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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ROBERT STEVEN WALDRON, JR.,<br><br>Defendant and Appellant. | B292677<br><br>(Los Angeles County Super. Ct. No. BA455143) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry J. Hall, Judge. Affirmed.

William J. Capriola, 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, Steven D. Matthews and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Robert Waldron of attempted voluntary manslaughter. On appeal, he contends the prosecutor engaged in misconduct during closing argument by misrepresenting the evidence and vouching for a witness. We disagree and affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

On November 7, 2016, Waldron and Danny G. had an argument, after which several men attacked Waldron while Danny watched. Later that day, Danny was stabbed repeatedly, including in his head, shoulder, and abdomen. Nearby surveillance cameras captured video of a man resembling Waldron attacking Danny.

Los Angeles Police Department detectives Michael Zolezzi and Vincent Carreon interviewed Danny after the stabbing. Carreon asked Danny "who did [this] to you," to which Danny responded "Robert" and pointed to a picture of Waldron. In a subsequent interview with police, Waldron denied that he stabbed Danny, but admitted he "probably hit him."

Waldron was charged by information with attempted willful, deliberate, and premediated murder (Pen. Code, §§ 664, 187, subd. (a)). It was further alleged that in the commission of the offense, Waldron personally used a deadly and dangerous weapon (Pen. Code, § 12022, subd. (b)(1)), and personally inflicted great bodily injury on the victim (Pen. Code, § 12022.7, subd. (a)).

At trial, Danny testified that he could not remember who stabbed him. He also could not remember having a fight with Waldron on November 7, 2016. Danny acknowledged he was affiliated with the Big Hazard gang.

When asked by defense counsel why he did not videotape the interview with Danny, Detective Zolezzi testified that he does not want witnesses to know they are being recorded "so their answers are honest." Zolezzi explained that, in his experience, "witnesses will tell us what happened, but when it comes time to go to court, they will change their story." Zolezzi agreed that witnesses will "sometimes . . . be honest with you about what they saw and who did it," but in court, they will "change that story a little bit or completely." He said this "pattern" is "particularly common" in gang neighborhoods.

Waldron called as a witness Dana Orent, who is a private criminal investigator and former detective. Orent testified that it happens "all the time" that "witnesses . . . say one thing to the police and then . . . say something different when they come to court." He explained the reason for this is "[i]t's the code not to testify truthfully in court."

The jury convicted Waldron of the lesser included offense of attempted voluntary manslaughter and found true the allegations that he personally used a deadly weapon and personally inflicted great bodily injury on the victim. The court sentenced Waldron to seven years in prison, consisting of the midterm of three years, plus one year for using a deadly weapon and three years for inflicting great bodily injury. The court also imposed various fines and fees, and awarded Waldron 644 days of custody credit.

Waldron timely appealed.

## DISCUSSION

Waldron's sole contention on appeal is that the prosecutor engaged in misconduct when he made the following statements during closing argument in the context of explaining

discrepancies between Danny's trial testimony and his statement to police: "You heard from the detectives that people who are gang affiliated, they usually tell the truth when you talk to them privately. When they come to court is when they change their mind because that's part of their code. They won't say the same things in court that they say in private. Even the defense investigator told you that." Waldron insists these comments misrepresented the evidence and constituted improper vouching. We disagree.

Initially, Waldron forfeited these claims by failing to object to the prosecutor's remarks and request the trial court admonish the jury to disregard them. (See *People v. Thornton* (2007) 41 Cal.4th 391, 454 ["defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion, and on the same ground, the defendant objected to the action and also requested that the jury be admonished to disregard the perceived impropriety."].) Contrary to Waldron's cursory suggestion, the prosecutor's remarks were not so outrageous or inherently prejudicial that an admonition could not have cured any harm. (See *People v. Dennis* (1998) 17 Cal.4th 468, 521.) Nonetheless, we will address the merits of his arguments in order to forestall his derivative ineffective assistance of counsel claim.

There is simply no merit to Waldron's contention that the prosecutor's comments misrepresented the evidence. "It is settled that a prosecutor is given wide latitude during argument. The argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom." (*People v. Sassounian* (1986) 182 Cal.App.3d 361, 396; see *People v. Collins* (2010) 49 Cal.4th 175, 230 [prosecutors enjoy wide latitude in

commenting on the evidence].) Here, a reasonable inference from Detective Zolezzi's testimony, considered as a whole, is that witnesses affiliated with gangs commonly tell the truth to the police, but lie at trial. Former Detective Orent's testimony could be reasonably interpreted to mean the same. The prosecutor's remarks, therefore, did not misrepresent the evidence.

We also find no merit to Waldron's perfunctory contention that the prosecutor improperly vouched for Danny's credibility by implying that he told the truth to the detectives. A prosecutor may comment on a witness's credibility based on the evidence at trial, but is prohibited from vouching for a witness's credibility by explicitly or implicitly referring to matters outside the trial record bolstering the person's testimony. (*People v. Turner* (2004) 34 Cal.4th 406, 432–433.) Here, the prosecutor's remarks did not suggest he had other evidence, not presented to the jury, that would bolster Danny's credibility. Rather, his comments referred specifically to witnesses' trial testimony and inferences that could be drawn from that testimony. The prosecutor did not vouch for Danny's credibility.[1]

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[1] Because the prosecutor's remarks did not constitute misconduct, we reject Waldron's related argument that his counsel was ineffective for failing to object to them on that basis. (See *People v. Anderson* (2001) 25 Cal.4th 543, 587 ["[c]ounsel is not required to proffer futile objections"]; *People v. Price* (1991) 1 Cal.4th 324, 387 ["[c]ounsel does not render ineffective assistance by failing to make motions or objections that counsel reasonably determines would be futile"].)

## DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We Concur:

STRATTON, J.

WILEY, J.