In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOSE LUIS PEREZ, et al.,

Defendants and Appellants.

Case No. S248730

Fourth Appellate District Division Two, Case No. E060438
San Bernardino County Superior Court, Case No. FVI901482
The Honorable John M. Tomberlin, Judge

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INTRODUCTION

Defendant Edgar Chavez Navarro was convicted in October 2013 of murder, attempted murder, and other violent crimes.[1] At his trial, Officer Jeffrey Moran of the California Highway Patrol testified that, in his expert opinion, Chavez was an associate of the Sinaloa drug cartel and his crimes were ordered by cartel leaders. Moran based his opinion on his background knowledge of criminal street gangs and on various case-specific facts supported by the testimony of other witnesses with personal knowledge of those facts. Chavez did not object to Moran's testimony on hearsay or Confrontation Clause grounds.

On appeal, after this Court's decision in *People v. Sanchez* (2016) 63 Cal.4th 665, Chavez argued for the first time that Moran's testimony related inadmissible case-specific hearsay for its truth, in violation of the Confrontation Clause of the Sixth Amendment. The Court of Appeal declined to reach the merits of that objection, holding that Chavez had forfeited it by failing to raise it at trial. (Petition for Review, Appx. A ["Opn."] at p. 61.)

This Court should affirm. A defendant forfeits an objection by not raising it at trial unless, at the time of trial, the objection "would have been futile or wholly unsupported by substantive law then in existence." (*People v. Brooks* (2017) 3 Cal.5th 1, 92.) Defendants need not raise objections that would be "fruitless" under existing law, simply because they "might hope that an established rule ... would be changed on appeal." (*People v. Gallardo* (2017) 4 Cal.5th 120, 127.) But they must raise any objection

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[1] Although this case is captioned *People v. Perez*, this Court granted the petition for review filed by defendant Chavez while denying the petition filed by co-defendant Jose Perez. (See *People v. Perez* (2018) 235 Cal.Rptr.3d 324 [mem.].)

they wish to preserve that is not legally foreclosed by binding precedent at the time of trial. That rule serves several important purposes. It affords trial courts, who are most familiar with the facts of each case, the ability to address objections in the first instance; it promotes finality and judicial economy by identifying and narrowing potential legal issues both at trial and for appeal; and, where the law is unsettled, it advances the development of the law.

Here, objections rooted in hearsay law or the Confrontation Clause would not have been futile at the time of Chavez's trial. To be clear, the objections would not have been meritorious, because Moran's testimony (to the extent it was material to Chavez's case) was consistent both with state evidence law and with the constitutional rule later set forth in *Sanchez*. But the objections were legally *available* to Chavez at the time of his trial.

As a matter of state evidence law, long before *Sanchez* was decided, California courts often restricted litigants' ability to present expert "basis" testimony that merely parroted or served as a conduit for inadmissible hearsay, at least where the court determined the evidence was likely to be understood by the jury as offered for its truth. That was true even when courts stated—contrary to this Court's ultimate holding in *Sanchez*—that case-specific factual statements related by an expert as part of the basis for an opinion were not admitted for their truth. On appeal, Chavez has made essentially this same argument: that Moran's testimony improperly parroted inadmissible hearsay. But his failure to object at trial deprived the trial court of any opportunity to consider and address that argument under pre-*Sanchez* law.

As to the Confrontation Clause, three decisions issued in 2012—the year before Chavez's trial—provided an available basis for objection. In *Williams v. Illinois* (2012) 567 U.S. 50, *People v. Lopez* (2012) 55 Cal.4th 569, and *People v. Dungo* (2012) 55 Cal.4th 608, majorities of Justices both

of this Court and of the U.S. Supreme Court reasoned that, at least in certain circumstances, testimony concerning the factual basis for an expert opinion must be considered admitted for its truth. The opinions in these cases clearly called into question whether California precedent to the contrary remained good law. As one court put it, Confrontation Clause law was "in an odd state of flux." (*In re Ruedas* (2018) 23 Cal.App.5th 777, 790.) *Sanchez* put an end to that uncertainty and clarified the law, but an objection on hearsay and Confrontation Clause grounds would not have been legally futile between 2012 and 2016, when this Court decided *Sanchez*. Indeed, many California defendants—including Sanchez, who was tried a year before Chavez—did raise such objections at their trials. Chavez did not; and he should not be permitted to do so for the first time on appeal.

Separately, even under *Sanchez*, Chavez's claims lack merit on the facts of this case. Virtually all of the case-specific factual-basis testimony Chavez cites—for instance, regarding Chavez's membership in the Sinaloa cartel, and the cartel's involvement with the murders—was supported directly by the trial testimony of witnesses with personal knowledge of the relevant facts. *Sanchez* approved this kind of expert opinion premised on fact-witness testimony. To the extent any small amount of Moran's testimony was not independently supported in that way, any error in admitting it was harmless beyond a reasonable doubt. Thus, while this Court should affirm the forfeiture ruling of the Court of Appeal, it may also affirm on the alternative ground that there was no prejudicial error under *Sanchez*.

STATEMENT OF THE CASE

On June 23, 2009, a motorist on U.S. Highway 395 near Victorville encountered Luis Romero, who was bleeding severely from gunshot wounds. (4RT 926-930.) When the police arrived, they discovered that a

trail of Romero's blood led to a black Chevrolet Silverado truck. (4RT 968-976.) There, they found two other men, Alejandro Martin and Eduardo Gomez, shot to death in the back seat. (*Ibid*; 4RT 1002-1004.) Romero had also been shot in the truck and left for dead, but survived and escaped by removing zip ties that his assailants had used to restrain him. (4RT 1004-1005.)

Romero told the police that he had been kidnapped a few days earlier in the city of South Gate, near Los Angeles. (4RT 959, 1029-1030.) He was staying at a house there that belonged to a woman named Flor Iniguez. (5RT 1268.) One day, after Martin and Gomez dropped him off at the house, he was tied up and held at gunpoint by a group of men. (4RT 1034-1036.) The group included Chavez, Jose Perez, Pablo Sandoval, Eduardo Alvarado, Cesar Rodriguez, Sabas Iniguez (Flor's nephew), and other unidentified individuals. (*Ibid*; 5RT 1278-1279, 1291; 6RT 1473-1475; 8RT 2022-2040; 9RT 2130-2153.)

The group forced Romero to call Martin and Gomez (who was Martin's driver) to summon them to the house, where they too were taken captive. (4RT 1036.) All three victims were blindfolded and bound with zip ties and duct tape. (5RT 1307-1308.) The group forced Romero, Martin, and Gomez to make arrangements for deliveries of money and drugs, which the assailants took. (5RT 1309-1310, 1324-1329.) Eventually, Alvarado and Sandoval began to discuss how to "get rid" of the victims. (5RT 1336.) The group made plans to drive them to the desert, intending either to kill them or release them in a remote area. (*Ibid*; 5RT 1362-1363.) When they reached Victorville, the defendants murdered Martin and Gomez and attempted to murder Romero. (4RT 968-976, 1002-1005.)

Chavez was tried in October 2013 in San Bernardino Superior Court along with Sandoval and Perez. (4RT 849-856.) Perez had a separate jury, because certain statements he had made to the police were admitted only in

his trial. (*Ibid*; 5RT 1110-1115, 1243-1251; 6RT 1604-1626.) The trial evidence amply established the guilt of Chavez and the other defendants. Iniguez, for example, provided a detailed account of the events as a cooperating witness in exchange for a reduced sentence. (5RT 1257-1258.)[2] Sandraluz Garcia, Chavez' ex-girlfriend, testified after pleading guilty as an accessory after the fact. (5RT 1199-1200.) DNA evidence and cell phone records tied the defendants to the vehicles used in the murder and to the scene of the crime. (5RT 1123-1154 [DNA evidence]; 6RT 1526-1543 [phone records].)

There was also extensive testimony establishing the cartel-related nature of the crimes. Garcia testified that Chavez told her he worked for the "Chapos" drug cartel in Mexico, specifically with a man called "El Gordo," and that several of the other assailants were involved with the cartel as well. (5RT 1215-1217.) Iniguez testified that he worked with El Gordo to distribute large quantities of drugs to street dealers. (5RT 1274, 1282-1283; 6RT 1505-1513.) Iniguez worked with a cartel leader called "Nacho," who supplied drugs to victims Martin and Romero. (5RT 1269; 6RT 1505-1513.)

Iniguez testified that a man called "Max," another high-ranking cartel member, ordered the robbery and murders of the victims. (6RT 1486-1488, 1516.) Max was in a dispute with Martin over money; Martin had attempted to collect money from Max in Mexico, angering Max. (6RT 1516.) At Max's direction, the group devised a plan to rob and possibly kill Martin, Romero, and Gomez, in order to settle the dispute and send a message to others. (5RT 1276-1278; 6RT 1486-1488, 1516.)

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[2] After testifying, Iniguez was attacked and beaten in prison by a group of seven to nine inmates who called him a "snitch." He is now in protective custody. (5RT 1259-1262; 6RT 1435-1441.)

Officer Moran testified as an expert on street gangs. Based on his own experience and research, he testified regarding the general operation of street gangs and drug cartels. (6RT 1545-1551.) He also testified in particular regarding the operations of the Sinaloa drug cartel, a prominent one operating in Mexico and the United States. (6RT 1552-1556.) According to Moran, Joaquín "El Chapo" Guzmán was the head of the Sinaloa cartel, and Ignacio "Nacho" Coronel was a high-ranking official. (*Ibid.*) Moran testified that in his expert opinion, based on facts he had learned from witnesses with firsthand knowledge of the events of the case, the assailants—including Iniguez, Alvarado, Chavez, Perez, Sandoval, and Rodriguez—were affiliated with the Sinaloa cartel. (6RT 1556, 1561-1568.) He also testified that, in his opinion, the facts of this case showed that those individuals were acting in association with each other and at the direction of cartel leaders. (6RT 1568.) Chavez did not object to Moran's testimony on either hearsay or Confrontation Clause grounds, or seek to have it excluded under section 352 of the Evidence Code on the ground that the jury would be likely to consider out-of-court statements for their truth. (6RT 1555-1568.)

On October 31 and November 1, 2013, the juries convicted Chavez, Sandoval, and Perez of the murders of Martin and Gomez, the attempted murder of Romero, and several counts of kidnapping and street terrorism. (8RT 2022-2041; 9RT 2109-2154.) They found that the murders were committed under six special circumstances: for financial gain; as multiple murders; by means of lying in wait; in the commission of robbery; in the commission of kidnapping; and by active participants of a criminal street gang to further the activities of the gang. (*Ibid.*) They also found firearms enhancements applicable to each count. (*Ibid.*) On January 10, 2014, the trial court sentenced Perez, Chavez, and Sandoval to multiple prison terms, including life without the possibility of parole for each. (9RT 2183-2191.)

In 2016, after trial but before the defendants' appeals were resolved, this Court's opinion in *Sanchez* set forth a new rule governing expert testimony premised on out-of-court statements. The Court noted that under prior California law, an expert's testimony relating out-of-court statements could not be admitted for the truth of those statements, but could be admitted to show the basis for the expert's opinion. (*Sanchez*, *supra*, 63 Cal.4th at p. 679.) Courts retained discretion to exclude testimony about the statements under section 352 of the Evidence Code if the jury would be likely to consider them for their truth. (*Ibid.*) The Court rejected this approach and held that when an 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," and must be treated as having been admitted for their truth for purposes of California evidence law and the Confrontation Clause. (*Id.* at p. 686.)

After *Sanchez* was decided, the Court of Appeal ordered supplemental briefing in this case to address the effect, if any, of that decision. Chavez then argued, for the first time, that Moran's testimony was hearsay and had been presented to the jury in violation of the Confrontation Clause.

The Court of Appeal affirmed most aspects of the defendants' convictions and sentences. In the published portion of its opinion, the court held that the defendants had forfeited their objections to the admission of case-specific hearsay under *Sanchez* by failing to object at trial. (Opn. at p. 61.) It reasoned that "[e]ven though this case was tried before *Sanchez* was decided, previous cases had already indicated that an expert's testimony to hearsay was objectionable," and an objection on that basis would not have been futile within the meaning of the forfeiture rule. (*Id.* at p. 3.) In the unpublished portion of its opinion, the court reversed the gang and financial-gain special circumstances, but otherwise affirmed. (*Ibid.*) This Court granted review to consider the forfeiture question.

ARGUMENT

I. CALIFORNIA LAW REQUIRES A DEFENDANT TO RAISE AN OBJECTION AT TRIAL TO PRESERVE IT FOR APPEAL, UNLESS THE OBJECTION WOULD BE LEGALLY FUTILE

"[A] challenge to the admission of evidence is not preserved for appeal unless a specific and timely objection" is made at trial. (*People v. Anderson* (2001) 25 Cal.4th 543, 586.) This rule "stems from long-standing statutory and common law principles." (*Ibid.*) And it exists for good reason. Failure to raise an objection "'deprives the trial court of the opportunity' to create a record and to 'correct potential error in the first instance.'" (*People v. Romero* (2015) 62 Cal.4th 1, 24.) "The requirement of a contemporaneous and specific objection ... furthers the interests of reliability and finality" (*People v. Holt* (1997) 15 Cal.4th 619, 657), as well as "proper development of the record and judicial economy" (*People v. Trujillo* (2015) 60 Cal.4th 850, 857). And where the law is unsettled, the contemporaneous-objection requirement also helps to advance the development of the law, by encouraging parties to raise unsettled issues for resolution by trial and appellate courts in concrete factual settings.

The rule is subject to a narrow exception: A defendant will not be deemed to have forfeited an objection if at the time of trial the objection "'would have been futile or wholly unsupported by substantive law then in existence.'" (*Brooks*, *supra*, 3 Cal.5th at p. 92, quoting *People v. Welch* (1993) 5 Cal.4th 228, 237.) The exception applies only when, under existing precedent, the "trial court ... would have been bound to reject any argument" the defendant might make. (*Ibid.*) Defendants need not raise "'fruitless objections'" in "'situations where [they] might hope that an established rule ... would be changed on appeal.'" (*Gallardo*, *supra*, 4 Cal.5th at p. 127, quoting *People v. Williams* (1976) 16 Cal.3d 663, 667, fn. 4). But an objection a defendant fails to make at trial is forfeited unless, at

the time of trial, the objection "clearly would have been futile" because "binding" precedent would have "required" the trial court to deny the objection. (*People v. Sandoval* (2007) 41 Cal.4th 825, 837, fn. 4; see also, *e.g.*, *People v. Powell* (2018) 6 Cal.5th 136, 179-180.)[3]

This Court has frequently emphasized the concept of foreseeability in articulating the standard for forfeiture. "[T]he relevant question is whether requiring defense counsel to raise an objection 'would place an unreasonable burden on defendants to anticipate unforeseen changes in the law.'" (*People v. Rangel* (2016) 62 Cal.4th 1192, 1217, quoting *People v. Edwards* (2013) 57 Cal.4th 658, 705; see also, *e.g.*, *Gallardo*, *supra*, 4 Cal.5th at p. 127 [same, quoting *Williams*, *supra*, 16 Cal.3d at p. 667, fn. 4]; *People v. Odom* (1969) 71 Cal.2d 709, 717 [no forfeiture where "[t]he subsequent change in the law ... was both substantial and unforeseeable"]; *People v. Bertoldo* (1978) 77 Cal.App.3d 627, 631 [rejecting defendant's argument that amendment to California constitution after trial "'represented such a substantial change in the former rule as to excuse an objection,'" quoting *People v. DeSantiago* (1969) 71 Cal.2d 18, 23].)

Chavez argues at length that the futility and foreseeability standards are distinct, and this Court should adopt the former rather than the latter. (See AOB 20-28.) But this Court has never suggested there is any difference between the two formulations, and it has used both concepts

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[3] California law differs on this point from that of the federal system and many other states, which follow the "plain error" rule in criminal cases. This rule is in one respect stricter and in one respect more forgiving than California law. The plain error rule requires a defendant to make *all* objections he or she wishes to preserve for appeal—regardless of whether they are futile under existing precedent—but (unlike in California) forfeited objections are still subject to review for error that is "plain" under the law as it exists at the time of appeal. (See, *e.g.*, *Henderson v. United States* (2013) 568 U.S. 266, 271.) This Court has rejected requests to adopt the plain error rule. (See, *e.g.*, *People v. Benavides* (2005) 35 Cal.4th 69, 115.)

alongside each other in articulating the relevant legal test. (See, *e.g.*, *Sandoval*, *supra*, 41 Cal.4th at p. 837, fn. 4; *People v. Chavez* (1980) 26 Cal.3d 334, 350, fn. 5; *Odom*, *supra*, 71 Cal.2d at p. 717.) Futility and foreseeability are two sides of the same coin. Where the law is sufficiently settled that an objection would be futile, any change to that law generally will not be foreseeable.[4] Conversely, where the law is unsettled, it will generally be foreseeable that an issue might ultimately be resolved in the defendant's favor. (Cf. *People v. Hoyos* (2007) 41 Cal.4th 872, 890 [where law is "unsettled," a defendant is "on notice" that the law may be resolved in a particular way, and a judicial decision doing so is "neither 'unexpected' nor 'unforeseeable'"], overruled on other grounds by *People v. McKinnon* (2011) 52 Cal.4th 610, 641.) In that situation an objection would not be futile within the meaning of the forfeiture rule, and the objection is forfeited if not made in the trial court.

Where the governing law at the time of trial is unsettled—either because it has yet to be resolved or because new case law from a higher court has abrogated prior precedent—courts in California and other jurisdictions have held that defendants forfeited objections to evidence, closing arguments, or jury instructions by failing to raise them at trial. For instance, in *People v. Navarette* (2003) 30 Cal.4th 458, this Court held that

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[4] In rare instances, it might in some sense be foreseeable that a binding precedent still in effect at the time of trial is likely to be overruled or modified in the near future. Although this Court has not explicitly determined whether a defendant forfeits an objection by failing to raise it in that situation, it appears that a defendant ordinarily will not be deemed to have forfeited the objection, since the binding precedent would have rendered it futile at the time of trial. (*Post*, pp. 23-24.) Regardless, however, that is not the situation here. The law at the time of Chavez's trial would have permitted objections under both state evidence law and the Confrontation Clause. (*Post*, pp. 25-35.)

the defendant had forfeited an objection by not raising it at trial, even though "[a]t the time of defendant's trial, the law was unsettled." (*Id.* at p. 515; see also, *e.g.*, *People v. Andrade* (2015) 238 Cal.App.4th 1274, 1297 [objection forfeited where the governing law was "unsettled" and "not clear" at the time of trial]; *Cadena v. Pacesetter Corp.* (10th Cir. 2000) 224 F.3d 1203, 1212-1213 [holding that party was not excused from failure to object to jury instruction where case law was unsettled at time of trial but out-of-circuit and district court opinions "foreshadowed" later ruling]; *State v. Holder* (1987) 155 Ariz. 83, 86 [new precedent, while "a significant change in the law," was not "so novel ... as to excuse the defendant's failure to make a timely objection," in light of authorities that existed at time of trial]; *Marrone v. State* (Alaska App. 1982) 653 P.2d 672, 675 [objection forfeited where subsequent change in law was "sufficiently foreshadowed" by existing precedent].)

These cases are in accord with precedent from other contexts in which courts have refused to excuse parties' forfeiture of legal arguments or claims in light of unsettled law. As Judge Posner observed, where the law is unsettled, "a foreseeable change in law is (if it comes to pass) at best a weak ground for relieving a party of the consequences" of forfeiture. (*Hernandez v. Cowan* (7th Cir. 2000) 200 F.3d 995, 997.) In *Engle v. Isaac* (1982) 456 U.S. 107, for example, the Supreme Court rejected a federal habeas petitioner's argument that the supposed novelty of a constitutional claim constituted cause for his counsel's failure to object at trial on that ground. (*Id.* at p. 133.) The Court reasoned that existing law had "laid the basis for the[] constitutional claim," so that it was "far from unknown at the time of [defendants'] trials." (*Id.* at p. 131; see also, *e.g.*, *Thompson v. State* (Alaska 1972) 496 P.2d 651, 655-656 [refusing to excuse failure to raise argument where, at time of trial, relevant legal principle had been embraced by a majority of the Justices on the state supreme court, albeit in

separate opinions]; *Smiley v. Citibank (S.D.), N.A.* (C.D.Cal. 1993) 863 F.Supp. 1156, 1159 & fn. 5 [refusing to excuse party's failure to raise ground for removal to federal court in its notice of removal because "the fact that the law in this area is and was unsettled does not give Citibank the right to sit on its ... claim until some other court has decided the issue in its favor"].)

In a similar vein, this Court routinely rejects defendants' arguments that their failure to object at trial should be excused on futility grounds because of the trial court's prior evidentiary rulings. In these cases, this Court has reasoned that "[b]ecause an objection would not necessarily have been futile," the defendant's failure to object "forfeited the issue for appeal." (*People v. Wilson* (2008) 44 Cal.4th 758, 793; see also, *e.g.*, *People v. Linton* (2013) 56 Cal.4th 1146, 1206 ["Nothing suggests an objection and request for admonition would have been futile, given that defense counsel made other objections, some of which the trial court sustained."]; *People v. Blacksher* (2011) 52 Cal.4th 769, 823; *People v. Thompson* (2010) 49 Cal.4th 79, 130; *People v. Bonilla* (2007) 41 Cal.4th 313, 355-356.) Just as the defendants in these cases were obligated to raise their objections at trial because the grounds for them were legally available (that is, reasonably foreseeable and not foreclosed by existing law) at the time, here the state of the law at trial made it at least possible that an objection under state evidence law or the Confrontation Clause would succeed. Chavez was therefore required to make those objections in order to preserve them for appeal.

Chavez cites several cases in which this Court has excused a defendant's failure to raise an objection (AOB 21-25), but none of those cases involved a situation, like this one, in which the objection in question was legally available at the time of trial:

- In *People v. Kitchens* (1956) 46 Cal.2d 260, this Court held that a defendant did not forfeit an objection that unlawfully obtained evidence should have been excluded, because at the time of trial "the trial court was bound by the earlier decisions of this court that illegally obtained evidence was admissible." (*Id.* at p. 262.)
- In *People v. DeSantiago* (*supra*, 71 Cal.2d 18), this Court held that a defendant did not forfeit an objection that evidence obtained in violation of a knock-and-notice statute should be excluded. The Court reasoned that before its ruling in *People v. Gastelo* (1967) 67 Cal.2d 586, "competent and knowledgeable defense counsel ... could only have concluded" that no such objection was available, while *Gastelo*, which was decided after the defendant's trial, "held precisely to the contrary." (*DeSantiago*, *supra*, 71 Cal.2d at p. 27.)
- In *People v. Black* (2007) 41 Cal.4th 799, this Court held that the U.S. Supreme Court's ruling in *Blakely v. Washington* (2004) 542 U.S. 296, had "'worked a sea change in the body of sentencing law'" such that "competent and knowledgeable counsel" could not "reasonably ... have been expected to have anticipated" the grounds for the defendant's objection at a pre-*Blakely* trial. (*Black*, *supra*, 41 Cal.4th at p. 812.)
- In *People v. Edwards* (*supra*, 57 Cal.4th 658) and *People v. Rangel* (*supra*, 62 Cal.4th 1192), this Court held that a defendant did not forfeit an objection based on *Crawford v. Washington* (2004) 541 U.S. 36 by failing to raise it at a trial that occurred before that decision, because "'the *Crawford* rule is flatly inconsistent with the prior governing precedent ...

which *Crawford* overruled.'" (*Rangel*, *supra*, 62 Cal.4th at p. 1215, quoting *Whorton v. Bockting* (2007) 549 U.S. 406, 416.)

- In *People v. Gallardo* (*supra*, 4 Cal.5th 120), this Court determined that it "need not resolve" whether the defendant had forfeited his objection, because the People had forfeited the ability to rely on the forfeiture bar by not raising it in the Court of Appeal. (*Id.* at p. 128.) Moreover, "at the time defendant was sentenced, California law allowed" the practice to which the defendant later sought to object. (*Id.* at pp. 127-128.)

In all of these cases, the law at the time of trial squarely foreclosed the objection at issue, so that raising it would have been legally futile. That is consistent with the rule, discussed above, that where an objection would *not* be legally futile under the law as it exists at the time of trial, the defendant is obligated to make the objection at trial in order for it to remain available on appeal.

II. AN OBJECTION TO THE EXPERT TESTIMONY IN THIS CASE ON HEARSAY OR CONFRONTATION CLAUSE GROUNDS WOULD NOT HAVE BEEN LEGALLY FUTILE

Chavez's argument for reversal of his conviction is that Officer Moran related to the jury case-specific, testimonial out-of-court statements of other individuals to prove the truth of those statements, in violation of the rule set forth in *Sanchez*. He argues that Moran's testimony improperly "conveyed hearsay to jurors about the cartel's activities and purposes." (AOB 8.) But at the time of Chavez's trial in October 2013, this argument could have been the basis for an objection under either California evidence law or the Confrontation Clause of the Sixth Amendment. Chavez could have objected under the Evidence Code because California courts often excluded case-specific expert hearsay testimony if the courts agreed that