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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>JAMES JERON BERRYMAN,<br><br>Defendant and Appellant. | B265766<br><br>(Los Angeles County Super. Ct. No. MA056720) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Heather J. Manolakas, 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, Assistant Attorney General, Victoria B. Wilson and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant James Jeron Berryman appeals from the judgment entered following trial before a second jury, the trial court having declared a mistrial after the first jury declared it was hopelessly deadlocked. The jury found defendant guilty of second degree robbery (Pen. Code, § 211; count 1),[1] attempted second degree robbery (§§ 664, 211; count 2), and making criminal threats (§ 422, subd. (a); count 3). The trial court found true the allegations that he had suffered two prior serious felony convictions (§ 667, subd. (a)) that constitute strikes under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

After dismissing one strike, the trial court sentenced defendant to prison to an aggregate term of 21 years 4 months on counts 1 and 2. Imposition of sentence was stayed on count 3 (§ 654).

Defendant contends the trial court erred by failing to declare a mistrial after a witness improperly referred to defendant's polygraph exam and the prosecutor improperly referred to his parole status. He challenges the sufficiency of the evidence to support his three convictions, contending it is physically impossible that defendant is the assailant depicted in the bank surveillance video footage. He also contends the prosecutor committed three instances of prejudicial misconduct that necessitate reversal of the judgment, i.e., the prosecutor improperly commented on the defense alibi witnesses' failure to testify at the preliminary hearing; on the defense's failure to present a jailhouse recording of defendant's conversation with an alibi witness, and on defendant's parole status. Lastly, he

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1 All further section references are to the Penal Code unless otherwise noted.

contends reversal is mandated in view of the cumulative effect of the assigned errors.

We affirm the judgment. The trial court did not abuse its discretion in declining to declare a mistrial. Whether viewed singly or in combination, the references to defendant's polygraph exam and to his parole status were nonprejudicial. Substantial evidence supports the jury's finding that defendant was in fact the perpetrator in all three crimes. His challenge to the sufficiency of the evidence to support the judgment therefore fails. When viewed in context, the first and second assigned comments by the prosecutor do not qualify as misconduct. The third about defendant's parole status was nonprejudicial, because the inadvertent comment was corrected at once; defense counsel stated he was "not so much concerned" about the reference; and he elected not to have the court instruct the jury to disregard the comment. Such error, at most, was of de minimis impact, and thus, this single error does not warrant reversal of the judgment.

## BACKGROUND

The incident resulting in defendant's conviction of the second degree robbery of Maria Ramirez (count 1), the attempted second degree robbery of Kathleen Herrera (count 2), and making criminal threats against Ms. Ramirez (count 3) occurred on May 24, 2012, about 5:20 p.m. in Lancaster. As Ms. Herrera, a Wells Fargo Bank teller, was putting away money, defendant handed her a note that read: "Your co-worker's life depends on whether or not I receive $5,000 within the next 20 to 30 seconds[.] Don't play. I'm ready to die[, are] you[?]" Ms. Herrera activated her alarm. Defendant, who was about two to three feet away, yelled, "I'm not playing. Give me the [fucking] money, or she gets it," indicating Ms. Ramirez, the customer behind him.

Ms. Ramirez backed out of the bank, and defendant ran after her, and grabbed her purse containing her driver's license, among other items. She fell during the struggle.

On June 18, 2012, April Morley resided in Anaverde Estates, which was "a big cul-de-sac" without commerce in the same area as the Wells Fargo Bank. While walking on Groves Street, she found Ms. Ramirez's driver's license on the ground. Ms. Morley mailed the license to Ms. Ramirez in an envelope addressed to her. The envelope reflected Ms. Morley was the sender and was date-stamped "June 21, 2012." On the envelope was this handwritten notation: "Found this on Groves Street in the Anaverde tract." Upon receipt, Ms. Ramirez contacted police.

Following defendant's arrest, he was placed in a jail cell where he received calls from his family and friends. Preceding a call and periodically during the call an admonishment announced that the call was being recorded. During one call, defendant asked Shannon Egans, his ex-girlfriend, to check her cell phone for evidence showing they were together on the day of the incident. Ms. Egans, who could not find any text messages between them, suggested defendant might have been with "Stan" that day. During a call with Jamie Williams, his mother, defendant stated on the day of the crimes, he was at the apartment complex of Danielle Felton, Ms. Egans's cousin, which was two blocks south of Wells Fargo.

During some of the calls, defendant spoke about changing his appearance so he would look different in court. In one call, he stated he did not have hair for the previous three or four years and was growing out his hair to alter his appearance. In a later call, he and Ms. Williams agreed defendant should shave off all

his hair. In another call, defendant acknowledged the still photographs of the bank surveillance video "favored his likeness."

Unable to catch an unobstructed view of the perpetrator's face, Ms. Ramirez was not able to identify defendant. Ms. Herrera was able to view the perpetrator at least two times from about 18 inches away. At the scene and during a police interview, Ms. Herrera described the perpetrator as having a "gap between his front two teeth." Ms. Herrera was able to identify what the perpetrator wore.

In a photographic lineup about four days after the incident, Ms. Herrera selected defendant's photo as depicting someone who "look[ed] very similar" to the perpetrator. In a live lineup, Ms. Herrera identified defendant as the perpetrator and the gap in his front teeth and his voice confirmed her identification. She also identified defendant at trial.

Defendant, who is African-American, presented a defense based on mistaken identity and alibi. Dr. Mitchell Eisen, an expert on eyewitness memory and suggestibility, testified regarding factors that could influence and alter a person's recollection, such as traumatic stress, passage of time, and the need to "infer information that feels just right" to fill in the gaps in memory that always occur. He also addressed the problems with cross-racial identification, e.g., less focus on subtle facial details, and voice identification, which is less reliable than eyewitness identifications. He opined in the live lineup, defendant, who alone had a gap between his front teeth, was the only "viable choice."

Other defense witnesses testified that about 3:50 p.m. on the day of the incident, Ms. Egans picked up defendant at his daughter's school. They went to Ms. Felton's apartment where

Ms. Williams picked up defendant about 5:00 p.m. Ms. Williams dropped off defendant at his grandmother's house in the Desert View Highlands area. At 5:40 p.m., defendant was there with his sister Amber Escoe cleaning the carpet. When shown photographs of the perpetrator from the surveillance video, both Ms. Escoe and Ms. Williams denied they depicted defendant.

In rebuttal, Mark Lorenz, a Los Angeles County Sheriff's Detective, testified at the time of the incident, defendant's cell phone was accessing the Trevor Avenue cell tower, 2.3 miles from the Wells Fargo Bank. It was possible that such access could have been from inside the bank. It was not possible to access that tower if the phone were at his grandmother's house.

## DISCUSSION

### 1. Denial of Mistrial Motion Not Abuse of Discretion

Defendant contends denial of his mistrial motion was error, because the references to his parole status and polygraph exam were prejudicial in that they served to bolster the credibility of the prosecution's witnesses and to undermine the defense witnesses' credibility. No abuse occurred.

#### a. Pertinent proceedings

##### i. "Parole search" reference

On direct examination, Detective Dwayne Bednar testified defendant resided about eight homes away from where the driver's license was found. The prosecutor asked if after having learned the license was found in Anaverde Estates, he looked for "certain people that might be involved in the robbery." When he answered affirmatively, the prosecutor asked, "How did you do that?" Defense counsel objected.

During the sidebar, defense counsel explained he was concerned that Detective Bednar would disclose he was looking

for parolees in the area. The prosecutor responded that Detective Bednar was aware he could not mention defendant's parole status or any prior arrests; rather, he would testify he used a law enforcement database. Defense counsel stated he had "[n]o problem with that."

Detective Bednar testified he "searched databases provided to law enforcement for investigation purposes" and discovered defendant was one of five individuals who resided in a one-mile radius of where the driver's license was found. He focused his investigation on defendant, because he "looked exactly like the [person in the] surveillance video." On cross-examination, he was asked if he noticed defendant had a gap between his teeth in a photograph taken the day he was arrested.

On redirect examination, the prosecutor displayed People's exhibit 5 and asked if it was the photo of defendant with the gap in his teeth. Detective Bednar replied, "Yes." The prosecutor then asked, "Now, . . . this is a still image from a video . . . during the parole search; correct?" When Bednar responded, "Yes," the prosecutor said, "I'm sorry. During the search."

**ii. "Polygraph examination" references**

On direct examination, the prosecutor asked Detective Bednar whether a handwriting expert had analyzed the note given to Ms. Herrera. Detective Bednar responded the expert could not conclude whether defendant had written the note. On cross-examination, Detective Bednar testified the expert's analysis of the six writing samples taken from defendant's home and the sample defendant submitted was inconclusive.

On redirect examination, Detective Bednar testified that the expert could not determine whether or not defendant wrote the note. On recross-examination, defense counsel asked, "Now,

you interviewed [defendant] after he was arrested; is that correct?" Detective Bednar responded, "Correct." When asked if defendant gave him an exemplar as part of the interview, Detective Bednar said, "No." Defense counsel then asked, "When was the exemplar obtained from him?" Detective Bednar replied, "After the completion of his polygraph examination." When Detective Bednar appeared uncertain what was meant by his next question, defense counsel rephrased it: "How many times did you interview him? Let's do it that way." He responded, "I talked to him the day of his arrest – that didn't last very long – and the second day, which is the polygraph examination, having him write the exemplar."

**iii. Sidebar regarding the above references**

During the sidebar, defense counsel moved for a mistrial based on the references to the polygraph examination. Although acknowledging Detective Bednar should not have mentioned the polygraph examination, the prosecutor urged the references were not intentional.

With the court's permission, the prosecutor addressed his earlier reference to defendant's parole status. After acknowledging no mention of his "parolee status" was allowed, the prosecutor apologized for referring to "the parole search" during direct examination of Detective Bednar. He explained the reference was inadvertent and it "just came out because that was the exact photograph from the parole search." Defense counsel stated he thought the prosecutor did not intentionally refer to defendant's parole status; however, he was concerned about the combined effect on the jury of the references to the polygraph exam and parole status. The court deferred its ruling pending research on the matter.

The trial court later denied the mistrial motion, finding Detective Bednar's references to the polygraph exam did not rise to the level of incurable prejudice in view of the manner in which they were elicited and the way the references were made. The court also found no cumulative prejudice accrued from the prosecutor's inadvertent reference to defendant's parole status, which did not amount to misconduct.

The court then offered defense counsel the alternative of a curative instruction that the jury was not to consider the references to the polygraph exam and defendant's parole status or to forego such instruction as a tactical matter. After stating he was "not so much concerned" about the parole status reference, he indicated he would draft an instruction regarding the polygraph exam references.

Subsequently, the trial court gave this special defense instruction: "The instrument known as the 'Polygraph' has been determined to be legally unreliable, and outlawed since 1983. The reference to an offer to take a polygraph exam, or failure to take a polygraph exam shall not be admitted into evidence in any criminal proceeding. You may not consider polygraph evidence, or the fact that one was taken, offered, or refused for any purpose in your deliberations."

**b. Relevant legal principles**

"[T]he trial court is vested with considerable discretion in ruling on mistrial motions." (*People v. Haskett* (1982) 30 Cal.3d 841, 854.) We review the court's denial of a mistrial under the deferential abuse of discretion standard. (*People v. Bolden* (2002) 29 Cal.4th 515, 555 (*Bolden*).) "A trial court should grant a mistrial only when a party's chances of receiving a fair trial have been irreparably damaged." (*Ibid.*) In other words, "[a] mistrial

should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction." (*Haskett*, at p. 854.) "Whether a particular incident is incurably prejudicial is by its nature a speculative matter[.]" (*Ibid*.)

**c. Parole status and polygraph exam references nonprejudicial**

Defendant has forfeited any claim of error regarding the prosecutor's brief and inadvertent reference to defendant's parole status by declining the trial court's offer to give a curative admonition to the jury. (*People v. Davis* (1995) 10 Cal.4th 463, 505-506 (*Davis*).) In any event, the reference was innocuous when viewed in context. (See, e.g., *Bolden*, *supra*, 29 Cal.4th at p. 555 ["fleeting reference to a parole office" insignificant "in the context of the entire guilt trial"].)

"A witness's volunteered statement can, under some circumstances, provide the basis for a finding of incurable prejudice." (*People v. Ledesma* (2006) 39 Cal.4th 641, 683.) However, it is only in the "exceptional case" that any prejudice from an improperly volunteered statement cannot be cured by appropriate admonition to the jury. (*People v. Allen* (1978) 77 Cal.App.3d 924, 935.) A "jury is presumed to have followed an admonition to disregard improper evidence[.]" (*Id*. at p. 934.)

In this instance, Detective Bednar's two, separate references to a polygraph exam were fleeting and of no particular significance. The curative instruction drafted by the defense and given, as drafted, by the trial court appropriately addressed any potential prejudice from these references. The record does not reflect the jury expressed any concerns about adhering to that instruction, which therefore the jury is presumed to have followed.

**2. Judgment Supported by Substantial Evidence**

Defendant contends he cannot be the perpetrator of the three charged crimes, because it is physically impossible that he is the individual depicted in the bank surveillance video. Substantial evidence supports the jury's finding defendant is the perpetrator of the charged crimes.

**a. Standard of review**

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains 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.] 'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Elliott* (2012) 53 Cal.4th 535, 585; see also *People v. Kraft* (2000) 23 Cal.4th 978, 1053 [presume every fact trier of fact reasonably could deduce from evidence].)

**b. Substantial evidence of defendant as perpetrator**

Defendant contends the depicted perpetrator had "a shorter, wider face, heavier cheekbones, more substantial eyebrows, and is heavier set than [defendant]." His interpretation of the photographs taken from the video is self-

serving and flies in the face of Ms. Herrera's identification of defendant as the perpetrator.

When shown the photographs made from the video footage, Ms. Herrera was unable to identify defendant, because the photographs were "pretty grainy." During a photographic lineup about four days later, however, Ms. Herrera selected defendant's photograph as depicting someone who "look[ed] very similar" to the perpetrator. She was able to identify defendant as the perpetrator during a live lineup and was confident in her identification "because of the gap in his front teeth and his voice." Further, she identified him at trial.

**3. No Prejudicial Prosecutorial Misconduct Shown**

Defendant assigns three instances of prejudicial prosecutorial misconduct: The prosecutor improperly commented on the failure of defense alibi witnesses to testify at the preliminary hearing; the failure of the defense to present a recording of a jail conversation; and defendant's parole status. The first and second assigned comments are not improper. The third, albeit improper, was nonprejudicial.

**a. Defense alibi witnesses' failure to testify**

During redirect examination, Ms. Escoe testified that at the time of the incident, defendant was with her and they cleaned their grandmother's carpet together. When asked if she had discussed this testimony with Lori-Ann Jones, who had been defendant's counsel retained about a month after the preliminary hearing, Ms. Escoe responded, "Yes." She responded, "No," when asked, "By the way, were you ever subpoenaed for a preliminary hearing?" Asked if she had been told "when you might be needed," Ms. Escoe gave this nonresponsive reply, "Lori and I discussed about my phone records, because I explained to her

that [defendant] and I were communicating through texts. And he didn't want to respond to my phone calls because . . . we had been arguing. He didn't want to hear my mouth. So – but he spoke with my mom."

On recross-examination, Ms. Escoe testified "the attorney didn't call me to testify so that is the only reason I'm assuming I didn't." She admitted previously she testified that she did not testify at the preliminary hearing because she did not want to see defendant "shackled."

During further redirect examination, Ms. Escoe testified she did not know about the preliminary hearing; had not been contacted before the hearing; had not been subpoenaed to testify; and did not know who represented defendant at that hearing.

When asked if she had been "contacted by any attorney[] about a preliminary hearing," Ms. Egans replied, "No."

On cross-examination, Ms. Williams testified the first time she remembered defendant was cleaning the carpet the day of the incident was during her testimony at the first trial in November 2013. During further redirect examination, Ms. Williams testified she had not been called as a witness at the preliminary hearing and Ms. Egans did not tell her Ms. Egans was with defendant at the time of the incident. On recross-examination, she testified she never discussed his whereabouts with Ms. Egans, because Ms. Williams saw him with Ms. Egans.

During rebuttal, the prosecutor argued the testimony of Ms. Escoe, Ms. Egans, and Ms. Williams had been influenced by the personal relationship each had with defendant. He pointed out these three "didn't testify at the preliminary hearing, July 20th of 2012, two months after the crime. When the judge is determining if there is enough facts for the case to actually go to

trial, when witnesses are being put on, none of them show up. None of them come to testify for their son, brother, and boyfriend."

Following the argument, defense counsel objected to the prosecutor's comments about the alibi witnesses' failure to testify at the preliminary hearing as "outreageous misconduct." In overruling the objection, the trial court explained, "It's in the evidence. It was brought up in evidence that the witness was not called at the preliminary hearing; so I believe it is fair comment by the People to . . . comment on the evidence." The court stated that had an objection been interposed during trial, the court could have ruled at that time and "if it was excluded, then the People would have been prohibited from arguing that"; however, "[t]he cat's out of the bag. It was already presented in evidence. I believe it is fair comment for the People. I don't assign that as misconduct."

**b. Comment regarding absence of recording of alibi witnesses**

At trial, Ms. Egans testified on one or maybe two occasions, she had a phone conversation with defendant, while he was in jail, which was recorded and during which she told him she remembered being with him on the day of the incident.

In rebuttal, the prosecutor argued "if that phone conversation is in [the recorded call] it would be presented to you. But it's not there. It's not there because they didn't have those conversations." Along the same vein, he argued, "There are no calls introduced between [defendant] and his family regarding Amber [Escoe, his sister], . . . Shannon [Egans, his ex-girlfriend], or . . . Jamie Williams[, his mother]."

Defense counsel objected "[t]hose statements would have been hearsay. [They] wouldn't have been admissible. The [prosecutor] knows that." The trial court announced this issue would be dealt with after closing argument and directed the jury to follow the court's instructions.

Following argument, defense counsel asserted the prosecutor committed misconduct, because his comments about a conversation between Ms. Egans and defendant about his whereabouts were inadmissible hearsay. The prosecutor responded such evidence was admissible pursuant to Evidence Code section 356, because defendant would not be allowed to refer only to parts of the recordings. Although agreeing the recordings would be admissible under that section, counsel argued the comment was improper, because it suggested counsel could have presented the recording to the jury. In ruling the comment was not misconduct, the court explained, "I believe it is a fair comment to comment on the state of the evidence. The failure of defense to call logical witnesses or failure of the defense to present evidence is a proper comment by the People."

**c. Defendant's parole status comment**

As discussed above, during redirect examination, the prosecutor asked Detective Bednar whether the photograph of defendant with the gap in his teeth "is a still image from a video . . . that was shot of [defendant] during the parole search; correct?" Detective Bednar responded, "Yes." The prosecutor then said, "I'm sorry. During the search."

**d. Applicable legal principles**

" 'The applicable federal and state standards regarding prosecutorial misconduct are well established. " 'A prosecutor's . . . intemperate behavior violates the federal Constitution when

it comprises a pattern of conduct "so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process." ' " [Citations.] 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 court or the jury." ' " [Citations.]' [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 819 (*Hill*).)

The trial court's ruling on a prosecutorial misconduct claim is reviewed for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 213.) "It is a fundamental principle that reversal for prosecutorial misconduct is not required unless the defendant can show that he has suffered prejudice. [Citations.]" (*People v. Uribe* (2011) 199 Cal.App.4th 836, 873.) In short, what must be shown is "[i]t is not reasonably probable that a result more favorable to the defendant would have been reached absent the misconduct or with a curative admonition." (*People v. Arias* (1996) 13 Cal.4th 92, 161.)

**e. First and second assigned comments not misconduct**

The prosecutor's comments regarding the defense's failure to call three alibi witnesses at the preliminary hearing do not amount to misconduct. These comments were responsive to evidence that neither Ms. Egans, Ms. Escoe or Ms. Williams testified at that hearing. Further, these comments were not reasonably susceptible to being understood in any objectionable way.

A prosecutor "enjoys wide latitude in commenting on the evidence, including the reasonable inferences and deductions that can be drawn therefrom." (*People v. Hamilton* (2009) 45 Cal.4th

863, 928.) Further, " 'the prosecutor is entitled to comment on the credibility of witnesses based on the evidence adduced at trial.' [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1191.) " ' "[W]hen 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." [Citations.]' [Citations.]" (*People v. Carter* (2005) 36 Cal.4th 1215, 1263-1264.)

Similarly, the second challenged comment also constituted fair comment on the state of the evidence rather than *Griffin*[2] error, i.e., impermissibly commenting on defendant's right to remain silent or arguing certain testimony or evidence is uncontradicted when contradiction would be available only if the defendant took the stand. (*People v. Hughes* (2002) 27 Cal.4th 287, 371 (*Hughes*); *People v. Bradford* (1997) 15 Cal.4th 1229, 1339.)

Initially, we note defendant forfeits his *Griffin* claim by failing to object on that basis and request a curative admonition at trial. (*Davis*, *supra*, 10 Cal.4th at pp. 505-506.) On the merits, we lay to rest his assertion that the prosecutor's comments amounted *Griffin* error. Not so. The gist of the comments simply was to challenge the credibility of the defense alibi witnesses, i.e., the defense failed to produce the recorded conversations that would have corroborated defendant's alibi as testified to by Ms. Egans, Ms. Escoe, and his mother. These were fair comments on the state of the evidence rather than matters that were inadmissible, contrary to defendant's claim otherwise.

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**2** *Griffin v. California (*1965) 380 U.S. 609 (*Griffin*).

(*Hughes*, *supra*, 27 Cal.4th at p. 372 [comments on state of evidence or failure of defense to introduce material evidence or call logical witnesses not *Griffin* error]; cf. *People v. Conover* (1966) 243 Cal.App.2d 38, 44-49, 51-53, 54 [reversal where comments on failure of a defense witness to testify at preliminary hearing "part of a sustained and pervasive plan" of prosecutor].)

**f. Single improper prosecutor comment nonprejudicial**

As discussed above, defendant forfeited any claim of error based on the prosecutor's comment about defendant's parole status. Additionally, when viewed in context, that comment was inconsequential. We emphasize that whether the prosecutor inadvertently, rather than intentionally, commented on defendant's parole status is of no import, as is defense counsel's acknowledgment that the prosecutor did not intentionally make the comment. Bad faith is not an element of prosecutorial misconduct. (*People v. Bolton* (1979) 23 Cal.3d 208, 213-214; accord, *Hill*, *supra*, 17 Cal.4th at pp. 822-823.) Rather, that the prosecutor immediately corrected his misstep and the comment itself was fleeting and insignificant are the controlling factors here.

**4. Single De Minimis Error Does Not Necessitate Reversal of Judgment**

Defendant contends the cumulative prejudicial effect of the assigned errors necessitates reversal of the judgment. We disagree. The de minimis effect of a brief improper but nonprejudicial comment by the prosecutor was of no significance. (*People v. Ward* (2005) 36 Cal.4th 186, 216.)

## DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

FLIER, Acting P. J.

SORTINO, J.*

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