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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

IGNACIO VILLASEÑOR,

Defendant and Appellant.

D059742

(Super. Ct. No. RIF152951)

APPEAL from a judgment of the Superior Court of Riverside County, Daniel A. Ottolia, Judge. Affirmed.

Ignacio Villaseñor participated in a speed contest on a public highway, struck and killed a pedestrian, and sped away. A jury found him guilty of vehicular manslaughter with gross negligence (Pen. Code, § 192, subd. (c)(1)), engaging in a speed contest (Veh. Code, § 23109, subd. (a)), hit and run violations (Veh. Code, §§ 20001, subd. (a), 20002, subd. (a)), and driving without a license (Veh. Code, § 12500, subd. (a)). The jury also found true allegations that the hit and run violations resulted in death and that Villaseñor

fled the scene after committing vehicular manslaughter. (Veh. Code, § 20001, subs. (b)(2), (c).) The trial court sentenced Villaseñor to prison for an aggregate term of nine years.

Villaseñor seeks reversal of the conviction of vehicular manslaughter on the ground the prosecutor committed prejudicial misconduct during closing argument by misstating the law of causation and disparaging his defense. We affirm the judgment.

## I.

### BACKGROUND

Eboni Natti was driving her aunt home on a four-lane highway when a blue Honda swerved in front of her and stopped at a stoplight. The blue Honda stopped alongside a green Honda in the adjacent lane. The driver of the blue Honda motioned the driver of the green Honda to roll down his window, and the two drivers spoke. When the stoplight turned green, the two Hondas "peeled out" at speeds Natti and her aunt estimated to be between 75 and 80 miles per hour. Natti lost sight of the two cars approximately 30 seconds later.

Natti again caught sight of the Hondas approximately two minutes later, when they were traveling at speeds she estimated to be greater than 80 miles per hour. Natti saw a woman in the center divider attempting to cross the highway. As the woman ran across the highway, the driver of the green Honda slammed on the brakes but could not avoid hitting the woman. The woman was thrown over the car and landed on the side of the highway. The green Honda sped away after hitting the woman. Natti and her aunt stopped to help the woman, but she was already dead.

Shortly after the fatal collision, a security guard at a recycling facility saw a green Honda with smashed-out windshield and side windows hit temporary fencing and drag it at a low speed. The security guard reported the incident and the license plate number of the car to the police. Investigators traced the green Honda to Villaseñor and found it hidden at the home of a man who admitted he was a passenger in Villaseñor's car at the time of the collision.

A blood sample taken from the victim at autopsy was found to have an alcohol concentration of 0.29 percent. A toxicologist testified at trial that such a blood alcohol concentration would cause a person to be apathetic, disoriented, confused and dizzy; to see double; to have difficulty perceiving colors and shapes; and to have a staggering gait.

## II.

### DISCUSSION

Villaseñor contends that the prosecutor committed misconduct during closing argument by misstating the law of causation and by disparaging his defense that the victim was the sole and proximate cause of her death, and that this misconduct was so prejudicial that it requires reversal of his conviction of vehicular manslaughter. After setting forth the challenged portions of closing argument and the applicable legal principles of causation, we shall analyze Villaseñor's claims of error.

#### A. *Relevant Portions of Closing Argument*

At the end of the initial portion of his closing argument, the prosecutor commented on the evidence of the victim's intoxication:

"[W]e have to ask ourselves, 'Why is that information about her being intoxicated in?' [A defense expert witness] didn't even use it for his calculations. Didn't even consider it. He put her at average speed at average person. The reason it's in there is to attack her character."

Villaseñor's counsel objected this was improper, but the trial court overruled her objection. The prosecutor then continued:

"The reason it's in there is to make the victim look bad. That's why it's in there. That's why you heard about it. Their expert didn't even rely upon that stuff. It's if you can make her look just as bad, you'll try to alleviate the defendant's conduct. And not focus on his conduct. That's why it's in there. And I ask you, don't fall for it."

Villaseñor's counsel did not object to this portion of closing argument.

In her closing argument, Villaseñor's counsel argued Villaseñor was not guilty of vehicular manslaughter because the victim's "very bad judgment" in attempting to cross a highway with fast approaching traffic while she was highly intoxicated caused her death. According to counsel, the reason evidence of the victim's blood alcohol concentration was presented was that "it explains why somebody would run into traffic like that. Because they don't see right. They don't perceive depth right. They're less inhibited. They're . . . nowhere near reasonable care." Counsel contended Villaseñor's driving was not a substantial factor in causing the victim's death because death was not a direct, natural and probable consequence of the driving. Rather, for Villaseñor's driving to have resulted in death, "something unusual would have to intervene, like [the victim's] running into his path of travel the way she did." Thus, counsel argued, Villaseñor "did not cause that woman to run into his path of travel at close proximity. His speed did not cause this collision."

In the rebuttal portion of his closing argument, the prosecutor responded to the defense argument that the victim was solely responsible for her death:

"What we heard from the defense was blame the victim for everything. I went over the law very carefully with everybody at the initial closing. Gave you the cites to the law so you could look at and realize what substantial factor is what you decide that is. What role maybe other people might involve when it comes to causation or assessing guilt. And what that all deals with is one thing: That guy's the one on trial. He's the one whose conduct you're supposed to assess. Nothing in there says if you can blame the victim enough, defendant gets off."

Villaseñor's counsel objected this was improper, but the trial court overruled her objection. The prosecutor continued:

"Again, I want to always address everybody to CALCRIM 620.<sup>[1]</sup> It tells you how to assess the victim's conduct here. It doesn't say anything about if she's totally at fault, let the defendant off. Or if she's a substantial factor let the defendant off. It talks about she may have played a role. And failure for her to use reasonable care does not let him off. That does not say you get a free car race this time around. You get to street race and everybody has to get out of your way. That's essentially what they're asking."

Villaseñor's counsel did not object to this portion of closing argument.

The prosecutor returned to the victim's intoxication later during rebuttal:

"I spoke a little bit about this, but technically the defense has blamed the victim for everything. You've read the law. You know that's not a defense. The focus is on the defendant. Or else you could find something wrong

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<sup>1</sup> CALCRIM No. 620 is a standard instruction on causation used in homicide cases when more than one cause may have contributed to the death. The version given to the jury stated: "There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death. [¶] The failure of [the victim] or another person to use reasonable care may have contributed to the death. But if the defendant's act was a substantial factor causing the death, then the defendant is legally responsible for the death even though [the victim] or another person may have failed to use reasonable care."

with anybody of any type. This time it happened to be a person who was intoxicated. It could be a person with dementia, attack their capacity, then you could blame them for everything. It doesn't [matter] what his conduct is like. And you'll see there[] [are] no instructions saying that's a defense for his conduct. It's focused solely on him."

Villaseñor's counsel did not object to this portion of closing argument.

The prosecutor also commented on causation as it related to the jury instruction on vehicular manslaughter (CALCRIM No. 592)<sup>2</sup> during the rebuttal portion of his closing argument:

"Then I want to go to the causes of death. If it's a direct, natural, and probable consequence of the act and the [death] would not have occurred if not for the act, that deals with the car striking the pedestrian. That's what that deals with. If maybe a potted plant hit her in the head and killed her right before the car hit her, then maybe that applied here. That deals with the act of the vehicle striking the pedestrian . . . ."

Villaseñor's counsel objected this was inaccurate, but the trial court overruled her objection.

#### B. *General Principles of Causation*

The statute defining vehicular manslaughter contains a causation requirement:

"This section shall not be construed as making any homicide in the driving of a vehicle punishable that is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner." (Pen. Code, § 192, subd. (c).) To prove this element, the People

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<sup>2</sup> In pertinent part, the instruction given the jury stated: "An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In considering whether a consequence is natural and probable, consider all of the circumstances established by the evidence."

must produce "evidence from which it may be reasonably inferred that [the defendant's] act was a substantial factor in producing the accident." (*People v. Scola* (1976) 56 Cal.App.3d 723, 726 (*Scola*)). "To be considered the proximate cause of the victim's death, the defendant's act must have been a substantial factor contributing to the result, rather than insignificant or merely theoretical.'" (*People v. Jennings* (2010) 50 Cal.4th 616, 643 (*Jennings*)). "In general, [p]roximate cause is clearly established where the act is directly connected with the resulting injury, with no intervening force operating.'" (*People v. Schmies* (1996) 44 Cal.App.4th 38, 48-49 (*Schmies*)). And, as Villaseñor points out, it is equally clear that "if the accident would have happened anyway, whether the defendant was negligent or not, then his negligence was not a cause in fact and cannot be a legal [or proximate] cause." (*Scola*, at p. 726.)

In some cases, however, the issue of proximate cause is not so clear because multiple factors combine to produce a result. "Indeed, it has long been recognized that there may be multiple proximate causes of a homicide, even where there is only one known actual or direct cause of death." (*People v. Sanchez* (2001) 26 Cal.4th 834, 846 (*Sanchez*)). ""When the conduct of two or more persons contributes concurrently as the proximate cause of the death, the conduct of each is a proximate cause of the death if that conduct was also a substantial factor contributing to the result. A cause is concurrent if it was operative at the time of the death and acted with another cause to produce the death."" (*Id.* at p. 847, italics omitted; accord, *Jennings, supra*, 50 Cal.4th at p. 643.) Thus, a defendant may be "'criminally liable for a result directly caused by his act, even though there is another contributing cause.'" (*Schmies, supra*, 44 Cal.App.4th at p. 49.)

In criminal cases generally, if the contributing cause of death or injury was the victim's or a third party's negligence, the defendant is not relieved of liability unless the victim's or third party's conduct was the sole proximate cause of the death or injury. (*People v. Pociask* (1939) 14 Cal.2d 679, 687 (*Pociask*); *People v. Autry* (1995) 37 Cal.App.4th 351, 360 (*Autry*.) For vehicular manslaughter, "[o]nly when the defendant's grossly negligent conduct is a remote cause, and the negligent or reckless conduct of the victim or other party is the sole proximate cause of the death, will the defendant be relieved of culpability." (*People v. Pike* (1988) 197 Cal.App.3d 732, 748 (*Pike*.)

C. *Analysis of Villaseñor's Claims of Error*

Villaseñor complains that in the passages quoted in part II.A., *ante*, the prosecutor repeatedly misstated the law of causation by telling the jury it could find him guilty even if the victim "were 'totally at fault,'" and "compounded the error with inflammatory and unprofessional language that improperly impugned and mischaracterized [Villaseñor's] potentially valid defense as a supposedly improper attack on the victim's character." As we shall explain, these complaints lack merit.

1. *Forfeiture*

As an initial matter, we note that Villaseñor did not object at trial to three of the passages from the prosecutor's closing argument about which he now complains. He did not object when the prosecutor urged the jury not to "fall for" the defense attempt to shift all responsibility for the fatal collision onto the victim. Villaseñor did not object when the prosecutor argued CALCRIM No. 620 "doesn't say anything about if [the victim was] totally at fault, let the defendant off. Or if she's a substantial factor let the defendant off."

Nor did he object when the prosecutor later argued that "technically the defense has blamed the victim for everything. You've read the law. You know that's not a defense. The focus is on the defendant." By not objecting at trial or seeking curative admonitions, Villaseñor forfeited any claim of prosecutorial misconduct as to these particular passages. (See, e.g., *People v. Fuiava* (2012) 53 Cal.4th 622, 691; *People v. Thompson* (2010) 49 Cal.4th 79, 121 (*Thompson*); *People v. Kennedy* (2005) 36 Cal.4th 595, 626 (*Kennedy*), disapproved on unrelated ground by *People v. Williams* (2010) 49 Cal.4th 405, 459.)

Villaseñor argues in his reply brief that by failing to object he did not forfeit any claims of prosecutorial misconduct because the trial court overruled some of his objections, and others "would almost certainly have been overruled." (*People v. Pitts* (1990) 223 Cal.App.3d 606, 692.) We need not decide this issue, however, because we accept his invitation to "consider the issue on its merits despite a lack of objection, in order to forestall a possible claim of ineffectiveness of counsel based on failure to object." (*Id.* at p. 693.)

## 2. *No Misstatement of the Law*

Villaseñor argues the prosecutor committed misconduct by repeatedly misstating the law of causation during closing argument. It is, of course, misconduct for a prosecutor to misstate the law. (E.g., *People v. Hill* (1998) 17 Cal.4th 800, 829 (*Hill*.) To determine whether the prosecutor misstated the law, we must consider whether it is reasonably likely his remarks, taken in context, were understood or applied by the jury in an objectionable fashion. (*Thompson, supra*, 49 Cal.4th at p. 121; *Hill*, at p. 832.) We thus proceed to examine each of the challenged remarks in its context.

Villaseñor contends the prosecutor misstated the law when he said, "Nothing in [the jury instructions] says if you can blame the victim enough, defendant gets off." The prosecutor made this statement right after he listed the conduct that he contended caused the victim's death and indicated Villaseñor's guilt:

"And at the end of my closing I ask how [the victim's] blood alcohol concentration affects defendant's decisions. His decisions to race at [an intersection], to race at where the collision occurred, to flee the scene, to hide the evidence, and reach speeds up to 80 miles per hour right before the collision occurred. I asked how her blood alcohol concentration affects that. What we heard from the defense was blame the victim for everything."

The prosecutor was thus arguing that because Villaseñor's grossly negligent driving was a substantial factor in causing the collision that resulted in the victim's death, the victim's intoxication and consequent bad decision to attempt to cross the highway — i.e., her contributory negligence — were not a defense to the vehicular manslaughter charge. That argument is consistent with the law. (See *Pociask, supra*, 14 Cal.2d at p. 687 [negligence of decedents was no defense to negligent homicide charge based on defendant's collision with bicyclists]; *Pike, supra*, 197 Cal.App.3d at pp. 747-748 [decedent's contributory negligence was no defense to vehicular manslaughter charge if jury concluded defendant's gross negligence was a proximate cause of the death]; *People v. Armitage* (1987) 194 Cal.App.3d 405, 420 (*Armitage*) ["the contributory negligence of the victim is not a defense"].)

Villaseñor next complains the prosecutor misstated the law when he argued that CALCRIM No. 620 "doesn't say anything about if [the victim was] totally at fault, let the defendant off." Although this statement is literally true, if considered in isolation it

arguably could be interpreted to mean the jury could find Villaseñor guilty even if the victim's conduct was the sole proximate cause of her death. Because, however, Villaseñor would not be guilty if the victim were, in the prosecutor's words, "totally at fault" (see *Pociask, supra*, 14 Cal.2d at p. 687; *Autry, supra*, 37 Cal.App.4th at p. 360; *Pike, supra*, 197 Cal.App.3d at p. 748), the prosecutor should not have used that phrase. Nevertheless, given the context in which the prosecutor made the remark, we conclude it is unlikely the jurors took his rhetorical flourish as permission to find Villaseñor guilty even if they found the victim was solely responsible for her death.

As noted, the prosecutor began this portion of his argument by referring the jury to CALCRIM No. 620. That instruction stated that "[a]n act causes death only if it is a substantial factor in causing the death"; and that "if [Villaseñor's] act was a substantial factor causing the death, then [he] is legally responsible for the death even though [the victim] or another person may have failed to use reasonable care." (Fn. 1, *ante*.) After making the remark about the victim being "totally at fault," the prosecutor acknowledged the victim "may have played a role" or may have been "a substantial factor" in the death, but contended Villaseñor was nevertheless guilty if his "act was a substantial factor causing the [death]." Fairly interpreted, then, the prosecutor's argument closely tracked CALCRIM No. 620, which correctly states the law. (See *Jennings, supra*, 50 Cal.4th at p. 643 [when conduct of two or more persons contributes to death, conduct of each is a proximate cause of death if that conduct was a substantial factor contributing to death]; *Schmies, supra*, 44 Cal.App.4th at p. 49 ["[D]efendant may also be criminally liable for a result directly caused by his act, even though there is another contributing cause.']);

*Scola, supra*, 56 Cal.App.3d at p. 726 [conviction of vehicular manslaughter upheld when defendant's speeding "was a substantial factor in producing the accident"].) We presume the jury understood and followed this instruction (e.g., *Sanchez, supra*, 26 Cal.4th at p. 852),<sup>3</sup> and conclude there is no "reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion" (*Thompson, supra*, 49 Cal.4th at p. 121).

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<sup>3</sup> In his reply brief, Villaseñor contends causation is so "notoriously difficult" that we cannot presume the jury understood and followed the court's instructions on that issue "after having been materially misinformed by the prosecutor." He cites nothing in the record and no legal authority to support this contention, however, and we reject it.

As an initial matter, this was not a case in which causation presented a difficult or close question to the jury. Villaseñor struck and killed a pedestrian while he was participating in a speed contest on a public highway. Indeed, as Villaseñor states in his brief, the evidence showed he was traveling so fast that despite slamming on the brakes and skidding for 113 feet, he was unable to avoid hitting the victim. Villaseñor's grossly negligent driving was thus clearly a substantial factor in bringing about the victim's death, as the jury found.

Further, as we explained in the text, the prosecutor did not misinform the jury on causation. But even if he had, reversal would not be required. "When argument runs counter to instructions given a jury, we will ordinarily conclude that the jury followed the latter and disregarded the former, for '[w]e presume that jurors treat the court's instructions as a statement of the law by a judge, and the prosecutor's comments as words spoken by an advocate in an attempt to persuade.' [Citation.] We so conclude here." (*People v. Osband* (1996) 13 Cal.4th 622, 717; accord, *People v. Davis* (2009) 46 Cal.4th 539, 614.)

Finally, we simply cannot accept the contention that causation (or any other commonly decided issue) is beyond the understanding of jurors. Such acceptance, our Supreme Court has explained, would undermine the entire jury system: "We presume that jurors comprehend and accept the court's directions. [Citation.] We can, of course, do nothing else. The crucial assumption underlying our constitutional system of trial by jury is that jurors generally understand and faithfully follow instructions. [Citation.] Defendant's assertion to the contrary notwithstanding, that presumption stands un rebutted here." (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.)

In the third portion of the prosecutor's closing argument that Villaseñor contends misstated the law, the prosecutor argued "blam[ing] the victim for everything" was "not a defense," and "[t]he focus is on the defendant." Here again, the context of the argument, which Villaseñor ignores, indicates the prosecutor was arguing the victim's contributory negligence was no defense to the vehicular manslaughter charge:

"They also talk about if there's a crosswalk there things would have changed. [The victim] still would have died if there was a crosswalk. . . . Just because there's a crosswalk doesn't mean there's white lines in that road [that] stop every car that goes through. It doesn't matter. [Villaseñor is] still traveling at an unsafe speed, racing another vehicle, driving recklessly on that road. It doesn't matter if there's a crosswalk there or not. And you won't see an instruction in there that says if there's a crosswalk, he's automatically guilty. Or if there's a crosswalk, you can't blame the victim for everything."

The prosecutor was here arguing that Villaseñor's speeding was a substantial factor in bringing about the victim's death, and her negligence in trying to cross the highway where there was no crosswalk did not relieve him of criminal liability for her death. Again, because it "has long been the rule in criminal prosecutions that the contributory negligence of the victim is not a defense" (*Armitage, supra*, 194 Cal.App.3d at p. 420), we reject Villaseñor's contention that this portion of the prosecutor's closing argument was an "inaccurate statement" of the law.

Finally, Villaseñor argues the prosecutor misstated the law when he told the jury it should consider the act of Villaseñor's vehicle striking the victim, "as opposed to [his] alleged speeding or racing conduct," in deciding whether the victim's death would have occurred without the act. According to Villaseñor, the prosecutor improperly argued "the causation element can be satisfied by 'abstract negligence,' i.e.,] the element can be

satisfied if [Villaseñor] was acting negligently at the time of the collision and *the collision* caused the [victim's] death." We disagree.

Contrary to Villaseñor's contention, the prosecutor never tried to remove the illegal act necessary to establish liability for vehicular manslaughter, i.e., Villaseñor's speeding, from the causal chain of events that led to the victim's death. In the portion of closing argument here challenged, the prosecutor discussed the part of the instruction on vehicular manslaughter stating that an "act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act." (CALCRIM No. 592; see fn. 2, *ante*.) He argued the quoted phrase "deals with the car striking the pedestrian." In other words, the prosecutor argued Villaseñor's speeding caused the victim's death because the fatal event, i.e., the collision of Villaseñor's car with the victim, was a direct, natural, and probable consequence of the speeding and would not have occurred without the speeding. To illustrate the point further, the prosecutor posed a contrasting hypothetical situation: "If maybe a potted plant hit [the victim] in the head and killed her right before the car hit her then maybe that applied here." In that situation, the prosecutor suggested, Villaseñor's speeding would not have caused the victim's death because the fatal event, i.e., potted plant hitting the victim in the head, was such an unusual and unexpected event that it was not a direct, natural, and probable consequence of the speeding and would have occurred without the speeding. In illustrating the direct, natural, and probable consequence doctrine in this way, the prosecutor did not misstate the law. (See *People v. Roberts* (1992) 2 Cal.4th 271, 319 ["The criminal law thus is clear that for liability to be found, the cause of the harm not

only must be direct, but also not so remote as to fail to constitute the natural and probable consequence of the defendant's act."]; *Armitage, supra*, 194 Cal.App.3d at pp. 420-421 ["Thus, it is only an unforeseeable intervening cause, an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding cause."].)

### 3. *No Improper Disparagement of the Defense*

Villaseñor also complains the prosecutor committed misconduct by asking the jury not to "fall for" the defense argument that the victim's intoxication was the sole proximate cause of her death. He argues the prosecutor used "inflammatory and unprofessional language that improperly impugned and mischaracterized" his causation defense, and "slurred and trivialized" evidence of the victim's intoxication by suggesting the defense must "have presented it for the purposes of attacking [the victim's] character and tricking the jury into not following the law." We disagree.

Although it is misconduct for a prosecutor to impugn the integrity of defense counsel (*Hill, supra*, 17 Cal.4th at p. 832), it is *not* misconduct for a prosecutor to denigrate the defense case by arguing to the jury that the evidence does not support it (*People v. Chatman* (2006) 38 Cal.4th 344, 387). Further, it "is not misconduct for a prosecutor to argue that the defense is attempting to confuse the jury" (*Kennedy, supra*, 36 Cal.4th at p. 626), or to remind the jury "it should not be distracted from the relevant evidence" (*People v. Gionis* (1995) 9 Cal.4th 1196, 1218). Thus, courts have rejected prosecutorial misconduct claims based on a prosecutor's argument the defense was "'try[ing] to confuse you'" by "'putt[ing] everybody else on trial'" (*Kennedy*, at p. 626), "'try[ing] to get you to buy something'" (*People v. Medina* (1995) 11 Cal.4th 694, 759),

"try[ing] to create some sort of a confusion with regard to the case because any confusion at all is to the benefit of the defense'" (*People v. Breaux* (1991) 1 Cal.4th 281, 305) or "'trying to sidetrack you in your deliberations'" (*People v. Goldberg* (1984) 161 Cal.App.3d 170, 190).

The prosecutor's request that the jury not "fall for" the defense argument that the victim's intoxication was the sole proximate cause of her death, when considered in context, is very similar to the remarks held proper in the cases cited above. Before the prosecutor asked the jurors not to "fall for" the argument, he asked a series of rhetorical questions designed to focus their attention on the evidence of Villaseñor's wrongdoing:

"How does [the victim's] intoxication . . . affect the defendant's decision to engage in a street race . . . ? How does her intoxication affect defendant's decision to reach up to 80 miles per hour on a public highway? Reach 80 miles per hour entering the city zone? . . . How does her intoxication affect the defendant to fail to stop and render aid? Failure to call the police? Drive his vehicle in the first place when he doesn't have a license?"

The prosecutor then referred the jury to CALCRIM No. 240,<sup>4</sup> and argued that there may be more than one cause of death, that Villaseñor's conduct need not be the only cause, and that he was guilty if his conduct was a substantial factor in causing the death. The prosecutor closed by suggesting the defense introduced evidence of the victim's

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<sup>4</sup> CALCRIM No. 240 is a standard instruction on causation. The version given to the jury stated: "An act causes injury or death if the injury or death is the direct, natural, and probable consequence of the act and the injury or death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider the circumstances established by the evidence. [¶] There may be more than one cause of injury or death. An act causes injury or death, only if it is a substantial factor in causing the injury or death. A substantial factor is more than a trivial or remote factor. However, it does not have to be the only factor that causes the injury or death."

intoxication "to make [her] look bad" and to cause the jury to "not focus on his conduct," and he asked the jury not to "fall for" that tactic. "An argument which does no more than point out that the defense is attempting to confuse the issues and urges the jury to focus on what the prosecution believes is the relevant evidence is not improper." (*People v. Cummings* (1993) 4 Cal.4th 1233, 1302, fn. 47.) We therefore conclude the prosecutor did not engage in misconduct when he asked the jury not to "fall for" the defense argument that the victim was the sole proximate cause of her death.

4. *No Need to Address Prejudice*

Villaseñor argues the prosecutor's misconduct during closing argument constitutes reversible error because it rendered his trial fundamentally unfair, undermined his defense and convinced the jury to find him guilty. The People, of course, argue any misconduct was harmless. Because we have concluded the prosecutor did not commit any of the misconduct alleged by Villaseñor, we need not and do not address the parties' respective arguments regarding prejudice.

DISPOSITION

The judgment is affirmed.

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IRION, J.

WE CONCUR:

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McCONNELL, P. J.

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AARON, J.