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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

KORINA SANCHEZ,

Defendant and Appellant.

B267691

(Los Angeles County  
Super. Ct. No. NA093873)

APPEAL from a judgment of the Superior Court of Los Angeles County. Halim Dhanidina, Judge. Affirmed, as modified.

Deborah L. Hawkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Korina Sanchez appeals from her conviction of the first-degree murder of her boyfriend, Leonardo Islas. She contends the trial court erred in excluding evidence, the prosecutor committed misconduct in argument to the jury, and her pretrial custody credits were miscalculated. We modify her custody credits and otherwise affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant shot her boyfriend in the head, killing him, and left his body to decompose. She later confessed the crime to police, admitting that she shot the victim while he slept and that she had premeditated the shooting. At trial, however, she suggested a different scenario, testifying that she had shot Islas in self-defense, as he was awake and pointing a loaded gun at her at the time.

#### **1. *The Killing***

Defendant began dating Islas in April 2012; they moved in together in August of that year. Defendant killed Islas, in their apartment, in the early morning hours of Friday, October 26, 2012.

Defendant and Islas had planned to attend a party to celebrate St. Jude the following Sunday. The party was planned by Islas, and was to be held at defendant's step-father's workplace.

On Thursday, October 25, defendant told her mother, on the phone, that the St. Jude party was cancelled. Defendant told her mother that she and Islas would not host the party because they were going to go away, to San Francisco or Arizona, instead. Islas was still alive when defendant spoke to her mother; defendant's mother heard his voice in the background of the call.

Later that night, at 2:00 or 3:00 a.m., defendant shot Islas in the head, with a .45 caliber semi-automatic pistol kept in their home. His body was subsequently discovered on the bed. Islas had a single gunshot wound to his right ear. The bullet travelled from right to left and front to back. Because of the state of decomposition at the time the body was found, the medical examiner could not opine as to whether the path of travel was

upward or downward, nor could he testify as to how close the gun had been to the victim's head when fired. The physical evidence was consistent with defendant being shot while lying in bed, but the medical examiner could not testify with any degree of certainty that this was, in fact, what had happened.

2. *Defendant's Post-Shooting Conduct*

After shooting Islas, defendant stayed in the apartment for about an hour, gathering her clothes and other belongings – including the murder weapon and a second handgun. She left in a Dodge truck which was owned by her mother, but used by Islas. When she left the apartment, she left the television on and also left a portable cooler set to 62 degrees, keeping the bedroom cold.

Defendant stayed at a motel for the remainder of the night. The next day, Friday the 26th, defendant rented an apartment on a street named Park Place. Defendant applied for the apartment using a fake ID, in the name of Princessa Cortez.

Defendant remained at liberty until November 4th. During the intervening week, she: (1) celebrated Halloween, as illustrated by a photo of her in a cat suit costume in the early morning hours of November 1; (2) surreptitiously returned to the apartment she shared with Islas in order to move her car, so that it would not be ticketed; and (3) performed internet searches on fingerprints, DNA, and good places to hide guns.

3. *Defendant's Interviews with Police*

Islas's body was discovered on the morning of November 1, 2012. Police put a "want" out on the Dodge truck in which defendant drove off after the killing. They also wanted to locate defendant, although she was not a suspect at that time.

On November 4, 2012, police stopped the Dodge truck with defendant driving. Defendant told police she was Princessa Cortez. Police conducted multiple interviews with defendant that day and the next. In the first interview, defendant claimed to be Princessa Cortez, said she did not know defendant, and claimed a man she did not know had loaned her the truck. As the interview proceeded, defendant admitted that she knew Korina Sanchez (i.e., defendant), who was her cousin, but that Korina did not give

her the truck. Shortly thereafter, defendant agreed that Korina had given her the truck and told her that police were looking for it.

In her second interview, police told defendant that when they ran the name “Princessa Cortez” in the computer, “Korina Sanchez” came up. Faced with this information, defendant continued to deny being Korina, but claimed that “We’re almost twins.” Defendant volunteered to find Korina for police, although she could not name a place where Korina might be, and said she would have to look for Korina.

In her third interview, defendant admitted that she was, in fact, Korina Sanchez. She admitted to having been on the run since October 26th, but did not tell police about the Park Place apartment, claiming that she had been sleeping in the truck.

In her fourth interview, defendant told police that she and Islas had argued and she left the apartment. When she returned, she was followed by two men, looking for Islas. One grabbed her by the hair, shot Islas, and left.

In her final interview, defendant admitted killing Islas. Her demeanor, which had been remorseless earlier, changed, and she began to break down and cry. She admitted that she shot Islas while he slept, and had been worried that he would wake and know that she was trying to kill him. At one point, she racked the gun and the noise nearly woke Islas. She hid the gun under the pillow, saw that Islas was sleeping, and was undecided as to whether she should kill him. She decided to do so, and shot him in the head. Although defendant admitted premeditated murder, she continued to lie about where she had lived after the murder, and falsely told police she had thrown the gun away.

#### 4. *The Guns*

Defendant had not thrown away the murder weapon. She had taken two handguns from the apartment – the .45 with which she had shot Islas and a .38.

Police discovered both guns at the Park Place apartment. Defendant did not know police had found the weapons. The Dodge truck was eventually returned to defendant’s mother, with

its keys. On the keyring was a key to the Park Place apartment. Defendant telephoned her mother, from jail, and told her to give the key and \$200 to a woman who would pick up the key. Defendant's mother did so. Thereafter, someone entered the Park Place apartment and cut a hole in the back of the bathroom shelves, in an apparent attempt to find the guns the police had already recovered from the bathroom shelves.

5. *The Charges*

Defendant was charged by information with one count of murder. (Pen. Code, § 187.)<sup>1</sup> It was alleged that she personally discharged a firearm causing death. (§ 2022.53, subd. (b).) It was further alleged that she had suffered a prior serious felony conviction, both within the meaning of the "three strikes law" (§ 667, subds. (b)-(i)), and section 667, subdivision (a)(1). Defendant pleaded not guilty and proceeded to jury trial.

6. *Defense*

At trial, defendant pursued a theory of self-defense, or, in the alternative, imperfect self-defense. Defendant testified that, although Islas had told others that he had a legitimate job, he actually was in the business of robbing drug dealers for their drugs. Defendant testified that Islas taught her to use a gun for the purpose of assisting in this activity, and that she took part in two robberies of drug dealers with Islas.

According to defendant, the St. Jude party which defendant had planned had an ulterior motive. Islas had intended to invite potential victims to the party and to rob them of their drugs at the party. Defendant learned of Islas's plan on Thursday, October 25th, and was against it. Defendant believed a robbery at her step-father's workplace would put her family at risk for revenge from the robbery victims. Defendant cancelled the St. Jude party because she did not want her family in danger.

Although defendant was upset that Islas wanted to do a robbery at her family's party, Islas was not angry with defendant

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

for cancelling the party. He did, however, continue his attempts to convince her to go forward with the plan. In the course of their ongoing discussion, Islas was sitting on the bed. He took the .38 from the windowsill and pointed it at defendant, who was standing near the foot of the bed. Defendant responded by grabbing the .45 from the dresser and pointing it at Islas. At this point, defendant did not believe Islas would shoot her. However, Islas racked the gun, ejecting a round and loading another. Defendant now feared for her life. She shot Islas without thinking.

There was a great deal of evidence – both in terms of defendant’s admissions to police and physical evidence – which required explanation in order to be reconciled with the self-defense theory offered at trial. As to her admission to police, defendant testified that, by the time she admitted the murder on the second day of questioning, she had not slept or eaten and was cold, frustrated, and “delusional.” She testified that she told the police what she thought they wanted to hear, but she did not think they would actually believe her. As to the physical evidence, an unfired bullet for the .38 was discovered to the *left* of where Islas had allegedly been sitting, yet the .38 ejects to the right. Moreover, Islas had been shot in the right ear. Defendant therefore testified that when Islas racked the gun, he had twisted it 90 degrees to the left, and that, when she shot him, defendant was looking down at the gun.

In order to rebut the suggestion that her self-defense theory was recently fabricated, defendant relied on a statement she made to her mother, when her mother had asked to see her during police questioning. Defendant told her mother she was okay; her mother stated, “But not – trying to hurt you, or – ?” Defendant overlapped and stated, “Because – no. But it could’ve been me also. Or – or him – or – .” While one interpretation of this ambiguous conversation is that defendant was claiming it came down to her or Islas, another is that she told her mother that Islas had not been trying to hurt her.

7. *Verdict, Sentence and Appeal*

The jury found defendant guilty as charged. The murder was found to be in the first degree; the jury had been instructed on both premeditation and lying in wait as theories for first-degree murder. Defendant admitted her prior felony conviction.

Defendant was sentenced to 25 years to life in prison, doubled for the strike, plus 25 years to life for the firearm enhancement, and an additional five years for the prior serious felony enhancement. She was given 1074 actual days of presentence custody credit. Defendant filed a timely notice of appeal.

**DISCUSSION**

On appeal, defendant raises three challenges. First, she contests the exclusion of a line of questioning she attempted to pursue in cross-examination of the investigating officer. Second, she contends the prosecutor engaged in misconduct in argument to the jury. Third, she challenges the calculation of her custody credits.

1. *There Was No Evidentiary Error*

Defendant's defense was based on Islas allegedly pointing a gun at her in the course of an argument regarding whether to reschedule the cancelled St. Jude party so Islas could rob drug dealers. Defendant offered evidence to confirm her testimony that defendant was, in fact, engaged in the practice of robbing drug dealers. This consisted of some photographs of defendant, Islas, and some friends posing in front of large quantities of cash and another photograph with what appeared to be a wrapped kilo of cocaine. In addition, when questioned by police, defendant had told them that she and Islas were involved in selling drugs. The prosecution disputed this evidence, offering an innocent explanation for the money in the photographs, and noting the absence of drugs, baggies, scales, or other evidence of drug sales.

In order to further establish that Islas was, in fact, in the business of robbing drug dealers, defense counsel asked Detective Isidro Rodriguez, the investigating officer, if he had asked Islas's neighbor and friend, Ramon, whether or not Islas was involved in

selling drugs. The prosecutor's objection to the question was overruled, and Detective Rodriguez admitted that he had asked Ramon if Islas was involved in selling drugs. Detective Rodriguez further testified that he had asked Ramon if Islas was involved in any illegal activity. No testimony regarding Ramon's answers was elicited.

Defense counsel then questioned Detective Rodriguez about the questions he asked an unidentified individual named Rojelio, whom Detective Rodriguez interviewed by telephone. Defense counsel asked if Detective Rodriguez asked Rojelio about "Bajadores." At the preliminary hearing, Detective Rodriguez had testified that the term had come up when he had interviewed defendant, and that he "might have" used it when talking to Ramon. It is a Spanish word for "people who rob narcotics dealers or people who are doing illegal activities." When defense counsel offered the evidence at trial, the prosecutor objected on hearsay and relevance grounds.

At sidebar, the trial court asked for an offer of proof. Defense counsel stated that she was not asking for hearsay because she only wanted to elicit testimony that Detective Rodriguez had asked a question about Bajadores. When asked the relevance of that testimony, counsel simply explained that it "will go to the defense." The trial court concluded that there is no relevance to the questions the detective asked someone who is not a testifying witness, and sustained the objection.

The next day, defense counsel sought to reopen the issue of whether Detective Rodriguez had questioned Rojelio about Bajadores. Defense counsel explained that she was not seeking Rojelio's answer; she simply thought it relevant that Detective Rodriguez had asked the question and used the word "Bajadores." When the court again questioned the relevance of Detective Rodriguez having asked the question, defense counsel stated, "Because it [goes] to his investigation into drugs, as well as he interviewed or talked to Ramon about drugs and he talked to my client about drugs. Just the fact that he's inquiring to different



individuals I think it is relevant.” The objection was again sustained.

After the jury verdict, defendant against raised the issue in a motion for new trial, arguing that excluding the evidence denied defendant a fair trial. The motion was denied.

Our analysis begins with the premise that only relevant evidence is admissible. Relevant evidence “means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) Like the trial court, we fail to see the relevance of the (presumed) fact that Detective Rodriguez asked an unknown person about Bajadores. That Detective Rodriguez may have asked someone about Bajadores has no tendency to establish that Islas actually was a Bajadore. No police witness was asked, for example, if they were investigating Islas for being a Bajadore.

Moreover, there is a misconception in defendant’s appellate argument as to the significance of evidence that Islas was in the business of robbing drug dealers. Defendant argues that if Islas had a legitimate job, this supports the prosecution’s theory of cold-blooded murder; but if Islas actually robbed drug dealers, it proves self-defense or imperfect self-defense, *even if* defendant shot Islas when he was asleep. Defendant suggests that she “waited for him to fall asleep to protect herself and her family from the ‘rip-off’ that would endanger them.” But both self-defense and imperfect self-defense require a fear of imminent harm. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1066; *People v. Trujeque* (2015) 61 Cal.4th 227, 270.) “To satisfy the imminence requirement, ‘[f]ear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant’s fear must be of imminent danger to life or great bodily injury. “‘[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with.*’ . . .” Put simply, the trier of fact must find an *actual* fear of an *imminent* harm.’ [Citation.]” (*Trujeque*, at

pp. 270-271.) Although, for imperfect self-defense, an unreasonable belief that harm was imminent will suffice, there still must be evidence of defendant's actual belief that harm was imminent. (*Nguyen*, at p. 1066.)

Defendant's testimony of actual fear was limited only to the circumstance of if Islas was awake and pointing a loaded gun at her. If Islas had been asleep, there was no such evidence. Indeed, the St. Jude party had been cancelled, and any possible future risk was based on the uncertain premise that Islas would succeed in rescheduling the party sometime in the future. While defendant did not want that to occur, she never testified that she actually believed (even if unreasonably) that the possibility presented an imminent danger requiring instant action. In other words, if Islas was a Bajadore and defendant shot him in his sleep to escape a future risk he presented to her family, it was murder, not self-defense. Defendant's defense depended solely on Islas being awake and threatening her with a gun. Islas's alleged occupation only provided context for the alleged argument leading to that threat; it would not alone support the defense.

Whether Islas actually robbed drug dealers was only marginally relevant to a disputed fact of consequence to the determination of the action – whether defendant and Islas had actually argued that night. Moreover, whether Detective Rodriguez questioned an unknown individual about Bajadores was not relevant to whether Islas actually robbed drug dealers. As the proffered evidence had no relevance, the trial court did not err in sustaining objections to attempts to elicit it.

2. *There was No Prejudicial Prosecutorial Misconduct*

Defendant next charges that the prosecutor committed misconduct in her argument to the jury; specifically, that she argued defense counsel was complicit in defendant's fabrication of the self-defense story and knowingly elicited false statements.

In her initial argument to the jury, the prosecutor argued that defendant, not her counsel, had made up the self-defense story. She argued that the true facts were what defendant confessed to police and “[n]ot something that Miss Sanchez had

three years to think about and invent.” She again stated that self-defense was “the story the defendant invented yesterday.”

After defense counsel argued, the prosecutor, in rebuttal, again made reference to “the new story that Miss Sanchez gave to you” and suggested that defense counsel was “stuck with the same facts, same evidence her client created. All that evidence that you have in that box there, she created that. The defendant did.” However, in the course of her argument, she implied that defense counsel knew defendant had fabricated the story and helped defendant deliver “scripted” testimony. She suggested that defense counsel had to ask leading questions of defendant, rather than open-ended ones, because “when there is a script and your witness is not following the script to help them out, you throw them a line. It’s like a kid in the play, they forgot your line. Somebody on the side is going, here’s your line, there’s your line. That’s what happened. [¶] So Miss Sanchez invented this story three years after her murder. Defense attorney fed her her lines.”

The prosecutor went on to illustrate her point with an example. “‘Miss Sanchez, is there a reason why you learned how to use a weapon? That Mr. Islas taught you how to use a weapon?’ ‘Yeah, for fun.’ Remember that? That wasn’t the script though. But [defense counsel] is such a good attorney, she didn’t go right back to it. She’s really good. She went onto something else, then she came back with ‘Mr. Islas, he taught you how to use a gun for protection, didn’t he?’ Remember that? Because it’s a script. She wasn’t following it. [¶] Because when you’re telling a story and it’s not based on something real, how can you remember the details? You can practice and practice and practice it, but it’s not like you can go back in your head and picture it in your mind how it happened, then you say it happened because. It never happened that way. You have to get fed the line. [¶] That’s what happened over and over and over again. [Defense counsel] got to throw her the line. All she had to say was yes, yes, yes, yes, yes. [¶] So that was on direct when it was [defense counsel’s] witness. What happened when I asked

her questions on cross? Every time I tried to ask her a detailed question about this ridiculous story, she couldn't tell us anything . . . .”

Defense counsel interposed no objection and sought no admonition.

A prosecutor commits misconduct if she attacks the integrity of defense counsel, or casts aspersions on defense counsel. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1337 (*Seumanu*)). “[A]lthough a prosecutor is accorded wide latitude in attacking the defense’s case [citation], for a prosecutor to claim that defense counsel does not believe in his or her client’s innocence is improper [citations].” (*Id.* at p. 1337.) “A prosecutor may vigorously challenge the validity of any defense, and can characterize the testimony of a witness, including the defendant, as untruthful, but to state or imply that defense counsel has fabricated a defense is generally misconduct. [Citations.]” (*Ibid.*) Arguing that a defense was a sham unsupported by the facts is permissible; arguing that defense counsel *put forward* a sham is not, as it improperly implies that defense counsel was personally dishonest. (*Id.* at pp. 1337-1338.)

The Attorney General first argues that any claim of misconduct was forfeited by the failure to object. “It is well settled that making a timely and specific objection at trial, and requesting the jury be admonished (if jury is not waived), is a necessary prerequisite to preserve a claim of prosecutorial misconduct for appeal. [Citations.] ‘The primary purpose of the requirement that a defendant object at trial to argument constituting prosecutorial misconduct is to give the trial court an opportunity, through admonition of the jury, to correct any error and mitigate any prejudice.’ [Citation.]” (*Seumanu, supra*, 61 Cal.4th at p. 1328.) There was no objection. We therefore agree that the claim was forfeited.

Defendant then argues that, if we conclude the claim was forfeited, her counsel rendered ineffective assistance. We disagree. “To establish ineffective assistance of counsel, ‘ ‘ ‘a defendant must first show counsel’s performance was “deficient”

because his “representation fell below an objective standard of reasonableness . . . under prevailing professional norms.” ’ ’ ’ [Citation.] ‘ “[T]here is a ‘strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.’ ” ’ [Citation.] ‘ In the usual case, where counsel’s trial tactics or strategic reasons for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel’s acts or omissions.’ [Citation.] For this reason, claims of ineffective assistance of counsel ‘are ordinarily best raised and reviewed on habeas corpus.’ [Citation.]” (*People v. Nguyen, supra*, 61 Cal.4th at p. 1051.) There may well have been a tactical or strategic reason for defense counsel’s failure to object. Any objection likely would have resulted in the prosecutor recasting her argument to emphasize that it was defendant, not defense counsel, who had made up the self-defense story. Absolving herself of any adverse inference at the risk of emphasizing defendant’s own falsehoods may have been a strategic choice counsel was unwilling to take.

In any event, even if we consider the prosecutorial misconduct claim on the merits, there was no prejudicial error. To be sure, some of the prosecutor’s statements improperly implied that defense counsel knew that her client was falsely testifying. But, even under the harmless beyond a reasonable doubt standard of federal constitutional error (*People v. Williams* (2013) 58 Cal.4th 197, 274), the prosecutor’s statements were not prejudicial. The evidence of defendant’s guilt was overwhelming. Defendant had shot Islas in the head, left his corpse to rot, and went off to live her new life, under a false name, while researching how to best hide the evidence against her. When caught by police, after showing herself to be an unconvincing liar incapable of reasonably answering follow-up questions, she ultimately broke down and confessed to the cold-blooded killing. She thereafter paid someone to take possession of the guns which she knew would establish her guilt, unaware that the police had already obtained the murder weapon and matched it to the bullet

in Islas's head. At trial, realizing she could not deny the shooting, defendant offered internally inconsistent and factually implausible testimony in order to establish that she killed Islas in self-defense when he allegedly pointed a gun at her – despite never having mentioned this theory to police. Her testimony was simply not credible and the jury disbelieved it. In fact, the jury found the murder to be in the first degree, meaning the jurors concluded beyond a reasonable doubt that defendant had premeditated the killing or had lain in wait – both circumstances which are wholly inconsistent with self-defense.

On appeal, defendant suggests it was a much closer case, but her appellate argument again misperceives the imminence requirement of imperfect self-defense. Defendant posits that the cancellation of the St. Jude party “did not establish definitively that the threat to [defendant] and her family from [Islas] had forever passed. He had been willing to put her family at risk on October . . . 28. There was nothing to prevent him from doing so again, . . . .” But if defendant killed Islas in his sleep because she believed Islas might potentially put her family at risk at some point in the future, there was no belief in imminent harm and no self-defense, imperfect or otherwise. Defendant argues that she “decided to kill [Islas] on October 26, 2012 . . . to protect her family.” Such a decision, based on a possible future risk and not a fear of imminent harm, was necessarily murder. The prosecutor's inartful closing argument could not have been prejudicial, given the strong evidence of defendant's guilt.

3. *Defendant's Conduct Credits Must Be Modified*

Defendant was awarded 1074 days of actual presentence conduct credit. Defendant argues she was actually entitled to 1076 days. The Attorney General concedes the error, and we agree with parties' calculation.

**DISPOSITION**

Defendant's actual presentence credit is increased from 1074 to 1076 days. We direct the trial court to prepare an amended abstract of judgment and forward a certified copy of the

amended abstract to the Department of Corrections. In all other respects, we affirm the judgment.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.