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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

THE PEOPLE, Plaintiff and Respondent, v. CARLOS JOE ESPINOSA, Defendant and Appellant.	B268560 (Los Angeles County Super. Ct. No. GA094970)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stan Blumenfeld, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Carlos Joe Espinosa of assault by means likely to produce great bodily injury, petty theft, and battery with serious bodily injury. Espinosa appeals the judgment, contending the evidence was insufficient to prove a great bodily injury enhancement, and the prosecutor committed prejudicial misconduct. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

a. *People's evidence*

On the evening of August 31, 2014, appellant Espinosa and his girlfriend, Mona Ceja, attended a large wedding reception at a Glendale restaurant. Seventeen-year-old Toufik A. served as a waiter and assisted with bartending. During the evening Toufik noticed that a large tip jar, which had contained between $300 and $400 in cash, was empty. Toufik and the restaurant manager, Merouane Rouguine, reviewed a surveillance video that showed Espinosa taking the cash from the tip jar and putting it in his pocket.

Rouguine approached Espinosa and stated, " 'I know what you did.' " Espinosa told Rouguine not to talk to him like that or he would "do something." Espinosa then walked outside to the restaurant's patio area. Rouguine informed the bride's sister, Vanessa Delgado, that Espinosa had stolen the money. Delgado confronted Espinosa about the theft. Ceja and Delgado argued. Ceja hit Delgado and the women began to fight, hitting each other and pulling each other's hair. Espinosa walked toward the parking lot while the women were fighting. The fight ended quickly after family members pulled the women apart.

Toufik slowly followed Espinosa at a distance of between 18 and 24 feet and began to dial 9-1-1 on his cellular telephone. He

had not been involved in the women's fight and said nothing to Espinosa. Espinosa walked back past Toufik and punched him in the back of the head, causing Toufik to fall to the ground, face forward. When other restaurant workers tried to calm Espinosa, he threatened them, saying, " 'Do you want some of this? I'll fuck you up, too.' " Espinosa then ran to the parking lot and fled from the scene.

Toufik briefly lost consciousness. The fall broke four of his teeth, broke his nose, and caused cuts on his lips that required stitches. The punch caused a lump on the back of his head. He felt dizzy, had a bad headache and toothache, and suffered neck pain. Paramedics treated Toufik at the scene and transported him to a hospital, where he remained for approximately seven hours. At the time of trial, Toufik's four front teeth were still broken.

Espinosa was arrested a few weeks later. While he was being transported to the police station, Espinosa stated, " 'It's because I hit that guy, isn't it?' "

b. *Defense evidence*

The defense presented the testimony of Ceja's cousins Christian Ceja, Ralph Ceja, and Freddie Hernandez[1] (who was a groomsman); of a defense investigator; and of maid-of-honor Delgado.

According to the defense witnesses, Delgado was intoxicated and tugged on Espinosa's shirt when she confronted him about the stolen tip jar money. When Ceja told Delgado to

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1 For ease of reference, and with no disrespect, we hereinafter refer to Christian and Ralph Ceja by their first names.

leave Espinosa alone, Delgado threw a glass of liquid in Ceja's face and the women fought.[2] Approximately 15 people observed the fight, which was broken up by family members within seconds. Delgado left the patio area. Neither Espinosa nor any of the restaurant staff were involved in the women's fight.

Immediately after the women's fight ended Espinosa and Ceja walked toward the parking lot. Toufik exited the restaurant and walked rapidly towards the couple, who had their backs to him. Toufik was dressed like many of the wedding guests, in black pants and a white shirt. According to Hernandez, Toufik had his arm raised in the air and was holding a black object.[3] Hernandez did not think the object was a weapon. From his vantage point 10 to 15 feet away, Hernandez recognized the item was a cell phone. When Toufik was within a foot or two of the couple, Espinosa turned and he and Toufik bumped into each other. Toufik's phone was close to Espinosa's face. Espinosa looked surprised. He punched Toufik once in the face, causing Toufik to fall to the ground. Without checking on Toufik's well-being, Espinosa and Ceja headed for the parking lot.

A defense investigator testified that restaurant manager Rouguine had told him, during an interview, that he did not see Espinosa punch Toufik.

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[2] Delgado denied being intoxicated or tugging on Espinosa's shirt. She admitted she threw a plastic cup of tequila at Ceja after Ceja cussed at her "a lot." Ceja then hit Delgado. Delgado, who had never been in a fight before, did not hit back. Espinosa never returned the stolen tip money.

[3] According to Ralph, Toufik had his hands at his side. According to Christian, Toufik appeared to reach into his pocket. Neither Christian nor Ralph saw the actual punch.

2. *Procedure*

Trial was by jury. Espinosa was found guilty of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4));[4] petty theft (§§ 484, subd. (a), 490.2); and battery with serious bodily injury (§ 243, subd. (d)). The jury found Espinosa personally inflicted great bodily injury during commission of the assault. (§ 12022.7, subd. (a).) Espinosa admitted suffering a prior conviction for robbery, a serious felony and a "strike" (§§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d)) and serving a prior prison term within the meaning of section 667.5, subdivision (b). The trial court denied Espinosa's *Romero* motion.[5] It sentenced him to the low term of two years on the assault conviction, doubled pursuant to the Three Strikes law, plus three years for the section 12022.7 great bodily injury enhancement and five years for the section 667, subdivision (a) serious felony enhancement, for a total sentence of 12 years. The court imposed a concurrent sentence on the theft conviction, and stayed sentence on the battery conviction pursuant to section 654. It imposed a restitution fine, a suspended parole revocation fine, a court operations assessment, and a criminal conviction assessment. It also ordered Espinosa to pay victim restitution in an amount to be set at a subsequent hearing. Espinosa appeals.

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[4] All further undesignated statutory references are to the Penal Code.

[5] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

DISCUSSION

1. *Sufficiency of the evidence*

Espinosa contends the evidence was insufficient to support the jury's finding that he inflicted great bodily injury on Toufik. We disagree.

a. *Standard of review*

When determining whether the evidence was sufficient to sustain a criminal conviction, " ' "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.]' " (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1104; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Medina* (2009) 46 Cal.4th 913, 919.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence. (*People v. Brown* (2014) 59 Cal.4th 86, 106.)

b. *The evidence was sufficient to support the great bodily injury finding*

Section 12022.7, subdivision (f), defines " 'great bodily injury' " as "a significant or substantial physical injury." (§ 12022.7, subd. (f); *People v. Cross* (2008) 45 Cal.4th 58, 63; *People v. Washington* (2012) 210 Cal.App.4th 1042, 1047-1048;

People v. Escobar (1992) 3 Cal.4th 740, 749-750.) To be considered significant or substantial, the injury need not cause permanent, prolonged, or protracted disfigurement, impairment, or loss of bodily function. (*Escobar*, at p. 750; *People v. Saez* (2015) 237 Cal.App.4th 1177, 1188.) It "need not meet any particular standard for severity or duration, but need only be 'a substantial injury *beyond* that inherent in the offense itself[.]' " (*People v. Le* (2006) 137 Cal.App.4th 54, 59; *Escobar*, at pp. 746-747.) "An examination of California case law reveals that some physical pain or damage, such as lacerations, bruises, or abrasions is sufficient for a finding of 'great bodily injury.' [Citations.]" (*Washington*, at p. 1047; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042 ["Abrasions, lacerations, and bruising can constitute great bodily injury"].) A " 'plain reading' " of the statute " 'indicates the Legislature intended it to be applied broadly[.]' " (*Cross, supra,* at p. 66, fn. 3.) The determination of whether a victim has suffered physical harm amounting to great bodily injury "is not a question of law for the court but a factual inquiry to be resolved by the jury. [Citations.]" (*Id.* at p. 64.) If there is sufficient evidence to sustain the jury's finding of great bodily injury, we are bound to accept it. (*People v. Escobar, supra,* at p. 750.)

There was ample evidence to establish great bodily injury in the instant matter.[6] Actual injury is not an element of assault with force likely to produce great bodily injury, and therefore Toufik's injuries were not inherent in the offense. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028; *People v. Griggs* (1989)

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[6] Indeed, during closing argument defense counsel conceded that Toufik suffered great bodily injury.

216 Cal.App.3d 734, 739-740; CALCRIM No. 875.) The evidence showed Espinosa's attack caused Toufik to lose consciousness and fall to the ground. Toufik suffered four broken teeth; required two sets of stitches in his lips; had a lump on his head; and suffered a broken nose. Toufik testified that he felt dizzy, suffered neck pain, and had a bad headache and toothache as a result of the attack. A paramedic testified Toufik's repetitive questioning indicated a possible head injury. At the time of trial, Toufik's four teeth were still broken. This evidence was more than adequate to prove the great bodily injury enhancement. (See *People v. Washington, supra,* 210 Cal.App.4th at p. 1047; *People v. Hale* (1999) 75 Cal.App.4th 94, 108 [broken teeth, split lip, and cut under eye were sufficient evidence of great bodily injury]; *People v. Corona* (1989) 213 Cal.App.3d 589, 592, 594-595 [swollen jaw, cuts on arms and chin, bruises on head, neck and back, sore ribs, and cut above eye requiring 10 stitches sufficient]; *People v. Jaramillo* (1979) 98 Cal.App.3d 830, 836 [bruising and swelling sufficient]; *People v. Sanchez* (1982) 131 Cal.App.3d 718, 734 [multiple contusions, abrasions and lacerations to the victim's back and bruising of eye and cheek sufficient]; *People v. Johnson* (1980) 104 Cal.App.3d 598, 608-609 [fractured jaw sufficient]; *People v. Kent* (1979) 96 Cal.App.3d 130, 136 [broken hand sufficient]; cf. *People v. Belton* (2008) 168 Cal.App.4th 432, 440 [broken tooth sufficient to establish serious bodily injury within the meaning of § 243, subd. (d), battery with serious bodily injury].)

Espinosa argues that the testimony of a paramedic and a treating physician demonstrate Toufik's injuries were "only moderate." He points out that there was no showing Toufik had head trauma, a neck injury, or back pain; the lacerations that

required stitches were "very small"; Toufik did not require an X-ray or "special treatment" for his broken nose; his normal bodily functions were not impaired; and he was released from the hospital "within hours." While these arguments were appropriate for the jury's consideration, none demonstrate the evidence was insufficient as a matter of law. (See generally *People v. Cross, supra,* 45 Cal.4th at pp. 65-66 [medical complications not required to support finding of great bodily injury]; *People v. Wade* (2012) 204 Cal.App.4th 1142, 1149-1150 [great bodily injury does not require a finding that the injury necessitated medical treatment].) " ' "A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description." ' [Citations.] Where to draw that line is for the jury to decide." (*Cross*, at p. 64; *People v. Escobar, supra,* 3 Cal.4th at p. 752.) Here, Toufik's injuries fell well over the serious side of the line.

Espinosa attempts to minimize the significance of evidence that Toufik's teeth were broken as a result of the attack. He asserts that the treating physician "vaguely remembered asking if" Toufik "had a history of broken teeth in the past," and insists this question "strongly suggest[ed] that [Toufik] had broken his teeth prior to the incident." This assertion is frivolous. There was no evidence Toufik told the physician or anyone else that the injuries to his teeth predated Espinosa's attack. To the contrary, Toufik testified that his teeth were broken as a result of Espinosa's punch, and Rouguine testified he observed pieces of Toufik's broken teeth on the ground.

Nor do Espinosa's citations to cases in which the victims' injuries were allegedly more severe than those inflicted here assist him. (See, e.g., *People v. Saez, supra,* 237 Cal.App.4th at

p. 1189 [ample evidence to prove great bodily injury where victim had lacerations on her neck and tongue, fractures to her eye socket and cheek, and was hospitalized for two days]; *People v. Escobar, supra,* 3 Cal.4th at p. 750 [multiple bruises and abrasions, stiff neck, and severe vaginal soreness that interfered with victim's ability to walk were sufficient to prove § 12022.7 enhancement].) That different, or stronger, evidence may have been present in other cases does not establish the evidence was insufficient here; each case must be considered on its own facts. (See *People v. Solis* (2001) 90 Cal.App.4th 1002, 1010.) In our view, four broken teeth, a broken nose, cuts to the lips requiring two sets of stitches, and a loss of consciousness cannot fairly be characterized as insignificant, as Espinosa suggests.

2. *Prosecutorial misconduct*

Espinosa argues that the prosecutor committed misconduct by misstating the law on self-defense during argument, thereby reducing the People's burden of proof in violation of his state and federal due process rights. We discern no error.

a. *Additional facts*

In closing argument, the prosecutor acknowledged that the key issue for the jury was whether Espinosa acted in self-defense or defense of Ceja when he punched the victim.[7] She referred the jury to CALCRIM No. 3470, the self-defense instruction, and argued at length that the evidence showed Espinosa did not act in self-defense. Among other things, she urged that Espinosa could not reasonably have believed Toufik was holding a weapon or was about to attack him, and Espinosa used unreasonable

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[7] Espinosa conceded that he took the money from the tip jar and that he was the person who hit Toufik.

force. She urged: "Even if you believe Rouguine is lying, Toufik has no idea what's going on, and Freddie Hernandez is the only person who told the truth, even if you believed that, you still find the defendant guilty because it still does not fit within the requirements of self-defense or defense of others. He was not acting on a reasonable belief of imminent danger, as we just discussed. He was not reasonable to think that he immediately needed to use force. And he definitely, under no circumstances, used a reasonable amount of force. [¶] So even if you accept the defense version in this case, you still find the defendant guilty of all charges."

In his closing, defense counsel likewise referenced CALCRIM No. 3470 and stressed that the People had the burden to prove Espinosa did not act in self-defense. Counsel argued that self-defense or defense of others was a complete defense to the charged assault and battery, requiring acquittal. He argued that the evidence showed Espinosa could have mistaken Toufik for a fellow wedding guest; was surprised by Toufik's sudden appearance next to him shortly after the women's fight; could have mistaken Toufik's cell phone for a weapon; and used no more force than necessary because he only hit Toufik once.[8]

In her final closing argument, the prosecutor responded to Espinosa's arguments and reiterated her own. Summing up, she urged: "Either way you look at the case, whether you decide you want to believe the defense witnesses or the People's witnesses, the defendant is guilty. . . . if you believe the People's witnesses, then the defendant hit Toufik [A.] in the back of the head. The

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[8] The defense conceded that Espinosa was guilty of petty theft.

punch was completely unprovoked. The defendant was not acting in self-defense and is guilty of the charges. [¶] If you believe the defense witnesses, then the defendant could not have reasonably believed he had to protect against an imminent harm. An imminent harm means you believe you are about to receive physical injury, bodily injury, because of what, a small black object that doesn't look like any sort of weapon? [¶] And again, a reasonable amount of force. Knocking someone unconscious, leaving them with a broken nose, broken teeth, lying on the ground bleeding and not checking on them or rendering any sort of aid is not a reasonable amount of force. [¶] *So even if you believed defense's version of events, which I do not think you should, but even if you choose to go that way, then you still have to find the defendant guilty*." (Italics added.)

b. *Applicable legal principles*

The standards governing review of prosecutorial misconduct claims are well settled. A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process. Conduct that does not render a trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade the jury. (*People v. Adams* (2014) 60 Cal.4th 541, 568; *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 427.) It is misconduct for a prosecutor to misstate the law during argument. (*People v. Whalen* (2013) 56 Cal.4th 1, 77; *People v. Mendoza* (2007) 42 Cal.4th 686, 702.) When a claim of misconduct is based on the prosecutor's comments before the jury, we consider whether there is a reasonable likelihood the jury construed or applied any of the

complained-of remarks in an objectionable fashion. (*People v. Friend* (2009) 47 Cal.4th 1, 29; *Adams*, at p. 568.) We consider the challenged statements in context, and view the argument as a whole. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 894; *People v. Valencia* (2008) 43 Cal.4th 268, 304.) We do not lightly infer that the jury drew the most, rather than the least, damaging meaning from the prosecutor's statements. (*People v. Shazier* (2014) 60 Cal.4th 109, 144; *People v. Dykes* (2009) 46 Cal.4th 731, 771-772.)

A defendant acts in lawful self-defense if (1) he actually and reasonably believes he, or someone else, is in imminent danger of suffering bodily injury or being unlawfully touched; (2) he reasonably believes the immediate use of force is necessary to defend against that danger; and (3) he uses no more force than is reasonably necessary to defend against that danger. (CALCRIM No. 3470; *People v. Lee* (2005) 131 Cal.App.4th 1413, 1427; *People v. Clark* (2011) 201 Cal.App.4th 235, 250.) If the defendant used more force than was reasonable, he did not act in lawful self-defense. (CALCRIM No. 3470.) As the jury was here instructed, self-defense is a complete defense to assault and battery. (*Ibid*.)

c. *Forfeiture*

The People argue Espinosa has forfeited his prosecutorial misconduct claim because he failed to object to the prosecutor's argument. To preserve a claim of prosecutorial misconduct, a defendant must make a timely and specific objection and ask the trial court to admonish the jury to disregard the improper argument. (*People v. Linton* (2013) 56 Cal.4th 1146, 1205; *People v. Souza* (2012) 54 Cal.4th 90, 122.) Here, Espinosa never objected at trial to the comments he now asserts were improper. Nothing suggests an objection would have been futile, or an

admonition inadequate to cure any harm. Accordingly, his claims have been forfeited. (*People v. Adams, supra,* 60 Cal.4th at pp. 568-569; *People v. Linton, supra,* at p. 1205.)

Recognizing this, Espinosa contends his counsel provided ineffective assistance by failing to object. To establish ineffective assistance of counsel, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's deficient performance was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687, 694; *People v. Brown*, *supra*, 59 Cal.4th at p. 109; *People v. Mai* (2013) 57 Cal.4th 986, 1009.) As we discuss *post,* the prosecutor's comments were not improper or objectionable. Therefore defense counsel did not provide ineffective assistance by failing to object. "Failure to raise a meritless objection is not ineffective assistance of counsel." (*People v. Bradley* (2012) 208 Cal.App.4th 64, 90; *People v. Szadziewicz* (2008) 161 Cal.App.4th 823, 836 ["Counsel's failure to make a futile or unmeritorious motion or request is not ineffective assistance"].)

d. *The prosecutor did not misstate the law or otherwise commit misconduct*

Espinosa contends that the italicized portion of the prosecutor's argument, set forth *ante,* misstated the law. According to him, the prosecutor's argument was tantamount to a statement that even if he acted in self-defense, he was guilty. This, he avers, was error because self-defense was a complete defense to the assault and battery charges.

Espinosa misconstrues the prosecutor's argument. The prosecutor never suggested, explicitly or implicitly, that self defense was less than a complete defense, or that the jury should

convict even if it found Espinosa acted in self-defense as defined in the relevant jury instruction. Instead, the prosecutor argued that even if the jury credited the defense evidence, that evidence failed to show self-defense because it failed to establish that Espinosa reasonably believed he (or Ceja) was in imminent danger and that he used only the amount of force reasonably necessary to defend against that danger. There was nothing objectionable or improper about this argument, which was a fair comment on the evidence. (See *People v. Winbush* (2017) 2 Cal.5th 402, 484 [prosecutor has wide latitude in describing deficiencies in opposing counsel's factual account]; *People v. Peoples* (2016) 62 Cal.4th 718, 796; *People v. Sandoval* (2015) 62 Cal.4th 394, 439 [prosecutor's argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences and deductions to be drawn therefrom].)

Nor did the prosecutor imply that Espinosa had the burden of proving self defense. (See *People v. Lee, supra,* 131 Cal.App.4th at p. 1429 [prosecution has the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense]; *People v. Lloyd* (2015) 236 Cal.App.4th 49, 63.) Instead, the prosecutor expressly referred the jury to CALCRIM No. 3470, which stated, "The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense. If the People have not met this burden, you must find the defendant not guilty . . . ."

Espinosa seems to believe the prosecutor's argument was improper because Hernandez's testimony, if credited, established self-defense as a matter of law. Not so. Hernandez testified that immediately after Delgado and Ceja fought, Espinosa and Ceja

walked toward the parking lot; Toufik walked quickly toward the couple, who were facing away from him; Toufik's arm was extended and he was holding his cell phone; when he and Espinosa bumped each other, the cell phone was close to Espinosa's face; and Espinosa looked surprised. These facts fell far short of establishing self-defense as a matter of law. There was no direct or circumstantial evidence that Espinosa, or anyone else, actually mistook the phone for a weapon. Hernandez testified that he was able to tell it was a phone from a distance of 10 to 15 feet away. Hernandez did not think Toufik had a weapon, and he easily recognized Toufik as a member of the wait staff. Toufik had not been involved in the fight between the women, which in any event had ceased by the time Espinosa punched Toufik. Toufik – who Ralph agreed was a "smallish kid" – had not said anything to Espinosa, did not make any gestures, and was not in a fighting stance. The event was not a street brawl but a wedding, and there was no showing anyone was armed. The defense did not provide a cogent reason for Espinosa to reasonably suspect anyone, let alone a teenaged waiter, had a weapon and was about to attack. Espinosa's conduct after the punch – including his threats to other staff that he would "fuck [them] up, too" – was consistent with an intent to leave with the stolen money and engage in violent conduct toward others, rather than with an intent to act in self-defense. In short, the defense evidence, if credited, did not compel the conclusion Espinosa acted in self-defense.

Espinosa also complains about the prosecutor's argument that certain of the defense witnesses were not credible because they were related to his girlfriend, Ceja, and therefore had a motive to lie. Espinosa asserts that "[t]hese comments by the

prosecutor further encouraged the jury not to believe" his self-defense theory. But it is axiomatic a prosecutor does not commit misconduct by arguing witness credibility based upon the evidence. Here, the prosecutor argued the jury should evaluate witness credibility in accordance with the relevant jury instruction. There was nothing improper about this argument.[9]

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.[*]

We concur:

EDMON, P. J.

JOHNSON (MICHAEL), J.[**]

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[9] Because there was no prosecutorial misconduct, we do not reach the parties' arguments regarding prejudice.

[*] Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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