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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DEAN SOPHER,

Defendant and Appellant.

D059363

(Super. Ct. No. SCE28040)

APPEAL from a judgment of the Superior Court of San Diego County, Allan J. Preckel, Judge. Affirmed.

A jury convicted James Dean Sopher of committing a lewd and lascivious act upon a child under the age of fourteen years by kissing Adrianna S. (Pen. Code¹, § 288, subd. (a).) It deadlocked on two counts alleging he touched Adrianna's vagina and buttocks during the same incident. (§ 288, subd. (a).) The court declared a mistrial on those two counts and granted the People's motion to dismiss them.

¹ All further statutory references are to the Penal Code unless otherwise stated.

In bifurcated proceedings, the court found true allegations that Sopher had previously suffered a violent felony prison prior conviction, a serious felony prior conviction and a strike prior conviction for committing a lewd and lascivious act upon his minor daughter. (§§ 288, subd. (a); 667 subd. (a)(2); 667 subds. (b)-(i); 667.5, subd. (a); 667.61, subds. (a)(c)(d); 667.71; 668.)

The court sentenced Sopher to 55 years to life in prison as follows: 25 years to life on the section 288, subdivision (a) conviction, doubled under the Three Strikes Law, plus 5 years for the serious felony prior conviction under sections 667, subd. (a)(2) and 668.

Sopher contends the trial court erroneously (1) failed to investigate possible jury bias; (2) admitted irrelevant and prejudicial evidence regarding his parole status; (3) failed to instruct the jury with CALCRIM No. 1193 in light of a social worker's expert testimony on child sexual abuse accommodation syndrome (CSAAS); (4) admitted prejudicial expert testimony from the social worker that perpetrators of sexual crimes sometimes "groom" their victims; and (5) admitted prejudicial hearsay testimony regarding his prior sexual misconduct against his daughters under Evidence Code section 1108. Lastly, Sopher contends the cumulative effect of the errors was prejudicial. We affirm the judgment.

BACKGROUND

Around August 2007, Desiree E., mother of Adrianna S., started dating Sopher. He told her he had previously been incarcerated for drug manufacturing without mentioning his past convictions for sexual misconduct with his daughter. Around

October 27, 2007, when Adrianna was eight years old, she told Desiree that Sopher had kissed her. Adrianna later told Desiree that Sopher had rubbed his tongue in her mouth. Desiree asked Adrianna if Sopher had molested her in any other way, and Adrianna said no.

At trial, Adrianna testified that during the incident, while she and Sopher lay in a bed, he put his tongue in her mouth and kissed her. He also put his hands down her pants and touched her buttocks and vagina. He told her not to tell her mother about the incident.

Christina Schultz, a forensic interviewer of child abuse victims and medical social worker, interviewed Adrianna in December 2007, a videotape of which was played for the jury. Adrianna told Schultz: "I was sitting down watching TV and then [Sopher] took my body and then rolled me towards him and he trapped me with his legs and then he hold his arms um and my mouth was shut he was kissing me and rubbing his tongue I tried to scream for my mom but my, but he had my mouth and I couldn't like he wouldn't let me go or anything." Adrianna added that during the incident Sopher had put his hands under her underwear and touched her "private" in front, and her "behind."

Over defense objection, the court granted the prosecution's motion in limine to permit Sopher's daughters, T.H. and T.S., and their mother, Jodi M., to testify under Evidence Code sections 1101, subdivision (b) and 1108 about incidents of lewd and lascivious conduct on his then minor daughters, T.H. and T.S., leading to his guilty plea in 2000.

T.S. testified that when she was ten years old, while at Sopher's residence for the weekend, she awoke because he was licking and kissing her vagina. She was scared, and recounted the incident to T.H. Minutes afterwards, Sopher apologized to her and asked her not to tell anyone about the incident.

T.H. testified that when she was 13 years old, Sopher touched her breast. T.H. added that during that same weekend, T.S. woke her up, and "[T.S.] was shaking and crying and said that [Sopher] just came in the room and was touching her." T.H. added, "[T.S.] told me that she was laying there, and she woke up to [Sopher] licking her."

Jodi M. testified she picked up her daughters following their weekend at Sopher's residence. T.S. was upset, teary-eyed and shaking, and said Sopher had touched her.

Defense Case

At trial, the prosecutor asked Sopher during cross-examination, "Did you kiss Adrianna? He replied, "No, she kissed me. She blew into my mouth." Sopher stated Adrianna did that "in a playful manner." The prosecutor asked him regarding his previous statement to a detective that during the incident Adrianna came up to him and stuck her tongue in his mouth. After his memory was refreshed with a copy of the statement, he said, "That's correct, yeah."

Sopher testified that in 2000, to avoid a life sentence, he pleaded guilty to molesting T.H. under section 288, subdivision (a). He admitted his role in the incident: "[T]he thing that they accused me of was brushing against my daughter's breast, and— which I did. I did do that, and I admitted that, but it was not done in a sexual context." Sopher was imprisoned for over five years for that crime, and released on parole. But he

did not tell Adrianna's mother or her grandfather that he had molested any of his daughters.

The court instructed the jury regarding Sopher's previous crime: "He pled guilty as a matter of law to a felony violation of . . . [section 288, subdivision (a)] involving [T.H.] as the named victim of that offense. [¶] In return for that plea of guilty, the remaining charges, including those involving [T.S.], were dismissed. But though those charges were dismissed, part of the agreement between the parties was that the judge pronouncing sentence on the charge to which Mr. Sopher did plead guilty, the agreement was that the sentencing court, the judge, could consider all of the known facts and circumstances concerning the case, including the facts and circumstances surrounding the charges that were dismissed in addition to the facts and circumstances specific to the charge to which he pled guilty. [¶] [¶] . . . [A] defendant charged in a criminal case such as Mr. Sopher was back in 2000 could decide to enter into a negotiated disposition without necessarily admitting as a matter of fact that he engaged in the conduct giving rise to the charge to which he pled guilty as a matter of law."

The case was submitted to the jury late on a Friday, and the jury likely did not start deliberating that day. Over that weekend, news was widely publicized in San Diego that John Gardner, a registered sex offender on parole, was suspected of abducting a young girl in the North County area. Before the start of deliberations the following Monday, the court consulted counsel regarding the news reports. Defense counsel proposed that the court declare a mistrial, but the court denied that motion. Instead, the court on its own motion instructed the jury not to be influenced by the Gardner case: "Over the past few

days, there has been substantial media attention focused upon a search for a missing 17-year old female in the Rancho Bernardo and Lake Hodges area, and upon an arrest of an individual in connection with her disappearance. [¶] I emphasize once again the need for you to fairly and impartially decide Mr. Sopher's case based *solely* upon the evidence and law that you have received within the walls of the courtroom during this trial."

Sopher unsuccessfully moved for a new trial on grounds his daughters' testimony regarding his prior acts was unduly prejudicial under Evidence Code sections 1108 and 352.

DISCUSSION

I.

Sopher contends the trial court erroneously failed to investigate whether Gardner's highly publicized case biased the jury against Sopher, and that inaction caused him prejudice, as evidenced by the fact the jury asked the court whether he was a registered sex offender, although that issue was not mentioned during trial.² Sopher also claims the jury deadlock on two counts against him indicated prejudice.

The trial court has the discretion to conduct an evidentiary hearing to determine the truth or falsity of allegations of jury misconduct, and to permit the parties to call jurors to testify at such a hearing. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 419.) Defendant is not, however, entitled to an evidentiary hearing as a matter of right. Such a

² The court responded to the jury: "The answer to your question is not part of the evidence. Therefore, I cannot answer the question, and you are not to speculate in that regard."

hearing should be held only when the court concludes an evidentiary hearing is "necessary to resolve material, disputed issues of fact." (*Id.* at p. 415.) "The hearing should not be used as a "fishing expedition" to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred. Even upon such a showing, an evidentiary hearing will generally be unnecessary unless the parties' evidence presents a material conflict that can only be resolved at such a hearing.'" (*People v. Avila* (2006) 38 Cal.4th 491, 604.)

"Juror misconduct, such as the receipt of information about a party or the case that was not part of the evidence received at trial, leads to a presumption that the defendant was prejudiced thereby and may establish juror bias." (*People v. Nesler* (1997) 16 Cal.4th 561, 578.) "Although prejudice is presumed once misconduct has been established, the initial burden is on defendant to prove the misconduct. [Citation.] We will not presume greater misconduct than the evidence shows." (*In re Carpenter* (1995) 9 Cal.4th 634, 657.) "Any presumption of prejudice is rebutted, and the verdict will not be disturbed, if the entire record in the particular case, including the nature of the misconduct or other event, and the surrounding circumstances, indicates there is no reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were actually biased against the defendant. [Citation.] . . . It is 'virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote.'" (*In re Hamilton* (1999) 20 Cal.4th 273, 293-296.)

Here, the court was not required to hold an evidentiary hearing regarding juror misconduct because Sopher did not adduce evidence demonstrating a "strong possibility" that prejudicial misconduct occurred. The court preemptively admonished the jury to decide the case solely on evidence presented at trial. Sopher regards the jury's question about whether he was a registered sex offender as evidence the jury was biased against him. In our view, the court adequately responded to the jury's question, and absent evidence to the contrary, we presume the jury followed the court's instruction to not speculate regarding that issue, which was not part of the evidence in Sopher's case. Further, we do not believe the jury's split verdict evidences its prejudice towards Sopher. To the contrary, it shows the jury deliberated carefully, without seeking to prejudice Sopher.

Sopher unpersuasively relies on cases in which there was some evidence of juror misconduct: *People v. McNeal* (1979) 90 Cal.App.3d 830, 837-838, [noting the trial court learned one juror knew personal information about a defense witness, but permitted the juror to deliberate based on that juror's promise to disregard the outside evidence]; *People v. Burgener* (1986) 41 Cal.3d 505, 516 [finding the jury foreman's statements were sufficient to raise the possibility a juror was intoxicated during jury deliberations]; and *People v. Lambright* (1964) 61 Cal.2d 482, 486-487 [concluding the trial court erroneously instructed the jurors they had a right to read articles about the trial or obtain extrajudicial evidence by radio or television]. These cases are inapplicable; they turn on their unique facts, and they do not demonstrate that misconduct can be inferred in this case.

II.

Sopher contends the trial court improperly admitted Desiree's testimony regarding his parole status, which was irrelevant for the purposes for which it was admitted, namely his consciousness of guilt and the decisions by Desiree and her father to let Sopher associate with Adrianna. He also contends the testimony was inflammatory and prejudicial because Desiree proceeded to testify regarding his manufacture and use of drugs, and the testimony tended to evoke jury sympathy for Desiree. He claims the admission of the testimony denied him his right to a fair trial, and violated due process under the state and federal Constitutions.

The People moved in limine to admit evidence Sopher was on parole, arguing it was relevant "because it explains the actions of Adrianna and her family and shows a consciousness of guilt on [Sopher's] behalf. . . . [Sopher] told Desiree [] it was for a drug conviction." In a hearing on the motion, the court ruled testimony regarding Sopher's parole status was relevant: "Absent the jury being privy to that information or those facts, the jury, upon hearing from the daughters out of the 2000 case and hearing that Mr. Sopher is on parole for child molestation, the jury is necessarily going to, I would think, have some wonderment about why Adrianna's mother would, under those circumstances and with that background, permit Mr. Sopher to get within a country mile of her own children and thus cast substantial doubt, unless the jury were apprised of the . . . 'true facts,' . . . unless the jury were apprised that . . . at least according to Adrianna's mother's testimony, she, the mother, had no actual knowledge of the true nature of Mr. Sopher's prior conviction and parole status. [¶] So . . . in my view,

notwithstanding [an Evidence Code section] 352 analysis, all of this background is going to come in, and we're going to have to sift through it for the jury's purposes and give the jury appropriate limiting instructions as to the purposes and/or extent to which they can apply evidence regarding Mr. Sopher's criminal history to their decision making concerning whether or not the presently charged offenses have been proven [¶] I grant you that, on the face of it, it might seem a little dicey . . . and I certainly understand, what I'll construe for the record as, a continuing string of objections on the part of Mr. Sopher, that the defense position is that none of this ought to come before the jury, meaning evidence of the prior conviction and nature thereof, nor any testimonial or other evidence regarding the evidentiary underpinnings of the 2000 case that gave rise to his guilty plea."

At trial, Desiree testified regarding Sopher's past as follows:

"[Prosecutor:] And when you started dating him, did he tell you anything about his background at that point in time? Where he lived, or where he came from?"

"[Desiree:] Nothing about where he lived. The only thing I knew is that he had just gotten released from prison. He said he was there for seven years, and he said he was there for drug manufacturing."

"[Prosecutor:] Did you ask him any—any other, like, family questions or things of that nature?"

"[Desiree:] He did tell me that he had three kids, but he said that when they were babies, the mom was really bad into drugs, and that she signed over his son to him and left with the two girls."

"[Prosecutor:] So when you started dating him, what was your understanding of his relationship with his children?

"[Desiree:] That he didn't get to talk to them because his family disowned him for the drugs."

Sopher also objects to Desiree's testimony regarding his housing arrangements:

"Originally . . . when we first started seeing each other, he was staying in, I guess, a rehab is what he told me. You know, the little—I don't know if you call them rehabs, but the houses that they live in, living sober, something like that. He was living in one of those in San Diego, and I—I took him to one of his parole dates that he had to go to, but I stayed out in the car, and he had asked if he could come stay at my house because he didn't like going back and forth because it was a drive."

"Under Evidence Code section 352, the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.] Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.) Evidence of a defendant's parole status is admissible if relevant. (*People v. Scheer* (1998) 68 Cal.App.4th 1020, fn. 2.)

Evidence Code section 352 requires the exclusion of evidence only when its probative value is substantially outweighed by its prejudicial effect. "Evidence is

substantially more prejudicial than probative . . . [only] if, broadly stated, it poses an intolerable 'risk to the fairness of the proceedings or the reliability of the outcome.' " (*People v. Waidla* (2000) 22 Cal.4th 690, 724.) "Prejudice for purposes of Evidence Code section 352 means evidence that tends to evoke an emotional bias against the defendant with very little effect on issues, not evidence that is probative of a defendant's guilt." (*People v. Crew* (2003) 31 Cal.4th 822, 842.) As explained in *People v. Doolin* (2009) 45 Cal.4th 390, "The prejudice that [Evidence Code] section 352 " 'is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.' [Citations.] 'Rather, the statute uses the word in its etymological sense of "prejudging" a person or cause on the basis of extraneous factors.' " ' " (*Doolin*, at p. 439.)

Applying this standard, we find no abuse of discretion. Desiree's testimony regarding Sopher's parole status was relevant to show that Sopher misled Desiree regarding the true nature of his prior conviction, and therefore the basis for his parole. The testimony explained her decision to allow Sopher to associate with Adrianna. Desiree mentioned the related testimony regarding Sopher's conviction for drug manufacturing and his residence at a half-way house by way of context to explain what she knew about Sopher early in their dating relationship, and it was not inadmissible under Evidence Code section 352.

In any event, any error was harmless as it was not reasonably likely the jury would have reached a different result in the absence of that testimony because this case did not turn on Sopher's parole status or the other objected to testimony. Rather, as noted,

Sopher himself admitted that a kiss was exchanged between he and Adrianna. He testified she was the one who kissed him, but she testified he kissed her. The jury resolved the matter by electing to believe Adrianna. We may not reverse the conviction in the absence of a miscarriage of justice, which is not evidenced here. (*People v. Parsons* (1984) 156 Cal.App.3d 1165, 1171-1172.)

III.

Sopher contends the trial court failed to comply with its duty to instruct the jury on its own motion with CALCRIM No. 1193³ in light of Schultz's testimony regarding CSAAS. He also claims, "Schultz did not identify any credentials to demonstrate she was trained in identifying sexual predators, and none of the facts of the instant case were connected with such a theory. . . . [¶] Moreover, Schultz's testimony on this point was utterly irrelevant and no bearing on [*sic*] the crimes charged. It was highly inflammatory and prejudicial because it cast [Sopher] as someone who engaged in planning and sophistication to commit the charged offense. Because this case was pure credibility issue [*sic*], it is reasonably probable that this evidence could have been the tipping point for the jury's guilt verdict on count 1, and reversal is required."

In moving to admit Adrianna's statements made to Schultz, the prosecutor told the court, "I provided [defense] counsel with her [curriculum vitae] today—[she] will testify

³ CALCRIM No. 1193 provides: "You have heard testimony from [name of expert] regarding [CSAAS]. [¶] [That] testimony about [CSAAS] is not evidence that the defendant committed any of the crimes charged against (him/her). [¶] You may consider this evidence only in deciding whether or not [the victim's] conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of (his/her) testimony."

as it relates to the disclosure of children, why they might disclose late and things of that nature." At a hearing, the court granted the motion, ruling, "I'll permit that kind of testimony in the abstract, understanding that . . . what she's not going to do, directly or indirectly, is testify as to whether Adrianna's disclosures are credible or not."

On direct examination, the prosecutor asked Schultz whether children disclose experiences of molestation in stages. The defense interposed no objection, and Schultz answered, "It's pretty common for a child to make what's called partial disclosures, where maybe the first time, the first person they talk to, they don't tell everything. It may be in pieces that they tell over time."

Schultz testified regarding grooming in this exchange:

"[Prosecutor:] Ms. Schultz, based on your training and experience, are you familiar with the term grooming?"

"[Schultz:] Yes.

"[Prosecutor:] Can you tell me what that is?"

"[Schultz:] Grooming is sort of a dynamic between a perpetrator and a victim where the perpetrator may engage in a—often a trusting relationship with a child or something in secrecy. And it could be initially they do subtle things, subtle forms of touching.

"[Defense Counsel:] Your honor, I'm going to object to this as a total lack of foundation for this type of testimony because this becomes psychological."

The court sustained the objection on that basis. The prosecutor attempted to lay a foundation, and elicited from Schultz that grooming is "the process of a perpetrator and—

to a victim, the process of building that relationship and possibly beginning with more subtle forms of abuse, subtle forms of touching, kissing, and then possibly leading to more egregious acts." The court next sustained its own objection to further related questions on grounds of prejudice under Evidence Code section 352.

Schultz also testified children do not commonly report being molested right away, but sometimes wait, even until adulthood. Immediately following Schultz's testimony, the court admonished the jury: "I think maybe what you've experienced today underscores what I attempted to impress upon you during the selection process, that you and you alone are the judges of the facts, and that a very important corollary necessarily to deciding the facts is to decide issues of credibility and believability. And those issues and determinations rest solely upon your shoulders as members of the jury. And such credibility determinations are important in every case, not just this one."

One court has held, "[B]ecause of the potential for misuse of CSAAS evidence, and the potential for great prejudice to the defendant in the event such evidence is misused, it is appropriate to impose upon the courts a duty to render a sua sponte instruction limiting the use of such evidence. Accordingly, in all cases in which an expert is called to testify regarding CSAAS we hold the jury must sua sponte be instructed that (1) such evidence is admissible solely for the purpose of showing the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested; and (2) the expert's testimony is not intended and should not be used to determine whether the victim's molestation claim is true." (*People v. Housley* (1992) 6 Cal.App.4th 947, 958-959; but see *People v. Stark* (1989) 213 Cal.App.3d 107, 116 [the

instruction must be requested of the trial court[.]) The purpose of the limiting instruction is to avoid misuse of CSAAS testimony and the expert inadvertently corroborating the victim's claim "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." (*Housley, supra*, 6 Cal.App.4th at p. 958.)

Here, any error in not giving the CSAAS limiting instruction sua sponte was harmless. Immediately following Schultz's testimony, the jury was instructed it alone was the trier of fact and judge of credibility. This case did not turn on grooming, but on the physical contact between Sopher and Adrianna, which Sopher did not deny happened. Sopher was not prejudiced by Schultz's testimony on the issue of whether children victims of abuse delay in disclosing the full extent of the abuse suffered. Here, Adrianna's initial report to her mother and others did not involve Sopher touching her vagina and buttocks, but she mentioned those incidents in her later report to Schultz. However, the jury acquitted Sopher of the charges involving the subject of Adrianna's later reports.

IV.

A.

In a motion in limine, defense counsel objected to admission of evidence of Sopher's prior conviction involving T.S. The court ruled the evidence was admissible under Evidence Code sections 1101, subdivision (b) and 1108, and was not unduly prejudicial under Evidence Code section 352.

Sopher contends the trial court erroneously admitted evidence regarding T.S.'s allegations because under Evidence Code section 1108, such evidence was "indisputably far more serious than the acts charged in the instant case (kissing and fondling), and far more serious than the act to which he pled in 2000 against [T.H.] (grazing her breast)." He claims he was prejudiced because the jury learned he was not punished for the allegations that he committed oral copulation on T.S.

Evidence Code section 1108 states: "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352."

Evidence Code section 1101, subdivision (a) states: "Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character . . . is inadmissible when offered to prove his or her conduct on a specified occasion." Evidence Code Section 1101 subdivision (b) provides: "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act."

"The admissibility of other-crimes evidence depends on three principal factors: (1) the materiality of the fact sought to be proved or disproved; (2) the tendency of the uncharged crime to prove or disprove the material fact; and (3) the existence of any rule or policy requiring the exclusion of relevant evidence, e.g., Evidence Code section 352."

(*People v. Sully* (1991) 53 Cal.3d 1195, 1224.) A defendant who pleads not guilty puts in issue all elements of the charged offenses. (*People v. Balcom* (1994) 7 Cal.4th 414, 422.) Moreover, the probative value of any uncharged offense must be weighed against the danger "of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

To be relevant on the issue of identity, the uncharged crimes must be highly similar to the charged offenses. (*People v. Kipp* (1998) 18 Cal.4th 349, 369-370.) A lesser degree of similarity is required to establish relevance on the issue of common design or plan. (*Id.* at p. 371.) "The least degree of similarity is required to establish relevance on the issue of intent. [Citation.] For this purpose, the uncharged crimes need only be 'sufficiently similar [to the charged offenses] to support the inference that the defendant " 'probably harbor[ed] the same intent in each instance.' " ' ' " (*Ibid.*) An appellate court will not reverse the trial court's ruling under Evidence Code section 352 unless it "exceeds the bounds of reason, all of the circumstances being considered." (*People v. Stewart* (1985) 171 Cal.App.3d 59, 65.)

Evidence of uncharged sexual assault committed by the defendant might be vital to the jury's efforts to evaluate the credibility of the victim and determine if her account is accurate. (*People v. Hollie* (2010) 180 Cal.App.4th 1262, 1276-1277.)

Here, we conclude no basis exists for reversing the judgment because even assuming error, it was harmless in light of the evidence establishing Sopher kissed Adrianna. Moreover, the jury acquitted Sopher of the charges he touched Adrianna's

private parts, thus indicating the jury was not prejudiced against Sopher by T.S.'s testimony.

B.

Sopher further contends the court erroneously overruled his counsel's objection and admitted prejudicial hearsay from T.S.'s mother that "[T.S.] said that [Sopher] had been touching her." He also challenges as hearsay testimony from T.H. that, "[T.S.] was shaking and crying and said that [Sopher] just came in the room and was touching her," and, "[T.S.] told me that she was laying there, and she woke up to [Sopher] licking her."

Claims of erroneous admission of hearsay evidence are subject to review under the harmless error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818. (*People v. Duarte* (2000) 24 Cal.4th 603, 618-619.)

It bears repeating that Adrianna's own testimony and Sopher's admission that Adrianna kissed him and stuck her tongue in his mouth sufficed to support the conviction, and it is not reasonably likely he would have received a more favorable verdict absent the introduction of testimony regarding his sexual misconduct with his two daughters. As noted, the jury carefully deliberated and acquitted him of the more egregious charges that he touched Adrianna's vagina and buttocks.

Sopher also summarily contends the court erred in denying his new trial motion, which he brought on grounds the trial court erroneously admitted T.S.'s testimony. But we treat that argument as forfeited because Sopher does not develop the argument with reference to case law and the relevant facts. Generally, "[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a

particular point, the court may treat it as waived, and pass it without consideration.' "

(*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

V.

Sopher contends there was cumulative error. In a close case, the cumulative effect of multiple errors may be sufficient to cause the trial to have been unfair and hence cause a miscarriage of justice. (*People v. Buffum* (1953) 40 Cal.2d 709, 726, overruled on other grounds by *People v. Morante* (1999) 20 Cal.4th 403, 415.) Multiple errors may require reversal even when the errors, considered individually, would not warrant the same conclusion. (*People v. Jackson* (1991) 235 Cal.App.3d 1670, 1681.) If, in the absence of the cumulative errors, it is reasonably probable that the jury would have reached a result more favorable to a defendant, the decision must be reversed. (*People v. Holt* (1984) 37 Cal.3d 436, 459, superseded by statute on another ground as stated in *People v. Muldrow* (1988) 202 Cal.App.3d 636, 645.) We have found no prejudicial error, and no errors which, if combined, would cause a miscarriage of justice. Therefore, this claim fails.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

McINTYRE, J.