No. S141080 - CAPITAL CASE

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

ADRIAN GEORGE CAMACHO,
Defendant and Appellant.

San Diego County Superior Court, Case No. SCN 163535
The Honorable Joan P. Weber, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

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INTRODUCTION

In his supplemental opening brief, appellant argues that two guilt-phase expert witnesses for the prosecution—Dr. Daryl Matthews and Officer Christopher Carnahan—offered inadmissible case-specific, testimonial hearsay that also violated his right to confrontation. This Court should reject appellant's first contention because while Dr. Matthews relied on hearsay in forming his expert opinion about appellant's mental health and relayed isolated case-specific facts to the jury during his testimony, the facts he relayed had already been presented to the jury, mostly through testimony elicited by the defense. With respect to appellant's second contention, to the degree Officer Carnahan offered a case-specific fact—that a scale was discovered in appellant's car—in support of his opinion that appellant possessed heroin for the purpose of sales, any error was harmless as the fact was not critical to his opinion or the jury's determination, and his opinion was otherwise supported by independently proven, competent evidence.

ARGUMENT

ANY CASE-SPECIFIC FACTS RELAYED BY DR. MATTHEWS HAD PREVIOUSLY BEEN PRESENTED TO THE JURY THROUGH THE TESTIMONY OF OTHER WITNESSES; TO THE DEGREE OFFICER CARNAHAN CONVEYED CASE-SPECIFIC HEARSAY, ANY ERROR WAS HARMLESS

Appellant contends that Dr. Matthews and Officer Carnahan offered case-specific testimonial hearsay in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*) and in violation of his right to confrontation as expressed in *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Contrary to appellant's contentions, Dr. Matthews testified generally as to the materials

he reviewed in formulating his opinion and relayed isolated case-specific facts in conveying that opinion to the jury, but the jury had heard each of those facts previously through the testimony of other witnesses. While Officer Carnahan may have relayed case-specific hearsay, the challenged testimony played a minor role in his expert opinion, which was otherwise supported by independent, competent evidence. To the degree there was any error in admitting the challenged statements of either expert witness, the error was harmless under both the state and federal standards.

A. The *Sanchez* decision

In *Sanchez*, this Court addressed the manner in which expert witnesses can refer to hearsay in support of their opinions, explaining the limitations on such testimony imposed by California's hearsay rule (Evid. Code, § 1200), and the confrontation clause of the Sixth Amendment. Addressing the state hearsay rule, this Court in *Sanchez* rejected the premise that out-of-court statements offered as the basis for an expert opinion are not admitted for their truth, and hence are non-hearsay. (*Sanchez*, *supra*, 63 Cal.4th at pp. 682-684.) This Court also drew a distinction between hearsay regarding "general knowledge" in the expert's field, which the expert is permitted to convey to the jury, and hearsay about "case-specific facts," which the expert may not convey to the jury unless an exception to the hearsay rule applies, or unless the same facts were independently shown by competent evidence other than the expert's testimony. (*Id.* at pp. 683-686.) As this Court explained, "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.)

The *Sanchez* decision nevertheless reaffirmed the principle that an expert witness "may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so." (*Sanchez, supra,* 63 Cal.4th at p. 685, italics in original.) An expert may also tell the jury "generally the kind and source of the 'matter' upon which his opinion rests," so that the jurors can evaluate the probative value of the expert's testimony. (*Id.* at p. 686.) The restrictions on hearsay therefore come into play only when an expert conveys the actual *content* of that hearsay to the jury.

In addition to state-law hearsay rules, *Sanchez* addressed the effect of the confrontation clause of the Sixth Amendment upon expert witnesses' use of hearsay to support their opinions. As the United States Supreme Court has held, the confrontation clause bars the use of out-of-court "testimonial" statements offered to prove the truth of the matter asserted, unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing. (*Crawford, supra,* 541 U.S. at pp. 62, 68.)

Whether a hearsay statement is "testimonial" is the critical question for purposes of applying *Crawford*. Surveying a series of United States Supreme Court decisions interpreting or refining *Crawford*, this Court in *Sanchez* held: "Testimonial statements are those made primarily to memorialize facts relating to past

criminal activity, which could be used like trial testimony. Nontestimonial statements are those whose primary purpose is to deal with an ongoing emergency or some other purpose unrelated to preserving facts for later use at trial." (*Sanchez, supra,* 4 Cal.4th at p. 689.)

This Court in *Sanchez* summarized its related holdings as to the state-law hearsay issue and the confrontation clause issue as follows:

> When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing.

(*Sanchez*, *supra,* 4 Cal.4th at p. 686, italics in original.)

B. Every fact discussed by Dr. Matthews in support of his expert opinion had previously been presented to the jury through the testimony of other witnesses

In his guilt-phase presentation, appellant attempted to prove he lacked the requisite mental state for the charged special-circumstance murder. To this end, psychiatrist Pablo Stewart testified as a mental health expert for the defense. (27 RT 4687-4688, 4784-4785.) Dr. Stewart opined that appellant was experiencing "substance intoxication delirium" from using a potent combination of Paxil and methamphetamine, with a "contribution" by heroin, when he killed Officer Zeppetella in

June 2003. (27 RT 4705-4706, 4720-4722, 4762, 4788-4789, 4795-4796.)

On rebuttal, the prosecution called forensic psychiatrist Daryl Matthews who wrote a 26-page report after reviewing about 17,000 pages of case materials, a videotape of appellant, and Dr. Stewart's notes. (29 RT 5020-5021.) He acknowledged that he had an assistant help him cull through the documents for relevant material as specified by parameters he set. (29 RT 5029, 5060-5061.) Dr. Matthews explained that as a forensic psychiatrist, he "is trained to make decisions largely from documentary evidence." (29 RT 5025.) Dr. Matthews said he relies on being able to review all available materials, rather than a select few reports, to draw an unbiased conclusion. (29 RT 5024-5026.) He reviewed records from Aurora Behavioral Institute, Alvarado Parkway Institute, Psychiatric Centers of San Diego, and the San Diego County Jail. (29 RT 5032.)

From his review of all of the materials, Dr. Matthews concluded that appellant was addicted to heroin, abused methamphetamine, and exhibited behavior consistent with antisocial personality disorder. (29 RT 5026.) With respect to appellant's drug addiction, Dr. Matthews testified that the materials revealed "an ongoing pattern of drug dependence and many attempts to intervene in that and to secure for Mr. Camacho treatment for that problem but that he would not pursue treatment and was not compliant with treatment." (29 RT 5033.)

Dr. Matthews further testified that his review of the records supported his conclusion that appellant met all of the criteria for the diagnosis of antisocial personality disorder. (29 RT 5055-5058.) With respect to some of the factors necessary to a diagnosis of antisocial personality disorder, the prosecutor asked Dr. Matthews about certain case-specific facts, and Dr. Matthews affirmed that those were facts he discovered in his review of the case materials. For instance, the prosecutor and Dr. Matthews discussed the following:

> [PROSECUTOR:] All right. And in your opinion—so in your opinion, based on your review of the records, the defendant failed to—based on your review of all the records we gave you, there was a failure to conform to social norms with respect to lawful behaviors indicated by repeatedly performing acts that are grounds for arrest, is that right?
>
> [DR. MATTHEWS:] Yes.

(29 RT 5057.) Then, the following colloquy occurred:

> [PROSECUTOR:] You also determined through your review of the records that the defendant lied repeatedly about his date of birth and name and has several aliases; is that right?
>
> [DR. MATTHEWS:] Yes.

(29 RT 5057-5058.) And there was also this question and answer:

> [PROSECUTOR:] You determined through your review of the records that the defendant showed irresponsible work behavior and had been unemployed for significant periods of time; correct?

[DR. MATTHEWS:] Yes.

(29 RT 5058.)

Dr. Matthews disagreed with the defense expert's conclusion that appellant was experiencing psychosis or delirium when he killed Officer Zeppetella. (29 RT 5031, 5091-5092.) From his review of the records, he saw no suggestion of a psychotic episode prior to June 13, 2003 (29 RT 5031), and no suggestion of psychosis after that date either (29 RT 5055). Other than substance dependence and antisocial personality disorder, Dr. Matthews's review of the case materials revealed no evidence of any other mental disorder. (29 RT 5033.)

Appellant argues that Dr. Matthews testified to case-specific hearsay, namely his testimony regarding appellant's drug dependence and refusal of treatment, his repeatedly performing acts that were grounds for arrest, his repeatedly lying about his name and date of birth, and his poor work performance and being unemployed for significant periods of time. (Supp. AOB 8.) No fact about which Dr. Matthews testified in support of his opinion was news to the jury. Each fact appellant challenges had already been presented to the jury by other witnesses—defense witnesses for the most part.

For instance, while appellant argues Dr. Matthews relayed case-specific hearsay about his drug dependence, the jury had already heard about his drug-dependence from several defense witnesses. Indeed, appellant's drug dependence was the cornerstone of his defense. Appellant's wife testified that he was a long time drug addict. (26 RT 4520, 4549, 4641-4642.) Dr.

Dennis Ordas, the psychiatrist in private practice who treated appellant from April 2002 until June 2003, testified that appellant was using heroin during the time he was a patient. (26 RT 4565, 4567, 4569, 4611.) With respect to Dr. Matthews's testimony that appellant's refusal of drug treatment factored into his expert opinion (29 RT 5033), the jury previously heard from Dr. Ordas that appellant tried a methadone program once, but refused further attempts to get him to try it again. (26 RT 4608.) Prior coworkers who testified in appellant's defense knew appellant to be a drug user; the jury heard from one prior coworker that appellant admitted to using and selling heroin. (26 RT 4450-4451, 4454-4456, 4465.) Appellant's expert, Dr. Stewart, testified that his review of a portion of the records in the case demonstrated that appellant was experiencing "substance intoxication delirium" from using a combination of Paxil, methamphetamine, and heroin when he killed Officer Zeppetella. (27 RT 4705-4706, 4720-4722, 4762, 4788-4789, 4795-4796.) As appellant's defense rested on the notion that he lacked the requisite mental state for the special circumstance murder due to his drug-induced delirium, the jury was well aware of appellant's drug dependence and lack of success at treatment through the various defense witnesses who testified at his trial.

The same is true with respect to Dr. Matthews's testimony regarding appellant's work performance issues. (29 RT 5058.) The jury heard from defense witness Dr. Ordas that during an appointment in March 2003, appellant told Dr. Ordas he had been "living on the streets for a few weeks" because his wife had

grown tired of his drug use. (26 RT 4576-4577, 4611-4612.) His wife confirmed this fact in her testimony. (26 RT 4653.) His wife also testified that appellant was not working beginning in March or April of 2003, months before the murder in June of that year, because he had been "laid off." (26 RT 4645.) Again, Dr. Matthews's relaying a fact about appellant's work-related problems was not new information as the jury had already heard this fact through defense witnesses.

Other case-specific facts about which Dr. Matthews testified—appellant's repeatedly lying about his identifying information and performing acts that were grounds for arrest—were presented to the jury in the prosecution's case-in-chief. The evidence discovered by officers as they were investigating Officer Zeppetella's murder demonstrated, in and of itself, appellant's repeated performance of acts that were grounds for his arrest. Officers discovered that appellant illegally possessed a pistol (24 RT 4410-4412, 4118-4123, 4227), drugs and paraphernalia (21 RT 3575, 3590-3591; 3733-3734, 3736-3740, 3742, 3745, 3752-3753, 3757, 3771), and indicia of possessing those drugs for sale (22 RT 3664, 3669-3673; 25 RT 4396). Each of those acts occurred prior to the murder in this case, and each constituted grounds for arrest.

An additional act constituting grounds for arrest was appellant's possession of counterfeit identification and using a name other than his own. Evidence of this act was also presented in the prosecution's case in chief. A search of appellant's home revealed counterfeit social security cards, a lease agreement

executed by appellant's wife, Stacey, and "Robert Vasquez," and a photo identification bearing the name Robert Vasquez and appellant's photograph. (22 RT 3734-3736, 3746; 23 RT 3908.) Officers found paystubs bearing the name Roberto Vasquez in the Toyota appellant was driving prior to shooting Officer Zeppetella. (22 RT 3659-3660, 3669.) During cross examination of defense witnesses, appellant's former employer and a crew leader testified they knew appellant as Robert Vasquez (though both had heard him called "Adrian"). (26 RT 4435, 4438, 4444, 4452-4453, 4462.) Appellant's wife testified that she helped him maintain this façade by yelling out "Robert" whenever someone from work called. (26 RT 4646.) Accordingly, as with the other facts, the fact that appellant used falsified identification was a fact proven via witness testimony prior to Dr. Matthews discussing its relevance to his expert opinion.

Finally, even if Dr. Matthews testified to inadmissible material, any error was harmless under the standard for state law error as to the admission of hearsay. Such error is subject to the *Watson* standard of prejudice, under which an error is prejudicial only if it is reasonably probable that a result more favorable to the defendant would have been reached absent the error. (*People v. Watson* (1956) 46 Cal.2d 818; see *Sanchez*, *supra*, 63 Cal.4th at p. 698.) But to the degree it is unclear whether Dr. Matthews relied on testimonial hearsay for any fact discussed in his testimony, even applying the more stringent standard applicable to testimonial hearsay, the admission of the

challenged statements is also harmless beyond a reasonable doubt. (*Sanchez*, *supra*, 63 Cal.4th at p. 698.)

Appellant argues that the alleged error with Dr. Matthews's testimony compounded the errors he alleged in his opening brief pursuant to *Griffin v. California* (1965) 380 U.S. 609, because both the *Sanchez* and *Griffin* errors affected the viability of his sole defense in the case—that he did not possess the requisite state of mind for first degree murder. (AOB 12-13.) First, as discussed above, many of the facts relied upon by Dr. Matthews were the same facts presented by the defense in support of the defense theory of the case. The defense case centered on the premise that appellant was experiencing a drug-induced delirium at the time he killed Officer Zeppetella. That Dr. Matthews testified to the case-specific fact of appellant's drug dependence and lack of successful treatment cannot be considered prejudicial under any standard as it was entirely consistent with the defense appellant presented. The other facts that Dr. Matthews testified to—repeated illegal behavior, lying about his identifying information, and poor performance at work[1] are all natural corollaries to drug dependence. As each fact about which Dr. Matthews testified in explaining his expert opinion was interrelated with the overarching concept of appellant's drug

[1] The jury also heard evidence that despite his drug use, appellant was a "good, hard worker" who was able to perform the skills his job required. (26 RT 4444, 4454.) The jury was free to assign the testimony about appellant's work performance whatever weight it believed was warranted.

dependence giving rise to these various other behaviors, and as drug dependence was the central theme of appellant's defense, any error with respect to the challenged testimony was harmless beyond a reasonable doubt.

Second, Dr. Matthews's testimony about these facts was quite brief and mostly consistent of him affirming questions posed by the prosecutor. He offered no details beyond the bare assertion of these facts.

Finally, appellant's *Sanchez* claim is harmless for the same reasons discussed more thoroughly in respondent's brief at pages 32 through 33. Those reasons include the fact that the defense expert who testified about appellant's mental state formed his opinion based on glaringly incomplete material. (See, e.g., 27 RT 4706, 4789; 29 RT 5020-5021, 5024-5025.) Further, Dr. Matthews's opinion that appellant's ingestion of Paxil and methamphetamine had little effect in this case was supported by the testimony of appellant's own witness, Dr. Ordas, who indicated that he saw no problem between appellant's "relatively low dose" of Paxil and his use of methamphetamine. (26 RT 4585, 4589-4590, 4621.) Furthermore, Dr. Matthews's opinion that appellant suffered from antisocial personality disorder was substantiated by the testimony of Dr. Ordas who rendered the same diagnosis before and after the murder. (26 RT 4617-4618.) Finally, the circumstances surrounding the murder—from appellant's calculated pauses during the violent attack to ascertain whether Officer Zeppetella was still moving, to his successful escape, description of the shooting to his wife, and

careful placement of the guns in a vacuum cleaner bag—overwhelmingly refuted any defense claim that appellant lacked the requisite intent for murder.

C. It is not reasonably probable appellant would have achieved a more favorable result had Officer Carnahan not relayed information that a scale was found in appellant's car

Officer Carnahan offered his expert opinion that appellant possessed heroin for sale. (22 RT 3754.) In explaining his expert opinion, Officer Carnahan relied on various items of evidence that Detective Thomas Morgans informed him had been seized from appellant's car including a cell phone, live and spent rounds, a scale, needles, syringes, and packaging material. (22 RT 3754, 3768.) Appellant argues that Officer Carnahan's testimony regarding the scale was based on hearsay because the officer had no personal knowledge of the scale and was only aware of it because Detective Morgans told him about it. (AOB 11.) In cursory fashion, he alleges, "Appellant was prejudiced by Officer Carnahan's testimony concerning the scale because it was the key element of his conclusion that the drugs that were found [in] appellant's possession, actual and constructive, were possessed for sale." (AOB 11.)

Respondent agrees that Officer Carnahan's testimony about the scale Detective Morgans discovered in the vehicle constituted testimonial case-specific hearsay. But the fact that direct testimony about the discovery of the scale was not offered at appellant's trial appears to be a matter of simple oversight. Detective Morgans testified at appellant's trial and described how he processed the three vehicles involved in appellant's crime. (22

RT 3558-3560.) Inside one of the vehicles, he found a nylon bag with the following contents inside:

> And then inside this bag is a black cell phone case. There are tweezers, scissors, small jeweler's bags, which are used to package narcotics. There is some small cotton swabs that are generally used to dip into a substance that's been heated up to inject. There's a small plastic spoon in here, also, and also a metal—small metal spoon.

(22 RT 3670-3671.) He also found syringes, a bag with residue, and a vial with residue. (22 RT 3672-3674.) Detective Morgans was not asked about a scale. Subsequently, a criminalist with the San Diego Sheriff's Department crime laboratory who tested various items of evidence seized in this case (22 RT 3769-3770), testified that he tested a black plastic scale with dark brown residue and discovered that it contained heroin. (22 RT 3782.) Appellant lodged no objection to this testimony either, suggesting that the fact of a scale discovered in appellant's car was not reasonably in dispute. Accordingly, it seems the fact of the scale could have been independently proven through competent testimony that was only omitted inadvertently.

The scale was the only item of drug indicia that Detective Morgans failed to account for in his testimony. When Officer Carnahan relied on the scale as a factor informing his expert opinion, appellant lodged no objection on grounds of hearsay or foundation.[2] Had the trial court sustained an objection on any

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[2] Respondent recognizes that to the extent appellant's claims are based on *Sanchez* and *Crawford*, they are not subject to forfeiture. (*People v. Perez* (2020) 9 Cal.5th 1, 9 [failure to object did not forfeit

ground, it appears likely the prosecutor would have responded by recalling Detective Morgans to provide competent, direct evidence about the discovery of the scale.

In any event, the admission of Officer Carnahan's testimony regarding the testimonial hearsay about the scale was harmless beyond a reasonable doubt. (See *Sanchez*, *supra*, 63 Cal.4th at p. 698 [applying beyond-a-reasonable-doubt standard for assessing prejudice to expert's relaying testimonial hearsay].) Appellant claims that the scale was the "key element" of his conclusion that appellant possessed heroin for purposes of sales, but the record reveals that the officer placed no more importance on the scale than any of the other indicia of sales which were proven independently by competent evidence. (22 RT 3754, 3768.) The scale was one of many items the officer relied upon in forming his expert opinion, and there is no reason to suggest the officer would have opined any differently had the scale not been among the list of items he considered in forming his opinion.

Officer Carnahan's testimony about the scale did not contribute to the jury's verdict on possession of heroin for the purpose of sales. Given the other evidence that appellant possessed indicia of sales, given appellant's admission to his crew leader that he sold drugs, and given the testimony regarding a scale containing heroin residue, Officer Carnahan's relaying this fact was not critical in proving appellant possessed heroin for purposes of sales. Thus, any error in admitting Officer

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Sanchez claim]; *People v. Turner* (2020) 10 Cal.5th 786, 821, fn. 21 [same re *Crawford*].)

Carnahan's brief testimony about the scale was harmless beyond a reasonable doubt.

CONCLUSION

For these reasons, and those set forth in the respondent's brief, respondent respectfully requests that the judgment be affirmed in its entirety.

Respectfully submitted,

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April 4, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL RESPONDENT'S BRIEF** uses a 13 point Century Schoolbook font and contains 3,659 words.

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April 4, 2022

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

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No.: **S141080**

I declare:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 4, 2022, at San Diego, California.

Amy Weas	
Declarant	Signature

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STATE OF CALIFORNIA
Supreme Court of California

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