

**APPENDIX A — ORDER OF THE APPELLATE DIVISION OF THE
ORANGE COUNTY SUPERIOR COURT, STATE OF CALIFORNIA
DENYING APPEAL**

No. 30-2021-01221480

DANIEL KRISTOF LAK,

Appellant,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

March 9, 2023

Appeal from the Orange County Superior Court
(No. 18WM13405)

Before: The Honorable R. Knox, M. McCormick, S. Van Camp.

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL KRISTOF LAK,

Defendant and Appellant.

30-2021-01221480

(Super. Ct. No. 18WM13405)

Appeal from a judgment of the Superior Court of Orange County, West Justice Center, John Zitny, Judge. Affirmed.

Daniel Kristof Lak, in pro. per., for Defendant and Appellant.

Todd Spitzer, District Attorney, and George Turner, Deputy District Attorney, for Plaintiff and Respondent.

Defendant Daniel Kristof Lak appeals his convictions of driving under the influence (DUI) of alcohol (Veh. Code, ¹ § 23152, subd. (a)), driving with a blood alcohol concentration of 0.08 percent or more (§ 23152, subd. (b)) and driving with blood alcohol concentration of 0.01 or greater while on probation for DUI (§ 23154, subd. (a)). He argues the prosecutor committed misconduct

¹ All statutory references are to the Vehicle Code unless otherwise indicated.

and the trial court erred by denying his motion to recuse the Orange County District Attorney's (OCDA) office. We affirm.

BACKGROUND

On August 12, 2018, around 8:15 p.m., Jessica J. called police after observing "a white male who appeared to be very intoxicated . . . harassing or trying to intimidate a seemingly Muslim family" at a dog park. After the call was made the man (defendant) "went into his car and drove off." Jessica J. called police a second time after defendant returned to the park "within five minutes or so" and appeared to follow the family again as they prepared to leave. Jessica J. called the police for the third time after defendant again left in his car and returned about five minutes later. When defendant drove away for the final time Jessica J. followed in her car "to make sure that he was not potentially causing harm to somebody else by driving intoxicated." While on the phone with the 911 dispatcher she provided information about defendant's location. At some point just before the police arrived, defendant apparently became aware that he was being followed and reversed his car, almost hitting Jessica J.'s car.

Officer Grant Hasselbach, a DUI enforcement officer, responded to the location and conducted a DUI investigation. The officer detected "a strong odor of an alcoholic beverage emanating from [defendant's] breath and person." Based on defendant's objective symptoms of intoxication and his performance on standardized field sobriety tests Officer Hasselbach arrested him for driving under the influence. Post-arrest breath tests indicated defendant had blood alcohol concentrations of 0.228 at 8:56 p.m., and 0.233 at 8:59 p.m.

Defendant was charged with driving under the influence of alcohol (§ 23152, subd. (a); count 1), driving with a blood alcohol concentration of 0.08 percent or more (§ 23152, subd. (b); count 2) and driving with a blood alcohol

concentration of 0.01 percent or more while on probation (§ 23154, subd. (a); count 3). It was further alleged pursuant to section 23538, subdivision (b)(2), defendant had a blood alcohol concentration of 0.20 percent or more, and previously had been convicted of driving under the influence of alcohol on or about January 11, 2016.

Prior to trial, the People disclosed to defendant that on May 22, 2020, Officer Hasselbach entered a suspected house of prostitution and exited about 10 minutes later. Officer Hasselbach was never charged with any crime based on the reported incident.

At trial, Jessica J., Officer Hasselbach and an Orange County Crime Lab forensic scientist testified.

The jury found defendant guilty on counts 1 and 2 and found the special allegations true. In a bifurcated court trial on count 3 the defendant was also found guilty.

The trial court suspended imposition of sentence on count 1 and placed defendant on five years of informal probation imposing 60 days in Orange County Jail, and payment of fines, fees, and penalty assessments. The court stayed the sentence on count 2 pursuant to Penal Code section 654 and suspended the sentence on count 3.

DISCUSSION²

A. *Brady and Penal Code Section 1054.1 Materials*

Defendant argues the prosecution engaged in prejudicial misconduct by failing to disclose material it was required to provide to the defense under

² We exercise our discretion and consider defendant's late-filed reply brief and requests for judicial notice. Defendant's requests for judicial notice are denied. The documents are not "both relevant to and helpful toward resolving matters before this court." (*Deveny v. Entropin* (2006) 139 Cal.App.4th 408, 418.)

Brady v. Maryland (1963) 373 U.S. 83 (*Brady*) and Penal Code section 1054.1. Defendant contends he “requested on numerous occasions . . . materials he was owed by the OCDA regarding the OCDA’s decision not to prosecute Hasselbach for the prostitution charge as well as any information regarding the OCDA’s decision to not prosecute other Hasselbach DUI, [*sic*] cases as a result of his being ‘unavailable’ as a witness,” but nothing was disclosed. He also claims he did not receive a formal witness list, “Breath Alcohol Results” and “Breath Screen Results” until the day of trial.

In *Brady*, the United States Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” (*Brady, supra*, 373 U.S. at p. 87.) “There are three elements to a *Brady* violation: (1) the state withholds evidence, either willfully or inadvertently, (2) the evidence at issue is favorable to the defendant, either because it is exculpatory or impeaching, and (3) the evidence is material. [Citation.]” (*People v. Lewis* (2015) 240 Cal.App.4th 257, 263 (*Lewis*).) With respect to materiality, “[e]vidence is material if there is a reasonable probability its disclosure would have altered the trial result.” (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1132 (*Zambrano*), overruled on another ground as stated in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *Brady, supra*, 373 U.S. at p. 87.) This means that “the defendant must show that ‘the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.’” (*Lewis, supra*, 240 Cal.App.4th at p. 263.) “In reviewing a claim that the prosecutor violated due process under *Brady*, we apply independent review to conclusions of law or of mixed

questions of law and fact, such as the elements of a *Brady* claim.” (*People v. Stewart* (2020) 55 Cal.App.5th 755, 770.)

We conclude there was no *Brady* violation. There is no reasonable probability that disclosure of alleged information regarding the OCDA’s decision not to file prostitution charges against the officer and/or whether to proceed to trial on unrelated DUI cases because the officer was not available to testify “would have altered the trial result.” (*Zambrano, supra*, 41 Cal.4th at p. 1132.) The requested information was therefore not “material” for purposes of *Brady* disclosure. Moreover, it appears there was no material responsive to defendant’s requests, and pursuant to Penal Code section 1054.6,³ any internal charging decision by the OCDA would likely be exempt from its discovery obligations.

Under Penal Code section 1054.1, the prosecution has a duty to disclose to the defendant “[t]he names and addresses of persons the prosecutor intends to call as witnesses at trial,” and “[r]elevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial.” (Pen. Code § 1054.1, subds. (a) & (f).) “Absent good cause, such evidence must be disclosed at least 30 days before trial, or immediately if discovered or obtained within 30 days of trial. ([Pen.

³ Penal Code section 1054.6 provides, “Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (a) of Section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or . . . as provided by the Constitution of the United States.” Our Supreme Court has explained that in referring to Code of Civil Procedure section 2018.030, subdivision (a), Penal Code section 1054.6 “‘expressly limits the definition of ‘work product’ in criminal cases to ‘core’ work product, that is, any writing reflecting ‘an attorney’s impressions, conclusions, opinions, or legal research or theories.’”” (*People v. Zamudio* (2008) 43 Cal.4th 327, 355, italics omitted.)

Code] § 1054.7.)” (*People v. Verdugo* (2010) 50 Cal.4th 263, 280.) “A violation of . . . section 1054.1 is subject to the harmless-error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836.” (*People v. Anderson* (2018) 5 Cal.5th 372, 396.)

Defendant’s claim that the prosecutor violated Penal Code section 1054.1 is not supported by a record citation and thus, it is unclear when the allegedly late records were produced to him. When an opening brief fails to make appropriate references to the record in connection with points urged on appeal, the appellate court may treat those points as waived or forfeited. (*WFG Nat’l Title Ins. Co. v. Wells Fargo Bank, N.A.* (2020) 51 Cal.App.5th 881, 894 [prejudice arguments forfeited for failure to cite record evidence].) (See Appellant’s Opening Brief (AOB), pages 7-8, 11-12.) Furthermore, defendant fails to demonstrate any prejudice from the alleged violation, i.e., how his defense strategy might have changed had he received the discovery sooner. (See AOB, pages 7-8, 11-12 and Appellant’s Reply Brief, pages 19-30.) “To prevail on a claim alleging a violation of discovery statutes, an appellant must show there is a reasonable probability that, had the evidence been disclosed, the result of the proceedings would have been different.” (*People v. Mora and Rangel* (2018) 5 Cal.5th 442, 467; *People v. Thompson* (2016) 1 Cal.5th 1101, 1103 [“It is defendant’s burden to show that the failure to timely comply with any discovery order is prejudicial, and that a continuance would not have cured the harm”].)

B. Prosecutor Error

Defendant argues the prosecutor committed misconduct in his closing argument when he said (1) defendant lied to the jury, (2) defendant’s actions were morally reprehensible and (3) defendant had a “weird” obsession with Officer Hasselbach.

“A prosecutor’s conduct violates the Fourteenth Amendment of the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process.” (*People v. Morales* (2001) 25 Cal.4th 34, 44.) “Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves the use of deceptive or reprehensible methods to attempt to persuade either the trial court or the jury.” (*Ibid.*)

It is prosecutorial error for the prosecutor to disparage defense counsel in front of the jury. (*People v. Young* (2005) 34 Cal.4th 1149, 1193 [prosecutor “characterized defense counsel as ‘liars’ [and] accused counsel of lying to the jury”].) However, our Supreme Court has found no impropriety in prosecutorial remarks aimed solely at the persuasive force of defense counsel’s closing argument. (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1155 [cataloguing cases and prosecutors’ remarks], overruled on other grounds in *People v. Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22.)

The federal and state standards governing prosecutorial misconduct are well-settled. “When a prosecutor’s intemperate behavior is sufficiently egregious that it infects the trial with such a degree of unfairness as to render the subsequent conviction a denial of due process, the federal Constitution is violated. Prosecutorial misconduct that falls short of rendering the trial fundamentally unfair may still constitute misconduct under state law if it involves the use of deceptive or reprehensible methods to persuade the trial court or the jury.” (*People v. Masters* (2016) 62 Cal.4th 1019, 1052; *People v. Wright* (2021) 12 Cal.5th 419, 443-444.) When a claim of misconduct is based on the prosecutor’s arguments before the jury, we consider whether there is a reasonable likelihood the jury construed or applied the challenged remarks in an objectionable fashion. (*People v.*

Centeno (2014) 60 Cal.4th 659, 667.) We consider the statements in context and view the argument and instructions as a whole. (*Ibid.*) “We review claims of prosecutorial misconduct under an abuse of discretion standard.” (*People v. Dworak* (2021) 11 Cal.5th 881, 910.)

The prosecutor’s comment that defendant lied to the jury during closing argument about his blood results was a fair comment on the evidence. Defendant told the jury the forensic scientist who testified at trial misrepresented the blood results. However, this was incorrect, as noted by the prosecutor and the court, and as demonstrated by the exhibits admitted into evidence.

Likewise, the prosecutor’s comment that it is “morally reprehensible” to harass a Muslim family was not improper. It was a comment about the evidence, and about the fact that defendant was not charged with any wrongdoing based on his conduct towards the family. The prosecutor’s comment that defendant had a “weird” obsession with the arresting officer was also not improper. It was a statement in response to defendant’s closing argument concerning the officer.

It is well-established that prosecutors “are allowed “a wide range of descriptive comment” and their “argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom.”” (*People v. Jackson*, (2016) 1 Cal.5th 269, 349.) Moreover, “harsh and colorful attacks on the credibility of opposing witnesses are permissible.” (*People v. Krebs* (2019) 8 Cal.5th 265, 343.) A prosecutor is thus “allowed to argue, from the evidence, that a witness’s testimony is unbelievable, unsound, or even a patent “lie.”” (*People v. Rivera* (2019) 7 Cal.5th 306, 335; see *People v. Huggins* (2006) 38 Cal.4th 175, 206 [no misconduct where prosecutor told jury defendant “lied

through his teeth in trying to sell this story to you”]; *People v. Hinton* (2006) 37 Cal.4th 839, 871 [no misconduct where prosecutor “called defendant a liar based on his admitted lies to the police,” and argued defendant “had lied on the stand”].)

Furthermore, viewing all the comments cumulatively, the statements “did not comprise a pattern of egregious misbehavior making the trial fundamentally unfair.” (See *People v. Espinoza* (1992) 3 Cal.4th 806, 820.) Defendant was not, therefore, deprived of due process under the federal Constitution. (*Ibid.*) Nor did the conduct constitute a miscarriage of justice under the California Constitution. (See *People v. Hill* (1998) 17 Cal.4th 800, 844.)

C. *Motion to Recuse*

Defendant contends the trial court erred by denying his motion to disqualify a certain deputy district attorney and the entire OCDA’s office.

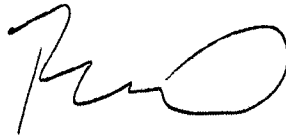
Penal Code section 1424 sets out the standard governing motions to recuse a prosecutor: such a motion “may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.” (*Id.*, subd. (a)(1).) The statute “articulates a two-part test: ‘(i) is there a conflict of interest?; and (ii) is the conflict so severe as to disqualify the district attorney from acting?’” (*Hambarian v. Superior Court* (2002) 27 Cal.4th 826, 833.) A motion to recuse is directed to the sound discretion of the trial court, and its decision to grant or deny the motion is reviewed only for an abuse of discretion. (*People v. Vasquez* (2006) 39 Cal.4th 47, 56.)

While defendant speculates the “OCDA’s loyalties were divided between ensuring [d]efendant received a fair trial and protecting the [Police Department]’s reputation and prior DUI arrests,” there was no evidence supporting that contention. “[A] motion to disqualify a prosecutor must be

based upon a likelihood of unfairness and not upon mere speculation.”
(*Spaccia v. Superior Court* (2012) 209 Cal.App.4th 93, 107-108.) The trial
court did not abuse its discretion by denying the recusal motion.

DISPOSITION

The judgment is affirmed.



Robert A. Knox
Judge

WE CONCUR:



Melissa R. McCormick
Presiding Judge



Scott Van Camp
Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

JUSTICE CENTER:
Central Justice Center
Civil Operations - Appellate Division
700 Civic Center Dr. West
Santa Ana, CA 92701

APPELLANT: **Lak**

RESPONDENT: **People of the State of California**

NOTICE OF FILING OF JUDGMENT/ORDER

Appellate Division

APPEAL CASE NUMBER:
30-2021-01221480

TRIAL COURT CASE NUMBER:
18WM13405

To the above named parties and their attorneys of record:

You are notified that a(n) **Opinion** in the above entitled matter was filed on: **March 9, 2023.**

A copy of the **Opinion** is attached for reference.

CLERK'S CERTIFICATE OF MAILING

Daniel Kristof Lak
17232 Julip Lane
Huntington Beach, CA 92647

BY INTEROFFICE DELIVERY:

West Justice Center - Criminal Appellate Clerk
8141 13th St., Westminster, CA 92683

OC District Attorney
P.O. Box 808
Santa Ana, CA 92702

Hon. John Zitny, Judge - Dept. N10
1275 N. Berkeley Ave., Fullerton, CA 92832

I certify that I am not a party to this action and that this certificate was mailed in accordance with Section 1013a of the Code of Civil Procedure. A copy of this Notice of Filing of Judgment/Order with a copy of the Judgment/Order was deposited in the United States mail, in a sealed envelope with postage fully prepaid addressed as shown above. The mailing and this certification occurred at Santa Ana, California, on 03/09/2023.

DAVID H. YAMASAKI, Clerk of the Court

By: 
M. DePaul, Deputy Clerk

NOTICE OF FILING OF JUDGMENT/ORDER

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE**

MINUTE ORDER

DATE: 03/09/2023

TIME: 04:06:00 PM

DEPT:

JUDICIAL OFFICER PRESIDING: Appellate Panel

CLERK: M. DePaul

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2021-01221480-CL-MC-CJC** CASE INIT.DATE: 09/20/2021

CASE TITLE: **People of the State of California vs. Lak**

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 02/23/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: see Opinion filed and served on this date 03/09/2023.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: People of the State of California vs. Lak

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

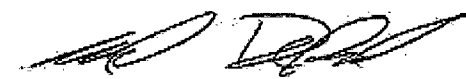
CASE NUMBER:

30-2021-01221480-CL-MC-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above dated , Notice of Filing of Judgment/Order dated 03/09/23, Minute Order dated 03/09/23 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 3/9/23. Following standard court practice the mailing will occur at Sacramento, California on 3/10/23.

DANIEL KRISTOF LAK
17232 JULIP LANE
HUNTINGTON BEACH, CA 92647

Clerk of the Court, by:



_____, Deputy

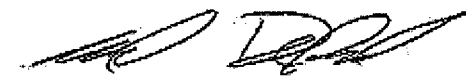
I certify that I am not a party to this cause. I certify that the following document(s), dated , Notice of Filing of Judgment/Order dated 03/09/23, Minute Order dated 03/09/23, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on March 9, 2023, at 4:09:40 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by:



_____, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**APPENDIX B — ORDER OF APPELLATE DIVISION, ORANGE COUNTY
SUPERIOR COURT, STATE OF CALIFORNIA, DENYING PETITION FOR
CERTIFICATION FOR TRANSFER AND PETITION FOR REHEARING**

No. 30-2021-01221480

DANIEL KRISTOF LAK,

Appellant,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

March 30, 20203

Appeal from the Orange County Superior Court
(No. 18WM13405)

Before: The Honorable R. Knox, M. McCormick, S. Van Camp.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE**

MINUTE ORDER

DATE: 03/30/2023

TIME: 11:17:00 AM

DEPT:

JUDICIAL OFFICER PRESIDING: Appellate Panel

CLERK: A. Salazar

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2021-01221480-CL-MC-CJC** CASE INIT.DATE: 09/20/2021

CASE TITLE: **People of the State of California vs. Lak**

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

APPEARANCES

There are no appearances by any party.

Appellate Panel Judge(s):

Hon. Melissa R. McCormick, Presiding Judge

Hon. Robert A. Knox, Judge

Hon. Scott Van Camp, Judge

Trial Court Case Number: 18WM13405

The application for certification for transfer and petition for rehearing filed March 24, 2023 are denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: People of the State of California vs. Lak**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE****CASE NUMBER:****30-2021-01221480-CL-MC-CJC**

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 03/30/23 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 3/30/23. Following standard court practice the mailing will occur at Sacramento, California on 4/3/23.

DANIEL KRISTOF LAK
17232 JULIP LANE
HUNTINGTON BEACH, CA 92647

Clerk of the Court, by:

Adrian Salazar, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 03/30/23, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on March 30, 2023, at 11:17:56 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by:

Adrian Salazar, Deputy**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE**

**APPENDIX C — ORDER OF COURT OF APPEALS (FOURTH DISTRICT,
DIVISION THREE), STATE OF CALIFORNIA, DENYING PETITION FOR
CERTIFICATION FOR TRANSFER**

No. 30-2021-01221480

DANIEL KRISTOF LAK,

Appellant,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

May 4, 2023

Appeal from the Orange County Superior Court
(No. 18WM13405)

Before: The Honorable O’Leary, P.J., Motoike, J., and Delany, J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL KRISTOFF LAK,

Defendant and Appellant.

G062564

(Super. Ct. No. 30-2021-01221480)

O R D E R

THE COURT:*

The petition to transfer from the Appellate Division of the Orange County
Superior Court is DENIED.

O' LEARY, P.J.

O'LEARY, P. J.

* Before O'Leary, P. J., Motoike, J., and Delaney, J.

**APPENDIX D — ORDER OF CALIFORNIA SUPREME COURT DENYING
PETITION FOR REVIEW**

No. S279984

DANIEL KRISTOF LAK,

Appellant,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

Appeal from the Orange County Superior Court
(No. 18WM13405)

Before: En Banc, Guerrero, C.J.

SUPREME COURT
FILED

JUL 12 2023

Court of Appeal, Fourth Appellate District, Division Three - No. G062564

Jorge Navarrete Clerk

S279984

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DANIEL KRISTOF LAK, Defendant and Appellant.

The petition for review is denied.

GUERRERO

Chief Justice