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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC A. PINEDA,

Defendant and Appellant.

B270379

(Los Angeles County  
Super. Ct. No. BA436864)

APPEAL from an order of the Superior Court of Los Angeles County. Mildred Escobedo, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Eric Pineda appeals from his conviction of reckless driving while evading a peace officer (Veh. Code, § 2800.2). He argues the prosecutor committed prejudicial misconduct at trial. We find no error and affirm.

***FACTUAL AND PROCEDURAL BACKGROUND***

On May 19, 2015, at approximately 2:30 a.m., a black Dodge Charger led police officers on a high-speed pursuit. The chase ended with the police arresting four individuals believed to have been in the Charger, including Pineda. On July 24, 2015, the prosecution filed an information charging Pineda with violating Vehicle Code section 2800.2. The information further alleged Pineda had suffered a prior serious and/or violent felony (Pen. Code, §§ 667, subd. (d) & 1170.12, subd. (b)) and prior prison terms (Pen. Code § 667.5, subd. (b)). Pineda pled not guilty.

At trial, Los Angeles Police Officer Francisco Carrillo testified he was on patrol on May 19, 2015 when he noticed a black Dodge Charger, the rear license plate of which was partially obscured. He initiated a traffic stop and the Charger pulled over to the curb. Officer Carrillo pulled up behind and positioned a spotlight on the Charger. He had a clear view of the driver's face in the side-view mirror. Suddenly, the Charger drove off. Officer Carrillo pursued the vehicle which traveled up to 80 miles per hour on surface streets before entering the freeway.

Los Angeles Police Officer Robert Heiserman, a tactical flight officer, testified that he was in a helicopter monitoring the pursuit. The Charger eventually exited the freeway and stopped on a surface street. Three individuals got out of the car and ran off. The Charger then drove into a parking structure and parked.

Officer Heiserman had a clear view of the driver as he exited the car and could see that the driver was wearing a gray hooded sweatshirt and blue shorts with a white stripe down the side.

The driver ran across the parking structure, across rooftops and into the back area of an apartment complex. He was then joined by another male and they ran into the apartment building. Officer Heiserman observed the driver emerge from the other side of the building onto a balcony. The driver then fell off the balcony and officers on the ground took him into custody.

Officer Carrillo testified that he was present when the individual wearing a gray sweatshirt and striped shorts was arrested. The individual was identified as Eric Pineda. Carrillo recognized Pineda as the driver of the Charger he had pulled over earlier. Three other individuals, including Ricardo Ramirez, were arrested as well.

Ramirez testified for the defense that he had driven the Charger during the police pursuit. He had initially told the police he was *not* the driver, but later came forward when he found out that Pineda was being charged in this case.

The jury found Pineda guilty of violating Vehicle Code section 2800.2. Pineda admitted three prior felony convictions. The court sentenced Pineda to nine years in state prison comprised of the upper term of three years doubled under Penal Code sections 667 and 1170.12 plus one year each for three prior prison terms. Pineda timely appealed.

### ***DISCUSSION***

Pineda argues the prosecutor committed prejudicial misconduct at trial by stating during closing argument that (1) defense counsel had told Ramirez he would not be prosecuted for testifying he was the driver, and (2) the defense had failed to

produce evidence corroborating Ramirez's testimony. We address and reject each of these contentions in turn.

1. *The Prosecutor's Comments About Defense Counsel*

Pineda first argues the prosecutor committed misconduct and mischaracterized the evidence when the prosecutor stated that defense counsel "assured [Ramirez] he would not be prosecuted" for testifying he drove the Charger during the police pursuit on May 19, 2015. Pineda contends this argument was "not supported by the evidence." In fact, the prosecutor's argument was properly based on inferences drawn from Ramirez's testimony.

"Closing argument presents a legitimate opportunity to 'argue all reasonable inferences from evidence in the record' [citation], and a 'prosecutor has a wide-ranging right to discuss the case in closing argument. [He] has the right to fully state [his] views as to what the evidence shows and to urge whatever conclusions [he] deems proper. Opposing counsel may not complain on appeal if the reasoning is faulty or the conclusions are illogical because these are matters for the jury to determine.' [Citation.]" (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1342.)

On cross-examination, Ramirez was asked if defense counsel told him he would not be prosecuted for his testimony:

"Q: . . . [I]n speaking to [defense counsel], did you ask her if you could be prosecuted?

A. No.

Q. No? Okay. The fact of the matter is you're not going to be, right?

. . .

Q. . . . You know that the witnesses in this case specifically exclude you from being the driver? Did you know that?

A. No.

Q. Okay. So you're not going to be prosecuted no matter what you say on the witness stand, correct? Do you know that?

[Defense counsel]: Objection. Foundation.

THE COURT: Overruled.

Q. Do you know that? Has anybody told you that, like [defense counsel]?

A. Yes."

Defense counsel then asked Ramirez, "Did I ever tell you that no one's going to prosecute you if you testify?" Ramirez answered, "I don't remember."<sup>1</sup>

During closing argument, the prosecutor stated that the defense "called [Ramirez] in, had him swear an oath, told him that he wouldn't get in trouble . . . You heard Mr. Ramirez. He was being told, you can take that witness stand, claim to be the driver, and you're not going to get in trouble."

The record shows that Ramirez answered affirmatively in response to the prosecutor's question whether someone "like" defense counsel had told him he was "not going to be prosecuted no matter what" he testified to. Furthermore, on redirect,

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<sup>1</sup> To the extent Pineda complains that the trial court improperly restricted defense counsel's attempts to inquire as to whether Ramirez was advised by his court-appointed attorney of his "constitutional right against self-incrimination," Pineda has not established error. When Ramirez was asked about communications with his attorney, the court sustained objections based on attorney-client privilege and leading the witness. This did not prevent defense counsel from asking Ramirez whether he was aware of his Fifth Amendment privilege against self-incrimination.

Ramirez did not deny that defense counsel had said this but stated he could not remember whether she had. Based on this testimony, the prosecutor's statement that defense counsel had told Ramirez he would not be prosecuted for his testimony was based on a reasonable inference drawn from Ramirez's testimony. This was not misconduct.

2. *Failure to Call a Logical Witness*

Pineda next argues the prosecutor committed misconduct by commenting on the defense's failure to produce witnesses corroborating Ramirez's testimony. According to Pineda, the prosecutor's comments improperly suggested that the defense had the burden to produce corroborating evidence. We conclude the prosecution's comments permissibly highlighted the lack of evidentiary support for the defense theory of the case.

"Comment on the failure to call a logical witness is proper. [Citations.]" (*People v. Bell* (1989) 49 Cal.3d 502, 539.) "Misconduct claims [] have been rejected . . . where the prosecutor criticizes the defense theory of the case because it lacks evidentiary support [citation]." (*People v. Bemore* (2000) 22 Cal.4th 809, 846.) "[A] prosecutor may argue to a jury that a defendant has not brought forth evidence to corroborate an essential part of [the] defensive story' [citation] . . . ." (*People v. Gaines* (1997) 54 Cal.App.4th 821, 825.)

During the prosecutor's rebuttal argument, he stated "[t]here's a facet the law call[s] failure to call logical witnesses," and argued that the other two individuals in the car were logical witnesses that could have supported Ramirez's testimony. Such argument is permissible "where a defendant might reasonably be expected to produce such corroboration." (*People v. Varona* (1983) 143 Cal.App.3d 566, 570 [holding the prosecutor committed

misconduct by arguing the defense had not produced corroborating evidence where the defense was precluded from admitting such evidence[.] Here, the defense was in a position to produce corroborating evidence – namely, the testimony of the other individuals in the car – therefore, the prosecutor could properly argue that Pineda had not presented such evidence. While a prosecutor may not suggest a defendant has a duty or burden to prove his innocence (*People v. Bradford* (1997) 15 Cal.4th 1229, 1340), the prosecution did not do so here. Rather, the prosecutor pointed out that Pineda’s defense was supported by testimony of only one of the three witnesses present. This was not misconduct.<sup>2</sup>

### ***DISPOSITION***

The judgment is affirmed.

SORTINO, J.\*

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

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<sup>2</sup> Pineda argues prejudice from errors he has claimed, but since we have found none, this contention fails as well. (*People v. Bolin* (1998) 18 Cal.4th 297, 335.)

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