Filed 6/12/17 P. v. Shinti CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. AMMEN SHINTI, Defendant and Appellant.	B275417 (Los Angeles County Super. Ct. No. LA079866)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph A. Brandolino, Judge. Affirmed.

Doris M. LeRoy, 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, Paul M. Roadarmel, Jr., and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Ammen Shinti of assault with intent to commit forcible rape or forcible oral copulation in the course of a burglary and three sexual assault offenses and found true multiple special allegations. On appeal Shinti contends the prosecutor committed misconduct by cross-examining Shinti on details of his prior rape conviction in a manner that insinuated facts about that offense that were not in evidence. Shinti also contends the prosecutor compounded the misconduct in closing argument by referring to facts not in evidence, misstating the law and accusing defense counsel of misleading the jury. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

An information filed April 15, 2015 charged Shinti with assault with intent to commit forcible rape or forcible oral copulation during the commission of a first degree burglary (Pen. Code, § 220, subd. (b)) (count 1),[1] two counts of forcible rape (§ 261, subd. (a)(2)) (counts 2 and 4) and two counts of forcible oral copulation (§ 288a, subd. (c)(2)(A)) (counts 3 and 5). The information specially alleged as to counts 1, 2 and 3 that Shinti inflicted great bodily injury (§ 12022.8), as to counts 2 and 3 the offenses were committed during the commission of a burglary (§ 667.61, subds. (a), (d)) and as to counts 2 through 5 the offenses were committed against more than one victim (§ 667.61, subd. (b)). Shinti pleaded not guilty and denied the special allegations.

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[1] Statutory references are to this code.

2. *Summary of the Evidence at Trial*

a. *Terri R.* (*counts 1, 2 and 3*)

Shinti rented a room in a house across the street from Terri R.'s residence. Shinti had worked for Terri for a short time doing light chores and errands until she fired him. They remained cordial but were not friends. On November 25, 2014 Shinti entered Terri's home uninvited, went into her bedroom and said to her, "Remember when you fired me and you said, 'Fuck you, Shinti?' That's what I'm going to do to you now." Terri protested, but Shinti told her if she kept talking he would become violent. He also made a motion as if he were going to punch her. He removed Terri's undergarments and forcibly put his mouth on her genitals.

During the assault Shinti choked Terri, and she lost consciousness. When she regained consciousness, she felt disoriented. Shinti turned her on her side, used a lubricant and penetrated her genital area with his penis. After he ejaculated and Terri assured him she would not call the police, he cleaned up with a towel and left. A rape examination the next day revealed active bleeding from Terri's ear and a burst eardrum consistent with strangulation. Terri also had lacerations and bruises to her vagina consistent with blunt force trauma.

The day after the sexual assault Shinti telephoned his landlord and told her he would not be returning to his residence. He had "done something that he didn't think he [could] get himself out of"; in a follow-up conversation Shinti told his landlord he had considered turning himself in to authorities but did not want to go back to jail.

b. *Anita O.* (*counts 4 and 5*)

In April 2007 Anita O. rented a room in the same motel where Shinti then resided. Anita testified she and Shinti were platonic friends and sometimes consumed drugs together. Anita worked as a prostitute, but Shinti was never one of her customers. She and Shinti never had consensual sex. On April 27, 2007 Shinti called Anita and told her he had money to repay a loan she had made to him. He asked her to come to his room. When she arrived, he pushed her onto the bed and told her he wanted her. She screamed and resisted. He told her to be quiet or he would choke her. He orally copulated her against her will and put his hands on her neck and squeezed slightly. He forced her to orally copulate him, then turned her over, applied a lubricant to his penis and raped her. Again, Anita screamed. When Shinti was finished and began dressing, Anita ran out of the room and called police. When the police arrived they found Shinti's door braced from the inside with a chair; Shinti was not there. It appeared he had climbed out of the room through a window.

c. *Stipulations*

During the People's case-in-chief the prosecutor introduced a stipulation between the parties that Shinti's DNA matched the profile of DNA recovered during Terri's medical examination and from a towel in Terri's bathroom. In addition, the parties stipulated that "[i]n 1974 the defendant, Ammen Shinti, was convicted of first degree burglary and rape in Greeley, Colorado."

d. *Defense evidence*

Shinti testified in his own defense. He claimed his sexual encounters with both Terri and Anita had been consensual. He never threatened or strangled either woman. He did not enter

Terri's house to have sex with her. He and Terri talked, and at some point during their conversation she asked him to have sex with her. He insisted Terri did not have any bleeding or bruises when he left. He and Anita did drugs together in 2007 and had frequent consensual sex. Anita accused him of rape in 2007 only after he had refused to give her money for drugs.

Shinti acknowledged on direct examination that he had suffered a prior conviction for first degree burglary and rape in Colorado in 1974 when he was 18 years old. He claimed he had never met the Colorado woman who had accused him of rape until she identified him during the trial as her rapist. He believed she identified him at trial because he was in the "defendant's chair." Shinti testified he was at his own house hosting a party the night of the Colorado rape offense. He told police about his alibi, but he was still charged. In response to defense counsel's inquiry, Shinti stated the Colorado woman who had accused him of rape was White.[2] (Shinti is African-American.) Shinti stated he served more than four years in prison in Colorado for rape and burglary offenses he did not commit.

On cross-examination the prosecutor asked Shinti, "[The victim's identification of you at trial] was not the only identification of you by that victim, was it?" After defense counsel objected, the prosecutor argued at a sidebar conference that Shinti had opened the door to the questioning when he discussed the victim's identification of him at the Colorado trial. The court agreed, finding the prosecutor had a good faith basis—

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[2] Defense counsel told the court outside the presence of the jury that the victim had since died.

Shinti's conviction and a police report in the 1974 case—for asking questions about identification evidence presented at the Colorado trial and was not seeking to introduce hearsay. The court ruled, "I think the defense opened the door for it. The impression the defendant gave in his direct was that he was misidentified. He was not the perpetrator. It was even suggested it was a racist misidentification. So if this happened during the trial and he's aware of it, we're not bringing up hearsay. It's just we're bringing out his recollection of it . . . . If we're not going to go into a retrial, but to elicit those [limited] issues, I think is it fine."

The prosecutor asked Shinti whether he remembered if the victim had also identified him in a photographic lineup. Shinti responded he did not remember. Shinti denied evidence had been presented at the Colorado trial that boots found in his closet matched the shoeprints of the perpetrator. He recalled the victim had been "an older woman." The prosecutor also sought to ask Shinti about details of the Colorado rape. The defense again objected, arguing the prosecutor was employing a back-door approach to expose the jury through insinuation to facts concerning the prior rape that were not in evidence and that needed to be independently established. The court ruled the prosecutor could ask Shinti limited questions about the Colorado rape that did not involve hearsay, while making clear it did not want a mini-trial on that offense.[3] Pursuant to the court's ruling,

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[3] The court ruled, "[The prosecutor] has a good faith basis for asking those questions. The defendant was convicted of an offense. [The facts were] alleged by the victim or was testified [to] by the victim. It's still a good faith basis. You can make your arguments if you want [that] [t]here's no independent evidence.

the prosecutor asked Shinti three questions about details of the Colorado rape.[4] To each question Shinti denied having committed that offense. On redirect Shinti testified no DNA evidence had been presented at his Colorado trial.

Two of Shinti's former employers testified to Shinti's good character as a peaceful and gentle person.

3. *Closing Arguments*

During the People's initial closing argument the prosecutor referred in a limited way to the Colorado conviction: "And then there's the uncharged sex offense, and that's talking about the 1974 burglary and rape conviction in Colorado, and we entered into a stipulation that the defendant in fact suffered those convictions. And what can you do with that is if you decide that the defendant committed the rape and burglary in Colorado, you can use that to say he was inclined to commit these two rapes with Terri and Anita, and that he was disposed to commit these sexual assaults."

In her closing argument defense counsel reminded the jury, "You've heard no actual evidence from that [1974] case other than it was a trial, and Mr. Shinti was convicted of burglary and rape. You heard Mr. Shinti tell you he was wrongfully accused back in

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If the defendant denies it, which he likely will, you can say there's no facts. You can make that argument to the jury, but they can ask it."

[4] The prosecutor asked, "Isn't it true you threatened that victim that you would hurt her if she didn't stay quiet?" "Isn't it true you started raping her on the bed, then forced her onto the floor and continued to rape her on the floor?" "Isn't it true when you were raping her you used Avon cream to lubricate yourself . . . ?"

1974, and he always asserted his innocence. And you heard him say 42 years later after being wrongfully convicted and even serving time for those crimes that he didn't commit that he still never committed those crimes back in 1974. And the prosecutor asking questions about the specifics of that conviction and what went on during that trial, that's not evidence, and the jury instructions are very clear about that. You heard no evidence about what went on during the conviction of 1974. No witnesses testified, and no evidence was ever presented to you about that case. The only thing in evidence is a stipulation that in 1974 in Colorado Mr. Shinti suffered a conviction for burglary and rape. You haven't heard about any DNA regarding the case in 1974. And I asked Mr. Shinti if there was DNA presented in that case, and he said no. . . . Just because Mr. Shinti was convicted of something in 1974 doesn't mean he was actually guilty of anything. In 1974, they weren't even using DNA in criminal trials. DNA wasn't even admissible in most states in criminal trials until the late '80's or early '90's. So I'm asking you just consider the possibility that just because in 1974 Mr. Shinti was convicted of burglary and rape doesn't mean he did it."

In the People's rebuttal closing argument, the prosecutor argued, "If one woman says you're a rapist, maybe you're not. Two women say you're a rapist, I don't know. That's unusual. When three women all come in here from different walks of life who do not know each other and all three of them are saying that you're a rapist and the details of those rapes are all consistent, you're a rapist." "But you also need to look at the similarities between these rapes. These are all older women. You heard him testify the woman in Colorado was an older woman. So even at

[18 or] 19 his targets are older women." Defense counsel did not object to any of the prosecutor's comments.

4. *The Verdict and Sentence*

The jury found Shinti not guilty of forcible oral copulation of Anita (count 5) and found not true the special allegation that Shinti had committed oral copulation by force against multiple victims. The jury convicted Shinti on all other counts and found true all of the remaining special allegations. Shinti was sentenced to an aggregate indeterminate state prison term of 45 years to life.[5]

DISCUSSION

1. *Governing Law and Standard of Review*

"'"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 by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the

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[5] The court imposed an indeterminate term of 25 years to life for forcible rape of Terri under the one strike law (§ 667.61, subds. (a), (d)) (count 2), plus five years for the great bodily injury enhancement; and a consecutive indeterminate term of 15 years to life for the forcible rape of Anita (§ 667.61, subd. (b)) (count 4). The court also imposed a concurrent indeterminate term of 15 years to life for the forcible oral copulation of Terri (count 3) and stayed pursuant to section 654 any sentence for assault with intent to commit rape or forcible oral copulation during the course of a burglary (count 1).

jury."'" (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1331-1332; accord, *People v. Cortez* (2016) 63 Cal.4th 101, 130.)

Ordinarily, "'"[t]o preserve a claim of prosecutorial misconduct for appeal, 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. Charles* (2015) 61 Cal.4th 308, 327; accord, *People v. Williams* (2013) 58 Cal.4th 197, 274.) The forfeiture doctrine does not apply only when a request for an admonition would have been futile or would not have cured the harm. (*People v. Seumanu, supra,* 61 Cal.4th at pp. 1328-1329; accord, *People v. Hill* (1998) 17 Cal.4th 800, 820.)

A conviction will not be reversed for prosecutorial misconduct that violates state law "'unless it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct.'" (*People v. Wallace* (2008) 44 Cal.4th 1032, 1070-1071; accord, *People v. Lloyd* (2015) 236 Cal.App.4th 49, 60-61.) Bad faith is not required. (See *People v. Centeno* (2014) 60 Cal.4th 659, 666-667 ["'[t]he term prosecutorial "misconduct" is somewhat of a misnomer to the extent that it suggests a prosecutor must act with a culpable state of mind[;] [a] more apt description of the transgression is prosecutorial error'"]; accord, *Lloyd,* at p. 61.) We review a trial court's ruling regarding prosecutorial misconduct for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 213.)

2. *The Prosecutor Did Not Commit Misconduct During His Cross-examination of Shinti*

"The permissible scope of cross-examination of a defendant is generally broad. 'When a defendant voluntarily testifies, the district attorney may fully amplify his testimony by inquiring into the facts and circumstances surrounding his assertions, or by introducing evidence through cross-examination which explains or refutes his statements or the inferences which may necessarily be drawn from them. [Citation.] A defendant cannot, by testifying to a state of things contrary to and inconsistent with the evidence of the prosecution, thus indirectly denying the testimony against him, but without testifying expressly with relation to the same facts, limit the cross-examination to the precise facts concerning which he testifies.'" (*People v. Chatman* (2006) 38 Cal.4th 344, 382; accord, *People v. Cooper* (1991) 53 Cal.3d 771, 822.)

Despite the wide latitude afforded on cross-examination, "'[i]t is improper for a prosecutor to ask questions of a witness that suggest facts harmful to a defendant, absent a good faith belief that such facts exist'" and can be proved. (*People v. Bolden* (2002) 29 Cal.4th 515, 562; accord, *People v. Mooc* (2001) 26 Cal.4th 1216, 1233 (*Mooc*); *People v. Visciotti* (1992) 2 Cal.4th 1, 52 ["a prosecutor may not examine a witness solely to imply or insinuate the truth of the facts about which questions are posed"]; see *People v. Perez* (1962) 58 Cal.2d 229, 241 ["'[i]t was improper to ask questions which clearly suggested the existence of facts which would have been harmful to defendant, in the absence of a good faith belief by the prosecutor that the questions would be answered in the affirmative, or with a belief on his part

that the facts could be proved, and a purpose to prove them, if their existence should be denied'"].)

Shinti testified on direct examination that he had been wrongly convicted in the Colorado case. He discussed his alibi at the time of that offense, the nature of the victim's identification of him at trial and suggested the victim's identification was based entirely on his status as the defendant on trial. There is no question that Shinti's direct testimony about the Colorado offense justified the prosecutor's examination of Shinti about that offense and the propriety of that conviction. (See *People v. Dykes* (2009) 46 Cal.4th 731, 766 ["[i]t constitutes misconduct to examine a witness solely for the purpose of implying the truth of facts stated in the question rather than in the answer to be given"[;] "[o]n the other hand, in the present case, defense counsel asked defendant why he purchased the firearm, opening the door to examination on the same point by the prosecution"]; see generally *People v. Chatman*, *supra*, 38 Cal.4th at p. 382.)

Shinti's contention the prosecutor's questions were misconduct because they were intended to insinuate facts the prosecutor knew Shinti would deny and that the prosecutor had no intent to independently prove also fails. As in *Mooc, supra,* 26 Cal.4th 1216, defense counsel indicated at the sidebar conference that the prosecutor's questions were based on circumstances described in a police report. That report provided a good faith basis for the prosecutor's questions. (See *id.* at p. 1234 ["In the instant case, the record shows defense counsel recognized the existence of a police report describing how an inmate named Solis had yelled out during the fracas that the inmates should blame Officer Garcia for starting the fight. We thus may surmise the prosecutor had a good faith belief that he

could have produced a witness to provide a factual basis for the questioning of Le and Vo" on those facts].)

Shinti suggests, as did his counsel at trial, that the police report contained inadmissible hearsay. That characterization of the report, however accurate, misses the mark. Even if the report itself was not admissible, it provided the prosecutor a good faith basis for asking Shinti whether he had committed certain acts in the Colorado case, questions that did not elicit hearsay.

Finally, Shinti emphasizes that the prosecutor failed to introduce evidence to support any of the inferences underlying his questions about the Colorado conviction and argues that omission is prima facie evidence the People had no intention of proving the facts that were insinuated. As the *Mooc* Court stated in rejecting a similar argument, the absence of evidence in the People's rebuttal case relating to questions asked the defendant does not necessarily mean the prosecutor lacked good faith in asking the questions. (*Mooc*, *supra,* 26 Cal.4th at p. 1234.) To the contrary, "'one can readily imagine that by the time [the prosecutor] could offer rebuttal evidence the prosecutor might have concluded that such additional evidence was unnecessary.'" (*Ibid.*)

3. *Shinti Forfeited His Prosecutorial Misconduct Claims Directed to the Prosecutor's Closing Argument; He Has Not Proved His Counsel's Failure To Object Was Constitutionally Deficient*

Shinti also contends the prosecutor committed misconduct during closing argument. In particular, he asserts the prosecutor recited facts about the Colorado conviction that were not in evidence, accused defense counsel of misleading the jury and misstated the People's burden of proof. Shinti did not object to

any of the allegedly improper remarks and has not demonstrated an objection and proper admonition would have failed to cure the harm. Accordingly, his claims of prosecutorial misconduct are forfeited. (*People v. Centeno, supra,* 60 Cal.4th at p. 674; *People v. Clark* (2011) 52 Cal.4th 856, 960.)

Recognizing the likely forfeiture of his claims of misconduct, Shinti alternatively argues his trial counsel's failure to object to the remarks challenged on appeal constituted ineffective assistance of counsel. (*People v. Centeno*, *supra*, 60 Cal.4th at p. 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'"].) To prevail on that claim, Shinti "bears the burden of showing by a preponderance of the evidence that (1) counsel's performance was deficient because it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficiencies resulted in prejudice." (*Ibid.*) Prejudice is established by showing that, but for counsel's unprofessional errors, it is reasonably probable that the result of the proceeding would have been more favorable to the defendant. (*People v. Johnson* (2015) 60 Cal.4th 966, 979-980; *Strickland v. Washington* (1984) 466 U.S. 668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

a. *Unsupported facts about the Colorado rape case*

Shinti contends the prosecutor referred to facts not in evidence when he told the jury the Colorado case bore similarities to the charged offenses because it involved an older victim and threats designed to keep the victim from fighting back. Specifically, the prosecutor stated, "When three women all come in here from different walks of life who do not know each other

and all three of them are saying that you're a rapist and the details of those rapes are all consistent, you're a rapist. . . . They don't know each other. They're in different states. One's in Colorado, the other two in California, spanning over 40 years, all saying the defendant is a rapist. But you also need to look at the similarities between these rapes. These are all older women. You heard him testify the woman in Colorado was an older woman. . . . Terri was 62, I believe, Anita in her 50's. He threatens them to keep them quiet."

The prosecutor's remarks that Shinti had been convicted of rape in a prior case and his victims were "older women" were based on the evidence at trial. Shinti testified the victim in the case in which he was convicted "was an older woman," as were Anita and Terri. The statement that he "threatens them" was also a proper comment on Terri's and Anita's testimony. However, as Shinti argues, there was no evidence Shinti had threatened the victim in the Colorado case. Because the prosecutor's remark suggested Shinti had threatened all three women, his counsel's failure to object and seek clarification or an admonition is certainly questionable. Nonetheless, it is not reasonably probable Shinti would have received a more favorable verdict had his counsel objected to the remark and an admonition been made. (See *In re Champion* (2014) 58 Cal.4th 965, 1007 ["'[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed'"]; *In re Alvernaz* (1992) 2 Cal.4th 924, 945 [same].)

Shinti's Colorado convictions for rape and burglary, the same crimes for which Shinti was being tried in the case at bar, were stipulated to by the parties. Anita and Terri's testimony

established that Shinti's crimes against them involved similar acts. Shinti also testified the victim in the Colorado case was an "older woman." Although the prosecutor's remarks improperly intimated Shinti had threatened the Colorado victim, defense counsel told the jury the underlying details of the Colorado rape conviction had not been independently established. Moreover, the trial turned on the credibility of Shinti's claim his sexual encounters with Anita and Terri were consensual. Whether he actually threatened his victims with force, or had simply overpowered them, was a minor point in the trial. Finally, the court instructed the jury that counsel's questions and closing argument were not evidence. We presume the jury followed those instructions. (*Mooc, supra,* 26 Cal.4th at p. 1234; *People v. Delgado* (1993) 5 Cal.4th 312, 331 ["'[t]he crucial assumption underlying our constitutional system of trial by jury is that jurors generally understand and faithfully follow instructions'"].)

b. *Disparagement of defense counsel*

Shinti also contends his counsel rendered ineffective assistance by failing to object to the prosecutor's denigration of defense counsel during closing argument. In particular, during the People's rebuttal closing argument, the prosecutor stated, "The first thing that I want to talk to is the defense attorney telling you that if there are two reasonable interpretations, you have to find the defendant not guilty. That is absolutely not the law. That is a misinterpretation of what it says, and it is there to mislead you. What your jury instruction says is with circumstantial evidence if there's two reasonable interpretations and both of them are reasonable, you have to go for the defense. This is not a circumstantial evidence case. You have direct

evidence. You have the victims coming in here and telling you that the defendant raped them."

Shinti contends this comment improperly accused defense counsel of deliberately misleading the jury. (See *People v. Hill, supra*, 17 Cal.4th at p. 832 ["[a] prosecutor commits misconduct if he or she attacks the integrity of defense counsel, or casts aspersions on defense counsel"]; *People v. Wash* (1993) 6 Cal.4th 215, 265 [same].) That characterization of the prosecutor's rebuttal argument overstates the challenge to defense counsel's closing argument. "'An argument [that] does no more than point out that the defense is attempting to confuse the issues and urges the jury to focus on what the prosecution believes is the relevant evidence is not improper.'" (*People v. Hillhouse* (2002) 27 Cal.4th 469, 503.)

c. *Misstatements of law*

Shinti also argues the prosecutor misstated the law by encouraging the jury to decide the case by counting witnesses. The prosecutor did no such thing. The prosecutor stated, "[I]f one person is saying something about you, it might not be you. It could be them. If two people are saying something about you, the same thing[,] [y]ou might want to start looking at yourself because maybe it's not them. Maybe it's you. But if three people are all saying the exact same thing about you, it's not them. It's you. . . . If one woman says you're a rapist, maybe you're not. Two women say you're a rapist, I don't know. That's unusual. When three women . . . are saying that you're a rapist . . . you're a rapist." The remark was a comment on the evidence and the reasonable inferences therefrom. There was no impropriety to which his counsel should have objected.

In addition, during the People's initial closing argument the prosecutor urged the jury to "use your common sense, and you come to only one reasonable conclusion, that the defendant is guilty." In rebuttal to the defense closing argument, the prosecutor also stated, "At some point you have to think [defendant's explanations] [are] completely unbelievable. Not everybody in this world is out to get this defendant. The reasonable explanation for all of this is the defendant raped these women." Shinti argues that each of these comments, whether considered separately or together, could be construed to permit a conviction based on a "reasonable conclusion" and not based on findings beyond a reasonable doubt.

Contrary to Shinti's contention, the prosecutor's remarks were proper commentary on Shinti's testimony and his explanations for both his prior Colorado conviction and for the adverse testimony of Terri and Anita. (See *People v. Romero* (2008) 44 Cal.4th 386, 416 ["In closing argument the prosecutor explained that the reasonable doubt standard asks jurors to 'decide what is reasonable to believe versus unreasonable to believe' and to 'accept the reasonable and reject the unreasonable.' Nothing in the prosecutor's explanation lessened the prosecution's burden of proof."].)

Finally, Shinti argues the prosecutor improperly shifted the burden of proof to the defense by commenting that Shinti "gave no explanation for Terri's injuries[] [s]o, you have the choice of he did it, or that there is no other explanation." Once again, the prosecutor's argument was a proper comment on Shinti's explanations for events to which he testified at trial. (*People v. Centeno, supra,* 60 Cal.4th at p. 673 ["the prosecution can surely point out that interpretations [of evidence] offered by the defense

are neither reasonable nor credible"].) The jury was properly instructed as to the People's burden of proof beyond a reasonable doubt, and both the prosecutor and defense counsel referred to the reasonable doubt standard and instruction during closing argument. There was no impropriety, and thus no ineffective assistance of counsel.

In sum, Shinti has not demonstrated his trial counsel's failure to object to any of the remarks he now identifies amounted to constitutionally ineffective assistance of counsel.[6]

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J. SMALL, J. *

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[6] Shinti also contends the errors he has identified, when considered cumulatively, denied him due process. (See *People v. Hill, supra,* 17 Cal.4th at pp. 844-845 ["a series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error"]; *People v. Rivas* (2013) 214 Cal.App.4th 1410, 1436 ["[a] claim of cumulative error is in essence a due process claim"].) For the reasons we have explained, none of the errors Shinti has alleged, even when considered cumulatively, deprived him of a fair trial. Accordingly, we reject Shinti's claim of cumulative error.

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