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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMIE B. DIXON,

Defendant and Appellant.

G050592

(Super. Ct. Nos. M09911, M10650
& M11477)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John L. Flynn, Judge. Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne G. McGinnis and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In July 1999, a jury committed Jimmie B. Dixon for treatment and protective custody under the Sexually Violent Predator Act (SVPA), codified in Welfare and Institutions Code section 6600 (all further undesignated statutory references are to this code). The district attorney filed subsequent petitions in 2003, 2005, and 2007, and after Proposition 83 changed an SVP commitment from two years to an indefinite term, the district attorney requested the indefinite term. The trial court consolidated the pending petitions and in July 2014 a jury again found Dixon qualified as an SVP. He contends the witness testimony, childhood photographs of some witnesses who testified against him, and police reports concerning his offenses should not have been admitted because he stipulated to committing his prior offenses. He also challenges the sufficiency of the evidence to support his commitment and raises, to preserve for possible federal review, numerous contentions that have found no footing in the California Supreme Court. None of these contentions merit reversal, and we therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In April of 1988, eight-year-old K.D. was riding her bicycle near her home in Pomona when Dixon approached her and asked her if she had seen his lost kitten. When K.D. turned around to help, Dixon grabbed her and dragged her to a nearby apartment complex as she kicked and screamed. Dixon put K.D. on the ground and started to pull off her pants. When one of K.D.'s friends saw what was happening and started screaming, Dixon jumped up and ran away. Dixon was convicted of committing forcible lewd and lascivious acts upon a child under Penal Code section 288, subdivision (b). K.D. testified at trial and a photograph of her when she was nine years old was shown to the jury.

In May of 1988, six-year-old A.P. was walking home in her Fullerton neighborhood when Dixon approached her using the same lost kitten ruse. When A.P. tried to help him, Dixon led her into a nearby apartment complex laundry room and

pulled down her pants. Dixon licked his finger, and ran it along her anus and vagina. He then exposed his penis and said “look at the baby squiggle.” A.P. ran home and told her mother. Dixon was convicted of two counts of lewd and lascivious acts upon a child under Penal Code section 288, subdivision (a).

A few days after A.P. was assaulted, eight-year-old C.C. was playing near her Montclair home when Dixon approached her with the lost kitten ruse. When C.C. tried to help him, Dixon grabbed her buttocks, pulled down her underwear, and repeatedly penetrated her vagina with his fingers. C.C. struggled and fought Dixon until she was able to break away and escape. Dixon was convicted of committing lewd and lascivious acts upon a child under Penal Code section 288, subdivision (a). A picture of C.C., taken a few months before the assault, was shown to the jury.

On June 30, 1988, seven-year-old K.H. was playing at her Fullerton elementary school with two of her cousins when Dixon approached them. Dixon told K.H. that his cat was missing. When K.H. tried to help, Dixon told her that a spider crawled into her shorts, proceeded to pull down her underwear, and then put his hand on her vagina. When one of K.H.’s cousins approached, Dixon stopped and fled. Dixon was convicted of committing forcible lewd and lascivious acts upon a child under Penal Code section 288, subdivision (b). A photo of K.H., taken a few months before the assault, was shown to the jury.

Dawn Starr, a licensed clinical psychologist, opined that Dixon met the criteria to be classified as a sexually violent offender. Starr explained an SVP determination is based on three factors: (1) the person must have one or more qualifying sex offenses; (2) the person has a diagnosed mental disorder that causes emotional and volitional impairment that predisposes him to recommit sexual crimes; and (3) because of the mental disorder, there is a substantial and well-founded risk the person will commit future sexually violent predatory acts.

Starr interviewed Dixon in 2007, and again in 2008, 2009 and annually from 2011 through 2013. Starr reviewed Dixon's historical information including his prior convictions, police and probation reports, and his most recent psychological evaluations and hospital records.

Starr testified that Dixon's prior convictions for committing forcible lewd and lascivious acts on children and his prior commitment as a mentally disordered sex offender (MDSO) met the qualifying threshold for commitment under the SVPA. In concluding Dixon warranted commitment as an SVP, Starr considered his prior criminal history, among other factors. She noted his criminal history began in 1980 in Nebraska where he exposed himself to two young girls, kidnapped a young girl, kidnapped and molested another young girl, and sexually assaulted two other young girls. Dixon was convicted for those offenses, but two years later he exposed himself to two young girls again and physically grabbed another girl. Following convictions for those offenses, Dixon was committed as an MDSO, but after he was released, he sexually assaulted a three-year-old toddler and a four-year-old girl.

Starr also considered Dixon's admission he molested a teenage girl in Arizona before eventually committing his California offenses and also considered various statements Dixon had made to law enforcement and mental health professionals. Dixon had admitted he was sexually aroused by young girls and that he molested them because they were less likely to resist him. Starr noted that in preparing to commit his California offenses, Dixon spent "a considerable amount of time" driving around to search out victims, yet also regularly engaged in sexual activity with his wife and with prostitutes, which showed he had a "high degree of sexual preoccupation."

Based on these factors and Dixon's numerous offenses, Starr diagnosed Dixon with "pedophilia sexually attracted to females, not exclusive type." Starr explained pedophilia is defined as the presence of "recurrent intense sexually arousing fantasies, urges, or behaviors generally directed toward prepubescent children which are

typically thought to be 13 or under,” and the preoccupation must persist over a period of at least six months. Starr noted that pedophilia is typically a “chronic and life-long condition” that can “fluctuate, increase, or decrease.” She explained that a person’s sexual interests, whether deviant or normal, can be treated and controlled, but do not go away.

Given the frequency of Dixon’s crimes and the number of times he was caught and prosecuted, but remained undeterred, Starr opined he had “serious difficulty in controlling himself.” Starr also opined that given the nature of the assaults, where Dixon subjected very young girls to significant trauma and fear, Dixon’s pedophilia impaired his emotional understanding. Accordingly, Starr opined that Dixon’s pedophilia impacted his emotional and volitional capacity to such an extent that it predisposed him to commit sexually violent acts.

As to the final SVP criterion, Starr utilized actuarial tools, among other factors, to determine whether Dixon posed a present risk for reoffense. Starr applied the Static-99R test, which tabulates factors that have been “demonstrated to correlate with a higher risk of sexual recidivism,” including the offender’s age, prior sexual relationships, prior offenses, and the age and gender of the victims. Starr scored Dixon with a “4,” which put him in the “moderate high risk” category of offenders. But Starr believed Dixon was closer to “high risk, high needs” offenders because of his previous MDSO commitment and multiple sex offenses. Based on his risk assessment score, Dixon had a 20 percent risk of reoffending over five years and an approximately 30 percent risk of reoffending over ten years.

Using the Static-2002R tool, Starr scored Dixon in the moderate high range with a 29 to 39 percent risk over five to 10 years. Using the SRAFFV (Structured Risk Assessment, Forensic Version) tool, which Starr explained involves evaluation of changeable or dynamic factors “that have been correlated with increased risk for sexual re-offense,” Dixon scored above the high treatment needs category and just below the

high risk category. Starr testified that although Dixon was 65 years old, he still reported he had a sex drive and occasionally masturbated, but claimed he had stopped recently. She noted that when she repeatedly asked Dixon if he had deviant fantasies, he was evasive and then would only say that it had been “a long time” since he had them. In 2011, when Starr asked Dixon whether he had sexual thoughts or desires, he stated “I don’t have *hardly* any.” (Italics added.) Based on these interactions with Dixon, including his evasiveness, Starr believed Dixon’s deviant sexual interests still preoccupied him. He did not show any cognitive decline and he still had enough physical ability to “overcome a small child . . . like he has in the past”

Starr testified that Dixon’s numerous offenses showed he was unable to control himself, especially given his recidivism even while on probation or parole. She noted that Dixon had reported, as recently as four to five years ago, that he still masturbated to the thought of young girls. Though Dixon had behaved well during his commitment, he did not have access to children in the state hospital setting. Thus, she opined, “there is no reason to think that he would be able to control himself on the outside.”

Although Dixon was first admitted to the state hospital in 1997, Starr emphasized that “in the course of about 17 years he has never attended available sex offender treatment.”

Dixon instead sought chemical “castration” to reduce his risk for reoffending, which she explained could indicate he still had “ongoing concerns” that he had not addressed. Starr explained that for men under SVP commitment, so-called castration involves lowering testosterone levels to reduce sexual urges. But a person can “undo the effects of castration by taking testosterone,” which is “widely available” out of custody. In any event, Dixon tried three different medications to reduce his testosterone level, but reported after each that his sexual interest and ideas increased, which Starr found “highly unusual.” As recently as June 2014, a month before the trial, Dixon

continued to request the treatment or even surgical castration. Such drastic measures when he was evasive about his sexual urges suggested to Starr that Dixon was concerned about his own sexual preoccupation and remained a risk for reoffending.

Based on her review of Dixon's prior convictions, admissions, diagnosis, his scores on the risk assessment actuarial tools, and her clinical assessment, Starr concluded that Dixon was likely to engage in sexually violent predatory behavior if released.

Douglas Korpi, another licensed psychologist and SVP evaluator for the state, evaluated Dixon eight times and interviewed him six times, from 2003 through 2013. Korpi noted Dixon had "a minimum of six" qualifying offenses. As to the second and third criteria for SVP commitment, Korpi considered several factors in determining whether Dixon had a qualifying diagnosis that predisposed him to committing sexually violent acts. Korpi took into account that Dixon assaulted 17 victims and was convicted 11 times of sex-related offenses.

Based on the frequency of Dixon's offenses, two of which Korpi noted were minutes apart, Korpi characterized Dixon's behavior as "hypersexual," "crazed [and] sexed." Korpi diagnosed Dixon with pedophilic disorder with volitional impairment. He noted that "most pedophiles don't have volitional impairments," but Dixon "really can't control himself."

Korpi evaluated Dixon with the Static-99R and Static-2002R actuarial tools. Dixon scored above the 80th percentile in both tools, which put him within the moderate or moderate high ranges. Korpi opined that Dixon had a number of "big risk factors" that made him likely to reoffend. Dixon assaulted "high-risk" victims who were strangers and he had both "hands-on and hands-off offenses." Korpi explained that offenders who commit both contact and non-contact offenses "are [a] higher risk than [sic] if you just limit yourself to hands-on offenses."

Korpi opined that the “strongest [and] most powerful risk factor” was the fact that Dixon committed some of his offenses while on probation or parole and again after he had received treatment as an MDSO. He explained that “nothing predicts sexual re-offense better” than if a person is willing to offend while on parole, or during or after receiving treatment.

Korpi acknowledged that Dixon had several positive factors in his favor. For instance, he got along with people in the hospital and was well liked by staff members.

Like Starr, Korpi noted as a troublesome risk factor that although Dixon participated in more than 30 community groups focusing on topics ranging from art to horticulture, he refused to participate in any sex offender treatment groups. Korpi believed this suggested Dixon still had inappropriate sexual desires that he was unwilling to address or, in any event, demonstrated a reluctance to confront his sexual history.

Korpi also noted that Dixon had an “incredible memory,” yet repeatedly claimed he could not remember his victims or details about his offenses. Korpi was aware that Dixon repeatedly asked to be castrated, which Korpi opined was Dixon’s way of trying to “quell” his pedophilic urges. Korpi found it significant that between 1998 and 2000, after Dixon had begun the chemical castration process, he reported having sexual fantasies about children.

Korpi acknowledged that Dixon had not “acted out” while in custody or commitment by possessing child pornography or even magazine pictures of children, but he did not find Dixon’s lack of outwardly deviant behavior while in custody dispositive. Instead, as Dixon’s history showed, he acted out when he had access to children.

Based on the totality of these considerations, Korpi concluded Dixon qualified as an SVP, posed a serious and well-founded risk of reoffending, and therefore his continued treatment and placement in a secure facility was necessary to protect the public.

Dixon testified and admitted his intense attraction to prepubescent girls had led him to commit numerous offenses. Dixon admitted committing the offenses from 1980 through 1985 in which he exposed himself to young girls and sexually molested them. He also admitted he was committed as an MDSO in Nebraska and that he molested the teenage daughter of his girlfriend, a woman he met while in custody for his prior offenses. Dixon also admitted he committed several sexual assaults in California, including the qualifying offenses in the late 1980's.

Dixon claimed that he requested castration *not* because he still had strong sexual urges, but to demonstrate that he was no longer a threat. Dixon testified that if he were released, he would move to Oregon to join other former SVP committees who would help him find housing and resources. Dixon testified he no longer experienced pedophilic desires.

Defense expert Brian Abbott, a licensed psychologist, reviewed Dixon's historical and institutional records, and interviewed him in 2013. He diagnosed Dixon with "situational pedophilia," which he described as a disorder that is driven by "maladaptive ways of coping with psychological and interpersonal problems" rather than by a sexual desire for young children. He opined that although Dixon suffered from pedophilia when he committed the offenses, it "eventually remitted over time." Abbott believed that based on Dixon's age and his self-reported lack of deviant sexual desire, Dixon was not likely to reoffend.

II

DISCUSSION

A. *Testimony, Photos, and Police Reports*

Dixon contends reversal is required because the trial court erred by admitting victim testimony regarding his underlying offenses, three childhood photos of victims who testified about his prior offenses, and police reports concerning the offenses. We are not persuaded.

“[A]ll relevant evidence is admissible” (Evid. Code, § 351), unless excluded under the federal or California Constitutions or by statute. (Cal. Const., art. I, § 28; *People v. Scheid* (1997) 16 Cal.4th 1, 13.) Evidence is relevant if it has a tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.) The trial court is vested with broad discretion to determine the relevance and admissibility of evidence. (*People v. Riggs* (2008) 44 Cal.4th 248, 289.)

The trial court has similarly broad discretion to exclude evidence because its probative value is outweighed by the probability its admission would “necessitate undue consumption of time or . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code, § 352; *People v. Linton* (2013) 56 Cal.4th 1146, 1200.) In this context, “prejudice” refers to evidence that tends to evoke an emotional bias against the defendant as an individual, with little substantive value on the contested issues. (*People v. Brogna* (1988) 202 Cal.App.3d 700, 709-710.)

Under the deferential abuse of discretion standard (*People v. Avila* (2006) 38 Cal.4th 491, 578), the jury’s verdict may not be set aside unless the court’s evidentiary ruling was “arbitrary, capricious or patently absurd . . . [and] resulted in a manifest miscarriage of justice.” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.) Admitting relevant evidence does not violate due process unless its probative value is outweighed by unfair prejudice, confusion of issues, or by a potential to mislead the trier of fact. (*Holmes v. South Carolina* (2006) 547 U.S. 319, 327.) As our high court has explained, “The admission of relevant evidence will not offend due process unless the evidence is so prejudicial as to render the defendant’s trial fundamentally unfair.” (*People v. Falsetta* (1999) 21 Cal.4th 903, 913.)

Here, Dixon contends his agreement to a joint statement with the prosecutor at voir dire concerning his qualifying offenses and other sexual offenses prevented the introduction of victim testimony, photos of the victims, and police reports concerning

some of the offenses. The joint statement noted 16 molestations, forcible sexual assaults, and kidnappings that Dixon committed from 1980 through 1988 in Nebraska, Arizona, and California. As Dixon explains, “the statement included a description of [his] offenses related to each of [his] victims.” The trial court read the joint statement to the jury panel at the outset of voir dire.

At trial, the prosecutor’s experts provided details of many of the offenses, and Dixon admitted all the offenses in his trial testimony. Dixon complains the trial court nevertheless permitted four of 19 victims from the prosecutor’s witness list to testify concerning the requisite predicate offenses for Dixon’s SVPA commitment, and granted the prosecutor’s motion to introduce a photograph of each of three of the testifying victims to show her age around the time of the offenses, and to introduce police reports concerning six of the offenses.

Dixon concedes “some *documentary* evidence establishing the fact of at least one qualifying conviction was presumably admissible” (italics added), but he argues “the extent of the prosecution’s evidence was unnecessary, irrelevant and prejudicial.” He asserts *none* of the victim testimony, photos, or police reports should have been admitted; instead, he contends they were “prejudicially irrelevant . . . because [Dixon] had the right to be tried for his current condition — not his actions decades earlier.” In particular, Dixon challenges the victim testimony as “unnecessary and prejudicial because it was irrelevant to any disputed fact and merely allowed the prosecutor to present the jury with live victims to create improper sympathy.” Similarly, he argues the photos of three of the testifying victims were irrelevant and “merely allowed the prosecutor to evoke an emotional reaction from the jury.” He also contends the police reports were irrelevant, cumulative, and prejudicial, and that, “individually and synergistically,” admission of the testimony, photos, and police reports “denied [him] due process” because “the improperly admitted evidence undoubtedly emotionally prejudiced the jury against [him].”

But Dixon’s attempt to limit the trial evidence to a dry record consisting of a joint statement or other documentary evidence fails under established law. The prosecutor generally cannot be compelled to accept a stipulation if the effect would be to diminish the persuasiveness and strength of the state’s case. (*Old Chief v. United States* (1997) 519 U.S. 172, 186-187 [“[A] criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it”]; *People v. Waidla* (2000) 22 Cal.4th 690, 723, fn. 5 (*Waidla*) [same]; *People v. Cajina* (2005) 127 Cal.App.4th 929, 931 [same].) Where the defendant claims, as here, that a stipulation is necessary to avoid prejudice, we review for abuse of discretion the trial court’s implicit determination the probative value of the evidence outweighed any prejudicial effect. (*Waidla*, at p. 723, fns. 5 & 6.)

The trial court did not abuse its discretion in admitting the witness testimony. As we observed in upholding an SVPA commitment in *People v. Landau* (2013) 214 Cal.App.4th 1, 22 (*Landau*), “Proof of the predatory nature of the offense is often established by live testimony from those who were victims of or witnesses to the prior incident(s) from years before.” There, “the appellant’s victims testified to incidents from as far back as 1969.” (*Ibid.*) Similarly, the prosecutor here noted that witness testimony “allow[ed] the jury to both hear directly from [and see] the best source, which is the actual victim who went through the experience.”

In showing vividly the *gravity* of Dixon’s offenses, the victims’ testimony describing their experience bolstered the expert’s opinions that Dixon’s pedophilic disorder was entrenched and unlikely to correct itself. This is particularly true where Dixon refused to participate in any counseling or treatment under the Sex Offender Commitment (SOC) program, despite the gravity of his offenses. The probative nature of the testimony is also evident in contrast to defendant’s sanitized version at trial, where he admitted his conduct, but omitted or could not remember certain details.

The prosecutor's experts testified Dixon's decision not to treat his condition increased the likelihood he would reoffend. Dixon testified he did not remember K.D. fighting him or screaming as he tried to molest her, nor that he used a ruse when he molested K.H. Absent their testimony on these and other points, the jury would have had an incomplete picture of Dixon's offenses based on his self-serving account. Based on the victims' testimony, the jury reasonably could conclude that either in suppressing his memory of the incidents and failing to participate in counseling, or in failing to recognize or forgetting important details that would lead a prudent person to treatment, Dixon continued to pose a risk of harm because he failed to address his disorder and failed to grasp the gravity of his offenses.

Contrary to Dixon's claim, the "extent" of this evidence did not render his trial fundamentally unfair or result in a miscarriage of justice. The court limited the number of witnesses to four of almost 20 victims named on the prosecutor's witness list, and their combined testimony was brief — just 23 pages of a transcript spanning more than 1300 pages. There was no error in admitting the testimony.

Dixon protests that the photos depicting three of the testifying victims as they looked around the time of the offenses were irrelevant because "there is no breathing adult that does not absolutely know what an eight year old child looks like," and therefore the photos served only "to get the jurors to react in an emotional way." But Dixon's argument proves too much. That is, assuming his premise is true that all jurors can accurately picture in their mind an eight year old, an ordinary photograph of an eight year old is at most harmless because the jurors may visualize a similar image. Alternately, if Dixon's premise is incorrect, the trial court reasonably could conclude the photographs were appropriate to illustrate defendant's pedophilic interest because he did not prey on the witnesses who appeared before the jury as adults, but when they were children.

Accordingly, Dixon fails to establish the victims' testimony or their photographs were "unrelated to the charged offense" (*People v. Covarrubias* (2015))

236 Cal.App.4th 942, 949) or, more specifically, unrelated to the issue of his SVP commitment. While the evidence described disturbing sexual offenses against children, “[t]he prejudice that section 352 “is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.”” (*People v. Branch* (2001) 91 Cal.App.4th 274, 286.) The court did not err in admitting the testimony and any conceivable error in admitting the photographs was harmless.

Dixon also challenges the admission of six police reports, but solely on the ground they were cumulative of the victims’ testimony or other evidence, and therefore became prejudicial overkill. But Dixon fails to address the trial court’s contrary finding that the reports included details and information absent from other sources. The trial court concluded the reports were at most “slightly cumulative” and that their probative value in providing context to the victims’ testimony and other evidence outweighed any prejudice. Dixon failed to object to the reports on hearsay grounds. Because Dixon objected only on grounds the reports were cumulative, which he fails to demonstrate in the record, his challenge fails. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408 [“conclusory claims of error will fail”]; *People v. Garcia* (1987) 195 Cal.App.3d 191, 198 [“it is defendant’s burden on appeal to affirmatively demonstrate error — it will not be presumed”].)

B. *Sufficiency of the Evidence*

Dixon challenges the sufficiency of the evidence to support the jury’s conclusion he currently poses a danger as an SVP. He acknowledges that a single sound psychiatric opinion may constitute substantial evidence to support an extension of an SVPA commitment (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 490, disapproved on another ground in *Hudec v. Superior Court* (2015) 60 Cal.4th 815, 828, fn. 3), but he argues the two experts’ opinions here were merely rote repetitions of earlier conclusions and insufficient as a matter of law because they were not based on

recent objective evidence. Under the governing standard of review, however, “[c]onflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.” (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

Consequently, an appellant challenging the sufficiency of the evidence “bears an enormous burden.” (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.) The reviewing court must view the record in the light most favorable to the judgment below. (*People v. Elliot* (2005) 37 Cal.4th 453, 466.) The test is whether substantial evidence supports the verdict (*People v. Johnson* (1980) 26 Cal.3d 557, 577; *Jackson v. Virginia* (1979) 443 U.S. 307, 318), not whether the appellate panel is persuaded the defendant is guilty beyond a reasonable doubt. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) Accordingly, we must presume in support of the judgment the existence of facts reasonably drawn by inference from the evidence. (*Ibid.*; see *People v. Stanley* (1995) 10 Cal.4th 764, 792 [same deferential standard of review applies to circumstantial evidence].) The fact that circumstances can be reconciled with a contrary finding does not warrant reversal of the judgment. (*People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

Substantial evidence supported the jury’s finding Dixon continued to suffer from a diagnosed mental disorder making him a danger to others because he likely would engage in sexually violent criminal behavior given the opportunity. (§ 6600, subd. (a)(1); *People v. McKee* (2010) 47 Cal.4th 1172, 1186-1187 (*McKee I*)). Both experts diagnosed Dixon’s condition as pedophilic disorder. Both experts evaluated and interviewed Dixon many times over the course of several years, leading Dixon to charge that their conclusions were simply rote and unpersuasive, but it was the jury’s prerogative to find that their consistency bolstered their diagnosis rather than undermined it.

In addition to their interviews, both experts also relied on Dixon’s criminal history, which he dismisses as too remote and insignificant for lack of recent objective

evidence he presented a current threat. But as another court has explained “‘proof of a recent overt act while the offender is in custody’ is unnecessary.” (*People v. Buffington* (1999) 74 Cal.App.4th 1149, 1161; § 6600, subd. (d).) Dixon’s history of serious violent offenses reasonably informed the jury’s assessment of his present ability to control himself. Based on the frequency of Dixon’s crimes, the number of times he was caught and convicted, yet continued to offend, and the fact that he reoffended even when on parole or probation, Starr concluded Dixon had serious difficulty in controlling himself. Starr explained that the callousness of the offenses and Dixon’s premeditated use of manipulative tactics were factors increasing the risk he would reoffend. Starr also observed that Dixon’s lack of emotional understanding also presented a continuing risk. Korpi similarly believed that the frequency of Dixon’s crimes was significant and opined that Dixon was hypersexual and had no control over himself.

Contrary to Dixon’s assertion on appeal, Starr and Korpi did not solely rely on his prior convictions in concluding he currently suffered from pedophilia and was dangerous and likely to reoffend. They also relied on his equivocal statements while committed, his lack of participation in treatment, and the results of actuarial assessment tools. For example, nearly 20 years after Dixon’s offenses and despite his increasing age, as recently as four to five years before trial, Dixon reported he still masturbated to the thought of young girls.

While Dixon in his recent evaluation denied he masturbated at all, Starr noted that when she pressed him about whether he still had deviant fantasies, he became vague and would only say he “hardly” had any, claiming it had been a “long time,” which the jury was not required to credit. To the contrary, Korpi had diagnosed Dixon as hypersexual and Starr observed it was “highly unusual” that Dixon’s sexual desires and interests actually increased after he underwent chemical treatment. Notably, Dixon still sought a chemical solution as his primary method of treatment, despite its inefficacy and,

indeed, its counterproductivity. The jury reasonably could conclude Dixon's sexual drive was at best changing, and had not transformed into something he could control.

Dixon's refusal to participate in sex offender treatment also presented an ongoing risk factor. Korpi found it significant that while Dixon was willing to engage in other therapy or services, he ignored the treatment program designed to address the basis for his commitment. Based on his interview history with Dixon and other factors, Korpi believed Dixon's rejection of treatment derived from deviant sexual desires Dixon was unwilling to address. Based on Dixon's unwillingness to attend treatment along with the fact that he continued to seek castration, Starr similarly concluded Dixon still had "ongoing concerns" that he did not want to address in treatment. The jury reasonably could reach the same conclusion.

Both experts also assessed Dixon using a number of actuarial tools, including the Static-99 and the Static-2002R, which are commonly used and relied on in predicting the risk of reoffending. (See, e.g., *People v. Paniagua* (2012) 209 Cal.App.4th 499, 504, fn. 5.) Dixon scored in the moderate to high risk range on both tests, and Starr explained Dixon was most similar to "high risk, high needs" offenders because he had previously been committed as an MDSO and had multiple sex offenses. Kopri similarly scored Dixon above the 80th percentile using both the Static-99R and Static-2002R tools, and based on the SRAFFV assessment tool, Dixon scored above the high treatment needs category and just below the high risk category. Starr determined Dixon had a 20 percent risk of reoffending over five years and approximately a 30 percent risk over ten years, which the jury reasonably could conclude presented a grave risk of serious harm. In sum, there was solid and credible evidence from which the jury reasonably could conclude Dixon currently suffered from pedophilia, was dangerous, was likely to reoffend, and required confinement to protect the public. Dixon's challenge therefore fails.

C. *Preserved Arguments*

Dixon also raises several issues to preserve for appeal or habeas review because he acknowledges they “have previously been rejected by the California Supreme Court and numerous other courts of appeal.” For example, he asserts due process required the trial court to instruct the jury that to conclude he was likely to reoffend it had to find expressly that he had “serious difficulty in controlling his behavior.” But as our Supreme Court has explained, “a commitment rendered under the plain language of the SVPA necessarily encompasses a determination of serious difficulty in controlling one’s criminal sexual violence,” as required by *Kansas v. Crane* (2002) 534 U.S. 407, and therefore, “separate instructions or findings on that issue are not constitutionally required” (*People v. Williams* (2003) 31 Cal.4th 757, 777.)

Similarly, the court has rejected challenges that are identical to Dixon’s claims that indeterminate commitment under the SVPA violates ex post facto, double jeopardy, or due process principles. (*McKee I, supra*, 47 Cal.4th at pp. 1188-1196.) As with the holding in *Williams*, we are bound by these conclusions. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Dixon also asserts indeterminate commitment under the SVPA violates equal protection, but we and other courts have uniformly rejected the contention, and we decline to revisit it. (*People v. Gray* (2014) 229 Cal.App.4th 285, 288-292; *Landau, supra*, 214 Cal.App.4th at pp. 47-48; *People v. McDonald* (2013) 214 Cal.App.4th 1367, 1379-1380; *People v. McCloud* (2013) 213 Cal.App.4th 1076, 1079; *People v. McKnight* (2012) 212 Cal.App.4th 860, 863; *People v. McKee* (2012) 207 Cal.App.4th 1325, 1348-1350 (*McKee II*).

III
DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.