Filed 11/21/12 P. v. Jimenez CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>HECTOR A. JIMENEZ,<br><br>Defendant and Appellant. | B234991<br><br>(Los Angeles County<br>Super. Ct. No. BA366782) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen A. Marcus, Judge. Affirmed.

Christopher Nalls, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Marc A. Kohn, Kathy S. Pomerantz and Timothy M. Weiner, Deputy Attorneys General, for Plaintiff and Respondent.*

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* Alexander Ray, certified law student, presented oral argument.

A jury convicted defendant Hector A. Jimenez of one count of first degree residential burglary (Pen. Code, § 459) (count 1),[1] and eight counts of receiving stolen property (§ 496, subd. (a)) (counts 2 & 4-10). Defendant admitted having suffered two prior "strike" convictions pursuant to section 1170.12, subdivisions (a) through (d), and section 667, subdivisions (b) through (i); two prior prison terms pursuant to section 667.5, subdivision (b); and two prior convictions for serious felonies pursuant to section 667, subdivision (a)(1).[2]

On July 11, 2011, after striking one of defendant's prior convictions, the trial court denied probation and sentenced defendant to 31 years four months in state prison as a second-strike defendant. In count 1, the trial court imposed 12 years (upper term doubled) and two consecutive five-year sentences pursuant to section 667, subdivision (a)(1). In each of counts 2, 4, 5, 6, 7, 8, and 9, the trial court imposed a consecutive sentence of 16 months (one-third midterm doubled). In count 10, defendant received a concurrent sentence of 16 months (one-third midterm doubled).

Defendant appeals on the grounds that his Sixth Amendment right to confrontation was prejudicially violated by the admission of his codefendants' statements, since those statements facially incriminated him in the burglary.

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1 Unless stated otherwise, all further statutory references are to the Penal Code.

2 Codefendants Oscar Escobar and Angie Martinez were also charged with counts 1 and 8, and counts 1 through 10, respectively. Neither Escobar nor Martinez is a party to this appeal.

## FACTS

### Prosecution Evidence

On December 18, 2009, Paige Reilley was living with three other people at 4420 Prospect Avenue in Los Angeles.[3] Reilley left the house around 1:00 or 2:00 p.m. that day and locked the door. When she returned in less than an hour, she could not enter because the chain was on the door. She was able to open the door about six inches, and she saw two men inside. The men were "Latino" and they seemed to be "under middle age." One of the men had a shaved head.

After Reilley called out "hello," she realized what was happening. She closed the door and started screaming, "Help, my house is being robbed." She called 911. She heard the two men leave through a sliding glass door and jump over a wall. She heard them running. Reilley was unable to identify either suspect at trial. She later saw that the screen from her bedroom window was on her bed. The inside of the house was in a state of upheaval. Reilley saw that her laptop computer and a PlayStation 3 were missing. A broken cellular phone was found outside Reilly's window, and it was identified as belonging to codefendant Oscar Escobar.

Elziver Repuyan was driving down Prospect Avenue on December 18, 2009, at approximately 2:15 or 2:30 p.m. when he saw a car double-parked and facing in the opposite direction. The car's trunk was open. It was a black, four-door American car. Repuyan identified a photo of a Chevy Caprice with no license plate as being the one he saw on that afternoon. Repuyan could see someone in the driver's seat but did not know if the person was male or female, and he did not discern the person's race. Repuyan believed the car looked "suspicious." As Repuyan passed the car, he slowed down, and he saw two Hispanic men run out of a

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[3] Because the sole issue on appeal pertains to defendant's burglary conviction, we recite only the facts that are relevant to that conviction.

driveway and close the trunk.[4] At trial, Repuyan identified the man who got in the car behind the driver's seat as defendant. One of the men was wearing a black and gray shirt, which could have been a Raiders jersey. The black car had a dent on the left bumper. Repuyan recalled that defendant had a "big smirk" on his face. Repuyan called 911.

After the incident, the police showed Repuyan some photographic lineups ("six-packs"). Repuyan testified that he identified someone.[5] On December 23, 2009, Detective Michelle Gomez of the Los Angeles Police Department (LAPD) showed Reilley a six-pack, and Reilley identified a photograph of Escobar as one of the men she saw in her house. Detective Gomez conducted a search of Escobar's home at 613 North Kenmore Avenue in Los Angeles. After being advised of his *Miranda*[6] rights, Escobar agreed to speak with Detective Gomez and her partner, Detective Korn.[7] Escobar took police to a house at 1177 Virgil Avenue, where stolen property was taken and where a black Caprice was parked.

Detective Gomez directed Officer Raquel Trujillo and Officer Chellew of the LAPD to watch the Caprice and stop it when it drove away. About an hour later, the police officers stopped the car in front of the house on Virgil. Defendant was driving, Angie Martinez was in the passenger seat, and a young child was in the backseat. A pink camera was found in a purse sitting on the front seat. The camera belonged to Daniel Kram, who was one of the residents living at 4420 Prospect Avenue on December 18, 2009. Defendant told Detective Gomez he lived at 1177

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**4** Repuyan at first testified that the men threw something in the trunk but later said he did not see them put any items in the trunk.

**5** It was never revealed at trial who it was that Repuyan selected from the six-pack.

**6** *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

**7** Escobar's statement is summarized *post*.

Virgil Avenue and gave written consent to search the residence. Martinez told police she lived at the residence as well. The house had two bedrooms, but one of them appeared to be used as a storage room. The police found a great deal of merchandise in the house, including electronics, cell phones, jewelry, televisions, cameras, passports, credit cards, stereo speakers, MP3 players, and an iPod dock. Two laptop computers were also found in the house.[8]

After defendant and Martinez were arrested and taken to the station, Officer Trujillo put them in neighboring cells. In order to speak to each other they had to shout. Officer Trujillo heard defendant telling Martinez in Spanish to "play dumb." Martinez responded that she would take the blame for everything because she was already in trouble. Defendant said "they didn't know anything about what was going on," and Martinez responded that "they've seen her driving the car." Defendant told Martinez to "blame it on [the] baby's daddy," and that she should say that "all the stuff that she got was because she was working at that time." Martinez asked defendant to promise her that he would not "do this again." Defendant said he had a lot of money in the bank and that he would bail her out. He also told Martinez to write everything down so she would not forget what to say. Martinez said that once they were released, they were going to "flee" to Mexico. Defendant said he needed to call "Danny" "to let him know so he can cover up for him."

Detective Susan Carrasco of the LAPD interviewed Martinez after reading Martinez her *Miranda* rights and obtaining a waiver.[9]

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**8** Some of the victims of other burglaries, as well as another victim of the Prospect Avenue burglary, testified as to which items belonged to them.

**9** Martinez's statement is summarized *post*.

**Defense Evidence**

Neither Escobar nor Martinez testified, nor did they present any witnesses on their behalf. Detective Edward Wilson of the LAPD testified on defendant's behalf. On December 23, 2009, Detective Wilson showed two color six-packs to Repuyan as part of the investigation of the Prospect Avenue burglary. Repuyan identified an individual as the one he saw enter the rear door of the car behind the driver.[10] Detective Wilson identified the six-packs in the defense exhibits as the ones shown to Repuyan. Detective Wilson did not know who, if anyone, in the six-packs was connected with the burglary. In Detective Wilson's opinion, the photo Repuyan selected looked "kind of similar" to both male defendants.

## DISCUSSION

### I. Defendant's Argument

Defendant contends that the admission of Escobar's and Martinez's statements to police violated the Sixth Amendment because the statements obviously referred directly to defendant and involved inferences a jury could make immediately. The codefendants' statements, both separately and together, facially incriminated defendant and were thus contrary to the *Aranda/Bruton* rule. (*Bruton v. United States* (1968) 391 U.S. 123 (*Bruton*); *People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*).)

### II. Proceedings Below

Prior to trial, defendant filed a severance motion. The trial court asked the prosecutor to address the issue of how redacting the statements might eliminate the need for severance. The trial court ultimately ruled that redaction was appropriate in this case and denied the motion.

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**10** Outside the presence of the jury, defendant's attorney argued that Detective Wilson's testimony had to be admitted because Repuyan picked out someone who was not one of the male defendants. Over the prosecution's objection that there was no prior inconsistent statement by Repuyan, the trial court allowed the testimony.

During trial, the parties met to discuss redaction of the statements. The prosecutor provided the defense attorneys with a "bullet-point" list or script of the statements he would seek to elicit from the testifying detectives. On the following day, the prosecutor told the court that it was his understanding that there was only one minor edit of the script he had provided, and he had made the correction.[11] Detective Gomez then testified about, inter alia, Escobar's statement and disclosure of the Prospect Avenue and Virgil Avenue locations. Detective Carrasco later testified briefly about her interview with Martinez. No objections were heard from defendant's counsel during Detective Gomez's or Detective Carrasco's testimony about the codefendants' statements. Defendant's attorney did not cross-examine Detective Carrasco.

**III. Relevant Authority**

The confrontation clause of the Sixth Amendment of the United States Constitution provides that "'[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'" (*Crawford v. Washington* (2004) 541 U.S. 36, 42.) The question of whether a defendant's rights under the confrontation clause have been violated is one of federal constitutional law. (*People v. Fletcher* (1996) 13 Cal.4th 451, 465 (*Fletcher*).) A trilogy of United States Supreme Court cases governs the issue of whether admission of the redacted statements constitutes a violation of the federal confrontation clause. *Bruton* held that admission at a joint trial of a codefendant's statements naming and incriminating the defendant violates the confrontation clause if the codefendant does not testify.[12] (*Bruton*, *supra*, 391 U.S. at pp. 135-136.)

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**11** Escobar's attorney requested a correction to reflect that Escobar did not say he burglarized the Prospect Avenue residence but rather that he broke into it.

**12** Although the *Bruton* court cited with approval the California Supreme Court decision in *Aranda* (*Bruton*, *supra*, 391 U.S. at pp. 130-131), *Aranda*'s holding was

*Richardson v. Marsh* (1987) 481 U.S. 200 (*Richardson*) held that a judge can preclude a *Bruton* violation by redacting a codefendant's statements to eliminate the name of his or her codefendant as well as any reference to his or her existence and by giving a proper limiting instruction to the jury. (*Richardson*, at p. 211.) In *Richardson*, a redacted confession of Marsh's codefendant omitted any reference to Marsh and suggested only that the declarant and a third party, who was not Marsh, had been involved in the crime. (*Id*. at pp. 202-203, 211.) Since the accomplice's statement was not incriminating on its face and became so only when linked with evidence introduced later at trial, its admission was constitutionally sound. (*Id*. at p. 208.)

In the third case, *Gray v. Maryland* (1998) 523 U.S. 185 (*Gray*), the high court held that a redaction substituting "an obvious blank space or a word such as 'deleted' or a symbol or other similarly obvious indications of alteration" for the codefendant's name constitutes a *Bruton* violation even if the judge gives a proper limiting instruction. (*Gray*, at pp. 192-195.)[13] For example, the *Gray* court noted

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a judicially declared rule of practice implementing section 1098, which governs joint trials. (*Aranda*, *supra*, 63 Cal.2d at pp. 524-526.) The United States Supreme Court cases rather than *Aranda* govern, because "[t]he question before this court is one of federal constitutional law. To the extent that [the] decision in [*Aranda*] constitutes a rule governing the admissibility of evidence, and to the extent this rule of evidence requires the exclusion of relevant evidence that need not be excluded under federal constitutional law, it was abrogated in 1982 by the 'truth-in-evidence' provision of Proposition 8 (Cal. Const., art. I, § 28, subd. (d))." (*People v. Fletcher*, *supra*, 13 Cal.4th at p. 465.) To the extent *Aranda* corresponds with *Bruton*, it was not abrogated by Proposition 8. (*People v. Orozco* (1993) 20 Cal.App.4th 1554, 1564.)

**13** Two years before *Gray*, in *Fletcher*, *supra*, 13 Cal.4th 451, our state Supreme Court addressed the issue subsequently addressed in *Gray*. The *Fletcher* court held that whether a statement may be redacted to avoid a confrontation clause violation "must be determined on a case-by-case basis in light of the other evidence that has been or is likely to be presented at the trial. The editing will be deemed insufficient . . . if, despite the editing, reasonable jurors could not avoid drawing the

that a proper answer to the question, "Who was in the group that beat Stacey?" would be "Me and a few other guys," but not "Me, deleted, deleted, and a few other guys." Whereas the former eliminates all references to the codefendant, the latter does not. (*Id*. at pp. 196-197.)

Improper introduction of a codefendant's out-of-court statement requires reversal only if the error was not harmless beyond a reasonable doubt. (*People v. Archer* (2000) 82 Cal.App.4th 1380, 1390 (*Archer*).) "That analysis generally depends on whether the properly admitted evidence is so overwhelming as to the guilt of the nondeclarant that a reviewing court can say the constitutional error is harmless beyond a reasonable doubt." (*Ibid*.)

**IV. Summary of the Statements**

Detective Gomez testified that she interviewed Escobar at the police station. Escobar admitted breaking into 4420 Prospect Avenue through an unlocked window. He admitted to running from the house when a female came home and screamed. He dropped his phone at the house. He said he ran to a large, black, four-door sedan that was waiting for him. He was carrying four laptops. He said "they took them" to a residence located near Lexington Avenue and Virgil Avenue. Escobar showed police the locations of 4420 Prospect Avenue and 1177 Virgil Avenue. At the Virgil Avenue address he pointed out the black sedan parked at the rear of that address. Escobar pointed out the front house and said that the computers were taken to that house. He admitted to breaking into another residence near Hoover Street and Melrose Avenue.

Martinez was interviewed by Detective Carrasco. She admitted to driving a vehicle in connection with the burglary at 4420 Prospect Avenue. It was the same vehicle in which she had been stopped. She drove the car to the location while "two

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inference that the defendant was the co-participant designated in the confession by symbol or neutral pronoun." (*Fletcher*, *supra*, at p. 456.)

other people" went to the house, took property, and returned to the car with the property.

**V. Any Error Harmless**

At the outset, we agree with respondent that defendant forfeited this issue. (*People v. Ervin* (2000) 22 Cal.4th 48, 88, 89 (*Ervin*).) Defendant cites *Archer* for the contrary position, arguing that the severance motion, in which he argued that no effective redactions were possible, preserved the issue on appeal despite his failure to object to the trial testimony. (*Archer*, *supra*, 82 Cal.App.4th at p. 1386.)

*Archer* found no forfeiture when the defendant objected to introduction of his codefendant's statement and sought severance of his case or impanelment of two juries rather than trial with his codefendant. (*Archer*, *supra*, 82 Cal.App.4th at p. 1386.) In *Ervin*, on the other hand, our Supreme Court found a forfeiture of defendant's argument that the redacted version of a witness's testimony was insufficient to assure he was not inculpated. (*Ervin*, *supra*, 22 Cal.4th at pp. 88-89.) "[A]lthough defense counsel objected to any references to defendant by name in [the witness's] prior testimony, he failed to object to the redacted testimony or to suggest further editing. Contrary to defendant's suggestion, such an objection would not have been futile, as the court clearly showed an awareness of the need for careful redaction of a defendant's statement implicating his codefendants." (*Ibid*.) In *Fletcher*, however, the Supreme Court found no forfeiture when the defendant failed to argue against the form of redaction that the trial court had approved in the defendant's first trial. (*Fletcher*, *supra*, 13 Cal.4th at p. 469.) But in *Fletcher*, the trial court "'incorporated the arguments previously made'" against the redacted version, a circumstance very unlike the instant case. (*Ibid*.)

Here, defendant's counsel remained mute when the prosecutor informed the court that he and counsel for the defendants had reached an agreement on the redactions. The only response was from Escobar's attorney, who confirmed an agreement had been reached on the one correction noted *ante*. No objection was

heard that the officers who testified about the codefendants' statements had gone beyond the scope of agreed-upon redactions. There was no effort to ensure that the number of Martinez's co-participants in the burglary remained vague. Under these circumstances, despite what appears to be a contrary holding in *Archer*, we believe defendant's arguments about the redacted statements as testified to by the officers have been forfeited. We address the merits of defendant's arguments in any event, since he sets forth a claim of ineffective assistance of counsel in his reply brief.

Defendant argues that the codefendants' statements "obviously" referred directly to defendant. This is because defendant was on trial with two codefendants, one of whom (Escobar) confessed to entering the house and stealing property before escaping in the black Caprice, and the other (Martinez) who confessed that she drove two people in a black Caprice to the house and waited while they stole property. No jury could avoid making the inference that the third person was defendant. Since defendant did not have the opportunity to confront Escobar or Martinez, he argues, his right to confrontation was violated.

We first observe that the issue of whether a statement is incriminating on its face without reference to other evidence is sometimes a difficult one. Any statement that does not specifically identify a codefendant by name, such as when a nickname or moniker is used, would require some other evidence to connect the identification to that defendant. Hence, an inference would have to be drawn for the statement to be incriminating. *Gray* stated that it is not the *fact* of an inference but the *kind* of inference that is significant. (*Gray, supra*, 523 U.S. at p. 196.) "The inferences at issue . . . involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial." (*Ibid*.)

In the instant case, it is not necessarily true that Martinez's statement that she waited for two persons and Escobar's statement that a car was waiting for him were

facially incriminating to defendant without reference to other evidence. Although defendant argues that Martinez's reference to "two people" obviously meant her two codefendants, linkage to other evidence was necessary to fully recognize the incriminating nature of the statement. Nevertheless, the statements would not pass muster under *Richardson*'s oft-cited phrase that a statement that does not refer to a defendant by name or even *refer to his existence* does not violate *Bruton*. (See, e.g., *People v. Burney* (2009) 47 Cal.4th 203, 231 (*Burney*); *Archer*, *supra*, 82 Cal.App.4th at pp. 1386, 1390.) We question whether the latter condition is a bright line rule for exclusion of a codefendant's statement or merely a reference to the circumstances that occurred in that particular case. (See *Richardson*, *supra*, 481 U.S. at p. 211 [no confrontation clause violation "when, *as here*, the confession is redacted to eliminate . . . any reference to [the defendant's] existence"], italics added.) Such a rigid rule would seem to contradict *Richardson*'s expression of "no opinion on the admissibility of a confession in which the defendant's name has been replaced with a symbol or neutral pronoun." (*Richardson*, at p. 211, fn. 5.)

On the other hand, Martinez's reference to "two persons" approaches, although from a distance, the phrase condemned in *Gray*, i.e., "Me, _____, _____, and a few other guys." Unlike the written statement in *Gray*, however, Martinez's statement was revealed to the jury in a much more fleeting iteration that did not call particular attention to the unnamed participants. (*Gray*, *supra*, 523 U.S. at pp. 192, 193, 194.) Thus, defendant's case is also unlike *Burney*, *supra*, 47 Cal.4th 203, where the jury members not only had the codefendants' redacted statements read to them, but the jury members were each given copies of the transcripts during deliberations. (*Id*. at p. 228 & fn. 7.) In that case, the redacted statements violated *Bruton* because they were similar to the redactions found in *Gray* in that the names of the perpetrators were merely replaced with "the other" or "the others." (*Burney*, *supra*, at pp. 228-229; see *Gray*, *supra*, 523 U.S. at p. 192.) The continual references to "the other" and "the others" performing

specific acts in Burney's codefendants' lengthy statements bear no comparison to Detective Carrasco's brief account of Martinez's statement.

Even assuming, however, that it was erroneous to admit the two redacted statements here, any error in doing so was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) Under the reasonable doubt standard, we must determine "whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error." (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 279.) We conclude that other properly admitted evidence was compelling with respect to defendant's guilt, and the extrajudicial statements were merely cumulative of other evidence. (*People v. Anderson* (1987) 43 Cal.3d 1104, 1129.)

Victim Reilley testified that she saw two Hispanic men inside her home when she was prevented from entering by the door chain. Passerby Repuyan testified that he saw two Hispanic men run from the Prospect Avenue location toward the black sedan and get in the car. Repuyan identified defendant in court as one of the men—the one wearing a smirk on his face as he got in the car. Subsequently, Martinez and defendant were placed in adjoining jail cells where their shouted conversation was incriminating toward defendant. Police found stolen property in the home defendant shared with Martinez. Defendant was stopped while driving the car identified as the getaway car, and a purse inside the car contained Reilley's roommate's camera. All of this evidence pointed inexorably to defendant's guilt. As the jury members were instructed with CALCRIM No. 376, if they concluded that defendant knew he possessed property and that the property was recently stolen, they could consider this evidence in conjunction with even slight supporting evidence to prove that defendant committed burglary.[14]

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[14] The trial court read CALCRIM No. 376 as follows: "If you conclude that the defendant knew he or she possessed property and you conclude that the property ad, in fact, been recently stolen, you may not convict the defendant of first degree residential burglary and/or receiving stolen property based on those facts alone.

To the extent the jury could not have avoided the conclusion that defendant must have been one of the two persons for whom Martinez acted as driver, i.e., because other evidence in the case pointed so strongly to defendant's identification as one of the burglars, the statement was merely cumulative.

Nothing else in Martinez's redacted statement, as testified to by Gomez, implicated defendant. Compared to other evidence, Martinez's statement was inconsequential. As noted, it was not a written statement admitted into evidence, as occurred in *Gray*, but rather a paraphrase of Martinez's statement recounted by the detective. Thus, even if the issue had not been waived, we find no error in the redaction used for Martinez's statement in this case. Even if the jury used Martinez's confession against defendant, it did not contribute to the verdict and was insignificant in relation to everything else the jury considered. (*People v. Song* (2004) 124 Cal.App.4th 973, 984.)

Likewise, any error in admitting Escobar's reference to at least one accomplice (the driver) was harmless. With respect to Escobar's confession, however, defendant also argues that Escobar tied his own commission of the crime directly to defendant's house and car. According to defendant, this strongly suggested that the other participants in the burglary were connected with the black

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However, if you also find that the supporting evidence tends to prove his or her guilt, then you may conclude that the evidence is sufficient to prove he or she committed the crime of first degree residential burglary and/or receiving stolen property. The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstances tending to prove his or her guilt of first degree residential burglary and/or receiving stolen property. You may also consider the attributes of possession—time, place, manner of possession—that tend to show guilt, the defendant's conduct or statements tending to show guilt. Remember that you may not convict the defendant of any crime unless you are convinced that each fact essential to that conclusion or to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt."

Caprice and the house at 1177 Virgil Avenue. Defendant states that, "[t]he jury surely connected this inference to other evidence . . . that [defendant] was arrested while driving the Caprice and that he lived at 1177 North Virgil." Thus, defendant himself acknowledges that an inference had to be drawn that defendant was an accomplice of Escobar's, since defendant was found driving the Caprice a few days later, he acknowledged that he lived at 1177 Virgil Avenue, and evidence at this address indicated the occupants were participants in the burglary. Thus, this evidence was an *indirect* implication of defendant's guilt that, combined with the proper jury admonition, did not violate *Bruton*. (*Richardson*, *supra*, 481 U.S. at pp. 208, 211.)

This portion of Escobar's statement is like the statement at issue in *People v. Hampton* (1999) 73 Cal.App.4th 710, which was found not to violate the defendant's right of confrontation. In that case, Hampton and Darrell Williams were convicted of robbery of a fast food restaurant. (*Id*. at p. 712.) In a confession, Hampton said that he had obtained a ski mask and gun from a car, and other trial testimony indicated that the vehicle was driven by Williams. (*Id*. at pp. 715-716.) The court held that Hampton's statements did not powerfully implicate Williams, and their admission with a limiting instruction did not violate Williams's right of confrontation. (*Id*. at p. 720.) "This is not a 'powerfully incriminating,' 'expressly implicat[ing]' codefendant confession which, under the narrow *Bruton* exception, a jury cannot ignore even with a limiting instruction. It is instead an indirect and less vivid implication as to Williams which, under [*Richardson*], the jury can be presumed to have ignored in light of the instructions and argument that Hampton's statement was admitted only against Hampton and may not be considered against Williams." (*People v. Hampton*, at p. 720.)) The same reasoning applies here.

Finally, as we have indicated, the trial court instructed the jury to limit consideration of Martinez's statements to Martinez and Escobar's statement to Escobar. (See CALCRIM Nos. 303, 304, 305.) As the high court noted, "with

regard to inferential incrimination the judge's instruction may well be successful in dissuading the jury from entering onto the path of inference in the first place, so that there is no incrimination [for the jury members] to forget." (*Richardson*, *supra*, 481 U.S. at p. 208.) The fact that the trial court did not give a limiting instruction until the close of the case, along with the rest of the jury instructions, does not negate the prophylactic effect of the instruction.[15] "While the express incrimination of the confession in *Bruton* justified the belief the jury will likely disobey the instruction not to consider the evidence, there is no overwhelming probability the jury will not obey the limiting instruction to disregard the confession in assessing defendant's guilt when the confession incriminates only by inference." (*People v. Song*, *supra*, 124 Cal.App.4th at p. 983.)

In sum, admission of the redacted statements was not prejudicial because there was unrebutted, convincing, and independent evidence of defendant's guilt. Any error was harmless beyond a reasonable doubt since the verdict was surely unattributable to the redacted statements. (*Sullivan v. Louisiana*, *supra*, 508 U.S. at p. 279.)

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**15** Defendant points out that the jury requested a readback of Detective Carrasco's testimony about Martinez's statement, and he asserts that the request must have been for the sole purpose of considering her confession against defendant. This is mere speculation. Also contrary to defendant's assertion, the fact that the jurors requested this readback does not necessarily signify that the deliberations were close.

## DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, P. J.
BOREN

We concur:

_____, J.
DOI TODD

_____, J.
ASHMANN-GERST