Filed 11/13/18 P. v. Olivares CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. CELESTINO OLIVARES, Defendant and Appellant.	B284758 (Los Angeles County Super. Ct. No. BA437222)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert J. Perry, Judge. Affirmed.

Jennifer A. Mannix, 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, Assistant Attorney General, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Celestino Olivares of one count of committing a lewd act upon a child under the age of 14 years. On appeal, Olivares contends the trial court erred in permitting testimony from an expert on child sexual abuse, in giving a flawed limiting instruction related to the expert testimony, and in failing to give a corpus delicti instruction. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the evidence in accordance with the usual rules on appeal. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263.)

Olivares and Omar G. were childhood friends and continued to be close friends as adults. Omar and his wife had a daughter named Paula. In 2005, they moved into a backhouse owned by Olivares. Olivares and his family lived in the front house.

During the summer of 2005, when Paula was six years old, Olivares would often babysit her while her parents were at work. On one of those days, Olivares stopped Paula in the hallway and instructed her to get on her knees, which she did. Olivares put his penis inside Paula's mouth, and moved it back and forth for about a minute. Olivares stopped when he heard a noise coming from the kitchen. He put his penis in his pants and told Paula it was "our secret."

Paula did not immediately tell anyone about the abuse because she was afraid and blamed herself. Over the next few years, she continued to spend time with Olivares and his family on vacations and at other social gatherings. Paula was close friends with Olivares's son.

Paula began to have behavioral issues in junior high. She would be quick to anger, would run away from home, and had difficulties in school. Paula's parents responded by signing her up for therapy.

In 2014, when Paula was 15 years old, her mother confronted her with a condom she had found in the wash. Paula responded by vaguely intimating that something may have happened to her as a child. A few weeks later, Paula disclosed Olivares's abuse during a conjoint therapy session with her mother. Paula disclosed the abuse to Omar during a therapy session the next week.

Paula's disclosure triggered an investigation by the Los Angeles County Department of Children and Family Services (DCFS). As part of that investigation, a DCFS social worker informed Olivares he had been accused of sexually abusing a child, but did not disclose the name of the victim.

Shortly after the visit from the social worker, Olivares went to the backhouse and met with Omar. Olivares got on his knees, started crying, and asked for forgiveness. He said he had done the act only one time. While this was happening, Paula and her mother arrived home. Paula's mother went inside the house and found Olivares on his knees asking for forgiveness and saying he did it only once. Olivares then approached Paula, who was waiting outside, and started to ask for her forgiveness before Omar stopped him. Omar and his family moved out of the backhouse a couple weeks later.

Olivares was charged by information with a single count of committing a lewd act upon a child under the age of 14 years (Pen. Code, § 288, subd. (a)).[1] The case was tried to a jury in

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[1] All further statutory references are to the Penal Code.

October 2016, and the court declared a mistrial after the jury indicated it was unable to reach a unanimous verdict. The case was again tried to a jury in June 2017, and the People presented evidence establishing the facts summarized above. As we discuss more fully below, the People also presented expert testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS).

Olivares testified in his own defense and denied ever sexually abusing Paula. He also denied asking forgiveness from Paula and her family, or otherwise implying he had abused Paula. According to Olivares, he went to the backhouse that day because he thought Omar and his wife were upset he did not go to a birthday party a few weeks earlier. It was then he learned for the first time that Paula had accused him of sexual abuse.

Olivares presented testimony from several character witnesses. In addition, Hy Malinek, who is a clinical and forensic psychologist, testified that he performed a sex offender evaluation of Olivares. Based on that evaluation, Dr. Malinek did not believe Olivares suffers from a mental disorder or is pedophilically inclined.

The jury found Olivares guilty as charged. The court sentenced him to the low term of three years, and imposed various fines and fees. Olivares timely appealed.

DISCUSSION

I. The Trial Court Did Not Err in Allowing CSAAS Testimony

Olivares argues the court erred in allowing expert testimony related to CSAAS. He contends CSAAS evidence should be categorically excluded from criminal prosecutions. Alternatively, he asserts the trial court abused its discretion in allowing CSAAS testimony in this case, and the prosecutor asked

improper questions of the expert. We find no merit to these arguments.

A. Background

Before trial, the prosecutor indicated she intended to present expert testimony from Jayme Jones, who is a clinical psychologist. The prosecutor represented that Dr. Jones would testify in general terms regarding CSAAS, which concerns the counterintuitive reactions of child victims of sexual abuse. Dr. Jones would not give an opinion as to whether Paula was abused.

Olivares objected to the testimony on the bases that CSAAS evidence is irrelevant and unreliable, and the jury could assess Paula's credibility without the aid of expert testimony. Alternatively, Olivares requested the testimony be confined to specific misconceptions the jury might hold regarding child sexual abuse victims. He also requested the court give a limiting instruction, although he expressed doubt as to whether it would actually prevent the jury from using the testimony for an improper purpose. Olivares indicated a CALCRIM instruction would be appropriate.

The court allowed Dr. Jones to testify, but cautioned the prosecutor to tailor the testimony to the facts of the case and not go into great detail. The court indicated the testimony should be limited to explaining that victims often do not report the abuse and may continue to associate with the abuser.

In her opening statement, the prosecutor informed the jury it would hear expert testimony from Dr. Jones. The prosecutor explained that the testimony "is not intended to predict or to detect sexual abuse," and would instead be "narrowly limited to

address . . . misconceptions" about the behavior of child sexual abuse victims.

During the prosecutor's case-in-chief, Dr. Jones testified that CSAAS is a model to help explain unexpected behavior of children who have been sexually abused by people they know. Although it is referred to as a syndrome, it is not a diagnostic tool and cannot predict whether a child has been abused. Dr. Jones said she had not interviewed Paula or reviewed any police reports associated with the case.

Dr. Jones explained there are five components to CSAAS—secrecy, helplessness, accommodation, delayed disclosure, and recantation—which describe aspects of sexual abuse and children's reactions to it. Children often do not disclose sexual abuse because of the secrecy and helplessness connected to it, and because sex and abuse are taboo subjects. The longer a child keeps the secret, the more difficult it becomes to disclose. Children may also begin to feel guilty about the secret and blame themselves. When victims do disclose, it is often accidental and piecemeal.

Dr. Jones further explained it is common for victims to continue to seek out the company of a perpetrator. This is because children often assume the abuse will not continue. They also may be hesitant to avoid the perpetrator because it could lead to unwanted questions about the abuse.

In her rebuttal closing argument, the prosecutor explained the limited nature of Dr. Jones's testimony: "[Dr. Jones] was not here to say, I know that Paula was molested because x, y and z. That was not her job. She never said anything about whether this abuse occurred and that was not her job." The prosecutor continued, "there's no testimony from Dr. Jones that's intended to

be vouching for the credibility of witnesses. That's not what—that's not what the purpose of her testimony was. She was explaining to you some of the counterintuitive things that kids that have been molested do and delaying in reporting, keeping it secret, telling in a piecemeal fashion, being around the perpetrator over and over again, those are some of the things that she testified about."

The court subsequently instructed the jury with CALCRIM No. 1193: "You have heard testimony from Dr. Jones regarding Child Sexual Abuse Accommodation Syndrome. Dr. Jones' testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not Paula G.'s conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of her testimony."

B. Analysis

1. CSAAS Evidence is Admissible in Criminal Prosecutions

Expert testimony on the common reactions of child victims of sexual abuse—often referred to as CSAAS—is not admissible to show the child has been abused. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300 (*McAlpin*).) However, "it has long been held that . . . CSAAS is admissible evidence for the limited purpose of disabusing the fact finder of common misconceptions it might have about how child victims react to sexual abuse." (*In re S.C.* (2006) 138 Cal.App.4th 396, 418; see, e.g., *McAlpin, supra*, 53 Cal.3d at p. 1300; *People v. Mateo* (2016) 243 Cal.App.4th 1063, 1069; *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744 (*Patino*); *People v. Housley* (1992) 6 Cal.App.4th 947, 955–956 (*Housley*);

People v. Bowker (1988) 203 Cal.App.3d 385, 393–394 (*Bowker*).) Such evidence may be used to rehabilitate "witness's credibility when the defendant suggests that the child's conduct after the incident—e.g., a delay in reporting—is inconsistent with his or her testimony claiming molestation." (*McAlpin, supra*, 53 Cal.3d at p. 1300; see *Patino, supra*, 26 Cal.App.4th at p. 1746 [holding CSAAS evidence admissible to show why the victim acted as she did and explain her state of mind].) "[T]he decision of a trial court to admit expert testimony 'will not be disturbed on appeal unless a manifest abuse of discretion is shown.' " (*McAlpin, supra*, 53 Cal.3d at p. 1299.)

Olivares acknowledges that California courts frequently allow CSAAS evidence for the limited purpose described above. Nonetheless, he urges us to break with those courts and declare CSAAS evidence inadmissible for any purpose. He points to authority from other jurisdictions that have disallowed CSAAS evidence, (see, e.g., *Blount v. Commonwealth* (Ky. 2013) 392 S.W.3d 393, 396; *Commonwealth v. Dunkle* (1992) 529 Pa. 168, 171), and insists we should reconsider the issue because recent studies have purportedly shown there is no scientific support for many CSAAS components. He further asserts it is inevitable that jurors will use the evidence as support for the claim of abuse, especially because a complaining witness's behavior will always be consistent with the model. We are not persuaded.

Olivares's reliance on authority from other jurisdictions is misplaced. The California Supreme Court has endorsed the use of CSAAS evidence (*McAlpin, supra*, 53 Cal.3d at p. 1301) and we are bound by its decisions (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455). Although Olivares suggests we should reexamine the issue because more recent studies have

questioned the scientific foundation of CSAAS, he failed to present those studies to the trial court. We decline to consider them for the first time on appeal. (See *People v. Leahy* (1994) 8 Cal.4th 587, 609 [declining to take judicial notice of scientific studies not introduced at trial].)

We are also not persuaded by Olivares's contention that jurors will inevitably use CSAAS testimony as support for the claim of abuse. Olivares overlooks that "[j]urors are routinely instructed to make similarly fine distinctions concerning the purposes for which evidence may be considered, and we ordinarily presume they are able to understand and follow such instructions." (*People v. Yeoman* (2003) 31 Cal.4th 93, 139.) Moreover, courts can ensure CSAAS testimony, in particular, is not used for an improper purpose by requiring it be targeted at specific misconceptions suggested by the evidence and instructing the jury "simply and directly that the expert's testimony is not intended and should not be used to determine whether the victim's molestation claim is true." (*Bowker, supra*, 203 Cal.App.3d at p. 394; see *Housley, supra*, 6 Cal.App.4th at pp. 958–959.) Olivares fails to adequately explain why such measures are insufficient. Accordingly, we decline his invitation to hold that CSAAS evidence is categorically inadmissible in criminal prosecutions.

2. The Court did not Abuse Its Discretion in Allowing Dr. Jones to Testify

Olivares argues that, even if CSAAS evidence is admissible for a limited purpose, the trial court abused its discretion by allowing Dr. Jones to testify in this case. He contends her testimony was unnecessary because the general population no longer holds misconceptions related to child sexual abuse victims,

and there was no showing that the individual jurors had such misconceptions. We find no abuse of discretion.

Olivares provides no authority for his assertion that, prior to the introduction of CSAAS evidence, the prosecutor must show that individual jurors hold misconceptions; nor are we aware of any situation in which the admissibility of evidence depends on a showing of the jurors' knowledge. Further, Olivares submitted no evidence below showing the general public no longer holds misconceptions about child abuse victims. His primary support for the claim on appeal is that "hundreds of episodes of Law and Order SVU, which deals with victims of sex offenses, have made these crimes and the reactions of children to those crimes well known." Suffice it to say, we are not persuaded.

Olivares cites *People v. Robbie* (2001) 92 Cal.App.4th 1075, for the proposition that "the 'public misconception' assumption should be reexamined." *Robbie*, however, did not concern CSAAS evidence; nor did the court call for a reexamination of public misconceptions about child sexual abuse victims. Instead, the case involved expert testimony regarding the behavior of sex offenders, which the Attorney General argued was necessary to disabuse the jury of certain misconceptions about rapists. (*Id.* at p. 1085.) The court noted in a footnote that whether the public holds such misconceptions is "certainly debatable." (*Id.* at p. 1086, fn. 1.) It declined to consider the issue, however, because the defendant did not raise it below. (*Ibid.*) Olivares's reliance on *Robbie* is wholly misplaced. The trial court did not abuse its discretion in permitting CSAAS testimony.

3. The Prosecutor did not Ask Improper Questions

Olivares argues the prosecutor went beyond the permissible scope of CSAAS evidence by asking Dr. Jones

"hypothetical" questions mirroring the facts of the present case. In particular, he takes issue with the prosecutor's questions regarding whether children fail to report abuse because they are afraid of the consequences,[2] whether every child recants,[3] whether disclosures can be piecemeal and inadvertent,[4] and whether children defer to adults.[5] Olivares contends that such questions, and Dr. Jones's responsive testimony, improperly invited the jury to apply CSAAS to the facts of the case and conclude Paula was sexually abused. We disagree.[6]

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[2] "Q: And is part of that section of the model, the secrecy aspect of it, are they inclined to keep a secret because they don't know what is going to happen if they don't? In other words, things could go wrong if they don't keep it a secret?"

[3] "Q: And does . . . [recantation] always take place or is that just something when the child doesn't have support from the family members?"

[4] "Q: And as a part of the delayed disclosure component . . . is there any aspect of that that addresses something you touched upon moments ago about this sort of piecemeal or fractured disclosure?"

"Q: So you mentioned that sometimes disclosure happens . . . accidentally where there's some small bit of information that's revealed almost inadvertently. . . . Was I understanding you correctly?"

[5] "Q: Now, you mentioned something about kids are trained to sort of give deference to adults, right, to do what they say?"

[6] In passing, Olivares contends the prosecutor improperly elicited testimony from Dr. Jones to the effect that sexually abused children are often rebellious, especially as teenagers. He implies the testimony allowed the jury to infer that, because

Although Olivares contends the court abused its discretion by allowing these questions, he did not object to them at trial. Nor did he raise the specific objection—that the questions invited testimony beyond the proper scope of CSAAS evidence—when he moved to preclude Dr. Jones from testifying. Olivares was required to raise the objection in the trial court, and his failure to do so forfeited the issue. (See *People v. Partida, supra,* 37 Cal.4th at pp. 433–434.)

Even overlooking the forfeiture, we do not agree that the prosecutor's questions or Dr. Jones's responsive testimony were improper. Contrary to Olivares's assertion, the prosecutor did not ask "hypothetical" questions mirroring the facts of the case. Rather, her questions were general in nature and simply invited Dr. Jones to elaborate on certain aspects of the CSAAS model relevant to misconceptions suggested by the evidence. Dr. Jones, in turn, testified in greater detail to behaviors common among abused children that also happened to be exhibited by Paula. There was nothing improper about this. Indeed, to be admissible,

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Paula was rebellious as a teenager, it is more likely she was abused. Initially, Olivares failed to raise this objection at trial, and he has therefore forfeited the issue on appeal. (*People v. Partida* (2005) 37 Cal.4th 428, 433–434.) Regardless, we do not think the testimony was improper. Dr. Jones discussed the issue in the context of explaining the helplessness component of the CSAAS model. Her testimony on the topic was very brief, spanning less than a page of the reporter's transcript. Dr. Jones also explained that CSAAS is not a predictor of abuse and rebelliousness is simply part of being a teenager. In addition, the trial court admonished the jury that CSAAS testimony is not evidence of Olivares's guilt. Considered in this context, we do not think there was a significant risk the jury would use Dr. Jones's testimony on this topic as evidence that Paula was abused.

CSAAS testimony must be "targeted to a specific 'myth' or 'misconception' suggested by the evidence." (*Bowker, supra*, 203 Cal.App.3d at pp. 393–394.) Consequently, in every case in which CSAAS testimony is properly admitted, the prosecutor's questions and expert's testimony will necessarily mirror the facts of the case to some extent.

Olivares insists that, given the connections between Dr. Jones's testimony and the facts of the case, the jury was likely to draw the impermissible inference that Paula acted like a typical abuse victim, and therefore was abused. We disagree. Throughout trial, the jury was repeatedly informed that CSAAS testimony is not evidence that Paula was abused. Dr. Jones, for example, was explicit that CSAAS is not a diagnostic tool and cannot predict if a child has been molested. The prosecutor echoed this testimony in her opening statement and rebuttal closing argument. The trial court further admonished the jury that Dr. Jones's testimony was not evidence of Olivares's guilt and could be used only for limited purposes, and we presume the jury followed the instruction. (*People v. Adcox* (1988) 47 Cal.3d 207, 253.) These measures were sufficient to ensure the jury understood the limited relevance of Dr. Jones's testimony and used it only for a proper purpose. (See *Bowker, supra*, 203 Cal.App.3d at p. 394; *Housley, supra*, 6 Cal.App.4th at pp. 958–959.) Consequently, we find no error.[7]

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[7] For the same reasons, we reject Olivares's associated claims of constitutional error. (See *People v. Burgener* (2003) 29 Cal.4th 833, 873 [denying constitutional claims related to evidence found to be properly admitted].)

II. The Trial Court Properly Instructed the Jury with CALCRIM No. 1193

Olivares argues the court erred in instructing the jury with CALCRIM No. 1193.[8] He insists the instruction misstates the law and invited the jury to use Dr. Jones's testimony as evidence of his guilt. In particular, he takes issue with the last phrase of the instruction, which informed the jury it may use Dr. Jones's testimony " 'in evaluating the believability of [Paula's] testimony.' " He insists the inclusion of this phrase was improper because there is no practical difference between evaluating the believability of the victim's testimony and determining whether her claims are true. We find no error.

The Attorney General contends Olivares forfeited this claim by failing to object in the trial court. Olivares responds that he raised the issue when he argued that a limiting instruction would not prevent the jury from using Dr. Jones's testimony for an improper purpose. We agree with the Attorney General that Olivares did not raise the issue below. Contrary to his present assertions, the record reveals that Olivares requested the trial court give a limiting instruction and suggested the CALCRIM instruction would be appropriate. Nonetheless, a defendant may challenge a jury instruction for the first time on

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[8] As noted above, the court instructed the jury as follows: "You have heard testimony from Dr. Jones regarding Child Sexual Abuse Accommodation Syndrome. Dr. Jones' testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not Paula G.'s conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of her testimony."

appeal on the bases that it is an incorrect statement of the law and affected his substantial rights, as Olivares asserts here. (§ 1259; *People v. Hudson* (2006) 38 Cal.4th 1002, 1011–1012; *People v. Easley* (1983) 34 Cal.3d 858, 875, fn. 2.) Accordingly, we will address the merits of his claim despite his failure to object below.

We independently review claims of instructional error. (*People v. Fiore* (2014) 227 Cal.App.4th 1362, 1378.) In doing so, we consider the instructions as a whole to determine whether there is a reasonable likelihood the jurors were misled as to the controlling law. (*People v. Tate* (2010) 49 Cal.4th 635, 696; *People v. Kelly* (1992) 1 Cal.4th 495, 525–526.) We presume the jurors were able to understand and correlate all of the instructions given. (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

Here, we do not think it reasonably likely the jury understood the instruction in the manner suggested by Olivares. The instruction was explicit that Dr. Jones's testimony "is not evidence that [Olivares] committed any of the crimes charged against him." It further delineated the only permissible uses for the testimony, which were to determine whether Paula's conduct was inconsistent with that of a sexually abused child, and to evaluate the believability of her testimony. This was a correct statement of the law. (See *McAlpin, supra*, 53 Cal.3d at pp. 1300–1301 [CSAAS evidence is admissible to rehabilitate a victim's credibility]; Black's Law Dict. (10th ed. 2014) p. 1838 [defining "credible witness" as a "witness whose testimony is believable"].) Moreover, we do not think it likely the jury understood the last phrase to mean it could use Dr. Jones's testimony as general support for Paula's allegations. Read in the

context of the entire instruction, the phrase clearly informed the jury it may use such testimony to evaluate the believability of Paula's account, but only in light of the evidence suggesting her behavior was inconsistent with that of an abused child.[9] (See *People v. Gonzales* (2017) 16 Cal.App.5th 494, 504.)

III. The Court's Failure to Give a Corpus Delicti Instruction Was Harmless

Olivares asserts the trial court erroneously failed to instruct the jury on the corpus delicti requirement.[10] He insists that without the instruction, there was a risk the jury convicted him based solely on evidence that he admitted the abuse to Paula and her family. The Attorney General concedes the trial court erred in failing to give such an instruction, but claims any error was harmless. We agree with the Attorney General.

"To convict an accused of a criminal offense, the prosecution must prove that (1) a crime actually occurred, and (2) the accused was the perpetrator. Though no statute or constitutional principle requires it, California, like most American jurisdictions, has historically adhered to the rule that the first of these components—the corpus delicti or body of the

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[9] For the same reasons, we reject Olivares's associated claims of constitutional error. (See *People v. Burgener, supra*, 29 Cal.4th at p. 873.)

[10] Olivares specifically asserts the trial court should have instructed the jury with CALCRIM No. 359, which provides: "The defendant may not be convicted of any crime based on (his/her) out-of-court statement[s] alone. You may rely on the defendant's out-of-court statements to convict (him/her) only if you first conclude that other evidence shows that the charged crime [or a lesser included offense] was committed."

crime—cannot be proved by *exclusive* reliance on the defendant's extrajudicial statements." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1164–1165 (*Alvarez*).) "The independent proof may be circumstantial and need not be beyond a reasonable doubt, but is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.] There is no requirement of independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss, or harm by a criminal agency. [Citation.]" (*Id.* at p. 1171.)

Whenever a defendant's out-of-court statements form part of the prosecution's case, the court has a sua sponte duty to instruct the jury that conviction requires some additional proof the crime occurred. (*Alvarez*, *supra*, at pp. 1161–1165, 1170.) However, "[e]rror in omitting a corpus delicti instruction is considered harmless, and thus no basis for reversal, if there appears no reasonable probability the jury would have reached a result more favorable to the defendant had the instruction been given." (*Id.* at p. 1181, citing *People v. Watson* (1956) 46 Cal.2d 818, 836.) The error is necessarily harmless under this standard if the prosecutor presented independent proof of the crime sufficient to satisfy the corpus delicti requirement. This is because, "[i]f, as a matter of law, this 'slight or prima facie' showing was made, a rational jury, properly instructed, could not have found otherwise, and the omission of an independent-proof instruction is necessarily harmless." (*Alvarez, supra*, at p. 1181.)

Here, the prosecutor relied on Olivares's out-of-court admissions, yet the court erroneously failed to give a corpus delicti instruction. Nonetheless, the error was harmless. Paula testified that Olivares inserted his penis into her mouth when

she was six years old, which alone constituted a prima facie showing of a lewd act upon a child under the age of 14 years. Given this showing, there is no reasonable probability the jury would have reached a result more favorable to Olivares had the trial court given a corpus delicti instruction. (*Alvarez, supra*, 27 Cal.4th at p. 1181.) The instructional error was harmless and does not warrant reversal.[11] (*People v. Watson, supra*, 46 Cal.2d at p. 836.)

IV. There was No Cumulative Error

Olivares contends the numerous instances of error, taken together, were prejudicial and require reversal. Because we have identified only one harmless error, the claim of cumulative error is without merit. (See *People v. Vieira* (2005) 35 Cal.4th 264, 305.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J. GRIMES, J.

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[11] Olivares urges us to apply the federal standard for harmless error found in *Chapman v. California* (1967) 386 U.S. 18. An erroneous failure to give a corpus delicti instruction, however, is governed by the state test of prejudice set forth in *People v. Watson, supra*, 46 Cal.2d 818. (*Alvarez, supra*, 27 Cal.4th at p. 1181; *People v. Beagle* (1972) 6 Cal.3d 441, 455–456, abrogated on other grounds by *People v. Diaz* (2015) 60 Cal.4th 1176, 1190.) Nonetheless, even under the *Chapman* standard, we would conclude the error is harmless.