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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO CAMACHO,

Defendant and Appellant.

D058736

(Super. Ct. No. SCD218344)

APPEAL from a judgment of the Superior Court of San Diego County, Lisa A.

Foster, Judge. Affirmed.

A jury convicted Guillermo Camacho of one count of oral copulation with a child 10 years or younger (Pen. Code, § 288.7, subd. (b)),<sup>1</sup> and two counts of committing lewd acts upon a child under the age of 14 (§ 288, subd. (a)). The trial court sentenced Camacho to an indeterminate prison term of 15 years to life plus a concurrent determinate term of six years.

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<sup>1</sup> Unless otherwise indicated all further statutory references are to the Penal Code.

Camacho contends (1) the trial court prejudicially erred in failing to give a sua sponte jury instruction limiting the use of certain expert witness testimony, and (2) the trial court erred in instructing the jury with CALCRIM No. 1190. We conclude that Camacho's arguments are without merit, and accordingly we affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

After reading a children's book relating to sexual abuse, a nine-year-old female relative of Camacho (the Minor) disclosed to family members that Camacho had been touching her private parts, but she did not otherwise disclose details of the molestation. The family members confronted Camacho the same day with the Minor present, and according to the testimony of the family members, Camacho admitted to the molestation and promised not to do it again.

Approximately six months later, the Minor disclosed details of the molestation to different family members, including telling them that Camacho had penetrated her vagina with his penis. Family members went to the police station that day, along with the Minor, and reported the molestation to the police.

In an initial interview with a police officer, the Minor stated that during a two-month period in June and July of the previous year, Camacho had molested her in bed by touching her genitals with his fingers and penetrating her vagina with his penis. A few days later, in a forensic interview, the Minor stated that Camacho had penetrated her vagina with his hands and with his penis during the night in June and July of the previous year, and that Camacho would put his mouth and tongue on her genitals. The Minor

reported that she sometimes asked a sibling to sleep together with her to prevent the molestation, but Camacho still touched her while the sibling was asleep. In that interview, the Minor stated that Camacho stopped molesting her after he apologized six months earlier. Camacho was arrested shortly after the forensic interview.

A couple of months after the forensic interview, the Minor told a social worker that she had not been truthful earlier when she said the molestation happened only during a two-month period, and it had actually occurred over a two-year period.

At trial the Minor testified that the molestation happened over a period spanning from when she was approximately five years old to when Camacho was arrested when she was 10 years old, and that Camacho had not stopped molesting her after he apologized and promised to stop. The Minor testified that she initially reported that the molestation lasted only two months because she was afraid that Camacho would go to jail.

Camacho was tried on charges arising from his molestation of the Minor during the months of June and July of the year before his arrest, with each count referring specifically to that time frame. Count 1 charged sexual intercourse with a child 10 years or younger (§ 288.7, subd. (a)). Count 2 charged oral copulation with a child 10 years or younger (§ 288.7, subd. (b)). Count 3 charged sexual penetration with a child 10 years or younger (§ 288.7, subd. (b)). Counts 4 through 6 charged lewd acts upon a child under the age of 14 years (§ 288, subd. (a)) based on kissing the Minor's mouth (count 4);

touching the Minor's vagina (count 5); and touching the Minor's vagina while her sibling was sleeping in the same bed (count 6).<sup>2</sup>

The jury found Camacho guilty on count 2 (oral copulation) and counts 4 and 5 (lewd acts consisting of kissing the Minor and touching her vagina). The jury was unable to reach a verdict on counts 1, 3 and 6 (sexual intercourse, sexual penetration, and lewd acts based on touching the Minor's vagina while a sibling was asleep next to her). The trial court declared a mistrial on counts 1, 3 and 6, and the prosecution later dismissed them.

## II

### DISCUSSION

#### A. *The Trial Court Did Not Prejudicially Err by Failing to Instruct the Jury Sua Sponte About Limitations on the Use of Certain Expert Testimony*

We first examine Camacho's contention that the trial court prejudicially erred by failing to give a sua sponte instruction to the jury limiting the use of the testimony of expert witness Catherine McLennan.

As explained to the jury, McLennan was called by the People "to talk about some of the myths and misconceptions about child abuse and about disclosure surrounding child abuse." McLennan set forth the general reasons that many children either do not disclose molestation or delay in making a disclosure. She also explained the

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<sup>2</sup> Camacho was also tried on an additional count of committing a lewd act upon a child under the age of 14 years (§ 288, subd. (a)) arising out of an allegation made by a different minor family member. The jury acquitted Camacho on that count, and we do not discuss the pertinent factual background because it is not relevant here.

phenomenon of children making false denials when they are questioned about molestation. According to McLennan, children often do not initially disclose all of the abuse that occurred, and disclosure is a process, not a one-time event. McLennan stated that children have difficulty placing abuse in a certain timeframe because they lack the tools for doing so, and children are not good at recalling when something happened, how many times it happened and how long it lasted. McLennan also discussed that children can seem to have an otherwise positive relationship with someone who is abusing them, and she briefly touched on the effect that child molestation has on victims, including self-esteem problems and depression.

Camacho's argument concerning McLennan's testimony is based on case law that discusses expert testimony about child sexual abuse accommodation syndrome (CSAAS). (*People v. Bowker* (1988) 203 Cal.App.3d 385, 391 (*Bowker*); *People v. Patino* (1994) 26 Cal.App.4th 1737, 1740.) We therefore begin our analysis by reviewing that case law.

As described in the relevant cases, CSAAS is used as a therapeutic tool, and it recognizes five stages of a victim's reaction to child sexual abuse. (*Bowker, supra*, 203 Cal.App.3d at p. 389.) The stages are (1) secrecy; (2) helplessness; (3) entrapment and accommodation; (4) delayed disclosure; and (5) retraction. (*Ibid.*) Courts have held that expert testimony about CSAAS "is inadmissible to prove that a child has been abused because the syndrome was developed not to prove abuse but to assist in understanding and treating abused children. However, . . . such evidence may be admitted to dispel common misconceptions the jury may hold as to how such children react to abuse." (*People v. Stark* (1989) 213 Cal.App.3d 107, 116 (*Stark*.)

According to case law, expert testimony about CSAAS is admissible if "narrowly tailored" to expose a "'myth or misconception'" about child abuse victims and to "explain[] why the child's behavior is not inconsistent with his or her having been abused." (*Stark, supra*, 213 Cal.App.3d at p. 116.) Further, case law states that the jury should be admonished that "[t]he evidence is admissible *solely* for the purpose of showing that the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested . . .'" and "'is not intended and should not be used to determine whether the victim's molestation claim is true.'" (*Ibid.*)

One opinion holds that even if defense counsel does not request that the jury be instructed regarding the limited purpose for the admission of CSAAS evidence, the trial court has a sua sponte duty to provide such an instruction. (*People v. Housley* (1992) 6 Cal.App.4th 947, 958-959 (*Housley*).) Other courts, however, do not recognize a sua sponte duty, and state that the trial court should give a limiting instruction about CSAAS evidence only "if requested." (*Stark, supra*, 213 Cal.App.3d at p. 116; *People v. Bothuel* (1988) 205 Cal.App.3d 581, 588; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 735.) Case law agrees that the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*) for assessing prejudice applies to determine whether a trial court prejudicially erred in admitting CSAAS evidence that was not narrowly tailored or was not accompanied by a limiting instruction. (*Housley*, at p. 959; *Bowker, supra*, 203 Cal.App.3d at p. 395.)

McLennan did not give any substantive testimony about CSAAS.<sup>3</sup> However, Camacho contends that the case law regarding the admissibility of CSAAS evidence applies here because McLennan's testimony was "about the behavior, in general, of children who have been sexually abused," although she did not expressly identify a "'syndrome.'" Camacho also contends that, based on *Housley, supra*, 6 Cal.App.4th 947, the trial court should have acted sua sponte to provide a limiting instruction on the jury's use of McLennan's testimony. Even though defense counsel did not request such an instruction, Camacho contends that the jury should have been instructed that McLennan's testimony could not be used to determine whether the molestation claims were true and could only be used to determine whether the victim's reactions were not inconsistent with being molested.

Camacho's argument implicitly raises two issues which would require further analysis to resolve: (1) whether the rules about the admissibility of CSAAS evidence apply to expert testimony that does not specifically refer to CSAAS, but instead generally describes the behavior of children who have been sexually abused; and (2) whether a trial court has a sua sponte duty to provide a limiting instruction regarding CSAAS evidence, or, in contrast, whether an instruction must be requested by defense counsel. We need not undertake the analysis to resolve either of those issues because, in this case, even if

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<sup>3</sup> Indeed, McLennan mentioned during an initial recitation of her qualifications that "a number of years ago, when I first started, there was something . . . that they used to refer to [as] child abuse accommodation syndrome, and I am specifically qualified in that area, as well as almost any area of child sexual abuse with the exception of mental health treatment." However, she did not offer any substantive testimony about CSAAS.

the trial court had been required to give a sua sponte limiting instruction, it is not reasonably probable that Camacho would have received a more favorable result had the instruction been given. Therefore, as we will explain, Camacho has not, as required, established prejudice according to the standard set forth in *Watson, supra*, 46 Cal.2d at page 836.

As the outset of our harmless error analysis, we note that the risk inherent in admitting CSAAS evidence is that "[s]uch testimony . . . easily could be misconstrued by the jury as corroboration for the victim's claim . . . ." (*Housley, supra*, 6 Cal.App.4th at p. 958.) This risk exists "because the expert commonly is asked to offer an opinion on whether *the victim's behavior* was typical of abuse victims, an issue closely related to the ultimate question of whether abuse actually occurred." (*Ibid.*, italics added.) However, in this case, any risk that McLennan's testimony would be mistaken by the jury as support for the Minor's credibility was eliminated by McLennan's clear statement that she knew nothing about the facts of this specific case and that the purpose of her testimony was to present general information that would be applicable in *any* molestation case. McLennan explained, "[M]y opinion doesn't have to do with whether or not these specific children are credible or not credible or telling truth or not. My purpose in being here is to provide information. The issue around initial denial and later disclosure has been discussed and that information would not change no matter what the facts of this particular case are." When asked by defense counsel whether she would want to have certain information about the case before testifying, McLennan explained, "No. Because my testimony didn't

have anything to do with the particular facts of this case, and very often doesn't. . . .  
What I say isn't case dependent."

In light of these comments, the jury would not reasonably have understood McLennan's testimony as being offered for the purpose of corroborating the Minor's claims of molestation. Indeed, this case is similar to *Housley*, which concluded that the absence of a limiting instruction for CSAAS evidence was harmless error because the expert witness "twice told the jury she had not met the victim and had no knowledge of the case" and "[h]er testimony was couched in general terms, and described behavior common to abused victims as a class, rather than any individual victim." (*Housley*, *supra*, 6 Cal.App.4th at p. 959.) In *Housley*, as here, the express limits that the expert put on her own testimony, made it "unlikely the jury interpreted her statements as support for [the victim's] credibility." (*Ibid.*) We therefore conclude that even assuming, without deciding, that the trial court erred in failing to provide a limiting instruction regarding McLennan's testimony, any error is harmless because it is not reasonably probable that Camacho would have obtained a more favorable result had a limiting instruction been given.

B. *Camacho's Challenge to the Instruction with CALCRIM No. 1190 Is Without Merit*

Camacho contends the trial court erred in instructing the jury with CALCRIM No. 1190, which states that "[c]onviction of a sexual assault crime may be based on the testimony of a complaining witness alone." Specifically, Camacho argues that (1) it was unnecessary to instruct the jury with CALCRIM No. 1190 in light of CALCRIM No. 301, which states that "[t]he testimony of only one witness can prove any fact . . .";

and (2) CALCRIM No. 1190 improperly favors the testimony of the complaining witness.

Camacho explains that he raises a challenge to CALCRIM No. 1190 only for the purpose of preserving the issue for possible future review, as our Supreme Court in *People v. Gammage* (1992) 2 Cal.4th 693, 700, specifically addressed and rejected the same arguments that Camacho makes here in the context of the substantively similar predecessor CALJIC instructions. As Camacho acknowledges, we are bound by our Supreme Court's decision in *Gammage*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Accordingly, we reject Camacho's argument that the trial court erred in instructing with CALCRIM No. 1190.

DISPOSITION

The judgment is affirmed.

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IRION, J.

WE CONCUR:

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NARES, Acting P. J.

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McDONALD, J.