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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

JESSIE C. ROBERTS,

Defendant and Appellant.

B278185

(Los Angeles County
Super. Ct. No. MA062199)

APPEAL from judgment of the Superior Court of Los Angeles County, Joel L. Lofton, Judge. Affirmed.

James M. Crawford, 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, Senior Assistant Attorney General, Steven E. Mercer, Acting

Supervising Deputy Attorney General, Zee Rodriguez,
Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Jessie C. Roberts of (1) carjacking (Penal Code, § 215, subd. (a), count 1);¹ (2) two counts of misdemeanor false imprisonment (§ 237, subd. (a), counts 8 and 9); (3) kidnapping during a carjacking (§ 209.5, subd. (a), count 10); and (4) unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a), count 11). The trial court sentenced defendant to an indeterminate term of life in prison with the possibility of parole, and a consecutive determinate term of nine years eight months.

Defendant's sole contention on appeal is that the prosecutor improperly vouched for the credibility of one witness—Norma Ruiz De Maldonado—who was the alleged victim in count 1 (charged as kidnapping during a carjacking) and count 8 (charged as kidnapping). The jury convicted defendant of the lesser included offenses of carjacking in count 1 and of misdemeanor false imprisonment in count 8. Ruiz De Maldonado was one of three salespersons from separate car dealerships defendant victimized during a two-day crime spree. We hold that defendant forfeited any claim of error by failing to make a specific objection on the ground asserted on appeal. In

¹ All statutory references are to the Penal Code unless otherwise indicated.

addition, the prosecutor's statements did not amount to vouching, but even if they did, defendant has not shown a reasonable probability that the jury would have reached a more favorable result had the prosecutor not made the disputed argument to the jury.

FACTS

In February 2014, defendant visited three different car dealerships over two consecutive days. He tried, with varying degrees of success, to steal a car from each dealership. This appeal concerns comments made during the prosecutor's rebuttal argument about testimony by the salesperson from the second dealership. We briefly review the facts surrounding all three incidents.

Toyota dealership

Defendant first visited a Toyota car dealership in Glendale seeking to test drive a 2014 Camry. Salesman Jeremy Licon took defendant for a test drive. Once defendant was in the driver's seat, he ignored Licon's instructions about the normal test drive route. Instead, he drove towards the freeway at around 60 miles per hour on a 25-mile-per-hour street. Defendant did not respond to Licon's requests to turn, pull over, or slow down. Licon said to defendant, "If you're planning on stealing the car, you're not going to do it with me in it. Let me -- like, stop the car

and let me out.” He also proposed that defendant “just pull the car over, we’ll switch seats. I’ll take you back to the dealership. None of this happened.” About 10 blocks past the point where Licon first told him to stop, defendant drove into a restaurant parking lot, where Licon got out of the car. Licon had the key fob as defendant drove away with the passenger door still open.

Chevrolet dealership

The next day, defendant went to Antelope Valley Chevrolet in Lancaster, where he told sales associate Norma Ruiz De Maldonado he was interested in buying a Camaro. Ruiz De Maldonado showed him a 2014 SS Camaro on the dealership lot. Defendant wanted to see the interior and the electronics, so she obtained the keys and sat in the passenger seat of the car while defendant sat in the driver’s seat. She turned the key just enough to activate the electronics. Without warning, defendant turned the car on and drove it forward. Ruiz De Maldonado repeatedly told defendant to stop, but he did not respond. He drove the car through the dealership lot toward the street. As the car approached the street, Ruiz De Maldonado turned the car off, grabbed the keys, and got out of the car. Appellant also got out of the car and yelled things like, “Bitch, all I wanted was the car. All I want is a car.” Using the car as a barrier between herself and defendant, Ruiz De Maldonado ran to the driver’s side, got in, and locked the doors. Defendant

yelled obscenities as Ruiz De Maldonado drove the car back into the dealership lot, parked it, and ran inside. She saw defendant yelling and walking to the dealership. Defendant entered a taxi and left. Ruiz De Maldonado reported the incident to her supervisor. She also completed a written report of the incident the next day, after she was written up for letting defendant drive the car.

During cross-examination, defense counsel asked Ruiz De Maldonado about her written statement. Ruiz De Maldonado confirmed she had written, “I pulled the keys out of the ignition and screamed at him to get out of the car, leaving the car in the middle of the road. He got out of the car, and I drove the car back to the lot.” She also confirmed she had not written anything in the report about feeling afraid.

On redirect examination, the prosecutor asked Ruiz De Maldonado why she prepared the handwritten report for her employer. She responded that the report justified that she had followed procedures after her employer had written her up. She explained, “Because according to them, I should have never let him drive off with the vehicle.”

On recross-examination, Ruiz De Maldonado testified she had been disciplined by her employer. Defense counsel asked, “Because you did not follow their instructions?” Ruiz De Maldonado responded, “According to them, yes.”

Kia dealership

Isaac Rodriguez was a salesperson at Antelope Valley Mazda in Lancaster. He showed defendant a blue 2013 Kia Optima. He placed the keys in the ignition to show defendant the electronics as he stood outside the open driver's side door. Defendant abruptly shut and locked the car door, and drove out of the dealership and onto a street.

Defendant apprehended

The same day as the incidents in Lancaster, Los Angeles County Sheriff's Department Deputy Brandon Hartshorne saw defendant attempting to remove a car dealership sticker from the windshield of a blue Kia Optima. The Toyota Camry was parked in front of the Kia Optima. Defendant was arrested.

DISCUSSION

Defendant contends the prosecutor committed misconduct by vouching for Ruiz De Maldonado's credibility. We reject the contention.

"A 'prosecutor is prohibited from vouching for the credibility of witnesses or otherwise bolstering the veracity of their testimony by referring to evidence outside the record. [Citations.] Nor is a prosecutor permitted to place

the prestige of her office behind a witness by offering the impression that she has taken steps to assure a witness's truthfulness at trial. [Citation.] However, so long as a prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses are based on the "facts of [the] record and the inferences reasonably drawn therefrom, rather than any purported personal knowledge or belief," her comments cannot be characterized as improper vouching.' [Citations.] Misconduct arises only if, in arguing the veracity of a witness, the prosecutor implies she has evidence about which the jury is unaware. [Citations.]" (*People v. Fernandez* (2013) 216 Cal.App.4th 540, 561.) "A prosecutor is given wide latitude to vigorously argue his or her case and to make fair comment upon the evidence, including reasonable inferences or deductions that may be drawn from the evidence. [Citation.] Generally, a claim of prosecutorial misconduct is preserved for appeal only if the defendant objects in the trial court and requests an admonition, or if an admonition would not have cured the prejudice caused by the prosecutor's misconduct. [Citations.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 726.) "Furthermore, and particularly pertinent here, when the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion." (*People v. Morales* (2001) 25 Cal.4th 34, 44 (*Morales*).)

During closing argument, defense counsel argued Ruiz De Maldonado's tearful and emotional testimony was not sufficient to support a conviction because her written report did not state defendant ever threatened her or displayed a weapon. He suggested that perhaps her employer did not believe her version of events because she was sanctioned for whatever she did.

During rebuttal, the prosecutor argued: "Now, the defense tries to make a big deal out of the statement that she wrote for her employer after the incident, but let's think about that. The issue in her statement was whether she complied with the dealership's procedures for letting somebody take a test drive. The issue is not whether she was afraid or not. The dealership, simply put, wasn't concerned with determining whether she was afraid or whether she was not afraid. That wasn't really their prerogative. Instead, they rather unfairly accused her of not following the procedures, and she quite justifiably felt, 'That's not fair. He drove me in a car against my will.'" Defense counsel objected to the argument, stating it was "being advanced with respect to the state of the mind of their employee." The trial court responded, "Overruled. It's argument." Defense counsel made no further objection and did not request a jury admonition.

First, defendant has forfeited his claim. Defendant objected to the prosecutor's argument, but the only ground stated was that it related to Ruiz De Maldonado's state of mind. The actual legal basis for the objection is unclear.

The objection did not put the trial court on notice that defendant was raising an objection on the grounds that the prosecutor's comments were improper vouching and misconduct. A "defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety." [Citation.] [Citation.]" (*People v. Stanley* (2006) 39 Cal.4th 913, 952.) Defendant only objected to the prosecutor's argument as going to the witness's state of mind. There was no assertion that the prosecutor was vouching for Ruiz De Maldonado's credibility, nor was there a request for a jury admonition. The claim of prosecutorial misconduct is therefore forfeited. (See *People v. Alfaro* (2007) 41 Cal.4th 1277, 1329; *People v. Cook* (2006) 39 Cal.4th 566, 606.)

Second, even if defendant had made a proper objection, the prosecutor's comments were a fair rebuttal to defendant's closing arguments and do not constitute personal vouching. Defense counsel's cross-examination and closing arguments focused on Ruiz De Maldonado's written statements in an attempt to undermine her testimony that she was afraid when defendant turned on the engine of the Camaro and maneuvered it to the driveway of the dealership despite her repeated requests to stop. The prosecutor offered a rebuttal to defense counsel's argument by reminding the jury of the context in which Ruiz De Maldonado gave the statement. Defendant argues the prosecutor's comments

implied to the jury that the prosecutor was placing the prestige of his office behind the witness's truthfulness, drawing attention away from the evidence. The record is not reasonably susceptible of the interpretation suggested by defendant. Having raised the matter of the post-incident report during cross-examination, and again during closing argument, defendant cannot now seek to transform the prosecutor's reasonable interpretation of Ruiz De Maldonado's testimony into prosecutorial misconduct.

Third, defendant cannot establish prejudice. "A defendant's conviction will not be reversed for prosecutorial misconduct' that violates state law, however, 'unless it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct.' [Citation.]" (*People v. Wallace* (2008) 44 Cal.4th 1032, 1071.) To begin with, the singular disputed comment on its face is so trivial and innocuous that we see no possibility it had a prejudicial impact on the jury on the counts relating to Ruiz De Maldonado.² Moreover, the trial court instructed the jurors on their obligation to determine whether witnesses in the case were credible, and there is every reason to believe the jury performed its function in this case without undue

² The disputed comment made no reference to the charges relating to the events at the Toyota and Kia dealerships. Defendant makes no argument of prejudice as to those counts, and justifiably so, as the prosecutor's argument related only to Ruiz De Maldonado and did not spill over to the other charged offenses.

influence from the prosecutor's argument. The prosecutor sought convictions for kidnapping during a carjacking (count 1) and felony kidnapping (count 8) for the incident involving Ruiz De Maldonado, but the jury instead convicted defendant, respectively, of the lesser-included offenses of carjacking and misdemeanor false imprisonment. Considering the lesser verdicts returned by the jury, there is no "reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion." (*Morales, supra*, 25 Cal.4th at p. 44.)

DISPOSITION

The judgment is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

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