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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO CASTELAN,

Defendant and Appellant.

B253404

(Los Angeles County  
Super. Ct. No. KA102970)

APPEAL from an order of the Superior Court of the County of Los Angeles,  
Bruce F. Marrs, Judge. Affirmed.

C. Matthew Missakian, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Senior Assistant Attorney  
General, Linda C. Johnson, Supervising Deputy Attorney General, Theresa A. Patterson,  
Deputy Attorney General, for Plaintiff and Respondent.

## INTRODUCTION

A jury found defendant and appellant Fernando Castelan (defendant) guilty of false imprisonment and carjacking. On appeal, he contends that the trial court violated his federal constitutional due process rights when it failed to instruct the jurors that, to find defendant guilty, they must find that the prosecution proved all of the elements of the charged offenses beyond a reasonable doubt. Defendant also contends that the trial court violated his state law rights when it failed to define for the jury reasonable doubt.

We hold that although the trial court omitted a standard reasonable doubt instruction from its predeliberation jury instructions, any purported federal constitutional error was harmless under *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*) in view of other predeliberation instructions and comments by the trial court and counsel during voir dire and argument that explained the reasonable doubt standard. We further hold that although the trial court failed to give a standard instruction defining reasonable doubt in violation of defendant's state law rights, any such error was harmless under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*) in light of the comments of the trial court and counsel during trial and the other instructions involving reasonable doubt. We therefore affirm the judgment of conviction.

## FACTUAL BACKGROUND

### A. Prosecutor's Case

On July 23, 2013, at approximately 4:50 p.m., Jason Torres was driving in the City of La Puente near Main Street and Stafford Avenue. He made a call to 911 because he saw a truck "speeding through the neighborhood" that almost hit him and another car. He observed someone in the back of the truck "throwing stuff through the glass, through the partition . . . ." He "saw a movement of someone trying to get in." The person driving the truck was a female and the person in the back of the truck was a male. The truck was speeding—"going super fast"—"swerving," "running stops," and skidding.

On July 23, 2013, at around 5:00 p.m., Ernest Belk and his girlfriend, Charlene Wilson, were seated in their car at the drive-thru window of a Starbucks coffee shop near Valley Boulevard and Hacienda Boulevard in the City of Industry. Wilson heard “tires squeal” and saw a truck coming towards her “with a [woman] swinging from the door.” The woman fell to the ground and the truck “stopped real quick.” Belk also saw a gray Chevy truck coming toward his car from the opposition direction. The truck stopped and Belk saw the passenger door “swinging open” and a woman on the ground.

Belk exited his car and went to the woman’s location, about ten feet from his car. Belk observed defendant stopped in the truck, which had a shattered back window. When defendant exited the truck and approached Belk, the woman said, “‘Don’t let him take me.’” Belk told defendant that he needed to leave, and defendant told Belk to “calm down.” Belk replied, “No, I’m not gonna calm down, . . . you need to leave.” A few minutes later, defendant went back to the truck and left the scene. Paramedics arrived and transported the woman to the hospital.

On July 23, 2013, Los Angeles County Sheriff’s Deputy Sandra Fanchin responded to the Starbuck’s location and saw paramedics treating Samantha Villa for injuries. She interviewed Belk at the scene and then went to Queen of the Valley Hospital to interview Villa. Villa was in a hospital bed in the emergency room “braced onto a back board” and wearing neck and head braces.

Villa told Deputy Fanchin that she had driven a borrowed truck to the home of her ex-boyfriend, defendant, “to return some of his [possessions] that he left at her house.” After Villa returned defendant’s possessions, she went back to the truck and, as she drove away, she saw defendant run toward the truck and jump into the back.<sup>1</sup> Defendant began throwing items from the truck bed at the back window of the truck. Villa decided to drive to a nearby Sheriff’s station because there was a history of domestic violence between her and defendant. After defendant succeeded in breaking the back window of

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<sup>1</sup> Villa testified at trial that on the day of the incident, she recalled driving to defendant’s house, dropping off some of his possessions, and leaving. But she could not remember anything that happened after that until she woke up in the hospital.

the truck, he climbed inside the vehicle and hit Villa with his fists several times in the head and neck. He “then pulled her hair and threw her head into the dashboard.” Villa continued to drive and tried to call 911, but defendant “grabbed her cell phone and took it from her.” Defendant pulled Villa by her hair into the passenger seat and took control of the truck.

Defendant turned on to southbound Hacienda Boulevard from Stafford Avenue. At the intersection with Valley Boulevard, defendant slowed the truck as he approached traffic stopped at a red light. As he approached a Starbuck’s coffee shop, Villa “jumped out of the vehicle, hit her head on an unknown object, and could not remember anything else about the incident from that point.”

Three weeks after the incident, Los Angeles County Sheriff’s Deputy Brendan Caslin interviewed Villa at her home. Deputy Caslin reviewed with Villa the report of the incident prepared by Deputy Fanchin, and she confirmed that the report accurately reflected the statements Villa made to the deputy on July 23, 2013, about the incident.

On June 10, 2013, Los Angeles County Deputy Sheriff Robert Nuse responded to the scene of a domestic violence incident around 11:50 p.m. Deputy Nuse spoke to Villa who told him that defendant had come to her house pounding on the door and window, using obscenities, and demanding to see his son. Defendant stated that he had a gun, showed it to Villa, pointed it in her direction, and said he was “gonna get her if he didn’t see his son.” Villa said she was afraid defendant would use the gun. Deputies located defendant sitting on a curb between two parked vehicles about 25 yards from Villa’s residence. They also found a “replica gun,” that looked very similar to a gun, on top of the right rear tire of one of the vehicles.

## **B. Defendant's Testimony<sup>2</sup>**

On the morning of July 23, 2013, Villa brought defendant's baby to his home for a visit. She arrived around 10:00 a.m. and left somewhere between 11:30 a.m. and 12:30 p.m.

After Villa left, defendant took a bus to General Hospital in Los Angeles for a medical appointment. It took defendant two hours to reach the hospital. He arrived around 3:30 p.m. and left about three hours later, between 5:00 p.m. and 5:30 p.m. It then took another two hours for defendant to return home. He estimated that he arrived at home between 7:00 p.m. and 7:30 p.m. Defendant then went to visit his girlfriend.

According to defendant, on the evening of the prior uncharged domestic violence incident, he engaged in an argument with Villa's father because defendant wanted to see his son and Villa's father refused to allow him to do so. Defendant denied having a handgun that evening.

## **PROCEDURAL BACKGROUND**

In an information, the Los Angeles County District Attorney charged defendant in count 1 with kidnapping in violation of Penal Code section 207, subdivision (a)<sup>3</sup> and in count 2 with carjacking in violation of section 215, subdivision (a). Defendant pleaded not guilty. Following trial, the jury found defendant not guilty of kidnapping but guilty of the lesser included offense of false imprisonment in violation of section 236. The jury also found defendant guilty on count 2, carjacking.

The trial court sentenced defendant to an aggregate prison term of five years, eight months, comprised of the following terms: on count 2, the trial court sentenced

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<sup>2</sup> Defendant was originally represented by counsel at trial but, during trial, he successfully moved to represent himself. He testified on his own behalf in a narrative format.

<sup>3</sup> All further references are to the Penal Code, unless otherwise indicated.

defendant to the middle term of five years and on count 1, to a consecutive, one-third the middle term sentence of eight months.

## DISCUSSION

### A. Background

#### 1. *Voir Dire*

During voir dire, the reasonable doubt standard was repeatedly discussed with the prospective jurors by the trial court, the prosecutor, and defense counsel.

##### (a) Trial Court

At the beginning of voir dire, the trial court advised all of the prospective jurors as follows: “The Court: All right. I’d ask all prospective jurors to please listen carefully, as I’m going to describe the case to you briefly and introduce the attorneys, the parties and the witnesses. I will also ask you certain general questions concerning your qualifications to serve as jurors in our case. [¶] I would ask you folks in the audience area to please listen carefully to the questions we ask, and if you are called to sit in the jury box, please be prepared to state whether you’d answer the questions any differently or whether you have any other information to offer about your abilities to be fair in this case.”

After the attorneys introduced themselves and the trial court explained the charges, the trial court, using language substantially similar to CALJIC No. 2.90, advised the jury as follows: “A defendant in a criminal action is presumed to be innocent until the contrary is proved. And in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. [¶] This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt. [¶] Now, reasonable doubt is defined in the law as follows: It is not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is

that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in the condition that they cannot say they feel an abiding conviction of the truth of the charges.”

While questioning a prospective juror who was later excused, the trial court asked, “But as I told you earlier, if you weren’t convinced beyond a reasonable doubt, he’d be entitled to a verdict of not guilty. [¶] If the People . . . bungled it and didn’t prove their case, would you be willing to join the other jurors and say okay, you know, the People blew it, he’s entitled to a verdict of not guilty? Could you do that for us?” During questioning of another prospective juror, the trial court admonished, “And remember, you’re not to consider the subject of penalty and punishment in any way, . . . you’re just to decide did the defendant do the act, yes or no. And if it is yes, it has to be proved beyond a reasonable doubt by [the prosecutor].”

(b) Prosecutor

During voir dire, the prosecutor also discussed the reasonable doubt standard with a panel of prospective jurors. “Does anyone here feel like they have any reason . . . why they would not find the defendant guilty if after hearing all the evidence, getting the law from the judge, you felt like there was proof beyond a reasonable doubt?” She also renewed that inquiry when questioning a specific juror about the subject. “Well, your job, if you are chosen as a juror, is to decide whether the . . . proof rose to a level where there was proof beyond a reasonable doubt. Do you think you would be able to do that?” Later, when addressing newly seated prospective jurors, the prosecutor again inquired, “Does anybody have any reason . . . why if [you] believe the case was proven beyond a reasonable doubt, they would not be able to vote guilty?”

The prosecutor then questioned a prospective juror who was thereafter excused as follows: “[Prosecutor]: Well, your job, if chosen as a juror, is to decide whether or not the proof, the level of proof rose to a level where there was proof beyond a reasonable doubt. Do you think you would be able to do that? [¶] . . . [¶] [Prosecutor]: Okay. So I guess what I’m asking you is if you believed that there was proof beyond a reasonable

doubt, which is the legal standard, would you be able to vote guilty? [¶] . . . [¶]  
[Prosecutor]: Okay. Knowing that that is, in fact, what the law is, and that's what the Judge would order you to do, is to determine whether or not you believe that there was proof beyond a reasonable doubt, if there's proof beyond a reasonable doubt, legally you must vote guilty. If you did not believe that the proof rose to the level of proof beyond a reasonable doubt, and it fell short, your duty would be to vote not guilty. If the Judge gave you that as the law that you must follow, would you follow it?"

During her questioning of another prospective juror, the prosecutor stated, "You know, in child custody, the standard there is much lower than what it is in a criminal proceeding. It's been explained to you both by the judge and by the defense attorney that the D.A. has a burden of proof that is proof beyond a reasonable doubt. So if I don't produce enough evidence, . . . you would vote not guilty. [¶] . . . [¶] And if you believe there was proof beyond a reasonable doubt, then the vote would be guilty, correct?"

The prosecutor subsequently addressed a prospective juror, stating that the jury's job was to decide if she had "put on enough evidence through witnesses and testimony to show that there was proof beyond a reasonable doubt." The prosecutor then asked, "Okay. Well, do you feel like you'll be able to listen to the evidence and decide whether or not the evidence in this trial shows you proof beyond a reasonable doubt?"

(c) Defense Counsel

During her questioning of a prospective juror, defense counsel stated that defendant was presumed innocent and explained that "[the prosecutor] has to present each and every element of the crime. Not only does she have to present it to you, but she has to prove it beyond a reasonable doubt." Later, when questioning a different juror, defense counsel asked, "[D]o you think you can presume [defendant] innocent until [the prosecutor] proves beyond a reasonable doubt that he's guilty."

When new prospective jurors moved into the jury box, defense counsel stated, "We talked about the presumption of innocence and how most of you probably came in here and assumed that because [defendant] has been arrested for a charge, which the

judge read to you, he may be guilty because he's sitting here. I heard some people say that. [¶] I want to make sure that everyone knows that's not how we proceed in a court of law. He's presumed innocent until the People present their case and show that he is guilty beyond a reasonable doubt. Does anybody have a problem with that instruction? Does everybody understand that that is the law and you must follow it?" Defense counsel then stressed that the prosecution had the burden to prove each and every element of the crime and noted that the burden of proof in a civil case was much lower than in a criminal case.

When a new group of jurors was questioned for purposes of selecting alternate jurors, defense counsel asked, "The presumption of innocence, you all heard it several times in the [questioning of the] prospective jurors. Does anyone have a problem with that instruction and that theory of the law?"

## 2. *Opening Statements*

The prosecutor concluded her opening statement by saying, "Ladies and gentlemen, I ask that you simply keep an open mind, listen to what the witnesses have to say, and I believe that once you have heard all of that, you will see that this case has been proven beyond a reasonable doubt and the defendant is guilty of both carjacking and kidnapping."

During her opening statement, defense counsel explained, "The People, because it is their burden, will put on all their evidence first. And then if, in fact, we believe that we need to, then we can put evidence on. If we don't want to, we don't need to, we won't. But that's not our burden. [¶] Our burden is to just let them prove the case beyond a reasonable doubt."

## 3. *Jury Instructions*

At the close of the evidence, the trial court orally gave the jury, inter alia, the following instructions.

(a) CALJIC No. 2.01

“However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only, one, consistent with the theory that the defendant is guilty of the crime but, two, cannot be reconciled with any other rational conclusion. [¶] Further, *each fact which is essential to complete a set of circumstances necessary to establish the defendant’s guilt must be proved beyond a reasonable doubt.* In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, *each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt.*”  
(Italics added)

(b) CALJIC No. 2.50.02

“Evidence has been introduced for the purpose of showing that the defendant engaged in an offense involving domestic violence on one or more occasions other than that charged in this case. Domestic violence means abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the defendant has had a child or is having or has had a dating or engagement relationship. [¶] . . . [¶] Abuse means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to herself or another. [¶] If you find the defendant committed a prior offense involving domestic violence, you may, but are not required to, infer that the defendant had a disposition to commit another other offense involving domestic violence. [¶] If you find the defendant had this disposition, you may, but are not required to, infer that he was likely to commit and did commit the crime or crimes of which he is accused. [¶] However, *if you find by a preponderance of the evidence that the defendant committed a prior crime or crimes involving domestic violence, that is not sufficient by itself to prove beyond a reasonable doubt that he committed the charged offenses.* If you determine an inference properly can be drawn from this evidence, *this inference is simply one item for you to consider along with all other evidence in*

*determining whether the defendant has been proved guilty beyond a reasonable doubt of the charged crimes.” (Italics added.)*

(c) CALJIC No. 2.62

“The failure of the defendant to deny or explain evidence against him does not, by itself, warrant an inference of guilt, *nor does it relieve the prosecution of its burden of proving every essential element of the crime and the guilt of the defendant beyond a reasonable doubt.*” (Italics added.)

(d) CALJIC No. 4.50

“The defendant in this case has introduced evidence for the purpose of showing that he was not present at the time and place of the commission of the alleged crime for which he’s here on trial. *If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crimes were committed, you must find him to be not guilty.*” (Italics added.)

(e) CALJIC No. 17.12

“*If you are not satisfied beyond a reasonable doubt that a defendant is guilty of the crime of which he’s charged in count 1, and you unanimously so find, you may convict him of any lesser crime provided you are satisfied beyond a reasonable doubt that he is guilty of that lesser crime.*” (Italics added.)

#### 4. Closing Arguments

Just before closing arguments, the trial court informed the jury that “the District Attorney will have an opportunity to make her opening argument and then the defendant will have his opportunity for comments. In conclusion, the District Attorney, because she has the burden of proof, will have an opportunity to respond to the defense arguments.”

During defendant’s closing argument,<sup>4</sup> he noted a discrepancy between Wilson’s testimony and her statement to the police, suggesting that this created “reasonable doubt.” Defendant also discussed his alibi and that Torres was unable to identify him, arguing, “So that’s a doubt, brings a doubt who really took the car.” Thereafter defendant referred to the preponderance of the evidence standard, stating, “The People on [CALJIC No.] 2.52, definition of preponderance of the evidence, it talks about evenly—how to even like—the evidence, she never has—the People never have brought you guys to prove like, yeah, he was there.”

The prosecutor concluded her rebuttal argument as follows: “The bottom line is the defendant in this case is charged with kidnap[ping] and carjack[ing]. Your job is to go back into the jury deliberation room and make a determination after you speak to each other about this—the evidence in this case and you look over the law and you just *go through the elements one by one and determine was that proven beyond a reasonable doubt?* [¶] Based on the evidence in this case and no other reason, *each and every element of both of these crimes [was] proven* and because of that and no other reason, the People ask that you return a verdict of guilty as to both counts.” (Italics added.)

## **B. Federal Constitutional Right to Reasonable Doubt Instruction**

“It is a fundamental precept of our criminal justice system that before a jury may convict a defendant of a criminal offense, it must find that the prosecution has proved all elements of the offense beyond a reasonable doubt. State law and the federal Constitution require the trial court to instruct with regard to this fundamental principle when it advises the jurors of the applicable rules of law that govern their deliberation and decision. In California, a trial court ordinarily satisfies this obligation by instructing the jury under one of two ‘pattern’ or ‘standard’ reasonable doubt instructions. (See

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<sup>4</sup> The prosecutor did not mention the reasonable doubt standard in her opening argument.

CALCRIM No. 220; CALJIC No. 2.90; hereafter sometimes referred to as the standard reasonable doubt instruction.)” (*People v. Aranda* (2012) 55 Cal.4th 342, 349 (*Aranda*).

Although the trial court in this case advised the prospective jury pool using the standard reasonable doubt instruction at the outset of voir dire, “no decision has viewed instructions and remarks at [that] stage of the proceedings as an adequate substitute for the court’s duty to instruct the jurors prior to deliberation on the principle of proof beyond a reasonable doubt. (See [*People v.*] *Flores* [(2007)] 147 Cal.App.4th [199,] 215 [finding it generally ‘unreasonable to expect prospective jurors . . . to give the necessary attention and weight to instructions given by a trial court during jury selection’].)

Although a trial court’s instructions or remarks during jury selection cannot relieve the court of its obligation to properly instruct the jury during trial regarding the prosecution’s burden of proving defendant’s guilt beyond a reasonable doubt, this does not mean that statements made by the court during jury selection to each of the jurors who actually served on the jury may not be considered along with any other potentially relevant factors in determining whether, in light of all the circumstances of a particular case, the court’s error should properly be found harmless.” (*Aranda, supra*, 55 Cal.4th at p. 362, fn. 11.)

“[T]he omission of the standard reasonable doubt instruction will amount to a federal due process violation when the instructions that were given by the court failed to explain that the defendant could not be convicted ‘unless each element of the crimes charged was proved to the jurors’ satisfaction beyond a reasonable doubt.’ ([*People v.*] *Vann* [(1974)] 12 Cal.3d [220,] 227.) When the trial court’s instructions otherwise cover this constitutional principle, the failure to instruct with the standard reasonable doubt instruction does not constitute federal constitutional error.” (*Aranda, supra*, 55 Cal.4th at p. 358.)

In *Aranda, supra*, 55 Cal.4th 342, the defendant had been convicted of a lesser included involuntary manslaughter offense and a substantive gang offense. The court concluded that the failure to give the standard reasonable doubt instruction did not amount to a violation of the defendant’s federal due process rights as to the involuntary manslaughter conviction. “In this case . . . the trial court repeatedly referred to the

prosecution's burden of proving guilt beyond a reasonable doubt when instructing on the murder charge and its lesser included offenses, clearly and directly connecting the requisite standard of proof to those offenses. We conclude that in light of these other instructions the omission of the standard instruction on the prosecutor's burden of proving guilt beyond a reasonable doubt did not amount to federal constitutional error with regard to defendant's conviction of voluntary manslaughter." (*Id.* at p. 361.)

The court in *Aranda, supra*, 55 Cal.4th 342, however, determined that the trial court had committed federal constitutional error concerning the substantive gang offense "because neither the instruction on the elements of that offense nor any other instruction given by the court connected the reasonable doubt standard of proof to that charge. The court read CALJIC No. 6.50, which addressed the requisite elements of the gang offense, but that instruction did not explain that the prosecution must prove each of those elements beyond a reasonable doubt." (*Aranda, supra*, 55 Cal.4th at p. 361.) The court concluded "that with regard to the gang offense conviction the court's omission of the standard reasonable doubt instruction deprived defendant of his federal constitutional right to due process because the court's instructions did not otherwise cover the requirement that the prosecution prove defendant's guilt of the gang offense beyond a reasonable doubt." (*Id.* at p. 362.)

Defendant contends that his federal due process rights were violated because the trial court failed to give a standard reasonable doubt instruction, such as CALJIC No. 290. According to defendant, none of the trial court's other predeliberation instructions clearly and directly informed the jury that each element of each crime charged had to be proven beyond a reasonable doubt. In addition, defendant argues that neither the comments of the trial court and counsel during voir dire nor the closing arguments were sufficient to adequately instruct the jurors on the reasonable doubt standard under federal constitutional requirements.

Based on our review of the entire record, we conclude that even if defendant's federal due process rights were violated by the omission of CALJIC No. 2.90, any such error was harmless beyond a reasonable doubt under *Chapman, supra*, 386 U.S. 18.

“Under *Chapman*, a federal constitutional error is harmless when the reviewing court determines ‘beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’ (*Chapman, supra*, 386 U.S. at p. 24.) When there is “‘a reasonable possibility’” that the error might have contributed to the verdict, reversal is required. (*Ibid.*) When, in violation of federal constitutional commands, the court’s predeliberation instructions have failed to cover the principle that the prosecution must prove the defendant’s guilt with respect to each of the charged offenses beyond a reasonable doubt, the effect of such an error is assessed by asking whether there is a reasonable possibility that the verdict in question was not based upon a finding of guilt beyond a reasonable doubt. If, after examination of the record, the reviewing court concludes beyond a reasonable doubt that the jury must have found the defendant’s guilt beyond a reasonable doubt, the error is harmless. If, on the other hand, the reviewing court cannot draw this conclusion, reversal is required. [¶] The reviewing court conducting a harmless error analysis under *Chapman* looks to the ‘whole record’ to evaluate the error’s effect on the jury’s verdict.” (*Aranda, supra*, 55 Cal.4th at p. 367.)

“[A] reviewing court applying the *Chapman* standard to determine the prejudicial effect of the erroneous omission of the standard reasonable doubt instruction should evaluate the record as a whole—but not rely upon its view of the overwhelming weight of the evidence supporting the verdict—to assess how the trial court’s failure to satisfy its constitutional obligation to instruct on the prosecution’s burden of proof beyond a reasonable doubt affected the jury’s determination of guilt. If it can be said beyond a reasonable doubt that the jury must have found the defendant’s guilt beyond a reasonable doubt, the error is harmless. If the reviewing court cannot draw this conclusion, reversal is required.” (*Aranda, supra*, 55 Cal.4th at p. 368.)

During voir dire, the trial court instructed all the prospective jurors using language substantially similar to CALJIC No. 2.90. That instruction was followed by repeated references to the reasonable doubt standard by both the prosecutor and defense counsel. The prosecutor’s multiple references were direct and clear concerning the burden of proof, including her comparison of the reasonable doubt standard to the “much lower”

standard applicable to child custody cases. Moreover, defense counsel clearly and directly linked the prosecutor's burden under the reasonable doubt standard to "each and every element of a crime" and noted that the burden of proof in a civil case was much lower than in the criminal case. And, during opening statements both attorneys again reminded the jury of the prosecutor's burden of proving her case beyond a reasonable doubt.

At the close of evidence, the trial court gave five instructions that specifically referenced reasonable doubt. When those predeliberation instructions are read in the context of the foregoing comments during voir dire and opening statements, as they must be during a review of the entire record, they support the conclusion that any federal constitutional error in instructing the jury was harmless beyond a reasonable doubt.

CALJIC No. 201 followed No. 200 which defined direct and circumstantial evidence. CALJIC No. 201 emphasized that circumstantial evidence was subject to the reasonable doubt standard of proof. Although the instruction was limited to circumstantial evidence, when it is read together with the other instructions, it is unlikely that the jury could have limited its application of the reasonable doubt standard to only the circumstantial evidence presented in the case, while applying some lesser standard to the direct evidence.

The trial court also instructed with CALJIC No. 2.50.2, which was directed at the domestic violence evidence. That instruction at the end emphasized that any inference that the jury might draw from the domestic violence evidence was only one item of evidence to be considered with all the other evidence, circumstantial and direct, in determining whether defendant had been proved guilty beyond a reasonable doubt of "the charged crimes." Thus, even though No. 2.50.2 dealt with a specific subject matter—domestic violence—it made clear that all the evidence presented was subject to the reasonable doubt standard, including all of the evidence relating to each of the charged offenses. Moreover, although the instruction mentioned the preponderance of the evidence standard, it did so only with reference to the *uncharged* acts of domestic

violence and the instruction then went on to stress that the standard of proof for the *charged* offense, kidnapping, was beyond a reasonable doubt.

CALJIC No. 2.62 similarly was directed at a limited issue, a defendants' failure to deny or explain evidence, but in doing so, it also referenced the prosecution's burden to prove every element of a crime beyond a reasonable doubt. Thus, contrary to defendant's assertion, the jury was informed that the reasonable doubt standard applied to each element of a crime charged.

CALJIC No. 4.50 was directed at defendant's alibi defense. It emphasized that if the evidence raised a reasonable doubt as to whether defendant was present during the commission of the crime, he must be found not guilty. It was therefore consistent with the other instructions dealing with reasonable doubt, even if it dealt only with one aspect of the evidence presented.

CALJIC No. 17.12 dealt with count 1, kidnapping, and the lesser included offense of false arrest. It made clear that the commission of both of those crimes by defendant had to be proven beyond a reasonable doubt. Although that instruction did not specifically mention count 2, carjacking, as noted above, another instruction, CALJIC No. 2.50.02 clearly linked the reasonable doubt standard to the "charged offenses" and the "charged crimes." In addition, during her rebuttal argument, the prosecutor emphasized that the jury had to determine whether "each element had been proven beyond a reasonable doubt and then argued that "each and every element of both crimes were proven . . . ." Thus, any realistic potential that the jurors believed some lesser standard of proof was applicable to count 2 was eliminated by that argument.

When the instructions that were given concerning reasonable doubt standard are read in the context of the voir dire comments on that standard and the arguments of counsel, it can be said beyond a reasonable doubt that the jury must have found defendant's guilt beyond a reasonable doubt. Defendant has therefore failed to demonstrate reversible federal constitutional error under *Chapman, supra*, 386 U.S. 18.

### C. State Law Right to Definition of Reasonable Doubt

“The failure to define the term ‘reasonable doubt’ does not amount to federal constitutional error. As the high court explained in *Victor* [*v. Nebraska* (1994) 511 U.S. 1], ‘the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course.’ (*Victor, supra*, 511 U.S. at p. 5.)” (*Aranda, supra*, 55 Cal.4th at p. 374.) A trial court’s “omission of a definition of reasonable doubt, however, does constitute an error under state law. By their terms, sections 1096 and 1096a clearly contemplate that a trial court will provide a definition of the term ‘reasonable doubt’ for the jury. Section 1096a provides in relevant part that when the court instructs the jury in a criminal case, it ‘may read to the jury Section 1096 . . . and no further instruction . . . defining reasonable doubt need be given.’ The legislative history of sections 1096 and 1096a indicates that their enactment was prompted by numerous reversals of criminal convictions resulting from trial courts instructing juries with erroneous definitions of reasonable doubt.” (*Aranda, supra*, 55 Cal.4th at p. 374.)

“Under those circumstances in which the court’s failure to include the standard reasonable doubt instruction in its predeliberation instructions does constitute state law error, such error is reviewed for prejudice under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 837 [299 P.2d 243], which inquires whether there is a ‘reasonable probability’ that a result more favorable to the defendant would have occurred absent the error.” (*Aranda, supra*, 55 Cal.4th at p. 354.) In *Aranda*, the court reviewed the record under the *Watson* standard and concluded that “that there is no reasonable probability that the outcome would have been more favorable for [the] defendant had the court provided in its predeliberation instructions a definition of the reasonable doubt standard of proof.” (*Aranda, supra*, 55 Cal.4th at p. 375.) The court explained its conclusion as follows: “Nothing in the record suggests that the jury might have been confused regarding the meaning of reasonable doubt. During its deliberations, the jury sent several notes to the court asking questions and seeking to rehear testimony. But the jury did not request clarification of the reasonable doubt principle ‘as it surely

would have done had it been confused as to the meaning of [that term].’ [Citations.] Furthermore, because neither the prosecutor nor defense counsel referred to the standard of proof during their closing remarks, nothing in their arguments invited the jury to apply a standard of proof less than beyond a reasonable doubt, or no standard at all. . . . The jury’s verdicts in this case, acquitting defendant of murder and convicting him of voluntary manslaughter instead, further suggest that the jury understood the prosecution’s heavy burden of proving guilt beyond a reasonable doubt, conscientiously adjudged the evidence in light of that standard of proof, and determined that the prosecution had failed to carry its burden of proof as to the greater offense but not as to the lesser. [¶] We can infer moreover that the jury was not left to guess as to the meaning of reasonable doubt because, as already noted, the record shows that the court gave the definition when it read CALJIC No. 2.90 to the entire panel of prospective jurors, and repeatedly explained the standard instruction’s principles during the three days of jury selection. Although not sufficient in itself to relieve the trial court of its obligation to define reasonable doubt for the sworn jurors during trial (and thus the court’s omission of the definition in the predeliberation instructions constituted state law error), the court’s remarks to prospective jurors can inform the harmless error analysis and further add some support to our conclusion that there is no reasonable probability that defendant would have obtained a more favorable outcome had the court included the standard reasonable doubt instruction or otherwise defined reasonable doubt during its predeliberation instructions to the jury.” (*Aranda, supra*, 55 Cal.4th at pp. 375-376.)

In this case, as in *Aranda, supra*, 55 Cal.4th 342, there is nothing in the record to suggest that the jury was confused about the meaning of reasonable doubt. Although the jury sent notes asking questions and requesting that certain testimony be reread, it did not request a clarification of the reasonable doubt standard—something it likely would have done if it had been confused about the definition of the standard. In addition, the jury’s verdict on count 1, acquitting defendant of kidnapping and finding him guilty of the lesser included offense of false imprisonment, demonstrated that the jurors understood

the prosecutor's burden and determined that she had failed to carry that burden as to the greater offense, but had satisfied that burden as to the lesser offense.

Moreover, as discussed above, the trial court defined reasonable doubt for all the prospective jurors during voir dire using language substantially similar to CALJIC No. 2.90. As explained in *Aranda, supra*, 55 Cal.4th at page 376, although the court's remarks to prospective jurors did not relieve the trial court of its duty to define reasonable doubt to the sworn jurors, those remarks are nonetheless relevant to the harmless error analysis and further support the conclusion that there is no reasonable probability that defendant would have obtained a more favorable outcome had the court included the required definition in its predeliberation instructions. Thus, defendant has failed to demonstrate reversible state law instructional error under *Watson, supra*, 46 Cal.2d 818.

### **DISPOSITION**

The judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

GOODMAN, J.\*

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