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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SEBASTIAN RESENDEZ,

Defendant and Appellant.

B265315

(Los Angeles County
Super. Ct. No. BA427599)

APPEAL from a judgment of the Superior Court of
Los Angeles County, William N. Sterling, Judge. Affirmed.

Paul Richard Kleven, under appointment by the Court of
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Shawn McGahey Webb and Ilana Herscovitz,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Sebastian Resendez was charged with murder (Pen. Code, § 187, subd. (a))¹ after he fatally stabbed his uncle during a dispute over a Corvette motor. The centerpiece of the prosecution's case against defendant was a recorded statement defendant made to detectives about eight hours after the incident, while he was in the hospital recovering from a stab wound inflicted by his uncle. Defendant moved to exclude the statement, but the trial court admitted it after finding that defendant made the statement voluntarily. The jury found defendant guilty of the lesser included offense of voluntary manslaughter. (§ 192, subd. (a).)

Defendant now contends the trial court violated his Fifth Amendment rights by admitting the statement he made while in the hospital. He argues that the statement was not voluntary and therefore should have been excluded from his trial. Defendant further argues that the statement was obtained in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), and that his trial counsel was ineffective for failing to raise the *Miranda* issue.

We find no error and affirm the judgment of the trial court.

BACKGROUND

A. *Defendant's Statement*

According to defendant's statement, he received a phone call from his maternal uncle, Peter Gomez, on the morning of

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

July 23, 2014. Gomez wanted to know the whereabouts of a Corvette motor he had been storing in the garage of defendant's mother's house. Defendant had sold the motor for \$80 several months prior, and claimed he had told Gomez about the sale at that time. Defendant reminded Gomez that he had sold the motor, and Gomez became angry. Defendant heard his mother crying in the background. Defendant feared for his mother's safety because he knew Gomez had a short temper, a sixth-degree black belt, and at least two guns. Gomez also had "choked out" defendant in the past, and was insulting defendant's mother and "breaking shit" at the house. Although defendant's mother subsequently sent him text messages assuring him that she was fine and directing him not to come home, he decided to leave work and drive to the house to make sure she was okay; he stated that he was "hot headed when it comes to her." On the way, defendant placed a retractable magnet stick in his shirt pocket "as protection, just 'cause it's extendable to whip him or something," "if it came to that." Defendant also placed a "big knife" in his right boot, beneath his pants leg. He explained that he took the knife "[b]ecause I know how he is."

When defendant arrived at the house, he was both furious and scared. He parked his truck in the driveway behind Gomez's van. Defendant's mother immediately walked over to him, and Gomez approached him from inside the garage. All three of them

were in the space between the back of Gomez's van and the front of defendant's truck. Defendant's mother stood between the two men, "bawling her eyes out" as she tried to separate them. She grabbed the magnetic stick from defendant's pocket.

Defendant and Gomez argued verbally at first. Then Gomez pushed defendant's mother "a couple of times." Gomez also seized the magnetic tool from defendant's mother and tried to stab defendant with it. At this point, defendant was pressed up against the side of the van, and defendant's mother was trying to push Gomez away from him. Gomez either dropped the magnetic stick or threw it at defendant; somehow, it ended up on the ground.

Defendant bent down and attempted to retrieve the magnetic stick. Gomez told defendant, 'You're not gonna do nothing with this' and kicked him, "a good one," on the right side of his forehead. Defendant wound up on the ground between the van and the truck. He had the magnet stick in his hand.

Gomez pushed defendant's mother and ran to the back doors of his van. Defendant thought Gomez was going to grab a knife or tool from the van. While still on the ground, defendant unsheathed his knife from his boot. Gomez, who had only reached for the handles of the back van doors, saw defendant getting up with the knife and ran toward the front of the van. Defendant chased him. Gomez tripped and fell near the porch,

but got up right away. He lunged or charged at defendant, saying, "I'm gonna kill you," "and then that's when [defendant] stabbed him."

Defendant "was tryin' to get his leg" but wound up stabbing Gomez in the stomach. Gomez continued to come at defendant, so defendant stabbed him a second time, "like right in the same spot." Gomez fell but somehow managed to gain control of the knife. Defendant's mother tried to intercede, but there was a tussle during which Gomez stabbed defendant once in the right side of his chest before falling to the ground. Defendant walked to the garage, "looking for something else to fight," but left empty-handed.

Defendant realized he had been stabbed only when he saw blood all over himself and could not breathe. He thought he was going to die and walked over to a neighboring house to lie in the shade.

Near the conclusion of the interview, one of the interviewing detectives asked defendant, "do you think that if you didn't take the knife in there that Peter would be alive right now?" Defendant responded, "Probably, but I would still be here." The other detective asked, "How do you know that?" Defendant responded, "I know." After a long pause, he

reaffirmed, “I would’ve still been here.”² He told the detectives several times that he chased and stabbed Gomez in self-defense. Defendant opined that had he not stabbed Gomez, Gomez “would’ve chased after me” or “got something from the van and stabbed me with it.” Defendant told the detectives, “you guys do not know what this man is capable of.”

B. *Circumstances of the Interview*

Detectives initiated the interview with defendant in the surgical observation unit of the hospital at 7:50 p.m., after calling the hospital “about three or four times throughout the day” to see if he was able to speak to them. Los Angeles County Sheriff’s Department Detective Quilmes Rodriguez testified that he and his partner, Sergeant Martindale, wore plainclothes with their “identifying homicide badge[s].” Defendant was “shirtless,” and Detective Rodriguez testified that he “was laying down kind of in a quasi seated position with his back kind of at maybe a 45-degree angle in his bed in his room.” Defendant had blood on his hands, redness or an abrasion on his forehead, and a stab wound on his right “flank near the right chest area under the armpit.” Defendant told the detectives near the beginning of the interview that he had tubes in both of his lungs.

² Defendant asserts that his response to the first query was, “Probably, but I wouldn’t still be here,” not “Probably, but I would still be here.” He does not dispute that his follow-up response was, “I know. I would’ve still been here.” We infer that the “here” to which defendant was referring was the hospital.

At the beginning of the interview, before the detectives introduced themselves, defendant asked, “he’s dead?” Detective Rodriguez confirmed that Gomez had “passed away.” After introducing himself and Sergeant Martindale, Detective Rodriguez stated, “You understand you’re not under arrest, right? You do? You’re nodding yes.” Detective Rodriguez also asked defendant, “Are you - - are you able to speak?” Defendant responded, “It’s just I can’t believe it.”

Detective Rodriguez informed defendant that it was his job to “come in when someone passes away,” and Sergeant Martindale told him, “We weren’t there. We don’t know what happened.” After telling the detectives, “I gotta call, my mom,” defendant proceeded to tell them about Gomez and the altercation. During defendant’s initial recitation, the detectives spoke minimally, saying only things like “Mm-hm” and “Okay.” As the interview progressed, they asked more questions and occasionally challenged defendant’s story. Detective Rodriguez testified that defendant “spoke fairly normally” and “very clear,” did not appear to be under the influence of any medication, “appeared alert,” and “when we got something wrong, he corrected it.” Defendant also questioned at least one of the detectives’ theories, asking them how Gomez could have planned to pick up the missing motor “with just one guy.”

Several times, defendant offered to take a polygraph test. He also invited the detectives to check his phone records or talk to his family members to confirm the veracity of his story. At one point, he told the detectives, “I don’t want to incriminate myself. That’s why I’m only telling you the stuff I remember.”

The interview was interrupted twice by medical personnel. Approximately 25 minutes in, someone came to the room to perform a chest x-ray. Then, about 15 minutes after that, someone from cardiology came by to draw blood from defendant. The detectives told the cardiology personnel, “we’ll get out of your way here,” to which defendant responded, “Yeah. You’re not going nowhere, right?” Sergeant Martindale told defendant, “No.”

Throughout the interview, defendant asked several times to see his mother or other family members. He also asked for ice or water, for “dry mouth.” None of these requests was granted during the approximately 75-minute interview. The detectives also did not advise defendant of his *Miranda* rights.

C. *Relevant Proceedings*

Prior to the start of trial, defendant moved to exclude the statement he made at the hospital. Defense counsel argued, “I don’t think that he was lucid to understand to the point where he was going to understand, a, that number one he was speaking to the police and didn’t have the ability not to. And, more importantly, the circumstances that he was in at the time, so - -

and the facts that I'll lay out - - I think that everyone will agree with, that he sustained a stab injury. He had to go through surgery in order to recover from that injury. He was administered pain medication. And he was still under the constant care of a medical professional while the interview began and as it progressed. I don't know exactly what the medication was at this point, but it was pain medication consistent with surgery."

The trial court asked the prosecutor if he would stipulate to those facts. The prosecutor agreed that he was "certain of all that with the exception of the pain medicine. I'm assuming that he was on pain medicine. I don't think that for certain, but I would have to assume that he would have been, so, yeah." Defense counsel then argued, "That being the case, without any further detail, I would submit to the court that under those conditions in total . . . the statement was not knowing and not voluntary."

The trial court disagreed. "I listened to it. And while at times his voice is weak because of the injuries he sustained, it's just so readily apparent that he was completely lucid, there isn't even, I think, the possibility of drawing the inference that he was confused, the entire thing is just clear from the conversation he knows exactly what's going on. He makes statements that are totally coherent. He never says anything that's not coherent. He

responds appropriately at every juncture to everything that the detectives say. I mean, I don't think there's even the remotest indication that he was mentally impaired. Physically, well, obviously, he's been wounded, but he is alert. It's clear - - I'm going to switch to past tense here. He was alert. There's no question about it. He was lucid. He was coherent. He was totally cognizant. I don't think there's any inference, even a remote inference, that could be drawn that he wasn't in full command of his faculties, whatsoever. I'm going to deny the motion."

The prosecutor played the recording of defendant's interview for the jury in its entirety. Defendant's statement constituted the bulk of the prosecution's evidence about the stabbing incident. Indeed, the prosecutor remarked that exclusion of the statement "may impact my ability to go forward" with the case. The testimony of the prosecution's other witnesses—Detective Rodriguez, another officer who responded to the scene, a criminalist, and a coroner—is largely irrelevant to the issues raised by this appeal and accordingly is not discussed here. Defendant called his mother as his only witness.

The jury acquitted defendant of murder but found him guilty of the lesser included offense of voluntary manslaughter. (§ 192, subd. (a).) The jury also found true an allegation that defendant personally used a deadly and dangerous weapon, a

knife, within the meaning of section 12022, subdivision (b)(1). The trial court sentenced defendant to a total of four years: the low term of three years, plus an additional year for the enhancement.

Defendant timely appealed.

DISCUSSION

I. *Defendant's Hospital Statement Was Voluntary.*

A. *Standard of Review*

“Both the state and federal Constitutions bar the prosecution from introducing a defendant’s involuntary confession into evidence at trial. [Citations.] “A statement is involuntary if it is not the product of “a rational intellect and free will.” [Citation.] The test for determining whether a confession is voluntary is whether the defendant’s ‘will was overborne at the time he confessed.’” [Citations.]” (*People v. Linton* (2013) 56 Cal.4th 1146, 1176.) When a defendant moves to suppress as involuntary statements he or she made to law enforcement, the prosecution bears the burden of proving, by a preponderance of the evidence, that the statements were made voluntarily under the totality of the circumstances. (*Ibid.*) Factors relevant to the determination include the duration, location, and continuity of the defendant’s interaction with law enforcement; coercion by law enforcement; and the defendant’s maturity, education, physical condition, and mental health. (*People v. Williams* (1997) 16

Cal.4th 635, 660, citing *Withrow v. Williams* (1993) 507 U.S. 680, 693-694.) In other words, we look at both the details of the interaction and the characteristics of the defendant. “On appeal, we conduct an independent review of the trial court’s legal determination and rely upon the trial court’s findings on disputed facts if supported by substantial evidence.’ [Citation.]” (*People v. Linton, supra*, 56 Cal.4th at p. 1176-1177.) “The facts surrounding an admission or confession are undisputed to the extent the interview is tape-recorded, making the issue subject to our independent review.” (*Id.* at p. 1177; see also *People v. Perdomo* (2007) 147 Cal.App.4th 605, 614 (*Perdomo*).)

B. Analysis

The parties point to “[t]wo primary cases” that address the voluntariness of statements a defendant made to law enforcement while an inpatient at a hospital: *Mincey v. Arizona* (1978) 437 U.S. 385 (*Mincey*) and *Perdomo, supra*, 147 Cal.App.4th 605.

In *Mincey*, defendant Mincey was shot during an afternoon police raid of his apartment. (*Mincey*, 437 U.S. at p. 387.) He was taken immediately to the emergency room, where he was examined and treated. (*Id.* at p. 396.) “He had sustained a wound to the hip, resulting in damage to the sciatic nerve and partial paralysis of his right leg. Tubes were inserted into his throat to help him breathe, and through his nose into his stomach

to keep him from vomiting; a catheter was inserted into his bladder. He received various drugs, and a device was attached to his arm so that he could be fed intravenously. He was then taken to the intensive care unit.” (*Ibid.*)

A detective came to the hospital to talk to Mincey at about 8:00 p.m. (*Mincey, supra*, at p. 396.) The detective told Mincey that he was under arrest for the murder of a police officer, advised him of his *Miranda* rights, and questioned him about the raid. (*Ibid.*) “Mincey was unable to talk because of the tube in his mouth, and so he responded to Detective Hust’s questions by writing answers on pieces of paper provided by the hospital.” (*Ibid.*) Even though Mincey repeatedly asked for a lawyer, the detective questioned him for almost four hours. (*Ibid.*)

The U.S. Supreme Court concluded that it would be “hard to imagine a situation less conducive to the exercise of ‘a rational intellect and a free will’ than Mincey’s.” (*Mincey, supra*, at p. 398.) The Court described Mincey as “a seriously and painfully wounded man on the edge of consciousness.” (*Id.* at p. 401.) Mincey had arrived at the hospital “depressed almost to the point of coma” mere hours earlier, was seriously wounded and still in the intensive care unit, and was “evidently confused and unable to think clearly about either the events of that afternoon or the circumstances of his interrogation, since some of his written answers were on their face not entirely coherent.” (*Id.* at

pp. 398-399.) The Court also noted that Mincey was questioned while “lying on his back on a hospital bed, encumbered by tubes, needles, and breathing apparatus.” (*Id.* at p. 399.) Notwithstanding his “debilitated and helpless condition,” Mincey made numerous requests to stop the interrogation so that he could retain a lawyer. (*Ibid.*) Thus, “the undisputed evidence ma[de] clear that Mincey wanted *not* to answer Detective Hust. But Mincey was weakened by pain and shock, isolated from family, friends, and legal counsel, and barely conscious, and his will was simply overborne.” (*Id.* at pp. 401-402.)

Perdomo distinguished *Mincey* and found statements that a defendant made during a hospital interrogation were voluntary. (See *Perdomo, supra*, 147 Cal.App.4th at pp. 616-619.) *Perdomo* “suffered severe traumatic injuries to his chest area” after a high-speed car accident. (*Id.* at pp. 608, 610.) He had an emergency splenectomy, broken ribs, and bleeding in his brain. (*Id.* at p. 610.) Four days after the accident, hospital personnel granted two detectives permission to speak with *Perdomo* in the intensive care unit. (*Id.* at p. 611.) During the interview, which was tape-recorded, *Perdomo* “was lying flat on his bed,” was “connected to intravenous solutions and monitors,” and “had received his last pain medication five and a half hours earlier.” (*Id.* at p. 612.) His speech was “slow and deliberate but not slurred or overly raspy” from being on ventilator for the preceding three days.

(*Ibid.*) Perdomo was responsive to the officers’ “slow, subdued, and deliberate” questions. (*Ibid.*) The interview lasted approximately 20 minutes. (*Ibid.*) Roughly two hours after the interview, Perdomo “was moved out of the intensive care unit, taken off intravenous pain medications, and thereafter given oral doses of Vicodin for pain as needed.” (*Id.* at p. 617.)

The *Perdomo* court acknowledged that some of the facts were similar to those in *Mincey*. For instance, the defendant was questioned while lying on his bed in an intensive care unit. No family members or friends were with him, he had intravenous tubes attached to his body, he was receiving pain medication, and “appeared to be in pain” at the time of the interview. (*Perdomo*, *supra*, 147 Cal.App.4th at p. 616.) The *Perdomo* court concluded that was “where the similarities end.” (*Id.* at p. 617.) The court pointed out that Perdomo was alert, oriented, and was not drifting in and out of consciousness. (*Ibid.*) The interview occurred days rather than hours after his injury and surgery, and Perdomo was downgraded to a regular hospital room shortly after the interview concluded. (*Ibid.*) Nothing on the recording demonstrated that Perdomo’s cognition was impaired; the court noted that some of his answers to the detectives’ questions were “remarkably detailed,” and that he “was even alert enough to attempt to deceive the officers.” (*Id.* at pp. 617-618.) The court also emphasized that the interview was “relatively short,” at only

20 minutes, the detectives' voices were "very quiet and subdued," and Perdomo "did not express distress or otherwise indicate any unwillingness to speak to the officers." (*Id.* at p. 618.) "In short," the court explained, "the record is devoid of any suggestion the officers resorted to physical or psychological pressure to elicit statements" from Perdomo, who "did not express distress or otherwise indicate any unwillingness to speak to the officers." (*Id.* at pp. 618-619.)

Based on our review of the interview recording, we conclude that the facts of the instant case are more in line with those of *Perdomo* than those of *Mincey*. The totality of the circumstances in this case reveal that defendant made his statement voluntarily. Although officers came to the hospital on the same day of defendant's injury and surgery, they waited until medical personnel gave them clearance to do so. When they arrived, defendant was alert, coherent, and did not express any reluctance to speak with them. To the contrary, when the interview was interrupted for a blood draw, defendant made sure the detectives were "not going nowhere." Defendant acknowledged that he was not under arrest and gave the detectives a full, coherent narrative of the day's events at the outset of the encounter, with minimal prompting or interruption. Though he still had tubes in his lungs and may have been on

some sort of pain medication, he was in a seated position and his voice was strong and clear for most of the lengthy interview.

Defendant also demonstrated an ability to think critically and strategically throughout the interview. He corrected himself about the location of the knife, which he initially said was in his back pocket, reasoning that the knife “would stick out of my back pocket.”³ He mentioned self-defense several times, expressed concern about “incriminating [him]self” by commenting on details he could not remember precisely, and told the detectives when he believed phone records or other third-party evidence would corroborate his story. Defendant disputed the detectives’ theory that Gomez had sold the motor and was at the house to pick it up, pointing out that it “took four guys and a [*sic*] engine crane” for him to get the motor out of the garage. Detective Rodriguez noted that was “[a] good question” and remarked, “we’ll have to figure that one out.”

Defendant argues that he “was at the complete mercy” of the officers because “he was in physical shock at being stabbed in the lung and in mental shock at being involved in the death of his uncle.” Despite the physical and mental trauma defendant undoubtedly suffered, the recording of the interview belies his

³ Respondent argues that, like the defendant in *Perdomo*, defendant was trying to deceive the detectives by telling them the knife was in his pocket. Although defendant made the change unprompted, Detective Rodriguez testified at trial that he believed defendant had been attempting to deceive him about the location of the knife.

claim that his suffering placed him at the mercy of the detectives. The detectives told defendant at the beginning of the interview that he was not under arrest and that they wanted to learn what happened during the altercation. They spoke in calm, conversational voices and were not confrontational even when challenging details defendant provided. They also allowed medical personnel to attend to defendant, and told him they would “try to make arrangements” for him to see his mother. Nothing on the recording suggests that they resorted to physical or psychological pressure to elicit statements from defendant. (See *Perdomo, supra*, 147 Cal.App.4th at p. 619.) For his part, defendant was forthcoming, coherent, and matter-of-fact. He did not complain of pain or call for a nurse to get ice, nor did he break down when informed that Gomez was dead. He affirmatively sought to continue the interview after the blood draw and joked with the detectives about their resemblance to officers he had seen on television. In short, he did not express distress or otherwise indicate any unwillingness to speak to the officers. (See *Perdomo, supra*, 147 Cal.App.4th at p. 618.) His statement was voluntary and therefore admissible at trial.

II. *Counsel Was Not Ineffective Because Miranda Warnings Were Not Required.*

Defendant alternatively argues that his hospital statement should have been suppressed because he was not advised of his

Miranda rights. Defendant forfeited this argument because he did not seek to suppress the statement on that basis below. (See *People v. Scott* (2011) 52 Cal.4th 452, 482; *People v. Holt* (1997) 15 Cal.4th 619, 667.) Defendant seeks to avoid forfeiture by arguing that his counsel was constitutionally ineffective by neglecting to raise this issue in the trial court. We conclude that counsel did not render deficient performance because no *Miranda* warnings were required.

To prevail on a claim of ineffective assistance of counsel, a defendant must make a two-pronged showing. First, he or she must “show counsel’s performance was deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms.” (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) “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.” (*Ibid.*) “Counsel’s failure to make a futile or unmeritorious motion or request is not ineffective assistance.” (*People v. Szadzewicz* (2008) 161 Cal.App.4th 823, 836; see also *People v. Price* (1991) 1 Cal.4th 324, 387.) A motion to suppress on *Miranda* grounds would have

been unmeritorious here, and counsel acted well within the bounds of prevailing professional norms by declining to bring such a motion.

A defendant must be advised of his or her *Miranda* rights only when he or she is subjected to “custodial interrogation.” (*People v. Mosley* (1999) 73 Cal.App.4th 1081, 1088 (*Mosley*).) Here, there is no dispute that the hospital interview was an interrogation, as it consisted of “words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301, fn. omitted.) The issue is whether the interrogation was “custodial.”

“An interrogation is custodial, for purposes of requiring advisements under *Miranda*, when ‘a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ [Citation.] Custody consists of a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. [Citations.] When there has been no formal arrest, the question is how a reasonable person in the defendant’s position would have understood his situation. [Citation.] All the circumstances of the interrogation are relevant to this inquiry, including the location, length and form of the interrogation, the degree to which the investigation was focused on the defendant,

and whether any indicia of arrest were present.” (*People v. Moore* (2011) 51 Cal.4th 386, 394-395.) The bottom-line question is whether, given the circumstances surrounding the interrogation, a reasonable person in defendant’s position would have felt free to end the questioning and leave. (*Ibid.*)

Factors relevant to this inquiry include “whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person’s conduct indicated an awareness of such freedom; whether there were restrictions on the person’s freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation.” (*People v. Aguilera* (1996) 51

Cal.App.4th 1151, 1162; see also *People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403-1404.) No single factor is dispositive. (*People v. Aguilera, supra*, 51 Cal.App.4th at p. 1162.)

The circumstances in this case overwhelmingly demonstrate that defendant was not in custody for *Miranda* purposes. Although law enforcement initiated the interview, the detectives immediately told defendant that he was not under arrest and did not manifest a belief that he was culpable. Defendant voluntarily consented to the interview, inasmuch as he almost immediately began telling the detectives about the events leading up to the stabbing of Gomez. The detectives did not dominate or control the course of the interrogation; they allowed defendant to tell his story, then asked follow-up questions to clarify the details. Their questions were open-ended and were neither aggressive nor particularly accusatory in nature, and there is no evidence that the officers had or drew weapons or otherwise employed threatening or intimidating interrogation tactics. Defendant was confined to his hospital bed, but this restraint was occasioned by his injury, not the officers' presence or actions. (See *Mosley, supra*, 73 Cal.App.4th at p. 1091.) The officers did not arrest defendant. The interview, though somewhat lengthy, appears to have been "in view of and in the presence of medical personnel who continued to treat defendant." (*Ibid.*) Medical personnel entered defendant's room

at least twice during the interview, and defendant's comment during the interview that there were "people next to me" suggests that other medical personnel or patients were present as well. Defendant's comment to the officers to ensure they were not leaving during his blood draw indicates that he wanted to talk to detectives and was aware that he had some control over the interview.

This case is analogous in many ways to *Mosley*. In *Mosley*, the defendant was in an ambulance, in the custody and care of paramedics. (*Mosley, supra*, 73 Cal.App.4th at p. 1089.) An officer entered the ambulance and questioned defendant while he was being treated for a gunshot wound, but did not arrest him. Defendant's injuries rendered him immobile, but the *Mosley* court concluded a reasonable person in his position would not have believed he was in police custody. (*Id.* at p. 1091.) The *Mosley* court emphasized that "[a]ny restraint of defendant's freedom of action was caused by the need to treat his gunshot wound." (*Ibid.*) *Mosley* was not placed under arrest, the questioning occurred in the presence of medical personnel, and the officer did not know the full circumstances of the incident when he spoke to *Mosley*. (*Ibid.*) The court also noted "that the questioning was not accusatory or threatening, that defendant was not handcuffed, that no guns were drawn, and that defendant was

about to be transported to a hospital and not a police station or jail.” (*Ibid.*)

Defendant contends these similarities are outweighed by differences. In *Mosley*, the interview lasted “only a couple of minutes.” (*Mosley, supra*, 73 Cal.App.4th at p. 1089.) The officers there were unfamiliar with the events in question, and did not challenge the defendant’s statements. Here, the interview went on for over an hour, occurred after the officers had spoken to defendant’s mother, and included challenges to and questions about defendant’s recollection. When considered in light of all the other circumstances of the case, however, these factors do not demonstrate that a reasonable person in defendant’s position would have believed he or she was in police custody or otherwise deprived of his or her freedom. A motion to suppress on *Miranda* grounds accordingly would have been properly denied, and defense counsel did not render ineffective performance by declining to make such a motion.

DISPOSITION

The judgment of the trial court is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.