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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. TROY M. HILL, Defendant and Appellant.	B289458 (Los Angeles County Super. Ct. No. LA079202)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael V. Jesic, Judge. Affirmed with directions.

David L. Annicchiarico, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Troy M. Hill of one count of first degree murder and found he intentionally killed the victim by means of lying in wait and personally used a deadly weapon. (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(15), 12022, subd. (b)(1); all undesignated statutory references will be to the Penal Code.) The trial court sentenced him to state prison for life without the possibility of parole, plus one year for the use of a weapon. Hill contends: (1) His trial counsel rendered ineffective assistance by failing to (a) object to hearsay evidence, (b) impeach a prosecution witness, or (c) request a jury instruction on provocation; (2) the prosecutor violated his confrontation and due process rights by injecting an accomplice's statements into the trial and committed misconduct by appealing to the jurors' sympathy; (3) the court erred by admitting hearsay, by excluding a statement by the accomplice, and by failing to instruct on manslaughter; and (4) the court erred in assessing a $5,000 parole revocation restitution fine in this non-parole case.

We agree with the last point but reject the others, and thus affirm the conviction with directions to strike the parole revocation fine.

BACKGROUND

In September 2014, Hill and his girlfriend, Shannon Lafon, lived with Lafon's mother, Trudy Douglas, in her one bedroom apartment in Van Nuys.

On the afternoon of September 4, 2014, Carlos Guzman, a neighbor, witnessed Douglas, who seemed to fear Hill and Lafon, say to them, "please get out of my life. I don't want to have you in my apartment any longer." Hill and Lafon told Douglas to "just shut up," and said they would not leave.

Later that evening Lafon took a home pregnancy test that was positive.

Early the next morning Hill and Lafon killed Douglas with an axe handle while she slept and put her body in the bathtub. They threw her now-bloody mattress into a nearby dumpster and the axe handle onto a roof, placed air fresheners throughout the apartment, turned the air conditioner on high, gathered their belongings and Douglas's flat screen television, lit scented candles in the kitchen, and left. Douglas's body was discovered three days later.

Hill confessed to the murder during a police interview. Also during the interview he asked detectives, "What would it take for me to make sure [Lafon] goes home free?" and said, "no matter what it takes me to do to make sure she goes home, I'll do it," and "I'll cop out to whatever you guys want me to cop out to . . . [i]f you let her go home." He also said, "Sorry to hear about the 24-year-old officer that got in a wreck." (The record does not reflect to which officer he was referring.)

At trial, Guzman testified that hours before Douglas was killed she told Hill to get out of her life.

Los Angeles Police Detectives John Dunlop and Matthew Kohl testified about their investigation of the murder. Dunlop stated he looked for Douglas's mattress in the dumpsters in the area, but they had been emptied. Kohl stated that after they arrested Lafon and Hill, Lafon told them the axe handle was on a rooftop one or two buildings down from Douglas's apartment.

A video recording of Hill's police interview was played for the jury. In it, Dunlop told Hill, "You know [Lafon] told us what happened, right? [¶] . . . [¶] [T]he hard part for you is going to be your girlfriend told us what happened. . . . [W]e recovered the

stick from the top of the building, that you're on video throwing. Um, the mattress from the dump." When Dunlop asked Hill to tell him what happened, Hill said, "Her mom was asleep in the bed. I hit her in the head with a stick. [¶] . . . [¶] Okay? I put her mom in the bathtub. [¶] . . . [¶] Okay? I got rid of the mattress and everything else."

When Dunlop asked why Hill killed a "52-year-old little frail lady," Hill responded, " 'Cause she threatened to kill [Lafon]. She had . . . one of those box cutters. Saying for her to get out of the house . . . . Threatening to kill her. She kept waving that fucking knife at her. So I did what I had to do."

Detective Dunlop said that Lafon had informed police that Douglas was "sleeping on the bed next to [Lafon] when [Hill] bashed her . . . in the face."

Hill responded, "Earlier that day, earlier that day she was threatening Shannon."

Detective Dunlop said, "So you waited for her to go to sleep," to which Hill responded, "It's the only option I had. We had no place else to go."

Hill said that Douglas was abusive and had given him a black eye, that she had attacked him with a box cutter, and that he was sick of her swinging a stick at him every day. When Detective Dunlop pointed out that Hill's eye was "not black now," Hill said, "[I]t was a couple of weeks ago."

Hill admitted he lit the scented candles, used air freshener, and turned on the air conditioner so the apartment would not smell, and "hopefully" give him and Lafon "a couple of days' head start."

Detective Kohl testified police recovered the axe handle after the interview.

Hill testified that Lafon, not he, killed Douglas in what she had claimed was self-defense, and told him she would kill herself and his unborn child if he told anyone.

Lafon, who had been convicted of second degree murder in a plea deal, refused to testify at Hill's trial, invoking her Fifth Amendment right not to implicate herself.

The jury convicted Hill and the court sentenced him to life without the possibility of parole.

DISCUSSION

A. Lafon's Statement Incriminating Hill

In the video of Hill's police confession, which was played for the jury, Detective Dunlop told Hill that police had recovered the murder weapon and bloody mattress, and they had video of him throwing the weapon onto a roof, all of which was untrue: the murder weapon was not recovered until after the interview, the mattress was never found, and there was no such video. Dunlop testified he used these statements as a ruse to induce Hill to confess.

Later in the recording, Hill said he killed Douglas to defend Lafon against Douglas's attack with a box cutter.

Detective Dunlop then said, "[Lafon] told us she was laying on the couch watching TV, with her mom sleeping on the bed next to her, when you bashed her mom in the face."

Hill's attorney offered no objection to the statement, and it played no part in the prosecution's closing argument.

Hill argues that Lafon's statement as relayed by Dunlop during Hill's police interview and played for the jury at trial—that Douglas was "sleeping on the bed when [Hill] bashed her . . . in the face"—was inadmissible hearsay, and counsel's failure to object to it, move for its exclusion before trial, or seek a jury

admonishment constituted ineffective assistance, a violation of his confrontation rights. He argues the statement was the only evidence supporting the jury's lying-in-wait finding.

" 'The lying-in-wait special circumstance requires "an intentional murder, committed under circumstances which include (1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) immediately thereafter, a surprise attack on an unsuspecting victim from a position of advantage." ' " (*People v. Moon* (2005) 37 Cal.4th 1, 22.) " '[T]he lying in wait need not continue for any particular period of time provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.' " (*Id*. at p. 23.)

"To prevail on a claim of ineffective assistance of counsel, a defendant ' "must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice." ' [Citation.] A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. [Citation.] Tactical errors are generally not deemed reversible, and counsel's decisionmaking must be evaluated in the context of the available facts. [Citation.] To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation. [Citation.] Moreover, prejudice must be affirmatively proved; the record must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient

to undermine confidence in the outcome.' " (*People v. Maury* (2003) 30 Cal.4th 342, 389.)

Because the record fails to disclose why Hill's counsel offered no objection to Dunlop's retelling of Lafon's statement, and sought no admonishment, and because she was never asked her reasoning, we will reverse the judgment only if there could be no satisfactory explanation for counsel's choices.

Respondent argues one satisfactory explanation is that such an objection would have been overruled, because Dunlop's retelling of Lafon's statement that Hill killed Douglas as she slept was not hearsay because it was offered not for its truth but to show how his story had changed in reaction to it, and thus impeach his credibility. We agree.

Hearsay evidence is a statement made by a witness not testifying at the hearing and offered to prove the truth of the matter asserted. (Evid. Code, § 1200, subd. (a).) Hearsay is inadmissible unless an exception applies. (Evid. Code, § 1200, subd. (b).) A statement admitted to show its effect on the defendant is not hearsay because it is not admitted for its truth. (*People v. Jablonski* (2006) 37 Cal.4th 774, 820; see *People v. Sanchez* (2016) 63 Cal.4th 665, 681 ["Neither the hearsay doctrine nor the confrontation clause is implicated when an out-of-court statement is not received to prove the truth of a fact it asserts"].)

Here, Hill initially said he killed Douglas to defend Lafon from an attack, but when Dunlop told him Lafon had told police he killed Douglas in her sleep, he changed his story, and said the attack happened earlier in the day. This change demonstrated the falsity and opportunism of Hill's burgeoning self-defense

claim, and Dunlop's retelling of Lafon's statement was properly admitted to show what prompted the change.

Even if Dunlop's retelling of Lafon's statement constituted hearsay, an obvious reason not to object to it before or during trial presents itself: Dunlop's prior three statements—that police had recovered the murder weapon and mattress and that Hill was recorded throwing the weapon onto the roof—were admitted ruses, known to defense counsel to be false. And nothing in the record indicates that Dunlop's fourth statement was true either, i.e., that Lafon had actually implicated Hill. Whether true or not, ignoring Dunlop's fourth statement left it grouped with the other, admittedly false statements, suggesting it was false too. To object to it would have distinguished it from the others and removed the suggestion of group falsity. It therefore would have been at least reasonable for defense counsel to ignore Dunlop's fourth statement even if it constituted hearsay, in hopes that it, like the others, would find no toehold with the jury.

Hill argues the jury likely would have disregarded his confession absent the Lafon statement, because he had no motive to kill Douglas and had said several times during the police interview that he would confess anything to ensure Lafon went free. The argument is without merit. First, Hill had motive. Douglas had told him to leave her home, and after killing her he took her television. Resentment and avarice are motives for murder. And we find it highly likely the jury would have viewed Hill's professed self-sacrifice, like his feigned concern for a fallen officer, as a transparent attempt to don a mien of nobility incompatible with guilt. No reason exists to suppose it was Lafon's statement, itself dubious, which ultimately caused the jury to believe Hill's otherwise unbelievable confession.

In a similar vein Hill argues his defense counsel provided ineffective assistance by failing to put before the jury the fact that Lafon, who did not testify, had pleaded guilty to second degree murder for the killing of Douglas, which would have impeached her purported statement to Dunlop about Hill being the murderer. But as discussed above, no reasonable probability exists that Lafon's statement made any difference in light of Hill's confession to the same effect.

B. Lafon's Hearsay Statement Exonerating Hill

After Lafon pleaded guilty to second degree murder for the Douglas killing she wrote a letter to Hill in which she said: "My love, I'm sorry I got you in trouble and wish I could take the blame. I never should have done it. I should have let you call the pigs. I should have told them the truth that I did everything. [¶] Please forgive me, my love. [¶] I love you and need you. [¶] Please write me. You have not wrote me in a long time. [¶] Are you mad at me? Did I do something wrong? Love your wife, Shannon Hill. Write me, please."

Defense counsel moved to admit the letter into evidence but the trial court denied the motion "under [Evidence Code section] 352," and on the ground that the letter was untrustworthy.

Hill argues the trial court erred in refusing to admit the letter as a declaration against penal interest. We conclude any error was harmless.

"Evidence of a statement . . . is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, . . . so far subjected him to the risk of . . . criminal liability . . . that a reasonable man in his position would not have made the statement unless he believed it to be true." (Evid. Code, § 1230.)

Even a statement admissible under Evidence Code section 1230 is "nonetheless subject to Evidence Code section 352 under which 'the trial court is required to weigh the evidence's probative value against the dangers of prejudice, confusion, and undue time consumption.' " (*People v. Geier* (2007) 41 Cal.4th 555, 584.) Such evidence should be excluded if the trial court, in its discretion, determines that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of confusing the issues or misleading the jury. (Evid. Code, § 352.)

We review a decision to admit or exclude evidence under the reasonable probability standard for prejudice. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Trujeque* (2015) 61 Cal.4th 227, 280.)

Here, by the time Lafon wrote to profess her love for Hill and say she considered them married (the record does not reflect they ever married), she had already pleaded guilty to second degree murder, and awaited only sentencing. The letter purported to show that Hill was not a principal in the murder but merely aided and abetted Lafon, which could obviate the lying-in-wait aspect of the crime. But its probative value was vitiated by Lafon's taking the opposite position during the police investigation, by her refusal to testify at trial, and by Hill's confession that he killed Douglas while she slept. No reasonable probability exists that the jury would have credited the absent Lafon's belated, inconsistent profession of Hill's innocence over the confession of Hill himself.

C. Douglas's Statement Overheard by Guzman

As noted above, Carlos Guzman, a neighbor, witnessed Douglas say to Hill and Lafon "please get out of my life. I don't want to have you in my apartment any longer."

Prior to trial Hill's defense counsel objected to admission of the statement on the ground that Guzman was not credible because he spoke limited English. The court ruled the statement was admissible under the excited utterance and spontaneous statement exceptions to the hearsay rule. At trial, Guzman testified that Douglas made the statement.

Hill argues Douglas's statement was inadmissible hearsay. The argument is forfeited because Hill did not object on that ground at trial (Evid. Code, § 353, subd. (a)), and meritless in any event because the statement was not admitted for its truth, i.e., as a description of Douglas's feelings, but for its effect: It showed that Hill had reason to be angry with Douglas. (See *People v. Bolden* (1996) 44 Cal.App.4th 707, 714-715 [the statement, "do not come around the house anymore" was not hearsay because it was offered to prove not its truth but the recipient's motive].)

D. Duty to Instruct on Manslaughter

Hill argues the court violated his due process rights failing to instruct sua sponte on the lesser included offense of voluntary manslaughter. He argues his statements to police that Douglas had attacked both him and Lafon supported heat-of-passion and self-defense instructions. We disagree.

A trial court must instruct, with or without a request, on general principles of law relevant to the issues raised in a criminal case. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1085.) The trial court must sua sponte instruct on a defense "if it appears that the [appellant] is relying on such a defense, or if

there is substantial evidence supportive of such a defense and the defense is not inconsistent with the [appellant's] theory of the case." (*People v. Maury*, *supra*, 30 Cal.4th at p. 424.) Substantial evidence is that which, if believed, would be sufficient for a jury to find a reasonable doubt as to defendant's guilt. (*People v. Michaels* (2002) 28 Cal.4th 486, 529; *People v. Salas* (2006) 37 Cal.4th 967, 982-983.)

" 'Under California law, a lesser offense is necessarily included in a greater offense if either the statutory elements of the greater offense, or the facts actually alleged in the accusatory pleading, include all the elements of the lesser offense, such that the greater cannot be committed without also committing the lesser.' " (*People v. Breverman* (1998) 19 Cal.4th 142, 154, fn. 5.) A trial court errs if it fails to instruct "on all theories of a lesser included offense which find substantial support in the evidence. On the other hand, the court is not obliged to instruct on theories that have no such evidentiary support." (*Id*. at p. 162.) The "existence of '*any* evidence, no matter how weak' will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is 'substantial enough to merit consideration' by the jury. [Citations.] 'Substantial evidence' in this context is ' "evidence from which a jury composed of reasonable [persons] could . . . conclude" ' that the lesser offense, but not the greater, was committed." (*Ibid*.)

"We review de novo a trial court's failure to instruct on a lesser included offense," viewing the evidence "in the light most favorable to the defendant." (*People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1137.)

Homicide is divided into murder and manslaughter. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) A killing without malice but induced by a sudden quarrel or heat of passion is voluntary manslaughter, a lesser included offense of murder. (*People v. Williams* (1988) 199 Cal.App.3d 469, 475.)

Voluntary manslaughter on a heat of passion theory has both subjective and objective components. (*People v. Moye* (2009) 47 Cal.4th 537, 549.) "To satisfy the subjective element . . . , the accused must be shown to have killed while under 'the actual influence of a strong passion' " induced by the victim's provocation. (*Id*. at p. 550.) The passion aroused may be any " ' " 'violent, intense, high-wrought or enthusiastic emotion' " ' [citation] other than revenge." (*People v. Breverman*, *supra*, 19 Cal.4th at p. 163.)

To satisfy the objective element, the heat of passion must be a result of sufficient provocation—that is, conduct by the victim "sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection." (*People v. Moye*, *supra*, 47 Cal.4th at pp. 549-550.) "To be adequate, the provocation must be one that would cause an emotion so intense that an ordinary person would simply *react*, without reflection." (*People v. Beltran*, *supra*, 56 Cal.4th at p. 949.) Both heat of passion and adequate provocation "must be affirmatively demonstrated." (*People v. Lee* (1999) 20 Cal.4th 47, 60.)

Malice aforethought may also be negated by an actual but unreasonable belief in the need to defend oneself or another from imminent danger of death or great bodily injury, reducing a killing from murder to voluntary manslaughter. (*People v. Randle* (2005) 35 Cal.4th 987, 990, 994, overruled on other

grounds in *People v. Chun* (2009) 45 Cal.4th 1172, 1201.) This doctrine is commonly known as imperfect defense of another. (*Randle*, at p. 994.)

Defense of another against an assault requires an actual and reasonable belief in the need to defend against an imminent danger of bodily injury. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.) The trier of fact "must consider what 'would appear to be necessary to a reasonable person' " in the position of appellant, with the appellant's knowledge and awareness. (*Id.* at pp. 1082-1083.) CALCRIM No. 3470 provides in pertinent part that a defendant acts in lawful defense of another and is not guilty of assault, if (1) he reasonably believed someone else was in imminent danger of suffering great bodily injury; (2) he reasonably believed the immediate use of force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 3474 instructs that the right to use force in self-defense or defense of another continues only until the danger no longer exists or reasonably appears to exist.

The question whether the trial court erred in refusing to instruct the jury on the defense-of-another theory turns on whether the record contains substantial evidence that, if believed by the jury, would raise a reasonable doubt as to whether Hill killed Douglas in a reasonable effort to defend Lafon.

Hill argues the jury "could have chosen to believe [his] confession, in which he said that [Douglas] was abusive and gave him a black eye. He also said that she came at him with a box cutter, and that he was sick of her swinging the stick at him every day. From this, the jury could find that [appellant] killed

[Douglas] in the heat of passion, in a rash reaction to the provocation of her assaults."

We disagree.

Hill stated Douglas gave him the black eye "a couple of weeks" before the murder. He also indicated Douglas was not threatening Lafon with a box cutter at the time of the murder, but had done so "earlier that day." And he admitted that he waited for Douglas to go to sleep before killing her. If we credit Hill's confession, as he urges us to do, he killed Douglas neither in a heat of passion nor to defend Lafon from imminent attack. No other evidence supported either of Hill's belated theories.

Given the absence of substantial evidence supporting a heat of passion or defense-of-another theory, the trial court correctly abstained from instructing on voluntary manslaughter.

In a related vein, Hill argues his counsel, whose sole theory was that Hill's confession was a sham, and Lafon was the killer, rendered ineffective assistance by failing to argue to the jury that even if Hill killed Douglas, he might have been provoked. We disagree.

Hill's attorney's decision not to pursue a theory for which there was no evidentiary support was a matter of trial tactics and strategy. (*People v. Gamache* (2010) 48 Cal.4th 347, 391 ["The decision of how to argue to the jury after the presentation of evidence is inherently tactical"]; *In re Lucas* (2004) 33 Cal.4th 682, 722 ["strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable"].) The reason not to suggest to the jury that Hill was actually the killer, when the entire defense hinged on the jury believing Lafon killed Douglas, is obvious. But even if counsel's decision not to tell the jury her client was the killer was

unsound, no reasonable probability exists that expansion on appellate counsel's manslaughter theory, which had no evidentiary support, would have led to a different verdict. (See *People v. Maury*, *supra*, 30 Cal.4th at p. 389 [a judgment will not be reversed unless the ineffective assistance was prejudicial].)

E. There Was No Prosecutorial Misconduct

Hill argues the prosecutor improperly appealed for sympathy for Douglas when she argued, without defense objection:

"I'm sorry that you had to be taken to this very dark place and this very dark time back in September of 2014, where we heard that Ms. Douglas took her last breath on that Friday morning. It's a disturbing case. And as I told you in my . . . opening statement, . . . it's not your regular kind of a murder case. It's not a gangster case, them shooting each other. It's not a bar fight gone bad. This case involves a very special kind of evil. This is up close and personal. This is a hands-on murder. And it involves family. And it occurs in the home where someone should feel the safest. Ms. Douglas[ ] would have been 57 years old today if she was still alive. And you heard a lot about her. She had family. She had friends. People liked her. She had this endearing quality about her. She was very vulnerable. She was very childlike, as you heard, totally incapable of . . . protecting herself. She needed help doing daily activities, the basics. This was a totally vulnerable woman who was completely taken advantage of. And she didn't even see it coming. . . . [S]he didn't have a chance to even defend herself. She didn't deserve to die. And she certainly didn't deserve to die in this brutal and vicious way by this man."

The prosecutor also argued:

"This is Ms. Douglas. She had a life ahead of her. It was cut short. . . . You can't turn back the clock. That's not in your hands. You can't fix what has happened. But you can give Trudy Douglas justice. She's entitled to justice. This defendant made a choice to take her life. He is sitting there because of the choice that he made. It is time that he is held responsible for what he has done."

And: "This defendant murdered an innocent, developmentally delayed woman who did not deserve to die. [¶] You will decide between murder in the first and murder in the second. Here there is murder in the first because there's willful, deliberate, premeditation and because there's lying in wait. We've met all of the elements. . . . It's time to convict this cold-blooded murderer. It's time for Trudy to get justice. She's entitled to your guilty verdicts."

After the close of evidence the court instructed the jury that nothing the attorneys said was evidence, and they were to decide the case based only on the evidence and not let bias, sympathy, or prejudice influence their decision. Immediately before closing argument the court reminded the jury that nothing the attorneys said was evidence. And after closing argument the court instructed the jury that their role was to judge the facts impartially.

After the verdict, defense counsel moved for a new trial on the ground that the argument was improper. The court summarily denied the motion.

Hill argues the prosecutor committed prejudicial misconduct.

Generally, a defendant may not complain on appeal of prosecutorial misconduct absent a timely objection at trial and a

request that the jury be admonished to disregard the impropriety, unless an objection or request for admonition would have been futile or the harm could not have been cured. (*People v. McDermott* (2002) 28 Cal.4th 946, 1001.) On this record, nothing suggests either that a proper objection would have been overruled or an immediate jury admonition ineffective. Hill was required to assert a timely and specific objection, and his failure to do so forfeits his claim of prosecutorial misconduct on appeal. (*People v. Turner* (2004) 34 Cal.4th 406, 421.) However, Hill also argues his attorney's failure to object to the prosecutor's misconduct constituted ineffective assistance. An ineffective assistance claim may be raised for the first time on appeal. (*People v. Fosselman* (1983) 33 Cal.3d 572, 581.)

A prosecutor's misconduct violates due process if it infects a trial with unfairness. (*People v. Harrison* (2005) 35 Cal.4th 208, 242.) Less egregious conduct may nonetheless constitute misconduct under state law if it involves the use of deceptive or reprehensible methods to attempt to persuade the court or jury. (*Ibid.*) If a prosecutorial misconduct claim is based on the prosecutor's arguments to the jury, we consider how the statement would, or could, have been understood by a reasonable juror in the context of the entire argument and determine whether there is a reasonable likelihood the jury construed or applied any of the complained-of remarks in an objectionable fashion. (*People v. Dennis* (1998) 17 Cal.4th 468, 522.) A prosecutor may fairly comment on and argue any reasonable inferences from the evidence. (*People v. Samayoa* (1997) 15 Cal.4th 795, 837.) But a prosecutor may not appeal to the jury's sympathy, passion, or prejudice (*People v. Fields* (1983) 35 Cal.3d 329, 362). Although a prosecutor "may strike hard blows, he is

not at liberty to strike foul ones." (*Berger v. United States* (1935) 295 U.S. 78, 88.)

Here, there is no reasonable likelihood the jury would have construed or applied any of the remarks complained of in an objectionable fashion. The evidence established Douglas had developmental issues and a childlike innocence, and seemed unable to protect herself. And this was indeed a cold, intimate, vicious murder perpetrated in Douglas's home by persons whom she trusted enough to fall asleep beside. The prosecutor's summation was entirely fair, and did nothing to suggest " 'that emotion may reign over reason' or invite 'an irrational, purely subjective response.' " (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1343.)

Moreover, any error would have been harmless under any standard. The jury was properly instructed, and nothing indicates it failed to understand and follow instructions. (See *People v. Buenrostro* (2018) 6 Cal.5th 367, 431 [jurors presumed to follow instructions].)

F. Cumulative Error

Hill contends that even if any of the claimed errors individually do not mandate reversal, the cumulative effect of such errors denied him his right to a fair trial.

A "series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error." (*People v. Hill* (1998) 17 Cal.4th 800, 844.) However, "[l]engthy criminal trials are rarely perfect, and this court will not reverse a judgment absent a clear showing of a miscarriage of justice." (*Ibid.*; see *Bruton v. United States* (1968) 391 U.S. 123, 135 [" 'A defendant is entitled to a fair trial but not a perfect one' "].)

But we discern no errors.

G. Parole Revocation Fine

Hill was assessed a $5,000 parole revocation fine even though he was sentenced to life without parole. He argues this fine must be stricken, and Respondent concedes the point and we agree. (*People v. Price* (2017) 8 Cal.App.5th 409, 465 [parole revocation fine must be stricken where defendant sentenced to life without parole].)

DISPOSITION

The judgment is affirmed. The abstract of judgment and the records at the Department of Corrections and Rehabilitation shall be corrected by striking the parole revocation fine.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.