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

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
RAYMOND LEE NORMAN,  
Defendant and Appellant.

A135815

(San Francisco City & County  
Super. Ct. No. 00214554)

Raymond Lee Norman, convicted of second degree robbery (Pen. Code,<sup>1</sup> §§ 211, 212.5), appeals on grounds of prosecutorial misconduct, impermissibly suggestive pretrial identification procedures, and ineffective assistance of counsel. We find no error, and even assuming error, no prejudice. We therefore affirm.

**I. BACKGROUND**

***The prosecution's case***

On November 13, 2009, at approximately 7:00 p.m., Anne McFadden was robbed of her purse while walking down the street in the Diamond Heights neighborhood of San Francisco. Contained within her purse (and also stolen) were an iPod and a Sony Walkman. The two robbers approached her, knocked her down, and took the purse from her, breaking the strap. McFadden described the men as white or Hispanic, one tall and one shorter, of average build, in their late teens or early twenties, dressed all in black, and

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<sup>1</sup> Statutory references are to the Penal Code.

wearing dark colored hoodies. Defendant was identified by McFadden as the shorter of the two.

After stealing her purse, the robbers fled in a car parked nearby. McFadden memorized the license plate number and reported it to the police when she called 911. The officer who responded to the scene ran the license plate and discovered it was registered to Adam Matteucci, with an address in Pacifica. Matteucci was described as a “known officer safety risk” and also known for concealed weapons possession and drugs. The officer notified the Pacifica Police Department to be on the lookout for the car.

About 1:00 a.m. the next morning, a Pacifica police officer spotted the car parked in front of the address where it was registered. He parked across the street and kept the car under surveillance for about an hour. At 2:10 a.m., Matteucci and defendant emerged from the house and got into the car. The officer then followed the car and, with backup from other officers, stopped it. Matteucci was driving and defendant was in the passenger seat. Defendant was wearing a black hoodie and black jeans. Another black hoodie was found in the back seat of the car.

About 3:00 a.m., the San Francisco police came to McFadden’s home and took her to the scene of the stopped car where defendant and Matteucci were in handcuffs. McFadden looked at the two men individually and said defendant “bears a resemblance” to the shorter robber, but she was not 100 percent certain. She testified that she was later shown photographs of defendant and Matteucci at the police station,<sup>2</sup> where she was more certain of her identification.

After McFadden identified defendant and Matteucci as the robbers, the police searched Matteucci’s car and retrieved a Walkman and an iPod from the car’s glove compartment. McFadden identified them as hers.

Matteucci and defendant were interviewed by San Francisco Police Sergeant Shaughn Ryan, and both admitted they were involved in the robbery. During the

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<sup>2</sup> Sergeant Ryan testified he did not show McFadden any photographs of defendant or Matteucci.

recorded part of the interview, defendant said he was not involved and had only been picked up by Matteucci 45 minutes or an hour before they were arrested.<sup>3</sup> He implied that he knew who had robbed McFadden and would tell Ryan if he were allowed to go home. But Ryan refused to make such a deal. Ryan testified that after the recording stopped, defendant admitted he had robbed McFadden with Matteucci. He said they committed the robbery to get money for Matteucci to pay off a drug debt.

Ryan also interviewed Matteucci, who implicated defendant in the robbery. According to Matteucci, defendant was the one who hit the victim and “snagged” her purse from her arm. Matteucci also told Ryan that defendant threw the purse out on the freeway after the robbery.

Matteucci, who pled guilty to robbery, testified at defendant’s trial that he had picked up defendant from his home earlier on November 13, 2009, and they drank several alcoholic drinks together before the robbery, leaving Matteucci heavily intoxicated. On direct examination he testified unequivocally, though, that he and defendant together robbed McFadden. On recross-examination Matteucci back-pedaled to some extent, testifying he was so drunk at the time of the robbery he could not be sure defendant was with him.

Matteucci was also confronted with a letter he had written while in custody awaiting trial, in which he exonerated defendant, saying defendant was not with him when he robbed McFadden. Matteucci explained in the letter, which was admitted into evidence, that he had lied to the police about defendant’s involvement because he was angry over the fact that defendant was having an affair with his girlfriend.

Matteucci explained at trial that he wrote the letter to try to avoid having to testify. He did not want to be perceived as a “snitch” or a liar. When he arrived at the courthouse to testify, he told the prosecutor he would testify defendant was not with him during the robbery. Sergeant Ryan then told him he could be prosecuted for perjury based on his

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<sup>3</sup> This was at odds with other evidence, as the Pacifica police officer had been watching Matteucci’s car and house for an hour before the traffic stop.

conflicting earlier statement to the police. He then proceeded to testify as recounted above.

In addition to Matteucci's testimony implicating defendant, McFadden positively identified defendant and was "absolutely" certain he was the shorter robber.

### ***The defense case***

The defense presented three alibi witnesses who testified defendant was at a party in Daly City at the time of the robbery. One of them testified defendant stayed until 2:00 or 3:00 a.m., which was the same time he was being apprehended by the police in Pacifica.

The defense also produced an expert witness who testified at length about the unreliability of eyewitness identification, giving reasons to doubt McFadden's identification of defendant.

### ***The verdict and sentence***

The jurors returned a guilty verdict on the robbery count (§ 211), and an alternative count of receiving stolen property (§ 496, subd. (a)) was dismissed. After a court trial on the prior conviction allegations, a 2003 prior robbery conviction was found true, which was both a strike and a five-year prior felony enhancement under section 667, subdivision (a). Defendant was sentenced to 11 years in prison, taking into account the prior conviction. (§§ 667, subds. (a)-(i), 1170.12, subd. (b).)

## **II. DISCUSSION**

### **A. Prosecutorial Misconduct**

Defendant contends the prosecutor committed misconduct in closing argument by (1) misstating the law regarding possession of stolen property; (2) improperly commenting on defendant's post-*Miranda*<sup>4</sup> "silence" about his alibi defense; (3) shifting the burden of proof to defendant by suggesting to the jury that defendant should have asserted his alibi defense prior to trial and should have produced Matteucci's girlfriend as

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<sup>4</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

a witness; and (4) denigrating defense counsel for the late production of Matteucci's letter.

A prosecutor's conduct violates the federal Constitution when it constitutes a pattern so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process. (*People v. Morales* (2001) 25 Cal.4th 34, 44.) 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. (*Ibid.*) In addition, when the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion. (*Ibid.*)

### **1. Possession of recently stolen property**

The first claim of prosecutorial misconduct stems from the prosecutor's argument to the jury that "recent possession of stolen property is sufficient to find that the defendant is guilty." But that is just a part of what the prosecutor told the jury. In context, the prosecutor argued: "And you heard the jury instruction that recent possession—and this, again, comports with common sense—recent possession of stolen property almost by itself—in fact, the jury instruction says only slight corroboration need be shown. [¶] But recent possession of stolen property is sufficient to find that the defendant is guilty. That's the jury instruction crafted, as I say, not in a vacuum but comports with common sense. [¶] Of course, there's a lot more here than just simply recent possession of stolen property. But what we know is that Mr. Norman had the Walkman, had the iPod, in Mr. Matteucci's glove compartment within hours of the robbery having occurred. [¶] Unlucky? I don't think so. Not based on all of the evidence that you heard in this case. [¶] The jury instruction says that, essentially, on that evidence alone, you can convict Mr. Norman of robbery. That's the jury instruction compiled, as I say, after years of common experience and common sense."

Defense counsel objected, saying “the last line of questioning [*sic*] [is] a misstatement of the law. The argument that mere possession is sufficient to convict is actually the opposite of what the Court has instructed.”

The trial court responded by telling the jury, “I’m just going to say one more time: The attorneys will talk to you about the law; they’ll try to describe it to you. The bottom line is, my instructions are what you need to follow, and you have those in writing, okay?” The prosecutor then told the jury, “Absolutely. You look at the instructions, and you can decide for yourself what that instruction says.” The instruction given on this issue, in fact, told the jury it could “not convict” on the basis of possession of recently stolen property alone, but rather must find “supporting evidence [that] tends to prove [defendant’s] guilt,” although that supporting evidence need only be “slight.” (CALCRIM No. 376.)

Defendant contends not only that the prosecutor’s statement about possession of recently stolen property was a misstatement of law, but that his statement about “decid[ing] for yourself” was also improper because it invited the jury to “decide for themselves what the law is.”

The prosecutor’s statement, considered in context, was not misconduct. The prosecutor plainly told the jury that “slight corroboration” was required.

Moreover, even if we considered it misconduct, its impact was neutralized by defense counsel’s objection and the court’s admonition. Defense counsel brought the matter keenly into focus for the jury, informing them the prosecutor’s remarks were “opposite” to the law. The court, by directing the jury’s attention to the instructions themselves, eliminated any confusion the prosecutor may have engendered. This court can presume the jury understood and followed its instructions. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1216.)

Further, contrary to defendant’s argument, the prosecutor’s statement regarding what jurors could “decide for [themselves],” was not equivalent to telling them they

could decide “what the law is.”<sup>5</sup> The statement was simply an affirmation that the jurors would have the written instruction to read and interpret. In fact, the prosecutor went on to point out: “[The instruction] says, obviously, that there needs to be corroboration, but it says only slight corroboration.” There is no reasonable likelihood the jurors would have misunderstood the instruction or understood the prosecutor’s remarks as an invitation to decide for themselves “what the law is.”

## **2. Comment on defendant’s failure to tell police about his alibi defense**

Defendant also claims the prosecutor committed *Doyle* error<sup>6</sup> by commenting on defendant’s failure to tell the police about his alibi defense. Specifically, the prosecutor argued to the jury over defense objection, “nowhere in this evidence does Mr. Norman ever say, ‘Oh, by the way, the robbery was at what time? Where was it? In San Francisco? Well, gee, I was at a party in Daly City at that exact time, and there’s ten witnesses that could say I was at that party.’ ”

Defense counsel objected again when the prosecutor said, “Nowhere, nowhere, does Mr. Norman say that ‘I was at a party.’ [¶] . . . [¶] [T]he fact of the matter is, if any one of us were confronted with an accusation that says, you were in a certain place, a certain city, at a certain time and you committed a crime, and you knew that you were at a party with 10, 12, 20, 30 people—[objection]— why wouldn’t you say something?”

The trial court sustained defense counsel’s second objection, but merely told the jury to disregard the comments. Still, the prosecutor went on to argue, “In any event, there’s no evidence, of any of this alibi, whatsoever, given to anyone until the very moment that these people [the defense witnesses] walk into the courtroom.” Defense counsel then made a standing *Doyle* objection to the prosecutor’s arguments about the late-disclosed alibi defense.

In *Doyle*, the United States Supreme Court held a defendant’s silence in reliance on *Miranda* warnings could not be used to impeach him when he testified at trial.

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<sup>5</sup> There was also no objection to this part of the prosecutor’s statement, and hence any error was forfeited. (*People v. Shazier* (2014) 60 Cal.4th 109, 127 (*Shazier*).)

<sup>6</sup> *Doyle v. Ohio* (1976) 426 U.S. 610 (*Doyle*).

(*Doyle, supra*, 426 U.S. at pp. 617–619.) In that case, two codefendants testified at trial they had been framed by a coparticipant in a marijuana deal, and the prosecutor cross-examined them on why they had not told the arresting officer that story. (*Id.* at pp. 612–615 & fn. 5.) The court held the impeachment with their post-*Miranda* silence violated their due process rights. Calling silence following *Miranda* advice “insolubly ambiguous,” the court held that, because the *Miranda* advice could have induced the defendants’ silence, use of that evidence against them at trial violated due process. (*Id.* at p. 617; see generally *People v. Tom* (2014) 59 Cal.4th 1210, 1223–1224.)

There is a key distinction between our case and *Doyle*, namely that defendant in our case did *not* remain silent. He waived his *Miranda* rights and talked to the interrogating officer, even admitting his participation in the robbery. This distinction is critical.

In *Anderson v. Charles* (1980) 447 U.S. 404 (*Anderson*), the Supreme Court held that “*Doyle* does not apply to cross-examination that merely inquires into prior inconsistent statements. Such questioning makes no unfair use of silence, because a defendant who voluntarily speaks after receiving *Miranda* warnings has not been induced to remain silent.” (*Id.* at p. 408.) In *Anderson*, the prosecutor’s questions were not designed to draw meaning from silence, but to elicit an explanation for a prior inconsistent statement. (*Id.* at p. 409.)

Defendant claims there are no cases holding that a waiver of one’s *Miranda* rights eliminates a *Doyle* claim. But *People v. Collins* (2010) 49 Cal.4th 175 (*Collins*) is just such a case. There, the defendant in a murder case did not remain silent in response to *Miranda* warnings. Instead, he gave a detailed explanation of his whereabouts on the date of the crime (Lancaster and Bakersfield), which conflicted with his trial testimony that he was at a friend’s house in East Los Angeles when the murder was committed. (*Id.* at pp. 183, 186–187, 189.) On cross-examination the prosecutor asked questions about why he had not told the interrogating officer about his alibi. (*Id.* at pp. 199–202.)

The California Supreme Court rejected the defendant’s claim of *Doyle* error. “Defendant was not ‘silent’ on his whereabouts at the time of the murder; he chose to

provide varied explanations that differed from his trial testimony.” (*Collins, supra*, 49 Cal.4th at p. 204.) The court held the prosecutor’s focus on the defendant’s failure to reveal his alibi before trial was a “legitimate effort to elicit an explanation as to why, if the alibi were true, defendant did not provide it earlier.” (*Ibid.*) So, too, here.

*Collins* also expressly rejected the theory that the defendant had been “silent” as to his alibi defense: “Defendant’s attempt to characterize a conflicting statement as ‘silence’ cannot stand and is unsupported by the evidence.” (*Collins, supra*, 49 Cal.4th at p. 203.) *Anderson*, too, rejected the notion that omission of specific facts during an interrogation amounts to “silence” as to those facts within the meaning of *Doyle*. The court acknowledged that each of the defendant’s “inconsistent descriptions of events may be said to involve ‘silence’ insofar as it omits facts included in the other version. But *Doyle* does not require any such formalistic understanding of ‘silence,’ and we find no reason to adopt such a view in this case.” (*Anderson, supra*, 447 U.S. at p. 409.)

Contrary to defendant’s argument, where a post-*Miranda* statement to police is contradicted by the evidence supporting a defense at trial, the prosecution is allowed to explore and exploit inconsistencies and omissions, even if the defense is presented without the defendant’s testimony. (*People v. Love* (1977) 75 Cal.App.3d 928, 931–934.) Defendant has not shown *Doyle* error.

### **3. Shifting the burden of proof to defendant**

Defendant bases his claim of burden shifting on the prosecutor’s argument that defendant “never said where he was” when he was questioned by the police, as well as on the prosecutor’s comment on the defense’s failure to produce Matteucci’s girlfriend as a witness. On the second point, the specific argument which defendant assigns as error was as follows: “[A]s part and parcel of Adam Matteucci’s flip-flop on the stand, here, we have an undated letter that was handed to me by the Public Defender shortly before she started to cross-examine Matteucci, that says, that, oh, the reason he said Norman was the guy” was “because Norman had this affair with his wife/girlfriend, and so he’s trying to get back at him. [¶] Again, if that were true, where is the wife/girlfriend?”

Defendant claims these statements amounted to unconstitutional burden shifting. (See, e.g., *Sandstrom v. Montana* (1979) 442 U.S. 510, 522–524; *In re Winship* (1970) 397 U.S. 358, 364.) We have already addressed the prosecutor’s comments on the late disclosure of defendant’s alibi, and we find them no more objectionable under a burden-shifting analysis than under a *Doyle* theory.

As for the prosecutor’s comment about the failure by the defense to produce Matteucci’s girlfriend as a witness, there was also no misconduct. It has long been established that the prosecutor commits no error by alluding to the failure of the defense to “ “introduce material evidence or to call logical witnesses.” ’ ’ ( *People v. Lewis* (2004) 117 Cal.App.4th 246, 257 (*Lewis*), quoting *People v. Vargas* (1973) 9 Cal.3d 470, 475.) Such comments do not “erroneously imply that the defendant bears a burden of proof.” ( *People v. Carr* (2010) 190 Cal.App.4th 475, 483; see also *People v. Frye* (1998) 18 Cal.4th 894, 973; *Lewis, supra*, at p. 257.)

Moreover, defense counsel did object to the statement about the failure to present Matteucci’s girlfriend as a witness on grounds of burden shifting, and the court sustained the objection. Even if there had been some impropriety in the prosecutor’s argument, we see no possibility of prejudice in light of that ruling. The jury was instructed to disregard any matter as to which an objection was sustained. We presume they understood and faithfully followed that instruction. (E.g., *People v. Hajek and Vo, supra*, 58 Cal.4th at p. 1216.)

#### **4. Denigrating defense counsel**

Defendant also complains the prosecutor denigrated defense counsel by telling the jury Matteucci’s letter was not produced until trial. First, we note there was no objection immediately following this statement. A claim of prosecutorial misconduct, to be preserved for appeal, must have been the subject of a specific objection at trial, with a request for admonition. (*Shazier, supra*, 60 Cal.4th at p. 127.) Therefore, we find this claim of prosecutorial misconduct forfeited.

Even if we were to assume the jury understood the argument as a brief attack on defense counsel, it was, in the context of the entire argument, a mild slight. A

prosecutor’s comment that testimony or a defense was “fabricated” may not, without more, properly be characterized as an attempt to impugn the honesty or integrity of the defense attorney. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1303, fn. 49.) Here, the comment was more oblique and less likely to have given the jury a negative impression of defense counsel’s ethics. There was no prosecutorial misconduct.

## **B. Admissibility of McFadden’s Identification Testimony**

Prior to trial, defense counsel moved to exclude McFadden’s identification of defendant at the showup and at the preliminary hearing on grounds that the initial identification was unduly suggestive, and that suggestiveness tainted the subsequent identifications. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 989 (*Cunningham*); *People v. Johnson* (1989) 210 Cal.App.3d 316, 322; see also *Neil v. Biggers* (1972) 409 U.S. 188, 196–198.) Defendant raises the same issue on appeal, contending the identification evidence was so unreliable as to amount to a due process violation.

Defendant’s briefing lists numerous factors that purportedly made the showup suggestive (e.g., no one but Matteucci and defendant were shown to McFadden, and they were handcuffed and surrounded by police with a spotlight shining on them). He also discusses at length the unreliability of eyewitness identification and the relative suggestiveness of field showups versus formal lineups. We are familiar with such criticisms, but find them insubstantial in light of the controlling law and the strong evidence of defendant’s guilt.

“In order to determine whether the admission of identification evidence violates a defendant’s right to due process of law, we consider (1) whether the identification procedure was unduly suggestive and unnecessary, and, if so, (2) whether the identification itself was nevertheless reliable under the totality of the circumstances . . . .” (*Cunningham, supra*, 25 Cal.4th at p. 989; see also *Manson v. Brathwaite* (1977) 432 U.S. 98, 114.) We apply an independent standard of review on appeal. (*People v. Avila* (2009) 46 Cal.4th 680, 698–699.)

The police in this case took measures to minimize the suggestiveness. For instance, McFadden was given and signed a standard printed admonishment from the

San Francisco Police Department explaining that it was important to make sure one did not identify the wrong person, and the officer who transported McFadden to the showup was careful not to give McFadden the impression the police thought they had the suspects in custody.

As noted above, McFadden's first identification of defendant at the field showup was somewhat tentative. She explained, however, that any hesitancy in identifying the men was due to the fact that she was viewing them from a distance of about 21 feet, and the spotlights on them washed out their features. In later identifications under better viewing conditions her certainty increased.

A single person showup has long been condoned by our Supreme Court, such a procedure having been declared unfair only if it suggests in advance the identity of the person suspected by the police. (*People v. Ochoa* (1998) 19 Cal.4th 353, 413 (*Ochoa*)). A defendant who claims an unnecessarily suggestive pretrial identification bears the burden of showing it gave rise to " 'a very substantial likelihood of irreparable misidentification.' " (*People v. Cowger* (1988) 202 Cal.App.3d 1066, 1072 (*Cowger*)).

There are obviously competing interests between the demands of law enforcement and the rights of suspects. The courts have struck a balance: "The potential unfairness in singling out a suspect is offset by the likelihood that a prompt identification shortly after the commission of a crime will be more accurate than a belated identification days or weeks later. . . . [¶] A prompt on-the-scene confrontation between a suspect and a witness enables the police to exclude from consideration innocent persons so a search for the real perpetrator can continue . . . . An innocent person who has been apprehended should not have to wait for the assembly of a lineup . . . while the real culprit puts more time, and presumably distance, between himself and the focal point of the offense." (*Cowger, supra*, 202 Cal.App.3d at pp. 1071–1072; see also *In re Carlos M.* (1990) 220 Cal.App.3d 372, 387.)

Although defendant claims there was no exigency in this case to justify the use of field identification, the mere passage of several hours between the robbery and the showup did not eliminate the exigency. Defendant and Matteucci were stopped in a

moving car matching the description and the license plate of McFadden's report to the police. The police needed confirmation that McFadden had given them the correct license number, and they needed to know whether the registered owner and his passenger were the same men who had robbed McFadden a few hours earlier. Because the suspects were mobile, the police were in the position of either having to arrest them or let them go, knowing that the car stop alone could have triggered their flight from the jurisdiction. Thus, we conclude there was a necessity for the abbreviated procedures used in this case and the showup was not unduly suggestive.

Even assuming for argument's sake the procedures were suggestive, suppression of the identification was not required if the identification itself was nevertheless reliable. (*Cunningham, supra*, 25 Cal.4th at p. 989.) In assessing reliability we take into account: (1) the opportunity of the witness to view the suspect at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of her prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. (*Ibid.*; accord, *Ochoa, supra*, 19 Cal.4th at p. 412.)

Here, McFadden had a good opportunity to view her assailants at the time of the crime, as they were within "a couple feet" of her, and she got to look at them for about five to 10 seconds before she hit the ground. McFadden and the men had full eye contact, and she looked directly at their faces, which she could clearly see. She testified she was concentrating on their faces during the crime, and she was an amateur artist and made a habit of noticing people's facial features. McFadden's powers of observation were also confirmed by the fact that she correctly described Matteuci's car and memorized the license plate number.

McFadden's description, recited above, also matched defendant fairly well. The record shows that defendant was 23 years old at the time of his arrest, a white male, 5'8" tall and weighing 180 pounds, wearing black pants and a black hoodie.

The confrontation occurred within about eight hours after the crime, which tends to make it more reliable. McFadden was very cautious about her identification, calling herself a "very honest person" who would never want an innocent person to be charged

with a crime. She did not want to say she was certain unless she was absolutely certain. In fact, she felt certain at the time of the cold show, but because of the lighting conditions and distance from the suspects, she told the police she was not 100 percent certain of the identification. However, when she could see defendant close up and in better lighting at the preliminary hearing, McFadden was able to say she was “100 percent sure” of her identification. She also recognized him because he was staring at her in the same intimidating way he did during the robbery. At trial, she was “absolutely” certain of her identification. In light of all of these circumstances, the identifications appear to be reliable. The testimony was properly admitted.

### **C. Ineffective Assistance of Counsel**

Next, defendant claims his attorney was ineffective in failing to request a pinpoint instruction telling the jury to view Matteucci’s testimony with caution because he was a “snitch” or informant who may have received some benefit for his testimony. We reject defendant’s argument for several reasons.

First, defendant does not even identify in his briefing exactly what pinpoint instruction should have been requested. In addition, Matteucci was not an informant. An in-custody informant is a person, “other than a codefendant, percipient witness, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were being held within a city or county jail, state penal institution, or correctional institution.” (§§ 1111.5, subd. (b), 1127a, subd. (a); *People v. Gonzalez* (2012) 210 Cal.App.4th 724, 733–734.) Matteucci was an accomplice, not an informant. Finally, defendant did request and receive an accomplice testimony instruction. The accomplice instruction told the jury to view Matteucci’s testimony with caution. (CALCRIM No. 335.) A second cautionary instruction would not have added any meaningful guidance to the jury or more protection for defendant.

Given the foregoing factors, it is self-evident that defendant has failed to meet the rather stringent requirements necessary to establish ineffective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 690, 694 [two prongs of error and

prejudice must be shown, with recognition of broad discretion accorded to trial counsel's professional judgment].) Here, defendant cannot show error, much less resulting prejudice.

**D. Cumulative Prejudice**

Defendant's final argument is that the prejudicial effect of the various claimed trial errors must be considered cumulatively, so that even if any single error would not be deemed prejudicial, the synergistic effect of several errors must be separately considered. (*People v. Brasure* (2008) 42 Cal.4th 1037, 1074; *People v. Hill* (1998) 17 Cal.4th 800, 847.) Having found no error, we find no cumulative prejudice. In some instances we assumed error for the sake of argument, but found it harmless. Even considering the cumulative effect of those assumed errors, we see no prejudice requiring reversal.

**III. DISPOSITION**

The judgment is affirmed.

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Bolanos, J.\*

We concur:

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Reardon, Acting P.J.

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Rivera, J.

\* Judge of the San Francisco City and County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.