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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.

TEVITA PETELO,

Defendant and Appellant.

A138954

(Alameda County
Super. Ct. No. CH52684)

A jury convicted appellant Tevita Petelo of second degree robbery, carjacking and forcible oral copulation, and made a true finding under the “One Strike” law that he had kidnapped his victim in connection with the forcible oral copulation count. (Pen. Code, §§ 211, 215, subd. (a), 288a, subd. (c)(2)(A), 667.61, subds. (d)(2), (e)(1).) An additional charge of kidnapping with intent to commit rape was dismissed after the jury was unable to reach a unanimous verdict, and a mistrial on that count was declared. (Pen. Code § 209, subd. (b)(1).) The court determined in a bifurcated proceeding that appellant had suffered a prior felony conviction for purposes of the five-year serious felony enhancement and the “Three Strikes” law (Pen. Code, § 667, subd. (a), 1170.12), sentenced him to prison for 25 years to life plus five years on the oral copulation count, and ordered the determinate sentence on the robbery and carjacking counts to run concurrently.¹ Appellant contends his conviction of forcible oral copulation must be

¹ The trial court struck the Three Strikes allegation for purposes of the oral copulation count, concluding a One Strike sentence of 25 years to life was sufficient punishment in light of the conduct underlying the offense.

reversed because the prosecutor committed misconduct during closing argument. We affirm.

I. BACKGROUND

On January 9, 2012, B. Doe lived on Darvon Street in Newark, California. At 9:30 or 9:45 that evening, she was sitting in her parked car outside her house smoking a small amount of marijuana when she noticed appellant, whom she did not know, walking along the street. Doe locked the doors of her car, but appellant walked up to her window, pulled out what she believed to be a gun, and demanded money. Doe gave him two \$1 bills from her purse.

Appellant started to walk away but came back and told Doe to open her door and move over to the passenger seat. Doe, in fear, complied. Appellant began driving and told Doe more than once to take off her pants. When Doe did not do so quickly enough, appellant reached over and pulled her pants down himself. He told Doe to “rub [her] pussy” and pushed her hand into her vaginal area. Appellant drove to a secluded area of a park, where he stopped the car and told Doe he would release her if she had sex with him. Doe told appellant she was menstruating as an excuse to avoid intercourse, and appellant, who had an erection, told her to “suck [his] dick” instead. Doe attempted to follow his instructions, but her mouth was very dry, so appellant grabbed her hand and spit into it. Doe felt sick and vomited a small amount onto appellant’s genital area, at which point he lost his erection.

Apparently deterred from further sexual contact, appellant asked Doe for more money. He cocked his gun and held it to her head, but Doe slapped the gun away. She remembered she had a \$2 bill that a friend had given her for good luck and took it out of her wallet. Appellant began to drive again, and Doe tried to convince appellant he would get in a lot of trouble if he continued. Appellant stopped on Lafayette Avenue and told Doe to get out of the car, warning her that he would come back and kill her if she screamed. Doe got out, leaving her cell phone and purse in the car.

As soon as appellant drove away, Doe ran to a nearby house and banged on the door. The residents of the house let Doe call 911, and Newark Police Department Officer Karl Geser responded at about 10:13 p.m. Geser smelled marijuana and asked Doe whether she had been smoking. Doe initially lied and denied smoking marijuana that night because she was afraid of getting in trouble and felt Geser was trying to blame her for what had happened to her.

Geser was initially very brusque and accusatory with Doe, assuming she was under the influence and trying to cover up an accident by claiming her vehicle had been carjacked. But Geser soon came to believe Doe was telling him the truth, and he drove her around to the locations relevant to the investigation and then to the hospital for a sexual assault examination. Doe became more communicative with Geser as the evening went on.

Doe described her assailant as Hispanic, 23 or 24 years old, about 5 foot 9 inches and 165 pounds, with a ponytail, goatee and mustache.² She said he had worn a black T-shirt, a black beanie and a hooded, zippered black sweatshirt. Doe told Geser her assailant had demanded sex, told her to take off her pants, instructed her to “rub [her] pussy,” and had spit into her hand before undoing his own pants and touching himself. She did not mention that she had orally copulated appellant or had vomited on his lap. She also told Geser that appellant did not have an erection. Doe told the nurse who performed the sexual assault examination that her assailant had touched her labia and spit on her hands, but she did not tell her she had performed oral copulation or had vomited.

Investigating police officers contacted Sprint to “ping” Doe’s stolen cell phone, which brought them to a residence on Scarborough Drive in Newark. Officer Warren positioned himself outside the home at 1:20 a.m. and saw appellant standing at a sink in the kitchen. Appellant’s clothing and facial hair matched Doe’s description of her assailant, and Warren knocked on the door and announced himself as a police officer.

² The probation report indicates that appellant is of the Pacific Islander ethnic group, 28 years old, 5 foot 11 inches, and 215 pounds.

Tofamoealo Uhatafe was appellant's cousin and owned the house, where he lived with several other family members. Appellant was staying with Uhatafe because he did not have anywhere else to go. As Uhatafe was on his way to speak to Officer Warren, he saw appellant wearing a dark, hooded sweatshirt and rushing up the stairs, which was strange because appellant was not allowed upstairs except to shower. Uhatafe took the officers upstairs to talk to appellant and noticed he had changed into a red shirt that belonged to Uhatafe. Appellant provided Warren with four false names before Warren was able to identify him.

During a search of the house with Uhatafe's consent, officers found a black hooded sweatshirt and a beanie on a pile of clothes on a bed in an upstairs bedroom. A \$2 bill and four \$1 bills were found in the same room. Downstairs, Doe's cell phone was found behind a microwave in the kitchen, and Doe's keys and keychain were found on a tray on top of the refrigerator. Officers found a replica of a pistol under a couch cushion; the replica made a cocking sound similar to that of a Glock pistol.

Geser drove Doe to the house on Scarborough Drive for an in-field showup. He read her an admonition cautioning her that the person she was about to view was not necessarily the person who had committed the crime, that she was not required to identify anybody, and that she should not be influenced by the fact that the person was detained and in handcuffs. Doe was very nervous and asked whether appellant could see her, but she said she was "sure" he was her assailant. None of the other men living at the Scarborough Drive house resembled appellant physically.

Doe's car was found about a mile's drive from the Scarborough Drive address, though a pedestrian could have reached the house more quickly by cutting through a park. Physical samples taken from the car and from Doe's hand during the sexual assault examination did not link appellant to the crime, though appellant could not be excluded as a contributor to the DNA sample found on Doe's hand.

Marcia Blackstock, the executive director of Bay Area Women Against Rape, testified as an expert in sexual assault and rape trauma syndrome. She explained there were many reasons why a victim of sexual assault might not immediately disclose the

details of the attack, such as shame, shock and repression. After listening to an audio recording of Officer Geser's initial interview with Doe, Blackstock opined that his aggressive questioning (which he later came to regret) must have been Doe's "worst nightmare." Blackstock did not think it unusual that under the circumstances, Doe would fail to reveal the details of her attack to Geser or the nurse at the hospital.

At trial, Doe explained she had not been fully honest with Geser about the details of her attack because she was afraid and not thinking rationally, and because she felt he was accusing her of a crime. She was ashamed and uncomfortable talking to anyone about what had happened.

The defense at trial was that Doe was not being truthful about the nature of the sexual assaults. During closing argument, defense counsel urged the jury to acquit appellant of forcible oral copulation and kidnapping with intent to commit rape and to instead convict him of the lesser included offenses of assault with intent to commit oral copulation and simple kidnapping.

II. DISCUSSION

Appellant urges us to reverse his conviction for forcible oral copulation based on the alleged misconduct of the prosecutor during closing argument. He contends the prosecutor made a number of improper remarks calling for justice for the victim, exhorting jurors to convict for "societal" reasons, calling for a verdict based on emotion or sympathy, and vouching for Doe's credibility. We reject the claim.

A. *Challenged Remarks*

At several points during his initial closing argument, the prosecutor urged the jury that Doe, as well as appellant, was entitled to justice in this case. The first such remark was made during the beginning of the prosecutor's argument, and linked the idea of justice to the strength of the evidence presented: "You know, we talk a lot in voir dire and you're going to hear about it more in this case through the closing arguments, we talk about this concept of justice, right? Justice in our criminal justice system. And we often talk about it within the context of the defendant. That's appropriate. But justice is a two-

way street. Justice is a two-way street here because if the defendant cannot be held accountable based on this evidence in this case, then all it is, is a hollow promise to people like [B.] Doe. Because there can be no justice here and now unless the defendant is held accountable for everything that he did back then. [¶] . . . [¶] You have all the evidence you need to find the defendant guilty on each and every single count. Because if you look at the evidence in this case, if you take a step back and you look at all in its entirety, there's only one just and logical conclusion that you can come to, and that is the defendant is guilty (indicating) as charged.”

The prosecutor returned to this theme of justice for the victim near the end of his initial closing argument: “Well, you know, like I told you, we've gotten to know each other here for a couple weeks from the beginning of this case to now where we find ourselves, and you've got all the evidence in this case. You've heard [] multiple witnesses testify here. And, you know, I talked to you briefly about the fact that justice, you know, justice is a two-way street. It means something. Not just to someone who's accused but to someone who's a victim. You know, your verdict does—Ms. Doe doesn't need to be told that she was sexually assaulted, forced to orally copulate a complete stranger, kidnapped, robbed. She doesn't need to hear that from you because she lived it. And your verdict can do nothing to change what happened to her that night, to take us back to the day before January 9th. But it can do something. It can bring a measure of justice where some is so desperately needed. [¶] I ask that after examining this case, after examining all the evidence you get, that you return the only logical, the only just conclusion that you can in this case and find the defendant guilty as charged on all counts.”

Defense counsel made his closing argument, in which he urged the jury to acquit appellant of forcible oral copulation and kidnapping with intent to commit rape, and to instead find him guilty of the lesser offenses of assault with intent to commit oral copulation and simple kidnapping. In his rebuttal argument, the prosecutor again discussed justice for the victim: “Like I said, your verdict won't tell her what happened because she was there, but it can bring justice. And it's only just if he's held accountable

for everything he did.” The prosecutor discussed why it would be unjust to return a verdict of guilty on only the lesser offenses: “In fact, all the pieces of evidence that we gathered tend to corroborate what [Doe] said. The saliva on the hand, the fact that this is the guy (indicating), right? Because all her stuff’s found in the house. The fact that she identifies him. The fact that even [defense counsel] won’t come up here and tell you that [Doe] lied about the carjacking or the kidnapping, right? He’s trying to cut his losses. I don’t blame him. Say, well, okay. We’ll give you the kidnapping and the carjacking. But no, let’s talk about Count One [kidnapping for the purpose of rape]. So even he couldn’t get up here and say she was lying. So what interests would she have? [¶] And again, it’s punishing her because she wasn’t able to be forthright with Officer Geser that first moment that he met her. Punishing her and rewarding [appellant]. Give him the benefit of doubt. I know it’s difficult for her to express what happened, but give him the benefit of the doubt. Punish the victim; reward the defendant.”

At the conclusion of his rebuttal argument, the prosecutor emphasized that a verdict on the lesser offenses as urged by defense counsel would not result in justice: “You know, compromise does not equal justice. Compromise does not equal justice, and that’s what [defense counsel] wants you to do. Sure, my client—I know he didn’t say this directly, but the implication was there—sure, my client kidnapped her. My client robbed her. My client carjacked her. My client sexually assaulted her, but, ladies and gentlemen, not in the way she said. She’s truthful about everything else but that one point. And he says, you know, return a verdict of something lesser. He’s asking you for a compromise, and that’s not justice. [¶] . . . [Appellant’s] had his justice, and it doesn’t work unless there’s justice for everyone here. For Ms. Doe. It’s not justice if you—if her—if she can’t come in here, having been attacked by this man (indicating) for no reason, sitting in her car at night, if she can’t come up here and say I’m being honest with you. This is what happened to me. It’s not justice saying, well, we’re going to hold him accountable for some things but not everything that he did to you. Like I said in the beginning, there can be no justice here unless the defendant is held accountable for what he actually did. Compromise is okay when you’re buying a car. It’s not okay when

we're talking about [] justice in a case like this. There can be no justice unless he's held accountable for each and every thing that he did then. That's what I'm asking you to do in this case.”

In addition to the comments about justice for the victim, appellant complains about several statements by the prosecutor regarding Doe's credibility: “This is not someone who's fabricating all of what she told you, right? She got up here and she did the best she could to give you an honest recollection of what happened that night.” “She's just telling it like it is, and she gets nothing for it.” “I mean, she was an open book.” “And she did the best she could to answer everything truthfully.” “So it is an important question to ask this question: Why would she lie or exaggerate about any of this? What's her motive? What's her motive to do any of that? Like I said, this is not about money or fame. She doesn't get anything. She doesn't—the benefit of testifying in this Hayward courthouse once and then at a preliminary hearing, having to answer questions from myself and [defense counsel], talking about every personal thing that she's ever gone through to when she smoked marijuana in high school to what it was like to have to be in a car and be forced to put her mouth on another man's penis against her will, that's not a pleasant thing to talk about. But she came and said it because it's the truth, and she gets nothing for it.” “She got on the stand. You got to hear from her. All of you are sitting 10 feet away from this young woman who is sitting in that chair and telling you everything that happened to her that night. She wasn't being dishonest when she was talking about it. Even the things she was dishonest about that night, she told you.” “And [B.] Doe has been telling the truth about everything she got on the stand and testified to.”

B. Standard of Review

“ “The standards governing review of [prosecutorial] misconduct claims are settled. ‘A prosecutor who uses deceptive or reprehensible methods to persuade the jury commits misconduct, and such actions require reversal under the federal Constitution when they infect the trial with such “ ‘unfairness as to make the resulting conviction a

denial of due process.’ ” [Citations.] Under state law, a prosecutor who uses such methods commits misconduct even when those actions do not result in a fundamentally unfair trial.’ [Citation.]” ’ ” (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 427 (*Bryant*).)

When a prosecutor’s remarks to the jury are at issue, the defendant must demonstrate, “ ‘[i]n the context of the whole argument and the instructions’ [citation], there was ‘a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner. [Citations.] In conducting this inquiry, we “do not lightly infer” that the jury drew the most damaging rather than the least damaging meaning from the prosecutor’s statements. [Citation.]’ ” (*People v. Centeno* (2014) 60 Cal.4th 659, 667.)

C. Failure to Object; Forfeiture

To preserve a prosecutorial misconduct claim for review on appeal, “a defendant must make a timely objection and, unless an admonition would not have cured the harm, ask the trial court to admonish the jury to disregard the prosecutor’s improper remarks or conduct.” (*People v. Martinez* (2010) 47 Cal.4th 911, 956.) Appellant acknowledges he did not object to any portion of the remarks he now challenges (or indeed, to any portion of the prosecutor’s closing argument), but he argues he was excused from doing so under the circumstances.

An exception to the objection requirement may occur “when the ‘misconduct [is] pervasive, defense counsel [has] repeatedly but vainly objected to try to curb the misconduct, and the courtroom atmosphere was so poisonous that further objections would have been futile.’ ” (*People v. Friend* (2009) 47 Cal.4th 1, 29.) “In addition, failure to request the jury be admonished does not forfeit the issue for appeal if ‘ “an admonition would not have cured the harm caused by the misconduct.” ’ ” (*People v. Hill* (1998) 17 Cal.4th 800, 820.) Neither exception applies in this case. Timely and appropriate objections could have cured any improprieties, and, had an objection been sustained on the grounds now urged by appellant, we presume the prosecutor would not

have continued to advance the themes now characterized as misconduct. “ ‘It is only in the exceptional case that ‘the improper subject matter is of such a character that its effect . . . cannot be removed by the court’s admonitions.’ ” (*People v. Olivencia* (1988) 204 Cal.App.3d 1391, 1404.) This is not an exceptional case, and appellant’s claims have been forfeited.

D. *Ineffective Assistance of Counsel*

Appellant alternatively argues his trial counsel was ineffective in failing to lodge an appropriate objection to the prosecutor’s various remarks. To prevail on this claim, which implicates the right to counsel under the Sixth Amendment of the United States Constitution, appellant “must establish his counsel’s representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel’s deficient performance, the result of the trial would have been different. (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1007 (*Mesa*), citing *Strickland v. Washington* (1984) 466 U.S. 668, 686-687.) Counsel is not ineffective in failing to assign misconduct to a prosecutor’s actions when there is “either no misconduct at all or misconduct so trivial that no prejudice could have arisen from it.” (*People v. Osband* (1996) 13 Cal.4th 622, 700.)

Appellant argues the prosecutor’s statements referring to justice for the victim were objectionable because an “appeal to the jury to view the crime through the eyes of the victim is misconduct . . . ; an appeal for sympathy for the victim is out of place during an objective determination of guilt.” (*People v. Stansbury* (1993) 4 Cal.4th 1017, 1057, reversed in part on other grounds in *Stansbury v. California* (1994) 411 U.S. 318.) We do not agree. The main thrust of the prosecutor’s remarks regarding justice for Doe was that justice would not be served by returning a verdict on a lesser offense as a compromise when a greater charged offense had been proved beyond a reasonable doubt. The prosecutor did not invite the jury to view the crime through Doe’s eyes and did not dwell inappropriately on her experience during the crime itself. (Compare *People v. Medina* (1995) 11 Cal.4th 694, 759-760 (*Medina*) [prosecutor’s statements telling the

jury that if the law required an eyewitness in every case, then almost all murderers who kill witnesses will go free, and asking jurors to “do the right thing, to do justice, not for our society, necessarily or exclusively, but for [the victim], an 18[-]year-old boy who was just working at a gas station one night” were “brief and isolated comments” that could not have influenced the jury’s guilt determination]; *People v. Pensinger* (1991) 52 Cal.3d 1210, 1250 [misconduct for prosecutor to argue, “Suppose instead of being [the victim’s] kid this had happened to one of your children”]; *People v. Simington* (1993) 19 Cal.App.4th 1374, 1379 [“ask[ing] the jurors to place themselves in the position of an innocent victim who is assaulted with a knife and sustains serious injuries” is misconduct].) The “justice” urged for the victim in this case was a verdict of guilt based on the evidence presented—the antithesis of an appeal to the passions or prejudices of the jurors.

Nor are we persuaded that the prosecutor’s comments improperly invited the jury to convict appellant “ ‘in order to protect community values, preserve civil order, or deter future lawbreaking,’ ” contrary to the principles set forth in *United States v. Weatherspoon* (9th Cir. 2005) 410 F.3d 1142, 1149 (*Weatherspoon*.) In *Weatherspoon*, the prosecutor made a number of such comments, and persisted in making them even in the face of defense objections: “ ‘Convicting Mr. Weatherspoon is gonna make you comfortable knowing there’s not convicted felons on the street with loaded handguns, that there’s not convicted felons carrying around semiautomatic’ ” (*Ibid.*) “ ‘[Y]ou can feel comfortable knowing there’s a convicted felon that’s been found guilty of possessing a loaded firearm, a fully loaded semiautomatic weapon.’ ” (*Ibid.*) “ ‘[T]he law of being a felon in possession of a firearm, that protects a lot of people out there too.’ ” (*Ibid.*) “ ‘[F]inding this man guilty is gonna protect other individuals in this community.’ ” (*Ibid.*) The Ninth Circuit found reversible error because of the foregoing argument and because the prosecutor had further committed misconduct by vouching for the credibility of law enforcement witnesses. (*Id.* at pp. 1146-1148.) “ ‘A prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial

appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant, they will assist in the solution of some pressing social problem. The amelioration of society's woes is far too heavy a burden for the individual criminal defendant to bear.' ” (*Id.* at p. 1149.) The prosecutor in the case before us did not suggest a guilty verdict would protect society or solve any social problems, and his argument did not resemble the misconduct committed in *Weatherspoon*.

Appellant also complains the prosecutor's statement urging the jury to “bring a measure of justice where some is so desperately needed” was similar to comments made during closing argument in *United States v. Sanchez* (9th Cir. 1999) 176 F.3d 1214 (*Sanchez*), which criticized, among other things, the statement that the various participants in the legal process had done their duty and it was now the “duty” of the jury to find the defendant guilty. (*Id.* at p. 1224.) The court in *Sanchez* noted, however, “There is perhaps a fine line between a proper and improper ‘do your duty’ argument. It is probably appropriate for a prosecutor to argue to the jury that ‘if you find that every element of the crime has been proved beyond a reasonable doubt, then, in accord with your sworn duty to follow the law and apply it to the evidence, you are obligated to convict, regardless of sympathy or other sentiments that might incline you otherwise.’ ” (*Id.* at p. 1225.) Unlike *Sanchez*, the thrust of the prosecutor's argument in the case before us was that justice would be satisfied by a guilty verdict because the evidence showed appellant to be guilty as charged.

Appellant focuses on certain phrases used by the prosecutor in making his argument: that finding appellant guilty of assault with intent to commit oral copulation instead of the charged forcible oral copulation would “punish the victim” for failing to describe the oral copulation at an earlier point in time; that justice for the victim was “desperately needed”; and that “people like Doe” were entitled to justice. To the extent these remarks might have crossed the line into impermissible argument, they were “brief and isolated” comments, unlikely to have had any impact on the verdict. (*Medina, supra*, 11 Cal.4th at p. 760.)

Even if we assume the prosecutor should not have discussed the concept of justice for the victim, there is no reasonable probability this line of argument influenced the outcome of this case. Appellant did not dispute that he had robbed Doe, carjacked her vehicle, and driven her to a remote park where he sexually assaulted her. The only argument raised by the defense at trial was that Doe's description of oral copulation should not be credited because she did not disclose this act to the police or the nurse who performed the sexual assault examination on the night of the assault. The challenged statements by the prosecutor, viewed in context and as a whole, urged the jury that it would not be fair to Doe to convict appellant of a lesser crime than shown by the evidence. Significantly, the jury did not return a unanimous verdict on the count charging appellant with kidnapping for rape, suggesting jurors were able to fairly consider the evidence and vote their own consciences. It is not reasonably probable appellant would have obtained a more favorable verdict on the oral copulation count if his counsel had objected to the "justice" line of argument. (*Mesa, supra*, 144 Cal.App.4th at pp. 1008-1009 ["reasonable probability" standard applies to evaluation of claim of ineffective assistance of counsel, even if other constitutional provisions are implicated in alleged error].)

As to the prosecutor's comments regarding Doe's credibility, we disagree with appellant that they amount to misconduct. Impermissible "vouching" occurs when the prosecutor "places the prestige of the government behind a witness through personal assurances of the witness's veracity or suggests that information not presented to the jury supports the witness's testimony." (*People v. Fierro* (1991) 1 Cal.4th 173, 211, overruled on other grounds in *People v. Thomas* (2012) 54 Cal.4th 908, 941; see *People v. Frye* (1998) 18 Cal.4th 894, 971 (*Frye*), disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421.) Such vouching poses two dangers: "[S]uch comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor's opinion carries with it the imprimatur of the Government and may

induce the jury to trust the Government’s judgment rather than its own view of the evidence.” (*United States v. Young* (1985) 470 U.S. 1, 18-19.)

The prosecutor in this case did not refer to facts outside the record, suggest he had information supporting her credibility that was not presented to the jury, or place the weight of his office behind her testimony. Instead, he urged the jury to find Doe credible based on her demeanor, her forthrightness about her initial failure to disclose all the facts regarding her sexual assault, and her lack of any motive to lie. The focus was on the evidence presented, and there was no insinuation the prosecutor knew something the jurors did not. A “prosecutor may ‘make assurances regarding the apparent honesty or reliability of’ a witness ‘based on the “facts of [the] record and the inferences reasonably drawn therefrom.” ’ ” (*People v. Turner* (2004) 34 Cal.4th 406, 432 (*Turner*); see *Frye, supra*, 18 Cal.4th at p. 971; *Medina, supra*, 11 Cal.4th at p. 757; *People v. Sully* (1991) 53 Cal.3d 1195, 1235.) That is all that happened here.

Nor is there a reasonable probability appellant was prejudiced by the comments regarding Doe’s credibility. (*Turner, supra*, 34 Cal.4th at p. 431; *Mesa, supra*, 144 Cal.App.4th at pp. 1008-1009.) The jurors were instructed that the arguments of counsel were not evidence and it was their task to evaluate the credibility of witnesses. (CALCRIM Nos. 222, 226.) We presume the jury followed the law and treated the prosecutor’s comments as words spoken by an advocate in an attempt to persuade. (*People v. Morales* (2001) 25 Cal.4th 34, 47; see *People v. Williams* (2009) 170 Cal.App.4th 587, 635.)

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.

(A138954)