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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRANCE BELL

Defendant and Appellant.

B255356

(Los Angeles County
Super. Ct. No. TA122815)

APPEAL from judgment of the Superior Court of Los Angeles County,
Patrick E. Connolly, Judge. Affirmed.

William L. McKinney for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and
David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Terrance Bell of the first degree willful, deliberate, and premeditated murder of Mark Lewis and found true gun and gang allegations. The court sentenced Bell to prison for 50 years to life. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Events Leading Up to the Shooting

On March 25, 2012, Racquel Staves and her aunt, Dietra Holmes, drove in Holmes' white Ford Mustang to an apartment at 112th Street and Towne Avenue in Los Angeles. The apartment belonged to a member of the 11 Deuce Neighborhood street gang (11 Deuce). Holmes was a member of the gang, but Staves was not.

At the apartment, Staves saw several members of 11 Deuce, including Bell, whom she met for the first time that day, and Haisani Reynolds, also known as "Peanut," whom she had known for several years through Holmes. She heard people at the apartment refer to Bell as "Droop" and "Blue."

On March 26, 2012, Staves and Holmes went back to the same apartment. On their way there, they picked up Reynolds and another member of 11 Deuce known as "Ace." Staves stayed at the apartment for a few hours and drank beer and smoked marijuana. She saw Bell, whom she described as having a short afro hairstyle, drive up to the apartment.

Between 8:00 p.m. and 9:00 p.m., Holmes and Staves drove to a gas station at the corner of 111th Place and Avalon Boulevard, only a few blocks from the apartment. Holmes parked her Mustang by one of the gas pumps and went inside the station's shop to buy snacks while Staves stayed inside the car. While Holmes was inside the shop, Staves saw Reynolds and Bell walk to the station and approach a man pumping gas at the pump next to Holmes' Mustang.

2. The Shooting

Around 8:40 p.m., Mark Lewis and his girlfriend, Delores Porter, drove to the gas station at the corner of 111th Place and Avalon Boulevard. Lewis parked the car in front of one of the gas pumps and went inside the shop to pay for gas, while Porter

stayed in the passenger seat of the car. Although it was nighttime, the gas station was well lit.

Shortly after Lewis returned to the car, Reynolds and Bell approached him from behind. Reynolds asked Lewis several times, “ ‘Where you from, N--a? Where, you from?’ ” When she heard Reynolds speak, Porter turned around in the passenger seat to see who was talking to Lewis. She looked at Reynolds and Bell for several seconds. She saw Reynolds had braids and wore a hat embroidered with letters and Bell had a short afro and wore a white t-shirt¹ and dark-rimmed glasses. Porter had never seen Reynolds or Bell before.

Lewis responded that he was from Avalon, a local street gang and one of 11 Deuce’s main rivals. Reynolds then told Bell, “ ‘Get that N--a, cuz. Get that N--a, cuz.’ ” Bell lifted his shirt, pulled out a gun, and shot Lewis several times, killing him. Porter and Staves both ducked when they saw Bell draw a gun. After Bell stopped shooting, Porter and Staves saw Reynolds walk to the front of the car and kick Lewis’s head several times while saying, “ ‘This is Neighborhood,’ ” and “ ‘Fuck Avons. Fuck Avons, cuz.’ ” Both men ran away from the gas station along 111th Place.

After Reynolds and Bell fled, Porter got out of the car and called 9-1-1. Holmes then walked out of the station’s shop and asked Porter if she was okay. When Porter asked for help, Holmes said she would go look for the shooter and drove off with Staves.

Holmes and Staves saw Reynolds and Ace running down 111th Place, but Bell was not with them. Holmes pulled over to the side of the road, and Reynolds asked her to drive him to a place where he could get rid of the gun. Holmes dropped Reynolds and Ace off at an apartment near 120th Street and Avalon, and then she and Staves drove home to Boyle Heights.

¹ Although both Porter and Staves described the shooter as wearing a white t-shirt, the video of the shooting shows the shooter wore a dark blue or black shirt with a white collar or white undershirt.

3. *The Investigation*

On March 30, 2012, the police interviewed Porter about the shooting. She was shown a six-pack photographic lineup from which she picked a photograph of Reynolds. She identified him as the man who first approached Lewis at the gas station.

On April 12, 2012, the police arrested Holmes and Reynolds as suspects in Lewis's shooting. Staves reported to the police station that same day to provide a statement about the shooting. Staves described Reynolds to the police as a Black male with braids, and she identified him after being shown a single photograph.

On April 13, 2012, the police interviewed Staves again. She was shown a six-pack photographic lineup containing photographs of six different men. She picked Bell, who had braids and was wearing a white t-shirt in the photograph. The men in the other photographs had very short hair, and none of them were wearing a white t-shirt. Staves later testified that Bell's appearance in the photograph tipped her off that he was the shooter. She explained that he was the only person in the lineup with the same color shirt as the shooter and hair long enough to make a short afro like the shooter had on the night of the incident.

On April 13, 2012, the police also interviewed Porter again. She described Bell as a Black male with a "little nappy afro." She told the police that he was wearing a white t-shirt and glasses at the time of the shooting, and that he held his mouth in a way that made him look "like a person who sucked [his] thumb."

The police showed Porter the same photographic lineup containing Bell's picture that they showed Staves, with the photographs arranged in a different order. Porter also picked Bell's photograph. Although the man in the photograph had longer hair than the shooter, she was sure it was the same person. She asked to look at a photograph in which Bell's mouth was open, but the police did not have one.

4. *The Charges*

In March 2013, Bell was arrested in Las Vegas. In July 2013, the Los Angeles County's District Attorney's Office filed an information charging Bell with murder (Pen. Code, § 187, subd. (a)). The information alleged Bell personally used a firearm in

the commission of the murder (Pen. Code, § 12022.53, subds. (b), (c), & (d)). The information further alleged Bell committed the murder for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(c)).

5. *The Jury Trial*

a. *The Prosecution Evidence*

Porter and Staves testified about the events surrounding the shooting and their involvement in the subsequent investigation. They both identified Bell in court as the man who shot Lewis. Although Bell's hair was very short during trial, both witnesses were sure he was the same person they saw draw a gun at the gas station.

The police officer who presented the six-pack photographic lineups to Porter and Staves testified about the process he used to compile the lineups. He also testified about Bell's Department of Motor Vehicle records, which indicated that Bell was required to wear corrective lenses when driving.

A gang expert from the Los Angeles Police Department testified for the prosecution. He testified that Bell and Reynolds were known members of 11 Deuce, and that Avalon is one of 11 Deuce's main rivals.

b. *The Defense Evidence*

An eyewitness identification expert testified for the defense. Before trial, he reviewed reports from the police's investigation, videos from surveillance cameras near the gas station, photographs from the crime scene, and the transcript from Bell's preliminary hearing.

The expert testified about the various factors that can detract from an eyewitness's ability to identify a suspect, including (1) the amount of stress the witness is under at the time she sees the suspect commit the crime; (2) whether the suspect is under the influence of drugs at the time she sees the suspect commit the crime; (3) the amount of time the witness has to view the suspect before, during, and after the crime; (4) the amount of time that elapses between when the witness sees the crime committed and when she identifies the suspect for authorities; and (5) whether the witness is familiar with the suspect before she sees him commit the crime.

Although the expert opined that poor lighting can negatively affect a witness's ability to identify a suspect, he testified that the lighting at the gas station at the time of the shooting was very good. The expert also testified about potential deficiencies in the methods police officers use to obtain identifications from witnesses, including the drawbacks from using six-pack photographic lineups.

6. *The Jury Verdict and Sentencing*

The jury convicted Bell of first degree willful, deliberate, and premeditated murder. The jury also found true the allegations that Bell personally discharged a firearm when he committed the murder and that Bell committed the murder for the benefit of a criminal street gang. The trial court sentenced Bell to an aggregate prison term of 50 years to life.

DISCUSSION

On appeal, Bell argues the prosecution failed to prove he was the person who shot Lewis. Specifically, he contends insufficient evidence supports the jury's finding that he was the shooter, the six-pack photographic lineups shown to Porter and Staves were unduly suggestive, and Staves' in-court identification of Bell should have been excluded as tainted. Bell also contends he received ineffective assistance of counsel because his trial attorney failed to request an accomplice corroboration instruction (CALCRIM No. 334) and object to the prosecutor's closing argument commenting on Bell's appearance at trial.

I. *Bell's Identification Was Proper*

A. *Substantial Evidence Supports the Jury's Finding that Bell Was the Shooter*

i. *Standard of Review*

When reviewing the sufficiency of the evidence to support a conviction, "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Avila* (2009) 46 Cal.4th 680, 701.) When

applying the substantial evidence test, we neither reweigh evidence nor reevaluate the credibility of witnesses. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27; see also *People v. Richardson* (2008) 43 Cal.4th 959, 1030 [under the substantial evidence test, “we defer to the trier of fact’s evaluation of credibility”].)

“ ‘ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ ’ ” (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Therefore, before we may set aside the judgment, it must be clear that “ ‘ “upon no hypothesis whatever is there sufficient evidence to support it.” ’ ’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

ii. *Analysis*

Bell contends insufficient evidence supports the jury’s finding that he was the person who shot Lewis. Specifically, he argues Porter and Staves, the only witnesses who identified Bell as the shooter and testified at trial, were unreliable. With respect to Porter, Bell argues her testimony was unreliable because she did not have a good opportunity to view the two men who approached Lewis at the gas station. With respect to Staves, Bell argues her testimony was unreliable because she made statements at trial that were inconsistent with statements she made to the police during the investigation. We disagree with both of Bell’s arguments and conclude substantial evidence supports the jury’s finding that he was the person who shot Lewis.

Porter testified she looked at the shooter for several seconds before he drew the gun and she ducked beneath the dashboard. Although it was nighttime when the shooting occurred, both Porter and the defense identification expert testified that the gas station was very well lit. Porter also testified that the shooter wore glasses, which was consistent with Bell’s records from the Department of Motor Vehicles. Based on these facts, the jury reasonably could have believed Porter accurately identified Bell as the shooter.

In any event, Porter’s identification of Bell was corroborated by Staves, who had seen the shooter on occasions prior to the shooting. Staves first saw Bell the day before

the shooting at the apartment on 112th Street, and she saw him again several hours before the shooting at the same apartment. She testified that the person she saw approach and shoot Lewis at the gas station was the same person she saw at the apartment -- i.e., Bell. Additionally, while at the gas station, Staves was able to observe the shooter for a longer period of time than Porter because she watched him walk up to the gas station and approach Lewis. During that time, she was able to confirm that he was the same person she had seen earlier at the apartment on 112th Street and Towne.

The jury heard expert testimony on eyewitness identifications and argument about the accuracy of Porter's and Staves' identifications of Bell as the shooter, and it was properly instructed on how to evaluate a witness's credibility, a witness's statements made prior to trial, conflicting evidence, and the accuracy of an eyewitness's identification.² In evaluating the evidence under the proper standards, the jury decided to believe Porter's and Staves' identifications were accurate. We will not second guess that finding on appeal. (*People v. Young* (2005) 34 Cal.4th 1149, 1181 ["In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts".])

B. *Bell Forfeited his Challenge to the Out-of-Court Identifications*

Bell next contends the police's use of the six-pack identification procedures was unduly suggestive and constitutionally unreliable. Specifically, he argues the six-pack photographic lineups shown to Porter and Staves singled him out as the suspect because he was the only person in the lineups who wore a white t-shirt and had hair long enough to make a short afro. Because the lineups were unduly suggestive, Bell contends they should have been excluded at trial. Bell further contends the court should have

² The court instructed the jury with CALCRIM Nos. 226, 302, 315, and 318. CALCRIM No. 226 instructs the jury on how to evaluate a witness's credibility; CALCRIM No. 302 instructs the jury on how to weigh conflicting evidence; CALCRIM No. 315 instructs the jury on what factors to consider when evaluating the accuracy of an eyewitness's identification; and CALCRIM No. 318 instructs a jury on how to evaluate a witness's statements made prior to trial.

excluded Staves' in-court identification of him as the shooter because it was tainted by her out-of-court identification.

Bell forfeited his challenges to the six-pack lineups and Staves' in-court identification by failing to object to them at trial. To preserve a challenge on appeal to the admission of an out-of-court identification, a defendant must object to the identification at trial. (*People v. Cunningham* (2001) 25 Cal.4th 926, 989 (*Cunningham*) [defendant's failure to timely object to the court's admission of a purportedly suggestive photographic lineup forfeited his challenge on appeal to the use of that lineup at trial]; see also Evid. Code, § 353, subd. (a).) Likewise, the defendant must also object to a witness's in-court identification on the ground that it was tainted by an improper out-of-court identification to preserve that issue for appeal. (*Cunningham, supra*, 25 Cal.4th at p. 989.)

Bell's counsel never moved to have the lineups shown to Porter and Staves excluded at trial, and he never objected to the prosecutor's use of those lineups when Porter and Staves testified. Further, Bell's counsel never sought an order precluding Staves from identifying Bell in court, and he never objected to her in-court identification. On appeal, Bell offers no explanation for why his counsel did not object to the admission of the lineups and Staves' testimony, and he does not contend his counsel rendered ineffective assistance by failing to raise such objections.³ Accordingly, Bell did not preserve his challenge on appeal to the court's admission of

³ The People interpret Bell's challenge to the admission of the photographic lineups as a claim for ineffective assistance of counsel. The People misread Bell's opening brief. Bell never argues, or even asserts in passing, that his counsel was deficient for failing to object to the admission of the lineups. Although Bell acknowledges that his counsel never objected to the court's admission of Staves' in-court identification, he does not claim that his counsel rendered ineffective assistance by failing to raise such an objection. Because Bell failed to file a reply brief, which could have addressed the People's argument concerning his counsel's failure to object to the admission of the lineups and Staves' in-court identification, we do not address whether such conduct was deficient for purposes of an ineffective assistance of counsel claim.

the lineups and Staves' in-court identification. (*Cunningham, supra*, 25 Cal.4th at p. 989.)

Even if Bell did preserve his challenge, he has failed to demonstrate there was a substantial likelihood he was misidentified as the shooter. “[T]o 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.) Put another way, “there must be a ‘substantial likelihood of irreparable misidentification’ under the ‘ ‘totality of the circumstances’ ’ ’ to warrant reversal of a conviction on this ground. [Citation]” (*Id.* at p. 990.)

A defendant challenging an out-of-court identification bears the burden of establishing that the procedure used was unduly suggestive. (*People v. Ochoa* (1998) 19 Cal.4th 353, 412.) Only if the defendant makes such a showing does the burden shift to the prosecutor to demonstrate the identification was nevertheless reliable and credible under the totality of the circumstances, including the witness’s opportunity to view the suspect at the time of the crime; the witness’s degree of attention; the accuracy of the witness’s description of the suspect; and the level of certainty demonstrated by the witness. (*Ibid.*)

Before Porter and Staves were shown the six-pack lineups containing Bell’s photograph, they described the shooter to the police as a Black male who wore a white t-shirt and had a short afro hairstyle. The lineups shown to Porter and Staves contained photographs of six different people, all adult Black males. Bell was the only person in the lineup, however, with hair that was long enough to make a short afro (it was braided), and he was the only person wearing a white t-shirt. All five of the other men had very short haircuts and were wearing black or striped shirts and sweatshirts.

Both Porter and Staves testified that they noticed Bell’s hairstyle in the photograph was different than the men in the other photographs. Indeed, during Bell’s preliminary hearing, Staves testified that Bell’s hairstyle and clothing in the photograph

was a “tip-off” that he was the same person she saw at the gas station. While we agree with Bell that the lineups shown to Porter and Staves were suggestive, we disagree that there was a substantial likelihood Porter and Staves misidentified him as the shooter.

While Porter acknowledged that Bell’s hair was longer than the other men depicted in the lineup, she did so to point out that although his appearance in the photograph was different at the time of the shooting, she still recognized him as the person she saw draw the gun on Lewis. Further, as discussed above, Porter and Staves both independently identified Bell in court, and they both testified in depth about their observations of Bell during the shooting, and in Staves’ case, on multiple occasions before the shooting. Both witnesses were thoroughly cross-examined by Bell’s counsel about their out-of-court identifications, and they both confirmed during the prosecutor’s re-direct that they were able to identify Bell in and out of court based on their observations of him during the shooting. In sum, Bell has failed to demonstrate that Porter’s and Staves’ out-of-court identifications were unreliable due to the suggestive nature of the lineups.

II. *Bell’s Counsel Did Not Render Ineffective Assistance*

Bell next contends he received ineffective assistance of counsel. He argues his counsel should have requested an accomplice corroboration instruction addressing Staves’ testimony. He also argues his counsel should have objected to the prosecutor’s statements during closing argument commenting on Bell’s appearance at trial. We disagree with both of Bell’s arguments.

1. *Standard of Review*

“A criminal defendant’s federal and state constitutional rights to counsel [citation] include[] the right to *effective* legal assistance. When challenging a conviction on grounds of ineffective assistance, the defendant must demonstrate counsel’s inadequacy. To satisfy this burden, the defendant must first show counsel’s performance was deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show resulting prejudice, i.e., a reasonable probability that, but for counsel’s deficient performance, the

outcome of the proceeding would have been different. When examining an ineffective assistance claim, a reviewing court defers to counsel’s reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance.” (*People v. Mai* (2013) 57 Cal.4th 986, 1009; *Strickland v. Washington* (1984) 466 U.S. 668, 690-694.)

2. *Bell’s Counsel Was Not Deficient for Failing to Request an Accomplice Corroboration Instruction*

Bell contends his counsel should have asked the court to instruct the jury with CALCRIM No. 334⁴ because there was sufficient evidence from which the jury could have concluded Staves was an accomplice to Lewis’s murder. We disagree.

Penal Code section 1111 provides in pertinent part: “A conviction can not be had upon the testimony of an accomplice unless it [is] corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.” (§ 1111.) “ ‘[W]hen there is sufficient evidence that a witness is an accomplice, the trial court is required on its own motion to instruct the jury on the principles governing the law of accomplices,’ including the need for corroboration. [Citation.]” (*People v. Tobias* (2001) 25 Cal.4th 327, 331.)

To qualify as an accomplice, the witness must be chargeable with the crime as a principal, and not merely as an accessory after the fact. (*People v. Felton* (2004) 122 Cal.App.4th 260, 268 (*Felton*)). “ ‘[a]n accomplice” is one who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of the crime.’ ” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1158; disapproved on another ground in *People v. Cook* (2015) 60 Cal.4th 922, 939.)

⁴ CALCRIM No. 334 instructs a jury that it must determine whether a specific witness is an accomplice and, if so, that the witness’s testimony must be independently corroborated and viewed with caution.

There is insufficient evidence to charge Staves as an accomplice to Lewis's murder. There is no evidence Staves knew Reynolds and Bell intended to kill Lewis, let alone that she intended to aid them in the murder. (See *People v. Snyder* (2003) 112 Cal.App.4th 1200, 1220 ["Merely giving assistance without sharing the perpetrator's purpose and intent establishes liability only as an accessory, not as an accomplice".]) There is also no evidence Staves was aware Reynolds and Bell were going to the same gas station when she left the apartment to buy food and drinks. Once Staves saw Reynolds and Bell approach the gas station, she never signaled to them or otherwise communicated with them before they approached Lewis. In other words, she provided Reynolds and Bell absolutely no assistance leading up to or during the crime.

Although Staves was riding in the passenger seat of Holmes's car when Holmes picked up Reynolds shortly after the shooting, this evidence establishes at most that Staves could have been an accessory after the fact to Lewis's murder. (See Pen. Code, § 32 ["Every person who, after a felony has been committed, . . . aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction, or punishment, having knowledge that said principal has committed such felony . . . is an accessory to such felony".]) However, a witness's status as an accessory to a crime does not warrant an instruction on accomplice testimony. (*Felton, supra*, 122 Cal.App.4th at p. 268.)

Because there was no evidence from which the jury could find Staves was an accomplice to Lewis's murder, any request by Bell's counsel for an instruction on accomplice testimony would have been futile. Accordingly, Bell's counsel was not deficient in failing to request CALCRIM No. 334. (*People v. Szadzewicz* (2008) 161 Cal.App.4th 823, 836 ["Counsel's failure to make a futile or unmeritorious motion or request is not ineffective".])

3. *Bell's Counsel Was Not Deficient for Failing to Object to the Prosecutor's Comments About Bell's Physical Appearance at Trial*

a. *Relevant Evidence and the Prosecutor's Comments*

There was testimony that Bell's physical appearance at trial was different than his physical appearance at the time of the shooting. Specifically, Porter testified that although Bell's hair was much shorter at trial than when she saw him at the gas station, she was sure he was the same person who she saw shoot Lewis.

During his closing argument, the prosecutor commented on Bell's appearance and demeanor at counsel table. He told the jury, "And here is Mr. Bell, little heavier, with more hair. Not a coincidence, Mr. Bell, sitting here like a choir boy, with very, very, very short hair. That's not a coincidence. If you're going to walk someone up in front of a jury and they look different than how they looked at the time of the crime, that's one thing. It's not a coincidence that Mr. Bell has short hair in this case. He does not want to resemble anything like the person shooting. Right?" Bell's counsel did not object to the prosecutor's comments.

b. *Analysis*

A prosecutor enjoys wide latitude during closing argument. (*People v. Williams* (1997) 16 Cal.4th 153, 221.) His argument may be vigorous and incorporate appropriate epithets as long as it amounts to fair comment on the evidence, and it may include reasonable inferences drawn for the evidence. (*Ibid.*) "[W]hen the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion." (*People v. Samayoa* (1997) 15 Cal.4th 795, 841.) "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. Brown* (2003) 31 Cal.4th 518, 553-554.) Generally, a defendant may not raise a claim of prosecutorial misconduct on appeal unless he timely objected to the alleged misconduct at trial. (*Samayoa, supra*, 15 Cal.4th at p. 841.)

Anticipating the forfeiture rule, Bell contends his trial counsel was ineffective for failing to object to the prosecutor's comments about his physical appearance during closing argument. Bell contends the prosecutor's statements constituted misconduct because they infringed on his right to not testify. Specifically, he argues the prosecutor invited the jury to consider his refusal to testify by highlighting his appearance at counsel table. We disagree.

It is not improper for the prosecutor to advise the jury to ignore the defendant's demeanor at trial and decide the case on the basis of the evidence presented. (*People v. Price* (1991) 1 Cal.4th 324, 454.) In *Price*, the California Supreme Court held the prosecutor did not err when telling the jury to disregard the defendant acting like a gentleman and attempting to play the " " "Gee willikers, golly shucks" " " role at trial. (*Ibid.*) The court held the prosecutor's statements were proper because they "did not urge the jury to draw any adverse inference from defendant's courtroom behavior," but rather they "advised the jury, in effect, to ignore defendant's courtroom demeanor and to determine his guilt or innocence on the basis of the evidence." (*Ibid.*)

Here, the prosecutor did not err when he commented on Bell's appearance at trial. In commenting on Bell's short hair and calm demeanor while sitting at counsel table, the prosecutor properly advised the jury to disregard Bell's appearance at trial and to decide the facts of the case based on the evidence. Contrary to Bell's assertion, the prosecutor did not comment on, or invite the jury to consider, Bell's refusal to testify at trial.

In any event, even if the prosecutor did improperly comment on Bell's appearance, Bell's counsel could have made a reasonable tactical decision to refrain from objecting to the prosecutor's comments. Because Bell's identification as the shooter was one of the main issues in this case, Bell's counsel may have wanted to avoid further drawing the jury's attention to Bell's appearance at counsel table out of concern that the jury would find Bell intentionally changed his appearance for trial.

III. *Cumulative Error*

Bell contends the jury would have reached a more favorable result but for the cumulative effect of the alleged errors. As we have “ ‘either rejected on the merits defendant’s claims of error or have found any assumed errors to be nonprejudicial,’ ” we reach the same conclusion with respect to the cumulative effect of any claimed errors. (*People v. Cole* (2004) 33 Cal.4th 1158, 1235–1236; *People v. Butler* (2009) 46 Cal.4th 847, 885.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

JONES, J.^{*}

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