-specific hearsay that was not independently proven by competent evidence.

"A trial court's ruling on the admissibility of evidence, including one that turns on the hearsay nature of the evidence, is reviewed under the abuse of discretion standard." (*Roa, supra*, 11 Cal.App.5th at p. 442; see also *People v. Waidla* (2000) 22 Cal.4th 690, 725.)

A. The Police Reports Were Properly Admitted

Hale argues the trial court erred when it admitted several police reports describing the circumstances of the offenses he committed against Shayleen and Amber. During the trial court proceedings, defense counsel objected to the police reports on hearsay and relevancy grounds, explaining: "I think [the content of the reports have] been testified to where necessary and where admissible. I don't think [they] ha[ve] any value beyond that." Counsel then added that the "specific objections" she was asserting included "foundation and hearsay[,] and also that its irrelevant."

In response, the People argued the police reports were admissible pursuant to section 6600, subdivision (a)(3), which states: "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."

The People further asserted that the police reports were necessary because a substantial portion of the expert witnesses' testimony regarding the predicate offenses was "contingent upon those reports being received . . . as competent evidence."

1. Case law regarding the use of documentary hearsay in SVPA proceedings

a. People v. Otto

In *People v. Otto* (2001) 26 Cal.4th 200 (*Otto*), the Supreme Court considered two issues regarding the admissibility of a probation report in a SVPA proceeding: (1) whether section 6600, subdivision (a)(3) permitted the admission of multiple hearsay appearing in the report; and (2) if so, whether the admission of the probation report violated the defendant's right to due process.

On the first issue, the Court concluded that subdivision (a)(3) permits the use of multiple hearsay statements within a probation report that relate to the circumstances of a predicate offense: "[The statute] 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.' [Citation.] The source of the details of the prior offense is not the author of the report, but the victims. [The California Rules of Court] contemplate[] that police reports will be used as a source of information for summarizing the crime in the presentence report. [Citations.] By 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 pp. 206-208.)

The Court next considered the defendant's contention that even if subdivision (a)(3) permitted the use of multiple hearsay in the probation report, "reliance on such evidence [nonetheless] violate[d] his due process right . . ." (*Otto, supra,* 26 Cal.4th at p. 209.) The Court explained that, to satisfy the due process protections afforded in a SVP proceeding, a "hearsay statement must contain special indicia of reliability." (*Id.* at p. 210.) The Court identified "numerous factors" that trial courts may consider when assessing "the reliability of hearsay statements in a presentence report, . . . including the context in which the statements appear[,] . . . any indicia the defendant challenged the accuracy of the hearsay statements at the underlying criminal proceeding[,] . . . . the circumstances surrounding the making of the statement, if known, such as spontaneity and consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, lack of motive to fabricate, and whether the hearsay statement was corroborated." (*Id.* at p. 211.)

Applying these factors, the Court concluded the hearsay set forth in the probation report was sufficiently reliable. According to the Court, "[t]he most critical factor demonstrating the reliability of the [statements in the report] . . . [was] that [the defendant] was convicted of the crimes to which the statements relate. This factor will nearly always be present in an SVP proceeding because the SVPA requires conviction 'of a sexually violent offense against two or more victims.'[3] [Citation.] Thus,

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3 Prior to 2006, the SVPA required that the offender have committed a qualifying offense against at least two victims. However, on November 7, 2006, voters passed Proposition 83, which reduced the number of victims necessary for commitment

a prerequisite to considering the presentence report is a conviction for the crime to which the hearsay statements relate. As a result of such a conviction, some portion, if not all, of the alleged conduct will have been already either admitted in a plea or found true by a trier of fact after trial." (*Otto, supra,* 26 Cal.4th at pp. 211.)

Second, the Court explained that "consideration of hearsay statements contained in presentence reports is not unique to the SVPA. A probation report is required following every felony conviction in this state. [Citation.] Rule 4.411.5 details the contents of presentence reports, and contemplates that police reports will be used to prepare crime summaries contained therein. [Citation.] Defendants are required by statute to have an opportunity to review and challenge inaccuracies in the presentence report. [Citation.] [The defendant] does not contend he failed to receive such an opportunity in the underlying criminal prosecution." (*Otto, supra,* 26 Cal.4th at pp. 212.)

Third, the Court noted that the defendant had "never specifically challenged the accuracy of the victims' statements in the underlying criminal proceeding. Indeed, [the defendant] admitted to [an evaluator that] he [molested the victims]." (*Otto, supra,* 26 Cal.4th at p. 212.)

Finally, the Court explained that other safeguards were in place that "diminish[ed] the risk of an erroneous deprivation of rights as a result of reliance on the hearsay statements." (*Otto, supra,* 26 Cal.4th at p. 214.) Specifically, the defendant had "the

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as an SVP from two to one. (See Historical and Statutory Notes, 73D West's Ann. Welf. & Inst. Code (2008 Supp.) foll. § 6600, p. 79 ["Initiative Measure (Prop.83), in [§ 6600,] subd. (a)(1), substituted 'one' for 'two'"].)

opportunity to present the opinions of [his own] psychological experts, and cross-examine any prosecution witness who testified. Moreover, the trial court retained discretion under Evidence Code section 352 to exclude unreliable hearsay, which acted as a further safeguard against any due process violation." (*Ibid*.)

b. Subsequent applications of Otto

In *People v. Burroughs* (2016) 6 Cal.App.5th 378 (*Burroughs*), the defendant in a SVP proceeding argued that the trial court had erred in admitting two police reports that included statements describing the nature of his predicate offenses because the reports "lack[ed] sufficient reliability to come within the section 6600, subdivision (a)(3) hearsay exception." (*Id*. at p. 410.) The court disagreed, explaining: "Section 6600, subdivision (a)(3) and *Otto* authorize the People to prove the details of appellant's qualifying offenses with probation reports. *Otto* explained that the sources of the details contained in those reports almost invariably are hearsay statements, either directly from victims or as related in police reports. The police reports underlying the qualifying offenses accordingly are the source of the admissible information in the probation reports, and therefore should be admissible themselves to prove the same information." (*Ibid*.)

In *People v. Carlin* (2007) 150 Cal.App.4th 322 (*Carlin*), the court reached a different conclusion regarding an investigative report that the district attorney's office had compiled ten years after the defendant committed his predicate offense. The probation report that was prepared at the time of defendant's sentencing on the predicate offense, committed in 1990, stated that the defendant had attempted to fondle the victim inside his underwear while in a hotel room. After initiating an SVPA

proceeding in 2000, the district attorney's office contacted the victim, who admitted that he had withheld substantial details about the severity of the crime during the original investigation. According to the DA's report, the victim said the defendant had raped him and forced him to engage in masturbation. At the SVPA trial, the defendant objected to the People's use of the 2000 report, arguing that it violated his due process rights. The trial court permitted the report.

The appellate court reversed, concluding that even if the victim statements in the district attorney's report fell within "the broad terms of [section 6600,] [s]ubdivision (a)(3)" (*Carlin, supra,* 150 Cal.App.4th at p. 339), they were nonetheless inadmissible because they lacked the "special indicia of reliability [necessary] to satisfy due process." (*Id.* at p. 340.) The court explained that unlike the situation in *Otto*, the victim's statements to the district attorney investigator "were not spontaneous, [we]re inconsistent with [the victim's original] statements [about the offense, and ha[d] not been corroborated. Additionally, the statements were not made in close proximity to the crime and were elicited as part of the People's SVP investigation." (*Id.* at p. 341.) The court also noted that the defendant had never admitted to the type of conduct set forth in the investigator's report, and "did not have the opportunity to challenge the report's accuracy." (*Id.* at pp. 341-342.)

2. The admission of the police reports did not violate Hale's due process rights

Hale argues that even if police reports generally fall within the broad terms of section 6600, subdivision (a)(3), in this case, the reports were nonetheless inadmissible because they lacked "the necessary special indicia of reliability that the Supreme

Court requires for this type of hearsay to satisfy the due process clause." We disagree.

Several of the reliability factors the Supreme Court identified in *Otto* are likewise present here. First, Hale was convicted of the offenses to which the police reports relate. (*Otto*, *supra,* 26 Cal.4th at p. 211.) As a result of the convictions, some, if not all, of the conduct described in the police reports has already been admitted in a plea, or otherwise found true by a trier of fact.

Second, as noted in *Otto* and *Burroughs*, prior to sentencing, a defendant is provided an opportunity to review and challenge the factual allegations set forth in the probation report, which are based in part on the information in the police report. Hale has never claimed that he was denied the opportunity to challenge the probation reports in the underlying proceedings, nor has he claimed that there are any factual inconsistencies between the allegations in his probation reports and his police reports.

Third, Hale corroborated a substantial portion of the factual information set forth in the police reports during his interview with Mark Miculian. Dr. Miculian testified that Hale admitted he molested Shayleen two to three times per week, and also admitted the details in the police report regarding the incident were "accurate." Hale further admitted that he had touched Amber's vagina, and that he had done so to "help his [sexual excitement]." Given these admissions, we find no basis to conclude the statements in the police reports regarding the circumstances of the offense were not sufficiently reliable.

Hale, however, contends the police reports are no more reliable than the investigative reports that were found

inadmissible in *Carlin*. There are, however, several obvious distinctions between the two types of reports: the police reports describing Hale's crimes were written shortly after he committed those offenses, not ten years after the fact; the police reports were not prepared for the purposes of the SVP proceeding, but rather were written to support criminal charges of which Hale was later convicted; there are no factual inconsistencies in the police records; and finally, unlike the defendant in *Carlin*, Hale has actually admitted that he had engaged in the very type of molestation that is described in those reports.

B. Hale Has Forfeited His Other Claims Regarding the Documentary Evidence

Hale also argues the trial court erred by failing to redact several individual hearsay statements that appear in the documentary evidence that was admitted at trial. For the reasons discussed below, we find that Hale has forfeited all of these claims.

1. Statements within the police reports

Hale argues that "even if the police reports [we]re not inadmissible in their entirety," the trial court should have excluded statements within the reports that did not specifically relate to the circumstances of the predicate offenses. (See generally *Burroughs, supra*, 6 Cal.App.5th at p. 410 [section 6600, subd. (a)(3) does not apply to information unrelated to the circumstances of the predicate offense].) The statements that Hale challenges include, for example, information regarding his criminal history, his prior failure to register as a sex offender and references to a polygraph test.

The reporter's transcript shows that although the trial court denied Hale's request to exclude the police reports in their entirety, the court did invite the parties to redact any specific statements within the reports that they believed to be inadmissible: "I'm going to allow [the police reports][.] I would certainly—it would need to be redacted. You guys can look at it to make sure the redactions are appropriate." Hale acknowledges that despite this invitation, his "trial counsel never sought any redactions."

"[I]t is settled law that where evidence is in part admissible, and in part inadmissible, 'the objectionable portion cannot be reached by a general objection to the entire [evidence], but the inadmissible portion must be specified.' [Citations.]" (*People v. Harris* (1978) 85 Cal.App.3d 954, 957.) Hale's failure to request redactions of the statements he now argues were inadmissible constitutes a forfeiture.

2. Statements within the probation reports

Hale argues the trial court also should have excluded numerous statements within the probation reports that did not specifically relate to the circumstances of the predicate offenses. Those statements include, among other things, his past drug and alcohol use, his criminal history and allegations of additional uncharged criminal conduct.

Again, however, the reporter's transcript demonstrates that defense counsel was given an opportunity to redact any portion of the probation reports he believed to be inadmissible. During the parties' discussion of the probation reports, the district attorney acknowledged that the reports "probably [contained] areas that need to be redacted . . .," and invited "[defense] counsel [to] . . . mark off the pages or areas where he believes it goes

beyond or goes into areas that are not admissible." The court agreed with this proposal, directing the parties to "just put a line through it. If you just put a line through it . . . I'll ignore it." Defense counsel, however, failed to submit any redactions. We therefore deem Hale's claims regarding the admissibility of individual statements within the probation reports to be forfeited.

3. *Statements within Hale's state hospital records*

Hale also argues the trial court should have redacted large portions of two state hospital records: a 90-day treatment plan (exhibit 19) and a "monthly report" (exhibit 21). At trial, defense counsel objected to the admission of these documents, explaining that the basis of his "objection . . . would be . . . hearsay."[4] The court, however, ruled the two exhibits (and several other hospital records) were admissible under the hearsay exceptions for business records and official records. (See Evid. Code, §§ 1271; 1280.)

Hale concedes that portions of the two documents were properly admitted under the business and official records exceptions, but asserts that other portions of the documents should have been excluded. According to Hale, the business and official records exceptions only permit the admission of statements within a record that relate to an "act, condition or event" that occurred "at or near the time of the" writing. (See Evid. Code, §§ 1271; 1280.) Hale contends large parts of the admitted hospital records did not meet those requirements,

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[4] Defense counsel also objected on the grounds of foundation, but now admits the People did in fact provide a proper foundation for the records.

including sections that set forth the treating physicians' opinions and diagnoses regarding Hale's mental condition. (See generally *People v. Reyes* (1974) 12 Cal.3d 486, 506 ["The psychiatrist's opinion that the victim suffered from a sexual psychopathology was merely an opinion, not an act, condition or event within the meaning of the statute"].)

As with Hale's contentions regarding the police and probation reports, we conclude that his general "hearsay" objection to the hospital records was insufficient to preserve the challenges he now presents on appeal. "Evidence Code section 353, subdivision (a) allows a judgment to be reversed because of erroneous admission of evidence only if an objection to the evidence or a motion to strike it was 'timely made and so stated as to make clear the specific ground of the objection.' [Citation.]" (*People v. Demetrulias* (2006) 39 Cal.4th 1, 20.) Under section 353, an "appellate court's review of the trial court's admission of evidence [is limited] . . . to the stated ground for the objection. [Citation.] 'What is important is that the objection fairly inform the trial court, as well as the party offering the evidence, of the specific reason or reasons the objecting party believes the evidence should be excluded, so the party offering the evidence can respond appropriately and the court can make a fully informed ruling. . . . A party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct.' [Citation.]" (*People v. Abel* (2012) 53 Cal.4th 891, 924.)

In this case, defense counsel's general "hearsay" objection to the hospital records did not fairly inform the People or the trial court of the argument he now raises on appeal, namely that specific statements within each record did not relate to an "act, condition or event," or were otherwise not written "at or near the

time" of that act, condition or event. (See Evid. Code, §§ 1271; 1280.)

C. Hale Has Failed to Establish Any Reversible Error Under Sanchez

Hale argues we must reverse the judgment because the court failed to exclude several statements the expert witnesses made at trial that related case-specific hearsay in violation of *Sanchez, supra,* 63 Cal.4th 665.

1. Summary of Sanchez

Prior to *Sanchez*, expert witnesses were generally permitted to relate out-of-court statements to explain the basis for their opinions. The theory underlying this rule was that the out-of-court statements did not constitute hearsay because they were not being "offered for the truth of the matter asserted, [but rather] . . . for the purpose of assessing the value of the expert's opinion." (*Burroughs*, *supra*, 6 Cal.App.5th at p. 405; see also *People v. Gardeley* (1996) 14 Cal.4th 605, 618-619; *People v. Dean* (2009) 174 Cal.App.4th 186, 193.)

In *Sanchez*, however, the Court concluded that this long-standing "paradigm" was no longer "tenable" (*Sanchez*, 63 Cal.4th at p. 679): "If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception." (*Id.* at p. 684.) The Court clarified that an "expert may still rely on hearsay in forming an opinion, and may tell the jury in general terms that he did so. . . . [¶] What an expert cannot do is 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." (*Id*. at pp. 685-686.) "Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried." (*Id*. at p. 676.)

Thus, "[u]nder *Sanchez*, admission of expert testimony about case-specific facts [constitutes] error—unless the documentary evidence the experts relied upon was independently admissible." (*Burroughs, supra*, 6 Cal.App.5th at p. 407; see also *Roa, supra,* 11 Cal.App.5th at p. 433 ["court erred by allowing the experts to recite case-specific facts that were not independently proven by admissible evidence"].) Subsequent cases have held that *Sanchez* applies to SVPA proceedings. (See *Yates, supra,* 25 Cal.App.5th at p. 483 ["courts have held *Sanchez* applicable to SVP proceedings in several published opinions"]; *Burroughs, supra*, 6 Cal.App.5th at pp. 406-407; *Roa, supra,* 11 Cal.App.5th at p. 428.)

2. Hale has failed to establish any reversible error under Sanchez

Hale's appellate brief identifies nine statements the parties' expert witnesses made during trial that he contends should have been excluded under *Sanchez*.

a. Hale has forfeited his Sanchez challenge to three of the statements

The reporter's transcript shows that Hale failed to raise a *Sanchez* objection to three of the statements he is now challenging on appeal.[5] Prior to trial, Hale filed a motion in

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[5] The three statements that Hale failed to object to include: (1) Dr. Miculian's testimony that Hale's hospital records

limine seeking to exclude any expert testimony that related case-specific hearsay in violation of *Sanchez*. The court declined to rule on the motion, and directed that the parties should raise any *Sanchez* objections at the time the objectionable testimony was offered at trial.

Although a motion in limine may be utilized to "preserve objections for appeal," the proponent of the motion is required to "secure an express ruling from the court." (*People v. Ramos* (1997) 15 Cal.4th 1133, 1171.) By failing to object at the time the testimony was offered, as specifically directed by the trial court, Hale forfeited his objections to these three statements.

b. Hale forfeited his challenge to Dr. Miculian's conditional testimony regarding Elizabeth

Hale argues that Dr. Mark Miculian committed a *Sanchez* violation when he testified about "a crime against Elizabeth." Hale asserts that because the People failed to introduce any independent evidence establishing that he committed the crime against Elizabeth, Miculian's testimony amounted to impermissible case-specific hearsay. The record shows, however, that Hale has forfeited this contention.

Prior to eliciting Miculian's testimony regarding Elizabeth, the district attorney clarified to the court that the witness's testimony would be "subject to [a] motion to strike by [Hale.]" The district attorney explained that the People were "still trying to obtain [Elizabeth's] actual appearance. . . . I was going to

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indicated he had "engaged in sex while at the hospital"; (2) Dr. Owen's testimony that Hale "was placed on O.R. after his 1979 offense and then left for Louisiana"; and (3) Dr. Owen's testimony that Hale had been arrested for "battery," and "multiple incidents of anger and fighting in the community."

ask . . . very general questions about Elizabeth. And it will be subject to motion to strike if the People do not get Elizabeth in." In response, defense counsel stated: "Certainly I join. I will certainly make that objection if her presence is not secured. . . ." The court then permitted Miculian to testify about Elizabeth. The People thereafter failed to secure Elizabeth's presence at trial, but defense counsel never moved to strike Miculian's testimony.

"When evidence is received subject to a later motion to strike, the motion to strike is mandatory. If it is not made, the objecting party waives its objections to admission of that evidence." (*People v. Hill* (1992) 3 Cal.App.4th 16, disapproved of on another ground by *People v. Nesler* (1997) 16 Cal.4th 561, 582, fn. 5]; see also *Ault v. International Harvester Co.* (1974) 13 Cal.3d 113, 123 ["When evidence is adduced upon the theory that it will be properly connected, subject to a motion to strike, and that motion is not subsequently urged, a party is deemed to have waived the objection thereto"].) Defense counsel's failure to move to strike Miculian's testimony regarding Elizabeth constitutes a forfeiture of the claim.

c. Hale mischaracterizes the nature of Dr. Owen's testimony regarding additional qualifying offenses

Hale asserts that Dr. Robert Owen violated *Sanchez* when he testified that "Hale had engaged in 19 years of pedophilic acts which included not just the qualifying offenses, but others." Hale appears to contend that Owen's testimony regarding "other" nonqualifying offenses was improper under *Sanchez* because the People failed to introduce any evidence that established those "other" offenses.

The reporter's transcript, however, shows that the only offenses Owen referenced in his testimony were the crimes Hale committed against Shayleen, Amber and Cynthia P. Each of those offenses was demonstrated by other forms of competent evidence: the People introduced extensive documentary evidence to prove the offenses against Shayleen and Amber, and Cynthia P. personally testified about the offense committed against her. We therefore find no *Sanchez* error.

d. Miculian's testimony regarding Linda's statements to police was supported by documentary evidence

Hale argues that Dr. Miculian violated *Sanchez* when he testified that one of the police reports prepared in the criminal case involving Amber stated that Hale's wife Linda told law enforcement Hale had "admitted to having molested children," and always asked Linda to shave her pubic hair.

However, the police report that contained Linda's statements was admitted into the evidence, thus allowing Miculian to testify about her statements. (See *Burroughs*, *supra*, 6 Cal.App.5th at p. 407 [no *Sanchez* error where "the documentary evidence the experts relied upon was independently admissible"].) Although Hale has challenged the admissibility of that police report (and certain statements within the report, including Linda's statements to the police), we have rejected those arguments. Because Miculian's testimony regarding Linda's statements were independently proven by documentary evidence, there was no *Sanchez* error.

e. The trial court did not err in refusing to strike testimony that defense counsel elicited on cross-examination

Hale argues the trial court should have stricken a statement that Dr. Owen made about his STATIC-99 analysis that referenced a prior mental evaluation conducted by another psychiatrist. During cross-examination, Dr. Owen explained that when calculating Hale's STATIC-99 score, he had placed Hale in the "high-risk" sample group, rather than the "routine" sample group, which resulted in an increased recidivism score. Defense counsel then asked Owen "what he had used" to justify placing Hale in the high-risk group, rather than the routine group. Owen responded that his decision was based in part on a score set forth in a prior recidivism assessment that Dr. Essres had performed on Hale. Defense counsel moved to strike Owen's testimony regarding the content of Essres's recidivism assessment, contending the testimony amounted to "case-specific hearsay." The district attorney opposed, explaining that Owen was simply trying to answer the question defense counsel had asked. The court denied the motion to strike.

We find no abuse of discretion in the trial court's decision not to strike testimony that Hale's own counsel elicited through broad, unfocused questioning. Regardless of whether Owen's statement amounted to case-specific hearsay, the record makes clear that defense counsel invited him to provide such testimony through his questioning. Hale therefore has no basis for complaint. (See *People v. Reyes* (1976) 62 Cal.App.3d 53, 65 [court did not err in refusing to strike testimony regarding defendant's prior convictions that his own attorney elicited through open ended questions]; see also 6 Witkin, Cal. Criminal Law (4th ed. 2012) Reversible Error, § 35, p. ["Where a party by

his or her own conduct induces the commission of error, the party may be estopped from asserting it as a ground of reversal"].)

f. Any error regarding the remaining statements was harmless

Hale argues the court should have excluded two additional case-specific hearsay statements made by Dr. Owen and Dr. Fisher. First, he asserts the court should have excluded Owen's testimony that Hale had been diagnosed with Hepatitis C. Second, he asserts that the court should have excluded Dr. Fisher's testimony that a medical evaluation by Dr. Essres stated that Hale had denied he always touched Shayleen's vagina when masturbating, clarifying that sometimes he only "observed" her.

Even if Hale is correct that those statements should have been excluded under *Sanchez*, we conclude the error was harmless because there is no reasonable probability that the trial court would have reached a result more favorable to Hale if the statements had been omitted. (See *People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 510 ["We evaluate prejudice resulting from the allowance of expert testimony in violation of *Sanchez* under the standard of *People v. Watson* (1956) 46 Cal.2d 818 . . . , which requires reversal if 'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error'"].)

The People presented a substantial amount of evidence describing Hale's molestation of a twelve-year-old girl, his former girlfriend's seven-year-old daughter and his own three-year-old daughter. Two experts also provided extensive testimony discussing why they believed Hale presented a substantial risk of reoffending, which included the severity of his pedophilic disorder and his refusal to seek treatment for the condition. In light of

such evidence, we find no basis to conclude that the expert's passing references to Hale's hepatitis diagnosis and Hale's claim that he did not always touch Shayleen's vagina when masturbating had any effect on the outcome of the case.[6]

D. Hale's Ineffective Assistance of Counsel Claims Are Not Appropriate on Direct Review

Finally, Hale argues that to the extent his attorney forfeited any of the claims raised in this appeal by failing to properly object at trial, he received ineffective assistance of counsel. Generally, "[o]n direct appeal, a [judgment] will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v. Mai* (2013) 57 Cal.4th 986, 1009; see also *People v. Mayfield* (1993) 5 Cal.4th 142, 188 [when ineffective assistance of counsel claim involves choices that may have been tactical in nature on a silent appellate record, the claim is "better evaluated" in a petition for habeas corpus]; *In re Wright* (2005) 128 Cal.App.4th 663, 674 [evaluating ineffective assistance claim in SVP case raised in habeas corpus petition]).)

There is no evidence in the record that defense counsel was ever asked why he did not object to the evidence Hale now claims should have been excluded. Nor can we conclude on this record

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[6] Hale also argues that Owen's testimony regarding his Hepatitis C diagnosis should have been excluded because it was irrelevant and unduly prejudicial. Again, however, we conclude that any error in admitting that statement was harmless.

that defense counsel had no conceivable tactical reason for declining to object to the evidence at issue.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.