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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR NOE MENDEZ,

Defendant and Appellant.

B255338

(Los Angeles County
Super. Ct. No. BA378654)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Katherine Mader, Judge. Affirmed.

Lynda A. Romero, 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, Senior
Assistant Attorney General, Victoria B. Wilson and Noah P. Hill,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Edgar Noe Mendez confessed to police detectives that, under orders from his gang, he and a man he knew as “Stranger” stabbed to death another member of the gang, Fernando Ramos. On trial for Ramos’s murder, Mendez testified he did not kill Ramos. He also stated he falsely confessed to the crime because the police threatened him with almost-certain death, by placing him in the jail’s general population instead of in protective custody, if he did not confess. According to Mendez, because he had fallen out of favor with his gang, the gang had “green-lighted” him, which meant that his gang had given its authorization for its members and members of other gangs to kill him. The police officers denied they made such a threat. The jury convicted Mendez of first degree murder (Pen. Code § 187, subd. (a)) and found true the related criminal street gang allegation (*id.*, § 186.22, subd. (b)(1)(C)).

Mendez argues the trial court violated his Sixth and Fourteenth Amendment rights to a fair trial by precluding his false confession expert from testifying. He also argues the trial court violated his Fourteenth Amendment right to a fair trial by allowing the prosecutor to make certain statements in her rebuttal argument, although Mendez did not object to those statements at the time. Specifically, the prosecutor argued the jury should not consider counsel for Mendez’s closing argument concerning false confessions because the attorney was not an expert and there was no expert testimony on the issue. Because the trial court did not abuse its discretion in excluding the testimony by Mendez’s expert on false confessions, and because Mendez’s prosecutorial misconduct argument is both forfeited and meritless, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Fernando Ramos Is Murdered*

On December 1, 2004 Fernando Ramos, a member of the Playboys gang, was stabbed to death in a park. He was stabbed seven times in the chest and once in the back. Although the stabbing occurred shortly after 4:00 p.m. on a “clear and dry” day, the police found no witnesses. The police did not do any forensic testing.

B. *The Playboys Gang “Green-lights” Mendez*

Mendez joined the Playboys gang in 2000. In 2006 Mendez was “green-lighted,” which means the gang gave its “okay or permission” for Mendez to be “killed, stabbed, [or] shot.” The People’s gang expert testified, “When you’re green-lighted, it means that if anyone has the opportunity to kill you, they can.” Although it was undisputed the Playboys green-lighted Mendez, Mendez and the People disagreed about why. Mendez testified he was green-lighted after a rival gang member shot him in the head and he gave the police information about the shooting.¹ According to Jonathan Perez, a former friend of Mendez who testified for the People, the gang green-lighted Mendez before he was shot in the head because he had “kill[ed] one of his own [Fernando Ramos] without a say so.”

¹ Even though no member of the Playboys gang had been involved in Mendez’s shooting, any cooperation with the police violated the Playboys’ code.

C. *Mendez Confesses to Ramos's Murder*

Mendez first became a suspect in Ramos's murder when Perez contacted the police in 2010. Perez and his mother, Rosa Laura Reynoso, told the police Mendez had admitted to them he had killed Ramos. Although Mendez confessed to them shortly after Ramos's murder, they did not go to the police at the time (before the gang green-lighted Mendez) for fear that doing so would have resulted in gang retaliation. Explaining why he did not go to the police in 2004, when Perez said Mendez admitted committing the murder, Perez testified, "[G]ang members go by a code. Snitches get stitches, meaning you run to the police, you're either going to get assaulted, hurt, or murdered."²

The police arrested Mendez on November 30, 2010. Detectives Julio Benavides and Jose Calzadillas interviewed Mendez, and Mendez confessed. In the recorded confession, Mendez said he killed Ramos under orders from the gang because Ramos "tiró rata" (had ratted out) another gang member.

D. *The Trial Court Excludes Mendez's Expert Witness on False Confessions*

Mendez was tried twice for Ramos's murder. At the first trial, Mendez did not testify. Although the defense's theory was that Mendez falsely confessed to Ramos's murder because the police had threatened him, without Mendez's testimony there

² Between Ramos's murder and the time Perez and Reynoso came forward, Perez's brother (who was also Reynoso's son) had been convicted of an unrelated attempted murder that Perez and Reynoso were convinced Mendez had actually committed. This may have caused the rift between Mendez, on the one hand, and Perez and Reynoso, on the other.

was no evidence to support that theory. Because there was no evidence “that anything happened that suggests anything involving a false confession,” the court in the first trial did not allow Mendez’s false confession expert to testify.

At the second trial (before a different judge) Mendez testified. He stated he told Detective Benavides he was a “green lighter gang member” whom “even the members of [his] own gang wanted to kill,” and “if [he] knew anything about [Ramos’s] murder [he] would tell them, but that [he] didn’t know anything about that.” Mendez testified, “Then Detective Benavides asked me if I knew what was going to happen to me in jail. . . . He said that if I didn’t cooperate and tell . . . them what happened that day, [Detective Benavides] was going to make sure that I was going to be in general population in jail.” Mendez testified Detective Benavides repeated the threat two more times, and said, “If I kept on playing . . . games, they were going to make sure that I was put in the mainline so that I could get killed just the same way that [Ramos] got killed.” Mendez said the detective subsequently stated it was Mendez’s “last chance.” Mendez testified Detective Benavides told him, “If I kept on making them waste their time, then they would have no choice [but] to put me in the mainline.” Explaining on redirect examination why he falsely confessed, Mendez stated, “For fear that the detectives would put me in general population” and “because I was afraid.”³

The detectives denied threatening to put Mendez in the general prison population. Detective Benavides denied making

³ Mendez also said the detectives “said something about speaking to the DA [to] see if [he] could get a manslaughter deal instead of first degree murder.”

any threats to Mendez. Detective Calzadillas said it was “absolutely not true” he threatened to put Mendez in the general prison population, and he denied even knowing at the time of the interview that Mendez was a green lighter. He said the only things that occurred before the recorded confession were that he and Detective Benavides “advised [Mendez they] were investigating Fernando Ramos’s murder that happened in 2004,” Detective Benavides read Mendez his *Miranda* rights, and Mendez waived those rights.

Mendez again sought to introduce the testimony of a false confession expert. The trial court asked counsel for Mendez, “[W]hat would you have [the expert] testify about?” Counsel for Mendez stated the expert “would talk about the areas of false confessions that would assist the jurors in determining whether or not this case is a case of—not this case, but determining whether or not—” The court interjected, “He’s not going to talk about this case at all.” Counsel for Mendez continued, “He would be a general expert. I would not pose any hypothetical, but he would discuss certain areas of interrogation, interrogation techniques, whether or not there was any contamination in terms of feeding Mr. Mendez with information.” The court stated, “You couldn’t talk about that.” Counsel for Mendez responded, “Not Mr. Mendez, but I’m saying in terms of the problems surrounding feeding a potential suspect information, if it—what contamination is.”

The court stated its concern about the proposed expert testimony: “I would want to know what [the false confession expert] could contribute that any lay person couldn’t figure out on their own. I mean, in this case, from the evidence that you’ve put on, it’s really a credibility issue . . . whether or not the jury believes your client that there was a lot of conversation that was

not on tape in which the detectives basically said, ‘If you don’t confess to this murder, we’re going to put you in general population.’ In other words, we’re going to kill you, have you killed, or you’re going to be killed. Or they didn’t say that.” The court deferred ruling on the admissibility of the expert’s testimony, and gave the parties an opportunity to brief the issue.

The People filed a written motion to exclude the expert’s testimony and Mendez filed a brief in opposition to the motion. In his brief, Mendez said he “[sought] to introduce expert testimony regarding the phenomenon of false confessions, the types of police interrogation techniques that create the risk that a suspect will confess falsely, the kinds of individuals who may be vulnerable to such techniques, the failure of police training manuals or other relevant materials to alert police officers to the dangers of such confessions, and the difficulties experienced by both lay people and criminal justice professionals in determining whether or not a particular statement is accurate.” Mendez asserted the expert “propose[d] to testify not that the confession was false . . . but [about] general principles of psychology and interrogation that lead to false or unreliable confessions.”

At the hearing on the People’s motion, the court asked, “Is there anything more that the defense would like to offer in terms of the specific offer of proof as to what [the expert] would say in this case?”⁴ Counsel for Mendez responded, “He will testify as to general areas regarding confessions, false confessions, the research. He will not in any way affect the jury’s ability to

⁴ Although counsel for Mendez stated before trial he believed he had produced all discovery to which the People were entitled, he never produced a report from the false confession expert, and none appears in the record.

determine whether or not the confession is true or false. . . . It is an aid . . . to assist the jury because common sense tells us that people don't confess [falsely] to something as serious as murder." Counsel for Mendez argued, "The general principles of psychology in interrogation to lead to false and unreliable confessions is something that's outside of common knowledge of these jurors."

The court determined that the false confession expert's testimony would not assist the jury because "what the jury has to determine is a question of credibility." The court noted, "We don't have any other factors which we see often in these types of cases where the police are taking advantage of someone of a young age, somebody with a mental disability, somebody with a lack of education, somebody with low education. [There is] no wearing down of the defendant, no physical abuse alleged. . . . [It] didn't appear that [Mendez] was being denied bathroom breaks. . . . This was not a particularly long interrogation." Instead, "the defendant claims that certain threats and coercive tactics were used, and the police have testified that they weren't used. . . . Somebody is lying," the court explained, "and [the jury is] going to have to figure out who is lying about what was said, if they can figure it out."

E. *Counsel for Mendez Discusses False Confessions in Closing Argument, and the Prosecutor Responds in Rebuttal*

At closing argument, counsel argued to the jurors that they had to determine whose testimony was believable. In the People's closing argument, the prosecutor said the jury's job was to decide whom to believe. The prosecutor, referring to Mendez, asked, "Is this someone that you can trust to be honest with you and tell you the truth while they're on the stand? There is

absolutely not one piece of corroboration that his statement was coerced.”

Counsel for Mendez countered that the detectives’ account of their interview with Mendez was not believable: “If it was so easy, then all the detectives would have to do in every single case is put someone in a room and say, ‘take a deep breath and tell us what happened.’” Like the prosecutor, counsel for Mendez argued, “It’s for you, the jury, to decide whether or not to believe the officers or Jonathan Perez [and Rosa Laura] Reynoso . . . or my client.” “It’s reasonable here that my client made that confession, that false confession, under coercion, under threats of being placed in the mainline. We’ve heard what happens to green lighters.” Counsel for Mendez also argued, “Common sense tells us, no one would . . . confess to a murder they did not commit. That’s just—that doesn’t make any sense. But it happens. Why? Research tells us why. But it happens.” The trial court sustained objections to subsequent references by counsel for Mendez to what “research has told us” and to “a recent study.” The prosecutor did not object when counsel for Mendez said “[t]he area of false confession is a phenomena,” and he had “tried to explain to you the phenomena of false confessions.”

In her rebuttal argument, the prosecutor stated, “When the law is on your side, you argue the law. When the facts are on your side, you argue the facts. When neither is on your side, you throw law enforcement under the bus. You allege that there has been a conspiracy among four people. You try and muddy up the victim in this case, and you start talking about false confessions as if you are an expert.” Later, the prosecutor asked, “Is a defense attorney an expert in . . . false confessions? You’ve heard no expertise in that regard. And his vouching for that is not

proper.” Counsel for Mendez did not object to either statement. The prosecutor concluded, “If you were to believe what the defense attorney argued, you would have to believe that two seasoned homicide detectives decided to coerce this defendant into making a statement about a case that was not high profile, that was a gang member, another gang member, [and that] they’re willing to risk their careers for that.”

F. *The Jury Convicts Mendez of Murder*

The jury found Mendez guilty of first degree murder and found true the allegation he committed the crime for the benefit of, at the direction of, or in association with a criminal street gang. Mendez moved for a new trial, arguing the court denied him a fair trial by excluding his false confession expert. Three months later, Mendez filed a “supplemental” new trial motion, arguing for the first time that the prosecutor’s comments in rebuttal argument “amounts to prosecutorial misconduct.”

The trial court denied the new trial motions, explaining, “I believe as strongly today as I did at the time that I made the decision that it was not an appropriate case for a false confession expert. . . . [T]he jury had an opportunity to evaluate credibility, and 12 of them decided that they didn’t believe that the defendant was threatened And I don’t believe that a false confession expert could have had any opinion that would have any relevance as to whether or not the defendant was threatened before the confession occurred.”

The court sentenced Mendez to a prison term of 25 years to life. Mendez filed a timely notice of appeal.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Precluding the Testimony of Mendez's False Confession Expert*

Mendez argues he “was deprived of his Sixth and Fourteenth Amendment rights to a fair trial and to present his defense when the trial court precluded the testimony of his false confession expert.” Although he never says specifically what the expert would have said that would have assisted the jury, counsel for Mendez argued in the trial court, and his appellate counsel reiterates on appeal, the proposed testimony would have covered “general principles of psychology in interrogation to lead to false and unreliable confessions.” Mendez argues “the testimony would have illuminated the defense and had significant probative value in this case,” was useful and “valid social science,” and “was not within the jury’s knowledge.”

The Fourteenth Amendment of the United States Constitution guarantees a criminal defendant the due process right to present witnesses in support of a defense, but that right is “subject to reasonable restrictions.” (*People v. Mickel* (2016) 2 Cal.5th 181, 218.) The rules of evidence are reasonable restrictions on those rights and thus generally “do not impermissibly infringe on the accused’s right to present a defense.” (*Ibid.*) Similarly, “the right to effective assistance of counsel encompasses entitlement to defense experts” when they are necessary for a “fair trial on the issue of guilt.” (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 918.) This right, however, is also subject to the reasonable restrictions in the Evidence Code. (See *ibid.*)

“Except as otherwise provided by statute, all relevant evidence is admissible.” (Evid. Code, § 351; see *People v. Cottone* (2013) 57 Cal.4th 269, 283.) “‘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; see *People v. Jones* (2013) 57 Cal.4th 899, 947 [“‘[t]he test of relevance is whether the evidence tends ‘logically, naturally, and by reasonable inference’ to establish material facts”].) “In the case of expert testimony, it is not enough that it is relevant to an issue in the case. It must also satisfy the criteria of Evidence Code section 801, which limits such testimony to that ‘[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.’” (*People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 753; see *People v. Sibrian* (2016) 3 Cal.App.5th 127, 133 [“‘[e]xpert opinion is not admissible’ . . . ‘if it consists of inferences and conclusions which can be drawn as easily and intelligently by the trier of fact as by the witness’”]; accord, *People v. Fiore* (2014) 227 Cal.App.4th 1362, 1383].) We review a trial court’s ruling regarding whether the testimony of an expert is relevant and “sufficiently beyond common experience” for abuse of discretion. (*Sotelo-Urena*, at p. 745; see *People v. Smith* (2003) 30 Cal.4th 581, 627.)

As the trial court correctly determined, the jury had to make a credibility determination. If the jury believed Mendez’s testimony that he was threatened with almost-certain death if he did not confess, common sense would dictate that he might falsely confess, and the proffered expert testimony was inadmissible under Evidence Code section 801. It does not take an expert to explain or understand that someone threatened with death if he or she does not confess to a crime may confess to that

crime, even if he or she did not commit it. If the jury believed the testimony of the detectives that there was no such threat or even a discussion about the case before Mendez confessed, then general testimony about the psychology of coercion and contamination leading to false confessions would not be relevant, and the proffered expert testimony was inadmissible under Evidence Code section 210. (See *People v. Ramos* (2004) 121 Cal.App.4th 1194, 1207 “[b]ecause the jury could understand and evaluate all the evidence presented at [the] trial without the assistance of an expert on police interrogation, we find no abuse of discretion in the trial court’s order excluding [the expert’s] testimony”]; *People v. Son* (2000) 79 Cal.App.4th 224, 241 [“given [the defendant’s] testimonial admission that his confession . . . was false and made only because [the detective] assertedly promised that [he] would serve no more than one year in custody—a matter easily understood by a layperson without expertise [citation]—expert evidence bearing on other potential reasons for false confessions was unnecessary”].) Either way, the trial court did not abuse its discretion in excluding the testimony of Mendez’s false confession expert. (See *People v. Smith, supra*, 30 Cal.4th at p. 628 [court did not abuse its discretion in excluding the defendant’s expert witness where the “defendant offered [the witness] as an expert on defendant’s credibility in making [a] statement” and “the jury was as able as an expert to judge that question for itself”; “[c]redibility questions are generally not the subject of expert testimony, or at least a court could so conclude in a given case”].)

Mendez relies on *People v. McDonald* (1984) 37 Cal.3d 351, overruled in part by *People v. Mendoza* (2000) 23 Cal.4th 896, 914, which concerned a subject analogous to false confessions—the untrustworthiness of eyewitness identification. Mendez

quotes the following passage from *McDonald*: “When an eyewitness identification of the defendant is a key element of the prosecution’s case but is not substantially corroborated by evidence giving it independent reliability . . . , it will ordinarily be error to exclude [expert eyewitness] testimony.” Mendez’s quotation of the Supreme Court’s opinion in *McDonald* is misleading. Mendez has excised with ellipses the qualifying language on which his case turns. The Supreme Court held it is “ordinarily error to exclude” expert testimony on eyewitness identification only when “the defendant offers qualified expert testimony on specific psychological factors shown by the record that could have affected the accuracy of the identification but are not likely to be fully known to or understood by the jury.” (*McDonald*, at p. 351.) Here, there are no “specific psychological factors shown by the record that could have affected” the legitimacy of the confession but that were “not likely to be fully known to or understood by the jury.” (*Ibid.*) Mendez does not even argue there are.

Mendez’s reliance on *United States v. Hall* (7th Cir. 1996) 93 F.3d 1337 is similarly misplaced. The court in *Hall* reversed the defendant’s conviction because the district court erred in precluding testimony by a false confession expert. (*Id.* at p. 1342.) The court stated: “At the trial, [the defendant’s] entire theory of defense boiled down to a simple proposition: due to a personality disorder that makes him susceptible to suggestion and pathologically eager to please, he ‘confessed’ to a crime that he did not really commit, in order to gain approval from the law enforcement officers who were interrogating him.” (*Id.* at p. 1341.) The court explained, “It was precisely because juries are unlikely to know that social scientists and psychologists have identified a personality disorder that will cause individuals to

make false confessions that the testimony would have assisted the jury in making its decision.” (*Id.* at p. 1345.) Here, if the jury were to believe Mendez’s testimony that the detectives threatened him with almost-certain death if he did not confess, common sense (and not expert testimony) would have led the jury to discount or ignore his confession. Common sense, not expert testimony, would have assisted the jury in answering what Mendez calls in his reply brief “the central question identified in *Crane v. Kentucky* (1986) 476 U.S. 683: ‘If the defendant is innocent, why did he previously admit his guilt?’”

Mendez also quotes *Crane* for the indisputable proposition that “evidence about the manner in which a confession was secured will often be germane to its probative weight.” (*Crane, supra*, 476 U.S. at p. 688.) *Crane*, however, involved a very different situation. In that case, the defendant’s defense rested entirely on the circumstances of his interrogation by police. “To support [his] defense, [the defendant] sought to paint a picture of a young, uneducated boy who was kept against his will in a small, windowless room for a protracted period of time until he confessed to every unsolved crime in the county.” (*Id.* at p. 691) The defendant sought to introduce “testimony from two police officers about the size and other physical characteristics of the interrogation room, the length of the interview, and various other details about the taking of the confession.” (*Id.* at p. 686.) The district court, however, prevented the defendant from introducing “any evidence about the duration of the interrogation or the individuals who were in attendance.” (*Id.* at pp. 686, 691.) In contrast, the trial court here allowed Mendez to introduce evidence regarding the manner in which the police obtained his confession—both his testimony about the alleged threat and the police officers’ testimony denying it. And, as the trial court

noted, Mendez’s defense did not rest on the indicia of false confessions that are often at issue in false confession cases.

B. *Mendez Forfeited His Argument the Prosecutor Committed Misconduct, and, in Any Event, There Was No Misconduct*

Mendez argues “[t]he prosecution committed misconduct by making personal attacks on defense counsel and by arguing there was a failure to present an expert witness after the court precluded the defense from doing so[,] which violated [Mendez’s] Fourteenth Amendment right to a fair trial.” Mendez contends it was “also improper for the prosecutor to imply that defense counsel [had] fabricated evidence or to otherwise malign defense counsel’s character.”

“A criminal prosecutor has much latitude when making a closing argument.” (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1330.) During rebuttal argument, the court “must permit the prosecutor to fairly respond to arguments by defense counsel.” (*People v. Bryden* (1998) 63 Cal.App.4th 159, 184.) “Indeed, ‘even otherwise prejudicial prosecutorial argument, when made within proper limits in rebuttal to arguments of defense counsel, do[es] not constitute misconduct.’” (*People v. Reyes* (2016) 246 Cal.App.4th 62, 74, quoting *People v. McDaniel* (1976) 16 Cal.3d 156, 177.) Nevertheless, “[u]nder the federal Constitution, a prosecutor commits misconduct when his or her conduct ‘infects the trial with such unfairness as to make the conviction a denial of due process.’” (*People v. Clark* (2016) 63 Cal.4th 522, 576.)

Mendez forfeited his contention of prosecutorial misconduct by not objecting in the trial court. Failing to object to a prosecutor’s remarks forfeits any argument on appeal of

misconduct based on those remarks. (*People v. Tully* (2012) 54 Cal.4th 952, 1021; see *People v. Peoples* (2016) 62 Cal.4th 718, 797 [prosecutorial misconduct argument was “forfeited by defense counsel’s failure to ‘make a timely and specific objection to the alleged misconduct and request the jury be admonished to disregard it’”]; *People v. Morales* (2001) 25 Cal.4th 34, 44 [defendant who “made no objection to the prosecutor’s remarks” forfeited argument of prosecutorial misconduct and “appeal is foreclosed on that basis”].) Mendez admits his attorney did not object during rebuttal argument, and he makes no argument regarding why his prosecutorial misconduct argument is not forfeited. Nor does Mendez argue that an admonition would not have cured any harm caused by the prosecutor’s statements. (See *Clark, supra*, 63 Cal.4th at p. 577 “[t]o preserve a claim of prosecutorial misconduct on appeal, ‘the defense must make a timely objection at trial and request an admonition; otherwise, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct’”].)⁵

In any event, the prosecutor’s rebuttal argument was not misconduct. Had the prosecutor commented on Mendez’s failure to present an expert witness on false confessions in her initial closing argument, the prosecutor’s comments may have been

⁵ Mendez also does not argue his trial counsel rendered ineffective assistance by failing to object to the prosecutor’s rebuttal argument. (See *People v. Centeno* (2014) 60 Cal.4th 659, 674 [“[a] defendant whose counsel did not object at trial to alleged prosecutorial misconduct can argue on appeal that counsel’s inaction violated the defendant’s constitutional right to the effective assistance of counsel”].)

more troublesome. But here, the prosecutor’s comments were in rebuttal and in response to counsel for Mendez’s improper argument that cited “research” and alluded to statistics and articles on false confessions that were not in the record. It was entirely appropriate for the prosecutor to remind the jury that counsel for Mendez was not an expert and that there had been no expert testimony on that issue in the trial. (See *People v. Reyes, supra*, 246 Cal.App.4th at p. 74; see also *People v. Tully, supra*, 54 Cal.4th at p. 1016 [analyzing whether the prosecutor’s argument was permissible rebuttal in the context of arguments defense counsel made during closing argument].)⁶

Finally, Mendez argues that, “[e]ven if the prosecutorial misconduct is not sufficient to require reversal on its own, reversal is required when the errors . . . are viewed cumulatively.” Because the trial court did not abuse its discretion by precluding Mendez’s false confession expert, by allowing proper rebuttal argument to which Mendez did not object, or by denying Mendez’s supplemental new trial motion that belatedly raised the prosecutorial misconduct claim, there is no error to cumulate. (See, e.g., *People v. Melendez* (2016)

⁶ Mendez argues in his reply brief that “[t]he trial court should have granted the motion for new trial due to the prosecutorial misconduct.” Mendez, however, does not acknowledge the applicable standard of review—abuse of discretion—let alone argue that the court’s ruling denying his motion for a new trial was an abuse of discretion. (See *People v. Lightsey* (2012) 54 Cal.4th 668, 729 [“[a] trial court’s ruling on a motion for new trial is so completely within that court’s discretion that a reviewing court will not disturb the ruling absent a manifest and unmistakable abuse of that discretion”].) As explained, it was not.

211 Cal.Rptr.3d 49, 78 [finding “no error to cumulate”]; *People v. Fernandez* (2013) 216 Cal.App.4th 540, 568 [same]; *People v. Watkins* (2012) 55 Cal.4th 999, 1036 [same].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

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