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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**THE PEOPLE,**  
**Plaintiff and Respondent,**  
**v.**  
**BENJAMIN KEATH NORTH,**  
**Defendant and Appellant.**

**A132740**  
**(Humboldt County**  
**Super. Ct. No. CR1003000)**

Defendant Benjamin Keath North was charged with one count of felony child abuse (Pen. Code, § 273a, subd. (a)).<sup>1</sup> A jury convicted him of the lesser included offense of misdemeanor child abuse (§ 273a, subd. (b)). He appeals from the judgment of conviction, contending prosecutorial misconduct resulted in a violation of his Sixth Amendment right to confront the witnesses against him and rendered his trial fundamentally unfair. He maintains, further, that his attorney’s failure to raise proper objections to this misconduct deprived him of the effective assistance of counsel. We reject these contentions and affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 18, 2010, defendant was charged with one count of felony child abuse (§ 273, subd. (a)), and he entered a plea of not guilty. The matter proceeded to a jury trial in May 2011.

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

The People contended that, on May 16, 2010, defendant left his 22-month-old son (the child) alone for several hours in an open jeep, which had run out of gas and was disabled on the side of the road. Defendant maintained he left the child in the jeep with his girlfriend, Emerald Dickens, while he went to get gas, and that Dickens abandoned the child. On June 10, 2011, the jury found defendant not guilty of the offense charged, but convicted him of the lesser included offense of misdemeanor child abuse (§ 273a, subd. (b)). The court ordered four years' probation, subject to various conditions, including completion of a one-year child abuse program.

Defendant filed a timely notice of appeal from the judgment of conviction.<sup>2</sup>

The following evidence was presented at trial:

*A. Discovery of the Child Left Unattended*

At around 9:30 a.m. on Sunday, May 16, 2010, Francine Allen was driving down China Creek Road, a dirt road near Garberville. As she approached the intersection with Briceland Road, she saw a red jeep parked in a pullout next to a high fence and a metal gate. A Mitsubishi SUV was parked nearby. The jeep had a flat tire, the hood was up, and tools were on the ground next to it. It had no top and no windows, and Allen noticed a small child asleep in the passenger seat, with a jacket covering him. It was “a pretty misty, chilly morning[.]” Allen also saw an opened-barred chain saw behind the seat next to the child. She did not see anyone around and received no response when she called out, so she dialed 911.<sup>3</sup>

Deputy Anthony Gomes of the Humboldt County Sheriff's Office arrived at the scene around 10:30 a.m. Gomes checked the child to determine if he needed medical attention and noted that he “appeared cold and hungry,” as he was dressed in thin sleeper pajamas and a T-shirt, and it was 52 degrees outside. He “was kind of dirty . . . from

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<sup>2</sup> As defendant was charged with a felony, we have jurisdiction over the appeal from his misdemeanor conviction. (§ 691, subd. (f); Cal. Rules of Court, rule 8.304(a)(2)(B).)

<sup>3</sup> At trial, Allen noted that there are bear, bobcats, and mountain lions in the area in which the child was found unattended.

dust,” smelled of urine, and had wet through his diaper. Gomes had the child taken into protective custody.

Deputy Gomes determined that the jeep was registered to Ligeia Hassall, who lived at a nearby address. One Ryan Tanner and a friend, who had driven by the jeep early that morning, stopped at the scene and gave statements. Tanner said he knew Hassall and her boyfriend, Rick Hoss, and agreed to drive to their house and ask them to come to the scene for questioning. Hoss later arrived at the scene and identified defendant as the child’s father.

Defendant arrived at the scene around 1:30 p.m, appearing “kind of shocked,” a little confused, and concerned about his son. After talking briefly with Deputy Gomes, he was arrested and taken to the sheriff’s substation. He asked Gomes if the child “was still sleeping when they found him.”

Later that afternoon, Hassall brought defendant’s daughter to the substation, and this child was taken into protective custody as well.

#### *B. Witnesses Who Passed the Jeep That Morning*

At trial, several witnesses reported driving by the jeep that morning. Ryan Tanner said he saw the jeep at 6 or 6:30 a.m. and stopped to help with the flat tire. He saw a baby in the front seat covered by a jacket, and it was “freezing cold out,” so he searched and yelled a couple of times to see if anyone was around. Tanner heard “a little ruckus” behind the fence—sound or movement that was “like a human, not an animal”—and thought someone was back there, so he left.

Another neighbor, Robert Sutherland, said he drove by the jeep at 7:25 a.m. and saw the child asleep on the front seat with a jacket over him, but did not see anyone and did not hear voices or movement. Sutherland did not see the Mitsubishi shown in photographs of the scene but saw another vehicle parked at a right angle to the jeep—a dark green or brown van with a pattern on it.

Jennifer Martin testified for the defense that she saw Hoss’s jeep between 7:30 and 7:45 a.m. She saw a child in the jeep, sitting in the lap of “a little, petite blond gal[.]” Martin said defendant asked for a ride into town but she declined, since she was not

going in that direction. She “hollered out if everything would be all right” and the woman indicated they were fine.

*C. Defendant’s Testimony*

Defendant testified as follows: He had known Emerald Dickens for 12 years and had been dating her for several months; they were “good friends” but were not dating exclusively. On Saturday, May 15, 2010, he decided to return a generator he had repaired for Hoss. He and his children drove to Hoss’s house to stay the night. He stopped to assist Hoss, whose jeep had a flat tire. Defendant’s cell phone would not hold a charge, so he used Hassall’s phone to call Dickens and asked her to bring his son’s diaper bag. They planned to meet at “the bottom of the hill” the next morning.<sup>4</sup>

The next morning, defendant called Dickens at 8:00 or 9:00 a.m. and arranged to meet her in a half hour. He repaired the jeep’s tire and drove with his son toward the bottom of the hill. On the way down, he met Hoss and Hassall, who were coming up the hill. The jeep’s tire was still leaking air, and Hoss said to take a tire from his Mitsubishi SUV, parked at the bottom of the hill. At the bottom of the hill, defendant searched for tools to change the tire. At one point, he looked through some tools scattered behind the gate next to the jeep. A black truck dropped Dickens off at the jeep. The jeep later ran out of gas, and defendant and Dickens agreed that he would walk one or two miles to a friend’s house to find a ride.<sup>5</sup> When defendant left, the child was sleeping, and Dickens was sitting next to him. Defendant maintained he was present at the jeep from 6:30 a.m. until around 10:00 a.m.

Defendant’s friend was not home, so he hitchhiked into Garberville, less than 10 minutes away. He arrived in Garberville around 10:30 a.m. and ordered food at a Subway restaurant. Hassall texted defendant, and when he called her from a pay phone,

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<sup>4</sup> As the parties refer to the area of China Creek Road where the jeep and Mitsubishi SUV were parked as “the bottom of the hill,” we do so as well.

<sup>5</sup> Defendant stated at trial that the jeep had one-fourth tank of gas before he made the eight-mile drive down the hill, which took less than 15 minutes.

she told him there were “cop cars all around her Jeep.” Defendant called 911 and learned his son was “left alone out there.”<sup>6</sup>

Defendant ran to his friend Missy’s house nearby. Missy called her boyfriend to give him a ride and allowed defendant to borrow a Trac phone. Defendant went to the Garberville Chevron station to purchase minutes for the phone, then walked back to Missy’s house. He picked up another Trac phone by mistake, and he and Missy’s boyfriend rushed to China Creek Road. When he arrived at the scene, he asked Deputy Gomes where Emerald Dickens was, but Gomes was upset and did not want to hear what he had to say.

Defendant said when he called Dickens later, he “was pretty upset with her,” but she explained why she had left the child unattended. The trial court excluded further testimony in this regard on hearsay grounds.<sup>7</sup>

#### *D. The Testimony of Deputy Gomes*

Deputy Gomes testified regarding defendant’s statements at the scene and following his arrest. According to Gomes, defendant said a black truck dropped Dickens off at Hoss’s house at 10:00 a.m., and she and defendant took the jeep to the bottom of the hill together, with the child sitting in her lap. Defendant said he went to bring back Hoss’s Mitsubishi SUV and decided to take the jeep because he had repaired a flat tire and needed to drive it “to get it to work right[.]”

Gomes said defendant claimed he left the child with Dickens, but when asked how to reach her, defendant said he did not know how to contact her. Gomes also indicated that he was unable to confirm defendant’s statement that he had called 911 after receiving

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<sup>6</sup> The People played a recording of the 911 call, which took place at 12:11 p.m. During this call, defendant reported: “I think I left my son in my friend[’s] Jeep . . . .” He said he “had to go get gas for the Jeep” and that he had a cell phone but “the battery only lasts a few minutes . . . .”

<sup>7</sup> After the trial court sustained an objection, defense counsel asked defendant: “Did she tell you yes or no that the reason for her leaving on the 16th was that she had a warrant?” and “Did she tell you she had a warrant? Yes or no.” The trial court sustained objections to both questions, and defendant did not respond.

text messages from Hassall informing him police were at the jeep with the child. Gomes said he examined the cell phones he found on defendant's person and discovered that one phone had a dead battery and the other had no text messages. Defendant told Gomes his cell phone was not in the property bag, and that he must have left it at Hoss's house, but this made no sense to Gomes, since defendant allegedly received the text messages after he left the house.<sup>8</sup>

*E. The Testimony of Hoss and Hassall*

Hoss and Hassall testified that defendant and his children stayed at their home the night of Saturday, May 15, 2010. Hoss said defendant helped him repair a flat tire in his jeep that evening and followed him home. Hassall said defendant asked if Emerald Dickens could come over and then called Dickens to arrange to meet at the bottom of the hill the next day because he had forgotten his son's diaper bag and needed her to bring it to him.

Hoss found a ride back to the bottom of the hill that night to pick up his Mitsubishi SUV, but was stranded there because he did not have the keys. Hassall went to pick him up around 5:30 a.m. On their way home at 6:30 or 7:00 a.m., Hoss and Hassall met defendant coming down the hill in the jeep and stopped to talk to him. The child was with him, but no one else was in the jeep. Defendant said he was going to meet Dickens and was taking the jeep for a test drive.

Later that morning, Hassall heard that police were with the child and texted defendant. Defendant responded at 10:50 a.m. but did not appear to know what she was talking about. He called her from a pay phone and asked her to pick him up in Garberville. Hassall said he told her the child was at the bottom of the hill with Emerald Dickens.

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<sup>8</sup> At trial, defendant maintained that the phones Deputy Gomes examined were the Trac phones Missy loaned him, not his own cell phone, which he lost that day. Deputy Gomes conceded at trial that he did not examine Hassall's cell phone to determine whether she had texted defendant.

Several defense witnesses confirmed that they had met Emerald Dickens or knew of her, but she did not testify at trial.<sup>9</sup>

## DISCUSSION

### I. Defendant's Claim of Prosecutorial Misconduct

#### A. The Prosecutor's Characterization of Dickens as a Drug Addict

Defendant contends the prosecutor committed misconduct by (1) asking questions suggesting Dickens was addicted to methamphetamine and heroin without a good faith belief that this was true or that defendant was aware of it in May 2010; and (2) arguing to the jury that defendant left the child with a "methamphetamine addict" when there was no evidence Dickens used drugs or that defendant knew she did.

##### 1. The Proceedings at Issue

The following exchange occurred during defendant's cross-examination:

"Q. Isn't it true that Ms. Dickens is addicted to methamphetamine and heroin?"

A. Not that I know of.

Q. You were her boyfriend. Correct?

A. Yes.

Q. Okay. Would it change your opinion, then, if you learned she was convicted in Inyo County on –"

Defense counsel objected on relevancy grounds, and the trial court held a bench conference off the record. The trial court's ruling on the objection does not appear in the record. After briefly exploring defendant's relationship with Dickens, the prosecutor appears to have pursued essentially the same line of questioning, without objection:

"Q. So, then, a year prior to the incident, you were aware that she was convicted of methamphetamine possession in Inyo County?"

A. No.

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<sup>9</sup> Deputy Gomes said he found Dickens's telephone number in the law enforcement computer system and left a voice message for her but did not receive a response and did not go to the address listed for her.

Q. Are you aware that approximately one month after this incident she was convicted of methamphetamine possession in Humboldt County?

A. I found that out afterwards, yes. I wasn't sure what it was."

The prosecutor began his closing argument by asking the jury to keep "a single issue . . . in the back of your mind," stating: "I'm sure much will be said . . . about [defendant's] good parenting. [ ] Bearing that in mind, remember that at various times while a parent, [defendant] was subject to a domestic violence restraining order, convicted of receiving stolen property. He brought his children to the home of [Hoss], a felon with multiple criminal convictions, and . . . allegedly contemplated leaving his youngest child in the care and custody of a methamphetamine addict."

In his rebuttal argument, the prosecutor argued the facts did not fit defense counsel's claim that Dickens left the child alone. Instead, the prosecutor argued: "I think a plausible version of events - - and this is giving [defendant] the benefit of the doubt - - is that perhaps maybe he did call Emerald Dickens the night before to arrange the delivery of the diaper bag. Maybe they arranged for [defendant] to meet Emerald Dickens at the bottom of the hill . . . . Perhaps [defendant] went down there to go meet Emerald Dickens to collect the diaper bag . . . . If that indeed happened, I would submit to you that Emerald Dickens didn't show up. I would submit to you, again, that meth addicts are not reliable people."

## 2. Analysis

Defendant contends these statements constitute prosecutorial misconduct. "[A] prosecutor commits misconduct by asking 'a witness a question that implies a fact harmful to a defendant unless the prosecutor has reasonable grounds to anticipate an answer confirming the implied fact or is prepared to prove the fact by other means.' " (*People v. Earp* (1999) 20 Cal.4th 826, 859-860, quoting *People v. Price* (1991) 1 Cal.4th 324, 481.) A prosecuting attorney also commits misconduct by making " 'statements of facts not in evidence . . . in his argument to the jury . . . .' [Citation.]" (*People v. Bolton* (1979) 23 Cal.3d 208, 212.) We do not decide whether the prosecutor's questions and comments during closing arguments constitute misconduct, however, as we conclude that

defendant has forfeited the alleged error. “To preserve for appeal a claim of prosecutorial misconduct, the defense must make a timely objection at trial and request an admonition; otherwise, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct.” (*Price, supra*, 1 Cal.4th at p. 447.)

Defendant objected only once when the prosecutor asked questions suggesting Dickens was a drug addict and, even then, did so on grounds that her alleged addiction was irrelevant. He did not challenge the prosecutor’s good faith basis for exploring defendant’s knowledge of this “fact” and did not ask the trial court to require an offer of proof from the prosecutor. It is therefore not possible to determine whether the prosecutor would have been able to put forward evidence to prove the “fact” implied by his question. (*Earp, supra*, 20 Cal.4th at p. 860, quoting *Price, supra*, 1 Cal.4th at p. 481 [“[I]f ‘the prosecutor is not asked to justify the question, a reviewing court is rarely able to determine whether this form of misconduct has occurred’ ”].) Defendant failed to raise any objection to the prosecutor’s characterization of Dickens as a methamphetamine addict during closing arguments.

Had defendant raised a proper objection in the first instance and requested an admonition to the jury, the trial court could have determined whether the prosecutor was able to prove that Dickens was a drug addict and, if not, instructed the jury to disregard the implication of the prosecutor’s question. Had the trial court determined that the prosecutor was unable to prove Dickens’s addiction, an admonition not only would have cured the harm caused by this line of questioning but also would have foreclosed the prosecutor from characterizing Dickens as a “methamphetamine addict” in closing arguments. An objection to the prosecutor’s statements during closing arguments also would have sufficed. The trial court could have admonished the jury that no evidence had been presented to establish that Dickens was addicted to methamphetamine and instructed the jury to disregard the prosecutor’s statements. Such an admonition would have prevented the prosecutor’s allegations from inflaming the jury and ensured that the jury did not rely on facts not in evidence. (*People v. Dement* (2011) 53 Cal.4th 1, 36 [presumption that the jury followed the trial court’s instructions].)

Defendant maintains: “[T]he kind of ‘testifying’ undertaken during argument by the prosecution . . . is precisely the sort of ‘evidence’ that the jury is likely to believe is known first hand by the prosecutor, and thus, [will] stick with them, consciously or subconsciously, as they consider the evidence, notwithstanding any admonition to the contrary.” We disagree. There is no indication here that, if instructed properly, the jury could not have disregarded the prosecutor’s characterization of Dickens as a methamphetamine addict, particularly if defendant had properly raised the issue when the prosecutor first suggested this “fact.”

Defendant concedes that “counsel’s efforts in objecting to the misconduct described above is spotty, at best,” but urges the court to exercise its discretionary power to consider the alleged error nonetheless. (See *People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6.) We decline defendant’s invitation to address the merits of the alleged misconduct, as we do not agree that the circumstances of this case call for consideration of this claim notwithstanding his failure to assert it below. Contrary to defendant’s assertion, the alleged misconduct does not implicate “core constitutional questions” that weigh in favor of an exercise of our discretion to consider the issue. First, he fails to demonstrate that the misconduct “touches upon [his] constitutional rights to . . . confront and cross-examine the witnesses against him.” Unlike the decisions on which defendant relies, the prosecutor in this case did not suggest to the jury that persons who did not testify would have stated that Dickens was a methamphetamine addict. (Compare *People v. Gaines* (1997) 54 Cal.App.4th 821, 825.) Nor did he imply that he had personal knowledge of Dickens’s addiction; at worst, he simply drew an improper inference from evidence of her drug conviction, which defendant admitted.

Defendant also has failed to establish that the alleged misconduct compromised his right to a fair trial. He maintains the prosecutor’s statements represent a pattern of misconduct that produced a “combined prejudicial effect” and “infect[ed] the trial with such unfairness as to make the conviction [on the lesser offense] a denial of due process.” (See *People v. Hill* (1998) 17 Cal.4th 800, 815 [“[w]e cannot ignore the combined prejudicial effect these many missteps had on the overall fairness of the trial. [T]he

cumulative prejudice flowing from the combination of prosecutorial misconduct and other errors rendered defendant's trial fundamentally unfair . . ."].) This argument fails, as it is premised on the unsupported assumption that the jury convicted him of the lesser offense based on his conduct in entrusting the child to Emerald Dickens. Contrary to defendant's assertion, the prosecutor did not argue that defendant was criminally negligent for leaving the child with a methamphetamine addict; the prosecution's theory throughout closing arguments was that "no credible evidence suggests that Emerald Dickens was ever present on May 16th, 2010." Indeed, the prosecutor stated "meth addicts are not reliable people," in arguing "Emerald Dickens didn't show up." The prosecutor noted that defendant *claimed* to have left the child with a methamphetamine addict, in discounting evidence that he was a good parent.

All that may be drawn from the record is that the jury found that defendant was criminally negligent and willfully caused or permitted the child's health or person to be endangered, but that he did not do so "under circumstances or conditions likely to produce great bodily harm or death." (See § 273a, subd. (b) ["under circumstances or conditions other than those likely to produce great bodily harm or death"].) Thus, the jury either found: (1) that defendant left the child alone for several hours, as the prosecution contended, but that the circumstances were not likely to cause great bodily harm or death; or (2) that defendant otherwise engaged in criminally negligent conduct that endangered the child but was not likely to cause great bodily harm or death. The evidence supports the latter finding based on other theories of criminal negligence, including defendant's decision to take the child for "a test drive" in the jeep, without windows or a roof, another adult, a car seat, a working cell phone, or sufficient gas in the tank.<sup>10</sup>

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<sup>10</sup> Defendant testified that he thought it was okay for his son to ride in the jeep without a car seat because they were driving on a dirt road, but admitted: "[I]t was not the smartest thing I've ever done." At the end of his closing argument, defense counsel noted that it could be argued defendant was "totally irresponsible" to "[leave] a perfectly good truck that he can drive around in . . . [take] a vehicle that he knew was going to break down or was foreseeable that it's going to break down and run out of gas down to

In concluding defendant was not deprived of a fair trial, we observe that his primary defense was that Dickens abandoned the child because she had an outstanding warrant—a fact that was not in evidence. In asserting this defense, defense counsel relied on Dickens’s drug conviction: (1) to establish that she is a real person, not a fabrication by defendant; (2) to confirm that she had an outstanding warrant; and (3) to show that law enforcement had an address for her, but did not call her to testify.

#### B. The Prosecutor’s Statements Regarding Hoss

Defendant contends the prosecutor committed prejudicial misconduct in “buttress[ing] its case with additional ‘evidence’ not found in the record” during closing argument, in order to impeach defense witness Rick Hoss. Defendant takes issue with the prosecutor’s statement during rebuttal argument: “[Y]es, I acknowledge having Mr. Hoss under subpoena and I acknowledge that I sent out a request to have Deputy Gomes contact him to advise him that he needed to be in court because, it might surprise everybody to know, he wasn’t cooperating with the prosecution. Once [Hassall] testified in a manner holding consistent with her statement to Deputy Gomes, I surmised that Mr. Hoss would do the same thing. And I, also, became aware when looking at his rap sheet that Mr. Hoss is, at least since 1999, a career criminal and I did not want him affiliated with my case.”

Again, defendant did not raise any objection below and has forfeited this assertion of error. A prompt objection could have terminated this line of argument, and the trial court could have cured any harm by instructing the jury to disregard the prosecutor’s trial strategy, as it was not relevant to the issues to be determined. We disagree with defendant’s assertion that the prosecutor was “testifying as to what Mr. Hoss would have said if questioned” and that the prosecutor’s statement rendered the trial fundamentally

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the bottom of the hill where it ran out of gas and . . . decide[] after it ran out of gas, he needed to go get help . . . .” Defense counsel maintained that this conduct was not criminally negligent, as parents sometimes make mistakes that are detrimental to their children.

unfair. We note that defense counsel invited this response when he argued: “[I]t was the District Attorney that subpoenaed Mr. Rick Hoss and decided not to use him.”<sup>11</sup>

## II. Defendant’s Claim of Ineffective Assistance of Counsel

Defendant contends he was deprived of the effective assistance of counsel because defense counsel failed to object to the prosecutor’s misconduct at trial. To establish ineffective assistance of counsel, a defendant must show that his trial attorney’s representation fell below an objective standard of reasonableness and that there is a reasonable probability a more favorable determination would have resulted in the absence of counsel’s failings. (*People v. Ledesma* (1987) 43 Cal.3d 171, 215-218.) Defendant maintains defense counsel’s failure to object to clear misconduct and to request a mistrial or an admonition to the jury “fell below an objective standard of reasonableness with ‘no satisfactory explanation[.]’ ” We need not decide this question, as defendant has not shown “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (*Strickland v. Washington* (1984) 466 U.S. 668, 694.) Defendant argues summarily: “Had defense counsel made the necessary arguments and cited the pertinent authorities, there is more than a reasonable probability that the trial court (or some subsequent appellate tribunal) would have agreed that the prosecutor’s actions were misconduct.” “It is not enough[, however,] for the defendant to show that the [alleged] errors had some conceivable effect on the outcome of the proceeding.” (*Id.* at p. 693.) “[A] criminal defendant alleging prejudice must show ‘that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.’ [Citations.]” (*Lockhart v. Fretwell* (1993) 506 U.S. 364, 369, quoting *Kimmelman v. Morrison* (1986) 477 U.S. 365, 374 [“ ‘The essence of an ineffective-assistance claim is that counsel’s unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect’ ”].) Defendant has not made the requisite showing here.

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<sup>11</sup> The prosecutor’s comments regarding Hoss’s criminal history are supported by the record.

We conclude, in any event, that there is no reasonable probability defendant would have achieved a more favorable outcome had counsel raised proper objections to the prosecutor's conduct, as the prosecution presented strong evidence that Dickens was not present in the jeep on May 16, 2010. The mother of defendant's children testified that defendant did not mention Dickens during their phone conversation that morning in which he reported that "he had hitched a ride, got dropped off on the wrong side of town, [and] had walked the longest walk of his life[.]" Defendant also did not mention Dickens in his 911 call and told Deputy Gomes he did not know how to contact her. Defendant's cell phone records did not show calls to Dickens Saturday evening, May 15, 2010, or the following morning. Hassall did not tell Gomes that defendant said he had left the child with Dickens, and neither Hoss nor Hassall told Gomes that defendant was planning to meet Dickens that morning, as they testified at trial. Significantly, Deputy Gomes did not find a diaper bag in the jeep. Jennifer Martin was the only witness who testified that she saw a woman in the jeep that morning, and the prosecution pointed out several conflicts between Martin's testimony and a letter she wrote at Hoss's request describing what she saw that morning, including whether she exited her vehicle and whether she spoke to the woman in the jeep. Moreover, the prosecution presented evidence suggesting that Martin was biased in defendant's favor, as she had a personal association with Hoss, and defendant's father drove her to court.

#### **DISPOSITION**

The judgment is affirmed.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.